

Terms of Reference for the Inquiry into Military Sexual Violence

The aim of the Inquiry is to consider reforms underway in the Australian Defence Force (ADF) in response to Recommendations 14–24 of the Royal Commission into Defence and Veteran Suicide (RCDVS) regarding military sexual misconduct. In doing so, the Inquiry will identify gaps and opportunities to make recommendations to improve workplace protections for victim-survivors of military sexual violence and ensure perpetrators are held to account, while advancing a victim-survivor centric approach and applying the principles of natural justice.

The Inquiry will assist to promote progress on ADF reforms that have taken place since the Royal Commission and recommend additional systemic improvements as required, rather than considering historic cases individually.

The Inquiry will include the following areas.

1. Prevention and early intervention

Assess the effectiveness of current prevention and early intervention of sexual violence in the ADF.

This should:

- a. have regard to work being undertaken by the Australian Human Rights Commission in relation to other recommendations of the RCDVS, including its prevalence research in response to Recommendation 14.
- b. look at ADF organisational culture, including how cultural norms, values and practices may act as drivers of military sexual violence and how they may be leveraged for effective early intervention and prevention
- c. support improving the ADF's understanding of perpetrators' behaviour including drivers, typical patterns of behaviour and why some groups are targeted at higher rates
- d. identify how the ADF may play a role in influencing the behaviours and beliefs of ADF members to shift attitudes and behaviours and encourage an appropriate standard of behaviour
- e. consider ADF education and training on military sexual violence to encourage understanding of appropriate and inappropriate behaviour, increase bystander action and support leaders to intervene early, particularly in higher risk areas such as recruitment, training, and while on deployment
- f. propose how preventative initiatives can be better designed, strengthened, monitored and evaluated using expertise from evidence-based approaches
- g. consider whether adequate data is collected within the ADF to support effective prevention efforts.

2. Reporting

Inquire into the barriers that prevent victim-survivors of military sexual violence from making a report, agreeing to reported matters being investigated, and/or pressing charges, and the extent to which ADF policies address these barriers and support reporting. This should include:

- a. cultural barriers such as secrecy, obedience, loyalty, command hierarchy, and the role of alcohol and drugs
- b. social barriers such as fear of not being believed, reputational damage, damage to career (for both victim-survivor and perpetrator), threats, coercion, loss of community, financial implications and stigma around gender identity and sexuality
- c. structural and systemic barriers such as access to effective, safe and trauma-informed reporting processes; command discretion and decision-making authority; length, complexity, and outcome of justice and reporting processes; use of non-disclosure agreements; and lack of access to effective therapeutic supports
- d. any other barriers.

Assess the effectiveness of anonymous reporting options including awareness, accessibility, uptake and impact compared to alternative approaches, including but not limited to the approaches taken in:

- a. Australian states and territories, such as the Sexual Assault Reporting Option in New South Wales and the Alternative Reporting Options in Queensland
- b. the United States and other Five Eyes partners, for example the US Special Victims' Legal Service.

3. Supports

Assess the effectiveness, availability, accessibility, and adequacy of supports within the ADF for people impacted by military sexual violence, including whilst on deployment. This assessment should include whether:

- a. supports provided are trauma-informed, victim-survivor-centred and responsive to diverse needs including by being culturally safe and accessible
- b. victim-survivors have access to supports that enable meaningful participation in reporting and justice processes, as well as healing and recovery, regardless of whether a report is made
- c. victim-survivors make use of these supports, and any barriers to their use
- d. families of victim-survivors and perpetrators have access to adequate information, guidance and therapeutic supports
- e. adequate wellbeing and therapeutic supports are provided to bystanders and affected peers, including those impacted by moral injury
- f. Commanding Officers (CO) have access to adequate wellbeing and therapeutic supports, particularly in consideration of their role in responding to disclosures and the support they can provide
- g. perpetrators have adequate wellbeing and therapeutic support.

