



Defence's policies for receiving and responding to reports of abuse

August 2019

Report by the Defence Force Ombudsman,
Michael Manthorpe PSM, under the *Ombudsman Act 1976*

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EXECUTIVE SUMMARY

Since 1 December 2016 the Commonwealth Ombudsman, in his role as the Defence Force Ombudsman, has had an oversight role regarding reports of serious abuse in the Australian Defence Force (Defence). There are two primary components to this role.

First, the Office of the Commonwealth Ombudsman (the Office) can receive, assess and respond to reports of serious abuse which occurred between two or more members of Defence.

Possible responses to reports of abuse include facilitation of a referral to counselling and participation in our Restorative Engagement Program. From 15 December 2017, our role was expanded in relation to reports of the most serious forms of abuse and sexual assault (that occurred before 30 June 2014). The expansion included the Ombudsman being able to recommend that Defence make a reparation payment to acknowledge the abuse.

Second, we also have the role of evaluating Defence's own internal procedures in relation to making and responding to complaints of abuse, and analysing the effectiveness and appropriateness of those procedures.

We have conducted this initial inquiry into Defence's written policies for making and responding to reports of abuse within Defence. Overall, we are largely satisfied that the range of Defence policies and procedures are appropriate and supportive to the making and handling of reports of abuse.

In the interests of continuous improvement, we have made the following six recommendations to assist Defence in maintaining a prevention-focused culture with respect to abuse.

RECOMMENDATION 1: COMMUNICATING PRINCIPLES OF TRAUMA-INFORMED SERVICE

We recommend Defence clearly explain the five trauma-informed principles. This will provide managers and commanders with a greater understanding of the key considerations in handling reports of abuse consistently with a trauma-informed approach.

RECOMMENDATION 2: GUIDANCE FOR EQUITY ADVISERS

We recommend Defence updates its policies and procedures for equity advisers to incorporate guidance on the trauma-informed principles and approach.

RECOMMENDATION 3: GUIDANCE FOR REFERRING MATTERS TO CIVILIAN POLICE

We recommend Defence review the *Service Police Manual (SPMAN)* to include information to help investigators identify how and when matters should be referred to civilian police.

RECOMMENDATION 4: GUIDANCE FOR REPORTING ABUSE

We recommend Defence develop and widely distribute a card, fact sheet or similar product which outlines all avenues for reporting abuse and accessing advice and support.

RECOMMENDATION 5: CONNECT REPORTING PATHWAYS

We recommend Defence audit the materials that members, managers or commanders might reasonably access to find information about making and handling reports of abuse (even if not specifically developed for this purpose), to ensure they:

- Are cross referenced with other, more targeted documents about reports of abuse.

- Include clear information about referral pathways for victims making reports and sources of advice for members handling reports.

RECOMMENDATION 6: CREATE A CENTRAL SOURCE OF KNOWLEDGE

We recommend Defence nominate a single area to take responsibility for reviewing and endorsing any Defence materials about making and handling reports of abuse, to ensure consistent and current messaging.

I welcome Defence's response to this report, which can be found at Appendix 2.

Our inspection and evaluation role is ongoing. In addition to following up on these recommendations, we will use future inquiries to determine how these policies and procedures are applied in practice.

To date, the Office has progressed the following stages of the inspection and evaluation role (in addition to this report, which is stage one):

- Stage two, a report entitled *Overview of the Defence abuse reporting function by the Defence Force Ombudsman*, which provides an overview as at 30 June 2019.
- Stage three has recently started and will review the training Defence provides to new recruits in relation to unacceptable behaviour across the three services (the Royal Australian Navy, the Australian Army, and the Royal Australian Air Force). This investigation will also consider the selection, preparation and evaluation of primary instructors of Initial Military Training.

Part 1: INTRODUCTION AND SCOPE OF INQUIRY

The Defence Force Ombudsman's role

1.1. The Commonwealth Ombudsman's role as the Defence Force Ombudsman is established under Part IIA of the *Ombudsman Act 1976* (the Act) and the *Ombudsman Regulations 2017* (the Regulations). For simplicity, we refer in this report to 'the Ombudsman'.

1.2. From 1 December 2016 the Ombudsman's role expanded to include an abuse reporting function for serving and former Defence members and civilians deployed on Australian Defence Force operations. The Office provides an independent and confidential mechanism to report incidents involving sexual abuse, serious physical abuse, and serious bullying and harassment within Defence.¹ Responses may include:

- Facilitation of a referral to counselling through Open Arms—Veterans and Families Counselling (formerly known as the Veterans and Veterans Families Counselling Service, or VVCS).
- Participation in the Office's Restorative Engagement Program. The program is designed to support reportees to tell their personal story of abuse to a senior Defence representative in a private, facilitated meeting (a restorative engagement conference). The conference also provides the opportunity for Defence to acknowledge and respond to a personal story of abuse.
- Recommendation for a reparation payment— from 15 December 2017, the Ombudsman may recommend that Defence make a reparation payment in acknowledgement that the most serious forms of abuse and/or sexual assault within Defence is wrong, that it should not have occurred and that Defence, through its actions or inactions, created the circumstances which allowed this abuse to occur.

1.3. The Ombudsman also has the function, under s 14(1)(c) of the Regulations, to inquire into Defence's procedures relating to making and responding to complaints of abuse and the effectiveness and appropriateness of those procedures.

Background to the report

1.4. From late 2017, this Office inquired into Defence's written procedures for making and responding to complaints of abuse. This report details the Office's findings and conclusions from those inquiries.

