

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

“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:

Bradley Campbell

Em:

25 March 2024

Standing Committee On Community Affairs - Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

(Transmittal – Electronic: economics.sen@aph.gov.au)

For Information:

Senate FADT Legislation Committee

TPI Federation – Federal President Ms Patricia McCabe

RSL National – National President MAJGEN Aziz “Greg” Melick

Defence Force Welfare Association – National President Ms Del Gaudry

Australian Peacekeepers & Peacemakers Association – Federal Chairman Mr Ian Lindgren

Australian Council of Public Sector Retiree Organisations – Mr John Pauley

Dear Committee Chair, Deputy Chair, and members of the Community Affairs Legislation Committee,

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

References:

- A. [Statement of Facts Issues and Contentions Submission - Peter Thornton 2021-9795 - dated 4 Mar 2024.pdf](#)
- B. Commissioner of Taxation v Douglas [2020] FCAFC 220, dated 4 Dec 2020
- C. Thornton & Campbell Combined Submission ([Sub No.4](#)) – [Senate Economics Legislation Committee Inquiry](#) – Re: ‘Schedule 9 - Treasury Laws Amendment (2022 Measures No. 4) Bill 2022 – dated 6 Dec 2022
- D. FADT Senate Inquiry – Veteran Suicide – [Thornton Submission 335](#), dated 6 Dec 2016

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

INTRODUCTION

1. We refer to the Subject above and tender this submission in response to the amending Bill now under review by the Committee/Senate.
2. At the outset, the Authors firmly believe this amending legislation is fraught and should immediately be placed on hold until further analysis is undertaken, because at a fundamental level, it is not in keeping with the original policy intent, is inequitable with respect to the rest of the Australian community, and prejudicially attempts to deal with an ill-effect and not the root cause.
3. The root cause lies elsewhere in a complex framework of Superannuation and Compensation Legislation where the improper classification and treatment of invalidity benefits has been in error for near on 40 years. This error has caused severe financial implications for our most disabled veterans and public servants because of the incorrect application of the law in various areas of Government.
4. This root cause stems from an invalidity benefit being classified as an ordinary retirement benefit when that is quite simply not the case. Like other amendments in various areas of law, this draft Bill equally reveals a lack of historical context and understanding of the actual policy intent.
5. The following submission provides responses to statements made in the explanatory memorandum, historical perspectives to the invalidity benefit issue, what the root cause is, the true nature of an invalidity and the deductible amount and a real-life example. These all serve to inform and highlight the history and considerable contentions that exist at law.

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

'... 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

GENERAL

SECTION 1 –RESPONSES TO EMPLANATORY MEMORANDUM 'BACKGROUND'

6. This Section provides Author responses to the 'Background' commentary (seen in blue italics below) as found in the Explanatory Memorandum (EM) to the amending Bill under review.

The decision in Douglas found that military invalidity benefits paid under the Military Superannuation and Benefits Scheme and the Defence Force Retirement and Death Benefits Scheme (MSB, DFRDB, the affected payments) 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.

7. A legal recharge is currently underway because the judgements handed down by the previous Douglas Tribunal and Federal Court are, in legal parlance, just "plainly wrong". As Ref. A., to this submission clearly shows, the judgements handed down were plainly wrong because the Commissioner of Taxation mislead and failed to alert judicial authorities to the fact that in 1992 clear policy and amendments to the law provided clarity in the bifurcation between a 'superannuation pension' and a 'disability superannuation pension', a bifurcation that had always existed prior, but required clarification because of abuse. Plainly stated, public sector invalidity recipients met a condition for early release for invalidity, not normal retirement, and therefore, the definition of 'pension' and date of 20 September 2007 is nothing more than a legal fiction and does not apply to them.

The affected payments have previously been treated as "asset-test exempt income streams" and "defined benefit income streams" under the Social Security Act and the Veterans' Entitlements Act. However, the Douglas decision also found the affected payments may not be "taken to be a pension" for the purposes of the Superannuation Industry (Supervision) Act 1994 under the Superannuation Industry (Supervision) Regulations 1993, as required by paragraph 9(1F)(a) of the Social Security Act and paragraph 5J(1E)(a) of the Veterans' Entitlements Act, in order to be defined as a "defined benefit income stream".

8. This is where a clear lack of understanding exists. Public sector invalidity benefits have never met the strict definitions of a 'defined benefit income stream', because as seen in Figures 8 & 9 of Ref A., to this submission, Reg 1.03AA(2)., and s291-175(2) of the ITTA 1997 shows in both cases that 'death' and 'disability' are explicitly excluded. Similarly, the *Occupation*

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

Superannuation Standards Regulations 1987 states that “Vesting Standards” do not apply for benefits that are for ‘death or disability’¹. This again makes perfect sense, because:

“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.”²

9. As Ref A clearly shows, Public Sector Invalidity Benefits fail the strict standards of a normal ‘superannuation income stream’ / defined benefit income stream / pension, because:
 - a. As the Court ruled, benefits conferred are not guaranteed to be paid at least annually, because benefits are subject to review, can be suspended and/or cancelled at the sole discretion of CSC.
 - b. Benefits have a ‘residual capital value’ if upon review, or upon the recipients once becoming a member of the fund, then the benefit is ceased, and the original lump sum value of the superannuation benefit is appropriated from Consolidated Revenue back onto the members account until they once again meet another condition of release. AND
 - c. Because a “superannuation interest cannot be added to by way of a contribution”. All public sector invalidity recipients who are in receipt of a compensatory benefit from the Safety Rehabilitation and Compensation Act 1988 in its various guises (i.e., SRCA 1988 / DRCA 2017), compensation that is offset by superannuation invalidity benefits, are required to contribute to their invalidity benefit by way of a “superannuation contribution”. By any measure, this requirement alone is just downright egregious and despicable.

The affected payments therefore no longer meet the definition of a “defined benefit income stream” in paragraph 9(1F)(a) of the Social Security Act and paragraph 5J(1E)(a) of the Veterans’ Entitlements Act, and no longer satisfy the lifetime income stream requirements in section 9A of the Social Security Act or section 5JA of the Veterans’ Entitlements Act which are necessary for them to be regarded as “asset-test exempt income streams”.

10. As stated, the payments have never met the strict definition of a “defined benefit income stream” or never a “lifetime income stream”. Therefore, Social Services have never treated an invalidity benefit in accordance with the Social Security Act. This proves the Bill’s intent is to

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

² <https://en.wikipedia.org/wiki/Vesting>

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

classify an invalidity as something it is not, perpetuating the ‘ill effects’ stemming from the root cause of the issues surrounding an invalidity benefit.

11. As the facts show, arguments mounted by the Commissioner of Taxation both now and during the Douglas case about the definition of a “pension”, and the supposed “policy intent”, are erroneous and downright misleading, because without exception invalidity benefits as provided by CSC for all Commonwealth schemes have never been ‘Superannuation Income Streams’ or ‘Pensions’. Instead, and as can be seen in the Appendices to Annex B of Reference A to this submission, Invalidity Benefits have always been considered to be “compensatory” in nature, providing “insurance” against death and invalidity. This is consistent with the definition of an ‘Income Stream’ in s9 of the *Social Security Act 1991*, where the definition explicitly excludes, for the purposes of calculating the “deductible amount”, the following:

‘(n) a payment of compensation to a person, or a payment to a person under an insurance scheme, in relation to:

(i) the person's inability to earn, derive or receive income from remunerative work; or

(ii) the person's total and permanent disability or incapacity.’

Consequently, the method of assessing income from “asset-test exempt income streams” that are “defined benefit income streams”, in section 1099A of the Social Security Act and section 46V of the Veterans’ Entitlements Act, can no longer be applied to the affected payments. In the social security system, the rate of payment for income support payments under the Social Security Act and the Veterans’ Entitlements Act may vary depending on the amount and type of income a person is taken to receive, and the assets they are taken to have. The means test consists of an income test and an assets test. The test that results in the lower rate of payment is the one that applies for a particular individual.

