

Chapter 7:

Sexual harassment,^{*}
sex discrimination and
sexual abuse^{**}

In summary

- For many men and women, the ADF is a positive work place but on occasion incidents of sexual harassment, sex discrimination and sexual abuse occur. There are a number of policies that address these issues but their implementation can be inconsistent and in some cases, deficient.
- An independent survey conducted for the Review found that sexual harassment prevalence rates for women in the ADF are similar to those in Australian workplaces, and for men in the ADF, they are lower. One in four women and one in ten men experienced sexual harassment in the ADF in the last five years.
- Perpetrators should be held to account and their suitability to remain in the ADF should be considered in any action taken against them.
- Under-reporting of incidents of sexual harassment, sex discrimination and sexual abuse is a significant issue in the ADF. An option that allows complainants to make confidential (restricted) reports could address this issue and should be investigated by the ADF as a matter of urgency.
- A complete picture of the reported number of complaints within the ADF and their outcomes is difficult to obtain because of inadequate and inconsistent data collection and analysis. This undermines the ADF's capacity to respond to sexual harassment and sexual abuse and to accurately identify the number of sexual offenders or repeat offenders in each of the Services.
- Good leadership is important to discourage abusive behaviour but leaders need to be supported by effective systems and practices that prevent the behaviour from the outset and hold perpetrators to account. Poor leadership is a common element when instances of sexual harassment, sex discrimination and sexual abuse occur.
- To be effective, any preventative education must be embedded in existing education and support processes and should be accompanied by other strategies, such as the promotion of strong messages about gender equality and the unacceptability of violence against women.

* Sexual harassment takes many forms. It can be defined as an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which in the circumstances, a reasonable person, aware of those circumstances, would anticipate the possibility that the person would feel offended, humiliated or intimidated. This is a simplified legal definition that accords with the definition under the *Sex Discrimination Act* (Cth) 1984. Behaviours that constitute sexual harassment include unwelcome hugging, touching or kissing, sexual gestures, sexually suggestive comments, sexually explicit emails or SMS messages or inappropriate advances on email, social networking sites or internet chat rooms by a work colleague.

** For the purposes of the Report, the terms sexual abuse and sexual offences includes acts of indecency¹ and sexual assaults/rapes.²

7.1 Introduction

The prevalence of, attitudes towards and responses to sexual harassment, sex discrimination and sexual abuse, including indecent assault and sexual assault or rape, were raised during consultations and through submissions to the Review. Incidents of such behaviours and offences were also raised in confidential individual interviews with ADF members. The deep distress and trauma experienced by the women who disclosed incidents makes change across the ADF in its treatment of women both critical and urgent.

This Chapter outlines the Review's findings in this area, identifies a number of systemic areas of concern and makes a number of proposals for reform. Drawing on data provided by the ADF, the Review's considerable quantitative data gathered from focus groups, one on one interviews and submissions, and the Review's specific surveys, the Chapter specifically examines incidents and prevalence of sexual harassment, sex discrimination and sexual abuse. This Chapter also examines the effectiveness of the ADF's complaints policy framework. The ADF has had some success in recent times in addressing unacceptable behaviours although it

is clear that the existing structures and systems that monitor and respond to issues of sexual harassment, sex discrimination and sexual abuse have failed some ADF members and the organisation, at a fundamental level. The Chapter concludes with proposals for reform that will help the ADF address the shortcomings identified.

7.2 Incidents of sexual harassment, sex discrimination and sexual abuse

(a) ADF Data

The Review was provided with a considerable amount of data about the numbers of complaints of sexual harassment, sex discrimination and sexual abuse made in recent years by ADF members. In particular, the Review was provided with information extracted from the database maintained by the ADF Values, Behaviour and Resolution Branch (formerly known as the Fairness and Resolution Branch) – an important centralised source of data capture.

There are a number of mechanisms through which ADF members can report unacceptable conduct. These include through their chain of command, or via staff members, such as equity and diversity advisors, medical personnel and padres. They can also make reports under the Defence Whistleblower Scheme, or where sexual harassment or sex discrimination is involved, to the Australian Human Rights Commission or state Equal Opportunity Commissions. Formal complaint mechanisms are also available under *Defence Instruction (General) PERS 35-3, 'Management and Reporting of Unacceptable Behaviour'*³ and *Defence Instruction (General) PERS 35-4, 'Management and Reporting of Sexual Offences'*.⁴ In relation to criminal behaviour, reports can also be made to the civilian police.

The Review received figures for the numbers of sexual harassment complaints recorded by the then Fairness and Resolution Branch for the years 2008-2011. Figures were also provided for discrimination complaints over the same period, but the Review was not advised which of these discrimination complaints were on the ground of sex. Quarterly updates provided by the then Fairness and Resolution Branch for the year 2010 provided statistical information to the Chief of the Defence Force about complaints of unacceptable behaviour and sexual abuse. However, these updates have not been prepared since 2010 and a replacement report is yet to be developed.⁵

It was difficult to ascertain with certainty the number of sexual assault and other sexual offences reported by ADF members in recent years. Different figures were provided by different areas within the ADF. This is detailed further below. As a result, the Review could not readily obtain a comprehensive overview of the volume of complaints made in relation to these matters.

(i) Sexual harassment and sex discrimination

Complaints about sexual harassment and sex discrimination are included as part of the discussion of the unacceptable behaviour complaints process in Defence's Annual Reports. The 2010-2011 Annual Report notes, for example, that there are, on average, between 700 and 900 complaints of unacceptable behaviour lodged across Defence each year and that in 2010-11, 720 complaints regarding this behaviour were received.⁶ This figure was noted to represent complaints from less than one per cent of the Defence workforce.⁷ In addition, during the same reporting period, 792 complaints were finalised, with 59.7 per cent being substantiated.⁸ The Annual Reports do not break down these figures into the type of complaints made, such as sexual harassment or sex discrimination.

The relevant Instructions relating to reporting and managing unacceptable behaviour and sexual abuse require various reports to be submitted to the Values, Behaviour and Resolution Branch for each complaint. This Branch is required to record all reported unacceptable behaviour complaints and outcomes⁹ and this data is used to measure reporting trends across Defence.

Defence categorises unacceptable behaviour into the following groups:

- bullying
- harassment
- inappropriate workplace relationship and conflict of interest
- sexual harassment
- sexual offences
- abuse of power
- discrimination.

Information from the Values, Behaviour and Resolution Branch indicates that the following figures represent the volume of sexual harassment complaints made in the following years:

Table 7.1: Number of sexual harassment complaints by year, Values, Behaviour and Resolution Branch¹⁰

Year	Number of complaints
2008	86
2009	74
2010	79
2011	82

The following figures are also provided for discrimination complaints:

Table 7.2: Number of discrimination complaints by year Values, Behaviour and Resolution Branch¹¹

Year	Number of complaints
2008	26
2009	20
2010	18
2011	23

It was not possible to ascertain the numbers of complaints of discrimination that were made on the ground of sex, as these figures are not categorised into the alleged ground of discrimination.

(ii) Sexual Abuse

In addition to the information recorded about unacceptable behaviour complaints, the database maintained by the Values, Behaviour and Resolution Branch is designed to record all sexual offence complaints.¹²

Information provided by this Branch indicates that the following figures represent the volume of sexual offence complaints made in the corresponding years:

Table 7.3: Number of all sexual offence complaints by year, Values, Behaviour and Resolution Branch¹³

Year	Number of complaints
2008	87
2009	74
2010	50 ¹⁴
2011	42

As previously noted, quarterly updates have not been prepared since 2010. As a result, there is no formalised reporting process to the CDF about complaint numbers.

Meanwhile, a recent report prepared by the Inspector General Australian Defence Force (IGADF) in September 2011 entitled 'Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction' ('IGADF 2011 report') noted that, based on data provided by Service Police, in any given year, there are approximately 75 sexual offence complaints by ADF personnel to ADF authorities.¹⁵

Data provided to the Review by the Service Police Central Records Office of the Australian Defence Force Investigative Service ('ADFIS') provided the following figures for initial reports to ADFIS of sexual assault and related offences:

Table 7.4: Number of initial reports to ADFIS of sexual assault and related offences by year, Service Police Central Records Office of the Australian Defence Force Investigative Service¹⁶

Year	Number of reports
2008	58
2009	82
2010	86
2011	84 ¹⁷

It is difficult to reconcile the data provided by the Values, Behaviour and Resolution Branch, ADFIS and the IGADF 2011 report. This is concerning, as it means that trends cannot be followed, offenders and repeat offenders cannot be tracked and areas in which sexual abuse are occurring cannot be identified with accuracy. It also means that targeted preventative strategies cannot be properly put in place. Of considerable concern is that the failure to capture incidents of sexual abuse accurately can place ADF members at risk of harm from undetected or untracked offenders.

The Review also sought information from State and Territory Police Forces concerning the numbers of reports and charges in relation to sexual and indecent assault (or the equivalent in the particular jurisdiction) involving ADF members, as well as the numbers of convictions for these offences for the period 2000 to early 2012. Most jurisdictions were unable to provide this information as they do not record whether an offender or victim is a member of the ADF.¹⁸ Some jurisdictions were able to provide relevant information.¹⁹ Others provided the requested data but cautioned against reliance on the figures on the basis that recording the occupation of alleged offenders and victims is not mandatory and that the data may not accurately reflect the number of ADF members who have been in contact with the relevant police force concerning these types of offences.²⁰

Without consistent data collection across all jurisdictions, this information is of limited value.

(b) The Review's data

(i) Focus Groups, Interviews and Submissions

It is important to acknowledge that, during focus groups and through written submissions, the Review heard from many members whose experiences at the ADF were positive and rewarding. Many commented that they felt safe on the bases to which they were posted and did not experience any sex discrimination, sexual harassment or sexual abuse. Comments included:

I have been in the Army for 17 years and started as a soldier. I have never been directly exposed to any harassment or discrimination nor have I directly witnessed any. Any report of harassment or discrimination has been promptly investigated and, in my opinion, appropriate corrective action [taken]. I am proud to be working in a mature, progressive and inclusive organisation.²¹

I've got no issues at all. I've got a very good working relationship with the [commanding officer] and the [executive officer].²²

I have three sisters all in civilian employment in country Victoria and the way they're treated by their male colleagues and bosses I would never put up with that. I've never been treated like that in all of my time in Defence.²³

It is equally important to acknowledge the personal accounts of inappropriate and criminal sexual behaviour from women across the three Services. The Review was told of certain environments that were highly sexualised and demeaning to women, individual instances of sexual harassment that were either one off or repeated over time, instances of inappropriate uses of technology, and instances of stalking and sexual abuse, including sexual assault. Instances of sexual misconduct were alleged, on occasion, to have been perpetrated by both peers and supervisors, including instructors.

