



## The Hon Darren Chester MP

Minister for Veterans' Affairs

Minister for Defence Personnel

Minister Assisting the Prime Minister for the Centenary of ANZAC

MC18-002540

- 3 DEC 2018

Mr James Brown  
President  
RSL NSW  
ANZAC House  
245 Castlereagh Street  
SYDNEY NSW 2000

Dear Mr *James* Brown

Thank you for your correspondence of 2 August 2018 concerning motions resolved by delegates, at the NSW State Congress of the Returned and Services League of Australia (RSL).

I note the motions on a range of matters from the State Congress that you have forwarded. I have asked the Department of Veterans' Affairs and the Department of Defence to fully consider these proposals and respond as appropriate. I have enclosed these responses for your information.

Thank you for taking the time to write.

Yours sincerely

**DARREN CHESTER**

Encl

**Motion:**

*That RSL NSW make representation to the Australian Government that there is a compelling need for the Commonwealth Superannuation Corporation to answer whether, according to law, an invalidity payment paid under either Military Superannuation and Benefits (MSB) Scheme or DFRDB is a pension in accordance with superannuation industry (supervision) regulations 1994 1.06(1)(a)(i) and if so which standard of superannuation industry (supervision) regulations 1994 1.06 sub regulation (9A) are they relying on in support of their position.*

**Response:**

The Government greatly values the service of all military personnel and acknowledges the dedication and sacrifices they and their families make every day in order to keep our nation safe.

As this motion raises issues concerning the taxation of military invalidity benefits paid to former military personnel, advice was requested from the Commissioner of Taxation (the Commissioner).

The Commissioner has advised that the Australian Taxation Office received a number of private ruling requests from individuals in receipt of invalidity payments paid from the MSB Scheme or the DFRDB Scheme.

These ruling requests were in relation to the classification of the income streams and in particular, the rulings asked whether the income streams were considered to be superannuation benefits.

The invalidity payments are made because the recipients are, or have been, fund members. Each individual's entitlement to the benefits arises because they were a fund member who retired due to invalidity. Therefore under the law the Commissioner considers the invalidity payments to be superannuation income stream benefits.

Specifically, these invalidity payments are a pension that are paid in accordance with regulation 1.06(1)(a)(i) and regulation 1.06(9A)(b)(i) of the Superannuation Industry (Supervision) Regulations 1994 (the Regulations). It may also be paid in accordance with regulation 1.06(9A)(iii) and 1.06(2) of the Regulations as a lifetime pension, depending on the age of the member and the differing medical review rules that may apply under the schemes' rules.

It has been a longstanding feature of the Australian superannuation system that military personnel and military invalidity pensioners are subject to tax on their superannuation income streams.

The taxation treatment applying to invalidity benefits for former military personnel is also consistent with how the law applies to the treatment of superannuation invalidity benefits of non-military personnel.