



DEFENCE FORCE WELFARE ASSOCIATION

4 May 2025

Committee Secretary

Senate Finance and Public Administration References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: fpa.sen@aph.gov.au

Dear Committee Secretary

Inquiry into the superannuation and pension schemes for current and former members of the Australian Defence Force (ADF)

Thank you for the invitation to make a submission in relation to the subject inquiry.

DFWA welcomes the inquiry and the broad terms of reference, however, we were disappointed with both the timing—during an election campaign—and the short timeframe. We thank the Secretariate and the Committee for accepting this late submission.

The Defence Force Welfare Association (DFWA) is an Australia wide organisation, formed in 1959, for the purpose of promoting and protecting the welfare and interests of serving and former members of the Australian Defence Force and their families.

DFWA has strong policy advocacy credentials particularly in relation to Defence superannuation and pension schemes. We are widely regarded as the lead veteran organisation in matters relating to superannuation and taxation.

Like most veteran organisations, we are staffed by members who volunteer their time and significant expertise, which is a precious resource. I commend our team for developing the submission. I would also acknowledge the contribution and support of the following organisations, in the development of this submission:

- a. Returned & Services League of Australia (RSL),
- b. Women Veterans Australia (WVA),
- c. Legacy,
- d. Defence Reserves Association.

DFWA will provide supplementary submissions as required.

I offer myself and my advisory staff to appear personally at any time to answer questions about this Submission, or other questions that may be deemed relevant to the Inquiry.

Yours sincerely,

Del Gaudry CSC

National President

Defence Force Welfare Association

Defence Force Welfare Association

Submission

Senate Finance and Public Administration References Committee Inquiry

THE OPERATION AND APPROPRIATENESS OF THE SUPERANNUATION AND PENSION SCHEMES FOR CURRENT AND FORMER MEMBERS OF THE AUSTRALIAN DEFENCE FORCE

1. This submission addresses the Terms of Reference (“**TOR**”) of the Inquiry into the operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force (“**ADF**”) examining each of the various sections of the TOR.

DFWA INTERPRETATION AND APPROACH

2. DFWA has adopted the following interpretation and approach to the TOR.

Beneficiaries and members

3. All the ADF superannuation and pension schemes have members and beneficiaries. “Beneficiaries” include former ADF members receiving benefits, and in the event of the veteran’s death, their dependent family members, i.e., widow/ers, former partners and children, receiving reversionary pensions.

Families

4. The TOR confines consideration to “current and former members of the ADF” with no mention of families. In responding to the TOR, DFWA has also addressed interests and wellbeing of veterans’ families.

Covenant

5. Reference to the Covenant¹ and the unique nature of military service is made throughout this submission, especially where ADF super schemes and legislation, designed to consider the unique nature of military service, have compatibility difficulties with other legislation designed for the non-military occupations and environments.

No Disadvantage.

6. Reference is also made to the “no disadvantage compared with other Australians” clause which was dropped from the proposed Covenant legislation as an unnecessary principle. DFWA welcomes TOR(e) seeking answers to “whether CSC account holders have the same rights and protections as other Australians in relation to their superannuation”. They do not. Inclusion of the “no disadvantage” principle in the Covenant would serve as a reminder for governments and communities to consider veterans and their families in their policies and practices.

¹ *Australian Veterans’ Recognition (Putting Veterans and their Families First) Act 2019* (Cth).

FITNESS OF GOVERNANCE – LEGISLATIVE FRAMEWORK

TOR (a) Examining whether the legislative framework governing superannuation and pension schemes for current and former members of the ADF is fit for purpose.

OVERVIEW

Core Superannuation Legislation & Framework

7. The ADF's superannuation landscape includes the following core schemes:
 - a. Defence Forces Retirement Benefits ("**DFRB**"), established by the *Defence Forces Retirement Benefits Act 1948* (Cth);
 - b. Defence Force Retirement and Death Benefits ("**DFRDB**"), established by the *Defence Force Retirement and Death Benefits Act 1973* (Cth);
 - c. Military Superannuation and Benefits Scheme ("**MSBS**" or "**Military Super**"), established by the *Military Superannuation and Benefits Act 1991* (Cth);
 - d. Australian Defence Force Superannuation ("**ADF Super**"), established by the *Australian Defence Force Superannuation Act 2015* (Cth); and
 - e. Australian Defence Force Cover ("**ADF Cover**"), established by the *Australian Defence Force Cover Act 2015* (Cth).
8. These schemes are governed under the CSC Governance Act, and take account of:
 - a. General superannuation legislation framework, such as:
 - (1) *Superannuation Industry (Supervision) Act 1993* (Cth) ("**SISA**"),
 - (2) *Superannuation Industry (Supervision) Regulations 1994* (Cth) ("**SISR**"), and
 - (3) *Superannuation Guarantee (Administration) Act 1992* (Cth) ("**SG Act**");
 - b. Taxation legislation, such as:
 - (1) *Income Tax Assessment Act 1997* (Cth) ("**ITAA 97**"), and
 - (2) *Income Tax Assessment Regulations 1997* (Cth) ("**ITAR 97**"); and
 - c. Other intersecting laws such as those relating to veteran compensation and entitlements, social security, child support, and family law.

Issues identified

9. DFWA has identified the following issues:
- a. Lack of transparency.
 - b. Issues with the applied legislative framework.
 - c. Omissions in the legislative framework.
 - d. Legislative Framework – Fitness for purpose.

LACK OF TRANSPARENCY IN CSC GOVERNANCE ACT OPERATIONS

10. DFWA is of the view there is a lack of transparency regarding adherence to the requirements of the *Governance of Australian Government Superannuation Schemes Act 2011* (Cth) ("**CSC Governance Act**") undermining veteran trust and confidence.

CSC Governance Act Objects

11. The CSC Governance Act Objects set responsibilities for the administration of all the ADF superannuation schemes covered by this Inquiry to make them fit for purpose.
- a. To be fit for purpose for the scheme members and beneficiaries, each scheme and its administration must consider other legislation which impacts on the operation of, and the subsequent value of the ADF scheme for, its members and beneficiaries.
 - b. The CSC Act puts an important specific direction with respect to the military superannuation schemes:

To ensure ... CSC has regard to the unique nature of military service, as recognised by the schemes established by or under those Acts.²

12. Reference to the unique nature of military service is made in some scheme legislation Explanatory Memoranda and supporting documentation, and it is reinforced in the Covenant legislation, the object of which is:

... is to acknowledge the unique nature of military service and the sacrifice demanded of those who commit to defend our nation.³

13. Parliament has seen fit to pass legislation that acknowledges *the unique nature of military service* and that the relevant superannuation schemes should be administered having regard to that unique nature.

14. The unique nature is not widely or well understood, even by serving members. Covid-19 and the work done by health and first responders, and supported by the ADF, meant that most public discourse lacked nuance. Regardless, while there are similarities with other employment, taken as a whole, military service is unique.

² CSC Governance Act s 3.

³ Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019 (Cth) s 3.

15. The requirement to have regard to the unique nature of military service is a different requirement from merely recognising that each scheme is unique.

16. It is not clear to what level CSC has recognised that distinction and what it means organisationally. Did anything change after the passage of the Covenant? This is an area that CSC ought to be interrogated on further.

Directors

17. The CSC Governance Act requires the CDF to:
 - a. nominate two CSC directors with a responsibility to serve the interests of current members of the ADF and beneficiaries, and
 - b. consult relevant organisations before nominating a Director to the Minister.
18. Relevant organisations are defined as:
 - a. an organisation:
 - (1) a substantial number of whose members are members of a superannuation scheme administered by CSC or eligible employees within the meaning of the Superannuation Act 1976; and
 - (2) whose principal purpose is to protect and promote the interest of its members in matters concerning their employment; or
 - b. an organisation that has as one of its principal purposes the protection and promotion of beneficiaries under a superannuation scheme administered by CSC in matters concerning their entitlements as beneficiaries.”
19. In the Explanatory Memorandum to the Bill⁴, examples are given of relevant organisations for the CDF to consult. “... examples could be the Returned and Services League of Australia, the Defence Force Welfare Association or other ex-service military organisations.”
20. For several years, the veteran community has expressed concern that no identified relevant organisation has been consulted.
21. Is Defence consulting itself?
22. **Qualifications and Experience of Appointed Directors.** “At Commonwealth Superannuation Corporation our primary responsibility is to act in our members’ interests, to protect their retirement outcomes and to ensure that they and their families are in safe hands. Our directors bring diverse and extensive professional experience to CSC to achieve these goals. But above that, they also have a genuine understanding of our members ...” It is noted that the experience of CDF directors outlined on the website has no mention of “members’ interests” :
 - a. ACTU nominated Directors have a focus on the training and education and specialist career experience consistent with a primary emphasis on members’ interests and understanding of members and the purposes of relevant organisations.
 - b. CDF nominees have no mention of training, education, experience or interest reflecting a primary focus on members’ interests or purposes of relevant organisations. “Command” experience itself does not reflect a concern for individuals’ interests, especially when it is not considered important enough to be mentioned in the bio.

⁴ Explanatory Memorandum Governance of Australian Government Superannuation Schemes Act 2011, page 7

- c. CDF nominees have no mention of any formal interactions with the beneficiaries (of five schemes) whose interests they are supposed to represent or with ex-service defence organisations where they could be informed of beneficiaries' interests.

23. Because of the unique nature of military service, where ADF Members have no employee rights nor a union to represent them, the CDF has a unique role for representing serving ADF members' interests as well as directing, through the chain of command, all ADF members' activities. As such, his role in nominating a director to represent serving members' interests is perfectly justified, and processes must be in place to identify those interests.

24. Beneficiaries are, by definition, no longer under command and not the CDF's responsibility and his responsibility for representing those interests are not relevant to the unique nature of military service.

DFWA View

25. DFWA identifies the following key issues:

- a. There is no transparency of this consultation or compliance with the legislation.
- b. There is evidence of sub-optimal administration with DFRDB and more recently regarding taxation of Invalidity Benefits, where members interests were not protected. This may be operational fault or inadequate legislation.

26. DFWA is of the view that:

- a. There should be greater transparency of the process of the appointment of CDF nominated directors to confirm that the required consultation with relevant organisation(s) occurs and identify the consulted organisation(s).
 - (1) The details of all consultations in the past should be published (date and organisations involved), and if no consultation has occurred:
 - (2) Defence should explain why not; and
 - (3) provision should be made to ensure future consultation is undertaken and procedures published to relevant organisations.
- b. If not already done, it should be mandatory for the CDF when making a nomination to the Minister, to advise the date of consultation and the organisation(s) consulted.
- c. There should be a requirement for CDF nominated directors to be briefed by relevant organisations within one month of appointment and at least once 13 months thereafter.

Recommendations

27. DFWA makes the following recommendations:

- a. Defence to provide greater transparency of conduct of the legislated consultation with relevant organisation(s) concerning the CDF nomination of CSC directors.
- b. CSC arrange for CDF nominated directors to be briefed by relevant organisations within one month of appointment and at least once 13 months thereafter.

ISSUES WITH THE APPLIED LEGISLATIVE FRAMEWORK

Challenges

28. Conformance with the general superannuation legislation poses difficulties with military superannuation schemes.

Legacy schemes

29. Legacy schemes include DFRB, DFRDB and MSBS:

- a. Designed for a military context, including early retirement (as young as 35), service-based retirement, and except for MSBS, no employer contributions.
- b. These designs predate modern civilian-based super laws and don't fit easily into the current framework – different definitions for similar terminology.
- c. MSBS introduced accumulation elements and trust deeds but has potential conflict of interest because CSC is required to consider Commonwealth policy in its decisions, potentially at odds with its fiduciary duty to members.

Modern Schemes

30. Modern schemes are those current schemes that are open to current members of the ADF, i.e. ADF Super and ADF Cover.

- a. ADF Super aligns more with civilian superannuation structures, offering portability and choice.
- b. ADF Cover provides death and invalidity cover benefits from consolidated revenue (rather than requiring payment of premiums by members) recognising the effect of the risks and unique nature of military service.
- c. However, tax complexities (e.g., due to differences from civilian schemes) continue to arise.

Taxation Legislation Issues

31. The Federal Court decision in *Douglas*⁵ has major tax implications for medically discharged veterans:

- a. Tax laws (e.g. ITAA, ITAR) are designed for “regular” superannuation schemes. These laws are fit for the civilian environment and practices but do not align with Defence purposes or the unique nature of military service.
- b. The decision led to confusion, misapplication, and hardship for thousands of veterans due to poor implementation by CSC and ATO.

IGTO Report Findings:

32. Repeated use of the word “complex” (50 times) to describe problems.

33. Veterans most affected were the most vulnerable (e.g., PTSD, anxiety).

⁵ *Commissioner of Taxation v Douglas* [2020] FCAFC 220

34. ATO's approach exacerbated mistrust and miscommunication.

Mismanagement and Need for Inquiry

35. DFWA is of the view that:

- a. CSC and ATO failed to implement Douglas decision for 17 months.
- b. Government falsely claimed Douglas made thousands worse off and announced legislation to fix the problem.
- c. DFWA and some veteran groups revealed this was misinformation and the problem was poor administration:
 - (1) Only ~400 slightly worse off (later fixed).
 - (2) Over 12,000 better off.
 - (3) The main problem was poor implementation administration, not "Douglas"
- d. As a result, the Government took no action to introduce legislation as planned.
- e. CSC's inaction and go-slow tactics raises concerns over its commitment to beneficiaries when that conflicted with policy direction from government.

INTERACTION WITH OTHER LEGISLATION

DVA Legislation

36. Interactions with DVA administered legislation includes:

- a. Veterans' payments can be offset against CSC benefits (to prevent double compensation).
- b. Inconsistencies and confusion remain, particularly with retrospective medical discharges involving lump-sum recalculations over years. (See Annex F).

Recommendation

37. It is recommended that an independent of government review of military superannuation be conducted and include coverage of the governance of retrospective medical discharges management and inter departmental responsibilities.

SOCIAL SERVICES & FAMILY LAW

38. Definitions and interpretations of military payments affect eligibility for:

- a. Service Pensions
- b. Child Support
- c. Disability Payments

39. This led to corrective legislation: SSOLA Act (2023) to fix definition issues.

Governance Concerns

- 40. CSC's fiduciary responsibilities are compromised by its dual obligation to government policy.
- 41. The lack of accountability and transparency, particularly during Douglas implementation, points to deeper structural governance issues.
- 42. CSC was excluded from the Financial Services Royal Commission, despite its poor performance.

Recommendation

- 43. It is recommended that an independent of government review of the of military superannuation be conducted and include coverage of implementation of the *Douglas* decision by CSC and ATO, in its terms of reference.
- 44. Reserved
- 45. Reserved

OMISSIONS FROM THE LEGISLATIVE FRAMEWORK

- 46. There are also some ADF Members who are currently excluded from participation as a superannuation scheme member and some family members who denied reversionary pensions, either by legislation or administrative difficulties. There are strong arguments for their inclusion in the legislative framework by taking into account the principle that veterans should suffer no disadvantage compared with other Australians and recognizing the unique nature of military service impacts on veterans and families. They concern:
 - a. Reservists, and
 - b. Reversionary pensions for surviving spouses/partners and children separated due to Veteran mental health and domestic/inter-Partner Violence.

Reservists

- 47. Issues affecting Defence Force Reservists are expanded at annex G.
- 48. While provision is made for Reservist participation with existing superannuation schemes when on continuous full-time service (CFTS), there are barriers:

Legislation Barriers

- 49. Reserve service, which does not meet the legislated CFTS criteria, does not qualify for superannuation entitlements, including:
 - a. the Superannuation Guarantee, available to all other Australians, and
 - b. Superannuation death and invalidity benefits (if injured during Reserve service), if unable to work again, available to all other Australians.

Administrative Barriers

- 50. Further, the extant administrative model and system fails to accommodate Reservists who wish to contribute to their superannuation, even if legislation allowed it.

Legislation Barriers

51. These barriers to participation in superannuation are detailed in Annex G and adversely impact on Reservists interests and the ADF capability. There are significant long-term financial implications (no Super Guarantee) for the affected Reservists and run counter to the principle of “No Disadvantage” compared with other Australians. Three groups are particularly affected:

Women

52. Women are disproportionately represented among those seeking part-time employment to meet caregiving responsibilities. The lack of a structured superannuation contribution pathway for Reservists further exacerbates gender-based financial disparities over the course of their careers. (See Annex G).

Indigenous

53. Many Indigenous soldiers serve for extended periods in regional and remote Reserve units and have limited opportunities of participation in superannuation schemes available to other Australian. The lack of a super scheme in these Reserve units contributes to the indigenous superannuation gap. (Details in Annex G).

Injured and Incapacitated

54. In all other employments, Australians must be offered Death and Total Disability Insurance Cover with their super schemes. There is no super scheme for non-CFTS Reserve service, so there is no Death and TPD insurance available for the Reservist. Injured Reservists, no longer able to work, and with no insurance, will find themselves and their families in dire financial straits.

Administration Barriers

55. The Total Workforce Model (TWM), introduced in 2016 alongside the SERCAT employment system, was designed to retain trained ADF members by allowing them to transition seamlessly between SERCATs throughout their career, by offering part-time service options for those unable to serve full-time, and by removing barriers for individuals returning to full-time service after periods of part-time employment. Unfortunately, the Personnel Management Key Solutions System (PMKeys) has proven to be deficient in supporting the ADF service options associated with TWM and SERCAT.

CONCLUSIONS

56. The review in Annex G, concluded that all ADF Members, including Reservists should have the same right of participation in superannuation as other Australians. This is consistent with the thoughts behind:

- a. TOR (d) regarding whether CSC account holders have the same rights and protections as other Australians in relation to their superannuation, and
- b. The “no disadvantage” clause – that veterans and families should suffer no disadvantage in access to benefits and services compared with other Australians – and which should be in the Veteran Covenant.

57. It is also concluded that, even if the legislation was changed to allow all Reservists to participate in superannuation, the existing PMKeys system does not currently provide the systems capability required.

RECOMMENDATIONS

58. The following recommendations are made:

- a. As a matter of urgency, the ADF Cover Act 2015 should be amended to provide the Acts' invalidity benefits to all Reservists not already covered by DFRDB or MSBS.
- b. All Reservists, regardless of SERCAT, and tax -exempt status, should be able to participate in an appropriate military superannuation scheme and be entitled to the Super Guarantee.
- c. Existing legislation should be changed to facilitate all Reservists to participate in superannuation.
- d. The TWM and PM Keys system should be examined through the lens of this review to ensure they support Reservists' contributions to superannuation and Reservists can access the associated benefits that arise from that change in legislation.

REVERSIONARY PENSIONS – DOMESTIC VIOLENCE - FAMILY BREAKDOWN (ANNEX H)

Reversionary Pensions

59. There are defined benefit reversionary pension provisions for surviving spouses, partners and dependent children under the DFRDB, MSBS and ADF Cover.

Situations

60. There are cases where the surviving family no longer qualify for reversionary pensions because the spouse did not meet the SIS Act definition of spouse – requiring dependency. Situations involve instances where there is physical separation of the veteran from the family and where the veteran ceased to provide financial support for the family members. Examples include, but are not limited to the following situation were, due to mental health conditions:

- a. The veteran leaves the family home and becomes homeless and/or difficult to contact, and
- b. Instances of family domestic violence oblige the family to live apart, for health and/or welfare reasons as advised by health/ welfare/government services or court orders.

61. Mental health conditions are often associated with ADF service, e.g., the Non-liability Health Care Cover (NLHC) for mental health issues are provided to veterans after one day's continuous full-time service, without the need for providing evidence of being service caused – because of the high probability of the link. However, whether a condition is service caused is a moot point in these instances, as no superannuation payments, including Invalidity Benefits require a link to service, nor is DFWA seeking that. ADF superannuation schemes provide cover for whatever the cause.

