

SUBMISSION TO AUSTRALIAN HUMAN RIGHTS COMMISSION  
NATIONAL INQUIRY INTO SEXUAL HARASSMENT IN AUSTRALIAN WORKPLACES

Dr Gary Rumble  
27 February 2019

## Introduction

1. I was the leader of the *Review of allegations of sexual and other abuse in Defence* in 2011-2012. The parts of our reports – incorrectly referred to as the DLA Piper report – which have been made public are at

<http://www.defence.gov.au/pathwaytochange/Master/docs/DefenceDLAPiperReview-FullReport.pdf>

2. The most serious kind of workplace sexual harassment is a sexual assault on fellow workers. Sexual assault by members of the Australian Defence Force (ADF) on other members of the ADF is particularly destructive because throughout their years of service members of the ADF must be confident that they can trust other ADF members with their lives.
3. In this submission I draw attention to the failure of the ADF to introduce genuine restricted reporting for victims of sexual assault in the ADF based on the model implemented by the US Military:
  - as was recommended by Churchill Fellow Chief Petty Officer Angela Ballard in 2010 (See Appendix 72 to our Report);
  - as was recommended by the Report from the Review which I led in 2011;
  - as was recommended – to be brought in as a matter of urgency - by the then Sex Discrimination Commissioner, Elizabeth Broderick, in August 2012;
  - as was decided by the then Government in November 2012.
4. According to answers which Defence gave in Senate Estimates in November 2017 (see attached) in the five years since 2013 when Defence first introduced a weakened version of restricted reporting:
  - less than 10 victims of an alleged sexual assault reported to SeMPRO an incident which had occurred within the previous 72 hours
  - less than 10 victims reported to SeMPRO within seven days of the incident
  - support co-ordinators had not been advising “clients” on preserving forensic evidence let alone organising the collection and preservation of forensic evidence.
5. The Supplement to the Defence Annual Report for 2017-2018 indicates that SeMPRO may now be able to provide information to clients about civilian options for gathering forensic evidence. But it seems there is still no option for an ADF victim of

assault who wishes to make a restricted report to have forensic evidence gathered and preserved on their base/ship etc.

6. The lack of take up of Defence's version of restricted reporting is a silent disaster for the ADF, for the nation, for the young women and men who are the victims of assault and for their families.
7. On the basis of information set out below, I estimate that each year hundreds of victims of sexual assault in the ADF do not make any report of the assault. Whenever sexual assault in the ADF goes unreported:
  - The victim does not get specialised counselling support and assistance in the period shortly after the incident which is so crucial to mitigation of impacts and to long-term recovery.
  - The victim's ability to function effectively in the ADF may be affected with ongoing risks for themselves and other members of the ADF.
  - The victim may choose to leave, or may be discharged from, the ADF.
  - Command is not alerted to environmental risks.
  - Perpetrators are not called to account.
  - Other members of the ADF are encouraged to think that they can get away with similar conduct.
8. Victims who suffer long term impacts including PTSD may be further prejudiced when they try to access benefits and support by the lack of a contemporaneous records to support their claim that they were a victim of abuse.
9. I urge the Commission to support the call on the Government for action on the matters which I set out in my 2016 letter (copy attached) to then Minister for Defence, Senator Payne to:
  - confirm the decision made by the then Government in November 2012 to bring in restricted reporting based on the US Military's model
  - work with the ADF leadership to get the message out in the ADF that there is a commitment to genuine restricted reporting
  - provide sufficient resourcing for Defence to have appropriately trained personnel on call 24/7 on bases, large ships and on all major exercises and deployments – as has been done at HMAS CERBERUS in the past but:
    - under SeMPRO supervision; and
    - with authority to take restricted reports; and
    - with capability to gather, or to arrange collection of forensic evidence so that victims have a genuine option later to convert a restricted report to an open report.
  - give priority to introducing genuine restricted reporting at all training establishments – because they are high risk ADF environments – but move to

bring in genuine restricted reporting on all bases, large ships and on all major exercises and deployments.

- direct Defence to consult with the Australian Human Rights Commission on a review of DI(G) PERS 35-4 Annex A's limitations on when reports can be taken on a restricted basis to confirm that the limitations are appropriate. (Copy of DI(G) PERS 35-4 attached).

10. I add to that list from 2016 a call for the Government to ensure Defence puts in place procedures to ensure that victims are informed of, and make a choice between, restricted and unrestricted reporting.

## Background

11. Many reports on the ADF which we surveyed in our Review had reported that the factors in general society which discourage victims from reporting sexual assault are exacerbated in Defence environments.

12. Those findings were consistent with many of the stories which victims told us. Indeed, many victims had not told their stories to anyone – not even their families - until they told them to our Review.

13. Then Sex Discrimination Commissioner Elizabeth Broderick reached similar conclusions about under-reporting in her 2012 report on the *Review of Treatment of Women in the Australian Defence Force*.

14. Since the experts agree that the rate of reporting of sexual assault in general society is less than 20% the implications of an even lower rate of reporting in Defence environments are deeply concerning.

15. The ADF has been attempting to effect cultural changes which will reduce the incidence of sexual assault by ADF members on other ADF members. However, there is no doubt that sexual assaults by members of the ADF on other members of the ADF are still occurring.

16. According to the Sexual Misconduct and Prevention Office (SeMPRO) Supplement to Defence's Annual Report 2017-2018 the numbers of sexual offences formally reported to Joint Military Police in 2017-2018 were as follows (page 12):

<b>AGGRAVATED SEXUAL ASSAULT</b>	<b>103</b>
Occurred less than 12 months ago	77
Occurred 12 months or more ago	26
<b>NON-AGGRAVATED SEXUAL ASSAULT</b>	<b>67</b>
Occurred less than 12 months ago	56
Occurred 12 months or more ago	11
<b>NON-ASSAULTIVE SEXUAL OFFENCES</b>	<b>32</b>
Occurred less than 12 months ago	32
Occurred 12 months or more ago	0