Whilst many women considered some of the sexualised environments they worked in to be "harmless" and the behaviour simply childish and trivial, others found their environments degrading and demeaning. In one interview, a sailor spoke of her supervisor using sexually explicit terms to identify each team member which, understandably, she found demeaning. One woman also told the Review:

My partner is a combat engineer and he actually confided in me about what the guys talk about at the bases. They like to smell all the females when they walk past. If you're not looking they'll smell behind you and that type of stuff.²⁴

Another woman stated:

Sitting in the mess...one guy has his scrotum out and they've got a torch underneath it so you can see all the veins through it. They call that a 'roadmap' and they're doing that in the mess.²⁵

Some women commented on the impact of degrading behaviour on their effectiveness at work. According to one:

You walk into the [workplace] and people are slagging females out, it makes you feel like shit, it ruins your day. We're in a working environment and we're meant to be comfortable where we work. We go [live and work] with these [men] for months at a time, and it's really hard.²⁶

Cases concerning sexual harassment over many years have recognised that an environment or culture that is sexualised or hostile to women also amounts to sexual harassment.²⁷ This was typified in the 2007 decision in *Lee v Smith*²⁸ in which the Commonwealth (Department of Defence) was held vicariously liable for the actions of its employees who subjected Ms Lee, a civilian administrator, to sexual harassment, discrimination, victimisation and ultimately rape by an ADF member. The Court found that Defence had not taken 'all reasonable steps' to avoid the harassment and discrimination and that the display of pornographic material 'may well create an impression regarding the prevailing workplace culture and thereby diminish...the confidence in the formal complaint procedures and policies'.²⁹

Direct experiences of sexual harassment were also related to the Review:

When I was at [training school] I was sexually harassed by an instructor who would place his hands on my legs under the table when we were in training.³⁰

In 2008 I was sexually harassed on four occasions over a weekend by the Corps Commandant (twice), a WO1 (once) and a male corporal who told me we would fuck before I left the unit.³¹

I would go on [specific work trips] and the boys would bash on my door at 2am going, "let us in, we just want a hug". It was pretty scary really.³²

The inappropriate use of technology continues to be a challenge in the ADF. The Review heard on occasions of instances where sexual acts were recorded without the women's knowledge and consent, and later distributed to other people. In one instance the woman involved was threatened with being charged with fraternisation by her supervisors:

Not once was the other member spoken to about the incident and at the time I was too scared to take it any further as I didn't want to have a charge on my record for fraternisation even though course instructors said what happens behind closed doors stays behind closed doors. It upset me that I was humiliated and threatened when the other member who I believe should have suffered some sort of punishment was not even approached even though they knew who he was.³³

Women also spoke of experiences of being stalked by other ADF members:

I had another stalker, he used to follow me where I went, took videos of me where I used to go to blackmail and entrap me, used to sit outside my block and watch where I went. I couldn't leave Base without (him) following me. I went insane, like I had to go and see a psych, I was borderline suicidal.³⁴

Another woman disclosed:

I get a different stalker every time I go to the boozier on base.³⁵

Of deep concern were the occasional but distressing stories of sexual assault recounted by some women. Some of these women were current serving members but others had discharged because they considered there was no viable alternative as they felt unsupported by the ADF to which they had been faithful.³⁶

Other women discharged because they had to confront the perpetrator or harasser each day on the base. A woman who was sexually assaulted and had recently discharged told the Review:

I have lost everything, my identity and my sense of purpose.³⁷

The Return of Service Obligations placed on ADF members creates additional pressures:

This guy who I went on a few dates with began to stalk me with texts and wanting to go out with me. I couldn't really tell anyone but it became quite intense. One night I had a few drinks and I was with him. He ended up raping me. He knew about my boundaries regarding sex. I feel it was my fault. I couldn't tell anyone about this. He is [still in the particular Service]. The treatment I have endured has meant that I am now looking to discharge and have applied for a job with a mining company. As I haven't completed my ROSO [return of service obligation] I am concerned that the [Service] won't let me discharge without a penalty.³⁸

The Review also heard of unacceptable behaviour during recruitment processes. One person told the Review that her experience with a particular Service interview panel was a significant factor in her decision not to pursue what had, until then, been a long held dream to one day be an officer in that Service:

Every interview panel I fronted was presided over by three male Officers of differing levels. At one of my interviews, wearing my suit, one of the Officers implied I was a prostitute, making jokes...and they all laughed (I sat uncomfortably). I was also asked if I was successful, how I would resist propositions from fellow [Service] personnel? Did I plan to get married (I was 17) and have a family as most men would not marry a woman who [deployed with men] How would I cope when my peers would be on shore leave and with strippers and hookers... I came out of the interview quite shaken up.³⁹

As indicated in Chapter 3, a consistent theme heard by the Review was how women in the ADF were expected to 'protect' their 'reputation' and the sometimes dire consequences for those individuals who were unsuccessful in doing so. The Review was told:

There were so many rumours about me – I was supposed to have slept with everyone. Soldiers would do what they could to sleep with me. I was constantly pulled into the boss' office to answer the false rumours. I nearly left at that point.⁴⁰

That label sticks with you through your career so you might be a major 20 years down the track and they bring out this story from 20 years ago that you know is no longer even relevant.⁴¹

Instances of gender-based bullying and exclusion were also reported to the Review. Such behaviour generally occurred when women were a small minority in specific units and the leadership of that unit was deficient. The Review heard, for instance, from a woman who was the only woman in her course:

The guys hated me. They were trying to get me off-course. They just didn't want me there. It only takes one person to change everyone's opinions. There was one particular person who just didn't want me there. And he got all the other boys on side. All he used to do was tell me stories about how all the chicks he ever [worked with] were shit, except for one. I just tried to ignore it but it upset me all the time. We'd go away on trips and all the guys would organise to do something. They didn't invite me. On the final section of our course they were trying to get rid of me. They were giving me wrong information or not passing on information – they were trying to make me fail. And so then I had to pull aside one of the guys who had been my friend and he admitted that it'd been going on, but he said that there wasn't much he could do.⁴²

Another woman who was in a large male-dominated unit disclosed to the Review:

I was constantly subjected to harassment, bullying and intimidation. People would talk behind my back. I never let the [senior non-commissioned officers] or the other officers see how upset I was. I was in tears most nights. I am normally a confident and strong person so it was really out of character. The adjutant of the unit was very opposed to having women in the corps. He was very sexist and picked up on everything about my work, my social life, who I was sleeping with etc. I felt he was conducting a campaign of abuse and harassment against me. I was put up for deployment to Afghanistan and when I got into country it got worse. I was called the dumb blonde behind my back, woken constantly during rest time and lies were made up about me for my report as a way of trying to make me go home. It was the worst six months of my life. I came home a shell of a person with zero confidence. I got no support when I came back. Everyone knew what was happening but no-one did anything about it. I suffered depression and anxiety and was seeing a psychiatrist three times per week.⁴³

(c) The Treatment of Women in the ADF Survey

The *Treatment of Women in the ADF Survey* did not ask participants if they had experienced sexual harassment, sex discrimination or had been sexually assaulted.⁴⁴ Rather, it focused on their *perceptions* of the impact of this behaviour on a person who had experienced it. The results provide a further important source of information to the Review.

Perceptions of harassment/discrimination/abuse were less positive for women compared to men. A higher proportion of women respondents reported perceiving that women are more likely than men, to be the recipients of sexual harassment, sex discrimination and sexual abuse. However many also believed that men can suffer from this behaviour. More women than men considered that a woman's 'reputation' regarding her sexual behaviour can negatively impact her military career and that experiencing sexual harassment or discrimination would have a negative impact on career progress.

Broadly, the Survey indicated the following:

- 65% of women and 44% of men agreed that women are more likely to experience sexual harassment or discrimination in the ADF than men.
- 54% of women and 39% of men agreed that women are more likely to experience sexual abuse in the ADF than men. 60% of women and 41% of men agreed that experiencing sexual harassment or sex discrimination in the ADF would have a negative impact on career progress.
- 58% of women and 41% of men agreed that experiencing sexual abuse in the ADF would have a negative impact on career progress.
- 68% of women and 35% of men agreed that a woman's 'reputation' regarding her sexual behaviour can inhibit her military career.
- 13% of women and 25% of men agreed that a man's 'reputation' regarding his sexual behaviour can inhibit his military career.

(d) The AHRC Sexual Harassment Survey – ADF Component

As part of the Review, Roy Morgan Research administered a workplace sexual harassment survey to identify the prevalence, nature and reporting of sexual harassment in the ADF. A full analysis of the survey results, including the methodology and limitations, is at Appendix N.4.⁴⁵ The survey formed part of a broader project undertaken by the Australian Human Rights Commission that examines sexual harassment in Australian workplaces (the National Survey).⁴⁶

(i) Prevalence of sexual harassment⁴⁷

Women are much more likely to experience sexual harassment in the ADF than men. In the last five years 25.9% of women and 10.5% of men in the ADF have experienced sexual harassment in an ADF workplace. This compares to prevalence rates in the National Survey of 25.3% of women and 16.2% of men in the last five years. A disaggregation by Service and gender is presented in table 7.5.

These figures combine those respondents who reported experiencing sexual harassment according to the legal definition, as well as those who did not report having experienced sexual harassment, but did report experiencing *specific behaviours* that constitute sexual harassment.⁴⁸ This was done to ensure that the experiences of respondents who were unable to identify sexual harassment from the legal definition would still be recorded. The combination of these results provides an accurate representation of the prevalence of sexual harassment.

It is important to note that about one in five women (20.3%) and one in ten men (10.2%) in the ADF reported *not* experiencing sexual harassment according to the legal definition of sexual harassment, but then went on to report experiencing behaviours that in fact constitute sexual harassment. This suggests that in the ADF there is a lack of awareness about what behaviours in fact constitute sexual harassment and what may be considered lawful or appropriate workplace behaviours.

