

Chapter 2

Issues raised in evidence

Introduction

2.1 This chapter summarises the main issues raised in public evidence, including the structure of Resistance to Interrogation (RTI) training, the process around the consent provided by Australian Defence Force (ADF) personnel who participate in the training, the potential for physical and psychological harm, the benefits of training and whether the training complies with Australia's domestic and international legal obligations.

Resistance to interrogation training framework

2.2 All military operations conducted overseas carry some risk that ADF personnel may be captured, detained, interrogated and exploited by an adversary, threat group, foreign military or foreign government.¹

2.3 To mitigate this risk, the ADF incorporates an element into its Survival, Evasion, Resistance and Escape program that teaches participants how to behave in the event that they are captured. Previously known as RTI training, the activity simulates the realistic captivity of participants by using trainers to role-play as threat forces in a variety of scenarios.²

2.4 Defence conducted a review of RTI training in 2004, which incorporated improvements to safety and accountability. According to Defence:

The review aimed to ensure that the sensitive and demanding training was robustly controlled and monitored, while continuing to prepare ADF members to cope with incarceration, detention and exploitation. The review initiated a re-write of the overarching Defence policy with the intent of aligning Defence practices with our principal allies...³

2.5 Following the internal review, changes to RTI training were planned in 2005, and carried out in 2006, after which the training was renamed Conduct after Capture (CAC) training.

2.6 Conduct after Capture training includes three levels:

- (1) Level A: An introductory computer based package that provides a basic awareness of the ADF Conduct after Capture policy;
- (2) Level B: A one-day theory workshop covering Introduction to Conduct after Capture, Hostage Survival, Foreign Government Detention,

1 Department of Defence, *Submission 8*, p. 2

2 Department of Defence, *Submission 8*, p. 2.

3 Department of Defence, answer to question on notice.

Military Exploitation, Common Survival Strategies and a Level C activity brief; and

- (3) Level C: Practical immersion training for identified 'prone-to-capture' personnel such as special forces personnel. The activity includes the three Conduct after Capture scenarios of Foreign Government Detention, Hostage Survival and Military Exploitation.⁴

2.7 According to Defence, CAC training is conducted in a humane and lawful manner and 'mentally prepares ADF "prone-to-capture" personnel for the rigours of captivity whilst teaching them how to survive a capture situation and return to Australia with dignity'.⁵ Defence argued that CAC training is consistent with coalition and NATO partner best practices.⁶

2.8 The committee received evidence from former participants of both RTI and CAC training. As upgrades to the training were incorporated following the 2004 review, it is important to distinguish whether evidence received refers to pre-2004 or post-2004 activities. Throughout this report, evidence is either attributed to 'RTI' or 'CAC' participants in order to indicate which model the criticisms are related to.

2.9 Not all submitters were critical of the objectives of the training. A former RTI participant argued that exposure to interrogation scenarios is essential for identified personnel. The individual argued that teaching techniques for dealing with captivity and exploitation in a safe and controlled environment mentally prepares personnel and provides guidance on how to survive with dignity.

2.10 It was also argued that RTI training ensures that Defence is able to exercise duty of care. One submitter argued that the training allows Defence to mitigate risk of harm to individuals as well as reduce potential harm to operations.⁷

Training methods

2.11 The Defence submission advised that the detailed content, training methods and survival strategies of Level C practical immersion activities are sensitive from an operational security perspective and should not be on the public record:

An understanding of ADF Conduct after Capture techniques and procedures by an enemy or threat force would enable them to alter their tactics, techniques and procedures to improve their chances of successfully exploiting detained or captured ADF personnel. In a worst case scenario, this could pose a risk to the lives of ADF personnel captured or detained in the future.⁸

4 Department of Defence, *Submission 8*, p. 3.

5 Department of Defence, *Submission 8*, p. 6.

6 In camera hearing, 7 March 2017.

7 Name Withheld, *Submission 2*, pp 3–6.

8 Department of Defence, *Submission 8*, p. 5.

2.12 Level C activities require Resistance Trainers to role-play as threat forces and use interrogation techniques, such as mental and physical stressors, on participants to replicate realistic captivity situations. Participants are trained to behave, resist exploitation, and survive with dignity in the following scenarios:

