

**SUBMISSION
TO
A PLAN TO SIMPLIFY AND STREAMLINE SUPERANNUATION**

The purpose of this submission is to highlight the inequitable treatment of invalidity pension payments received from the military superannuation schemes under the proposed superannuation plan announced by the Government on 9 May 2006.

The military superannuation schemes are not solely superannuation schemes as are the vast majority of taxed superannuation scheme; but encompass three distinct entitlements: superannuation, invalidity and death benefits.

The submission proposes amendment to the proposed superannuation plan and amendment to taxation legislation to enable exemption for invalidity pension payments for members of the Australian Defence Force (ADF) medically discharged as a result of injury or illness attributable to military service.

The submission will compare the equitable tax exemption provisions within the United Kingdom “Armed Forces Pension Scheme” (AFPS) for members discharged on medical grounds from the UK Armed Forces and the provisions of taxation legislation on pension payments from the current Australian military superannuation schemes: Defence Force Retirement and Death Benefits (DFRDB) and the Military Superannuation Benefits Scheme (MSBS). In addition, the submission will highlight the tax exemption provisions and the treatment of invalidity pensions for members medically discharged from the US Armed Services under the provisions of US Department of Treasury Publication 525.

In supporting the case for tax exemption the submission will also review the High Court determination in 1977 that invalidity pension payments to members medically discharged from the ADF be exempt from tax, and the Government’s reactive introduction of the Taxation Amendment Bill 1977.

Overview of Proposed Superannuation Plan.

The Government’s proposed superannuation plan involves sweeping away the current raft of complex tax arrangements and restrictions that apply to people’s superannuation benefits, resulting in improved retirement incomes and increased incentives, initiatives and assistance to work and save for retirement.

The proposed plan is a further expansion of Government initiatives over recent years, including superannuation co-contribution, removal of superannuation surcharge and salary sacrificing pre-tax income for superannuation.

Under the proposed plan, superannuation benefits paid from a taxed fund either as a lump sum or as an income stream such as a pension would be tax free for people aged 60 and over.

While the proposed plan retains contributions tax and fund earnings tax, the removal of benefits tax for people aged 60 and over, in combination with removal of Reasonable Benefit Limits (RBL) will result in significantly higher retirement incomes for members of a taxed fund, particularly individuals on large incomes.

Benefits paid from an untaxed scheme (mainly public servants) would still be taxed, although at a lower rate than they are now for people aged 60 and over.

The untaxed military superannuation schemes including DFRDB and MSBS are either primarily or totally unfunded, with pension payments coming from consolidated revenue, rather than a superannuation fund which has already been taxed. Because this money has never been formally taxed, the Government has determined that benefits will not qualify to be tax free to recipients over age 60, from 1 July 2007.

As many people may want a higher level of retirement income than they will receive from the age pension and their compulsory superannuation, the proposed plan builds on the introduction of existing legislation to encourage additional savings and provides further rewards for people who make additional superannuation contributions to improve their standard of living in retirement.

Equitable Treatment of taxed and untaxed schemes.

The Government's declared emphasis with the introduction of the proposed superannuation plan is on equity between the taxed and untaxed schemes.

This value operates at two levels; firstly, in ensuring equity between taxpayers in relation to the application of the tax law; and secondly, in providing procedural fairness to taxpayers contributing to superannuation schemes.

For equity reasons, for people aged 60 and over, lump sum benefits from an untaxed scheme would be taxed at 15 percent up to \$700,000 and at the top marginal tax rate thereafter. In an attempt to make pension benefits more equitable (although not perfect), the Government has decided to introduce the 10% tax rebate from 1 July 2007 for those untaxed pensions, for persons 60 years of age and over. According to the Government, this would ensure a similar tax treatment between benefits paid from taxed schemes and untaxed schemes.

