

I was working in the Australian Defence Force when I was diagnosed with a progressive disease in 2016 that would prevent me from ever working in my job in the future and significantly affected my physical capacity. I was medically discharged some months later.

I encountered a number of difficulties with the process that I found hard to manage and my mental state deteriorated over the period leading up to and following my discharge. I also encountered what I consider likely to be malicious behaviour from the CSC (Commonwealth Superannuation Corporation) when they assessed my entitlements to invalidity benefits.

In my submission I will bring up the issues that I encountered (along with many of my colleagues) which directly relate to military compensation and the wellbeing of veterans. Administrative errors at any stage after an injury or illness in the ADF, the medical review or discharge can significantly affect entitlements, which are often determined months or years later.

1. Medical discharge process
2. Rehabilitation coordinators
3. Medical discharge documentation
4. Career Transition Assistance and Training Scheme (CTAS)
5. Department of Veteran Affairs (DVA)
6. Commonwealth Superannuation Corporation (CSC)

Medical discharge process

I found the medical discharge process stressful and confusing. I found that once you are unable to do your job in the military, the entire system has little regard for the individual's needs and circumstances and everything that follows is mostly beyond their control. Most injured personnel are moved from their normal place of work. There is no concrete policy within the Defence Force Standard Instructions (DGIs) or Manuals (MILPERSMAN or HLTMAN) that gives a member any certainty of what will happen to them in the workplace.

I was nearly posted to a different position, however my chain of command cancelled the positing order as soon as the error was brought to their attention. These changes can directly affect a veteran's entitlements as they are usually related to the job position or posting or their pay (for example flying, seagoing or hard-lying allowances are included in the ADF Cover scheme but not older schemes). Even though in my case it was immediately corrected, this error remained on my record and actually affected me in my recent MSBS Invalidity reconsideration because CSC misinterpreted it and I had no opportunity to point this out without undertaking a completely new review.

Members have no employee rights due to a paragraph in the Defence Act 1901 legislation that specifically denies they can be considered employees. They have no rights to unions or representatives relating to employment matters. This means that members are often forced or pressured into unfavourable positions or reduction in pay and the only means of redress relating to employee matters must be the military redress scheme which often takes months (by then the member is already discharged).

- Injured members must be allowed to (if they wish) *remain in their position (official posting, rank and pay) until the Medical Review Board has made a determination and, in the case where a decision to discharge is made (J5), until actual discharge.*

- Members should be allowed an option to delay medical discharge until the resolution of a redress.

Rehabilitation coordinators

Members are allocated contracted Rehabilitation Coordinators to assist them, however I found that their job was more aligned to help the defence force organisation manage the member to get them functioning in a new capacity or to get them discharged as quickly as possible. I was not made aware that they would be writing reports on my medical file, which I consider totally inappropriate as they usually have no medical training and, in my case, made significant errors in my reports. Neither do they have direct relations with the member in their workplace. Furthermore, I found these coordinators to be lacking in the detailed knowledge required to actually help members through the process, often adding to confusion. For example, my coordinator told me they did not think I was entitled to invalidity benefits when I brought up the question, which turned out to be completely incorrect.

Coordinators are much needed and often helpful as a liaison but they are truly ill equipped and have a very broad and ambiguous job, so it is too much to expect good results from them without detailed training.

- The defence act must be amended to allow members to be considered employees and to organise some kind of support that is *only acting in support of the member*, not a worker for the defence department or the ADF. There are many number of ESOs (ex-service organisations) that might provide such a service. The legislation could still have specific consideration to different rights in wartime situations.
- The denial of members legal rights during peacetime has no excuse and has resulted in many abuses of power in many forms over many decades as covered in many reviews into problems in the ADF.

Medical discharge documentation

The documentation that covers the process within the military is detailed and often difficult to follow. The member and medical practitioners often encounter paperwork and events that they are not prepared for, often meaning the members entitlements post discharge are put at risk. For myself, I luckily received advice from a member who had recently discharged to ensure that my doctors filled out the form in excessive detail so that CSC could not assume anything or find any reason to deny my application.

Similarly, there are documents that must be filled out by unit commanders which are included on the members medical file and sent to Medical Review Boards. Often commanders have little understanding as to how these should be filled out and for what purposes the forms can be used for by other agencies.

