

Introduction

The Terms of Reference (TOR) explain that “..the Government is now seeking a comprehensive examination of how the current compensation and rehabilitation system operates and should operate into the future”. For an individual veteran, or small group of them, this is an impossible task to address. They simply are overwhelmed and entirely confused by the system as a whole. In fact it is as if the governments response to the publicly identified problems of the Department of Veterans’ Affairs is a deliberate attempt to complicate those matters further. There has been a Seante Inquiry, and now there are investigations by the ANAO and this Commision. In truth veterans will only be able to address single, anecdotal issues that relate to them personally that exemplify a set of issues pertinent to them. **So my first point for the Inquiry is** you will be relying upon the major submissions from key Ex Service Organisations (ESO) and other Veteran Support Groups – many of which veterans have been losing faith in for a long time. You will also be perceived as part of the problem – not the solution because you are “just another inquiry”. You will need to test the submissions made by such key ESO, etc by comparing them to individual experiences of veterans who have attempted to navigate the labyrinth of veteran rehabilitation and compensation AND you will have to convince veterans that you are indeed a value adding measure by the government. I believe this will be a very hard task.

In reviewing the legislation you MUST address the fact that each of the Acts (VEA, SRCA, MRCA, DRCA) have had an element in their evolution involving a deterioration of entitlements and support. It is simple fact that if you create a hypothetical veteran with certain mental and physical injuries and then compare what that veteran would receive under each of the different Acts, you will see an entirely different set of support and compensation outcomes. This continues to breed a strong attitude of discontent and inequality amongst the veteran community. If an investigation into this aspect were simply to repeat a further degradation of support in a newly created Act, that would be criminal.

A focus on the Department of Veteran Affairs, while relevant, has hidden another key player in the scope of this inquiry; that being, the Commonwealth Superannuation Corporation (CSC). They have much to answer for in mistakes and ongoing systemic errors that have impacted upon veterans very significantly.

Scope

This submission will use two long term experiences of mine in order to respond mainly to the first item of scope in the TOR:

1. DVA Case Study revealing deliberate evasion of responsibility resulting in long term and ongoing delays in delivery of compensation.

2. CSC Case study/s revealing delays, denials and potential criminal conduct resulting in long term and ongoing systemic misconduct and errors in the delivery of compensation.

Department of Veterans' Affairs

In 2015/16 DVA themselves identified an error in the way they had been calculating incapacity payments to certain veterans. The following is a copy of an internal DVA message notifying staff of the error:

6.6.2.1 Use of Superannuation benefit for a family law settlement

A person may have their superannuation benefit split and part of the benefit paid to their former spouse as a result of a family law settlement. Following a family law settlement, the member's superannuation entitlement is reduced in line with the amount paid to their former spouse.

The policy prior to the 15 December 2016 was to reduce a person's incapacity payment by the full (pre-settlement) amount of any Commonwealth-funded superannuation benefit that is derived from the ADF employment that gave rise to the incapacity.

The policy from the 15 December 2016 is that a person's incapacity payment can only be reduced by the Commonwealth-funded superannuation amount the person actually receives. Following a family law settlement only the reduced (post-settlement) amount of their Commonwealth-funded superannuation benefit (derived from the ADF employment that gave rise to the incapacity) can be included in calculations. The amount the person receives is as advised by the CSC.

This policy is applicable to all incapacity payment calculations from the 15 December 2016.

Delegates are not expected to seek out and correct calculations where the pre-settlement superannuation amount has been held but should correct these calculations (from the 15 December 2016) as they are identified i.e. during the regular review process.

The two last paragraphs contained concerning statements which I addressed by a complaint to DVA. My complaint was upheld and the arbitrary choice of the date 15 Dec 2015 was agreed to be unsupportable and the date was to be the date of any relevant court order for each effected veteran. The last paragraph is the worst part because it goes to

heart of a culture lacking in transparency, openness, honesty and veteran centric support. That last paragraph is a weasel wording of “make sure you hide this and don’t proactively tell veterans about it”.

I addressed this with the Ombudsman and succeeded in DVA admitting that they needed to identify effected veterans and fix this problem. To date, that does not seem to have happened. I am aware that the Ombudsman was told that DVA were of the opinion that not many veterans were impacted but they were not sure. How could this be so? In order to do even the incorrect calculations DVA had to identify every single one of these impacted veterans to do the offsetting calculations! There has to be a list of all these veterans somewhere. If not – then it’s even worse in terms of efficiency and effectiveness in the delivery of compensation to veterans.

I could provide more detail about my case but my appeal/complaint took over 6 months and only really got traction when I made a complaint to the Ombudsman. It is my opinion that, until DVA admitted to the error and committed to fixing it more openly, that they breached model litigant rules in that they delayed and denied the issues I raised and also tried to hide the identified error in an internal ly circulated instruction.

How is this behavior close to any “contemporary best practice” out there or how can it possibly do anything but represent an attack on “veteran centric” support.

Recently anecdotal evidence on social media exemplifies the utter confusion some veterans face. In one case a veteran submitted claims for a back injury causing chronic pain and another claim for psychiatric impacts of that pain. The psychiatric claim was accepted, the back injury was not. How the hell is that possible?

I have also attached an inter-departmental error that is perpetuating severe financial hardship on veterans and exemplifies the almost monolithic inertia that exists in acting in the best interests of veterans. Please read this case that is attached as it involves breaches of legislation and an Agency that acts belligerently in an almost combative approach to veterans.

Commonwealth Superannuation Corporation (CSC)

The CSC is the ONLY superannuation option available to someone entering service in Defence. There is no choice. If a serving member is dissatisfied with the performance of the fund, they have no option to change. CSC has a monopoly on hundreds of thousands of serving members and veterans.

In a veteran’s journey toward medical discharge it is the CSC that is actually the first organization that must make determinations about the veteran’s medical status regarding disability. This is because DVA must

“offset” dollar for dollar any compensation paid by the CSC against any DVA might offer to avoid double dipping – an entirely appropriate process. Also, much depends on the Classification of disability decided by CSC with regard to future DVA considerations. However, there are cases (that can be provided) in which the CSC do not provide the veteran’s entire medical file resulting in an incorrect medical assessment. This also results in long delays (more than a year or 2) because the veteran (if they are lucky enough to discover the exclusion of medical evidence) has to appeal the decision.

A veteran in receipt of invalidity benefits loses their superannuation and it goes into consolidated revenue. They only get to transfer their employer contributions to a registered fund (in some cases). The invalidity benefit they receive is the insurance component of the fund. The TOR for this inquiry ask to draw “on experiences of Australian workers’ compensation” by way of comparison. Well, in the civilian world, a person injured at work can make a claim through ComCare/WorkCover. They might receive a large lump sum in compensation and/or payments to compensate for the inability to work/loss of wages. They do not lose their superannuation and are not subject to the same detailed offsetting rules between CSC and DVA that a veteran is. A medically discharged veteran, loses any lump sum payment from superannuation and has to be classified A, B or C disability and can be reviewed (under the DFRDB for lifetime) and lose those payments at any time. In addition, the equivalent of these invalidity payments are taxed differently under civilian schemes resulting in a reduction of tax liability.

These invalidity payments from the CSC are compensatory in nature, are the insurance component of the Funds, are reviewable and therefore not lifetime in nature and therefore DO NOT meet the definition of a superannuation income stream under the Superannuation Industry Supervision (SIS) Act (1993) and SIS Regulations 1994. However the CSC stoically claim that they are but provide no evidence to support that position and so the invalidity benefits of struggling veterans are further eroded by an average of \$300 per fortnight.

Just to add salt into the wounds, these invalidity payments should not be split in the Family Court but have and continue to be (a fight veterans are gaining some ground on very, very slowly). When they are split, the spouse receives an “associate pension” for life. The spouse receives this while they are still working, still contributing to their own superannuation, not yet reached preservation/retirement age AND if the veteran is reviewed and loses the payments or has them reduced – the associate pension is unaffected and the spouse still gets paid.

All payments/benefits provided by the CSC have been significantly devalued over time as they have not been indexed appropriately over time. There is an excellent presentation on this that is available at the

[following link](#).¹ This issue alone represents an enormous disadvantage (indeed injustice) in the delivery of compensation to veterans.