62. From Legacy discussions, DFWA is aware of representations concerning this lack of support to the surviving family were made to CSC, and the Australian Financial Complaints Authority. The latter indicated that, to provide support, the SIS Act would require amendment. The Minister for Finance then indicated that there was no plan to change the SIS Act. That is, there were no political plans to do something about it. I understand that Senators Jacqui Lambie and David Pocock took up the cause on this. Examination of the SIS Act and Regulations regarding interdependency (See Annex H), indicates areas where dependency could have existed but for conditions that arose due to disability. Further study is required.

63. Cases such as described indicate that dependency could exist. It hinges on the definition of a close personal relationship in the SIS Act and Regulations. From the limited research DFWA has been able to do, it appears the MSBS Act also requires “dependency” for a separated spouse to qualify, however the decision on dependency is based totally on CSC opinion. The provisions for ADF Cover have not been ascertained by DFWA yet. See Annex H.

ARGUMENTS FOR CHANGE

64. It is the DFWA view that it is time to review the applicable SIS Act and SIS Reg provisions.

65. The extent and impact of domestic violence was not as well-known as it is today in the general community. The extent of mental health issues in the ADF was not known nor the links to domestic violence.

66. Action has been taken in other areas to address this, e.g.:

- a. DVA legislation changes to extend eligibility to the War Widows and for the Partners Service Pension to former partners in domestic violence circumstances:
- b. The DVA Family and Domestic Violence Strategy (2020-2025).

67. As result of Family Law, the military super Acts have been changed to ensure that veterans with super assets (deemed or real) and those in receipt of superannuation income, meet support responsibilities for family dependents after family breakdown. [OBJ]

68. Veteran Covenant. The Veterans’ Covenant obligates “the Commonwealth [to acknowledge] the demands placed on, and the sacrifices made by, the families of veterans” and to do something about it. DFWA contends that the Covenant obligations apply to all Commonwealth legislation affecting veterans and veteran families, including superannuation legislation as originally sought by DFWA, not just the beneficial DVA legislation. Another area of the Covenant legislation to be fixed - See Annex A.

CONCLUSION

69. There should be a simple mechanism whereby spouse and other family members who would have met the SIS Act definition of dependents before the family breakdown and or the family law criteria for support after a family breakdown, could claim for the CSC reversionary pensions after the veteran’s death. DFWA has earlier noted that the SIS Act and Family Law are part of the legislation framework. Further review of the provisions in the ADF superannuation schemes are required. There needs to be a consistent approach across all ADF schemes.

70. It is noted that the SIS Act inter-dependency criteria are not exclusive Veteran and Veteran Family issues but should be addressed nationally. It is suspected however, due primarily to the stresses

of the unique nature of military service on veterans and family members, that the instances of mental health and family breakdowns are much more common in the veteran community, particularly at times of transition.

RECOMMENDATION

71. That the Committee recommends to Government, that a separate inquiry be conducted to ascertain ways ahead for reversionary pension entitlement where disabilities and interpersonal violence affect family breakdown, including:

- a. the scope of the issues in the veteran community and in the general Australian community; and
- b. propose any changes to SIS Act and Regulations, ADF superannuation scheme legislation, CSC dependency decision criteria and to other legislation or policy as required to address the issues identified.

LEGISLATION FRAMEWORK - FITNESS FOR PURPOSE

Principles.

72. In assessing whether the legislative framework governing superannuation and pension schemes for current and former members of the ADF is fit for purpose, DFWA consideration included:

- a. Design of the schemes, and any changes to a scheme, and the legislative framework impacting on military super scheme members and beneficiaries, should have regard to the unique nature of military service.
- b. The existing super schemes should be aligned – harmonized – in financial outcomes and liabilities as far as possible.
- c. Any new superannuation scheme should produce similar or improved outcomes for veterans and their families
- d. Veterans and families should not be disadvantaged compared to other Australians in the financial outcome and liabilities

The Legislative Framework

73. The TOR focus appears focused on the legislation regarding the specific super schemes and includes ADF Cover. Examination of fitness and issues in each of the various scheme legislations is covered in the TOR(f) Section, and specific reference is also made to:

- a. DFRDB – in Annex B.
- b. MSBS – in TOR(b) Section. (MSBS)
- c. ADF Cover – Annex E – Taxation and ADF Cover.

Complexities of Interaction

74. Assessing “fitness for purpose” of the legislative framework requires a broader approach. As indicated in the previous sections, the financial benefits and financial liabilities of veterans and their families as members and beneficiaries of those schemes can:

- a. be affected directly by the impact of other legislation, and
- b. can impact on the financial benefits and liabilities arising from other legislation.

75. Those impacts may be unintended or intended. Some are the result of the respective schemes’ legislation taking into account the unique needs of Defence, and the unique nature of military service. The latter includes the fact, confirmed by High Court decisions, that ADF members do not have employee rights as do other Australian occupations, are generally excluded from employment law, as they are not employees but members of the ADF. It also means that broader legislation is produced considering the practices and business norms of normal employment and its environment.

76. There is a broader legislative framework that needs to be considered in the design and operation of the ADF superannuation schemes as it affects the financial benefits of veterans and their families. In day-to-day operations where input and outputs are required between entities responsible for the legislation silos, there is often no agency responsible for delivery of the best outcome for the veteran/family. Departments operate within their legislation and funding, as do state and local governments, also providing services to current and former ADF members and their families.

77. The Figure below illustrates the challenges faced by veterans and families. The unique nature of military service adds to the complications to those experienced by other Australians. Obviously, it is beyond the remit of the federal government and this Senate Inquiry to address all of these. But there should be an awareness of the general environment.

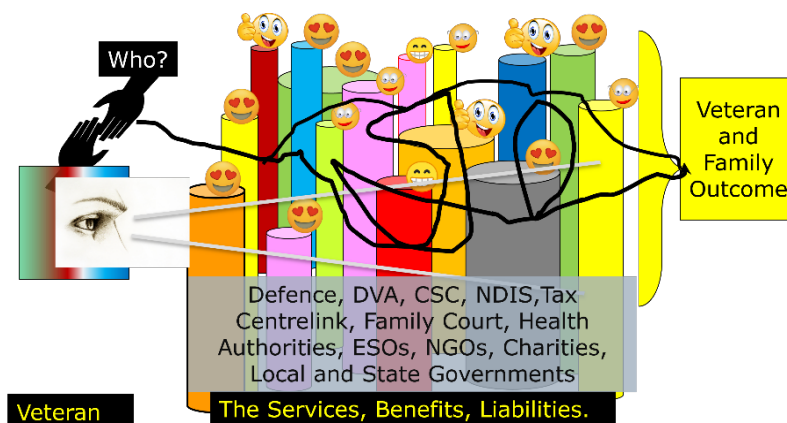


Figure 1: Challenges faced by Veteran's and their Families

Lack of Coherence Across Legislation

78. The Royal Commission into Defence and Veteran Suicide identified that:

- a. a lack of coherence among the various DVA legislated schemes related to treatment of benefits provided to veterans and families - causing confusion and stress to veterans and families.
- b. The complex legislative framework also leads to complex administrative claims processing and contributes to claim processing delays. Complexity and delays contribute to some veterans’ stress, mental ill-health and suicidality

79. Similar situations arise when CSC legislation interacts with other legislation, for example, retrospective medical discharges (retrospective invalidity) as illustrated in Figure 2. There is a need to:

- a. Design CSC legislation to address unique needs of military service and ensure that new or changes to legislation do not undermine the intent of veteran specific legislation.

80. Provide resources to assist veterans and families to navigate the various service delivery agencies and departments to achieve the best possible financial and wellbeing outcomes for the veteran and families. There are difficulties with this as each legislation silo stakeholder has legislative and funding constraints. While difficulties apply to the general population as well, veterans have further difficulties due to the uniqueness of the veteran super and DVA legislation.

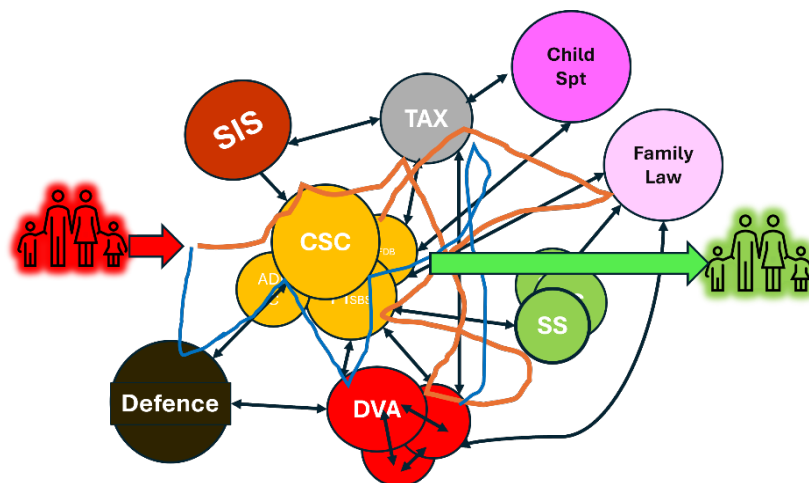


Figure: Navigating Retrospective Medical Discharge

Figure 2: Navigating Retrospective Medical Discharge

RECOMMENDATION

81. It is recommended that an independent of government review of the of military superannuation be conducted and include addressing the support of veterans and families to navigate through claims processes involving several entities and addressing adverse impacts to veterans and families as a result of complexities of non-harmonised legislation and practices

MSBS CAPABILITY – INCOME EQUITABLE AND SUSTAINABLE?

TOR(b) Examining whether the Military Superannuation and Benefits Scheme (MSBS) enables veterans to preserve savings to deliver income for a dignified retirement in an equitable and sustainable way.

MILITARY SUPERANNUATION AND BENEFITS SCHEME

82. MSBS replaced DFRDB and is a hybrid fund, providing both Accumulation and Defined Benefits. This means that Member Benefit and Ancillary Benefit (if applicable) is based on contributions into the fund, plus investment earnings, and the Employer Benefit is determined by a formula. There are two parts to MSBS:

- a. The Employee Benefit comprising accumulated member contributions.
- b. Employer Benefit comprising “notional” (not real) contributions made by the government (Employer)

Identified Shortcomings

83. There are several aspects where MSBS veterans’ ability to deliver income for a dignified retirement are adversely affected by treatment inequitable compared with other veterans, other Australians and, in some cases, their ex-spouse. These are:

- a. Indexation of Superannuation Pension
- b. Accumulated Benefits Compared with Other Australians
- c. Employer Benefit Indexation Compared with Ex-Spouse
- d. Maximum Benefit Limits
- e. Trustees Not Permitted to Act in Best Interests of Members and Beneficiaries
- f. No Access to Financial Advice Regarding Transfer
- g. Taxation of Invalidity Benefits
- h. Deficient Advice When Considering Transfer to ADF Super

INDEXATION OF SUPERANNUATION PENSION

Situation

84. The situation on indexation for all ADF superannuation schemes is detailed at Annex C and addresses MSBS.

- a. **All Political Parties Agree.** Government and all Parties have acknowledged and agreed that indexation based solely on the Consumer Price Index is unfair. This was stated and recorded in Parliament when the Fair Indexation Act was introduced in 2014.

- b. CPI does not maintain the buying power of the MSBS pensions as promised in government issued publications when DFRDB members were offered transfer, because:
 - (1) It is inequitable with other Australian pensions.
 - (2) It is inequitable with DFRDB which benefits from the Fair Indexation Act.
- c. This is an obvious inequity which is not justifiable and must be fixed.
- d. It is ten years since the previous Fair Indexation Act improved the indexation arrangements for some military superannuants. It will therefore continue to be an ongoing issue for the larger cohort of military superannuants.
- e. The relevant legislation should be harmonized.

Backdating

85. It is fact that from the introduction to the present day, all MSBS Accumulated Fund Benefits and MSBS pensions updating, did not maintain the purchasing power, as intended by Government.

Support

86. DFWA supports any action to rectify this erosion of the purchasing power of all military superannuation benefits and payments in accordance with the clear intent of the relevant Acts.

Recommendation

87. The indexation provisions of the Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act should be extended to include all pensions paid under DFRB, DFRDB, MSBS, and ADF Cover.

ACCUMULATED BENEFITS COMPARED WITH OTHER AUSTRALIANS

Accumulation Phase

88. The Employee and Employer Benefit of MSBS is locked into the CPI.:
- a. Only on discharge, can a veteran access the Employee Benefit and roll it over into another Super Fund of choice.
 - b. The Employer Benefit is locked into MSBS until age 55 years, earning CPI.

Inequity compared to other Australians

89. The equivalent federal public servant scheme allows public servants to “roll-over” to another Super Fund without any age restriction Civilian super funds, by law, must allow employees to “roll-over” the Employer Benefit if they choose. As an example:

- a. A person joins the RAN at 17. Served for 10 years and discharges”
- b. Employer Benefit of \$115k (as per CSA MSBS calculator).
- c. At 55 years, this is \$293k (indexed to CPI as per CSA MSBS Calculator).
- d. Funds invested in super could expect \$635k.

90. This is a \$342k difference, clearly not equitable.

EMPLOYER BENEFIT INDEXATION COMPARED WITH EX-SPOUSE

Further Disadvantage

91. If divorced, an MSBS member typically retains 50% of the Employer Benefit indexed at CPI (typically 2%) until age 55. The ex-spouse gets the other 50%, and this earns at the Long-Term Government Bond Rate (Always more than CPI) until the veteran turns 55 years. Each case is different depending on age and length of service etc but the difference in value at age 55 yrs can be in the hundreds of thousands.

Rewards Divorce

92. It is clear that the veteran is disadvantaged at being locked into the CPI, compared with other Australians, e.g., the public service scheme example. It is also clear that it is possible to unlock the Employer Benefit to pass to an ex-spouse and it will earn a higher interest rate than the CPI. On the latter, it rewards divorce. Example:

- a. ADF veterans enlisting at 20, (married) each serving 15 years, would typically have about \$150k each in their Employer Benefit, both indexed at the CPI for 20 years until they reached 55 years
- b. If they divorced and swapped their Employer Benefits as part of the property settlement, they would be about \$500k better off.

Recommendations

93. It is recommended that:

- a. MSBS Members be permitted to rollover their MSBS Employee Benefit under the same conditions as other Australians
- b. MSBS Members no longer serving, be permitted to rollover their MSBS Employee Benefit under the same conditions as other Australians, or
- c. The Employer Benefit of MSBS Members be indexed:
 - (1) under the same provisions as in the Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act, or
 - (2) at the Long-Term Government Bond Rate as is provided to an ex-spouse under a family law property settlement.

MAXIMUM BENEFIT LIMITS (MBL)

94. Reserved

95. Reserved

TRUSTEES NOT PERMITTED TO ACT IN BEST INTERESTS OF MEMBERS AND BENEFICIARIES

96. See "Fiduciary Duties of CSC" in:
- a. TOR(d) Section – Same Rights and Protections as Other Australians;
 - b. TOR(f) Section – Operation and Effectiveness.

LIMITED ACCESS TO FINANCIAL ADVICE REGARDING TRANSFER

97. When ADF Super was introduced, MSBS members were advised to seek professional financial advice if considering transfer. Typically, civilian schemes permit funds from the old scheme to be used (without penalties) to pay for financial advice. This was not made available from MSBS, to members' disadvantage.

Recommendation

98. Any future new ADF superannuation scheme which allows transfer from MSBS, should allow for release of funds from MSBS to be used to obtain financial advice without penalty.

TAXATION OF INVALIDITY BENEFITS

99. As a result of Douglas Case. See Annex E.

DEFICIENT ADVICE WHEN CONSIDERING TRANSFER TO ADF SUPER

100. There was a period where those transferring would not have been informed of less beneficial tax treatment of ADF Cover Invalidity Benefits compared with MSBS Invalidity Benefits. See Annex I.

CSC GOVERNANCE – FOR SERVING AND FORMER ADF MEMBERS

TOR(c) - Examining the structure and governance of the Commonwealth Superannuation Corporation (CSC), including an examination of its services to current and former members of the ADF and the identification of strategies to address complaints and improve service delivery.

Main Issues.

101. The issues addressed are:
- a. Governance of CSC.
 - b. Misinformation.
 - c. Complaints with Services.
 - d. Strategies to Improve Service delivery.

GOVERNANCE OF CSC

102. DFWA has major issues with the governance of CSC. These concerned:
- a. the lack of transparency concerning the nomination of Directors as required by the Governance of Australian Government Superannuation Schemes Act 2011 (CSC Act) undermining veteran trust and confidence in the governance by CSC. (Addressed under TOR(a) and Annex A.)
 - b. Issues with the fiduciary duties of CSC as outlined in ToR(f).

Transparency Conclusions

103. The following conclusions were made:
- a. There should be greater transparency of the process of the appointment of CDF nominated directors to confirm that the required consultation with relevant organisation(s) occurs and identify the consulted organisation(s).
 - (1) The details of all consultations in the past should be published (Date and organisations involved), and If no consultation has occurred:
 - (2) Defence should explain why not; and
 - (3) provision should be made to ensure future consultation is undertaken and procedures published to relevant organisations.
 - b. If not already done, it should be mandatory for the CDF when making a nomination to the Minister, to advise the date of consultation and the organisation(s) consulted.
 - c. There should be a requirement for CDF nominated directors to be briefed by relevant organisations within one month of appointment and at least once 13 months thereafter.

Recommendations

104. It was recommended that:

- a. Defence provides greater transparency of conduct of the legislated consultation with relevant organisation(s) concerning the CDF nomination of CSC directors.
- b. CSC arrange for CDF nominated directors to be briefed by relevant organisations within one month of appointment and at least once 13 months thereafter.
- c. An independent of government review of the of military superannuation should be conducted and include coverage of operation of the CSC Act for the benefit of scheme members and the fiduciary duty of CSC to members and beneficiaries of all superannuation related schemes.

MIS-INFORMATION

Instances

105. There have been many instances where CSC has provided incorrect, misleading and/or vague information to members and beneficiaries - for whom they have a fiduciary duty and a duty of care - and to other government departments, to parliament and Ministers leading to actions or inaction adversely affecting veterans. The effects of misleading (whether intentionally, or not) has been the cause of uncertainty and stress for veterans and families.

106. There is an appearance of a general corporate reluctance to accept responsibility for these shortcomings or explain them when caught out. A distinct lack of openness and transparency; Examples include, but are not limited to the following:

DFRDB Commutation Misinformation

107. Dating back to 1980s. There was total denial of any shortcomings in the information CSC provided. No awareness of Defence publications over decades giving wrong information. There was no admission of neglect in their lack of awareness of and reaction to their members beliefs related to the restoration of retirement pay. Total denial of responsibility to correctly inform all members of the conditions surrounding commutation.

Reporting the Nature of Invalidity Benefits

108. Incorrectly reporting that MSBS and DFRDB Invalidity Benefits conformed with SIS Regulation 1.06 to be classed as an Income Stream:

- a. To veterans, ministers and Senate estimates and MPs making representations; but
- b. when questioned further, refusing to specify which part of the regulation it was applying on the grounds that each case was different and individual cases could not be discussed. Each case was not different.
- c. Avoiding responsibility for the making the decision that Invalidity Benefit was an income stream, and stating the decision was an ATO responsibility, until IGTO made it clear it was a CSC responsibility.
- d. Not informing ATO that the Invalidity Benefits were not a life-time pension (FOI).

Providing Incorrect Information to the Court in the Douglas Case

109. This concerned income and tax withheld from the veteran, then providing new contradictory statements when challenged by the court. Then giving no explanation for errors or how it happened – drawing adverse comment from the Judge in the published Douglas decision.

Providing Misleading Information Regarding Implementation of The Douglas Decision

110. The instances between Dec 2020 to April 2022 were serious, caused a lot of harm to veterans and grossly mislead MPs, Minister and the Veteran community. There is an IGTO report on ATO deficiencies in this, it is unfortunate that CSC culpability in this has not been addressed.

Failure to Update Information Concerning ADF Super Transferees

111. MSBS Members considering transferring to ADF Super arrangements, are automatically transferred ADF Cover which provides Invalidity Benefit cover which provides similar cover as was provided under MSBS. As a result of the Douglas decision, the likely taxation of ADF Cover is generally much higher than it is with MSBS, This significant difference was not publicized (Dec 2020 - until April 2022) on CSC websites (or Defence), giving information to MSBS members considering a transfer to ADF Super, some 18 months after it applied.