As a result of the proposed taxation changes members of untaxed superannuation schemes will generally benefit from the proposed plan when they access a retirement lump sum or retirement pension benefit. Obviously the higher the members salary and retirement benefit the greater the increased tax rebate and resultant savings.

While contribution to the military superannuation schemes is compulsory, equity between members of untaxed schemes and taxed schemes is further assisted by existing superannuation legislation and changes in the proposed superannuation plan.

Contributors to military superannuation schemes may already access initiatives including the superannuation co-contribution, spouse superannuation contribution and salary sacrificing of additional contributions into authorised taxed schemes to enhance eventual retirement income: and will be entitled to benefit from the removal of RBL under the proposed superannuation plan.

As a result, although reduced tax would continue to be paid on retirement lump sum payments and retirement pension payments, members contributing to separate taxed schemes, during their military service in addition to contributions to DFRDB or MSBS, will benefit from the superannuation tax free benefits within the proposed plan for members of taxed schemes, greatly enhancing their total retirement income after age 60. In addition, military personnel resuming private (non-Government) employment following retirement from the ADF, will be eligible for superannuation benefits from joining taxed funds under the proposed plan.

As an example, a member in the DFRDB scheme may voluntarily retire after 20 years service with a pension for life and a lump sum that may be rolled over. Concurrent with military superannuation contributions, the member may contribute by salary sacrifice arrangements, to a separate authorised taxed scheme. On retirement from the ADF, the member may commence private employment and, with the removal of the superannuation surcharge and RBL, will be eligible for tax free benefits on all superannuation benefits from taxed schemes in addition to the tax rebate on retirement pension from the military superannuation scheme, on retirement from the workforce after age 60.

Accordingly, while there may be grounds to dispute the statement that the 10% rebate is an equitable offset to the tax exemption on benefits from taxed superannuation funds, members of military superannuation schemes retiring voluntarily from the workforce aged 60 or over, have the opportunity, as have members of taxed schemes, to greatly enhance potential retirement income as a result of changes in the proposed superannuation plan.

However, the Government initiatives over recent years and the benefits of the proposed superannuation plan do not provide equity for members of the military superannuation schemes medically discharged as a result of injury or illness attributable to military service and in receipt of an invalidity pension.

Military Superannuation Invalidity Benefits.

The proposed superannuation plan and resultant amendment to taxation legislation will result in tax free lump sums at any age and tax free invalidity pensions for persons retiring aged 60 years or over, who are members of taxed superannuation funds.

However, the proposed superannuation plan treats invalidity pension payments the same as “normal” retirement pension payments for members in untaxed schemes. Members of military superannuation schemes retired involuntarily on medical grounds will only be

eligible for the 10% tax rebate from 1 July 2007 for those persons 60 years of age and over.

The intention of the DFRDB and MSBS invalidity benefits is to provide a payment in the case of invalidity which would make up to the recipient that which he/she would have been able to earn, not as a member of the ADF, but in civilian employment had he/she not been incapacitated.

Under the military superannuation schemes a member involuntarily medically retired on invalidity grounds is entitled to invalidity pension payments, not retirement pension. The determination of a member's invalidity benefit is determined by the percentage of incapacity in relation to civilian employment.

In DFRDB and MSBS, members are classified as either: Class A, Class B or Class C. Members classified as Class A or B are entitled to invalidity pension payments DFRDB members invalidity pension payments are determined as a percentage of the member's eligible annual rate of pay for rank at the date of discharge. (Class A 76.5%, Class B: 38.25%). MSBS member's invalidity pension payments are determined as a conversion of the member's employer benefit, based on the total number of years the member may have served till compulsory retirement age. (Class A: full entitlement, Class B: half the rate which would have been payable to him or her if he or she had been classified as Class A.). Members of either DFRDB or MSBS classified as Class C are not entitled to invalidity pension benefits.

