

## Submission to the inquiry into the Defence Amendment (Sexual Assault Prevention, Intervention and Response Commission) Bill 2025

27 February 2026

### **About Us**

Gender Justice Australia helps dismantle the systemic and structural barriers that prevent women, trans and gender diverse people from accessing real equality and justice. We collaborate with experts and advocates to achieve critical law reform.

This submission is co-authored by Katherine Berney and Lara Freidin, independent experts in gender-based violence with experience advising governments on the impacts of legislative reforms on women's safety, gender-based discrimination, and gender equality.

### **Introduction**

Gender Justice Australia welcomes the opportunity to provide this submission to the Committee in relation to the Defence Amendment (Sexual Assault Prevention, Intervention and Response Commission) Bill 2025.

Sexual violence within the Australian Defence Force (ADF) does not occur in a vacuum. It occurs within a rigid hierarchy, within a closed institutional culture, and within a system that concentrates disciplinary, administrative and professional power in the same structures that receive, investigate and respond to complaints. The findings of the Royal Commission into Defence and Veteran Suicide (the Royal Commission) made plain that sexual violence remains a systemic issue within the ADF and its consequences extend far beyond the immediate harm of the assault itself. The Royal Commission heard evidence linking sexual violence to suicidality, medical discharge, career derailment and long-term psychological injury. Those findings underscore that institutional responses are not peripheral to harm; they can compound it.

This Bill forms part of the Government's response to the Royal Commission, which identified military sexual violence as a systemic harm with profound consequences for mental health, suicidality and premature separation from service. It sits alongside the forthcoming dedicated inquiry into military sexual violence and the implementation of Recommendation 25, which will examine systemic failures and future reforms in greater depth. Our recommendations are designed to ensure that the new Sexual Assault Prevention, Intervention and Response Commission (SAPIR Commission) gives practical effect to the Royal Commission's findings by embedding enforceable victim-survivor rights, independent representation and meaningful accountability into the Defence legislative framework.

The Explanatory Memorandum states that the Bill will establish a trauma-informed, victim-centred and independent framework for preventing and responding to sexual assault in Defence. This submission assesses the Bill against those stated objectives and identifies targeted amendments

required to ensure victim-survivors have enforceable rights, genuinely independent legal representation and meaningful standing in processes that affect their safety, privacy and careers.

We acknowledge the sustained advocacy of Senator Jacqui Lambie and victim-survivor advocates who have ensured that military sexual violence is treated as a national reform priority. This Bill represents an important opportunity to reset institutional settings. However, unless it embeds genuine independence, enforceable rights and meaningful victim agency, it risks reproducing many of the structural imbalances that have historically silenced victim-survivors.

This submission focuses, in particular, on why independent legal representation, strengthened procedural protections and enforceable accountability mechanisms are essential components of reform to improve outcomes for victim-survivors of sexual violence, ensure perpetrators are held accountable, and ultimately reduce the prevalence of military sexual violence.

### **The Structural Vulnerability of Victim-Survivors in the Military Context**

The military is not simply another workplace. It is an institution defined by command, discipline and hierarchy. Members may live, train and deploy together. Housing, healthcare, income, professional advancement and reputation are often tied directly to command structures. In that environment, reporting sexual assault is not merely the act of lodging a complaint; it is an act that can alter the trajectory of a member's entire career and life.

A victim-survivor who reports may remain in proximity to the alleged perpetrator. They may be required to continue operating within the same unit or base. They may depend on the institution for ongoing employment and housing. They may fear reputational damage in a culture where cohesion and loyalty are deeply valued. They may worry that their mental health will be questioned, that they will be medically downgraded, or that they will be informally labelled as a risk to operational effectiveness.

These risks are not hypothetical. They have been repeatedly described in evidence to national inquiries and parliamentary processes. The fear of retaliation, social exclusion or career stagnation is a powerful deterrent to reporting. When reporting does occur, the response of the institution becomes as consequential as the underlying offence.

Reform must therefore recognise that military sexual violence occurs within an environment of concentrated institutional power. Safeguards must be designed to rebalance that power.

### ***Proposed amendments to the Bill***

The Bill establishes the SAPIR Commission within the *Defence Act 1903* (Cth) framework, including new Part provisions beginning at proposed section 110ZMD. However, the Bill does not explicitly articulate victim-survivors as rights-holders within this hierarchy. The functions and powers are predominantly framed as powers of the Commissioner and commanding officers.

**Recommendation 1:** Insert an objects clause within the new Part (for example, following section 110ZMD) that expressly recognises victim-survivors as participants with enforceable rights to safety, dignity, legal representation and participation in processes affecting them.