- (a) Foreign Government Detention: This module is conducted over a 12–24 hour period and provides ADF personnel with survival strategies, coping mechanisms and experience in how to behave during detention by officials from a foreign government. The scenario for this module is that Australia may or may not be involved in an armed conflict with the second country;
- (b) Hostage Survival: This module is conducted over a 12–24 hour period and provides ADF personnel with survival strategies, coping mechanisms and experience in how to behave during detention by a terrorist or criminal organisation; and
- (c) Military Exploitation: This module is conducted over 48–72 hours and provides ADF personnel with survival strategies, coping mechanisms and experience in how to behave during detention by a military service of a hostile government. The training includes situations where ADF personnel are detained as prisoners of war and the detaining authority acts in a manner compliant with applicable international humanitarian law, but also includes situations where ADF personnel are detained by an authority that does not comply with the Geneva Conventions.⁹

2.13 According to Defence, there are a number of control measures in place to protect the safety and wellbeing of participants who undergo Conduct after Capture training. These include:

- providing participants with an activity overview during Level B briefings;
- obtaining the consent of participants before Level C activities are conducted via signed volunteer declaration forms;
- reaffirming the volunteer status of participants prior to commencement of Level C training;
- informing participants of their right to withdraw at any stage and the process for withdrawing prior to commencement of activity;
- monitoring of activities by psychology and medical officers who may withdraw participants at any stage;
- recording Level C activities on closed circuit television (CCTV);
- monitoring of CCTV footage by the Conducting Officer and Shift Senior Trainer who may veto activities at any time; and

9 Department of Defence, *Submission 8*, pp 3–4.

- individually debriefing all participants (completed and withdrawn) after training with both a Resistance Trainer and psychology officer.¹⁰

2.14 Prior to the commencement of the training, all activity staff also receive a safety brief which covers the key safety issues relevant to the activity and provides guidance on how to respond to an issue if the need arises.¹¹

2.15 The evidence received by the committee from ADF personnel mostly related to RTI training conducted during the 1990s and up to RTI training transitioning to CAC training in 2006. The concerns raised by submitters address a number of issues with the equivalent of today's Level C training activities including the risk of physical and psychological harm, informed consent and the role of activity staff. The benefits of the training from Defence's perspective and the ability of the training to adequately prepare personnel for the reality of being captured were also questioned by a number of submitters.

Risk of harm

2.16 Submitters to the inquiry raised concerns that participants and trainers involved in Level C activities are at risk of physical and psychological harm. Submitters argued that participants are at risk of sustaining physical or psychological injury due to their exposure to realistic interrogation scenarios. Trainers are also at risk of psychological harm due to their involvement as role-players.

2.17 In evidence to the committee, a former RTI participant described how they had suffered immediate physical injury from the training and continued to experience pain from that injury for years afterwards.¹² Another former RTI participant explained that they also continued to be significantly physically affected:

I am not able to control it. I am still impacted on a weekly or daily basis when my physiology is triggered by the levels of physical distress that they put on us.¹³

2.18 As well as the risk of physical injury, submitters argued that trainees have experienced significant psychological harm as a direct result of the training. A former CAC participant described a range of mental health issues following their participation in the training:

I went to see this psychologist to deal with this imprinting and, with her help, we managed to stop that. But what happened then was other symptoms started to manifest themselves: sleeplessness and restlessness, mild shaking in the hands, problems with short-term memory.¹⁴

10 Department of Defence, *Submission 8*, p. 4.

11 Department of Defence, *Submission 8*, p. 4.

12 Name Withheld, *Submission 2*, p. 6.

13 In camera hearing, 7 March 2017.

14 In camera hearing, 7 March 2017.

2.19 Significant psychological issues also had lasting effects on yet another RTI participant:

It can take me three to five days to come back down from where I am not quite incapacitated but pretty well impaired in my thinking and my capacity for self-care. I can go from being a normal, highly-functioning person with a well-paid job to being someone who really is in dire straits for a few days.¹⁵

