



**Australian Government**  

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**Department of Veterans' Affairs**

**Submission to the**  
**THE SENATE STANDING COMMITTEE**  
**ON COMMUNITY AFFAIRS**  
**Legislation Committee**

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

March 2024

Senate Standing Committee Inquiry into Social Services and Other Legislation Amendment (Military Invalidation Payments Means Testing) Bill 2024 March 2024

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## 1. Introduction

The Department of Veterans' Affairs (DVA) welcomes the opportunity to make a submission to the Senate Community Affairs Legislation Committee (the Committee) Inquiry into the Social Services and Other Legislation Amendment (Military Invalidation Payments Means Testing) Bill 2024.

DVA supports the Bill which amends the *Social Security Act 1991* (SSA) and the *Veterans' Entitlements Act 1986* (VEA) to clarify the treatment of military invalidity pensions affected by the Full Federal Court decision in *Commissioner of Taxation v Douglas* [2020] FCAFC 220 (the *Douglas* decision) within the social security and veterans' entitlements means test.

## 2. Background

### 2.1. Income Support Means Testing

The amount of income support payable to an eligible person receives under the VEA is assessed on the basis of their income and assets. An equivalent means test is also applied under the SSA in respect of income support payments made under that Act (to both veterans eligible under the SSA rather than the VEA, and members of the general community).

The rate of income support payable is calculated under two separate tests - the income test and the assets test. The test paying the lower rate of pension is the one that is applied. For a couple, the rate of income support is calculated on the combined income and assets, regardless of which member of a couple actually receives the income or owns the assets.

For the purposes of the SSA and VEA, an income stream is a regular series of payments made directly from superannuation, or purchased with a lump sum. This definition may differ from the definition used in taxation law.

Income streams may be assessed under the income test only, or under the income test and the assets test, depending on the characteristics of the income stream and the way it is categorised and treated under the two Acts. This determines what impact the income stream has on a person's income support payment rate if the person seeks assistance through the income support system.

### 2.2 The Douglas Decision

The Federal Court decision in *Commissioner of Taxation v Douglas* [2020] FCAFC 220 (the *Douglas* decision) found that, certain military invalidity benefits paid under the Military Superannuation and Benefits Scheme (MSBS) and the Defence Force Retirement and Death Benefits Scheme (DFRDB) that commenced on or after 20 September 2007 should be taxed as "superannuation lump sums" rather than "superannuation income streams". Prior to *Douglas*, the affected payments were taken to be superannuation income streams for tax purposes.

The *Douglas* decision is highly complex, and it has taken considerable time to identify and clarify the additional consequences of the decision on the SSA and VEA.

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## **2.2 The Douglas Decision – Income Support Means Testing**

An indirect consequence of the *Douglas* decision is to prevent invalidity payments from being treated as ‘asset-test exempt defined benefits income streams’ under the SSA and the VEA, for income support purposes. This is contrary to the historical treatment of such payments. The decision created uncertainty and potential inequities for veterans and other members of the community receiving income support payments.

The legislative changes proposed in this Bill are important as they give veterans and their families’ certainty by ensuring there is a fair and clear legal basis for assessing these invalidity benefit payments in the income support system.

## **3. The Social Services and Other Legislation Amendment (Military Invalidation Payments Means Testing) Bill 2024**

The Social Services and Other Legislation Amendment (Military Invalidation Payments Means Testing) Bill 2024 was introduced in the Senate on 28 February 2024.

The Bill inserts a new category of ‘military invalidity pension income stream’ in the VEA and SSA, which will include the affected invalidity benefits.

The new provisions are designed to produce the same assessment of income as the historical assessments of the affected invalidity payments, and to ensure the invalidity payments continue to be treated as exempt from the assets test.

The Bill also preserves the validity of all relevant historical income and asset assessments relating to the affected payments.

The Bill includes an instrument making power that provides for the Secretary of the Department of Social Services, or the Repatriation Commission, to specify an income stream as a military invalidity pension income stream via legislative instrument under the SSA or VEA respectively.

The instrument making power will allow for certain incapacity payments provided by a small number of legacy superannuation schemes to be treated on the same basis as military invalidity pensions affected by the *Douglas* decision. These payments may also fail to meet the requirements for being treated as a defined benefit income stream in the means test, for reasons independent of *Douglas*. The need to include arrangements for these schemes was identified in consultations with the Department of the Treasury.

Approximately 850 current income support recipients are veterans with income from an affected invalidity payment, or their partners. While more than 16,000 veterans in total are receiving an affected invalidity payment from the Commonwealth Superannuation Corporation, the payments usually provide income at a level that has always precluded people from income support.

In almost every case, the amendments in the Bill will result in no change to the rate of income support veterans or their partners are currently receiving.

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The changes in this Bill do not alter the income tax benefits of the *Douglas* decision for veterans and/or their partners. The amendments make no changes to family assistance law and will have no impact on a veteran's adjusted taxable income or their eligibility for payments that depend on it.

#### **4. Interaction with the draft Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024**

This Bill is not impacted (or vice versa) by the draft Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024, which is currently subject to a public consultation process. The draft Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 amends provisions relating to compensation eligibility under the VEA, but does not amend any provisions relating to income support payments under the VEA, which is the purpose of this Bill.

#### **Conclusion**

The proposed legislative amendments to the VEA and the SSA will result in the historical arrangements for income support means testing of *Douglas* impacted payments continuing as per the original policy intent under Australia's social security system.

DVA supports the Bill.