

Recommendation 25: Draft Terms of Reference for an Inquiry into Military Sexual Violence

Background

The Royal Commission into Defence and Veteran Suicide (Royal Commission) recognised that the historic and current experiences of victim-survivors of all forms of sexual violence in the Australian Defence Force (ADF) is horrifying, and has an incalculable impact on both serving and ex-serving members, particularly women. The Royal Commission advised that there remain systemic issues regarding military sexual violence that require additional examination.

The Australian Government agreed to commission an independent inquiry into military sexual violence in the ADF. The Government response also acknowledged that sexual misconduct and unacceptable behaviours have no place in Defence and that the rates of sexual violence being reported in the ADF are completely unacceptable. Military sexual violence is defined as any unwanted sexual activity perpetrated against service members by a fellow service member or members¹. All lived experience testimony and submissions to the Royal Commission will be considered, in addition to the significant legal and policy reforms adopted by the ADF subsequently.

These Terms of Reference are being developed in consultation with victim-survivors of sexual violence in the ADF (serving and ex-serving). Consultation is being undertaken by the Australian Human Rights Commission. The inquiry acknowledges the additional impacts of military sexual violence on serving and ex-serving First Nations, LGBTIQ+ and culturally and linguistically diverse members.

Objectives of the Inquiry

The Australian Government is conducting an external, independent, expert inquiry into military sexual violence in the ADF.

The aim of the inquiry is to consider reforms underway in the ADF in response to Recommendations 14 – 24 of the Royal Commission regarding military sexual misconduct and identify gaps and opportunities so it can make recommendations to improve workplace protections for victim-survivors of military sexual violence and ensure perpetrators are held to account, while preserving a victim-survivors centric approach and applying the principles of natural justice.

The inquiry is focused on progressing ADF reforms that have taken place since the Royal Commission and recommending additional systemic improvements required rather than considering historic cases individually.

Inquiry Leadership

The Defence and Veteran Services Commission (DVSC) will conduct the inquiry into military sexual violence. DVSC will appoint an Assistant Commissioner with relevant experience to lead the inquiry.

¹ Professor Megan MacKenzie, Simons Chair in International Law and Human Society in the School of International Studies, Simon Fraser University, Canada, pg 8, Volume 3, Royal Commission into Defence and Veteran Suicide: Final Report.

Terms of Reference

The inquiry into military sexual violence will have regard to the ADF reforms underway in response to Recommendations 14–24 of the Royal Commission regarding military sexual misconduct.

The inquiry will consider these reforms and report on additional and specific recommendations to improve ADF responses to military sexual violence and misconduct, including:

1. Effective prevention and early intervention of sexual violence in the ADF.
2. The effectiveness of anonymous reporting options including awareness, uptake and impact compared to alternative approaches (including but not limited to the approach taken in the United States and other Five Eyes partners. For example, the US Special Victims' Legal Service).
3. A comparison of the effectiveness of the military justice system with the civilian justice system, including as relevant, in receiving, investigating and adjudicating on sexual and related offences. In relation to victim-survivors, this should include:
 - a. impact on own career
 - b. an examination of legal and wellbeing supports available for victim-survivors, witnesses, complainants
 - c. how victim-survivor feedback can be better incorporated to improve processes and make them more trauma informed.

In relation to perpetrators, this should include:

- d. an examination of the joint Military Police Unit's investigative powers and capability to conduct sexual offence investigations
 - e. the referral of matters to civilian police
 - f. any barriers faced by civilian police investigating sexual offences on ADF bases
 - g. recidivism rates
 - h. decisions not to prosecute
 - i. conviction rates
 - j. sentencing outcomes
 - k. penalties and sanctions imposed
 - l. an examination of legal and other support available to perpetrators.
4. The underlying reasons for the reduction in actions (including making a report, agreeing to reported matters being investigated, and pressing charges) taken by victim-survivors of sexual violence and misconduct in the ADF, including the:
 - a. organisational culture towards victim-survivors
 - b. role of alcohol and drugs
 - c. adequacy of ADF policies in addressing these
 - d. impact of peers/colleagues in choosing whether to report
 - e. family and domestic violence
 - f. availability and accessibility of appropriate support services
 - g. any other reason for a reduction in actions.

5. Actions that can be taken by command when a member decides to withdraw a complaint or make no complaint.
6. Perpetrator accountability, including during justice processes, when an action is not taken, or when action sits outside the justice system.
7. Recommendations for improvements to the military justice system including the accessibility and range of options for increasing actions taken by victim-survivors of military sexual violence and misconduct within the military justice system, including reporting, support available to victim-survivors, peers and command, and other options as relevant.
8. Improving the ADF's understanding of perpetrators' behaviours, consistent with a victim-survivors-centric approach and including clear consequences for perpetrators when a report is substantiated.
9. Effective victim-survivors support that enables meaningful participation in reporting and justice processes, as well as healing and recovery.
10. The different terminology and definitions used by the military justice and administrative systems, and the civilian justice system for matters relating to sexual violence, assault, misconduct, and the impact of these disparities on understanding and action taken within and outside of Defence, having regard to the independent research on the prevalence of military sexual trauma.
11. The inquiry should also consider:
 - a. relevant research, including on prevalence and alternative international approaches;
 - b. the termination/suspension policies and penalties imposed in other militaries and workplaces;
 - c. analysis of all available lived-experience testimony, statements, exhibits and published submissions made to the Royal Commission that are relevant to sexual violence in the ADF; and
 - d. the effectiveness of outcomes from other relevant Australian inquiries.

Process and Timeframes

It is anticipated that the inquiry will undertake consultation with relevant peak bodies, universities, publicly funded research organisations and government departments. Trauma informed consultation with serving and ex-serving victim-survivors of sexual violence may be undertaken where appropriate. The inquiry will not be able to resolve individual cases. The inquiry will commence in 2026 and conclude within 12 months. The final report of the inquiry into military sexual violence will be publicly available.

Secretariat

The DVSC will provide secretariat services to the inquiry.