- a. A transfer from MSBS to ADF Super/Cover is irreversible.
- b. The numbers of Reserve and regular MSBA members who transferred without being given full information is unknown
- c. There has been a significant improvement in CSC publishing information on this since that date. Unfortunately, ADF website information has not improved.

Recommendations

112. It is recommended that:

- a. CSC be required to provide veterans of all details of their calculations to derive the total superannuation payments and related tax payments, offset and recovered super and incapacity payments related to retrospective medical discharges.
- b. An independent of government review of the of military superannuation should be conducted and include accuracy of information being provided by CSC concerning payments, their calculations and advice to members and other stakeholders.

COMPLAINTS WITH SERVICES

113. Mainly anecdotal concerning administration and lack of information concerning decisions.

114. Reserved

STRATEGIES TO IMPROVE SERVICE DELIVERY

115. Strategies to improve services, requires accountability and transparency concerning the current state of the services. A full independent inquiry into the current state of services is required as attempts to obtain details have been met with resistance. (DFWA acknowledges that many CSC staff members do their best at the operational level to provide information and advice, often informally.)

116. However, many official approaches are ignored or met with vague high level motherhood statements. Examples:

- a. Refusing Information. Requests for numbers of MSBS members who transferred to ADF Super (and consequently) ADF Cover) since the Douglas decision, and what financial advice was given, have been ignored. Request on what information was provided to executors of deceased estates where the veteran was affected by Douglas, were ignored.
- b. Conflicting Information Unexplained. The conflicting CSC evidence given to the Douglas Hearing concerning the amounts paid to Mr Douglas and the tax withheld were tens of thousands of dollars different. No explanation was offered to the Court, much to the displeasure of Justice Logan. Neither Party sought an explanation. DFWA requests to CSC to explain, and advise what action, if any, was taken to ensure the mistakes were not widespread and would not occur again, were dismissed with "It was just a one-off." See Annex F for Details.

CSC ACCOUNT HOLDER RIGHTS COMPARED WITH OTHER AUSTRALIANS

TOR(d) - Examining whether CSC account holders have the same rights and protections as other Australians in relation to their superannuation, including the ability to withdraw funds, receive appropriate returns, change superannuation providers and receive transparent information about return on investments.

117. The following areas of concern are raised:
- a. Flexibility to invest
 - b. Reservists
 - c. CSC Trustees – Fiduciary Duty Clash
 - d. Family Law Act and Family Law (Superannuation) Regulations
 - e. Financial advice for members transferring

FLEXIBILITY TO INVEST

Appropriate Returns

118. Do the ADF superannuation funds receive appropriate returns compared with what is available for other Australians?
- a. DFRDB - No. While the most are subject to the Fair Indexation Act 2014 provisions, they do not have the flexibility of transferring accumulated funds to higher performing schemes – because funds do not exist. However virtual funds needed to generate the Retirement payments, can be deemed for Family Court assessment.
 - b. MSBS - No. Movement (rolling-over) of accumulated funds is restricted by Age and other conditions not applied to other Australians or to the public service super schemes of the same era. Indexation is linked to the CPI and not the Fair Indexation Act rate.
 - c. ADF Super. Yes. ADF Super members have almost the same flexibility as other Australians to move funds to other schemes.

Incomplete Question

119. The question does not consider the unique nature of military service.
- a. While DFRDB and MSBS do not have the same legislated flexibility as other Australians (and ADF Super) to move funds to higher performing schemes, they are lower risk and are “battleworthy”.
 - b. ADF Super is not “battleworthy”. It does not consider the unique nature of military service. In the event of extended operations or war with 24/7 military focus, or extended deployments with limited communications, e.g, submarines, it is not practicable to exercise this flexibility to assess, monitor and move funds to other schemes for higher

returns or to protect assets. A veteran could return and find his or her funds denuded. It is too late when given short notice to deploy, to start thinking about safe funds.

Recommendation

120. DFWA recommends:

- a. That CSC set up a special low risk superannuation fund where ADF Super and MSBS members can quickly transfer accumulated funds when required.
- b. That the government consider establishing a guaranteed "Fair Indexed" fund available for ADF members to transfer any accumulated super funds if mobilisation occurs or members are unable to monitor and manage funds due to deployments or likelihood of short notice for deployment.
- c. The indexation provisions of Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act should be extended to include all pensions paid under DFRDB, MSBS, and ADF Cover.
- d. MSBS Members be permitted to rollover their MSBS Employee Benefit under the same conditions as other Australians.
- e. MSBS Members no longer serving, be permitted to rollover their MSBS Employee Benefit under the same conditions as other Australians

RESERVISTS

121. Unlike other Australians, Reservists, except those on Continuous Fulltime Service (CFTS), are currently excluded from the Superannuation Guarantee Act benefits and cannot participate in any ADF superannuation scheme. This is to their long-term financial detriment and does not facilitate Death and Total Permanent Disability insurance options required to be offered by the Superannuation Guarantee to all other Australians. There is no justification for this - See Annex G.

Recommendations

122. The following recommendations are made:

- a. As a matter of urgency, the ADF Cover Act 2015 should be amended to provide the Acts' invalidity benefits to all Reservists not already covered by DFRDB or MSBS.
- b. All Reservists, regardless of SERCAT, and tax -exempt status, should be able to participate in an appropriate military superannuation scheme and be entitled to the Super Guarantee.
- c. Existing legislation should be changed to facilitate all Reservists to participate in superannuation.
- d. The TWM and PM Keys system should be examined through the lens of this review to ensure they support Reservists' contributions to superannuation and Reservists can access the associated benefits that arise from that change in legislation.

CSC TRUSTEES – FIDUCIARY DUTY CLASH

123. SIS Act. A trustee's fiduciary duties are normally to administer the trust solely in the interests of the beneficiaries. The SIS Act states Trustees should not be subject to direction by another person.

124. MSBS Trust Deed. The MSBS Trust Deed (1991) directs CSC to have regard to

"the interests of members and the Commonwealth; and any statement of policy of the Commonwealth Government ... by the Minister with a request that CSC consider that policy."

125. This clearly requires CSC have more regard to another person, i.e., the Commonwealth's interest and policy direction and does not comply with the SIS Act.

Conclusions

126. This clearly presents a conflict of interest, to the detriment of veterans. It certainly does not provide any assurance that CSC represents the interests or wellbeing of scheme members and beneficiaries. Nor does it generate trust. This is discussed in TOR(a) and at TOR(f), where the following recommendations are raised:

Recommendations

127. It is recommended that:

- a. CSC arrange for CDF nominated directors to be briefed by relevant organisations within one month of appointment and at least once 13 months thereafter.
- b. An independent of government review of the of military superannuation be conducted and include coverage of fiduciary duty of CSC to members and beneficiaries of all superannuation related schemes.

FAMILY LAW ACT (FLA) AND FAMILY LAW (SUPERANNUATION) REGULATIONS (FLSR)

128. DFWA has followed an on-going saga with the way CSC reports DFRDB and MSBS Invalidity Benefits to the Family Court. It would also apply to ADF Cover:

- a. Superannuation Invalidity Benefits are paid to Veterans who are discharged for medical reasons. This group includes our most vulnerable veterans, with the stresses of transitioning, uncertainties for health and job, strains on relationships and families coupled with mental and physical health problems.
- b. The Invalidity Benefits are reviewable until prescribed age for MSBS and ADF Cover. This means a veteran can have his or her condition re-assessed at any time. The Benefits can and do go up and down from Class A (Approx 76% of salary) to Class B (50% of Class A) and down to Class C (0%) and indexed to the CPI.
- c. It is argued that CSC has historically misreported the reviewable nature of these Benefits to the Family Court creating fertile ground for litigation between the parties. This is not in the interest of the veteran, the former partner nor the family as a whole.

129. This misleading reporting to the Family Court has sometimes led to the following "hard to believe" situation as shown in the examples at Tables 1 and 2.

Table 1: EXAMPLE FAMILY COURT - INCOME SPLIT – BASED ON CSC REPORTING

Table 1: EXAMPLE FAMILY COURT - INCOME SPLIT – BASED ON CSC REPORTING			
	Gov't Liability	Injured Veteran receives	Ex-Partner receives
Injured Veteran Awarded Class A Invalidity Benefit – Annual Payment	\$50,000	\$50,000	0
Family Court Splitting Order: Injured Veteran > 60% Ex Partner > 40%	\$50,000	\$30,000 reviewable 60%	\$20,000 for life 40%
Veteran Invalidity Reviewed. Benefit Reduced to Class B. 50% of \$50,000 = \$25,000	\$25,000	\$5,000 reviewable Now 20%	\$20,000 for life Now 80%
Invalidity Reviewed Benefit Reduced to Class C	\$20,000	\$0 reviewable 0%	\$20,000 for life 100%
<p>CSC Reports Invalidity Benefit Payment as if it was for life and therefore splittable.</p> <p>The Injury compensation awarded to non-injured ex-Partner is paid for life by the Australian taxpayer.</p> <p>The Veteran condition can be reviewed and Benefit changed.</p> <p>If reviewed down, the Total Government Payment is reduced, e.g., to Class B 50%. The Ex-partner Payment is unchanged, and so the injured Veteran Payment is reduced more than 50%.</p> <p>The Veteran payment can be reduced to 0, however the Payment to the ex-partner (for the Veteran's invalidity) continues to be paid by the taxpayer.</p> <p>The Veteran Superannuation Fund Value is reduced to 0 when Veteran receives Class A or Class B Invalidity Benefits.</p> <p>If Veteran is reviewed down to a Class C, the Veteran Superannuation Fund notional Value is restored.</p> <p>Offsetting. If there was offsetting, Incapacity Payments to the Veteran were reduced by the total Government liability, even though the Veteran did not receive the total amount. This was addressed in 2017 by DVA.</p> <p>Incapacity Payments are now only reduced by the share the veteran receives.</p>			

Table 2: EXAMPLE - FAMILY COURT ASSET SPLIT		
Equity in Family Home	Estate Valuation less mortgage	\$250,000
Cars + Other Property Assets	Joint Valuation	\$150,000
CSC reports annual Invalidity Benefit Payments of \$50,000 to Injured Veteran.	Assessor calculates value of assets required to generate Annual Payments. (Notional – not available to Veteran or ex Partner - ever)	\$900,000
Veteran Super Fund Value	Value due to payment of Benefit	\$0
Ex-Partner Super Fund value	Accumulated Fund Value	\$100,000
TOTAL Asset Value		\$1,400,000
Actual Real Assets Available	\$900,000 is notional.	\$500,000
Court Asset Split Asset Split 50/50	Injured Veteran - \$700,000 (notional) (\$0 in actual assets). Veteran takes out loan to pay \$200,000 (real) to ex- Partner.	Ex Partner \$700,000 (Real) (\$500,000 in actual assets + \$200k paid by Veteran)

The Invalidity Benefit is also included in Asset splitting calculations. It can be double counted as an asset and income.

The Assessment of its value is questionable. Several reputable actuarial firms have stated they cannot be valued.

However, some experts have routinely provided valuations for many years and were accepted by the legal fraternity. Many ex-Partners pursue this claim on legal advice.

The asset calculated is notional; it does not exist, as the Income is paid from Consolidated Revenue on a fortnightly basis.

Veteran may have to take out loan to pay ex-Partner share of assets. Veteran left with no realisable assets, a loan debt to be paid from reviewable Invalidity Benefit and any other income earned (if able to work) or from Centrelink.

Only in recent times has the validity of CSC reporting and subsequent valuations been challenged, initially by Veterans representing themselves without legal support. The Veterans have been successful, prompting others to also challenge, also successfully.

However, CSC continues to ignore Federal and Family Court findings purporting there is authority to do so.

This stance by CSC means that injured Veterans have to go through expense, risk and stress of fighting this in court if they wish to challenge the ex-partners claim. Many give up.

130. Apart from the inconsistent and uncertainty of treatment of assets and income by the courts, DFWA also has grave concerns over the FLA and FLSR as applied to military superannuation schemes due to different definitions used in different legislation, e.g., A definition of a "lifetime" pension is now included and refers to payments which can be reduced to nil and cancelled, and refers SIS Reg 11A.

- a. Exclusions for SIS Reg 5 assessments only apply to benefits that only use the defined benefit calculations to pay a death or invalidity benefit.
- b. That would include invalidity benefits from DFRDB, MSBS and ADF Cover.
- c. The regulations then appear to specifically exclude ADF Cover from the definition.

Financial Security vs Wellbeing

131. The situation of reviews and treatments of the courts creates stressful decisions where progress in rehabilitation can result in a review, and a benefit reduction which then creates financial stress and a relapse in rehabilitation. Consider this 2018 case of a female veteran, physically and mentally injured on operations in Middle East.

- a. Self-medicates for pain and mental problems.
- b. Medical Discharge due to physical and mental injuries and substance abuse.
- c. Violent episodes and self-harm, contributing to family breakdown.
- d. Loses custody but has supervised access to daughter.
- e. Her Class A Invalidity Benefit is subjected to Income and Asset splitting.
- f. Long fight back to rehabilitate to gain proper access to daughter.
- g. Veteran comes off drugs. Commences education. Regains ordinary access to daughter.
- h. Disability reviewed. Re-classified as Class B. Effectively reduces mother's payment by 50%.

- i. Aggravated by financial difficulties and stress, Veteran's health deteriorates. Applies for disability to be reviewed again due to health deterioration.
- j. CSC notes application but gives routine warning that Invalidity Benefit could be reviewed downwards.
- k. Veteran too worried to pursue review fearful of losing Invalidity Benefit totally and putting DVA Incapacity Payments at risk as well.
- l. Health continues to deteriorate due to stress. Thankful she did not switch to ADF Super/Cover in 2016 when she considered it. She was rescued by Douglas decision.

132. This is a complex area where definitions change between Acts and amendments abound making exceptions. It is an area of great stress and uncertainty and prevalent amongst those who are most vulnerable to suicidality – affecting both the veteran and the family. In the implementation of the Douglas related Schedule 9 taxation of military invalidity Benefits, it required provision for Act of Grace payments to both veterans and former partners to ameliorate the diverse effects on veterans and former partners and their families. It is too complex a subject to deal within this submission or Inquiry and a more detailed review is required.

Recommendation

133. It is recommended that an independent of government review of the of military superannuation be conducted and include treatment of superannuation assets (deemed and real) and payments considered in Family Court and child support matters.

FINANCIAL ADVICE FOR MEMBERS TRANSFERRING

134. When a new ADF scheme is introduced and the old scheme is closing to new members, typically members of the old scheme are permitted to transfer to the new, often being advised to see professional financial advice. Typically, civilian schemes permit funds from the old scheme to be used (without penalties) to pay for financial advice without penalty.

135. This was not available for DFRDB transfer to MSBS, nor is it for MSBS to ADF Super.

Recommendation

136. Any future new ADF superannuation scheme which involves the closure of ADF Super and or ADF Cover to new members and allowing transfers to the new schemes, should allow for release of funds from the existing super schemes to be used to obtain financial advice.

RETROSPECTIVE MEDICAL DISCHARGE – ADEQUACY OF ADMINISTRATION

TOR(e) - Examining mechanisms for veterans to have their discharge reclassified from administrative to medical, particularly in cases involving psychological injuries, and whether current appeal processes and discretion practices by the Department of Defence and the CSC adequately protect veterans' entitlements and recognition of service-related mental health issues.

Key Issues

137. DFWA raises the following issues which are expanded upon in annex F:

- a. Vulnerability and Stress
- b. Length and Complexity
- c. Process Inefficiencies
- d. Emotional and Financial Impact
- e. Risk of Error and Lack of Transparency

Retrospective medical discharge

138. Retrospective Medical Discharge – also referred to as Retrospective Invalidity - affects veterans who seek medical discharge recognition long after leaving service. These veterans are particularly vulnerable due to prolonged physical and/or mental health issues and resulting stress compounded by a slow, complex, and poorly coordinated administrative process.

139. DFWA has no direct evidence of issues with the mechanisms for obtaining reclassification other than noting there is anecdotal evidence that the process seems to be taking longer to get decisions and there are claims that CSC are taking a stricter line. However, there has been a large increase in applications for Retrospective Invalidity and not all Advocates are familiar with the processes as they are not DVA responsibility.

140. One thing is apparent is that the time limit of one month to appeal a Class C classification of invalidity is insufficient and should be extended – See Annex F

141. DFWA main focus is on the financial aspects once approval has been given.

Recommendations

142. It is recommended that:

- a. Resources be provided to establish a working group with representatives from RSL, DFWA, CSC, DVA and ATO be formally established to support process improvement in the retrospective medical discharge process, with ability to recommend changes and initiate appropriate business cases.
- b. Where necessary, legislation be changed to:

- (1) Ensure case management is established and:
 - (a) Engages with all stakeholders and the veteran throughout the process
 - (b) Ensures veterans are given indicative time for completion when claims are submitted and given regular update on progress.
 - (c) Ensure veterans are given detailed reasons for any Class B or Class C decisions.
- (2) Extend the time to appeal to an initial Class C pension decision to six months and retain ability to grant leave to appeal after that time subject to extenuating circumstances.
- (3) Fund development and training for veteran advocates, on the processes involved.
- (4) Extend VITA insurance to cover Advocate work related to all veteran and family claims on ADF superannuation issues.

GOVERNANCE

CORE ADF LEGISLATION

1. The Committee TOR lists the super schemes – the core legislative framework:
 - a. DFRB
 - b. DFRDB
 - c. MSBS
 - d. ADF Super
 - e. ADF Cover
2. The administration of each schemes' legislation is governed by the CSC Act, and each scheme must operate with and consider:
 - a. The general superannuation legislation framework.
 - b. that the input and outputs of the ADF super funds are subject to tax legislation which aligns with the industry superannuation legislation.
 - c. that those inputs and outputs and the effects of the tax legislation further impact on:
 - (1) the scheme members' eligibility and benefits provided by DVA and social service legislation; and, often on
 - (2) Family Court and child support liabilities -
3. These all impact on super scheme members' and beneficiaries' finances and therefore affect "fitness for purpose".

SUPERANNUATION LEGISLATION FRAMEWORK

4. While addressing the unique nature of military service in design and administration of the ADF superannuation schemes, it is also necessary for the schemes to comply with the Superannuation Industry (Supervision) Act (SISA), and Superannuation Industry (Supervision) Regulations (SISR) and Superannuation Guarantee Act 1992.
5. They provide a framework based on the concepts and assumptions related to the Australian normal work environment and are designed with civilian scheme benefits and common practices in mind.
 - a. DFRB, DFRDB and MSBS design predate this framework and do not fit easily with it.
 - b. ADF Super (2016) has a better fit with general Super legislation but has features to cater for uniqueness of military service.
 - c. ADF Cover (2016) was "harmonised" with the earlier super schemes and specifically designed to retain the same Invalidity benefits outcomes, criteria and eligibility as provided by earlier schemes.

6. Examples are:

- a. **DFRDB.** The DFRDB scheme was originally based on providing Retirement Pay (RP) after 20 years' service, unrelated to age (often as young as 35 yrs) as an inducement to serve at least 20 years. Member contributions of 5.5% went straight to consolidated revenue and were not accumulated. If a veteran left before 20 years, only a refund of member contributions – with no interest – was made. It also had compulsory young retirement ages (Less than 50yrs) to meet Defence needs of a “young” fit ADF. There was no Employer Benefit contributed as required by later superannuation legislation.
- b. **MSBS.** With the introduction of an accumulation element with MSBS, there was a requirement for a MSB Trust Deed, effectively making CSC trustee. The MSBS Trust Deed (1991) directs¹ CSC to have regard to *“the interests of members and the Commonwealth; and any statement of policy of the Commonwealth Government ... by the Minister with a request that CSC consider that policy.”* A trustee's fiduciary duties are normally to administer the trust solely in the interests of the beneficiaries. The SIS Act states Trustees² should not be subject to direction by another person, yet the MSBS requires CSC consider the Commonwealth's interest **and** policy direction. This clearly presents a conflict of interest, to the detriment of veterans.
- c. **ADF Super/ADF Cover.** ADF Super replaced MSBS in 2016 with a modern super scheme similar to that of other Australians, including flexibility to switch from CSC to other fund providers and to meet the requirement for provide for death and invalidity cover for new members of the ADF – even if they switched super to a different provider. It did the latter by establishing ADF Cover funded from Consolidated Revenue and not member policy payments. This recognised the unique nature of military service in that, it is difficult for ADF members to obtain death and invalidity cover at a reasonable cost under group insurance arrangements, but creates other difficulties related to taxation (see Annex D.)