12. The Authors believe this statement lacks depth of understanding and is incorrect, as will be discussed later in Section 3 of this submission.
13. Why? Because in direct consequence of meeting a condition of early release for invalidity, public sector invalidity recipients are paid a superannuation lump sum and derivative lump sums in the first instance. One of those lump sums (i.e., mainly the employer benefit) is internally rolled over into Consolidated Revenue where, upon further derivation in accordance with the rules of the fund, the benefit is paid as an income stream (ordinary meaning), BUT NOT a superannuation income stream (taxation law) for all the reasons given. The benefit contains

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

the ‘compensatory tax-free element’ (i.e., the ‘future service component’ that was clearly described in the 1992 Policy Document and amendments to the law shown in Ref A.). This component forms part of the ‘undeducted purchase price’ of the benefit, all of which forms the “deductible amount” for Social Security purposes. The balance of the benefit is income that (should) attract a 15% tax offset / rebate on the net taxable component.

14. Therefore, the benefit paid from Consolidated Revenue should be an “asset-test exempt income stream”, but not as described in current legislation. This is what needs to be corrected!!

The amount of income a person is taken to receive is affected by the way the income is categorised and treated under the Social Security Act and the Veterans’ Entitlements Act. The income test is designed to encourage people to supplement their income support payments with other income, if they are able to do so. A person and their partner can receive a certain amount of income before their income support payment starts to be reduced. This amount may comprise income from various sources, including superannuation income, and is known as the “income free area”. For each dollar of income over the income free area, a taper rate which reduces a person’s payment rate usually applies.

15. No comment

The assets test is designed so that people with substantial assets use those assets, either directly or to produce income, to meet their day-to-day living expenses before calling on the social security system for support. An asset is any property or possession that a person owns, with the exception of exempt assets, such as the person’s home in which they live.

16. As alluded to above, if compensation and insurance are explicitly excluded in the definition as not being an income stream, then by logical deduction, they are a special form of benefit that should be defined and included in the “asset-test exempt income stream” category.

Generally, the assets test allows a person to hold a certain amount of assessable assets before their rate of payment is affected by the assets test. This amount is known as the “assets free area”. Where a person’s rate of income support is worked out under the assets test, the value of each dollar of assets above the assets free area generally reduces their payment rate according to a taper rate.

17. Authors firmly maintain that public sector compensation in all forms should be included in the “deductible amount”, and therefore not subject to either the assets or income means-test.

For the purposes of the Social Security Act and the Veterans’ Entitlements Act, an income stream is a regular series of payments made directly from accumulated superannuation contributions or purchased with a lump sum. This definition may differ from the definition used in tax law.

18. Again, by strict Social Security Act definition, and by extension, the Veterans Entitlement Act definition also, an ‘income stream’ does not include:

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

‘(n) a payment of compensation to a person, or a payment to a person under an insurance scheme, in relation to:

(i) the person's inability to earn, derive or receive income from remunerative work; or

(ii) the person's total and permanent disability or incapacity.’

Income streams may be assessed under the income test only, or under the income test and the assets test, depending on the features of the income stream and the way it is categorised under the Social Security Act and the Veterans’ Entitlements Act. This determines what impact the income stream can have on a person’s income support payment rate.

19. No comment.

This Bill provides a clear legal foundation for the assessment of the affected payments within the means test by inserting a new income stream classification and assessment regime for them under the Social Security Act and the Veterans’ Entitlements Act. The new provisions are designed to produce the same assessment of income as the historical assessments of the affected invalidity payments, and to ensure the invalidity payments continue to be treated as exempt from the assets test. These arrangements are intended to ensure veterans and/or their partners receive a level of support that is consistent with the intent of legislation and policy before the unexpected findings of the Douglas decision.

20. Unfortunately, as discussed above and as will be discussed further in this submission, this Bill does not at all provide a clear legal foundation, because the very foundation upon which it resides is fundamentally fractured. The suggestion and provision of a new income stream classification is fraught with danger, not only because the term “military invalidity pension income stream” is a mental summersault and bureaucratic tongue twister, but because it fails to recognise that the benefits are not ‘superannuation income streams’, as defined and as tested in the SIS Regulations, but instead, they should be correctly classified and paid as superannuation lump sums / derivative lump sums, where upon the application of the modification of disability, they are then rolled over into Consolidated Revenue from where after further derivation they are paid as a public sector invalidity benefit income stream containing its component parts including the “deductible amount” so vitally necessary for social security purposes.

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

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

21. Given the historical errors across the fabric of the law, admitted by Social Services in their own submission, the Bill is not valid at all. It's Authors seem to lack a deep and fundamental understanding of what constitutes a public sector invalidity benefit. They can be forgiven, because how could they have reasonably known the long historical tail of malfeasance by the CSC and the failure in proper regulation by the Commissioner in the proper derivation and reporting of component parts (i.e. via the Centrelink Schedule (see Section 3) that is so necessary to directly feed Social Security assessments.) However, Social Services do need to take some responsibility for not applying their legislation correctly, with respect to the benefit in question.

The changes in this Bill do not alter the income tax benefits of the Douglas decision for veterans and/or their partners.

22. In effect it does, as the bill seeks to continue years of misfeasance by incorrectly classifying an invalidity benefit as a defined benefit income stream, (as seen in Appendix 1, Annex A), even though the benefit in question has never met the very strict legislated requirements. By simply renaming the benefit from a 'defined benefit income stream' to a 'Military Invalidity Pension Income Stream', whilst purporting it was always the legislative intent to treat the benefit as a defined benefit income stream, it is incongruous when the true historic legislative intent is plain to see, as laid out in this document and as seen in Ref A. The income tax benefits discovered and corrected by Douglas lie also in the correct recognition of the compensation aspect of the benefit, thus the flow on effects it has in other areas of law.

SECTION 2 – HISTORICAL PERSPECTIVES & THE INCONVENIENT TRUTH

23. As some historical background, Fig 1. below was provided by Author Peter Thornton for the 2017 Senate Inquiry investigating Veteran Suicide (see Ref. D); 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.