The CSC have been excluded from the Royal Commission into the Financial Services Sector even though they are the recipient of thousands of complaints, offer financial advice through a chosen firm and are clearly making questionable decisions that impact veterans. Veterans have approached the Superannuation Complaints Tribunal, the Ombudsman, APRA, ASIC, politicians, a Senate Committee and all that has happened is denial and obfuscation. I have included, at Attachment 2, another submission I have made with more detail regarding the CSC.

There is little that is “best practice” or “veteran centric” at the CSC.

Conclusion

For the individual veteran, who can be suffering from depression, anxiety, alcoholism, isolation, physical injury and more, their ability to respond to the TOR of this inquiry is more than questionable. Instead, they will rely on ESO and other like minded organisations, in which many have lost trust given recent scandals. A sensationalised and necessary focus on DVA has camouflaged the CSC from necessary investigation and the prime opportunity to do that has explicitly been prevented by the government in excluding it from the current Royal Commission.

I offer the following recommendations to this inquiry:

1. Go back to the historical and original charters for the DVA and RSL and invoke those principles in legislation covering veteran compensation and rehabilitation.
2. Do not be “just another inquiry” and be sure to value add to veteran compensation and rehabilitation problem space.
3. Do not just trust the submissions from large and key ESOs. Be sure to proactively venture out into the veteran community and ask questions that relate to those key ESO submissions. Ask the individual veterans how they feel about those submissions.
4. The DVA and the CSC have breached model litigant rules on many occasions. Do not trust them or the briefs they provide to various Ministers and other senior reps. You need to dig down into the detail and do the real research to get 1st order level of detail facts, not the alternative facts fed to such senior representatives in briefs.
5. Look into the CSC in detail with regard to their misreporting of veteran invalidity benefits. You will need to do your own research into the legislation and how that applies or not to such benefits because the CSC cannot be trusted to brief you accurately. I can provide detailed research if you wish. Indeed just refer them to the

¹ <https://www.youtube.com/watch?v=y5LCkvqEJgg&feature=youtu.be>

Royal Commission and that would be a great help. (Why the hell are they excluded anyway?).

Attachment 1 - CSA Illegally Accessing Veteran SRDP/TPI Payments

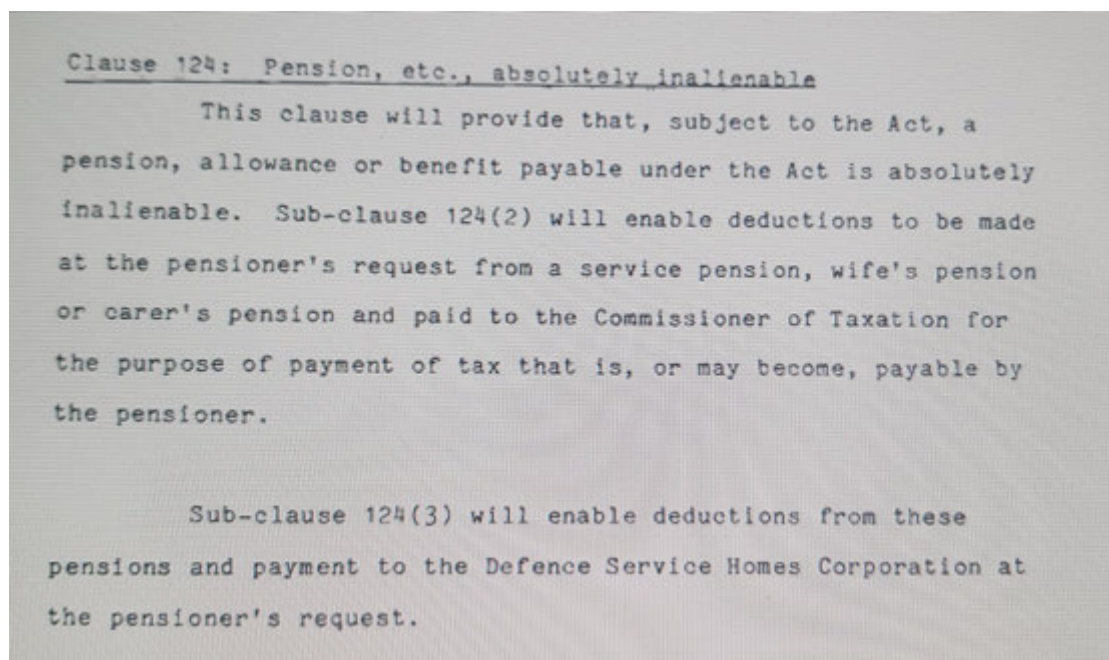
Attachment 2 – The Case For the CSC to be Included in the Royal Commission

CSA Illegally Accessing Veteran SRDP/TPI Payments

Dear Minister,

I write to you on a matter that is causing severe financial hardship for veterans. The problem crosses three departments because it involves the Department of Veterans' Affairs, Department of Human Services (Child Support Agency) and the Department of Finance (Commonwealth Superannuation Corporation – CSC). I have therefore written to all three ministers involved.

Some veterans receive a Special Rate Disability Pension (SRDP) which is commonly referred to as the TPI pension. If received under the Veterans' Entitlement Act (VEA) that act (and it's explanatory memoranda) explain that this payment is an "absolutely inalienable" one. Below is an extract from the original explanatory memoranda circa 1985:



In section 125 of the Act it is described as follows:

- Subject to this Act and Parts 3B and 3C of the [Social Security \(Administration\) Act 1999](#), a [pension](#), allowance or other pecuniary benefit under this Act is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise".

You will be aware that the definition of inalienable is:

- May not be taken away or transferred. A right to it which cannot be changed or taken away. Synonyms are, Sacrosanct, absolute, unassailable.

In simple terms this disability pension is provided because the injured veteran can either not enter into employment or can only find employment that remunerates him/her at a far lower level than would he/she be able if it were not for the injuries received as a result of service. It is a **tax free and non assessable** payment.

The CSA are bullying veterans, misleading them by using their unilateral interpretation of their own legislation to “double dip” into these veterans’ CSC invalidity payments by assessing the SRDP as income. Here is how it works.

The CSA use Subdivision C, section 43 of the Child Support (Assessment) Act 1989 to calculate an “Adjusted Taxable Income” or ATI. They use sub para (e), shown immediately below, to justify this action.

FROM CHILD SUPPORT (ASSESSMENT) ACT 1989

Subdivision C—Working out the components of child support income

43 Working out parent’s adjusted taxable income

(1) Subject to this Part, a parent’s **adjusted taxable income** for a child for a day in a child support period is the total of the following components:

- (a) the parent’s taxable income for the last relevant year of income in relation to the child support period;
- (b) the parent’s reportable fringe benefits total for that year of income;
- (c) the parent’s target foreign income for that year of income;
- (d) the parent’s total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for that year of income;
- (e) the total of the tax free pensions or benefits received by that parent in that year of income;
- (f) the parent’s reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for that year of income.

Note 1: Other provisions that relate to a person’s adjusted taxable income are section 34A and Subdivisions B and C of Division 7.

Note 2: The components of the definition of **adjusted taxable income** are defined in section 5.

(2) If the Registrar amends an assessment under section 44, then for the purposes of the assessment, the person’s **adjusted taxable income** for a child to whom the assessment relates, for a day in the child support period, is the amount determined by the Registrar.

However, the Department of Human Services clarifies this in their guide [to what counts as Adjusted Taxable Income](#). That guidance explains “certain tax free pensions or benefits...” count toward ATI. The use of the term “certain” is important because it is linked to further legislation to which I refer later (specifically excluding the SRDP from assessment). The Department of Social Services also elaborates on this in the [Fact Sheet 19: Alignment of income definitions for child support and Family Tax Benefit 9 FTB](#). In that document it directs that “Disability pensions paid by DVA will not be included as income for child support but will continue to be included as income for FTB.” On this point

alone the SRDP/TPI pension should not be assessable in any way for child support.

However, the CSA continue to include this disability pension as part of ATI assessment. Once this ATI has been calculated the CSA then justify a very significant increase in the periodic child support payments required from the veteran and they simply demand it to be paid by contacting the CSC direct and making it happen. The veteran has no chance to address the action with the CSA or the CSC prior to the payments being increased. One example that demonstrates the impact on veterans is that prior to this reassessment a veteran was paying \$177/month. He is now paying \$757/month and that's about to increase to \$1050/month. These veterans are not doing well financially and this just destroys them.

