

GUIDELINES

HOW TO REQUEST A RETROSPECTIVE CHANGE TO MODE OF SEPARATION FOR SUPERANNUATION PURPOSES UNDER SECTION 37 OF THE *DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT 1973 (DFRDB)*

General Information

[Section 37 of the *Defence Force Retirement and Death Benefits Act 1973*](#) (DFRDB Act) allows the Service Chiefs (or their authorised delegate) to consider whether a contributing member who separated for reasons other than for medical reasons, may be treated as though they had separated medically for certain invalidity benefits under the DFRDB Act only.

The Directorate of National Programs (<http://www.defence.gov.au/DCO/Transitions/>) administers this function on behalf of the Service Chiefs.

Legislation

Applicable legislation is as follows:

Defence Force Retirement and Death Benefits Act (DFRDB) 1973

[Section 37 Service Chief may inform authority of grounds of retirement](#)

Where a contributing member has been retired otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties but, after his retirement, the Chief of Navy, the Chief of Army or the Chief of Air Force or a person authorized in writing by the Chief of Navy, the Chief of Army or the Chief of Air Force, as the case requires, informs the Authority that, at the time the member was retired, grounds existed on which he could have been retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he may, for the purposes of this Act, be treated as if he had been retired on that ground.

Disclaimer

The following provides general information which may assist applicants to understand the application process under the relevant legislation. It has been prepared without taking into account personal objectives or circumstances, financial situations or needs. It is recommended that applicants obtain independent professional advice before submitting an application. There are a number of community and government organisations that offer this advice for free, such as Centrelink and Legal Aid.

Role of the Department of Defence

In summary, the DFRDB Act confers on the Service Chiefs (or their authorised delegate) a specific function to **inform** the Commonwealth Superannuation Corporation if a former member **could** have been medically retired on the grounds of invalidity or of physical or mental incapacity to perform their duties, if such grounds existed.

The Act **does not** confer upon the Service Chiefs (or their authorised delegate) the power to decide whether the former member **should** be treated as having been medically separated. The Commonwealth Superannuation Corporation has this **discretionary power** only. The Service Chiefs do not determine an applicant's right to an entitlement under the DFRDB Act, but rather notify the Commonwealth Superannuation Corporation of whether, and based on the facts available, the former ADF member **could** have been retired on the grounds of invalidity or of physical or mental incapacity.

The Commonwealth Superannuation Corporation must then determine whether such grounds are adequate for the applicant to be taken to have been retired on the grounds of invalidity or of physical or mental incapacity to perform their duties.

The Service Chiefs **are not required** to advise the Commonwealth Superannuation Corporation if they do not consider that such grounds existed.

General Test Conditions for Applications under this Act

In determining whether such grounds exist, as a guide, Service Chiefs (or their authorised delegate) normally consider whether the applicant suffered from an identifiable physical or mental condition at the time of separation, and if so, whether that identifiable physical or mental condition significantly impacted on the capacity of the applicant to perform military duties at the time of separation.

In determining the above, the following information may be considered:

- Any Service-related medical or psychological evidence that supports the applicant's claim of physical or psychological injury for which they consider they could have been medically separated for.
- Administrative documentation and employment performance reports.
- Any post Service-related medical or psychological evidence that supports the applicant's claim of a physical or psychological injury for which they consider they could have been medically separated for.
- Specialist reports.
- Statements by former colleagues, friends, relatives etc that supports the applicant's claim of a physical or psychological injury for which they consider they could have been medically separated for.

In order for Defence to access these records, the applicant will be required to sign a release form, a copy of which is included as part of the Application to Request a Retrospective Change to Mode of Separation for Superannuation Purposes under Section 37 of the Defence Force Retirement and Death Benefits Act 1973 (DFRDB Act).

Medical Guidance provided to the Delegates by Defence Joint Health Command

Directorate of National Programs will liaise with Joint Health Command (JHC) who is the principal adviser to the Service Chiefs on medical matters. To assess applications under the *DFRDB Act 1973*, JHC considers:

- All available medical reports and clinical notes contained in the applicant's Service Medical Records.
- The separation medical status is assessed against the policies and requirements that were extant at the time of the applicant's separation (and not against current requirements, which require all members to be deployable).
- Consideration is only given to the applicant's medical status at the date of separation.
- The identification of a condition, or the later deterioration and increased disability of a condition, does not infer that the applicant was medically unfit for service at the time of separation.
- The Service Medical Record is taken into consideration when reviewing the evidence provided by the applicant.
- All the evidence provided by the applicant is examined and analysed in detail.

Role of the Commonwealth Superannuation Corporation

The legislation provides the Commonwealth Superannuation Corporation and its delegates a ***discretionary power*** to either agree or disagree with the notification from the relevant Service Chief or their authorised delegate that such grounds existed.

Therefore, it does not automatically follow that the Commonwealth Superannuation Corporation will apply the provision of the Act. Each case is examined on its merits. If the Commonwealth

Superannuation Corporation receives such advice and agrees to exercise its discretion, the invalidity classification of the Act would then need to be applied to the circumstances of the separation.