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

Historical Perspective That Provides Critical Context

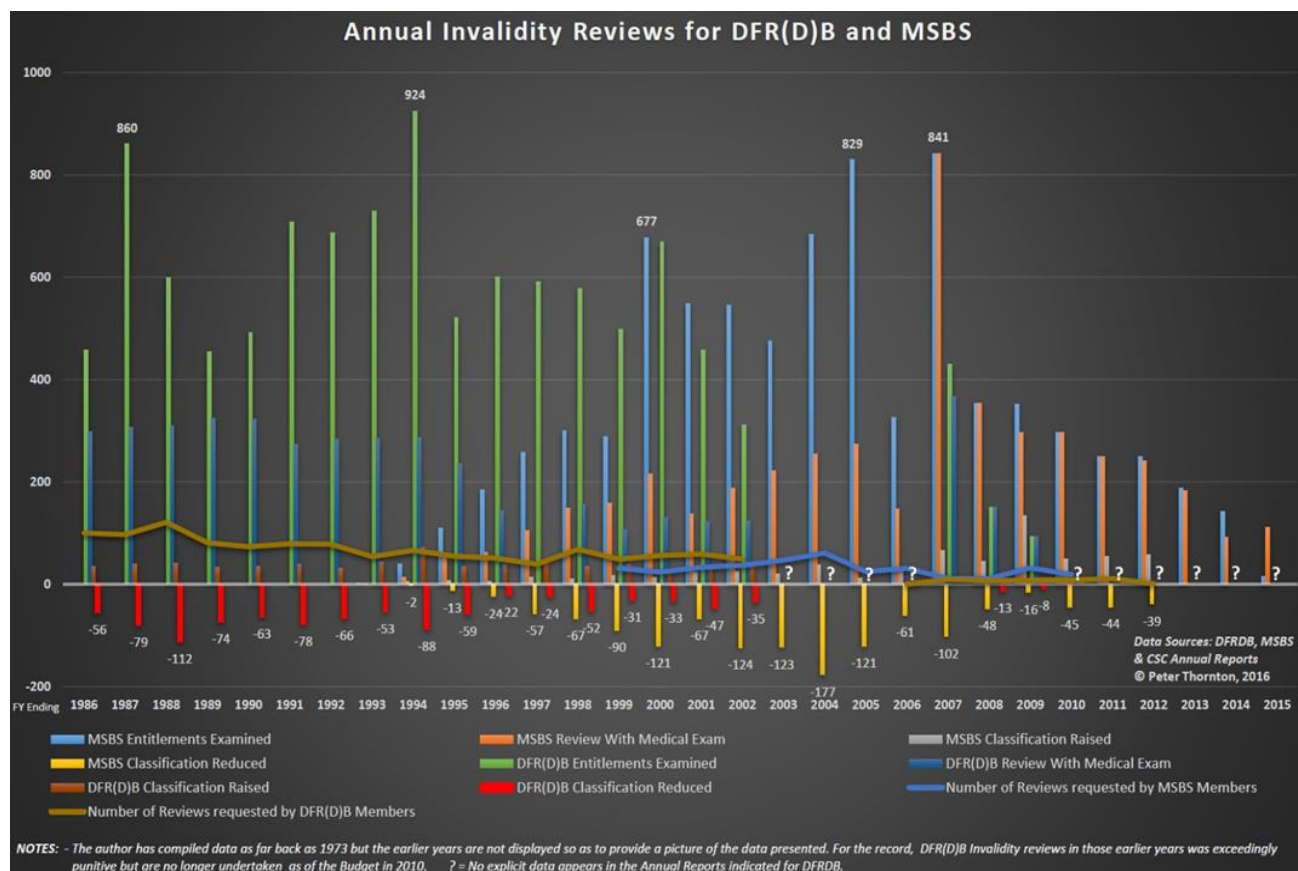


Figure 1³

24. Why is this chart important? Because the projections below the zero line illustrate and reinforce that Military invalidity superannuation benefits (and by extension Commonwealth invalidity benefits) are discrete statutory provisions that are disparate to that of other vested non-reviewable life-time Retirement, Redundancy & Reversionary benefits.⁴
25. 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 CSC⁵. As such, invalidity benefits do not vest as they are not guaranteed for the life of a medically retired member. The Authors maintain

³ 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>

⁴ 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.

⁵ Para 133-134, Commissioner of Taxation v Douglas [2020] FCAFC 220

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

that such benefits fail the definitional test of a “Pension”, as specified at s10 of the “Definitions” of the SISA.

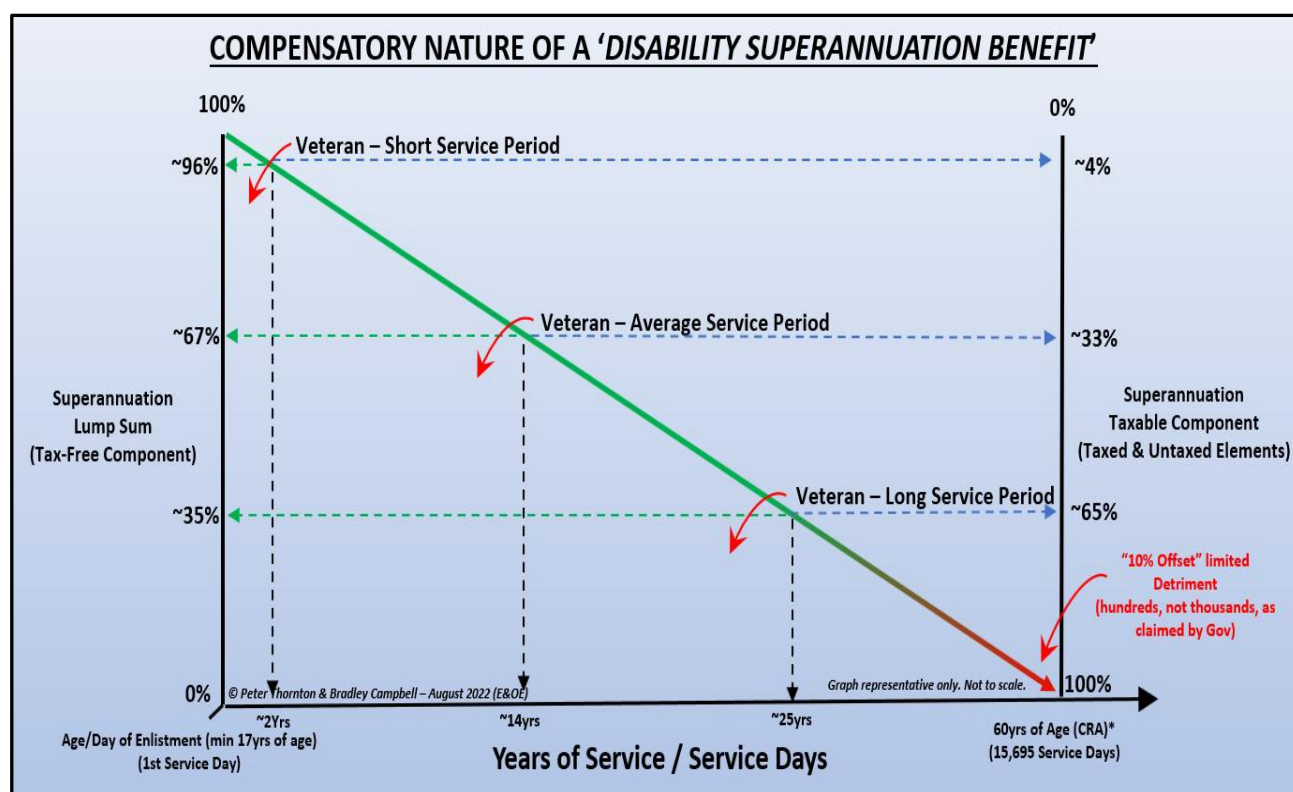


Figure 2

26. 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 are not ‘superannuation income stream benefits’, but instead, should be classified and administered as ‘superannuation lump sum’ payments, and where applicable, should be further classified as either ‘Disability Superannuation Pension’ (1 Jul 1994 – 1 July 2007) or a ‘Disability Superannuation Benefit’ (1 July 2007 to current) that attracts further tax-free treatment as specified by technical modifications found at s 307-145, and where relevant, s 82-150 of the ITAA 1997.
27. The historical intent of these invalidity provisions makes perfect sense, because in absolute terms when properly assessed and conferred, then the tax-free invalidity component of these benefits become “compensatory in nature”. Not surprisingly, draft amending legislation now held in abeyance before the Parliament would suggest that Social Security officials equally fail to understand the true historical nature of these tax-free provisions or the broader legislative framework in which they reside. Indeed, Appendices to Annex B provide substance to such matters, where importantly, Figure 1 of Appendix 2 provides a definition of a Totally &

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

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 1997, and the *Occupation Superannuation Standards Act 1987* (OSSA) and relevant OSSA Regulations (OSSR) that preceded it.

28. Given the multi-decades long intent and the compensatory nature of invalidity benefits, specifically – a 'Disability Superannuation Pension' (pre 1 July 2007) or a 'Disability Superannuation Benefit' (post 1 July 2007), then as can be seen in the Fig 2⁶, 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).
29. The underlying premise of such policy intent was to try and compensate an individual who is medically retired earlier in their working life⁷. It assumes that a TPIed individual so struck down early in their chosen profession 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 'Future Service 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., a recipient as certified by at least two (2) Doctors is unlikely to work in a vocation by way of training, education, or experience)⁸.
30. The passing of the *Schedule 9 -Tax Laws Amendment (No. 4 2022) Bill 2022* legislation was outrageous and unconscionable as it has now breached the accrued rights of tens 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 now enacted.

⁶ 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

⁷ Justice Cole makes similar observations about the compensatory nature of invalidity benefits in his review of DFRDB

⁸ Please see Appendix 4 to Annex A for a graphical depiction of DSB provision within the broader invalidity envelop.

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

31. Schedule 9 now places legislative handcuffs on all those Military and Commonwealth retirees who now legitimately seek lawful restitution of their rights on the same equitable grounds to those covered under the Douglas Case. On balance, Schedule 9 was legislative theft as it clearly contemplated no ‘just terms’ in compensation for property so acquired for all individuals concerned.⁹

SECTION 3 – Invalidity Benefits & The Social Security **“Deductible Amount”**

32. **The root cause?** It is of the utmost importance for readers to understand what an invalidity benefit is and more importantly what it is not.
33. An invalidity benefit is not an ordinary retirement benefit that is guaranteed for the life of the member. Up until the Douglas decision, this is how the benefit has been treated in various areas of law. The Department of Social Services has admitted this is how they have categorised an invalidity benefit in the past. However, rather than correcting the classification, they now seek to name it as something different and treat it the same as a Defined Benefit Income Stream, which the invalidity benefit never was.
34. The Bill seeks to calculate a ‘special reduction amount’ (i.e., changing the application of ‘the deductible amount’ by giving it another bogus name) by treating the benefit as though it was a superannuation income stream when it never has been. Since Douglas, the public service/veteran community has endured several surreptitious legislative changes aimed at making an invalidity benefit the same as a normal retirement benefit.
35. An invalidity benefit is only paid when a specific condition of release has been met. It is paid before retirement age and is a compensatory payment for the loss of the ‘ability to earn’. It is the insurance component of Public Sector superannuation schemes. Particularly for the veteran cohort, they generally have no other insurance facility available to them. The benefits are

⁹ It has been said that this could trigger a Constitutional claim for acquisition of property. The reader is encouraged to read <http://bit.ly/2nwOXk4> - ‘Why are Invalidated Veterans Being Denied Due Process & Natural Justice?’, by Author Mr. Bradley Campbell. This document 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.