- Members must be given a detailed file that includes (at least links or references to) all paperwork that might be required during a medical review or discharge and information about what their purpose is. Currently, Defence Community Organisation have a large booklet, but even still it does not have enough detail, particularly in this regard. It should also include links to the relevant documentations in the DI(G)s (Defence Instructions), HLTMAN (Health Manual) and MILPERSMAN (Military

Personnel Manual) that not all members might be aware of. This booklet should also contain contributions and links to the ESOs (ex-service organisations)

- Commanders and medical personnel (particularly doctors) need brief but specific training and updates on the medical discharge process and veteran/military entitlements, as their role is absolutely key in the process.
- The military needs to employ more doctors and give them more time as they need to give significant amount of time to injured members and those discharging but they are under great pressure and might easily make an error or omission without sufficient time.

Career Transition Assistance and Training Scheme (CTAS)

During my discharge process I applied for CTAS to study at university that was provided under the Pay and Conditions Manual (PACMAN) for up to 1 year after discharge and a number of other overly strict discharge. However, my detailed application was denied despite my appeals for considerations because my study was not starting until the academic year and therefore timing of my discharge meant that I couldn't complete the course in the required 1 year. This was administered by the Defence Community Organisation (another separate department). It was clear to me that the CTAS officer did not have an understanding of the PACMAN or any legal principles whatsoever after I called them to ask for an explanation of the letter denying me (after receiving free civilian legal advice myself). I decided not to appeal this decision as I was already significantly stressed and had many other issues in my life and the discharge process that were more urgent.

- The administrator of the CTAS scheme could be DVA and could be included in MRCA so it is more easily accessible.
- The requirements for study assistance should be relaxed and the administration burden lowered, for example discharged members should simply be able to send an invoice from any Registered Training Organisation to DVA and be refunded up to their allowed amount any time up to 4 years after discharge.
- Defence documents and legislation are almost never interpreted in favour of the member (despite the legal requirement of beneficial legislation) because the organisation is totally oriented around units rather than individuals. Therefore, they should generally be particularly clear and drafted with this in mind.

Department of Veteran Affairs

I have only applied to **DVA** for liability of a single (quite straightforward) defence caused condition so far. I used an advocate from the local RSL and the condition was accepted without delay. My experiences with the (on-base advisor) OBAS were also generally positive. However, I have not yet had experience with a more significant medical issue so my experiences have been very brief so far.

I am only now in the process of applying for my most serious condition. I found out from the SOP (Statements of Principles) that it will probably be difficult to prove that my condition was caused by my service even though I believe it was likely brought on or at least aggravated by my service.

If liability for aggravation is accepted, I am also concerned that the legislation MCRA only allows for treatment to be covered as long as aggravation is present, which would be very hard to judge.

- Non-liability care should be extended to the more common conditions and injuries associated with service, or at least a very low burden of proof be required, for example, simply that the condition occurred during or shortly after service. Bruxism and back injuries are examples of conditions that are extremely prevalent in the ADF.

Commonwealth Superannuation Corporation (CSC)

I applied to CSC for Invalidity Benefits under my superannuation scheme shortly before my discharge. Invalidity benefits under military superannuation schemes do not require any admission of liability and so I believed this was my best chance for financial support.

According to the legislation, I could have applied up to three months prior to my discharge date however no decision would be made until after discharge and I found it difficult to arrange all the paperwork to be completed in that time.

CSC did not receive my full medical documents from the ADF for many months later, after I had actually requested reconsideration of their initial decision.

I also requested interim incapacity payments from CSC because DVA informed me I was not eligible for their interim incapacity payments as I did not have a claim for incapacity currently with them. This also was denied on the basis that CSC did not have enough information at the time.

- All medically discharged members should have access to 12 months of full pay for financial certainty *regardless* of whether or not they have a pending claim or whether or not there is sufficient information.

CSC classified my initial incapacity at 40% *despite* my being completely unable to work in any capacity as a pilot, which had been my only job in the ADF. The CSC delegate noted that I could not work as a pilot but considered the kinds of employment a person with my skills and experience 'might reasonably undertake' also included vegetable picker and sales assistant. This was based on brief casual employment while I was in high school, which was made to seem somehow as significant as my experience as a military pilot. I have attached this decision as a confidential document.

I spoke to a number of colleagues who had been medically discharged in recent years and found that they had also been classified inappropriately. I felt this was wrong. I could barely pay my rent and bills with the amount of benefit I was receiving and needed to find somewhere else to live. I felt I had given up many opportunities for other successful careers when I joined the ADF at a young age and disappointed that I was now had minimal assistance to support myself and my family.

I found legal advice and was told this decision was not correct according to the legislation nor the precedent established in the courts. I was also told that according to the trustee legislation, the CSC is obliged to act in my best interest. Many veterans would not be aware of their rights in these matters and or be willing to go through the stress of a reconsideration.