17. For the reasons set out above, it is likely that less than 20% of sexual assaults in the ADF are being formally reported.
18. This suggests that another 300 aggravated sexual assaults and 220 non-aggravated sexual assaults during 2017-2018 went unreported.
19. The action most likely to increase the rate of reporting of sexual assault in the ADF is to introduce genuine restricted reporting based on the model implemented by the US Military as has been previously recommended and indeed decided by Government.
20. The US Military's model includes:
  - The right of a victim to choose between making a restricted (confidential) report or an unrestricted report
  - The right of a victim who has made a restricted report to later lift the restriction so that there can be investigation and possible action against the perpetrator
  - The presence of trained personnel including sexual assault nurses on bases, ships and during deployments to receive restricted reports and to provide face to face support for victims.
  - The option for victims making a restricted report to have forensic evidence collected and preserved to enable the victim to later make the report an unrestricted report with a realistic possibility of action against the perpetrator.
  - Procedures to ensure that victims are offered the choice between making an unrestricted report and a restricted report.
21. When Churchill Fellow CPO Ballard first presented her report on restricted reporting it was rejected by the ADF. As I detailed in the materials which I provided to the Minister for Defence in 2016, there continued to be dogged resistance to implementing a genuine version of restricted reporting *even after* the Government decided in November 2012 that it would be implemented.
22. Some of those in the ADF with whom I have discussed the issue have been in denial about the reality of under-reporting and have insisted that victims must make unrestricted reports so that Command can take action.
23. This ignores the reality that if the victims' only option is to make a formal unrestricted complaint, the overwhelming majority of victims will not report at all and Command will get no information about current risks.

24. There were echoes of the “victim has a duty to report” mindset in an interview which Elizabeth Broderick gave in the Sydney Morning Herald Good Weekend Magazine on 9 February 2019:

*When I speak to less high-profile women and ask them to speak up they say –*

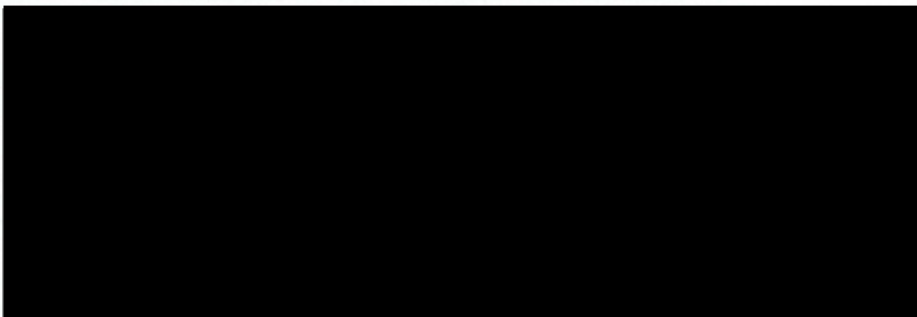
*‘Liz not only would I be the victim of the incident, I would be the victim of not bringing it to the attention of management’.*

25. I have made submissions to the Senate Foreign Affairs, Defence and Trade Committee in 2014 and to the then Minister for Defence, Senator Payne, in 2016 expressing my concerns about the “Claytons” versions of restricted reporting which Defence has implemented and about inadequate resourcing of SeMPRO.

26. I attach a copy of my 2016 submission to the Minister and to the response which I got from the Department.

27. There have been some improvements but the current ADF version run by the Sexual Misconduct Prevention and Response Office (SeMPRO) is still inadequate in the following respects:

- SeMPRO does not have representatives throughout the ADF – Accordingly SeMPRO cannot offer face to face contact to provide support and to take a restricted report – contact is limited to email, telephone or SMS.
- SeMPRO’s website has been offline undergoing “construction” since the end of last year with no known date for when it will be back online. Accordingly, victims do not have readily available online information about their options.
- SeMPRO has finally gathered information which it can provide to victims about civilian services which can gather forensic evidence but SeMPRO does not offer on base/ship etc collection of forensic evidence.



28 February 2019

Attachment to Rumble Sub

**Question on notice no. 47**

**Portfolio question number: 59**

**2017-18 Supplementary budget estimates**

**Foreign Affairs, Defence and Trade Committee, Defence Portfolio**

**Senator Skye Kakoschke-Moore:** asked the Department of Defence on 25 October 2017—

Since SeMPRO commenced operations, for each year including this year to date:

a. On how many occasions has SeMPRO accepted a restricted disclosure of an alleged sexual offence:

(i) within 72 hours of the incident; and

(ii) within 7 days of the incident?

b. On how many occasions has SeMPRO assisted or advised a victim of an alleged sexual assault on preservation of forensic evidence?

**Answer —**

a (i) Since 2013, less than 10 victim services clients have made restricted disclosures and advised their support coordinator that the incident took place within the previous 72 hours.

a (ii) Since 2013, less than 10 victim services clients have made restricted disclosures and advised their support coordinator that the incident took place within the previous seven days. These are different clients to those at answer a (i).

b. Less than 10 clients made contact with the Sexual Misconduct Prevention and Response Office within 72 hours of being victimised in a sexual misconduct incident in 2016–17. Defence personnel have increasingly used support coordinator services for recent sexual misconduct incidents but they do not often use those services as a crisis response. Clients more commonly use the Sexual Misconduct Prevention and Response Office within the first month after an incident than within the first day or two. The pattern of initial client contact reflects the telephone-based support and case management services that support coordinators provide.

Not all of those clients were the victims of penetrative sexual offences. Support coordinators have provided support and advice to clients after a range of incidents. Around 55 per cent of victim services clients in 2016-17 sought support after a

penetrative sexual offence; around 20 per cent sought help after an act of indecency; and about 25 per cent sought assistance after sexual harassment. Support coordinators do not advise clients on preserving forensic evidence but they do provide each client with advice and information relevant to their individual circumstances.

Attachment to Rumble Sub

8 April 2016

Senator the Hon Marise Payne  
Minister for Defence

cc The Hon Bill Shorten  
Leader of the Opposition

cc The Hon Michael McCormack MP  
Assistant Minister for Defence

cc Senator Nick Xenophon

cc Senator Alex Gallacher Chair  
Senate Standing Committee on  
Foreign Affairs, Defence and Trade

Dear Minister

**Restricted reporting: time to give victims of sexual assault in the ADF a genuine option to make a confidential report**

As you are aware, I was the leader of the *Review of allegations of sexual and other abuse in Defence* in 2011-2012.<sup>1</sup>

In the brief meeting which Senator Xenophon and I had with you on 27 November 2015 I mentioned that restricted reporting was an issue of continuing concern.

It is clear from information provided by Defence during Supplementary Estimates since our November meeting that the Claytons version of restricted reporting which Defence is offering victims of sexual assault in the ADF is not being taken up by victims in the crucial first stages after an assault occurs.

This is a silent disaster for victims and for the ADF:

Taking into account the number of reported sexual assaults in the ADF and the view of experts about the level of under-reporting I estimate that at least 100 and quite possibly as many 200 victims of sexual assault in the ADF are going without prompt support each year; and

In relation to those 100 to 200 unreported sexual assaults each year - Command gets no information at all about environmental risks contributing to sexual assaults occurring let alone any information about suspected perpetrators in the ADF.