Apart from the SRDP/TPI being inalienable and therefore not assessable in any way, the CSA also refuse to admit, and indeed ignore, their own legislation that prohibits them from what they are currently doing. See immediately below an excerpt from the Child Support (Registration and Collection) Act 1988:

FROM CHILD SUPPORT (REGISTRATION & COLLECTION) ACT 1988

72AC Deductions from veterans' pensions and allowances

(1) The Registrar may give a written notice to the Repatriation Commission (within the meaning of the *Veterans' Entitlements Act 1986*) if:

(a) either of the following applies:

(i) a person is a payer of an enforceable maintenance liability under section 17 of this Act;

(ii) a person owes a child support debt in relation to a liability under section 17 or 17A of this Act and an amount of the debt remains unpaid after the day on which the debt became due and payable under section 66 of this Act; and

(b) the person is receiving:

(i) an age service pension under Division 3 of Part III of the *Veterans' Entitlements Act 1986*; or

(ii) an invalidity service pension under Division 4 of Part III of that Act; or

(iii) a partner service pension under Division 5 of Part III of that Act; or

(iv) income support supplement under Part IIIA of that Act; or

(v) Defence Force Income Support Allowance under Division 2 of Part VIIAB of that Act.

By its very exclusion, the SRDP/TPI pension (which is certainly NOT an invalidity service pension under Div 4 of Part III of the VEA) cannot be included in any assessment by the CSA, ATI or otherwise. Its exclusion is no accident and should be of no surprise because of the original intent of the VEA, as explained in the explanatory memoranda – it's inalienable. Earlier I noted that DHS guidance explained that "certain" tax free pensions can be included in ATI assessment. Well, for veterans, here they are listed and the SRDP/TPI is NOT one of them.

I should also bring to your attention that there is evidence to show that the CSC have defined some veterans in receipt of invalidity benefits as “employees” of the CSC to significantly facilitate the garnishing part of the process in this problem space. They have done so without the knowledge of the veterans involved. That, my elected representatives is fraud and a crime under the Crimes Act and puts all the breaches of model litigant rules to shame, but there are many of those as well.

In summary we have:

- a. a government department interpreting legislation in a manner outside of its authority to do so,
- b. the same department ignoring guidance on how to treat such pensions in two departmental guideline documents, and
- c. not recognising its own legislation specifically excluding the disability pension from any assessment,
- d. resulting in an inalienable disability pension somehow losing that legislated status,
- e. an act of fraud facilitating the last step of garnishing veterans’ CSC invalidity payments.

So far I and others have submitted our concerns to the CSA who simply ignore them and have a “see you in court” mentality and I must say are belligerent in their dealings with veterans – particularly so on this matter. We have also written to various Senators and MPs, Federal and State. It is clear that because the CSA is involved, with all its attendant emotional space risks, that the courage to deal with these problems has been lacking in our elected representatives. Meanwhile the veterans affected suffer severe financial hardship – which the CSA routinely decline applications to recognise.

It is time that the CSA is called out on this matter. The CSA could be called before a Senate Committee or its Minister could ask some probing questions. Our Minister for Veteran Affairs could be the one to initiate those questions if he is interested in investigating this issue that significantly and negatively impacts veterans.

I look forward to your responses on this matter at your earliest convenience because veterans are basically suffering severe financial hardship as a result of the belligerent actions by the CSA, outside of their authority as defined in legislation.

**THE CASE FOR
THE COMMONWEALTH SUPERANNUATION CORPORATION
TO BE INCLUDED IN
THE ROYAL COMMISSION INTO
THE FINANCIAL SERVICES SECTOR**

Introduction

The Commonwealth Superannuation Corporation (CSC) is the only superannuation organisation to be excluded from the subject Royal Commission (the Commission) by the following excerpt from its terms of reference (TOR) dated 14 Dec 2017.

“...And we declare that in Our Letters Patent:

financial services entity means: ...

but does not include an entity that is a Commonwealth company or Commonwealth entity (both within the meaning of the Public Governance, Performance and Accountability Act 2013).”

For many years prior to this Commission, a number of ongoing complaints have been evaded by the CSC (and related government departments - the government). The CSC has breached *model litigant rules* and behaviour on numerous occasions and veterans have had no real investigation of their claims and certainly no transparency of any alleged investigation or any independent nature of those so called investigations into complaints. The TOR also state that:

“...AND all Australians have the right to be treated honestly and fairly in their dealings with banking superannuation and financial services providers. The highest standards of conduct are critical to the good governance and corporate culture of those providers...”

The CSC has been dishonest and unfair in its dealings with veterans and no regulatory authority has rigorously tested or questioned the standards of conduct, governance or corporate culture of the CSC, and there has most certainly been a complete lack of transparency and accountability with respect to responses on questions and complaints that veterans have raised with the CSC.

In excluding the CSC from the Commission it is clear that the government has a reason to exclude veterans from the honesty and fairness of which it speaks in the Commission’s TOR. This submission makes the case that by excluding the CSC from the Commission, basic rights of honesty, fairness and justice afforded to other citizens of Australia are being deliberately withheld from veterans who have fought, bled and died for the very system of justice, democracy and freedom that this Commission represents.

On the 12 Dec 2017, a Defence Force Welfare Association [media release](#) called upon the government “...to clarify the Terms of Reference...” and to include the CSC in the Commission (see [Attachment 1](#)). It explained that

“...DFWA cannot agree that CSC should be excluded. It would be the only superannuation entity in Australia not examined with the others. The voices of the many thousands of current and former members of the ADF whose superannuation is administered by the CSC should be heard, along with those members of industry and other funds.

The CSC administers military superannuation funds. It often appears as non-compliant with the Superannuation Industry Supervision Act, and is seen by the veterans’ community to be regularly misreporting to both the Australian Taxation Office and to the Family Court the nature of Invalidity Benefits paid to ADF members who have been discharged for medical reasons. At times it has failed to respond convincingly to the valid approaches by former members of the ADF who have sought clarification of their concerns. This has caused severe financial and emotional hardship to many already traumatised veterans and their families...”

On the 17 Jan 2018 a [joint media release](#) by the National Branch of the RSL and the Australian Defence Services Organisation (ADSO) also “...called upon the government to include the CSC in the Commission...” echoing and emphasising the concerns raised by the DFWA (see [Attachment 2](#)). On 8 Feb 2018 the shadow minister for Veterans’ Affairs, Amanda Rishworth, supported these calls in her own [media release](#) (see [Attachment 3](#)). These releases pointed to approximately 230,000 serving and former servicemen and women who “...unlike members of Industry Super Funds...” cannot switch funds if they are dissatisfied and are therefore “...reliant on external moderators to ensure fairness and justice...”.

The overarching point is that the CSC is not administering superannuation payments made to Veterans in accordance with the law. **One must wonder if the exclusion of the CSC is a breach of the Constitution from the point of view of veterans and the beneficiaries of the CSC.**

INVALIDITY PAYMENTS

Invalidity Payments Are Not Pensions

The CSC, in simple terms, define invalidity payments paid to injured veterans as *lifetime pensions*. There are reasons why this is not the case and there are unjust outcomes in the taxation and family law domains that result:

They are the insurance component of the funds being paid to veterans who have been injured during their service and as such are compensation for those injuries.

They are reviewable payments (under the legislation) and as such cannot be construed as lifetime in nature.

Unjust Outcomes under Family Law:

Splitting of compensation payments in family law proceedings:

- Incorrect information provided to parties that leads to incorrect valuation of reviewable payments.
- Payments are valued as lifetime, when in fact can be reviewed and cease.
- Non-veteran spouse (no injury) receives payments for life, when the veteran with the injury can still be reviewed and payments cease.

Unjust Outcomes under Taxation:

No recognition for the compensatory nature of these payments.

- Compensation ordinarily has a tax free element
- CSC incorrectly report payments which leads to Veterans paying tax they are not legally required to pay.
- Not advising beneficiaries of rights. (Failure to advise the ability to use the taxation election)

This all relates to definitions required to be met under the Superannuation Industry (Supervision) Regulations (SIS) Act 1994. For over 4 years I, and other veterans in receipt of invalidity payments (under the Defence Force Retirement & Death Benefits - DFRDB - and Military Superannuation Benefits -MSBS-Schemes), have asked a key question that the CSC has evaded answering and in doing so has breached Model Litigant Rules and its responsibilities under each of the scheme Trust Deeds. That question is:

In order to remain a compliant superannuation fund the CSC has a legal obligation to be both conversant and compliant with the SIS Regs and as such in order to address my complaint I require the CSC to:

“Formally place on record by answering either yes or no to the question :

Is my Invalidity benefit administered by you a pension in accordance with SUPERANNUATION INDUSTRY SUPERVISION REGULATIONS 1994 - REG 1.06, and

in the event that the answer is yes,

Which standard of SUPERANNUATION INDUSTRY SUPERVISION REGULATIONS 1994 - REG 1.06 subregulation

9A are you relying on in support of your position.

