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**INSPECTOR-GENERAL
OF THE AUSTRALIAN DEFENCE FORCE**

OWN-INITIATIVE INQUIRY

**IMPLEMENTATION OF MILITARY JUSTICE
ARRANGEMENTS FOR DEALING WITH
SEXUAL MISCONDUCT IN THE
AUSTRALIAN DEFENCE FORCE**

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Note: an earlier version of this report contained a typographical error which has been amended.

Acknowledgments

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**INSPECTOR GENERAL OF THE AUSTRALIAN DEFENCE FORCE INQUIRY REPORT –
IMPLEMENTATION OF MILITARY JUSTICE ARRANGEMENTS FOR DEALING WITH SEXUAL
MISCONDUCT IN THE AUSTRALIAN DEFENCE FORCE**

EXECUTIVE SUMMARY AND CONCLUSIONS

1. The Australian Defence Force, ADF, has been on a journey of cultural reform for over a decade, with particular emphasis on the treatment of women, diversity and the upholding of Defence values. This has arisen from a series of cultural reviews that commenced in 2011, following an incident of sexual misconduct that became known as the ADFA Skype incident.
2. The implementation plan for those reforms, Pathway to Change, is necessarily a great deal broader than the management of sexual misconduct, and includes, among other things, the representation of women and gender equality in the ADF. While gender diversity is desirable in its own right, an evaluation of Pathway to Change would provide insight into the program's effectiveness more broadly.
3. Accordingly, changes in arrangements for the management of sexual misconduct have been part of a wider reform which is not the subject of this inquiry. This review has not considered, for example, the impact of increased female participation in the ADF, or the rise in the percentage of female commanders, on the management of sexual misconduct.
4. Instead, and in keeping with the IGADF's responsibilities, this inquiry has been concerned with the implementation of military justice arrangements for dealing with sexual misconduct in the ADF, particularly the effectiveness and fairness of such arrangements. It is not bound by gender and sexual preference.
5. Today, the prevalence of sexual misconduct in the ADF (which includes sex discrimination, sexual harassment and sexual offences) stands at 5.7 per cent¹, compared with 20 per cent (for harassment incidents only) in Australia's civilian workplaces.² Prevalence is measured by the rate of anonymous, self-reports of misconduct provided to workplace surveys carried out by the ADF and the AHRC, respectively. Anonymous self-reporting is considered the most reliable means of establishing the underlying incidence of misconduct; official reports to authorities usually only represent a fraction of this.
6. Data analysis provided to the inquiry also confirms that over the period 2012-2018 anonymous, self-reported sexual harassment (only) has risen in the civilian workplace from 21 percent to 33 percent, where prevalence includes incidents which occurred within the

¹ Sex discrimination, sexual offences and assault are a statistically small part of sexual misconduct

² This is prevalence over the previous twelve months.

previous five years. As the AHRC has commented, this represents a significant increase in civilian workplaces.

7. By comparison, anonymous and self-reported incidents of sexual misconduct (which includes sexual harassment and offences including assault) in the ADF rose by 0.5 per cent per annum between 2013-17 and subsequently, using a slightly different survey design, rose by 0.2 percent per annum from 2018, from 5 per cent to 5.7 per cent in 2021. (Prevalence fluctuated between 6-9 per cent in 2013-17; rising from 5-5.7 per cent 2018-2021).

8. While there are some differences between the Defence survey and the AHRC survey, the AHRC civilian survey provides the closest possible point of reference. Clearly there is a wide gap between the experience of ADF members and those in civilian workplaces.

9. While women represent a little under half of those employed in civilian workplaces, they represent only 19 percent of ADF personnel, which would account for some of this gap.

10. The prevalence of sexual misconduct experienced by women in the ADF in the previous 12 month period has risen from 11 percent to 15 percent between 2018-2021. For women in civilian workplaces, although no data for 2021 was available, the prevalence experienced by women stood at 23 percent in 2018, more than double the ADF rate in 2018. However, the recent increase in prevalence among women ADF members, while still markedly lower than prevalence for civilian women, is a warning sign to Defence and should be closely monitored.

11. Comparisons with the Australian public sector are less favourable, with the ADF reporting sexual misconduct at a higher rate, but the difference in occurrence (1.4 per cent) is modest.

12. These are excellent results for an institution that began its reforms under a cloud. Whether the reforms could have been reasonably expected to produce a reduction in the rate of misconduct, given the prevailing social conditions reflected in the AHRC survey results, is debateable. The significant increase in the civilian rate over the period suggests this would have been difficult, but the ADF needs to ask whether the investments made over the reform decade have delivered sufficient change and whether efforts to increase the representation of women in the ADF need to mitigate the greater risk of sexual misconduct.

13. These headline figures do not explain how the ADF has managed to contain the increase in sexual misconduct; the impact of each new program, new process and new emphasis on values cannot be known with any certainty without rigorous evaluation. Evaluation is strongly recommended.

14. The inquiry has brought together the insights of commanding officers who manage misconduct as part of their direct responsibilities with those of senior officers who are responsible for various components of the policy, as well as written and oral feedback from victims, bystanders and respondents.

15. The majority of victims who gave feedback to the inquiry considered the process had been unfair and unsupportive and that ADF culture, in their experience, still made it difficult for victims to come forward and to receive justice without fear of career or reputational impairment.

16. Respondents, that is those accused of misconduct, also considered the process they had undergone was unfair. Bystanders tended to consider the process was fair although some male bystanders (in the Air Academy case study) were concerned that the imposition of quotas meant that female trainees were treated favourably.

17. The inquiry has also drawn on the experiences and research of ADF research units and those of Australia's FVEY partners (Canada, NZ, the UK and the US).

18. These insights have enabled the inquiry to analyse relevant data and draw conclusions about the effectiveness and fairness of the implementation of military justice arrangements as well as opportunities for improvement.

19. It should be noted that there is emerging internal Defence research which links sexual misconduct to other forms of workplace misconduct, especially bullying. This is a significant development because it provides policy makers with a broader suite of options for addressing sexual misconduct and should be pursued.

20. Instructions for the management of sexual misconduct is provided in Chapters 3 and 9 of the Complaints and Resolution Manual (CARM). However, it is not described in any systematic way which would enable military personnel to understand it as a series of interacting components designed to minimise the prevalence of sexual misconduct. Nor is the prevention of sexual misconduct consistently and clearly described as upholding the values of the ADF and supporting the safety of members as well as Defence capability.

21. There are no objectives and targets explicitly identified for the policy and an assessment of the management of misconduct, including sexual misconduct, is not part of annual performance appraisals for commanding officers. As the US has observed, performance appraisals would assist in ensuring the chain of command maintained a leadership focus on the prevention of unacceptable behaviour or misconduct.

22. Unique features of the ADF, such as the importance of upholding the ADF's interests, the provision of health and welfare support and the potential to apply both administrative and criminal justice processes to incidents of misconduct, often delay outcomes in complaint management and, as the report explores, creates some confusion and frustration.

23. The Sexual Misconduct Prevention and Response Office (SeMPRO) was established in 2013 to provide support for victims, advice to commanding officers and relevant training materials for all members. The inquiry has heard criticisms of SeMPRO as well as praise for its victim-centric approach; there is obviously room for improved training materials SeMPRO provides and better data collection and integration, as explored in the report.

24. SeMPRO is also responsible for restricted (anonymous) reporting of sexual misconduct, in line with a similar US military body and as increasingly found in other large organisations. The purpose of such a mechanism is to provide support and advice to victims who do not wish to report, but to also provide victims with greater confidence and encouragement to make an official complaint. Anonymous reporting can also provide valuable insights into risks associated with sexual misconduct.

25. There was widespread frustration among commanding officers that victims very often did not wish to make a complaint, even to them. Defence survey results suggest the most common reasons for not reporting were that:

- a. it would not change things
- b. I didn't think it was serious enough
- c. I dealt with the incident directly
- d. it was easier to just keep quiet and
- e. the instigator was of a higher rank.

26. Other reasons provided for not reporting include fear of not being seen as a team player, with consequences for promotion and postings and fear that the complaint would not be taken seriously. Commanders considered this denied them the opportunity to intervene early in the case of a minor offender, or to apprehend a perpetrator of a more serious offence who may, if unchecked, go on to repeat that offence.

27. The inquiry has concluded that SeMPRO's purpose in providing restricted reporting needs to be reviewed in light of the significant reduction (10 per cent) in victims in the ADF who now take action of any kind.

28. The role of alcohol in sexual misconduct was a consistent theme for all who spoke to the inquiry. Being affected by alcohol is estimated to occur in 70 per cent of sexual offences. While most commanding officers recognised the increased risk of sexual offences for a victim affected by alcohol, few recognised the impact alcohol had on the tendencies of perpetrators and that alcohol significantly increased the risks of perpetration. Greater awareness of alcohol as a risk to perpetrators and the use of alcohol management as a means of preventing unacceptable behaviour, including sexual misconduct, would be beneficial.

29. While the law is clear on the inability of someone substantially affected by alcohol to give consent to sexual activity, there is limited awareness of this among commanders and members generally, which should be addressed and emphasised in awareness training.

30. There was extensive support for and understanding of victims, however the ADF's policy, overall, has little focus on the perpetrator. Perpetrator invisibility is unfortunately also a feature of the management policies of many civilian organisations.

31. Without a focus on perpetrators, their motivations, predictive factors and possible behaviour change approaches, the prevention of sexual misconduct is more difficult if not impossible.

32. The ADF has remarkable research assets, including access to a large sample of potential participants for the study of perpetrators and the development of new approaches to reducing perpetration. It has every opportunity to lead ground breaking research work into the better identification and management of perpetrators as well as a deeper understanding of sexual harassment as part of a toxic workplace.

33. An important aspect of an effective justice system is the deterrent effect of justice having been seen to be done. It is critical to the building and maintaining of confidence in any behaviour management program. While the outcomes of some military and civilian proceedings can be found on line, it is not easy or obvious to do. Outcomes of proceedings could be included as annual updates in member training or published more broadly in the well-read service newsletters.

34. Further, with the increasing trend towards the use of administrative action and away from the Defence Force Discipline Act, the consequent opacity is a cause for concern; the enterprise is unaware of how consistently and rigorously administrative action is applied and the deterrent effect is further undermined by the failure to publicly report even anonymised outcomes.

35. While high level committees exist which consider aspects of the policy from time to time, there is no integration of Defence's many data sources, which are currently a series of loose jigsaw pieces. The inquiry was unable to identify integrated reports and instead requested that the Directorate of People Intelligence and Research provide that analysis.

36. The interrogation of well integrated data analysis on a regular and strategic basis would provide Defence's policy makers with insights for further policy improvement.

37. In the case of the management of sexual misconduct, the ADF has a great deal to gain from the regular monitoring of key data, particularly in combination with research and evaluation, both of which the ADF either already does or has the capacity to do but does not do at the high level required.

38. Clearly, Defence recognises its data analysis limitations and significant reforms in various parts of the Defence enterprise have been underway and evolving for a decade. This has resulted in the Defence Data Strategy, 2021-2023. An important component of the strategy has been the recent establishment of a new Data Division, under the leadership of a

Data Integration Officer. This unit is required to “better integrate Defence’s data management and delivery of major business information system projects”.³ The inclusion of personnel data within that body will be an important step towards closer monitoring of unacceptable behaviour generally and sexual misconduct particularly.

39. This inquiry has been advised that work is underway, under the leadership of SeMPRO, to pilot sexual misconduct data integration, working with the Provost Marshal-ADF. The intention of this new approach by SeMPRO is to ensure the Defence People Committee is provided with more regular and strategic advice for continuous improvement in the management of sexual misconduct.

40. This is welcome news and the new forum is expected to work with Defence’s new, central Data Division.

41. As this report has noted previously, SeMPRO has evolved into a trusted support and advice unit for victims and, increasingly, for commanding officers and managers. It has no involvement with respondents and consequently no overview of the management of sexual misconduct as a preventive system. Although the SeMPRO data forum proposal suggests no additional resources will be required, it seems unlikely such a large data integration task could be accomplished by any organisation in Defence without additional resources.

42. To provide the ADF with greater assurance, and after consultation with the acting Data Integration Officer and Head People Capability, Defence People Group, this inquiry considers the IGADF could work with SeMPRO and closely monitor the development of this integrated data management capability, so that it is ready to be reviewed by the Data Division in 2023 and the proposed pilot data project is carried out and evaluated in a timely way.

43. Integration of information, in combination with identifying clear objectives for the policy which link it with the upholding of Defence values through member safety and capability, can take an organisational response that is already very good, to excellent. This will require the development of appropriate metrics, recognising that the goal of elimination is probably unattainable, but that minimisation can be attained.

44. Evaluation of program components should become part of the ADF culture of continuous improvement. Currently, it is impossible to identify the effectiveness of the programs and organisations such as SeMPRO, in reducing the prevalence of sexual misconduct or promoting either commitment to or confidence in the policy.

³ DEFGRAM 500/21 of 9 Nov 21

45. The ADF's reward for doing so will be its greater effectiveness in times of peace and war, a motivated and professional workforce and greater safety for all who serve.

A handwritten signature in black ink, appearing to read 'Pru Goward', with a stylized flourish at the end.

Professor the Honourable Pru Goward
Assistant IGADF

26 November 2021

INSPECTOR GENERAL OF THE AUSTRALIAN DEFENCE FORCE INQUIRY REPORT –
IMPLEMENTATION OF MILITARY JUSTICE ARRANGEMENTS FOR DEALING WITH SEXUAL
MISCONDUCT IN THE AUSTRALIAN DEFENCE FORCE

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Finding 1. Based on comparisons between the prevalence of sexual misconduct in civilian and ADF workplaces, the reforms of the past decade appear to have contributed to improvement in the level of misconduct in the ADF, using the civilian population as a benchmark. Survey results are not directly comparable but provide a general guide. Future comparisons between the ADF and the AHRC surveys would benefit from an agreed approach to the prevalence period and the behaviours included.

Finding 2. Although the prevalence of sexual misconduct in the ADF has risen slightly over the review period since reforms were first introduced, it is approximately a quarter to a third of the rate of prevalence in civilian workplaces⁴. Prevalence among women in both workplaces is significantly higher than among men however the rate for civilian women was more than double that of women in the ADF. The female rate is noted to have increased in the ADF as the proportion of women members has increased, which requires further exploration.

Finding 3. More recently, a larger gap has opened up between prevalence among ADF trainees compared with the rest of the ADF. However, the prevalence of sexual misconduct in Defence training institutions is significantly lower than the incidence of sexual misconduct in civilian universities.

Finding 4. Prevalence rates and trends suggest that Defence as an employer has better managed and prevented sexual misconduct than civilian workplaces, which may reflect on the characteristics of ADF members compared with others, the under-representation of women in the ADF, a more robust management system than encountered elsewhere, or some combination of the three.

Finding 5. ADF surveys indicated high level confidence in Command to take action in response to complaints, although no gender breakdown is available.

Finding 6. Confidence in the ADF's management of sexual misconduct has remained consistently strong over the review period, despite changes to the policy framework. This may reflect the confidence of members in command's management of sexual misconduct rather than any change in policy itself. This increased confidence has not translated to greater use of official complaints process.

⁴ For incidents in the previous 12 months

Finding 7. It is unclear why there has been a significant reduction in the number of incidents that have led to action since the establishment of SeMPRO. Actions include victims resolving the matters themselves, seeking the intervention of the commanding officer or making an official complaint. Usually a reduction in action taken would indicate a reduction in confidence in the policy.

Finding 8. The significant decline in action taken by victims of sexual misconduct may have increased risk to the ADF and to future victims. This outcome requires further investigation.

Finding 9. In comparison, the ADF is quicker to finalise sexual offences and fewer complaints are withdrawn than in the civilian criminal system.

Finding 10. There has been an increase in the use of administrative action to address sexual misconduct and a smaller reduction in the use of the DFDA. This limits the transparency of management outcomes since these are not published centrally or subject to any policy focused scrutiny.

Finding 11. Commitment to the policy, as measured by bystander involvement, remains high at over 80 per cent, but its effectiveness has not been evaluated.

Finding 12. A victim-centric approach is appropriate for a policy on dealing with sexual misconduct.

Finding 13. A victim-centric focus limits the focus on perpetrators and distracts from measures to address the risk of perpetration.

Finding 14. The understanding of perpetrators of sexual misconduct in the ADF is limited and consequently behaviour change programs cannot be appropriately developed and targeted for perpetrators.

Finding 15. Most ADF members are aware of CARM. However, their deeper understanding of how to complain about sexual misconduct incidents is lacking.

Finding 16. There is considerable dissatisfaction with the nature of training provided for the management of sexual misconduct. Training in the management of sexual misconduct should be reviewed to ensure it is interactive, engaging and provides relevant information about outcomes of complaints through the use of case studies.

Finding 17: More education for ADF members is required about the nature of consent.

Finding 18. Commanding Officers struggle between the competing principles of privacy and closure for victims in providing advice to victims on the outcome of their sexual misconduct complaints.

Finding 19. When a respondent and a complainant belong to different commands, Commanders should communicate to ensure the victim centric approach is balanced with the obligation to ensure both members are treated fairly.

Finding 20. There is no centralised integration of data related to the management of sexual misconduct, although this is expected to change. The newly established Data Division will be responsible, as part of its 2023 onwards strategy, for ensuring that integrated data analysis is reliably able to support policy monitoring and reform.

Finding 21. There is no culture of evaluation in the ADF; evaluation of the existing components of sexual misconduct management, including SeMPRO, would be helpful for policy makers and contribute to continuous improvement.

Finding 22. Targets and associated metrics currently do not exist. Recognising that the goal of elimination is probably unattainable, but that minimisation most certainly is, a target of minimisation may be sufficient to galvanise a target-focused organisation such as the ADF- at least in the first instance.

Recommendation 1. Defence identify the objectives of its sexual misconduct policy and assign suitable targets within given timeframes. The objectives and targets should be communicated effectively and consistently across the Defence enterprise and linked with Defence's values.

Recommendation 2. Defence should promote its sexual misconduct policy as an integrated system, based on Defence values and supporting safety and capability.

Recommendation 3. The Mandatory Workplace Behaviour Awareness Program should be updated annually and include more information about consent.

Recommendation 4. Defence should provide clear guidance on the level of information to victims on what action has been taken against a respondent in a sexual misconduct incident.

Recommendation 5. The ADF should consider adopting the US program CATCH, or adopt the US SAPRO's greater use of restricted reports to encourage official reporting.

Recommendation 6. Sexual misconduct management must provide for a greater focus on perpetrators and prevention. Defence data and research capability is well able to assist with this task.

Recommendation 7. Prevention should include a focus on behaviour change programs which are appropriately developed and targeted for perpetrators and based on Defence research.

Recommendation 8. Command accountability for fairly managing respondents and complainants could be reported on in annual performance appraisals.

Recommendation 9. Victims of sexual misconduct should be provided written advice about their options in reporting a complaint and the possible outcomes that may be available.

Recommendation 10. The ADF should report, in a de-identified manner, the disciplinary and administrative sanctions outcomes of substantiated sexual misconduct complaints. This information should be updated regularly and incorporated into annual mandatory awareness training.

Recommendation 11. SeMPRO should annually report on restricted disclosures made to it and ensure any trends and significant changes are identified.

Recommendation 12. The IGADF should work with the proposed new SeMPRO and Provost Marshal forum to both monitor its development, so that it can be included in the review of the Defence Data Division in 2023, and assist in ensuring the proposed pilot project is carried out and evaluated in a timely way.

Recommendation 13. That the Defence People Committee commission work into the development of suitable metrics to measure the impact of the policy on ADF personnel safety and capability, as well as some refining of the existing measures applied to prevalence, occurrence and commitment.

Chapter 1

Overview of Reform Journey and Current Arrangements

Background

1. The purpose of this own-initiative Inquiry is to consider the implementation of military justice arrangements for dealing with sexual misconduct in the Australian Defence Force, in particular the effectiveness and fairness of such arrangements.
2. In 2011, Defence undertook a suite of cultural reviews following an incident at the Australian Defence Force Academy (ADFA) involving first year cadets that became known as the ADFA Skype incident. These included a Review of the Management of Incidents and Complaints in Defence including Civil and Military jurisdiction conducted by the former IGADF.
3. As a consequence, Defence placed significant emphasis on ensuring appropriate policies and practices, to manage complaints of sexual misconduct, were introduced that were victim-focused and trauma-informed
4. Ten years have now elapsed and IGADF has decided to review the implementation of current military justice arrangements for dealing with sexual misconduct, particularly the effectiveness and fairness of such implementation in all environments where ADF members may be serving.
5. The many reviews which followed the ADFA Skype Incidence in 2011, including the IGADF 2011 Review, led Defence to establish a “Reviews into Aspects of Defence and ADF Culture Steering Committee” to oversee change. This in turn lead to a Defence Cultural Platform to integrate the outcomes of the various reviews so Defence had a coherent plan to address the recommendations from those reviews. That plan was called Pathway to Change.
6. By 2017, the Pathway to Change Report advised that 175 actions and recommendations were completed. Key actions included:
 - a. establishment of the Sexual Misconduct and Prevention Response Office (SeMPRO) to allow for restricted reporting of sexual misconduct, provide support and guidance to victims and commanding officers, and ensure a necessarily victim-centric approach
 - b. introduction of a range of education programs
 - c. roll-out of bystander awareness training
7. Between 2015 and 2017 SeMPRO had briefed over 46 000 Defence personnel.
8. Other actions under Pathway to Change included strategies to improve women’s safety, promote gender equality and increase the participation and advancement of women in Defence.

9. It was also acknowledged that reducing the incidence of unacceptable behaviour and implementing further improvements to the management of complaints of unacceptable behaviour required further effort.

10. Pathway to Change noted by 2017 there had been a reduction in incidents of unacceptable behaviour at Defence training establishments. Recently however, a gap has opened up in the prevalence of sexual misconduct between ADF trainees and ADF members.

11. The ANAO conducted an audit three years into the current Pathway to Change and found "Defence has not established effective monitoring and reporting arrangements for the strategy, and is not yet able to demonstrate at the enterprise level that intended outcomes are being achieved through its implementation of the strategy."⁵

12. Since 2017, while there has been a slight, but continuous increase in the prevalence of sexual misconduct there has been no discernible trend in the number of complaints made. The proportion of victims who took any action, other than seeking information, has declined. Taking action includes victims addressing the misconduct themselves, seeking the involvement of their commanding officer or making an official complaint.