TAXATION LEGISLATION

7. This includes Income Tax Assessment Act (ITAA) and Income Tax Assessment Regulations (ITAR). Taxation Legislation regarding superannuation is designed with the normal operation of civilian schemes in mind and complications arise due to military superannuation schemes differences required to address the unique needs of military service. This is highlighted by the *Douglas* decision litigation and its implementation. These created situations which caused a great deal of stress to medically discharged veterans – the cohort most vulnerable to mental health issues and suicidality.

AAT Decision

- a. As Justice Logan stated in the *Douglas*³ decision:

“It would do less than justice not to conclude these reasons ...by recording ... if the encounter in this case is any guide, to the prospect of being “broken by age and war”

¹ Military Superannuation and Benefits Scheme Trust Deed 1991 (Cth) cl 1.1.1.

² Superannuation Industry (Supervision) Act 1993 (Cth) s 58(1)

³ *Douglas and Commissioner of Taxation (Taxation)*[2020] AATA 494, [157]

there must now be added for members and former members of the ADF, the prospect of encounter with how we as a Nation State have come to regulate and tax the bargain struck on enlistment."

Inspector General of Taxation and Taxation Ombudsman (IGTO)

8. In the IGTO Report⁴ on the implementation of *Douglas*, "complex" is mentioned 50 times describing operational issues with the interactions between the ATO, CSC and veterans. It also noted:

*"ATO's approach was a contributing factor to adverse perceptions of the ATO's administration and **contributed to adverse impacts on veterans' experience with the tax administration system**"⁵ and*

"... the veterans most likely to be affected by this Full Federal Court decision were likely to represent a cohort of vulnerable taxpayers. Due to the nature of the benefits received by these affected veterans, many are likely to suffer from mental health issues linked to their service history, such as depression, anxiety and post-traumatic stress disorder, and have been deemed incapable of civil employment to varying degrees."⁶

Need for Independent Inquiry

7. Unfortunately, there has been no similar independent Inquiry into CSC covering the botched implementation (December 2020 to April 2022) of the *Douglas* decision which required a great deal of ATO/CSC interworking, nor events surrounding it. An Inquiry should be conducted, for several reasons:
 - a. The mismanagement of the implementation caused stress, financial difficulties and harm to the veterans concerned as highlighted in the IGTO Report.
 - b. It highlighted the inadequacies of existing CSC IT systems and quality assurance and the reluctance and lack of preparation to comply with the legislation change. The processing had to be done manually and was slow. More staff was required to overcome the higher workload for implementation.
 - c. It highlighted deficiencies operational collaboration and information sharing between CSC and ATO and in communication with veterans as mentioned in the IGTO report.
 - d. Hundreds of veterans complained to MPs, Senators and Ministers about incorrect tax deductions causing financial hardship, *Douglas* not delivering benefits, and general difficulties in communications with CSC and ATO to address problems.
 - e. The Minister for Veteran Affairs⁷ and the Assistant Treasurer⁸ were briefed by CSC and ATO/Treasury staff resulting in a media release that "thousands of veterans were financially worse off" because of the Douglas Decision and new legislation was to be introduced to fix the problem and "reverse Douglas". This was a false claim, based on:

⁴ Inspector-General of Taxation and Taxation Ombudsman, 'IGTO Report: Implementation of the Douglas Decision' (Report, 2023)

⁵ Ibid [48]

⁶ Ibid [49]

⁷ The Hon Matt Keogh MP

⁸ The Hon Stephen Jones MP

- (1) Thousands were temporarily worse off because of bad management and total lack of preparedness of ATO (See IGTO Report) and CSC.
 - (2) Under 400 were slightly worse off, but that could be easily fixed and subsequently was fixed.
 - (3) Over 12,000 were better off because of *Douglas*.
- f. After intensive lobbying by DFWA and veteran social media groups, providing evidence that:
 - (1) the claims in the Media statement were false, and
 - (2) Ministers and prominent veterans who spoke publicly in support of the media announcement, had been misinformed,
- g. the drafted legislation was not pursued⁹.
- h. In April 2022, CSC announced that it was going to implement the *Douglas* decision – a law it failed to comply with for 17 months.
- i. CSC has a fiduciary duty to the beneficiaries of the schemes. This appears to conflict with the government policy to reverse to *Douglas* decision. CSC go-slow management of *Douglas* changes, and reluctance to engage more staff to address delays in processing, and creating distress amongst affected veterans, certainly created an environment to support legislative change. It certainly does not provide any assurance that CSC represents the interests or wellbeing of scheme members and beneficiaries.
- j. There is a need to learn lessons to improve performance in the future and to ensure schemes are fit for purpose.

Irony

9. The Douglas AAT Hearings coincided with nearby hearings of the Royal Commission Inquiry into Financial Institutions from which CSC was excused on the grounds that it was subjected to greater scrutiny than other super funds.

Recommendation

10. It is recommended that an independent of government review of the of military superannuation be conducted and include coverage of implementation of the *Douglas* decision by CSC and ATO in its terms of reference.

OTHER LEGISLATION

11. The financial wellbeing and liabilities of Members and Beneficiaries of the military superannuation schemes can be and are affected by other legislation due solely to the benefits, and deemed assets and incomes (whether they exist or not) provided by the military superannuation schemes.

⁹ Treasury, Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Taxation of military superannuation benefits (Consultation Paper, November 2022)

- a. **DVA Legislation.** With some DVA legislation, there is offsetting of DVA Incapacity Payments against the Invalidity Benefits based on the principle of not being compensated for the same injury twice. Some DVA Incapacity Payments are also offset against part of ordinary superannuation pension payment by CSC. Military superannuation payments are considered in means testing for the Service Pension administered by DVA/ Human Services. Two specific areas of concern are:
- (1) **Offsetting.** There are inconsistencies and confusion concerning offsetting payments under DVA legislation against CSC payments. DVA Offsets related to SRDP have different effects on veteran's dependent upon which DVA payments are involved – Veterans Entitlement Act (VEA) and The Military Rehabilitation and Compensation Act (MRCA), with some RSL modeling show lifetime losses with MRCA more than \$500,000 compared to VEA. These were not satisfactorily addressed in the recent VETS Act aiming to harmonise and simplify DVA entitlement legislation. It is not a CSC issue if looking at it from this Inquiry's TOR perspective, but it is a big problem for the Veteran.
 - (2) **Retrospective Medical Discharges.** An area of particular concern is retrospective medical discharges where DVA Incapacity Payments previously received by the veterans, (after tax) have to be offset against the backdated CSC Invalidity Benefits, to be received by the veteran as a lump sum. This is the most complex area involving CSC, DVA and the ATO with all entities required to revisit the veteran's records and payment calculations going back years. See TOR(e) section.
- b. **Social Legislation.** This includes a range of Social services, general welfare, disability, family law and child support legislation and regulations. For example, because of *Douglas* decision and the 2023 Schedule 9 Tax legislation, there was a need to address definition confusion which caused unintended impacts for benefit eligibility in Social Service and VEA payments. This resulted in the Social Services and Other Legislation Amendment (Military Invalidity Payments Means Testing) Act (SSOLA). Further details are at Annex H.

Recommendations

12. It is recommended that an independent government review of military superannuation be conducted and include coverage of the case management of retrospective medical discharges and inter departmental responsibilities.

DFRDB COMMUTATION

1. There have been two recent Inquiries into DFRDB - an Ombudsman Inquiry¹ (2019) and a Senate Committee Inquiry² (2021). Both were focused on administration and on the accuracy of information provided to DFRDB members when making the decision to apply for commutation or not, when retiring from the ADF. Other areas of dissatisfaction were raised and solutions proposed.
2. This submission addresses issues arising from the findings of those Inquiries:
 - a. Misinformation and Defective Administration – Outcomes.
 - b. Proposed Update for Life Expectancy Changes – to address factor not known when the DFRDB Act was passed in 1973.
 - c. Continued Misinformation by Defence – a lesson not learned from the Ombudsman report - causing stress amongst older veterans.

MISINFORMATION AND DEFECTIVE ADMINISTRATION

Defective Administration

3. From both Inquiries, there was overwhelming evidence that many thousands of DFRDB retirees were given wrong information and deficient over about 20 years and consequently were expecting increases to DFRDB Retirement Pay (RP) on reaching their Life Expectancy (LE) age.

Defence

4. The Ombudsman found evidence that thousands of DFRDB retirees were given inaccurate information by Defence that lump sum commutation of 4-5 times annual RP was a loan which was paid off by a reduction to their Retirement Pay on reaching their average LE age. and there was defective administration.

CSC

5. There is ample evidence that in the same period CSC³ official publications, in information brochures designed for Members, provided vague and easily misunderstood information that could lead DFRDB Members that commutation was a loan.

Misinformation

6. Commutation was not a loan. The reduction to RP, calculated by dividing the Commuted lump sum by the retiree's LE, was for life, It did not cease when LE age was reached, having paid off the "loan". The DFRDB Authority (CSC predecessor) , explained this as:

65. Although a life expectancy factor is used, full retirement pay is not restored should the member live beyond normal life expectancy. By the same token, should the member die

¹ Commonwealth Ombudsman, *Investigation into the Administration of the Defence Force Retirement and Death Benefits Scheme* (Report, December 2019)

² Senate Foreign Affairs, Defence and Trade References Committee, *Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members* (Report, 2021)

before attaining the expected age no attempt is made to recover the amount of the lump sum outstanding from dependants or the estate. [DFRDB Authority Circular 1973/7 dated 2 August 1973.]

7. With the statistical LE Age, half the population die before reaching the average age, and half the population die after the average life expectancy age. For the DFRDB retirees, those who live past the average LE age, effectively subsidise those who die before that age, The scheme is cost-neutral to the Commonwealth if correct tables are used.

Cost-Neutral

8. DFWA recognises the Department of Finance principle of cost-neutrality for the Commonwealth (i.e. taxpayer). It is the Finance argument routinely used by government as offsetting to balance the books.

Redress Options

9. There were thousands of DFRDB retirees were expecting to receive the increase on reaching life expectancy age. The Inquiries did not recommend any recompense. Legislative change to correct detriment due to defective administration is not a practicable option as explained in the Ombudsman report nor has such change any political support. As not all retirees were misinformed, only those who suffered because of the misinformation, have possible redress through the CDDA³ process or other civil litigation. Most affected retirees were and are not satisfied with the offering of the CDDA bureaucratic process to claim any financial redress. The explanation that they had suffered no financial detriment unless they could demonstrate they would have been better off by choosing the only other option was not to commute, did not address the "mis-selling" of DFRDB many years ago. This has been specifically raised in detail in submissions to both inquiries by Mr Ken Stone OAM, as part of the DFRDB Commutation Campaign.

10. None of the 30-40 veterans who pursued a claim via the CDDA process has been successful and no other litigation seems to have been pursued yet.

Apology

11. This mismanagement by Defence was acknowledged and an apology issued by the Secretary of Defence and the Chief of the Defence Force (CDF) with an assurance to educate staff to of the importance of providing correct advice and to refer information provision to CSC to avoid recurrence of misinformation resulting in stress to veterans.

12. Reserved.

PROPOSED UPDATE FOR LIFE EXPECTANCY CHANGES

13. DFWA is seeking a minor change to the legislation to address a factor not known when the DFRDB Act was passed in 1973. The change proposed is consistent with Government intention at the time:

³ Attorney-General's Department (Cth), *Scheme for Compensation for Detriment Caused by Defective Administration (CDDA Scheme)* (Web Page, 2025) <https://www.ag.gov.au/about-us/connect-us/scheme-compensation-detriment-caused-defective-administration>

- a. Commutation being cost-neutral to the Commonwealth (taxpayer).
- b. Those retirees who die later than the life expectancy age 'subsidise' those who die earlier.
- c. Commutation is not a loan and the reduction to the DFRDB Retirement Pay is for life.
- d. The reduction to Retirement Pay is based on member's life expectancy at date of commutation.

Change Sought

14. The change sought is to amend the DFRDB Act 1973 in order to reflect the current life expectancy of DFRDB members upon their separation from ADF full-time service.

DFRDB LIFE EXPECTANCY

Life Expectancy Tables

15. The DFRDB Act 1973 uses the statistical life expectancies in calculations of the reduction to DFRDB retirement pay after commutation of 4-5 years Retirement Pay (RP) to receive the commuted lump sum.

Government Intention

16. The DFRDB Act is specific that the life expectancy used is the nearest average life expectancy based on the age of the retiree on the date of commutation.

- a. Being aware of the differences of Life Expectancy (LE) between males and females, the Act provides the different value in the "expectancy of life factor" in Schedule 3 of the Act (Table 1).
- b. Table 2 shows the significant difference in the reduction to retirement pay between males and females, considering both were on same salary and made the same contributions to DFRDB. This indicates the importance attributed to ensuring a cost neutral outcome for the Commonwealth, by using the life expectancies at time of commutation.

Table 1: Extract from Schedule 3		
Age (in years) on date of effect of election	Factor	
	Male	Female
30	41.12	46.49
38	33.67	38.86
44	28.25	33.29
59	16.29	20.32

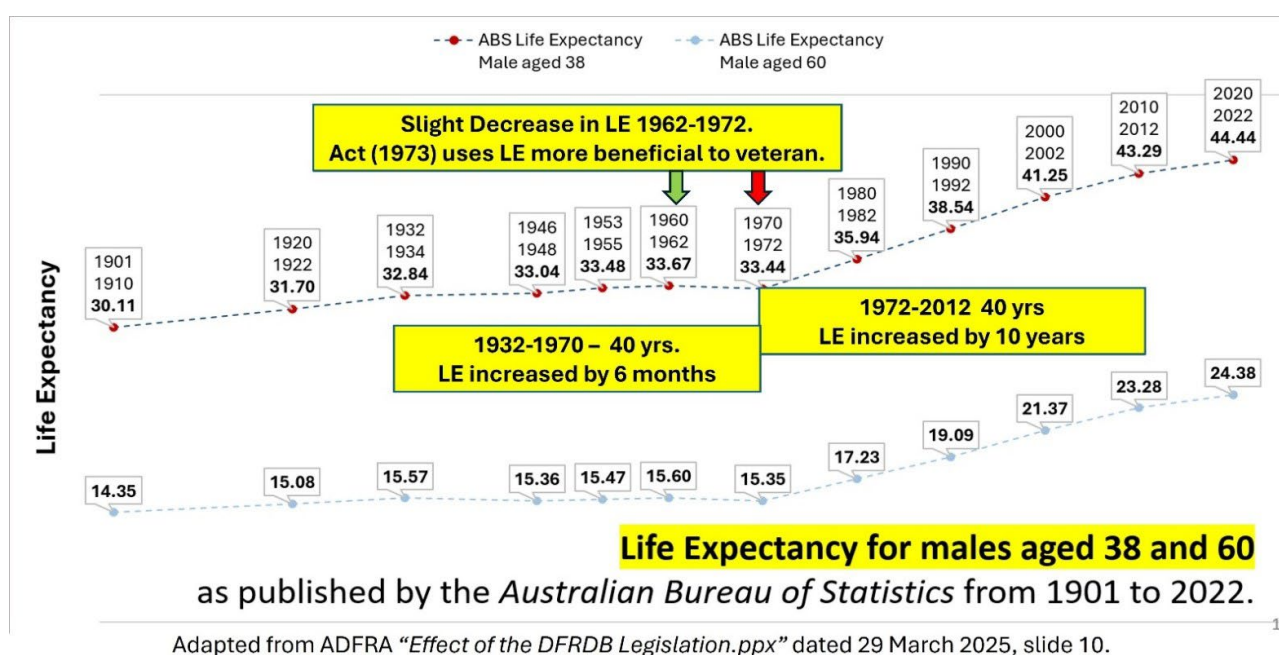
Table 2: Calculations - Reduction to RP		
38 year old after 20 years service in 1992	Male	Female
Annual Retirement Pay of	\$15,000	\$15,000
Commuted = 4 x RP.	\$60,000	\$60,000
Divided by		
Life Expectancy on Commutation from Table 1.	33.67	38.86

60	15.60	19.51
61	14.94	18.72
65	12.47	15.68

Act - Reduction per annum	\$1782	\$1,544
Actual LE for 38 yr old at date of commutation in 1992 ⁵	38.54	43.70
Reduction pa	\$1,557	\$1,373

Factor Not Known When Act Passed in 1973

17. Graph 1 shows the average LEs for 38- and 60-year-old males. For 40 years before the DFRDB Act in 1973, there was minimal increase, in fact there was a decrease from 1962 to 1972. For the 40 years after 1972, there was a large increase. This large increase was not known and could not have been anticipated by Parliament or drafters of the Act.



Graph 1: Average LEs for 38- and 60-year-old Males.

Fixed Value

18. DFWA contends that Parliament, not expecting any major changes to LE, adopted a fixed value – calling it the “expectancy of life factor” and chose the most beneficial value in the previous 40 years, i.e., 1960-1962 values.

DFWA Assumption

19. If the government knew that similar differences would emerge with time, it is reasonable, for the following reasons, to assume that parliament would have provided a mechanism for incorporating the differences:

- For example, the Act made provision for updating RP to reflect actual changes in buying power affecting the Australian population – because such changes were known and expected. This provision went through various iterations and eventually resulted in the Fair Indexation Act. That Act includes a beneficial intent providing the most beneficial

outcome for any updating, including no change if there is a decrease in the indexes used.

- b. Beneficial Intent. Note also, that the 1973 Act, counter-intuitively, adopted the 1960-62 ABS LE tables rather than the later 1970-72 tables. The 1962 values were more favourable to retirees and the 1972 values. If Parliament had known life expectancies were set to increase to the benefit of retirees, it is reasonable to assume they would have adopted that course of action. This clearly indicates Parliament's beneficial intent.
- c. Other legislation involving financial benefit payments have been altered due to changes in LE, e.g., eligibility for age pensions. So can the 1973 DFRDB Act.

Cost Neutrality

20. As stated earlier, the scheme is cost-neutral to the Commonwealth if correct life expectancies at date of commutation are used. But the Act's life expectancy tables do not reflect reality and have not done so since shortly after the Act's 1973 inception. The Act's life tables have never been updated.

- a. A shorter legislated life expectancy means a greater pension reduction forced on each DFRDB pensioner. That is because the commuted sum must be "repaid" in a shorter time.
- b. This means that the Commonwealth unjustly benefits because "repayments" of its commutation advance by DFRDB pensioners are exceeded significantly. The Commonwealth receives back far more than it ever outlaid to those who chose to commute. From Table 2 above, comparing 38-year-old retiree's reduction under the Act with what the reduction would be using the correct life expectancy from the ABS.
 - (1) Male: The Reduction under the Act is \$ 1782 compared with actual life expectancy of \$1,557. The retiree has "overpaid" the Commonwealth \$225 pa since 1992.
 - (2) Female: The Reduction under the Act is \$ 1544 compared with actual life expectancy of \$1,373, The retiree has "overpaid" the Commonwealth \$171 pa since 1992.
- c. This means that the arrangement is no longer cost neutral. The Commonwealth has benefited from an unexpected "windfall" for decades and is continuing to do so at the expense of retirees, bearing in mind that:
 - (1) Around 30% of a life table increase would be 'clawed back' by the Government through reduced welfare pensions and increased income tax and GST.
 - (2) Unlike most super schemes, DFRDB Retirement pay is taxable.