I note that your trust deed states in part that you are at all times to act in the best interest of your members”.

This question has been asked thousands of times of the CSC via many emails to them directly and by letters and emails to the local members of veterans. Not once has it been answered. The CSC attempts to close the matter by only

addressing the first part of the question – the more general part. They have always ignored and evaded the fundamental part of the question relating to sub regulation 9A.

There are long term grievances between the CSC and veterans in receipt of invalidity payments. Because the CSC had never informed fund members of any errors or potential issues I only became aware of them in 2016 because of the efforts of dedicated, injured veterans. In addition, because the ***CSC had failed in its fiduciary duty*** to inform its members (me), at time of discharge, that they could make an election to have their invalidity payments treated in more than one way, I was blissfully unaware of any problems until being introduced to other veterans addressing the issue/s. Around that time I submitted to the Senate Committee Inquiry into Veteran Suicide (follow the link to [submissions](#) and then go to 388 [See Attachment 4](#)) with no response or meaningful outcome.

Following this experience there were multiple complaints lodged with the CSC by me and many other veterans. Examples of these are at Attachment 5, 5A and Attachment 6 and are only just a few of my many communications with the CSC and related Ministers, Senators and others. At [Attachment 5A](#) you can see the evasion of sub regulation 9A pervading into the political domain which is likely to be the result of misleading briefings by the CSC. The CSC claim (in [Attachment 5](#)) that:

“...The Australian Taxation Office ATO is responsible for the taxation of superannuation pensions. The Commonwealth Superannuation Corporation has withholding tax and ATO reporting obligations and complies and has complied with those obligation in accordance with the ATO’s view and guidance on the taxation status of MilitarySuper invalidity payments. It is not CSC’s role to determine the tax status of a superannuation interest under tax law – that is a matter for the relevant legislation as administered by the ATO and their view has been clearly expressed...”

Veterans sought further advice on where such “clearly expressed” views of the ATO were documented and no less than the Inspector general Taxation responded on 31 Oct 2017, who formally placed on record that:

“...the Superannuation Industry Supervision Act 1993 (SISA) and its associated regulations DO NOT form part of the binding rulings framework and as such the Commissioner cannot make administrative decisions with regard to the SISA and its associated regulations”.

It would appear as a result of this statement that the previous response by the CSC, regarding the ATO, is factually incorrect. On 5 Dec 2017 I resubmitted my complaint to the CSC ([Attachment 6](#)) in light of all the above. Once again they evaded the answer by evading the specific, and most important issue, of sub regulation 9A. Given that the CSC had already suggested addressing the matter with the SCT (numerous times) I did so and on 3 Jan 2018 I received a concerning response pointing to possible “jurisdictional issues” (See [Attachment](#)

7). In my response at Attachment 8 (8 Jan 2018), I raised the collective concerns of all veterans involved that the CSC uses mischievous delay tactics. Indeed these are breaches of ***model litigant behaviour*** and also represent severe breaches of ***fiduciary duty***. The jurisdictional issues indeed were allegedly confirmed and the SCT advised on 10 Jan 2018 ([Attachment 8](#)) that it could not investigate my complaint noting that :

"In advising that the Tribunal is unable to deal with your complaint, the Tribunal is not forming any view on the reasonableness or fairness of the decision of the Fund. Instead, the Tribunal is conveying its inability to proceed with your complaint because of jurisdictional constraints contained in the legislation governing its operation".

That response almost cries out that there are more matters to be investigated.

At [Attachment 9](#) I refuted the SCT's position that they did not have jurisdiction to investigate my complaint. You will note that they offer the avenue of the federal court which is exactly the outcome that the CSC and government wanted because veterans will not be able to afford that avenue. Of course this is also the reason why the CSC should be investigated by the Commission because, as the Commission's TOR state:

'...all Australians have the right to be treated honestly and fairly in their dealings with banking superannuation and financial services providers. The highest standards of conduct are critical to the good governance and corporate culture of those providers...'

and veterans have had nothing but belligerent, mischievous and misleading behaviour and standards from the CSC and related departments.

My refutation was rejected (see [Attachment 9](#)). So we have the CSC who have continued to evade answering a question for approximately 4 years, veterans (like me) who follow the process and engage with the democratic and legal processes (which they literally fought for) and who behave within the concepts of natural justice and due process; but, are treated with calculated mischief and by a rogue organisation willing to consistently breach ***model litigant rules and behaviour***. In this instance the CSC consistently advised to go to the SCT with the complaint but when I did more than a year later since their first advice to go to the SCT) decided to reveal that there was a jurisdictional issue. This delay has been in the order of 3-4 years for others and is part of a deliberate strategy to delay and deny until the issue dies or we go away – it won't and we won't.

Other Attempts to Address the CSC's Lack of Cooperation

In the lead up to these complaints I, and other veterans, wrote to ministers and senators about the issue and their responses sing the chorus that the CSC and their public servant executives have written. In truth most simply did not

respond or responded that they were looking into it, or had passed it on, with no further communication thereafter. See Attachment 5A for one of many examples. Once again see that sub regulation 9A is entirely evaded when in fact it is the ONLY part of the answer that matters.

My position on all of this is made on not just the evidence I provide in this submission but on other evidence that more than suggests collusion between the government and the CSC due to the potential liability this mistake of theirs represents. I and others can provide that evidence if desired.

There has been an attempt by the Department of Treasury to suggest that the CSC need not be investigated by the Commission because it is subject to additional scrutiny beyond that applied to other funds. This is absolute rubbish. At [Attachment 10](#) the Treasurer attempts to provide examples of this additional oversight noting:

"...the Governance of Australian Government Superannuation Schemes Act 2011...imposes governance arrangements. In addition, the CSC is subject to the Public Governance, Performance and Accountability Act 2013...is subject to Parliamentary Scrutiny through the Senate Estimates process and audit by the Auditor General..."

The mentioning of the two Acts simply confirms that there is no independent oversight of the CSC and that it is all conducted by government organisations. With respect to the Senate Estimate Committee process I personally took that as a challenge and did some research on what the CSC had been called before the committees to explain. Nothing of significance is the answer and I also successfully submitted the afore mentioned key question to the Committee process and you can see the meaningless answer at [Attachment 11](#).

The CSC actually mislead the Committee in their answer. The question is not addressing "classes of pension" it is asking about reviewable benefits. What the CSC is not revealing is that they do not want to even use the term *reviewable benefit*, even though legislation determines them to be so. In fact we have tried to make their job easier by specifically asking about sub reg 9A thereby reducing the complexity entirely. The CSC is also not revealing that they have had more than a few meetings with veterans on this matter and not once have they backed away from the relevance of sub reg 9(A). The CSC are taking advantage of the Committee's complete lack of knowledge in this matter to obfuscate the issue. In any case the final sentence says it all. *"The CSC is satisfied that all military pensions meet the relevant standard and has administered all of its invalidity pensions accordingly"*. Well their beneficiaries are most certainly not satisfied. Neither are the National RSL, ADSO or DFWA. First of all, they are not pensions and that is the point of the entire disagreement and question space. The CSC's reticence to answer the question, the tactics to evade, delay and deny and provide real evidence is a breach of *model litigant* rules and their own *Trust Deed/s* which says it must act in the best interest of its beneficiaries.

The ANAOs suggested scrutiny has been inconsequential to say the least. See

[Attachment 12.](#)

Other Failings/Transgressions of the CSC

Breaches of model litigant rules/behaviour have already been provided but failures in FIDUCIARY DUTY are also relevant. The CSC is failing to act in the best interest of its beneficiaries by not informing them of a possible election in the taxation treatment of their payments and by withholding, obscuring, delaying and denying information and facts in the domains of the family court, reports to the ATO about the nature of invalidity payments and by defining some veterans, in receipt of invalidity payments, as employees of the CSC (without informing the veteran) in order to circumvent other procedures related to garnishing of payments by the Child Support Agency (CSA). This is an act of fraud!