2.20 One submitter highlighted that the UK no longer conducts its equivalent RTI training longer than 48 hours because studies had showed it could induce psychosis.¹⁶

2.21 Although the Australian Psychological Society (APS) acknowledged that participants who voluntarily enter into RTI training are less likely to suffer from psychological harm than non-voluntary participants, it highlighted a lack of research into the prevalence of mental health issues due to participation in RTI activities.¹⁷ The committee heard evidence that volunteerism may not mitigate the risk of psychological harm:

I know that the common human way of coping is to dissociate in those situations, and the stress involved can have permanent effects upon the brain in a similar way to what PTSD does, so there can be long-term damage that can occur from a process that has no proven benefit. Even if it were voluntary, it still will not offset those risks.¹⁸

2.22 Submitters expressed concern that CAC activities are conducted directly following SAS selection courses, at a time when participants are mentally and physically exhausted and therefore in a vulnerable condition:

...the activities I experienced during the R2I process would be stressful to the point of being psychologically dangerous and damaging for anyone under any circumstances. Add to that, the state of physical and emotional fragility that we were in after 18 days of food and sleep deprivation and mental exhaustion, and I consider that the R2I process I experienced was an act of gross negligence, possibly criminal negligence.¹⁹

2.23 The Royal Australian and New Zealand College of Psychiatrists warned that ADF personnel are at increased risk of developing mental health issues due to the unique demands of their military service and suggested that Defence implement systematic screening of individuals exposed to CAC training to identify mental health trends.²⁰ At the hearing, the APS argued:

15 In camera hearing, 7 March 2017.

16 Name Withheld, *Submission 9*, pp 2–3.

17 Australian Psychological Society, *Submission 1*, p. 3.

18 In camera hearing, 7 March 2017.

19 Name Withheld, *Submission 9*, p. 2.

20 Royal Australian and New Zealand College of Psychiatrists, *Submission 3*, p. 2.

Clearly, if someone withdrew from the training, that should be setting off warning bells for people.²¹

2.24 The APS advised that following any traumatic event the symptoms for most individuals will decline after the first month, however around 10 per cent or less may continue to be impacted; therefore screening of participants should be conducted as soon as possible following activities so early treatment can be provided. The APS argued that all organisations should obtain independent advice on the potential effects of any contentious course, and that independent oversight of CAC training is essential:

This is such a serious thing, that can leave such a mark on a person psychologically, that I do not think it can be left to the people who are undertaking or providing the training to assess whether it is having an impact on people. I think there has to be an arm's length, third-party kind of review process.²²

Informed consent

2.25 From a legal perspective, informed consent generally refers to an individual agreeing to a course of action (such as undergoing a medical procedure) only after all the relevant factors and risks associated with that activity have been disclosed. In this context, there is a conundrum with RTI training and the consent of individuals who participate in and complete the training.

2.26 Defence does not use the term 'informed consent' in relation to its RTI or CAC training activities. As previously noted, Defence refers to participants in Level C training as 'volunteers' if they have signed a volunteer declaration form prior to commencing training.

2.27 The committee received evidence from former participants of RTI training which clearly demonstrates that on a number of occasions during the 1990s, Defence:

- suddenly initiated RTI training without participants having prior knowledge this would happen;
- failed to obtain the consent of participants; and
- obtained consent when participants were in a depleted mental and physical state.