Rather, most have actually been selected and trained for obedience rather than encouraged to demand their rights. I suspect I am just 'tip of the iceberg' of these problems and suspect other veterans have put up with much worse under worse circumstances.

With legal assistance I was able to submit a request for reconsideration that included a detailed explanation of why the only appropriate kind of employment was pilot and highlighted other errors made.

The relevant section of the legislation says that only the relevant kinds of employment should be considered. The exact legal wording is

the kinds of civil employment which a person with the skills, qualifications and experience referred to in paragraph (a) might reasonably undertake

Established legal precedents put beyond doubt (what is already a common sense interpretation of the law) that it is unreasonable to expect a person with such specific high level skills might reasonably undertake low level work if it were not for their injury or illness. My submission made clear to the CSC that a healthy pilot would not undertake work as a vegetable picker or sales assistant according to any reasonable viewpoint. I have attached this as a confidential document.

My request for reconsideration was dealt with in a relatively timely manner. It was a significant but understandable period of time. The entire process including getting medical information, legal advice, submission and preparation by the reconsideration team and it took approximately 7 months. It was a stressful period for myself that should not have occurred in the first place. The incorrect decision created unneeded burdens for myself, legal assistance and the CSC itself.

The result of the reconsideration was the committee decided to set aside the original decision and substitute it for a 60% (the bare minimum for Class A). This was a successful outcome for myself but the CSC had still chosen to include inappropriate employment kinds. I was now considered air transport professional, labourer and clerical worker. This was partly based on new factual errors as well as a disregard for the law I included in the submission. I have attached this as a confidential document.

I am concerned that the CSC has an ongoing habit of considering inappropriate kinds of employment for veterans in order to dilute their percentage of relevant incapacity. While this may not have a large effect in the short term, as a veteran attempts to reskill and find work within their abilities, any review by CSC will dilute their incapacity even further and there will be no financial support once below 30%. Similarly, any indication that a veteran has attempted to do even part-time or modified work or attempt incremental education has often resulted in a loss of their benefits at review (according to my conversations with other injured veterans).

For example, many infantrymen have been classified as security guard when, on close inspection, the two occupations have little in common for duties, physical requirements, skills or earnings. Similarly, just any level of education is regularly then used to justify the use of clerk as an appropriate occupation. Statistics of how many times these occupations have been used would be interesting to see.

This is clearly discouraging veterans from attempting to re-enter employment due to fear of prematurely losing what is often their only safety net. Many veterans have conditions that are deteriorating, improving or fluctuating and the existing system is usually too slow, adversarial and rigid to provide an adequate safety net for injured and ill veterans who often have treatment costs, families to support among mortgages and other living costs. Therefore, this approach from CSC is clearly harming veterans' wellbeing in the long term.

I consider these repeated actions of CSC in inappropriately classifying veterans as contempt for veterans, their service and the law. It flies in the face of the purpose of the legislation, which is to provide reliable support to a veteran who can no longer do their job and is undergoing huge upheavals in their life. I can only guess where or when in the organisation this approach stems from and what pressures or incentives are acting on decision makers in the organisation. I would also like to know also how many decision makers have an appropriate level of legal training or understanding of the vocational landscape. The CSC needs a higher degree of transparency and accountability as a trustee with important responsibilities.

Under a competent and benevolent trustee, I think the existing law (relating to incapacity benefits in the three superannuation schemes) would normally be enough to safeguard veterans from employment issues due to medical problems. However, it is clear that after decades of consistent mistreatment, veterans must demand the law be strengthened in their favour.

- The legislative clause 'might reasonably undertake' for determining employment kinds must now come with compelling explanation that the *evidence used to determine the kinds of employment must clearly have actual or relative significance to a hypothetical person with such experience.*
- The law must allow no more than one review per year unless requested by the member.
- The law must require that the veteran's primary specialisation in their ADF service be included as an employment kind (even if there is no civilian equivalent), unless the veteran requests otherwise.
- The law must require that the incapacity be considered as *the greater of either the physical incapacity or estimated economic incapacity incurred or likely to be incurred by the veteran.*
- The law must require the trustee (currently CSC) to *provide at least one draft of a decision to the veteran to allow them to correct any immediate factual errors.*
- The law must allow all veterans to smoothly transfer to the most recent invalidity scheme (ADF Cover) or most recent superannuation (ADF Super) as two separate and distinct matters and only if they wish to.
- The latest super scheme (ADF Super) must be improved to comply with recommendations of the recent reviews in military superannuation which were only partially enacted.
- Incapacity payments must increase with a minimum of either wage increases or CPI, as they do not currently keep up with the cost of living.