



**Team:** Military Casework

**Title:** MSBS - Considerations when classifying in respect to incapacity – Rule 22 of the Military Superannuation and Benefits Act 1991 (Cth)

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## PURPOSE

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To provide an overview of the decision making framework for Casework Services when making an initial invalidity classification.

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## SCOPE

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- This procedure will apply to the classification of initial invalidity benefits for invalidity retirees (or those treated by way of Rule 30) pursuant to Rule 22 of the Military Superannuation and Benefits Act 1991 (Cth) - Trust Deed.
  - This document will step through the considerations for making a rule 22 decision. From the legislation there are factual requirements, exemptions and a process for classification established.
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## ROLES & RESPONSIBILITIES

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AREA/OFFICER RESPONSIBLE	ROLE/RESPONSIBILITY
Casework Services Manager	Delegated Authority, Process owner
Casework Services Team Leader and Senior Case Officers	Delegated Authority
Casework Services Case Officers	Drafting of decision

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## REFERENCES

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The Military Superannuation and Benefits Act 1991 (Cth)

- Rule 19 - ICC functions and obligations
  - Rule 22 - Classification of incapacity
  - Rule 22A - Interim classification
  - Rule 24 - Notify the member, with a statement of reason
  - Rule 30 - Treating a member as having been retired on the ground of invalidity (Retrospective)
  - Rules 32/33/34 - Invalidity benefits not payable
  - Rule 76 - Reconsiderations (review of delegate decisions)
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## DEFINITIONS

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ADF – Australian Defence Force

CSC- Commonwealth Superannuation Corporation

MEAS - Member and Employer Access and Support branch

MSBS - Military Superannuation and Benefits Act 1991 (Cth) - Trust Deed

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DM42 - Invalidity Retirement from the Defence Force Medical Information

M40 - Application for invalidity benefits

SAM - (Defence) Single Access Mechanism

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## BACKGROUND

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Members of the MSBS scheme, who have been retired on the grounds of invalidity, or who may be treated so by effect of a retrospective determination under Rule 30 of the MSBS must have their percentage of incapacity determined in line with the provisions of Rule 22.

Further, if a member has been subject to an interim classification pursuant to Rule 22A, the CSC must, upon receiving sufficient information, cancel the interim classification and classify the member under Rule 22.

To facilitate the making of Rule 22 determinations, we have developed a template and Rule 22 pack to assist, please refer to the casework packs folder within the Military Casework drive.

### Classification categories

The percentage of incapacity in respect to civil employment determines the class of invalidity pension, within a three tier system as follows:

- Class A - 60% or more;
- Class B - 30% or more but less than 60%;
- Class C - less than 30%

This is the classification effective from the day following discharge.

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## DELEGATIONS

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### Delegation to make Rule 22 decisions:

The delegated authority to classify initial invalidity is provided through the following legislative provision:

Within the Governance Act 2011 – Section 36:

- CSC may, by writing, delegate to:
  - (a) a director; or
  - (b) a member of the staff of CSC; or
  - (c) the CEO of ComSuper; or
  - (d) a member of the staff of ComSuper; or
  - (e) an APS employee in the Department or in the Department responsible for the administration of the Defence Act 1903; or
  - (f) a member of the Australian Defence Force; or
  - (g) an officer or employee of a person who is responsible for investing money forming part of a superannuation fund administered by CSC; or
  - (h) any other person who performs duties in connection with the operation of a governing deed, an Act administered by CSC or regulations made under such an Act; or
  - (i) a committee consisting of 2 or more persons each of whom is a person referred to in any of the above paragraphs;

All or any of its powers under an Act administered by CSC or regulations made under such an Act.

In line with s36 of the Governance Act 2011, the CSC produces an instrument of delegation and delegations schedule in order to delegate its powers to ComSuper staff. In which, the MSBS Rules are delegated to position number holders. To ensure you hold the delegated authority to make a decision, please check the schedule located on the Delegations/Authorisations tab in the Business atlas - <http://cedar:8075/files/generalcatalog/472B23D3-61D5-4959-A031-2BCF3AD4BEF4.html>.

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## INFORMATION PACKAGE

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Whilst there is no legislative requirement for a member to complete an application for invalidity benefits, member's are encouraged to complete the M40 form. This form is accessible at the Military Super website.