Trust Deeds for MSBS and DFRDB state it must act in the best interest of its members AND the Government. This is a fundamental conflict of interest and is being used duplicitously by the CSC (and indeed by the government) to evade, avoid, delay and deny justice and fairness to the injured veterans – their beneficiaries.

It is not in the best interest of a member to pay tax they are not legally required to pay and the CSC refuse to provide any legislative basis for reporting payments the way they do to the ATO.

In some cases the CSC fail to provide the full medical file to their Medico legal Doctors when assessing Veterans for injury. (This has led to report/s saying no medical evidence of injury despite surgical reports in members medical file).

The CSC refused to acknowledge facts in litigation. (e.g: Campbell v SCT and CSC)

Erosion/Denial in Value of Invalidity and Retirement Benefits

A submission, put to the Minister's advisor and Department of Defence representatives in February last 2017, is conveniently available in a 30 minute pre-recorded PowerPoint presentation. More evidence since the 2017 submission has been added. This presentation explains very clearly the legislative history and evidence and the detail of the figures involved. You can view the [Presentation](#) by following the link. This is a separate issue to the ones raised up to this point but is very, very significant and should be investigated in its own right.

Recommendations

1. It is strongly recommended that the CSC be investigated by the Commission to avoid a miscarriage of justice in that veterans and serving members will be denied the very "fairness and justice" the Commission's TOR provide to the rest of the citizens of Australia, in that the CSC is not administering superannuation payments made to Veterans in accordance with the law.

2. That the CSC be forced to answer the question they have been evading for at least 4 years, as presented to the Senate committee recently and SPECIFICALLY answer the question with respect to invalidity benefits and sub regulation 9(A).
3. That breaches in fiduciary duty by the CSC be investigated.
4. That the CSC be investigated for defining beneficiaries as employees of the CSC without informing said veterans and using that definition to “grease the wheels” of administration with other departments and for any internal processes.
5. That the CSC be investigated for withholding medical information/files from their own medical assessors thereby negatively impacting and delaying the classification assessments of injured veterans.
6. That the CSC be investigated for any collusion with government departments in the evasion of answering questions put forward by beneficiaries but in particular for collusion with the Attorney General’s department in the formulation of a legislative amendment that was backdated at least 5 years with the intent to protect the CSC and the Government from liability.
7. That the CSC be investigated for incorrect reporting of information to the Family Court for the purposes of Form 6 calculations for the splitting of pensions – when the subject invalidity payments are not splittable and are not pensions.
8. That the CSC be asked why an invalidity payment, at its simplest, is an insurance/compensation payment for injury AND a reviewable benefit (and therefore NOT a lifetime pension), but is being treated, managed and taxed as a lifetime pension with significant adverse effects for the veterans and their families.
9. That the retirement and invalidity benefits managed by the CSC (for the military) be investigated for an apparent denial and erosion in value since their early legislative introduction.
10. That the inevitable other issues that come out of these recommended lines of inquiry also be investigated.

CSC has, in my and others opinion, deliberately evaded (and I use that term deliberately rather than “avoid”) the very specific question I listed at the outset of this document. It can easily be determined that the CSC has breached model litigant behaviour and also that the SCT have ignored those breaches in their investigations. Why have the CSC, after thousands of questions via hundreds of avenues evaded the sub regulation 9A issue – culminating in, at the very least, misleading a Senate Committee about this very specific area. I say misleading (at best) because the answer to the Senate Committee suggests that the answer would depend on case by case issues and certain complex calculations related to legislation. That is simply waffle and obfuscation. This is about one issue and one issue only – the nature of invalidity benefits as defined in legislation as opposed to what the CSC have unilaterally and incorrectly applied. It is not about individual cases regarding applications of legislation to output individual calculations – that is ridiculous.

In addition, the government have claimed that the CSC experience additional scrutiny via the Senate Committee system, AG/ANAO and certain Acts. They provided no evidence of this because there is none. I have demonstrated, with evidence, the uselessness of the Senate Committee process with respect to the CSC and also the almost entire lack of scrutiny by the AG/ANAO. I also have evidence that APRA refuse to investigate the CSC when I and other veterans have raised prudential matters with them. I think that I have provided enough evidence here to demonstrate that assertions that the CSC come under additional scrutiny are not just ridiculous – they are entirely misleading.

Ministers who previously argued against this Royal Commission are now admitting that stance was wrong in light of recent revelations. Indeed, Kelly O'Dwyer, Minister for Financial Services Sector and a previous NAB executive, now agrees that this Commission is the right thing to do (having previously resisted calls for the Commission to be held. See this [Australian Financial Review](#) article and this [SMH article](#)). In an ABC radio AM interview on Thu 19 Apr 2018, Kelly O'Dwyer said:

"...it's fair to say that giving the Royal Commission broad terms of reference, giving it full autonomy to go after bad misconduct and to look into that right across the financial services sector was absolutely the right thing to do..."

and when asked if the Commissioner had enough time to investigate and report on the sector she said:

"...we will obviously take advice from the Royal Commissioner in relation to that..."

(You can listen to the [interview here](#)).

By excluding the CSC from the Commission serving members and veterans are denied any value that this Commission offers with respect to Superannuation and denied the service that other citizens (taxpayers) are getting from this Commission – which veterans' taxes (some of which are over taxed) are also funding. **One must wonder if the exclusion of the CSC is a breach of the Constitution from the point of view of veterans and the beneficiaries of the CSC.**

The CSC must be included in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. To not do so denies the very people who have fought for our systems of democratic freedoms and justice the very justice and fairness the Commission's terms of reference claim to represent.



MEDIA STATEMENT

DFWA CALLS ON GOVERNMENT TO LEAD BY EXAMPLE ON THE ROYAL COMMISSION INTO BANKING AND SUPERANNUATION

The Defence Force Welfare Association (DFWA) calls on the Government to clarify the Terms of Reference of the Royal Commission into Banking and Superannuation. By defining a financial service entity to be the subject of inquiry as one 'other than a Commonwealth entity or company', they appear to exclude the Commonwealth Superannuation Corporation (CSC) from the inquiry.

DFWA cannot agree that CSC should be excluded. It would be the only superannuation entity in Australia not examined with the others. The voices of the many thousands of current and former members of the ADF whose superannuation is administered by the CSC should be heard, along with those members of industry and other funds.

The CSC administers military superannuation funds. It often appears as non-compliant with the Superannuation Industry Supervision Act, and is seen by the veterans' community to be regularly misreporting to both the Australian Taxation Office and to the Family Court the nature of Invalidity Benefits paid to ADF members who have been discharged for medical reasons. At times it has failed to respond convincingly to the valid approaches by former members of the ADF who have sought clarification of their concerns. This has caused severe financial and emotional hardship to already traumatised veterans and their families.

The DFWA believes that the management of military superannuation warrants the same scrutiny that the Government intends for industry superannuation funds. It calls on the Government to amend the Terms of Reference of the Royal Commission into Banking and Superannuation to include an examination of the military superannuation funds administered by the Commonwealth Superannuation Corporation.

<i>Contacts</i>		
National President: Kel Ryan (0418) 759 120	www.dfwa.org.au	QLD Branch President: John Lowis (0439) 192 574

DFWA – Voice of the Defence Community

**The Returned & Services League of Australia (RSL)
Alliance of Defence Service Organisations (ADSO)**

18 January 2018

JOINT MEDIA STATEMENT

**ROYAL COMMISSION INTO MISCONDUCT IN THE
BANKING, SUPERANNUATION AND
FINANCIAL SERVICES INDUSTRY**

Call to include the Commonwealth Superannuation Corporation

The Returned & Services League of Australia (RSL) and the Alliance of Defence Service Organisations (ADSO) call on the Government to include the Commonwealth Superannuation Corporation (CSC) in the Terms of Reference of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

CSC administers military and other superannuation funds for over 700,000 people, including 230,000 serving and former servicemen and women. Unlike members of Industry Super Funds who have the ability to switch funds if they are dissatisfied, ex-service members of the CSC do not. They are reliant on an external moderator to ensure fairness and justice. The Royal Commission is the ultimate arbitrator.

Given the magnitude of the CSC influence on the wellbeing of former servicemen and women the RSL and ADSO members consider this represents a compelling reason to include CSC within the Terms of Reference. CSC is the only significant superannuation entity in Australia to avoid examination.

