

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

“If the law should be in danger of doing injustice, then equity should be called in to remedy it.”
Lord Denning - Re Vandervell's Trusts (No 2)

Peter Thornton
Em: peterthornton@grapevine.net.au
Mob: [REDACTED]
Bradley Campbell
Em: bradcampbell76@gmail.com
Mob: [REDACTED]

6 December 2022

Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600 (Transmittal: economics.sen@aph.gov.au)

For Information:

Senators Lambie and Shoebridge
TPI Federation – Ms Patricia McCabe
RSL National – MAJGEN Aziz “Greg” Melick
Australian Peacekeepers & Peacemakers Association – Mr Ian Lindgren
Australian Council of Public Sector Retiree Organisations – Mr John Pauley
Social Media Channels - For the benefit of all affected invalid Veterans / Commonwealth Officers

Dear Senate Economics Committee,

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

References:

- A. Objection Statement & Supporting Documents – Peter Thornton – dated 22 Jun 2021
- B. Appeal of ATO Objection (18 Oct 2021), dated 16 December 2021
- C. ATO Decision (Non-Approval) of Objection – dated 18 Oct 2021
- D. Initial Objection Lodgement – The Applicant, dated 27 Apr 2020
- E. Amended Objection Lodgement – The Applicant, dated 26 Nov 2020
- F. Commissioner of Taxation v Douglas [2020] FCAFC 220, dated 4 Dec 2020
- G. Respondent Submission – ‘Statement of Facts And Contentions Of The Respondent’, dated 3 Nov 2022
- H. Respondent Submission – ‘Supplementary T-Documents’, dated 3 Nov 2022

INTRODUCTION & EXECUTIVE SUMMARY

1. We refer to the Subject above and wish to tender this detailed submission in direct response to Schedule 9 / Chapter 9 of the Bill that is now under review by the Committee/Senate.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

- 2 At the outset, the Authors request that the Committee immediately recommend to the President of the Senate and the Senate as a whole to “**Disallow**” Schedule 9 of the [TREASURY LAWS AMENDMENT \(2022 Measures No. 4\) BILL 2022](#). The key reasons for this request are as follows:
- a. The matter is once again being adjudicated by a Judicial Power. The Government’s attempt to “sneakily”¹ introduce legislation implies that it knows it can’t win in Court, so through a process of political and bureaucratic skulduggery and subterfuge it is desperately trying to change the law retrospectively in order to cover up what is arguably the largest error in public administration (in liability terms) that Australia has ever witnessed. In doing so, it serves to foist an inequitable detriment in perpetuity upon approximately 32,000 invalid retirees, including that of approximately 4,000 Veterans, thereby they are unlawfully putting Veterans DEAD LAST.² It also serves to deny the rights of all those who currently contribute to such schemes.
 - b. As detailed at Annex E to this submission, and contrary to the Government’s compliance statement, the passage of Schedule 9 of the Bill will breach the Human Rights of all those concerned, not only current retirees, but all those who contribute to Commonwealth superannuation schemes, where, without exception, invalidity benefits are subject to review, and as such, these benefits can and have been varied, suspended or cancelled at the sole discretion of CSC.
 - c. Claims that it was not the “original policy intent”, or that changes in 2007 created an anomaly is obtuse and disingenuous, as such claims are not at all supported by any modicum of detailed research; research which clearly shows that such lawful provisions (not correctly administered) existed long before changes were made in 2007. Indeed, some of the evidence provided at Annex B clearly shows in part that these provisions find their origins back in the early to mid-1970s.
 - d. The identified detriment to recipients when treated as a Superannuation Lump sum, only affects a very small number of the cohort coming under the Douglas decision. Detriment is also ameliorated in part by Legislative Instrument <https://www.legislation.gov.au/Details/F2022L01347> . It is important to state here (as previously stated in various pieces of correspondence – example at Annex E) that any such detriment can be easily extinguished by merely amending the law to allow the 10% tax-offset for recipients age 60+ to be equally applied to the taxable component for recipients in receipt of a superannuation lump sum. It is that simple, but the Government is clearly leveraging the detriment of a small number of invalidity recipients as a means to progress its broader nefarious agenda that serves to hurt tens of thousands. There are

¹ In his 2nd reading speech, Shadow Treasurer – Mr Angus Taylor MP – states: “*But to insert controversial items in them – bury them deep in them – in an attempt to sneak them through is not something that is going to be helpful to anybody in the future*”

² The Government’s actions are at direct contravention of the principles espoused in *Australian Veterans’ Recognition (Putting Veterans and Their Families First) Act 2019*

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

concerns surrounding various caps³, however this would be a simple amendment of the legislation to exclude these benefits from such caps, whose design was not intended to encapsulate such payments.

- e. The Government claims that it consulted widely on the current Bill before Parliament, titled: '*Taxation of military superannuation benefits: Reversing the Douglas decision*'. This again is highly misleading, because no consultation was undertaken for the specific Bill currently before parliament. The previous draft Bill that was consulted on was titled: '*Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Taxation of military superannuation benefits*'. That consultation happened in a non-open/transparent way where Treasury called for submissions over a two week period from the 25th of July 2022, but where Treasury explicitly stated on its website that submissions would not be published. Like many, the Authors operating under their own diminished capacities did not bother to contribute to such nebulous processes as experience has taught that such process only serves to allow the bureaucracy to change language and concepts for their own nefarious purposes.
3. With the foregoing in mind, the Authors respectfully request that the Committee refer the nature of this matter to the Privileges Committee, because it is clear to all concerned that the Assistant Treasurer and DVA Minister, and their associated functionaries, have clearly and purposely tried to deceive and mislead the Parliament, and therefore, they have not abided by the [Ministerial Code of Conduct](#). 32,000 invalid retirees (including an estimated 10,000 Veterans), not explicitly covered by the Douglas ruling, will be permanently and detrimentally affected by this proposed legislation, and the responsible Ministers are knowingly complicit in this deceptive harm. Likewise, senior functionaries of the Treasury and Commissioner of Taxation should be referred to the Australian Public Service Commissioner (APSC) for breaches in the APS Code of Conduct and Values.
4. Finally, as previously offered, the Authors, with Representative Organisations in support also, stand ready to offer detailed in-person briefings to the Senate Economics Committee, and/or other interested parties, so as to reveal the detailed truth of such matters. The following sections of this submission serve to inform and highlight the history and considerable contentions that exist at law.⁴

³ Example of one cap is the 'Untaxed Plan Cap'.

⁴ This submission has been repurposed from a confidential submission made to the Administrative Appeals Tribunal – dated the 25 Nov 2022. Given that this submission has been repurposed, then the Author apologises in advance for any disjointedness that might occur in the commentary provided.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

GENERAL

SECTION 1 – OVERVIEW

5. The legal axiom espoused by Lord Denning in the epigraph above rings true for approximately 32,000 invalidity retirees in Appeals that are currently before the Administrative Appeals Tribunal (Tribunal). As a consequence of the Douglas Federal Court case (Douglas) as per Ref F., the matter now before the Tribunal urgently seeks a remedy for equity in the legal interpretation of the law, not solely for the benefit of Author Peter Thornton alone, but critically, for the benefit of all other invalidity recipients also⁵, and of equal importance, those who currently contribute to Commonwealth superannuation schemes: as administered by the Commonwealth Superannuation Corporation (CSC), and as overlooked by the Commissioner of Taxation (Commissioner) as the responsible Regulator.⁶
6. The Authors and many other affected constituents contend without exception that invalidity benefits provided by the CSC for all Commonwealth schemes under administration are not ‘Lifetime Pensions’ as tested and defined in law, because the rules of all funds pertaining to the provision of invalidity benefits subject such benefits to review, and as such, invalidity benefits as distinct from other standard non-reviewable retirement benefits, can be varied, suspended, or cancelled at the sole discretion of the CSC.⁷
7. The Authors reject the unfounded notion of the Commissioner of Taxation (Commissioner) that the outcome for Plaintiffs of Douglas with a pre-20 Sep 2007 invalidity benefit has any bearing on cases now before the Tribunal, or indeed, any similar cases for approximately 32,000 other affected invalidity recipients also⁸. Why? Well without wishing to be critical, which the Authors are not, Plaintiffs at Ref F., incorrectly agreed that they were in receipt of a pension, which the Authors firmly contend with authority, that they are not. Why?, because outside of agreeing to a pension, two of the Plaintiffs with a pre-20 Sep 2007 entitlement failed to alert the Tribunal / Court to the correct sections of law that pertain specifically to them (i.e., specifically - the *Superannuation (Industry) Supervision Regulation* (SISR) 1.06 (1A), and by extension, SISR1.06(2)). These missteps not only prejudiced the outcome for at least one of the Plaintiffs concerned, but they inadvertently and indirectly affected all other recipients with a pre-20 Sep 2007 entitlement to invalidity benefits also, including that of Author Peter Thornton.

⁵ This estimate is derived from research undertaken by the Applicant from CSC’s Annual Reports to Parliament, where the 30th of June 2007 acts as a close approximation to the 20 September 2007, an irrelevant date in law that under considerable dispute, there were approximately 26,600 invalidity recipients pre-20 September 2007, and approximately 4,860 post 20 September 2007.

⁶ It’s important to highlight here that it is CSC who is solely responsible for compliance with the OSSA & SISA, as detailed at Annex D.

⁷ The schemes concerned are: 1922 Scheme (1922). Defence Force Retirement Benefits (DFRB) scheme 1948, Defence Force Retirements & Death Benefits (DFRDB) scheme 1973, Commonwealth Superannuation Scheme (CSS) 1976. Military Superannuation Benefits Scheme (MSBS) 1991, and Public Sector Superannuation (PSS) Scheme 1992, Public Sector Superannuation Accumulation Phase (PSSap) 2005, and Australian Defence Force Cover (ADF Cover) 2014.

⁸ Please see Annex C for a breakdown of recipient numbers per scheme concerned.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

8. The Authors further contend that the court was not alerted to the dichotomy created between superannuation lump sums and superannuation income streams at the outset of the drafting and passing of the Superannuation Industry Supervision Act 1993. This dichotomy was not created in 2007 with the simplification of Superannuation laws. On the contrary, very strict requirements existed in the regulations at the outset for a benefit to be considered and more so compliant under the aforementioned ACT. The notion that the ordinary meaning of the word “pension” was the original intent of the legislation, is obtuse given the very explicit requirements as set out in the SISR, and the Occupational Superannuation Standards Act 1987 (OSSA) and its associated Regulations (OSSR) that preceded it.⁹
9. Due to these missteps and other technicalities, proponents of Douglas only won the day specifically for approximately 12,000+ Veterans, who were, or will be, medically retired on or after the 20 September 2007. However, as can be seen at Annex C to this submission, data extracted from Annual Reports to Parliament clearly illustrate that the Douglas outcome will leave approximately 32,000 or so other invalid retired Pre and Post 2007 Military and Commonwealth Officers in an inequitable legal quandary, thereby requiring further resumptive legal adjudication, which is now in train for several Applicants, including that of Author Peter Thornton.
10. Documents submitted to the Tribunal, together with the information contained herein, collectively expose the long-term failure of the CSC and the Commissioner in providing the correct interpretation and classification of an invalidity benefit and the subsequent error in the tax withholding and/or the equitable tax treatment pertaining to superannuation invalidity benefits, in accordance with the *Superannuation Industry (Supervision) Act 1993* (SISA)¹⁰ and the *Income Tax Administration Act 1997* (ITAA). The Author Peter Thornton maintains that his medical retirement from the Commonwealth, as supported by at least two (2) complying doctor’s certificates, should have afforded him not only the ‘Superannuation Lump Sum’ classification under the *Public Sector Superannuation Act 1990* (PSS), but the additional classification as a “Disability Superannuation Benefit” (DSB) recipient, thereby conferring compensatory “superannuation lump sum” tax-free payments, as per the modification for disability found at s307-145 of the ITAA.¹¹
11. Whilst there is some variation depending on the scheme concerned, such invalidity reviews are a policy feature of all schemes under contention also, as can be seen in part at the Appendices to Annex B of this submission. As can be seen in Appendix 2 to Annex B, the contemporaneous definition of a ‘Disability

⁹ Please see the definitional test of a “pension”, as per Sub-Section 3(1) of the Occupational Superannuation Standards Act 1987, as repeated in the Regulations, as captured in part [here](#).