Upon receipt of the member's application, ComSuper issues an acknowledgement letter, in which the member is advised of the Case Officer's duties as follows, to:

- provide you with an opportunity to present evidence in support of your claims;
- gather any further evidence or obtain clarification around any issues which may be required in order for the Delegate to make a decision in your case; and
- inform you of your appeal rights in the event that you are not satisfied with the outcome of your invalidity classification.

Annexed to this letter is the Initial Invalidity Classification information pack, a copy of these documents are located here: L:\Military Casework\PRECEDENT BANK MSBS\Invalidity\Legislation pack

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## SERENA

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After allocation in Casework Services' reporting tool, search Serena, TRIM and Capital to review:

- Date of discharge/ Mode of discharge
- Application form
- Medical documentation
- Notes field/Case status
- Member correspondence

Ensure Serena fields are updated as the case progresses.

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## TRIM

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Access the member's documentation within the electronic record management system - TRIM. To access the member's documentation:

- Initiate a search by record number
- Enter the members PMKEYS number into the equal to field with an (e) on the end
- Double click the members file to then access the individual records
- Select individual files within the members file by double clicking.

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## CAPITAL/ADF PAY - DATE OF DISCHARGE

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Within Rule 22, an obligation is established to classify a 'retiree'. As such, the forming of a decision under Rule 22 is to be conducted after the member retires from the ADF.

To confirm that a member has discharged, we do not rely upon a 'signal' from the ADF or the member's advice. We confirm the date of exit via the ADF Pay system and/or by referencing Capital.

To locate this field within Capital:

- Open the program;
- Set the search parameters by clicking the filter tab, ticking 'all products', then the relationships tab, ticking the 'inactive' box;
- Enter the member's PMKEYS number in the 'select member' field, with a % on the end; and
- Click processing, maintenance – Employment details. In which the date of exit will be displayed.

If the member has discharged within 2 years of service or when absent without leave, consider the below rules in respect to circumstances when invalidity benefits are not payable.

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## INVALIDITY BENEFITS NOT PAYABLE

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There are circumstances when a member is statutory barred from pension benefits. In line with the provisions of rules 31-34, invalidity benefits are not payable when:

- A member is classified as Class C;
- The CSC is satisfied that the member suffered from an existing condition, that was the cause or substantially contributed to the invalidity retirement, and the condition was not materially aggravated by service and the member was discharged within 2 years of service;
- The invalidity retirement was due to an intentional act; or
- The invalidity arose during an absence without leave exceeding 21 days.

With reference to Rule 32(1), a template regarding pre-existing conditions may be accessed [here](#).

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## DVA ESCALATION

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If an 'at risk' member is identified, please raise the issue with your Team Leader and complete the below form:



PMC 2015 65 - DFRDB - MSBS - Advice to Department of Veterans Affairs (DVA) - Escalation Case Form.tr5

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## RULE 22 TEMPLATE

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Casework Services are to use the following template:



PMC 2015 50 - MSBS - Rule 22A Delegates decision template.tr5

We are required by Rule 24 to notify the retiree of the initial invalidity classification decision, in writing, with a statement of reasons. Please refer to the [section regarding statement of reasons](#) below.

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## OBTAINING AND CONSIDERING EVIDENCE

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Pursuant to Rule 19(2) of the MSBS Rules, when determining a classification of, or reclassifying an invalidity retiree, the committee or Commonwealth Superannuation Corporation:

- (a) must take into account any evidence relating to that retiree that is made available or submitted to it; and
- (b) may take steps to obtain any other evidence that it considers necessary to properly determine the classification.

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## RULE 22 CLASSIFICATION

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By law, when classifying invalidity retirees, Casework Services is to have regard to the following matters **ONLY**:

- (a) the vocational, trade and professional skills, qualifications and experience of the retiree;
- (b) the kinds of civil employment which a person with the skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
- (c) the degree to which the physical or mental impairment of the retiree that is the cause of the invalidity by reason of which he or she has been, or is to be, retired has diminished his or her capacity to undertake the kinds of civil employment referred to in paragraph (b).

