



Actions Speak

Follow-up on Defence's implementation of recommendations in the Defence Abuse Response Taskforce final report

Contents

Why did we do this report?	2
How did we assess implementation?	2
Recommendations implemented by the DFO	3
What did we find?	3
Recommendations summary	4
Commonwealth Ombudsman assessment	5
Defence’s implementation of recommendations	5
Agency Response.....	14



Why did we do this report?

In March 2016, the [Final Report by the Defence Abuse Response Taskforce \(DART\)](#) made 8 recommendations, of which 6 applied to Defence¹ (recommendations 1 to 6), and 2 applied to the Defence Force Ombudsman (DFO) (recommendations 7 and 8).

The purpose of this report is to assess the actions taken by Defence and the Office of the Commonwealth Ombudsman (the Office) to implement the recommendations from the DART final report.

How did we assess implementation?

We conducted a desktop review of Defence's implementation of recommendations 1 to 6. We considered Defence's management assertions and reviewed documents.

While our engagement with Defence gives us a high level of confidence about its implementation of the DART's recommendations, we cannot provide unqualified assurance of Defence's adherence to improved processes and policies in day-to-day administration and operational activities. Our 2023 inquiry, [Defending Fairness: Does Defence handle unacceptable behaviour complaints effectively?](#) (2023 Defence Inquiry) found that Defence has further work to do in ensuring their processes work in practice.

The DFO has an enduring role with respect to actions taken by Defence relating to matters of administration, as well as matters relating to complaints of abuse. It remains important that there is an independent avenue, outside the chain of command, to consider complaints. If our Office becomes aware of issues with the effectiveness of Defence's implementation of the DART recommendations, either through complaints or other sources, we have the power to take appropriate action.

¹ For the purpose of this report, the Department of Defence and the Australian Defence Force are collectively referred to as 'Defence' unless specifically stated otherwise.



Recommendations implemented by the DFO

Recommendation 7 stated that the DFO monitor Defence's implementation of these recommendations and report his findings to the Chief of the Defence Force and in the Defence Force Ombudsman's Annual Report. We consider that our ongoing engagement with the Chief of the Defence Force, ongoing annual reporting and publication of this report meet the intent of this recommendation.

Recommendation 8 stated that the Government and Defence should develop and implement processes to enable subjects of past abuse to continue to come forward when they feel able to do so and to have their complaints responded to appropriately. We consider this recommendation implemented given the DFO took over the DART's work administering the Defence Abuse Reparation Scheme and receives reports of abuse from individuals.

The DFO continues to be a private and confidential mechanism for reports of abuse outside the chain of command and independent to Defence. Other avenues available to individuals to make complaints include the Inspector-General of the Australian Defence Force, the Australian Human Rights Commission and policing authorities.

What did we find?

We found that Defence implemented 4 recommendations in full, met the intent of 1 recommendation, and partially implemented 1 recommendation.

While we found that the changes made by Defence since the end of the DART have largely implemented the DART final report's recommendations, Defence will need to continue to consider the operational and practical effectiveness of these changes.

In particular, we expect Defence to build on the changes already made when considering the findings and implementing the recommendations from our 2023 Defence Inquiry.





Implemented – 4
Intent met – 1



Partially Implemented – 1

Recommendations summary

<p>Recommendation 1</p> <p>Defence provide training in accordance with policing best practice in responding to sexual assault and abuse.</p>	
<p>Recommendation 2</p> <p>That:</p> <p>2.1 civilian criminal offences involving abuse be investigated and prosecuted if within jurisdiction</p> <p>2.2 details of alleged criminal offences involving abuse investigated or prosecuted through the military justice system be provided to the relevant police authority, and</p> <p>2.3 Defence strictly comply with the provisions of Defence Instruction (General) PERS 35-4 Reporting and management of sexual misconduct including sexual offences.</p>	
<p>Recommendation 3</p> <p>Defence ensure officers who conduct formal inquiries into allegations of sexual harassment have a clear understanding of the definition and nature of sexual harassment and best practice in responding to victims of such abuse.</p>	
<p>Recommendation 4</p> <p>Defence ensure its processes include proper and effective management of abuse where it has actual or constructive knowledge of the abuse whether or not a complaint has been made.</p>	
<p>Recommendation 5</p> <p>Defence amend its policies and procedures to ensure complainants are kept advised of the progress of their complaints and given a clear explanation about any action taken, its outcome and any sanction imposed.</p>	
<p>Recommendation 6</p> <p>Defence empower and appropriately staff and resource the Sexual Misconduct Prevention and Response Office to:</p> <p>6.1 develop or revise policies and training and other programs to address and prevent sexual abuse, sexual harassment, workplace harassment and bullying</p> <p>6.2 have a Defence-wide education and training</p> <p>6.3 gather and regularly publish statistics on allegations of abuse in Defence, and</p> <p>6.4 advise the Chief of the Defence Force on further initiatives or programs to advance and continue improvements in Defence culture and practices.</p>	

Commonwealth Ombudsman assessment

Defence's implementation of recommendations



Recommendation 1

That the training provided to officers employed by the Inspector-General ADF and the Australian Defence Force Investigative Service accord with policing best practice in responding to Defence members who have suffered sexual assault or other abuse.

