Supplementary submission – intended to address Term of Reference (h) - Other Factors

Executive Summary. This supplementary submission addresses systemic maladministration in the Defence Force Retirement and Death Benefits (DFRDB) scheme, focusing on the misuse of the Consolidated Revenue Fund (CRF), misclassification of member contributions, and unlawful taxation and commutation practices that contradict both legislation and constitutional protections.

The key findings are:

1. Misrepresentation of Member Contributions
    - Member contributions were made from *after-tax income (PAYG)* and are expressly recognised as *member property* under section 66(4) of the DFRDB Act.
    - CSC and the ATO misclassify these contributions as untaxed Commonwealth revenue, enabling *systematic double taxation* and denying veterans their legislated property rights.
2. Misinterpretation of Commutation Provisions
    - Section 24(1) authorises commutation as a *prepayment of future pension entitlements*, not a permanent reduction.
    - Section 39(1) confirms that spouse pensions are calculated as if no commutation occurred, proving that full pension entitlements remain intact in law.
    - CSC's treatment of commutation as a permanent forfeiture constitutes an *unauthorised reinterpretation of legislation* that enriches the Commonwealth at members' expense.
3. Unlawful Indexation Practices
    - Section 98B legislates indexation of the "relevant rate of pension benefit," which contextually refers to the full pension entitlement.
    - CSC applies indexation only to reduced post-commutation pensions, creating a *hidden, compounding financial penalty* contrary to statutory intent.
4. Misuse of the Consolidated Revenue Fund (CRF)
    - The CRF was intended as a protective mechanism ensuring benefit security. It has instead been used as a *device to absorb member capital*, obscure ownership, and deny actuarial reconciliation.
    - This amounts to a *de facto acquisition of property without just terms*, in breach of section 51(xxxi) of the Constitution.
5. Breach of Fiduciary Duty and Public Trust
    - The CSC, charged with acting in members' interests, has published materials and maintained administrative practices directly contradicting the Act it administers.
    - Despite repeated inquiries, evidence-based member submissions have been dismissed, not because they are incorrect, but because they expose *systemic error and Commonwealth liability*.

Conclusion:
The DFRDB scheme's administration now represents not a protective arrangement for veterans, but a

continuing transfer of wealth from those who served to the Commonwealth itself.
The Committee is urged to:

- Recognise the CRF's misuse to obscure member ownership and facilitate double taxation.
- Direct reconciliation and restitution of member contributions and pension entitlements.
- Restore lawful administration consistent with the DFRDB Act, the Income Tax Assessment Act 1997, and the constitutional right to property on just terms.

6. The administration of the DFRDB scheme is so fundamentally flawed that no single submission could capture the full scope of its anomalies, inconsistencies, and administrative absurdities.

7. A striking example lies in the way the Commonwealth Superannuation Corporation (CSC) publishes a DFRDB "booklet" as guidance material that directly contradicts the DFRDB Act itself or the foundational memoranda. has been used to legitimise unlawful practices without legislative authority:

- **The false claim that all DFRDB benefits are funded from CRF and therefore are untaxed**. The CSC's ongoing claim that DFRDB pensions are 'untaxed' because they are paid from the CRF is legally false. It conceals a structure of double taxation that contradicts both the DFRDB Act and the Income Tax Assessment Act 1997.

  - **Contradictions:** Legislation (S.66(4) DFRDB Act) recognises member contributions as capital and property, forming the basis of lump sums and actuarial prepayment of future pensions. Contributions are after-tax (PAYG) and should be treated as member-owned.

  - **CSC / ATO practice** treats all contributions as flowing into the Consolidated Revenue Fund (CRF), presenting benefits as entirely Commonwealth-funded and "untaxed," effectively denying members' property rights.

  - **Effect:** Members' own capital is misclassified as Commonwealth revenue.

    - Lump sum repayments and post-commutation reductions are calculated without recognising prior taxation or ownership, leading to double taxation and permanent financial disadvantage.

