

Submission to the Senate

Defence Amendment (Sexual Assault Prevention, Intervention and Response Commission) Bill 2025

1. Introduction

I welcome the opportunity to make a submission on the Defence Amendment (Sexual Assault Prevention, Intervention and Response Commission) Bill 2025 (the Bill).

Sexual assault and sexual misconduct within the Australian Defence Force (ADF) are real, serious and enduring issues. They require decisive and credible reform. I acknowledge the intent of the Bill and the genuine effort to address harm that has occurred and continues to occur within Defence.

However, I do not support the Bill in its current form.

While the Bill establishes a dedicated commission to address sexual assault, it does so without addressing the broader structural reality. The ADF remains legally and practically separated from the core workplace rights, accountability mechanisms and cultural standards that apply to almost every other Australian workplace.

2. Author's Background and Perspective

I served in the Australian Army as an infantry soldier. I now work as a senior human resources and industrial relations practitioner, holding managerial roles that regularly involve workplace misconduct, investigations, Fair Work proceedings, work health and safety compliance, including oversight of psychosocial risk management and regulatory scrutiny.

With the benefit of this experience, I can state plainly that many behaviours, practices and so-called management responses that were normalised during my time in Defence would not be tolerated for a moment in the civilian workforce. In any other setting, they would trigger regulator intervention, litigation, enforceable undertakings or criminal investigation.

What is particularly confronting is that much of what occurs in Defence is so far removed from normal workplace standards that civilians often struggle to believe it occurred at all. The conduct is so detached from contemporary employment norms that it appears implausible to those who have never served.

That disconnect matters. It exposes the real issue. The ADF does not operate within the same baseline workplace framework as the rest of the country.

3. The Core Problem: Defence Is Not a Normal Workplace, Legally or Practically

The Bill proceeds on the assumption that sexual assault in the ADF is best addressed through a stand-alone, Defence-specific statutory regime. That assumption is flawed.

The deeper issue is structural. ADF members are excluded, either wholly or in part, from legal frameworks that underpin accountability in civilian workplaces, including the Fair Work Act 2009 (Cth), ordinary unfair dismissal protections, general protections against adverse action and externally enforced work health and safety regimes including:

- the Fair Work Act 2009 (Cth), including unfair dismissal protections in Part 3-2 and general protections in Part 3-1
- external adverse action remedies under sections 340 to 342
- independent access to the Fair Work Commission
- externally enforced work health and safety regimes under the model WHS laws

By contrast, ADF employment and discipline are primarily governed by the Defence Act 1903 (Cth) and the Defence Force Discipline Act 1982 (Cth), which prioritise command authority and operational control over independent oversight.

In practice this means:

- ADF members do not enjoy ordinary Fair Work protections
- Unfair dismissal and general protections frameworks do not apply in the usual way
- Work health and safety obligations are fragmented and largely internally enforced
- Command structures override independence, transparency and procedural fairness
- Victims often lack meaningful external remedies or escalation pathways

This environment creates profound power imbalances. It discourages reporting, enables retaliation, and permits institutional self-protection and cover-ups to occur.

Establishing a new commission focused solely on sexual assault, while leaving these structural exclusions intact, treats the symptom rather than the disease.

4. Burden of Proof and Military Justice

A further issue rarely acknowledged in public debate is the markedly lower and more flexible burden of proof applied in military disciplinary and administrative processes, compared with civilian legal systems.

In the civilian context, allegations of misconduct are assessed against established evidentiary standards, procedural fairness requirements and independent review mechanisms. Findings are subject to scrutiny by courts, tribunals and regulators, including merits review and judicial oversight.

In contrast, many ADF processes operate through administrative and disciplinary mechanisms under the Defence Force Discipline Act 1982 (Cth) and subordinate instruments, where findings can be made on lower evidentiary thresholds, often on the balance of probabilities and in some administrative contexts without the safeguards ordinarily expected in civilian employment law.

Further, the concentration of investigative, disciplinary and decision-making authority within the chain of command materially increases the risk of real or perceived bias, particularly where allegations involve senior personnel or operational units.

This has two consequences.

First, it creates inconsistency and uncertainty in outcomes for both complainants and respondents. Second, it enables serious workplace harm to be dealt with internally in ways that would not withstand scrutiny in a civilian employment, regulatory or judicial setting.

When combined with limited external oversight and restricted rights of review, this divergence significantly undermines confidence in Defence's ability to manage workplace harm fairly, independently and transparently.

