Deemed invalidity retirement guidelines

Purpose of these guidelines

The purpose of these guidelines is to provide guidance about the types of circumstances in which Commonwealth Superannuation Corporation (CSC) is likely to approve or reject an application for a person to be deemed, under subsection 7(2) of the *Superannuation Act 1976 (the Act)*, as having been retired on the ground of invalidity because of physical or mental incapacity.

Our decision-making process

We have genuine discretion about whether to approve or reject an application, having regard to all relevant circumstances. We will not necessarily approve an application in circumstances where the medical evidence supports the conclusion that the applicant was totally and permanently incapacitated at the time that he or she ceased employment. Whether we will approve such an application will depend on all of the circumstances of the case.

We will generally take the approach set out in these guidelines but may take a different approach with regard to relevant considerations in a specific case if appropriate to do so.

We consider all medical evidence provided by an applicant and determine the appropriate weight to give that evidence. We do not independently seek or request additional medical evidence.

If an application relates to a condition in respect of which the person is or was entitled to receive compensation under Commonwealth workers compensation legislation, we may seek the views of:

- any Commonwealth authority that is or has been liable to pay compensation in respect of the person, or
- in the case of members or former members of the Australian Defence Force, the Military Rehabilitation and Compensation Commission

about the application. In these circumstances we will take the views of the Commonwealth authority or the Military Rehabilitation and Compensation Commission into account in making a decision about the application.

Referral to an expert panel

We may refer an application to an expert Invalidity Assessment Panel to assist us with the application, if we consider that it is necessary to do so.

Most referrals occur for cases where there is doubt as to whether or not a person was Totally and Permanently (TPI) at the time of their exit from the APS.

If we do refer an application to an expert Invalidity Assessment Panel, we:

- may require the applicant to undergo medical examinations and provide information required by the panel
- will provide the panel with any medical or other evidence we have that is relevant to the application.

CSC — CSS Commonwealth Superannuation Scheme

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Primary grounds on which an application may be declined

A request for retrospective invalidity may be **declined** if one or more of the following grounds exists:

1. **Medical evidence**: The medical evidence provided by the applicant indicates that it is unlikely that he or she was totally and permanently incapacitated when he or she ceased CSS membership.
2. **Work history**: The applicant's work history after ceasing CSS membership indicates that it is unlikely the person was totally and permanently incapacitated when they ceased CSS membership.
3. **Delay**: We form the view that there has been an unreasonable delay by the applicant in applying to be treated as having been retired on the ground of invalidity.

Note: Where an applicant does not make an application until after they have ceased to be eligible for benefits under Commonwealth safety, rehabilitation and compensation legislation this will generally be regarded as an unreasonable delay.

4. **Likelihood of a benefit classification certificate**: The applicant had less than 20 years of contributory service in CSS when his or her employment ended, and the medical evidence indicates that:
   (a) the person suffered from an undisclosed medical condition upon becoming an eligible employee and would have been subject to a benefit classification certificate if that medical condition had been disclosed when membership commenced
   (b) the applicant's incapacity which was the ground of his or her retirement was caused, or was substantially contributed to, by that undisclosed medical condition.

Other considerations

We may also take the following considerations into account in determining whether to approve an application for a person to be treated as having been retired on the ground of invalidity:

5. **Awareness of the invalidity retirement process when employment ended**: The applicant was aware of the invalidity retirement process but did not pursue this option.
6. **Receipt of payment(s) upon ceasing employment**: The applicant received a payment (or payments) when his or her employment ended (e.g. a payment in respect of a redundancy payment, damages or an ex gratia payment)
   (a) the amount of the payment was significant
   (b) the applicant would not have received the payment if he or she had been retired on the ground of invalidity
   (c) the applicant has indicated that he or she would not be willing to repay an amount equal to the relevant payment if his or her application was approved (including by entering into a payment plan or having amounts deducted from future pension payments).
7. **Previous receipt of superannuation benefits**: The applicant received superannuation benefits upon ceasing employment and neither the applicant nor a rollover fund to which those benefits were paid (if applicable) are willing to repay the amount of the benefits to the Commonwealth.
8. **Conscious and intended choice of original benefit**:
   (a) the applicant's original mode of exit included the option to choose a pension but the applicant made a conscious and intended decision to choose to receive a lump sum
   (b) the applicant invested a lump sum benefit or used it to purchase a significant asset, and the applicant would not have been able to make the investment or purchase had he or she received a pension.

