

Foreign Affairs,  
Defence and Trade Committee,  
Department of the Senate,  
PO Box 6100  
Parliament House Canberra ACT 2600

1 October 2016

**Re: Senate Inquiry into DVA and Suicide of DVA Personnel**

I refer to my recent emails to you in which I attached my principal submission and the addendum which was added to include **Case History 3** relating to matters that I considered were most relevant to my submission, but due to the fact that I was not sure that I could receive the consent of the veteran involved, I provided **Case History 3** after I prepared the principal submission. The addition of **Case History 3** fundamentally connects the 3 case histories together which, I believe, is essential to the understanding of the issues that I have endeavoured to present and address in the outline for the Senate Committee's full comprehension of the underlying inhibiting factors and horrendous problems confronting veterans when transitioning from the ADF into civilian life. In my submission the group of veterans most at risk are those who have suffered endemic targeted assaults at the hands of fellow ADF personnel and superior officers which have caused or substantially contributed to this category of service member being discharged.

Because these members are generally discharged from service years before they reach retirement age they are medically unfit to remain in service, but through ADF culture and many years of administrative "tightening up", the average serviceman or woman who is caught in this situation is left in "no man's land" with no access to help, support, rehabilitation and proper psychological counselling. The case histories have been chosen to illustrate the "legislative minefield" that veterans (and their families) have to undertake if they are to attain any financial security for themselves and their loved ones following discharge.

I believe a number of veterans have tried to undertake this "suicide mission" but very few have succeeded. **Case History 3** has been the "trail blazer" and his case took 45 years to be finally resolved. This is due entirely to entrenched administrative barriers which I have attempted to identify for the Committee's appreciation. If I have alerted the Committee to the impossible factors that a veteran, caught up in this situation, has to overcome then I have achieved some purpose.

What I have not sought to address are the Constitutional issues underlying the ADF and Comsuper's decision making power which I believe breaches the Separation of Powers provisions contained in the Constitution Act. I have also alluded to the different interpretation of "**income**" as contained in the *Income Tax Assessment Act* and the interpretation of income as contained in the *Social Security Act 1999*. If in this country we have one set of laws for the wealthy and another set of laws for the poor, then I believe that it is the responsibility of our politicians to address this disparate treatment between the "haves and the have nots". In the case of the DVA veterans the constant tinkering to the superannuation rules over the past 15 years has been a substantial contributor to the early retirees from the ADF and PS becoming disillusioned with our society and significantly depressed, which has caused or significantly contributed to their mental distress and psychological instability.

Yours sincerely,

## **SUBMISSION TO SENATE INQUIRY INTO DVA AND VETERANS' SUICIDES**

I have read a number of the submissions already made to the Senate Committee Inquiry by DVA personnel (Submissions 3; 12; 15; 18; 23; 31; 33; 34 and 36) and their experiences of systemic problems within the armed forces while on active service coupled with the mental, psychological, social and financial issues confronting them after discharge from service, has only confirmed what I have experienced in having a matter processed through Comsuper – Commonwealth Superannuation Corporation – CSC, the Trustee for the Commonwealth Superannuation Scheme – CSS. I have had in the past involvement with DVA personnel in a professional capacity and I retain contact with some of these former clients as I am interested in their issues and problems. Through my professional involvement with these veterans I have a knowledge of the processes and the internal system hurdles and issues that individual veterans are confronted with, which is made more difficult, because throughout this whole ordeal in “dealing with the system,” the individual is mainly self represented and has to come to grips with the various legislative provisions that relate to their particular application for medical discharge.

This problem may be considered as the first hurdle which includes:-

1. The individual identifying to himself or herself that there is (or has been) an “event” that has had a traumatic impact upon them when employed within the services. Such an event, in some cases could have occurred years earlier and the victim has been too ashamed to report the incident to those in command which results in there being no “incident report” of the alleged conduct or behaviour complained about. Such events often involve incidents of rape or bastardry, bullying and bashing incidents and other forms of victimisation. Young victims are often intimidated by the perpetrators of the offence and are not confident enough to make such reports.
2. The lack of confidence to make an “incident report” identifies a second inhibiting factor in the system and that is, those who have the courage to make a report to their superior officers are generally ridiculed as being “whimps” or “whooses” and their complaints are “laughed off” and brushed aside. Scuttlebutt and talk of these “incident reports” filters back to the perpetrators of the abuse and the victim becomes “targeted” as a weakling who can’t take the medicine.

These factors may be cited as the **inhibiting factors** to reporting.

The second hurdle in this process is that the victim is the only person who is in any position to analyse what the impact of the incident has had upon –

- (a) The individual as a person; and
- (b) Their career and performance within the services itself.

These issues may be cited as **the “self analysis” factors** which in some cases may take years before the victims identify how the various incident(s) have impacted upon them and their careers within the services.

The third hurdle to overcome in the process is that often the perpetrators have had career advancements within the services so that their “credibility” is generally more accepted when the “event issue” is finally brought to the Medical Review Board (MRB) for consideration.

1. The lack of an initial “incident report” formally recognizing the “event” is then used by the MRB to discount the victim’s report years later as to the events which have

contributed or caused the victim's case for medical discharge upon mental and psychological grounds generally cannot be established. The victim's credibility then becomes an issue.