Invalidity pension payments are calculated for both DFRDB and MSBS on the members rank and salary at the date of discharge (maximum salary for rank for DFRDB and FAS 3 for MSBS). The calculation of invalidity pension payments does not include provision for advancement in rank and salary and the medically discharged member's potential income prospects are effectively fixed at the date of discharge apart from nominal Consumer Price Index (CPI) adjustment.

Members of DFRDB classified as Class A or Class B are not entitled to commutation of any portion of their superannuation entitlements, but receive lump sum payment of accumulated Productivity Superannuation entitlements. Members of MSBS classified as either: Class A, Class B or Class C are entitled to a lump sum payment of member benefits.

Members of DFRDB and MSBS, discharged on medical grounds and classified as Class A or Class B, and in receipt of an invalidity pension payment are subject to a regular review and adjustment of pension entitlements based on the continued percentage of incapacity for civil employment. Classification reviews are conducted at regular intervals throughout an invalidity pension recipient's life. Reviews usually terminate as invalidity pension recipients achieve or approach the age of 60. At that point in time, the recipient's medical classification is determined as permanent for the remainder of his/her life and no further reviews are conducted. Some severely disabled invalidity pension recipients with a Class A classification may be advised of the cessation of classification reviews earlier than 60 years of age, if medical assessment determines that there is no

potential for improvement in the member's incapacity assessment and potential for return to the workforce.

As a result of an unplanned, involuntarily medical discharge, member's expectations and plans for life in general and long term retirement planning are no longer a reality. Irrespective of a member's rank, age and salary at the date of medical discharge, the financial burden on families caused by the disability and the resultant medical discharge can be insurmountable.

Members of military superannuation schemes discharged on medical grounds and classified as Class A or Class B, are accordingly faced with an immediate and potentially long term or permanent reduction in income. This reduction in income has an immediate impact on the recipient's ability to improve their ultimate retirement income.

As the recipient's disability effectively precludes them from obtaining suitable civilian employment, they cannot contribute to additional superannuation benefits within taxed schemes and benefit from the recent Government initiatives including salary sacrificing, removal of superannuation surcharge, removal of RBL, portability of superannuation, contributions to a spouse superannuation scheme, superannuation co-contribution, splitting of superannuation or the new transition to retirement arrangements.

In addition spouses of invalidity pension recipients providing daily care to severely disabled invalidity pension recipients may be unable to undertake paid employment to assist the family's predicament and may be in receipt of the Government Carer Allowance or Care Payment. This further limits the ability of an invalidity pension recipient and their family to improve their eventual retirement income.

The proposed superannuation plan fails to distinguish between "normal" retirement pension payments and "involuntary", medical discharge invalidity pension payments to members in the military superannuation schemes. While the Government initiatives have dramatically improved the awareness of the importance of saving early for retirement, members in receipt of invalidity pension payments from DFRDB and MSBS cannot benefit from the incentives to improve their retirement. As a result, the living standards of retirees relying on the invalidity pension payment from military superannuation schemes cannot keep pace with those of the general community.

In addition, recipients of invalidity pension payments are not in a financial position as to be able to accumulate even modest additional assets that could contribute to their retirement needs over and above the invalidity pension received.

UK Armed Forces Pension Scheme (AFPS)

The United Kingdom "Armed Forces Pension Scheme" (AFPS) introduced in 1975 incorporates comprehensive tax exemption for many servicemen and servicewomen medically discharged from the Armed Forces.

The AFPS applies different taxation provisions for attributable and non-attributable invaliding. Attributable invaliding refers to medical discharge resulting from injury or illness attributable to service in the Armed Forces. Non attributable invaliding refers to medical discharge resulting from injury or illness not considered attributable to a member's Service.

Members of the AFPS medically discharged from the UK Armed Forces are entitled to a Service Invaliding Pension (SIP), based on their assessed disability and percentage of incapacity for civil employment.