    - Contributions are after-tax (PAYG) and are therefore part of the member's taxed property. Tax obligations for lump sum repayments or pension adjustments should acknowledge prior taxation, in line with Income Tax Assessment Regulations 1997, Subdivision 307-220.

      - ➢ Subdivision 307-B of the Income Tax Assessment Act 1997 (ITAA 1997) deals with tax free components of superannuation streams. This subdivision provides a formula for calculating tax-free and taxable components of a superannuation pension.

        - The laws intent: to ensure that the portion of pension that represents a return of your post tax contributions are identified as tax free.

        - The correct calculation: CSC should be using the detailed contribution records held by the Government actuary, the very records they should use to calculate refunds and to determine a fair an accurate tax-free percentage for each member's pension.

        - Instead, of conducting a member specific calculation, CSC uses the unfunded status of the scheme to apply a formula in a way that deliberately minimises or zeros out the tax-free component. Justification: all benefits are paid from the CRF, no tax has been paid by the scheme. CSC is violating the spirit and purpose of the tax law.

    - Interest on contributions and any actuarial prepayment is lost to members, converting a statutory entitlement into a source of Commonwealth enrichment.

    - The practice raises serious questions under Section 51(xxxi) of the Constitution (acquisition of property without just terms) and represents a breach of statutory and fiduciary obligations.

- **Mischaracterisation of commutation as a permanent pension reduction.**

  - **Contradictions:** Parliamentary debates, explanatory memoranda, and the DFRDB scheme design documents (1973-1974) make clear that:

    - The commuted lump sum is not an additional benefit; it is an advance (a prepayment) of future pension entitlements.

    - **S.24(1)** — *A person entitled to retirement pay may commute a portion of that pay for a lump sum.* This clause authorises a voluntary exchange of future pension income for an actuarially calculated lump sum. It provides no authority for a permanent reduction in pension; in fact, its structure and intent repudiate any such interpretation, as it presumes eventual actuarial reconciliation of the commuted value over the member's lifetime (so, an up-to-date mortality table).

    - **S.39(1)** — provides that, where a member dies, the spouse's pension is calculated as though the member had *not* commuted any portion of retirement pay. This clause confirms that commutation under Section 24 is an actuarial prepayment, not a permanent reduction, and that the underlying full pension entitlement continues to exist in law. The Commonwealth's reinterpretation of commutation as a permanent forfeiture directly contradicts this provision and the Parliament's expressed intent.

    - The **Explanatory Notes** to the Defence Force Retirement and Death Benefits Bill (1973) explicitly refer to the lump sum as being "in lieu of a portion of continuing retirement pay" (i.e., a substitution, not extinguishment).

  - **Effect:** CSC's interpretation converts a temporary, member-elected arrangement into a permanent financial penalty that enriches the Commonwealth at members' expense.

- **Omission of any reference to actuarial reconciliation.**

  - **Contradiction:** The Act provides for an actuarially defined mortality period to balance commutation.

  - **Effect:** CSC's version converts a temporary, member-elected arrangement into an open-ended financial penalty without legislative authority, imposed on veterans as an open-ended liability - a blank cheque that no member could ever have knowingly agreed to.

Failure to Recognise and Disclose Taxed Member Capital

- **Fact:** DFRDB member contributions were deducted from *after-tax income* (PAYG). These were not employer or concessional amounts, but personal capital already taxed prior to remittance to the Commonwealth.

- **Legislative Basis:**
  - **DFRDB Act s.66(4)** expressly recognises that member contributions remain the member's property, forming capital which funds benefits such as lump sums and pensions.
  - **Income Tax Assessment Regulations 1997**, **Subdivision 307-220**, stipulates that *non-concessional (after-tax)* contributions represent the **tax-free component** of a superannuation benefit, and must not be subject to further taxation when paid out.

