

Statement to
the Senate Finance and Public Administration Committee
on the Inquiry into the Operation and Appropriateness
of the Superannuation and Pension Schemes
for Current and Former Members of the Australian Defence Force
from Legacy Australia

Legacy's submission is about the matter of Domestic Violence and Family Separation

I would like to begin by thanking Senators Jacqui Lambie and David Pocock for taking up this matter in part leading to this review.

*and the late
Senator Molan*

The DFRDB, MSBS and ADF Cover are defined benefit schemes where reversionary pension provisions for surviving spouses, partners and dependent children are available. But we have cases where that is not always the case.

Legacy would like to raise the matter of CSC withholding payment of reversionary benefits to surviving partners under these schemes when the veteran has died and because of mental health leading to domestic violence, the veteran and the partner were physically separated, but still legally married.

I now refer you to the Veterans' Covenant which states:

We, the people of Australia, respect and give thanks to all who have served in our defence force and their families.

"We acknowledge the unique nature of military service and the sacrifice demanded of all who commit to defend our nation.

"We undertake to preserve the memory and deeds of all who have served and promise to welcome, embrace and support all military veterans as respected and valued members of our community.

"For what they have done, this we will do."

I read that covenant as a promise to respect and give thanks to families of veterans who too have served our nation by supporting their veteran partner, father or mother throughout their life together. We must honour that promise – it states this we will do.

Our experience is that family breakdown appears more common among veteran families than in the broader Australian community. To date, Legacy cares for over 28,000 individuals made up of surviving partners, children and youth, and disabled adults, including families whose veteran loved one has given their physical or mental health.

The Royal Commission finding into Defence and Veterans Suicide also found that mental health issues are more common amongst veterans who have transitioned involuntarily and often such mental health problems lead to domestic violence.

At issue, there are cases where the surviving family members no longer qualify for reversionary pensions because the spouse or intimate partner did not meet the Act's definition of spouse – that of requiring dependency. This dependency it determined to mean financial dependency and be 'wholly or partially dependent'. The DVA Act defines "dependent" as meaning "dependent for economic support" so the interpretation has been that the surviving partner must be dependent upon the veteran to receive a reversionary benefit.

Modern superannuation schemes allow for a binding or non-binding nomination to be made by the superannuant. With a binding nomination, the member specifies where their residual super goes when they die. This removes the discretion from the CSC if a binding nomination is in place. Legacy wishes to highlight that Defence Force Retirement and Death Benefits (DFRDB) and Military Superannuation and Benefits Scheme (MSBS) do not allow binding nominations, and CSC decision criteria are not visible to families. This creates problems for the Trustee when the time comes for disbursement.

When the Superannuation Act 1976 was drafted, the definition of a family was given to mean a man and women with or without children living together. Today, that is but one definition. Also, in 1976, it was common for one partner, usually the woman to be the home maker. They often did not work, they did not have their own superannuation, and in many cases did not have their own savings. Back then, they were dependent on their veteran partner, legally, economically and emotionally.

Contemporary households operate more on a basis of mutual support and a sharing of the roles of earning income, parenting, and household duties. Partial dependence on each other with a strong degree of independence better reflects the present norms.

It appears to us that the decision on whether a surviving partner is quote 'financially dependent' before a benefit is paid is up to CSC to decide. The decision on dependency is based totally on CSC opinion on a case-by-case basis.

DVA may recognise a separated partner where CSC does not, leading to divergent outcomes and clawbacks. Legacy seeks to align CSC's criteria with DVA's by adopting a presumption in favour of survivors when there is some room to be lenient.

To Summarise

Under the provisions of the Acts Interpretation Act 1901, and if the Superannuation Act 1976 has not been revoked, Section 8A – titled Marital or couple relationship of that Act also still applies. That paragraph states: For the purposes of this section, a person is taken to be living with another person if CSC is satisfied that the person would have been living with that other person except for a period of:

- (a) temporary absence; or
- (b) absence because of the person's illness or infirmity.

That seems clear to Legacy that CSC can legally make a more lenient and compassionate decision regarding what we see as fair entitlement.

Legacy asks the Committee to

- Recognise domestic violence sometimes arises from the stresses of unique military service – we know this service places partners in different circumstances to the broader community. In the case of domestic violence, the couple cannot live together for safety reasons which often requires financial separation as well.
- Review the Superannuation Act in light of changes over the past fifty years to make it contemporary to Australian expectations and clarify that dependency on a veteran at the time of their death is no longer a reason to deny a reversionary benefit to their surviving partner.
- If a review of the Superannuation Act 1976 is too far reaching, then the Committee may recommend smaller amendments to the Superannuation Industry (Supervision) Act 1993 (Cth) and the Superannuation Industry (Supervision) Regulations 1994 (Cth) to remove this unfair and iniquitous dependency rule.

Thank you Chair, I will be happy to answer questions.