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<sup>1</sup> The Report from the Review is commonly referred to as the DLA Piper Report. However, the Report set out only opinions and findings of myself and the other two Review leaders - Ms Melanie McKean and - until his withdrawal on account of ill-health in February 2012 - Professor Dennis Pearce. It did not report views of DLA Piper. I am writing this letter solely on my own behalf.



I write now to urge you and your Ministerial colleagues to:

- Confirm the decision made by the then Government in November 2012 to bring in restricted reporting based on the US Military's model and work with the ADF leadership to get the message out in the ADF that there is a commitment to genuine restricted reporting;
- Provide sufficient resourcing for Defence to have appropriately trained personnel on call 24/7 – as has been done at HMAS CERBERUS in the past but:
  - under SeMPRO supervision; and
  - with authority to take restricted reports; and
  - with capability to gather, or to arrange collection of forensic evidence<sup>2</sup> so that victims have a genuine option later to convert a restricted report to an open report.
- Give priority to introducing genuine restricted reporting at all training establishments – because they are high risk ADF environments – but move to bring in genuine restricted reporting on all bases, large ships and on all major exercises and deployments.
- Direct Defence to consult with the Australian Human Rights Commission on a review of DI(G) PERS 35-4 Annex A's limitations on when reports can be taken on a restricted basis to confirm that the limitations are appropriate.

In 2012 when the Sex Discrimination Commissioner Elizabeth Broderick recommended that restricted reporting be brought in, she recommended that it be brought in as a matter of urgency.

There is still a need for urgency.

I am aware that an election may be called in the near future. Accordingly I am copying in the Leader of the Opposition in the hope that there can be bipartisan agreement to move on these issues regardless of when the election is called.

I attach a Summary of the issues and some fuller Background notes.

I can meet with you or your staff or with Defence to discuss any of these issues if that would be of assistance.

Yours sincerely

Dr Gary A Rumble

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<sup>2</sup> It has previously been argued that the ADF cannot collect forensic evidence but it is my understanding that the ADF has 'rape kits' for gathering forensic evidence on ships and during deployments.

## ATTACHMENT TO 8 APRIL 2016 LETTER OF DR GARY RUMBLE TO MINISTER PAYNE

### SUMMARY

1. In her August 2012 Report *Review of Treatment of Women in the Australian Defence Force* the then Sex Discrimination Commissioner Elizabeth Broderick stated (p 272):

*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.*

2. Unreported sexual assault in the ADF does not make headlines and does not clamour for attention from Government or from Defence. But there is no doubt that sexual assault of members of the ADF by other members of the ADF is still occurring.<sup>1</sup>
3. There is also no doubt that there is still under-reporting of these assaults.<sup>2</sup>
4. Taking into account:
  - the number of *reported* sexual assaults in the ADF;<sup>3</sup> and
  - the view of experts about the level of *under-reporting*<sup>4</sup>

I estimate that at least 100 hundred and very possibly as many as 200 hundred sexual assaults by ADF members on other ADF members are going unreported each year.

5. Whenever sexual assault in the ADF goes unreported:
  - The victim does not get specialised support and assistance.
  - The victim's ability to function effectively in the ADF may be affected with ongoing risks for themselves and other members of the ADF.
  - The victim may choose to leave, or may be discharged from, the ADF
  - Command is not alerted to environmental risks.

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<sup>1</sup> See paragraphs 37 and 38.

<sup>2</sup> See paragraphs 40-51.

<sup>3</sup> See paragraphs 37 and 38.

<sup>4</sup> See paragraphs 48-51.

- Perpetrators are not called to account.
  - Other members of the ADF are encouraged to think that they can get away with similar conduct.
6. The action most likely to increase the rate of reporting of sexual assault in the ADF is to introduce genuine restricted reporting based on the model implemented by the US Military:
    - as was recommended by Churchill Fellow Angela Ballard in 2010;
    - as was recommended by the Report from the Review which I led in 2011;
    - as was recommended – to be brought in *as a matter of urgency* - by the Sex Discrimination Commissioner, Elizabeth Broderick, in August 2012;
    - as was decided by the then Government in November 2012.
  7. In July 2013 Defence introduced a version of restricted reporting through the newly established Sexual Misconduct Prevention and Response Office (SeMPRO).
  8. In October 2014, Defence informed the Senate Foreign Affairs, Defence and Trade Committee that in 2013-2014, the first year of SeMPRO's operation of Defence's version of restricted reporting:
    - Not a single victim of sexual assault in the ADF had contacted SeMPRO within 72 hours of a sexual assault occurring; and
    - SeMPRO had not assisted a single victim of sexual assault with collection of forensic evidence.
  9. I repeat – in the first year of SeMPRO operation, *not one* victim had contacted SeMPRO within 72 hours of a sexual assault occurring – and *not one* victim had been advised by SeMPRO on safeguarding forensic evidence.
  10. This was a complete failure of Defence's version of restricted reporting to reach victims in the crucial first stages after a sexual assault.
  11. Defence has shown no enthusiasm for restricted reporting.
  12. From 2013 onwards when the first signs emerged that Defence was not inclined to bring in genuine restricted reporting, I have made extensive submissions about my concerns in correspondence with previous Ministers for Defence and in submissions to the Senate Foreign Affairs, Defence and Trade Committee.
  13. There have been some improvements in statements on SeMPRO's website about when restricted reporting is available and the relevant Defence Instruction was amended twice in August 2014 while the Senate FADT Committee hearings on *Processes to Support Victims of Abuse* were under way.