  - **Contradictions:** CSC's booklet claims that all DFRDB benefits are "untaxed" because payments are made from the Consolidated Revenue Fund (CRF).

  - This assertion disregards the statutory ownership of member contributions and ignores their taxed origin, enabling the Commonwealth to reclassify taxed member capital as public revenue.

  - **Effects:** When benefits are paid, the ATO applies tax formulas as if no tax had ever been paid on contributions.
  - This results in systematic double taxation: once under PAYG when contributions were made, and again on the pension, which includes repayment of that same capital through reduced income, and lump sum repayments, containing member capital.

- **Outcome:**
  - Members' contributions have been absorbed into the CRF without recognition, contrary to legislative intent.

  - The Commonwealth gains an undisclosed annual return through taxation of repayments on already-taxed member capital.

  - The arrangement breaches principles of fiduciary duty, property rights under s.51(xxxi) of the Constitution, and transparency in superannuation taxation.

Contradiction Between Legislated Indexation and Post-Commutation Reductions

- The DFRDB Act establishes that indexation applies to the member's full pension entitlement. CSC's practice of applying indexation only to the reduced post-commutation amount contradicts that legislative framework:

  - **Contradictions: S.24(1)** treats commutation as a prepayment, with interest - not a permanent reduction.

  - **S.39(1)** calculates surviving spouse pensions as if no commutation occurred, preserving the underlying entitlement.

  - **S.98B** mandates indexation on the "relevant rate of pension benefit," which, interpreted in context, is the full pension, not an administratively reduced figure.

- Despite this, CSC applies post-commutation reductions indefinitely, calculating indexation on the already reduced pension.

- **Effects:** Members lose legislated indexation benefits, creating a hidden, ongoing financial penalty and Commonwealth enrichment.

- Illustrative example:
  - Full pension = $50,000/year; 20% commutation → $40,000/year

  - Indexation 3%: legislated → $51,500/year; applied to reduced → $41,200/year

  - Annual shortfall = $300; cumulative over 20 years = $6,000 lost

- The practice converts a temporary actuarial adjustment into a permanent disadvantage, misrepresents legislative intent, and has no statutory authority.

Moving on - Legislative and Administrative Context

8. Defence's Retirement and Death Benefits (DFRDB) scheme is legislation approved by Parliament. It is not a departmental policy or an accounting convenience mechanism. Yet during its implementation, Defence was sidelined by bureaucrats, despite being the agency carrying the financial and moral obligation for its outcomes. This represents a serious procedural failure.

9. In the final stages, that same bureaucracy forced alignment with other Commonwealth schemes, totally disregarding and disrespecting the unique and inalienable structure of military conditions under DFRDB. Last-minute insertions, including the infamous "on and after" language in section 24(3), probably made without Defence oversight; and introduced contradictions that have since destabilised the entire scheme's legal and financial integrity.

Member Property, Commutation, and Taxation Distortion

10. We were told, and the foundational Jess report shows, that member contributions were explicitly to create a vested financial stake for members, establishing a contributory partnership with the Commonwealth. These contributions were not a gift or a tax; they were calculated as members' capital, specifically intended to fund key benefits, such as reservists' benefits and refunds, thereby

giving members tangible ownership with the completed scheme. This contractual understanding of a shared cost and equitable partnership has been systematically betrayed by an administration that now treats these contributions as general revenue, denying the very ownership and equity the scheme's architects designed to provide.

11. DFRDB was also sold as an *unfunded* model with contributions going into the CRF to protect the nation and veterans from the risk of a failed investment fund. In practice, every element of financial risk has subsequently been transferred to members, from obsolete actuarial data to longevity risk, and of course the abundant administrative preference, sleight of hand, and misappropriation.

12. The CRF did not remove risk; it merely converted member-funded capital into Commonwealth-controlled revenue, making members involuntary underwriters of their own detriment.