13. Work-related unacceptable behaviours, particularly bullying and discrimination, continue to be the most common types experienced in the workplace. Satisfaction and overall confidence in the ADF's management of complaints is moderate to high, while confidence in commanding officers management of incidents has risen. Women continue to experience unacceptable behaviour at higher rates than male counterparts and females are twice as likely to experience sexual-related unacceptable behaviour.⁶ It is not known from data analysis provided to this Inquiry whether confidence of women in the ADF's management of sexual misconduct differs from that of men. Confidence and commitment data should be gender disaggregated in any measures relating to sexual misconduct.

Current System for the Implementation of Defence's Response to Sexual Misconduct

14. The Conflict and Resolution Manual (CARM) is the single source document created to assist Commanders or people involved in managing and resolving complaints of unacceptable behaviour, redress of grievance and Review of Action and responding to complaints received by external parties. CARM is also designed to assist individuals who are contemplating making a complaint. The two most relevant chapter for this inquiry are:

- a. Chapter 3, Responding to unacceptable behaviour – This chapter provides commanders and managers with processes on how to respond to and report unacceptable behaviour. Part of this chapter provides the definition of unacceptable behaviour, a flow chart to assist in managing unacceptable behaviour and a list of support services.

⁵ The Auditor-General Auditor-General Performance Audit Report No. 38 2020–21 'Defence's Implementation of Cultural Reform' 20 May 2021

⁶ 2017 Pathway to Change Report

- b. Chapter 9, Responding to Sexual Misconduct. Like chapter 3, chapter 9 highlights the reporting requirements, management of sexual misconduct once reported, support mechanisms and the importance of a victim based approach. Chapter 9 also explains the roles and responsibilities of the different areas that engage in the process of responding to sexual harassment (all staff, Commanders, JMPU, SeMPRO, Service Chiefs and Group Heads). Chapter 9 also includes information about confidentiality and restricted disclosure.
15. CARM defines unacceptable behaviour as “behaviour that arises from breaching Defence Values” and “any unreasonable conduct at work or in any situation that may be connected to Defence that is offensive, belittling, abusive or threatening to another person, or adverse to morale, discipline or workplace cohesion. This includes unlawful discrimination and harassment.”
16. Sexual misconduct is a set of described unacceptable behaviours. Chapter 9 defines sexual misconduct as a spectrum of sexualised behaviours that are contrary to Defence and community values. Those behaviours include sex discrimination, sexual harassment, pornography incidents and offences, sexual offences and sexual assault.
17. Within the ADF framework, implementation and enforcement of the policy is supported by a suite of military justice laws and policies including the Defence Force Discipline Act 1982, Defence Regulations 2016 and MILPERSMAN.
18. CARM contains the following policy statements:
- a. Defence does not tolerate sexual misconduct
 - b. Victim wellbeing is paramount
 - c. Defence personnel have reporting obligations which are determined by the nature of an incident
 - d. All sexual misconduct incident reports are to be actioned promptly and sensitively
 - e. Defence provides support mechanisms for victims of sexual misconduct including access to external support service providers
 - f. Defence requires personnel to propagate an organisational-level response to sexual misconduct.
19. Defence has also instituted a number of programs and initiatives which address the prevention of sexual misconduct, such as mandatory annual awareness training for all members, pre-command training for commanding officers, followed by annual and on-line repeat training as members. Commanders are also expected to undertake SeMPRO’s refresher courses every three years.
20. Bystander training has been introduced for members which includes sexual misconduct.

21. Alcohol policies have been linked to risks for victims of sexual misconduct, although not for perpetrators.
22. The senior leadership of the ADF appears in training videos to emphasise sexual misconduct as a breach of Defence values
23. The three services' military police responsibilities have been brought together into the Joint Military Police Unit (JMPU) and its investigators are provided with specialist training in the investigation of sexual offences, including sexual assault. The Provost-Marshal ADF may authorise the release of information to commanding officers for the purposes of administrative action.
24. A pilot Sexual Offences Response Team (SORT) was established in October 2019 within the JMPU to improve the conversion of sexual offence complaints into investigations.
25. SeMPRO was established as an independent body outside the chain of command to improve the wellbeing of people affected by sexual misconduct. It is victim-centric and has enabled restricted disclosures which allow victims to access support without triggering mandated incident reporting mechanisms.⁷ Currently, SeMPRO sponsors chapter 9 in CARM and is undertaking a review of the chapter.
26. The results of courts-martial or Defence Force magistrate trials are not published in a form that is easily accessible and there is no redacted or summary account of administrative actions taken against those who have perpetrated sexual misconduct available to members. The deterrent effect of punishment of offenders is consequently minor.
27. There is some transparency for victims of outcomes of their complaints. For reasons of privacy, they are mostly advised of outcomes and actions against respondents in general terms only.
28. Defence maintains extensive, relevant data collections, including ComTrack, member survey results and JMPU records, but these are not combined in any way that enable the monitoring of the policy or to inform policy reviews.
29. Responsibility for sexual misconduct policy lies with the VCDF. Public accountability is maintained through the provision of information to the Australian Parliament's Senate Estimates process and publication of the Defence Annual Report.

Management of Sexual Misconduct by Australia's FVEY Partners

30. The policies, studies and reviews of the FVEY nations are often shared across the group and frequently reference one another. Canada and New Zealand, in particular, look closely at Australia's management of their Defence personnel, given our shared membership of the

⁷ CARM Chapter 9.

Commonwealth, similar demographics and systems of military justice. The US military is recognised for its research excellence in personnel management.

31. Regular joint military exercises with our partners require our personnel to work closely together and at least a shared understanding of personnel management, including the management of unacceptable behaviour, is both sensible and desirable.

32. It is clear from the available reports from Australia's FVEY allies that there are several consistent recommendations and concerns regarding responses to sexual misconduct in the armed forces. These will be referenced in relevant sections of this report, and a full summary of relevant findings can be found in Annex B.

Summary of Unique Features of ADF Employment and Relevance to this Review

33. Defence has an integrated workforce comprising Australian Public Servants and ADF members. There are some unique features of military service that differentiate the APS from the ADF workforce and consequently affect the application of policies in dealing with sexual misconduct.

34. ADF members are not considered to be employees but servants of the Crown.⁸ They have an obligation to render service, participate in armed conflict and to use lethal force. They may be ordered to do things that may result in them being killed or severely wounded, and their refusal to comply with lawful directions may result in imprisonment.⁹

35. In addition to facing disciplinary action for sexual offences under the Defence Force Discipline Act or criminal consequences in civilian courts, members may be reduced in rank or terminated from the ADF if their continuing service is considered "not to be in the interest of the ADF".¹⁰ Consequently, sexual misconduct is both a disciplinary or criminal offence against the person and unsatisfactory conduct which impacts on the ADF's interests. This potential impact on the ADF's functioning and standing more broadly is addressed through administrative action (separate from action under the DFDA). Since both avenues may be pursued, complainants and respondents face lengthy waits. Outcomes under the DFDA do not preclude later administrative action, which also applies a different standard of proof and different considerations. This is explored in more detail later in this report.

36. The Commonwealth is obliged to provide permanent members medical (including mental health) and dental treatment necessary to keep them fit for the performance of their duties.¹¹ This has implications for the holistic management of personnel who may be involved in sexual misconduct and is explored further in relevant sections of this report.

⁸ Defence Act 1903, section 27

⁹ See for example, Defence Force Discipline Act 1982, section 27 which imposes a maximum punishment of 2 years imprisonment for the offence of disobeying a lawful command.

¹⁰ Defence Regulation 2016, regulations 14 and 24

¹¹ Defence Regulation 2016, regulation 49

Chapter 2

Outcomes of Reform: what has changed since 2011?

Introduction

1. It is not the role of this inquiry to examine the rising trend in sexual harassment and assault in civilian workplaces over the decade of interest (2011-2021) to the inquiry. However, as data analysis later in this chapter suggests, while comparisons are limited, the prevalence of sexual misconduct in the ADF, while it has also risen over the period, has done so at a fraction of the rate of increase in the civilian world. Prevalence of sexual misconduct, excluding sexual assault, is also markedly lower in the ADF than in civilian workplaces, as measured by confidential and anonymous surveys of self-reported incidents.
2. Rates of sexual assault in either domain are low and it is not possible to meaningfully track changes in prevalence over the ten years, noting there has been a recent increase in sexual offence reporting in both civilian and military workplaces.
3. It is widely speculated that more recent increases reflect the impact of on-going publicity of allegations of sexual assault in high profile civilian workplaces. Although some research indicates that greater public awareness may impact the reported incidence; as Williamson, Foley and Cartwright note in their 2019 paper, the percentage of victims who lodged a complaint of sexual harassment has remained virtually unchanged since 2008.¹²
4. Australian Institute of Health and Welfare data records a steady increase in reporting of sexual assault in Australia since 2014, which may reflect a real increase in sexual assaults, or increased confidence in the response of the criminal justice system or heightened awareness resulting from increased media coverage.¹⁰

Measures of Effectiveness

5. The effectiveness of a workplace sexual misconduct policy can be described by three indicators:
 - a. **confidence** in the policy
 - b. **commitment** to the policy
 - c. **outcome of the policy; prevalence** of sexual misconduct
6. Reductions in the prevalence of sexual misconduct invariably lag behind improvements in confidence and commitment of the membership to the policy. This lag is unsurprising; reform takes time to embed in large, even well- structured organisations such as the ADF.

¹² Williamson S, Foley M, Cartwright N. Women, work and industrial relations in Australia in 2018. *Journal of Industrial Relations*. 2019;61(3):342-356. doi:[10.1177/0022185619834051](https://doi.org/10.1177/0022185619834051)
<https://journals.sagepub.com/doi/full/10.1177/0022185619834051> ¹⁰ AIHW Sexual Offences report August 2020.

7. The effectiveness of a sweeping array of changes such as those introduced by Defence in the last ten years is difficult to assess individually, but overall changes in confidence, commitment and prevalence are possible to measure and provide some overall guidance.
8. While measurement of the occurrence or prevalence of misconduct is straightforward, confidence in the system is best measured by several indicators in addition to survey reports of confidence.
9. An indicator of Commitment will have several proxies but bystander confidence in intervening in incidents of misconduct is one useful measure of member commitment to the policy and safety of their fellow members and has been adopted for the purposes of this inquiry. It is also closely monitored by the ADF.
10. Fortunately, the ADF is endowed with comprehensive data collections relevant to the inquiry. Particularly, annual member surveys have been conducted for well over a decade and it is possible to determine whether or not there has been a change in the occurrence of sexual misconduct over the ten years of interest to this inquiry as well as the level of confidence ADF members have in the policy and its implementation. Workplace Planning Branch (Defence People Group) are responsible for those surveys and have identified trends in experience and confidence in a report compiled for this inquiry: Sexual Misconduct in the ADF – Perspectives from Your Say Workplace Experiences and the Workplace Behaviours Surveys 2013-2021 ('the Technical Report' at Annex C). The report provides contextual information about the organisation relevant to the military justice response to sexual misconducts as well as a trend analysis of key behaviours between 2013 – 2021.

Table 1.1: Summary Table of Outcomes

ADF	Measure (2013-2021)	Civilian -	Measure (2012-2018)
Prevalence of Sexual Misconduct (anonymous, self-reporting survey of incidents in the previous twelve months)	Overall increase in Prevalence to 5.7 in 2021 . ¹³ Increase on trend by 0.5 per cent per annum during 2013-2017 and 0.2 per cent a year during 2018-2021. (prevalence fluctuated between 6-9 per cent in 2013-17; and from 5-5.7 per cent 2018-2021).	AHRC Respect at Work Report. Prevalence of sexual misconduct (anonymous, self-reporting national survey, similar but not identical questions)	Prevalence has risen to 20 percent in 2018 . ¹⁴ When prevalence is broadened to include incidents over the previous five years, civilian prevalence is 33 per cent in 2018 . ¹⁵ This is a marked increase since 2012. Methodological differences between the surveys means a direct comparison cannot be made, but the gap is clearly significant. ¹⁶ (civilian prevalence has varied from 11 per cent in 2003, 4 per cent in 2008, 21
			per cent in 2012 and 25 per cent in 2018).
ADF Trainee prevalence (anonymous, self-reporting survey)	Approximately 6- 9 per cent of ADF trainees experienced sexual misconduct. ¹⁷	University Prevalence. AHRC Change the Course report (2017) anonymous, self-reporting national survey	21 per cent of Australian University students reported experiencing sexual harassment in a university setting in 2016.

¹³ Prevalence in the previous 12 months¹⁴ Prevalence in the previous 12 months¹⁵ Prevalence in previous 5 years. It should be noted that survey respondents were asked how many incidents of sexual harassment they had experienced in the previous 12 months and previous 5 years. AHRC Respect at Work Survey analysis provided in DPIR Technical Report and subsequent clarification (BN39295657)¹⁶ BN39225623¹⁷ DPIR-TR-057/2021 - Technical Report - *Sexual Misconduct in the ADF – Perspectives from Your Say Workplace Experiences and the Workplace Behaviours Surveys 2013-2021* (Annex C)

Confidence	Moderate-high: stable or improving over period 2013-2021	NA	
Commitment	75 per cent -high: unchanged since 2016	NA	

Finding 1. Based on comparisons between the prevalence of sexual misconduct in civilian and ADF workplaces, the reforms of the past decade appear to have contributed to improvement in the level of misconduct in the ADF, using the civilian population as a bench mark. Survey results are not directly comparable but provide a general guide. Future comparisons between the ADF and the AHRC surveys would benefit from an agreed approach to the prevalence period and the behaviours included.

Finding 2. Although the prevalence of sexual misconduct in the ADF has risen slightly over the review period since reforms were first introduced, it is approximately a quarter to a third of the rate of prevalence in civilian workplaces¹⁸. Prevalence among women in both workplaces is significantly higher than among men however the rate for civilian women was more than double that of women in the ADF in 2018. The female rate is noted to have increased in the ADF as the proportion of women members has increased, which requires further exploration.

11. It should be noted that trends in overall outcomes tell us very little about the why; which elements of the policy are working effectively and particularly, where informed modifications to policy implementation might contribute to further improvements in outcomes. Program evaluations would be of great assistance.

Outcomes in Detail

Prevalence

12. Analysis of ADF self-reporting, anonymous survey results over the 2013-2021 period estimates the occurrence of sexual misconduct in the ADF population has slightly increased during the period 2013 – 2021. ADF members' experiences of sexual misconduct ranged between five per cent and nine per cent from 2013 to 2021.¹⁹

13. Overall, the prevalence of sexual misconduct (includes sexual harassment and sexual offences) has increased, on trend, by 0.5 per cent a year during 2013-2017 and 0.2 per cent a year during 2018-2021 and now stands at 5.7 per cent.²⁰

¹⁸ For incidents in the previous 12 months

¹⁹ Ibid.

²⁰ Prevalence over previous 12 months

Finding 1. Based on comparisons between the prevalence of sexual misconduct in civilian and ADF workplaces, the reforms of the past decade appear to have contributed to improvement in the level of misconduct in the ADF, using the civilian population as a bench mark. Survey results are not directly comparable but provide a general guide. Future comparisons between the ADF and the AHRC surveys would benefit from an agreed approach to the prevalence period and the behaviours included.

14. Although the prevalence of sexual misconduct in the ADF has risen slightly over the review period since reforms were first introduced, it is approximately a quarter to a third of the rate of prevalence in civilian workplaces²¹. Prevalence among women in both workplaces is significantly higher than among men however the rate for civilian women was more than double that of women in the ADF. The female rate is noted to have increased in the ADF as the proportion of women members has increased, which requires further exploration.

15. Navy survey respondents consistently reported higher experiences of sexual misconduct during the period 2013 – 2021.

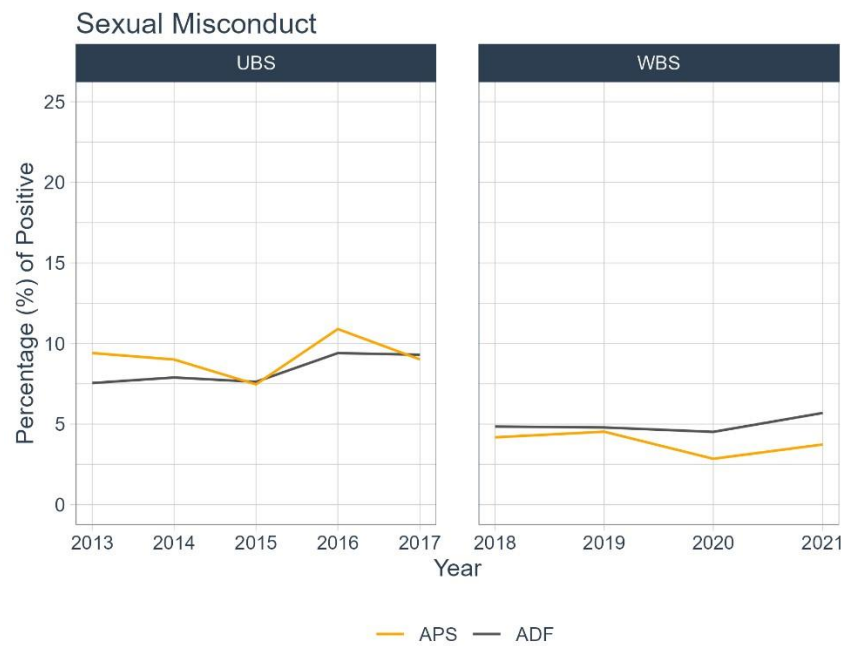
16. These figures compare favourably with the Australian Human Rights Commission's Respect at Work Reports, which show an increase in sexual harassment (only) in civilian workplaces to 20 percent 2012-2017²². Prevalence rose to 33 per cent if incidents over the previous five years are included.

17. The Australian Human Rights Commission's Respect at Work Report shows approximately a 12 per cent annual increase in sexual harassment (only) between 2012 and 2018 in civilian workplaces. That is, the prevalence rate for incidents occurring in the previous five years rose from 21 percent to 33 percent during this time. Comparing this figure to a similar period in Defence (2013-2017), we see that the proportion of ADF members who reported sexual misconduct also increased, but at the rate of .5 percent per annum.

18. Comparisons with the Australian Public Service are not so favourable. Between 2013 and 2017, there is no significant difference between ADF and APS ($p=0.26$). After 2018, a marginal significant difference between ADF and APS ($p=0.07$) appears, where APS have lower experiences of sexual misconduct (-1.14 per cent). This means ADF members experience sexual 1.14 per cent higher than the APS and this gap appears to be slightly widening.

²¹ For incidents in the previous 12 months

²² *ibid*



19. Among university-equivalent ADF members, about six to nine per cent of ADF trainees experienced sexual misconduct between 2013 and 2020, consistent with results for all ADF members. However, the gap between these two groups in 2018–2021 is larger (two to four per cent) than it was in the period 2013–2017²³. By comparison, the Australian Human Rights Commission Change the Course report (2017) found 21 per cent of Australian university students reported experiencing sexual harassment in a university setting in 2016.

20. However, there was a sharp increase in sexual misconduct experienced by young ADF members of incidents of sexual misconduct in 2020 which will require closer monitoring.

²³ See Figure 11, DPIR Technical Report (n.13)

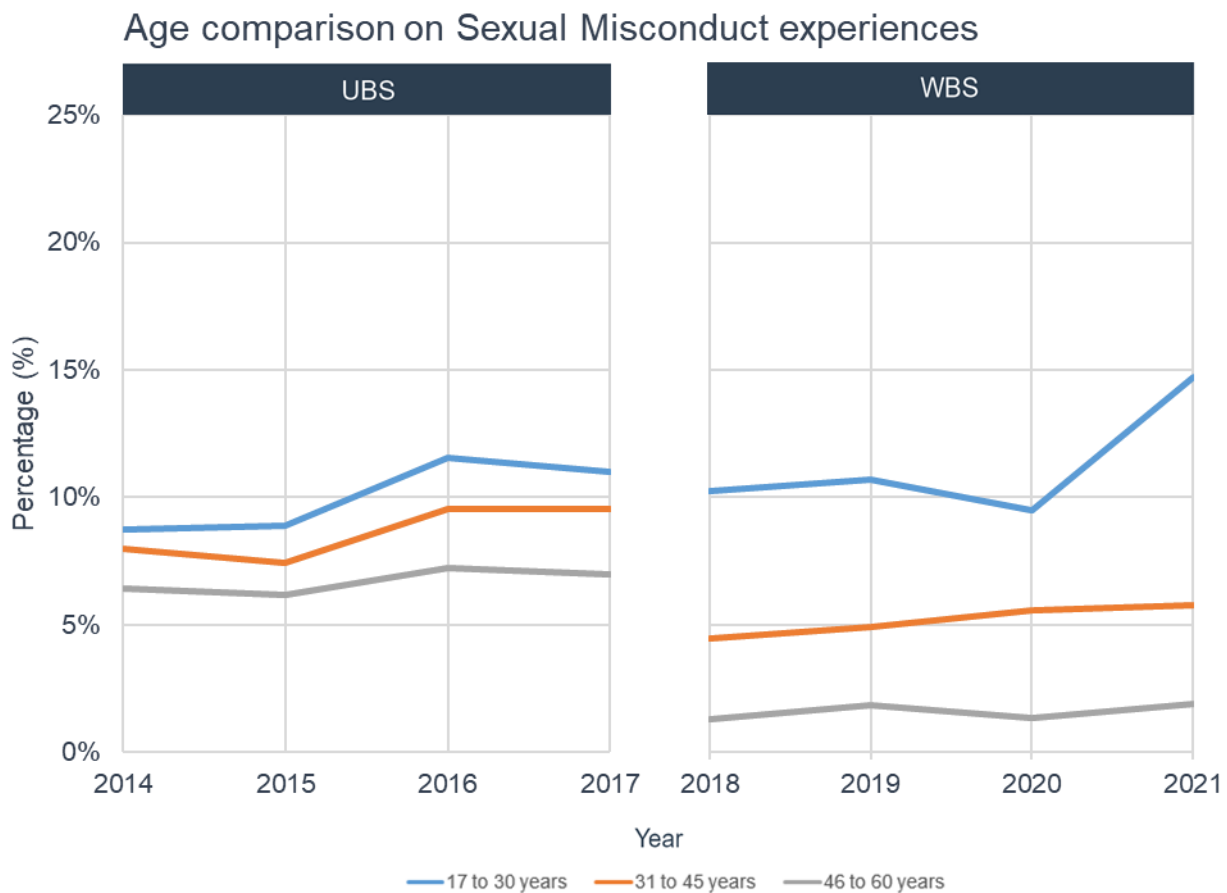


Figure 10. ADF Age Comparison for Sexual Misconduct experiences from 2013 to 2021.