In addition to the Service Invaliding Pension, medical discharged members assessed as being discharged on "attributable invaliding" grounds may be in receipt of entitlements under Veteran's Agency (VA) awards or compensation under the Armed Forces Compensation Scheme (AFCS).

On medical discharge from the Armed Forces a member's Service Invaliding Pension is initially taxed as earned income. However, the Service Invaliding Pension may be paid tax-free following the VA's decision on whether the Principal Invaliding Condition was caused or made worse by the member's service and considered as attributable or non-attributable invaliding.

Eligibility for tax exemption is restricted to members whose medical discharge is assessed on "attributable invaliding" grounds and the VA awards either a gratuity (where the assessment of disability is between 1 and 19%) a War Disability Pension (assessed at 20% or above) or the member receives compensation under the AFCS.

Where the VA's assessment of a discharged member's Principle Invaliding Condition is considered "attributable invaliding" but the assessment of disability is nil%, and neither a VA award or AFCS compensation is awarded, the Service Invaliding Pension remains taxable. However, if the degree of disability increases and an award is made by the VA or AFCS, the Service Invaliding Pension is paid tax-free from the date of the revised degree of disability.

For members of the Armed Forces discharged on medical grounds and subsequently assessed by the VA as "non-attributable invaliding" the Service Invaliding Pension will remain taxable.

Comparison of AFPS with DFRDB and MSBS invalidity pension entitlements.

The procedures and policy for the management of medical discharged personnel in the UK Armed Forces is similar to that applied within the ADF. The assessment of a member's level of disability in the AFPS and the VA and AFCS entitlements is similar to the policies and procedures within the DFRDB, MSBS and a member's Veterans' Entitlement Act 1986 and Military Compensation and Rehabilitation Scheme (MCRS) entitlements.

The obvious fundamental difference is the UK Armed Forces differentiation of a member's Principal Invaliding Condition as "attributable" or "non-attributable" invaliding and the associated tax-free assessment.

While acknowledging the financial impact of all medical discharges on an individual's earning capacity, the UK Government has acknowledged additional responsibilities for those members medically discharged on "attributable invaliding" grounds, where the Principal Invaliding Condition was caused or made worse by the member's service in the Armed Forces. The UK approach recognises the uniqueness of military service and ensures equality for member's involuntary medically discharged on "attributable invaliding" grounds by ensuring the Service Invaliding Pension is provided tax-free.

Members medically discharged from the ADF are subsequently assessed by Commonwealth Superannuation Administration (ComSuper) for the level of invalidity pension payment, based on their assessed level of incapacity for civilian employment (Class A, B or C) and by the Department of Veterans' Affairs for entitlements under the Veteran's Entitlement Act 1986 (VEA) and the MCRS.

Eligibility for benefits from both VEA and MCRS are limited to disabilities caused or made worse by a member's service. Accordingly a subsequent assessment similar to the UK Armed Forces "attributable invaliding" or "non attributable invaliding" assessment could be readily ascertained and applied to policies governing members medically discharged from the ADF.

US Armed Services : Tax Exemption for US Invalidity Pensions.

The United States Department of Treasury has specific tax exemption policy applied to certain US military and government disability pensions for members medically discharged as a result of a service connected disability.

Members of the US military medically discharged as a result of service connected disability may be entitled to exclude from income amounts received as a pension, annuity or similar allowance under the provisions of the US department of Treasury, Publication 525, "Taxable and Non-taxable Income".

The provisions of Publication 525, incorporates tax exemption for US military personnel if any of the following conditions apply:

1. The member was entitled to receive a disability pension prior to September 25, 1975.
2. The member was part of a listed Government service or its reserve component, or was under a binding written commitment to become a member before September 24, 1975.
3. The member is in receipt of disability pension payments for a combat related injury.

4. The member would be entitled to receive disability compensation from the US Department of Veterans Affairs (VA).

The treatment of taxation exemption for members of the US Armed Services medically discharged as a result of a service connected disability, is similar to the provisions applied to members of the UK Armed Forces and recognises the uniqueness of military service.

