



ALLIANCE OF DEFENCE SERVICE ORGANISATIONS

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The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

ALLIANCE OF DEFENCE SERVICE ORGANISATIONS SUBMISSION ON AGE BARRIERS TO WORK IN COMMONWEALTH LAWS

On behalf of the Alliance of Defence Service Organisations (ADSO¹), this submission deals with three of the 54 questions in the Issues Paper, namely:

- Question 1: Framing Principles;
- Question 2: Service Pension qualifying age; and
- Question 39: The compulsory retirement age for Australian Defence Force personnel.

However, ADSO may wish to make further submissions on other questions in the Issues Paper during the second round of consultation and depending on what emerges from the enquiry into each question. In addition, ADSO would welcome consultation during the enquiry's developmental processes on matters that may affect serving and ex-serving ADF members, and their families, and also including their widows and widowers (referred to in this submission as the veteran community).

¹ Membership of ADSO comprises the Defence Force Welfare Association (DFWA), the Naval Association of Australia (NAA), the RAAF Association (RAAFA), The Royal Australian Regiment Corporation (RARC) and Australian Special Air Services Association (ASASA) with the Vietnam Veterans Association of Australia (VVAA) and the Australian Peacekeepers and Peacemakers Association as partners.

Question 1: Framing Principles – The Unique Nature of Military Service

While ADSO would not advocate that the unique nature of military service should be a Framing Principle for the enquiry as a whole, it is a principle which under-pins the approach that should be taken in all matters affecting the veteran community. The attached paper is intended to help clarify and strengthen an understanding of the elements of military service which render it unique as an activity (or vocation) within a democratic society such as Australia.

By way of a summary of these elements, in volunteering for military service, the individual accepts the surrender of his or her basic rights recognized in Article 3 of the Universal Declaration of Human Rights as, among others, life, liberty and the security of the person. (Australia is a signatory of this Declaration, adopted by the General Assembly of the UN in 1948.) Even when the State demands surrender of these rights by imposing a compulsion for service, the terms of the social contract imply that such compulsion is done only within the democratic framework and is therefore with the assent of the individual, who at all times is party to it. This surrender is not unconditional, though *in extremis*, it is absolute. The State, for its part, accepts the obligation to preserve, as far as is consistent with the achievement of the military mission, the physical and spiritual wellbeing of such individuals who place themselves at its disposal.

In no other calling, occupation or profession has the State the power to accept or demand the surrender of these rights. Moreover, when engaged in combat, the individual may lawfully be commanded to exert lethal force on other human beings. No person who has exercised such force, and who has seen the results of this action, can doubt that the experience constitutes a most serious assault on the security of his or her person, imposing, inter alia, significant psychological effects on the individual and family. Nonetheless, the individual cannot, on that account, excuse him or herself from obedience to the command. Military service in these fundamental respects is unique, and the obligation this places on the State is inescapable, as it is enduring. This obligation extends beyond the period of service itself, to the physical and psychological consequences of that service.

Question 2: Service Pension Qualifying Age

The Service Pension paid to veterans who have qualifying service and the partner Service Pension paid to eligible partners, widows and widowers, are paid, at a particular qualifying age, in recognition of the intangible effects of war that may result in premature ageing of the veteran and/or loss of earning power. Further, those eligible can be covered under either the VEA 1986 or MRCA 2004 or both. Therefore, why Question 2 in the Issues Paper relates only to the VEA is not understood. Consistency between the acts in regard to Service Pension is absolutely paramount. However, to argue that there is also a need for consistency with the age pension is *non sequitur*. The qualifying age for Service Pension is a bottom-up

independent judgement based on the effects of war and should be seen as an absolute figure, not a top-down figure with reference to the age pension. Under-pinning this statement is the truism that service in the military is unique and that a member of the Australian Defence Force who has been involved in operations sustains ongoing physical and mental impacts.

In this regard, the premature aging due to qualifying service is as valid today for veterans of Timor, Iraq and Afghanistan, with the added stress of often having an invisible enemy, as it was for those fighting in the trenches of WWI at Anzac Cove, the Western Front and the Middle East; those in WWII battling the enemy and the conditions of the Kokoda Trail and flying for RAF Bomber Command over Germany; and those with qualifying service from Korea and the jungles of Malaya, Borneo and Vietnam. For these reasons, ADSO is very strongly opposed to any change of qualifying age for Service Pension.

Question 39: Compulsory Retirement Age for ADF Personnel

The operational capability of the ADF requires that those personnel deployed into operations are of an age and physical fitness to meet the rigours of battle in defence of the nation. In this regard, take two simple examples: firstly, the infantry soldier, wearing body armour and carrying his weapon and a heavy pack, could not cope with the rigours of a fire-fight unless he or she is relatively young, very fit and highly trained; secondly, the pilot, flying a high performance fighter aircraft, capable of pulling 7G and delivering precision weapons in a hostile air environment, could not cope unless he or she is relatively young, very fit and highly trained. The need for a relatively young ADF is obvious and ADSO is very strongly opposed to any change in compulsory retirement age for the ADF. However, this is not to say, as is currently laid down, that specific individuals or classes of individuals should not be extended past the current retirement ages by the Minister or Service Chief.

Again, under-pinning this contention is that service in the military is unique.



David K Jamison AM
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Attachment:
The Unique Nature of Military Service.