If one or more of these considerations exist, they will weigh against a finding that the applicant should be treated as having been retired on the grounds of invalidity but will not necessarily result in the application being rejected.

We may also take any other matters into account if we consider them to be relevant.

Information that must be provided with applications

Applicants must provide the following information (unless it is identified as being optional):

1. **Medical evidence**
2. **Statutory declaration**
3. **Personal earnings evidence**
4. **Written authorisation for us to obtain evidence**
5. **Employer statement (optional)**
6. **Rollover fund statement (if applicable).**

Each of these categories of information are described in further detail below.

Applicants **may** also choose to provide any other additional information that they consider is relevant to their application.

1. Medical evidence

Medical evidence provided by an applicant should be contemporaneous – i.e. medical evidence that indicates his or her medical situation when ceasing CSS membership.

Important: An application for retrospective invalidity will not be considered without supporting medical evidence.

2. Statutory declaration

An applicant must provide a **statutory declaration** in support of their application. The statutory declaration should address any matters that are relevant to the considerations set out in guidelines 1–8 on this page, and must include an explanation of the following:

- the circumstances surrounding the cessation of the applicant's relevant employment, including an explanation why the applicant did not seek to be retired on the grounds of invalidity when his or her employment ceased
- whether the applicant received any payments (e.g. a payment in respect of damages, a redundancy payment, an ex gratia payment or a superannuation payment) when his or her employment ceased and, if so, the amount of the payments, the use to which such payments were put, and whether the applicant would be willing to repay the relevant payments if the application was approved the reasons for any delay in applying for a retrospective invalidity benefit
- whether the applicant has been employed (including if he or she has been self–employed) since his or her relevant employment ended. If so, the applicant must provide a list of all his or her periods of employment, with dates of duration and descriptions of his or her duties
- if the applicant has not been employed since his or her relevant employment ended, an explanation of his or her source of income (for example, receipt of compensation, social services benefits, war pensions etc).

3. Evidence of personal earnings since ceasing relevant employment

CSS invalidity pensioners are subject to regular reviews of their personal earnings. The amount of their personal earnings can affect the rate of invalidity pension that an invalidity pensioner is entitled to receive.

Personal earnings in this context means **salary, wages, fees or other amounts** received for services rendered or work performed. Personal earnings specifically include:

- remuneration received for being director of a company
- commission received for canvassing, collecting or similar activities.

An applicant must provide evidence of the amount and type of all of his or her personal earnings since ceasing to be a contributor to CSS.

In particular, an applicant should provide:

- copies of all notices of assessment issued by the Commissioner of Taxation since he or she ceased employment (if an applicant does not have copies of relevant notices of assessment he or she can request copies from the Australian Taxation Office)
- any other types of evidence the applicant has that may be relevant, such as pay slips and bank statements, etc.

4. Authorisations

Applicants must provide all relevant authorisations to enable evidence to be obtained from medical practitioners, their former employer, and any other Government agencies that pay income–support or compensation payments.

5. Employer statement (optional)

An applicant may also wish to organise a statement from his or her former employer concerning the circumstances in which he or she ceased employment. The applicant should arrange for the statement to be sent directly to us by the employer, and advise us that they have done this when they lodge their application.

6. Statement from the rollover fund

If all or part of the applicant's previous CSS benefit was rolled over to another superannuation scheme or a rollover fund, the applicant must provide a statement from the rollover fund as to whether it is prepared to return the previous benefit to CSS should the application for retrospective invalidity be approved.

Who will be notified about an application?

Relevant employers will be notified

An applicant's former employer will be notified when an application is made.

Applicants will be notified about the outcome

Each applicant will be advised in writing of the outcome of an application.

If an application is approved, the applicant will start to receive his or her ongoing pension.

Other Commonwealth income–support agencies may be notified

When an application is made, Comcare and other Commonwealth income–support agencies may be notified about the application and asked to provide medical and/or benefit payment information.

If an application is successful, Comcare and other Commonwealth income–support agencies **will be notified** of the amount payable, including the arrears payable for past periods.

Lodge application

Applications and supporting documentation should be emailed to **formsandapplications@csc.gov.au**

For more information visit csc.gov.au

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