13. In my own case, 84% of my lump sum is self-funded through contributions, yet I am required to repay that same amount in full, and more, via permanent pension reductions, loaded with extortionary interest - derived from obsolete mortality assumptions, and with no tax concessions applied to the repayment component. This is not an actuarial balance; it is a concealed fiscal levy on veterans' pensions, generating an undisclosed revenue stream for the Commonwealth under the guise of superannuation administration.

The CRF as a Tool for Obfuscation and Denial of Ownership

14. The CRF functions as a financial event horizon. Once our contributions and taxes cross into it, they vanish, and with them, our ownership. This deliberate opacity enables a convenient fiction that allows the Commonwealth to:

- **Deny property rights** clearly recognised in *section 66(4)* of the DFRDB Act, which attaches ownership to member contributions and accrued interest.
- **Reclassify member capital as general revenue**, breaching the legislated nexus between contributions and benefits.
- **Double-dip on that capital** through commutation repayments, permanent pension reductions, and post-Douglas taxation.

15. These are not errors of administration – they are maladministration and misappropriation. They represent a systematic reappropriation of private capital, made possible by administrative reinterpretation and legislative manipulation.

16. I ask the Committee to put a single, direct question to Finance and CSC:

"Show us the specific clause in the DFRDB Act that authorises you to ignore member contributions for the purpose of commutation, lump sum repayments, or taxation."

They cannot. It does not exist. Their reasoning is circular: *we treat it this way because it is unfunded; it is unfunded, so we treat it this way.* The Committee must break this circular argument.

The "Taking" – Acquisition Without Just Terms

17. The Commonwealth's appropriation of member contributions through the CRF constitutes an acquisition of property other than on just terms, in direct contravention of Section 51(xxxi) of the Constitution.

18. The Commonwealth takes our contributions via the CRF, fails to recognise them as the property they are, and never returns them in full measure or purpose. The CRF, originally conceived as a mechanism of protection, has been perverted into a mechanism of appropriation.

Breach of Trust

19. The CRF was meant to shield the public interest. In this case, it has become a sword turned inward, used against those least able to contest it. Veterans represent a limited political constituency, and that vulnerability has been exploited. This is not merely poor administration; it is a betrayal of trust by those charged with protecting it

20. DFRDB contributions were always the property of members, a finite, percentage-based prepayment intended to create ownership for future decision making. Bureaucratic reinterpretation, maladministration, and ATO-endorsed taxation distortions have converted that property into Commonwealth revenue without authority, transparency, or consent.

21. Despite multiple inquiries and reviews, CSC has systematically dismissed, ignored, or obfuscated every legitimate concern. This is not because member evidence is flawed, but because acknowledging it would expose systemic error and long-standing maladministration. This conduct represents a profound breach of fiduciary duty and public trust.

22. Defence leaders rightly proclaim that 'people are our best asset', yet the overwhelming theme from all of the Committee called submissions is that the DFRDB scheme represents a broken covenant – a failure to deliver the deferred compensatory salary that was earned by one's service. This Committee now has the historic opportunity to align those words with action, to finally honour the nation's debt and prove that our best asset is not merely a slogan but a sacred commitment.

A Call to Action

The Committee is asked to find that:

- The use of the CRF coupled with an unfunded program has been blatantly used to absorb DFRDB member contributions and has been leveraged to obscure and deny the property rights of members.
- This practice has facilitated a permanent transfer of wealth from veterans to the Commonwealth, contrary to the intent of the DFRDB Act and without member consent.
- The Commonwealth must be directed to cease using the CRF as a legal fiction to justify maladministration, and to commence reconciliation and restitution of the amounts wrongfully absorbed.

Closing Statement

1. The CRF was created to ensure the Commonwealth always met its obligations. In the case of DFRDB, it has been used to avoid them. This is not a mere accounting convenience; it is a systemic breach of trust and an unjust appropriation of property from those who served.

The Committee has both the power and the duty to restore integrity to this Act, to ensure that those who served this nation are not the only Australians denied the superannuation equity they were promised.