



# Deemed invalidity retirement guidelines

## Purpose of these guidelines

Commonwealth Superannuation Corporation (CSC) provides scheme administration services to members of Public Sector Superannuation Scheme (PSS) under legislative mandate. The purpose of these guidelines is to set out how we will consider an application for 'deemed invalidity' under the PSS Rules.\*

We are the relevant decision-maker under the PSS Rules.

\* PSS operates under the *Superannuation Act 1990*, PSS Trust Deed and Rules. The PSS Rules, which are a Schedule to the Trust Deed, can be viewed at [comlaw.gov.au/Series/F2005B01198](http://comlaw.gov.au/Series/F2005B01198)

## What is deemed invalidity retirement?

**Deemed invalidity retirement** occurs when we exercise discretion under the PSS Rules to treat an applicant as having ceased membership on invalidity retirement, on the ground that we are satisfied that they were Totally and Permanently Incapacitated (TPI) on their last day of PSS membership. This is sometimes also referred to as **retrospective invalidity**.

## An applicant must be a preserved benefit member

Under the PSS Rules a person may only make an application for deemed invalidity retirement where they are:

- a **preserved benefit member**
- at the date of ceasing membership:
  - not a Limited Benefits Member (LBM)
  - less than 60 years of age.

Under the PSS Rules, a **preserved benefit member** is a former member who has a preserved benefit compulsorily or voluntarily retained in PSS for payment under Part 8 of the PSS Trust Deed.

## Important

Anyone who is not a preserved benefit member and wishes to apply for deemed invalidity retirement must first apply to change their original benefit choice (ie to preserve their benefit). The request is subject to approval and, if approved, the person would need to repay any PSS benefit they had previously received.

The PSS Rules generally impose a three month time limit on changing a benefit choice. However, we have the discretion to accept an application after that time limit has expired. Not all requests after the time limit has expired are accepted.

Further, even if you change your benefit option choice to preserve your benefit, you will not necessarily be approved for deemed invalidity retirement.

If you want to change your benefit option choice to a preserved benefit, please contact us for more information.



Public Sector  
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## Our decision-making process

When we receive an application for deemed invalidity retirement, we may approve that application if, after considering:

- the report or reports of one or more medical practitioners submitted with the request
- any other matters we consider relevant
- and are satisfied there is no reasonable doubt that the preserved benefit member was TPI on their last day of PSS membership.

There is 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 there is no reasonable doubt that the applicant was TPI on their last day of PSS membership. Whether the application is approved will depend on all of the circumstances of the case.

We will generally take the approach set out in these guidelines, but may choose to take a different approach in a specific case if we consider that is appropriate, having regard to relevant considerations.

We may have regard to any case law that we consider to be relevant; including case law relating to section 7(2) of the Superannuation Act 1976 (that provision confers a similar discretion in relation to the Commonwealth Superannuation Scheme).

We will consider any medical evidence provided to us by an applicant, and determine the weight that should be given to that evidence. Where we form the view that there is a reasonable doubt that an applicant was TPI on their last day of membership, we will refer the applicant to an approved practitioner for a further medical examination.

## Primary grounds on which an application may be declined

An application for deemed invalidity retirement may be declined if one or more of the following grounds exist:

1. **Medical evidence:** The medical evidence provided by the applicant indicates that it is unlikely that they were TPI on their last day of PSS membership.
2. **Work history:** The applicant's work history after ceasing PSS membership indicates that it is unlikely that they were TPI when they ceased PSS 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. **Undisclosed medical condition upon membership:** The medical evidence indicates that:
  - (a) the person failed to give information, or gave false or misleading information in connection with a medical questionnaire, such as the **Confidential Medical and Personal Statement (CMAPS)** form or medical examination, upon becoming a member that would have resulted in the member being classed as a Limited Benefits Member (LBM) under the PSS Rules
  - (b) the applicant ceased PSS membership within the period that the person would have been a LBM under the PSS Rules (generally three years).

## 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 invalidity retirement process when employment ended:**  
The applicant was aware of the invalidity retirement process but did not pursue this option.
6. **Circumstances surrounding cessation:** The reasons why the applicant was not retired from their employment on the grounds of invalidity. Information and documentation provided by the applicant's former employer may be considered in this context.
7. **Receipt of a payment(s) from the employer upon ceasing employment:**  
The applicant received a payment (or payments) when his or her employment ended (eg a payment in respect of damages, a redundancy payment or an ex gratia payment) and the applicant would not have received the payment if he or she had been retired on the ground of invalidity.
8. **Other relevant matters:** Any other matters that are relevant may also be taken into account. These considerations may weigh against a finding that the applicant should be treated as having retired on the ground of invalidity but will not necessarily result in the application being rejected.

