

Defence submission to the Senate Standing Committee on Constitutional and Legal Affairs Inquiry into the effectiveness of the *Commonwealth Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equity.

Term of reference: (n) scope of existing exemptions

Summary

The exemption in section 34 of the Act relating to housing provided to employees (which Defence understands extends to members of the ADF) must be retained. It is also necessary to retain the exemptions set out in sections 41A and 41B of the Act as they relate to military superannuation schemes administered by Defence (*Defence Forces Retirement Benefits Act 1948*; *Defence Force Retirement and Death Benefits Act 1973* and *Military Superannuation and Benefits Act 1991*).

The combat duties exemption under section 43 of the Act is considered effective as it provides Defence with the flexibility to employ women in way that provides suitable career opportunities without undermining the capability and effectiveness of the Australian Defence Force (ADF) and should be retained.

Exemption 34 Accommodation provided for employees or students

This exemption relating to housing provided to employees (which we understand extends to members of the ADF) must be retained. This is because a member and their family regularly relocate throughout the member's career in order to meet the mobility requirements of the ADF. The ADF provides significant housing assistance to members. While type and amount of assistance may have a relationship to the member's rank and duties, the composition of the member's household (family size and makeup) is highly relevant to most housing assistance provided to the member. This is a special measure to ensure that a member's family is not disadvantaged if, for example, they relocate to accompany the member, or choose to remain at a posting location while the member travels to a new place of duty. It assists a member to provide service to the ADF and continue to meet their family responsibilities.

The exemption must be retained to make clear to members that the larger home provided for a larger family is not an issue of discrimination against members with smaller family sizes or no dependants, but is intended to address the disadvantage that members of the ADF whose families normally live with them would otherwise face. Providing housing assistance that differs for members in different circumstances is an example of a substantive equality as it meets individual needs rather than imposing a 'one size fits all' form of housing on members and their families.

Exemptions 41A New superannuation fund conditions and 41B Existing superannuation fund conditions

It is necessary to retain these exemptions because there are elements of the schemes that may provide a differential amount of benefit based on gender, marital status or family responsibility. This is in some circumstances due to the age of the schemes and the terms on which they were provided to members; in some instances it relates to

reasonable use of statistical information. The reasons have not changed since the exemptions were inserted in the Act in 1991. As instruments are still being made under the DFRDB and MSBS legislation, the exemption for current activities in section 41A is potentially of relevance and should be retained, as should the section 41B exemption that relates to older schemes.

Removal of the exemption would require significant reworking of the benefits under the scheme. In the case of the *Defence Forces Retirement Benefits Act 1948*; *Defence Force Retirement and Death Benefits Act 1973*, this would require the reworking of closed schemes. It is important to note that the *Defence Force Retirement and Death Benefits Act 1973* and *Military Superannuation and Benefits Act 1991* allow members a degree of choice in the benefit they elect and so they may choose the option (lump sum or pension benefit) that best meets their needs, and any reworking of the statistical basis for the scheme could disadvantage members who have chosen one of those options based on the current workings of the schemes.

Exemption 43 Combat duties etc

Whilst Defence has been progressively broadening women's roles in the ADF, current policy still restricts the employment of women in some employment categories that involve or have the potential to involve direct combat duties. The s43 exemption provides Defence with the manning flexibility to meet current and emerging operational and capability requirements. Accordingly, the exemption is still required.

In response to changes in policy, the s43 exemption was amended in 1995 to remove reference to 'combat-related' duties.

Most of the barriers to women being employed across a range of ADF job categories have been removed over the past 15 to 20 years. Many women are now serving in command positions and on military operations overseas, and more are reaching senior star-rank levels. Women are now eligible to serve in approximately 90 per cent of employment categories, up from 73 per cent in 2003. The employment opportunities for women are listed by service below:

Navy

Excluding Clearance Divers, women can be employed in any capacity in any ship, submarine or aircraft in the Navy.

Army

While Infantry and Armoured Corps employment categories are not open to women, employment in Infantry and Armoured units is open to women in the headquarters and logistic support company roles. Women are able to be employed in a number of Artillery Corps employment categories and can serve in Artillery units with the exception of Field Artillery. All Engineer employment categories are open to women and women can serve in all Engineer units with the exception of Combat Engineer Squadrons.

Air Force

Women can be employed in all categories with the exception of Ground Combat categories (Airfield Defence Guards and Ground Defence Officers). These employment categories are the Air Force equivalent of the Army's Infantry Corps.

Reviews

Defence is currently assessing the expansion the Physical Employment Standards Project to include combat trades in the three Services. The results of this project will allow more informed decisions about the allocation of service personnel to trade categories based on their physical capacity to perform the duties, and will inform consideration of the broader employment of women in the ADF.

Air Force is separately examining the restriction on women entering ground combat roles.

Increasing the number of women in the Defence forces and their length of service are priorities under the Defence Strategic Workforce Plan 2007–17. The three Services are undertaking individual programs to increase the participation rates of women. The Chief of the Defence Force has established an external Women's Reference Group to present alternative and innovative strategies and options to break down current barriers to women joining and continuing to serve in the ADF.

Recommendation

It is recommended that Division 4 Exemptions 34, 41A, 41B and 43 be retained.