4. Responses

Assess current leadership approaches to responding to disclosures and reports of sexual violence, with particular attention to the role of the CO and ADF chain of command. This assessment should include:

- a. how approaches can be trauma-informed, victim-survivor-centred, and respond to a diversity of needs by being accessible and culturally safe
- b. the responsibility of the CO to individually manage ADF responses to sexual violence and whether independent, external expertise may support this responsibility
- c. oversight and accountability for CO decision-making to encourage consistency and prevent discretionary decision-making across the organisation
- d. the collection, aggregation, and analysis of relevant data, including but not limited to:
 - i. whether COs referred victim-survivors to available support services
 - ii. whether administrative or disciplinary action was taken
 - iii. number of matters that were not progressed and why
- e. consideration of what additional data should be captured and analysed to improve responses to sexual violence reports
- f. whether victim-survivors
 - i. are provided adequate options and supports to ensure their safety without negatively impacting their career, regardless of whether they proceed with formal reporting and justice processes
 - ii. have access to adequate support to return to work
- g. whether responses minimise the impact on victim-survivors' families
- h. consideration of leadership training and capability regarding:
 - i. understanding what sexual violence is
 - ii. responding to victim-survivors' disclosures
 - iii. understanding of and communication of the range of options and supports available to victim-survivors to ensure their safety, healing, and recovery, as well as perpetrator accountability
 - iv. appropriately managing reports in a trauma-informed, victim survivor-centred, culturally safe and inclusive way
- i. how perpetrator accountability is managed by command
 - i. during justice processes
 - ii. when an action is yet to be taken
 - iii. when action sits outside the justice system
- j. actions available to command when a victim-survivor decides to not to report, or withdraws a report
- k. what other options could be available for victim-survivors to ensure their safety and support healing and recovery, such as restorative justice processes.

5. Justice processes

Examine how justice approaches to military sexual violence matters, within the military justice system and the civilian criminal, administrative and civil systems, can be more effective for victim-survivors. The examination should consider how effectiveness could be defined beyond speed, fairness, deterrence and outcome¹ by including an assessment that considers sexual violence as a unique form of harm which requires a response that considers the needs of a diversity of victim-survivors, as well as ensuring a trauma-informed approach to delivering justice.

This examination should have regard to:

- a. alignment with ALRC report, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (January 2025)
- b. specialised trauma-informed sexual violence legal services pilots in the ACT and WA
- c. any proposed changes to the *Defence Force Discipline Act 1982*, *Defence Act 1903* or the *Defence Regulation 2016* that relate to sexual violence
- d. effectiveness and availability of legal supports available to victim-survivors, their families, witnesses, complainants and perpetrators
- e. the impact of justice processes on victim-survivors including career impacts
- f. how systems and processes can be better designed to:
 - i. be person-centred to support victim-survivors with diverse needs, by acknowledging their individualised needs and required outcomes
 - ii. support victim-survivors with diverse needs, for example by listening to victim-survivor voices
- g. the interaction between the civilian justice system and the military justice system
- h. differing consequences for sexual violence within the civilian and military justice systems and how these impact on direction of prosecution
- i. a comparison of how different jurisdictions deal with sexual violence offences and how jurisdiction impacts chosen avenues for prosecution, outcomes, and management of complaints
- j. the impact of differing jurisdictions on Commonwealth obligations to workplace protections, including but not limited to the *Sex Discrimination Act 1984*, the *Fair Work Act 2009*, the *Work Health and Safety Act 2011*, relevant state and territory health and safety legislation, and the *Safety, Rehabilitation and Compensation Act 1988*
- k. the role of command in the military justice system, inconsistent decision-making; and misuse and abuse of military justice processes
- l. an examination of the Joint Military Police Unit's investigative powers and capability to conduct sexual offence investigations
- m. the referral of matters to civilian police
- n. any barriers faced by civilian police investigating sexual offences on ADF bases

¹ Royal Commission into Defence and Veteran Suicide (RCDVS) [Final Report Volume 3: Military sexual violence, unacceptable behaviour and military justice](#), RCDVS, 9 September 2024, p.103.

- o. the collection, aggregation, and analysis of relevant data including but not limited to:
 - i. recidivism rates
 - ii. decisions not to prosecute, or where complaints and investigations are discontinued
 - iii. conviction rates
 - iv. sentencing outcomes
 - v. penalties and sanctions imposed on perpetrators

6. Sexual Violence Terminology

Assess the different terminology and definitions used by the military justice system (including administrative systems) and the civilian justice system for matters relating to sexual violence, assault, and misconduct. This should include the impact of these disparities on understanding and action taken within and outside of Defence.

Inquiry leadership

The Defence and Veteran Services Commission (DVSC) will conduct the Inquiry. The Government will appoint a Deputy Commissioner with relevant experience and expertise in military sexual violence to lead the Inquiry.

The Inquiry will establish an advisory group comprising of current and ex-serving ADF members (permanent and reserves) with lived experience of military sexual violence. This group will operate for the duration of the Inquiry. They will provide advice on the processes and operation of the Inquiry and be consulted throughout the development of recommendations related to systemic reform, to ensure these are adequately informed by lived experience.