## What if there is reasonable doubt?

If we consider there is reasonable doubt that a preserved benefit member was TPI when their employment ended, we will:

- require the applicant to undergo a medical examination by a Commonwealth Medical Officer or other Approved Medical Practitioner (AMP)
- refer the question of whether the member is TPI and the report of the medical examination to an expert Assessment Panel.

We will also provide any other information to the Assessment Panel that we consider relevant.

We will take the recommendation of the Assessment Panel into account when making our decision, on whether or not to regard the preserved benefit member as having retired on invalidity grounds as at the date of ceasing membership. We may also have regard to any of the considerations set out above in making our decision.

## Information that must be provided with applications

Applicants for deemed invalidity retirement 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).**

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.

### Important

An application for deemed invalidity will not be considered without supporting contemporaneous medical evidence.

## 1. Medical Evidence

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

## 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 above, and must include an explanation of the following:

- the circumstances surrounding the cessation of the applicant's PSS membership, 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 (eg a payment in respect of damages, a redundancy payment, an ex gratia payment or a superannuation payment) when his or her employment ceased
- the reasons for any delay in applying for a deemed invalidity retirement benefit.
- if the applicant has been employed (including if he or she has been self-employed or performed any unpaid work) since ceasing PSS membership, the applicant must provide a list of all periods of employment, including dates, durations, and descriptions of his or her duties
- if the applicant has not been employed since ceasing PSS membership, an explanation of his or her source of income (eg receipt of compensation, social services benefits, war pensions etc).

## 3. Evidence of personal earnings since ceasing PSS membership

PSS 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 also include, but are not limited to:

- 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 PSS membership.

In particular, an applicant should provide:

- copies of all notices of assessment issued by the Commissioner of Taxation since he or she ceased PSS membership (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.

### Who will be notified about an application?

#### Former employers will be notified when an application is made

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

The employer may be asked to comment on the application and provide further information about the circumstances in which the applicant ceased employment, including information about why the applicant was not retired on invalidity grounds.

The employer may also be asked to provide details of any lump sums paid to the applicant on ceasing employment – eg a redundancy payment or any other severance payment.

#### Other Commonwealth income–support agencies may be notified when an application is made

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.

#### Applicants and their former employers will be notified

Each applicant and his or her employer will be advised in writing of the outcome of an application. The applicant and the employer will be provided with a statement of reasons for the decision and a copy of the recommendation from the Assessment Panel (if any).

Applicants should note that if their application is successful, their former employer may require the repayment of previous employment benefits they received when their employment ended (eg a redundancy lump sum payment). Applicants should consult their former employer about whether they would be required to repay previous employment benefits.

### Important

If an application is approved, the member will receive a benefit application form accompanied by a benefit estimate outlining the options available to them. Once we receive the completed benefit application form, the payment will be processed in accordance with the member's instructions.

Applicants should note that the defined benefit will be reduced by any amount(s) already paid before it is converted to pension (see rule 8.5.3 of the PSS Rules).

### Important

Any benefit that becomes payable is retrospective – that is, the benefit is backdated to your original date of exit. An applicant's entitlement to previous payments under Commonwealth legislation (eg safety, rehabilitation and compensation legislation) may be affected, which may result in the applicant owing a debt to the Commonwealth or a Commonwealth agency in respect of previous payments he or she has received.

## Other Commonwealth income—support agencies will be notified

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

### How can I get more information?



**EMAIL** [members@pss.gov.au](mailto:members@pss.gov.au)

**PHONE** 1300 000 377

**FAX** (02) 6275 7010

**MAIL** PSS  
GPO Box 2252  
Canberra ACT 2601

**WEB** [csc.gov.au](http://csc.gov.au)



**Email**  
[members@pss.gov.au](mailto:members@pss.gov.au)



**Phone**  
1300 000 377



**Financial Advice**  
1300 277 777



**Post**  
PSS  
GPO Box 2252  
Canberra ACT 2601



**Web**  
[csc.gov.au](http://csc.gov.au)



**Overseas Callers**  
+61 6275 7000



**Fax**  
(02) 6275 7010