Table 7.5: Prevalence of sexual harassment in the ADF by Service and gender, previous five years

Service	Women	Men
Navy	28.1%	13.9%
Army	25.8%	8.9%
Air Force	23.7%	10.8%
Whole of ADF	25.9%	10.5%

(ii) Nature of sexual harassment and characteristics of persons involved

Nature of sexual harassment

The most common sexual harassment experienced by women in the ADF was:

- ‘Sexually suggestive comments or jokes that made you feel offended’ (14.6%).
- ‘Intrusive questions about your private life or physical appearance that made you feel offended’ (12.7%).
- ‘Inappropriate staring or leering that made you feel intimidated’ (9.7%).

The most common sexual harassment experienced by men in the ADF was:

- ‘Sexually suggestive comments or jokes that made you feel offended’ (4.2%).
- ‘Sexually explicit emails or SMS messages’ (4.1%).
- ‘Intrusive questions about your private life or physical appearance that made you feel offended’ (3.4%).

Additionally, 6.2% of women and 1.2% of men in the ADF reported experiencing inappropriate physical contact, 2.9% of women and 0.2% of men reported receiving requests or pressure for sex or other sexual acts, and 0.9% of women and no men reported experiencing actual or attempted rape.

Overall, women in the ADF were more likely to feel more offended and intimidated by their experience than men.⁴⁹ 12.1% of women and 1.5% of men who reported experiencing sexual harassment were ‘extremely offended’ by their experience, and 10.2% of women and 2% of men were ‘extremely intimidated’ by their experience.

Women’s experience of harassment in the ADF was also more likely to last longer than men’s.⁵⁰

Characteristics of targets

A majority of those who experienced sexual harassment in the ADF were under 30 years (71.1% of women, 50.9% men). 44.5% of women and 34.2% of men who were harassed were from the 18-24 age group, and 27% of women and 16.2% of men who were harassed were from the 25-29 age group. ADF Census data indicates that in 2011, 6% of all Permanent ADF personnel were under 20 and 46% were 20-29.⁵¹

Women in the ADF were more likely to experience sexual harassment earlier than men. 66.5% of women who experienced sexual harassment reported it took place in their first year at the location and about half of these during the first three months. Comparatively, for men 61.7% experienced sexual harassment behaviours after working in the location for more than a year.

Characteristics of harasser

The profile of the harassers of men and women was similar:

- Women and men reported that their harasser was more likely to be male (94.7% of women and 78.9% of men).
- Women reported that the harasser was more likely to be between 21 and 40 years of age (38.2% said 21-30 years of age, 31.6% said 31-40 years of age). Men also reported that their harasser was more likely to be aged between 21 and 40 years of age (42.4% said 21-30 years of age, 27.4% said 31-40 years of age).
- Women and men reported that their harasser was more likely to be a co-worker (56.7% of women and 65.9% of men).

Respondents reported that harassers were often involved in more than one incidence of sexual harassment in the same workplace. In the ADF, among those who had reported experiencing sexual harassment, 41.5% of women and 46.5% of men knew of other incidences in the same workplace.⁵² A majority of these respondents reported that the same harasser was involved in both/all incidents that they were aware of (59.1% of women, 55.7% of men). This compares to the National Survey, in which similar proportions of respondents reported that they were aware of others experiencing sexual harassment in the same workplace and of these a higher number of women and men reported that the same harasser was involved.

(iii) Addressing Sexual Harassment

Reports and complaints

A very small number of the men and women in the ADF who had experienced sexual harassment made formal complaints, only 25 women and five men out of the 181 people who had experienced sexual harassment in the last five years. For consistency with the rest of this section, findings regarding respondents who made a formal report or complaint are still presented using percentages to the first decimal point. However, given the very small sample bases, such results should be interpreted with care.

Only 21.2% of women and 9.2% of men who had experienced sexual harassment in the ADF in the last five years reported making a formal report or complaint. In the National Survey, a similar proportion of women made complaints, while a significantly larger proportion of men made complaints.

In the ADF, reports or complaints were most commonly made to commanding officers or other senior officers, ADF/APS supervisors and Equity Officers. Two women lodged a complaint or report with the military police, and two women lodged a complaint or report with the civilian police. No men took a complaint or report to either military or civilian police. Similarly, in the National Survey, reports or complaints were most commonly made to managers or supervisors.

About one-third (32%) of ADF survey respondents who made a formal report or complaint reported that they were 'not satisfied at all' with the outcome of the process. By contrast, in the National Survey fewer women and men were 'not satisfied at all' with the outcome of their complaint.

Further discussion on reporting and making a complaint of sexual harassment, sex discrimination and sexual abuse, is at section 7.3.

Non-reporting

The majority (83.4%) of those who experienced sexual harassment in the ADF did not seek support, or make a formal report or complaint, reflecting a similar figure in the National Survey. Among this group in the ADF, 27.2% of women and 26.7% of men did not report because they told the harasser(s) the behaviour was inappropriate, and it ceased.

Higher proportions of women than men in the ADF reported that they did not make a complaint because they did not think it was serious enough (6.6% of women compared to 2.2% of men), thought nothing would be done (6.6% of women and no men), felt it was easier to keep quiet (6% of women and 2.2% of men) and said that the person was too senior (4% of women and 2.4% of men). Higher proportions of men than women reported that they did not make a complaint because the harassment wasn't severe and/or it was minor/mild (17.4% of men compared to 6.4% of women) or they were not offended (7.9% of men compared to 4.8% of women).

Support and/or advice

Only a minority of those who reported experiencing sexual harassment in the ADF in the last five years sought any support or advice (38.6% of women, 25% of men). Among those who sought support or advice, the most likely sources were their commanding officer or senior officer, ADF/APS supervisor or Equity Officer. Three women, and no men among the sample reported seeking support or advice from the civilian police.

(iv) Awareness of other incidents of sexual harassment

Finally, with regard to awareness of the prevalence of sexual harassment in the ADF, more than two in five ADF members (43.4%) were aware of sexual harassment happening to someone else in the ADF workplace.⁵³ This was highest in Navy (46.4%) followed by Army (43.2%) and Air Force (40.9%).

ADF members who were aware of harassment being experienced by others were asked how they learnt of this. The most common responses (disaggregated by gender) were:

- 'told about it by the target' (37.6% of women compared with 17.1% of men)
- 'heard about it in the media' (37% of men compared with 18.5% of women)
- 'heard on the workplace grapevine' (32.5% of women, 32.6% of men).

The most common responses of all respondents that were aware of others being harassed in the ADF were:

- talking or listening to the target/complainant (59.5% of women, 26.2% of men)
- offering advice to the target/complainant (46.6% of women, 21.0% of men)
- reporting the harassment to a commanding officer/senior officer/supervisor etc. (28% of women, 14.3% of men).

Additionally, very few women and no men reported utilising external mechanisms (e.g. civilian police) in response to their awareness of sexual harassment occurring to other in the ADF.

Those who took action when they were aware of sexual harassment occurring were asked about the consequences of this action. 94.7% of ADF members reported that there were no consequences, and the remaining minority was split between positive consequences (e.g. the harassment stopped, received positive feedback) and negative consequences (e.g. being ostracised, victimised or ignored).

7.3 Reporting sexual harassment, sex discrimination and sexual abuse

In addition to the Sexual Harassment Survey results, the extensive data from the Review's consultations indicated that under-reporting of sexually related misconduct is a significant issue for the ADF. Consultations indicated that members are aware that policies and complaint handling procedures exist to identify, prevent and address unacceptable conduct and that many of the policies targeting sexual harassment, discrimination and sexual abuse were sound, and reasonably well understood.

Even so, members reported to the Review making decisions not to engage with the formal complaint processes, despite the seriousness of their allegations of harassment and assault. Reasons given included the fear of victimisation from peers and supervisors, the negative impact on career progression and, in relation to sexual assault specifically, the personal trauma to which such an assault gives rise. The Review also heard from members who had made a formal complaint but had been disillusioned and disempowered by the experience, frequently as a result of less than optimal implementation of what, on paper, are relatively comprehensive complaint handling procedures. Deficient policies were also identified.

The following section will examine the effectiveness of the ADF's complaints process as a means of responding appropriately and sensitively to complainants of sexual misconduct and abuse.

(a) Overview

The Review heard from a number of sources of the high regard in which the ADF's complaint processes are held. One experienced commander, who had been a victim of unacceptable behaviour early in her career, noted as follows:

It is my view that Defence has extremely supportive and valid guidelines and policy to assist members in making complaints and to assist commanders and managers in the management of reports of incidents of unacceptable behaviour...Sometimes the system fails an individual, and at times, this is demonstrated by a lack of experience, training or understanding by the person responsible for managing the complaint. This is compounded by lengthy but necessary administrative processes to investigate and resolve complaints.⁵⁴

The broad range of experiences ADF members bring to the organisation is also acknowledged:

People join the ADF with attitudes, values and beliefs borne of their upbringing and life experiences. It is inevitable that some behaviour will not measure up to the standards required in a military force... However, the measure of an organisation's commitment to address these behaviours is its capacity to properly report, manage and resolve such incidents and demonstrating a zero tolerance approach.⁵⁵

There was, however, a consistently expressed view across the range of focus groups that the complaints policies and procedures do not adequately address the realities of women's experiences in the ADF. This deficiency also impacts on men in the ADF who are, at times, also subjected to sexual harassment and sexual abuse.

Meanwhile, allegations of harassment and assault in the ADF are frequently under-reported. Certainly, it is not uncommon in broader society,⁵⁶ with researchers identifying various reasons for this. In relation to incidents of sexual assault, for example, studies have identified barriers to reporting such as:

- lack of recognition that an incident is sexual assault, or not considering an incident serious enough to report
- a relationship between victim and perpetrator (not necessarily an intimate relationship, although these are less likely to be reported)
- potential for negative reactions, including fear of not being believed or being blamed

- lack of encouragement from support networks
- fear of repercussions and concerns about the impact of disclosure on others, such as children
- the victim's belief that they can handle an incident themselves.⁵⁷

Evidence indicates that similar barriers to reporting exist in the ADF. This was acknowledged in a recent decision in which the Defence Force Disciplinary Tribunal noted the additional pressures placed on complainants by a 'hierarchical military environment'.⁵⁸

Reluctance to report matters has resulted, for some, from a lack of confidence in the complaints system. In the *Treatment of Women in the Australian Defence Force Survey*, a majority of respondents believed that if they reported an incident of unacceptable behaviour appropriate action would be taken, though this included a higher proportion of men (83%) than women (66%). Of female respondents, 21% did not believe that appropriate action would be taken, and 14% were unsure. It is concerning that about one-third of women, and nearly one-in-five men either did not believe that action would be taken, or were unsure.