Allegations exist that CSC is not fully compliant with the Superannuation Industry Supervision Act. For example, some in the veteran community claim that CSC misreports invalidity benefits (paid to servicemen and women discharged for medical reasons) to both the Australian Taxation Office and to the Family Court. And, all too often, veterans report that CSC fails to respond convincingly to valid approaches by them seeking clarification of their concerns. A consequence of this practice could result in veterans (and their families) already suffering trauma being subjected to unwarranted financial and further emotional hardships.

These and other allegations clearly require the same scrutiny as would similar assertions involving industry superannuation funds. The voices of 230,000 serving and former servicemen and women should be heard, not be silenced.

The RSL and ADSO call on the Government to amend the Royal Commission's Terms of Reference to include an examination of the military superannuation funds administered by the Commonwealth Superannuation Corporation.

<i>Contacts</i>		
National President RSL: Robert Dick 0448 889 848		ADSO National Spokesman: Kel Ryan 0418 759 120

DOT POINTS

OVERARCHING POINT.

- a. CSC is not administering superannuation payments made to Veterans in accordance with the law.
- b. Classifying superannuation recipients as employees to circumvent provisions of the SIS Act relating to the garnishing of such payments.

FAMILY LAW.

- c. Splitting of compensation payments in family law proceedings.
 - Incorrect information provided to parties that leads to incorrect valuation of reviewable payments.
 - Payments are valued as lifetime, when in fact can be reviewed and cease.
 - Non-veteran spouse (no injury) receives payments for life, when the veteran with the injury can still be reviewed and payments cease.

TAXATION

- d. No recognition for the compensatory nature of these payments.
 - Compensation ordinarily has a tax free element
 - CSC incorrectly report payments which leads to Veterans paying tax they are not legally required to pay.
 - Not advising beneficiaries of rights. (Failure to advise the ability to use the taxation election)

FIDUCIARY DUTY.

- e. CSC is failing to act in the best interest of its beneficiaries.
 - Trust deed states it must act in the best interest of its members and the Government. This is a conflict of interest.
 - Not in the best interest of a member to pay tax they are not legally required to pay.
 - Refuse to provide legislative basis for reporting payments the way they do to the

ATO.

- Failure to provide full medical file to their Medico legal Doctors when assessing Veterans for injury. (Led to report saying no medical evidence of injury despite surgical reports in members medical file).
- Refuse to acknowledge facts in litigation. (Campbell v SCT and CSC)

MEDICAL FILES

- f. Failure to provide full medical file to MLCOA doctors when assessing injured Veterans.
This leads to a biased report stating no physical evidence of injury. (even though members medical file has surgical reports)

Kel Ryan
National President
Defence Force Welfare Association



**AMANDA RISHWORTH MP
SHADOW MINISTER FOR EARLY CHILDHOOD EDUCATION AND
DEVELOPMENT
SHADOW MINISTER FOR VETERANS' AFFAIRS
SHADOW MINISTER FOR DEFENCE PERSONNEL
MEMBER FOR KINGSTON**

**BANKING ROYAL COMMISSION MUST INCLUDE CSC IN TERMS OF
REFERENCE**

Today Labor has written to Treasurer, Scott Morrison and Minister for Veterans' Affairs, Michael McCormack backing calls by ex-service organisation to include the Commonwealth Superannuation Corporation (CSC) into the Terms of Reference for the *Royal Commission into the misconduct in the Banking, Superannuation and Financial Services Industry*.

While the Turnbull Government made it clear they wanted superannuation to be examined by the Royal Commission they have neglected to include CSC- a significant player in the superannuation sector especially for our current and former Australian Defence Force (ADF) personnel.

Labor has listened to calls from the National Returned and Services League (RSL) and the Alliance of Defence Services Organisations (ADSO) who have also raised their concerns about the exclusion of the CSC from the Terms of Reference.

In neglecting to include CSC from the Terms of Reference our service men and women cannot be satisfied that CSC is working in their best interests.

If the Turnbull Government believes superannuation needs to be examined by the Royal Commission then they need to amend the Terms of Reference to include CSC.

Labor is committed to ensuring the Royal Commission delivers justice to all families and small businesses that have suffered because of the misconduct in the banking and financial services sector.

THURSDAY, 08 FEBRUARY 2018

Brendan Dwyer

**SUBMISSION TO
SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS AND TRADE
FOR
INQUIRY INTO SUICIDE BY VETERANS AND EX-SERVICE PERSONNEL**

This submission is submitted as a result of watching and listening to the public hearing on 6 Feb 2017. Some comments were made by DVA representatives, in response to committee member questions, which have prompted me to bring some matters to your attention that are significantly impacting the health and well being of our Veterans and servicemen and women. This submission will:

1. Explain how financial stress is caused by the military discharge process, the Commonwealth Superannuation Commission (CSC) and the Department of Veterans' Affairs (DVA).
2. Explain in some detail two specific ways the CSC is causing veterans significant mental stress as a result of financial hardship.
3. Provide an example of how DVA significantly, and unnecessarily, increase the time and cost of processing/assessing claims, thereby disadvantaging the veteran and the taxpayer.

I have included the CSC in my submission as MAJGEN Craig Orme AM CSC, quite eloquently included that organisation as part of the discharge process for a veteran and he was correct to do as it is inextricably linked with the DVA process for the veteran. However, MAJGEN Orme was seemingly not aware of the quite serious errors the CSC are making in the execution of their role as the trustee of the veterans invalidity pension.

I wish to state here that in almost all the cases I explain the veteran has acted appropriately and within the concepts of procedural fairness and due process. This should come as no surprise as they have served their country, at the behest of their government and done so under harsh and threatening conditions. They have been part of a campaign by our government to raise the international status of our nation through actions at home and abroad. Why then should we accept such underhand, mischievous actions (explained further on) by those that represent us in the Government. For example, there has been no procedural fairness or natural justice in how the CSC and AG department have acted in the scenario I explain later in this submission. All of this leaves the veteran disillusioned, in despair and feeling absolutely helpless - not a good thing when they are already suffering significant mental and or physical injuries.

To see the rest of the submission go the [submissions link](#) and select number 388.

RE: Invalidity Benefits - Taxation treatment

Dear Mr Dwyer,

Thank you for your email below.

The Australian Taxation Office (ATO) is responsible for the taxation of superannuation pensions. The

Commonwealth Superannuation Corporation has withholding tax and ATO reporting obligations and complies

(and has complied) with those obligation in accordance with the ATO's view and guidance on the taxation status of

MilitarySuper invalidity payments. It is not CSC's role to determine the tax status of a superannuation interest

under tax law – that is a matter for the relevant legislation as administered by the ATO and their view has been

clearly expressed. It is also not CSC's role to provide you with personal financial and/or legal advice. Should you

require this, you should seek your own professional advice from a qualified professional, such as a lawyer or financial adviser.

CSC has taken the time to respond to numerous queries from you in this matter and we have provided you with all

information you require to make our position clear. We cannot continue to provide you with responses on the

same issues. We have treated your queries as a complaint and now consider this complaint finalised. If you are

not satisfied with our handling of your complaint, you may wish to contact the Superannuation Complaints

Tribunal (SCT). For more information, contact the SCT by email info@sct.gov.au, or by visiting their website

www.sct.gov.au. Please note that the SCT has specific time frames in which you may raise a complaint. These time

frames can vary depending on the subject matter of the complaint. I would encourage you to contact the SCT in

order to familiarise yourself with their procedures.