¹⁰ Without exception, CSC failed to classify invalidity/disability benefits as ‘superannuation lump sums’. Where applicable, CSC also failed to further classify an invalid with two complying doctors certificates as a ‘Disability Superannuation Benefit’ recipient. As such, CSC failed to apply the modification at ITAA s307-145 for all post 1 July 2007 recipients, or s307-150 for all recipients pre-1 July 2007.

¹¹ It is important to note here that the modification at ITAA s307-150 operates for all invalidity recipients with an invalidity benefit conferred prior to 1 Jul 2007.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

Superannuation Benefit’ (DSB) from the “Definitions” of the ITAA97 seemingly finds its definitional origins in not least that of the Commonwealth Superannuation Scheme Act 1976 (i.e., the definition of a Commonwealth Superannuation Scheme (CSS) recipient who is classified as Totally and Permanently Incapacitated is the same definition for a contemporary DSB recipient), where the intent of such provisions was for insurance/compensation purposes as seen at Annex B for DFRDB scheme recipients, as just one example.

12. In addition to the detail provided to the Tribunal at Ref A., the Authors will attempt here to appraise the Senate Committee of how an injustice now emerges and prevails, where the definition of a “Pension” in the SISA, relating to Pre 20 Sep 2007 validity recipients; recipients who may or may not qualify for a “disability superannuation benefit”, does not comply with the rules of the sub-regulations of the *Superannuation Industry (Supervision) Regulations 1994* (SISR), pertaining to a “Pension” according to the respective SISR Regulation; specifically Sub-Reg:1.06(1A) and/or a “Lifetime Pension” as specified at s294-130 of the ITAA, and relevantly SISR 1.06(2).
13. When properly referenced and read, which it was not, then Sub-Regulation 1.06(1A) is critically relevant to this case as it is consistent with the Tribunal / Court’s investigation and part-favourable judgement at Ref F., (i.e., that DSB benefits provided were distinct to that of normal invalidity, being superannuation lump sums that contain a tax-free compensatory element, pertaining to all post 20 Sep 2007 invalidity recipients). As will be expanded upon later, Sub-Reg 1.06(1A) clearly negates the definition at ITAR 995-1.01(1)(b)(i) & (b)(ii) as being a relevant consideration, as does the more relevant sections pertaining to defined benefit interests, because the explicit standard as set out in SISR1.06(1A) makes the preceding regulation, and the date specified, totally irrelevant.
14. With the foregoing in mind, the Authors will attempt to present relevant excerpts from law that clearly illustrate that invalidity benefits originating from “defined benefit interests” are not “superannuation income stream benefits” as the Commissioner contends at Para 14 of Ref F, but instead, “superannuation lump sums” that the Commissioner agrees at Para 15 of Ref F, is the correct position to take if benefits conferred are not income streams.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

'... being "broken by age and war" there must now be added for members and former members of the ADF the prospect of encounter with how we as a Nation State have come to regulate and tax the bargain struck on enlistment.'

Justice Logan – AAT Douglas Case - March 2020

SECTION 2 –HISTORICAL PERSPECTIVES & THE INCONVENIENT TRUTH

15. By way of some background, Fig 1. below was provided by Author Peter Thornton to the 2017 Senate Inquiry investigating Veteran Suicide; modelling CSC data extracted from the Annual Reports to Parliament. It illustrates in part a long history of punitive reviews that were undertaken (lawfully) by the CSC, but where consequential benefit reductions/cancellations occurred for many recipients.

Historical Perspective That Provides Critical Context

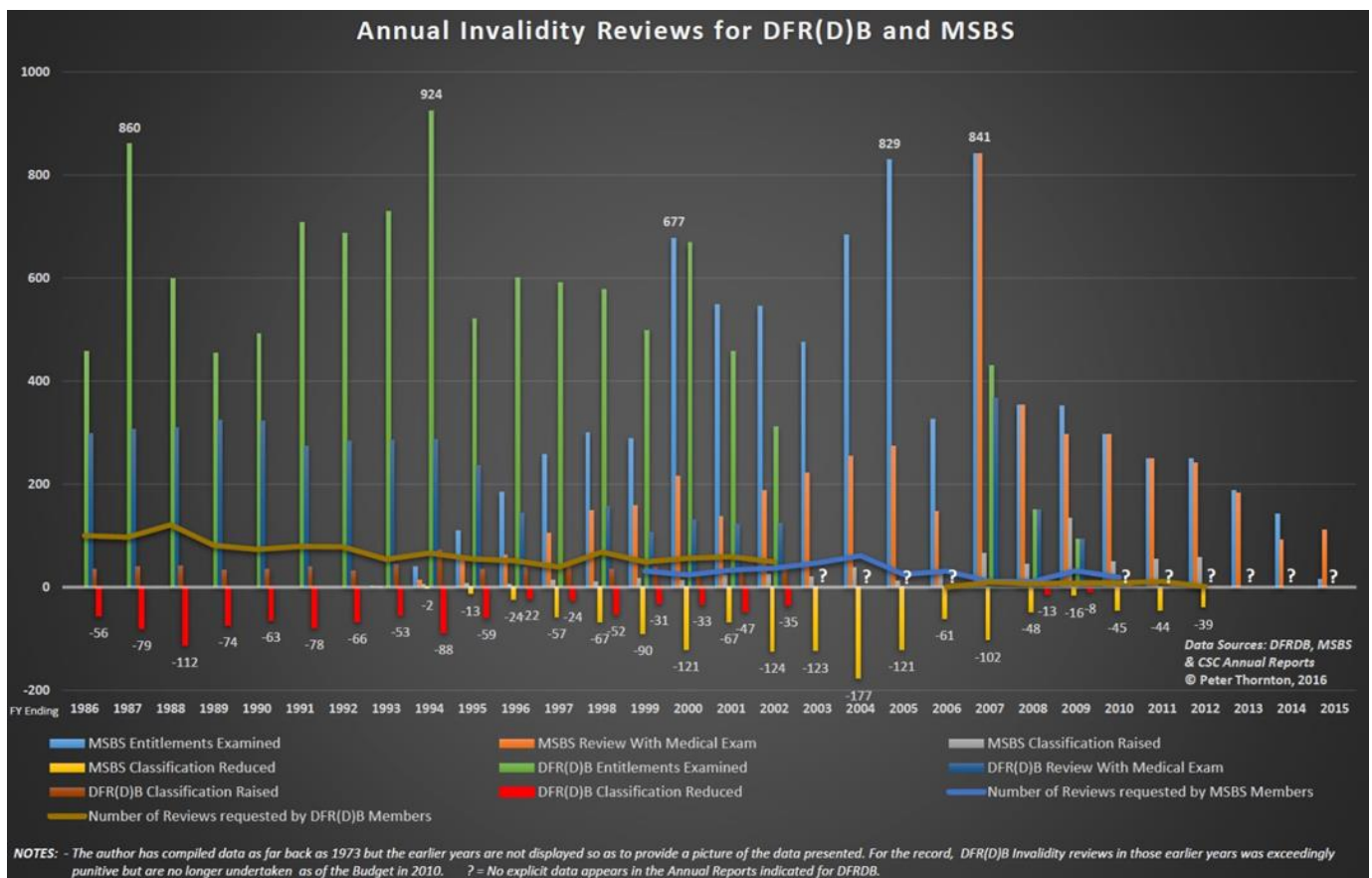


Figure 1¹²

16. Why is this chart important? Because the projections below the zero line illustrate and reinforce that Military (and Commonwealth) invalidity superannuation benefits are discrete statutory provisions that are disparate to that of other vested non-reviewable life-time Retirement, Redundancy & Reversionary benefits.¹³

¹² This graph was originally produce for a comprehensive submission (Submission 335) to the Senate Inquiry in Veteran & Defence Personnel Suicide, found here: <https://www.aph.gov.au/DocumentStore.ashx?id=f034eb66-b173-4b31-b6cf-02664af0541f&subId=461087>

¹³ The Applicant has data of such reviews all the way back into the early 1970s. However, for clarity, only a recent subset of the data is presented here, save the loss of graphical clarity.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

17. As the Court found and concluded in *Douglas*, rules governing Military superannuation invalidity benefits make such benefits reviewable, and as such, these benefits in isolation can be suspended or cancelled at the sole discretion of CSC¹⁴. As such, invalidity benefits do not vest as they are not guaranteed for the life of a medically retired member. The Authors maintain that such benefits fail the definitional test of a “Pension”, as specified at s10 of the “Definitions” of the SISA.

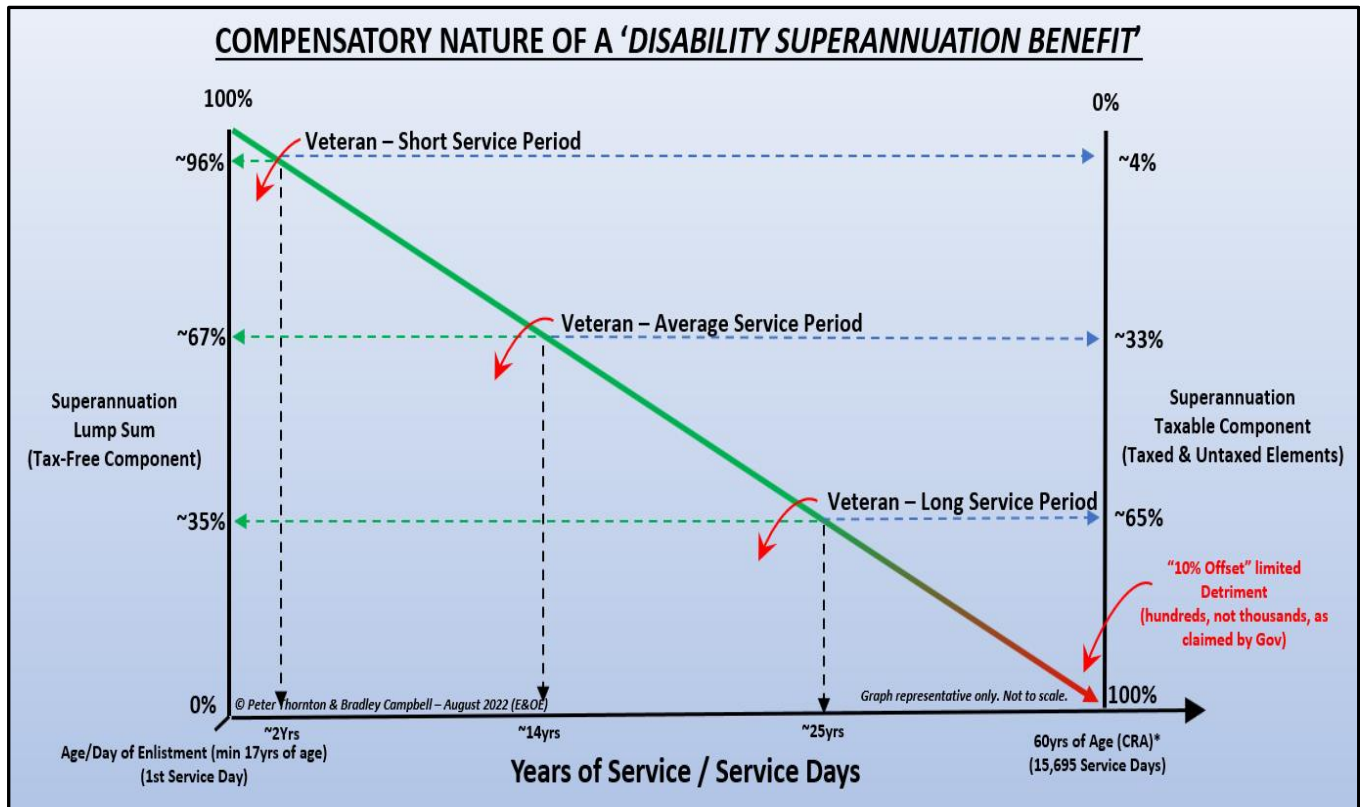


Figure 2

18. If a superannuation benefit fails to be a ‘Pension’ as per s 10 of the SISA, as tested and deduced by the relevant SISR, then such benefits cease to be ‘superannuation income stream benefits’, and instead, should be classified and administered as ‘superannuation lump sum’ payments, and where applicable, should be further classified as a ‘Disability Superannuation Benefit’ that attracts further tax-free treatment as specified by technical modifications found at s 307-145, and where relevant, s 307-150 of the ITAA.
19. The historical intent of these invalidity provisions makes perfect sense, because in absolute terms when properly assessed and conferred, then the tax-free invalidity benefits become “compensatory in nature”. Not surprisingly, draft amending legislation now held in abeyance before the Parliament would suggest that Treasury & Finance officials fail to understand the true historical nature of these tax-free provisions or the broader legislative framework in which they reside (i.e., to ostensibly negate “double dipping” in

¹⁴ Para 133-134, *Commissioner of Taxation v Douglas* [2020] FCAFC 220

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

compensation provisions). Indeed, Appendices to Annex B provide substance to such matters, where importantly, Figure 1 of Appendix 2 provides a definition of a Totally & Permanently Incapacitated (TPI) CSS recipient; a definition that is almost word for word to that of the contemporaneous definition of a ‘Disability Superannuation Benefit’ recipient under the ITAA, and the *Occupation Superannuation Standards Act 1987* (OSSA) and relevant OSSA Regulations (OSSR) that preceded it.