Note: results from ADF members aged 61 years and older were not included due to low response numbers (n<30). The results presented below are from two different surveys, the Unacceptable Behaviours Survey, administered from 2013 to 2017; and the Workplace Behaviours Survey, administered from 2018 to 2021. The difference in the results are due to differences in the methods used by each survey to calculate the prevalence of sexual misconduct in the Organisation. Age was collected differently in 2013 compared to the rest of the years and therefore it has not been included in the graph, see Annex A for more

21. Research suggests that increased reporting for sexual misconduct experiences (especially in young age groups) in the general Australian population may be related to the improved awareness of these types of behaviours. However, increased awareness alone does not always result in higher reporting. Factors such as removing negative career consequences, fear of being perceived as over-reacting and other barriers in the complaints process may further encourage ADF members to make formal complaints.²⁴

22. Crude behaviour in the ADF has trended down however unwanted sexual attention has trended up.

23. Sexual assault reported in the ADF shows little change since 2018, when the definition of sexual assault was broadened to include non-penetrative offences.²⁵

²⁴ Williamson S et al, (n.9)

²⁵ JMPU data

Table 1.2: Reported Defence sexual assault incidents per year, as at 7 July 2021

Model Criminal Code				ANZSOC			
2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
60	96	98	84	170	166	160	187

Note: Australian state and territory police use the Australian and New Zealand Standard Offence Classification (ANZSOC) definitions from the Australian Bureau of Statistics. In 2018, Defence adopted ANZSOC for statistical reporting on sexual assaults in Defence to ensure consistency across Government agencies.

Defence's reports between 2013–14 and 2017–18 used the definitions in the Model Criminal Code, which classifies non-penetrative sexual offences as indecent acts. Reports from 2017–18 onwards use the broader ANZSOC definition of sexual assault, which includes penetrative and non-penetrative sexual offences. Figures from 2012–13 to 2016–17 cannot be directly compared to figures from 2017–18 onward, due to the use of different reporting frameworks for sexual offences.

Finding 2. Although the prevalence of sexual misconduct in the ADF has risen slightly over the review period since reforms were first introduced, it is approximately a quarter to a third of the rate of prevalence in civilian workplaces²⁶. Prevalence among women in both workplaces is significantly higher than among men however the rate for civilian women was more than double that of women in the ADF. The female rate is noted to have increased in the ADF as the proportion of women members has increased, which requires further exploration.

Finding 3. More recently, a larger gap has opened up between prevalence among ADF Trainees compared with the rest of the ADF. However, the prevalence of sexual misconduct in Defence training institutions is significantly lower than the incidence of sexual misconduct in civilian universities.

Finding 4. Prevalence trends suggest that Defence as an employer has better managed and prevented sexual misconduct than civilian workplaces, which may reflect on the characteristics of ADF members compared with others, or a more robust system than encountered elsewhere, or some combination of the two.

Confidence

23. Confidence in the management of a sexual misconduct policy is essential to effectiveness. Members need to trust the system. As has been observed in domestic violence and civilian sexual assault, often policy reform is followed by an increase in complaints as victims feel more confident that their complaints will be heard and treated appropriately.

²⁶ For incidents in the previous 12 months

24. Potential respondents also need to feel confident that the policy is commensurate and fair. Several commanding officers referred to the risk of “get even complaints”. This concern is not unnoticed by victims. As one victim noted “that’s all the boys want to know - what do they do if she is lying and makes stuff up, instead of worrying about how they can tell if she has really consented”.²⁷
25. Likewise, a policy that members do not understand or believe will support them also diminishes member confidence in both the policy and the ADF.
26. Total confidence in a system would result in all incidents leading to either official complaints or reports to supervisors for action (or dealing with the incident themselves). A total absence of confidence would result in no incidents being reported. The proportion of victims who made a complaint or dealt with it themselves or sought action from their supervisor, is a measure of confidence based on experience rather than expectation.
27. In the case of the ADF, Table 1.3 shows the proportion of victims who took no action dropped from 41 per cent in 2013 to 36 per cent in 2021, fluctuating slightly in the interim. This is a welcome improvement. However, the proportion of victims who either self-managed the incident, raised it with their commanding officer or made an official complaint also dropped, from 59 per cent in 2013, to 49 per cent most recently; this is of concern for any organisation which relies on reporting to address misconduct.

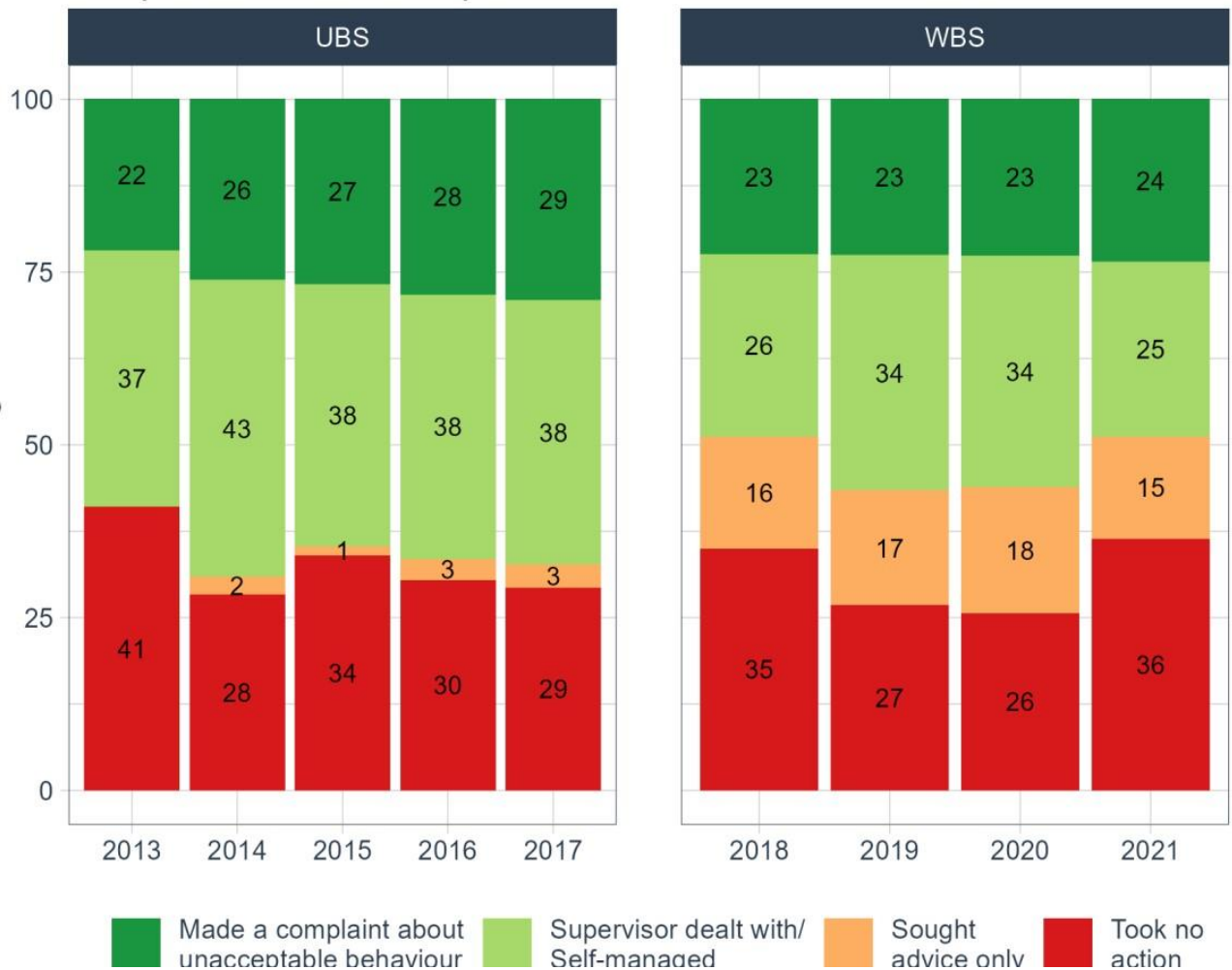
Finding 5. ADF surveys indicated high level confidence in Command to take action in response to complaints, although no gender breakdown is available.

Finding 6. Confidence in the ADF’s management of sexual misconduct has remained consistently strong over the review period, despite changes to the policy framework. This may reflect the confidence of members in command’s management of sexual misconduct rather than any change in policy itself. This increased confidence has not translated to greater use of official complaints process.

²⁷ BN37071836

Table 1.3

Responses to Unacceptable Behaviour



Note: UBS – Unacceptable Behaviour Survey; WBS - Workplace Behaviour Survey

28. The reduction in “actions taken” coincides with the establishment of SeMPRO in 2013. SeMPRO’s function is to provide support and advice to victims (as well as commanding officers) but is also able to provide, uniquely in the ADF, restricted disclosures. Restricted disclosures are a means of providing support, medical assistance and other services to a victim without automatically triggering notifiable incident reporting obligations by a service provider such as a commanding officer, welfare service or SeMPRO. Consistent with the experience of other organisations, restricted disclosures have been welcomed by victims who do not wish to formally complain. SeMPRO’s deep commitment to victims of sexual misconduct in the ADF is acknowledged and has sustained and comforted hundreds of victims, protected their wellbeing and their safety. However, similar organisations such as SAPRO in the United States military, have also used the relationship-building opportunities provided by restricted disclosures to build the confidence of the victim in reporting the assault.

29. As Table 1.3 reveals, since 2013 there has been a significant increase in the percentage of victims who sought advice only; from 2 per cent in 2014 to 15 per cent in 2021. In 2018 a notable shift occurred in the types of actions ADF members were taking after experiencing sexual

misconduct. A higher percentage of ADF members sought advice and a lower percentage reached out to supervisors, self-managed their experiences or made formal complaints, compared to previous years.²⁸

30. There are many possible explanations for this unexpected outcome. It may be that SeMPRO has so effectively performed its role in supporting victims, a role once played by supervisors, that victims feel no need to pursue their concerns further either with their supervisor, or by addressing the misconduct themselves or making an official complaint. In these cases, SeMPRO has played an admirable role in supporting the victim.

31. Alternative explanations might be differences in measurement tools or perhaps that SeMPRO's advice may have reinforced a victim's initial wish not to complain instead of supporting the victim to report a complaint or seek action from the commanding officer.

32. It should be noted that this change in outcomes, while a welcome reduction in commanding officer workload and paper-work and possibly distraction for victims, may have denied command visibility and an early opportunity to counsel or warn an early stage perpetrator, with longer term consequences for that perpetrator, and, as we explore further in this report, for future victims.

33. Based on discussions with SeMPRO and Workforce Planning Branch, the inquiry concludes that a restricted disclosure or seeking advice from SeMPRO, is a socially focused resolution rather than a formal statutory resolution. The establishment of SeMPRO seemed to empower ADF members to understand their options and make informed decisions about the management of their experiences of sexual misconduct. It has provided an additional avenue for ADF members who are not ready to go through a formal complaints or judicial process to still gain access support and resources they require. The results suggest that subsequent engagement with the formal complaints or judicial processes is less likely to occur. However further research is required to understand why people prefer the 'socially focused approach' versus the 'formal avenues of complaint'.

Finding 7. It is unclear why there has been a significant reduction in the number of incidents that have led to action since the establishment of SeMPRO. Usually a reduction in action taken would indicate a reduction in confidence in the policy.

Finding 8. The significant decline in action taken by victims of sexual misconduct may have increased risk to the ADF and to future victims. This outcome requires further investigation.

34. Annual survey results suggest that members have a reasonable level of confidence in the military justice system; over 50 per cent agreed the system was fair (on several measures) and this proportion has not significantly changed during the review period either because of, or despite, the reforms and with changes in Defence's gender balance.²⁰

²⁸ See Figure 18, DPIR Technical report (n.13)

²⁰ Ibid.

35. Survey results find no difference between the confidence of male and female members in the ADF's management of unacceptable behaviour, although this has not been broken down for sexual misconduct, which is a subset of unacceptable behaviour.²⁹ It would be useful to determine if there is a gender gap in confidence in the sexual misconduct policy, if only because anecdotally there are more complaints from women about the policy's effectiveness.

36. Further analysis showed that the only question that shows a positive trend that was statistically significant over the period 2015-2021 is *"Diversity groups are treated equitably under the military justice system"*.

37. Confidence in the ADF's organisational integrity (that is, members' perceptions of the ADF's trustworthiness) has risen slightly over the decade of reform and confidence in the immediate supervisor's intolerance and management of misconduct has grown considerably. Likewise, the belief that it would not be worth complaining because nothing would be done, has significantly declined.²²

38. Despite these improvements in reported member confidence, as observed, the percentage of people who choose not to make a complaint has reduced only from 41 per cent to 36 per cent. This could be the result of several factors and should be both investigated further and monitored in future.

39. There was also confidence in the military justice system as more effective than the civilian criminal system ("effectiveness" in terms of speed, fairness, deterrence, outcome). The military justice system deals with sexual offences, including sexual assault.

40. The outcomes of official investigations of sexual offences are collated by the JMPU. The following table identifies outcomes for the 187 official complaints of sexual offences received in 20/21. The comparison with outcomes for civilian authorities is instructive; the civilian authorities experience longer delays in resolving complaints than the military justice system, complainants are less likely to withdraw their complaint in the military justice system (11 complaints withdrawn in the civilian system compared with 5 complaints withdrawn in the military justice system) and within the year, the military justice system was more likely to produce an outcome.

Table 1.4: Outcome Breakdown of the FY 2020/21 Sexual Assault Data³⁰

Serial	Outcome	Total
1	No Complaint Forthcoming after initial receipt of information	69
2	No ADF Jurisdiction	10
3	Civil Police Dealing - Ongoing	33

²⁹ DPIR Technical report (n.13)

²² Ibid.

³⁰ Data sourced from the ADFHQ Sexual Assault Action Tracking FY 20/21 (as at 30 Jun 21) (BN33099850)

4	Civil Police Dealing - Complaint Withdrawn	11
5	Civil Police Dealing - Insufficient Evidence	13
6	Civil Police Dealing – Trial - Guilty	0
7	Civil Police Dealing – Trial – Not Guilty	0
8	MP Dealing - Ongoing	11
9	MP Dealing - Complaint Withdrawn	5
10	MP Dealing - Referred to ODMP	10
11	MP Dealing - Referred to ODMP – Insufficient Evidence	12
12	MP Dealing - Referred to ODMP – Trial - Guilty	6
13	MP Dealing - Referred to ODMP – Trial – Not Guilty	3
14	MP Dealing - Referred to ODMP – Trial – Held in Abeyance	1
15	No CDPP Consent to Prosecute – Referred to Civil Police	0
16	MP Dealing - Referred to ODMP – Refer to Unit – Admin Action	1
17	MP Dealing - Referred to ODMP – Refer to Unit – Minor Disciplinary Action	1
18	POI Deceased	1
	Total	187

Finding 9. In comparison, the ADF is quicker to finalise complaints of sexual offences and fewer complaints are withdrawn than in the civilian criminal system.

41. Fair and commensurate outcomes also build confidence in the policy. Fair and commensurate outcomes are the result of good processes and systems which, importantly, are transparently seen to be so. Ideally, complaints should always be investigated and, if upheld, appropriate penalties applied. These may seek to correct the individual's behaviour, reduce the risk of that person reoffending or remove the offender from the ADF altogether as part of maintaining the integrity of the ADF.

42. From the data available in Table 1.4, only a minority of reports are officially investigated. This minority would include sexual offences, which must be referred to the JMPU. Of the remainder, sex discrimination and sexual harassment may be addressed by the commanding officer and the chain of command, following the usual procedure of Fact Finding and then considering initiating administrative action. When making findings, the commanding officer is required to apply a lesser standard of proof, that is, on the balance of probabilities, than the standard of beyond reasonable doubt which applies in the civilian criminal and military discipline systems.

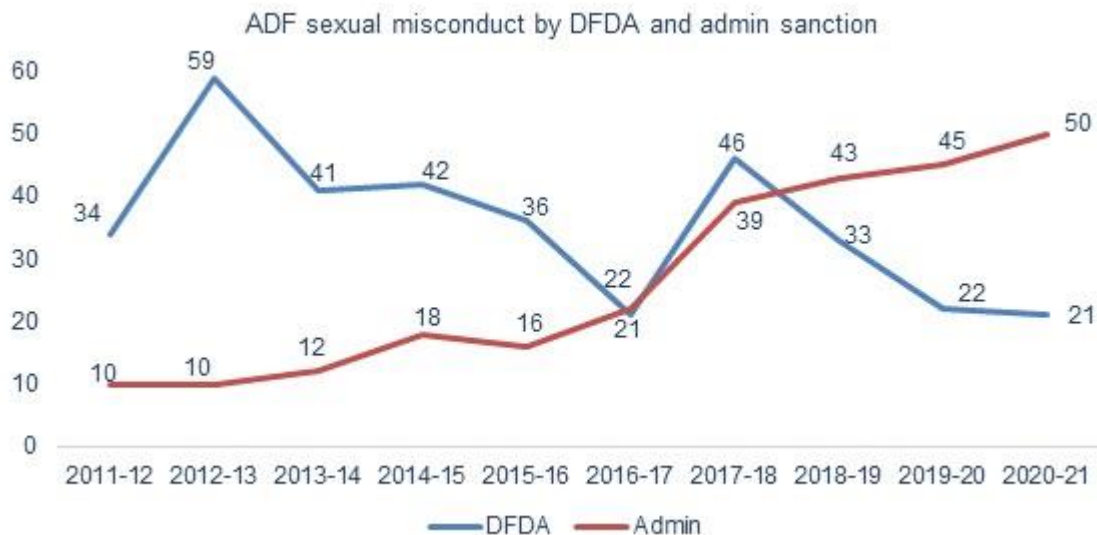
43. While the outcomes of administrative action are reported in ComTrack and, depending on what further action is taken against an ADF respondent, may also be recorded in PMKeyS CRTS, there is no efficient mechanism for collecting data on the outcomes of administrative action. Consequently, it is not possible to infer outcomes from available data. This is a significant gap since

administrative sanctions account for the ADF's response to an increasingly significant proportion of sexual misconduct complaints.

44. From IGADF analysis of unacceptable behaviour (of which sexual misconduct is a sub-set), it is known that a wide range of penalties are applied. Unfortunately, it is not possible to establish what sanctions are applied for sexual misconduct and how often, Graph 1.1 provides information on penalties more generally.

45. As IGADF analysis of the past decade confirms in Graph 1.1, the increasing use of administrative action has continued for sexual misconduct (as it has for unacceptable behaviour more generally). Since these are raw numbers, it cannot be argued that this is the consequence of applying administrative action in addition to summary level convictions under the DFDA, since disciplinary action has declined at the same time.

Graph 1.1



Notes: DFDA matters relate to convictions at the summary level only.

The spikes of DFDA action taken in 2012/13 and 2017 correspond with the release of Pathway to Change 2012 and Pathway to Change 2017-2022.

Finding 10. There has been an increase in the use of administrative action to address sexual misconduct and a smaller reduction in the use of the DFDA. This limits the transparency of management outcomes since these are not published centrally or subject to any policy-focused scrutiny.

46. While victims have expressed their frustration with not being told the outcomes of administrative action due to the privacy restrictions on the respondents' information, respondents also have taken issue with the nature of administrative action (and their understanding of the process) instead of action under the DFDA; one respondent considered it had been detrimental to his

treatment. This respondent wrote: “A command decision was made to conduct an IOI into my conduct. This meant that the evidence against me was unable to be properly and fairly tested.....In a DFDA proceeding, a more stringent approach to the rules of evidence and the ability to contest ‘findings’ is offered to respondents.”³¹ Another has expressed the view that the Service ‘undermined’ the outcomes of a superior disciplinary tribunal by initiating administrative action “in what appears to be an attempt to increase punishment.”

47. Increases in the number of sexual offence incidents which become official investigations is another measure of members’ trust in the management of sexual misconduct. In both military and civilian worlds, making an official report to the justice system is difficult for victims of sexual offences, for many familiar and well-understood reasons. Unfortunately, when a sexual offence report is not pursued by the victim there are not only continuing risks for the victim’s safety but for the safety of other potential victims - as well as the organisation’s discipline and capability. In these circumstances an alleged perpetrator remains at large and may even be emboldened by the lack of consequences.

48. The Sexual Offences Reporting Team (SORT) is a recent (and very small) JMPU pilot program, which has been designed to provide additional advice to victims to assist them in deciding whether to make a formal report to military police, following an alleged sexual offence. The SORT team consists of a social worker and an investigator.³²

49. The SORT trial has seen some success in supporting victims to agree to formal investigations of their reports.

50. As the Provost-Marshall has noted:

Importantly, the decision not to formalise a complaint does not reflect a failure of the SORT process, as it is not the role of SORT to coerce victims into proceeding to investigation, but to provide, in a sensitive and respectful manner, accurate information about the investigative and prosecutorial processes. Defence is thereby assured that the victim has been empowered to make an informed choice that leads toward closure and moving on with their life.

51. According to the Office of the Provost-Marshall ADF, prior to 2020, the maximum conversion rate of reported offences to investigations was 12.5 per cent.

52. In the 12-month trial period between 20 November 2019 and 10 November 2020, SORT was involved in 45 sexual misconduct cases, of which 29 involved direct work with the victims. Of these 29, 20 proceeded to investigation, representing a conversion rate of 69 per cent. Overall, the Provost-Marshall ADF considers that the 80 per cent conversion rate of those who initially elected not to proceed is a significant rise.³³

³¹ BN38212446

³² Interview with SORT staff, 26 Aug 21

³³ BN35421790

53. The SORT trial is now being extended with additional social workers being employed in other major military regions.

Commitment

54. Commitment to a policy is a reflection by the members that it is both necessary and supported by them. Bystander Behaviour is one indicator of members' commitment to its purpose because it requires the bystander to actively engage in the prevention or management of an incident. It is seen as a significant preventive of unacceptable conduct and increasingly promoted by organisations as a first line of protection. This includes the ADF, which has made significant investments in bystander training and measured confidence in bystanders since 2016.