Ombudsman Report

21. Although the Ombudsman's investigations are, by legislation, limited to investigating administration of legislation, the Ombudsman Report made comment on legislation policy aspects concerning life expectancy. The Report conjectured that providing a means to update the life expectancy was *"open to the government and parliament of the day. The legislation could have provided for the use of a particular external actuarial table as updated from time to time. However, this was not the path that was chosen. This suggests that the scheme drafters never envisaged use of current tables, but rather, preferred a static commutation factor. With retrospect, if it had been formally named a 'commutation divisor'*

rather than a 'life expectancy' factor, it is possible the misunderstanding that ensued could have been avoided."

Ombudsman Inquiry Challenged

22. It is DFWA View that the Ombudsman's "reflection" on life expectancy ignores facts, and the reasoning does not withstand scrutiny:

- a. The option was open to the Parliament of the day, but there was absolutely no reason for Parliament or the government to even consider using current tables. Drafters and legislators opted to adopt fixed life expectancies because there was practically no change in life expectancy ages for the previous forty years. To suggest that Parliament would have considered using updated tables to cater for the minor moves in that period is unrealistic as the administration etc would be for no benefit for any party.
- b. The Ombudsman suggests the term "Communication Factor" – made up by the Ombudsman - should have been used in the Act rather than "life expectancy" factor and would have avoided misunderstanding. This ignores evidence and is total unsubstantiated conjecture and is refuted by DFWA:
 - (1) All the legislative documentation and DFRDB Authority advice and published brochures referred to life expectancy throughout.
 - (2) References specifically address male and female life expectancy differences and specifically detail that life expectancy was as at date of commutation taking effect, not, for example, date of discharge.
 - (3) Parliament's choice of the life expectancy was the most beneficial available from all existing data – as previously discussed under **Beneficial Intent**.

Non-Commuters

23. For those who do not commute, there is no lump sum reduction to retirement pay. However, the only part of a non-commuter's RP that is indexed, is that part of RP which the retiree would have received, if the retiree had commuted four times the RP at date of discharge. The change proposed benefits non-commuters as well. There is no cost-neutral argument made by government for this arrangement for non-commuters. It was a designed encouragement to commute and for government cost saving.

Conclusions

24. The current use of outdated fixed life expectancy tables has penalised retirees by reducing their retirement pay for life by more than required to ensure that commutation was cost neutral for the Commonwealth.

25. The Commonwealth has had the benefits of an unexpected windfall at the expense of DFRDB retirees.

26. The actual life expectancies of retirees at date of commutation should be used to calculate the reduction in retirement pay of retirees who commute. This would preserve the government intent of being cost neutral to the Commonwealth, providing fairness to the retiree and to the Commonwealth (taxpayer).

27. For, non-commuters, the proportion of Retirement pay that is indexed would increase as the notional reduction calculated as if the retiree had commuted would be less.

Recommendation

28. The DFRDB Act 1973 should be amended to replace the current static life expectancies to reflect the correct life expectancy of DFRDB members on date of commutation:

- a. This should apply immediately to commutation related reductions to retirement pay for all future retirees.
- b. The changed reduction to retirement pay for those who commuted, and recalculations of index related updates to retirement pay for those who did not commute, should occur for existing retirees as soon as possible after the legislation change.
- c. Lump sum back payments to correct underpayment from date of effect should be made for all retirees still living at date of legislation change.

CONTINUED MISINFORMATION BY DEFENCE

29. (A lesson not learned from the Ombudsman report - causing stress amongst older veterans.)

History

30. In the Ombudsman Inquiry there was overwhelming evidence of misinformation concerning DFRDB Commutation. The misinformation had caused a lot of confusion and stress. As detailed previously this was mainly due to Defence and CSC actions and inaction. There was an apology issued by the Secretary of Defence and the Chief of the Defence Force (CDF) with an assurance to educate staff to of the importance of providing correct advice, and of referring information provision to CSC to avoid recurrence of misinformation resulting in stress to veterans.

DVA

31. In the Ombudsman Inquiry, there was no indication of DVA involvement in misinformation as superannuation is not part of their responsibilities except where it impacted on DVA payments. Any member queries were referred to CSC.

Misinformation Again

32. In VetAffairs Aug 2024, DVA published advice on changes being sought by veteran groups:

"With regards to changes in [DFRDB] life expectancy factors, it would not be feasible to adjust one component in isolation without considering the rest of the scheme.

Changes to the life expectancy tables could leave most members worse off, as the other key element of the scheme, the commutation factor, would also need to be updated and this would likely affect the pension amount an individual receives."

- a. This relates directly to DFWA's published policy objective⁶ (as outlined above) for a change the DFRDB Act's static life expectancy table to a mechanism where the current life expectancy (based on latest ABS data) of the retiree at date on commutation is used to calculate the reduction to the DFRDB retirement pay. DFWA takes issue with this. The claim "could leave most members worse off," is totally incorrect, as detailed above.

- b. Para 5.10 of the Ombudsman Report states, "It is understandable why members would prefer the use of later life expectancy figures ... [because] ... the flow on effect would have been increased retirement pay for those who commuted (because... [it] ... results in a smaller reduction" to retirement pay). This totally contradicts the claim of "could leave most members worse off," made in the VetAffairs article.
- c. The article refers to updating a "commutation factor" which does not exist anywhere in the legislation. The Ombudsman Report introduces the term "commutation divisor" which probably confused the article writer.

Politics

33. This is a comment on a policy objective being put by DFWA to political parties and to veterans. It is totally incorrect advice. If departments are going to comment on policy objectives, especially around election time, the Australian public has a right to expect such advice is accurate, especially when it specifically concerns veterans and DFRDB Commutation where there is a history of inaccurate information, which resulted in two Inquiries and apologies from the Secretary of Department of Defence and the CDF.

Outcome

34. DFWA has requested that a joint article by DVA and DFWA be published in VetAffairs to provide clear and accurate information on the DFRDB Life Expectancy Issue. It is understood that DVA has referred the matter to Defence as the originator of the article.

FAIR INDEXATION

LEGISLATION

1. The following Defence Force Superannuation schemes include indexed defined benefit pensions in retirement:
 - a. Defence Force Retirement Benefits (DFRB)
 - b. Defence Force Retirement and Death Benefits (DFRDB)
 - c. Military Superannuation Benefits Scheme (MSBS – sometimes called Milsuper.)
 - d. ADF Cover (for reversionary (dependents) and invalidity benefit pensions only)
2. There is a need to provide horizontal equity on the updating of the military superannuation pensions and reversionary pensions so that all recipients are treated equitably in updates to rates of payment. When schemes were introduced, official documentation provided to members, stated there would be updates to rate of payment to retain buying power.

BUYING POWER

CPI Indexation

3. The Pensions paid by these schemes were indexed to the Consumer Price Index (CPI). Indexation by CPI was intended to ensure that pensions received under these schemes maintained the *buying power* of that pension.
4. According to the Commonwealth Superannuation Corporation *Militarysuper book*, 30 June 2012, page 4:

“..... Pensions are subject to full CPI updating every six months (ensuring that \$1 in 2011 will be equivalent to \$1 in 2028)”
5. Well, that’s true, except when it’s not! – as for many years and now. This was a repeat of an earlier “promise” of the government when MSBS was introduced.
6. While CPI was appropriate when it was one of the major tools for wages determination, it has changed and now the CPI no longer reflects costs of living but rather inflation. Governments have recognised this and changed indexation for other payments, e.g., Age Pension, to factor in both CPI and the Living Cost Index to better preserve buying power.

Fair Indexation for Some Veterans

7. The Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act was passed unanimously through both Houses in March 2014.
 - a. The method of fair indexation¹ maintains purchasing power of those affected pensions.

¹ Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014 (Cth)

- b. All speakers from all parties and independents spoke in favour of the Act for the improved "Fair indexation" - and that CPI was unfair as it did not maintain purchasing power.

8. This Act did not go far enough.

Who is left behind?

9. DFRDB pension recipients under 55, and all MSBS and ADF Cover pension recipients.

- a. All reversionary pensions are for either the dependent³ of a deceased ADF member or are disabled veterans.
- b. The latter group includes those most injured and incapacitated and were medically discharged.
- c. Associates in receipt of a pension because of a family law split.

10. There is no justification for some ADF Superannuation pension recipients to have their pensions indexed fairly, but not others.

MSBS

11. When MSBS was introduced, DFRDB members were given the option to transfer to MSBS, and CSC produced a fair bit of information. Many did transfer. One of the influencing factors considered was the assurance of government and CSC that *"..... Pensions are subject to full CPI updating every six months (ensuring that \$1 in 2011 will be equivalent to \$1 in 2028)"*.

- a. The falseness of the effect of that assurance has been amply demonstrated - from ABS statements and acceptance by Parliament in passing the Fair Indexation Act.
- b. For those who transferred from DFRDB, it is a double hit, as DFRDB, from which they transferred has benefitted from fair indexation since 2014.

Anomaly

12. It is noted that the MSBS Employer Benefit (notionally) accumulated in the MSBS scheme is indexed at the CPI and cannot be accessed by the member until the Age of 55 years. If the member has an asset split as a result of a Family Court action, the portion of the Employer Benefit awarded to the ex-spouse is treated separately and is indexed at the long-term government bond (LTGB) rate, until the member turns 55 years. The LTGB rate is typically more than the CPI. This is clearly inequitable. The member's portion should be indexed the same as the ex-spouse or at the Fair Indexation Act rate.

Others

13. The inequity is also targeted at reversionary pensioner - i.e., single parent families where the veteran parent has died, and orphaned children, and those veterans medically discharged. The latter includes the veteran cohort most vulnerable to mental health issues and suicidality.

Assurances

14. With DFRDB Act (June 1973) and with MSBS Act, there is a history of political assurances on introduction of the Acts, specifically, that the purchasing power of the beneficiaries' payments, will be preserved. The Pollard Report - *"Enquiry into Superannuation Pension Updating"* (March 1973)

recommended that "*the purchasing power of the pension should be maintained*" and informed the DFRDB Act (June 1973) and the following Acts with defined benefits.

15. The assurances have proved to be false. Increases to DFRDB were initially spasmodic, avoided CPI because even in 1972, the Jess Committee regarded it as an unreliable measure for increases, but later CPI was adopted. When action was finally taken in 2014, it was only a partial fix for DFRDB only and took no account of the erosion of the base purchasing power over the previous decades for all schemes.

16. It is fact that:

- a. between 1976 and 2012 DFRDB Retirement Pay, reversionary pension and Invalidity pension updating did not maintain purchasing power, and
- b. from introduction to the present day, all MSBS Accumulated Fund Benefits and MSBS pensions and ADF Cover reversionary pension updating,

17. did not maintain the buying power, as intended by Government.

Recommendation

18. It is recommended that:

- a. The indexation provisions of *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act* should be extended to include all pensions paid under DFRDB, MSBS, and ADF Cover.
- b. An independent of government review of the of military superannuation should be conducted and include a review of the mechanism to retain the buying power of all defined benefit pensions and accumulated funds, and adoption of a harmonising mechanism of updating across all schemes.

19. superannuation benefits and payments are in accordance with the clear intent of the relevant Acts.

Support:

20. DFWA supports any action to rectify this erosion of the purchasing power of all military superannuation schemes.

TAXATION OF INVALIDITY BENEFITS – DOUGLAS

WHAT IS THE *DOUGLAS* DECISION?

1. The *Douglas* decision¹ on 4 December 2020 found that DFRDB and MSBS Invalidity Benefits payments starting from 20 September 2007 did not satisfy the definition of a superannuation income stream specified in SIS Reg 1.06 (2) because it could be varied, cancelled on review nor paid at least annually. Consequently, such IB payments were a series of lump sum payments and taxed accordingly.
2. This Annex covers:
 - a. Events leading up to Litigation.
 - b. Issues Concerning Administrative Appeals Tribunal Hearings.
 - c. Implementation of the Federal Court *Douglas* Decision.
3. and the relevance to the Inquiry TOR.

EVENTS TO START OF LITIGATION (2014-2017)

Start

4. From early 2014, MSBS and DFRDB Invalidity Benefit recipients had requested CSC and the ATO to answer the question, “Which specific criteria in SISR 1.06 are being applied to treat our payments as a lifetime pension subject to normal income taxation?”
 - a. Both CSC and the ATO referred questions back to the other party to avoid answering the question.
 - b. Related “Private Ruling” requests to the ATO (requiring answers within 28 days) were unanswered for over 18 months.
 - c. After 18 months IGTO ruled that CSC were responsible for reporting the nature of the IB payments to the ATO.
 - d. In response to a Senate Estimates hearing question on notice, CSC advised, “each case was different, and they could not therefore answer generally, other than say that the criteria of SIS Reg 1.06 was met in each case”. Yet, the Minister, via MPs, was refusing to answer that question from individual veterans for their own case.
 - e. In 2016, ATO encouraged veterans to utilize another regulation to reduce tax thereby effectively cancelling their original Private Ruling requests on SISR 1.06.
 - f. The ATO decided (Freedom of Information) not inform the Veterans that the offered alternative regulation was regarded as a loophole and was closing the following FY, and the extra cash would cease.
5. In the following FY, some Veterans and their families suffered from financial over-commitment because of this deception. There were protests. In rebuttal of complaints, the Minister for Revenue and

Financial Services claimed the veterans were using a “loophole”, the closure of which had been announced before the veterans started using it.

Test Case Litigation Funding

6. The media campaign continued, The ATO communication (FOI) was circulated that the matter of the loophole was not to be mentioned in communications with veterans when ATO encouraged them to use it to reduce tax and drop requests for Private Rulings:

- a. On 5 Aug 2017, the Minister announced that “.... information was provided regarding the potential accessibility of a loophole. This information was provided without referencing the fact that the loophole would be closed effective 1 Jul 2017.”
- b. In August 2017, three veterans were offered Test Case Litigation Funding to pursue their appeals against the ATO decisions on their taxation.
- c. It would be a “Presidential” sitting of the AAT, meaning the decision would set a precedent.

FPA Senate Committee Inquiry relevance:

7. TOR(a) – Unsatisfactory governance – ATO/CSC misinformation to Ministers. ATO withholding information.
8. TOR(c) – Unsatisfactory governance - not addressing complaints.
9. TOR(f) - Not operating in best interests.

AAT HEARINGS (2018)

10. At the 1 June 2018 Hearing, the Commissioner’s case developed what was described by Justice Logan as a “fatal flaw”. The ATO Senior Counsel agreed and requested an adjournment until 12 December 2018 to consult.

Retrospective Legislation.

11. On Friday 7 December 2018, tabled retrospective changes to ATAR to overcome the “fatal flaw” which would become law unless there was a successful Disallowance motion.
 - a. The Explanatory Memorandum stated there had been public consultation on this change. This was a false statement. The record indicates otherwise.
 - b. The change took away a person’s rights in the middle of Court proceedings.
 - c. The minister denied the retrospective legislation was aimed at the veteran Court case. FOI evidence reveals this was untrue.

Disallowance Motion.

12. DFWA and veteran groups commenced lobbying for a Disallowance Motion. There were ructions concerning eligibility for some sitting MPs and Senators due to nationality issues, delays to Parliament resuming and the calling of an election. No disallowance motion was passed.

2019- March 2020.

13. The change to regulations created delays. There were further delays due to conflicting information provided by CSC. The AAT decision ruled all DFRDB and MSBS Invalidity Benefits were not superannuation income streams, they were eligible as Disability Superannuation Benefit (DSB). Of note, the decision was highly critical of CSC.

CSC -Incorrect Information Provided to the AAT.

14. The ATO had received incorrect information from CSC and as a result Douglas had been taxed incorrectly. The procedures used by CSC in making the earlier calculations were ruled incorrect. CSC declined to provide an explanation. In his judgement, Justice Logan observed¹:

"The reply of CSC of 4 October 2019 was, with due respect, singularly unhelpful ...

It is the CSC, not the Commissioner of Taxation or the Tribunal in his place, which is charged with the calculation and administration of payments under the DFRDB Act...

The best assistance that the CSC has offered entails no explanation for how it came to specify \$331,136.00 (as the amount of arrears payment) but an explanation that indicates that it should have specified \$272,642.40."

15. As a result of the miscalculations revealed during the hearings, the calculated refund due to Wayne Douglas went from the originally claimed amount of approximately \$8000 to about \$48,000.

Question to CSC Annual Member Meeting.

16. A question on Notice to the Meeting:

- a. Sought details of the reasons for incorrect Douglas pay and tax information provided to the AAT;
- b. What action was taken by CSC to ensure no similar errors with other veterans had occurred; and
- c. What action was taken to ensure no repeat in the future. The answer given to the General Meeting is at Appendix 1.

Appendix 1 Answer by CSC Management Totally Misleading.

17. CSC rightly identified it was a "hot topic", with many interested – the CSC avoids the questions. The CSC answer suggests that the two different calculations were due to the first calculations being made under the old pre-Douglas rules² and second calculations were due to the Douglas decision changing the rules. This is nonsense:

- a. The calculations were made under the same rules to the AAT.
- b. The AAT had yet to deliver *the Douglas* decision, changing the rules.

18. CSC made mistakes in calculations and totally avoided taking responsibility for mistakes at the CSC Member Meeting, continuing the practice at the AAT - as pointed out by Justice Logan.

FPA Senate Committee Inquiry TOR Relevance:

¹ *Douglas v Commissioner of Taxation* [2020] FCA 1112

² *Douglas and Commissioner of Taxation (Taxation)* [2020] AATA 494

- a. TOR(a) – CSC Unsatisfactory governance – CSC miscalculations – in accurate information to Veteran, ATO and the Court, to the Annual Members Meeting and to DFWA and ESORT.
- b. TOR(c) – CSC Unsatisfactory governance - not addressing complaints – Original
- c. TOR(f) – CSC Not operating in best interests

IMPLEMENTATION OF THE FEDERAL COURT *DOUGLAS* DECISION

19. In April 2020, the Commissioner of Taxation lodged three separate appeals to the Federal Court against the AAT decisions. After consideration by the Full Bench of the Federal Court, the “*Douglas* Decision” reference above was delivered on 4 December 2020.

20. Implementation was poorly and reluctantly administered by CSC and ATO. As indicated by the IGTO Report³, the complexities in administration, and lack of IT systems to support the changes created difficulties for both, and both were poorly prepared for it. Much of CSC work required review of past Invalidity Benefit and withholding tax payments of 12,000 veterans going back to 2007. ATO were ill-prepared going forward in preparation of new withholding tax schedules.

21. While the focus of the report is the ATO, the investigation was initiated as result of the large number of complaints from veterans regarding the implementation of *Douglas*, the timeliness of implementation and associated communication – as such both CSC and ATO were involved. As reported in the report, DFWA raised questions of CSC and was involved numerous times in improving communications with veterans on the implementation. Subjects raised with CSC, included:

- a. Discrepancies in calculations made by CSC in *Douglas* and corrective action taken.
- b. Impact of incorrect income reporting to the Family Court. (Not addressed.)
- c. Ensuring deceased estates are included in remediation processes. Not addressed
- d. Delays in processing doctors’ certificates needed for disability superannuation benefit (DSB) determinations. (Certificates are crucial to obtaining the tax benefits of the *Douglas* decision and this caused hardship to many veterans.)
- e. Applicability to ADF Cover. (no response)

New Legislation

22. On 21 November 2021, Assistant Treasurer Michael Sukkar MP and the Minister for Minister for Veteran Affairs Andrew Gee MP released a [joint media release “Government Protecting Veterans’ Interests Following Court Decision”](#) with new legislation to be introduced in February 2022 as “several thousands of veterans being financially worse off” as a result of *Douglas*. DFWA was given an Exposure Draft on 23 December and was able to respond showing the statistics quoted were wrong, with about 400 veterans slightly worse off, but easily fixed and that over 12,000 veterans were better off. This was reinforced with veteran meetings with the Minister in January 2022. As a result, the legislation was not introduced as planned.

³ Inspector-General of Taxation and Taxation Ombudsman (Cth), IGTO Annual Report 2023–24 (Report, October 2024) 14

23. The DFWA submission statistics were later shown to be correct. The ministers had been badly briefed. It is noted that the IGTO report mentions that CSC⁴ modelling had 60% veterans worse off, compared to 9% with the ATO, and the ATO Flowchart showing high adverse effects which would be reduced when CSC clears backlog of DSB claims⁵.