14. Until it was amended for the second time in August 2014 while the Senate FADT Committee inquiry was under way, the relevant DI(G) *expressly* prevented SeMPRO from ever accepting a restricted report for sexual assault.<sup>5</sup>
15. That DI(G) – signed off jointly by the Secretary and the Chief of the Defence Force – had effectively rejected the Government’s 2012 decision to bring in restricted reporting for sexual assaults.
16. A further amendment of the DI(G) in August 2014 made an important improvement.<sup>6</sup>
17. It may be that the fact that I had drawn attention to these issues contributed to those changes occurring. However, there was nothing to indicate that my submissions to give victims of sexual assault a genuine option to make restricted reports were being heard by Ministers or Defence.
18. I was inclined to give up. However, these issues are fundamental to the welfare of current and future ADF personnel. Furthermore, since I met with you in November last year, information provided by Defence in Supplementary Estimates confirms that Defence’s version of restricted reporting is still not giving sexual assault victims in the ADF assistance in the crucial first period after assault.
19. According to information provided by Defence in Supplementary Estimates: - in 2014-2015, the second year of operation of Defence’s version of restricted reporting through the Sexual Misconduct Prevention and Response Office (SeMPRO):
  - ‘fewer than five’ victims had contacted SeMPRO within 72 hours of a sexual assault occurring; and
  - SeMPRO had still not assisted a single victim of sexual assault with collection of forensic evidence.
20. ‘Fewer than five’ for 2014-2014 *might* be better than zero in the first year of SeMPRO operations. But even if the number was four, this is not good enough. This is a continuing silent disaster for victims and for the ADF.
21. In its October 2014 Report on *Processes to support victims of abuse in Defence* the Senate Foreign Affairs, Defence and Trade Committee recommended (recommendation 3):

*That the Australian Government provide additional resources to SeMPRO to facilitate further outreach activities and personal support to victims of abuse in Defence.*
22. The Government’s June 2015 response to this recommendation was:

*SeMPRO is one of a range of responses to managing sexual misconduct in Defence. Defence strives to achieve a holistic approach*

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<sup>5</sup> See paragraphs 83-87.

<sup>6</sup> See paragraphs 88-91.

*to delivering support in response to sexual misconduct, which may include health professionals, the ADF Investigative Service, chaplains, legal officers or psychologists, as well as SeMPRO support staff.*

23. That is not a sufficient answer: - Churchill Fellow Ballard, the Review which I led and Commissioner Broderick were all well aware that Defence has 'health professionals, the ADF Investigative Service, chaplains, legal officers or psychologists' when we made our respective recommendations for the introduction of genuine restricted reporting.
24. I set out below extensive extracts from Churchill Fellow Angela Ballard's report recommending restricted reporting based on the model adopted by the US Military.
25. Angela Ballard made her recommendation for restricted reporting on the basis of many years as Chief Petty Officer in the Navy working with victims of sexual assault and on the basis of her study of these issues with the Military in other countries.
26. I also set out below extensive extracts from Sex Discrimination Commissioner Broderick's report. Commissioner Broderick's recommendation was based on her team's meetings with victims and thorough consideration of the issues.
27. The recommendation from the Review which I led was based on our consideration of the statements of many victims of sexual assault in the ADF and our survey of many previous reports – including Angela Ballard's report.
28. Commissioner Broderick was well aware of those options when she recommended the establishment of SeMPRO.
29. It is clear that – based on our familiarity with the experience of many victims of sexual abuse in the ADF from our different backgrounds and Reviews and our consideration of the problem of under-reporting - none of us thought that those other options were sufficient.
30. The Government's June 2015 response to this FADT recommendation also included:

*SeMPRO was established in July 2013 and resourced at that time to support its identified Initial Operating Capability. These levels may or may not remain appropriate for SeMPRO's ongoing activities, and this will need to be considered with reference to the uptake of SeMPRO's services to date and its planned future activities.*

31. The references in the Government's responses to SeMPRO being resourced to support its 'identified Initial Operating Capability' and considering ongoing resourcing for SeMPRO by reference to 'uptake of SeMPRO's services' looks like code for setting up SeMPRO and restricted reporting to fail.
32. I have set out above the statement from Commissioner Broderick referring to the importance of:

*.... a 'complainant focussed' approach, one which empowers the complainant to make choices ...*

33. The fact that in the first two years of SeMPRO operation, 'fewer than five' victims of sexual assault in the ADF have taken up Defence's version of restricted reporting in the first 72 hours after an assault means the Defence is not offering victims a meaningful choice.
34. Defence is not empowering victims.
35. So I am trying one more time: - I write now to urge you and your Ministerial colleagues to:
  - confirm the decision made by the then Government in November 2012 to bring in restricted reporting based on the US Military's model;
  - provide sufficient resourcing for Defence to be able to have SeMPRO supervised and appropriately trained personnel with authority to take restricted reports – in the first instance at all training establishments – and then on all bases, large ships and on all major exercises and deployments – and to have them on call 24/7 for face to face contact and for collection of forensic evidence where the victim agrees to that occurring.

## **BACKGROUND**

### **Sexual assaults by members of the ADF on other members of the ADF are still occurring**

36. Defence has done a great deal to address sexual abuse issues over the last few years. However, no-one suggests that Defence has eliminated sexual assault by ADF members on other ADF members.
37. On the contrary, Vice-Admiral Griggs told the Senate Foreign Affairs, Defence and Trade Committee in 2014 that zero incidence of sexual assault in the ADF was not achievable.
38. Furthermore, information provided by Defence to the Senate FADT Committee in recent Supplementary Estimates (Question Reference number 45) indicate that significant numbers of sexual assaults are being reported *without restriction*. In 2014:
  - 37 'sexual assaults'- were reported (without restriction) to ADFIS
  - 19 'sexual offence' incidents – sexual assaults and acts of indecency - were reported to the Values, Behaviours and Resolutions Branch.
39. It is possible that some sexual assaults were reported directly to State or Territory police without notification to ADFIS and are not reflected in these figures.

### **There is still under-reporting of sexual assault in the ADF**

40. In the Review which I led, we carried out an extensive review of previous reports related to abuse in Defence.
41. Based on that review of previous reports and our consideration of the specific allegations before our Review, in the October 2011 Report we identified

under-reporting as a major systemic issue for Defence.

42. In her August 2012 *Review of Treatment of Women in the Australian Defence Force - Phase 2 Report* Commissioner Broderick also identified under-reporting as a major issue:

*[7.3] ... 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.*

*...*

*[7.5] ... 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.*

43. The IGADF regularly runs surveys which indicate there is in the ADF a high level of awareness of procedures for reporting unacceptable conduct and of confidence of how such reports will be managed.
44. However, it is one thing to be aware of reporting procedures and to have confidence in those procedures as an abstract proposition before becoming the victim of an assault, and it is altogether another thing to choose to go into those procedures after being assaulted.
45. In her August 2012 Report Commissioner Broderick noted that even though ADF members were aware of policies and complaint handling procedures, victims of abuse were still making decisions 'not to engage with the formal complaint process, despite the seriousness of their allegations of harassment and assault' (7.3).
46. It would be quite astonishing if Defence – from a likely rate of reporting of sexual assault of less than 20% and with a high turnover of the junior personnel who are most vulnerable to abuse – could have found an instant cure for under-reporting.
47. Defence does not dispute that there is still under-reporting of abuse in Defence.