To assist in the interpretation of the legislative provision, I refer to the comments of Brennan J in *Re Bos and Defence Forces Retirement and Death Benefits Authority* (1977) 1 ALD 31 at 34 in an often-cited passage:

- If there be no incapacity of the relevant kind, a person's talents - his education, training, skills, physical strength, personality or other attributes - open to him a range of employment opportunities. The range may cover opportunities for engaging in various kinds of employment, for earning various levels of remuneration and for deriving tangible and other benefits. These are the opportunities which are appropriate to the individual - his own range of employment opportunities estimated by reference to the talents which, but for the incapacity, he would have had. When he suffers an incapacity, some of these opportunities are denied to him. He suffers an incapacity in relation to civil employment. A comparison between the lost opportunities and the whole range of the individual's employment opportunities provides the measure of his percentage incapacity.

In line with the Rule 22 template, firstly:

- capture the members personal and service details; and
- assess if the provisions of Rules 32,33 or 34 apply.

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## VOCATIONAL TRADE AND PROFESSIONAL SKILLS, QUALIFICATIONS AND EXPERIENCE OF THE RETIREE

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A members vocational trade and professional skills, qualifications and experience form the basis for the assessment of the skills the member has acquired which could be applicable to kinds of civil employment. This information includes previous education and the level of qualification, prior work experience, in-service training and experience. This information can be found in the following places.

Details of these are located:

- Within the M40 form, at parts, G, H, I and J
- Within the member's Workplace Disability Report (if applicable)
- ADO service record
- Rehabilitation Assessment Reports (if applicable)
- Medico-Legal reports

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## DETERMINING EMPLOYMENT KINDS

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From the vocational trade and professional skills, qualifications and experience, member's skills and talents can be considered to determine the employment kinds open to them.

For consistency in determining employment kinds, regard is given to the employment classifications listed in the Australian and New Zealand Standard Classification of Occupations (ANZSCO), First Edition, Revision 1 (2009) published by the Australian Bureau of Statistics and the following relevant case law and other:

*Click picture below to access website:*



*Click picture below to access website:*



In accordance with MSB Rule 22, the kinds of employment that a member could reasonably undertake at the time of their discharge from the Australian Defence Force (ADF) (having regard



to their vocational, trade or professional skills, qualifications and experience), leaving aside their impairment, are considered.

Might: Expressing possibility;

Reasonable: Having sound judgment

Undertake: To bind oneself to perform, make oneself responsible for, engage in, enter upon (work, enterprise, a responsibility)

### **Reasonably undertake**

A discussion on employment kinds can be found in Shelton and Defence Force Retirement and Death Benefits Authority [1979] AATA 93 (20 July 1979). The important considerations are:

‘whether it is reasonable to expect a person with the vocational, trade and professional skills, qualifications and experience of the pensioner to undertake a specified kind of civil employment.’

*When...that sub-section speaks of "the kinds of civil employment which a person ... might reasonably undertake" It is not we think referring to the mere physical ability of the person. It is referring to the question whether it is reasonable to expect a person with the vocational, trade and professional skills, qualifications and experience of the pensioner to undertake a specified kind of civil employment.*

### **Transferable skills**

In Re Stephen Carle Thomas and Defence Force Retirement and Death Benefits Authority [1987] AATA at 31 Davies J provides a discussion on the range of employment open to a member and importantly recognises that skills are transferable across industries:

*The range of employment that would be available to him, apart from his impairment, is wide indeed... Mr Thomas has the ability to undertake almost any task that does not require particular technical skills or substantial experience...His experience would not limit him to being a sales assistant, a stores assistant, a credit officer or clerk, an upholsterer or a crewman of small ships.*

In Davies J, Moore J and Sackville J within Michael Ralph Chambers v Repatriation Commission [1995] FCA 1144; (1995) 36 ALD 207 (1995) 129 ALR 219 (1995) 21 Aar 128 (1995) 55 FCR 9 (22 March 1995), comment is made on the interpretation of skills, qualifications and experience of invalidity retirees:

*As Defence Force Authority v House shows, a veteran may have skills and qualifications for remunerative work of a particular kind, even though some new learning or certification, involving a relatively small increment on existing skills and qualifications, is required. And it follows from what we have said that, where a veteran has the skills and qualifications necessary to undertake remunerative work in a particular field, those skills and qualifications...must...be taken into account, even though they were acquired independently of and were never utilised in the veteran's previous employment or training programs...the*