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

reviewable and can cease. They do not vest and as found in Douglas, they are not considered lifetime pensions as per common law principles.

36. The root cause of the issues we are discussing here is the treatment of a non-lifetime, reviewable, compensatory benefit as a guaranteed, lifetime, ordinary retirement pension. In effect, invalidity benefits from various Public Sector schemes have been taxed unlawfully for decades. This unlawful taxation has led to unlawful outcomes in other areas including Social Security.
37. Annex A to this submission provides important definitional excerpts from Sect 9 of the *Social Security Act 1991*. The excerpts help to further elicit the truth as to what the “policy intent” was leading up to 2007, where the ‘deductible amount’ was supposed to be largely comprised of the ‘future service component’ / ‘tax-free compensatory element’ of public sector invalidity benefits.
38. By way of example, and as per the ‘Exit Statement’ provided to all other public sector invalidity recipients, Figure 3 provides an annotated extract of Author Thornton’s own ‘PSS Contributing Member Exit Statement’. Thornton’s statement helps to reinforce the commentary provided in Section 1 of this submission, where the principal Superannuation Lump Sum and derivative lump sums were paid in direct consequence of Thornton meeting an early condition of release for invalidity.
39. Mr. Thornton, with three doctor’s certificates certifying that he was Totally & Permanently Incapacitated for superannuation purposes, as accepted and certified subsequently by CSC, in that he met a condition of early release for invalidity, not normal retirement. Therefore, and without exception, Thornton and every other public sector invalidity recipient are not in receipt of a Pension, as defined, or affected by the date of 20 Sep 2007. They are instead in receipt of an invalidity benefit upon which the correct date of 1 July 1994 and 1 July 2007 operate.
40. As a consequence, and consistent with the Commissioner’s own Tax Ruling TR2003/13, in direct consequence of meeting that early condition of release, Mr Thornton received a Superannuation Lump Sum, comprising the finalisation of contributions and benefit accruals (as seen in the top comment section of Fig 3.).

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

Contributing Member Exit Statement

YOUR DETAILS

Name: PETER ANTHONY THORNTON Date of Birth: [REDACTED] AGS Number: [REDACTED]

Date of Exit: 30/05/2007
(Date you ceased to be a member)

Payment Date: 10/07/2007
(Date your payment was processed and you ceased to hold equity in the fund)

Net rate of return for period 1/7/2006 to 30/6/2007 was 14.137%

Net rate of return for the period from 1/7/2007 to 16/7/2007 was 0.82%

YOUR EQUITY IN THE FUND AT DATE OF EXIT

	At 30/6/2006	Paid values from 1/7/2006 to Exit Date	
1. Average Superannuation Salary	\$96,107.33		\$104,904.67
2. Accrued Benefit Multiple	1.39	4,777,307.69	6,167,307.69
3. Total Equity (1x2)	\$133,589.19	\$513,760.23	\$647,349.42

YOUR EQUITY IN THE FUND AT DATE OF PAYMENT

Components of your total benefit:

Member Component	At 30/6/2006	Contributions 1/7/2006 to Payment Date	Interest 1/7/2006 to Payment Date	At Payment Date
4. Contributions and Interest	\$54,901.18	\$9,561.25	\$10,744.04	\$75,206.47
Productivity Component				
5. Productivity Benefit and Interest	\$9,986.02	\$1,912.25	\$1,460.61	\$13,358.88
Employer-Financed Component				
6. Employer-Financed Component	\$68,701.99	\$491,352.86		\$560,054.85

Notes: Productivity contributions paid since 1/7/1990 have been reduced by contributions tax.

	At 30/6/2006	Received 1/7/2006 to Payment Date	Interest 1/7/2006 to Payment Date	Amount at Payment Date
Super Co-contributions	\$0.00	\$0.00	\$0.00	\$0.00
Transfer Values	\$28,454.39	\$0.00	\$5,003.74	\$34,058.13

Your Surcharge Debt = our total surcharge debt resulting from the Australian Taxation Office's (ATO) assessment of your surchargeable contributions.

	At 30/6/2006	Amount Debited 1/7/2006 to Payment Date	Interest 1/7/2006 to Payment Date	Repayments 1/7/2006 to Payment Date	Total Surcharge Produced at Payment Date
Surcharge Debt	\$471.71	\$0.00	\$29.51	\$0.00	\$501.22

BENEFIT DETAILS AT DATE OF PAYMENT

Paid as a Lump Sum (Including interest since exit)	Paid as a Rollover	Converted to Pension	Preserved in Fund	TOTAL EQUITY
\$109,204.60	\$0.00	\$573,413.74	\$0.00	\$682,678.33
Your preserved benefit component	Your restricted non-preserved benefit component	Your un-restricted non-preserved benefit component		
\$0.00	\$0.00	\$682,678.33		

Originating Superannuation Lump Sum - comprising the finalisation of contributions and benefit accruals up to CRA, in direct consequence of meeting an early condition of release for invalidity.

1. Derivative Lump Sum - internally rolled over into CRF where upon further derivation the benefit is paid as an 'income stream' as defined by the Rules (i.e., it is NOT a Superannuation Income Stream/Pension).

2. Disability Super Benefit payment should comprise the 'Tax-Free Compensatory Element' + Net 'Taxable Component' in its proportional parts (comprising taxed and untaxed elements), taxed at marginal rate with 15% tax offset / rebate.

3. Benefit is not a superannuation pension because a 'Residual Capital Value' manifests if Applicant is reviewed and/or on his own volition, once again becomes a PSS Fund member.

Derivative Lump Sum - refund of member contributions + interest, as per the Rules of Fund for invalidity

Figure 3 - PSS Contributing Member Exit Statement

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

41. Only after that Superannuation Lump Sum was derived, did derivative superannuation lump sums then become payable, on or after 10 July 2007. One derivative lump sum was paid in the form of an ETP comprising Mr Thornton's Member Contributions plus interest, as per the rules of the fund. The second lump sum was internally rolled-over into the Consolidated Revenue at which point a divisor of 11 was applied, to then derive a subsequent income stream that was supposed to comprise the net taxable component (comprising the balance of the taxed and untaxed elements) and the tax-free compensatory element (i.e., the 'future service component' as was intended from 1 July 1994¹⁰), as worked out IAW the 'modification for disability' as per s307-145 ITAA 1997.

42. Once the tax-free and taxable components of the interest are calculated, then relevant subsections of the 'Proportioning Rule' at s307-125 of ITAA 1997 are then supposed to be applied as follows:

*'(2) The *superannuation benefit is taken to be paid in a way such that each of those components of the benefit bears the same proportion to the amount of the benefit that the corresponding component of the * superannuation interest bears to the * value of the superannuation interest.*

*'(3) For the purposes of subsection (2), determine the * value of the * superannuation interest, and the amount of each of those components of the interest, at whichever of the following times is applicable:*

*'(b) if the superannuation benefit is a * superannuation lump sum--just before the benefit is paid;*

43. For expediency and completeness, the explanation given in the *Tax Laws Amendment (Simplified Superannuation) Bill 2006* is instructive in countering the false narratives and misleading statements surrounding Douglas, and in revealing the shortfalls and errors inherent in the Social Security Act also. It is provided in its entirety as follows:

¹⁰ From Pg 80 of Annex H – 'From 1 July 1994, the 'future service component' of an ETP paid as a consequence of permanent invalidity will be exempt from tax but continue to be included in the definition of an ETP and allowed to be rolled over. For taxation purposes they will be treated in the same manner as post-June 1983 undeducted contributions in the hands of rollover funds.

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

'Part 2 -- Amendment commencing 1 July 2007'

' 5.37 Part 2 contains an amendment to insert a new definition of `deductible amount'. The amendment will commence on 1 July 2007.'