20. Given the multi-decades long intent and the compensatory nature of invalidity benefits, specifically – a ‘Disability Superannuation Benefit’, then as can be seen in the Fig 2¹⁵ above, the quantum in a tax-free superannuation lump sum payment starts high, but then reduces incrementally over longer periods of service rendered, tending towards zero as the recipient approaches his/her Compulsory Retiring Age (CRA). The underlying premise of such policy intent was to try and compensate an individual who is medically retired earlier in their working life¹⁶. It assumes that a TPIed individual so struck down early in their chosen profession then ceases to have the ability via normal employment earnings and/or career progression to build wealth and to save for their retirement, up until and including their CRA. For abundant clarity, the ‘Tax-Free component’ of a ‘Superannuation Interest’ only manifests if the disabled recipient meets a specific condition of release, within the broader envelop of the superannuation Invalidity Benefit framework (i.e., certified by 2 Doctors as unlikely to work in a vocation by way of training, education, or experience)¹⁷.
21. In its current form, the draft legislation before Parliament is outrageous and unconscionable as it attempts to breach the rights of thousands of medically retired Veterans and Commonwealth Officers. It does so because it specifically targets them in isolation to the rest of the general community; the latter of whom maintain their decades long enduring rights and are not made subject to such regressive measures as proposed. At the outset, the amending legislation explicitly places legislative handcuffs on all those Military and Commonwealth retirees who now legitimately seek lawful restitution on equitable grounds to those covered under the Douglas Case. Also, whilst verbal assurances have been given, what guarantees will prevail as to the legal rights and benefits so determined and secured for all those covered by the Douglas Case (i.e., will the Government once again attempt in future to try and revert the superannuation lump sum benefit back into income stream and provide non-refundable tax-offsets as was originally proposed in the first draft of legislation?) On balance, the proposed legislation clearly contemplates no ‘just terms’ in compensation for property so likely to be acquired for all individuals concerned.¹⁸

¹⁵ This graph reflects the Modification for Disability found at s 307-145 of SISA. The downward projection of the graph is supported by the before and after Payment Summaries of three (3) separate Veterans at Appendices to Annex A

¹⁶ Justice Cole makes a similar observations about the compensatory nature of invalidity benefits in his review of DFRDB

¹⁷ Please see Appendix 4 to Annex A for a graphical depiction of DSB provision within the broader invalidity envelop.

¹⁸ It has been said that this could trigger a Constitutional claim for acquisition of property. The Tribunal is also encourage to read <http://bit.ly/2nwOXk4> - ‘Why are Invalidated Veterans Being Denied Due Process & Natural Justice?’, by Author Mr. Bradley Campbell, as it expands considerably on the continued ineptitude of the CSC and the consequential detriment suffered by Veterans, and by extension, all other affected invalidity recipients also.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

22. Here in lies the criticality of the matter and the case that is now before the Tribunal, because the Commissioner did not assess the merits of the Thornton's case, or that of others also, because in correspondence to Thornton the Commissioner declared that other things were more important than the merits of Thornton's case, and that of many others. In correspondence to Thornton, the Commissioner's Contact Officer stated:
- "... [Thornton's case] may have broader implications as to the application of *Commissioner of Taxation v Douglas* [2020] FCAFC 220 into other superannuation schemes apart from Military Superannuation Benefits Scheme and Defence Force Retirement and Death Benefits Scheme". (Emphasis added).**¹⁹
23. The four (4) month delay in the Commissioner's disputed determination of Thornton's rightful Objection proved to be nothing more than a stalling tactic by the Commissioner and/or senior Treasury officials as they raced in parallel and against the clock to generate retrospective draft legislation that Government Ministers heralded in the last Parliament, and via exaggerated media releases, as a saving Private Ryan moment²⁰.
24. As history will attest, the tabling of the original draft legislation was abandoned when the responsible Ministers of the last Government were alerted by the Authors (specifically Mr. Campbell) that the supposed detriment conjured up by the Commissioner and/or Treasury measured only in the low hundreds; certainly not the approximate 7,000 that was originally touted.
25. The subsequent third attempt to reintroduce similar draft legislation under the present Government serves only to add insult to injury where Schedule 9 attempts to deny the rights and exclude all recipients and contributors not explicitly covered by the Douglas Ruling²¹. This toxic legislation has now proceeded even though the case for 32,000 recipients is once again before a Judicial authority. Such intended legislation would constitute a breach in the Human Rights of not only the Mr Thornton, but approximately 32,000 other invalid retirees, and that of all current contributors also.
26. Armed with additional research found in Ref B.,²² Mr. Thornton requested of the Commissioner an internal review / Alternate Dispute Resolution on the 19th of November 2021, and twice thereafter, but was denied. Thornton was advised by the original contact officer that senior officers of the Commissioner had dictated to him that the only pathway for redress was via an Appeal to the AAT or Federal Court, as specified in the Commissioner's decision letter, as per Ref C.

¹⁹ This excerpt is from email correspondence between the Commissioner and the Author, dated 8 Oct 2021.

²⁰ Here's one such media release: <https://www.minister.defence.gov.au/media-releases/2021-11-24/government-protecting-veterans-interests-following-court-decision>

²¹ That is, the schemes of DFRDB and MSBS

²² T01-11 to T01-22

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

27. The Commissioner also denied Thornton’s application for “Test Case Funding”, even though he was a recipient of a superannuation scheme not explicitly covered by the Douglas ruling. Thornton is a claimant with a significant contention at law, and a legitimate claim that is definitely in the public interest. By all accounts, the Commissioner has failed in his Model Litigant obligations!

SECTION 3 – LEGAL CONTENTIONS CURRENTLY UNDER JUDICIAL REVIEW

28. As per Ref B, the definition of a “Pension,” as per “Definitions” at s10 of the SISA, is provided at Fig 3.

*"pension", except in the expression **old-age pension**", includes a benefit provided by a [fund](#), if the benefit is taken, under the regulations, to be a pension for the purposes of this Act.*

Figure 3

29. The Government claims that the definition above is “inclusive” of all benefits conferred. With respect, and in deference to previous judgments, the Authors firmly disagree. Why? Well, there are two reasons, as follows:

The First Reason:

30. Unlike the underlying premise of the SISA, from the analysis and judgement handed down by his Honour - Justice Hill in *Tubemakers of Australia Limited v Federal Commissioner of Taxation* (1993)²³, it appears from the outset that the context and construct that the definition of a “Pension” in the SISA is quite different as serves a very specific purpose as a conditional test in derivation.
31. That definition’s purpose is clearly to conduct a **conditional test** upon which a Pension is then so defined as a superannuation benefit conferred that meets the specific standards as set out in the SISR. In the first instance, the prefatory of the definition explicitly excludes the “old age pension”, because such provision has its own constructs and should not be confused by the operation of the Definition within the SISA. Secondly, and more critically, the prefatory of the definition is clearly subjugated to the Regulations by the phase “**IF the benefit is taken, under the regulations, to be a pension,**”. This then redirects attention away from the Act and to the relevant SISR 1.06 where the conditional test is further amplified, as seen and read in part at Fig 4 below.

²³ As stated in his judgement found here, <https://jade.io/article/152270>, Justice Hill was clearly operating without a specific definition of a pension for the specific Act he was dealing with. His Honour also relied heavily upon the dictionary definitions cited. The Macquarie Dictionary in particular stated: "1. a **fixed** periodical payment made in consideration of past services, injury or loss sustained, merit, poverty etc. 2. an allowance or annuity" [Emphasis added]. The critical point here is that invalidity benefits provisioned by the Commonwealth are not necessarily **fixed**, because the Rules of all funds under contention permit invalidity benefits to be varied, suspended or cancelled.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

SUPERANNUATION INDUSTRY (SUPERVISION) REGULATIONS 1994 - REG 1.06 Meaning of pension (Act, s 10)

SUPERANNUATION INDUSTRY (SUPERVISION) REGULATIONS 1994 - REG 1.06

Meaning of pension (Act, s 10)

(1) A benefit is taken to be a pension for the purposes of the Act if:

(a) it is provided under rules of a superannuation fund that:

(i) meet the standards of subregulation (9A) or 1.06A(2) ; and

(ii) do not permit the capital supporting the pension to be added to by way of contribution or rollover after the pension has commenced; and

(b) in the case of rules to which [paragraph \(9A\)\(a\)](#) applies and that meet the standards of subregulation (9A) --the rules also meet the standards of [regulation 1.07D](#); and

(c) in the case of rules to which [paragraph \(9A\)\(b\)](#) applies and that meet the standards of subregulation (9A)--the rules also meet the standards of [regulation 1.07B](#).

Figure 4²⁴

32. Once read, it follows from Fig.4., that SISR 1.06(9A)., as shown at Fig 5, illustrates that at the outset the rules of all relevant schemes **do not** “*ensure that payment of a pension is made at least annually*”. Also, whilst an excerpt in not shown, SISR1.06(A)(2)(c) & SISR1.06(A)(3)(b) & (c) also fail the standard²⁵. Why? Because irrespective of the scheme concerned, invalidity / disability benefits are reviewable (i.e., they can be varied, suspended, or cancelled at the sole discretion of the CSC). The Court accepted this critical interpretation and the overall position for all Respondents at Para 111 of Ref F.

(9A) Rules for the provision of a benefit (the *pension*) meet the standards of this subregulation if the rules ensure that payment of the pension is made at least annually, and also ensure that:

Figure 5²⁶

33. In addition, the Tribunal / Court were not seemingly alerted to Sub Regulation 1.06(1A), which explicitly defines the very standards upon which a pension must be met, if the benefit commenced before 20 Sep 2007, as can be seen at Fig. 6.

²⁴ https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_reg/sir1994582/s1.06.html

²⁵ http://classic.austlii.edu.au/au/legis/cth/consol_reg/sir1994582/s1.06a.html

²⁶ *ibid*

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

(1A) A benefit that commenced to be paid before 20 September 2007 is taken to be a pension for the purposes of the Act if:

- (a) it is provided under rules of a superannuation fund that meet the standards of subregulation (2), (4), (6), (7) or (8); and
- (b) where the primary beneficiary became entitled to the benefit on or after 20 September 1998 under rules of a superannuation fund that meet the standards of subregulation (7)—those rules provide that the commencement day is the day when the primary beneficiary became entitled to the pension; and
- (c) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (4)—the rules also meet the standards of [regulation 1.07A](#); and
- (d) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (2), (6) or (7)—the rules also meet the standards of [regulation 1.07B](#); and
- (e) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (8), and has a commencement day on or after 20 September 2004—the rules also meet the standards of [regulation 1.07C](#).