24. As the IGTO Report states⁶:

"The Commissioner of Taxation was the appellant in this test case and had over 3 years to prepare for the possible outcomes and consequences of the Court decision handed down."

25. CSC also had over 3 years to prepare.

FPA Senate Committee relevance:

26. TOR(a) – CSC Unsatisfactory governance – lack of preparation for the change.

27. TOR(d) – CSC account holders same rights as other Australians? It is doubtful that other Super Funds would be able to delay implementing the law due to lack of resources to process Relevant responsible officers would have been held to account.

28. TOR(f) – CSC Not operating in best interests of beneficiaries.

Recommendations

29. It is recommended that:

a. CSC be required to:

- (1) provide a detailed explanation "for how it came to specify \$331,136.00 (as the amount of arrears payment) ... when CSC later indicated ... that it should have specified \$272,642.40."
- (2) What action was taken to ensure similar errors had not been made for other veterans; and
- (3) What action has been taken to prevent recurrence.

b. an independent of government review of the of military superannuation be conducted and include coverage of implementation of the *Douglas* decision by CSC and ATO in its terms of reference.

APPENDIX 1 TO: ANNEX D TO DFWA SUBMISSION

30. Transcript – CSC Annual Member Meeting.

a. APPENDIX! TO

b. ANNEX D TO

⁴ Ibid [215]

⁵ Ibid app 5, 73

⁶ Ibid [11]

c. DFWA SUBMISSION TO

d. SENATE FPA COMMITTEE INQUIRY

e. DATED APR 2025

TRANSCRIPT – CSC ANNUAL MEMBER MEETING

Annual Member Meeting (AMM) Event Transcript

Company: Commonwealth Superannuation Corporation (CSC)

Title: Annual Member Meeting

Date: 16 March 2021

Time: 17:30 AEDT

31. Another reminder that you can submit your questions using the question buttons at the top and bottom of your screen, and once again, we won't be responding to questions tonight that are related to your individual circumstances. So, let's move into questions. Our first question tonight comes from John, and John's asked a question that **many of you are interested in**, so we thought we'd handle this straight off the top. Damian has talked about it in his presentation, but I think Damian will reinforce a few of those key points that he made, and the question is regarding the recent AAT decision of **Douglas versus the ATO**, regarding taxation of DFRDB lump sum payments resulting from a medical discharge. **John has indicated that Justice Logan was particularly critical of us not providing an explanation for the income originally** stated and asked what we're doing to ensure that the previous amounts charged have been corrected, and how we're going to ensure this is done quickly for veterans.

32. So, as I said, I'll pass over to Damian. He's already made a few comments about this, but I'll ask him just to make a few more comments. Damian?

DAMIAN HILL:

33. Well, thank you, John, for your question, and **we know it's a hot topic**. Just reiterating what I said in my comments that the federal court recently ruled that military invalidity pensions should be taxed as invalidity pensions or superannuation lump sums, rather than as superannuation income, and this applies for pensions that were paid after September 2007.

34. So, the result of this ruling is that pension payments, invalidity pension payments, will now be taxed at either a higher rate or a lower rate, and the amount of tax in the past will need to be adjusted. So, CSC was **operating the - and deducting tax, based on the income and the rules and the legislation that applied at that time and the interpretation at that time**. Obviously, this decision has changed that interpretation, and CSC is quite happy to make that change. We know that over the last few years, a few of our customers got private rulings, and we changed the tax withholding for them during that process.

DFWA NOTE:

35. The Question John asked was what CSC were doing to ensure mistakes made in Douglas calculations presented as evidence were not repeated for other veterans and in the future.

36. The CSC Answer given suggests the difference in the payment figures was due to the introduction of new rules under Douglas. This is total rubbish. The corrected figures were provided at the Hearing before the Douglas decision and were based on the old rules.

37. Either total spin and avoidance of question or total incompetence.

TAXATION OF INVALIDITY BENEFITS - ADF COVER

INEQUITABLE TAXATION OF INVALIDITY BENEFITS

INVALIDITY BENEFITS (IB)

1. CSC IB are paid to those veterans who are most vulnerable to mental health issues and suicidality. They have been medically discharged for physical and/or mental injuries. They suffer the further trauma of leaving their mates, the *team*, and its supports, of being classified as not being good enough anymore, and now facing challenges greater than those transitioning “normally.” Any Incapacity Payments received from the veteran from DVA for service caused injuries, are offset (reduced) by any payments received from CSC.

SAME INVALIDITY BENEFITS REGARDLESS OF ACT

2. From DFRB (1948) to ADF Cover (2016) all the schemes have provided Class A, B, and C Invalidity Benefits, based on similar criteria such that veterans of same age, service, and pay would receive on average the same quantum of Invalidity Benefit for Class A, B and C regardless of scheme. This was design and government intent¹. All CSC and Defence² publications advertised this fact for those members in MSBS considering switching to ADF Super (and hence also ADF Cover) when these schemes were introduced for all new ADF enlistees on 1 July 2016.

DOUGLAS DECISION

3. The Full Bench Decision of the Federal Court in December 2020, gave significant tax treatment benefits to DFRDB and MSBS Invalidity Benefit recipients for those whose IB payments started after 20 September 2007 and who also qualified for the Disability Superannuation Benefit.

DISABILITY SUPERANNUATION BENEFIT (DSB)

4. Those DFRDB and MSBS IB recipients of a Class A (Incapacity 60% and more) and probably most on a Class B (30-60% incapacity) would qualify for the DSB modification². Eligibility for the DSB, is by the same criteria as all other Australians, i.e., certification from two medical practitioners that, *because of the ill-health, it is unlikely that the veteran can ever be gainfully employed in a capacity for which they are reasonably qualified because of education, experience or training*. It reflects a loss of earning capacity.

¹ Australian Government, *Australian Defence Force Cover Scheme (ADF Cover)* (Web Page, 2025) <https://www.directory.gov.au/portfolios/defence/australian-defence-force-cover-scheme-adf-cover>.

² Defence Force Welfare Association, *Disability Superannuation Benefits* (Web Page, 2025) <https://dfwa.org.au/update/disability-superannuation-benefits/>.

NEW TAX LAWS 2023

5. The main aim of the *Treasury Laws Amendment (2022 Measures No. 4) Bill 2022* - Schedule 9 - *Reversing the Douglas Decision* was to prevent the veteran beneficial tax treatment from being extended to other defined benefit schemes³. These are primarily federal and state government public service schemes estimated at up to 100,000. It preserved the *Douglas* decision tax treatment of recipients of DFRDB and MSBS benefits and introduced a tax offset for those few veterans disadvantaged by the *Douglas* decision. It also extended the beneficial tax treatment of any reversionary pension to the veteran's dependents if the veteran should die⁴.

DOES NOT APPLY TO ADF COVER IB RECIPIENTS

6. The *Douglas* decision (a test case) commenced in 2017 for DFRDB and MSBS Invalidity Benefit recipients who had, in the previous year had challenged taxation of their benefits. There were then no cases from ADF Cover (2016), that could be included in the test case litigation. See details in Annex D.

THE INEQUITY

Same IB Amount

7. Currently, the ADF has roughly 48% of members in MSBS and about 52% in ADF Cover, serving side by side. If they get injured, have roughly the same service, age and pay, they will receive roughly the same amount of Invalidity Benefit.

Same Reviewable (Non-Lifetime) Benefit

8. The prime reason for the *Douglas* Decision was that the payments of IB could be cancelled under both the DFRDB Act and MSBS Act, and the legislation did not ensure that '*the pension is paid at least annually throughout the life of the primary beneficiary*' (as required by reg 1.06(2) of the *SIS Regulations*)⁶. It is not a lifetime pension. The same rules apply under the ADF Cover legislation⁷.

9. However, ADF Cover IB veteran recipients, compared with MSBS, will generally:

- a. pay more tax on their IB, e.g., around a \$6,500 a year more on an IB of \$2,000 fortnight and
- b. are less likely to qualify for other benefits, e.g., FTB of about \$7,000 pa for eligible children, Carers Allowance, often for the spouse unable to work for care reasons.

10. Further, the widows and family members of ADF Cover recipients who die, do not receive the same beneficial Schedule 9 tax treatment as the MSBS IB reversionary pension recipients.

DFWA Assertions.

11. This is not equitable treatment and goes against the original legislative intent of providing the same benefits for ADF Cover as for MSBS⁸ as advertised as such by the ADF and CSC.

³ Explanatory Memorandum, *Treasury Laws Amendment (2022 Measures No. 4) Bill 2022* (Cth) sch 9.

⁴ Parliamentary Library, Parliament of Australia, *Bills Digest* No 43, 2022–23, 8 February 2023, 31.

12. This discriminates against all those medically discharged veterans who enlisted after 30 June 2016 – and their families if the veteran dies.
13. This is not consistent with One ADF concept – ADF members working side by side on same pay and conditions, are taxed differently if medically discharged.
14. In other Australian work environments, such different treatment for workers, working side by side, would not be tolerated. (There is sound argument for the need of a “no disadvantage compared with other Australians” clause in a re-energized Veteran Covenant – to remind government of their obligations.
15. This discrimination is not consistent with Defence needs to recruit and increase the size of the ADF. It is a disincentive and adds a further argument for those who discourage family members and friends from joining the ADF.
16. It disadvantages those MSBS members who transferred to ADF Super, based largely on the arguments related to greater flexibility in super scheme investment choice. They were assured Invalidity Benefits would be the same as MSBS. This changed with the *Douglas* decision in December 2020. Particularly aggrieved would be those veterans who transferred after this date. This change in taxation treatment was not generally published by Defence or CSC until mid-2022. It is unlikely that the small number of members transferring in that period would have been correctly informed of that by CSC or any financial advisor. If later medically discharged, they would likely to have suffered a financial detriment. Defence ADF Cover Key Facts still does not mention it nor provide a working link on where to get further details⁵. CSC only announced on 12 April 2022 that they were going to implement the *Douglas* decision. (See Annex D).
17. DFWA believes that no politician would deliberately design such a system.

Medical Discharges

18. The number of medical discharges is increasing. DFWA has increasing numbers of medically discharging veterans and their partners attending the DFWA stall at Transition Seminars requesting further information supporting change and requesting updates on our campaign to fix this inequity.

RECOMMENDATION

19. It is recommended that the Committee endorse the following recommendations for the necessary legislation changes to the *Treasury Laws Amendment (2022 Measures No. 4) Bill 2022 - Schedule 9 - Reversing the Douglas Decision*, be brought before parliament within the new term of government as a matter of Defence urgency:
 - a. **As Priority 1.** Amend the Schedule 9 legislation so that IB veteran and IB reversionary pensions tax treatment is extended to all ADF Cover current and future beneficiaries commencing from the date of medical discharge.

⁵Australian Government Department of Defence, *ADF Cover: Key Facts* (Fact Sheet, March 2014) <https://pay-conditions.defence.gov.au/sites/default/files/2021-09/march-14-updated-adf-cover-fact-sheet.pdf>.

- b. Amend the appropriate legislation to extend the Schedule 9 tax treatment to the current DFRB, DFRDB and MSBS IB veteran and IB reversionary pension recipients whose payments commenced before 20 September 2007.

ISSUES WITH EXTENDING BENEFICIAL TAX TREATMENT TO ALL VETERAN IB RECIPIENTS

Horizontal Equity for All Veteran IB Tax Treatment

20. The Australian Parliamentary Library submission related to the Treasury Laws Amendment (2022 Measures No.4) Bill 2022, raised the concept of Horizontal Equity⁶

"One of the good tax criteria is horizontal equity: the idea that people in the same circumstances should be treated in the same way." It goes on to state,

"One effect of the Douglas decision is that two taxpayers who both receive a regular, periodic superannuation benefit arising from invalidity caused by their military service can be taxed differently, as the need for the proposed veterans' superannuation (invalidity pension) tax offset discussed above demonstrates.

In this instance, a potential effect of the Bill is that two taxpayers receiving the same type of superannuation benefit on a regular basis (for example, invalidity pension payments) can be taxed differently, thus breaching the horizontal equity principle in tax design."

"In the same circumstances"

21. The circumstances would include the same financial circumstances and the same circumstances of work; the latter would acknowledge pertinent differences affecting tax treatment, e.g., remote areas, warlike operations, etc.

"Both receive a regular, periodic superannuation benefit/receiving the same type of superannuation benefit on a regular basis"

22. The Bill Digest should have included in this instance, the key *Douglas* legal finding, i.e., the benefits are all reviewable and can be ceased.

23. DFWA maintains that the Horizontal Equity principle supports that ADF Cover IB recipients should benefit from Schedule 9 the same as DFRDB and MSBS do for all payments after 20 Sep 2007 – the nature of the military service and the benefits are the same.

24. The Henry report⁷ in addressing Horizontal Equity (Horizontal equity refers to people in "similar circumstances" being treated in a similar way) of "Income from work" points to some income tax exemptions as being breaches of the principle, e.g.:

- a. Henry recommends Defence warlike income should be taxable and, instead, "direct remuneration should be increased for affected personnel". This Henry Report recommendation was not accepted, however DFWA maintains that Government should and does make exceptions for other valid reasons. DFWA also notes that Invalidity

⁶ Parliamentary Library, Parliament of Australia, *Bills Digest* No 43, 2022–23, 8 February 2023, 33.

⁷ Australia's Future Tax System Review Panel, *Australia's Future Tax System: Report to the Treasurer* (Final Report, December 2009) pt 2 vol 1.

Benefits are not “income from work”. They are paid because the veteran is unlikely to work again.

- b. Henry is highly critical of some employment related concessions where justification is opaque and subjective¹³. The justification for the IB beneficial tax treatment was established by the Douglas decision and reinforced by Schedule 9 and is neither opaque nor subjective.

Horizontal Equity and Non-Veteran IB Recipients

25. The APH Bill Digest observed that the Schedule 9 - by allowing veterans to be taxed differently to other workers on similar IB payments - diverges from “the horizontal equity tax design principle.” DFWA contends that expansion of the Schedule 9 benefits to ADF Cover beneficiaries does not require extension of benefits to non-veteran workers as well.

26. While some Australian workers experience high risk and danger often, the nature of military service is unique. No workers in other employments, can be ordered into a situation where there is a high risk of injury or death, and where refusal to obey, can result in imprisonment. ADF members do not have the employee rights of “other workers.” A distinction can be made between the “work circumstances” of other workers and those in military service.

27. Because of the unique nature of military service, it is difficult for ADF members to obtain death and invalidity cover at a reasonable cost under group insurance arrangements as available to other workers through their superannuation schemes.

- a. Rather than provide some allowance or other means to each ADF Member to obtain the insurance, the government decided that no contributions are required to be paid by Defence or members to obtain such insurance. (See Note⁸)
- b. Instead, ADF Cover benefits are paid from consolidated revenue.¹⁵ These are paid as defined benefits. No similar occupation environment reason has been claimed for other schemes to justify defined benefits for invalidity cases.

Direct Remuneration Option

28. In speaking of Defence, as mentioned, Henry suggests a direct remuneration option. In this case, direct remuneration would need to cover increased costs for death and total permanent disability insurance. This has already been considered and rejected by the government for good reasons considering the vagaries and short notice changes to operational needs and risks.

29. Invalid veterans are in a messy complex definitional area, where Defence requirements, and the unique nature of military service has brought about clashes with SIS Act, SIS Regs, Tax legislation and regulations and attempts to equate public service schemes with military superannuation schemes. DFWA asserts:

- a. Government claims, in the Explanatory Memorandum to Schedule 9, regarding original policy intent⁹ are challengeable. However, it is quite clear that policy now is to prevent the *Douglas* decision affecting the taxation of similar benefits in Commonwealth public

⁸ It is noted that the government has not taken up the Henry recommendation (based on horizontal equity) to provide an allowance to replace the tax exemption given for defence “warlike” service. Exceptions can be justified for other reasons.

⁹ Explanatory Memorandum, *Treasury Laws Amendment (2022 Measures No. 4) Bill 2022* (Cth) sch 9, [9.4]–[9.6]

service superannuation schemes, (or state, local government and some private defined benefit schemes).

- b. What is also clear is that there was no consideration given by the drafters of the SIS Act, SIS Regs and the relevant Tax Regs of the pre-existing legislation covering military invalidity benefits. These had been harmonized since 1948 across all military super schemes. The ADF superannuation legislation took account of unique circumstances of Defence and the consequent unique nature of military service.
- c. Part consideration is now being given in Schedule 9 which effectively adds more band aid to the complex mess of the Superannuation and Tax laws and entrenches disharmony of tax treatment of veterans serving side by side.

Final Question

30. It is inevitable, if it has not happened yet, that there will be some incident -perhaps on operations over or under the South China Sea, or on Exercise - where ADF members will be injured resulting in their being medically discharged.

- a. Some will be veterans unlikely to ever work again, may have young families and need of a Carer.
- b. Some will be on MSBS and some on ADF Cover, receiving the same IB payments but will be taxed differently.
- c. The younger veteran will be entitled to ask "Why am I being taxed thousands of dollars more than my mate with the same injuries? Why can't we get the Family Tax Benefit and a carers allowance like my mate's family? Why is my family taxed more than my mate's, if I die?

OFFSETTING AND RETROSPECTIVE MEDICAL DISCHARGE

OFFSETTING

DVA Legislation

1. With some DVA legislation, there is offsetting of DVA Incapacity Payments against some Invalidity Benefits based on the principle of not being compensated for the same injury twice. Some DVA Incapacity Payments are also offset against part of ordinary superannuation pension payment by CSC. Military superannuation payments are considered in means testing for the Service Pension administered by DVA/ Human Services and there are inconsistencies and confusion concerning offsetting payments under DVA legislation against CSC payments.

Example

2. DVA Offsets related to the Special Rate Disability Pension (SRDP) have different effects on veteran's dependent upon which DVA payments are involved – Veterans Entitlement Act (VEA) and The Military Rehabilitation and Compensation Act (MRCA), with some RSL modeling showing lifetime losses with MRCA more than \$500,000 compared to VEA. These were not satisfactorily addressed in the recent VETS Act aiming to harmonise and simplify DVA entitlement legislation. It is not a CSC issue if looking at it from this Inquiry's TOR perspective, but it is a big problem for the Veteran, due to the uncertainties and the gross differences in financial outcomes. The principle of not being compensated for the same injury twice is not remotely applied given the two different outcomes. The SRDP payments can be offset by DFRDB and MSBS ordinary superannuation pension payments.