2. For the victim to even establish these grounds, the victim generally has to spend their own time and money to obtain these specialist reports for presentation to the MRB and generally by this time these victims have been "broken" by the system and often impoverished by having been forced out of the service.

These factors may be cited as **the creditability issues**.

The above considered submissions all evidence these inhibiting factors, self analysis and credibility issues at play in some form or another and serves to confirm my experiences with Comsuper and the effectiveness (or total ineffectiveness) of the "internal review systems" that currently operate within the whole structure of ADF and PS review cases which not only contributes, but is very often the cause of suicides.

For reasons that my experiences are still ongoing with Comsuper I wish to retain confidentiality as to my name as the matters raised in my submission have been taken to Court pursuant to the *Administrative Decisions (Judicial Review) Act 1977* (Judicial Review Act) following 2 two Determinations made by the *Superannuation Complaints Tribunal* (the Tribunal) pursuant to the *Superannuation (Resolution of Complaints) Act 1993* (Complaints Act) which has involved fundamental breaches by Comsuper with respect to the provisions of the *Superannuation Industry (Supervision) Act 1993* (Supervision Act) and the *Superannuation Act 1976* (the Act) which governs and controls Comsuper's administration of the CSS funds under its management and control. My experiences with Comsuper have taken over 7 (seven) years to evolve to this stage and throughout the whole process Comsuper have demonstrated its intention to protect its vested interests in administering the CSS funds while it has evidenced strong ulterior motives in making the decisions that it has made. These vested interest and ulterior motive issues are rife throughout ADF, DVA and Comsuper processes which coalesce to form an impenetrable barrier against the veteran who seeks to bring into the system their medical grounds which relate to their discharge from service, generally under pressure and duress.

The submissions of the veterans have not been able to address the vested interest aspects of the processes and procedures, nor the inherent ulterior motives of the system which are present in all DVA claims while the ulterior motives remain concealed from view because those who sit on Boards and Committees represent the ADF, DVA and Comsuper, being the system itself. Within the currently existing framework, procedural fairness becomes a "casualty" to the Boards and Committees because those who are responsible for the provision of the "victim's case matters" are the secretaries to the Boards and Committees and they do not present the victim's case in a cogent form for the Boards and Committees to address. Not only is there this "defect" in the system itself but as most victims are "self represented" they are not lawyers or doctors or professionals who are capable of presenting their own issues concisely for such Boards and Committees to properly understand, evaluate and address the fundamental problems which the veteran has experienced and is undergoing.

**Recommendation 1:**

To overcome the procedural fairness issue it is recommended that there be provided to every Board and Committee a “victim’s representative” who must be totally independent of the ADF, DVA and Comsuper sphere of influence as many of these Boards and Committees sit without the victim being present. This effectively means that such Boards and Committees are “Kangaroo Courts” who effectively “rubber stamp” the delegates’ decisions upon any particular matter.

To address this fundamental problem I have made a “public interest” FOI application of Comsuper under the “Right to Know” web site in the name of “Enquirer” to request information relating to Comsuper’s review and reconsideration of decisions made by Committees and Boards over the past 10 years. A copy of this public interest FOI has been sent to Senators Lambie and Xenophon because Comsuper have blocked my emails from its system due to me not being a “member” of Comsuper. If what I suspect is correct in fact then, the results of such a public interest FOI application will confirm my initial premise for making the FOI request, which is based upon the assumption:-

1. That within the whole system there is **an “automatic” decision by a delegate** to refuse to accept any application made by a person where there is the slightest possibility that the application can be rejected.
2. All review and reconsideration Boards and Committees “automatically” affirm the decisions of the delegates because of systemic “cultural” attitudes within the various departments based upon misplaced “loyalty” to their colleagues and to the organisation or agency itself that employs them. This may be termed **the “perceived” pressure** which applies to individuals who step out of line.
3. There is also the purpose of delay behind these processes being adopted as in the case of Comsuper where it uses its power to “investigate” all such claims for the purpose of “proving” its case to the Boards and or Tribunal to which the matter may eventually be referred – **the “benefit of delay”** elements.

Point 3 may be considered as **“the self-fulfilling prophecy” element** behind the motive to delay applications and complaints.

4. There is also the additional benefit enjoyed by ADF; DVA and Comsuper in that while they delay applications, the victims are left to struggle with proving their case without any support from these agencies and with Comsuper, it fails to respond to any correspondence sent to it by the applicants concerning matters and issues that are requested for Comsuper to address – **the “victims’ oppressive factor”**.

A number of the submissions referred to above have raised the delay processes that they have encountered which has only added to the torment being suffered by the victims and also their families. These are additional factors to the pain, loss and suffering of the victims that has a “flow-on effect” to their families and loved ones. In many cases the “flow-on effect” causes families to break up, which adds to the social, financial, mental and psychological pressure being endured by the victim at the very time when prompt, decisive, fair and reasonable action needs to be made to alleviate these overwhelming pressures. Instead, the opposite action is immediately taken by the agencies involved which serves to exacerbate and protract the misery being experienced by the victims.