' 5.38 Item 21 repeals and replaces the definition of `deductible amount' at subsection 9(1). [Schedule 8, item 21]

'5.39 Under the social security legislation, the `deductible amount' is used to determine assessable income for defined benefit income streams (as defined in subsection 9(1F) of the Social Security Act 1991) but not for `purchased' income streams. The social security definition refers to the definition of `deductible amount' in the Income Tax Assessment Act 1936 (ITAA 1936) which is used to determine assessable income for tax purposes. [Schedule 8, item 21]

'5.40 Defined benefit income streams are lifetime income streams where the payments are not fully determined in relation to a particular sum of money used to acquire the income stream but also by other factors, for example, completed years of service and the retiree's salary in the years immediately preceding retirement. Under the income test, assessable income for these income streams is determined by reducing their gross annual income by the deductible amount. Currently the value of the deductible amount remains constant throughout the life of the income stream. [Schedule 8, item 21]

'5.41 The amendments that will apply to the Income Tax Assessment Act 1997 (ITAA 1997) from 1 July 2007, will move the tax treatment of superannuation income stream benefits from an annual basis to a per payment basis. As a result, the annual deductible amount needs to be converted into a per benefit (ie, per payment) figure to maintain the existing tax treatment (see subsection 307-125(2) of the Income Tax (Transitional Provisions) Act 1997). [Schedule 8, item 21]

'5.42 This will be achieved by apportioning the annual deductible amount across each superannuation income stream according to the value of each of the superannuation income stream benefits received in the income year. The portion of the deductible amount applying

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

to a particular superannuation income stream benefit will be the 'tax free component' for that superannuation income stream benefit (see subsection 307-125(2) of the Income Tax (Transitional Provisions) Act 1997). The 'tax free component' is paid 'tax free' to the recipient, and comprises several segments that are specified in this Bill. [Schedule 8, item 21]

'5.43 Under the new arrangements, the value of the 'tax free component' of a superannuation interest is worked out by reference to subsection 307-120(2) of the ITAA 1997. The proportion that the tax free component comprises of the superannuation interest is then calculated in accordance with section 307-125 of the ITAA 1997. This proportion is then applied to each benefit (ie, each payment) paid from the superannuation interest to determine the amount of the benefit that should be returned to the recipient as a tax free component. [Schedule 8, item 21]

'5.44 These changes to the ITAA 1997 require corresponding amendments to the social security definition of deductible amount. [Schedule 8, item 21]

'5.45 For defined benefit income streams created from 1 July 2007 (as well as those subject to an event under subsection 307-125(3) of the Income Tax (Transitional Provisions) Act 1997), the rules under section 307-120 of the ITAA 1997 will also apply in determining a deductible amount for social security purposes. Under these rules, the proportion of the superannuation interest that constitutes the tax free component will be applied to a benefit paid as an income stream payment to determine the tax free component, (i.e., the deductible amount, for that benefit). [Schedule 8, item 21]

'5.46 For defined benefit income streams acquired before 1 July 2007, section 307-125 of the Income Tax (Transitional Provisions) Act 1997 will apply in determining the deductible amount for social security purposes. The effect of this section is that the deductible amount for the income year will continue to be worked out under section 27H of the ITAA 1936 (as in force before 1 July 2007) unless a specific trigger event occurs under subsection 307-125(3). As the deductible amount calculated under section 27H is an annual amount, subsection 307-125(2) allocates the deductible amount proportionately to each of the income stream benefits paid out in respect of the year to which the deductible amount applies. If a

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

trigger event occurs, the deductible amount will be assessed under the new rules in section 307-120 of the ITAA 1997. [Schedule 8, item 21]

‘5.47 These methods of calculation will be applied irrespective of whether or not the recipient of the income stream payments is below 60 years of age, or 60 years of age or above. Where the recipients of defined benefit income streams are 60 years of age or above, it will still be necessary for them, or their provider, to retain details of the proportion of their superannuation interest that would have constituted the tax free component to allow the determination of their deductible amount for social security purposes. [Schedule 8, item 21]

‘5.48 Deductible amounts for defined benefit income streams acquired before 1 July 2007 will not change for the life of the income stream unless a trigger event occurs. [Schedule 8, item 21]

‘5.49 Deductible amounts for defined benefit income streams that are acquired from 1 July 2007, that are based on a proportion of the total superannuation interest, will remain constant for as long as the value of the benefits paid to the recipient remains constant. However, if the value of the benefits paid to the recipient rises, for example, as a consequence of indexation of the income stream payments, then the deductible amount will increase in line with an increase in the indexed payments. [Schedule 8, item 21] ’

44. As the facts show, arguments mounted by the Commissioner of Taxation both now and during the Douglas case about the definition of a “pension”, and the supposed “policy intent”, are nothing but erroneous and highly misleading, because without exception invalidity benefits as provisioned by CSC for all Commonwealth schemes have never been lifetime ‘Superannuation Income Streams’ or ‘Pensions’. Instead, and as previously cited regarding the Appendices to Annex B to Ref A of this submission, Invalidity Benefits were considered to be “compensatory” in nature, providing “insurance” against death and invalidity. This is consistent with the definition of an ‘Income Stream’ in Sect 9 of the *Social Security Act 1991*, where the definition explicitly excludes for the purposes of the “deductible amount” the following:

‘(n) a payment of [compensation](#) to a person, or a payment to a person under an insurance [scheme](#), in relation to:

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

(i) the person's inability to earn, derive or receive income from remunerative work; or

(ii) the person's total and permanent disability or incapacity. '

45. In addition to the foregoing, the Authors believe it is important to also demonstrate and appraise the Committee of another real-world example pertaining to Mr Thornton's own son, who at the age of 21 years of age, was medically retired from the Australian Defence Force as Totally & Permanently Incapacitated, as certified by both CSC and DVA.
46. In early 2023, Mr Thornton junior (Thornton Jnr) lodged an application for Disability Support Pension with Services Australia, an application that to date remains in limbo. Because of failures within DVA, Thornton Jnr had to navigate and be subjected to all of the regressive processes of Services Australia. Once those processes had run their course, then not dissimilar to other applicants, Thornton Jnr was required to obtain a completed "Centrelink Schedule" from CSC.
47. Upon receipt of the improperly completed "Centrelink Schedule", and upon detailed engagement of CSC staff by Mr Thornton Senior (please see Annex B), then it is patently clear that CSC has breached Sect 87 of the Crimes Act by issuing a "false certificates", not only for Thornton Jnr and all other Veterans covered under the Douglas Case, but arguably for all medically retired Veterans and Commonwealth Officers spanning back to 1991 when the Social Security Act of 1991 received Royal Assent.
48. Why is the "Centrelink Schedule" important and relevant to this Inquiry? Because this important document is supposed to accurately record and report the "tax-free compensatory element" / "tax-free future service component" that Centrelink uses in order to calculate the "deductible amount".
49. Here in lies the criticality and malfeasance of this whole issue. CSC has not only classified invalidity benefits incorrectly, and consequently then not applying the relevant modification for disability to determine the correct tax withholding for members, but it has by extension just completely failed to then correctly report the tax-free compensatory element to Centrelink for "deductible amount" purposes.
50. Therefore, CSC, aided and abetted by the Commissioner of Taxation as the hapless Regulator, has single handedly created the largest error in public administration that Australia has ever

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

witnessed, an error that is estimated in financial liability terms to be in excess of at least five (5) times that of RoboDebt.

CONCLUSION

51. This submission coupled with evidence found in Reference A, reveal very serious issues surrounding the legitimacy of the Bill currently under review by the Senate Community Affairs Legislation Committee.
52. It is strongly recommended that the Committee immediately recommend to the Senate that it instruct the Executive Government to just STOP, because with lawful authority the Authors have clearly proven that the Government and their hapless functionaries from the Commissioner of Taxation and Treasury have grossly mislead judicial authorities and the Senate.
53. As a consequence, legislative decisions have been made that have fractured the very foundations upon a once egalitarian framework for public sector invalidity once existed, and with changes enacted through *Schedule 9 of the Taxation Laws Amendment (No.4 2002) Bill 2022*, now breach the law every fortnight when benefits are paid (i.e., because the Government has artificially forced the definition of a pension retrospectively, then it causes contributions to superannuation under the SCRA / DRCA Acts to be unlawful IAW SIS Regs).
54. The Bill under review by this Committee demonstrates that Services Australia lack a fundamental understanding of the broader framework in which public sector invalidity benefits reside. We seek the Senate Committee's immediate intercession and action to disallow the Bill currently under review.
55. Contrary to the Government's false narratives and misleading statements 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.
56. We believe the contentions put forward by the Author and many others are well supported by Authority. It clearly establishes that the classification of invalidity benefits conferred by CSC

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

and its predecessors has been in error since the 1970s, and therefore, the tax assessments for all invalidity retirees are in error and not lawful.