#### **The rate of under-reporting of sexual assault in the ADF**

48. Experts on sexual assault are of the view that in the general community less than 20% of sexual assaults are reported and that male victims of sexual

assault are even less likely to report than are female victims.<sup>7</sup>

49. In the Review which I led we surveyed and summarised many previous reports relating to abuse in Defence.
50. Those reports identified that the general societal factors which discourage victims of sexual assault from reporting the assault have been compounded by particular aspects of Defence environments and culture which further discourage reporting of abuse.<sup>8</sup>
51. If we take those two propositions:
  - the rate of reporting of sexual assault in the general community is less than 20%; and
  - there have been factors in Defence environments and culture which have further discouraged reporting

then it is likely that *more than 80% of sexual assaults in the ADF go unreported.*

#### **How many sexual assaults in the ADF are not reported?**

52. It is not possible to estimate with precision how many sexual assaults in the ADF go unreported.
53. We discussed the unreliability of surveys on these issues at length in Volume 1 of our Report. We appended commentary on survey unreliability in this context from a relevant expert.
54. The unreliability of surveys in this area is demonstrated by the experience with a survey administered at ADFA in 1998.
  - The survey recorded only one person as having indicated that they had been the victim of sexual assault at ADFA that year;
  - However, after Bronwen Grey had interviewed all the female cadets at ADFA that year she concluded that around 30% had been the victim of rape or similarly serious sexual assault during their time at ADFA;
  - Lt Col Northwood put together around 26 briefs involving 24 suspected perpetrators for possible prosecution for sexual assault for incidents over the three year period up to and including 1998. He was aware of another 13 incidents where the victims did not wish to give statements.
  - I asked one of the women who had been raped at ADFA in the 1990s why the survey result was so low. Her answer was that it was well understood that ADFA Cadets should not do anything – including tick boxes in surveys - which would reflect adversely on ADFA.

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<sup>7</sup> Para 2.7.1 of Volume 1 of our Report.

<sup>8</sup> See Chapter 2 – especially 2.7.1 and Chapters 6 and 7 of Volume 1 of our Report.



55. If we take:

- Defence's figure of 37 sexual assaults *reported* without restriction to ADFIS in 2014; and
- a likely rate of under-reporting of more than 80%;

then an estimate of at least 100 and possibly as many as 200 *unreported* sexual assaults in calendar year 2014 seems realistic.

56. Given that it is possible that there were other sexual assaults in the ADF which might have been reported direct to State or Territory police and not brought to the attention of ADFIS it is possible that the number of sexual assaults in 2014 not reported in the ADF was even higher than 200.

#### **Is the number of unreported sexual assaults in the ADF significant?**

57. Whether or not the number is 100 or 200 it seems to me that is a very significant number from total ADF personnel of around 57,000.

58. That number is particularly concerning once it is taken into account that – as indicated by the report from the Review which I led and from the reports of the Defence Abuse Response Taskforce - it is females - who make up around 20% of the ADF - and the junior ranks who are more likely to be victims of abuse including sexual assault.

#### **Why does under-reporting matter?**

59. For the reasons set out above:

- it is likely that sexual assaults have been occurring in the ADF and will continue to occur in the ADF; and
- the vast majority of incidents of sexual assaults in the ADF are not reported.

60. And of course, when incidents of sexual assault are not reported:

- victims are not supported and assisted with recovery;
- the lives of victims and their families are damaged;
- the victim's ability to perform may be affected and they may leave the ADF
- Command gets no information about risk factors or situations;
- suspected perpetrators are not identified as such let alone called to account; and
- other members of the ADF are encouraged to think that they can get away with sexual assault.

61. I do not know how rates of sexual assault in the ADF compare with the incidence of sexual assault in the general community or at tertiary institutions.

Whether or not that comparison is 'favourable', there are two aspects of the ADF environment which exacerbate the harm done by sexual assault in ADF:

- First: – members of the ADF must be able to trust one another with their lives *throughout their entire service*. If a member of the ADF has sexually assaulted another member of their service then that surely undermines the ability of victim and perpetrator to trust one another and thus threatens operational effectiveness.
- Second: - unreported sexual assault is likely to adversely affect retention rates. Once a victim has decided not to report, then often the only way for the victim to avoid the perpetrator(s) – or others like him (them) – is to leave the ADF. This is not likely to show up as the reason for leaving the ADF in exit interviews. If the victim has decided to leave the ADF and not to report the assault then the victim is most unlikely to give sexual assault as reason when leaving the ADF – doing so would likely delay disentanglement from the ADF.

62. Defence has committed to Zero Tolerance of sexual abuse. To be meaningful that Zero Tolerance must extend to the vast majority of sexual abuse which is not being reported at all.

#### **Churchill Fellow CPO Ballard's 2010 recommendation for restricted reporting**

63. In October 2011 Volume 1 of the Report from the Review which I led included a recommendation for restricted reporting.
64. We drew heavily on, and were persuaded by, the 2010 paper by Angela Ballard – now a retired Chief Petty Officer – reporting on her Churchill Fellowship study of *Sexual Assault, Prevention and Intervention in a Military Environment*.<sup>9</sup>
65. Then CPO Ballard has had extensive experience in working with victims of sexual assault in the Navy. With the support of her Churchill Fellowship CPO Ballard spent 10 weeks with experts and groups working on sexual assault issues in the Canadian, American and British militaries.
66. Here are some of the key extracts from CPO Ballard's paper explaining how the US model works (emphasis added):

#### **8.4 Reporting. ....**

*The US Military has acknowledged that sexual assault is one of the most underreported crimes in America. They are conscious of the additional barriers to reporting in a military culture and have implemented a 'Restricted and Unrestricted' option for reporting. The essence of this is to provide victim care for those who have been sexually assaulted regardless of any law enforcement involvement or investigation or proof of any assault. These reporting options are outlined in more detail in the following paragraphs.*

**8.5 Restricted Reporting.** *Sexual Assault Response Coordinators (SARC) and Victim Advocates (VA) in the US military have been given*

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<sup>9</sup> [www.churchilltrust.com.au/site-media/fellows/2009\\_Ballard\\_Angela.pdf](http://www.churchilltrust.com.au/site-media/fellows/2009_Ballard_Angela.pdf).  
See Appendix 72 to Volume 1 of our Report.