Yours sincerely,

Cindy Fotia

On Behalf of Rommie Redlich

Head of Customer Service Delivery

Commonwealth Superannuation Corporation (CSC)

Phone: 1300 001 777

GPO Box 2252, Canberra ACT 2601

www.csc.gov.au

-----Original Message-----

From: Brendan Dwyer

Sent: Friday, 23 June 2017 10:28 AM

To: John Ayton

Subject: Invalidity Benefits - Taxation treatment

CustomerCare <CustomerCare@csc.gov.au>

Fri 7/07/2017 1:36 PM

Dear Mr Ayton, Thank you for your email dated 24 May 2017 (attached).
In response the ATO have no legislative authority over the SUPERANNUATION
INDUSTRY (SUPERVISION)
REGULATIONS 1994 (SIS Regs) and cannot direct a superannuation fund on how they
apply legislation that is
outside their administrative power.
In order to remain a compliant superannuation fund the CSC has a legal obligation to be
both conversant and
compliant with the SIS Regs and as such In order to address my complaint I require the
CSC to:
Formally place on record by answering either yes or no to the question "Is my Invalidity
benefit administered by
you a pension in accordance with SUPERANNUATION INDUSTRY (SUPERVISION)
REGULATIONS 1994 - REG 1.06
(1) (a) (i) and in the event that the answer is yes,
Which standard of SUPERANNUATION INDUSTRY (SUPERVISION) REGULATIONS 1994 -
REG 1.06 subregulation
(9A) are you relying on in support of your position.
I note that your trust deed states in part the you are at all times to act in the best interest
of your members.
The CSC's continual attempts to avoid taking responsibility by answering this question
is not acting in its members
best interest and places you in breach of your trust deed.
Regards

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CSC: AFSL 238069 ABN 48 882 817 243 RSE L0001397 ADF Super : RSE R1077063
CSS: RSE R1004649
MSBS: RSE R1000306
PSS: RSE R1004595
PSSap: RSE R1004601

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CSS: RSE R1004649
MSBS: RSE R1000306
PSS: RSE R1004595
PSSap: RSE R1004601



SENATOR THE HON MATHIAS CORMANN
Minister for Finance
Leader of the Government in the Senate

REF:MC17- 045891

Mr Brendan Dwyer
PO Box 3030
MYAREE WA 6154

Dear Mr Dwyer,

I refer to your email dated 5 December 2017. I am responding to the concerns raised as I have portfolio responsibility for these matters.

I understand that you are concerned about the Commonwealth Superannuation Corporation's (CSC) administration of invalidity pension payments under the Military Superannuation & Benefits Scheme (MSBS) and the Defence Force Retirement & Death Benefits Scheme (DFRDB).

I can confirm that CSC administers MSBS and DFRDB invalidity pensions as 'pensions' as defined by Regulation 1.06 of the *Superannuation Industry (Supervision) Regulation* 1994.

I trust that this information is of assistance.

Kind regards /

Mathias Cormann
Minister for Finance

4 December 2017

RE: Complaint (A233397e)

Dear Mr Dwyer

Thank you for your email below, which has been accepted as a formal complaint to the Commonwealth Superannuation Corporation (CSC), the Trustee of the DFRDB Scheme.

We can confirm that CSC administers both MSBS and DFRDB invalidity pensions as "pensions" as defined by Regulation

1.06 of the Superannuation Industry (Supervision) Regulations 1994.

We appreciate the time you have taken to raise your concerns and thank you for providing the Commonwealth

Superannuation Corporation with an opportunity to resolve your complaint. If we can be of further assistance in this

matter or you have any queries regarding our complaints handling process please do not hesitate to email

customercare@csc.gov.au.

Yours sincerely,

Customer Care Team

Customer Information Centre | Commonwealth Superannuation Corporation

From: Brendan Dwyer

Sent: Tuesday, 5 December 2017 10:59 AM

To: Pensions DFRDB <pensions@dfldb.gov.au>; CustomerCare <CustomerCare@csc.gov.au>

Subject: Complaint

To Whom it may concern,

I wish to lodge a formal complaint with regard to the treatment and classification of Invalidity payments made under

either the Military Superannuation Benefits Scheme (MSBS) or the Defence Force Retirement & Death Benefits

(DFRDB) act.

The details of my complaint are as follows.

Previously the Commonwealth Superannuation Corporation (CSC) has stated on the record that the reason they

classify a reviewable invalidity payment paid under either the MSBS or DFRDB act as a pension in accordance with

the Superannuation Industry Supervision Regulations 1994 is on direct instruction from the Australian Taxation Office.

On 31 October 2017 the Inspector General Taxation has formally placed on the record that the Superannuation

Industry Supervision Act 1993 (SISA) and its associated regulations DO NOT form part of the binding rulings

framework and as such the Commissioner cannot make administrative decisions with regard to the SISA and its

associated regulations.

It would appear as a result of this statement that the previous response by the CSC is factually incorrect.

In order to rectify the situation and address my complaint I require the CSC to:

Formally place on record by answering either yes or no to the question "Is a reviewable Invalidity benefit administered

by you and paid under either the MSBS or DFRDB act a pension in accordance with

SUPERANNUATION INDUSTRY

(SUPERVISION) REGULATIONS 1994 REG

1.06 (1) (a) (i) and in the event that the answer is yes,
Which standard of SUPERANNUATION INDUSTRY (SUPERVISION) REGULATIONS 1994 REG
1.06 subregulation
(9A) applies to the payment.

I note that as part of the Commonwealth's obligation Legal Services Directions 2017
Appendix B—The Commonwealth's obligation to act as a model litigant SECT 2 states "The
obligation to act as a

CustomerCare <CustomerCare@csc.gov.au>

Fri 8/12/2017 8:30 AM

model litigant requires that the Commonwealth and Commonwealth agencies act honestly
and fairly in handling claims

and litigation brought by or against the Commonwealth or a Commonwealth agency by:"

(a) dealing with claims promptly and not causing unnecessary delay in the handling of
claims and litigation and

(e) (i) not requiring the other party to prove a matter which the Commonwealth or the
agency knows to be true

I look forward to your expedient response

Regards

Regards

Brendan Dwyer

THIS

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without taking into account

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you should obtain a Product

Disclosure Statement and consider its contents before making any decisions

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AFSL 238069 ABN 48 882 817 243 RSE L0001397

ADF Super: RSE R1077063

CSS: RSE R1004649

MSBS: RSE R1000306

PSS: RSE R1004595

PSSap: RSE R1004601



Superannuation
Complaints
Tribunal

Level 2, 120 Collins Street Melbourne, Vic.
Postal Address Locked Bag 1000, Melbourne VIC 3000
Telephone 1 800 008 114
International +61 3 9615 1000
Fax (03) 9615 1000
Internet Address: www.sct.gov.au

Ref. No. 18-00015

Mr Brendan Dwyer
10 Glenroy Gardens
PORT KENNEDY WA 6172

Dear Mr Dwyer

**Re: Brendan Dwyer & DFRDB Scheme / Military Superannuation and Benefits
Scheme
Member No. A233397**

I refer to the above complaint.

The Tribunal currently has insufficient information to establish jurisdiction and is seeking further information from the Trustee.

This information is required to establish the Tribunal's jurisdiction to deal with this matter, and the Tribunal is unable to take any action in relation to this complaint until the information is received.

I will contact you again in due course to advise whether the Tribunal is able to deal with this complaint. There is no need to provide the Tribunal with any information at this stage.

Should you have any queries or wish to discuss the matter further, please phone me on
or on **1300 884 114** (for the cost of a local call).

Yours sincerely

Paula Britton
paula.britton@sct.gov.au
Complaints Resolution
3 January 2018

Re: Complaint Ref 18-00015 (Treat as In Confidence) [DLM=Sensitive]

Ref. No. 1800015

Dear Mr Dwyer

Brendan Dwyer & DFRDB Scheme

Member No. A233397

I refer to the above complaint and to previous correspondence. I also refer to your email below in which

you requested a time frame in relation to the assessment of the Tribunal's jurisdiction to deal with your complaint.

The Trustee of the fund provided a response to the Tribunal's request for information yesterday. The Trustee

has confirmed that the invalidity pension you are receiving, which is the subject matter of this complaint, is

in relation to the DFRDB Scheme.

I regret to inform you that it appears the Superannuation Complaints Tribunal is unable to assist you with

your complaint.

The

Superannuation†@Resolution†of†Complaints®†Act†1993†@the†Act@†outlines the circumstances in which the

Superannuation Complaints Tribunal can deal with a complaint. The Tribunal is only able to deal with

complaints in relation to a superannuation fund where that fund is a "regulated fund". A

"regulated fund" is

one which complies with certain conditions and has elected to become regulated under the

Superannuation

Industry†@Supervision®†Act†1993Æ

Section 4A of the Act states that the Tribunal is unable to deal with exempt Public Sector Funds, unless they

choose to come under the relevant legislation and be taken to be a "regulated fund" for the purpose of the

Act. The DFRDB Scheme has not chosen to come under the relevant legislation and therefore the Tribunal is

not the correct external resolution body that can assist you with your complaint.

The Trustee has advised that the appropriate avenue for appeal of decisions in relation to the DFRDB

Scheme is the Administrative Appeals Tribunal. The Trustee also advised that it would be writing to you

shortly to advise you of the correct avenue for your appeal.