1.5. This is our first inquiry of this type. When this Office commences a new oversight or inspection function, our usual approach is to first conduct a baseline assessment of any policies, procedures and other materials related to the agency's performance of the particular task, role or program. This means that before we consider whether an agency does something well in practice, we consider whether it has set up an appropriate framework to do the work in theory. By separating the

¹ Abuse and more broadly unacceptable behaviour can differ greatly in their form as well as their severity. It is important to distinguish that not all sexual misconduct is abuse. For the purpose of this report the term 'abuse' is given the meaning provided in the *Ombudsman Regulations 2017* (Cwlth):

abuse... includes:

- (a) *sexual abuse of the complainant; and*
- (b) *serious physical abuse of the complainant; and*
- (c) *serious bullying or harassment of the complainant.*

practice from the theory, we are better able to identify the reasons for any problems and make targeted recommendations.

1.6. With this in mind, this inquiry focused on Defence's written policies for making and responding to complaints of abuse. We did not consider whether the policies are effective or appropriate in practice, as this will be covered in future inquiries.

Methodology for our inquiry

1.7. This Office developed criteria to guide its assessment of Defence's written policies. These were developed with reference to:

- The Office's experience handling reports of abuse within Defence.
- The Commonwealth Ombudsman's *Better practice guide to complaint-handling*.²
- The Office's experience developing inspection approaches in other jurisdictions.³
- The Australian and New Zealand Standard *Guidelines for complaint management in organisations* (AS/NZS 10002:2014).

1.8. Specifically, we examined whether Defence's written policies:

- Give appropriate support to people making or considering making a report of abuse.
- Give appropriate guidance and support to supervisors and other people receiving reports, for example, about developing a culture of prevention.
- Are current, consistent and accessible.
- Include appropriate accountability for managing reports.

1.9. In conducting each of these assessments, we also considered whether Defence has implemented any related recommendations from the Defence Abuse Response Taskforce (DART) final report.

1.10. Defence was given an outline of this Office's criteria before the inquiry commenced, so it understood what we would be assessing and the types of documents and other information that would help the Office's inquiry.

1.11. Within the inquiry, we considered Defence's written materials relating to making and handling reports of abuse, such as manuals, Defence Instructions, policy documents and guidelines (which Defence provided to us in a searchable electronic format). The documents were initially provided between October 2017 and June 2018, and again in February 2019.

1.12. This report represents an assessment of Defence's written materials at the time of the inquiry and references the materials that were current at the time of the inquiry. We acknowledge Defence has revised documents during the inquiry period. The principal policy documents which

² Office of the Commonwealth Ombudsman, *Better practice guide to complaint-handling*, Office of the Commonwealth Ombudsman, Canberra, 2009, viewed 17 July 2019, <http://www.ombudsman.gov.au/__data/assets/pdf_file/0020/35615/Better-practice-guide-to-complaint-handling.pdf>.

³ The Commonwealth Ombudsman is responsible for overseeing law enforcement agencies and their use of certain covert and intrusive powers. The Office conducts inspections to assess agencies' compliance with the legislative requirements and reports its findings to agencies, parliament, the government and/or the public.

have been replaced are identified in paragraph 2.9 of this report. Footnotes identify the relevant updated documents.

1.13. We also sought briefings from a number of areas of Defence that play a role in receiving and handling reports of abuse, including areas that have direct and indirect support roles.

1.14. During the inquiry, Defence was encouraged to be proactive in identifying and disclosing risks and associated remedial action.

1.15. A copy of Defence's response to this report is included at Appendix 2.

Part 2: FRAMEWORK FOR HANDLING CONTEMPORARY REPORTS OF ABUSE

2.1. Defence can receive complaints of abuse through different pathways. These can be categorised into pathways that do one or more of the following:

- Provide advice and/or support.
- Investigate or otherwise act on reports of abuse.

2.2. The main channels for reporting abuse or seeking support or advice are:

- The chain of command.
- The notifiable incident reporting process.
- Defence health professionals.
- Defence chaplains.
- The Sexual Misconduct Prevention and Response Office (SeMPRO).
- Equity advisers.⁴
- Australian Defence Force Investigative Service (ADFIS).
- Service police.
- *Public Interest Disclosure Act 2013*—Defence public interest disclosure (PID) scheme.
- Defence hotlines such as the Army Fair Go Hotline, the former Defence Equity Advice Line⁵ and the PID Scheme Hotline.

2.3. There are differences in how Defence members access these channels. More details about each of the pathways are provided in Appendix 1.

2.4. Defence is also open to other reporting channels (such as social media) and encourages the use of external reporting options, such as civilian police and civilian sexual assault services.

Defence Instructions

2.5. Members of Defence must comply with Australian law. In the case of uniformed members, they are also bound by military law and must comply with the orders contained in Defence Instructions (DI).

2.6. DIs are general orders issued under the authority of s 11 of the *Defence Force Act 1903*. DIs establish procedures and expected standards, and set policy across a variety of subject matters. DIs are periodically released and updated and are generally issued jointly by the Chief of the Defence Force and the Secretary of Defence, or their delegates.

2.7. Members of Defence who fail to comply with a DI may be guilty of a disciplinary offence under the *Defence Force Discipline Act 1982* (DFDA).

⁴ Effective from 1 July 2019, equity advisers are known as workplace behaviour advisers.

⁵ The primary phone line is now 1800 Defence (1800 333 362).

2.8. DIs are the foundation for procedural documents and manuals that guide the application of policy by decision-makers. The subject matter of DIs may overlap; where this occurs, DIs specify where other DIs and their content are applicable.

Defence Instructions relating to making and handling reports of abuse

2.9. When the inquiry was undertaken, Defence had three principal policy documents underpinning the making and handling of reports of abuse. These have since been replaced. The principal policy documents current at the time of the inquiry are listed below and references to the documents which have replaced them are included in the corresponding footnotes.

- *Defence Instruction (GENERAL) PERS 35-4 Reporting and management of sexual misconduct including sexual offences.*⁶
- *Interim Defence Instruction ADMIN 45-2 Incident reporting and management.*⁷
- *Interim Defence Instruction PERS 35-3 Required behaviours in Defence.*⁸

2.10. These documents outlined Defence's notifiable incident reporting requirements, including how and to whom abuse should be reported.