Figure 6²⁷

34. Critically, SISR Sub-Regulation (1A)(a) then further directs one's attention to other various sub-regulations; SISR Sub-Regulation 1.06 (2) being of specific interest, both now and in the next section, as read at Figure 7.

(2) Rules meet the standards of this subregulation if they ensure that:

- (a) the pension is paid at least annually throughout the life of the primary beneficiary in accordance with [paragraphs](#) (b) and (c) and, if there is a reversionary beneficiary:
 - (i) throughout the reversionary beneficiary's life; or
 - (ii) if he or she is a child of the primary beneficiary or of a former reversionary beneficiary under the pension—at least until his or her 16th birthday; or
 - (iii) if the person referred to in subparagraph (ii) is a full-time student at age 16—at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs sooner); and
- (b) the size of payments of benefit in a year is fixed, allowing for variation only:
 - (i) as specified in the governing rules; or
 - (ii) to allow commutation to pay a superannuation contributions surcharge; or
 - (iii) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged; and
- (c) unless the Regulator otherwise approves, the sum payable as benefit in each year to the primary beneficiary or to the reversionary beneficiary, as the case may be, is:

Figure 7²⁸

²⁷ *ibid*

²⁸ *ibid*

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

35. As seen at Fig. 7., SISR 1.06(2)(a) reinforces Thornton’s Objection from the very outset, and in line with the Court’s judgement at Para 125 of Ref. F., that the parameters that define a pre-20 Sep 2007 pension are again NOT MET in the first instance (i.e. because it “must ensure” that the pension is paid “at least annually”), with the additional failure at Sub-Reg (2)(b), simply because the rules don’t permit an invalidity benefit to be “fixed” (i.e., because of a variation, suspension or cancellation of the benefit (e.g., a suspension and/or cancellation incurred because an invalidity recipient might not comply with a CSC directive). At face value, the sub-regulations of (4), (6), (7) and (8) all appear to fail also.
36. With the foregoing in mind, the Authors maintain that the Commissioner’s argument supporting their non-approval of Thornton’s Objection, and by extension the contention of many others; (i.e., in attempting to leverage Mr. Burn’s case that the PSS invalidity benefit did not “cease” prior to, and then “recommence” sometime after, 20 Sep 2007) is unfounded and irrelevant, because as the foregoing clearly demonstrates, as per the rightful judgement handed down for Douglas and Walker, the benefit payment also fails the standard specified at law for a benefit payable before the 20 Sep 2007.
37. The Commissioner purports that the legislative intent was always to treat these benefits as Superannuation Income streams. This is not in-line with the construct of the Regulations at the time the SIS Act was drafted, or the OSSR that preceded. At the time of construct and initial passing of the SISA, the SISR contained very similar tests on the definition of a pension. If the original intent of the legislation was for a pension to be the ordinary meaning of the word, then why were regulations drafted with very explicit requirements/exclusions as to what could be considered a pension for the purposes of the SISA? Again, stringent testing requirements also appeared in the OSSR.²⁹

The Second Reason:

38. Further to Ref A. & B., the Schemes in question at the time (i.e., DFRDB & MSBS), are “Defined Benefit Schemes” (as are the 1922, DFRDB, CSS, PSS etc) that under normal circumstances confer standard “Defined Benefit Interests” in the form of “Defined Benefit Income”, and commutations where permissible, for Retirement, Redundancy and Reversionary phase beneficiaries. As can be seen at Figure 8., SISR1.03AA(1) substantiates this assertion.

²⁹ Reg 3F *Occupational Superannuation Standards Regulations 1987*, Meaning of pension—subsection 3(1) of the Act

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

SUPERANNUATION INDUSTRY (SUPERVISION) REGULATIONS 1994 - REG 1.03AA Defined benefit interest

SUPERANNUATION INDUSTRY (SUPERVISION) REGULATIONS 1994 - REG 1.03AA

Defined benefit interest

(1) A superannuation interest is a **defined benefit interest** if it is:

(a) an interest in an unfunded public sector superannuation scheme that has at least 1 defined benefit member; or

(b) an interest that entitles the member who holds the interest, when benefits in respect of the interest become payable, to be paid a benefit defined, wholly or in part, by reference to one or more of the following:

(i) the amount of:

(A) the member's salary at the date of the termination of the member's employment, the date of the member's retirement, or another date; or

(B) the member's salary averaged over a period; or

(C) salary, or allowance in the nature of salary, payable to another person (for example, a judicial officer, a member of the Commonwealth or a State Parliament, a member of the Legislative Assembly of a Territory);

(ii) a specified amount;

(iii) specified conversion factors.

(2) However, a superannuation interest is not a **defined benefit interest** if the only benefits defined by reference to any of the amounts or factors mentioned in subparagraphs (1)(b)(i) to (iii) are benefits payable on death or invalidity.

Figure 8³⁰

39. However, and critically, as seen at the bottom of Fig 8., Reg 1.03AA(2)., and s291-175(2) of the ITTA as seen at Fig 9., it clearly shows in both cases that '**death**' and '**disability**' are **explicitly excluded**. Similarly, the *Occupation Superannuation Standards Regulations 1987* states that "Vesting Standards" do not apply for benefits that are for 'death or disability'³¹. This again makes perfect sense, because as Wikipedia puts it:

*"In law, vesting is the point in time when the rights and interests arising from legal ownership of a property is acquired by some person. Vesting creates an immediately secured right of present or future deployment. One has a **vested right** to an asset that cannot be taken away by any third party, even though one may not yet possess the asset."*³²

³⁰ https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_reg/sir1994582/s1.03aa.html

³¹ Please see Reg 8(1A) of the [Occupation Superannuation Standards Regulations 1987](#)

³² <https://en.wikipedia.org/wiki/Vesting>

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

291-175 *Defined benefit interest*

- (1) An individual's *superannuation interest is a ***defined benefit interest*** to the extent that it defines the individual's entitlement to *superannuation benefits payable from the interest by reference to one or more of the following matters:
 - (a) the individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
 - (b) another individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
 - (c) a specified amount;
 - (d) specified conversion factors.
- (2) However, an individual's *superannuation interest is ***not a defined benefit interest*** if it defines that entitlement solely by reference to one or more of the following:
 - (a) *disability superannuation benefits;
 - (b) *superannuation death benefits;
 - (c) payments of amounts mentioned in paragraph 307-10(a) (temporary disability payments).

Figure 9³³

40. Therefore, the Authors firmly maintain with authority that by way of its construct, the definition of a "Pension" in the SISA is not satisfied by reference to the relevant sections and regulations of the ITAA and SISR respectively.
41. Again, as read in both Figures 8 & 9., SISR1.03AA(2) and ITAA s291-175(2) (specifically s 291-175(2)(a)) provide absolute clarity that a "superannuation interest" is not a "defined benefit interest" if the benefit provisioned is for invalidity / DSB. The parameters of a DSB are further defined in the 'Definitions' at ITAA s995-1, as seen below at Figure 10.

disability superannuation benefit means a *superannuation benefit if:

- (a) the benefit is paid to an individual because he or she suffers from ill-health (whether physical or mental); and
- (b) 2 legally qualified medical practitioners have certified that, because of the ill-health, it is unlikely that the individual can ever be *gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training.

Figure 10³⁴

³³ *Income Tax Assessment Act 1997*, s291-175, Vol 6, pg. 423

³⁴ *Ibid*, pg. 610

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

42. A question naturally arises from the references cited in Para 41, and that is, are the “benefits defined” for a superannuation invalidity benefit / DSB, as established by various CSC Fund rules:
- “defined benefit income,” in the form of a “Superannuation Income Stream Benefit” that is paid from a Capped Defined Benefit Income Stream,” as defined at ITAA s303-2(2), as seen below at Figure 11; or
 - A “superannuation lump sum” benefit?

303-2 Effect of exceeding defined benefit income cap on assessable income

(1) Despite sections 301-10 and 302-65, if:

- during a *financial year, you receive one or more *superannuation income stream benefits:
 - that are *defined benefit income; and
 - to which either section 301-10 or 302-65 applies; and
- the sum of all of those benefits (other than any *elements untaxed in the fund of those benefits) exceeds your *defined benefit income cap for the financial year;

50% of that excess is assessable income.

(2) ***Defined benefit income*** is a *superannuation income stream benefit that is paid from a *capped defined benefit income stream.

Figure 11³⁵

43. The Authors contend that the correct answer to the first part of this question appears in Figure 12., where s294-125 and s294-130(1) of ITAA provide perfect clarity that “Defined Benefit Income” only exists where a “Superannuation Income Stream Benefit” is paid from a “Capped Defined Benefit Income Stream”.
44. With the relevant 1922, DFRB, DFRDB, CSS, PSS, MSBS, PSSap and ADFcover Payment Summaries as a backdrop³⁶, the answer is amplified and qualified by reference to the “Items” specified within the Table at ITAA s294-130(1), as per Fig 12.

³⁵ Ibid pg. 581

³⁶ Specifically, the categorisation of the current benefit as a “Capped Defined Benefit Superannuation Income Stream”, seen at the top of the relevant summaries at ST12 > ST16.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

294-125 When this Subdivision applies		
This Subdivision applies to you if you are the *retirement phase recipient of a *capped defined benefit income stream.		
294-130 Meaning of capped defined benefit income stream		
(1) A *superannuation income stream is a <i>capped defined benefit income stream</i> if it is:		
(a) covered by an item of the following table; and		
(b) if it is covered by any of items 2 to 7 of that table—it is in the *retirement phase just before 1 July 2017.		
Capped defined benefit income streams		
Item	Topic	A superannuation income stream is covered if:
1	Lifetime pension	it is a pension for the purposes of the <i>Superannuation Industry (Supervision) Act 1993</i> (the <i>SIS Act</i>) that is provided under rules that meet the standards of subregulation 1.06(2) of the <i>Superannuation Industry (Supervision) Regulations 1994</i> (the <i>SIS Regulations</i>)
2	Lifetime annuity	it is an annuity for the purposes of the <i>SIS Act</i> that is provided under a contract that meets the standards of subregulation 1.05(2) of the <i>SIS Regulations</i>
3	Life expectancy pension	it is a pension for the purposes of the <i>SIS Act</i> that is provided under rules that meet the standards of subregulation 1.06(7) of the <i>SIS Regulations</i>
4	Life expectancy annuity	it is an annuity for the purposes of the <i>SIS Act</i> that is provided under a contract that meets the standards of subregulation 1.05(9) of the <i>SIS Regulations</i>
5	Market linked pension	it is a pension for the purposes of the <i>SIS Act</i> that is provided under rules that meet the standards of subregulation 1.06(8) of the <i>SIS Regulations</i>
6	Market linked annuity	it is an annuity for the purposes of the <i>SIS Act</i> that is provided under a contract that meets the standards of subregulation 1.05(10) of the <i>SIS Regulations</i>
7	Market linked pension (RSA)	it is a pension for the purposes of the <i>Retirement Savings Accounts Act 1997</i> that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the <i>Retirement Savings Accounts Regulations 1997</i>
(2) A *superannuation income stream is also a <i>capped defined benefit income stream</i> if the income stream is prescribed by the regulations for the purposes of this subsection.		

Figure 12 – Modified from source³⁷

45. As read, the table at ITAA s294-130, clearly negates, with respect to underfunded Commonwealth “public sector” superannuation schemes, the notion that an invalidity benefit is a “superannuation income stream”, derived principally from a “capped defined benefit income stream”, because the governing rules pertaining to all CSC Funds do not guarantee that invalidity benefits will be “Lifetime”, “Life Expectancy”, or “Market Linked” pensions for the lifetime of the recipients concerned, because once again, invalidity benefits do not vest because they can be subject to review that can suspend or cancel a benefit payable.
46. In addition, and as read and interpreted conversely to that at Figures 13 & 14., (i.e. ITAA s307-65 & s307-70), if a “superannuation benefit” is not a “superannuation income stream benefit” then it must logically resolve down to, as the Commissioner rightly states at Para. 15 of Ref C., a “superannuation lump sum”.