*privilege via policy, not law, to accept a 'Restricted' (confidential) report. This allows the victim to receive medical and counselling support. Whilst the SARC, the controlling body on behalf of the higher level command, monitors all aspects of the case management, including victim advocacy, the facilitation of support, medical and mental health services, in a 'Restricted' report can provide Command non-identifying information to meet any governance requirements. The benefit is that the Command can put into action any environmental risk reduction practices that may be required. 'Restricted' reporting does however have limitations in that if Command is unaware of the identity of the victim, any protective provisions for the victim cannot be implemented and no investigation can take place which prevents anyone being held accountable for the sexual assault. A challenge that will always remain with a 'Restricted' report is apportioning accountability for the 'act'. Nevertheless this option for reporting is in line with a 'victim centric' program, empowering the victim to make choices again and which aids in the initial steps of recovery.*

*In the US, they have found that whilst some members choose to report under the 'Restricted' provision, there a number of these who convert to 'Unrestricted' after the initial phase of disclosure and after becoming confident with the VA/SARC and the SAPR program. For a victim the loss of trust can be as traumatic as a loss of choice, both of which are taken away when they have been sexually assaulted. There is value in Commands and Policing agencies being less visible to the victim via the 'Restricted' reporting option: whilst the SARC ensures priority victim care, there is a likelihood that as the victim becomes more empowered and confident in being supported, they will change to 'Unrestricted' reporting and the organisation can regain 'control' of the situation.*

67. I particularly draw attention to the US Military's deliberate decision to offer restricted reporting even though that means:

*... if Command is unaware of the identity of the victim, any protective provisions for the victim cannot be implemented and no investigation can take place*

68. As CPO Ballard explained – the Americans understand the reality that sexual assault is under-reported. Recognising that reality, the US Military offers restricted reporting so that:

- Victims get assistance.
- Even with a restricted report, Command can be given non-identifying information so that Command can put into action 'any environmental risk reduction practices that may be required'.
- Many members who choose to report under the 'Restricted' provisions, later convert to 'Unrestricted' 'after the initial phase of disclosure and after becoming confident'.

69. CPO Ballard concluded her paper with recommendations which included:

**Recommendation Three:**

*That a 'Restricted' and 'Unrestricted' option for disclosure should be provided to ADF victims, allowing them to access medical and mental health services without law enforcement involvement. This will provide Commands with environmental knowledge to ensure future risk reduction measures could be put in place.*

**Commissioner Broderick's August 2012 recommendation for restricted reporting**

70. Sex Discrimination Commissioner Broderick in August 2012 in her *Review of Treatment of Women in the Australian Defence Force - Phase 2 Report* also recommended restricted reporting.

**Recommendation 19:**

*As a matter of urgency, the ADF should investigate mechanisms to allow members to make confidential (restricted) reports of sexual harassment, sex discrimination and sexual abuse complaints through SEMPRO.*

71. Furthermore, Commissioner Broderick set out and dealt with arguments against restricted reporting which had been advanced by the IGADF but which have been resurrected to justify Defence's decision to introduce a Clayton's version of restricted reporting. I set out at length the following important extracts from Commissioner Broderick's 2012 report (footnotes omitted):

**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.*

...

[After referring to the problems with under-reporting]

*... 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. 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.*

*It has been acknowledged that a 'restricted' report does not apportion accountability for the alleged act. 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. 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. 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.*

**(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.

...

#### **(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.

...

##### **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.

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.

### **The Government decision in November 2012**

72. In November 2012 the then Government announced that it had accepted the recommendations for establishment of SeMPRO and for restricted reporting. It was noted that both the Report from Review which I led and Commissioner Broderick's Phase 2 Report had recommended restricted reporting.
73. SeMPRO commenced operations on 1 July 2013.

### **Commissioner Broderick's 2014 Audit has not endorsed Defence's version of restricted reporting**

74. In May 2014 Commissioner Broderick's report on the AHRC Audit of Defence's progress complimented Defence on having introduced restricted reporting.
75. However, that aspect of the Audit Report relied on Defence's own assurance to the AHRC that Defence had introduced restricted reporting.
76. When that Audit Report was completed, the AHRC did not have available to it the information that in its first full year of operation – 2013-2014 – SeMPRO did not receive a single report of sexual assault within 72 hours of the incident.

### **SeMPRO's version of restricted reporting**

77. The version of restricted reporting run by SeMPRO since July 2013 has been limited to a telephone number for victims to call. There is no SeMPRO presence on bases and ships or during exercises or deployments.
78. I had noticed that there were statements on the SeMPRO website which seemed to mean that SeMPRO would ordinarily not be able to take a report of a recent sexual assault on a confidential basis.
79. I also noticed that there was no information on the website about gathering forensic evidence.

### **The FADT Committee 2014 inquiry into *Processes to assist victims of abuse in Defence***

80. I made written and oral submissions in this inquiry criticising what I called the Claytons version of restricted reporting introduced by Defence.
81. My submissions addressed the aspects of statements on the SeMPRO website which seemed to prevent the possibility of a restricted report for a recent sexual assault and the apparent failure to provide for collection of forensic evidence.
82. I also addressed the problem of SeMPRO being limited to a telephone number (Hansard 26 September 2014):

*I think it is significant that SeMPRO is a telephone number and not an on-the-ground presence, as is the case, as I understand it, in the US Army. Obviously, there needs to be a very high level of trust and confidence involved for someone who has recently been sexually assaulted to contact anyone. Without a physical presence at the main training establishments and perhaps in operational settings, without the physical representation of SeMPRO there, the prospects of ever*

*building that confidence and then of collecting fresh forensic evidence to enable action should the victim decide they do want some process to happen—I just think that is unrealistic. There is a written promise that, if they ever get a call, they will try to figure out what to do about it in the period. When I rang last year and said, 'Why is there no reference to forensic evidence,' the very helpful lady said, 'Because there's no chance of a prosecution.' So they had already given up at that point. As I said, there will not be confidence for rape victims without there being someone they can talk to, preferably face-to-face, and someone they know and trust already.*

*...  
I think Angela Ballard would be the best person to talk to about this, having worked at the front line in Cerberus as the one to deal with the victims shortly after and to find practical, on-the-ground solutions for minimising risk and for helping people. So, no, I do not hold myself out as saying who that kind of person would be. As I say, ask Angela Ballard.*

83. After the first day of hearing on 13 August 2014, Defence provided some written material to the Committee including DI(G) PERS 35-4 *Reporting and management of sexual misconduct* up to and including AMDT 5.
84. AMDT 5 was signed on 19 August 2014 – after the first day of the Committee hearing. I do not know what amendment was made by AMDT 5 and I do not know what was the form of DI(G) PERS 35-4 before AMDT 5. However, as DI(G) PERS 35-4 stood after AMDT 5 it included in Annex A the following (emphasis added):