This was also reflected in individual accounts to the Review:

I was fairly confident in Defence's procedures for dealing with these incidents when I saw them on paper, but now, I've actually seen them in place and seen nothing come of it except an extended sort of investigation...I'm not even really sure what the end result is except perhaps this commander now feels uncomfortable in his position because everyone knows what he did.⁵⁹

Junior members of the ADF are at a particular disadvantage:

When you're new to the Army you might get a little bit of information about what is available to you but you don't necessarily have the confidence to take that further and as a recruit you think the corporals are God and if there's incidences you may feel that it's impossible to work past.⁶⁰

Others consider the complaints process is too reliant on the skill of the members in charge:

I have complete faith in the procedures that Defence has set out in the management of this type of incident. What I don't have faith in is the people to implement them... It depends on what kind of unit you're in [including whether] it is a much more male dominated environment.⁶¹

The Review also heard of inappropriate responses to reports of assault, which compounded the trauma experienced and inhibited even further a formal complaint being made:

[in relation to being sexually harassed] I made a complaint. That just led to me being humiliated by the [commanding officer] in front of the entire school body.⁶²

The potential for a member's career prospects to be adversely affected if they raised a complaint was another theme raised during the Review. A submission observed:

Fear of retribution for raising concerns is frequently cited as a reason for passivity. Actions can include, for example, the stoppage to a preferred posting or delay in promotion. Interestingly, while some members are being subjected to unacceptable behaviour in the workplace, others who acknowledge what is occurring take no action to remediate the situation for fear they will then become targets themselves.⁶³

Members also told the Review as part of the *Treatment of Women in the ADF Survey* and in consultations:

I don't believe making a claim of harassment would affect your career, unless that claim was against an officer. I believe that claims against officers are generally kept quiet and within the unit.⁶⁴

I'd be very reluctant [to complain] because I know for a fact it would be the end of my career... You just get a name, a label for yourself as a trouble maker, as a whinger, as someone that you can't then put on operations with other men, that type of thing.⁶⁵

No squadron would want me as the girl who made a complaint. Have a career or complain were my only options.⁶⁶

Isolation, victimisation and ostracism from peers was also seen as a strong inhibitor to reporting an incident of unacceptable behaviour or sexual misconduct.

The risk of being viewed as a troublemaker if an issue is raised in the workplace appears to be a real and ongoing deterrent for some to make complaints:

If you complain, you'll be isolated. If you stick up for yourself and do E&D, you'll be isolated. No-one will like you.⁶⁷

I think a lot of times you don't want to take it further because you don't want the attention and you don't want to have the name following you around of 'she's a trouble maker' or she's this or that. You just get worried because you don't want it to ruin your reputation.⁶⁸

Participants described deficiencies in the complaint handling processes and lack of support after reporting a sexual assault:

The respondent is [a specific occupation] and the chain of command responsible for the findings was [the same occupation]. I believe the chain of command protected him as despite the findings no detrimental action was taken against him.⁶⁹

On one of my first days back in the job I...ran into the perpetrator. He was located in offices adjacent to [where I was working]... When I complained I was told that I would have to walk the long way around so as to limit my risk of running in to him. I was offered very limited support at this time despite having suffered major trauma.⁷⁰

A male officer also told the Review:

When the victim [of sexual assault] makes a complaint, I'm using a female as an example, she's got no support and the people that do support her, can then be discriminated and victimised as well. The system needs an overhaul.⁷¹

The Review heard, on occasion, concerns from a number of different groups about their experience with the Australian Defence Force Investigative Service ('ADFIS'):

They have a...history of being late, back logged, reports being faulty, evidence not being correctly submitted. There's all these kinds of issues with ADFIS's investigations. They drag on for months on end, nearly years in some cases and things do not get resolved because chains of command change. People post in, post out.⁷²

(b) Sexual Offence Support Person Network (SOSP)

One site specific program worthy of mention is the SOSP network, an initiative of the Command at HMAS *Cerberus*, the Navy's premier training establishment located in southern Victoria. The network was developed in consultation with Victoria Police and the local rape crisis response service. A 'SOSP' is a uniformed member who undertakes the role voluntarily and is provided with specialised training by both internal and external parties. When a sexual assault is reported, through any channel at any time of day, both the complainant and the respondent will be assigned a SOSP. However, the focus of the program is ensuring the medical, counselling and legal needs of the complainant are met. It is the role of the SOSP to be a primary contact of support and information for the complainant/respondent and this may include accessing medical assistance, providing information about support services (both internal and external, the preference being the local rape crisis centre), advising the complainant/respondent about the mandatory reporting process in the state of Victoria (including Victoria Police, ADFIS and the Command), and internal and external complaint procedures and how to access them.

The Review was advised that the IGADF would like this model to be rolled out across ADF bases. The SOSP can, with the permission of the complainant/respondent, accompany the member to the police or medical appointment and can also assist the complainant, based on their preference, to make changes to their accommodation and/or workplace as a matter of urgency if required.

This network is a positive initiative and focuses on providing complainants/respondents with a trained person as a single point of support and information and draws on external support where needed (rape crisis service) to assist the complainant and ensure their medical and safety needs are met.

The Review considers that the SOSOP is an important strategy in supporting complainants of sexual abuse and misconduct. Building on this initiative, the Review recommends that a broader, ADF wide system, that importantly gives the complainants an option of confidentiality, be established. This is discussed further, below.

7.4 Complaints policy framework

The Review examined the key policy documents relevant to the management of complaints alleging unacceptable behaviour and sexual abuse in the ADF. An overview of these policies is provided at Appendix N.1. Generally, whilst many of the policies are sound, their volume and complexity undermines the capacity for consistent and effective implementation. Based on this analysis and the information provided during consultations, the Review identified areas of concern that, taken as a whole, inhibit rather than encourage members from using the complaint handling mechanisms. These systemic areas of concern are discussed in this section.

(a) Complexity of complaint processes

While the Defence Instructions dealing with complaints of unacceptable behaviour and the management and reporting of sexual abuse are detailed and comprehensive, the large number of policies and related documentation – Defence Instructions, checklists and forms – as well as their overlapping nature, can create understandable confusion about what steps need to be taken.⁷³ Ongoing confusion can lead to a delay in implementing procedures, and/or to inappropriate outcomes, such as complaints and alleged perpetrators continuing to be posted together.⁷⁴ These deficiencies, in turn, can undermine the confidence of complainants, as well as respondents, in the process and the outcomes and create a barrier to reporting unacceptable behaviours, including sexual assaults.

(b) Risks associated with focus on ‘self-resolution’

In relation to complaints of unacceptable behaviour, members are encouraged to deal with issues at the ‘lowest possible level’. This is reflected in the existing policy framework, which describes ‘self-resolution’ and ‘supported self-resolution’ as part of the ‘suite’ of options that can be used to resolve complaints or concerns.⁷⁵

There are risks associated with giving inappropriate weight to ‘self-resolution’, given the power differentials that exist in a military environment structured by rank. This may also create a barrier to members utilising formal complaint processes.⁷⁶ Further, it can potentially undermine perceptions of a zero tolerance approach to unacceptable behaviour, particularly sexually based unacceptable behaviour.

Giving inappropriate weight to informal resolution options can create further risks for individuals and for the organisation. For example:

- complainants may not have the appropriate skills to effectively address sensitive issues of a sexual nature with the alleged perpetrator or harasser and therefore do not raise the issue
- serious matters that ought be investigated and, if proven, would lead to disciplinary action, are not appropriate to be dealt with through informal mechanisms

- patterns of unacceptable behaviour, particularly lower level sexual harassment and elements of a sexually hostile work environment, remain undetected
- the accountability of a perpetrator or harasser may be lessened.

Appropriate positioning of self-resolution and assisted self-resolution is an important element to be included in the development of training modules for those who manage complaints of unacceptable behaviour. This will also help build confidence in the impartiality and effectiveness of the complaints management system generally within the ADF. Further, it is consistent with best practice complaint management processes to present options to complainants in a way that acknowledges their potential discomfort or perceived inability to address an issue directly with the alleged perpetrator or harasser. It should be emphasised in all training modules that complainants are under no obligation to address complaints by way of self-resolution or assisted self-resolution.

The Review strongly considers that serious sexual misconduct matters and sexual assaults should not be the subject of self-resolution processes and acknowledges *Defence Instruction (General) PERS 35-3, 'Management and Reporting of Unacceptable Behaviour'* in this regard.

(c) Responsibilities of commanding officers

The role and leadership of commanding officers is fundamental not only to the effective management of complaints within the ADF, but also to the confidence that members have in accessing complaint mechanisms in the first place. In order to change workplace culture, and to highlight the value of an effective and responsive complaints mechanism, all promotions for commanding officers should be subject to a criterion of 'performance on workplace culture'. This could include recording how many incidents of sexual harassment and discrimination were reported and how many were successfully managed and resolved.

Commanding officers also need to be made aware of issues of concern on their bases by senior officers:

I don't think they understood the personal significance of what had gone on and so if someone doesn't take an event seriously knowing the process and knowing the right forms to fill in, doesn't really matter because if they don't take it seriously they won't do it.⁷⁷

The investigation and findings were conducted at the commander level and I now question the decision making abilities of my senior leaders. These individuals must be held to account for their actions otherwise Defence Instructions and speeches made by the CDF and Senior Leadership Team are nothing but lip service.⁷⁸

Requiring all promotions to be subject to such a criterion would ensure that commanding officers are held accountable for contributing to a healthy organisational culture and for taking any corrective action. Ensuring commanding officers have regular direct dialogue with members on their bases with regard to such issues could also prevent matters escalating to a critical and potentially risky stage. The Review saw evidence of impressive commanding officers who were already doing this. The task for the ADF is to ensure accountability for a healthy organisational culture is understood by every commanding officer.

