

## **Factsheet 3: Former serving members – how to apply to have classification of discharge reviewed**

The purpose of this fact sheet is to provide general information about the process for former serving members to apply to have the classification of their discharge reviewed.

It is the responsibility of the former serving member (or their relative, if deceased) to initiate this process and make the relevant application. Neither the Defence Abuse Response Taskforce nor Defence can make applications on behalf of complainants.

### **About classification of discharge**

Legislation allows a member's service to be treated as having been terminated (rather than 'discharged') for a reason other than the original grounds for termination. For example, a member may request that his/her termination type be treated as being terminated on medical grounds i.e. physically or mentally incapacitated for continued employment in the Service at the time that s/he was discharged.

Regulation 99 of the *Defence (Personnel) Regulations 2002* [DPR 99] states:

(1) *applies if:*

(a) *the service of a member has been terminated; and*

(b) *the Chief of the member's Service is satisfied that member's service could properly have been terminated for a reason other than the reason for which the service was terminated; and*

(c) *treating the service as having been terminated for the other reason would not change the status of the member.*

(2) *The Chief may:*

(a) *at the request of the member; or*

(b) *with the member's consent;*

*ensure that the member's service is treated as having be terminated for the other reason.*

It is important to note that even if Defence treats the complainant's service as being terminated on other reasons (such as medical grounds) there is no guarantee that other Government agencies (such as DVA) will similarly treat the complainant's service in this way.

### **How to apply for a review of classification of discharge**

The former member must apply to his or her Service to request the reason for termination is reviewed.

The former member must identify the reasons for requesting the member's original termination could have been terminated for another reason. The former member should

provide supporting evidence, and where relevant, should also provide written authority for the decision maker to access the member's medical and psychological records.

Defence has no legal obligation to change a member's separation mode once the member has terminated. Under DPR 99, an appropriate delegate may consider a change of separation mode if the former member requests it *and* then only if there is exceptional evidence to demonstrate the original separation mode may not have been the most appropriate.

### **Applying to change a termination to a medical termination**

Generally speaking, in order to treat a termination as having been terminated for medical grounds, the Service Chief, or his delegate, will need to be satisfied that all the following general conditions are met:

- a. Was the member suffering from an identifiable physical or mental condition *at the time* of termination from the Service?
- b. Did the identifiable physical or mental condition *significantly impact* on the capacity of the member to perform military duties at the time of termination from the Service?
- c. Changing the reason for the termination would not change the status of the member.

These general conditions need to be supported by available evidence such as clinical assessment, available medical (clinical) examination results; administrative documentation and employment performance reports; psychological/attitude testing results; employment history records during service. This evidence needs to clearly provide an identifiable link to present day conditions from the clinical traits identifiable at the time of termination.

### **Superannuation**

Changing a termination decision may have implications for superannuation purposes. Former members are encouraged to seek their own financial advice.

Under the provisions of Commonwealth Defence Force Retirement and Death Benefits Scheme (DFRDB) and Military Superannuation Benefits Scheme (MilitarySuper) legislation, a former member who has had their service terminated administratively, but has evidence supporting their appeal for medical separation and to have their termination mode changed, may be considered as if they had been medically transitioned for ComSuper payments. Accordingly, they have the right to have their case re-considered by a ComSuper Invalidity Delegate. This is also applicable to members who elect to transition voluntarily rather than on medical grounds after being presented at MECRB, either for expediency or due to post transition employment opportunities.

Sub-section 51(6) of the *Defence Forces Retirement Benefits Act 1948* (DFRB Act) and Section 37 of the *Defence Force Retirement and Death Benefits Act 1973* allows the Service Chiefs (or their authorised delegate) to consider whether former members who retired for reasons other than for medical reasons, may be treated as though they had separated medically for certain invalidity benefits under these Acts only.

MSBS Contributors: Former members applying for retrospective change to mode of separation under Rule 30 of the Military Superannuation and Benefits Scheme (MSBS) are to forward their applications directly to ComSuper for consideration.

### **Related Factsheets**

- Factsheet 1: How former serving members may access, amend, add to or annotate information to the records Defence holds about them
- Factsheet 3: How former serving members can apply to have the classification of their discharge reviewed
- [DVA Factsheet FIP01 Access to Information](#)
- [DVA Factsheet FIP03 Records Relating to Veterans, Former and Serving Members](#)

### **Disclaimer**

The information contained in this Factsheet is general in nature and does not take into account individual circumstances. You should not make important decisions, such as those that affect your financial or lifestyle position on the basis of information contained in this Factsheet.