### **Legal Representation Must be Independent**

The Bill proposes the establishment of a victim-survivors' legal counsel program within the SAPIR Commission. While the intention to provide legal support is welcome, the structural location of that support is critical. Effective justice responses to military sexual violence, as envisaged by the Royal Commission and the forthcoming dedicated inquiry, depend on victim-survivors having access to legal representation that is structurally and perceptually independent of Defence decision-makers.

A victim-survivor's lawyer must be able to act solely in the interests of their client. That may require challenging decisions of the Commission itself, questioning investigative steps, opposing disclosure of confidential communications, or seeking review of decisions such as determinations not to proceed with a formal investigation. If legal counsel is embedded within the same statutory body that exercises investigatory and oversight powers, an inherent conflict arises. Even if that conflict is managed administratively, the perception of alignment with the institution may undermine trust.

Trust is not a peripheral issue. Many victim-survivors already approach institutional systems with apprehension shaped by prior experiences of disbelief or minimisation. If the lawyer intended to safeguard their interests appears structurally connected to the ADF, confidence may be compromised at the outset.

Independent legal representation performs several essential functions in this context. It ensures that victim-survivors understand the legal consequences of reporting decisions. It enables them to enforce confidentiality protections and resist improper disclosure of counselling communications or sexual history evidence. It allows them to participate meaningfully in proceedings that directly affect their safety, privacy and career. It provides a mechanism for challenging administrative decisions that may otherwise proceed without scrutiny. Perhaps most importantly, it signals that the system recognises victim-survivors as rights-bearing participants rather than passive witnesses.

In adversarial systems, the accused is entitled to representation as a matter of course. Where victim-survivors face complex legal processes without equivalent support, a profound imbalance emerges. In the military context, where the institution itself wields significant authority, that imbalance is magnified.

### ***Proposed amendments to the Bill***

Proposed section 110ZMH(ix) establishes a "victim-survivors' legal counsel program" as a function of the Commissioner. The Commissioner, however, is also responsible under ss 110ZMH–110ZMR for investigation initiation, oversight, reporting systems, evidence management and advice to commanders. Under s 110ZMJ, the Commissioner has "complete discretion" in performing these

functions. A legal representative embedded within this structure cannot be said to be structurally independent.

**Recommendation 2:** Amend s 110ZMH(ix) to provide that the victim-survivors' legal counsel program is delivered by an independent statutory office or externally funded legal assistance body, not administratively located within the SAPIR Commission.

**Recommendation 3:** Insert a new provision expressly guaranteeing victim-survivors access to independent legal representation at all stages of SAPIR processes, including investigations, service tribunal proceedings and administrative decision-making.

### **Legal Representatives Must Have Standing**

Access to legal advice will be insufficient if victim-survivors cannot be heard in proceedings that directly affect them. Issues such as disclosure of counselling records, admissibility of sexual history evidence, management of SAFE material, and interim safety arrangements have profound personal consequences. Without legislative standing, victim-survivors remain peripheral to decisions that determine their privacy and dignity. Unfortunately this Bill does not provide explicit standing rights in service tribunals or related proceedings.

The Australian Law Reform Commission (ALRC) has emphasised that victim-survivors of sexual assault must be recognised as active participants in proceedings affecting their rights, privacy, and dignity. In particular, Recommendation 10 of *Safe, Informed, Supported —An Inquiry into Justice Responses to Sexual Violence* (2024) calls for statutory standing for victim-survivors in proceedings concerning subpoenas and inspections of sexual assault-related evidence. Standing ensures that procedural decisions cannot proceed without the knowledge, input, and consent of the person most affected.

Currently, many jurisdictions, including within the military framework, do not provide explicit statutory standing to victim-survivors in proceedings that directly impact their safety, privacy, or career. Without standing, decisions regarding access to their confidential, private and sensitive material may be made without their participation, leaving them vulnerable to further trauma or unintended consequences.

The military context, with its concentrated hierarchy and high-stakes consequences for reporting, makes standing particularly critical. Decisions about evidence disclosure or administrative arrangements can affect postings, career progression, and professional reputation. Where victim-survivors lack standing, their independent legal counsel cannot fully advocate on their behalf, and their interests risk being sidelined.

Implementing ALRC Recommendation 10 in the military context would:

- Grant victim-survivors and their independent legal representatives the right to appear and make submissions in proceedings involving disclosure or admissibility of sexual assault-related evidence.

- Ensure victim-survivors are notified and consulted before decisions affecting their safety, privacy, or career are made.
- Enable legal representatives to challenge improper access to counselling, medical or other personal records.
- Along with a new mechanism for victim-survivors to seek review of procedural decisions where their interests are not adequately considered, enable legal representatives to seek review.