The Review considers that good leadership is important to discourage abusive behaviour. However, leaders must be supported by effective systems and practices that prevent the behaviour from occurring and which hold perpetrators to account. The Recommendations contained in the Report aimed at addressing sexual harassment, sex discrimination and sexual abuse will provide the proper support that leaders require to address unacceptable behaviour by those under their command.

(d) Fear of disciplinary action

ADF members told the Review that there is some fear that reporting a sexual assault may result in disciplinary action for the complainant. For instance, there is a fear that fraternisation charges could arise against a victim if the alleged sexual offender committed the offence when they were in the victim's room, contrary to the rules around contact. Alcohol is frequently a factor when sexual misconduct, including sexual assault, occurs

and the Review was told that, when a complainant has consumed alcohol and reported an assault, there is the potential for him or her to face consequences for that behaviour. Additionally, if an assault occurs after consuming alcohol with other members, they too may be disciplined for their drinking. One woman explained:

While I was at [ADF establishment] I was sexually assaulted. I had been drinking with friends one night. When I reported the sexual assault the XO [executive officer] said that if I took it further, both I and my friends would get into trouble for drinking so I decided that I wouldn't take it any further.⁷⁹

Clearly, a victim's well-being and needs should outweigh and precede any action that may be taken (if at all) in regard to their involvement in any "ancillary" behaviour, such as fraternisation or drinking. Change in this regard would be an important step towards treating sexual assault with the seriousness it deserves.

(e) Tracking sexual misconduct

In practice, the systems in place to record complaints and their outcomes are inadequate to reliably track members who may have had more than one complaint of unacceptable behaviour made against them. This is of considerable concern given the potential risks that repeat offenders may present to other ADF members. It is also of concern that in some cases members whose complaints were upheld were obliged to continue working with offenders. For instance, the Review was told by one woman who had reported an incident of sexual harassment:

The perpetrator was a warrant officer who I was left sitting next to for the remainder of the year.⁸⁰

Another woman who had also reported receiving disturbing text messages from a male member stated:

This guy is still in the squadron and I still have to work with him every day.⁸¹

The Review is strongly of the view that where a complaint of any sexual misconduct is upheld, the perpetrator or harasser should be separated from the complainant including being removed from the base.

If a complaint is resolved by way of informal resolution,⁸² then the matter is recorded by the Values, Behaviour and Resolution Branch but with no identifying information.⁸³ Whilst the relevant case file remains in existence, the lack of identifying information results in no centralised, systematic way of ascertaining the parties to a complaint and whether several separate incidents involve the same respondent.⁸⁴

When a complaint of unacceptable behaviour results in a formal outcome,⁸⁵ in addition to a report being made to the Values, Behaviour and Resolution Branch, the name and personal details of the member against whom the complaint is made are meant to be provided to the member's career management agency. This information may be taken into account by the relevant Service for career management and postings decisions.⁸⁶

However, it is unclear whether this information is used in any systematic way especially, as it was suggested that it is not standard practice for commanding officers, when dealing with a complaint of unacceptable behaviour, including sexual misconduct by a member, to check whether complaints have previously been made against that member from other units.⁸⁷ It is also unclear whether the relevant career management agency undertakes required checks with the Values, Behaviour and Resolution Branch on every occasion when a member is posted to a new unit.⁸⁸ Even if this check is conducted, a pattern of unacceptable behaviour resolved through informal resolution mechanisms will not, for the reasons noted above, be revealed.

The risk that repeat 'offenders' are not identified and their behaviour addressed in an appropriate way was highlighted by focus group participants:

There was one dickhead at [base], and a complaint was made against him, held up in my favour, settled at the lowest common possible level, but because it was settled at a mediation level I understand that it is not paper trailed and I've since found out he's done that to several others in the past.⁸⁹

There was a guy in our unit last year that was found to have sexually harassed women through contact on Facebook and sending pictures of his dick via text message. It ended up being about 12 women from the unit and there's only about 14 max at any one time so we kept getting counselled on that, what's going on, this is what we're doing with him, this is what we're not doing with him, what would you like done and then the consensus was at the very minimum, don't ever put this guy in a training command position. He obviously can't be in command over girls who can't stick up for themselves. So this year he got posted to a training command position.⁹⁰

Given the information provided about these matters, it is questionable as to whether the ADF is meeting its own policy objective of identifying repeat behaviour.

(f) Data collection

Data collection is a challenge for any organisation, particularly one as large and as diverse as the ADF. Though a considerable amount of material from the database maintained by the Values, Behaviour and Resolution Branch was provided to the Review, it was difficult to extract data easily and obtain a complete 'picture' of the scale of the problem facing the ADF.

These difficulties can be attributed to a number of factors:

- As noted earlier, the Review was provided with quarterly updates prepared by the then Fairness and Resolution Branch for the Chief of the Defence Force for 2010. Quarterly updates prepared by the Fairness and Resolution Branch (now the Values, Behaviour and Resolution Branch) have not, however, been prepared since 2010 and a replacement report is yet to be developed.
- Information provided by the Office of the Judge Advocate General (JAG) confirmed that the statistics recorded by that office do not include information about whether the outcomes of discipline officer scheme charges and summary authority trials relate to sexual misconduct.⁹¹
- Similarly, in relation to the outcomes of Defence Force Magistrate hearings and courts martial proceedings, the Office of the JAG advised that statistics are not collected specifically on the basis of charges relating to sexual misconduct.⁹² Nor are statistics automatically gathered relating to charges or convictions of act of indecency offences.⁹³
- The Office of the Director of Military Prosecutions (ODMP) provides some information about the type of offending reported to that Office in its annual report to the Minister for Defence. For example, in its report for the period of 1 January to 31 December 2009, 'sexual assault' represented 8% of reported offending across the ADF.⁹⁴
- Both the Office of the JAG and the ODMP advised that they do not keep records of criminal charges brought by civilian police or prosecutions that take place in civilian courts.

The Review understands that the ADF personnel database Conduct Reporting and Tracking System, sponsored by the IGADF, includes information about individuals' DFDA and civil convictions. It was told that information about sexual offences and sexual misconduct convictions is recorded but because of database limitations, it is not capable of easy retrieval and historically has not been collated, although it is understood that this is under review.⁹⁵

The Review strongly considers that if information on sexual offences is not collected in a systemic way, it is unlikely that the ADF has an accurate picture of the extent of these matters and of their potential impact on its members.

(g) Termination

Common to all Services are the termination provisions in the *Defence (Personnel Regulations) 2002* for officers and enlisted members.⁹⁶ Further details of the Regulations are contained in Appendix N.2.

Of the three Services, the Army has developed more detailed policy around this issue. Of concern, however, is the fact that civilian criminal convictions do not warrant mandatory consideration of a soldier's retention in the Army. In fact, the implication in the policy is that criminal offences of essentially a non-violent nature (that is, the use of prohibited substances or theft or fraud) are regarded more seriously than offences against the person including sexual abuse.

DI(A) PERS 116-5 *Separation of Regular Army soldiers, Army Reserve soldiers and soldiers on full-time service – policy and procedures* provides policy guidance when considering whether it is in the interests of the Defence Force to retain an enlisted member who has been convicted of 'serious' civil or service offences, or has a history of less serious civil or service offences.⁹⁷ The policy document notes that whilst 'serious civil offences can be difficult to define as civil and criminal courts may take the prospect of adverse administrative action into account when passing sentence',⁹⁸ the finding of guilt or conviction for a sexual offence is specifically noted as one example of a 'possible serious offence'.⁹⁹ The inference that may be drawn from this is that a question remains over whether a sexual offence will amount to a serious offence, rather than automatically being considered serious.

The Review knows of at least one instance where a member was convicted of one count of indecent assault in a civilian court against another member of the ADF. He was sentenced to a term of imprisonment but the whole of the sentence was suspended for 18 months. The offender was retained by the ADF, and continues to serve. The victim in this matter has discharged from the ADF.

The ADF could not advise with certainty that there are no other current serving ADF members who are convicted sexual offenders.

A policy change needs to occur that mandates the review of a member's retention across the Services if convicted of any criminal offence. A specific reference to sexual abuse would highlight the particular seriousness with which Defence views offences of this nature. The terminology would need to be general enough to capture the range of terminology used to describe these offences in the civilian criminal jurisdictions and in the DFDA.

An assessment of the ability of a member who has been convicted of a sexual offence to perform the inherent requirements of their job must be undertaken in order to ensure that the ADF complies with its obligations not to discriminate on the basis of a person's criminal record.¹⁰⁰

It is essential that, when considering whether or not the member is able to perform the inherent requirements of their job, the relevant decision maker has all material relevant to the conviction.

The Review proposes the addition of a requirement in the list of matters that must be considered in all personnel determinations and decisions in the *Defence (Personnel Regulations) 2002* that individuals must be *fit and proper persons for service in the ADF*.

Regulation 87(1) of the *Defence (Personnel Regulations) 2002* should be amended so that the specific reference currently found within the termination grounds for officers is also available for consideration in relation to enlisted members. Importantly, the reference should include that termination may be considered where the member has been convicted of an offence or a service offence and the Chief of the officer's Service has certified that, having regard to the nature and seriousness of the offence, the retention of the member is not in the interests of the ADF.

(h) Minimum period of service and return of service obligations

As referred to in earlier Chapters, all ADF members are expected to serve for a period specified as the Initial Minimum Period of Service (IMPS).¹⁰¹ The IMPS differs across occupations and is designed to ensure that the ADF receives reasonable value from its investment in the recruitment, initial training and development of its personnel.¹⁰² In addition, Service Chiefs have the authority to impose a Return of Service Obligation (ROSO) on members who receive specified training, education, experience or undertake special duties.¹⁰³

ADF policy notes that applications to resign from the ADF from personnel who have not completed their IMPS will not normally be approved unless compassionate or otherwise compelling personal reasons exist.¹⁰⁴ An application to resign citing compelling personal reasons may, in exceptional circumstances, be approved subject to the member agreeing to meet a financial condition, in lieu of serving out the IMPS.¹⁰⁵

Service Chiefs also have the authority to waive a ROSO or to reject the application for separation from the ADF of a member who has not acquitted a ROSO.¹⁰⁶ The conditions that may attach to a member's separation from the ADF depend, however, on whether the application is accepted as having been based on 'compassionate' reasons or 'compelling personal' reasons. An application citing compassionate reasons may be approved and will generally not attract a financial condition.¹⁰⁷ An application citing compelling personal reasons may, in exceptional circumstances, be approved subject to payment of a financial condition.¹⁰⁸

As previously noted, the Review heard from a number of women of their desire to discharge from the ADF due to the trauma they experienced not only as a result of having been sexually assaulted or harassed but also due to a failure to have their complaint appropriately addressed. This has been compounded in a number of cases by the risk of serious financial detriment if a member seeks to separate from the ADF either before their IMPS or ROSO is completed.