*primary question...is not what an employer might do, nor even what the particular member might do, but what a hypothetical person with the relevant skills, qualifications and experience "might reasonably undertake"...which does not at all suggest that the absence of a particular licence, or the need of a particular refresher course, would constitute a barrier...The statutory test is not whether the postulated person already has everything that [is] requisite, but whether a person with his skills, qualifications and experience might reasonably undertake the employment.*

## Retraining

In DFRDB Authority V House (1989) 22 FCR 138 at 141, and FCA 516 ALR 286 it was stated '...vocational, trade and professional skills, qualifications and experience' was not to be read in a narrow sense noting... importantly that new training and upgrading of skills is not unreasonable and occurs frequently:

*It should also be observed that the primary question posed by para (b) is not what an employer might do, nor even what the particular member might do but what a hypothetical person with the relevant skills, qualifications and experience 'might reasonably undertake'. Substituted expressions may tend to lose the peculiar force of the statutory language, which does not at all suggest that the absence of a particular licence, or the need of a particular refresher course, would constitute a barrier. People constantly undertake employment which require some degree of new learning or the obtaining of a new certificate or licence; to do so involves a small increment upon their existing skills, qualifications and experience. The statutory test is not whether the postulated person already has everything that is requisite, but whether a person with his skills, qualifications and experience might reasonably undertake the kind of employment in question. The extent to which in some way he might have to prepare himself bears on whether he might reasonably undertake the employment, which is the ultimate question under the paragraph, but the fact that he must do so does not debar him. It is a question of degree.*

*One thing which is abundantly clear is that para (b) does not restrict a member to the employment in which he is now engaged in his impaired state. That would be to mock the statutory purpose, which is to find an objective criterion for the assessment of the extent of the impairment. The criterion is a broad one which related to categories of employment and not to particular occupations. It is concerned with the range of occupations open to the person described, so that the effect of the disability may be measured against the opportunities that might have been open.*

*[P]ara (a) cannot be applied on a basis which excludes a pre-impairment capacity simply because a relevant skill has been lost over the period the illness prevented its use, or because a relevant qualification has lapsed or relevant experience has become dated during the same period. These things are an inevitable part of the process of diminishment of capacity through illness, and it is the result of that process which the sub-section is designed to measure. Nevertheless, if new skills, qualifications and experience have been acquired, they must be taken into account.*

## Broad range of employment kinds

In *Re Thomson and [the Authority]* (1987) 6 AAR 424, at 433-434, Davies J made clear:

*...an individual is likely to have open to him a wide range of employment opportunities of various kinds. The sub-section does not narrowly scrutinise one example of the kinds of employment open in the particular circumstances. For example, if a man can operate a backhoe, it would be wrong to think of backhoe operation as the kind of employment open to him - it is rather a specific example of a kind of employment which includes the operation of post-hole diggers and a host of other pieces of equipment." (emphasis in the original)*

## Conclusion

It therefore stands that the determination of the relevant employment kinds, in line with MSB Rule 22, is to be broad in nature and involves an assessment not only of a member's known qualifications and experience, but also of the general skills possessed by the member. In determining the member's general skills, in addition to skills obtained through employment or study, it is apparent that regard can be given to skills attained during the performance of recreational pursuits or other.

It further stands that in order to determine an employment kind suitable for a member, consideration must be given to the reasonable ability of the member to qualify for employment requiring retraining or certification, if not held by the member at the time of assessment. In this regard, consideration must be given to the extent of the retraining or certification. It is apparent that the impairment must be disregarded in determining the employment kinds relevant to a member.

## Considerations

- Our duty is not to simply match the jobs previously performed with that specific employment type, it is to consider the range of employment kinds opened by skills, talents and qualification;
- A member's in-service skills are transferrable to the civilian context, consider the skill-set required to perform the in duty roles as opposed to focusing on the job title. An online search often reveals a range of duties performed by members in certain roles;
- ANZSCO is not exhaustive, utilise other sources to identify kinds of civilian employment;

The SCT has considered how troop management transfers to the civilian market as follows:

*Management of Officers and Troops under a person's command clearly involves that person in inter alia planning, training, implementing, leading, directing and assessing those troops. It requires another person to have responsibility, implement disciplinary proceedings where necessary, as well as encourage and support those troops under his or her command. While the above activities occur in an ADF context, the Tribunal is satisfied that the skills and experience acquired are transferable to a civilian context.*

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## IDENTIFYING RETIRING IMPAIRMENTS

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A retiring impairment is one that at the time of discharge caused or was one of the causes of retirement. The mere existence of a condition is not grounds for consideration as a retiring impairment. The condition has to be significant enough, at the time of discharge, to be the cause, or one of the causes of retirement.