Status: Implemented



Ombudsman comments

The Joint Military Police Unit (JMPU) including the Australian Defence Force Investigative Service (ADFIS) has implemented a victim-centric, trauma-informed approach when responding to reports of sexual assault and sexual abuse. Defence advised that JMPU staff receive specific training designed for investigating sexual offences, including from the AFP, the Military Police Investigator Course and the Australian Defence Force (ADF) Investigator Course. Defence advised that the training provided to JMPU staff is subject to regular and structured evaluation to ensure it meets national standards and incorporates better practice in responding to Defence members that have suffered sexual assault or other abuse.

Defence advised that the Inspector General of the ADF (IGADF) training package incorporates a variety of courses to ensure staff engage with individuals in a sensitive and trauma-informed way. Much of the training IGADF staff receive is delivered by external organisations. Defence advised that the IGADF training package includes several elements to ensure its staff are appropriately prepared to deal with abuse matters in a trauma-informed manner.

Defence advised that the IGADF continues to explore appropriate training offerings for its staff to assist them in dealing with abuse matters. Defence should, if it has not already done so, formalise the evaluation of the training



provided to its staff to ensure that it remains appropriate and accords with better practice so that staff are equipped to deal with abuse matters appropriately when necessary.

While our 2023 Defence Inquiry did not focus on training for IGADF or JMPU staff specifically, we made findings regarding a delivery of training more generally. Defence should consider our observations and findings in that report when considering training for IGADF and JMPU staff.



Recommendation 2

That:

2.1 civilian criminal offences involving acts of abuse by members of Defence should (except for minor offences) be investigated and prosecuted through an Australian criminal justice system unless the alleged offence was committed overseas and Australian authorities have no jurisdiction

2.2 details of any alleged criminal offences that involve acts of abuse investigated or prosecuted through the military justice system (whether or not there was a conviction) should be provided to the relevant police authority, and

2.3 Defence strictly comply with the provisions of Defence Instruction (General) PERS 35-4 Reporting and management of sexual misconduct including sexual offences.

Status: Partially Implemented



Ombudsman comments

Defence has taken action and made progress towards implementing this recommendation.

In relation to 2.1, Defence advised that, while it encourages victims to report alleged offences to external investigative bodies, victims may choose to have the offences investigated by Military Police instead. As such, Defence does not automatically transfer such offences to be investigated and prosecuted by the relevant criminal justice system; however, if an individual chooses to have civilian police investigate the alleged offence, Defence helps the individual to make a report.

We assess that this is appropriate and consistent with a victim-centric, trauma-informed approach to sexual offences.



We consider 2.2 partially implemented. Under the Defence Force Discipline Act 1982, Defence may disclose that an individual has been convicted of an offence and the details associated with the conviction to relevant Commonwealth, State and Territory authorities. However, the legislation does not expressly allow for disclosures related to investigations or prosecutions that did not result in convictions. To fully implement this recommendation, we suggested Defence seek law reform to allow it to disclose details of investigations or prosecutions, and begin to pro-actively disclose convictions.

Defence agreed on 20 March 2023, and in October 2023 advised that implementation is in progress. Defence is consulting both internally and externally, and intends to consult with civilian police authorities. For this recommendation to be fully implemented we expect Defence to progress consultation with the civilian authorities and consult with the Attorney-General's Department on legislative or policy change to enable proactive disclosures of allegations, investigations, and convictions to police authorities.

In relation to 2.3, Chapter 9 of the Complaints and Alternative Resolutions Manual (CARM) replaced the Defence Instruction (General) PERS 35-4. Chapter 9 is enforceable and personnel failing to comply with the requirements of the chapter may face disciplinary action. The chapter outlines several mandatory requirements for Defence members for reporting 'Notifiable Incidents' (including unwanted sexualised behaviours that are, or may be, criminal offences) internally. This means that personnel who witness a sexual misconduct incident that might constitute a Notifiable Incident, or who have reason to believe that one has occurred, must immediately report that incident to their commander or manager, or the JMPU.