***Non-acceptance of restricted disclosure***

*9. In some situations, SeMPRO may not be able to accept a restricted disclosure due to the circumstances of the incident and Defence's obligations. Generally, it is not appropriate for SeMPRO to accept a restricted disclosure if:*

- a. you are younger than 18 years of age*
- b. there is evidence of serious or imminent threat to the life or health of you or others*
- c. the incident involves serious or aggravated sexual offences*
- d. the alleged offender appears to be a repeat offender and Defence is required to take reasonable steps to prevent similar conduct occurring.*
- e. the incident is already known, eg to the commanders/ADFIS, civilian police, or the incident is otherwise in the public domain, including social media*
- f. it is required to be disclosed by law such as a court order.*

85. Paragraph 9.c's provision that restricted reporting was 'generally' not available in case of serious or aggravated sexual offences' amounted to a rejection of the Government's November 2012 decision to bring in restricted reporting for



sexual abuse.

86. Paragraph 9.d also significantly weakened restricted reporting because it could mean that victims of sexual assault would be denied the opportunity to make a restricted report of a recent sexual assault if there was an indication that the alleged offender might be a serial offender.
87. Both 9.c and 9.d ignored the reality that there is under-reporting of sexual assault in the ADF and that the likely result of these restrictions would be that no report would be made at all – the victim would get no assistance – Command would get no information – there would be no protection of forensic evidence – and no chance of a victim later converting a restricted report to an open report.
88. On 29 August 2014, the Secretary of Defence and the CDF signed a further amendment - AMDT 6 of DI(G) PERS 35-4.
89. As far as I can tell the only amendment which AMDT 6 made was to delete paragraphs 9.c and 9.d from Annex A – with consequential renumbering of the following two paragraphs. As far as I can tell, there has not been any further amendment of DI(G) PERS 35-4 since AMDT 6.
90. The FADT Committee had another day of hearing on 26 September 2014. There is nothing on the Committee's website for this inquiry<sup>10</sup> to indicate that Defence informed the Committee that DI(G) PERS 35-4 had been amended by AMDT 6.
91. There is a case to be made that even Annex A para 9.b is self-defeating because it may mean that no report is made at all and a victim has to deal with a continuing threat situation without any assistance or advice. Even if a report is taken on a restricted report basis it is still open to those taking the report to inform Command of risk situations which need a response – to the extent that can be done without disclosing identities. Accordingly it is arguable that 9.b should also be deleted.
92. However, there is no doubt that the current version of DI(G) PERS 35-4 – with the hold paras c. and d. deleted - is much better than DI(G) PERS 35-4 as it stood before AMDT 6.

#### **The recommendation of the FADT Committee in 2014**

93. In its October 2014 Report on *Processes to support victims of abuse in Defence* the Senate Foreign Affairs, Defence and Trade Committee recommended (recommendation 3):

*That the Australian Government provide additional resources to SeMPRO to facilitate further outreach activities and personal support to victims of abuse in Defence.*

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<sup>10</sup> For reasons which are not readily apparent, this inquiry which was conducted while the Defence Abuse Response Taskforce work was under way and before the DART had delivered two major reports is now entitled on the Committee website an inquiry into *Government Response to the Defence Abuse Response Taskforce*.

94. The Government's June 2015 response to this recommendation included:

*SeMPRO is one of a range of responses to managing sexual misconduct in Defence. Defence strives to achieve a holistic approach to delivering support in response to sexual misconduct, which may include health professionals, the ADF Investigative Service, chaplains, legal officers or psychologists, as well as SeMPRO support staff.*

95. Churchill Fellow Ballard, the Review which I led and Commissioner Broderick were all well aware that Defence has 'health professionals, the ADF Investigative Service, chaplains, legal officers or psychologists' when we made our respective recommendations for the introduction of genuine restricted reporting. Commissioner Broderick was well aware of those options when she recommended the establishment of SeMPRO.
96. It is clear that – based on our knowledge of the accounts of many victims of sexual abuse in the ADF and our consideration of the problem of under-reporting - none of us thought that those other options were sufficient.

97. The Government's June 2015 response to this recommendation also included:

*SeMPRO was established in July 2013 and resourced at that time to support its identified Initial Operating Capability. These levels may or may not remain appropriate for SeMPRO's ongoing activities, and this will need to be considered with reference to the uptake of SeMPRO's services to date and its planned future activities.*

98. The references in the Government's responses to SEMPRO being resourced to support its 'identified Initial Operating Capability' and considering ongoing resourcing for SeMPRO by reference to 'uptake of SeMPRO's services' look like signs SeMPRO and restricted reporting are being set up to fail.

**Defence's version of restricted reporting is not being taken up by victims of sexual assault in Defence**

99. In 2014 during the Senate Standing Committee on Foreign Affairs, Defence and Trade inquiry into *Processes to Support Victims of Abuse in Defence*, Defence informed the Committee that in the first year of operation of SeMPRO (2013-2014):
- Not a single victim of sexual assault had contacted SeMPRO within the first 72 hours of an incident; and
  - As a consequence, SeMPRO had not advised or assisted a single victim of sexual assault on safeguarding of forensic evidence.
100. Since Senator Xenophon and I met with Minister Payne in November last year, Defence has stated in Supplementary Estimates that in SeMPRO's second year of operation (2014-2015):
- 'Fewer than five' victims of sexual assault in Defence contacted SeMPRO within the first 72 hours of the incident; and

- SeMPRO had still not assisted a single victim with collection of forensic evidence.
101. This confirms that the Claytons version of restricted reporting which Defence has introduced is not reaching victims of sexual assault in the ADF in the crucial early stages shortly after an incident.
  102. In 2014 the officer in charge of SeMPRO informed the FADT Committee that he regarded SeMPRO's first year of operation as an 'unqualified success'.
  103. As noted above, in that year SeMPRO had not assisted a single victim of sexual assault within 72 hours of the incident and had not assisted with collection of forensic evidence on a single occasion. That was failure not success.
  104. In a recent letter dated 7 March 2016 [REDACTED] in Defence, told me that the continuing failure of significant numbers of victims of sexual assault to contact SeMPRO within the first 72 hours after an assault and the failure of SeMPRO to assist a single victim with collection of forensic evidence should be seen as a manifestation of SeMPRO's focus on victim choice:

*SeMPRO is a victim focussed organisation and the nature of the response in each instance is necessarily, and appropriately, determined by the victim.*

105. It is grotesque for Defence to characterise the failure of SeMPRO to reach victims within the crucial early stages after an assault and SeMPRO's failure to assist a single victim with collection of forensic evidence as a victory for victim choice.
106. Victims are not 'empowered' unless they are offered a meaningful choice.
107. If victims of sexual assault are not choosing the version of restricted reporting which Defence is offering, that means that this version of restricted reporting is not a meaningful option.