In my submission it is not surprising that there are a substantial number of DVA suicides which could include, in some cases, suicides being committed by other family members of the victims because what happens after the victims go through making their claims then affects the families themselves which is the aftermath that involves Comsuper.

Case example – **Case History 1**

*“Consider the situation where an ADF member is forced out when they are in their mid 30s and the member's partner is a "stay-at-home mother" looking after children from another relationship. The "discharged" ADF member goes onto Centrelink allowance because he cannot find a job. The couple rent a property (or the discharged member is buying a house in his name only) so he has "commitments and obligations" which he cannot fulfil. His life has been turned "upside down" by the ADF, and because he has no job, he cannot get an increased mortgage loan. His partner cannot assist him in this most difficult time and under extreme depression he commits suicide. His partner has been living with the member for 2 1/2 years and doesn't meet the criteria under Section 8A of the Superannuation Act 1976 (the Act) so she cannot get a spousal benefit claim through Comsuper. **WHAT HAPPENS TO THAT FAMILY?** They become "fodder for the 'scrap heap'".*

DVA is unable to help the *de facto* partner and Comsuper is set up to oppose the partner's applications for access to the veteran's superannuation entitlements.

**Recommendation 2:**

The “blanket” cast by ADF and PS senior personnel who have risen through the “system” becomes entrenched in the attitudes, conduct and behaviour of these administrators when they become appointed to senior positions within DVA and Comsuper. In this system of dispersal of the culture and ethic of the ADF and PS, the administrative background of these personnel is used to “oppose” the very persons for whom the system was created to assist. Therefore, the “automatic” decision of the delegates to oppose applications is made due to the entrenched views and concepts that the delegates have with respect to their decisions which applies to only certain types of claims that are able to be accepted. [Refer to paragraph 2 of page 2 above]. If the “one size fits all” mould does not fit the case circumstances, the application is rejected.

To break this perpetuating cycle of decision making it is recommended:

1. The “incident reporting” processes be removed from ADF personnel and vested with the DVA so that the anxiety of the victim is totally removed from any possible retaliation, retribution or threat of intimidation. This recommendation will provide a formal process for reporting of “incidents” that may affect the victim's career path within the ADF without the victim's file records as to “incidents” being viewed by “closeted” commanders and administrators. Those in command have credibility and their word is always believed above the victim's word.
2. DVA should be empowered to address the seriousness of the incident report so that systemic bullying, intimidation and threats to individuals is detected at an early stage within that particular sector of the ADF. [Duntroon incidents may have been detected much earlier had this process been in place]. DVA administration must be recruited from private sector experience so that the sphere of ADF and PS influence is not carried into the system.

3. Medical monitoring and psychological assessments for active service should be maintained through DVA engagement of private professionals for this service.

These recommendations address the “arms length” and total independence of the provision of the services being provided through the DVA function and eliminates the “cultural hangover” from PS and ADF service due to the private professional regulations which cover standards of conduct to be provided to the public at large. In house professionals are often not accountable to their professional service organisations which potentially renders in house services being provided at a lesser standard of professionalism. The establishment of the DVA independence from the ADF and PS is essential to the creation of trust and confidence in the DVA following ADF personnel being discharged from the services. There is a history within the ADF itself that “**Z 75** (naval files)” go “missing” and are never found and there may be other “lost files” that go back to the Vietnam War conscription era. Clear records and file management will only serve to improve a veteran’s history and their cases.

4. The procedures recommended here would also make commanding officers more accountable for what occurs within their command so that the systemic “cover up” that occurs is detected at an early stage to repress retaliation, intimidation and cover up of serious issues – **the repression of “cover up” issues**.
5. It is the “rank and file” ADF personnel who experience the “back-lash” from those in command and it is these ADF members that need protection, help, assistance and counselling following discharge from service. The transition from ADF service back into civilian life may be, and in some cases, is catastrophic for the individuals concerned and this transitional phase needs to be considered – **the improved transition facilities**.

It is submitted here that DVA has a proper and valuable function to perform and any proposal to merge DVA with Centrelink would only result in a worsening of issues for veterans and their families which is a matter that I am all too familiar with. I ardently urge that this possible or proposed amalgamation/merger of the functions of DVA be absolutely opposed for the following reasons.

**Case History 1** provided at the bottom of page 3 may be used to address the reasons for opposing any amalgamation of the DVA and brings into focus the issues that I have personally experienced with Comsuper. Those issues involve –

- (a) the automatic decision of the delegate to refuse to accept the application being made by the deceased member’s partner pursuant to S.8A of the *Superannuation Act 1976* (the Act) for a spousal benefit pension for herself and the children. In **Case History 1** the deceased member’s application would be automatically rejected by the delegate on the grounds that the partner was not married to the deceased member and the relationship was not more than 3 year’s duration.
- (b) If the partner was in receipt of a single mother’s benefit at any time during the currency of the relationship, Comsuper would make inquiry of Centrelink to obtain this information as part of its information to be provided to the Reconsideration Advisory Committee established under S. 153 of Part XA of Division 3 of the Act irrespective of the fact that the partner was “*wholly or substantially dependent upon the person*” S.8A subsection (2) and following.

At this point there would be no further avenue to progress the partner’s application for spousal benefit as the rules applied would prevent the partner overcoming subsection (1) of the provision. The only assistance that is afforded to the partner is provided through Centrelink and these issues I will address below.