Consideration for Tax Exemption for ADF Invalidity Pensions.

The possibility of the exemption of ADF invalidity pension payments from the payment of income tax was raised in 1976, in the case of *Goodfellow v Commissioner of Taxation*. (ATR 387). The decision of the High Court in the case, 77ATC 4086, handed down on 4 March 1977, held that the provisions applied to exempt the applicant's DFRDB invalidity pension from payment of Australian taxation.

The ruling in the 1977 High Court case, considered the application of paragraph 23AD(3)(c) of the Income Tax Assessment Act 1936, which exempts from Australian income tax wounds and disability pensions of the kinds specified in subsection 365(2) of the UK Income and Corporation Taxes Act 1970. In essence the High Court determined that paragraph 23(AD)(3)(c) embraced not only the specific pension exempt from English income tax under the Imperial Act, but also wounds and disability pensions of the same kind payable from outside the UK.

Following the High Court determination, the Commissioner of Taxation took the extreme view that the Court's decision exempted not only invalidity pensions paid under the DFRDB scheme but all occupational superannuation schemes. The Commissioner also regarded the decision as applying to pensions paid from the DFRDB to widows of individuals, who at the time of death, were in receipt of invalidity pensions.

As a result, the Government introduced the "Income Tax Assessment Amendment Bill 1977" and determined that the income tax law be amended so that all pensions paid under all occupational superannuation schemes be liable to tax.

In 1977, this may have been considered an acceptable treatment of invalidity pension payments as superannuation remained primarily limited to Government employees and members of the military.

However, the Government has introduced numerous initiatives since 1977 to improve and enhance the attractiveness of superannuation for Australian taxpayers by removing perceived anomalies detracting from the benefits of superannuation and making superannuation fairer for all Australians. The vast majority of the recent initiatives necessitated amendment to taxation legislation, resulting in enhanced tax benefits to members of all superannuation schemes and dramatically increased potential retirement incomes for the vast majority of Australians.

Accordingly in light of the proposed introduction of tax exemption for the vast majority of Australians in receipt of retirement pensions aged over 60, and the claim of equality in the proposed superannuation plan, it may be considered appropriate to reconsider tax exemption for recipients of invalidity pension payments for members medically discharged from the ADF, based on the determination of the High Court in 1977.

The High Court determination in 1977 legitimised the exemption from tax on invalidity pensions similar in nature to exempt repatriation disability benefits. The precise justification within the subsequent Income Tax Assessment Amendment Bill 1977, for the Government's decision not to comply with the High Court decision stated:

“Another provision of the Bill was to amend the income tax law to ensure that all pensions paid under the superannuation arrangements for members of the Defence Force are liable to tax.

The need for amendment – which was announced on 15 April 1977 – arises from a recent decision of the High Court involving an invalidity pension paid under the Defence Force Retirement Benefits Scheme to a former officer of the Navy who was prematurely retired as a result of an accident sustained in the course of duty.

The High Court held that the pension concerned fell within the scope of provisions of the law which exempt from tax pensions similar in nature to exempt repatriation pensions.

In a setting where tax is levied on pensions paid under other occupational superannuation schemes, the Government thinks it is only equitable that all DFRB and DFRDB pensions be taxed and the Bill contains provisions to this effect.”

As evident, the sole justification for the imposition of tax levied on invalidity pensions and the Government decision to circumvent the High Court judgement was to ensure equitable treatment of all DFRB and DFRDB pensions with other occupational superannuation schemes.

The Government statement in 1977, that taxation must be applied to military invalidity pensions to maintain equality with other occupational superannuation schemes, may only be considered erroneous as it failed to acknowledge the uniqueness of military service and the specific nature of the High Court judgment. The High Court's decision related solely to invalidity pension payments from military superannuation schemes where recipients also received payment of tax exempt repatriation pensions, not to similar invalidity provisions in other Commonwealth occupational superannuation schemes.