55. The Technical Report finds "A high proportion of ADF members do not tolerate unacceptable behaviours and are likely to act according to Defence values when witnessing these behaviours". It should be noted this proportion (greater than 75 per cent) is largely unchanged since 2016. Defence is to be commended for establishing and maintaining high levels of support for the role of the bystander.³⁴

56. The effectiveness of bystander training as a preventive or early intervention has not been evaluated and an evaluation may provide insights into an optimal approach. As one commanding officer observed however, there are limits on the impact they can make:

Friends and colleagues are often the instigators of complaints, but the chain of command may be different. There is also no roadmap for a supervisor when a friend or bystander raises a complaint.³⁵

Another commented that it was difficult for bystanders to intervene: "courage is required to check a colleague."³⁶

57. There was general agreement that bystanders were most likely to intervene after an incident had occurred, usually to provide support to the victim or to make a complaint. Approximately a third of complaints are estimated to be instigated by bystanders.³⁷

Finding 11. Commitment to the policy, as measured by bystander involvement, remains high at over 80 per cent, but its effectiveness has not been evaluated.

³⁴ DPIR Technical report (n.13)

³⁵ BN36283079

³⁶ BN36367459

³⁷ BN36283079

Chapter 3

Victim Centric Approach

Victim-centred, Person-centred, One Front Door, Single point of contact, Single point of entry, Trauma-informed Policy.

1. The victim-centred approach is a fundamental feature of Defence's response to and management of sexual misconduct, in keeping with institutions and workplaces across the world. This approach is based on the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly resolution 40/34 of 29th November 1985. The declaration, while not prejudicing the rights of suspects or offenders, seeks to (among other things) "implement prevention policies to reduce victimization and encourage assistance to victims in distress."³⁸
2. It is most commonly understood to mean "the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner."³⁹
3. In some literature, the trauma-informed, victim-centred terminology is used in a general sense as victims being at the heart of justice rather than simply as witnesses or the system emphasising process or prioritising offending. Many organisations, including defence departments, make specific reference to the human and cultural needs of victims in defining a victim-centred approach.⁴⁰
4. However, for many public institutions, a 'victim-centred' approach reflects a system of practical support coordinated around a victim, primarily to "reduce the need for the service user to visit many different sites of support or to tell their story multiple times." It is also known as the "One Front Door" or "No Wrong Door" approach.
5. Organisations such as Victim Support Scotland identifies the elements of this integrated, one front door model as:

systems based around the needs of victims and involving their choice, reduction of duplication, development of a common language between services, improvement of sharing between organisations for the benefits of service users and system planning, the involvement of a diversity of skill sets in providing support, reduction in attrition, improvement of confidence in the system, the speeding up of justice and a reduction in perceived organisational boundaries. Furthermore, that a criminal justice system needs to be as easy to navigate as possible.⁴¹

³⁸ <http://www.un-documents.net/a40r34.htm>

³⁹ <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/>

⁴⁰ <https://www.forensichealth.com/2010/09/20/victim-centered-what-does-it-mean/>

⁴¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/minutes/2019/11/victims-taskforcepapers-september-2019/documents/paper-10-victim-centred-approach---scoping-review-of-the-literature/paper-10victim-centred-approach---scoping-review-of-the->

6. The ADF's policy reflects a similar approach. Chapter 9 of CARM makes clear that the welfare of a victim is of paramount importance and that a trauma informed care framework and the principle of victim centricity is critical to Defence's harm minimisation efforts. It states that 'victim centricity means to focus on the needs and wishes of the victim'.

7. Apart from the more obvious benefits of a coordinated response, research has identified a number of other advantages. There appear to be few drawbacks to the victim-centric approach, when employed by properly trained managers and commanding officers, investigators and other personnel. In terms of investigatory police work, the Manor Police Department of Texas believes their investigators are trained to conduct investigations with "compassionate impartiality" and "determine whether probable cause exists for an arrest" not to "determine if there is proof beyond a reasonable doubt."⁴² This experience suggests that a victim-centred approach does not lead investigators to automatically side with the victim and deny justice to the accused. Manor also found that (at least in the United States) the "prosecution already has a statutory obligation to disclose all evidence", both inculpatory and exculpatory, nullifying the argument that a victim-focussed investigatory team would be likely to withhold evidence which may benefit the defendant.⁴³

8. A central element of a victim-centred approach is to give victims choices about reporting their case. Research worldwide has identified anonymous reporting channels as important in promoting learning opportunities and increasing reporting rates, whether it be sexual assault, paediatric care or accounting fraud.⁴⁴ The US continues to maintain this line of reporting is of benefit because it still alerts a commander that there is a problem within their unit, it gives victims a sense of control and "confidentiality actually leads to increased reporting rates."³⁸

9. The US Sexual Assault Prevention Office identifies several benefits and limitations of Restricted Reporting which are relevant to the ADF:

a. **Benefits**

- Victims receive healthcare (medical and mental health) and victim support as soon as possible after the incident, which supports recovery.
- Victims have the personal space and time to consider their options and begin the healing process.
- Victims are empowered to seek relevant information and support to make more informed decisions about participating in a criminal or disciplinary investigation.

literature/govscot%3Adocument/Paper%2B10%2B-%2BVictimCentred%2BApproach%2B-%2Bscoping%2Breview%2Bof%2Bthe%2Bliterature.pdf

⁴² <https://shsu-ir.tdl.org/bitstream/handle/20.500.11875/2617/1833.pdf?sequence=1&isAllowed=y>

⁴³ <https://shsu-ir.tdl.org/bitstream/handle/20.500.11875/2617/1833.pdf?sequence=1&isAllowed=y>

⁴⁴ <https://pediatrics.aappublications.org/content/113/6/1609.short>

³⁸ <https://sapr.mil/restricted-reporting>

- Victims control the release and management of their personal information.
- Victims decide whether and when to move forward with initiating a formal report. b.

Limitations

- Alleged perpetrators cannot always be held accountable and may assault other victims.
- Victims may continue to have contact with the alleged perpetrators if they are posted to the same unit or reside in the same establishment.
- Evidence from the crime scene where an assault occurred will be lost, and any subsequent criminal or disciplinary investigation, should the victim later make a formal report, may encounter significant obstacles.⁴⁵

10. Recommendation 25 of IGADF's 2011 Review advised not to adopt Restricted reporting (anonymous and outside the chain of command) "in that it potentially allows sexual assailants to continue to serve undetected."⁴⁶ While Defence initially agreed with this recommendation, a form of restricted reporting was introduced with the establishment of SeMPRO in 2013. Unlike the US practice, anonymous reporting to SeMPRO, which is outside the chain of command, does not provide information to commanders that an incident has taken place within their unit.

Conclusion

11. A victim-centric approach contributes to member safety by improving the confidence of victims in the system and their willingness to report, while the provision of appropriate support and advice directly supports victim wellbeing and sense of personal safety. Significantly, a victimcentric policy is otherwise unable to contribute to a reduction in sexual misconduct because it has no impact on perpetration or prevention.

12. The limitations of a victim-centred approach for investigators and commanders are most obvious when the victim's choices are emphasised. Victims are empowered to report informally or anonymously, receive medical and psychological help, but the option to make a formal report also rests with them. For commanders, this can be an unfortunate frustration, knowing that perpetrators may not be identified, punished or rehabilitated. The focus on victims limits the focus on perpetrators.⁴⁷

Finding 12. A victim-centric approach is appropriate for a policy on dealing with sexual misconduct.

⁴⁵ <https://sapr.mil/restricted-reporting>

⁴⁶ IGADF Report, 2011 p.30

⁴⁷ https://www.uvic.ca/socialsciences/politicalscience/assets/docs/faculty/IJTJ-2012-James-ijjtj_ajs010.pdf

Finding 13. A victim-centric focus limits the focus on perpetrators and distracts from measures to address the risk of perpetration.

Finding 14. The understanding of perpetrators of sexual misconduct in the ADF is limited and consequently behaviour change programs cannot be appropriately developed and targeted for perpetrators.

Chapter 4

Best Practice: Policy Objectives

The Policy Objective

1. The effective implementation of a sexual misconduct policy begins with a common understanding of the policy's objective and a system-wide view of its various parts, which include awareness raising and a complaints handling procedure. A system's various components should be clearly linked and defined, with measurable targets and agreed objectives.
2. Overwhelmingly, most commanding officers considered the policy objective to be the upholding of Defence values. Pride was frequently expressed in the changes in Defence culture over the past decade because of this focus on values. Respect was frequently referred to by commanders and the senior leadership.
3. While upholding values is critical in an organisation charged with the most serious of responsibilities to its country, in practice commanding officers need to be able to link those values with their everyday responsibilities of safety and capability, morale and welfare.
4. It is important that the ADF retains a focus on values; they need to be operationalised and made relevant to members' every day experience.
5. Safety frameworks are well understood by commanding officers who understand member safety (including welfare) is a primary responsibility. They also appreciate the link between safety and capability and may benefit from contextualising sexual misconduct as a safety issue.
6. Some commanding officers clearly saw the management of sexual misconduct as a safety issue for their members, but this was not often articulated.
7. Most commanding officers considered the policy contributed to the maintenance of Defence capability by its maintenance of discipline. Some went further, arguing that effective team work required working environments of mutual respect and that the management of sexual misconduct would contribute to greater capability.
8. Most commanding officers recognised the importance of diversity to Defence and recognised sexual misconduct as diminishing diversity. "We have to have it [diversity]" was a common refrain from commanding officers.
9. The victim-centric approach, referenced by almost all who spoke to the inquiry was identified not only as a guiding principle but often as the purpose of the policy; to believe and support those who experienced sexual misconduct and to be guided by their wishes in their management of the complaint. "The victim should be at the heart of everything we do"....
10. The limitations and complexities of a victim-centric approach have been addressed in an earlier chapter; for the purposes of this chapter however, a victim-centric approach is not the objective of the policy but a principle that is applied to the provision of victim safety.

11. Since there is no overall depiction of the sexual misconduct policy as a system of interconnected parts and, unusually for a target-driven organisation, no defined measure of success, it is perhaps unsurprising that victim-centricity has become something of an end in itself instead of a means to an end.

12. The policy's objective, needless to say, should be a reduction in the incidence of sexual misconduct in the ADF, which contributes directly to the maintenance of Defence's values, values which underpin ADF's approach to member welfare, safety and Defence capability.

Understanding of Existing Policy Directions

13. Most COs stated they found CARM and Chapter 9 to be clear and easy to understand. However, several COs who had experience in dealing with multiple instances of sexual misconduct, had developed their own quick handy reference guide which "go everywhere with us. This is used whenever an incident occurs, even if after hours. Then we go in to read and crosscheck policy in more detail."⁴⁸ As one commanding officer of a large training establishment commented to this inquiry "Commanding officer training is good, but under pressure, people need simple, clear instructions".⁴⁹

14. Another CO commented she did not find it helpful that each echelon in her chain of command had to issue its own additional guidance, when she found CARM to be the single guide she needed.⁵⁰

15. More often, commanding officers said they would find it useful to have access to detailed case-studies to which they could refer for greater guidance. Case studies should be presented at every opportunity in training, updated and promulgated to the ADF audience, and incorporated in extant policy. While Chapter 9 of CARM currently contains some short case studies, they are overly simplistic. As one CO commented, "I've never had an incident as clear as say someone standing over the bloodied body with 20 people who saw you stab him. It's always been much more opaque."⁵¹ The present re-writing of Chapter 9 is an opportunity to ensure it gives clear and consistent guidance, with detailed and relevant case studies drawn from ADF experience.

Targeting the Objective

16. While many human resource management policies do not have targets or an identified objective, safety-oriented policies such as sexual misconduct more often do so, typically for the reduction in unsafe behaviour. Targets may be rates of reduction or an absolute level the organisation should aim to reach. In the case of sexual misconduct, zero tolerance or a target of zero prevalence is clearly unrealistic. A target of minimisation, as measured by a consistent

⁴⁸ BN3626580

⁴⁹ BN3626580

⁵⁰ BN36165400

⁵¹ BN35753077

downward and then asymptotic trend in prevalence may be sufficient to galvanise a target oriented organisation such as Defence. Targets invite measurement, and measurement invites monitoring.

17. Setting targets across the enterprise increases intensity of effort, drives innovation and significantly shifts the focus to prevention, with the perpetrator central to prevention and deterrence efforts.

18. Targets can also be strengthened by assigning them across the enterprise's chain of command. Over the past decade of reform, no measureable targets or even milestones have been set which could have been brought to bear on the chain of command, including in performance evaluations. By contrast, the US military's Independent Review Commission (IRC) notes, for example, that including the management of sexual misconduct in the performance evaluation system would bring greater focus to it.⁵²

19. Noting the low incidence of sexual misconduct in the ADF, even as a proportion of unacceptable behaviour, it would not be reasonable to impose such a requirement on commanding officers. That does not mean consideration could not be given to including the management of unacceptable behaviour in commanding officer performance appraisals, especially since, as the Beach study suggests, there is a strong link between more common unacceptable behaviours (such as bullying) and sexual misconduct.

Recommendation 1. Defence identify the objectives of its sexual misconduct policy and assign suitable targets within given timeframes. The objectives and targets should be communicated effectively and consistently across the Defence enterprise and linked with Defence's values.

⁵² Independent Review Commission on Sexual Assault in the Military "Hard Truths and the Duty to Change", June 2021, p.208

Chapter 5

The Seven Elements of Effective Implementation

The Policy as a System

1. The ADF's existing policy framework reflects sound organisational principles and, although unspoken of as a system, consists of elements common in other safety frameworks.
 - a. Commitment of Leadership
 - b. Awareness
 - c. Prevention
 - d. Management of complaints
 - e. Deterrence
 - f. Monitoring of impact
 - g. Review and Continuous Improvement

These elements are represented as an implementation heptagram, in which all elements are bound together by the values of the ADF:



Safety and Capability

2. At the core of the seven principles underpinning the sexual misconduct policy are the concepts of safety and capability. Members who work in a safe, respectful and cohesive work environment contribute directly to operational effectiveness. On the other hand, a workplace that tolerates or fails to prevent sexual misconduct will lead to poor retention, poor recruitment, and poor performance.
3. Recent data analysis by Ruth Beach from the Directorate of Defence Intelligence Research has established a link between sexual misconduct and toxic workplaces, where excluding, humiliating, manipulative and ridiculing behaviours damage the capacity of the targets of this mistreatment to function. Sexual misconduct, which may be also occurring, may even be of secondary concern to those affected.
4. The use of power is also fundamental to command and military discipline relies on recognising power imbalances, where, for example, a senior officer can order a subordinate to carry out an action. Critically, members need to be able to reflect on and identify abuse of power in their roles and appreciate that the prevention of power abuse in all domains and behaviours, including sexual misconduct, contributes to the maintenance of Defence capability and order.
5. More work is recommended to explore this research and develop metrics which would indicate the policy's impact on victim safety and welfare as well as military discipline, capability and morale.
6. Defence has a moral and legal obligation to ensure the health and safety of all personnel in the workplace. This includes managing the risk of workplace sexual misconduct as it can cause physical and psychological harm to the person it is directed towards, and to bystanders. Deloitte estimated that the economic costs of sexual harassment in the workplace in 2018 was \$3.5 billion.⁵³
7. There has been some social and media commentary that the current focus on diversity is "too woke" and detracting from Defence's core mission.⁴⁸ The Defence leadership recognises the perceived tension between pursuing initiatives to improve diversity and a respectful workplace culture and ensuring operational capability to meet the Defence mission. A joint Directive issued on 21 May 21 said "We have made it clear to all Service Chiefs and Group Heads that combat and organisational capability is to be delivered through our well-developed training and education programs, exercises and operational experience, with respectful behaviours, underpinned by Defence values."⁴⁹

⁵³ Deloitte Access Economics, The economic costs of sexual harassment in the workplace, Final Report, March 2019 ⁴⁸ See for example, political and public commentary following the 'twerking' performance at HMAS *Supply's* decommissioning, and the direction from Minister Dutton to cease work morning teas where personnel are encouraged to wear particular clothes. ⁴⁹ DEFGAM 221/2021 issued 21 May 21

8. One CO spoke of the link between the ADF's policies on sexual misconduct and capability succinctly as "I need a safe and supportive workforce, and if it's not, it impacts capability."⁵⁴ Another CO linked appropriate behaviour, trust and values, saying:

We're an armed fighting force and I need to trust you. You can't throw out those service values when it doesn't suit you or you are ashore. I need to be able to trust you even when I'm in bed sleeping soundly and can't see what you are doing.⁵⁵

9. Another CO took a more nuanced approach in this way:

How does it affect capability? I come at it in two ways. One, it's important in the Defence Force because we build our people and we want them to be good human beings. A team is not just a group of people, but a group of people who trust each other. Some might think 'this is just another layer of bureaucracy which takes us away from core business, and it does affect capability.' We need to establish this level of awareness. No, it doesn't affect capability. It's important. We need to establish those behaviours and patterns.

The other thing is the *implementation* of the policy can affect capability. If an individual has been involved, say as a respondent, and is subsequently terminated, then depending on their role, it may have an impact of capability. I'm dealing with an officer, who has taken 8 years to train as a helo pilot, \$2m in terms of cost and time, and he's now waiting for a decision on NTSC for termination. This impacts capability and we then have to deal with that when there is already a paucity of pilots. I'm not saying this has to drive the decision, the decision is based on expectations we set and the values we hold, but this is how policy can impact capability.⁵⁶

10. When pressed whether commanders may weigh the balance between forgiving sexual misconduct and retaining a member who has a particular niche skill set or expertise, in favour of retention, another CO said this:

That's very common, that sits in the level 2 of that managing bad behaviour. "Yeah I know they did it, but they are my vertical launch SME I can't do without, there's a fleet-wide shortage of that sort of individual, let's come in soft so I can meet my mission." He talks tough before he has to do it, but I would prefer not to sail my ship than do that.⁵⁷

11. Another senior officer commented there was more incentive to take action against an ADF respondent when the victim was also an ADF member. She referred to "a case when an individual was a particular... [rare specialist trade group]...in the Air Force. He had gone to court three times for DV. The victim was not in the Defence Force. We kept him because of his skill sets."⁵⁸

⁵⁴ BN35916426

⁵⁵ BN35753077

⁵⁶ BN36065151

⁵⁷ BN36655934

⁵⁸ BN36283079

12. However, other senior officers were adamant that such a balancing act was historic. “There was behaviour in the past ‘oh he’s a good bloke’. But now, if it’s assault, we don’t care who you are or what you do, we treat you the same.”⁵⁹ Another said “I know people would get away with stuff in the past, but if they did that today, they’d be sacked. Mel Hupfeld would sack them personally.”⁶⁰

13. VCDF, as the accountable officer for military justice, put it bluntly: “I start with my view - and confident it’s the view of the Chiefs – there’s no expensive fighter pilot whose performance is so critical to us that he or she is beyond the expectations we have of them to build healthy team culture.”⁶¹

14. Defence also places great store in team work. Particularly when the tasks involved are dangerous or difficult, team work needs to be strong. As the commander of a unit responsible for dangerous maritime missions observed “We wouldn’t get that [sexual misconduct] behaviour here. What we do is too dangerous if the team doesn’t work properly together. They have to respect each other because they depend on each other to stay alive”. This approach could be applied across all Defence activities.

15. As one CO put it:

One of our strengths in Defence is risk management. We are good at crafting policy within risk tolerance, and we need to leverage that strength including in managing sexual misconduct. Couching it in those terms might help the cultural journey, and it takes time and takes continual focus.⁶²

16. Defence would benefit from making the link between safety and capability and the minimising of sexual misconduct clear in its policy.

Recommendation 2. Defence should promote its sexual misconduct policy as an integrated system, based on Defence values and supporting safety and capability.

⁵⁹ BN36408651

⁶⁰ BN36741878

⁶¹ BN35534924

⁶² BN35916426

Chapter 6

Leadership

1. In any organisation, the open commitment of the leadership to policy is critical, more so in highly disciplined and hierarchical organisations such as the ADF. Leadership plays an important role in promoting, implementing and upholding the policy. Importantly, all ADF members play a leadership role to some degree⁶³ and therefore all ADF members have a responsibility for upholding and personally exhibiting behaviours that align with Defence values. This is made explicit in CARM Chapter 9.
2. The chain of command can ensure regular reflections and discussions between commanders and all who directly manage personnel, as well as directly with the membership, about sexual misconduct and the damage it causes.
3. Many COs recognised their role in advocating values and expected standards of behaviour which align with Defence values. Some witnesses also told the inquiry they hear their COs talk about these things. However, there did not seem a wide-spread understanding that all people can contribute to reducing the rates of sexual misconduct. In this regard, “leadership” appeared to refer only to persons appointed to particular command positions.
4. Senior leaders can reinforce the message that sexual misconduct, and all forms of unacceptable behaviour, erode safety and capability. Conversely, they can encourage reporting and correct behaviour as enhancing safety and capability. This message needs to filter down to all ADF member so they absorb and believe it.
5. Public leadership also contributes to commitment. Access to the ADF intranet, social media and broadcast opportunities allow the most senior ranks to directly reach all members and underscore the importance they place on a well-disciplined, team focused ADF where unacceptable behaviour of any kind damages the standing of Defence in the eyes of the Australian community, weakens the fabric of discipline, risks member safety and diminishes capability.
6. One member made a submission to the inquiry advocating for a “blame free” approach within Defence, stating that “Things go wrong in life, people make poor decisions, and bad things just happen for no reason.”⁶⁰ Under this approach, if a person makes a mistake, they should be encouraged to report it and not face any consequences for their actions and this can assist the organisation to learn and avoid future errors. This form of blame free approach works extremely well in building a strong reporting culture in the safety space.
7. However, care must be taken in applying a blame free approach to managing sexual misconduct. This because sexual misconduct involves intent, and is against the law. It is important that a person who wishes to report sexual misconduct, whether that be the victim, an alleged perpetrator or a bystander, should not be blamed for reporting, and should be actively encouraged to do so. But the person who has inflicted the sexual misconduct cannot be excused from behaving in that way. They should be supported and provided help, but should not escape ‘blame’.