## **Case History 2:**

*Similar facts to case 1 above except that much younger lady becomes partnered to older man who has spent most of his wealth and income on having a good time. The couple live together for more than 20 years during which time the DVA member goes onto pension phase under his superannuation policy. The younger lady wants to have children but finds that the older man is not capable and so the younger lady has children to another man. The DVA member and the lady raise the children as if they were their own but the DVA member dies when the children are 11 years old and the lady has spent the previous 2 years looking after the DVA member full time and receiving a carer's pension. The children are returned to their biological father who takes out a custody order for the children. The children are left to be educated at their local primary school and visit the mother and member each day after school from where the biological father collects them after dining with the couple and the children.*

The lady makes application to Comsuper for a spousal benefit pension for herself and the children which the delegate rejects. The lady then applies for Reconsideration of the delegate's decision pursuant to Division 3 of Part XA of section 153 of the Act. Comsuper reviews the delegate's decision and AFFIRMS the delegates decision so the lady applies to the *Superannuation Complaints Tribunal* (Tribunal) for review of Comsuper's decision. By the provisions of the *Superannuation (Resolution of Complaints) Act* (Complaints Act) the Tribunal must seek to conciliate a dispute before exercising its power under S. 37 of the Complaints Act. Comsuper, the Trustee, delays the conciliation process for more than 3 years (through its exercise of "alleged" investigatory powers) before the case is released to the Tribunal for determination. The Tribunal substitutes its determination for that of the Trustee and the decision of the Tribunal is handed down to the parties. By section 46 of the Complaints Act the parties have 28 days to appeal the Tribunal's determination and neither party makes any appeal.

The lady and the biological father of the children make application to Comsuper to comply with the Tribunal determination which Comsuper addresses by saying that there needs to be certain paperwork formalities that must be completed before payment may be made. The applicants complete the paperwork and Comsuper indicates that -

- (a) It has no provisions within the Act for making arrears of pension payments.
- (b) There is no provision for the payment of interest accrued upon the arrears of pension payments; and
- (c) As Comsuper has no accounting for contingent liability claims it has to make calculations for the arrears of pension payment entitlements.

These delays take a further few months before Comsuper makes payment to the lady for her entitlements and because the children are in the custody, care and control of the biological father, Comsuper decides to make payment to the children (who are twins), directly to the children because the children are aged over 16 years and the delegate has applied the provisions of section 114 of the Act to the facts of the case.

The biological father seeks review of Comsuper's decision to make payment of the children's portion directly to them under S. 114 of the Act being a decision made by the



delegate and the Reconsideration Advisory Committee makes a decision to AFFIRM the delegates decision. The applicants are informed by Comsuper that the decision with respect to interest is not a matter that it can address under the Act because there is no provision within the Act for the payment of arrears of pension entitlements. The applicants are informed that this matter may be referred to the Tribunal under S. 101 of the *Superannuation Industry (Supervision) Act 1993* (Supervision Act), which the applicants do.

By late November the Trustee's Reconsideration Committee makes its review decision to affirm the delegate's decision to make payment of the funds directly to the children. The applicants, being the biological father and the mother (being the lady partner of the deceased member), seek reconsideration of the Trustee's decision under Division 4 of Part XA of the Act as provided for in S. 153 OF Part XA and in support of the "new application" the applicants provide S.3 being the definition of "Child" under the Act. Comsuper spent all 2014 delaying the process of review under Part XA of Division 4 claiming amongst other things that the review conducted in late November was **not a CSC decision** and that only CSC decisions could be reviewed by an application under Division 4 of Part XA. When this was pointed out to Comsuper that this was in breach of the Act, Comsuper said that the Division 4 Committee was delegated to the functions of the Division 3 Committee, and the applicants immediately requested a copy of the "instrument of delegation". This was never provided and the matter was thereupon referred to the Commonwealth Ombudsman to address.

Comsuper misinformed the Commonwealth Ombudsman (Ombudsman) of its power of authority and the applicants addressed that issue with the Ombudsman whereupon the Ombudsman withdrew from the case because it was already before the Tribunal. In the meantime the lady partner had received notice from the Australian Taxation Office (ATO) that she had not lodged her taxation returns since 2009 and that she was going to be penalised for not lodging returns. Penalties included fines and possible imprisonment for non-lodgement of returns. As Comsuper had failed to provide any proper accounting to the applicants with respect to the arrears of pension payments to enable the lady to make the necessary tax returns: This information had to be obtained from Comsuper for the years from 2009 to 2014/15. The information was provided to the lady in November 2014 and returns were lodged in arrears for each of the years to the ATO.

In December 2014 the Trustee made its 2<sup>nd</sup> decision under Part XA of Division 3 of the Act which the applicants stated was ultra vires the Act, and again, the Committee decided to AFFIRM the previous decisions of the delegate and the Committee. The matter was then released to the Tribunal for determination and by this time the children had reached the age of 18 years. This 2<sup>nd</sup> Tribunal determination upheld the Trustees decision made in May 2013 that payments made to the children were legal and secondly, that due to the passage of time the applicant biological father of the children, had been delisted as an applicant as the children had attained legal age.