5. Systemic Failure and the Limits of Defence Exceptionalism

The Royal Commission into Defence and Veteran Suicide, Volume 3, makes clear that harm within the Australian Defence Force has repeatedly been managed through internal systems that prioritised organisational protection, command cohesion and administrative finality over transparency, accountability and individual welfare. The Royal Commission identified a pattern in which serious harm, including sexual violence and abuse, was minimised, normalised or contained within Defence processes rather than subjected to independent scrutiny. This concern is not merely cultural but legal. While the High Court has long recognised that Defence operates within a unique constitutional and operational context, it has also been unequivocal that military law is not immune from the requirements of legality, procedural fairness and external accountability. Defence exceptionalism has constitutional limits. Where internal military systems fail to provide safeguards comparable to those expected in civilian

justice and employment frameworks, Parliament bears responsibility to correct that imbalance. Incremental, issue-specific commissions do not address this structural deficiency. Only whole-of-system reform can.

6. Agreement in Principle, Not in Architecture

To be clear:

- Sex-based violence must be addressed
- Prevention, survivor support and trauma-informed responses are essential
- Accountability and cultural reform are non-negotiable

However, reform cannot continue on an issue-by-issue basis through bespoke Defence-specific bodies.

Sexual assault is the focus today. Previously it was bullying. Then discrimination. Then psychosocial injury. Then suicide. Each time, a new framework is proposed, layered over the same unresolved structural deficiencies.

This approach is neither sustainable nor effective.

7. Civilian Legislative Benchmarks the ADF Is Not Required to Meet

In civilian workplaces, employers are legally required to:

- take proactive steps to prevent sexual harassment
- implement Respect@Work-aligned positive duties
- manage psychosocial hazards under work health and safety legislation
- conduct independent and procedurally fair investigations
- protect workers from victimisation and reprisals
- remain accountable to external regulators, tribunals and courts

These obligations arise under the Fair Work Act 2009 (Cth), the Sex Discrimination Act 1984 (Cth) as amended by the Respect@Work reforms, and model Work Health and Safety legislation.

They are mandatory, enforceable and transparent.

Defence should not be exempt from standards it expects every other employer in Australia to meet.

8. Risks Created by the Current Bill

In its current form, the Bill risks:

- reinforcing Defence exceptionalism rather than dismantling it
- further fragmenting accountability across multiple regimes
- allowing Defence to claim reform while core power structures remain unchanged
- creating overlap, confusion and jurisdictional complexity
- diverting attention from whole-of-system workplace reform

While the Bill acknowledges Defence's historical failure to self-regulate, it nonetheless leaves Defence largely outside the mainstream employment and safety law frameworks designed to address these failures elsewhere.

9. What Meaningful Reform Should Look Like

Rather than progressing this Bill in isolation, Parliament should pursue structural alignment, including:

1. Extending Fair Work-style protections to ADF members, subject to clearly defined operational carve-outs
2. Embedding Respect@Work-equivalent positive duties within Defence
3. Strengthening independent oversight outside the chain of command
4. Ensuring work health and safety obligations, including psychosocial duties, are externally enforceable
5. Establishing consistent standards for investigations, evidence handling and procedural fairness
6. Reducing reliance on ad-hoc commissions in favour of systemic, integrated accountability

Sexual assault reform should be one component of a broader workplace rights framework, not a stand-alone exception.

10. Conclusion and Willingness to Contribute

I support meaningful reform. I support accountability. I support survivors.

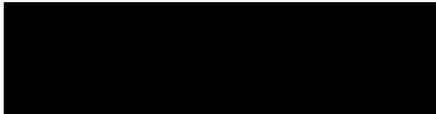
What I do not support is continuing to treat the ADF as a special legal environment where normal workplace rights do not apply and then attempting to correct the consequences one issue at a time.

This Bill should not proceed in its current form. The solution is not another siloed commission. It is a holistic overhaul that brings the ADF closer to contemporary Australian workplace law and standards.

I would strongly welcome and actively support, a comprehensive reform process of this nature. I would also welcome the opportunity to be involved in the planning and implementation of such an overhaul, drawing on lived Defence experience and contemporary HR and industrial relations expertise.

Until systemic reform occurs, the risk of misuse of power, institutional protection and preventable harm will remain.

This submission does not argue for the removal of military discipline. It argues for the introduction of baseline workplace safeguards consistent with contemporary Australian employment and safety law.



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Submitted in a personal capacity