57. We respectfully put forward that there exists a need for an urgent and thorough review of public service invalidity benefits and the way they are treated with respect to the law and various agencies that deal with them. It is imperative that the rights of our most disabled public servants/veterans are protected and acknowledged so they may move on with their lives within the best of their abilities living with their ailments.
58. Finally, as previously offered, the Authors, with Representative Organisations in support also, stand ready to offer detailed in-person briefings to the Senate Community Affairs Legislation Committee, and/or other interested parties, so as to reveal the detailed truth of such matters. We would like to thank the committee for the invitation to present in person.

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 Tax, Veterans' compensation, and Social Security issues. Peter's independent research and commentary 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 matter pertaining to tax, superannuation, family law, and Social Security associated with Veterans. Brad gives his time freely to help thousands of Veterans when navigating complex matters.

Acknowledgements:

The Authors wish to acknowledge the kind assistance and support of the Federal President TPI Federation – Ms. Patracia McCabe OAM, Chairman of Australian Peacekeepers - Mr. Ian Lindgren, RSL National President – MAJGEN Aziz “Greg” Melick, DFWA QLD State President – Mr. John Lowis, and Federal President of the Australian Council of Public Sector Retiree Organisations – Mr. John Pauley.

The Authors wish to acknowledge Mr. Bert Hoebee and Mr. Steven Boyle for the ongoing assistance and support also.

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMEND- MENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

ANNEX A

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

APPENDIX 1 TO ANNEX A

RELEVANT DEFINITIONAL EXCERPTS - SOCIAL SECURITY ACT 1991 - SECT 9

Financial assets and income streams definitions¹¹

"deductible amount" , in relation to a [defined benefit income stream](#) for a [year](#), means the sum of the amounts that are the tax free components (worked out under Subdivision 307-C of the [Income Tax Assessment Act 1997](#) or, if applicable, section 307-125 of the [Income Tax \(Transitional Provisions\) Act 1997](#)) of the payments [received](#) from the [defined benefit income stream](#) during the [year](#).

"income stream" means

- (a) an [income stream](#) arising under arrangements that are regulated by the [Superannuation Industry \(Supervision\) Act 1993](#) ; or
- (b) an [income stream](#) arising under a public sector superannuation [scheme](#) (within the meaning of that Act); or
- (c) an [income stream](#) arising under a [retirement savings account](#); or
- (d) an [income stream](#) provided as life insurance business by a life [company](#) registered under [section 21](#) of the [Life Insurance Act 1995](#) ; or
- (f) an [income stream](#) designated in writing by the [Secretary](#) for the purposes of this [definition](#), having regard to the guidelines determined under [subsection](#) (1E); or
- (fa) a [family law affected income stream](#);

but does not include any of the following:

- (g) [available money](#);
- (h) [deposit money](#);
- (i) a [managed investment](#);
- (j) a [listed security](#);

¹¹ Accessed 2:18pm 21st Feb 2024

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

(k) a loan that has not been repaid in full;

(l) an [unlisted public security](#);

(m) gold, silver or platinum bullion

(n) a payment of [compensation](#) to a person, or a payment to a person under an insurance [scheme](#), in relation to:

(i) the person's inability to earn, derive or [receive income](#) from remunerative [work](#); or

(ii) the person's total and permanent disability or incapacity.

"defined benefit income stream" has the meaning given by [subsection](#) (1F).

(1F) An [income stream](#) is a [defined benefit income stream](#) if:

(a) under the [Superannuation Industry \(Supervision\) Regulations 1994](#), the [income stream](#) is taken to be a pension for the purposes of the [Superannuation Industry \(Supervision\) Act 1993](#); and

(b) except in the case of an [income stream](#) arising under a [superannuation fund](#) established before 20 September 1998--the [income stream](#) is provided under rules that meet the standards of sub-regulation 1.06(2) of the [Superannuation Industry \(Supervision\) Regulations 1994](#); and

(ba) in the case of an [income stream](#) arising under a [superannuation fund](#) established before 20 September 1998--the [income stream](#) is provided under rules that meet the standards determined, by legislative instrument, by the Minister; and

(c) in any case--the [income stream](#) is attributable to a defined benefit interest within the meaning of the [Superannuation Industry \(Supervision\) Regulations 1994](#) (for this purpose, disregard subparagraph 1.03AA(1)(b)(ii) of those regulations).

"residual capital value", in relation to an [income stream](#), means the capital amount payable on the termination of the [income stream](#).

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

APPENDIX 2 TO ANNEX A

CENTERLINK SCHEDULE

Defined Benefit Income Stream Schedule for Centrelink assessment purposes			
This schedule must be completed by the Superannuation Fund. Under Section 192 of the <i>Social Security Administration Act 1999</i> , Centrelink is authorised to obtain this information for the purpose of determining entitlements under the <i>Social Security Act 1991</i> .			
Details of Client			
➤ Name	<input type="text"/>	➤ CENTRELINK REF	<input type="text"/>
➤ DOB	<input type="text"/>		
➤ Address	<input type="text"/>		
Details of Product			
➤ Product Reference Number (unique identifier for customer's income stream)	<input type="text" value="A-MS"/>		
➤ Name of Super Fund	<input type="text" value="Military Superannuation Benefits Scheme"/>		
➤ Commencement Date (If payee is Eligible Spouse, enter original superannuant's start date)	<input type="text" value="25/10/2017"/>	Spouse Commencement Date	<input type="text"/>
➤ Current Gross Fortnightly amount of payment	<input type="text" value="SEPA-MS.p/f"/>	Effective From	<input type="text" value="30/06/2023"/>
➤ Current Gross Fortnightly amount of payment in respect of children	<input type="text" value=".p/f"/>	Effective From	<input type="text"/>
Details of Tax Free Component (known as Deductible Amount for assessment purposes, as defined under Section 9(1) of the Social Security Act 1991.			
➤ Does the superannuant have a Tax Free Component?	No <input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>
➤ If Yes - Is the Tax Free Component calculated using:			
The <u>NEW proportional method</u> under:			
<ul style="list-style-type: none"> subdivision 307-C of the <i>Income Tax Assessment Act 1997</i> for pensions which commenced on or after 1 July 2007, or subsection 307-125(6) of the <i>Income Tax (Transitional Provisions) Act 1997</i> due to the occurrence of a trigger event for pensions commencing prior to 1 July 2007? 		No	<input type="checkbox"/>
		Yes	<input type="checkbox"/>
➤ Current amount of Tax Free Component per fortnight	<input type="text" value=".p/f"/>		
<i>If New 1 July 2007 Method applies, Centrelink staff will record the Tax Free Component as a Deductible Amount p/f unless the saving provision applies.</i>			
<u>OR</u> - Is the Tax Free Component calculated using:			
The <u>OLD method based on UPP</u> for pensions which commenced prior to 1 July 2007 as defined in subsection 307-125(2) of the <i>Income Tax (Transitional Provisions) Act 1997</i> ?		No	<input type="checkbox"/>
		Yes	<input type="checkbox"/>
➤ Undeducted Purchase Price (Total UPP at Commencement Date)	<input type="text"/>		
➤ Current amount of Tax Free Component Per Fortnight	<input type="text" value=".p/f"/>		
<i>If Old Pre 1 July 2007 Method applies, Centrelink staff will record the Total UPP. This is divided by the relevant number to derive the Deductible Amount per annum and then converted to a fortnightly amount.</i>			
Authorised Officer's Signature			
➤ Name	Rachael McCoy	➤ Phone No	1300 001 877
➤ Signature		➤ Date	28 September 2023

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

Background Information

As a result of the Better Superannuation legislation implemented from 1 July 2007, there is a new definition and method for calculating the Deductible Amount to be applied to the gross income of a defined benefit pension for a person on a social security benefit.

For income test assessment purposes, the gross income from a person's defined benefit pension is reduced by the deductible amount. From 1 July 2007, the deductible amount will be based on the *tax free component*.