However the Government took the opportunity to introduce the 1977 Bill without apparent consultation and declared that superannuation and similar pensions paid by the Commonwealth under other Acts were not within the scope of the High Court exempting provision.

As evident throughout this submission, the financial impact on recipients of invalidity pensions undermines the ability to adequately ensure a financially secure retirement and

is far from equitable, particularly as a result of the wide ranging amendments to superannuation and taxation since 1977.

The catch cry throughout the proposed superannuation plan is similar to the Government justification for the Amendment Bill 1977 and justifies on equitable grounds the treatment of pensions in untaxed and taxed superannuation schemes. However the decision to allow a 10% tax offset for both “normal” retirement pensions and invalidity retirement pensions for members involuntarily medically discharged from the ADF as a result of service caused or aggravated disabilities is definitely not equitable.

As a result of the apparent inequitable access to superannuation incentives by invalidity pension recipients discharged from the ADF on medical grounds as a result of disability caused by or aggravated by service, the Government should initiate taxation amendment to ensure compliance with the High Court’s determination in 1977 and equity with other retirees.

With the introduction of the Military Superannuation and Benefits Scheme (MSBS) in 1991, the High Court’s 1977 determination would now apply to all members of military superannuation schemes. All new members of the ADF must compulsorily contribute to the MSBS, an untaxed superannuation scheme and if medically discharged are faced with a similar inequitable predicament

As the Government is so insistent on achieving equitable access to and improvement of retirement income for all Australians, the inequitable treatment of invalidity pension payments from the military superannuation schemes must be redressed and may be achieved in a number of ways.

One approach would be to incorporate an amendment to the proposed superannuation plan for the payment of eligible invalidity pension payments for members medically discharged from the ADF as a result of injury or illness attributable to military service to be tax exempt from the date of medical discharge, regardless of a recipient’s age, conforming to the High Court’s 1977 determination.

Introduction of tax exemption for invalidity pension payments for members of the ADF whose discharge disability was caused or aggravated by the member’s service should not be considered discriminatory. Member’s entitlements for VEA and MCRS benefits are currently restricted to disabilities caused or aggravated by a member’s service and are awarded tax-free. The introduction of tax exemption for acceptable invalidity pension payments would an additional recognition of a member’s service related disability and the uniqueness of military service.

However, it is acknowledged that the emphasis on members medically discharged from the ADF at a young age, is justifiably focussed on rehabilitation back into the workforce. In the interests of rehabilitation, the Government is already committing financial support for members willing and capable of undertaking training to assist recipients of military incapacity pension payments to obtain gainful employment. While many recipient’s understandably experience severe limitations, both physically and mentally which limit the prospect of re-entering the workforce, gainful employment remains a justifiable goal

for the Government, until a recipient's incapacity is determined to be permanent and the cessation of incapacity classification reviews eventuates.

Without limiting the obvious financial predicament faced by younger recipient, the introduction of tax exemption on invalidity pensions prior to an assessment of permanency and cessation of invalidity classification reviews may accordingly act as a disincentive to a recipient's motivation to undertake rehabilitation programs.

However, by age 60, all recipients of invalidity pension payment should have undergone their final invalidity classification review and their medical classification would be "permanent".

The introduction of tax exemption on eligible invalidity pension payments for recipients at age of 60, or the cessation of classification reviews would incur minimal ongoing administration as recipients and their spouse would remain entitled to the tax exemption on the invalidity pension or residual spouse's pension for the remainder of their lives.

The limiting of tax exemption for the majority of invalidity pension recipients to aged 60 and over, while not resolving the overall financial predicament facing younger and middle aged recipients, would enable all recipients to have a "light at the end of the tunnel" and enjoy a more equitable and secure retirement after the age of 60. In addition, it is acknowledged that younger and middle aged invalidity pension recipients should be assisted in rehabilitation back into the workforce within the limitations of their assessed incapacity for civil employment.