³⁷ ITAA 1997 pg. 489-490 stitched together

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

307-65 Meaning of *superannuation lump sum*

- (1) A *superannuation lump sum* is a *superannuation benefit that is not a *superannuation income stream benefit (see section 307-70).
- (2) Treat a lump sum payment arising from a partial commutation of a *superannuation income stream as a *superannuation lump sum* for the purposes of this Act (other than Subdivision 295-F).

Figure 13³⁸

307-70 Meaning of *superannuation income stream* and *superannuation income stream benefit*

- (1) A *superannuation income stream benefit* is a *superannuation benefit specified in the regulations that is paid from a *superannuation income stream.
- (2) A *superannuation income stream* has the meaning given by the regulations.

Note: For the purposes of the transfer balance cap, the meaning of *superannuation income stream* is affected by subsection 294-50(2).

Figure 14³⁹

47. Therefore, by logical deduction, an invalidity benefit can not be a “superannuation income stream benefit”, as would normally be the case of a “capped defined superannuation income stream” for the purposes of supporting a normal retirement, redundancy or reversionary phase defined benefit; but instead, it is a benefit that should clearly be a “superannuation lump sum”, provided under the rules of the relevant CSC scheme, where lump sums payable should be properly classified and taxed, and where applicable, adjusted for tax-free purposes in accordance with the modification for disability at ITAA s307-145, as seen at Figure 15, or alternatively, at ITAA s307-150 (not shown) for those with a pre 1 July 2007 invalidity entitlement.

³⁸ Ibid., pg. 609

³⁹ Ibid., pg. 610

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

307-145 Modification for disability benefits

- (1) Work out the *tax free component* of the *superannuation benefit under subsection (2) if the benefit is a *superannuation lump sum and a **disability superannuation benefit**.

Note: This section does not apply to an unclaimed money payment.

- (2) The *tax free component* is the sum of:
- (a) the *tax free component of the benefit worked out apart from this section; and
 - (b) the amount worked out under subsection (3).
- However, the tax free component cannot exceed the amount of the benefit.

- (3) Work out the amount by applying the following formula:

$$\text{Amount of benefit} \times \frac{\text{Days to retirement}}{\text{Service days} + \text{Days to retirement}}$$

where:

days to retirement is the number of days from the day on which the person stopped being capable of being *gainfully employed to his or her *last retirement day.

service days is the number of days in the *service period for the lump sum.

- (4) The balance of the *superannuation benefit is the *taxable component* of the benefit.

Figure 15⁴⁰

CONCLUSION

48. In the spirit of Lord Denning, this submission seeks the Senate Committee's immediate intercession and action to **disallow** Schedule 9 of TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022, and to refer the conduct of responsible ministers and various functionaries to appropriate disciplinary authorities, including that of CSC, who with explicit Ministerial direction, ignored the Court's ruling.⁴¹
49. Contrary to the Government's smoke and mirrors, this legislation is not beneficial as claimed. For the majority, it serves to not only undermine Judicial processes in the pursuit of equity, but it covers up what arguably is one of Australia's largest errors in public administration by the CSC and ATO.
50. This submission seeks an equitable remedy for justice through Judicial processes currently in train, not only for the benefit of the Authors, but for ~32,000 pre and post 20 Sep 2007 invalidity recipients also. That remedy would then ensure that benefits conferred by CSC are classified and taxed equitably and correctly inline with Parliaments long-held intent and the Court's rightful and favourable judgement pertaining to the lump sum tax treatments afforded under Douglas; treatments that should have been afforded (but have not)

⁴⁰ Ibid., pg. 620

⁴¹ Please see Annex F of this submission for examples of CSC issuing "false certificate(s)" to affected Douglas recipients.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

to all post-20 Sep 2007 invalidity recipients⁴², and particularly so, those who are (or should be) classified as DSB recipients.

51. The foregoing analysis clearly demonstrates that there is no anomaly at law stemming from changes in 2007 or a “loophole that is being exploited by Veterans”, as one former DVA Minister had so offensively stated back in 2018. The analysis above clearly amplifies the Parliament’s original policy intent that existed long before; an intent that defines the treatment and classification of a superannuation invalidity benefit in multiple ways (i.e. both for contemporary accumulation phased accounts and/or the long-standing unfunded public sector defined benefit superannuation scheme accounts). Once properly classified, a DSB recipient residing within the broad invalidity envelope should be furnished with a tax-free benefit in accordance with the modification at ITAA s307-145 or s307-150, where applicable.
52. Contrary to the assertions made by the Government and its functionaries, the contentions put forward by the Authors and many others are well supported by Authority. It clearly establishes that the classification of invalidity benefits conferred by CSC and its predecessors has been in error since at least the 1970s, and therefore, the classification and tax assessments for all invalidity retirees are not lawful and are in error.

Yours sincerely

Peter Thornton & Bradley Campbell

About the Authors

Peter Thornton is a retired member of the Defence Force & Commonwealth. Peter provides independent analysis and commentary on matters relating to Commonwealth & Military Superannuation and Veterans’ compensation issues. Peter’s independent research aims to underpin the advocacy and representational activities of national peak bodies and individuals alike.

Bradley Campbell, is a Veteran Advocate and subject matter expert in matters pertaining to tax, superannuation and family law. Brad gives his time freely to help thousands of Veterans when navigating these complex matters.

Acknowledgements:

The Authors would also like to acknowledge the very kind assistance and support of various Senators, particularly Senators Lambie and Shoebridge, together with the Federal President TPI Federation – Ms. Patricia McCabe, Vice President Australian Peacekeepers - Mr. Ian Lindgren, RSL National President – MAJGEN Aziz “Greg” Melick, and Chairman of the Australian Council of Public Sector Retiree Organizations – Mr. John Pauley

⁴² The Commissioner and CSC are failing in their fiduciary duty by not informing all post-20 Sep 2007 CSS, PSS, PSSap and ADF Cover invalidity recipients that because of Douglas, their benefits have not been correctly classified as Superannuation Lump Sums and taxed accordingly.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

ANNEX A

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

APPENDIX 1 TO ANNEX A

VETERAN – SHORT PERIOD OF SERVICE – 2YRS – TPI/DSB

PAYG payment summary - capped defined benefit superannuation income stream

Payment summary for year ending 30 June 2020

Payee details

NOTICE TO PAYEE

If this payment summary shows an amount in the total tax withheld box, you must lodge a tax return. If no tax was withheld, you may still have to lodge a tax return. If you have already lodged your tax return, you may need to lodge an amendment request.

For more information about this payment summary or lodging your tax return or an amendment request, you can:

- visit ato.gov.au
- phone 13 28 61 between 8.00am and 6.00pm, Monday to Friday.

Period of payment: 01/07/2019 to 30/06/2020

Death benefit (Reversionary income stream) is the payee under 60 years of age and a death benefit is dependent, where the deceased died at 60 years or over? Yes ☐ No ☒

Payee's tax file number: [REDACTED]

TOTAL TAX WITHHELD \$ 8528

Taxable component	\$ 223
Taxed element	\$ 48894
Untaxed element	\$ NIL
Tax-free component	\$ NIL
Tax offset amount	\$
Lump sum in arrears - taxable component	\$ NIL
Taxed element	\$ NIL
Untaxed element	\$ NIL
Lump sum in arrears - tax-free component	\$ NIL

Payee details

Payee's ABN or withholding payer number: 48 882 817 243 Branch number:

Payee's name: CSC

Privacy - For information about your privacy, go to ato.gov.au/privacy

Signature of authorised person: William Smith Date: 19/06/2020

PAYG payment summary - superannuation lump sum

Payment summary for year ending 30 June 2022

Payee details

NOTICE TO PAYEE

If this payment summary shows an amount in the total tax withheld box, you must lodge a tax return. If no tax was withheld, you may still have to lodge a tax return. For more information about this payment summary, lodging your tax return or an amendment request, you can:

- visit www.ato.gov.au
- refer to 781/81x
- phone 13 28 61 between 8.00am and 6.00pm Monday to Friday.

Date of payment: 30/06/2022

Payee's tax file number: [REDACTED]

TOTAL TAX WITHHELD \$ NIL

Taxable Component	\$ 9	} Tax-Free Component = 96% of all components
Untaxed element	\$ 2139	
Tax-free Component	\$ 50704	
Death benefit	N	
Type of death benefit		

Payee details

Payee's ABN or withholding payer number: 48 882 817 243 Branch number:

Payee's name: CSC

Signature of authorised person: William Smith Date: 01/07/2022

@ Peter Thornton & Bradley Campbell – August 2022 (E80E)

Notes: Discrete and in its own right, the grossed up value of the Invalidity Superannuation Interest (i.e. the Disability Superannuation (Lump Sum) Benefit), excluding other taxable income and tax-objects such as LTMO etc., = ~\$60,496

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

APPENDIX 2 TO ANNEX A

VETERAN – AVERAGE PERIOD OF SERVICE – 14YRS – TPI/DSB

PAYG payment summary - capped defined benefit superannuation income stream

Payment summary for year ending 30 June 2020

Payee details

NOTICE TO PAYEE
If this payment summary shows an amount in the total tax withheld box, you must lodge a tax return. If no tax was withheld you may still have to lodge a tax return. If you have already lodged your tax return, you may need to lodge an amendment request.
For more information about this payment summary or lodging your tax return or an amendment request, you can:
■ visit ato.gov.au
■ phone 13 28 61 between 8.00am and 6.00pm, Monday to Friday.

Period of payment: 01/07/2019 to 30/06/2020

Death benefit (Reversionary income stream)
Is the payee under 60 years of age and a death benefit dependent, where the deceased died at 50 years or over? Yes ☐ No ☒

Payee's tax file number: [REDACTED]

TOTAL TAX WITHHELD \$ 12288

Taxable component

Taxable element	\$ 2787
Untaxed element	\$ 58520
Tax free component	\$ NIL
Tax offset amount	\$ 418
Lump sum in arrears - taxable component	\$ NIL
Taxed element	\$ NIL
Un taxed element	\$ NIL
Lump sum in arrears - tax free component	\$ NIL

Payee details

Payee's ABN or withholding payer number: 48 882 817 243 Branch number:

Payee's name: CSC

Privacy - For information about your privacy, go to ato.gov.au/privacy

Signature of authorised person: William Smith Date: 19/06/2020

PAYG payment summary - superannuation lump sum

Payment summary for year ending 30 June 2021

Payee details

NOTICE TO PAYEE
If this payment summary shows an amount in the total tax withheld box, you must lodge a tax return. If no tax was withheld, you may still have to lodge a tax return. For more information about this payment summary, lodging your tax return or an amendment request, you can:
■ visit www.ato.gov.au
■ refer to TaxPack
■ phone 13 28 61 between 8.00am and 6.00pm Monday to Friday

Period of payment: 30/06/2021

Payee's Tax File Number: [REDACTED]

TOTAL TAX WITHHELD \$ 11478

Taxable Component

Taxable element	\$ 2831
Un taxed element	\$ 12383
Tax free Component	\$ 42045

Tax-Free Component = 67% of all components

Death benefit: N

Type of death benefit: [REDACTED]

Payee details

Payee's ABN or withholding payer number: 48882817243 Branch number:

Payee's Name: CSC

Signature of Authorised Person: William Smith Date: 18/06/2021

@ Peter Thornton & Bradley Campbell – August 2022 (E&OE)

Notes: Discrete and in its own right, the grossed up value of the Invalidity Superannuation Interest (i.e. the Disability Superannuation (Lump Sum) Benefit), excluding other taxable income and tax offsets such as LTRMO etc., = \$72,960

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

APPENDIX 3 TO ANNEX A

VETERAN – LONG PERIOD OF SERVICE – 25YRS – TPI/DSB

PAYG payment summary - capped defined benefit superannuation income stream

Payment summary for year ending 30 June 2020

Payee details

Payee details [REDACTED]

NOTICE TO PAYEE

If this payment summary shows an amount in the total tax withheld box, you must lodge a tax return. If no tax was withheld you may still have to lodge a tax return. If you have already lodged your tax return, you may need to lodge an amendment request.