Defence Instruction PERS35-4 Reporting and management of sexual misconduct including sexual offences

2.11. This DI establishes an obligation for managers and commanders to recognise and manage reports of sexual abuse in accordance with Defence procedures. It also imposes an obligation to implement procedures to prevent sexual misconduct.

2.12. Defence describes 'sexual misconduct' as a range of behaviours of a sexual nature that are committed by force or intimidation, or are otherwise unwelcome. This includes sexual harassment and discrimination as defined in the *Sex Discrimination Act 1984* and any sexual offences defined by criminal law in Australia.

2.13. The DI also provides the exceptions to Defence's notifiable incident reporting obligation. These include:

- Confidential communications between an individual seeking care and guidance from chaplains and legal officers.
- Medical or mental health services.
- Confidences made by a victim of sexual misconduct to a friend who is a Defence member.

Interim Defence Instruction ADMIN 45-2 Incident reporting and management

2.14. This DI creates an obligation for Defence members to report all notifiable incidents to their manager or commander. In turn, the manager or commander has an obligation to recognise a notifiable incident, report it to the relevant Defence investigative authority and manage the incident.

⁶ Replaced by CARM Chapter 9, 'Responding to sexual misconduct'.

⁷ To be replaced by Instruction AG4 in the Defence Instruction (Administrative Policy).

⁸ To be replaced by Instruction PPL7 in the Defence Instruction (Administrative Policy).

2.15. An incident is defined as any non-routine event or occurrence that may have an effect on Defence, such as its:

- capability
- operations
- personnel
- security
- safety
- reputation
- property
- premises
- environment
- legal and ethical obligations
- obligations to minors
- foreign relations.

2.16. Examples of a notifiable incident include a reasonable suspicion that a criminal offence may have been committed under Australian law or the criminal law of another country, or an incident that commanders would consider to be serious, sensitive or urgent.

2.17. The obligation to report is triggered when a Defence member forms a reasonable suspicion that an incident has occurred, or receives credible information about any matter that might reasonably be categorised as an incident. The notifiable incident reporting obligation includes knowledge of an allegation of sexual misconduct. Failure to report a notifiable incident may be an offence under the DFDA and the APS Code of Conduct.

2.18. The DI notes a number of possible exceptions to the notifiable incident reporting requirements. For example:

- The application of medical or legal professional privilege.
- Reporting directly to a Defence investigative authority or civilian police.
- Making a public interest disclosure to an authorised officer under the *Public Interest Disclosure Act 2013*.
- Reporting unacceptable behaviour to the member's commander or manager.
- An incident that might affect a person's suitability to hold a security clearance is reported directly to the Australian Government Security Vetting Agency.
- A victim of physical or emotional trauma arising from a criminal act is not required to report the incident themselves. However, Defence encourages members who have experienced abuse to advise their commander or manager.

Interim Defence Instruction PERS 35-3 Required Behaviours in Defence

2.19. This DI was transitioning at the time of our Office's inquiry. The interim DI is to be read in conjunction with the *Complaints and Alternative Resolutions Manual (CARM)*.

2.20. The CARM sets out the behavioural standards expected of members and points to the importance of Defence values and the obligation to accept responsibility for conduct. Chapter three of the CARM articulates Defence's expected response to unacceptable behaviour.

2.21. 'Unacceptable behaviour' is defined as unreasonable conduct at work or in any situation that may be connected to Defence that is:

- Offensive, belittling, abusive or threatening to another person.
- Adverse to morale, discipline or workplace cohesion.

2.22. This includes unlawful discrimination and harassment, bullying, violent behaviour and any form of sexual misconduct.

2.23. The CARM advises Defence members that the provision of support or help in their professional capacity is confidential, with the exception of statutory reporting requirements or situations where there is a threat to life:

Legal officers, Medical officers, Equity Advisers, Dispute Resolution Practitioners and members of the Clergy (padres) are sometimes the recipients of unacceptable behaviour complaints. Each of these have professional confidentiality obligations that may apply depending on the circumstances of the incident.

2.24. Chapter three does not specifically identify the mandatory reporting requirements other than to note they differ across professions.

Part 3: ASSESSMENT OF POLICIES FOR PEOPLE MAKING AND HANDLING ABUSE

3.1. In most instances, Defence's written policies are appropriate to enable and handle reports of abuse.

3.2. At the time of our investigation, the three DIs noted above were the main policy documents addressing abuse. These, in conjunction with Defence's broader values, set the tone for the expected standards of behaviour, culture and policy for the management of abuse. The direction established by these values and policy documents is used by Defence as the basis for preparing more detailed guidance material and manuals to support members.

3.3. We analysed and identified a large amount of information that has been prepared by several areas of Defence that deal directly or indirectly with reports of abuse. Defence has demonstrated a clear commitment to building multiple reporting pathways and preparing a broad selection of guidance material. We note that offering options for reporting abuse and accessing support is consistent with a trauma-informed or victim-centric approach, which advocates that, wherever possible, people reporting abuse should be provided with choice and control.

Support for people making reports of abuse

3.4. Defence's written policies are generally appropriate for supporting victims to make reports of abuse.

3.5. Abuse matters involve intense emotion and personal issues, which can make it difficult to communicate effectively. Defence aims to provide a wide range of materials to maximise reach. However, as discussed above, this can create risks that the information is not maintained, kept comprehensive and up to date.

3.6. Outdated, incorrect or inconsistent information may affect the trust a victim is willing to place in Defence's processes and to participate fully in the management of a report. The Office's analysis identified some instances where Defence's materials contained omissions that could potentially mislead a victim.

3.7. For example, the Joint Health Command's *An introduction to Defence health care: A handbook for personnel working in garrison health care* states: 'Defence has equity advisers who can provide you with information, advice and support on discrimination, harassment and sexual offences.'