The listing of an impairment or condition within the DM42 (Invalidity Retirement from the Defence Force Medical Information) does not, by itself warrant inclusion as a retiring impairment. Appropriate diagnosis and evidence supporting the gravity of a condition are required for a determination to be made in respect to retiring impairments. The condition has to have caused the members invalidity discharge.

In Re [Briggs and Defence Force Retirement & Death Benefits Authority \[2007\] AATA 1310](#) the Tribunal adopted the following approach. It said: [45]

*It is then necessary to identify the physical or mental impairment which was the cause of that incapacity. In that regard, we are not limited to the diagnoses which were in fact made at or about the time of the Applicant's discharge, although we are required to have regard to them and give those diagnoses such weight as we consider appropriate....*

Statute requires us to correctly identify member's retiring impairments, you will need to consider if we have sufficient info to correctly identify the member's retiring impairment. At times, a medico-legal opinion may be warranted for diagnoses.

Members often have difficulty in understanding why DVA accept conditions for compensation purposes, yet for our purposes the same conditions are not able to be considered. A clear distinction between retiring impairments and other conditions may assist the member in recognising the differences.

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## DETERMINING THE PERCENTAGE OF INCAPACITY

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Class A - 60% or more;

Class B - 30% or more but less than 60%;

Class C - less than 30%

In accordance with MSB Rule 22 a percentage of incapacity for employment must be determined. In making such a determination regard is given to the following relevant case law and other:

### Overview of incapacity classification

In *Bos and Defence Forces Retirement and Death Benefits Authority (1977) 1 ALD 31* at 34:

*Any determination of a “percentage of total incapacity” requires a comparison between the incapacity of the person at the time of the determination and an entire loss of capacity for these are the components which yield the percentage...*

*“Civil employment” comprehends both an engagement to work, whether under a contract of service or for services, and the remuneration or benefits which are the tangible fruits of such an engagement.*

**“Incapacity”** in relation to civil employment thus comprehends and incapacity in relation to the engagement of the person to work and in relation to the earning of remuneration and other work associated benefits. Diminution in earning is not the only criterion for determining the percentage of that incapacity- indeed there may be cases where there is a substantial incapacity affecting the employability of a person entitled to a benefit which does not produce any, or any significant effect upon his earning. On the other hand, a relatively minor diminution in employability may entail a large loss of income, and occasion a substantial percentage incapacity. “Incapacity in relation to civil employment” is a wider concept than the “ability to earn income”. An “incapacity” may be said to be “in relation to” civil employment if the opportunities to engage in civil employment and derive benefits from that employment are restricted by reason of the incapacity.

If there be no incapacity of the relevant kind, a person’s talents- his education, training, skills, physical strength, personality or other attributes- open to him a range of employment opportunities. The range may cover opportunities for engaging in various kinds of employment, for earning various levels of remuneration and for deriving tangible and other benefits. These are the opportunities which are appropriate to the individual- his own range of employment opportunities estimated by reference to the talents which, but for the incapacity, he would have had. When he suffers an incapacity, some of these opportunities are denied to him. He suffers an incapacity in relation to civil employment. A comparison between the lost opportunities and the whole range of the individual’s employment opportunities provides the measure of this percentage incapacity.

An objective assessment may reveal that a significant physical disability, e.g. the amputation of a hand, is of much greater importance to a man whose talents limit him to labouring than to one whose talents qualify him for clerical work. The loss of any employment talent is of more importance to one whose talents are only marginally sufficient to secure employment in good economic conditions, for he will assuredly lose employment opportunities in time of adverse economic conditions. However, the determination of percentage of incapacity does not vary with the swing of the economic pendulum. Employment opportunities are estimated by reference to the talents which he had and the talents he would have had would give or would have given opportunities for employment in which those talents would be or would have been used. Once the extent of lost opportunities is assessed, the importance of that loss may be assessed and the percentage incapacity thereby determined.

