

## Committee Secretariat

Senate Finance and Public Administration Committees

## Opening Statement

For nearly five decades, the Defence Force Retirement and Death Benefits (DFRDB) scheme has operated in defiance of its legislation, with veterans subjected to unlawful, permanent pension reductions. I am one such veteran, with 35 years of RAAF service and 14 years in the Australian Public Service. I have been a compulsory DFRDB member since 1975.

## Terms of Reference

I have nominated the “other related matters” as the reference point for this Committee’s consideration. While parts of this submission overlap with my earlier provided submission, the critical issue here is the breadth of governance failure across every body entrusted with independence - courts, Ombudsman, Defence, CSC, and CDDA. Each has defaulted to endorsing a narrative that twists the plain meaning of the DFRDB Act. This is not a matter of ambiguity, but a systemic breakdown of governance and oversight that squarely falls within the Committee’s mandate to ensure accountability, integrity, and respect for parliamentary intent.

## Legislative Intent Ignored

This is not merely a failure of administration but of parliamentary oversight, where delegated administrators have rewritten the intent of the Act by practice, without amendment or approval of Parliament.

The DFRDB Act provides no authority for permanent pension reductions. The commutation arrangement has been designed solely as a recovery mechanism for prepayment of pension income, to be reconciled over an actuarially defined lifespan. The Act contains only one actuarial rule, Schedule 3, and no provision exists for permanent pension cuts, because there is no actuarial mechanism to support ongoing pension reductions past Schedule 3's expectation of life factors.

The Commonwealth’s continued reliance on an unrevised Schedule 3 constitutes clear breaches of the PGPA Act 2013:

- **s 15 – Proper governance:** Failure to uphold proper use and management of resources by persisting with outdated actuarial tables.
- **s 16 – Risk management:** No framework to address risks created by obsolete mortality data, while deliberately diminishing lump sums and embedding a permanent pension reduction to secure Commonwealth enrichment.
- **s 8 – Efficient and effective use of resources:** Inefficient and distorted outcomes that undermine the integrity of member entitlements.
- **s 26 – Good faith and proper purpose:** Acting contrary to the intended statutory purpose, prioritising Commonwealth enrichment over lawful benefits.

The scheme’s core engine, Schedule 3, remains sound. The government, at any time, can recalibrate the discount rate and mortality tables to modern standards without threatening the scheme’s solvency. It is just the case that making this change, which should have been undertaken years ago,

will swing the benefits away from the Commonwealth and back to its members; a purely ethical stance rather than a liability protection outcome.

Despite this clear intent, successive administrators, authorities, and courts have chosen to ignore it. Veterans understand commutation as a temporary advance of pension, with full restoration over time. Instead, they face legislative sleight of hand, a permanent financial penalty that distorts s24 to falsely legitimise permanence.

### Executive Summary

The injustice of DFRDB commutation has been entrenched by systemic failure across multiple institutions:

- **Courts** have twice upheld permanent pension reductions despite the Act containing no authority (actuary framework) for such an outcome. Prescribing a mechanism that fails to interrogate the financial and legislative structure of the scheme, while allowing pensions without actuarial control, to collect multiples of fair value for any provided lump sum.
- **The Commonwealth Ombudsman** reinforced this misinterpretation under the guise of administrative fairness. Unable or unwilling to identify any actuarial basis for permanent pension reductions beyond Schedule 3's expected life factors, the Ombudsman instead relied on convoluted comparisons to external lump sum investments, effectively endorsing ongoing Commonwealth enrichment in a legislated, unfunded defined benefit scheme.
- **ComSuper/CSC and the CDDA scheme** openly reject claims that do not pander to the imposed permanency narrative. Delegates refuse to address undermining issues in their reasons for decisions, instead only promoting high-level arguments that endorse ongoing Commonwealth enrichment at the expense of members.

Together, these actions distort the will of Parliament and bind multiple arms of government into sustaining a legal fiction. Veterans are not the casualties of drafting ambiguity or isolated oversight, but of a deeper, systemic, and coordinated institutional failure. The model should be that Defence carries the legislative risk while member benefits are secured as per the purpose of the Act. In any private-sector setting, such conduct would likely constitute predatory practice or financial misconduct.

What has been framed as administrative 'fairness' is in reality a systemic misrepresentation of law, a breach of PGPA duties, and an erosion of parliamentary intent.