3.8. While this information is true, it does not advise members that equity advisers are bound by Defence's notifiable incident reporting requirements and must report any allegation of a criminal nature (including a sexual offence) to the chain of command or a Defence investigative authority. Reporting an allegation a victim may not be prepared to pursue (at that time, or ever) could be re-traumatising, and affect the person's trust in that individual and/or Defence.

3.9. We also identified that a document aimed at equity advisers, entitled *Equity FAQs*, which states that all Defence personnel (including counsellors and health professionals) who receive a disclosure of a sexual offence must report it to the relevant commander or manager. This is inconsistent with *DI(G) PERS 35-4 Reporting and management of sexual misconduct including sexual*

offences, which recognises that certain Defence personnel⁹ are exempt from those obligations because of professional privilege. This inconsistency has the potential to create confusion for equity advisers. It may also deter victims from seeking confidential advice, support or treatment from a Defence professional, because they mistakenly believe those personnel are required to report the disclosure.

3.10. Although *Equity FAQs* is not a substantial document, it is in circulation and supplements training provided to equity advisers. It is an example of the challenges for Defence in ensuring written material is kept consistent and current, and of the risks posed when this does not occur.

Trauma-informed complaint-handling

3.11. Defence's written policies reflect a trauma-informed approach to handling reports of abuse. We identified that policies were written with a trauma-informed perspective and explained issues central to reporting and handling reports of abuse.

3.12. Defence demonstrated a clear commitment to a trauma-informed approach when it established SeMPRO in 2013. This was based on research indicating a trauma-informed culture helps victims to recover better. It incorporated five trauma-informed principles: safety, trustworthiness, choice, collaboration and empowerment.

3.13. *DI(G) PERS 35-4 Reporting and management of sexual misconduct including sexual offences* is the lead policy document addressing sexual misconduct and so the most likely point of reference for managers and commanders handling reports of abuse. While the DI(G) mentions the trauma-informed principles in the definitions, they are not clearly identified and articulated in the DI(G) itself.

RECOMMENDATION 1: COMMUNICATING PRINCIPLES OF TRAUMA-INFORMED SERVICE

We recommend Defence clearly explain the five trauma-informed principles. This will provide managers and commanders with a greater understanding of the key considerations in handling reports of abuse consistently with a trauma-informed approach.

3.14. We note that some policy and procedural documents are clearly written with a trauma-informed approach. For example, ADFIS' *Service Police investigations of sex offences: modelling best practice* says '...It should be remembered that a victim's disclosure is not an event—it is a process.'

3.15. We encourage Defence to ensure the trauma-informed principles are carried over to policies and procedures guiding reports of serious bullying, harassment and unacceptable behaviour — where the trauma effects can be equally serious.

3.16. While there were many good examples, we also identified other instances where guidance materials did not reference or reflect a trauma-informed approach. For example, *Best Practice: For Practising Equity Advisers: Best Practice Procedure Version 1.2* does not refer to the trauma-informed principles or approach. This appears to be a significant omission, given the role equity advisers play in providing advice on bullying and harassment matters which may also include an element of sexual misconduct.

⁹ Such as health professionals, chaplains, legal officers and restricted reports to SeMPRO.

RECOMMENDATION 2: GUIDANCE FOR EQUITY ADVISERS

We recommend Defence updates its policies and procedures for equity advisers to incorporate guidance on the trauma-informed principles and approach.

Communicating with reporting parties

3.17. Defence has written policies in place to encourage open communication and transparency about reports of abuse.

3.18. In the course of the Office's inquiries, ADFIS advised that specialist investigators are assigned to handle reports of sexual misconduct. As a matter of course, the investigator will provide the victim with information about their options in reporting the matter, the process of investigation, the likely timeframe and possible outcomes.

3.19. ADFIS' policies require investigators to contact the victim each month to provide an update. The investigator also gives the victim their direct contact details so that they can contact ADFIS at any time to discuss the investigation. ADFIS' policies make it clear that investigators should be as open as possible with victims, but also acknowledge there are limits to the information that can be provided in some cases.

3.20. This approach is consistent with a recommendation in DART's final report:

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 of any action taken, its outcome and any sanction imposed.

3.21. People reporting abuse also have the option of reporting under the *Public Interest Disclosure Act 2013* (PID Act). However, the criteria specific to the PID scheme must be met. These criteria include:

- Disclosure by a current or former public official.
- The disclosure must include information that tends to show, or that the public official reasonably believes tends to show, disclosable conduct.
- The disclosure must be made to an authorised recipient within government (including Defence or the Commonwealth Ombudsman), or in limited circumstances made to anybody other than a foreign official.

3.22. Where a report is made under the PID Act, it triggers a number of statutory obligations. One of these is to provide the person who reported the disclosure with information about the outcome of the investigation.

Fostering a reporting culture

3.23. Having a strong and consistent body of information about reporting abuse is vital. We note the approach Defence has recently taken with the Australian cadet movement and encourage it to consider similar messaging across Defence more broadly.

3.24. The Australian cadet movement acknowledges the importance of building trust through strong messaging that minors are 'entirely without blame' in terms of reporting an issue of abuse. This approach aims to counter self-blame, which is a common barrier to reporting.

3.25. We also note the *Defence Health Manual*, when discussing sexual misconduct, states: ‘Please remember—it was not your fault, you are believed, and you did not deserve to be assaulted.’

3.26. In contrast, we note that other documents available to first line responders do not provide sufficient guidance about the importance of maintaining a victim’s trust. For example, ADFIS will generally refer serious assaults, and in some instances of sexual misconduct, to civilian police. The *Service Police Manual* states that a referral to civilian police can occur ‘regardless of the wishes of the complainant’ without providing any details about the situations in which this may be appropriate or the considerations an investigation should take before making such a referral.