We are satisfied the enforceable nature of the requirements in addition to training and education provide an appropriate basis for compliance. We advised Defence to take action to ensure compliance with Chapter 9 of the CARM is consistently enforced, including disciplinary action where personnel fail to comply. Defence responded that it will take disciplinary action on a case-by-case basis.

While we have found that there is an appropriate basis to ensure compliance, our findings in the 2023 Defence Inquiry were that, from a broader complaints handling perspective, there were improvements to be made in ensuring compliance with policies and procedures in practice. This raises some concerns about compliance with these amended



requirements in practice. We made recommendations related to ensuring compliance, consistency and quality assurance in the 2023 Defence Inquiry (see recommendations 2, 3 and 9).

We will continue to follow up our recommendations from that inquiry to assess how well Defence implements these requirements in practice.



Recommendation 3

That Defence ensure that all officers who conduct formal inquiries into allegations of sexual harassment have, in addition to a knowledge of and familiarity with the relevant legislation and applicable process, a clear understanding of the definition and nature of sexual harassment and best practice in responding to victims of such abuse. Senior officers and managers would also benefit from training directed at understanding the nature of sexual harassment and recognising it when it occurs.

Status: Implemented



Ombudsman comments

Defence advised that officers conducting formal inquiries into allegations of sexual harassment are guided by the CARM and training to ensure they have appropriate knowledge with relevant legislation, definitions of terms and better practice in responding to responding to victims of abuse.

We assessed the CARM, which provides appropriate guidance to ensure those conducting formal inquiries into allegations of sexual harassment have a knowledge of and understanding of the relevant legislation and applicable process, as well as a clear understanding of the definition and nature of sexual harassment and best practice in responding to victims.

Defence advised that from 2023, in addition to mandatory behaviour training, sexual misconduct training has also been mandatory for all employees. Defence advised that those conducting investigations are guided by the Administrative Inquiries Manual and the Summary Discipline Manual 2020, both of which provide guidance on undertaking inquiries.

We assessed that the training provided to JMPU staff (discussed in detail as part of recommendation 1) appears to be subject to regular and structured evaluation to ensure it accords to better practice so that staff



are appropriately equipped to respond to victims of abuse given it is subject to regular and structured evaluation.

We note our comments above regarding lessons learned concerning training more generally in our 2023 Defence Inquiry.



Recommendation 4

That, noting the number of complaints which included an element of mismanagement, Defence ensure its processes include proper and effective management of abuse where it has actual or constructive knowledge of the abuse whether or not a complaint has been made

Status: Implemented



Ombudsman comments

Since the DART report was published, Defence has taken appropriate action to improve its processes, policies, and procedures to ensure that reports of abuse can be reported by victims or witnesses and responded to by commanders and managers. If a Defence member becomes aware of an incident of abuse, they must report it under the Defence Instruction Administrative Policy.

In accordance with Defence's victim-centric model, a victim of violence or emotional trauma as a result of a criminal act is exempt from mandatory incident reporting requirements. In addition, in the cases of sexual misconduct and/or sexual abuse under Chapter 9 of the CARM, if the impacted person doesn't wish to report an instance of abuse, or a matter is reported but the impacted person does not want an investigation to proceed, the investigation will cease, which we agree is an appropriate trauma-informed approach.

If Defence Personnel witness sexual misconduct that constitutes a notifiable incident, they must report it to their commander, manager or JMPU. If they witness such misconduct that is not a notifiable incident, they should report to their commander or manager. Commanders and managers must promptly respond to all reported incidents.

If a manager or commander becomes aware of an instance of abuse that could be considered a Notifiable Incident - for instance, if they have reasonable suspicion a criminal offence occurred - they have additional



requirements to action it, regardless of whether a complaint has been made. While the Notifiable Incident threshold is high, it includes unwanted sexualised behaviours that are or may be criminal offences.

In addition, there are obligations under the CARM chapter 3 for Commanders, Managers and Supervisors to act on all allegations of unacceptable behaviour and handle them as complaints, regardless of whether a complaint has been made.

Defence's policies and procedures contain a number of mandatory reporting obligations that support proper and effective management of abuse where Defence has actual or constructive knowledge of the abuse, whether or not a complaint has been made. The effectiveness of these policies and procedures in practice will be improved by the implementation of the recommendations made in our 2023 Defence Inquiry.