For more information about this payment summary or lodging your tax return or an amendment request, you can:

- visit ato.gov.au
- phone 13 28 61 between 8.00am and 6.00pm, Monday to Friday.

Period of payment: 01/07/2019 to 30/06/2020

Death benefit (Reversionary income stream)
Is the payee under 60 years of age and a death benefit dependent, where the deceased died at 60 years or over? Yes ☐ No ☒

Payee's tax file number [REDACTED]

TOTAL TAX WITHHELD \$ 15821

Taxable component	\$ 5272
Taxed element	\$ 6720
Un taxed element	\$ NIL
Tax free component	\$ 750
Tax offset amount	\$ NIL
Lump sum in arrears - taxable component	\$ NIL
Un taxed element	\$ NIL
Lump sum in arrears - tax free component	\$ NIL

Payer details

Payer's ABN or withholding payer number: 48 882 817 243 Branch number:

Payer's name: CSC

Privacy – For information about your privacy, go to ato.gov.au/privacy

Signature of authorised person: William Smith Date: 19/06/2020

@ Peter Thornton & Bradley Campbell – August 2022 [8x0E]

Notes: Discrete and in its own right, the grossed up value of the Invalidity Superannuation Interest (i.e. the Disability Superannuation (Lump Sum) Benefit), excluding other taxable income and tax-offsets such as LTMO etc., ~ \$86702

PAYG payment summary – superannuation lump sum

Payment summary for year ending 30 June 2022

Payee details

Payee details [REDACTED]

NOTICE TO PAYEE

If this payment summary shows an amount in the total tax withheld box, you must lodge a tax return. If no tax was withheld, you may still have to lodge a tax return. For more information about this payment summary, lodging your tax return or an amendment request, you can:

- visit www.ato.gov.au
- visit ato.gov.au
- refer to 180/PaIX
- phone 13 28 61 between 8.00am and 6.00pm Monday to Friday.

Date of payment: 30/06/2022

Payee's tax file number [REDACTED]

TOTAL TAX WITHHELD \$ 4524

Taxable Component	\$ 3682	Tax-Free Component = 35% of all components
Taxed element	\$ 4665	
Un taxed element	\$ 27211	
Tax-free Component	\$ N	
Death benefit		
Type of death benefit		

Payer details

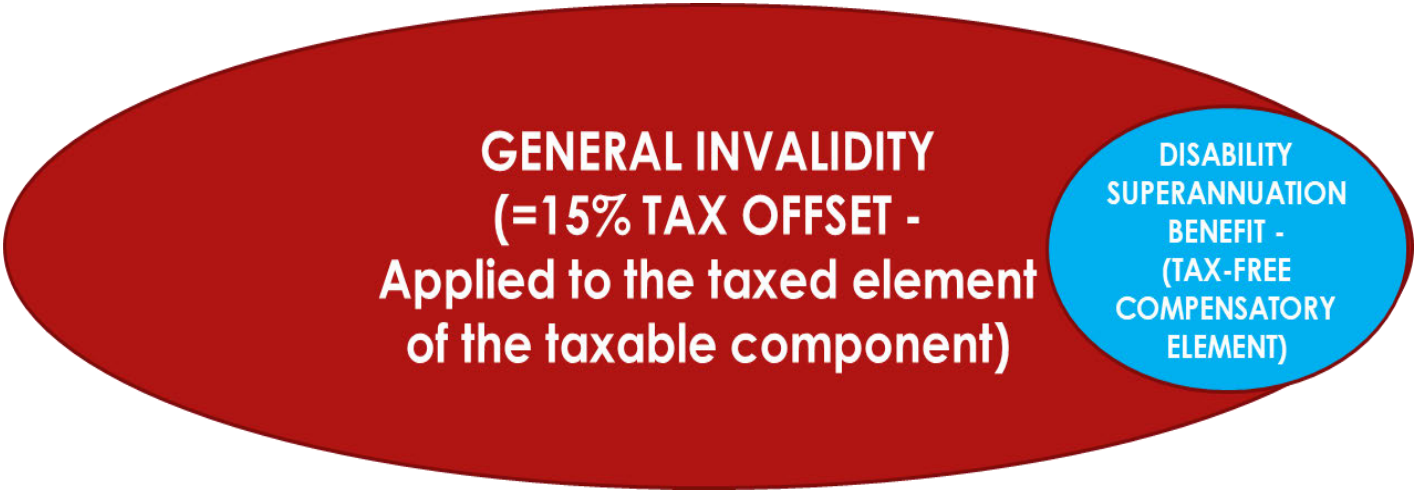
Payer's ABN or withholding payer number: 48 882 817 243 Branch number:

Payer's Name: CSC

Signature of authorised person: William Smith Date: 01/07/2022

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

APPENDIX 4 TO ANNEX A



GENERAL INVALIDITY
(=15% TAX OFFSET -
Applied to the taxed element
of the taxable component)



DISABILITY
SUPERANNUATION
BENEFIT -
(TAX-FREE
COMPENSATORY
ELEMENT)

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

ANNEX B

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

APPENDIX 1 TO ANNEX B

DEFENCE FORCE RETIREMENTS & DEATH BENEFITS SCHEME ACT 1973

SCOPE OF THE SCHEME

4. The scope of the Defence Force Retirement and Death Benefits Scheme follows closely the recommendation of the Joint Select Committee on the Defence Forces Retirement Benefits Legislation, under the chairmanship of Mr J. D. Jess, C.B.E., presented to the Parliament on 18 May 1972.

5. The basic objective of the scheme is to provide a form of occupational super-annuation insurance for members of the Defence Force. Benefits are related to insurable risks over the period of service with the Defence Force applying to eligible contributors with reversionary benefits for the members of the family unit who would have an insurable interest in the contributor. Under the new scheme the concept of the family unit has been extended to include certain de facto relationships and children as well as the immediate families of married female contributors.

6. The method of establishing benefits due is now related to years of effective service for both officers and other ranks. A composite flat rate of contributions of 5.5 per cent of pay is paid by all contributors to purchase the full range of available benefits.

7. Contributions are paid into Consolidated Revenue instead of the previous arrangements for payment into a mutual fund from which benefits were paid. All benefits are appropriated from Consolidated Revenue by a special appropriation included in the legislation.

Figure 1 - Source: DFRDB Annual Report to Parliament, Pg 1 - Dated 30 Nov 1973 (Note Para 5)

Review of invalidity pensions

11. During the year ended 30 June 1973, a total of 1,315 invalidity cases were examined in accordance with the review provision of section 53 of the Defence Forces Retirement Benefits Act. Of these, 1,088 classifications were not changed, 80 were raised and 147 were reduced. Reduction in classification resulted in the cancellation of pension in 104 of these cases.

12. The provision of section 53A of the Act, whereby the Board could suspend payment of pension if an invalidity pensioner was engaged in employment at a remuneration of not less than two-thirds of the current equivalent of his rate of pay on retirement, was repealed by the *Defence Forces Retirement Benefits Act 1973*. Any suspension of pension under this provision which was in force immediately before 1 October 1972 will be revoked with effect from that date, provided that on review there is still an incapacity for civil employment of 30 per cent or more. Already a large number of pensions have been reviewed and pensions restored.

13. Section 53B of the Act provides that an invalidity pensioner shall, upon request, submit himself for medical examination or furnish certain information concerning any employment in which he is or has been engaged. Pension may be suspended if the

11

Figure 2 - Source: DFRDB Annual Report to Parliament, Pg 11 - Dated 30 Nov 1973 (Note Para 11)

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

APPENDIX 2 TO ANNEX B

COMMONWEALTH SUPERANNUATION SCHEME ACT 1976

54B Meaning of <i>totally and permanently incapacitated</i>		
For the purposes of this Part a person is totally and permanently incapacitated if, because of a mental or physical condition, it is unlikely that the person will ever be able to work in any employment or hold any office for which the person:		
<hr/>		
78	<i>Superannuation Act 1976</i>	
Compilation No. 63	Compilation date: 05/03/2022	Registered: 09/03/2022
Retirement on ground of invalidity Part IVA Preliminary Division 1		
<hr/>		
Section 54B		
<hr/>		
(a) is reasonably qualified by education, training or experience; or		
(b) could become reasonably qualified after retraining.		

Figure 1 - Source: Modified from Commonwealth Superannuation Scheme Act – 1976, s 54B., Pg 78-79⁴³

43.	The Division also contains provisions empowering the Commissioner to require an invalid pensioner who has not attained age 65 to undergo a medical examination. It also provides for the suspension or cancellation of invalidity pension in certain circumstances.
------------	--

Figure 2 - Source: Explanatory Memorandum, Commonwealth Superannuation Scheme Act – 1976, Para 43., Pg 23

⁴³ The wording of Figure 1 resonates almost exactly with the contemporaneous definition of a 'Disability Superannuation Benefit', as defined in the 'Definitions' at ITAA s995-1, as can be seen and read at Figure 8 of this submission.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

ANNEX C

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022**APPENDIX 1 TO ANNEX C****COMMONWEALTH / MILITARY INVALIDITY RECIPIENT NUMBERS**

Annual Reports to Parliament, dated and valid up until the 30 June of each year, provides a close approximation to the split of Pre & Post-the 20 Sep 2007 recipients.

The data is as follows:

Pre-20 Sep 2007

Total Invalidity @ 30 Jun 2007	
1922	?
DFRB	781
DFRDB	2367
MSBS	3243
CSS	18431
PSS	1779
Totals	26601

26601

? = No invalidity data was explicitly reported for the 1922 scheme in the 2006-2007 report. However, in a note under *Table 22 – Pensions Summary* the annual report for 2007-2008 stated that 1922 invalidity recipients were included in the CSS data sets.

Post-20 Sep 2007

Permanent Invalidity Recipients																	
	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	Totals
CSS	97	118	77	63	65	47	38	44	28	21	20	19	16	8	11		672
PSS	260	364	280	260	271	271	231	213	250	234	173	164	216	160	205		3552
PSSap	0	3	11	23	30	23	59*	95*	124*	153*	143*	84*	89*	132*	93*		90
ADF Cover											2	34	64	144	302		546
* CSC used to report PSSap invalidity statistics discretely up until 30 June 2012. Beyond this point, the statistics recorded above reflect TPD claims that peruserably are a proxy to approved invalidity																	4860

4860

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

ANNEX D

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

APPENDIX 1 TO ANNEX D

NEW SUPER LEGISLATION

In June 1992, the Treasurer made a policy statement entitled *Security in Retirement* which outlined a system of tighter prudential controls designed to safeguard superannuation investments and to further encourage the superannuation industry to operate in a fair, honest and open manner.

On 30 November 1993 a package of seven bills, known collectively as the *Superannuation Industry (Supervision) Act 1993* (SIS), was passed into law. For most superannuation funds, SIS came into effect on 1 July 1994. Trustees of public sector funds, which includes the PSS, have until 30 June 1995 to elect to become regulated superannuation funds under SIS.

An election to become a SIS-regulated Fund is irrevocable—once it is made, a scheme must comply with all of the standards set out in the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and Regulations. From 1 July 1994 until the Board elects to come under SIS, the PSS must continue to comply with the *Occupational Superannuation Standards Act 1987* (OSSA), as modified by SIS.

There are some aspects of scheme design and administration that must be modified in order for the PSS to fully satisfy the requirements of SIS. These changes will be implemented when all the

For 1993-94, in order for the PSS Fund to receive favourable tax treatment, it had to comply with the *Occupational Superannuation Standards Act 1987* (OSSA).

The PSS Trustees received notices of OSSA compliance from the ISC for 1990-91 and 1991-92, and neither notice has been revoked. Copies are available on request to the Board Secretary. (The return for 1992-93 is currently being assessed by the ISC). There are still some aspects of the Scheme design that are inconsistent with OSSA operating standards, and we are discussing these with the ISC. We have asked the ISC Commissioner to again exercise his discretion to treat the Fund as a complying Fund in 1993-94.

