



Social Services and Other Legislation Amendment (Military Invalidity Payments Means Testing) Act 2024

No. 30, 2024

**An Act to amend the law relating to social security
and veterans' entitlements, and for related
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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**An Act to amend the law relating to social security
and veterans' entitlements, and for related
purposes**

[Assented to 30 May 2024]

The Parliament of Australia enacts:

*No. 30, 2024 Social Services and Other Legislation Amendment (Military Invalidity
Payments Means Testing) Act 2024 1*

1 Short title

This Act is the *Social Services and Other Legislation Amendment (Military Invalidation Payments Means Testing) Act 2024*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|--------------------------|---|--------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | 31 May 2024 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Social Security Act 1991

1 Subsection 9(1) (definition of *asset-test exempt income stream*)

Omit “9A, 9B and 9BA”, substitute “9A, 9B, 9BA and 9BB”.

2 Subsection 9(1)

Insert:

military invalidity pension income stream has the meaning given by subsection (1G).

3 After subsection 9(1F)

Insert:

(1G) An income stream is a *military invalidity pension income stream* if:

- (a) the income stream is:
 - (i) invalidity pay within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (ii) an invalidity pension under the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*; or
 - (iii) an income stream provided under a superannuation scheme and that is covered by an instrument under subsection (3); and
- (b) the income stream is not a defined benefit income stream.

4 After subsection 9(2)

Insert:

- (3) For the purposes of subparagraph (1G)(a)(iii), the Secretary may, by legislative instrument, do any one or more of the following:
 - (a) specify an income stream;

- (b) describe an income stream;
- (c) determine requirements relating to an income stream; regardless of whether the income stream relates to military service or invalidity.

(3A) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, an instrument under subsection (3) may make different provision in relation to:

- (a) different kinds of income streams; and
- (b) different kinds of circumstances.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

5 After section 9BA

Insert:

9BB Meaning of asset-test exempt income stream—military invalidity pension income stream

An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if the income stream is a military invalidity pension income stream.

6 Subsection 23(1) (definition of asset-test exempt income stream)

Omit “9A, 9B and 9BA”, substitute “9A, 9B, 9BA and 9BB”.

7 Subsection 23(1)

Insert:

military invalidity pension income stream: see subsection 9(1G).

8 Subsection 1098(1)

Omit “1099 or 1099A”, substitute “1099, 1099A or 1099AAA”.

9 Subsection 1098(1) (note)

Omit “9A, 9B and 9BA”, substitute “9A, 9B, 9BA and 9BB”.

10 Section 1099 (at the end of the heading)

Add “or a military invalidity pension income stream”.

11 Section 1099

After “defined benefit income stream”, insert “or a military invalidity pension income stream”.

12 After section 1099A

Insert:

1099AAA Income—income stream is a military invalidity pension income stream

- (1) If the asset-test exempt income stream to which this Subdivision applies is a military invalidity pension income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

Annual payment $-$ Special reduction amount

where:

annual payment means the amount payable to the person for the year under the income stream.

special reduction amount means the sum of the amounts that would be the tax free components, worked out under Subdivision 307-C of the *Income Tax Assessment Act 1997*, of the payments received from the military invalidity pension income stream during the year, if it were assumed that the military invalidity pension income stream is a superannuation income stream within the meaning of that Act.

Cap on special reduction amount

- (2) If:
- (a) the military invalidity pension income stream:
 - (i) is an income stream of a kind mentioned in subparagraph 9(1G)(a)(iii); and
 - (ii) is not an income stream relating to military service; and

(b) apart from this subsection, the special reduction amount under subsection (1) in relation to the income stream for the year would exceed 10% of the amount payable to the person for the year under the income stream;

then that special reduction amount is taken to be an amount equal to 10% of the amount payable to the person for the year under the income stream.

13 Paragraph 1099DB(1)(a)

After “defined benefit income stream”, insert “or a military invalidity pension income stream”.

14 At the end of subsection 1099DB(1)

Add:

; or (c) if the income stream is a military invalidity pension income stream—the amount determined by the Secretary under this paragraph.

15 Subsection 1099DB(2)

Omit “(1)(a) or (b)”, substitute “(1)(a), (b) or (c)”.

16 After paragraph 1099DD(b)

Insert:

(ba) paragraph 1099DB(1)(c); or

17 Subsection 1118(1A) (subparagraph (a)(i) of the definition of *partially asset-test exempt income stream*)

After “defined benefit income stream”, insert “or a military invalidity pension income stream”.

Veterans’ Entitlements Act 1986

18 Subsection 5J(1) (definition of *asset-test exempt income stream*)

Omit “5JA, 5JB and 5JBA”, substitute “5JA, 5JB, 5JBA and 5JBB”.

19 Subsection 5J(1)

Insert:

military invalidity pension income stream has the meaning given by subsection (1EA).

20 After subsection 5J(1E)

Insert:

- (1EA) An income stream is a *military invalidity pension income stream* if:
- (a) the income stream is:
 - (i) invalidity pay within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (ii) an invalidity pension under the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*; or
 - (iii) an income stream provided under a superannuation scheme and that is covered by an instrument under subsection (1FA); and
 - (b) the income stream is not a defined benefit income stream.