⁶³ Even a new recruit with no subordinates can demonstrate leadership among peers or through bystander intervention. ⁶⁰ BN38374558

Chapter 7

Awareness

1. Awareness of an organisation's sexual misconduct policy is a key element of best practice policy implementation. Awareness of the policy's contents and the processes and possible outcomes of complaints of sexual misconduct, promotes confidence, compliance and application of it. Awareness, however, is not the same as a deep understanding and the inquiry finds that while most ADF members are aware of CARM, their deeper understanding of the complaints management process for sexual misconduct incidents is lacking.
2. Frequently, organisations develop and implement policies without engaging those who will be most affected by it. Not only can this absence of co-design result in policies and procedures which are not well understood; it also means an inclusive and interactive opportunity to raise awareness about the policy is lost. Awareness of the policy and consequences for breaches promotes confidence in the policy and a willingness to both abide by it and apply it when necessary.
3. Training provided to ADF members, from initial entry through to senior command and staff courses, introduce and reinforce the concepts of sexual misconduct and Defence policy and procedures. Ab initio training establishments invest heavily in training about Defence values, discipline and the importance of respectful conduct. The consequences of breaches are reinforced and alcohol policies are applied.
4. SeMPRO aims to improve the organisational response to personnel affected by sexual misconduct, including by the provision of relevant training.
5. Pre-command courses or Commanding Officer-Designate courses, include focus on human resource management and the application of CARM for unacceptable behaviour. Additionally, for sexual misconduct complaints, Commanding Officers are encouraged to seek the advice of SeMPRO, which presents training sessions during their pre-command courses. All commanding officers are expected to undergo refresher training on the management of sexual misconduct every three years.

Finding 15. Most ADF members are aware of CARM. However, their deeper understanding of how to complain about sexual misconduct incidents is lacking.

Finding 16. There is considerable dissatisfaction with the nature of training provided for the management of sexual misconduct. Training in the management of sexual misconduct should be reviewed to ensure it is interactive, engaging and provides relevant information about outcomes of complaints through the use of case studies.

Annual awareness training

6. All ADF personnel are required to undergo annual mandatory awareness training (MAAT) which builds on the education they are provided at initial entry or employment training. The

Services have different course requirements for MAAT but all ADF members are expected to complete the Workplace Behaviour Awareness Program. The Directorate of Complaints and Resolution is responsible for the development and maintenance of the course.⁶⁴

7. The current Mandatory Workplace Behaviour Awareness Program was last updated in January 2021 and includes information about Pathway to Change, Defence Values and Behaviours with messages from the Chief of Defence Force and the Secretary. The course also includes the 'cup of tea' video⁶¹ about consent.

8. Many people interviewed by the inquiry referred to the 'cup of tea' video. One CO said he loved it "but I'm hearing it's not resonating as much with the young people."⁶⁵ Another said "the 'cup of tea' video is wearing a bit thin."⁶⁶ One ADF Investigator felt the video "doesn't grasp the seriousness of consent, the consequences if consent is not provided and the long term effects this can have on the victim, this needs to be updated/addressed."⁶⁷

9. Annual awareness training should also provide basic information about making a complaint and seeking assistance. Several victims commented that they did not know how to go about making a complaint, despite having done the awareness training program several times.⁶⁸

10. ADF members may complete the course online on CAMPUS or receive face to face training which is typically offered as part of a unit's annual induction training. Since COVID, it has been reported to the inquiry that most personnel chose to complete their MAAT online.

11. Personnel are able to provide feedback on the course within CAMPUS. One representative online comment was "All the info is there, but the course is clunky, and not engaging. To be fair, it would be difficult to make this engaging: the material is dull, and we have to plough through it every year". Indeed, many people told the inquiry they 'just click through' the online training. This is particularly the case when the course is not updated annually, and the content therefore is not novel or interesting each time they are required to do it.

12. While the course is mandatory for all ADF members, the inquiry was made aware of one cohort who may not receive any training on sexual misconduct for several years. Undergraduate students may join the ADF and commence their university studies before undertaking any initial military training, including MAAT. One CO dealt with a UB complaint between two undergraduates, one of whom did not know how to access the chain of command:

One of them was a Captain with prior experience, the other was a LT who had no prior military service, no initial training, and not even been issued a uniform. That's an example

⁶⁴ Emmeline May and Blue Seat Studios/Thames Valley Police

⁶⁵ BN35753077

⁶⁶ BN36445263

⁶⁷ BN36017658

⁶⁸ BN36873231

of a portion of our training who has a lot of experience, and portion who does not even know the ranks in the ADF.⁶⁹

13. The ADF should make an effort to ensure all ADF entrants receive basic military education.

Recommendation 3. The Mandatory Workplace Behaviour Awareness Program should be updated annually and include more information about consent.

Awareness of the policy

14. Pleasingly, 93 per cent of the COs surveyed in the course of this inquiry agreed that they ‘have an adequate working knowledge of all policies, practices and procedures dealing with complaints.’ This demonstrates an increase in awareness as almost 67 percent of COs agreed with this statement in the survey conducted as part of the 2011 IGADF Review.

Awareness of how to make a complaint

15. Over the last 7 years, on average nearly 68 per cent of respondents to the Unacceptable Behaviour Survey (UBS) and the Workplace Behaviours Survey (WBS) report that they agree or strongly agree to the proposition that ‘I am aware of the avenues of complaint available to me under the military justice system’.⁷⁰ While there has been a slight positive trend since 2015, overall it is not statistically significant. This could suggest that there has been no improved awareness of Defence’s sexual misconduct policy despite mandatory annual awareness training.

16. The data does not disclose the number of people who have experienced sexual misconduct and their awareness of how to make a complaint. The inquiry received several submissions from individuals who had been the victims of sexual misconduct and did not know to whom to report.

17. One young woman who was sexually assaulted three weeks into her initial employment training said “we had no one to tell and were never educated on the reporting systems.”⁷¹

Additional awareness training

18. While they were broadly aware of the policy, some COs felt their pre-command training could have made them better prepared. One said “Workshops on each type of sexual misconduct incident would be extraordinarily useful. I felt very undercooked when the first one happened here.”⁷² Another said:

The more I come across examples and have to exercise this good judgement, then the more comfortable I feel. When you do it for the first time, it’s a bit scary. What are the

⁶⁹ BN35983399

⁷⁰ DPIR Technical Report (n.13)

⁷¹ BN35967992

⁷² BN36426162

expectations? Are there examples? Someone help me here? I was looking for a precedent but I understand each case has to be considered on its merits. A case study would have really helped me.

19. A number of people who had experience with dealing with sexual misconduct incidents identified the need for additional training to build on the MAAT and spoke to the utility of using de-identified case studies or scenarios. For COs, frequent training with their executive team was necessary. "Our OCs are aware of CARM and we have done a lot of training, including quizzes across different chapters of CARM, through PME sessions. I've done complex case studies with my OCs."⁷³

20. Many COs also felt the need to reinforce MAAT whenever they spoke with staff or trainees.

I talk to both trainees and staff about this. It's not a once a year conversation, it's every time I talk to them. I feel like a broken record but it's important.⁷⁴

Awareness of what is consent

21. The inquiry received evidence which suggests there is an incomplete understanding of what constitutes sexual misconduct, particularly relating to the meaning of consent to sexual activity. A number of COs identified the gap in the formal awareness training and members' understanding of consent.

22. One CO reported she actively discussed approaches to dealing with sexual misconduct with her staff to enhance their understanding of the process. She said:

My observations are that knowledge on the concept of consent is still not widely understood, which may affect perceptions around whether an incident constitutes sexual misconduct. I have also observed enhanced understanding around the concept of a victimfocussed and trauma-informed approach to managing sexual misconduct. Again I believe this is an area/concept that is not widely understood and it took deliberate discussion on my part to implement this in my Unit. In saying that, once understood by my staff, they have readily and strongly adopted the concepts of victim-focussed, trauma-informed and consent. But I do believe more education around these concepts would be of benefit – potentially at the Warrant Officer and [O4] level ranks.⁷⁵

23. Another CO said his "big effort right now is to talk about consent and what is not consent. We go through a lot of scenarios, role playing, real world examples which is better than watching a video."⁷⁶

⁷³ BN35983399

⁷⁴ BN36125146

⁷⁵ BN35638167

⁷⁶ BN35753077

24. This view that consent is not widely understood is shared by a number of ADF investigators who made submissions to the inquiry. Perhaps unsurprisingly, those same ADFI proposed an increased role for SORT and/or JMPU for leading and promoting better education surrounding consent and what are the consequences if consent is not given.⁷⁷

25. Victims also felt that “consent education should be more than the tea video that everyone laughs at”.⁷⁸ A number of witnesses said they felt personnel did not have an understanding of the interplay between intoxication and the ability to give consent.⁷⁹ One said “I think men don’t realise that there’s a point where consent can’t be given.”⁸⁰

Finding 17: More education for ADF members is required about the meaning of consent and impact of alcohol on capacity to consent.

Awareness of alcohol

26. As outlined elsewhere in this report, there is a correlation between alcohol consumption and an increased risk of sexual misconduct occurring. There are three aspects of this that should be reinforced in MAAT. First, if a party to sexual activity (whether a potential future victim or a current victim) is substantially impaired by alcohol, they are unable to provide legal consent. Second, the risk of offending increases if a potential perpetrator is intoxicated. Third, a victim who was intoxicated may feel a sense of guilt or shared responsibility and be reluctant to report.

27. Alcohol as a risk to perpetrators is addressed in a later chapter but it can be noted here that it was largely absent in discussions with commanding officers about awareness.

28. Where alcohol was a factor in the offence, 205 victims (54 per cent) chose not to proceed, compared with offences where no alcohol was present in which 90 (24 per cent) victims chose not to proceed.

29. Awareness of the interplay between alcohol and sexual misconduct will also improve ADF members’ confidence in the policy. If complainants feel they are entitled to be treated fairly and that their level of intoxication not only does not make them responsible for the unwanted sexual activity but that the law says they were unable to consent to sexual activity, they may be more likely to make a complaint.

Awareness of possible outcomes

30. SORT and SeMPRO are able to provide information to a victim about various avenues of complaint and the mechanisms that might be used to resolve the complaint.

⁷⁷ BN36017658

⁷⁸ BN37071836

⁷⁹ See for example, BN37071836; BN37071978

⁸⁰ BN37071964

Awareness of outcome of particular complaint

31. CARM Chapter 9 requires commanders to inform all parties involved about the response to a complaint. Senior officers and COs were conscious of the requirement to provide sufficient information to victims to demonstrate their complaint had been taken seriously and that appropriate action had been taken against the respondent, while maintaining a respondent's confidentiality and privacy. Many had discussed this balancing requirement with their legal officer. COs would typically debrief a victim face to face and would often also provide them written notification of the outcome of their complaint.

32. Many witnesses commented that depending on the nature of the disciplinary or administrative action taken against a respondent, it would be visible and public (for example, a reduction in rank or removal from a posting location). If the respondent was charged (either under the DFDA or by civilian police), it would be likely the victim would be involved in the process and therefore aware of the trial outcome. However, other forms of administrative action such as censure or formal warning, or action under the discipline officer scheme, would not be so visible. In these cases, COs would typically advise a victim that 'appropriate action had been taken'.

33. If a CO does not provide that basic level of feedback to a complainant, it can have detrimental effects. The inquiry received a submission from a junior officer who was the victim of sexual misconduct. She said "once this incident went to an administrative matter with [the CO], I was left out of the loop. To me, this situation remains unresolved, and I have no way to get closure."⁸¹

34. A Service may take administrative action against a member following civilian criminal proceedings but this may be even less visible to the complainant. One submission noted:

Upon conclusion of the [civilian criminal] case, I have not received any updates regarding the employment of this member and whether he remains in the Navy. I believe he is back in the workplace. There should be a follow-up process within the ADF/Navy to ensure victims are informed of the final result (ie, termination)⁸²

35. It is important for members' confidence in the military justice system for them to have an understanding of why there is a particular outcome to a complaint. This is particularly so where it may be perceived that different outcomes have been meted out in similar sexual misconduct complaints.

36. However, as DCAF noted, "Sometimes people do find out the outcomes and it can become a feeling of 'that's not enough'."⁸³ The following case study provides such an example:

⁸¹ BN36021213

⁸² BN37149762

⁸³ BN35916425

37. An ADF investigator told the inquiry of matter he had been involved with that went to a DFM. He reported that:

One complainant expressed discontent with one standard for a senior officer and another for another ranks member. In particular, she felt a loss of seniority was not a justifiable outcome considering what she went through. As a result, the complainant is transitioning from Defence.⁸⁴

38. The case summary for that trial provides information for the DFM's decision to award a punishment of loss of seniority:

The DFM concluded that as he had not been convicted of offences involving an element of indecency, and the touching, whilst not momentary, was at the objectively lower end of the scale, a punishment of loss of all of his 6 years of seniority adequately reflected the need to maintain discipline and deter others. This was, however, a serious matter involving a substantial rank difference inside the ADFA cadets mess. But for the significant mitigation of the medical issue and its relevance to the offending behaviour, the defendant would likely have been dismissed and/or reduced in rank.⁸⁵

39. Presumably this explanation would have been communicated to the victim but, from her perspective (at least on the information provided to the inquiry), the outcome was not satisfactory. While the inquiry is conscious this is just one case study, it is illustrative of the importance in communicating outcomes to a victim and the potential consequences to the organisation of not doing so.

40. Many COs were conscious of the need to balance the privacy of the respondent and the need for the victim to be feel assured that appropriate action had been taken. Further work is required to provide consistent guidance to COs about what degree of information can be provided to the victim while ensuring Defence's obligations under the Privacy Act are respected.

Finding 18. Commanding Officers struggle between the competing principles of privacy and closure for victims in providing advice to victims on the outcome of their sexual misconduct complaints.

Recommendation 4. Defence should provide clear guidance on the level of information to victims on what action has been taken against a respondent in a sexual misconduct incident.

⁸⁴ BN35659898

⁸⁵ Case summary – trial of LTCOL K, 3-7 May 2021

Chapter 8

Prevention

1. The purpose of a sexual misconduct policy is ultimately to prevent misconduct, maintain accountability for breaches and minimise the harm it causes individuals.
2. ADF prevention activities extend well beyond awareness-raising and include bystander programs; alcohol management programs which reduce the risks of perpetration (as well as victimisation); physical improvements (such as lighting) to high risk settings and practice improvements including regular welfare checks. Apparently minor infractions and patterns of behaviour can be monitored and Commanding Officers may use administrative action to deter early offenders from repeated or more serious misbehaviour.
3. Potential ADF applicants undergo psychological assessment and background checks during their recruitment which can identify anti-social traits.
4. Among commanding officers with a long experience of the CARM, there was recognition that while CARM has clarified the meaning of sexual misconduct and “is good for incident management ... it doesn’t have an early warning system or prevention roadmap.”⁸⁶
5. While awareness raising about the policy’s objectives and processes is an interactive teaching exercise intended to ensure members understand the nature of sexual misconduct and Defence’s processes for addressing it, prevention builds that awareness into active strategies to prevent sexual misconduct occurring.
6. Early intervention, which involves more minor instances of misconduct, is also considered to be prevention, at least of more serious misconduct such as sexual assault. As the US’ Independent Review Commission on Sexual Assault in the Military concluded: “Left unchecked, sexual harassment significantly contributes to a unit’s sexual assault risk. In units with above-average rates of sexual harassment, the risk for sexual assault increases by a factor of 1.5 among women, and 1.8 – almost two-fold – among men. LGBTQ+ Service members are especially impacted.”⁸⁷
7. Early intervention can also encompass the reduction of other forms of misconduct which occur in toxic workplaces. Using confidential ADF survey data, PHD candidate Ruth Beach has established possible links between bullying behaviours and later sexual misconduct which requires further consideration (‘the Beach study’).
8. The Beach study found that sexual misconduct tends to occur in environments that show a high number, range and frequency of different types of mistreatment. Non-sexual behaviours that are manipulative, excluding, ridiculing and aggressive appear to provide an enabling environment for sexual misconduct to occur. The conditions may break down restraints on behaving poorly

⁸⁶ BN36283079

⁸⁷ IRC Review, p.23 (n.46)

toward others, and may also undermine a person's ability to respond to acts of aggression with protective behaviours.⁸⁸

9. This phenomenon can also be described as conditional vulnerability, or the increased likelihood of an individual being victimised (this should not be confused with the concept of victim blaming).⁸⁹

10. The responsibility and accountability for unacceptable behaviour by members, including sexual misconduct, lies with members themselves but inevitably also with their commanding officers. Prevention efforts as well as the management of complaints, reflect directly on commanders' leadership.

11. US research confirms the importance of leadership in prevention. "In relation to peer and unit attitudes, research showed that when leaders or officers allowed disparaging sexual comments or gestures, the probability of reported sexual assault increased."⁹⁰

12. While interviews with commanding officers confirmed their willingness to shoulder responsibility for the conduct of members under their command, focus tended to be on their own complaints management rather than prevention, although a younger commanding officer who had yet to deal with a sexual assault complaint observed: "Prevention starts with command. Leadership is critical."⁹¹

13. Mature data collection and analysis will increasingly be able to interrogate the competence of commanding officers and their promotion of member safety and capability through their management and prevention of unacceptable behaviour. This is particularly relevant if the chain of command manages a significant proportion of unacceptable behaviour complaints as administrative action. (The current trend of managing sexual misconduct by the chain of command, with reliance on the DFDA reducing, suggests this would be useful in galvanising, or incentivising, the determination of commanding officers to prevent misconduct by the members under their command.)

14. Data analysis would provide effectiveness indicators for commanders which will always need to be tested against qualitative assessments, but nonetheless provide the ADF with improved means of ensuring accountability for the culture of a unit is taken by the unit's leader.

15. As observed earlier, the US Military is considering a similar recommendation from their recent Independent Review Commission. IRC Recommendation 3.5b is to "Include a Meaningful Narrative Section in Performance Evaluations for Officers and NCOs. One way of both addressing and correcting poor command climates is through performance evaluation systems. Evaluations

⁸⁸ DPI

⁸⁹ Wintle, E., Angelkovski, E., and McKinley, A., (2021) Outcomes for sexual offences recorded by the Military Police FY2019-2020

⁹⁰ RAND Corporation, Organizational Characteristics Associated with Risk of Sexual Assault and Sexual Harassment in the U.S. Army, 2021, p. 53

⁹¹ BN36385288

matter to leaders hoping to rise through the ranks. If one has to be held directly accountable for performance in the area of unit climate and appropriate handling of sexual harassment and assault cases, it follows that leaders who want to get promoted will take notice.”⁹² In the Australian context, noting the relatively low number of sexual misconduct complaints, performance appraisal reports may more usefully consider a commander’s management of unacceptable behaviour more broadly.

16. Of course, ensuring responsibility for unacceptable behaviour lies with the leadership is of little use if they are provided with no tools to prevent unacceptable behaviour, including sexual misconduct, other than their own example and their power to order those under their command.

17. The prevention of sexual misconduct is not possible without a clear focus on perpetration. Preventing perpetration requires a focus on the actions and motivations of perpetrators.

18. Emerging evidence suggests bystander management of perpetrators may be effective while the over-whelming link between sexual misconduct (ranging from assault to harassment) and alcohol consumption suggests this is another avenue for the prevention of sexual misconduct.

19. The ADF is unique in its access to extensive information and data about its members, placing it in an enviable position to pilot new approaches to prevention and early intervention and test them against existing approaches.

Perpetrators

20. The on-going victim focus of sexual misconduct policies provides support for victims, sustains and may heal them; it is seen by commanders as a welcome and well supported change in the management of sexual misconduct.

21. A victim-centric approach can also build victim confidence in the policy and encouraging reporting. But these are inevitably retrospective efforts with limited consequences for prevalence.

22. While there is extensive research in sexual offence perpetration, research into sexual harassment and sex discrimination perpetration is more limited, but recognised as being on the same continuum of behaviour as sexual offending.

23. As the US Independent Review Commission on Sexual Assault in the Military concludes:

The bulk of research on sexual violence in the military has focused on victims; however, without complementary research on perpetration—and the unique risk factors that drive some Service members to sexually harass or assault others—the military lacks half of the total information needed to paint the full picture of how and why sexual violence occurs. Despite the evidence that sexual harassment is strongly tied to sexual assault risk, there is also little to no research on sexual harassment prevention within the Department. As a

⁹² Ibid at 30, p.209

result, the impact of prevention activities in military communities, particularly activities aimed at reducing perpetration, remains relatively unknown. This lack of insight regarding the motivation, predictive behaviours, and impact of prevention programs on perpetrators is especially concerning because *some efforts may actually cause harm*, if not implemented with care. For example, a growing body of research indicates that some men who hold hostile attitudes towards women may endorse increased sexual aggression after exposure to anti-violence messaging.⁹³

29. A Rand Corporation review of perpetrator research drew the following conclusions about perpetrators⁹⁴:

- Perpetrators with a history of childhood physical abuse or exposure to family violence, but not necessarily child sex abuse, are identified.
- Multiple sex partners, sexual activity at a younger age and casual attitudes to sex outside a relationship were the factors of sexual behaviour identified.
- A high rate of recidivism was also identified, consistent with the findings of continuum of harm with sexual harassment.
- Interpersonal skills were much debated academically: some found no interpersonal skill or empathy deficit; some was found amongst child sex offenders, for example, highlighting the problem of bundling some subject matter in research.⁹⁵
- Negative attitudes towards women, a belief in rape myth-acceptance (“rapists are sexstarved”, “only promiscuous women get raped”, “if there are no bruises, it wasn’t rape”), belief in traditional gender roles and hyper-masculinity were found to be more common in perpetrators.
- Peer attitudes were also highlighted. That is, if perpetrators think their peers approve of sexual assault, they are more likely to commit offences. A small number of studies linked perpetration with the perception of peer pressure to engage in sexual activity.⁹⁶
- Predictably, as around half of sexual assaults in the reviewed literature involve the consumption of alcohol by one or both parties, alcohol can also increase the misperception of female (having insufficient data on male victims) sexual interest. There is not enough research on the impact of other drug use on perpetrators.⁹⁷

⁹³ Ibid at 30

⁹⁴ Rand Corporation (n.87)

⁹⁵ Ibid, p.8

⁹⁶ Ibid, p.22

⁹⁷ Ibid, p.23

30. One consequence of having only limited understanding of sexual offending and misconduct by perpetrators in the military is the risk of investing in prevention programs that not only may not reduce perpetration, but increase it, as the US Independent Review Commission observes:

The Services have already invested in programs that use innovative messaging and methods to educate Service members on prevention topics like healthy masculinity, sexual boundaries, and gender. Programs such as We End Violence, Unnamed Conspirator, Can I Kiss You, and Sex Signals have been fielded to some Service members in recent years. Such programs are often research-based but originally designed for civilians—and have not yet been tested or evaluated on military audiences. Which is to say, the appetite exists across the Services for effective, persuasive sexual harassment and sexual assault prevention messaging tools, but these tools have not yet been developed. Instead, current military messaging on sexual assault and sexual harassment can actually harm prevention efforts. Worrisomely, a growing body of research indicates that some men who hold hostile attitudes towards women may endorse increased sexual aggression after exposure to antiviolence messaging. These findings speak volumes about the critical need for additional research in military settings.⁹⁸

31. The ADF has a unique capacity to research member conduct to better understand perpetrator motivations and possible interventions for preventing offending.