## Quality and range of employment opportunities

In Davies J in Re Thomson, supra, at 433 it was discussed that the quality and range of employment was a factor to be considered in determining the member’s percentage of incapacity:

*Most employees hold one job at a time and many, particularly skilled tradesmen and professional persons, undertake one type of work throughout the whole of their working life, notwithstanding that they may have a capacity and even a qualification to undertake some other employment. The width of the range in employment opportunity is only one of the matters to be taken into account. The quality and nature of the range is another. Moreover, a particular impairment may indeed not greatly reduce the range of employment opportunities, but it may preclude the person from working more than part-time or intermittently. Thus, the*

*determination of a percentage of incapacity is not to be undertaken as if it were a mathematical calculation. Rather it is a value judgment of the extent to which, expressed in percentage terms, and taking into account only the matters set out in s 34(1A), a person has suffered incapacity to engage in civil employment brought about by a prescribed physical or mental impairment.*

## Mental incapacity

In a Superannuation Complaints Tribunal of Australia determination of 31 October 2001, the Tribunal discussed:

*The ability to undertake employment successfully involves significantly more than the mere physical ability to do the work. It involves skills that may be hidden to the observer, but without which an individual has great difficulty working. Skills such as concentration, motivation, initiative, persistence, goal-directed behaviour, impulse control, an ability to remember learned tasks, verbal fluency, capacity for abstract thinking, multiple tracking, conceptualisation and insight are all vital if work is to be successfully undertaken.*

## Monetary Earnings - Not considered

In Jones and [the Authority] (1982) 4 ALN N148 the Tribunal, in relation to the intended operation of the level of classification for the purposes of section 51 of the 1948 Act said:

*We understood him to say that the legislation under consideration here was not designed to provide compensation for injury; it is intended to provide assistance for persons invalidated out of the Defence Forces; that the classification class A provides 76 per cent of retirement salary for persons unable to obtain employment and that classification class B provides a supplement to the income of persons so classified. This may well be the result in many cases but s.53(1A) explicitly states that in determining the percentage of incapacity in relation to civil employment for the purposes of that section, the Authority shall have regard to the matters set out in that sub-section and to those matters only. The effect of the incapacity on earnings is not - since the inclusion of that sub-section in the Act - one of those matters.'*

## Summary

It therefore stands that, following a determination of the civilian employment kinds suitable for a member, the first consideration in determining the percentage of incapacity is to ascertain the opportunities within these employment kinds that is now lost to the member as a result of their impairment. Consideration must then be given to the quality, nature and importance of the opportunities lost in comparison to the opportunities that remain viable for the member.

Within a Report of Defence Force Retirement and Death Benefits Scheme Review Committee of June 1990, (Cole Report) the committee commented on the invalidity classifications as follows:

- **Class A:** “total, or near total, invalidity, unlikely to work in a job for which the member is reasonably qualified by education, training or experience”

- **Class B:** are “partial invalidity, some restrictions on working in own job, but capable of performing other types of employment outside of the ADF”
- **Class C:** “partial invalidity unfit for ADF employment but capable of performing own job outside the ADF”

In respect to **Class C** pensions, the following is noted within the explanatory memorandum:

*The classification of persons classified as Class C on exit from the Defence Force is not reviewable, because their medical condition does not appreciably affect their employability in the civil workforce and, in most cases, can work to normal retiring age.*

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## STATEMENT OF REASONS

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Rule 24 of the MSBS provides that we are to notify the member in writing of a rule 22 determination, this notification must include the reasons for the decision.

Written notification to a member of an administrative decision should contain sufficient information to enable a member to have a clear understanding of the findings of fact and the weight given to those facts in making the decision. Describing the reasoning process can also help decision-makers think more carefully about their task and be more careful in their decision-making.

Reasons should refer to the legislation/subordinate legislation and/or policy documents that authorised the decision.

The statement should identify the evidence that was considered relevant, credible and significant in relation to each material finding of fact. In drawing your conclusion you will need to make reference to the most pertinent pieces of evidence from the medical documents provided by defence, the member, DVA , medical assessments etc. You should include any evidence which you use to come to your decision, however you do not need to include ALL evidence (for example if there are 50 documents which refer to PTSD only one is required to demonstrate that this was diagnosed during service). Not all evidence is of equal value, remember that ultimately you are determining the loss of employment opportunity.