3.27. This approach is inconsistent with a trauma-informed approach that allows a victim choice and control about how their report is handled and may undermine members’ confidence in the Defence investigative authorities. We make a suggestion for improving guidance to investigators on this issue, when we discuss referrals to civilian police.

Support for people handling reports of abuse

Communicating expectations and fostering a preventive culture

3.28. Defence’s guidance materials cover the expected behavioural standards for Defence members such as:

- How to recognise abuse.
- How to report abuse.
- How reports should be managed.
- The importance of support networks.

3.29. Information is available for commanders or managers to report or respond to an allegation of abuse. Many of the guidance materials also require that commanders, managers and workplace supervisors ensure the people they supervise are aware of Defence’s approach to reporting abuse, including the policy on unacceptable behaviour and sexual misconduct.

3.30. *DI(G) PERS 35-4 Reporting and management of sexual misconduct including sexual offences* places a particular responsibility on commanders and managers to promote behaviour that ‘upholds the Defence and Service values’. Further, the policy principles in the DI make it clear that promotion and support of prevention programs is a core aim.

3.31. All three DIs underpinning the reporting and management of abuse promote a culture of prevention being implemented and maintained all the way to unit level. However, they do not provide detailed guidance on how this can be achieved or monitored.

3.32. The Office intends to conduct an examination of the issues of culture and prevention, particularly the ‘prevention’ component of SeMPRO’s role, in future inquiries.

Training for staff handling reports

3.33. Effective implementation of policies and procedures requires appropriate training for those using them. We did not specifically examine the training in place as part of our Office’s inquiry. However, as part of the Office’s discussions, ADFIS advised around 28 of its investigation officers had attended training with New South Wales Police, regarding how to interview victims and investigate reports of sexual misconduct in line with trauma-informed practice. ADFIS and Service Police training also includes guidance on what abuse is and how to recognise and respond to it.

3.34. Supervisors and other senior and professional personnel are likely to engage with members who have experienced abuse. SeMPRO delivers regular, mandatory training on recognising and reporting sexual harassment, but this does not extend to how to ensure a trauma-informed approach when engaging with such reports.

3.35. It may not be practical to offer comprehensive training to all members about trauma-informed care. However, there would be value in ensuring relevant guidance materials highlight the role of SeMPRO in providing advice and support to managers in handling interactions with victims of abuse.

Guiding how Defence refers reports to civilian police

3.36. The *Service Police Manual* (SPMAN) outlines that, for reports of sexual misconduct, ADFIS and Service Police investigators will consider the context and detail of the assault and, where appropriate, pass the matter to civilian police. The SPMAN is not clear what considerations investigators should apply in deciding when it is 'appropriate' to refer a matter.

RECOMMENDATION 3: GUIDANCE FOR REFERRING MATTERS TO CIVILIAN POLICE

We recommend Defence review the *Service Police Manual* (SPMAN) to include information to help investigators identify how and when matters should be referred to civilian police.

Assessment of policy robustness

Accessibility, consistency and connectedness

3.37. Most of the manuals and other guidance materials available to Defence members, managers and commanders emphasise and provide clear guidance on ensuring a trauma-informed approach to victims of misconduct. Unfortunately, this emphasis was not clear in all relevant materials.

3.38. For example, although *Good decision-making in Defence: a guide for decision-makers and those who brief them* (the guide) is not concerned directly with the management of abuse, it does deal with administrative decision-making and fact-finding. The guide states that a decision-maker may choose to talk with or interview a victim of sexual misconduct for these purposes. The guide then advises it 'may' be desirable to coordinate with SeMPRO in such cases.

3.39. It would be appropriate to require a person conducting fact-finding to seek advice from SeMPRO before they speak with a victim or suspected victim of sexual misconduct, due to SeMPRO's expertise in such matters. This would ensure Defence's approach to engaging with reports of abuse is more consistent. We note that ADFIS already has a trauma-informed approach in place, which requires its investigators to be specially trained to investigate sexual misconduct matters.

3.40. We are also aware that, although it is not binding, ADFIS investigators routinely refer to *Service Police investigations of sex offences: modelling best practice* to guide their approach to engaging with victims of sexual misconduct. That research sets out the importance of a trauma-informed care model for handling reports of sexual misconduct and the value of having a coordinated and holistic approach between Joint Health Command, ADFIS and SeMPRO.

3.41. As a further example, the section of the *Joint Health Manual* dedicated to medical management of sexual and indecent assault¹⁰ does not refer to SeMPRO as a referral option for victims or as a source of advice for health professionals in engaging with Defence members who have experienced sexual abuse. That chapter also refers to the since transitioned *DI(G) (PERS) 35-3 Management and reporting of unacceptable behaviour* rather than the *DI(G) PERS 35-4 Reporting and management of sexual misconduct including sexual offences*.

3.42. Interestingly, other sections of the *Joint Health Manual* which do not deal specifically with sexual assault mention both SeMPRO and the updated DI(G) PERS 35-4. This suggests some sections of the manual have been updated over time, while others have not.

3.43. The volume of information, located across multiple policies, procedures and other guidance texts has created challenges for Defence in ensuring members are able to quickly and easily identify current, relevant information about making and handling reports of abuse.

Providing choice

3.44. Defence provides many different pathways to report abuse or seek support or advice. Some of these can be accessed anonymously and victims can choose which of the options best suits their support needs at that time.

3.45. While information about these options is available in a number of places, we could not identify a document that summarised the unique combination of services each provides. Such a document would ensure victims and Defence personnel responding to reports are able to easily and readily identify the range of options and select which best suits their individual needs—noting this may also change over time.

RECOMMENDATION 4: GUIDANCE FOR REPORTING ABUSE

We recommend Defence develop and widely distribute a card, fact sheet or similar product which outlines all avenues for reporting abuse and accessing advice and support.