2.28 Submitters alleged that, in some cases, Defence failed to provide RTI participants with briefings prior to or following the training:

We astoundingly have a cohort of formerly serving Australian soldiers who have been subjected to one of the most hazardous (and possibly heinous) forms of military training, without any preparation, training, consent, post-exercise debriefing, or access to any form of support.²³

21 In camera hearing, 7 March 2017.

22 In camera hearing, 7 March 2017.

23 Dr Steven Scally, *Submission 7*, p. 2.

2.29 One former RTI participant advised the committee they would not have elected to participate had they received more information prior to the activity.²⁴ Another former RTI participant argued that they would have either opted out earlier had they known in advance that doing so would not affect their career.²⁵ According to the APS:

I think the problem with what we are talking about—the resistance-to-interrogation training—is that it is described to people, but the demands that it places on individuals really only become apparent to them as they are undergoing the training. So under the present set of circumstances they are not consenting in a way where they fully understand the risks and the dangers to them. That is not informed consent.²⁶

2.30 The evidence from submitters suggested that pressure to participate in RTI training activities contributed to the decision to consent, even though activities had not been fully explained beforehand. Being considered eligible for the SAS or maintaining personal reputation amongst peers are strong motivating factors. As one former RTI participant explained:

Particularly in the context of SAS selection, you have got a bunch of people who are trying to prove that they can handle whatever is thrown at them. Certainly I was just trying to prove I could handle whatever was thrown at me, and it would have been shameful amongst my peers to put my hand up and say, 'I can't handle this' or, 'I think this is wrong' or, 'I'm not prepared to go on'.²⁷

2.31 The committee also heard evidence that on at least one occasion in 2006, volunteer declaration forms were only provided to trainees after they had been 'captured'. In this case, signatures were obtained from individuals who were confused and exhausted from SAS training over the preceding days.²⁸ It remains unclear to the committee whether these individuals were RTI or CAC model participants as information on the timing of Defence's transition to CAC was not provided to the committee.

Issues related to activity staff

Resistance Trainers

2.32 Submitters expressed concerns that the active role of trainers may cause psychological harm. Although Defence argued that activity staff are trained to protect the safety and wellbeing of CAC participants, information on measures to protect the wellbeing of Resistance Trainers was not provided to the committee.

2.33 According to the APS, interrogation and torture can have long-lasting negative effects on both the subject and the person delivering it. However, it

24 Name Withheld, *Submission 9*, p. 1.

25 In camera hearing, 7 March 2017.

26 In camera hearing, 7 March 2017.

27 In camera hearing, 7 March 2017.

28 In camera hearing, 7 March 2017.

highlighted the absence of clinical evidence on the occurrence of harm to trainers and suggested that further research into the subject be conducted.²⁹

2.34 The committee received evidence alleging that RTI activities conducted by Defence doubled as training for army interrogators to enable them to practice information extraction techniques on personnel undertaking training to resist interrogation.³⁰

2.35 According to the APS, misuse of RTI training is a genuine risk. It highlighted cases where psychologist-designed SERE training for US Special Forces had been reversed by members of US military and security services and misused as techniques for interrogation.³¹

2.36 Defence advised that the Defence Force School of Intelligence is the only ADF unit authorised to deliver Conduct after Capture training. It indicated that only qualified ADF Resistance Trainers are authorised to deliver training and that trainer qualification is awarded following a suitability assessment, including psychological testing, as well as the successful completion of a five week Resistance Trainer course which covers all aspects of Conduct after Capture training.³²

Independence of psychological and medical officers

2.37 Submitters also raised concerns over the use of psychologists and medical officers during CAC activities. It was argued that staff who participate in training activities are in direct conflict with their ethical obligations. Their independence to protect the safety and wellbeing of participants can also be compromised.

2.38 According to the APS, registered psychologists are guided by a Code of Ethics which provides that psychologists must in no way harm individuals and ensure that their knowledge and expertise is not misused to harm others.³³ Following the misuse of SERE training in the US and questions into the integrity of the American Psychological Association, the APS released a statement that condemned the involvement of psychologists in situations where inhuman treatment is being used or threatened. The APS argued that:

It is imperative that the [committee] understand the importance of the ADF recognising psychologists' obligations under the APS Code of Ethics and associated guidelines...³⁴

2.39 Accepting that CAC training may be a necessary activity, the APS recommended that Defence support psychologists involved in CAC activities to remain compliant with professional codes of conduct.³⁵