OSSA requirements

OSSA requires us to tell you about the Fund's financial position and to summarise the financial transactions that occurred during the year. We are also required to tell you about any legislative changes that occurred during the year, and to provide you with details about your superannuation entitlements (including prospective benefits).

For the most part, these requirements are met by this Annual Report and your Information Statement. We keep you informed of legislative changes by way of administrative circulars and Super News newsletters, which are sent by ComSuper to Personnel Sections as new legislation comes into force. The information on your prospective benefits is available to you through the use of the ComSuper Ready Reckoner program and various Scheme leaflets which you can get from your Personnel Section.

Unclaimed money

SIS sets out rules for the treatment of unpaid superannuation benefits. Where more than 90 days pass after a superannuation lump-sum benefit becomes payable, SIS permits—and in certain circumstances requires—the benefit to be paid into an eligible rollover fund. However, if a member has reached the eligibility age for a Social Security age pension, SIS requires that an unclaimed superannuation lump-sum benefit must be transferred to the Consolidated Revenue Fund.

Reasonable Benefit Limits (RBLs)

From 1 July 1994 new limits will apply for the concessional taxation treatment of superannuation benefits. For 1994-95 the limits are \$400 000 for lump sums and \$800 000 for pensions. Transitional RBL provisions apply if you have a higher entitlement under the rules that were in effect at 30 June 1994. If you do, you have two years to register a transitional RBL with the Australian Tax Office. ComSuper is currently negotiating with the ATO to determine the best way to administer the transitional provisions, and members will be given the benefit of transitional RBLs.

OSSA COMPLIANCE

PUBLIC SECTOR SUPERANNUATION

Source: PSS Annual Report to Members – 30 Jun 1994

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

APPENDIX 1 TO ANNEX D

NEW SUPER LEGISLATION

In June 1992, the Treasurer made a policy statement entitled *Security in Retirement* which outlined a system of tighter prudential controls designed to safeguard superannuation investments and to further encourage the superannuation industry to operate in a fair, honest and open manner.

On 30 November 1993 a package of seven bills, known collectively as the *Superannuation Industry (Supervision) Act 1993*, was passed. For most superannuation funds, the new rules will apply from 1 July 1994. Trustees of public sector superannuation funds will have until 30 June 1995 to bring their funds into compliance with the new rules.

For matters concerning a superannuation scheme upon scheme trustees, non-compliance with SIS standards can subject trustees to civil and/or criminal penalties. Trustees may be prosecuted by the Insurance and Superannuation Commission (ISC), and members may seek compensation for loss or damage.

For us as trustees, SIS means that:

- we must ensure that the Fund complies with SIS in order for it to receive favourable taxation treatment;
- we must continue to give you information on the performance of the Fund each year;
- we must continue to give you information on your superannuation entitlements each year;

As PSS members, SIS protects your interests in a number of ways, which include:

- rules to ensure equal representation for employers and employees on the Board of Trustees;
- standards for the appointment and conduct of trustees, actuaries, auditors, custodians and investment managers;
- standards for the preservation and payment of benefits;
- obligations on the trustees to do all things necessary to ensure compliance; and
- establishment of an independent Superannuation Complaints Tribunal to which you can apply if you have a grievance about your superannuation.

Reasonable Benefit Limits (RBLs)

From 1 July 1994 new limits will apply for the concessional taxation treatment of superannuation benefits. For 1994-95 the limits are \$400 000 for lump sums and \$800 000 for pensions. Transitional RBL provisions apply if you have a higher entitlement under the rules that were in effect at 30 June 1994. If you do, you have two years to register a transitional RBL with the Australian Tax Office. ComSuper is currently negotiating with the ATO to determine the best way to administer the transitional provisions, and members will be given the benefit of transitional RBLs.

OSSA COMPLIANCE

For 1993-94, in order for the PSS Fund to receive favourable tax treatment, it had to comply with the *Occupational Superannuation Standards Act 1987* (OSSA).

The PSS Trustees received notices of OSSA compliance from the ISC for 1990-91 and 1991-92, and neither notice has been revoked. Copies are available on request to the Board Secretary. (The return for 1992-93 is currently being assessed by the ISC). There are still some aspects of the Scheme design that are inconsistent with OSSA operating standards, and we are discussing these with the ISC. We have asked the ISC Commissioner to again exercise his discretion to treat the Fund as a complying Fund in 1993-94.

OSSA requirements

OSSA requires us to tell you about the Fund's financial position and to summarise the financial transactions that occurred during the year. We are also required to tell you about any legislative changes that occurred during the year, and to provide you with details about your superannuation entitlements (including prospective benefits).

For the most part, these requirements are met by this Annual Report and your Information Statement. We keep you informed of legislative changes by way of administrative circulars and Super News newsletters, which are sent by ComSuper to Personal Sections as new legislation comes into force. The information on your prospective benefits is available to you through the use of the ComSuper Ready Reckoner program and various Scheme leaflets which you can get from your Personal Section.

PUBLIC SECTOR SUPERANNUATION

Source: PSS Annual Report to Members – 30 Jun 1995

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

ANNEX E

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

EXAMPLE OF EMAIL CORRESPONDENCE SENT TO PARLIAMENTARIANS

From: Peter Thornton on behalf of Peter Thornton <peterthornton@grapevine.net.au>
Sent: Thursday, 1 September 2022 4:49 AM
To: Senator.McKenzie@aph.gov.au; Senator.McKim@aph.gov.au;
Senator.McLachlan@aph.gov.au; Senator.Mirabella@aph.gov.au;
Senator.Molan@aph.gov.au; Senator.ONeill@aph.gov.au;
Senator.OSullivan@aph.gov.au; Senator.Paterson@aph.gov.au;
Senator.Payman@aph.gov.au; Senator.Payne@aph.gov.au;
Senator.Polley@aph.gov.au; Senator.Pratt@aph.gov.au; Senator.Price@aph.gov.au;
Senator.Rennick@aph.gov.au; Senator.Reynolds@aph.gov.au;
Senator.Rice@aph.gov.au; Senator.Roberts@aph.gov.au; Senator.Scarr@aph.gov.au;
Senator.Sheldon@aph.gov.au; Senator.Shoebridge@aph.gov.au;
Senator.Smith@aph.gov.au; Senator.Smith@aph.gov.au; Senator.Sterle@aph.gov.au;
Senator.Stewart@aph.gov.au; Senator.Thorpe@aph.gov.au;
Senator.Tyrrell@aph.gov.au; Senator.Urquhart@aph.gov.au;
Senator.Van@aph.gov.au; Senator.Walsh@aph.gov.au; Senator.Waters@aph.gov.au;
Senator.Watt@aph.gov.au; Senator.Whish-Wilson@aph.gov.au;
Senator.White@aph.gov.au; Senator.Wong@aph.gov.au
Cc: national.president@rsl.org.au; President - TPI Federation; 'Ian Lindgren';
members@cpsu.org.au; John Pauley; bradley campbell; bienk@grapevine.com.au; Mark
Schroffel -AVN; 'Michael von Berg'
Subject: IMMEDIATE: A Breach of Human Rights for 30,000 Medically Retired Military &
Commonwealth Officers is Imminent
Attachments: The Douglas Court Case - An Enduring Legal Case Demanding Fairness and Equity
For All Medically Retired Veterans and Commonwealth Officers - 25 August
2022.pdf; DSB Payment Summaries - Illustrating Compensatory Nature of DSB - 6 Aug
2022.pdf
Importance: High
Dear Parliamentarians,

We would humbly request once again that addressees please read the commentary in the email below and its attachments (as attached), and particularly so, when considering that a breach in the Human Rights of approximately 30,000* medically retired Veterans and Commonwealth Officers is imminent. We would also draw your attention to an Editorial on Australian Veteran News that has just been released also:

<https://www.australianveterannews.com/post/retrospective-legislation-set-to-revoke-access-to-administrativejustice>

The Government's draft legislation ("Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Taxation of military superannuation benefits') or its equivalent to be tabled as early as next week, raises for equal and serious concern "Article 26 of the 'International Covenant on Civil and Political Rights (ICESCR),' which protects the right to equality and non-discrimination in law in any field regulated and protected by public authorities, including the provision of pension entitlements." (Professor Gillian Triggs – In a letter to the Mr. Peter Thornton and Mr. Bert Hoebee regarding differential pension indexation, dated 24 February 2015)

The Government's proposed legislation is considered equally untenable regarding, not least:

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

- Article 2(2), of the ICESCR. which concerns the right to equality and non-discrimination; including the right to adequate food, clothing, housing and to the continuous improvement of living conditions and pension benefits to assist persons to meet an adequate standard of living;
- Article 7: the right to just and favourable conditions of work, which includes the right to equal remuneration that extends to pension benefits; and
- Article 2(2)(h) of the 'International Labor Organization's (ILO) Covenant C037 – Invalidity Insurance (Industry, etc.) - 1933,' which confers a right for retired (invalid) public officials to be afforded the same invalidity provisions consistent with national laws and regulations.

Given the totality of these very serious concerns, then we once again ask that every Member and Senator of the 47th Parliament to petition the Government to:

1. Immediately cease tabling the regressive and punitive draft legislation,
2. Apply a 10% tax-offset to the 'untaxed element' of the 'Taxable Component' of a 'Disability Superannuation Benefit (DSB)', for all 60+yr DSB recipients, both now and in perpetuity, thereby eliminating the small number of identified recipients suffering a current detriment, as a consequence of the Douglas decision, and to facilitate and negate any other prospective or unforeseen future detriment(s), and
3. Do the honourable thing and accept that a major error in public administration has occurred and accept the financial liability that is associated with it. In doing so, the Government should instruct the ATO to immediately withdraw from current litigation, acquiesce to Mr. Thornton's rightful request for remediation, and to have CSC and ATO immediately facilitate and administer the lawful restitution of DSB invalidity benefits for not only Thornton, but for all 30,000* medically retired officers, consistent with the law.

These medically retired Veterans and Commonwealth Officers have in the main been invalided in the service of their country, but for whom now in the shadow of the Douglas Case have not been afforded equity and a "fair go" under the law.

To comply within its International Human Rights and International Labor Organisation obligations, then Veterans and Commonwealth Officers should be treated with dignity and equally, regardless of the nature of service or the period upon which such service was rendered. Indeed, as a case in point, former AusAid Commonwealth Officer and CSS invalidity retiree, Mr. David Savage, was deployed with the ADF and maimed in 2012 by a roadside bomb in Afghanistan (please see here: <https://youtu.be/vbS4Wx4eXA8>). Yet David and 30,000 others are not afforded the same compensatory tax-free element available under Douglas and/or other state based public sector and civilian sector superannuation.

Regardless of the type of service rendered, David Savage and everybody else in receipt of an invalidity benefit that is supported by two (2) doctor's certificates, certifying that they are incapable of working, is because they are formally classified as being Totally and Permanently Incapacitated. Regardless of the nature of service rendered, invalidity (DSB) retirees are all reduced to the same common denominator. Regardless of the nature of service rendered, invalidity (DSB) retirees are all reduced to the same common denominator, yet the Government intends to solely denigrate certain retirees through punitive and regressive legislation.

For further information, please don't hesitate to contact either of the points of contact below, or as an alternative, the National President of the RSL (MAJGEN Aziz "Greg" Melick), Federal President of the TPI Federation (Ms. Patricia "Pat" McCabe), or Vice President of the Peacekeepers Association (Mr. Ian Lindgren).

We look forward to your earliest considered response and/or corrective actions please.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

Yours faithfully

Peter Thornton

Independent Researcher/Commentator and Affected PSS Member/Litigant [REDACTED]

Bradley Campbell

Veteran Advocate – Veteran Clawback

[REDACTED]

* To substantiate the number of 30,000 retirees, then analysis of demographic data contained in the Annual Reports to Parliament, as a close approximation to the date stated in law, being the 20 Sep 2007, is as follows:

Pre-20 Sep 2007

Total Invalidity @ 30 Jun 2007	
1922	?
DFRB	781
DFRDB	2367
MSBS	3243
CSS	18431
PSS	1779
Totals	26601

Post-20 Sep 2007

Permanent Invalidity Recipients									
	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
CSS	97	118	77	63	65	47	38	44	28
PSS	260	364	280	260	271	271	231	213	250
ADF Cover*									

ADF Cover data is 'Class A' invalidity benefit only.