### The Commonwealth's Financial Enrichment Cycles

The DFRDB commutation structure has been twisted and remains unchanged to deliver a recurring financial benefit to the Commonwealth at the expense of members:

- **The Pool** – Member contributions, plus imputed interest, provide the Commonwealth with cheap capital in an unfunded scheme. That capital is buried within the Central Revenue Fund to accommodate a modest off-the-books liability reporting outcome.
- **The Exchange** – At retirement, the Commonwealth manipulates outdated mortality data to undervalue lump sums and inflate recovery payments, embedding a hidden repurchase rate of 4.4%. This sleight of hand assumes pensions will last only 8–10 years, when in reality they are paid continuously until a member's death.

- **The Taxation** – The diminished pension benefit is then taxed as income rather than being treated as a repayment of twice-purchased lump sum benefits (member post-tax contributions plus the well-hidden discount cost), compounding the loss.
- **The Windfall** – Permanence of pension reductions guarantees the Commonwealth an undisclosed windfall far beyond Schedule 3's obsolete predicted age of 68, extracting pure financial gain from veterans for the rest of their lives. No other scheme on record delivers this kind of reverse enrichment.

This framework contradicts the stated purpose of the DFRDB Act, to provide fair benefits for members. Instead, it has been optimised by bureaucrats to enrich the Commonwealth.

### **Legal Misinterpretation and Maladministration**

Reliance on the phrase “payment... on and after” in section 24(3) to justify permanent pension reduction is fatally flawed. It ignores core provisions:

- **Section 24(1):** The Commonwealth has subverted its statutory duty by distorting an entitlement to a defined benefit. Instead of honouring the legislated value, it has relied on obsolete discount rates and imposed a permanent pension reduction, falsely presented as actuarially sound. This governance failure has eroded member benefits for decades, converting a lawful entitlement into an unlawful enrichment for the Commonwealth.
- **Section 24(2B):** Parliament placed a hard limit on commutation; no more than five times annual retirement pay (40%). This safeguard was designed to ensure equity, proportionality, and lifetime sustainability. The Commonwealth's use of outdated factors and permanent pension reductions defeats this safeguard, creating hidden member losses that extend well beyond the legislated cap.
- **Commutation exchange:** Members never consented to an undefined exchange. Schedule 3 is explicit: commutation is a value-for-value prepayment, with time-coded reductions that restore the full pension and maintain equity across members. Permanence destroys that balance, stripping out cost, timeframe, and fairness. It leaves veterans trapped in a one-sided arrangement that continuously enriches the Commonwealth once they achieve Schedule 3's life expectancy milestone.
- **Schedule 3:** Successive authorities have weaponised the phrase “on and after” to justify permanent pension reductions. This interpretation not only ignores the governing actuarial mechanism in Schedule 3, but also elevates a general clause above a specific rule of law - a basic legal error (*generalia specialibus non derogant*). It reflects failed governance and judicial neglect of statutory interpretation.

Schedule 3 is integral. Its time-based actuarial factors specify a repayment period, meaning an ultimate reversion to the full pension. The Act contains no authority to bypass or selectively apply these life expectancy factors.

If the Commonwealth reasonably intended to impose permanent reductions, Defence could have amended the legislation or administratively updated Schedule 3 actuarial tables (e.g., to reflect ABS 2007 or later life tables). It did neither. Instead, all stakeholders simply draw down on an agreed narrative, which has been retained for decades, creating unlawful Commonwealth enrichment.

## Call to Action

The Standing Committee must:

- **Acknowledge** that the DFRDB Act contains no authority or mechanism for permanent pension reductions.
- **Investigate** the systemic misrepresentation and maladministration that has entrenched the DFRDB's false interpretation of commutation by a range of bodies since inception.
- **Administratively update Schedule 3** to align the Act with its original intent, ensuring commutation operates only as a prepayment recovery mechanism with eventual restoration to full pension.
- **Taxation reform** to ensure commuted pensions are not taxed as income where they represent repayment of members' own capital.
- **Establish redress mechanisms** for veterans already disadvantaged, including reconsideration of CDDA claims and restitution of unlawfully reduced pensions.

## Closing

This is not merely poor communication; it is a breach of statutory duty, PGPA principles, and parliamentary trust. Veterans bore the risks of service; Defence and the Commonwealth must bear the legislative risk and ensure benefits are delivered as were intended.

Only decisive parliamentary intervention will restore fairness, accountability, and the original intent of the DFRDB Act.