29 Australian Psychological Society, *Submission 1*, p. 3.

30 Name Withheld, *Submission 9*, pp 3–4.

31 Australian Psychological Society, *Submission 1*, p. 4.

32 Department of Defence, *Submission 8*, p. 3.

33 Australian Psychological Society, *Submission 1*, pp 4–5.

34 Australian Psychological Society, *Submission 1*, p. 5.

2.40 Concerns regarding the independence of activity staff were also raised. Dr Steven Scally argued that medical staff are not able to protect the safety and wellbeing of participants because their power to report or veto activities is compromised by command. Dr Scally alleged that staff were historically deterred from exercising their powers during RTI activities for fear of reprisal:

Challenging the wants of command is an audacious, if not career-ending, prospect. The military has many implicit sanctions for the non-conforming, and this includes the lowly-ranked psychology or medical officer...Medical officers being forced to change clinical decisions (not over-ruled, but enforced) was common place. Concepts of confidentiality were lost on superior officers insisting on intruding on sacrosanct doctor-patient ground, in directed attempts to sway the outcome of the clinical interaction, such as occurred in Resistance to Interrogation training, and other settings. Threats of insubordination charges, legal action and imprisonment were reserved for the particularly feisty.³⁶

Value of training

2.41 Although Defence argued that CAC training is essential to prepare prone-to-capture personnel in conduct after capture, submitters speculated whether it has any proven operational benefit or whether the risk of injury to participants is too high and outweighs any military operational benefits.³⁷

2.42 Several submitters highlighted that the benefits of the training is poorly researched, and not enough is known about the efficacy of the training or the effects on those who participate.³⁸ The APS doubted if it was even possible to prepare people for the brutality of captivity.³⁹

2.43 During the hearing, a former RTI participant reflected that:

I am not confident that anybody who went through the training in my era, as undergoing interrogation, got anything out of it. The crux is that it is actually a misnomer to call it 'training', because no instruction was given, there was no feedback, there was no evaluation and there was no coaching...what the objectives of the training are, what they are going to take you through, what the key techniques are that you need to understand are. None of that was there.⁴⁰

2.44 According to Defence, an analysis conducted by the Defence Force School of Intelligence investigated the positive and negative experiences of CAC trainees over 2015–16. Whilst trainees acknowledged the training was arduous, they indicated that

35 Australian Psychological Society, *Submission 1*, pp 5–6.

36 Dr Steven Scally, *Submission 7*, p. 3.

37 Dr Steven Scally, *Submission 7*, pp 1–2.

38 For example: Australian Psychological Society, *Submission 1*; Royal Australian and New Zealand College of Psychiatrists, *Submission 3*; Dr Steven Scally, *Submission 7*.

39 In camera hearing, 7 March 2017.

40 In camera hearing, 7 March 2017.

their experience better prepared them for resisting interrogation and surviving captivity.⁴¹

Compliance with the law

2.45 Since 1989, Australia has been a signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and it continues to be legally bound by it. The convention is an international human rights treaty that aims to prevent torture and other acts of cruel, inhuman or degrading treatment around the world.⁴²

2.46 However, former RTI participants described their personal experience with being forced into degrading and humiliating activities without prior warning or consent. One submitter argued that their activity had subjected individuals to abusive behaviour in direct conflict with their employer's duty of care obligations:

When we come back to the issue of duty of care, and whether the duty of care was met in taking care of people like myself who were being interrogated, it does not really stack up in terms of the duty of care of the people coordinating all this.⁴³

2.47 In April 2016, Defence completed a legal review of its Conduct after Capture training framework. The review was undertaken by a Senior Counsel from the NSW Bar as an ADF reserve legal officer. According to Defence:

This legal review determined that the training is compliant with Australian domestic law and applicable international legal obligations. The legal advice has been reviewed by the Office of the Australian Government Solicitor, in order to address previously raised concerns over the independence of any review. The office of the Australian Government Solicitor concurs with Defence's legal advice.⁴⁴

41 In camera hearing, 7 March 2017.

42 Australian Human Rights Commission, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <https://www.humanrights.gov.au/convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-human-rights> (accessed 28 February 2017).

43 In camera hearing, 7 March 2017.

44 Department of Defence, *Submission 8*, p. 5.