32. While there is some evidence that it is possible to identify risk factors among recruits (young men remain the most likely offenders of sexual misconduct) there is also recognition that Defence must draw its recruits from the broader community, which, as one commanding officer observed: “makes it a more challenging environment. The bell curve has widened and diversity, fitness, backgrounds and expectations of behaviour have changed. Recruitment training means frequently repeating ADF values and expectations from the beginning.”⁹⁹

33. Awareness raising, refresher training, bystander training and command induction would benefit from a focus on perpetrators, including what is known of their other qualities which may make them unsuitable for the ADF and encourage peer disapproval.

34. Commanders differed in their tolerance of misconduct, some insisting they would not tolerate it in any circumstances, others acknowledging there might be a trade off with a member’s performance “There was a second year who was given notice to show cause after several incidents. His alpha male behaviour had given him licence, especially since he did well in the field”.¹⁰⁰

⁹⁸ RAND Corporation p.51 (n.87)

⁹⁹ BN36283078

¹⁰⁰ BN36385288

35. Other commanders considered it would be difficult not to make that trade-off, depending on how critical the respondent was to the unit's success. As one put it "Skill sets do matter to the ADF, especially if the victim is not part of the ADF, even unconsciously".¹⁰¹

Alcohol Management as Prevention

36. Based on the 2020 Strategic Intelligence Report on Sexual Assault Offences, the Office of the Provost-Marshal ADF estimates that alcohol is likely to have been involved in over 70 per cent of cases. While there is no comparable data available for sexual offences and sexual harassment, alcohol is clearly also likely to have played a role.

37. The role of alcohol in sexual misconduct does not detract from the abuse of power involved, but facilitates it.

38. A review of the research literature about sexual offending for the Rand Corporation¹⁰² confirms alcohol as decreasing inhibitions, reducing empathy for the victim and awareness of the long term consequences of their actions as well as increasing misperceptions of female sexual interest.

39. For victims, alcohol is also likely to distort their perceptions of safety.

40. It would appear that alcohol is also a consideration in whether a victim is prepared to proceed to an investigation. Where alcohol was a factor in the offence 205 victims (54 per cent) chose not to proceed, compared with offences where no alcohol was present in which 90 (24 per cent) victims choose not to proceed.

41. Commanding Officers were clearly aware of the connection between alcohol abuse and sexual misconduct, although many stressed that alcohol was also associated with other, more prevalent forms of misconduct such as violent assault.

42. Alcohol abuse is generally understood as a risk for victims rather than perpetrators, as one commanding officer summarised "Alcohol policies make clear the risks to the victim, but not of perpetrating. We have a culture of binge drinking where perpetrators are also victims of this excessive drinking and misunderstandings because of the alcohol."¹⁰³

43. Commanding officers recognised the usefulness of alcohol management policies in reducing sexual misconduct although as one noted: "It's a difficult cultural issue where young Australians drink heavily."¹⁰⁴ And another observed: "we need to accept young eighteen year olds will make mistakes with alcohol and need to make mistakes as safely as possible."¹⁰⁵

¹⁰¹ BN36283079

¹⁰² RAND Corporation (n.87)

¹⁰³ BN36426162

¹⁰⁴ BN36125146

¹⁰⁵ BN36283078

44. Many commanding officers had instituted or supported restricted alcohol availability at social functions, adherence to Responsible Service of Alcohol policies or the use of sober members at functions. As one member who had been the victim of a sexual offence told the inquiry:

Having a sober and confident Duty Officer present at the social function at the mess was invaluable, for several reasons:

He was sober, and only had about 10 members to monitor. He observed the escalation and felt comfortable to stop the incident progressing further, despite being a subordinate rank.

He was able to be called as a reliable witness to the incident during the investigation.

I had approximately six male peers with me at the time of the incident, and they were also intoxicated. Despite being my friends, they did not perceive the need to take action at the time of the incident, only the Duty Officer did.

When I spoke with a few of my peers the next work day, they felt unsure about what they saw and how much they could accurately remember.

The Duty Officer on the other hand, was confident in making a statement and encouraged me to make a complaint.¹⁰⁶

45. Defence introduced a number of new policies following the Hamilton Review in an attempt to curb alcohol abuse, including increasing the price of alcohol in Service messes commensurate with civilian costs. Experienced commanding officers reflected this decision led to a reduced role of the mess for social activity and the increasing consumption of alcohol off-base, where the ADF was unable to provide a safe environment. One commanding officer summed it up categorically “this has been counterproductive and now people are less regulated.”¹⁰⁷

46. In August 2018, COSC agreed to the single Services conducting price modelling activities within the bounds of the Joint Health Command-led ADF Alcohol Management Strategy. Navy introduced a bar price reduction trial in selected shore establishments from July 2019. Navy assessed the trial was a success leading to improved mess culture and quality of mess life, and a greater propensity for members, particularly trainees, to identify, report and/or support colleagues who may be having difficulties. Anecdotally, the trial has led to personnel who live on board to prefer to drink in the mess (where alcohol consumption can be monitored) as opposed to stepping ashore and drinking there. Navy found there was no increase in alcohol-related incidents in the participating messes during the trial period. The Fleet Commander has agreed to continue the trial.¹⁰⁸ The inquiry predicts this will lead to a lower level of offending particularly in LIA.

¹⁰⁶ BN38410284

¹⁰⁷ BN36445263

¹⁰⁸ DB for COMAUSFLT, BS21139375

47. The role of alcohol in determining whether consent to sexual activity has been given is a key issue in sexual assault cases. However, confusion exists regarding the capacity of a victim to give consent while under the influence of alcohol.

48. There appears to be a view among members that drunk victims can give consent. While the law's expression differs slightly across Australia's state and territory jurisdictions, in general terms, a victim cannot consent to sexual activity if they are substantially intoxicated, or so affected by alcohol as to be incapable of freely agreeing to that sexual activity.

49. Several submissions to the inquiry claimed victims had "lied" about consent. In these instances, alcohol had also been present and the victim, or a third party, later reported the incident as sexual assault. This was based on the premise that alcohol had disabled the victim's capacity to consent, meaning that legally, the victim had not consented.

50. The implication of this is clear; a person who wishes to engage in sexual activity must consider whether or not the other person is sufficiently impaired by alcohol to be unable to consent. While breath-testing is clearly impracticable, members wishing to have sexual contact with another should take reasonable steps to establish consent. If either party is so drunk their judgment is impaired, then consent cannot be deemed to have been given.

51. Confusion may arise for decision makers when both victim and complainant have consumed alcohol so that both suffer impaired judgment. It is important for members to understand that drunkenness on the respondent's part will not automatically be considered a defence. Amendments to sexual consent laws currently being considered in NSW, for example, are expected to include clarification that self-induced intoxication cannot be relied on to show the defendant was mistaken about consent.

Bystander Training

52. COs recognised the power of bystander training in preventing misconduct:

Bystander behaviour has enabled better outcomes because it is building shared responsibility across the ADF. It emphasises the responsibilities and obligations of bystanders.¹⁰⁹

53. Bystanders can prevent unacceptable behaviour by recognising people "who aren't conforming to the norms" observed a commanding officer of 43 years' experience.¹¹⁰

54. Commanding officers also saw the limitations of bystander interventions, which are more likely to occur after the event than as attempts to prevent it. Confronting a perpetrator is also not easy and required "courage"; one suggested "bystander training could be improved if we gave training on techniques on how to have difficult conversations".

¹⁰⁹ BN36002878

¹¹⁰ BN36741878

55. Although bystander training programs are supported by commanding officers, these have not been evaluated for their effectiveness. Further research on the motivations and psychological makeup of perpetrators of sexual misconduct might provide greater insight into effective bystander interventions.

56. There is also emerging evidence that bystander programs which emphasise the importance of an organisation's strengths may be more effective. In the case of athletics organisations, for example, research by McMahon and Farmer, 2009, finds that bystander programs which "capitalize on prosocial aspects of athletics like team-bonding may have better outcomes in terms of encouraging bystander action".

Anonymous Reporting (Restricted Disclosures) as Prevention

57. The ADF's policy for the management of sexual misconduct provides for restricted disclosures to SeMPRO. The purpose of this is to enable victims to seek support without the obligation to report the misconduct.

58. Analysis of actions taken by victims in Chapter 2 suggests that seeking advice and disclosing to SeMPRO anonymously may have resulted in fewer complaints being addressed by commanding officers and, consequently, fewer Fact Finding activities and reports which can be entered into ComTrack.

59. The collation and analysis of details provided to SeMPRO in restricted reports have not been provided to this inquiry and are not referenced in SeMPRO's annual reports, further limiting the opportunity for the enterprise to understand the extent and nature of sexual misconduct.

60. As has already been noted, anonymous reporting and on-going engagement with a support service can lead to formal reporting of incidents that would otherwise go unreported, ensuring perpetrator accountability.

61. The US program (Catch a Serial Offender - CATCH), enables Service members and adult dependant victims who file a Restricted Report to anonymously disclose information about their offenders and discover whether the suspect may have also assaulted another person. This information may help inform their decision about whether to convert their report to Unrestricted.¹¹¹

62. A US survey of victims' use of anonymous reporting is compelling. "All victims indicated that they would not have reported if the only means had been through a formal report. In 2017, 24 per cent of those reporting went on to convert to a full report initiating an investigation. Key to this is that the report must be recorded to enable an understanding of the level of incidents."¹¹²

¹¹¹ US IRC p.254 (n.46)

¹¹² Wigston Report p. 24

63. Commanding officers tended to agree that having a longitudinal understanding of a member's conduct while in the ADF would greatly assist them when determining possible administrative action. One experienced CO disagreed however, expressing the concern that "I might be biased if I knew all about an individual's behaviour."¹¹³

64. Commanding officers were conscious of the risks of relying on uncorroborated claims against a member but agreed it would be one mechanism for building a profile of a respondent as part of taking appropriate administrative action. Others considered ComTrack would be adequate.

I don't need an early warning system (to get a picture of a respondent), good use of ComTrack is sufficient, even NFAs.¹¹⁴

65. SeMPRO's role in anonymous reporting and the conversion of anonymous reports to official complaints could be significantly augmented to improve the overall accountability of perpetrators and to improve the enterprise's longitudinal understanding of a perpetrator's behaviour, but in a way which is consistent with a victim-centric approach.

66. SeMPRO is understandably concerned that greater focus on the conversion of unofficial complaints to formal complaints may cause further trauma to the victim and reduce the victim's sense of control, but the low percentage of incidents which lead to action by Defence suggests this is worthy of consideration.

Recommendation 5. The ADF should consider adopting the US program CATCH, or adopt The US SAPRO's greater use of restricted reports to encourage official reporting.

Recommendation 6: Sexual misconduct management must provide for a greater focus on perpetrators and prevention. Defence data and research capability is well able to assist with this task.

Recommendation 7. Prevention should include a focus on behaviour change programs which are appropriately developed and targeted for perpetrators and based on Defence research.

¹¹³ BN3654439

¹¹⁴ BN36627056

Chapter 9

Complaint Management

1. The management of complaints of sexual misconduct is dealt with under Chapter 9 of CARM. Because of their criminal nature, the policy distinguishes between the management of penetrative and non-penetrative sexual offences, and sexual harassment and sex discrimination. Sexual offences must be reported to JMPU whereas Command has the discretion whether to formally or informally manage sexual harassment and sex discrimination (in the context of the victim-centric approach).

2. In accordance with the MP Manual, JMPU may encourage a victim to report the sexual offence to civilian police. Many complainants reported to the inquiry a reluctance to make a formal report for the following reasons:

- a. concern for the time such a process would take to conclude
- b. concern that there would be no positive outcome (particularly if the facts in issue was around consent)
- c. concern that if the police investigation did not result in a conviction, they would be deemed a liar

3. These reasons are different in character to the top five reasons reported in the Technical Report which were:

- a. it would not change things
- b. I didn't think it was serious enough
- c. I dealt with the incident directly
- d. it was easier to just keep quiet
- e. the instigator was of a higher rank level

Suspension from duty

4. A member may be suspended from duty under Defence Regulation 2016 or under the DFDA. Under the Regulation, a member may be suspended from duty if they have received a notice of a proposed termination, or if a delegate has decided to terminate a member's service but the decision has not yet taken effect.

5. A member may be suspended under the DFDA if they are suspected of having committed a service offence. This suspension may only occur if an authorised officer orders a discipline investigation.

6. A member may be suspended under the DFDA if they have been charged with a service offence or a civilian court offence. However, if a member is subject to a civilian police investigation, the DFDA does not allow the member to be suspended under this provision. There is no specific power under the DFDA to suspend a member on suspicion of committing only a civilian criminal offence.

7. This lacuna has caused some frustration by command. One CO described a situation where a member was suspended from duty while being investigated for a (relatively) minor service offence. The discipline investigation ended, and the member was returned to duty. The member was then subject to a civilian police investigation for a more serious offence but there was then no scope to suspend the member from duty. The CO commented:

There's a bias towards action but we're constrained by the reality, and the resources of state policing and the law.

8. Single service policies provide guidance to COs in considering suspension from duty, but retain the CO's discretion as to whether suspension is warranted in the particular circumstances. However, many COs reported to the inquiry that they felt pressure from higher headquarters to suspend a member from duty, regardless of the individual circumstances of the situation or the CO's concern for the member's welfare. As one CO put it:

I had to step through the process of suspending him from duty when he was charged, and to decide whether or not this was with or without pay. I had to do a lot of things I'd not done before. COs are expected to use their judgement here in these questions. It's subjective which is a question of degree. There was a good directive around this but I struggled with this presumption of innocence. I did suspend him without pay. The Navy directive talked about the need to protect the organisation, and it does mention that COs might feel it's not consistent with the presumption of innocence, so I was comfortable this was corporately the guidance which made me feel a little easier this was the right thing to do. But I did feel that we weren't listening to him.

9. The more experienced COs appeared to be more comfortable with making their own decision without influence and being confident to defend their decision if challenged. One CO said:

I think current COs are troubled by the expectation of the organisation in our decisionmaking. There is a lot of pressure to take decisive action, to suspend members without pay. But it's very complex. I had a lot of pressure from [higher headquarters] to suspend a member without pay ... I had a lot of pressure there, but my reason for not suspending was based on legitimate concerns for safety and welfare. I could put other measures in place at unit level to ensure those behaviours could not occur again. I felt this was best of the individual to be in the workplace with a supervisor, and timings to meet and places to be and things to do. More pressure to take action and be seen to do this. When you don't do this, it takes a lot of work to justify it.

10. Based on his extensive experience, one CO raised his concern about the potential for a respondent who suicides after he's been suspended, saying:

My directions are for serious allegations, I'm to suspend you without pay. But if I do that, I can't watch you closely anymore. I had a guy in Darwin who was bailed to me for 6 months. I had nowhere to put him and he was suicidal! I had to draw circles on the map showing his room with how far away the pool was because kids were there. His mere presence on base where there was a married patch was a problem, but I was charged with his health and wellbeing.

I now get psych advice before suspending someone. 'If I suspend you, where will you live, what will you do, who will you be with and how will this affect you?'

Balancing complainant and respondent rights

11. Under CARM, it is the respondent's command who has responsibility for managing a complaint. However, chapter 9 does not make this explicit. A tension can arise when a respondent and complainant belong to different chains of command. Both commands place importance on their own member's welfare. As one CO put it, "My obligation is to my member." CARM, however, requires an overarching victim-centric approach which can be interpreted as putting the interests of the complainant before those of the respondent.

12. One means of reconciling the apparently competing interests of the respondent's and victim's command may be through an annual performance appraisal process, which has been highlighted earlier in this report as a means of encouraging command accountability.

13. Chapter 9 does not provide much guidance about Command's role with respect to the respondent although this is being addressed in the current review of the chapter. Single service documents fill the gap to some extent. For example, a recent Chief of Army Directive requires that both respondents and complaints are assigned a Support Officer.¹¹⁵ However, in cases where a complainant expresses a wish that no action is taken, Command is prohibited (in line with the victim-centric approach) from informing the potential respondent of the allegation against him or her. The potential respondent, therefore, may be unaware of the allegation, and denied an opportunity to be heard even though their name may be recorded in ComTrack. There would also be no trigger to assign a support officer to that respondent.

14. One submission noted:

... the reality is that we [Command] can, and are, called upon to manage both impacted persons and respondents and often within the same command. Unfortunately the skew of Defence towards impacted persons, almost entirely it seems, is at odds with the 'innocent

¹¹⁵ CA Directive 07/21 – Management of Army Members Involved in Administrative, Disciplinary or Criminal Processes dated 21 May 21 ¹¹³ BN36733363

until proven guilty’ premise of our justice system. In order for command to effectively meet its obligations, and for all parties to be afforded due process, Defence needs equal policy guidance and support for impacted parties and respondents.¹¹³

15. The inquiry received a submission which highlights this tension between the victim-centric approach and the rights of a respondent. A person who had been accused of sexual assault, and suspended from duty during the service police investigation, said:

I find it disgraceful that the Commanding Officer of a base would state in the Suspension Notice that they remain responsible for the morale, welfare and safety of the member, then exclude the member from the base and not provide for their morale welfare or safety.

16. Despite these concerns, IGADF’s consideration of grievances has not revealed a pattern of bias against respondents.

Other management action

17. In addition to suspension from duty, COs have a range of options they can take to manage a situation before any formal investigation or outcome is completed. This ranges from posting one of the parties away from the unit, instituting freedom of movement restrictions or adjusting working hours. Balancing the rights of both the victim and respondent in this situation can be challenging. As one CO put it:

Being victim-centric, it’s don’t forget about the victim. But the respondent. It’s a concern particularly in a small unit, how do you look after the respondent. People can see what’s happening. Protecting both people is a tough one.

My initial thought is [to move] the respondent but it is hard to know until you know what happened, the victim has to be supported. But then people go ‘ah, they must have done it, they’ve been moved!’ That’s the difficult situation all commanders are put in. You have to do something. You have to manage the appearance of whatever decision you’ve made. It’s easy to protect the victim but you have to look after the respondent too.

18. Another put it more succinctly “How do you not disadvantage either member?”

Finding 19. When a respondent and a complainant belong to different commands, Commanders should communicate to ensure the victim centric approach is balanced with the obligation to ensure both members are treated fairly.

Recommendation 8. Command accountability for fairly managing respondents and complainants could be reported on in their annual performance appraisal. (this also relates to improved command focus on prevention)

Delays in police investigations

19. Many witnesses spoke to the delays in reaching an outcome when a matter is referred to JMPU and civilian police. Several complainants commented that they had to proactively seek updates on the progress of an investigation. This situation can be exacerbated if the matter is being dealt with in a foreign jurisdiction (such as when an ADF member was subjected to sexual misconduct by a foreign military member). While JMPU is required to provide a unit monthly report on the status of a discipline investigation when that investigation takes longer than a month to conclude¹¹⁶, this information may not flow to a complainant (or respondent).

20. One junior officer expressed the challenge in trying to support a subordinate who was subject to a discipline investigation:

The investigation has been drawn out and a timeline has never been provided to the member, their chain of command or their unit. There has been a complete lack of communication regarding the duration of the investigation, inclusive of failing to provide any updates. As a result, there has been an inability for commanders to expectation manage the member and the lack of timeliness – or at least detailing an expected timeline – has inhibited the ability to implement timely welfare and support measures for the member. Further, this lack of timeline has placed the member under increased stress and uncertainty, which has adversely affected their welfare and mental state. The lack of timeliness has increased ambiguity, confusion and fear for the member. As an organisation that prides itself on effective communication and planning, failing to outline the duration of the investigation, any timeline or updates has very poorly reflected on the professionalism of the investigation and has been of severe detriment.¹¹⁷

21. However, compared with the civilian criminal system, the military justice system is quicker. For this reason, some complainants prefer to choose the disciplinary path rather than referring a matter to civilian police.

22. Some witnesses expressed frustration at the inability of JMPU to receive evidence directly from civilian police, or that JMPU were unable to exercise the same law enforcement powers of civilian police. One investigator said:

As it stands, should a victim of a sexual offence elect for MP to conduct the investigation as opposed to State/Territory Police, it would be reasonable to presume that the victim is of the belief that MP have access to all and any investigative tool that a police agency would have access to. *We are after all, representing to the victim that an MP investigation is a viable option if they do not feel comfortable in taking the matter to police, or if the police choose not to investigate.* As part of this communication process to the victim, they are not informed that MP do not have the ability to carry out a full and thorough investigation due

¹¹⁶ Paragraph 2.22 of the Military Police Manual, Volume 2

¹¹⁷ BN36060628

to the severe lack of resources and legislative backing to allow that to happen. To do so would indeed undermine the criminal investigative ability of MP.¹¹⁸

23. Rather than seeking to amend the DFDA to increase JMPU's powers, the inquiry is of the view that investigators communicate the limits of their powers to both commanders and complainants. The inquiry is conscious that this investigator's comments may not be representative of JMPU practice as one complainant in her submission said: "JMPU did explain to me that they do not have the same level of jurisdiction as NSW Police did, which was part of the reason they subtly 'encouraged' me to refer the case to NSW Police."¹¹⁹

Military justice options

24. CARM Chapter 9 requires that commanders advise victims the processes that are likely to follow their report and involve them in decision making processes. SORT and SeMPRO can also provide such advice. Broadly speaking, there are three potential avenues to achieve an outcome from a complaint of sexual misconduct:

- a. criminal prosecution by civilian authorities
- b. prosecution under the DFDA
- c. adverse administrative action

25. These potential avenues are not mutually exclusive, have different standards of proof and purposes and can have different outcomes. For example, depending on the severity of the offence, a conviction under both civilian criminal processes and the DFDA can lead to imprisonment. Action under both the DFDA and administrative sanctions can lead to a reduction in rank or dismissal. The standard of proof for both civilian criminal processes and DFDA is beyond reasonable doubt, and for administrative action it is on the balance of probabilities.