A Defined Benefit income stream for social security purposes is an income stream where payments are defined by factors like years of service, final salary, or final average salary over recent years, or by criteria determined by superannuation fund governing rules. Payments are not defined by amount of funds used to purchase the income stream.

The new definition of a Deductible Amount is defined in Sub Section 9(1) of the Social Security Act 1991. It states that the deductible amount, in relation to a defined Benefit income stream for a year, means the sum of the amounts that are the **tax free components** (worked out under Subdivision 307-C of the Income Tax assessment act 1997, or, if applicable, section 307-125 of the Income Tax (Transitional Provisions) Act 1997) of the payments received from the defined benefit income stream during the year.

The calculations that result from the new definition are to be undertaken by superannuation funds from 1 July 2007. Centrelink will request its customers obtain the new calculation from their superannuation fund, commencing 1 July 2007. Where agreed with superannuation funds, Centrelink will make arrangements to obtain the required information in bulk for mutual customers.

The legislation and regulations covering the superannuation funds calculating the new Tax Free Component is contained in:

- Subdivision 307-C of the Income Tax Assessment Act 1997,
- Section 307-125 of the Income Tax (Transitional Provisions) Act 1997,
- Income Tax Assessment Regulations 1997,
- Superannuation Industry Supervision (SIS) Regulations 1994, and
- Social Security Act 1991.

The Australian Taxation Office has responsibility for assisting superannuation funds meet these new requirements. Further information can be obtained from the Australian Taxation Office on 131020.

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMEND-
MENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

ANNEX B

(Real World Experience of CSC Ineptitude
and a Young TPI Veteran / Douglas Re-
cipient)

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMEND- MENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

Peter Thornton

Email:

Mobile:

CRN

7 October 2023

The Manager
Disability Support Pension Team
Centrelink Tuggeranong
Reply Paid 7800
Canberra BC ACT 2610
(Transmittal electronic)

References:

- A. Disability Support Pension Application, SMS acknowledgement, dated 20 March 2023
- B. Teleconference with Desk Officer Letisha – Commonwealth Superannuation Corporation (CSC) and [REDACTED] and Peter Thornton, dated 28 Sep 2023.
- C. Follow up Telecon with CSC MSBS Pension Desk Officer Emily / May and Peter Thornton, dated 4 & 6 Oct 2023 respectively.
- D. Telcon with CSC Team Leader – Ms Jessica Woods and Peter Thornton, dated 6 Oct 2023
- E. Email correspondence from CSC Team Leader – Ms Jessica Woods, dated 6 Oct 2023 (Please see Annex B).

Dear DSP Team Manager / Delegate,

1. By way of introduction, my name is Peter Thornton, and I am writing to you as the nominated representative of my son – Mr [REDACTED] Thornton – CRN [REDACTED], who applied for, and received acknowledgement of his application for Disability Support Pension, as per Ref A.
2. As requested, please find attached at Annex A what we firmly believe is an incomplete/incorrect Centrelink Schedule, as provisioned by CSC.
3. Upon receipt of the incomplete Centrelink Schedule, both Lachlan and I were involved in a teleconference call with CSC, as per Ref B. The officer concerned could readily see the dilemma we had raised (i.e., with reference to CSC's own documentation of the annual benefit letter and taxation payment summary clearly showing Lachlan has a tax-free component, then the 'tax-free component' area of the Centrelink schedule had not been completed correctly).
4. With Centrelink's impending deadline of the 9th of October looming, and with [REDACTED] subsequently contracting COVID, then as per References C. & D., I initiated a follow up call with CSC, as no subsequent contact from CSC's Technical Team was made. A telecon with the Pension's Desk Team Leader - Ms Jessica Woods then ensued.
5. The conversation with Ms Woods was defensive and revealed that CSC had seemingly handcuffed itself to a self-imposed decision that because of a "lack of direction" from Centrelink post the Douglas Federal Court case, then CSC had no choice but to complete the form as is. Upon request, Ms Woods did graciously provide written policy advice reflecting CSC's stated position, as can be seen at Annex B.

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

6. With the foregoing in mind, we seek the Centrelink Delegate's special dispensation and corrective action please, because contrary to the advice tendered by CSC, it is clear my son did meet a condition of release for severe invalidity, as supported by at least two (2) doctor's certificates, and had his CSC invalidity benefit reclassified as a 'Disability Superannuation Benefit' and remediated accordingly IAW s307-145 and s307-125 of the Income Tax Assessment Act 1997.

7. As such, we submit that [REDACTED]'s Centrelink Schedule as seen at Annex A should be amended to reflect the correct information as illustrated in Figure 1 below, as substantiated not only by the evidence that we have to hand (i.e., as seen at ANNEX C), but again, as communicated in the email provided by Ms Woods at Annex B.

Details of Product			
➤ Product Reference Number (unique identifier for customer's income stream)	[REDACTED]		
➤ Name of Super Fund	Military Superannuation Benefits Scheme		
➤ Commencement Date (If person is eligible spouse, enter original superannuation start date)	25/10/2017	Spouse Commencement Date	
➤ Current Gross Fortnightly amount of payment	[REDACTED] -p/t	Effective From	30/06/2023
➤ Current Gross Fortnightly amount of payment in respect of children	-p/t	Effective From	
Details of Tax Free Component (known as Deductible Amount for assessment purposes, as defined under Section 9(1) of the Social Security Act 1991.			
➤ Does the superannuant have a Tax Free Component?	No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	
➤ If Yes - Is the Tax Free Component calculated using:			
The <u>MPW proportional method</u> under:			
<ul style="list-style-type: none"> subdivision 307-C of the Income Tax Assessment Act 1997 for pensions which commenced on or after 1 July 2007, or subdivision 307-125(8) of the Income Tax (Transitional Provisions) Act 2007 due to the occurrence of a trigger event for pensions commencing prior to 1 July 2007? 			
No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>			
➤ Current amount of Tax Free Component per fortnight	[REDACTED] -p/t		
<small>(From 1 July 2007 Method applies, Centrelink staff will record the Tax Free Component as a Deductible Amount -p/t unless the ruling provision applies.</small>			

Figure 1

8. Finally, this issue raises for very serious concern a clear error in public administration, where incorrect information stemming from the Commonwealth Superannuation Corporation will likely impact on both Services Australia and the Department of Veterans' Affairs (i.e., in the correct provisioning of lawful entitlements to the Disability Support Pension and Invalidity Service Pension respectively).

9. Thank you for your assistance in this regard and we would appreciate Centrelink's corrective actions and DSP provisioning, and its considered response in due course please.

Yours faithfully

Electronically Signed

Peter Thornton

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

Defined Benefit Income Stream Schedule for Centrelink assessment purposes			
This schedule must be completed by the Superannuation Fund. Under Section 593 of the Social Security Administration Act 1999, Centrelink is authorised to obtain this information for the purpose of determining entitlements under the Social Security Act 1991.			
Details of Client			
> Name	[REDACTED] THORNTON		> CENTRELINK REF
> DOB	[REDACTED]		
> Address	[REDACTED]		
Details of Product			
> Product Reference Number (unique identifier for customer's income stream)	A [REDACTED] MS		
> Name of Super Fund	Military Superannuation Benefits Scheme		
> Commencement Date (If payee is Eligible Spouse, enter original superannuant's start date)	25/10/2017	Spouse Commencement Date	[REDACTED]
> Current Gross Fortnightly amount of payment	[REDACTED] p/f	Effective From	30/06/2023
> Current Gross Fortnightly amount of payment in respect of children	[REDACTED] p/f	Effective From	[REDACTED]
Details of Tax Free Component (known as Deductible Amount for assessment purposes, as defined under Section 9(1) of the Social Security Act 1991.			
> Does the superannuant have a Tax Free Component?	No <input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>
> If Yes - Is the Tax Free Component calculated using:			
The <u>NEW</u> proportional method under:			
<ul style="list-style-type: none"> subdivision 307-C of the Income Tax Assessment Act 1997 for pensions which commenced on or after 1 July 2007, or subsection 307-125(6) of the Income Tax (Transitional Provisions) Act 1997 due to the occurrence of a trigger event for pensions commencing prior to 1 July 2007? 			
No <input type="checkbox"/> Yes <input type="checkbox"/>			
> Current amount of Tax Free Component per fortnight	[REDACTED] p/f		
If New 1 July 2007 Method applies, Centrelink staff will record the Tax Free Component as a Deductible Amount p/f unless the saving provision applies.			
OR - Is the Tax Free Component calculated using:			
The <u>OLD</u> method based on UPP for pensions which commenced prior to 1 July 2007 as defined in subsection 307-125(2) of the Income Tax (Transitional Provisions) Act 1997?			
No <input type="checkbox"/> Yes <input type="checkbox"/>			
> Undeducted Purchase Price (Total UPP at Commencement Date)	[REDACTED]		
> Current amount of Tax Free Component Per Fortnight	[REDACTED] p/f		
If Old Pre 1 July 2007 Method applies, Centrelink staff will record the Total UPP. This is divided by the relevant number to derive the Deductible Amount per annum and then converted to a fortnightly amount.			
Authorised Officer's Signature			
> Name	Rehael McCoy	> Phone No	1300 001 877
> Signature		> Date	28 September 2023

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

Background Information

As a result of the Better Superannuation legislation implemented from 1 July 2007, there is a new definition and method for calculating the Deductible Amount to be applied to the gross income of a defined benefit pension for a person on a social security benefit.