The aim of the recommendations made throughout this Report is, of course, for the ADF to find better ways of supporting and retaining members, rather than losing them. Where a member decides, however, that it is in their best interests to leave the organisation in which he or she experienced assault or harassment, that member should not be penalised in the form of a financial condition being imposed if their IMPS or ROSO has not been acquitted.

Nor should the member, when considering whether to apply for discharge, be left uncertain as to whether their reason for discharge will be considered a 'compassionate' reason or a 'compelling personal' reason, with different potential financial consequences. Given the information gathered by the Review, leaving members who have experienced sexual assault or harassment, whether male or female, subject to the uncertainty of these provisions cannot be an outcome that the ADF desires as a first class employer.

The Review recommends that the policies addressing waiver of IMPS and ROSO be amended to provide clarity about these matters and to ensure that a member who has made a decision to discharge because of sexual assault or sexual harassment is able to do so expeditiously and without financial penalty, upon production of supporting evidence of physical, psychological or emotional trauma.

7.5 Proposal for reform

After careful analysis of the data sources available to the Review, an examination of the policies and practices of the ADF in relation to dealing with complaints of unacceptable behaviour and sexual abuse, and after hearing from a diverse range of members, male and female, the Review concludes that current structures and systems have failed some ADF members at a fundamental level. This failure impacts not only on the individuals concerned, but has broader implications for operational effectiveness, team cohesiveness and the attraction and retention of personnel. The ADF must rethink and redesign its approach, place greater emphasis on preventative strategies and provide a more robust and effective complaints system in which all members can have confidence.

In relation to prevention strategies, any suite of measures designed to eradicate sexual misconduct must include rigorous and meaningful prevention and education programs. Certainly, most members receive education on acceptable behaviour and equity and diversity, some also receiving this before they are deployed. Some members felt that this training was satisfactory, though others described it as 'death by PowerPoint'.¹⁰⁹ Equally, whilst many considered that current training was largely grounded in common sense, others felt it was not effective. The *National Standards for the Primary Prevention of Sexual Assault through Education* provides a best practice framework which the ADF should consider in the implementation of preventative measures of sexual assault.¹¹⁰

As the Review found in its *Report into the Treatment of Women at the Australian Defence Force Academy* (the ADFA Report), an effective primary prevention tool for sexual assault and other sexual misconduct is education about gender relations, sexual ethics and healthy and respectful relationships. Any preventative education needs to be meaningful, interactive and resonate with members.

Education about prevention can be effective when accompanied by other strategies, such as the promotion of strong messages about gender equality and the unacceptability of violence against women. The Review reiterates its belief that 'one-off', add-on programs have limited value. Those that are embedded into existing education and support processes, based on the themes that underpin overall organisational values, practice and policy, will have greater benefits.¹¹¹ One senior ADF member told the Review:

I believe that every single person who enters the ADF must receive hard-hitting training on what comprises sexual assault, what do to reduce the incidence of sexual assault, options for reporting sexual assault and their responsibilities to 'protect their mates' as both potential victims and perpetrators.¹¹²

Further, as mentioned above, many incidents of sexual misconduct in the ADF go unreported. Factors that lead to a decision not to make a formal complaint are varied but, in relation to sexual abuse, the following all play a part:

- the trauma of the incident itself, as well as a fear of not being believed
- victimisation and retribution; fear of the negative impact on career progression and promotion
- fear of being disciplined for collateral issues such as drinking, and the impact on personal life, family and career
- 'losing control' of the complaint if it is addressed through normal military channels
- fear of reprisals from peers and supervisors in their everyday working and living context.¹¹³

The Review considered a number of options to provide the ADF and its members with a more effective framework for action. This included the 'restricted reporting' system for sexual assaults specifically used by the US military and coordinated through the US Sexual Assault Prevention Response Office. The Israeli Military also has a restricted reporting regime.

The essence of this approach is to provide victim care for those who have been sexually assaulted, regardless of any law enforcement involvement, investigation or proof of any assault.¹¹⁴ Restricted reporting allows victims to report an incident confidentially and access medical and counselling support without disclosing identities or initiating an investigation. It provides command with de-identified information about rates of sexual assault that may help to effect systemic change. Victims can elect to convert to an 'unrestricted' status at a later stage should they wish to do so. The report would then be investigated through the chain of command. The Review notes that the *Report of the Review into Allegations of Sexual and other Abuse in Defence* has recommended that in Phase 2 of its Review there should be 'further examination of the establishment of a system for permitting the restricted reporting of sexual assaults in Defence with particular regard to the availability of such a system for the receipt of allegations arising from the distant or even middle distant past.'¹¹⁵

It has been acknowledged that a 'restricted' report does not apportion accountability for the alleged act.¹¹⁶ The Inspector General ADF 2011 report recommends that this approach should not be adopted by the ADF because of this lack of accountability, as well as the view that such an approach is inconsistent with the

maintenance and enforcement of Service discipline, potentially allowing sexual assailants to continue to serve undetected.¹¹⁷ Certainly, careful consideration would need to be given to the application of a measure of this nature in the Australian context having particular regard to legal obligations imposed on the ADF, including those relating to vicarious liability under the Sex Discrimination Act.¹¹⁸ Nevertheless, as outlined below, the Review is concerned that to date, the ADF has failed to adopt an approach that appropriately and sensitively focusses on the needs and wishes of a complainant.

The Review was also concerned at the current deficiencies in terms of data collection and strategic use of data in relation to incidents of sexual harassment, sexual misconduct and sexual assault. An accurate picture of the extent of sexually based unacceptable behaviour cannot be gained. This means that offenders cannot be tracked, repeat offenders cannot be identified, outcomes cannot be measured and the level of risk to other ADF members cannot be determined and addressed.

A situation should not endure whereby incidents of sexual harassment, sex discrimination and sexual abuse continue to go unreported and complainants remain without support. Instead, it is incumbent upon any first class employer to take a 'complainant focussed' approach, one which empowers the complainant to make choices and which may aid in the initial stages of recovery. Further, the benefit of more accurate information about rates of sexual assault will significantly aid the ADF's attempts to ensure a safe workplace and appropriately target prevention programs.¹¹⁹

(a) Sexual Misconduct Prevention and Response Office

The Review recommends the establishment of a dedicated 'Sexual Misconduct Prevention and Response Office' ('SEMPRO'). This Office would be headed by a senior officer of at least a one star rank or Senior Executive Service (SES) level, who would report directly to the Chiefs of Services Committee (COSC). The Office would be located in Defence Headquarters and have overall responsibility for coordinating and implementing ADF prevention strategies and responses to complaints by members of sexual harassment, sex discrimination and sexual abuse, thereby creating one central body within the organisation that can accurately collect data on incidents and analyse this in order to develop appropriate responses and prevention strategies.

(i) Prevention and education strategies

Preventing harassment and violence must be the foremost priority of the ADF. This requires changing the culture in the ADF that enables harassment and violence to take place (often with impunity) and that disempowers women and men from making complaints. Through collaboration with expert independent providers, SEMPRO would be responsible for coordinating education and training, including a wide-spread multi-media campaign advertising the ADF's 'zero tolerance' policy, clearly articulating consequences and penalties for sexual harassment, sex discrimination and sexual assault, encouraging bystander action and listing the contact details of SEMPRO for complainants.

Given the particular cultural and formative significance of recruitment and training establishments, SEMPRO, in collaboration with expert independent educators, should provide recruits and trainees with interactive education on:

- respectful and healthy relationships, as well as sexual ethics
- the meaning, inappropriateness and impact of sexist language and sexual harassment
- the meaning of consent
- the appropriate use of technology
- stalking, controlling and threatening behaviours
- the importance of bystander action.¹²⁰

Effectiveness of these education and training efforts should be evaluated every two years with an external evaluator and assessed against key indicators that measure attitudinal and behavioural change.

Training and education should also be provided to all members entering command positions.

A robust, effective and responsive complaints system (as detailed below) will also be a preventative strategy, discouraging sexual harassment, sex discrimination and the commission of sexual abuse and contributing to a shift in culture towards the desired zero tolerance.

(ii) A new approach to complaint handling

Aim and role of the Sexual Misconduct Prevention and Response Office

The aim of SEMPRO would be to provide a holistic response service for complainants. SEMPRO would oversee a centralised, effective, robust and sensitive complaints system to provide more effective redress and support for complainants than is currently the case.

This new approach would be particularly designed to address the significant under-reporting of sexual offences within the ADF. It would also be the single point of data collection, analysis and mapping of all sexual misconduct and abuse matters. Appropriate levels of expertise and resourcing of the Office would need to be a priority for the ADF.

SEMPRO would be positioned as the first point of contact for complainants. The first report of a complainant is recognised as the most critical time for an individual seeking support after experiencing sexual assault and the ADF must ensure that professional and compassionate assistance is available to members so that the complexity and entirety of their needs are met and that further trauma is prevented.¹²¹ Placing SEMPRO in this role would not prevent a member from approaching their commanding officer or chain of command directly if they chose to do so. In those circumstances, the commanding officer would refer the member to SEMPRO but would remain as the point of contact.

SEMPRO should be resourced to provide a 24 hour/seven day a week telephone hotline and online service ('talk, text, type') operated by experienced staff who are skilled in responding to complainants – female and male – of sexual harassment, sex discrimination and sexual assault. The ADF should draw on the examples and experience of organisations that already exist that provide a referral and support service¹²² in order to be accessible and effective.

The services offered to members by SEMPRO would include:

- information about all complaint options (both internal and external to the ADF, as well as confidential (restricted reports)
- assistance and support to navigate the complaints process
- referrals to appropriate counselling and support services in every State and Territory¹²³
- on request, an option to be provided with a support person to liaise with the member's commanding officer or chain of command.

Commanding officers would continue to have the primary responsibility to monitor and address any behaviour that may constitute victimisation of a complainant, or bystander, as a result of making a complaint. SEMPRO should also have a role in providing ongoing support to these members.