The actual reasons relied upon by the decision-maker at the time of making the decision must be stated. Every decision should be amenable to logical explanation. The statement must detail all steps in the reasoning process that led to the decision, linking the facts to the decision. The statement should enable a reader to understand exactly how the decision was reached; they should not have to guess at any gaps.

A statement of reasons should also refer to any submission or evidence by a member and considered in making the decision. If a submission from a member is not referred to in the statement there is a risk that a court will conclude it was a relevant matter that was not considered.

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## REFERRAL TO MILITARY PAYMENTS

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After Casework Services makes a decision under Rule 22, we are to notify the payments area through TRIM by saving a second copy of the decision, ensuring the Responsible Location is: MS&P Payments Internal Requests, Estimates & Non Benefits Group Tray.

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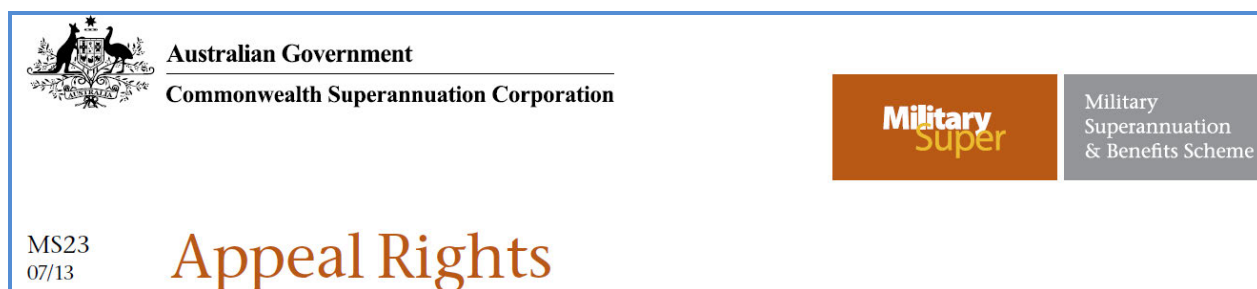
## ADVICE LETTER/APPEAL RIGHTS

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After a decision as to classification has been made, we are to advise the member by writing. Please note the form of covering/advice letter available in the Casework Services pack.

The member should be advised on their appeal rights on receiving their decision. The applicant is to be told about the time limit of 30 days in which to make a request for reconsideration, pursuant to Rule 76. Even if classified Class A, the member may be dissatisfied with an aspect of the decision - such as the kinds of civil employment considered suitable, or may wish to dispute the retirement impairment.

Click picture below to access CSC website:



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## MEDICAL EVIDENCE

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Within the ADF information received, note that our duty is to assess the member at the time of discharge. As such give weight to the more recent medical assessments and reports. Key documents from ADF include:

### DM42

- Details of the physical or mental impairment, which is the cause of the invalidity by reason of which the retiree is about to be discharged on medical grounds, are obtained from the information provided on the Form DM 42. Specifically from part B (1) of the form entitled 'Conditions for which the member is to be retired'.
- The purpose of the Form DM 042 is to assist the Initial Classification Delegate in determining the retiree's level of incapacity and corresponding benefit.
- Information regarding the retiree's skills, qualifications and experience are provided by the retiree on the M40/D40—'Application for Invalidity Benefits Form' and are not addressed as part of the Form DM 042.



## Medical Employment Classification (MEC) Advice

- Lists the 'specific employment or deployment restrictions' applicable to the Member.

## Workplace Disability Report (WDR)

- Sets out the Commanding Officer's (CO) position on how a member's medical condition impacts on their ability to perform the full duties of their military occupation and the additional duties required on operational deployment. The CO may also make recommendations in regards to options for future employment of the member, or on the suitability of a member for a critical skills waiver. The WDR, when considered with the Member's Health Statement completed by the member, will assist the MO conducting the CMECR or CAMECR to make an informed decision on how the member's medical condition impacts on the Australian Defence Force (ADF) workplace.
- This report assists the Case Officer to capture the duties performed as well as the member's ability to perform said duties.

When the specialty of a medical practitioner is unclear, we may reference the registers of practitioners here.

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## SAM REQUEST

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A request for further medical documentation may be made to the ADF via the Defence Single Access Mechanism - SAM.