Application Process

The following sets out the Defence application process:

Step 1: Complete the application form and email/mail to address on the form.

Step 2: Directorate of National Programs will confirm the receipt of the application with the applicant.

Step 3: Defence assess the application and any available information.

Step 4: Assessed application provided to Service Chief or their Authorised Delegate with a brief on the application and any supporting evidence.

Step 5: If the Service Chief or Delegate supports the application, the Commonwealth Superannuation Corporation are notified and provided with a copy of the application and supporting evidence. The applicant is also notified at this stage of the Service Chief or Delegates support of the application.

Step 6: If the Service Chief or Delegate does not support the application, the applicant is notified and provided with the reason why the application is not supported.

What the Applicant Needs to Know

What can be considered under the Legislation?

- Consideration is only given to the applicant's medical status at the date of separation.
- The identification of a condition, or the later deterioration and increased disability of a condition, does not infer that the applicant was medically unfit for service at the time of separation.

What are the consequences of retrospectively changing a mode of separation for superannuation purposes?

- In the event that the application is accepted by the Commonwealth Superannuation Corporation, the invalidity benefits will be recalculated dating back to the date of the applicant's separation. This may impact upon monies received by the applicant, from such organisations as Commonwealth Superannuation Corporation, Centrelink and Department of Veterans' Affairs.
- Applicants should contact other government agencies, such as Centrelink and the Department of Veterans' Affairs, to determine if they will be required to pay back any money or affect any other benefits that they are currently receiving, should the Service Chief (or their authorised delegate) notify the Commonwealth Superannuation Corporation that such grounds existed.

How can an Application be withdrawn?

- Should the applicant wish to withdraw their application, they must advise Defence (Directorate of National Programs) in writing prior to the Service Chief (or their delegate) considering their application. If a Service Chief has already notified the Commonwealth Superannuation Corporation that such grounds existed, the application is unable to be withdrawn.
- Correspondence to withdraw an application is to be addressed to:

Retrospective Consideration for Superannuation
Department of Defence
Directorate of National Programs
PO Box 7921
CANBERRA BC ACT 2610

What happens if the Service Chief (or their authorised delegate) does not consider that grounds existed to support the Application?

- If, after considering an application, the Service Chief (or their delegate) does not consider that such grounds exist, the applicant will be notified in writing of this position. The applicant will be provided with a copy of all information that was considered by the Service Chief (or their delegate).

An applicant may request that their application be reconsidered if they are able to provide new evidence to support their application.

What happens if the Service Chief (or their authorised delegate) does notify the Commonwealth Superannuation Corporation that such grounds existed?

- Defence will; on behalf of a Service Chief (or their authorised delegate) notify the Commonwealth Superannuation Corporation in writing if in their opinion such grounds exist. Defence is not advised by the Commonwealth Superannuation Corporation of the status or the outcomes of the application. The applicant must contact the Commonwealth Superannuation Corporation on the status of their application.

Are decisions made by the Department of Veterans' Affairs regarding a Service-related injury or illness taken into account during this process?

- Under the DFRDB Act, Defence is not bound to take into account decisions made by the Department of Veterans' Affairs. Applications made under Section 37 of the DFRDB Act relate to invalidity benefits under the DFRDB Act only and serve the purpose of determining an applicant's medical status (i.e. was the applicant medically unfit for Service) at the time of separation.
- The Department of Veterans' Affairs considers and makes decisions regarding benefits, including ongoing treatment for compensable injuries or illnesses which arise during the applicant's Service or can be attributed to their Service employment. While the Department of Veterans' Affairs may deem an injury or illness compensable, the medical condition may not have prevented the applicant from performing their Service (military) duties. Therefore for the purpose of the DFRDB Act an applicant may not have been deemed 'medically unfit for Service'.

Can Defence provide applicants with legal advice in relation to their application under this Act?

- No. Defence is unable to provide applicants with any form of legal advice or legal information.

Can applicants obtain copies of their Service, Medical and Psychological Records?

- Yes. An applicant may access their Service, Medical and Psychological Records. Information on how to obtain copies of your records can be found at <http://www.defence.gov.au/Records/ExService.asp>. Some records are held by agencies other than Defence such as the National Archives of Australia (NAA) and the Department of Veterans' Affairs (DVA).

Is Proof of Identity required to access these records?

- Yes, Proof of Identity, is also required and can be proved using certified copies of the following documents:
 - Passport
 - Australian Full Birth Certificate in your name (or former name if applicable)
 - Australian Citizenship certificate in your name (or former name if applicable)
 - Australian Driver's Licence, with signature, photo and same name and address as application
 - A bank or financial institution statement from current savings or cheque account with same name and address as application.

Who to contact if you have any questions?

Please contact the Directorate of National Programs (defence.sam@defence.gov.au) if you have any questions relating to your application to retrospectively change your mode of separation for superannuation purposes.