Where there is any ancillary behaviour on the part of a complainant that may be subject to disciplinary action, such action should be deferred to a later date, if at all, while the sexual misconduct and sexual offence matters are appropriately addressed.¹²⁴

In making this recommendation the Review also supports complementary single Service initiatives such as SOSF. It considers that complainants should be provided with a range of options suitable to their needs and wishes.

Confidential (restricted) reports

The ADF, through SEMPRO, must investigate as a matter of urgency, mechanisms to allow for confidential (restricted) reporting of sexual harassment, sex discrimination and sexual offence complaints. Given the extent of under-reporting, this would ensure access to information and support to members who are victims of sexual harassment or sexual assault, but who may not have otherwise reported an incident and would not have access to support services.¹²⁵ Experience from other militaries demonstrates that confidential reporting leads to a significant increase in the number of men and women accessing services. A confidential reporting system would also allow for the collection of de-identified data that would not otherwise be available.

Relationship with external organisations

The ADF should harness the expertise of other organisations with experience in providing support and referral services to men and women who have experienced sexual assault and sexual harassment. The ADF should enter into appropriate arrangements with such external service providers if those providers are willing to undergo training in relation to the ADF context. In this way, SEMPRO could offer an alternative avenue for support and advice, particularly if complainants do not wish to engage with the ADF's internal complaints system. The ADF must provide adequate resourcing and assistance to ensure that these organisations have the capacity to provide these services, and that their expertise in sexual harassment and sexual assault matters is enhanced by an understanding of the military.

Outreach service

SEMPRO should be adequately resourced to provide an outreach service to all ADF establishments, including a rolling cycle of visits to each base every two years. This service would provide both relevant training and education and offer members an opportunity to discuss issues of concern with SEMPRO personnel. This service should complement, rather than conflict in any way, the military justice audits conducted on bases by the Inspector-General of the ADF.

7.6 Conclusion

The implementation of measures – such as transparent and robust data systems, a culture where leaders accept enhanced responsibility for unacceptable behaviour occurring in their units, an accessible and rigorous complaints policy framework, and a reporting system that ADF members trust – is critical to creating a culture where sexual misconduct has no place. Taking strong action will demonstrate that the ADF is committed to combatting sexual misconduct and abuse in a manner which provides effective, sensitive support to its members.

No person in any workplace should experience or face the risk of sexual harassment or sexual abuse. First class employers implement strong measures to eradicate such behaviours and the Review is convinced that, at the senior leadership level of the ADF, there is an absolute determination to do just that. The key is to ensure that this commitment is translated into swift and consistent action that is replicated across each of the Services.

- 1 Department of Defence, *Defence Instruction (General) PERS 35-4, 'Management and Reporting of Sexual Offences'*, 22 November 2011 ('DI(G) PERS 35-4') at para 19, defines 'acts of indecency' as including acts that 'have an "indecent" nature and are committed on, or in the presence of, a person. An act of indecency will almost always relate to any unwanted sexual behaviour or touching, committed against a person without their consent. Examples may include touching a person's breast or genitalia, exposing genitalia whilst making lewd or suggestive comments, or masturbating in the presence of another person. As these examples illustrate, the act of indecency need not be committed on a person and can be committed in the person's presence. In some jurisdictions of Australia, there is a separate offence of 'indecent assault'. This is not the situation in the ACT and in this Instruction the offence of 'indecent assault' is included in the category of offences referred to as "acts of indecency".'
- 2 DI(G) PERS 35-4, above, para 20, refers to 'sexual assaults' as 'a range of different forms of abuse used to force sexual acts against a person. This category includes the offence of 'sexual intercourse without consent', which is commonly known as rape. The offence of sexual intercourse without consent (ie rape) occurs when a person does not consent or agree to penetration (to any extent) of the vagina or anus by a penis, or by another part of the body such as a finger, tongue, or other object. This category also includes fellatio or cunnilingus without consent. Failure to withdraw upon becoming aware that a person is not consenting can also amount to sexual intercourse without consent. This category also includes offences involving violence or threatened violence against a person with intent to engage or attempt to engage in sexual intercourse without the consent of that person. There are a number of graduations of this latter type of offence to take into account different degrees of violence.' Definitions of these graduated forms of sexual assault are contained in Annexure A.
- 3 Department of Defence, *Defence Instruction (General) PERS 35-3, 'Management and Reporting of Unacceptable Behaviour'*, 28 June 2009 ('DI(G) PERS 35-3').
- 4 DI(G) PERS 35-4, note 1.
- 5 SQLNDR F James, email to the Review, 12 June 2012.
- 6 Department of Defence, *Defence Annual Report 2010-11*, vol 1, Appendix 5, p 265.
- 7 *Defence Annual Report 2010-11*, above.
- 8 *Defence Annual Report 2010-11*, above.
- 9 DI(G) PERS 35-3, note 3, para 46.
- 10 'Case Count' provided to the Review by SQLNDR F James, 12 June 2012.
- 11 'Case Count', above.
- 12 DI(G) PERS 35-3, note 3, para 46.
- 13 'Case Count', note 10.
- 14 The Review notes that this figure does not appear to be consistent with the figure provided to the CDF in the 2010 quarterly updates prepared by the then Fairness and Resolution Branch in which it was noted that a total of 27 sexual offence complaints were made during the first half of 2010 and 25 sexual offence complaints were made in the second half of the year. DGFR J Diercks to CDF, Minute, *Fairness and Resolution – Quarterly Update, 1 Jan – 31 Mar 2010*, p 3, para 13; DGFR J Diercks to CDF, Minute, *Fairness and Resolution – Quarterly Update, 1 Apr – 30 Jun 2010*, p 2, para 12; DGFR J Diercks to CDF, Minute, *Fairness and Resolution Update, 1 Jul – 31 Dec 2010*, p 2, para 16.
- 15 Inspector General Australian Defence Force, *Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction* (2011), p 29.
- 16 ADFIS, Service Police Central Records Office, *Advice on the number of people still in the ADF who have been convicted of criminal offences*, Report 10/2012 for Broderick Review, 14 May 2012, p 5.
- 17 ADFIS, note 16.
- 18 J McRoberts APM, Commissioner of Police for the NT, Correspondence to Commissioner Broderick, 30 April 2012; S Hodges, Director Strategy & Performance, WA Police, email to the Review, 4 May 2012; Commander APJ Cerritelli, Tasmania Police, Correspondence to Commissioner Broderick, 3 May 2012.
- 19 M Hyde, Commissioner of Police, South Australia Police, Correspondence to Commissioner Broderick, 30 April 2012. Commissioner Hyde advised that the South Australia Police records were searched for arrests and reports where the victim or offender nominated their occupation description as Air Force Personnel, Army Personnel, Navy Personnel, RAAF Personnel or Soldier and that since 2000, there have been a total of 23 reported incidents alleging rape and other sexual offences involving either a victim or suspect or both as a member of the ADF. Of those 23 incidents, 17 involved suspects from the ADF and in 10 of those matters an ADF member was the complainant. Prosecutions resulted in 11 matters and one ADF member was convicted since 2000.
- 20 A Scipione APM, Commissioner of Police, NSW Police Force, Correspondence to Commissioner Broderick, Undated but received 31 May 2012. Commissioner Scipione advised that 'given the inherent limitations of the data, this information provided should not be published in any report that may arise from the Review or otherwise released publicly'; R Quaedyvlieg, Chief Police Officer for the ACT, Correspondence to Commissioner Broderick, 17 May 2012.
- 21 *Treatment of Women in the Australian Defence Force Survey*.
- 22 Focus group 17C.
- 23 Focus group 27A.
- 24 Focus group 39D.
- 25 Focus group 19B.
- 26 Focus group 12B.
- 27 *Horne v Press Clough Joint Venture* (1994) EOC 92-556; *Freestone v Kozma* (1989) EOC 92-249.
- 28 [2007] FMCA 59.
- 29 [2007] FMCA 59, [198].
- 30 Confidential meeting.

- 31 Confidential submission 14.
32 Confidential meeting.
33 *Treatment of Women in the Australian Defence Force Survey*.
34 Focus group 7B.
35 Focus group 7B.
36 Confidential submission 26.
37 Confidential meeting.
38 Confidential submission 7.
39 Confidential submission 1.
40 Confidential meeting.
41 Focus group 33A.
42 Confidential meeting.
43 Confidential meeting.
44 All *Treatment of Women in the Australian Defence Force Survey* figures quoted in this Chapter are taken from the electronic sample. See Appendix B for further examination and discussion.
45 1000 ADF members were surveyed for the ADF component, and this sample was re-weighted by Roy Morgan Research in order to reflect the actual gender and Service representations across the ADF as of 1 June 2012 (minus members under 18 years), provided by Dr J Vaile, Assistant Director of DSPPR.
46 The broader project is the 2012 version of the Australian Human Rights Commission's sexual harassment in the Australian workplace survey. A comprehensive report on sexual harassment in the Australian workforce will be released by the Sex Discrimination Commissioner in the last quarter of 2012.
47 This section deals with prevalence rates of sexual harassment as experienced by the individual. Prevalence regarding a respondents 'awareness of other incidents of sexual harassment' is dealt with separately below.
48 Respondents were initially read a simplified legal definition of sexual harassment (that accords with the definition under the *Sex Discrimination Act* (Cth) 1984), as follows:
"Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which, in the circumstances, a reasonable person, aware of those circumstances, would anticipate the possibility that the person would feel offended, humiliated or intimidated."
Respondents who reported having experienced sexual harassment as per the legal definition in the ADF in the last five years were then read a list of 12 sexual harassment behaviours and asked which, if any, described what had happened to them. Respondents who did *not* report having experienced sexual harassment after being read the definition above were read the same list of behaviours, and asked whether they had experienced any of the behaviours in the ADF workplace in the last five years.
This was to ensure that the experiences of respondents who were unable to identify sexual harassment from the legal definition would still be recorded.
The combination of these results provides an accurate representation of the prevalence of sexual harassment, since anyone who identified at least one behaviour from the list was counted. This combined figure was used as the base to measure and report on the total incidence of sexual harassment in the ADF workplace in the last 5 years.
49 On a scale of one to five, where one was 'not at all' and 5 was 'extremely', the average level of offense for women was 3, and for men it was 2.3; the average level of intimidation for women was 2.5, and for men it was 1.9.
50 The responses to length of behaviours/s by gender were:
 - It was a one off – 37.3% of women, 47.7% of men
 - Less than one month – 19.9% of women, 13.4% of men
 - One to three months – 12.8% of women, 8.7% of men
 - Four to six months – 8.6% of women, 5.6% of men
 - Seven to 12 months – 1% of women, no men.
 - More than one year – 1.6% of women, no men
 - Ongoing (continuous) – 6.7% of women, 5.6% of men
 - Sporadic (comes and goes) – 11.3% of women, 16.8% of men
 - Other/don't know – 0.8% of women, 2.1% of men.
51 Census data from '02_2011 Broderick Review Phase 2_RFI6' provided to the Review by CMDR A Westwood, 13 January 2012.
52 This was highest in the Air Force (47.6%) followed by Army (44.9%) and Navy (43.3%).
53 This figure combines the total number of personnel who were aware of sexual harassment happening to someone else. It includes: (1) those that have experienced sexual harassment and were aware of harassment happening to someone else in the same workplace; (2) and responses from the whole sample to whether they know of sexual harassment happening to someone in the ADF in general.
54 Public submission 26 Heymans.
55 Public submission 26 Heymans.
56 D Lievore, *Non-reporting and Hidden Recording of Sexual Assault: An International Literature Review*, Commonwealth Office of the Status of Women (2003), p 27. At www.aic.gov.au/documents/D/4/6/%7BD4631AC0-2DDC-4729-AD3C-8A69DF33BA65%7D2003-06-review.pdf (viewed 13 June 2012); Australian Human Rights Commission, *Sexual harassment: Serious business – Results of the 2008 Sexual Harassment National Telephone Survey* (2008), p 31. At www.hreoc.gov.au/sexualharassment/serious_business/SHSB_Report2008.pdf (viewed 13 June 2012); Australian Law Reform Commission, *Family*