In order to produce a request:

- Access the form here
- Following completion, convert the document to PDF
- Attach the Members authority (located within the M40 - Part N)
- Then attach the two PDF files to an outgoing email to: [defence.sam@defence.gov.au](mailto:defence.sam@defence.gov.au), BCC Trim
  - N.B. If two separate requests are required, send two individual requests.

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## DVA REQUEST

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If medical evidence is not sufficient to form a decision, we may access medical evidence from DVA.

In order to request same, first issue the below 'authority form' for the Member to complete and return:



PMC 2015 64 - DFRDB - MSBS - Form of Authority (to release information to DVA - ComSuper - Board).tr5

Then, issue an email of request to DVA, with the completed authority to: [foi.dva.gov.au](mailto:foi.dva.gov.au). Consider using the following form of request:

Dear FOI,

Regarding: Mr xxx

Date of birth: xxx

Address: xxx

Date of discharge from the Defence Force: xxx

Veterans' Affairs reference number: xxx

MCRS reference number: xxx

ComSuper reference number: xxx

Mr xxx, a Military Superannuation and Benefits Scheme (MSBS) member, has applied for ComSuper to classify his level of invalidity. Mr xx has advised that he has a file with your Department, and has provided an authority for ComSuper to obtain the documents in this file. This request is being made in accordance with the appropriate provisions, that is, either section 59 of the SRCA or section 14, Privacy Principle 11.1(b) of the Privacy Act 1988.

To assist with the review process, it would be appreciated if you could please provide all medical information that your department has on file for Mr xx.

Mr xx's written authority to obtain the information requested is attached. Thank you for your assistance.

Should you have any queries, please contact the writer via the below details.

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## CUSTOMERS/USERS

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CUSTOMER/USER	NATURE/EXTENT
Casework Services	To make an initial invalidity classification

## DOCUMENT AND FOI RELEASE ADMINISTRATION

### Approvals – Document content and FOI Release

Date	Version	Name	Position
February 2015	6	[REDACTED]	Manager, Casework Services
March 2014	5	[REDACTED]	Manager – MEAS
April 2012	4	[REDACTED]	Manager MIRR
March 2008	3	[REDACTED]	Manager MIRR
	2	[REDACTED]	Manager MIRR
	1		Administration & Relationship Manager, Military

### Revision History

Date	Version	Drafter's Name	Drafter's Position	Reason for Revision
February 2015	6.1	[REDACTED]	Knowledge Repository & Business Atlas	Stored related forms in Knowledge Repository and updated TRIM links
Feb 2015	6	[REDACTED]	Senior Case Officer	Annual review
March 2014	5	[REDACTED]	Case Officer	Review
April 2012	4	[REDACTED]	Initial Classification Officer	Update
March 2008	3	[REDACTED]	Procedure writer	Updated to reflect escalation process
August 2007	2	[REDACTED]	Unknown	Updated to remover references to HSA
March 2007	1	[REDACTED]	Procedure writer	created

### Document Owner

Date	Document Owner (i.e. section responsible for the procedure)

February 2015	Casework Services
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## FOI Document Release

**All documents** will be released unless a direction to exempt is provided by document owner. The list of exemptions is displaying in the table below. If you require advice regarding FOI or exemptions, please contact your scheme FOI/Legal team.

Exemption Number	Explanation	Only check if an Exemption applies
FOI- N/A	This document is not used to assist ComSuper to exercise its functions or powers in making decisions or recommendations that affect members of the public	
33	Documents affecting national security, defence or international relations	
34	Cabinet documents	
37	Documents affecting enforcement of law and protection of public safety	
38	Documents to which secrecy provisions of enactments apply	
42	Documents subject to legal professional privilege	
45	Documents containing material obtained in confidence	
46	Documents disclosure of which would be contempt of Parliament or contempt of court	
47	Documents disclosing trade secrets or commercially valuable information	
47A	Electoral rolls and related documents	
s 47B	Cause damage to Commonwealth-State relations *	
s 47C	Deliberative processes *	
s 47D	Substantial adverse effect on the financial or property interests of the Commonwealth *	
s 47E	Prejudice/substantial adverse effect on certain operations of agencies *	
s 47F	Unreasonable disclosure of personal information *	
s 47G	Unreasonably affect business *	
s 47H	Research (unreasonably expose agency/officer to disadvantage) *	
s 47J	Substantial adverse effect on the economy *	

\* Public interest conditional exemption