In advising that the Tribunal is unable to deal with your complaint, the Tribunal is not forming any view on

the reasonableness or fairness of the decision of the Fund. Instead, the Tribunal is conveying its inability to

proceed with your complaint because of jurisdictional constraints contained in the legislation governing its

operation.

However, if you still believe the complaint is within the Tribunal's jurisdiction please provide a written

response within 21 days setting out why you think the matter should be considered to be within jurisdiction.

If you do not contact the Tribunal within this time the file will be closed.

Please contact me on 1300 884 114 (for the cost of a local call) if you have any questions.

Yours sincerely

Paula Britton

Wed 10/01/2018 9:20 AM

To: Brendan Dwyer

 1 attachments (195 KB)

Document 5.pdf;

[Paula Britton | Senior Jurisdiction Analyst | Superannuation Complaints Tribunal |](#)

|

[[www.sct.gov.au](#)][www.sct.gov.au](#)

"A community better informed about superannuation"

From: Brendan Dwyer

To: "paula.britton"

Date: 08/01/2018 06:54 PM

Subject: Complaint Ref 18-00015

Hi Paula,

I'll be candid and say that I believe the attached response is a delay tactic by the SCT and possibly CSC.

You know this issue is a hot topic and is being avoided by the CSC. Numbers of veterans are now aware of this matter and I know

that you have a number of submissions like mine.

The CSC should be answering this/these questions fully and accurately and have not been. One of their tactics was to defer to

the ATO who diverted to the CSC, etc, etc. After many iterations of this the IG Taxation has put this matter firmly in CSC's areas

of responsibility. So we went back to the CSC and they have advised that we must take the matter up with the SCT.

So here we are with the SCT, the nation's body that must fundamentally deal with a complaint like mine, yet I am being

informed that there maybe a question of jurisdiction.

I did not come down in the last fire mission (defence for I was not born yesterday). The Veteran community is quite sick of

government organisations not complying with their own trust deeds and the model litigant rules.

I require an accurate estimate of the delay you expect with this apparent matter of jurisdiction. I am not going to play the 28 day

turn around game with you in correspondence just to string this matter out so the SCT and CSC (and government) can avoid the

matter.

Please advise by email.

Regards

Brendan Dwyer

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Brendan Dwyer & Defence Force Retirement and Death Benefits Scheme (DFRDB) SCT Ref: 18-00015 (Treat as In Confidence) [DLM=Sensitive]

Dear Mr Dwyer

I refer to your email of 15 and 26 January 2018 in response to the Tribunal's decision that it does not have jurisdiction to deal with your complaint.

You have requested that the Tribunal investigate your complaint.

I have reviewed the matter and confirm the Tribunal does not have jurisdiction to deal with your complaint.

The Tribunal's jurisdiction to deal with complaints is governed by the Superannuation (Resolution of Complaints) Act 1993 (Complaints Act).

The Tribunal is only able to deal with complaints in relation to a superannuation fund where that fund is a "regulated fund". A

"regulated fund" is one which complies with certain conditions and has elected to become regulated under the Superannuation Industry (Supervision) Act 1993.

Section 4A of the Superannuation (Resolution of Complaints) Act 1993 prevents the Tribunal from dealing with exempt Public Sector

Funds, unless they choose to come under the relevant legislation. The Retirement Benefits Scheme has not chosen to come under the relevant legislation and the Tribunal does not have discretion in relation to this.

In advising that the Tribunal is unable to deal with your complaint, the Tribunal is not forming any view on the reasonableness or fairness of the decision of the fund. Rather, the Tribunal is conveying its inability to proceed with the complaint because of jurisdictional constraints contained in the legislation governing its operation.

Appeal Rights

If you are dissatisfied with the Tribunal's decision that the complaint is outside the Tribunal's jurisdiction you may apply to the Federal

Court for judicial review of that decision. An application for review must be made not later than the 28th day after the day on which a copy of the Tribunal's decision is given to you or within such further period as the Federal Court allows.

The Tribunal cannot advise you whether you should apply to the Federal Court for judicial review. You may wish to consult a Solicitor,

the Legal Aid Commission or a Community Legal Service to obtain further advice.

If you are not satisfied with our investigation of your complaint, you can contact the Commonwealth Ombudsman. The Ombudsman

has an office in every State and Territory. Complaints can be made in writing, by telephone or by using the Ombudsman's on-line complaint form.

The Ombudsman's office can be contacted by telephone on 1300 362 072 for the cost of a local call. The addresses and further

information about the Ombudsman can be found on the Internet at

[www.ombudsman.gov.au]www.ombudsman.gov.au.

Yours sincerely

Fiona Power | Senior Manager Complaints Resolution | Superannuation Complaints Tribunal |

|
"A community better informed about superannuation"
Fiona Power
Fri 9/02/2018 8:18 AM

| [www.sct.gov.au]www.sct.gov.au



Australian Government
The Treasury

Ref: MC17-009782

24 JAN 2018

Mr John Lewis

J

Dear Mr Lewis

Thank you for your correspondence of 13 December 2017, originally directed to the Attorney-General, concerning the Terms of Reference of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Your correspondence has been referred to the Treasurer and he has asked me to respond to you.

As you are aware, the Government has established a Royal Commission and appointed former High Court Judge, the Honourable Kenneth Madison Hayne AC, as Commissioner to inquire into the conduct of banks, superannuation and financial services entities to examine allegations of misconduct or conduct that falls below community expectations.

The Commonwealth Superannuation Corporation (CSC), while excluded from the definition of financial services entities in the Letters Patent, is required to meet additional standards for governance and scrutiny than trustees of other superannuation funds.

For example, the *Governance of Australian Government Superannuation Schemes Act 2011* establishes the CSC's role, functions and imposes governance arrangements. In addition, the CSC is subject to the *Public Governance, Performance and Accountability Act 2013*, which places additional requirements on the CSC over and above those imposed on APRA-regulated superannuation funds and their trustees. As a Commonwealth entity, the CSC is subject to Parliamentary scrutiny through the Senate Estimates process, and audit by the Auditor-General. Consequently, the CSC is subject to a higher degree of accountability, including Parliamentary oversight, as well as periodic Government review and scrutiny.

Once again, thank you for taking the time to write.

Yours sincerely

Diane Brown
Division Head
Financial System Division

Question on notice no. 43

Portfolio question number: 43

2017-18 Additional estimates

Finance and Public Administration Committee, Finance Portfolio

Senator Linda Reynolds: asked the Commonwealth Superannuation Corporation
on

27 February 2018—

Is a reviewable invalidity benefit administered by the Commonwealth
Superannuation

Corporation paid under either the MSBS or DFRDB act a pension in accordance
with

Superannuation Industry (Supervision) Regulations 1994 - REG 1.06

(1)

(a)

(i) and in the event that the answer is yes, which standard of
Superannuation Industry (Supervision) Regulations 1994 - REG 1.06
subregulation (9A) applies to the payment?

Answer —

CSC administers MSBS and DFRDB pensions as ‘pensions’ as defined by
Regulation

1.06 of

the Superannuation Industry (Supervision) Regulation 1994 (SIS Regulations).

The legislative provisions relating to pensions are complex and there is not one
particular

standard that can be considered to categorically apply to all military invalidity
pensions.

There are a number of different classes of ‘pension’ prescribed in Regulation
1.06 of

the SIS

Regulations, each of which contain a number of features that a pension-type
payment

must display in

order to meet the standards of that class. Some of those features, as they relate to
military

invalidity pensions are clearly discernible on the face of the relevant scheme
legislation and

rules and others require calculations to be made in respect of pension payment
and

indexation

amounts.

CSC is satisfied that all military invalidity pensions meet a relevant standard
and

has administered all of its invalidity pensions accordingly.

4/15/2018

RE: ANAO query [SEC=UNCLASSIFIED]

Sam Highley

Tue 30/01/2018 2:48 PM

To:

Hi Brendan,

Regarding your query earlier today about performance audit activity of the Commonwealth Superannuation Corporation (CSC), the only recent activity we could locate involving the CSC as an audited entity is the following:

<https://www.anao.gov.au/work/performance-audit/corporate-planning-australian-public-sector-2015-16>

Regards,

Sam



Sam Highley
Director, Communication
Corporate Management Branch
Australian National Audit Office
Tel: 02 6203 7666 |
[\[www.anao.gov.au\]](http://www.anao.gov.au)www.anao.gov.au

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This notice should not be removed.