In the process of reaching its second Determination of the matter the Tribunal refused to consider the provisions of S. 14(6D) (a) and (b) of the Complaints Act and also S. 37(c) and (d), which enabled the Tribunal in the first Determination to set aside the Trustee's decision and substitute its own.

### ***Problems Created by Comsuper's Handling of the Application Claim***

1. The initial application of the spouse for superannuation spousal benefit for herself and the children arose out of the deceased member's superannuation policy which was determined by Comsuper according to the fund rules.
2. Comsuper is a regulated fund operator pursuant to the *Superannuation Industry (Supervision) Act 1993* (Supervision Act) which prescribes under S. 101 that regulated superannuation fund trustees must make a decision with respect to superannuation complaints within 90 days of the complaint being made.
  - (a) Comsuper wilfully, deliberately and negligently breached this provision of the Supervision Act. The application to the Tribunal failed to address this issue.
  - (b) Pursuant to the Supervision Act S. 101 the Trustee was to have in place provisions for dealing with complaints to which the complaint, with respect to the payment of interest on the pension arrears, was referred to the Tribunal as a S. 101 complaint. The Tribunal failed to consider this aspect of the application.
  - (c) By Comsuper having no provision within its Act for the payment of arrears of pension entitlements, Comsuper claimed that the payment of arrears of pension (which was made in 2013 – 4 years after the death of the member) was a Lump Sum Death Benefit Payment to which Comsuper was empowered to take out GST pursuant to S. 32 of the *Governance of Australian Government Superannuation Schemes Act 2011* (Governance Act).
  - (d) Superannuation payments that are not made within a 6-months timeframe of the death of the deceased member are deemed to be a death benefit payment to the reversionary beneficiary by reason of Taxation Ruling 2013/5.
  - (e) The spousal benefit entitlement to the lady partner of the deceased is tax exempt in her hands and Comsuper notified her of this fact.
  - (f) By lodging PAYG tax returns for each of the years between 2009 and 2014 the lady partner was able to receive a "NIL" tax return from the ATO.
  - (g) The lady was unable to obtain a tax rebate for the "tax" withheld by Comsuper and claimed under GST (Governance Act, S. 32) even though Comsuper had indicated upon the gross payment of the arrears, that it had withheld Tax upon the payment to her. (This was an implied statement of income tax).
  - (h) This issue arises because Comsuper is a Government superannuation fund operator and it is not required to lodge BAS returns. So the lady received no tax return from the ATO because Comsuper had not paid the tax component to the ATO.
3. After the ATO provided its assessment of the tax returns, Comsuper had communications with Centrelink because the lady partner was in receipt of a Newstart Allowance which she had been forced to go onto after the member died and her carer's pension ceased.

### ***The Fundamental Issues with Centrelink***

1. There are a number of fundamental problems with Centrelink applying its rules provided under Section 8 of the *Social Security Act 1991* (SS Act) which applies in the case of the lady partner of the deceased member.
  - (a) Under the SS Act Newstart is an allowance and not a pension. This distinction is fundamentally important to the interpretation of the SS Act provisions by Centrelink.
  - (b) Although on a Newstart Allowance from 2009, the lady partner was assessed by Centrelink in 2010 to be “totally incapacitated” following her having psychological counselling during 2009 and 2010.
  - (c) In 2012 she was further assessed by Centrelink as being “totally incapacitated” however, in 2014 she was required to undertake retraining under Newstart rules for returning people to the workforce. Because the lady was undergoing retraining her assessment for being totally incapacitated lapsed.
  - (d) The Comsuper Lump Sum Death benefit payment made to the lady in 2013 was subsequently assessed by Centrelink in November 2015 as being a Superannuation Income Stream in accordance with the information provided to Centrelink by Comsuper.
  - (e) The lady sought to have a review of the Centrelink decision with respect to her being assessed as being in receipt of income, only to be informed by Centrelink that the decision is not reviewable by Centrelink because Centrelink did not make the decision – Comsuper did.
  - (f) From 15 November 2015 the lady has been deducted the amount of \$170 a fortnight out of her Newstart Allowance because of the deemed income stream being paid to her by Comsuper pursuant to her superannuation spousal pension benefit entitlement.
  - (g) As the arrears of pension payments were made to the lady as a Lump Sum Death Benefit Payment, Centrelink have now made a further assessment claiming the amount of \$27,514.59 as a debt owed by the lady for the superannuation spousal benefit entitlements she received as a death benefit payment out of her deceased partner’s superannuation policy. This debt claimed by Centrelink has now devastated the lady because –
    - (i) She has no hope of repaying this claimed debt to Centrelink.
    - (ii) Following the death of her partner in 2009 the lady fell behind in paying the rent for her rented premises and was subsequently evicted from the property and faced homelessness. Her jointly owned belongings with the deceased member were packed up and placed into storage in the mistaken belief that Comsuper would make payment to her for the spousal benefit entitlement due and owing within a short period of time. Effectively Comsuper delayed these payments for 4 years.
    - (iii) The lady obtained temporary accommodation during those 4 years but in 2016 she was required to move out of her temporary accommodation and for a second time in her life she faced homelessness. She was provided Community housing which she accepted because it enabled her to remove her belongings out of

storage only to find that Centrelink was now chasing her for the alleged further debt that she owes.