26. In addition to respecting the wishes of a victim, the choice for command between pursuing administrative and/or disciplinary action

"It comes down to what outcomes you are seeking to achieve. The discipline system brings penalties that act as a deterrent, and can achieve outcomes to remove people from places and apply more stringent consequences like deprivation of liberty. If you are trying to achieve deterrent effect, this is the way to go. But if you have come to the determination that the person doesn't add value to the organisation, or provide capability, then the admin system is the way to go to remove them. Using both comes down to what the outcomes you are looking to achieve and what effects you're looking to generate. I have tended to lean on

¹¹⁸ BN35968931 with additional emphasis

¹¹⁹ BN37149762

the admin system because this has helped me to achieve the outcome I want. It's time to move them on out of the system and I don't think they are rehabilitative.¹²⁰

27. One CO told the inquiry:

One reservation I have is that I feel, as a CO, there is pressure from senior leadership in Army to jump to admin action in every case. ... There should be no pre-determined outcomes. ... Some higher chains of command expect administrative action to automatically follow on from discipline action. This is not always necessary, the member has already received a punishment and it does not always warrant further administrative action.¹²¹

28. It is well established that there is no prohibition against taking both administrative and disciplinary action against a member.¹²² However, some respondents (perhaps understandably) felt that they are punished twice if they are subject to both disciplinary punishments and administrative sanction. One said "It would appear that the findings of the DFM have been undermined by Army, having perused [sic] administrative action against me in what appears to be an attempt to increase punishment."¹²¹

29. Since 2011, DFDA action accounted for 57 per cent of all action taken against sexual misconduct, and administrative sanctions accounted for 43 per cent. Since 2018-19, administrative action has been the preferred avenue to deal with cases involving an element of sexual misconduct accounting for 74 per cent of action taken.

Advice to complainant on options

30. Concern has been raised by FORCOMD that it is inappropriate for JMPU to discuss administrative inquiry or adverse administrative action as an alternative to discipline or criminal complaint when conducting interviews with complainants. The concern is that 'raising the prospect of administrative action acted to dissuade the complainant from pursuing her complaint under the false belief that there was another less traumatising means by which Defence could hold [the respondent] accountable' or that it meant that 'the complainant did not make an informed decision and was left with an expectation which cannot be met by Command'.¹²³

31. Victims of sexual assault may not be able to fully process all the advice initially given to them about their options. Advice services, whether they be SORT, JMPU, SeMPRO or the chain of command, should be mindful of this. Providing victims written advice about their options can ensure a consistent and clear message is given to them, and victims can read it over when they are in a position to fully absorb and understand the information. Care should be taken not to infer that a particular course of action *will* be pursued. The inquiry understands PM-ADF is liaising with Defence Legal to draft some appropriate documents.

¹²⁰ BN35916426

¹²¹ BN35916424

¹²² Defence Legal Practice Note, Concurrent Administrative and Disciplinary/Criminal Law, March 2014 (AD1485177)

¹²¹ BN38152297

¹²³ BN33918870

Recommendation 9. Victims of sexual misconduct should be provided written advice about their options in reporting a complaint and the possible outcomes that may be available.

Interplay between victim-centricity and military justice

32. Many COs spoke about their frustration at not being able to take action because either a complainant chose not to disclose the name of the respondent/alleged perpetrator, or because they were bound to comply with a complainant's wishes not to take action even when the identity of the respondent/alleged perpetrator was known. In the cases of sexual harassment or sex discrimination where the victim does not wish a formal process to commence, Chapter 9 provides some guidance about options commanders have to address the unacceptable behaviour including speaking with the alleged respondent about Defence values or directing them to complete training on Defence's expected behaviours. However, Chapter 9 does not provide any options for commanders in the case of a victim of a sexual offence who expresses a wish that no formal process commences.

33. COs are conscious that, in abiding by the victim centric approach, they are both unable to provide a resolution for the complainant, and are hampered in their ability to protect other potential victims from harm. One CO expressed his concern as this:

I believe that the current policies have resulted in an inability to pursue the alleged perpetrator who is continuing to serve alongside female soldiers. As we are aware of the alleged incident, I am certain that it is reasonable to infer that the public expectation would be that we take action to address the matter and determine whether there is basis to the allegations. Having read the full military police statement, I am almost certain that the complainant was truthful. From a reputational standpoint, I believe that Defence's inaction has the potential to be extremely damaging should the complainant discover our lack of action and alert the media to the matter.

Currently, I am managing a soldier who I know has had serious allegations levelled against him, yet I am unable to take overt protective measures, or conduct inquiries into the matter.¹²⁴

34. Some respondents can feel guilty because of the emphasis placed on the victim-centric approach and the blanket acceptance of the victim's claim:

I feel that the complainant was inherently believed based on the gender, and age of the accused.¹²⁵

and

¹²⁴ BN35561641

¹²⁵ BN37133002

Complainants are automatically granted “victim” status. This reverses the presumption of innocence and automatically makes respondents feel that they are guilty before proven innocent, or provided a fair and just opportunity at recourse.¹²⁶

35. Management of a complaint may be more complex when it is raised by a third party. The CO may feel compelled to act, but the victim may not be aware that a complaint has been made. One CO identified the challenge as:

And the problem is the friend doesn't raise it with the victim's CoC but with their own CoC, which could be another part of the organisation or even another Service. And then it gets quite difficult. It should be confidential but you still need to do something about it. ... In my experience, half of the complaints don't come from the victim.¹²⁷

36. A ComTrack report indicates management-initiated complaints comprise 26 per cent of all ADF complaints of a sexual nature between 2011-2021. This information is differentiated in ComTrack as a 'yes' or 'no' selection option called 'Management Initiated Complaint'. A more detailed breakdown by year is in the table below. The number of management-initiated complaints is trending upwards but whether this is due to complaints being raised by bystanders, or command acting unilaterally in response to rumours is not clear.

Table 9.1

ADF Complaints of a sexual nature submitted 2011 - 2021 Management Initiated Analysis			
	Yes	No	No response
2011	19	62	46
2012	28	50	28
2013	25	57	24
2014	25	70	
2015	36	63	
2016	30	67	
2017	43	76	
2018	39	135	
2019	39	134	
2020	63	151	
2021*	41	116	
*as at 01/09/21			
	388	981	98
	26%	67%	7%

Note: ComTrack has a selection option called 'Management Initiated Complaint' where Decision Makers can select 'yes' or 'no'. Accurate data before 2013 was unavailable which indicates that this field/category may have been changed after this time and a 'yes' or 'no' response then became mandatory.

¹²⁶ BN36571701

¹²⁷ BN36283079

Medical issues

37. It is not surprising that both victims and respondents may require mental and physical health care while going through a sexual misconduct complaint and process.

38. The attitude of some people who spoke with the inquiry was concerning. One CO referred to the 'weaponisation' of mental health, believing a respondent was deliberately (mis)using the system to avoid being charged. In his opinion, the only reason the matter proceeded was because a senior medical officer intervened and overruled the psychologist's advice as to whether the member could be questioned.¹²⁸ He lamented the removal of medical officers from units, commenting that 'I hadn't thought of the importance before of Joint Health Command but they are an important part of managing these incidents.'

39. The mental health provisions of the DFDA are already under review and could address these concerns.

40. From a victim's perspective, the interplay between seeking medical treatment and attempting to retain a career after a sexual misconduct incident, may also be problematic. The inquiry received a submission from a junior officer who experienced sexual misconduct and sought psychological support. As a result she was medically downgraded and "forced to request a change in posting for my own safety" to avoid contact with her alleged perpetrator. She summed up her experience as "I asked for help, I took my time, sidelined my career to recover, and am still paying for it."¹²⁹

41. Another submission from a rape victim stated:

I eventually broke after I became suicidal and admitted myself to hospital as I couldn't deal with the depression and anxiety I felt attending work, during my hospital stay I was stood at attention by the SSM and told that I was a disgrace because I had turned to alcohol to self-medicate.¹³⁰

42. A unit may wish to obtain medical advice to assist them to manage an individual and/or to inform an individual welfare board. From a victim's perspective, however, being directed to undergo a PM008 evaluation, can feel like 'a way to remove people rather than help people':

This repeated requirement for me to prove myself capable and appropriate for defence felt like another attempt to remove me by exhausting me and overwhelming me with administrative action. They fail to see that the cause of the issue is the person that

¹²⁸ BN36262580

¹²⁹ BN36021213

¹³⁰ BN35967992

harassed me and the staff that enabled him to continue to do so by devaluing or ignoring my experiences.¹³¹

43. Similarly, a respondent with pre-existing mental health issues may feel disadvantaged because of the victim-centric approach. In one submission, a member who was undergoing mental health treatment was issued a NTSC for suspension from duty (for an alleged sexual assault) and ordered to leave the unit. While he said he understands the reasons for the need to suspend a member if accused of a serious service offence, he “did not believe it is appropriate for the Commanding Officer ... to order a member with an active mental health condition that included suicidal ideation, that he was fully aware of, to immediately depart the base unsupervised after a major traumatic event.”¹³²

44. The length of time to resolve complaints of sexual misconduct can also impact the mental health of those involved. The following statement was typical of many submissions the inquiry received, from both victims and respondents:

... the handling of the investigation has almost pushed me to the brink of suicide. I have been the subject of a long-lasting and still unresolved complaint since 2019.

I was admitted to a psychiatric facility as a suicide risk and kept there for some weeks after the initial draft findings were sent to me. I have been downgraded for mental health reasons and am regularly taking a variety of prescribed psychiatric medications.

I am now classified J40 and will present to the MECRB for discharge for both medical and psychiatric unfitness for service.¹³³

45. The trauma this causes may be exacerbated because members perceive the same ‘system’ which is responsible for managing the complaint is the same as that which provides medical support and outcomes.

46. Data compiled by DDCS indicates that 55.5 per cent of all members facing charges concerning sexual misconduct before superior discipline tribunals had Medical Employment Classification (MEC) 3 or above. Further detail can be found in annex E. All MEC 3 subclassifications are defined as not fit for operational deployment. MEC 3 is used for medical conditions or injuries that are considered temporary and for which there is a reasonable expectation that the member will return to a deployable status following a period of rehabilitation and recovery.

¹³¹ BN36732498

¹³² BN37133002

¹³³ BN36571701

Chapter 10

Deterrence

1. The Summary Discipline Manual states that “In appropriate cases — such as where a specific service offence is prevalent or where there is a requirement to reinforce standards of behaviour — regard may be paid to the need to send a message of deterrence, both to the alleged offender and the unit generally.” The Chief Judge Advocate made the point that individual deterrence is less likely to arise because the military justice system invariably deals with people who have never offended before.¹³⁴
2. A key component of deterrence is communicating the message to ADF members. ADF members need to know sexual misconduct is unacceptable, that it will be actioned, and appropriate outcomes will be applied under the civilian criminal system, the DFDA or adverse administrative action (or a combination of these).
3. An ADF member who has been arrested, charged or convicted for a civil offence is obliged to inform his/her CO¹³⁵ and in this way, Defence should be aware of any action taken against an ADF member by the civilian criminal system for sexual misconduct. However, communication of the outcomes of civilian trials of sexual offences to the wider Defence population is made difficult because there may be a statutory prohibition to publish the name of the complainant or anything that can lead to the identity of the complainant.¹³⁶
4. Summary trials under the DFDA are held in private but section 140 states that ‘hearings of proceedings before a court martial or a Defence Force magistrate shall be in public’. It is this provision that has enabled the JAG to publish the outcomes of DFM and courts martial trials on the intranet and internet. The JAG intended that publication in this manner would serve the maintenance of service discipline through ‘greater transparency, to promote public confidence in the superior service tribunal system and to facilitate its power of general deterrence’.¹³⁷ One might add it also serves to maintain service discipline by promoting ADF confidence in the system.
5. While the outcomes of DFM and courts martial trials are publicly available, a number of COs referred to the fact that Service newspapers used to publish the outcomes of DFM and courts martial convictions and were unaware that information is now published on the JAG intranet and internet site.¹³⁷ There is now a lower level of awareness of superior trial outcomes than when they were published in Service newspapers. Service newspapers target the desired ADF audience. As previously recommended by IGADF,¹³⁸ the Service newspapers could resume the practice of reporting on the outcomes of superior tribunal proceedings. A failure to do so undermines public confidence, deterrence and transparency, which were the very principles that led to the JAG’s decision to publish in the first place. However, the inquiry understands there may be reluctance to

¹³⁴ BN35365609

¹³⁵ MILPERSMAN Part 9, Chapter 7

¹³⁶ See for example, section 74 of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT)

¹³⁷ JAG Annual Report 2017 pages 21 to 24 https://www.defence.gov.au/JAG/JAG_Report_2017.pdf

¹³⁷ Eg. BN36408651; BN36741878

¹³⁸ Own Initiative Inquiry (01/20 into the First Twelve Months of Publishing Lists and Outcomes of Courts Martial and Defence Force Magistrate Trials dated 27 October 2020

further publish case summaries as it could cause further trauma to ADF members and their families who were involved in the trials.

6. The ability to promote deterrence by promulgating information about adverse administrative action taken in response to an incident of sexual misconduct is more difficult due to widespread concerns about the privacy of the respondent.

7. One CO said:

We recently instituted a practice of publishing outcomes of UB in weekly orders. Not with names. I doubt that would extend to anything with a sexual nature but things like UB and alcohol will be going into weekly orders. I know the Americans will do that, with names. If you look at any edition of the US Navy times, it will be in there.¹³⁹

8. This approach is commendable and should be rolled out across the entire ADF.

Recommendation 10. The ADF should publish, in a de-identified manner, the disciplinary and administrative sanctions outcomes of substantiated sexual misconduct complaints. This information should also be updated regularly and incorporated into annual mandatory awareness training.

¹³⁹ BN36445263

Chapter 11

Monitoring of Impact

1. The desired direct outcome of the sexual misconduct policy is a reduction in the incidence of sexual misconduct. The collection of trend data enables the monitoring of the overall effectiveness of the policy.
2. Clearly Defence recognises its data analysis limitations and significant reforms in various parts of the Defence enterprise have been underway and evolving for a decade. This has resulted in the Defence Data Strategy, 2021-2023. An important component of the strategy has been the recent establishment of a new Data Division, under the leadership of a Data Integration Officer. This unit is required to “better integrate Defence’s data management and delivery of major business information system projects”.
3. The ADF’s Defence Data Strategy, 2021-2023, throws down a challenge to the ADF. Its foreword is uncompromising in its urgency “Defence holds many data assets across the enterprise, ranging from Defence mission and operational data, through to policy and corporate enabling data. Improving data management will enhance our ability to be successful in an era of geostrategic competition. It will help us better understand our capacity and build a more resilient Defence enterprise”.¹⁴⁰
4. The Report observes the urgency of lifting Defence’s use of data analytics as part of international cooperation : “Defence’s ability to securely manage and use data is a key determinant for Australia to successfully operate within the Five Eyes community”¹⁴¹
5. By contrast, the US Army has been able to develop sophisticated understandings of risks of sexual misconduct across installations and command, using data which would be familiar to the ADF, but analysed using sophisticated modelling which could also be applied by the ADF.
6. The 2021 RAND Corporation report commissioned by the US Army summarises the data task of the report: “The U.S. Army’s Deputy Chief of Staff, G-1, asked the RAND Arroyo Center to extend previous RAND Corporation analyses that produced estimates of sexual assault risk and sexual harassment risk across installations and commands (Morrall et al., 2018). To do so, we used U.S. Department of Defence administrative data; Army administrative and personnel data; and survey data from the 2018 Workplace and Gender Relations Survey of Active Duty Personnel (WGRA), 2016 WGRA, and 2014 RAND Military Workplace Study (RMWS) to examine organizational and operational characteristics associated with sexual assault risk and sexual harassment risk among soldiers in the U.S. Army.”¹⁴²
7. As the US military’s work demonstrates, comprehensive data also allows the pursuit of further insights and the commissioning of research which would enable innovative approaches to

¹⁴⁰ Department of Defence: Defence Data Strategy 2021-2023.

¹⁴¹ Department of Defence: Defence data Strategy 2021-2023

¹⁴² RAND Corporation (n.87)

the management of victims, respondents and third party responders. It would also guide greater concentration of effort where it is most needed and the testing of underlying risk factors, in a way without parallel in the civilian world.

8. The ADF has a capacity similar to that of the US military and has well established directorates and research capability.

9. Clearly Defence recognises its data analysis limitations and significant reforms in various parts of the Defence enterprise have been underway and evolving for a decade. The establishment of a new “Data Division to better integrate Defence’s data management and delivery of major business information system projects” is a welcome step. Integration of all personnel data within that body will be an important step towards closer monitoring of unacceptable behaviour generally and sexual misconduct particularly.¹⁴²

10. The use of data within the ADF to understand and respond more effectively to sexual misconduct can be seen, effectively, as a case-study of the use of data in the ADF.

11. There are many sources of data available to the ADF relevant to the management of sexual misconduct:

- a. Directorate of People Intelligence and Research, DPIR, is the unit responsible for the administration of annual personnel surveys and is able to track both confidence, occurrence and outcomes of incidents across the enterprise and reports to Deputy Secretary Defence People Group (DEPSEC DP).
- b. DPIR also makes recommendations about research possibilities, based on the data it collects, which DEPSEC DP and the DPC determine and allocate resources accordingly¹⁴⁴.
- c. The Directorate of Select Strategic Issues Management (DSSIM) with ADFHQ compiles Sexual Assault Action Tracking (SAAT). SAAT seeks to fuse sexual offence data between JMPU, ADFHQ, Service HQs, ODMP and RMJ. SAAT provides Financial Year data related to civil/military police outcomes and the actions taken by Defence. The intent is to also provide the capability to analyse data across financial years as the time for cases to be finalised can span different years. SAAT data can be used to inform a range of products including Audit Task 21-035 implementation, SeMPRO initiatives, QB/SB briefs. The process is currently performed using a combination of databases, emails, spreadsheets and PMKeyS – to improve efficiency this data is expected to be absorbed into the ERP Case Management System.¹⁴⁵
- d. As outlined in Chapters 2 and 8, SeMPRO collects restricted information from victims of sexual misconduct and from commanding officers seeking advice about incident

¹⁴² DEFGRAM 500/21 of 9 Nov 21

¹⁴⁴ Head Personnel Capability Email 26 November 2021.

¹⁴⁵ BN34901503

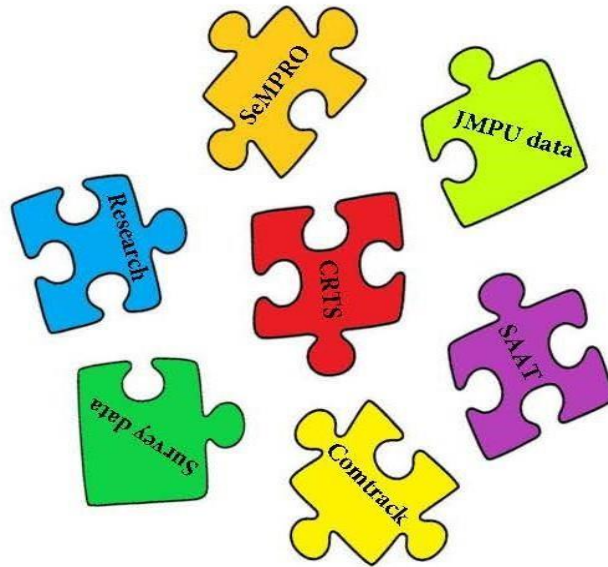
management. SeMPRO currently does not report on this information in either the Defence Annual Report or its own report, significantly limiting enterprise-level line of sight.

- e. SeMPRO was originally authorised to provide centralised reporting on incidents of sexual misconduct, collating data from a number of areas within Defence “including, but not limited to, JMPU, the Directorate of Complaints and Resolutions, the Directorate of Conduct and Performance, and the Defence Public Interest Disclosure Scheme that hold data on sexual misconduct should provide that data to SeMPRO on a quarterly basis.”¹⁴³ SeMPRO reports to DPG. In 2018 it was decided that SeMPRO no longer pursue this data role and Defence is now creating a SME data sharing forum chaired by Provost Marshal and Head SeMPRO; this forum will work with the Data Division for data literacy purposes.
 - f. ComTrack, a database held within the Directorate of Complaints and Resolution, records information about unacceptable behaviour. This includes a ComTrack Initial Incident Report, which must made via PMKeyS, as well as the outcomes of military justice, disciplinary proceedings and administrative actions. Information recorded is the responsibility of commanding officers and is in free-text form. Defence ID information enables analysis of data by rank, gender and service. ComTrack does not use Artificial Intelligence to analyse free text (although this capability is being rapidly developed in private industry). Free text analysis would improve the capacity of ComTrack to contribute to an enterprise-wide understanding of sexual misconduct. Alternatively, commanding officers and managers’ reports could be revised to include more fields, making more data collection possible.¹⁴⁴
 - g. The Conduct Reporting and Tracking System (CRTS) running in parallel with PMKeyS, records disciplinary and administrative processes involving individual members of the ADF. It relies on a transactor and supervisor in every unit entering the information, and in a timely manner. While managers and commanding officers can access reports under CRTS, it is not as widely used as ComTrack and it is not possible to produce a system-wide report of administrative sanctions applied in cases of unacceptable behaviour (sometimes classified as unsatisfactory conduct) or sexual misconduct.
 - h. JMPU and the Provost Marshal have a productive research capacity, provided through Charles Sturt University’s Australian Graduate School of Policing and Security, which has produced a number of insightful research papers on sexual misconduct, based on ADF data.
 - i. Each service collects data on incident management for its own use as well as for enterprise-wide analysis.
12. Data available from these various sources is presented with varying levels of clarity. Findings are rarely accompanied by policy recommendations, for the reason that no one

¹⁴³ CARM Chapter 9.