Granting standing is not a procedural luxury, it is a structural safeguard that enhances procedural fairness, strengthens accountability, reduces retraumatisation, and affirms that victim-survivors are rights-bearing participants in processes that shape their lives.

### ***Proposed amendments to the Bill***

**Recommendation 4:** Insert a new provision in the *Defence Act 1903* (Cth) expressly granting victim-survivors and their independent legal representatives statutory standing to appear and make submissions in all service tribunal or administrative proceedings that affect the handling, disclosure, or admissibility of sexual assault-related evidence, including SAFE material, counselling records, or sexual history evidence. This ensures that victim-survivors are recognised as rights-bearing participants and can meaningfully influence decisions that affect their safety, privacy, and career.

**Recommendation 5:** Require the SAPIR Commission and service tribunals to consult with victim-survivors prior to making any decision that materially affects safety, privacy, or career, including decisions regarding disclosure of protected communications or medical records. Written reasons must be provided where decisions proceed without the victim-survivor's consent or submissions. Independent legal counsel must be empowered to fully exercise standing on behalf of their client, including the right to be heard, object, and seek review of procedural decisions.

### **The High-Stakes Nature of Reporting Decisions**

One of the most consequential choices a victim-survivor will make is whether to pursue restricted or unrestricted reporting. That decision determines whether an investigation is initiated, whether command is notified, whether confidentiality is preserved, and whether criminal prosecution is possible. It may influence future posting decisions, career progression and workplace relationships.

These are not choices that should be made without independent legal advice. The distinction between restricted and unrestricted reporting is legally complex. Exceptions to confidentiality may exist. Interactions with state and territory police introduce additional layers of legal consequence. Statements provided early in the process may shape subsequent proceedings irreversibly.

If victim-survivors are required to elect a reporting pathway before they have access to independent legal advice, the risk of uninformed or pressured decision-making increases. Informed consent requires more than the provision of information; it requires the opportunity to receive confidential, independent advice tailored to the individual's circumstances.

Ensuring that legal advice is offered and facilitated before reporting decisions are finalised would not impede investigations. Rather, it would enhance legitimacy and reduce later withdrawal or disengagement that can arise when victim-survivors feel they did not fully understand the consequences of their initial choice.

***Proposed amendments to the Bill***

Section 110ZMQ establishes restricted and unrestricted reporting pathways but does not require that victim-survivors be offered legal advice before electing a pathway.

**Recommendation 6:** Amend s 110ZMQ to require that victim-survivors are offered and facilitated access to independent legal advice prior to finalising a restricted or unrestricted report.

**Recommendation 7:** Clarify in s 110ZMQ(6)–(7) that communications between victim-survivors and independent legal counsel are fully protected and do not convert restricted reports into unrestricted reports.

**Victim Agency, Interim Arrangements and Career Protection**

When an unrestricted report is made, commanding officers are required to implement interim arrangements to prevent contact between the victim-survivor and the alleged perpetrator. These arrangements are essential for safety. However, without mandatory consultation, they may inadvertently disadvantage the victim rather than the respondent.

If the victim-survivor is relocated, reassigned or removed from duties while the respondent remains in place, the message conveyed is that reporting carries professional cost. Even where such decisions are well-intentioned, the absence of consultation can exacerbate feelings of powerlessness and injustice.

Meaningful reform requires embedding consultation rights into statutory processes. Victim-survivors must be heard before interim arrangements are determined or varied. Their safety, preferences and career aspirations must be central considerations. Otherwise, the system risks replicating dynamics in which the institution acts upon victim-survivors rather than with them.

***Proposed amendments to the Bill***

Under s 110ZMQ(5), commanding officers must establish interim arrangements following an unrestricted report to ensure no contact between the alleged perpetrator and the victim-survivor. While safety is paramount, the absence of a statutory consultation requirement risks unintended harm. Victim-survivors may be relocated or disadvantaged without their input.

**Recommendation 8:** Amend s 110ZMQ(5) to require consultation with the victim-survivor prior to implementing or varying interim arrangements, and require written reasons where arrangements materially affect the victim-survivor's posting or career.

**Confidentiality, Evidence and Secondary Trauma**

Sexual assault proceedings often involve attempts to access counselling records, medical records, private communications or sexual history evidence. These practices can be deeply retraumatising. In civilian jurisdictions, significant reform has been undertaken over decades to restrict the admissibility of sexual history evidence and protect confidential communications. Even so, enforcement of those protections is uneven and often depends on the discretion of the judge, or the capacity of the prosecution.

In the military context, equivalent or stronger protections must apply. Victim-survivors should not be placed in a position where their private records or therapeutic communications are exposed without rigorous legal scrutiny. Victim-survivor agency over private evidence is essential because decisions about collection, retention and disclosure carry both evidentiary and psychological consequences. Independent legal representation is essential to enforce these safeguards.