RECOMMENDATION 5: CONNECT REPORTING PATHWAYS

We recommend Defence audit the materials that members, managers or commanders might reasonably access to find information about making and handling reports of abuse (even if not specifically developed for this purpose) to ensure they:

- Are cross referenced with other, more targeted documents about reports of abuse.
- Include clear information about referral pathways for victims making reports and sources of advice for members handling reports.

RECOMMENDATION 6: CREATE A CENTRAL SOURCE OF KNOWLEDGE

We recommend Defence nominate a single area to take responsibility for reviewing and endorsing any Defence materials about making and handling reports of abuse, to ensure consistent and current messaging.

¹⁰ Department of Defence, 'Sexual and indecent assault in the Australian Defence Force- Medical Management', *Joint Health Manual*, Volume 2, Part 9, Chapter 19, 09 December 2016 (Amendment number AL8.14- 27 October 2017).

Identifying areas for improvement

3.46. Defence's policies support reports and complaints and include reference to other options for communicating concerns, including the Inspector-General of the Australian Defence Force (IGADF) and the Defence Force Ombudsman.

3.47. In several documents, we noted Defence's desire for continual improvement in process and accountability. For example, the Joint Health Command's policy on complaints and reviews¹¹ says:

A healthcare compliment and complaints management system is an integral part of dynamic health service delivery. It provides opportunities for health service managers to review and implement improvements to the quality and safety of healthcare provided to Defence members.

3.48. ADFIS's written materials also demonstrated a commitment to identification of flaws and improvements to process. For example, the investigation standard for all Defence investigative authorities, including Service Police, requires them to:

...have a written procedure by which their investigations may be the subject of an internal review, analysis, and evaluation or quality assurance. The purpose of the review is to promote continuous improvement and achieve best practice.

3.49. ADFIS and Service Police also have their performance and operations periodically audited by the IGADF to ensure their professional standards are appropriate.

Accountability arrangements for managing reports

3.50. Based on this Office's review of available documents, Defence's written policies include appropriate accountability for the way personnel are expected to manage reports.

3.51. We identified Defence has appropriate policies regarding controls and accountability for privacy and access to information. This was a strong theme in all areas of Defence that have a role in handling abuse matters.

3.52. We note Defence's policy documents and manuals regularly refer to staff obligations under the Privacy Act and Australian Privacy Principles, and also emphasise the importance of protecting sensitive and personal information. This was particularly evident in the materials for Joint Health Command and Defence investigative authorities, and the protocols for accessing Defence's electronic reporting systems.

¹¹ Department of Defence, 'Management of Healthcare Compliments and Complaints within Defence', Joint Health Manual, Volume 2, Part 1, Chapter 6, Section 6.1, 09 December 2016 (Amendment number AL8.14-27 October 2017).

Part 4: CONCLUSIONS AND FUTURE INQUIRIES

4.1. Overall, we are of the view that the written policies and procedures for receiving and responding to reports of abuse are appropriate.

4.2. Through recent developments in policies and procedures, Defence has demonstrated a clear commitment to building multiple reporting pathways and preparing a broad selection of guidance materials consistent with a trauma-informed or victim-centric approach. Such an approach advocates that, wherever possible, people reporting abuse should be provided with choice and control.

4.3. We have identified some room for improvement. A number of written policies and procedures were outdated, contained incorrect or inconsistent information, or could otherwise inadvertently mislead people seeking to report abuse. We have made six recommendations for Defence's consideration that address these issues.

Future inquiries

4.4. In future inquiries, we intend to follow up on the implementation of the recommendations we have made in this report. We will also inquire into how these policies are applied in practice.

4.5. This will include a particular focus on the training offered to support these policies.

4.6. These inquiries will be undertaken in a staged approach, with this report representing the first stage.

4.7. Our Office has also finalised the stage two inquiry. That report is entitled *Overview of the Defence abuse reporting function by the Defence Force Ombudsman* and provides an overview of the Defence Abuse Reporting function within my Office as at 30 June 2019.

4.8. The third stage has recently commenced and will review the training Defence provides to new recruits across all three services (the Royal Australian Navy, Australian Army and Royal Australian Air Force) in relation to unacceptable behaviour. The investigation will also consider the selection, preparation and evaluation of primary instructors of Initial Military Training.

APPENDIX 1: CHANNELS FOR MAKING REPORTS OF ABUSE WITHIN DEFENCE

Advice and support

Sexual Misconduct Prevention and Response Office (SeMPRO)

SeMPRO was established by Defence in 2013 as a dedicated body to coordinate responses to reports of sexual misconduct. It is a first line responder but is not an investigative authority.

SeMPRO advocates for victims and has a 'victim-focused approach' when handling reports of sexual abuse. This approach involves giving a victim choice and control over how their matter is handled, including the services they access and whether their matter is reported to the chain of command for investigation.

Defence members can approach SeMPRO on a confidential basis, known as a 'restricted report', or make an unrestricted report.

If a victim of sexual misconduct chooses to make a restricted report, they will receive medical treatment and ongoing mental and emotional support as required. Unless required by a statutory mandatory reporting obligation, the matter will not be reported outside of SeMPRO and its staff are not obliged under Defence's notifiable incident reporting requirements to pass on information to command or a Defence investigative authority (DIA).

If the victim of sexual misconduct chooses to make an unrestricted report, they may access all of SeMPRO's services. The matter will also be reported to civilian police or to a DIA, such as the Australian Defence Force Investigation Service (ADFIS), discussed below. If either SeMPRO or ADFIS decide to refer a matter to civilian police, they will provide a support person to accompany the victim.

SeMPRO encourages people to make unrestricted reports. However, in line with a trauma-informed approach, victims are supported to decide when (if ever) their report may move from restricted to unrestricted. There is no time limit on SeMPRO's support for a member.