We note our findings in our 2023 Defence Inquiry regarding Defence's unclear direction on resolving complaints of unacceptable behaviour at the lowest appropriate level. Defence rightly considers there are unacceptable behaviour matters that are not appropriate for any form of self-resolution and chapter 9 of the CARM specifically states that there are very few sexual misconduct matters that will be appropriate for resolution under this direction.

While this direction does not (and should not in practice) apply to any incident approaching the threshold of a notifiable incident or abuse, action our recommendation from the 2023 Defence Inquiry (recommendation 7) will help ensure there is no scope for misinterpretation.





Recommendation 5

That Defence amend its policies and procedures to ensure that complainants can be and are kept advised of the progress of their complaints and given a clear explanation about any action taken, its outcome and any sanction imposed.

Status: Implemented, however note findings of our 2023 Defence Inquiry in regard to effectiveness in practice



Ombudsman comments

Defence's policies, procedures and fact sheets set out that complainants must be kept informed of the progress of a complaint and given an explanation of action taken, its outcome and any sanction.

The CARM chapter 3, responding to unacceptable behaviour, sets this out explicitly. We found however, it was less clear in CARM chapter 9. Defence advised us that SeMPRO updated the 'Fact Sheet for Commanders and Managers on Sexual Misconduct Incident Response and Wellbeing' to include direction on keeping the parties informed.

While we assessed Defence has amended its policies and procedures in accordance with this recommendation, we have since reviewed the effectiveness of Defence's policies and procedures. Our 2023 Defence Inquiry found that Defence is not always communicating effectively with complainants in practice.

We made the following recommendations in the 2023 Defence Inquiry:

- Recommendation 8: Defence ensure guidance for complaint handlers about communication with the parties to a complaint makes clear that as much information as possible should be disclosed to the parties to the complaint in line with privacy legislation.
- Recommendation 9: Defence establish a quality assurance process to ensure the requirements for communicating with complainants and respondents are complied with.

We will monitor Defence's actions in response to these recommendations, which will allow us to consider the effectiveness of Defence's actions in respect of Recommendation 5 of the DART Final Report in practice.





Recommendation 6

That, in addition to its current responsibilities, Defence empower and appropriately staff and resource the Sexual Misconduct Prevention and Response Office reporting directly to the Chief of the Defence Force to:

6.1 develop or revise policies and training and other programs to address and prevent sexual abuse, sexual harassment, workplace harassment and bullying and other specific areas of concern.

6.2 have a Defence-wide education and training role to continue with and give ongoing impetus to the present efforts to improve Defence culture and practices

6.3 gather and regularly publish statistics on allegations of abuse in Defence, and

6.4 bring forward and advise the Chief of the Defence Force on further initiatives or programs to advance and continue improvements in Defence culture and practices.

Status: Implemented the intent



Ombudsman comments

While Defence has not implemented this recommendation as specifically worded by the DART, our view is that Defence has met the intent of the recommendation. In addition, recommendation 3 in our 2023 Defence Inquiry – that Defence create or task an area with being a centralised unit to oversee the complaint process – will help build on the work Defence has already done in this area.

In relation to 6.1, Chapter 9 of the CARM governs the response to sexual misconduct (including abuse and harassment), and contains guidance on disclosing, managing and reporting incidents of sexual misconduct as well as increasing awareness in support of Defence's prevention efforts. Defence People Group maintains overall responsibility for the CARM, but SeMPRO is the sponsor responsible for maintaining Chapter 9.

Workplace bullying and harassment that does not have a sexual misconduct element is covered by Chapter 3 of the CARM. In addition to updates to Chapter 9 of the CARM, SeMPRO conducted a review of its education products in 2021 and identified the need to renew some of its training packages to ensure they reflect contemporary issues. SeMPRO began rolling out mandatory sexual misconduct training for all areas of



Defence in January 2023. While we are satisfied the policies and training were developed, we note the concerns we raised in our 2023 Defence Inquiry about how these work in practice.

In relation to 6.2, while SeMPRO is not solely responsible for Defence-wide education and training on unacceptable behaviour, SeMPRO does provide training and education across the service, including annual training specifically related to sexual misconduct and abuse. The Defence People Group is responsible for enterprise-wide programs such as annual mandatory workplace behaviour training, while some education and training is the responsibility of entities such as the ADF services. We note this will be built upon with recommendation 6 in the 2023 Defence Inquiry, that Defence audit who involved in the complaint process has undertaken appropriate training, and that it ensure such personnel receive training in a reasonable timeframe.

In relation to 6.3, Defence's annual report includes statistics on:

- number of unacceptable behaviour complaints received and finalised
- perceptions on how personnel believe unacceptable behaviour is being managed in the workplace, and
- reported sexual assault incidents per year.