From: Peter Thornton On Behalf Of Peter Thornton

Sent: Thursday, 25 August 2022 10:13 AM

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

To: Senator.McKenzie@aph.gov.au; Senator.McKim@aph.gov.au; Senator.McLachlan@aph.gov.au;

Senator.Mirabella@aph.gov.au; Senator.Molan@aph.gov.au; Senator.ONeill@aph.gov.au;

Senator.OSullivan@aph.gov.au; Senator.Paterson@aph.gov.au; Senator.Payman@aph.gov.au;

Senator.Payne@aph.gov.au; Senator.Polley@aph.gov.au; Senator.Pratt@aph.gov.au; Senator.Price@aph.gov.au;

Senator.Rennick@aph.gov.au; Senator.Reynolds@aph.gov.au; Senator.Rice@aph.gov.au;

Senator.Roberts@aph.gov.au; Senator.Scarr@aph.gov.au; Senator.Sheldon@aph.gov.au;

Senator.Shoebridge@aph.gov.au; Senator.Smith@aph.gov.au; Senator.Smith@aph.gov.au;

Senator.Sterle@aph.gov.au; Senator.Stewart@aph.gov.au; Senator.Thorpe@aph.gov.au;

Senator.Tyrrell@aph.gov.au; Senator.Urquhart@aph.gov.au; Senator.Van@aph.gov.au; Senator.Walsh@aph.gov.au;

Senator.Waters@aph.gov.au; Senator.Watt@aph.gov.au; Senator.Whish-Wilson@aph.gov.au;

Senator.White@aph.gov.au; Senator.Wong@aph.gov.au

Cc: national.president@rsl.org.au; President - TPI Federation <president@tpifed.org.au>; 'Ian Lindgren'

<ian.lindgren@peacekeepers.asn.au>; members@cpsu.org.au; John Pauley <john.pauley00@gmail.com>; bradley campbell <bradcampbell76@gmail.com>; bienk@grapevine.com.au

Subject: IMMEDIATE: The Rights Of Medically Retired Military & Commonwealth Officers Are In Legal Jeopardy

Dear Senators,

By way of introduction, my name is Peter Thornton, and I am a long-time independent researcher and commentator on matters surrounding Military & Commonwealth superannuation and Veterans compensation matters also.

The reason I am writing is that there is an immediate and dire situation developing, where on the 25th of July, the Government released re-treaded draft legislation that attempts to potentially stymie not only an Appeal currently before the AAT (Thornton vs Commissioner of Taxation, 2021 – 9795), but more importantly, an egregious attempt to outrightly negate the rights of approximately 30,000 other medically retired Veterans and Commonwealth officers; invalid retirees who are largely oblivious to what is transpiring. Had they known, then these retirees would no doubt seek the same rightful restitution of their invalidity superannuation benefits also.

We understand the Government intends to table this bad law on or about the first day of the parliament's return, being 5 September 2022.

For decades, invalidity benefits had and continue to be administered in error by the Commonwealth Superannuation Corporation and the Australian Tax Office, as a Full Bench of the Federal Court adjudicated and concluded recently: 'Commissioner Taxation vs Douglas [2020] FCAFC 2020 – Case 89089'. Now, the Government and its bureaucratic enablers are trying to cover up that error to negate the financial liability that is associated with it.

The offensive draft legislation ('Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Taxation of military superannuation benefits') is highly deceptive and attempts to legislatively handcuff and throw a net over approximately 26,600 pre-20 September 2007 military and Commonwealth Officer invalidity recipients (i.e., schemes DFRDB, MSBS, CSS and PSS), and approximately 4,500 post-20 September 2007 similarly retired Commonwealth Officers also (i.e., CSS & PSS).

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

This legislation will discriminate against former employees, whose former employer was the insurer, whilst the rest of the community will rightly continue to receive unabated their TDP insurance equivalent.

Attached is a 3-page editorial that gives rise to the true nature of what has transpired. There is an accompanying document that graphically illustrates, using three (3) different sets of payment summaries of 3 Veterans who rendered different periods of service, how the benefit received is supposed to work. The graph in this document demonstrates the “compensatory nature” of ‘Disability Superannuation Benefits’ at work in the real world. Contrary to Government assertions, the Parliament’s original intent and lawful provision confers a tax-free element that is directly proportional to the service rendered of each invalid retiree concerned (i.e., a higher tax-free element that manifests for a shorter period of service, that then incrementally reduces as the service of others approaches the ‘Compulsory Retiring Age’ (CRA) of the scheme concerned.

The Government’s unfounded defence that it was “not the policy intent” is obtuse and irrelevant. The law itself has no explicit exclusion and the legislative framework in which invalidity provisions exist gives clear rise to what the Parliament’s original intent was. Indeed, how does the policy of superannuation offsetting, set against other compensation provisions (e.g., SRCA, DRCA, MRCA), exist if the original intent of invalidity superannuation was not meant to be compensatory in nature? It is clear from the black letter of the law that there is no anomaly at law or a “loop-hole being exploited” by Veterans. The intent of the provisions is crystal clear and replete across the fabric of the legislative framework.

The Government has submitted to key executives of various Ex-Service Organisations that Douglas has caused 2nd and 3rd order problems with family law, family tax benefits and the like. Whilst acknowledged, that position is not the fault of invalidity retirees of any class, but that of the Commonwealth. It is not a proper reason to depart from the operation of various Acts, for which the Judicial Power has already clearly revealed has not been properly followed.

Given these very serious concerns, I/we have requested the Government to:

1. **Immediately withdraw the regressive and punitive legislation,**
2. **Apply the 10% tax-offset to the ‘untaxed element’ of the ‘Taxable Component’ of a DSB for all 60+yr DSB recipients, both now and in perpetuity, thereby eliminating the already small identified detriment and to negate any prospective or unforeseen future detriment, and**
3. **Do the honourable thing, instruct the ATO to immediately withdraw from current AAT litigation, acquiesce to Thornton’s rightful request, and have CSC and ATO immediately facilitate and administer the lawful restitution of the DSB invalidity benefit for not only Thornton, but for all 30,000 medically retired officers who have been invalided in the service of their country, but for whom the Douglas decision has not been equitably applied, both for Veterans and Commonwealth Officers regardless of the nature of service or the period upon which such service was rendered.**

Minister Keogh MP and/or Assistant Minister Jones MP have failed to respond.

Lord Denning of the Privy Council once said ... “If the law should be in danger of doing injustice, then equity should be called in to remedy it.” We trust every Member and Senator of the 47th Parliament will not allow such injustice to manifest, ultimately breaching the rights and equity of 30,000 former employees, all because the Government and its bureaucratic enablers want to cover up a massive error in public administration, and the financial liability that is associated with it.

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

With the foregoing in mind, I would encourage addressees to read the attached documents and to call either Mr. Bradley Campbell and/or myself as we would be happy to discuss this matter in greater detail.

Yours faithfully

Peter Thornton

[REDACTED]

Brad Campbell

[REDACTED]

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

ANNEX F

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

PAGE 1 TO APPENDIX 1 OF ANNEX F

EXAMPLE OF FALSE CERTIFICATE & NON-COMPLIANCE OF THE LAW BY CSC



Australian Government
Commonwealth Superannuation Corporation

2 December 2021

Reference: [REDACTED]

[REDACTED]
By email: [REDACTED]
[REDACTED]

Thank you for completing our online feedback form on 17 November 2021 regarding the information provided to you by Commonwealth Superannuation Corporation (CSC) about the tax changes to invalidity payments.

I appreciate your patience awaiting my response.

I want to begin by apologising for the distress that we have inadvertently caused you recently. It is disappointing to hear that you have had negative experiences with CSC.

For your records, the Australian Taxation Office (ATO) provided CSC with a withholding variation dated 18 August 2021, which outlined the tax withholding rate as 0% on your MilitarySuper invalidity payment effective until 30 June 2022. You were notified of this change shortly after, please see **enclosed** letter dated 27 August 2021.

You met the criteria of the Disability Superannuation Benefit (DSB) and were advised of this via email on 3 September 2021. You were advised that the tax withheld from your invalidity payment may change on 21 October 2021 based on the Full Federal Court decision in Commissioner of Taxation v Douglas [2020] FCAFC 220.

The DSB leads to a 15% tax offset being applied to the taxable taxed component of an income stream. The 15% tax offset was applied to your invalidity payment as at pay day 21 October 2021. However, as you currently have no tax withheld from your MilitarySuper invalidity payment, you did not see a difference in your net fortnightly payments.

We understand you were expecting to have your invalidity payments treated as a superannuation lump sum, instead of an income stream. Due to a number of Federal Government agencies who commenced working together regarding the future withholding arrangements, we were unable to make these changes.

On 24 November 2021, The Hon Michael Sukkar MP and The Hon Andrew Gee MP issued a joint media release where they announced action would be taken to ensure no veteran was worse off due to the Federal Court decision, Commissioner of Taxation v Douglas [2020] FCAFC 220 (the Douglas Decision). You can read the announcement [here](#).



Military
Superannuation &
Benefits Scheme

Any financial product advice in this document is general advice only and has been prepared without taking account of your personal objectives, financial situation or needs. Before acting on any such general advice, you should consider the appropriateness of the advice, having regard to your own objectives, financial situation and needs. You may wish to consult a licensed financial advisor. You should obtain a copy of the MilitarySuper Product Disclosure Statement and consider its contents before making any decision regarding your super.
Commonwealth Superannuation Corporation (CSC) ABN: 48 882 817 243 AFSL: 238069 RSE: L0001397
Trustee of the Military Superannuation and Benefits Scheme (MilitarySuper) ABN: 50 925 523 120 RSE: R1000306

EMAIL
members@
enq.militarysuper.gov.au
WEB
csc.gov.au
PHONE
1300 006 727

OVERSEAS CALLERS
+61 2 6275 7000
FAX
(02) 6275 7010
POST
MilitarySuper
GPO Box 2252
Canberra ACT 2601

RE: SCHEDULE 9 OF TREASURY LAWS AMENDMENT (2022 Measures No. 4) BILL 2022

PAGE 2 TO APPENDIX 1 OF ANNEX F

We are assessing the implications of the government's announcement and seeking to understand how our members may be affected depending on their circumstances. As we know more information we will update the dedicated page on the CSC website and we will write to you directly if any changes will be made to your payments.

In the meantime, we're doing our best to avoid people's fortnightly in the hand amounts changing repeatedly. As the government has announced it will reverse the Federal Court decision, we will not change withholding at this point in time. Please remember, CSC only withholds amounts and gives these to the ATO who ultimately work out your tax payable. If we have over withheld, you will get this back at tax time.

In summary, your MilitarySuper invalidity payment will continue to be paid as a superannuation income stream, until further direction is received. For more information please view our website [here](#).

You are currently not claiming the tax free threshold on your MilitarySuper pension and this may be option for you to consider in the future. You can only claim the tax free threshold on once source of taxable income. We cannot advise whether this option is right for you or your personal circumstances, so you should seek professional taxation advice.


I've **enclosed** the tax file number declaration form to complete if you wish to claim the tax free threshold. Please also note, claiming the tax free threshold will not override the ATO's withholding variation dated 18 August 2021.

I appreciate the time you have taken to raise your concerns and thank you for providing the Commonwealth Superannuation Corporation with an opportunity to address your complaint. If you are not satisfied with our response to your complaint, you may lodge a complaint with the Australian Financial Complaints Authority in one of the following ways:



Post: Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001

Time limits may apply to complaints to AFCA and so you should act promptly or otherwise consult the AFCA website to find out if or when the time limit relevant to your circumstances expires.

If you would like more information concerning this matter or have any queries regarding our complaints handling process, please call 

Yours sincerely,



Rachael Knight
Internal Dispute Resolution Case Manager
Customer Contact Centre | Commonwealth Superannuation Corporation