- (iv) The lady made application to the AAT with respect to the Centrelink deduction of \$170 per fortnight out of her Centrelink Newstart Allowance and she also made an FOI application to Centrelink for her file records. Her FOI Centrelink file records have been “slow” in coming and the AAT application which was to address both the \$170 Newstart deductions and the debt for \$27,514.59 was divided into 2 applications because Centrelink had not been able to provide the necessary information to the AAT.
- (v) The recent AAT hearing on the issue of the \$170 Newstart deduction has been left for decision but the present indicators are not optimistic.
- (h) The *Social Security Administration Act* (Administration Act) provides Centrelink with the power to administer the SS Act.
- (i) Under S. 8 of the SS Act Centrelink has a different definition of income to that provided under the Tax Act. According to the AAT Tribunal member, S. 8 (8) does not exempt income derived by a spouse as a reversionary beneficiary of her partner’s superannuation policy unless she is an aged pensioner.
- (j) The lady contested the issue before the AAT on the grounds that by S. 8 (8)(b)(v) her superannuation payment was an annuity which should be exempt. The AAT Tribunal member was informed that the only option open to the lady was to have her Superannuation Spousal Benefit entitlement held by Comsuper retained until she became eligible for an aged pension. In these circumstances the arrears of pension benefits would be paid to the lady as a Lump Sum Death benefit and substantial tax of up to 46% would be withheld upon the payment.
- (k) The interpretation of an annuity may be found on the ASIC web site and the example provided upon the ASIC information clearly illustrates that the lady partner is in receipt of an annuity. This information may be provided to the Senate Committee Inquiry if required.

2. With these horrendous problems associated with Centrelink it is submitted that DVA cannot, and must not be amalgamated with Centrelink as these problems will only become worse.

### ***Proposed Solutions to the Problems***

1. To address the foregoing problems, difficulties and horrendous hardship issues encountered by DVA and PS members and their families, DVA must remain a separate agency independent of the ADF influences as recommended in ***Recommendation 1*** above.
2. ***Recommendation 2*** above is also required to break the sphere of influence cast by the ADF and PS over both the DVA and Comsuper agencies. Without breaking the nexus between ADF/Comsuper and DVA, the same old problems of delegates’ decision-making will continue to be supported by the review and reconsideration Boards and Committees which will have the effect of prolonging the horrendous problems encountered by applicant/claimants who are put on the “legislation merry-

go-round” which no self-represented individual is likely to untangle. This maze of legislation touches upon *The Constitution Act*, section 83 because Comsuper claims that it invests its funds into the Consolidated Revenue Fund (CRF) which it cannot access without proper approval. However by S.42 of the Act Comsuper is permitted to invest funds through proper fund managers. Also by S. 153AG of the Act, members of Reconsideration Advisory Committees are entitled to be paid for attending the Committees and Boards. The question that I pose is “out of which fund are these Committee and Board members paid?”

3. Beside the various legislative provisions already touched upon there are references to the *Family Law Act 1976*; the *Trustee Act*; the *Status of Children Act* and under S. 101 of the Supervision Act there is implied knowledge of the *Administration of Probate Act 1958 (Victorian legislation)* because an executor of a member may make application to a trustee with respect to a death benefit claim. Such persons have standing to make applications which the Act does not address however, as Comsuper is a regulated fund operator under the Supervision Act and it is also “licensed” by ASIC and APRA who are Regulators along with the Commissioner of Taxation and the Director of Medicare: Executors and administrators of a member’s Will have “standing” to raise such issues with Comsuper. The maze of legislation is a fundamental “nightmare” for all self-represented veterans to go through, never mind trying to understand its impacts upon ADF and Comsuper.
4. Once the veteran passes the “legislation test” the obstacles presented by the review and reconsideration Boards; Committees and Tribunals begin to operate to further frustrate and delay a member’s application, or the application of a reversionary spousal beneficiary.
5. Finally, if through all this ordeal the victim is able to maintain any sanity, he or she will not be classified as being “disabled” for medical discharge or entitled to become a disability support pensioner.

The end result is that having gone through the “obstacle course” and “survived” all the ordeals, there is no recognition of the pain, financial hardship, mental anguish and total lack of self esteem and utter humiliation that the “system” throws up to the victim following transition from one category status to another. As indicated in the initial address relating to the inhibiting factors, which are compounded by the delaying factors, DVA suicides are inevitable because proper mental health facilities are not in place, or readily available at a cost that the victims are able to afford and this dilemma is bound to drive the mentally damaged and unstable veterans to absolute despair because their issues and plight are not recognised and/or accepted by the ADF, Comsuper or Centrelink.

I would be most pleased to provide to the Senate Committee copies of my personal correspondence to Comsuper addressing all its breaches of the above indicated legislation including its misrepresentations to the Commonwealth Ombudsman as to its processes and procedures which will support my submission matters. What the above case scenarios identify are past, present and long-term after affects which ADF personnel encounter following discharge from the service.