- Violence – A National Legal Response*, ALRC Report 114 (2010). At www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114 (viewed 13 June 2012).
- 57 Australian Law Reform Commission, above; A Quadara, 'Responding to young people disclosing sexual assault: A resource for schools', *ACSSA Wrap*, No 6 (2008). At www.aifs.gov.au/acssa/pubs/wrap/acssa_wrap6.pdf (viewed 13 June 2012); Lievore, above, p 28.
- 58 *Low v Chief of Navy* [2011] ADFDAT 3, [98] (Tracey, White and Mildren JJ).
- 59 Focus group 34E.
- 60 Focus group 33A.
- 61 Focus group 34E.
- 62 Confidential submission 16.
- 63 Confidential submission 3.
- 64 *Treatment of Women in the Australian Defence Force Survey*.
- 65 Focus group 40A.
- 66 Confidential meeting.
- 67 Focus group 12B.
- 68 Focus group 35B.
- 69 Confidential submission 5.
- 70 Confidential submission 9.
- 71 Focus group 38A.
- 72 Focus group 34E.
- 73 The Inspector General Australian Defence Force 2011 report noted the potential confusion created by the separate policies for dealing with complaints of sexual offences and complaints of unacceptable behaviour with the attendant risk that commanders and managers may attempt to resolve disciplinary or criminal matters informally: Inspector General Australian Defence Force, note 15, p 27. Reference was also made to the conclusion reached by the Honourable Roger Gyles in Part 1 of the HMAS Success Commission of Inquiry Report that some incidents that warranted a disciplinary response and investigation had been managed as an equity and diversity issue.
- 74 See for example, G Rumble, M McKean and D Pearce, *Report of the Review of Allegations of Sexual and Other Abuse in Defence* (2011) pp 140-144.
- 75 DI(G) PERS 35-3, note 3, Annexure E.
- 76 In relation to complaints alleging that a sexual offence has occurred, *Defence Instruction (General) PERS 35-4, 'Management and Reporting of Sexual Offences'* notes that 'mediation and other forms of alternative dispute resolution **are not to be used** as a means of resolving sexual offence complaints' (emphasis added) and that '[a]ny measures aimed at resolution must include steps to ensure there is no repeat of the behaviour or victimisation of either party. This may require consideration of disciplinary or formal administrative action. Commanders and managers must also undertake regular follow-up action to prevent recurrence and to ensure that victimisation does not occur': DI(G) PERS 35-4, note 1, para 78.
- 77 Focus group 19B.
- 78 Confidential submission 5.
- 79 Confidential submission 8.
- 80 Focus group 19B.
- 81 Focus group 7B.
- 82 By way of self-resolution, supported self-resolution, apology, alternative dispute resolution, counselling of the respondent or a behavioural development program for individual or group needs: DI(G) PERS 35-3, note 3, Annexure E.
- 83 Further details of the record keeping requirements for complaints of unacceptable behaviour are contained in Appendix N.2 – Tracking Repeat Offenders.
- 84 Meeting with Values, Behaviours and Resolution Branch (formerly Fairness and Resolution Branch).
- 85 A formal outcome involves disciplinary action or administrative sanction against a member: DI(G) PERS 35-3, note 3, Annexure E.
- 86 DI(G) PERS 35-3, note 3, Annexure F, para 8.
- 87 Meeting with Values, Behaviours and Resolution Branch.
- 88 Meeting with Values, Behaviours and Resolution Branch.
- 89 Focus group 23A.
- 90 Focus group 34E.
- 91 Response from Chief Judge Advocate (BRIG Ian Westwood), Office of Judge Advocate General provided to the Review by CMDR A Westwood, 3 April 2012.
- 92 Response from Chief Judge Advocate (BRIG Ian Westwood), Office of Judge Advocate General above.
- 93 Response from Chief Judge Advocate (BRIG Ian Westwood), Office of Judge Advocate General above.
- 94 Department of Defence, Director of Military Prosecutions, Report for the period 1 January to 31 December 2009, Annexure E.
- 95 CMDR A Westwood, email to the Review, 17 July 2012.
- 96 *Defence (Personnel) Regulations 2002*, Chapter 9, Part 2, Divisions 1 and 2.
- 97 Department of Defence, *Defence Instruction (Army) PERS 116-5 'Separation of Regular Army soldiers, Army Reserve soldiers and soldiers on full-time service – policy and procedures'*, para 87-91 ('DI(A) PERS 116-5').
- 98 DI(A) PERS 116-5', above, para 88.
- 99 DI(A) PERS 116-5', above, para 88.

- 100 See *Australian Human Rights Commission Act 1986* (Cth), Part II – Division 4 (ss 30, 31 and 32); *Australian Human Rights Commission Regulations 1989* (Cth), reg 4. See also Australian Human Rights Commission, *On the record: Guidelines for the prevention of discrimination in employment on the basis of criminal record*. At http://www.hreoc.gov.au/human_rights/criminalrecord/on_the_record/contents.html (viewed 28 June 2012).
- 101 Department of Defence, *Defence Instruction (General) PERS 33-5 'Arrangements for service in the Australian Defence Force'*, para 18 ('DI(G) PERS 33-5').
- 102 DI(G) PERS 33-5, above, para 18.
- 103 Department of Defence, *Defence Instruction (General) PERS 33-2 'Return of Service Obligation'*, para 2 ('DI(G) PERS 33-2').
- 104 DI(G) PERS 33-5, note 101, para 18.
- 105 DI(G) PERS 33-5, note 101, para 18.
- 106 DI(G) PERS 33-2, note 103, para 2. Service Chiefs may delegate these powers to the Directors-General of the relevant Service personnel management agency (para 2).
- 107 DI(G) PERS 33-2, note 103, para 21.
- 108 DI(G) PERS 33-2, note 103, para 21. An offer of employment is stated as not generally considered a compelling reason for approving an application to separate from the ADF. An application for any other reason may be approved subject to the payment of a financial condition.
- 109 Focus group 38C.
- 110 M Carmody, S Evans, C Krogh, M Flood, M Heenan and G Ovenden, *Framing best practice: National Standards for the primary prevention of sexual assault through education, National Sexual Assault Prevention Education Project for NASASV* (2009), pp 197-8.
- 111 Australian Human Rights Commission, *Review into the Treatment of Women at the Australian Defence Force Academy* (2011), p 96.
- 112 Confidential submission 25
- 113 Confidential submission 25.
- 114 A Ballard, *Report on Sexual Assault Prevention and Intervention in a Military Environment* (2009), p 21. At www.churchilltrust.com.au/site_media/fellows/2009_Ballard_Angela.pdf (viewed 31 May 2012).
- 115 Rumble et al, note 74, p l.
- 116 Ballard, note 114, p 22.
- 117 Inspector General Australian Defence Force, note 15, p 30.
- 118 *Sex Discrimination Act 1984* (Cth), s 106. Note also section 105 of the SDA that provides that 'a person who causes, instructs, induces, aids or permits another person to do an act that is unlawful under Division 1 or 2 of Part II shall, for the purposes of this Act, be taken also to have done the act'.
- 119 Ballard, note 114, p 22.
- 120 See P McDonald, M Flood and the Australian Human Rights Commission, *Encourage, Support, Act: Bystander Approaches to Sexual Harassment in the Workplace*, AHRC (2012).
- 121 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021* (2009), p 79. At <http://apo.org.au/research/time-action-national-councils-plan-australia-reduce-violence-against-women-and-their-childr> (viewed 10 July 2012).
- 122 Further information available at National Sexual Assault, Domestic Violence Counselling Service, *1800RESPECT Online*, <http://www.1800respect.org.au/1800RESPECT-online.html> (viewed 27 June 2012).
- 123 See, for example, information provided at National Sexual Assault, Domestic Violence Counselling Service, *1800RESPECT Online*, above (at Appendix N.6).
- 124 This is also an approach adopted by the US military: US Department of Defense, *Instruction Number 6495.02, 'Sexual Assault Prevention and Response Procedures'*, 23 June 2006, updated 13 November 2008. At <http://www.dtic.mil/whs/directives/correspdf/649502p.pdf> (viewed 10 July 2012).
- 125 Under-reporting of sexual assault is widely acknowledged in the literature. See for example, the Australian Centre for the Study of Sexual Assault, *International Violence Against Women Survey: the Australian Component*, and other Victimisation surveys available on the website. At <http://www.aifs.gov.au/acssa/statistics> (viewed 28 June 2012).