The SeMPRO annual report also provides statistics on the clients it assists each year. We anticipate that Defence's data in this area will improve with the implementation of the case management system discussed in the 2023 Defence Inquiry and recommended to be rolled out as a priority. In relation to 6.4, Defence Group Heads and Service Chiefs are responsible for advising the Secretary of Defence and the Chief of the Defence Force on initiatives to advance cultural improvements. Defence People Group is responsible for setting the cultural strategic direction and regularly briefs Defence leadership on new initiatives and the status of existing initiatives.





Australian Government

Defence

PO Box 7900 CANBERRA BC ACT 2610

EC24-004098

Mr Iain Anderson
Defence Force Ombudsman
GPO Box 442
Canberra ACT 2601

Dear Mr Anderson *Iain,*

Response to Recommendation Implementation Report – Recommendations in the Final Report of the Defence Abuse Response Taskforce

Thank you for your letter of 18 June 2024, and for offering Defence an opportunity to respond to the draft Recommendation Implementation Report (The Report).

Defence welcomes The Report's finding that it has implemented four of the six recommendations made to it by the Defence Abuse Response Task Force, and that it has met the intent of a further recommendation.

With respect to Recommendation 5 (that Defence amend policies and procedures to ensure complainants are kept advised of the progress of their complaints and given a clear explanation about any action taken, its outcome, and any sanction imposed), Defence also notes that in February 2024 it published new guidance on the notification of outcomes. Chapter Four of the *Complaints and Alternative Resolutions Manual*, enclosed, now provides clear policy on notifying complainants, respondents, witnesses, and other impacted people of the outcome of administrative and disciplinary processes. The chapter requires that meaningful and substantive information be provided. It sets out what information people should usually expect to receive and, when information cannot be provided, a requirement to inform the recipient why it cannot be provided. Defence is currently working to ensure the policy is being consistently implemented, and notes that it will have particular relevance in addressing abuse-related complaints.

Defence also notes The Report's finding that it has partially implemented Recommendation 2 from the Defence Abuse Response Taskforce. The remaining work to complete this recommendation centres on external reporting of information on abuse-related investigations and disciplinary convictions.

Defence has recently developed a policy proposal for the external reporting of disciplinary convictions with civilian equivalents, which would include convictions that relate to acts of abuse. Defence is currently working on technical solutions to achieve this reporting, which is intended to make such convictions available in all Australian jurisdictions for police reference checks, consistent with Australian law.

Defence is also continuing to develop opportunities to provide information regarding complaints and investigations relating to abuse proactively to Australian policing agencies, and has engaged with the Australian Criminal Intelligence Commission on its current National Criminal Intelligence Service project. Such disclosures will need to comply with Defence's legal obligations, and Defence is currently reviewing the extent to which legislative change is necessary to achieve this intent. Proactive disclosure to an appropriate central database, once established, will complement Defence's existing practice of disclosing conviction and investigative information to Australian police authorities on request.

Defence also notes The Report's observations about the need to ensure the consistent application of Defence policies and procedures in dealing with complaints of abuse. These concerns are also being addressed further to recommendations made in the 2023 Ombudsman report, *Defending Fairness*, and Defence looks forward to continued engagement with the Ombudsman to ensure the effective and comprehensive implementation of these recommendations.

Yours sincerely



Matt Yannopoulos PSM
Acting Secretary

5 August 2024



David Johnston AC
Admiral RAN
Chief of the Defence Force

03 August 2024

Disclaimer

The Commonwealth owns the copyright in all material produced by the Ombudsman. With the exception of the Commonwealth Coat of Arms, the Office of the Commonwealth Ombudsman's logo, any material protected by a trade mark, and where otherwise noted, all material presented in this publication is provided under a Creative Commons Attribution 4.0 licence.

The details of the relevant licence conditions are available on the Creative Commons website (creativecommons.org/licenses/by/4.0/deed.en) as is the full legal code for the CC BY 4.0 licence.

The Commonwealth's preference is that you attribute this report and any material sourced from it using the following wording:

Source: Licensed from the Commonwealth Ombudsman under a Creative Commons 4.0 licence. This report is available from the Commonwealth Ombudsman website at www.ombudsman.gov.au.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the It's an Honour website www.pmc.gov.au/government/its-honour

Contact us

Inquiries regarding the licence and any use of this report are welcome at:

Commonwealth Ombudsman

Level 5, 14 Childers Street

Canberra ACT 2600

Tel: 1300 362 072

Email: ombudsman@ombudsman.gov.au