TOR(e) - mechanisms for veterans to have their discharge reclassified from administrative to medical, particularly in cases involving psychological injuries, and whether current appeal processes and discretion practices by the Department of Defence and the CSC adequately protect veterans' entitlements and recognition of service-related mental health issues;

RETROSPECTIVE MEDICAL DISCHARGE

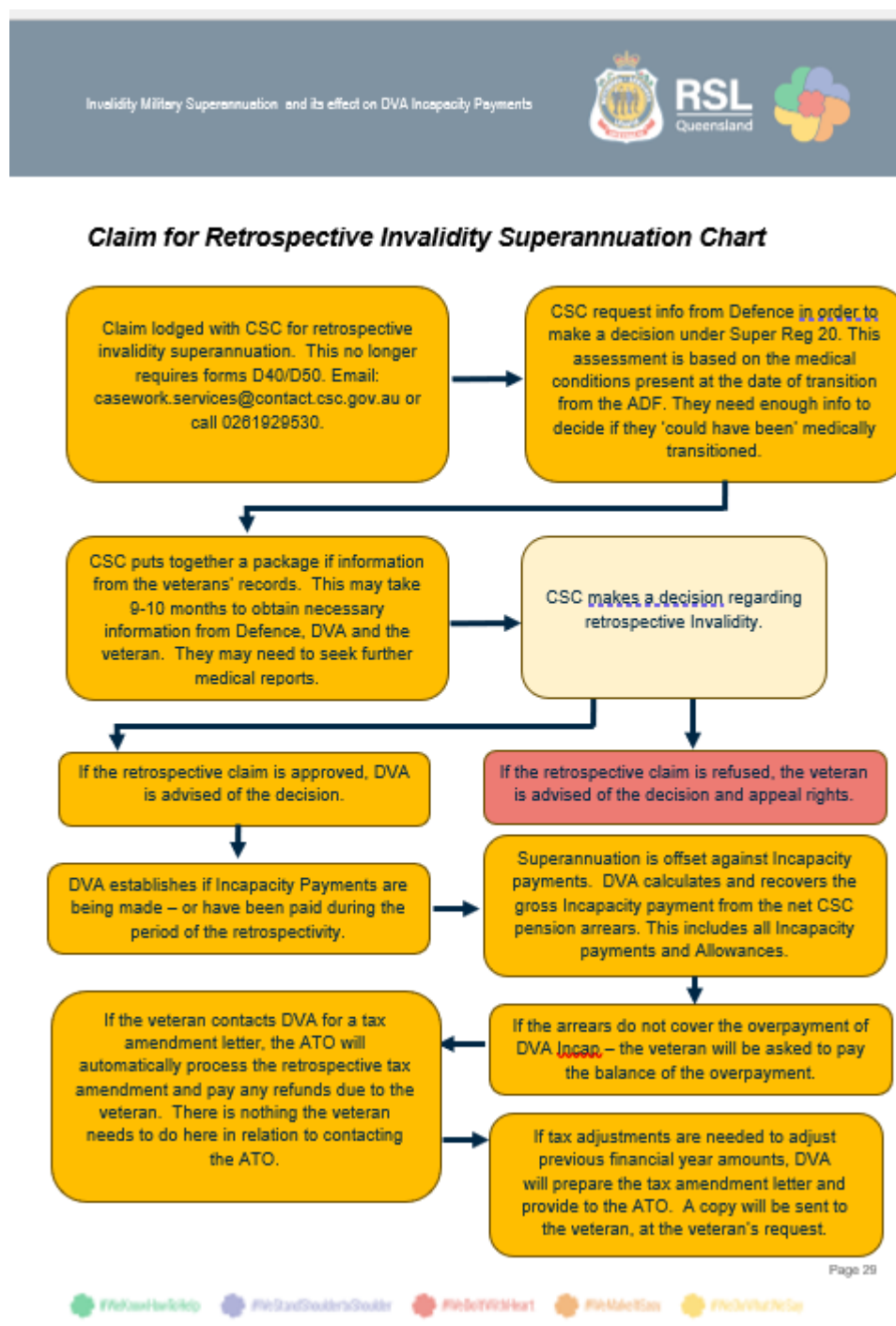
3. Veterans medically discharged are the cohort most vulnerable to mental health issues and suicidality. A large proportion of those seeking retrospective medical discharge may be at greater risk, as their condition has been suppressed, denied and hidden for years and probably untreated. Actually, the process of deciding and initiating is usually very hesitant, weighed with uncertainty about the outcome in an already uncertain future and creates a lot of anxiety.

Complexity

4. A retrospective medical discharge claim is also probably the most complex area in the administration of veteran entitlements, due to offsetting between DVA Incapacity Payments and CSC payments. If it involves a DFRDB or MSBS retiree who was in receipt of a retirement pension, it involves repayment of those payments, including any lump sums, before Invalidity Benefit payments, including the back payments to date of discharge, can be made. It also involves Defence and the ATO.

Stress

5. DFWA had concerns about aspects of retrospective medical discharge as a result of involvement in the *Douglas* Case, involving the taxation of Invalidity Benefits. Part of the *Douglas* case involved a retrospective medical discharge, and other veterans and advocates (ESO) raised issues with us about delays, lack of information and stress. In discussions with DVA¹, it was revealed that DVA staff handling these claims were also stressed to the point of leaving – with the added risk of losing experienced staff. Verbal complaints by angry veterans were often directed at DVA, even though the delays were elsewhere



¹ Discussion between Tara Hatzismalis (Assistant Secretary, Processing, Client Benefits Division, Department of Veterans' Affairs) and John Lewis (President, DFWA Qld), 24 May 2022.

No Owner

6. A direct issue was that none of the stakeholders was responsible for managing the flow for an individual veteran through the process involving CSC, DVA and ATO. It relied more on goodwill and collaboration of the individuals concerned. Further, the process was not understood by veterans who were normally supported by an ESO Advocate – trained mainly on DVA claims, not CSC. At a meeting with DVA managers and involved staff, RSLQ, DFQAQ and DFQA (National), RSLQ agreed to take lead in providing an information guide on this and DFQA would seek input from CSC² and ATO³. Input from both has been given quickly and freely. The result was the production of a guide⁴ for Advocates and veterans, covering DFRDB, MSBS and ADF Cover (Extract in Figure). It has recently been reviewed again by DVA, CSC and ATO for accuracy and currency. and was offered to ATDP to inform their training. DFQA commend the three organisations involved and especially acknowledges the work of Margaret Jenyns, Head of Veteran Services Support, RSLQ.

Lengthy

7. As can be seen, the process takes considerable time, and delays can create financial uncertainty and stress, all to the detriment of veteran and family.

8. A retrospective medical discharge claim involves trawling back through medical records back to before discharge to the current day, leading up to a decision. If claim is successful, it then involves reviewing the historical records of CSC and DVA payments made, withholding tax, and veteran tax - dating back to the date of discharge. Some of the records have been archived. Some earlier ones are still held on paper or scanned, requiring manual searching. This process is lengthy and its outcome uncertain and creates more stress. DFQA has supported veterans where the retrospective claims went back as far as the 1970s and required about 2 years for a decision.

9. Due to the record searching and review required, it is difficult to see how this can be shortened without considerable investment in IT and perhaps AI innovations. It is noted that there is medical data sharing, with the veteran's permission among DVA, Defence and CSC. There is also the need for the veteran to arrange access to his or her medical records since discharge and provide input into the process. The period of 9-10 months is based on Advocate experience, but surely action could be taken to reduce stress and the time taken. For example:

- a. It should be possible to derive estimates of likely times for a decision, based on date of discharge, ease of access to service records and other factors.
- b. Establishing baselines would aid process improvement, and measure improvement; and
- c. Provision of such information to veterans at start of the process and regular updating would ease stress on veterans; and
- d. Encourage veterans to respond promptly to requests for information, reducing delays further.

² CSC National Director Defence and Veterans Liaison, David Wilton; CSC Senior Manager, Customer Support & Claims Operations, Jude Frost.

³ ATO Director, Leadership and Advice, Michael Majoor; ATO Enterprise Strategy and Design – Kirsten Courtney, and Richard Turner.

- e. Use of AI and access to readable records could speed up decision making where all Class A decided by AI accepted, and all others subjected to a manual review.
 - (1) There would be need for periodic manual review of AI decisions where incorrect decisions should not create debts for affected veterans.
 - (2) Veterans should be provided with detailed reasons of any decision.

10. It takes considerable time for CSC to determine the Class of pension, but much is largely a sausage making decision routine process. For the veteran, it is not routine, it involves a deal of specialist knowledge, gets confused with DVA medical assessment process, and is stressful. A veteran given an initial classification of Class C will likely become very anxious and will take time to understand and consider what action to take and how to appeal a challenge. Given the previous stress, many just want no more to do with it, let alone to be pressured to make a rushed decision – so just walk away from it. Given this frequent situation, DFWA submits that the legislated one month to appeal is not enough time to consider, and its imposition places more stress on already stressed veterans. CSC allows appeals well after that period, by considering applications to appeal based on extenuating circumstance. Sometimes many years later. Given what is now known, the appeal time should be formally extended to 6 months but still retain ability to give leave to appeal after that time where extenuating circumstances exist.

11. The reference guide has assisted Advocates and the support to veterans, has probably achieved some time saving and has reduced some of the stress, but no metrics exist. It was produced with the co-operation and relied on the goodwill of the people in stakeholder positions – the only hiccup was when some personnel changed. DFWA submits that faster processing times could be achieved by formalising the arrangements between stakeholder organisations

Interworking

12. The guide focusses on the three main players, but does mention that there may be Tax, child support and Centrelink (SS) impacts. With stress and mental health issues, there may also be Family Court matters. The Veteran and family are dealing with all these factors influencing their life and there is no wonder there is stress.

13. Each Department deals with its own legislation, its own “silo”. DVA might claim to be Veteran Centric, but it only has the funding and policy responsibility related to its own legislation, therefore DVA – Centric.

14. There is no government agency there to support the Veteran navigate the system to the best solution for the veteran. However, the initiative given by the production of the RSLQ guide, indicates a possible direction. The only agencies attempting this task are ESOs, but their Advocate training is DVA focussed. DFWA view is that the Veteran Covenant legislation makes it clear that veteran and veteran family treatment is a Commonwealth responsibility as is the commitment to work with the ESO Community⁴. It should be amended to reflect that it is a general Commonwealth commitment, not limited to DVA legislation. An entity like the ESO Peak body proposed by the Royal Commission into Defence and Veteran Suicide Report could engage across the legislation silos to address veteran navigation and support. The key areas for Retrospective medical discharges are CSC and DVA there are

⁴ Australian Veterans' Recognition (Putting Veterans and Their Families First) Bill 2019 (Cth)

other areas that such a body could address, however other government areas are involved in veteran support – this is addressed separately.

CSC Calculations

15. DFWA has reservations about CSC calculations of amounts previously paid by CSC for DFRDB retirement pay and commutation. In the Douglas case, during the AAT Hearings (Douglas vs the Commissioner of Taxation), Douglas challenged CSC advice concerning the commutation lump sum tax paid. ATO solicitors requested an explanation of the calculations from CSC. CSC provided no explanation to the AAT and instead issued a new payment summary giving a different Income and withholding tax. CSC had overstated income by about \$90,000 and Douglas had paid tax on money never received. Note, this did not require offsetting calculations with DVA, and all data was held by CSC:

- a. CSC never gave any explanation of how the miscalculation occurred and was subsequently rebuked by Justice Logan in his AAT decision⁵.
- b. DFWA requested advice on what action CSC⁶ had been taking to ensure that no other veteran had been similarly treated and that similar mistakes would not happen again.
- c. A request from DFWA to explain this were dismissed by CSC with the non-explanation that "It was just a one-off."
- d. DFWA requested advice whether CSC⁸ had engaged with DVA to ascertain if there is a need to review offset calculations regarding Incapacity Payments?

16. CSC was aware that these calculations would be used in evidence in this test case litigation and obviously aware of the significant sums of money involved. Yet the CSC quality assurance process failed and incorrect evidence was submitted to Court. The lack of transparency and recognition of a duty to veterans is of concern:

- a. This miscalculation involved significant financial detriment to *Douglas* and it required questioning of CSC at the AAT to get an answer in spite of previous requests.
- b. Shortly after the queries, CSC undertook a review of their offsetting calculation of all MSBS cases between 2014 and 2019, initiated due errors found.
- c. The *Douglas* case started with incorrect reporting by CSC of the reviewable nature of IB payments to the ATO.

17. There have been other instances where CSC provided incorrect advice concerning taxation and invalidity benefits to CSC general meeting and to Senate Estimates. Details can be provided

Accountability and Transparency

18. DFWA is continuing to pursue this matter. It is noted that CSC was not reviewed closely by the Royal Commission into Defence and Veteran Suicide and was not covered in the IGTO Review of the Douglas implementation. The government excluded CSC from the Royal Commission into Financial Institutions because they were already held to account by other mechanisms. The evidence does not

⁵ As reported in "Camaraderie" Vol 52 No 2 DFWA. Page 20

⁶ As reported in "Camaraderie" Vol 52 No 1 DFWA. Page 11.

support that reasoning. Greater transparency is required to provide greater accountability of Commonwealth funds, assist in assurance and restore and maintain trust.

RECOMMENDATIONS

19. It is recommended that:

- a. Resources be provided to establish a working group with representatives from RSL, DFWA, CSC, DVA and ATO be formally established to support process improvement in the retrospective medical discharge process, with ability to recommend changes and initiate appropriate business cases.
- b. Where necessary, legislation be changed to:
 - (1) Ensure case management is established and:
 - (a) Engages with all stakeholders and the veteran throughout the process
 - (b) Ensures veterans are given indicative time when claims are submitted and given regular update on progress.
- c. Ensure veterans are given detailed reasons for any Class B or Class C decisions.
 - (1) Extend the time to appeal to an initial Class C pension decision to six months and retain ability to grant leave to appeal after that time subject to extenuating circumstances.
 - (2) Fund development and training for veteran advocates, on the processes involved.
 - (3) Extend VITA insurance to cover Advocate work related to all veteran and family claims on ADF superannuation issues.
- d. CSC and DVA be required to provide veterans of all details of their calculations to derive the total superannuation payments and related tax payments, offset and recovered super and incapacity payments related to retrospective medical discharges.

RESERVISTS

1. There are some Reservists who are currently excluded from participating in ADF superannuation schemes due to:
 - a. Legislation, and
 - b. Administrative deficiencies.

LEGISLATION

Continuous Full-Time Service

2. Provision is made for the inclusion of Reservists as members of existing superannuation schemes only when on continuous full-time service (CFTS). However, service rendered which does not meet the CFTS criteria, does not attract superannuation scheme membership and entitlements, including the Superannuation Guarantee¹. The impacts are:
 - a. The non-CFTS Reservist does not benefit the 11.5% employer contribution to the fund of choice as required to be paid by employer to all other Australians employed in non-fulltime occupations. Nor do they benefit from the 16.5% Employer Benefit to all other ADF new enlistees since 2016.
 - b. Non-CFTS Reservists are not entitled to the Invalidity Benefits provided to all other ADF members if injured and likely to never be able to work again; nor are they able to get civilian equivalent insurance cover at reasonable price and as required to be offered by all super schemes².
 - c. CFTS Reservists who were on MSBS and now on ADF Cover for Invalidity Benefits may not be aware that the tax treatment of these benefits differs significantly with ADF Cover IB recipients generally paying significantly more tax. CFTS Reservists may be unaware that they had transferred from MSBS to ADF Cover when returning to a CFTS engagement. "ADF Cover - Key Facts" on the Defence website does not inform the reader of this and the link for further information does not work. See Annex E for details.

CHANGES

3. The nature of employment of Reservists has changed considerably from the "weekend warrior" and annual camp concept to provide a force ready for mobilisation and assist in the rapid expansion of the ADF and to step in behind the regular force when the situation required it. The ADF is now far more integrated with Regular forces and Reservists play an essential role in current operations, both individually and as units.

Total Workforce Model (TWM)

¹ *Superannuation Guarantee (Administration) Act 1992* (Cth) s 29

² Australian Government, *Australian Defence Force Cover Scheme (ADF Cover)* (Web Page, 2025) <https://www.directory.gov.au/portfolios/defence/australian-defence-force-cover-scheme-adf-cover>

4. This Total Force concept was supported by the TWM, introduced in 2016 alongside the SERCAT4 employment system, and was implemented following the Broderick Review with the objective of providing a more flexible employment structure. It was designed to enable personnel to transition seamlessly between SERCATs throughout their career, breaking the traditional "all in or out" mindset and offering part-time service options for those unable to serve full-time. Additionally, it sought to remove barriers for individuals returning to full-time service after periods of part-time employment, particularly benefiting women and those with caring responsibilities

Superannuation Guarantee Act

5. Through the Total Workforce Model and SERCAT employment categories there are many variations of service similar to permanent part-time, job-sharing, limited term full-time engagements and casual engagements as available in the general population. For employers supporting these types of employment, it is mandatory for employers to contribute at least the minimum Super Guarantee as the "employer benefit" to the employee's superannuation fund of choice. However, the TWM does not allow those in SERCAT Reservist categories (not involving CFTS) to participate in superannuation and makes use of a legislated exemption.

6. The current arrangements fail to accommodate Reservists who wish to contribute to their superannuation and be covered by Death and Total Permanent Disability cover. This omission has significant long-term financial implications, in particular:

Women

7. Women are disproportionately represented among those seeking part-time employment to meet caregiving responsibilities. The lack of a structured superannuation contribution pathway for Reservists further exacerbates gender-based financial disparities over the course of their careers. (See Appendix 1 - Women Veterans 2025 Baseline Data Report).

Indigenous

8. Indigenous soldiers form an important part of the Army Regional Force Surveillance Units, e.g., Norforce and 51 Far North Queensland Regiment. These are vital in monitoring our northern approaches. Many serve for extended periods in these Reserve units and have limited or no opportunity for employment and participation in superannuation schemes available to other Australians. The inability of Reservists to participate contributes to the financial gap³ between the average accumulated funds of indigenous men and women compared with their non-indigenous counterparts.

Injured and Incapacitated

9. In all other employments, Australians must be offered Death and Total Disability Insurance Cover with their super schemes. There is no super scheme for Reserve service, so there is no Death and TPD insurance available for the Reservist. Injured Reservists, no longer able to work, and with no insurance, will find themselves and their families in dire financial straits.

Conclusion

³ Bankwest Curtin Economics Centre, *Aboriginal and Torres Strait Islander Australians and the Superannuation System* (Report, June 2020) <https://bcec.edu.au/assets/2020/06/BCEC-ATSIA-and-the-Superannuation-System-Report-FINAL-1.pdf>.

10. All ADF Members, including Reservists should have the same right of participation in superannuation as other Australians. This is consistent with the thoughts behind:
- The question put in TOR (d) regarding whether CSC account holders have the same rights and protections as other Australians in relation to their superannuation, and
 - The “no disadvantage” clause – that veterans and families should suffer no disadvantage in access to benefits and services compared with other Australians – and which should be in the Veteran Covenant.

TAXATION

11. The ADF pay and allowances of those Reservists not rendering CFTS are exempt from income tax⁴ and the payments are not covered by the Superannuation Guarantee Act. The income tax exemption for Reservists not rendering CFTS is obviously an inducement for recruitment and retention. The trade-off, if there is any, that the actual per diem pay is less than for those Regular and Reservist ADF members rendering CFTS. The tax exemption for Reservist/citizen/militia force services predates the DFRDB and other superannuation schemes⁵.

No Link Between Tax Exemption and Superannuation Costs

12. There is no published link between a Reservist’s pay exemption from income tax used to justify the denial of superannuation and an Employer Benefit (providing the Super Guarantee). With DFRDB there was no Employer Benefit paid, with MSBS the Employer Benefit varied from 18%, to 23%, to 28% and with ADF Super, it is now 16.4% and complies with the Superannuation Guarantee Act minimums (from 9% in 2002 to currently 11.5% and 12% from 01 July). Historically, there has been no adjustment in Reservist pay to as a trade off with the changes to the government contribution, i.e., Employer Benefit. There is no link.

Administrative Deficiencies

PMKeys Deficiencies

13. The TWM has not delivered the anticipated level of project-sourcing flexibility due to its continued reliance on the PMKeys system⁹, which imposes rigid constraints on ADF workforce management. Unfortunately, the intended flexibility of transitioning in and out of positions has also not materialized as expected. Instead of facilitating seamless movement across employment categories, systemic constraints remain, limiting the model’s effectiveness in supporting SERCAT purposes for all Reservists. It should be noted that, these barriers disproportionately impact women, who often require adaptable working arrangements to balance professional and personal responsibilities. Even if legislation supported extension of superannuation to all Reserve service, the “system” – PMKeys does not cater for the unique military service needs. (One could question whether PMKeys supports Defence’s civilian employees’ needs for flexible working and rights to the Super Guarantee.)

14. In the long term, a transfer to the Reserve service can adversely affect superannuation accumulation with consequent adverse impacts, including:

⁴ *Income Tax Assessment Act 1997* (Cth) s 51-5 table item 1.4.

⁵ *Superannuation Guarantee (Administration) Act 1992* (Cth) s 29

- a. A disincentive to serve in the Reserves resulting in:
 - (1) a total loss of skills and experience to the ADF and a degrading of capability; and
 - (2) A loss to the ADF and to Australia of sovereign skills and experience capability, e.g., nuclear trained submariners seeking relevant employment overseas when transitioning.
- b. The cumulative effect of reduced superannuation contributions and lower lifetime earnings further entrenches financial inequality for women in the workforce, contributing to a gender pay gap.