### **Case History 3:**

The ADF member wrote this account in July 2013 after being discharged from service in 1968 -

*“THUS - Today and after more than almost five months of further “tooth and nail” battle, at times toxic - following Navy acceptance of liability for Naval College horrific events including rape, 2 x tortures and repeated bashing; with mental and physical assaults on a regular basis AND events during around 19 periods of war service AND other “arduous service”, including illegal summary jailing and illegal summary dismissals - I received final pension advice.*

9. *Eventually, after much fighting, I was advised Class A pension, as confirmed today, BUT ALSO*
  - a. *Despite ADF members being able to obtain pension assessment up to 12 months before discharge, Comsuper has repeatedly denied me any indication of that which I may eventually receive, UNTIL AFTER I LODGED COMPLAINT 16 July 2013 – AFTER*
  - b. *Senior Comsuper manager had advised they could NOT answer my reasonable and fair queries lodged from 7 June 2013 on pension sum and its make-up, after all, I do have family and I do have commitments and I do need to make plans, just like ADF members leaving the service – this.....*
  - c. *Despite repeated WRITTEN requests **without reply** since 7 June 2014, with serious personal issues at stake, of which Comsuper was made aware - I have just been and made to feel flotsam and jetsam !*

**10. Calculations have not been provided, just bare figures in a hasty reply to complaint.”**

The important statement from the above extract is that the member, after having fought a long, hard battle over a 45 year period was eventually informed that he would be provided with a class A pension, HOWEVER, Comsuper could not provide the member with any advice or indication as to what the member may eventually receive “until after [he] lodged Complaint” - [9 (a) above], and AFTER “Senior Comsuper manager had advised they could NOT answer [the member’s] reasonable and fair queries...” – [9(b) above] “Despite repeated WRITTEN requests **without reply**... – I have just been and made to feel flotsam and jetsam!”

The person to whom the email was addressed to at Comsuper was \_\_\_\_\_, the same person that the lady partner of the deceased member had to deal with in **Case History 2** indicated above. The veteran in this case experienced the same problems that the lady partner in **Case History 2** identified in having the complaint processed through Comsuper. The issue to which the veteran was referring to was expressed in points 1 and 2 as follows:-

- “1. Another extreme and toxic battle seems to have reached yet another stage where I must battle a 46.26% taxation deduction on funds awarded after a 45 year battle to obtain fairness in pension first advised by Deputy Navy Chief 22 August 1968 !
- 2. Not anyone in the ADF pays, or has ever paid some 46% tax on income earned solely from ADF service earnings or pension.”**

Again, in this case, Comsuper was directed to make **payment of arrears of pension** to this veteran after a 45 year battle following his discharge from the Navy in 1968 when the member was advised that he would be paid his pension entitlements. After years of “fighting the system” the Navy accepted the member’s claim for discharge upon medical grounds which entitled him to his pension payments as from 1968, however, under the *Superannuation Act 1976* (the Act) Comsuper applied the Act perversely to claim that as there was no provision within the Act for the payment of arrears of pension, the payment of the amount was made as a **lump sum payment** which, in this case Comsuper applied a taxable rate of **46.26%** which it withheld for tax purposes based upon the payment being made in the taxable year as being the member’s total **income** received from Comsuper for that year.

The assessed income amount should have been amortised over the 45 year period as the arrears of pension accrued annually over that period of time, which is what the lady in **Case History 2** was able to obtain after 18 months of struggle for the accounting and following the ATO threatening her for non-lodgement of her tax returns. In this case the member was assessed upon the highest level of personal income tax due to the arrears of pension being paid to the member in a lump sum.

In the case of this member, and after considerable further difficulties, he was eventually able to receive his pension entitlements without the excessive tax being deducted, however the member was then faced with alleged liabilities claimed by DVA against the funds that the member was provided with as pension. As in **Case History 2** the lady had subsequent problems brought on by Centrelink’s application of its rules in respect to Centrelink’s definition of income, this member had ongoing issues with DVA following the receipt of the payment of his pension entitlements.

The issues raised by the member in **Case History 3** are substantially the same issues that the lady partner in **Case History 2** had with Comsuper.

1. There was a decision made by either a Board or a Tribunal directing that **back payments relating to pension arrears** were owing to each of these persons.
2. In each of these cases Comsuper deliberately refused to accept the direction of the Board or Tribunal that made the determination.
3. In each of these cases Comsuper required the person to make an application.
4. In each of these cases a delegate made a decision to refuse the application which required each of these persons to seek review of the delegate’s decision by proceeding through Comsuper’s review and reconsideration processes under S. 153 of the Act.
5. In each of these cases the Committee to which the reconsideration of the person’s application was referred to was the APS Reconsideration Committee  
\_is the secretary.
6. In making the complaint against the delegate’s decision the complainant was forced to identify what it was that the person disputed about the delegate’s decision.
7. By having to make a complaint about the delegate’s decision Comsuper then used its processes to “investigate” the complaint made by the person against the delegate’s decision which had already been determined by the authorising Board or Tribunal that made the authorising determination in the first place.
  - (a) It is submitted here that there is no provision in the Act for Comsuper to investigate these matters and that the only reason for Comsuper to send matters to the APS Reconsideration is for the sole purpose of delay.
  - (b) It is further submitted here that the purpose of delay is for the benefit of Comsuper retaining investment of its funds in the Consolidated Revenue Fund (CRF) of the Federal Government so as to attract the maximum interest upon its funds invested in the CRF. Comsuper claims that pursuant to S. 83 of the Constitution Act it requires

proper process to appropriate money out of the CRF and that proper process is provided through the APS Reconsideration Committee reviewing the decision of the authorising Board or Tribunal decision.