21 After subsection 5J(1F)

Insert:

- (1FA) For the purposes of subparagraph (1EA)(a)(iii), the Commission may, by legislative instrument, do any one or more of the following:
- (a) specify an income stream;
 - (b) describe an income stream;
 - (c) determine requirements relating to an income stream;
- regardless of whether the income stream relates to military service or invalidity.
- (1FB) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, an instrument under subsection (1FA) may make different provision in relation to:
- (a) different kinds of income streams; and
 - (b) different kinds of circumstances.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

22 After section 5JBA

Insert:

**5JBB Meaning of asset-test exempt income stream—military
invalidity pension income stream**

An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if the income stream is a military invalidity pension income stream.

23 Subsection 5Q(1) (definition of *asset-test exempt income stream*)

Omit “5JA, 5JB and 5JBA”, substitute “5JA, 5JB, 5JBA and 5JBB”.

24 Subsection 5Q(1)

Insert:

military invalidity pension income stream: see subsection 5J(1EA).

25 Subsection 46T(1)

Omit “46U or 46V”, substitute “46U, 46V or 46VAA”.

26 Subsection 46T(1) (note)

Omit “5JA, 5JB and 5JBA”, substitute “5JA, 5JB, 5JBA and 5JBB”.

27 Section 46U (at the end of the heading)

Add “or a military invalidity pension income stream”.

28 Section 46U

After “defined benefit income stream”, insert “or a military invalidity pension income stream”.

29 After section 46V

Insert:

46VAA Income—income stream is a military invalidity pension income stream

If the asset-test exempt income stream to which this Subdivision applies is a military invalidity pension income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

Annual _ Special reduction
payment amount

where:

annual payment means the amount payable to the person for the year under the income stream.

special reduction amount means the sum of the amounts that would be the tax free components, worked out under Subdivision 307-C of the *Income Tax Assessment Act 1997*, of the payments received from the military invalidity pension income stream during the year, if it were assumed that the military invalidity pension income stream is a superannuation income stream within the meaning of that Act.

30 Paragraph 46ZA(1)(a)

After “defined benefit income stream”, insert “or a military invalidity pension income stream”.

31 At the end of subsection 46ZA(1)

Add:

; or (c) if the income stream is a military invalidity pension income stream—the amount determined by the Commission under this paragraph.

32 Subsection 46ZA(2)

Omit “(1)(a) or (b)”, substitute “(1)(a), (b) or (c)”.

33 After paragraph 46ZC(b)

Insert:

(ba) paragraph 46ZA(1)(c); or

34 Subsection 52(1AA) (subparagraph (a)(i) of the definition of *partially asset-test exempt income stream*)

After “defined benefit income stream”, insert “or a military invalidity pension income stream”.

Part 2—Application and validation provisions

35 Definition

In this Part:

commencement means the commencement of this item.

36 Application of amendments—*Social Security Act 1991*

The amendments of the *Social Security Act 1991* made by Part 1 of this Schedule apply in relation to working out the ordinary income of a person in respect of days occurring on or after commencement, whether the income stream began to be provided to the person before, on or after commencement.

37 Validation provision—*Social Security Act 1991*

- (1) This item applies if:
 - (a) the ordinary income of a person in respect of days occurring before commencement is or was worked out, or purportedly worked out, under section 1099A of the *Social Security Act 1991*; and
 - (b) the working out of the person's ordinary income would, apart from this item, be wholly or partly invalid or ineffective only because it is or was done or purportedly done on the basis that paragraphs 9(1F)(a) and (ba) and 9A(1)(a) of that Act applies or applied in relation to the income stream provided to the person.
- (2) The working out of the person's ordinary income, or purported working out, and any other thing done or purportedly done in relation to the working out of the person's ordinary income, is taken for all purposes to be valid and effective, and to have always been valid and effective.

38 Application of amendments—*Veterans' Entitlements Act 1986*

The amendments of the *Veterans' Entitlements Act 1986* made by Part 1 of this Schedule apply in relation to working out the ordinary income of a person in respect of days occurring on or after commencement,

whether the income stream began to be provided to the person before, on or after commencement.

39 Validation provision—*Veterans' Entitlements Act 1986*

- (1) This item applies if:
- (a) the ordinary income of a person in respect of days occurring before commencement is or was worked out, or purportedly worked out, under section 46V of the *Veterans' Entitlements Act 1986*; and
 - (b) the working out of the person's ordinary income would, apart from this item, be wholly or partly invalid or ineffective only because it is or was done or purportedly done on the basis that paragraphs 5J(1E)(a) and (ba) and 5JA(1)(a) of that Act applies or applied in relation to the income stream provided to the person.
- (2) The working out of the person's ordinary income, or purported working out, and any other thing done or purportedly done in relation to the working out of the person's ordinary income, is taken for all purposes to be valid and effective, and to have always been valid and effective.
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*[Minister's second reading speech made in—
House of Representatives on 15 February 2024
Senate on 28 February 2024]*

(19/24)
