



Australian Government

Defence

Community Affairs Legislation Committee
Inquiry into the Social Services and Other Legislation
Amendment (Military Invalidation Payments Means
Testing) Bill 2024

Department of Defence

Submission

March 2024

Defence welcomes the opportunity to provide a submission to the inquiry into the Social Services and Other Legislation Amendment (Military Invalidation Payments Means Testing) Bill 2024 (the Bill).

In December 2020, the Full Federal Court (*Commissioner of Taxation v Douglas*) (the *Douglas* decision) found that military invalidity superannuation pensions that commenced on or after 20 September 2007 under the Defence Force Retirement and Death Benefit (DFRDB) Scheme and Military Superannuation Benefits Scheme (MSBS) are to be taxed as superannuation lump sums instead of superannuation income stream benefits.

The Government has committed to ensuring no veteran affected by the Court's decision will be worse off, whilst also maintaining benefits some veterans will have gained from the Court's decision. As such, the Treasury drafted legislation to achieve this outcome, which passed the Senate and received Royal Assent on 23 June 2023. The *Treasury Laws Amendment (2022 Measure No. 4) Act 2023* (the Act) is now in force.

Defence has reviewed the Social Services and Other Legislation Amendment (Military Invalidation Payment Means Testing) Bill 2024 and the accompanying Explanatory Memorandum and has noted the following:

- The Bill 2024 responds to the *Douglas* decision, by amending the *Social Security Act 1991* and *Veterans' Entitlements Act 1986* to provide a clear legal basis for the assessment of income for military invalidity pensions affected by the *Douglas* decision.
- The Bill introduces a new classification of 'military invalidity pension income stream' in the Social Security Act and Veterans' Entitlements Act, to include the military invalidity payments affected by the *Douglas* decision.
- Defence notes there is a separate Bill currently undergoing stakeholder consultation entitled the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024.
- The new provisions are designed to produce the same assessment of income as the historical assessments of the affected invalidity payments, and ensure the invalidity payments continue to be treated as exempt from the assets test. These arrangements are intended to ensure veterans and/or their partners receive a level of support consistent with the intent of legislation and policy before the unexpected findings of the *Douglas* decision.
- The Bill is advantageous to those veterans that receive income support and have been affected by the *Douglas* decision. The amendments will ensure the relevant invalidity payments can be means tested for income support in a way that delivers the same outcomes for those veterans affected by the *Douglas* decision as the pre-*Douglas* arrangements.
- Veterans and their partners will continue to receive income support at a rate consistent with entitlements for other income support recipients, including the other DFRDB scheme and MSBS veterans that are not affected by the *Douglas* decision, who receive retirement defined benefit income streams under existing arrangements.
- Without the new provisions, veterans affected by the *Douglas* decision that also receive income support would be worse off. The new provisions are designed to produce the same assessment of income as the historical assessments of the affected invalidity payments, and to ensure the invalidity payments continue to be treated as exempt from the assets test. These arrangements are intended to ensure veterans and/or their partners receive a level of support that is consistent with the intent of legislation and policy before the findings of the *Douglas* decision.

Noting Defence is not an expert in Social Security legislation, Defence makes no comment on the technical operation of the measures. However, Defence is supportive of the Bill. It appears to take a sensible and

practical approach, with no veteran being worse off. The Bill ensures all DFRDB and MSBS veterans are treated in the same, advantageous way for income support purposes, whether they have been affected by the *Douglas* decision or not.