SeMPRO also provides information and advice services to commanders and managers or those who may be involved in handling a case of sexual misconduct. As part of its prevention role, SeMPRO develops and delivers ongoing outreach and prevention programs to Defence members.

Joint Health Command (JHC)

JHC provides health facilities and services to all bases in Australia and for Defence members deployed overseas. JHC staff include doctors, nurses, psychologists and dentists, and are first line responders for reports of sexual abuse. Defence health professionals must be qualified and registered with their professional body and are subject to the same professional standards and obligations as their civilian counterparts. They are also bound by Defence standards and procedures as a Defence member.

Reporting abuse to a Defence health professional allows the member to access immediate medical treatment and support, as well as ongoing support. A report made to a health professional in the course of a professional consultation is confidential and, unless required by a statutory mandatory reporting obligation, does not trigger Defence's notifiable incident reporting requirements. A medical

professional may pass on confidential information to other areas of Defence with the consent of their patient.

JHC does not investigate reports of abuse. However, the JHC Health Manual advises Defence health professionals to encourage a person reporting sexual misconduct to contact SeMPRO, ADFIS or civilian police.

Complaints about the conduct of a health professional can be made to the relevant professional body. That body may impose sanctions, which will also be acknowledged by Defence.

Chaplains

Chaplains have been a part of Defence for over 100 years, providing confidential support and advice to members. Chaplains can act as advocates for members. As a result of their availability at unit level and the informality of their relationships with members, they are first line responders to reports of abuse.

Chaplains generally engage at unit level and work closely with service men and women. Defence has male and female chaplains from various denominations, they are accessible 24 hours a day, and provide advice and support regardless of a member's religious beliefs.

Commanders and chaplains work together, with chaplains providing de-identified feedback to commanders on issues impacting the unit. Commanders will also often seek the advice of the unit's chaplain on issues such as morale, or request the chaplain discuss a sensitive issue with a member.

Defence chaplains must be ordained into their respective faith organisations and can only maintain their status as a Defence chaplain with the support of their faith group. If, for any reason, a chaplain does not have the backing of their faith group, they are not permitted to continue in their Defence role. Defence accepts that chaplains are bound by their denomination's code of conduct and teachings. A conversation with a chaplain in their professional capacity is confidential, so a report of abuse to a chaplain does not trigger Defence's notifiable incident reporting requirement.

Chaplains may only breach confidentiality if:

- They have the express consent of the individual.
- They believe a person may be harmed.
- The matter triggers a statutory mandatory reporting requirement, such as in respect to minors.

Defence prefers to recruit chaplains who are experienced. However, they are not qualified counsellors or health professionals. A chaplain's role is to provide guidance, advice and support, but they do not investigate reports of abuse. While bound by confidentiality, they triage issues and seek consent to refer a matter to an appropriate pathway. The support offered by a chaplain can be ongoing and, in some instances, will continue over several years and even after a member has left the unit.

Equity advisers

The Defence Equity Adviser Network was replaced by the Workplace Behaviour Network on 1 July 2019. Equity advisers are now known as workplace behaviour advisers. For consistency with the rest of the report, this section will use the former terminology.

The network provides an equity adviser to all members of Defence. The equity adviser is available for informal advice regarding prevention and resolution of unacceptable behaviour in the workplace, including advice on workplace conflict and bullying issues. Defence also provides a telephone referral (1800 Defence, or 1800 333 362) as another way for members to access the network.

Equity advisers provide support, information and advice about options for resolution of instances of unacceptable behaviour. They are not trained counsellors or health professionals. They attend two days of training to qualify for the role and are required to complete refresher training every three years. Any Defence member can volunteer to become an equity adviser; however, the role is in addition to the member's existing duties.

Equity advisers are not advocates and are not permitted to take direct action to resolve, mediate or investigate a matter. Discussions between equity advisers and members are confidential. However, equity advisers are obliged to report a matter if it indicates a possible threat to life, or the matter is subject to a statutory mandatory reporting requirement.

Importantly, equity advisers are bound by Defence's notifiable incident reporting obligations. Any information they receive concerning a serious criminal offence or a notifiable incident must be reported to either ADFIS or the chain of command. This includes any report made to them about sexual misconduct or serious physical abuse, such as an assault. A Defence member who fails to report a relevant matter under the notifiable incident reporting obligations will be subject to disciplinary action.

Investigations and action

Australian Defence Force Investigative Service (ADFIS)

ADFIS commenced operation in 2007 and is a Defence investigative authority made up of investigators from all three services. It conducts serious, sensitive and complex investigations involving Australian Defence Force members, including reservists. ADFIS will sometimes investigate less serious matters, but can also refer matters back to unit level to be resolved, or to Service Police for investigation.

ADFIS does not have a specialist unit dedicated to investigating sexual offences, but does ensure some of its investigators (approximately 28, at that time of the Office's inquiries) are qualified to interview victims of sexual misconduct. The training on sexual assault that ADFIS investigators receive is delivered by New South Wales Police and is refreshed every three years. The training is based on a 'victim care methodology', which ADFIS has adopted and is generally reflected in its manuals and the relevant Defence Instructions. ADFIS advised the Office that it liaises with civilian police to refresh methods and procedures for the management of sexual misconduct incidents.

Where incidents occur in Australia, ADFIS will refer serious assaults to civilian police. This includes offences such as assault occasioning actual bodily harm or grievous bodily harm. For reports of sexual misconduct, the SPMAN states that ADFIS or Service Police will consider the context and details of the assault and, where appropriate, pass the matter to civilian police.

ADFIS does not prosecute matters and members reporting sexual misconduct are not compelled to progress the matter. In those circumstances, ADFIS will keep a record of the matter for use if the victim wishes to proceed at a later time.

