

GUIDELINES

1. The purpose of these guidelines is to provide general information about the process for applying to be treated as if you had transitioned from the ADF for medical reasons. It is the responsibility of the applicant to initiate this process and make the relevant application.

Defence Force Retirement and Death Benefits (DFRDB) Act 1973, section 37

Chief of the Defence Force may inform CSC of ground 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 the Defence Force or a person authorized in writing by the Chief of the Defence Force informs CSC 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.

Defence Forces Retirement Benefits (DFRB) Act 1948, sub-section 51(6)

Where a member who is a contributor has, before 1 October 1972, been retired otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties but the Chief of the Defence Force or a person authorized in writing by the Chief of the Defence Force 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.

General Information

2. The Defence Member and Family Support Branch is the departmental coordination point for this function on behalf of the Service Chiefs or their authorised delegates.

Disclaimer

3. 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.

Role of the Department of Defence

4. In summary, the DFRB and DFRDB Acts 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.
5. The Acts **do 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 Acts, 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.

6. 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.
7. 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

8. 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.
9. 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.
10. In order for Defence to access these records, the applicant must complete and sign the application form.

Medical Guidance provided to the Delegates by Joint Health Command (JHC)

11. To assess applications under the *Acts*, 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

12. 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 Acts.
13. 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 Acts would then need to be applied to the circumstances of the separation.

Application Process

14. The following sets out the Defence application process:

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

Step 2: Defence SAM 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

15. *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?

16. Before proceeding with retrospective invalidity the application may wish to consider financial implications of this decision or access financial advice.

How can an Application be withdrawn?

17. Should the applicant wish to withdraw their application, they must advise Defence in writing.

- Correspondence to withdraw an application is to be addressed to:

Retrospective Consideration for Superannuation
Defence Member and Family Support Branch
PO Box 7921
CANBERRA BC ACT 2610

Or

Email: defence.sam@defence.gov.au

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

18. 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).
19. 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?

20. 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?

21. Under the Acts, Defence is not bound to take into account decisions made by the Department of Veterans' Affairs. Applications made under these Acts relate to invalidity benefits under the Acts 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.
22. 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 these Acts 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?

23. 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?

24. Yes. An applicant may access their Service, Medical and Psychological Records. Information on how to obtain copies of your records can be found at <https://www.defence.gov.au/adf-members-families/service-records>

Who to contact if you have any questions?

25. Please contact the Defence Member and Family Support Branch (defence.sam@defence.gov.au) if you have any questions relating to your application to retrospectively change your mode of separation for superannuation purposes.