This approach would ensure equity with the Government's announced age for tax exemption on superannuation pensions for the majority of Australians in taxed superannuation schemes at the age of 60.

Accordingly, an alternative approach may be for the Government to incorporate tax exemption for eligible invalidity pension payments for recipients at age 60, following the cessation of medical classification reviews by ComSuper.

However, a small number of members medically discharge from the ADF and in receipt of invalidity pension payments and VEA or MCRS benefits are permanently severely disabled with little if any prospect of rehabilitation. In some of these instances, ComSuper may determine permanency of incapacity and cessation of incapacity reviews at an earlier age than 60.

Accordingly, consideration should be given to the introduction of tax exemption at an earlier age for the minority of recipients severely disabled and whose permanency of incapacity and cessation of classification incapacity reviews are determined earlier than age 60.

Conclusion

The proposed superannuation plan will simplify and remove the complexity surrounding superannuation. While the 10% tax offset proposed for pensions received from untaxed schemes for retired individuals over the age of 60, may satisfactorily compensate

“normal” retirees it will not assist the predicament facing individuals in receipt of a permanent invalidity pension payment from a military superannuation scheme.

The proposed superannuation plan incorporates nothing to equitably overcome the perceived anomalies and financial predicament facing members of the military superannuation schemes medically discharged and in receipt of invalidity pension payments.

Recipients of invalidity pension payments from the military superannuation schemes have not and effectively cannot benefit from the wide range of government incentives and initiatives available to “normal” tax payers and retirees. Accordingly, consideration should be given to tax exemption for all military invalidity pension payments for recipients medically discharged as a result of disabilities caused by or aggravated by military service.

The UK Government has addressed the financial predicament facing service personnel medically discharged from the UK Armed Forces and has effectively implemented tax-free Service Invaliding Pension entitlements and invalidity pensions for members discharged where the Principle Invaliding Condition was caused or aggravated by the member’s service and the VA awards either a gratuity, a War Disability Pension or the member receives compensation under the AFCS. In addition, the US Government, Department of Treasury has specific taxation exemption policy for military disability pensions attributable to a service connected disability.

The Australian Government should consider introducing similar procedures to the UK Armed Forces and US Armed Services for members of the ADF discharged on medical grounds as a result of service caused or aggravated injuries and introduce tax exemption for eligible invalidity pension recipients in receipt of VEA or MCRS payments.

Investigation and comparison with the benefits for the UK Armed Forces, the US Armed Services and the High Court 1977 determination supports and justifies tax exemption of invalidity pension payments for members of the ADF medically discharged as a result of disabilities caused or aggravated by military services, as determined by the High Court in 1977.

Accordingly consideration should be given to replacing the provisions of the taxation legislation with amended provisions detailing the circumstances in which invalidity pension payments from military superannuation schemes may receive tax exemption, either for recipients of all ages, for recipients at the age of 60 or at an earlier age for recipients severely disabled and whose permanency of incapacity and cessation of classification incapacity reviews are determined earlier than age 60.

The Government's treatment of members medically discharged from the ADF as a result of service related disabilities is at odds with its stated retirement incomes policy of encouraging independence and self-provision in retirement and inconsistent with the taxation exemption policies applied by Australia’s major military allies, the UK and US.

Recommendation:

The proposed superannuation plan incorporate amendment to taxation and superannuation legislation to enable all invalidity pension payments for recipients medically discharged from the ADF as a result of disabilities caused or aggravated by military service and in receipt of tax exempt VEA or MCRS benefits to be:

- a. tax exempt from the recipient's date of medical discharge;*
- b. tax exempt for recipients over the age of 60; or*
- c. tax exempt for severely disabled recipients whose incapacity is determined to be permanent earlier than age 60, from the date of cessation of incapacity classification reviews*

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