#### **Recommended action**

108. First, it seems to me that there needs to be strong and unambiguous Government confirmation of the substance and intent of the November 2012 decision to bring in restricted reporting.
109. The IGADF and ADFIS were opposed to the introduction of restricted reporting. Commissioner Broderick conclusively answered those concerns in her August 2012 report – see above.
110. There has not been any great enthusiasm in Defence for restricted reporting: -
  - Even though Commissioner Broderick had recommended in August 2012 the introduction of restricted reporting as a matter of urgency, no great urgency has been shown in Defence. Restricted reporting was not introduced until July 2013;

- It was clear from DI(G) PERS 35-4 as it stood after AMDT 5 as late as 19 August 2014 that there were some in Defence who were still fundamentally opposed to introducing genuine restricted reporting.
- The ADF officers supervising SeMPRO have not seen it as a matter of concern that in two years of operation:
  - 'fewer than five' victims of sexual assault have made prompt reports to SeMPRO; and

SeMPRO had not assisted a single victim with collection of forensic evidence.

111. Government needs to give Defence a clear message that Government does want restricted reporting to work and the ADF Leadership need to pass that message on.
112. It may be that the new Sex Discrimination Commissioner could engage with ADF leadership to address the issue of getting Defence to support restricted reporting.
113. Second, the ADF has limited restricted reporting to reporting to SeMPRO by *telephone*. There are no SeMPRO supervised personnel on bases, ships or exercises with authority and training to take restricted reports and to assist victims face to face.
114. This is to be contrasted with the previous support provided at HMAS CERBERUS – in an effective program in which then CPO Ballard had a role – with 24/7 on-call face to face assistance for victims of sexual assault.
115. In my view Government should provide resources to enable SeMPRO to provide genuine restricted reporting 'on the ground' – as happens in the US Military. I set this out in my oral submission to the FADT Committee on 26 September 2014):

*I think it is significant that SeMPRO is a telephone number and not an on-the-ground presence, as is the case, as I understand it, in the US Army. Obviously, there needs to be a very high level of trust and confidence involved for someone who has recently been sexually assaulted to contact anyone.*

*Without a physical presence at the main training establishments and perhaps in operational settings - without the physical representation of SeMPRO there - the prospects of ever building that confidence and then of collecting fresh forensic evidence to enable action should the victim decide they do want some process to happen—I just think that is unrealistic.*

*There is a written promise that, if they ever get a call, they will try to figure out what to do about it ... When I rang last year and said, 'Why is there no reference to forensic evidence,' the very helpful lady said, 'Because there's no chance of a prosecution.' So they had already given up at that point. As I said, there will not be confidence for rape victims without there being someone they can talk to, preferably face-to-face, and someone they know and trust already.*

...  
*I think Angela Ballard would be the best person to talk to about this, having worked at the front line in Cerberus as the one to deal with the victims shortly after and to find practical, on-the-ground solutions for minimising risk and for helping people. So, no, I do not hold myself out as saying who that kind of person would be. As I say, ask Angela Ballard.*

116. Third – I mentioned above the argument that perhaps Annex A para 9.b of DI(G) PERS 35-4 should be deleted. I recommend that there be a review of all the limitations in Annex A para 9 to make sure that they are appropriate and are not unnecessarily closing off restricted reporting in situations where – without restricted reporting – there might not be any reporting at all.
117. This review could be carried out with assistance from the new Sex Discrimination Commissioner.

Dr Gary A Rumble

Attachment to Rumble Submission



**Australian Government**  
**Department of Defence**  
Defence People Group

DEPUTY SECRETARY  
RI-1-C001  
Russell Offices  
CANBERRA ACT 2600

DEPSEC DP/OUT/2016/097

Dear Dr Rumble

Thank you for your letter of 8 April 2016 to the Minister for Defence regarding the Defence Restricted Reporting model which is provided for Australian Defence Force personnel who are victims of sexual misconduct. I am responding on behalf of the Minister.

Defence offers ADF victims of sexual misconduct the option of making a restricted disclosure which is a confidential mechanism enabling victims, who do not want to report to their chain of command, the Australian Defence Force Investigative Service or civilian police, to access support and information.

These ADF victims of sexual misconduct are encouraged to access support from the professionals they are most comfortable with, which includes (but is not limited to) the Defence Sexual Misconduct Prevention and Response Office (SeMPRO) Support Coordinators, Defence psychologists and social workers, medical personnel, chaplains and support services external to Defence. This support is based on trauma informed care principles which advocate choice, empowerment, trust, safety and collaboration.



SeMPRO Support Coordinators are trained mental health professionals (social workers and psychologists) with experience in responding to trauma and sexual assault. They are also familiar with the Defence systems, guidelines and policies which inform their work and are applicable to their clients. Additionally, SeMPRO Support Coordinators also provide advice and support to professionals supporting victims of sexual misconduct.

Defence acknowledges that there are caveats on accepting restricted disclosures which align with the limits of confidentiality available to mental health professionals, in line with trauma informed care principles and mental health professional practice requirements. However, if a report of sexual misconduct cannot be accepted as a restricted disclosure, the chain of command does not necessarily need to be informed. If a SeMPRO Support Coordinator assessed that a caller was in imminent risk of self harm, for example, appropriate support would be sought via medical personnel. This does not mean that chain of command would be notified. By utilising medical personnel for the medical and mental health support, the matter could be addressed as a medical-in-confidence matter complying with the request by the victim for command not to be informed of the reason (ie sexual misconduct).

Defence acknowledges that there is a low rate of contact from victims of sexual assault within 72 hours, which is also reflected in the broader civilian community, and that there are many barriers to reporting sexual assault. SeMPRO continues to work with the Australian Defence Force Investigative Service, command and the broader Defence population to educate about, and overcome, the barriers to reporting and to develop a Defence environment in which reporting of sexual misconduct is encouraged, supported and actioned to ensure a safer working environment for all.

I would like to take the opportunity to thank you for detailing your concerns and I trust my response clarifies for you the approach taken by Defence.

Yours sincerely

  
  
Deputy Secretary  
Defence People  
*30* May 2016