Addressing Administrative Deficiencies

15. Addressing the limitations of the PMKeys system, apart from addressing ADF retention of capability issues, would enable Reservists to contribute to superannuation, and genuinely facilitate flexible transitions and will be critical in ensuring equitable outcomes for all personnel, particularly women and caregivers, as happens in other Australian occupations.

Recommendations

16. The following recommendations are made:
- a. As a matter of urgency, the ADF Cover Act 2015 should be amended to provide the Acts' invalidity benefits to all Reservists not already covered by DFRDB or MSBS.
 - b. All Reservists, regardless of SERCAT, and tax -exempt status, should be able to participate in an appropriate military superannuation scheme and be entitled to the Super Guarantee.
 - c. Existing legislation should be changed to facilitate all Reservists to participate in superannuation.
 - d. The TWM and PM Keys system should be examined through the lens of this review to ensure they support Reservists' contributions to superannuation and Reservists can access the associated benefits that would arise from that change in legislation

APPENDIX 1: FROM WOMEN VETERANS 2025 BASELINE DATA REPORT

17. Serving women access flexible working arrangements (via SERCAT6) at ten times the rate of serving men.
18. Women veterans with children are 16 percentage points more likely to live with children than male veterans.
19. There is a deviation in the income of women veterans (from the 29 ages of 30-39 years to 80-89 years) compared to male counterparts, due to providing unpaid care. This deviation equates to a total difference of ~\$80,000 in lifetime income earnings.
20. Women veterans are almost twice as likely to deliver 30 hours or more of unpaid domestic work per week than male veterans. Women who had never served had similar rates of unpaid domestic work.
21. Women who have served are more than twice as likely to be employed part time as male counterparts. This rate was consistent with women who had never served.

DOMESTIC VIOLENCE -REVERSIONARY PENSIONS

Reversionary Pensions

1. There are defined benefit reversionary pension provisions for surviving spouses, partners and dependent children under the DFRDB, MSBS and ADF Cover.

Situations

2. There are cases where the surviving spouse/partner no longer qualified for a reversionary pension because the relevant definition of dependency did not apply in either the SIS Act and/or ADF scheme provisions.

SIS ACT

3. From Legacy discussions, DFWA is aware of representations concerning this lack of support to the surviving family were made to CSC, and the Australian Financial Complaints Authority. The latter indicated that, to provide support, the SIS Act would require amendment. The Minister for Finance then indicated that there was no plan to change the SIS Act. That is there were no political plans to do something about it. DFWA understands that Senators Jacqui Lambe and David Pocock took up the call for action. Examination of the SIS Act and Regulations regarding interdependency indicates areas where dependency could have existed but for conditions that arose due to disability. Further study is required.
4. Cases such as described above, indicate that, despite current interpretation of the Act, dependency could exist. It hinges on definition of a close personal relationship in the Act.

ADF SCHEME LEGISLATION

5. DFWA has not had time to research all ADF superannuation scheme provisions nor time to consult records or other ESO concerning other instances where the stumbling block has been with ADF scheme provisions and not SIS Act provisions. DFWA notes that the definition of a spouse for the purposes of a reversionary pension is complex and has gone through various iterations, but the decision of dependency is up to CSC/Board opinion - with no mention of disability as provided in SIS Act, e.g., MSBS Act – Compilation 27 September 2022 extract:

Part 5—Spouse

9. Subject to this Part, a reference in these Rules to a spouse of a deceased person is a reference to:
 - (a) a person who was legally married to the deceased person at the time of his or her death and who, at that time, was ordinarily living with the deceased person on a permanent and bona fide domestic basis; and
 - (b) a person who was legally married to the deceased person at the time of his or her death but who was not ordinarily living with the deceased person on a permanent and bona fide domestic basis at that time and who, **in the opinion of CSC**, was wholly or substantially dependent upon the deceased person at that time; and ...”

6. DFWA is concerned about the complexity in this area where the MSBS provisions make no mention of mental disability as in the SIS Act yet have gone through various iterations/compilations in this area since the SIS Act. No assessment or review has been made concerning ADF Cover provisions in this area.

ARGUMENTS FOR CHANGE

7. It is the DFWA view that families in these circumstances were possibly not foreseen or considered when the SIS Act was introduced. The community is now much more aware of mental health issues and the link to domestic violence than they were 20 years ago when the Acts came into being. However the situation is changing. e.g., *The DVA Family and Domestic Violence Strategy (2020-2025)*. Changes, however, to the MSBS provisions have been frequent addressing many concerns of "spouse" definitions, but apparently nothing related to disabilities, and related domestic violence and family interdependencies.

DVA Partner Service Pension Eligibility Extended to Former Partners

8. The Veterans' Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019 extended eligibility for the PSP¹ **to all former partners of veterans**, regardless of marital status, being eligible for an extension of PSP for 12 months on separation from the veteran, and indefinitely where specified circumstances exist, such as a domestic violence. All former partners of veterans, regardless of marital status, are also eligible to continue to receive PSP indefinitely after the death of the former veteran partner.

9. This does not address all circumstances:

- a. The Veteran must have had eligible service.²
- b. It is subject to Assets and Means Testing and any income from other sources will likely result in reductions to the PSP.

10. The separate War Widow(er)'s Pension has similar eligibility criteria but the eligible service must have caused or contributed to the death, is income tax free and is not means tested.

Family Law

11. As result of Family Law, the military super Acts have been changed to ensure that veterans with super assets (deemed or real) and those in receipt of superannuation income, meet support responsibilities for family dependents after family breakdown. In many situations, it is clear that disability has been a major factor leading to family breakdowns.

12. If Family Law action had been initiated, but not settled, before the Veteran's death, then that should be strong evidence of dependency.

13. That no family law action had been taken before the death of the veteran is not really relevant as it should not be a factor in considering support responsibilities. Taking no Family Law or child

¹ Australian Government Department of Veterans' Affairs, *Veterans' Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019* (Web Page, 2025) <https://www.dva.gov.au/about/overview/legal-resources/recent-changes-our-legislation/veterans-affairs-legislation-amendment-partner-service-pension-and-other-measures-act-2019#schedule-1-extended-eligibility-for-partner-service-pension>.

² Note that ex- and partners of veterans without qualifying service for a PSP, will not be eligible for a PSP

support action could be due to many reasons in that period of stress. It could be that the family members did not wish to exacerbate the stressful situation further out of care for other parties or thwart attempts at remediation/reconciliation and that should be supported.

Veteran Covenant

14. There is a strong argument that such family members should be taken care of by the Commonwealth and not suffer due to mental health issues arising from military service. Within the spirit of the Veterans' Covenant, it is the obligation of *"the Commonwealth³ [to acknowledge] the demands placed on, and the sacrifices made by, the families of veterans"* and to do something about it – acknowledgement should not cease due to family breakdown. Unfortunately, the Covenant legislation, was not veteran centric, but DVA legislation centric and only mentioned DVA legislation – a serious omission. DFWA contends that the Covenant obligations apply to all Commonwealth legislation affecting veterans **and veteran families**, including superannuation legislation.

Legislation Change

15. DFWA has not had the resources to determine if there is any case law establishing interpretation of interdependency in this or similar cases involving SIS Act or Regulations or where decisions were based on relevant ADF superannuation scheme provisions. There is an argument for a legislation change to provide a reversionary pension entitlement considering the following factors:

16. The criteria for financial support between the couple that would have applied under a Family Law Act claim, had such a claim been applied for prior to the death of the veteran.

17. Living apart was temporary due to domestic violence or court order, welfare or other advice due to mental health issues

- a. Current SIS Act interpretations appear to encourage the non-violent partner to continue to cohabit in spite of risk of violence and death.

Veteran Issue for this Inquiry?

18. DFWA is aware that these situations are not confined to the veteran community, however, the links between mental health issues and/or domestic violence and family breakdowns are established. The incidence of PTSD and mental health issues among veterans seems to be leading to an increase in medical discharges from the ADF:

- a. It is likely that DV and family breakdowns are more common in veteran families⁴, especially in those transitioning.
- b. These veterans are about to add to the numbers of DV and family breakdowns in the community.

19. Any action taken to support the disproportionately high number of veteran families affected, would likely benefit the broader Australian community.

RECOMMENDATION

20. That the Committee recommends to Government, that a separate inquiry be conducted to ascertain ways ahead for reversionary pension entitlement where disabilities and interpersonal violence affect family breakdown, including:

21. the scope of the issues in the veteran community and in the general Australian community; and

22. propose any changes to SIS Act and Regulations, ADF superannuation scheme legislation, CSC dependency decision criteria and to other legislation or policy as required to address the issues identified.

EXTRACT FROM LEGACY AUSTRALIA SUBMISSION TO ROYAL COMMISSION

23. Discussions with Legacy Australia, indicate that family breakdown appears more common among veteran families than in the broader Australian community. Also, as revealed in Royal Commission findings, mental health issues are more common amongst veterans who have transitioned and many such mental health problems lead to domestic violence.

24. The focus of the Royal Commission was the “service-caused” criteria for DVA support through DVA legislation, and hinged on definitions of dependency in DVA legislation – not superannuation legislation as for this Inquiry. However, extracts are included, to illustrate:

- a. The large change in concepts and norms of dependency and roles from the past from SIS Act of 30+ years ago,
- b. To the family roles and dependency of today, and
- c. The increase in awareness of domestic violence and the community approach change from “suffer quietly” to “take action”. Current superannuation legislation offers financial incentive to “suffer quietly”.

25. DFWA has emboldened parts of the **Legacy submission** and *[added comment]* to highlight relevant areas.

EXTRACT

26. **“Definition of dependants.** The key determinant of a dependant is that the related person was wholly or partly dependent on the member or would have been but for an incapacity of the member that resulted from an injury or disease or an aggravation of an injury or disease. The *[DVA]* act defines “dependent” as meaning “dependent for economic support”.

Nexus of economic dependence

27. The premise of the provision of support to families of veterans is based on them having an economic dependence on the veteran immediately before his or her death. When the Veterans’ Entitlement Act was written in 1986 [and SIS Act 1993] it was still common that wives would be stay-at-home mothers with an economic dependence on their working husbands. This is no longer consistent with contemporary households where both parents work and sometimes the veteran may not be the

primary source of household income. In the MRCA, the definition progressed to where it was defined that a dependent was for economic support, however, it is not reflective of today's family dynamics. It would be remiss of us to not use this opportunity to expand the definition of dependency, remove the requirement of proving that there was financial dependency, and simply compensate those where care and support was provided to the Veteran. Further to this, the Veteran is usually financially dependent on other members of the family, DVA or receiving invalidity benefits from a superannuation source.

Wholly and partly dependent

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

Relationship of care and emotional support

29. Narrowly focusing on economic dependence ignores the critical importance of care and emotional support in a relationship. In fact, in an environment of growing mental health issues and increasing incidence of suicide, this can be far more important than money.

Reverse dependency

30. The current act undervalues the personal care provided by partners, other family members and close friends to the veteran in the family. For many decades, Veterans have been supported by their partners with Post Traumatic Stress Disorder (PTSD) and other mental health related challenges. New research conducted for the Royal Commission into Defence and Veteran Suicide estimates that one serving or ex-serving Australian Defence Force member has suicide-related contact with emergency services every four hours across Australia. The impact that this has on the people around that member or veteran cannot be continued to be ignored. This reverse dependency is apparent in contemporary families of veterans who have given their health. Many veterans have reclused from society and are struggling with transitioning to civilian life, finding employment, dealing with physical or mental disabilities and many find themselves inside all day self-medicating on alcohol, drugs or playing video games, leaving their partner to provide an income for the household, parent the children and maintain the household. More often than not, the Veteran is financially dependent on other members of their family or even friends, often borrowing money to fund their lifestyle. These relationships should be compensated for the funding and support they have provided to the veteran. The revised Act only provides compensation for those who were financially dependent on the Veteran and not the other way round. Almost every family that responded to the Royal Commission raised these areas of concern, it would be abhorrent of government to not address this deficiency in the legislation.

Relationship breakdowns

31. There are many examples of where the veteran's service-caused mental health issues have led to substance abuse and gambling resulting in financial distress for the family, and this along with domestic violence leading to a relationship breakdown. It is truly sad reality how many cases Legacy sees where the veteran has suicided after being arrested for domestic related offences. When the partner leaves the relationship because of this and then becomes financially independent, they lose their eligibility for compensation as a wholly dependent partner. [or for "interdependency" as currently the case for SIS Act] The loss of family then becomes the tipping point that leads to the veteran suicide.

Divorce

32. For many wives of Vietnam Veterans, the only options available were to remain with their veteran husband and accept the PTSD-related abuse and domestic violence, or divorce. Historically Police assistance and protection was not afforded to women who remained in these situations further exacerbating an already reprehensible situation. What should have been a long-term happy marriage has been destroyed because of the veteran's service. They still carry the emotional and at times physical scars of their former marriage. They are as much deserving of support from the Australian taxpayer as is their former spouse, and DVA should redraft the legislation to make appropriate support provisions for these women.

MISINFORMATION AND MISUNDERSTANDING – SUPERANNUATION

IMPROVING VETERAN UNDERSTANDING

1. The Report of the Foreign Affairs, Defence and Trade References (FADT) Committee into the Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members July 2021 recommended at 5.21 that:

“the Australian Government consider ways to improve members' understanding of DFRDB and other military superannuation schemes. This could include additional information and education for ADF recruits and officer cadets, and ongoing updates for ADF personnel. It could also comprise a dedicated website or webpage for members, including a summary of the scheme and information on a member's contributions history and any residual pension payable”.

2. This was in response to thousands of DFRDB members who were given incorrect and/or misleading information by Defence and the DFRDB Authority /CSC. This led then to believe that when they reached their life expectancy, their commutation amount would have been repaid and the reduction (which paid off the commutation/loan) to their Retirement Pay would cease. They were expecting their retirement pay would increase by \$1500 -3000 pa.
3. Many did not understand the scheme, and many had been misinformed at transition when crucial financial decisions were made.

CSC

4. The preceding Ombudsman Inquiry into the same issue observed that many of the CSC brochures were unclear and misleading, giving rise to misunderstanding by DFRDB members.

Defence

5. Defence information was totally incorrect at times. This led to the Secretary for Defence and the CDF into making an apology to ADF Members who misunderstood, and also stated.

Defence values its workforce and veterans highly, and always seeks to provide the highest level of support, particularly on transition from the ADF to civilian life. As superannuation is a complex subject, members have been encouraged to seek the most accurate information from CSC (or its predecessors), and Defence also continues to educate our administrators and managers on such matters.

6. DVA stated they had no role in giving advice on DFRDB commutation and referred inquiries to CSC.

TARGETED INITIATIVES FOR TRAINING AND EDUCATION

Websites and General Information

7. Targeted initiative starts with basic general advice on Websites and Publications. Getting targeted training correct, requires that general advice provided should be correct, clear and current. As such, it may well be the first official site referred to when an ADF Member starts to check on a

particular subject. If it is deficient or does not very clearly direct members to seek accurate and full advice from the authoritative source before making a decision, then bad decisions are possible.

Misleading and Incomplete Information

8. While there have been noticeable improvements since the DFRDB Reports, Defence, CSC and DVA have continued to give misleading advice on some superannuation issues, ignoring the previous DFRDB findings, and in the case of Defence, forgetting the need and undertaking *to educate our administrators and managers on such matters*. Then, even when prompted, not acknowledging the need to address deficiencies.

NEW DEFICIENT INFORMATION FROM DEFENCE CONCERNING ADF COVER

ADF Cover

9. Defence website (Google: ADF Cover – Key Facts) rightly advises, that the Class A and B Invalidity Benefits from ADF Cover were roughly the same as they would receive from MSBS if medically discharged. A fair consideration if switching from MSBS to ADF Super or planning for life after transition. The Key Facts pdf does not mention that:

- a. the ADF Cover Invalidity Benefit is now generally taxed thousands of dollars a year more than the same payment from MSBS Benefit, and
- b. professional financial advice should be sought - it just refers people to another website (non-existent) and not an authoritative source.

10. It is likely that an ADF Member considering a switch from MSBS to ADF Super because of the flexibility advantages, would read Key Facts and decide no further examination is necessary. This affects:

- a. Permanent members of the ADF contributing to MSBS who choose to join the new arrangement.
- b. Returning members or Reserve members on CFTS who do not have a preserved MSBS benefit.
- c. Reserve members on CFTS contributing to MSBS who choose to join the new arrangement.

11. Reservists are at most risk of making an uninformed decision because of a focus on flexibility. Total numbers are likely to be small; however, the wrong decision could have serious financial consequences¹ for injured individuals, noting that:

- a. a decision to change to ADF Super is irreversible,
- b. administration of CFTS Reservist superannuation with on-off engagements is often less than desirable and Reservists may easily find themselves transferred from MSBS to ADF Cover, without their knowledge, nor knowledge of consequences if badly injured; and
- c. personal insurances for TPD which Reservists may have generally have war and war-like exclusion clauses.

¹ Paying thousands of dollars per year more in tax on the Invalidity Benefit, than if stayed in MSBS.

DEFICIENT INFORMATION FROM CSC CONCERNING TAXATION OF INVALIDITY BENEFITS

DFRDB and MSBS Invalidity Benefit

12. The CSC website gave inaccurate and incomplete information concerning taxation of DFRDB and MSBS Invalidity Benefits from Dec 2020 (*Douglas*² Decision) until about April 2022 when CSC website announced they were now going to apply the change in the law required by the Douglas decision.

13. CSC speakers at ADF Defence and Family Transition Seminars did not formally brief on ADF Cover tax situation until mid-2022.

DVA MISLEADING INFO ON DFRDB

14. DVA, which does not advise on DFRDB Commutation (see previous), published in the DVA newspaper VetAffairs Aug 2024, a general article on DFRDB, but also included a totally inaccurate statement on policy and legislation changes to DFRDB being sought by veteran groups.

"With regards to changes in [DFRDB] life expectancy factors, it would not be feasible to adjust one component in isolation without considering the rest of the scheme. Changes to the life expectancy tables could leave most members worse off, as the other key element of the scheme, the commutation factor, would also need to be updated and this would likely affect the pension amount an individual receives."

15. This relates directly to DFWA's published policy objective concerning DFRDB Life Tables detailed in Annex B, aiming to get bi-partisan support to replace the DFRDB Act's static life expectancy table which is based on the 1962 ABS published life expectancies, with a mechanism where the current life expectancy (based on latest ABS data) of the retiree at date on commutation is used to calculate the reduction to the DFRDB retirement pay.

16. The DFWA change proposed would leave all DFRDB retirees better off and NOT *"could leave most members worse off"* as stated in the DVA article. Note expert advice from:

- a. **CSC.** Informal discussions with CSC staff (the experts that indicate all would be better off.
- b. **Ombudsman.** The Ombudsman Report states at para 5.10, that the life expectancy change proposed by DFWA would have *"increased the retirement pay for those who commuted."* Over 85% of DFRDB members commuted. This totally contradicts the DVA article advice.

17. For veterans who retired in the 1980-90, the amounts involved are about \$200-\$300 pa; For those still serving and about to retire, the amounts are about \$5-8,000 pa. They are significant.

18. DFWA requested that joint DVA/DFWA, be published in VetAffairs to provide clear and accurate information on the DFRDB Life Expectancy Issue.

Duty to be Accurate.

² The Federal Court decision in Commissioner of Taxation v Douglas [2020] FCAFC 220 (the Douglas decision) found that, from 1 July 2007, certain invalidity pension payments for veterans and their beneficiaries are superannuation lump sums, and not superannuation income stream benefits

19. While DFWA does not question the right of DVA to inform veterans of facts related to policy and legislation changes proposed by Veteran groups, any government department must provide accurate information.

20. Veterans with whom DFWA are engaging on DFRDB commutatio are confused and distressed about the conflicting information on the subject, especially considering the history in this area. Instances of misinformation must be corrected.

RECOMMENDATION

21. It is recommended that CSC as the authority on DFRDB and of proposed changes provide advice on the accuracy of the statement that DVA VetAffairs Article and that the government is requested to publish the correct advice in the same publication.