For income test assessment purposes, the gross income from a person's defined benefit pension is reduced by the deductible amount. From 1 July 2007, the deductible amount will be based on the tax free component.

A Defined Benefit income stream for social security purposes is an income stream where payments are defined by factors like years of service, final salary, or final average salary over recent years, or by criteria determined by superannuation fund governing rules. Payments are not defined by amount of funds used to purchase the income stream.

The new definition of a Deductible Amount is defined in Sub-Section 9(1) of the Social Security Act 1991. It states that the deductible amount, in relation to a defined Benefit income stream for a year, means the sum of the amounts that are the **tax free components** (worked out under Subdivision 307-C of the Income Tax assessment act 1997, or, if applicable, section 307-125 of the Income Tax (Transitional Provisions) Act 1997) of the payments received from the defined benefit income stream during the year.

The calculations that result from the new definition are to be undertaken by superannuation funds from 1 July 2007. Centrelink will request its customers obtain the new calculation from their superannuation fund, commencing 1 July 2007. Where agreed with superannuation funds, Centrelink will make arrangements to obtain the required information in bulk for mutual customers.

The legislation and regulations covering the superannuation funds calculating the new Tax Free Component is contained in:

- Subdivision 307-C of the Income Tax Assessment Act 1997,
- Section 307-125 of the Income Tax (Transitional Provisions) Act 1997,
- Income Tax Assessment Regulations 1997,
- Superannuation Industry Supervision (SIS) Regulations 1994, and
- Social Security Act 1991.

The Australian Taxation Office has responsibility for assisting superannuation funds meet these new requirements. Further information can be obtained from the Australian Taxation Office on 131020.

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

From: pensions@contact.csc.gov.au
Sent: Friday, 6 October 2023 3:38 PM
To: peterthornton63@outlook.com
Subject: [REDACTED] THORNTON - MSBS - (A [REDACTED] MS)

Dear Peter,

Thank you for your enquiry regarding [REDACTED]'s Centrelink schedule.

CSC have not received a formal request from Services Australia to provide recalculated tax components for withholding purposes as a result of the Douglas Federal Court decision. As this is the case, CSC will continue to report [REDACTED]'s invalidity pension components to Services Australia based on the funding of their capped defined benefit income stream, until further directions from the Government are received.

We report income stream tax components on all schedules. CSC will continue to report your invalidity pension components to Services Australia based on the funding of their capped defined benefit income stream, until further directions from the Government are received.

As provided to [REDACTED] in his June 2023 CPI increase letter, your Indexed fortnightly pension components are:

However, as [REDACTED] is affected by the Federal Court decision, Commissioner of Taxation v Douglas [2020], and [REDACTED]'s pension is treated as a super lump sum for tax purposes. Below are the different components of your benefit for tax purposes. We use this to determine how much is withheld for tax purposes and how we report these payments to the ATO.

New fortnightly lump sum tax components

Lump sum tax-free component

Tax-free: \$[REDACTED]

Lump sum taxable components

Taxable taxed: \$0.40

Taxable untaxed: \$[REDACTED]

You may wish to speak to services Australia in relation to your request.

If you have any further enquiries, please contact pensions@contact.csc.gov.au or call 1300 001 877.

Kind regards,



MilitarySuper AFS Licence No: 238069

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMEND- MENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

Postal Address: MilitarySuper, GPO Box 2252, Canberra, ACT 2601

Telephone: 1300 006 727

Fax: (02) 6275 7010

International callers should ring +61 2 6192 9502

Website: www.csc.gov.au

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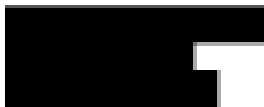
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If you are looking at acquiring a financial product you should obtain a Product Disclosure Statement and consider its contents before making any decisions. Product disclosure statements are available from our website at www.csc.gov.au, or by phoning our Customer Information Centre on 1300 006 727.

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMEND-
MENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024



Australian Government
Commonwealth Superannuation Corporation



Reference No. A[REDACTED]MS
Your Scheme: MilitarySuper
Telephone: 1300 001 877
Date: 30 June 2023

Dear [REDACTED]

On 13 July 2023 your MilitarySuper pension will increase by 3.3%. This is to reflect changes to the Consumer Price Index (CPI) recently announced by the Australian Bureau of Statistics.

Current fortnightly pension details

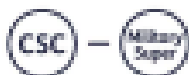
Gross:	\$[REDACTED]
Net:	\$[REDACTED]

New fortnightly pension details from payday 13 July 2023

Gross CPI increase:	\$[REDACTED]
Gross:	\$[REDACTED]
We withhold this much tax:	\$[REDACTED]
Net:	\$[REDACTED]

Indexed fortnightly pension components

Indexed tax-free component	
Tax-free:	\$0.00
Indexed taxable components	
Taxable taxed:	\$[REDACTED]
Taxable untaxed:	\$[REDACTED]



Military
Superannuation &
Benefits Scheme

Information provided is subject to the terms and conditions of the Military Superannuation & Benefits Scheme. The information is provided for general information only and does not constitute an offer of insurance or any other financial product. For more information, please visit www.militarysuper.gov.au or contact your nearest Military Super office. The Australian Government is not responsible for the accuracy or completeness of the information provided. The Australian Government is not responsible for the accuracy or completeness of the information provided. The Australian Government is not responsible for the accuracy or completeness of the information provided.

Online
www.militarysuper.gov.au
1300 001 877
1300 001 877

Military Super
1300 001 877
1300 001 877
1300 001 877

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

Your 2022-2023 Payment Summary is enclosed. Please keep this copy of your Payment Summary as you will need it to complete your 2022-2023 tax return. The Australian Taxation Office (ATO) has already received your Payment Summary details, this copy is for your records only.

Additional information about the components of your benefit

As you are affected by the Federal Court decision, Commissioner of Taxation v Douglas [2020] FCAFC 220, your pension is treated as a super lump sum for tax purposes.

Below are the different components of your benefit for tax purposes. We use this to determine how much is withheld for tax purposes and how we report these payments to the ATO. You may also need to provide information about your payments to other government agencies. If required, that information is here:

New fortnightly lump sum tax components

Lump sum tax-free component

Tax-free:

\$ [REDACTED]

Lump sum taxable components

Taxable taxed:

\$ [REDACTED]

Taxable untaxed:

\$ [REDACTED]

Introducing the CSC Navigator

Our new digital portal is now live. It's a streamlined experience, improving the way you engage with your CSC super account/s online - anytime, anywhere.

Via a new single view, you are able to access your account/s and insurance products, update your details, and generate Centrelink or Department of Veteran Affairs (DVA) schedules.

You will need to register before using it for the first time via csc.gov.au/cscnavigator

More information about the CPI and your pension is available at csc.gov.au/cpi. You can also email us at pensions@enq.militarysuper.gov.au or call 1300 001 877 if you have any questions.

That's all for now

Adam Nettheim

INQUIRY INTO THE SOCIAL SERVICES AND OTHER LEGISLATION AMEND- MENT (MILITARY INVALIDITY PAYMENTS MEANS TESTING) BILL 2024

PAYG payment summary – superannuation lump sum

Payment summary for year ending 30 June 2023

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.

Day/Month/Year

Date of payment: 30/06/2023

Payee's Tax File Number



TOTAL TAX WITHHELD

\$

NIL

Taxable Component

Taxed element

\$



Untaxed element

\$



Tax-free Component

\$



Death benefit

N

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: 30/06/2023