- (c) As the committee members of the APS Reconsideration Committee are entitled to be remunerated (S. 153AG of the Act) there is (in these cases) an improper motive for keeping these cases within the APS Reconsideration Committee for the following reasons:-
- (i) The authorisation for payment of arrears of pension has already been made.
  - (ii) The investigation process is done to find an "issue" or defect in the authorising Board or Tribunal determination so as to avoid the obligation of payment under the superannuation fund rules knowing that the persons involved are self-represented and they do not make the rules. Comsuper then applies its rules to its own benefit to avoid having to make the payment and/or it contrives ways in which to make the least amount of payment to the person.
- (d) In applying its own rules to suit its own vested interests the complainants are unable to counter Comsuper's conduct and actions because they are not kept informed of matters and the decisions to AFFIRM the delegate's decision is the first indication that the complainants have of the reasons for decision of the APS Reconsideration Committee.
- (e) By this time "the self-fulfilling prophecy" element has been identified to continue the rejection of the claim or in handling the claim in the manner that the entitled member will receive the least amount of payment. In the foregoing submission, I made the following points at pages 2 & 3 above:

1. *There is also the purpose of delay behind these processes being adopted as in the case of Comsuper where it uses its power to "investigate" all such claims for the purpose of "proving" its case to the Boards and or Tribunal to which the matter may eventually be referred.*
2. *All review and reconsideration Boards and Committees "automatically" affirm the decisions of the delegates because of systemic "cultural" attitudes within the various departments based upon misplaced "loyalty" to their colleagues and to the organisation or agency itself that employs them.*
3. *There is also the purpose of delay behind these processes being adopted as in the case of Comsuper where it uses its power to "investigate" all such claims for the purpose of "proving" its case to the Boards and or Tribunal to which the matter may eventually be referred.*

*Point 3 may be considered as "the self-fulfilling prophecy" element behind the motive to delay applications and complaints.*

4. *There is also the additional benefit enjoyed by ADF and Comsuper in that while it delays applications the victims are left to struggle with proving their case without any support and with Comsuper it fails to respond to any correspondence sent to it by the applicants concerning matters and issues that are requested for Comsuper to address.*
8. In both cases the persons experienced the total lack of communication with Comsuper ignoring correspondence addressed to it.

**It is submitted** that the conduct and actions of Comsuper are in fundamental breach of the *Constitution Act 1901* because Comsuper is not vested with judicial power to make any decision upon legal issues which, by investigating matters and making decisions it makes decisions upon matters of law. Comsuper breaches the "Separation of Powers" provisions



under the Constitution. This is an aspect of all Comsuper decisions that has never been challenged or tested in the Federal Court due to the fact that self-represented persons do not have knowledge of the law and are unable to afford lawyers to represent them (even if they were able to do so by reason that any complaint arising out of Comsuper's decisions may only be referred to the Superannuation Complaints Tribunal where complainants are expressly prevented from being legally represented – S. 23 of the Complaints Act.

9. Due to the Tribunal not having any power to award costs to complainants, any legal advice that a complainant may receive is generally paid for out of the complainant's pocket. In these circumstances, while Comsuper has a legal team at its disposal, the complainant is generally in desperate financial difficulty, totally unsupported and psychologically, as well as mentally damaged and injured.

In these circumstances there is certainly “no level playing field” from the very beginning of the processes where ADF, DVA and Comsuper are able to control what information and material the secretary provides to the Committee members for their consideration. In all matters that relate to DVA members their file information is sanitised firstly by the ADF and secondly by Comsuper. If by some “miracle” a complainant is successful in completing this “suicide course” then in the case of DVA members they have further issues, difficulties and problems with DVA itself seeking reimbursement of payments as what has occurred in **Case History 3**. At the other end of the spectrum, PS complainants have issues, problems and difficulties with Centrelink as indicated above and through **Case History 1** and **Case History 2**. The Submissions referred to above by DVA members disclose some of the Centrelink issues that arise.

The Submissions 3; 12; 15; 18; 23; 31; 33; 34 and 36 all express and identify a number of these problems. The Senate Committee is requested to pursue Comsuper for the statistical information that Enquirer has sought to obtain from Comsuper by way of a public interest FOI request. At this stage Comsuper is refusing to provide this information under section 24AA of the *Freedom of Information Act*. It has been indicated that the information requested is fundamentally important to the proper inquiry into DVA and veterans' suicides.

Until the necessary changes are introduced whereby ADF members are assisted towards transition and rehabilitation back into our society DVA suicides will potentially increase. It is absolutely necessary that changes are made to all the impediments placed into various legislation that obfuscates, delays and hinders the social integration of DVA members back into civilian society and affords them the essential counselling, assistance and necessary rehabilitation to enable them to transition and function as worthwhile members of our community by enabling them to be classified as Disability Support Pensioners; rather than totally discriminate against them because they served their country above and beyond the call of duty.

Yours faithfully,

(Name withheld)