¹⁴⁴ Meeting Complaints and Resolution Directorate, 4 Aug 21

directorates or units has sufficient line of sight to other sources of data to be able to do so with confidence. The collection of data related to sexual misconduct is a scattering of jigsaw pieces that have not yet been put in place to form the whole picture.



13. SeMPRO's Annual Reports refer to the provision of services to new clients of SeMPRO; should these reports continue, they could also provide headline results drawn from relevant data sources across the enterprise including the number of restricted disclosures, but publishing them in the Defence Annual Report would also provide the necessary focus.
14. The Defence Annual Report includes a limited account of the enterprise's management of sexual misconduct and response, but unfortunately fails to reflect the quantum of effort across the enterprise or the outcomes of those efforts as are reported in Chapter 2 of this report.
15. Were the ADF's data integrated and supplemented with further analysis, there would be greater opportunity for informed data analysis of the prevalence (or occurrence) of sexual misconduct and member confidence in the policy's implementation. It would also enable the ADF to understand the cost effectiveness of interventions, in addition to their contribution to member safety and enterprise capability. It is expected that this will occur under the new arrangement between SeMPRO and the Provost Marshal.
16. The potential for detailed and on-going analysis of policy implementation within the ADF, including the evaluation of discrete initiatives, is clearly significant.
17. In the case of the management of sexual misconduct, the ADF has a great deal to gain from the regular monitoring of key data, particularly in combination with research and evaluation, both of which ADF either already does or has the capacity to do but does not do at the high level required.

18. As this report has noted previously, SeMPRO has evolved into a trusted support and advice unit for victims and, increasingly, for commanding officers and managers. It has no on-going involvement with respondents and consequently no overview of the management of sexual misconduct as a preventive system.

19. To provide the ADF with greater assurance, and after consultation with the acting Data Integration Officer and Head People Capability Defence People Group, this inquiry considers there is advantage to the ADF if the IGADF worked with the proposed new forum to monitor the development of this integrated data management capability, so that it can be included in the review of the Defence Data Division in 2023.

20. The IGADF receives complaints about the management of sexual misconduct from respondents and complainants. Subsequent reviews of command decisions will also provide useful insights into the policy's effectiveness and again, should be included in any centralised monitoring process, as well as any recommendations being provided to the relevant service.

21. Monitoring the effectiveness of the policy does not enable the evaluation of any policy component and for this, qualitative investigation of implementation is necessary. Since precursors of a reduction in incidence are likely to include increased confidence and commitment, good qualitative insights will again be necessary to augment data analysis and better understand both the why and the how.

Finding 20. There is no centralised integration of data related to the management of sexual misconduct, although this is expected to change. The newly established Data Division will be responsible, as part of its 2023 onwards strategy, for ensuring that integrated data analysis is reliably able to support policy monitoring and reform.

Finding 21. There is no culture of evaluation in the ADF; evaluation of the existing components of sexual misconduct management, including SeMPRO, would be helpful for policy makers and contribute to continuous improvement.

Recommendation 11. SeMPRO should annually report on restricted disclosures made to it and ensure any trends and significant changes are identified.

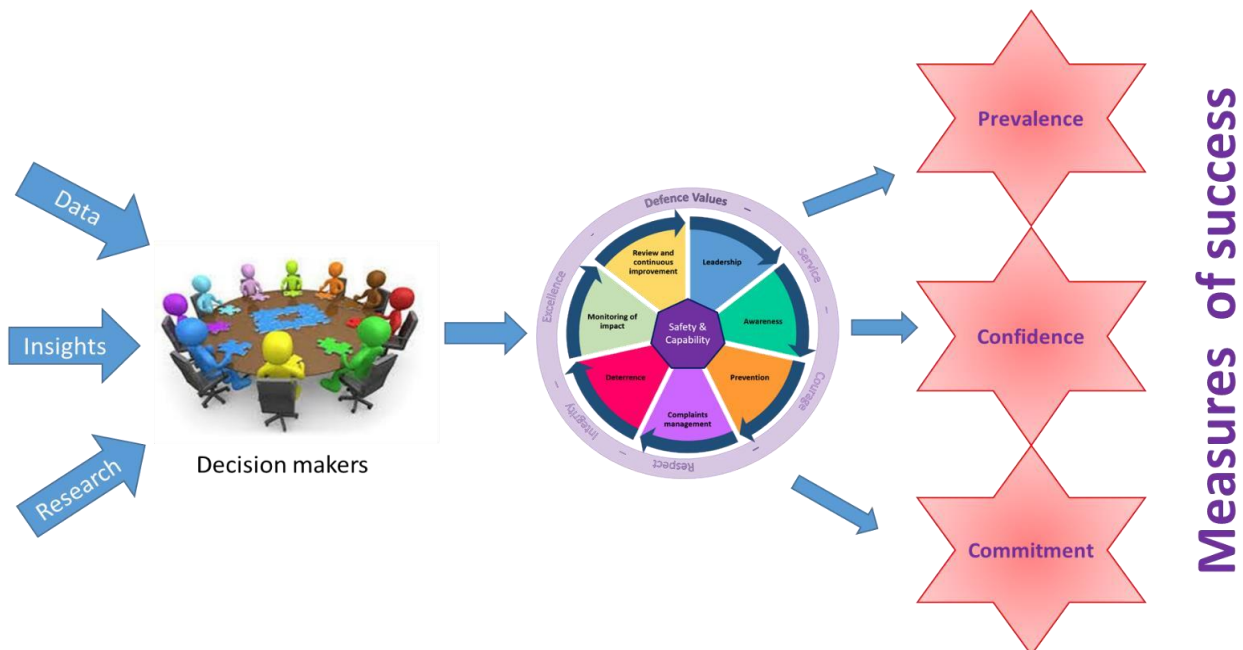
Recommendation 12. The IGADF should work with the proposed new SeMPRO and Provost Marshal forum to both monitor its development, so that it can be included in the review of the Defence Data Division in 2023 and assist in ensuring the proposed pilot project is carried out and evaluated in a timely way.

Chapter 12

Review and Continuous Improvement

1. Trend analysis and interrogation of discrete data sets enable the identification of overall effectiveness and confidence in the policy. This high-level assessment of policy performance is the starting point for reviewing specific aspects of the policy and implementation, in order to identify areas of possible improvement. Policy development can be further assisted by information collected by the IGADF complaints handling processes.
2. A best practice policy is also able to respond to emerging changes in types of misconduct, such as sexting, which was largely unknown in 2011, on-line stalking and wider changes in social attitudes. These should also be reflected in policy documents and training materials and also contribute to continuous improvement.
3. Integrated data to enable comprehensive monitoring of the policy for outcomes and unintended consequences is the starting point for on-going policy review and continuous improvement. With the establishment of the proposed SeMPRO / ProvostMarshal data forum, it will be possible, in time, to provide a high level policy body such as the Defence People Committee (DPC) with insightful and integrated data and advice.
4. It should be noted that policy advisers, although expected to have data management capability, are not data experts. Frequently, organisations fail to translate complex data analysis into information which is useful for high level policy making and so discipline will be required on the part of the data forum to ensure its products are immediately useful, or useful with policy-focussed interrogation.
5. High level dashboards force data analysts to focus on what is relevant to policy makers and allows policy makers to have a clear view of the landscape, undistracted by detail (which can be sought as required).
6. Evaluation of component parts, using a combination of qualitative and quantitative techniques, provides further insights into the outcomes being achieved.
7. The combination of program evaluations with critical outcomes data and insightful feedback from independent authorities such as the IGADF, provides policy makers with a sound basis on which to make decisions about policy and implementation improvements.
8. Defence's significant in-house research capability and its large population base, which makes randomised control and QED based trials of innovative approaches possible and manageable, provides policy makers with rich opportunities to pursue avenues of possible improvement.
9. In a complex organisation such as Defence, it is unthinkable that the relevant key policy decision makers would not be drawn from the three Services and DPG, and accountable, through the DPC, to VCDF as the accountable officer for military justice.

10. The purpose of such a group however, needs to remain squarely focussed on improving the policy's outcomes, with key metrics assigned to ensure this focus is visibly maintained.
11. Targets could be considered as part of sharpening the decision making focus, but metrics which clearly link outcomes for sexual misconduct to member safety and capability will be necessary to ensure the right effort is brought to bear on improved implementation and any necessary policy changes. These metrics do not currently exist but are well within ADF's capacity to develop.
12. While a goal of elimination is admirable, it is not realistic. A target of minimisation, as measured by a consistent downward and then asymptotic trend in prevalence may be sufficient to galvanise a target-focused organisation.
13. The DPC will require the support of an integrated data advisory service, such as the newly established forum, and is currently attempted by the Directorate of Select Strategic Issues Management (DSSIM) within AFHQ with respect to sexual offences. As DSSIM has observed, once CMS is up and running, which is expected in the next few years, "it could then be referred to as a data system".



Finding 22. Targets and associated metrics currently do not exist. Recognising that the goal of elimination is probably unattainable, but that minimisation most certainly is, a target of minimisation may be sufficient to galvanise a target-focused organisation such as the ADF - at least in the first instance.

Recommendation 13. That the Defence People Committee commission work into the development of suitable metrics to measure the impact of the policy on ADF personnel safety and capability, as well as some refining of the existing measures applied to prevalence, occurrence and commitment.

Chapter 13

Air Academy: A Case Study

Background

1. The inquiry was invited to undertake a case study of the management of sexual misconduct at the Air Academy, in East Sale, Victoria. The Academy provides training for ADF aviators from induction training to instructor courses. It has 500 staff across Australia and over 300 students at any one time, rotating through its courses. These include, but are not limited to, the basic pilot's course, an advanced pilot course and air traffic control. Following a number of complaints of unacceptable behaviour, the OC has sought to review current management practices, noting that induction courses for trainees, in which sexual misconduct is expected to be covered, occur prior to admission to the Academy. Notwithstanding that, the OC requires that expectations are outlined to all students at the beginning of their course. Following reports of unacceptable behaviour, the OC also instigated a strict alcohol policy, forbidding the consumption of alcohol in residential blocks.
2. Trainees are overwhelmingly male. The RAAF has sought to increase the number of women members generally and pilots in particular. Accordingly, it has set a requirement that female applicants, while needing to meet minimum course requirements, can be selected for the course without necessarily being the most meritorious. Despite this, the RAAF only graduated its first female fighter pilots in 2017. This informal quota setting for prestigious and sought after training, has, from many accounts, caused some resentment among male trainees and even staff.
3. During a training course of particular concern to the OC, none of the female trainees completed the course. At this point, accounts of unacceptable behaviour, strongly focussed on sexual misconduct, came to light.
4. **Commitment of leadership.** Both staff and students referred to the strong views held by the Officer Commanding and Commanding Officer that unacceptable behaviour and sexual misconduct will not be tolerated. However, some staff did not appear to think this messaging was directed at them.
5. A female student said:

Even here the onus is on the women to be safe. It's all about how we dress or how we have to be careful with alcohol. Even women say, if she didn't want the attention she wouldn't have been in that position. It's always on the victim. Even her female friends say, oh but she's strong she would speak up. If the instructors go to a winery and got trashed, nothing happens. One of the instructors made all the females he spoke to deeply uncomfortable. Everyone saw the drunkenness, but not one instructor stepped in. No-one reported it because it is too exhausting and you would get crucified.¹⁴⁵

¹⁴⁵ BN37071969

6. Some students and staff reported that not all instructors' behaviour met Defence standards. Most staff were unaware of any instances where instructors had engaged in sexual misconduct. However, one female staff member was aware of an investigation into a fraternization incident between a male instructor and a female student¹⁴⁶. During the interview she expressed some frustration that no administrative or DFDA action appeared to have been taken against the instructor. A female student¹⁴⁷ said "one instructor said what's a girl like you doing here, in the middle of a flight. It's a joke. It's not bad behaviour, it's the norm".

7. All of those interviewed were aware of the 'penis in the sky' incident where an instructor's flight pattern depicted a penis shape on radar. However, the male staff interviewed did not believe there was any sexual misconduct intent behind the behaviour. When asked about this incident, one instructor reflected on his perception of the pilot's personality and judgment instead.¹⁴⁸ Another instructor made similar comment although he said:

Having said that, drawing a penis in the sky, you have to ask what else is going on? And now the question is being asked if there's a cultural issue with staff.¹⁴⁹

8. Some female students spoke of instances of behaviour by students of both sexes and male instructors that could be considered sexual misconduct. The majority of these were not reported to the chain of command.

9. **Awareness of unacceptable behaviour.** The staff and students interviewed agreed there was a high level of awareness and education on what constituted unacceptable behaviour and sexual misconduct. However, most agreed the training packages were outdated (e.g cup of tea video) and the online annual mandatory training was a 'click and forget' exercise. Of concern, was the fact a student reported that she (and her peers) did not know how to make a complaint of unacceptable behaviour, despite the fact she had been through three years of ADFA training and presumably completed the mandatory annual awareness training.

10. A few students spoke about the 'normalisation' of low level unacceptable behaviour among the trainee population. Some female students said they were viewed as potential sexual conquests by male students rather than colleagues or peers. Four of the female students interviewed recounted a number of incidents that had either happened to them or they were aware of. Staff reported they had not seen or heard any sexual misconduct. Some staff were aware of 'rumours' but not of specifics. Most of the males interviewed expressed surprise that any sexual misconduct had occurred at 1FTS.

11. A female student said

¹⁴⁶ BN37041989

¹⁴⁷ BN37071836

¹⁴⁸ BN37071942

¹⁴⁹ BN37071971

During OTS I struggled a bit as there were not that many women on the course most of them were older than me in their 30s with partners. There were nice enough blokes around, but as soon as you're hanging around them just because you're comfortable with them, there's rumours around oh she must be sleeping with him. I slowly retreated and became more reserved after OTS waiting for pilot's course. It was not the most positive experience.

I definitely didn't just scrub in to the pilots slot but that's how I felt. I get told Defence 'really hit the mark with you, you've got the diversity quota'. A few comments all the time about how easy it is for girls, how they're letting the girls through the door to get on pilot's course. I get that frequently to my face, and I hear the guys saying that about other people.

In terms of sexual comments, the butt one was from a male on pilot's course. The subtleties of being in the classroom at 1FTS, the blokes exclude you from conversations, or this subtle rejection because you're female. You're objectified and sexualised. In a professional environment where you have to live and work with these people, it became more difficult. That course, all...girls came off course.¹⁵⁰

12. When asked about inappropriate comments being made to female students a male instructor responded:

I'm almost certain that's not happening among the QFI body. If that's happening among the trainees, they're not letting the instructors know. Maybe some of the young ones potentially. But I can't see that from the ones I know.¹⁵¹

13. **Prevention.** The newly adopted mentor scheme at 1FTS can play an important role in both prevention and managing complaints. The mentoring scheme was welcomed by the students who saw it as a good initiative. Most agreed it could provide an avenue to raise complaints of sexual misconduct and a means to intervene early and informally. Staff and students agreed that the success of the scheme would depend on the establishment of good rapport between the staff member and student. Students have the ability to request a change of mentor if the relationship is not working.

14. The instructors said they had not received mentor training on how to be an effective mentor, but had been given a set of questions as a guideline. Most were being guided by what the student wished to discuss.

15. There was no established feedback mechanism on the effectiveness of the mentor scheme.

16. There was reference by students on the impact of ADFA dominated course groups on group behaviour. Isolation of non-ADFA trainees, sexism, ageism and alcohol abuse were cited. Some staff had similar concerns although others prefaced this concern by saying ADFA trainees were

¹⁵⁰ BN36873231

¹⁵¹ BN37071971

generally better prepared to undertake the pilot's course. Some students and staff considered a greater mixing of trainees from various entry level training courses, genders, and age groups would enable greater inclusiveness.

17. One female student said:

During my time at ADFA, three years there, I had a couple of interactions with guys who treated me in a way I didn't expect and this had repercussions for how I saw people around me. When I ended up at Sale it impacted how I dealt with them and how I saw people I lived and worked with. You get hyper vigilant. If you don't trust the people you're living with to respect you and to respect your boundaries. The behaviours of some people concerned me as well.¹⁵²

18. Another female student, speaking of a course heavily dominated by trainees coming from ADFA, said

I think they brought their culture from ADFA. They'd be drinking a lot. Apparently the blokes were sitting on the balcony having beers and one girl inside heard them rating the girls on course on a scale of 1 to 10 on 'rapeability'. They rated my butt. It's something I tried to wrap my head around it, why are they treating us so differently? Coming out of ADFA they've been told they're the cream of the crop, the elite. I think they've really embodied that arrogance, those toxic masculine behaviours and just band together as boys. It's sort of us and them.¹⁵³

19. There were also reports of racist 'comments and jokes'. A student said,

I [have] a different ethnic background. I got...comments and jokes. I'd turn around and say 'I'm Australian like you are'. No one was standing up for me. I had to have these little fights all the time. I felt like an impostor.

20. **Management of complaints.** Many students and all staff interviewed reported an understanding that Air Academy leadership had a 'zero tolerance' of sexual misconduct, and reported confidence command would take action if a report was made. However, the female students who alleged they had experienced sexual misconduct did not immediately report the incidents to their chain of command and one did not report at all. When they eventually did report to the Academy WOFF, all...declined to name the alleged perpetrator(s). Some said they did not know where/how to report incidents, or what options were available to them once they did report. One female student said

It was only after talking to a female PCO who told us what we were experiencing was not normal. No one knows what to do, SeMPRO was quite useless. Once there was a clearer path more would report.¹⁵⁴

¹⁵² BN37071969

¹⁵³ BN36873231

¹⁵⁴ BN37071836

21. Another student said “the only reason I made the complaint was because my friends informed me if I went to the MPs and gave them the names, they could put a red flag on their names. That was the first time I heard about anonymous reporting”.¹⁵⁵

22. They also expressed significant concern that their reputation would be damaged if they reported the incident. None were confident a positive outcome would be achieved for them. This was largely based on their experiences at ADFA and witnessing the adverse repercussions felt by other females who had reported sexual misconduct. “The shame culture is like it’s my fault, but that’s not what prevents the reporting, it’s fear. I still want to remain in defence and not have this as the number one defining feature of me”.¹⁵⁶

23. Another student recounted two incidents where a female reported a sexual assault at ADFA leading the student to conclude that there is no point in making a complaint as a positive outcome is not achievable.

When she reported this it went to civilian courts. It was a very lengthy and drawn out process. It was very divisive in our year. Watching her go through that. He was found not guilty at court there was nothing it seemed that Defence could do. ... Watching that process and how it affected her emotionally for a lot of people in my year, changed what we thought were the prospects of reporting sexual assault and getting a positive outcome. If you go to civilian court and end up with not guilty, which happens a lot statistically, and that’s the result you’re likely to get, and Defence can’t offer anything else.

There was another similar event which happened to a close friend of mine at RMC. Again alcohol was involved. ... Again there was a JMPU investigation and referred to civilian police. She was told that because nothing really happened there was no chance of conviction. That was quite traumatic for her. She went from a really emotionally stable, calm happy person – and this has really wrecked her.

They didn’t do anything wrong, but there was potentially something they could have done something, if they weren’t drunk it wouldn’t have happened. I think they carry guilt for that. Choices that they made put them in danger.¹⁵⁷

24. Another student said

I’ve seen other women in my cohort making a formal complaint and nothing ever came of it. They remained in the same Division as the assailant and their reputation got dragged through the mud. And in most cases the male perpetrator was found innocent and therefore girl was just lying.¹⁵⁸

¹⁵⁵ BN37071969

¹⁵⁶ BN37071836

¹⁵⁷ BN37071978

¹⁵⁸ BN37071969

25. When asked why she didn't report her sexual assault another female student responded: If I ask myself why, it's because I was on course... I wanted to keep my head low and study hard. I've seen it on OTS, on interim that once you report it, it doesn't go your way, ultimately they stay on pilot's course and end up being future leaders. Everyone will know you reported it, and that deterred me a bit. And I was so consumed with course and wanting to pass each and every day.¹⁵⁹

26. When asked if he would be surprised that some young women said they would not speak up about sexual misconduct an instructor responded

Not entirely, which is a shame. You're in a position on course where you always feel like your position is tenuous here, and so you'd be scared to rock the boat. I remember when I had a particular write up when I was quoted as saying something I hadn't but I didn't bother saying anything, even though it upset me, because I didn't want to damage my training or impact my reputation. Different circumstances, but it's a shame. I'm not surprised.¹⁶⁰

27. While many of the sexual offences cited by students did not occur at the Air Academy, their negative experience of the investigative process and lack of outcome, has carried with them leading to a current reluctance to report.

28. **Deterrence.** Students and staff advised they were often aware of rumours of misconduct but were not aware of the specific consequences for perpetrators. The female students generally felt it was unlikely perpetrators would be held to account. There was no awareness of specific cases where adverse administrative or DFDA action was taken. Staff were also largely unaware of the consequences, if any, to other staff members following an allegation of sexual misconduct.

29. **Monitoring of impact.** The female students spoke of the ongoing effects of being subjected to sexual misconduct both as a victim or as a witness to what other victims have experienced. Many said there was often a feeling of shame because they may have put themselves in a situation that allowed the incident to occur (e.g. being drunk). Other concerns raised during interviews included the perceived damage to their reputation and career, not being believed, the risk of being ostracised from their peers or seen as a troublemaker.

30. **Review of policy and continuous improvement.** OC Air Academy was aware of an apparent increase in complaints of sexual misconduct and directed the CO HQ AirA to identify any causal factors or trends. The CO had identified alcohol, LIA and ADFA cohorts as common factors. As a result, Air Academy is conscious of the desirability to liaise with ACMC to create course cohorts from a mixed, diverse background of age, gender, Service, modes of entry (ie ADFA, changeover, direct entry).

¹⁵⁹ BN36873231

¹⁶⁰ BN37071942

Report Annexes (not published)

- A. Inquiry administration, process and procedures
- B. Overview of Five Eyes Nations' approach to sexual misconduct
- C. Sexual Misconduct in the Australian Defence Force 2013-2021 – Perspectives from the Workplace Experiences and Workplace Behaviours Surveys: Response to IGADF Own-Initiative Inquiry Request for Information (DPIR-TR-057/21)
- D. IGADF 2021 CO Survey results
- E. DFDA Mental Health Analysis: Sexual Misconduct Matters (within the Superior Discipline Tribunals)