The Bill's intention that response and support actions avoid subjecting victim-survivors to further trauma is welcome. However, intention must be translated into enforceable rights. Trauma minimisation is not achieved solely through counselling or support services. It is achieved when legal processes are structured to respect dignity, privacy and agency.

### ***Proposed amendments to the Bill***

Section 110ZMR(1) sets out support capabilities but does not expressly include facilitation of legal advice as a core element. Section 110ZMR(7) of the Bill provides that Parliament intends the core consideration for response and support actions to be the avoidance of further trauma.

**Recommendation 9:** Amend s 110ZMR(1) to include an express function requiring the Commission to ensure victim-survivors are informed of, and facilitated to access, independent legal advice as part of the 24/7 response capability.

**Recommendation 10:** Amend s 110ZMS to require explicit informed consent processes for collection and disclosure of SAFE evidence, and provide that disclosure decisions are subject to consultation and independent legal advice.

### **Accountability and Limits on Discretion**

Delivering on the Royal Commission's recommendations in relation to military sexual violence requires not only new structures, but clear limits on discretion and strong accountability for how those structures exercise power over victim-survivors. The Bill confers broad authority on the SAPIR Commissioner. Section 110ZMJ provides that the Commissioner has "complete discretion" in performing their functions. While operational independence is necessary, discretion of this breadth must be balanced by robust accountability, particularly in light of the systemic concerns identified by the Royal Commission into Defence and Veteran Suicide.

Discretion without corresponding accountability can undermine confidence. Victim-survivors must have access to reasons for decisions, opportunities for review, and transparent reporting mechanisms.

In systems where institutional culture has historically discouraged reporting, visible accountability mechanisms are critical. They reassure victim-survivors that their concerns will not be quietly deprioritised. They provide Parliament and the public with oversight of systemic trends. They create incentives for continual improvement.

### ***Proposed amendments to the Bill***

Section 110ZPE establishes detailed annual reporting obligations. The Commissioner must report on program effectiveness and provide comprehensive quantitative data, including the number of restricted and unrestricted reports, investigation status, conviction outcomes, employment terminations, discharge data, administrative and disciplinary outcomes, and demographic information. These requirements are significant and welcome. They provide an important foundation for transparency and systemic monitoring.

However, the reporting framework is primarily aggregate and retrospective. It does not, on its own, ensure accountability in individual cases. A victim-survivor whose report does not proceed, is closed, or is adversely affected by discretionary decisions requires timely reasons and access to review. Aggregate statistics about matters that “did not proceed” do not illuminate whether decisions were evidence-based, process-driven, or influenced by systemic barriers.

Further, while s 110ZPE requires reporting on “effectiveness”, the term is not defined and does not explicitly require qualitative assessment of victim-survivor experience, timeliness, trauma minimisation, or reasons for withdrawal. Without such analysis, reporting risks becoming descriptive rather than evaluative. For these reasons, the discretion conferred by s 110ZMJ should be complemented by strengthened procedural safeguards.

**Recommendation 11:** Amend s 110ZMJ to require written reasons for significant decisions affecting victim-survivors, including decisions not to investigate or to close a matter.

**Recommendation 12:** Insert a mechanism for internal or external review of key discretionary decisions under the new Part.

**Recommendation 13:** Amend s 110ZPE(1)(a) to clarify that “effectiveness” includes qualitative assessment of victim-survivor engagement, timeliness, trauma minimisation and reasons matters did not proceed.

**Recommendation 14:** Amend s 110ZPE to require reporting on complaints about the Commission’s processes and steps taken to address systemic issues identified.

### **The Broader Imperative for Reform**

Military sexual violence is not solely a criminal justice issue. It is a workplace safety issue, a gender equality issue and, as the Royal Commission confirmed, a critical mental health and suicide prevention issue. When victim-survivors disengage from investigations because they feel unsupported, justice is not done. When they leave the ADF prematurely due to institutional response failures, organisational

capability is eroded. When legal and administrative processes compound trauma, the harm extends far beyond the individual incident.

Reform must therefore reach beyond administrative efficiency. It must rebalance power, rebuild trust and recognise victim-survivors as participants with enforceable rights, not passive subjects of process. Independent legal representation, standing in proceedings, mandatory consultation, robust confidentiality protections and meaningful accountability are not procedural enhancements; they are structural requirements in an institution defined by hierarchy and concentrated authority. The establishment of a SAPIR Commission is an opportunity to entrench those requirements in law. The Committee should strengthen the Bill to ensure it does not simply redistribute functions but materially changes how victim-survivors experience Defence systems when they seek justice, and in doing so complements the work of the dedicated inquiry into military sexual violence.

### **Contact Us**

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