Service Police

Service Police are made up of members from all three services. They perform minor investigation work and general duties functions, such as traffic control on bases and roadside alcohol testing. Service Police do not routinely investigate sexual misconduct matters or serious assaults such as those involving actual or grievous bodily harm, acknowledging they do not have the appropriate expertise.

Service Police may be first line responders to a report of abuse. However, they are generally co-located with ADFIS investigators so would generally refer matters immediately. Alerting Service Police to a report of abuse meets Defence's notifiable incident reporting requirement.

Service Police and ADFIS have jurisdiction to investigate serious matters involving Defence members if those incidents occur while serving overseas on operations, so they may be required to engage with victims of abuse in that context.

Service Police do not receive the New South Wales Police training on sexual assault which is given to ADFIS investigators. However, they do receive mandatory induction training which includes some sexual assault modules. The SPMAN states that a victim must be 'responded to in a respectful and supportive manner'.

Chain of command

The chain of command describes the military relationship between a Defence member and their command. A member is responsible to their chain of command, with command having authority to issue orders to the member.

The chain of command is also responsible for a member's wellbeing and is often the first contact point for a member if they have questions or problems. A member's chain of command can be a first line responder for a report of abuse.

The chain of command is bound by Defence's notifiable incident reporting requirements, with a report of abuse made to a commander triggering a requirement to contact civilian police or ADFIS and provide medical assistance and support.

A report of abuse may be a notifiable incident under *Interim DI ADMIN 45-2 Incident Reporting and Management*. A commander receiving a report of abuse must consider those requirements to ensure they meet their obligations in managing the incident.

Reporting notifiable incidents to their chain of command is an obligation that applies to all Defence members at all times, both in Australia and while overseas. The trigger for reporting a notifiable incident is a reasonable suspicion that a criminal offence may have been committed. Failure to report a notifiable incident may result in sanction under the DFDA or *Public Service Act 1999*.

Defence Public Interest Disclosure scheme through the Public Interest Disclosure Act 2013

The Defence Instruction (General) PERS 35-4 Reporting and management of sexual misconduct including sexual offences encourages members who have been subject to sexual misconduct to report it through one of the available avenues, including to an authorised officer under the PID Act.

The PID Act establishes a framework for current or former public officials (including Defence members) to report wrongdoing or maladministration in the Commonwealth public sector. This includes abuse, such as bullying and harassment or sexual misconduct in Defence.

To make a disclosure a Defence member must approach a person authorised under the PID Act. Once a disclosure is made to and accepted by an authorised officer, the person making the disclosure receives statutory protection from reprisal action. Under the PID Act an authorised officer has a number of obligations, such as keeping the identity of the person making the disclosure confidential.

An authorised officer must seek consent from the discloser to provide their identity to the appropriate investigative body. If the discloser does not consent to their identity being disclosed, the matter must be investigated anonymously. In the case of abuse, it would be extremely difficult to investigate an anonymous report. In these circumstances, the authorised officer who received the report is potentially the only person in the PID process who knows the identity of the person making the disclosure. Authorised officers are not trained counsellors or mediators and are not able to advocate for a person. Importantly, the role of an authorised officer under the PID Act is in addition to their regular duties and they do not receive training to support a person making a report of sexual abuse.

Defence Legal Division

Defence Legal Division provides a wide range of services within Defence. Lawyers are accessible to members on base and can provide advice about a broad range of issues. A Defence lawyer on base may be a front line responder to a report of abuse, noting that they may be approached by a victim of abuse seeking legal advice and/or on the basis they are trusted and outside the chain of command.

Although making a report to Defence Legal Division is not the preferred option for disclosing abuse, it is possible they may receive a report of abuse in the course of their duties. It is also possible a Defence lawyer may be asked by their commander for legal advice about the management of an abuse matter.

Defence lawyers are bound by the professional standards of confidentiality, in addition to those that apply to them as a Defence member. *DI ADMIN 45-2 Incident Reporting and Management* acknowledges that a legal professional is bound by legal professional privilege.

APPENDIX 2: DEPARTMENT OF DEFENCE RESPONSE TO DEFENCE'S POLICIES FOR RECEIVING AND RESPONDING TO REPORTS OF ABUSE



Australian Government

Department of Defence

PO Box 7900 CANBERRA BC ACT 2610

EC18-002124

Mr Michael Manthorpe, PSM
Commonwealth Ombudsman
Level 5, Childers Square
14 Childers Street
CANBERRA CITY ACT 2601

Dear Mr Manthorpe

Thank you for your correspondence dated 30 November 2018, regarding your draft report into Defence's written policies to respond to abuse. Thank you for providing an extended time for Defence to consider and provide comments on the report over the Christmas period.

Overall, we are supportive of your draft report. It is valuable in terms of highlighting Defence's commitment to improving our approach to abuse. More importantly, it is valuable in terms of identifying some areas that are inconsistent, require rationalisation or are confusing. We support the intent of your proposed recommendations and we have already achieved some of them. This includes links on the home pages of our internet and intranet sites to report misconduct and abuse, which has a similar effect to your proposed recommendation four.

Defence has a 'no wrong doors' approach to reporting abuse and this may give a view to an outsider that our reporting avenues are disconnected. The variety of reporting options gives victims choice and our support and case management systems are engaged in all cases.

The draft report contains a number of references to dated policies and organisational structures, which is recognised in the draft report's note that documents were collected over an extended period. Your Office has been provided with relevant details of the current organisational arrangements and copies of the current policies.

We look forward to continuing to work with you in the interests of continuous improvement and maintaining a prevention focused culture with respect to serious abuse in the Australian Defence Force.


Our point of contact is Ms Justine Greig, Deputy Secretary Defence People, who can be contacted by telephone on 02 6265 7339 or email: Justine.Greig@defence.gov.au.

Yours sincerely



Greg Moriarty
Secretary

4 February 2019



Angus J Campbell, AO, DSC
General
Chief of the Defence Force

4 February 2019