



DEFENCE FORCE WELFARE ASSOCIATION

18 March 2024

Committee Secretary

Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary

Social Services and Other Legislation Amendment (Military Invalidation Payments Means Testing) Bill 2024

Thank you for the invitation to make a submission in relation to the subject Bill.

About DFWA

The Defence Force Welfare Association (DFWA) is an Australia wide organisation, formed in 1959, for the purpose of promoting and protecting the welfare and interests of serving and former members of the Australian Defence Force and their families.

Our advocacy areas include rehabilitation of injured veterans, compensation for service-related injuries, ADF pay and conditions, retirement and superannuation, improving service delivery, and veteran recognition.

DFWA has been involved in the *Douglas* case since 2017. Our involvement includes supporting the veterans involved in the original litigation, advocating for affected veterans during the aftermath of the poor implementation of *Douglas* by CSC and the Australian Taxation Office, and the legislative actions in 2022 and 2023 to address *Douglas*.

DFWA Position

Veterans who receive invalidity benefits through one of the various military superannuation schemes¹ are those who were, or ought to have been, medically discharged from the Australian Defence Force (ADF), for physical and/or mental health conditions.

¹ Defence Force Retirement and Death Benefits (DFRDB) and Military Superannuation and Benefits Scheme (MSBS).

Defence Force Welfare Association National Incorporated

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This is a vulnerable cohort of veterans:²

Due to the nature of the benefits received by these affected veterans, many are likely to suffer from mental health issues linked to their service history, such as depression, anxiety and post-traumatic stress disorder, and have been deemed incapable of civil employment to varying degrees.

The way in which invalidity benefits paid under the various military superannuation schemes interact with income tax, general superannuation, veterans' compensation and entitlements, and social security legislation is extremely complex. Most tax and financial planning professionals have little, if any, understanding.

It is unsurprising that many veterans who have to deal with bureaucracy in relation to their invalidity benefits are left confused, stressed, and in many cases, angry.

DFWA's stated position is that we support action that provides relief to those veterans who have been negatively impacted by the decision in *Douglas*; however, we absolutely oppose any action that removes any tax or other benefits flowing from the decision in *Douglas*.

Potential Changes to Income Support Payment

In Minister Rishworth's Second Reading speech, she says:³

*Importantly, in **almost every case** these amendments will result in no changes to payment rates for the approximately 850 veterans (or their partners) who receive one of these invalidity benefit payments and also an income support payment from the social security system. [Emphasis added]*

DFWA seeks to highlight to the Committee that there appears to be an expectation that some veterans may have changes and it may be that some of those changes are negative. DFWA strongly urges the committee to interrogate this further.

Potential Changes to Consequential Benefits from Douglas

Minister Rishworth has confirmed to DFWA that this Bill will not affecting Family Tax Benefit, Childcare Subsidy or any other family payments provided under family assistance law; or impact eligibility for Low Income Health Care Cards.

Family Law Affected Payments

It is noted that some amendments in the Bill are made on the basis that *military invalidity pension income streams may also be family law affected income streams for the purposes of [the Act]*.⁴

Many veterans who were in receipt of military superannuation invalidity payments at the time of divorce or separation have expressed concern over these amendments. There has been various interpretation by the Courts in family law matters concerning the method of inclusion of invalidity benefits in asset assessments.

DFWA sought clarification from the Minister, who confirmed:⁵

These means testing arrangements apply only within the income support system. The amendments in the Bill have no effect of family law. As assets test exemption of income support purposes does

² Letter from Inspector-General of Taxation to Australian Taxation Office, *Re: IGTO View*, 8 December 2022 at [4].

³ Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 15 February 2024, p 1 (Amanda Rishworth, Minister for Social Services).

⁴ Explanatory Memorandum, Social Services and Other Legislation Amendment (Military Invalidation Payments Means Testing) Bill 2024 (Cth) 6, 8.

⁵ Letter from Minister Rishworth to DFWA, 8 March 2024.

not prevent the affected invalidity payments being subject to family law proceedings and decisions of the Family Court. The Bill will not change this.

In addition, just as it does for other forms of income, the income support system will continue to take into account any family law orders relating to the invalidity payments (for example, in cases where orders split the income from the invalidity payments between the former members of a couple). Again, this Bill will not change these arrangements.

DFWA accepts that this Bill does not affect treatment of affected invalidity benefits in the Family Court.

However, DFWA seeks to highlight to the Committee that in family law matters, military superannuation invalidity benefits are inconsistently classified for the purposes of asset splitting. Affected invalidity benefits are reviewable up to the age of 55 and can be reduced to \$0 as a result, yet in many cases, the benefit is assessed as an asset that may be split.

DFWA urges the Committee, in its report, to recognise the need for greater consistency in the classification of military superannuation invalidity benefits in family law property settlement matters.

Conclusion

DFWA welcomes the measures to provide a clear legal foundation for the assessment of military superannuation disability payments within the means test for the purposes of the *Social Security Act 1991* (Cth) and the *Veterans Entitlement Act 1986* (Cth).

While DFWA does not wish to delay the introduction of legislation that improves the welfare of affected veterans, we do urge the committee to:

1. Note that there appears to be an expectation that some veterans may have changes and that some of those changes may be negative. DFWA strongly urges the committee to interrogate this further.
2. To recognise in its report that there is a need for greater consistency in the classification of military superannuation invalidity benefits in family law property settlement matters.

Thank you again for the invitation to provide a submission. I offer myself and my advisory staff to appear personally, via video conference if appropriate, to answer questions about this submission, or other questions that may be relevant to the inquiry.

Yours sincerely,

Del Gaudry CSC
National President
Defence Force Welfare Association