

Reason: To provide timely advice on this matter.

4. At the meeting on 19 Mar 09 and a subsequent meeting between Defence representatives and VSASA, s47F provided a range of proposed amendments to the current Defence procedures. Defence acknowledges that there are areas for improvement in this process and will be engaging an external medico-legal expert to review the current procedures. A report will be due in September 2009.
5. A proposed letter to s47F advising him of the intended review of procedures is attached for your consideration.

Sensitivity

6. Low. s47F may continue to write until this issue is resolved to his satisfaction.

Resources

7. DTSS has sufficient funding to engage a medico-legal expert to conduct the proposed review.

Consultation

8. Nil.

Attachments

- A. Background on the application process in relation to sub-section 51(6) of the *Defence Force and Retirement Benefits Act 1948* and section 37 of the *Defence Force Retirement and Deaths Benefits Act 1973*.
- B. Draft letter to s47F.

BACKGROUND ON THE APPLICATION PROCESS IN RELATION TO SUB-SECTION 51(6) OF THE *DEFENCE FORCE AND RETIREMENT BENEFITS ACT 1948* AND SECTION 37 OF THE *DEFENCE FORCE RETIREMENT AND DEATHS BENEFITS ACT 1973*

1. Under the *Defence Force Retirement and Benefits Act 1948* (DFRB) and the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB), there is provision for former ADF members, who separated for other than medical reasons, to have their cases reconsidered to determine whether circumstances existed at the time of separation, for them to retire on grounds of invalidity or physical or mental incapacity to perform their duties.

Delegation

2. If a decision is made that circumstances did exist, then for the purposes of the relevant Act, the member can be treated as though they separated on that medical grounds.
3. The Chiefs of Navy, Army and Air Force have delegated the authority to determine a case to Director General, Navy Personnel and Training, Commander Career Management Army and Director General Personnel- Air Force, respectively.
4. The Chiefs of Navy, Army and Air Force retain the authority to consider cases that are seeking an independent appeal of a determination taken by Director General, Navy Personnel and Training, Commander Career Management Army and Director General Personnel- Air Force.
5. If the Chiefs of Navy, Army and Air Force or their delegates believe, after investigation of the claim, that a former member could have separated on the grounds of invalidity or of a physical or mental incapacity to perform their military duties, then the DFRDB Authority (which administers these Acts on behalf of Defence) will be advised accordingly.
6. The following guidelines are considered by the delegate during the investigation:
 - a. Was the member suffering from an identifiable physical or mental condition at the time of separation from the ADF?
 - b. Did the identifiable physical or mental condition significantly impact on the capacity of the member to perform military duties at the time of separation from the ADF?
7. Evidence used to determine this includes:
 - a. Available clinical assessment;
 - b. Available medical (clinical) examination results;
 - c. Administration documentation and employment performance reports;
 - d. Psychological/ attitude testing results; and
 - e. Employment history records during service and extending from the period of separation through time.
8. Defence Legal Services and Joint Health Command are the principal advisers to the Chiefs of Navy, Army and Air Force in these matters.
9. It is important to note that as these are 'retrospective' cases, Defence can only consider the medical situation as it might have been at the date of separation, rather than subsequent developments.
10. Many former members and their advocates perceive that acceptance by Department of Veterans' Affairs of claims, under their 'whole of life' coverage, does not apply under the DFRB and DFRDB Acts, which is based on the member's physical and mental condition at the time of separation.

DFRDB Authority

11. The DFRDB Authority only holds a discretionary power. Therefore, even if the Chiefs of Navy, Army and Air Force or their delegate support the former member's claims, it does not automatically follow that the DFRDB Authority will apply the provisions of these *Acts*.
12. Each case presented to the DFRDB Authority is considered on its merits. If the DFRDB Authority 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 former member's separation.

Potential Outcomes of Applications

13. There are two potential outcomes for former member's applying under these Acts. The Chiefs of Navy, Army and Air Force or their delegates support the former member's claim and it is sent to the DFRDB Authority; or, the claim is not supported.
14. Where the claim is not supported the former member or their advocate are able to submit new evidence or request a review of the case at any stage into the future.

Proposed Procedural Improvements

15. Veterans' Support and Advocacy Service Australia (VSASA) has provided a number of recommendations as to how this process could be improved to ensure transparency and procedural fairness.
16. Defence is proposing to engage an external medico-legal consultant to review the current procedures, as well as VSASA's recommendations and provide a report by September 2009.

s47F

Veterans' Support and
Advocacy Service Australia
PO Box 1753
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Dear s47F

I refer to our meeting of 19 March 2009 concerning the processing of applications under sub-section 51(6) of the *Defence Force Retirements Benefits Act 1948* and section 37 of the *Defence Force Retirement and Death Benefits Act 1973*.

I have noted your concerns in relation to the transparency and timeliness of processing these applications and thank you for providing comprehensive information and recommendations on how this process can be improved.

Defence is proposing to engage an external medico-legal expert to review the current processes, as well as your recommendations in relation to these Acts, to ensure that the process is fair, transparent and timely.

Given the complexity of both the Acts and the process involved, this review will take a number of months. As such, Defence has undertaken to write to you in September 2009 to advise the outcomes of this review and the proposed improvements.

I thank you for the support you provide for the former members of the ADF and trust that this information will be of assistance to you.

Yours sincerely

WARREN SNOWDON