

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
AUSTRALIAN HUMAN RIGHTS COMMISSION

**Question No. SBE15/004**

**Senator Xenophon asked the following question at the hearing on 20 October 2015:**

Senator XENOPHON: Professor Triggs, in the absence of a sex discrimination commissioner, I think it is appropriate that I ask you these questions that go to the AHRC's report in August 2012 entitled *Report on the review into the treatment of women in the Australian Defence Force Academy*, and the phase 2 report of the Sex Discrimination Commissioner Broderick at recommendation 19, where she recommended:

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—that is the Sexual Misconduct Prevention and Response Office. If I may put some questions to you, and I appreciate that it may be more appropriate for you to provide me answers on notice, but it is a matter that is of great interest to me, particularly with constituents who have approached me in respect of this.

The body of the report at 7.5, and I will not ask you to look to it, explained that there was a major problem that many incidences of sexual misconduct in the ADF go completely unreported. The report explained that by 'restricted reporting' it meant an approach similar to what is used in the US and Israeli forces, and it goes into the details of how that works and appears to have worked quite successfully. The report referred to arguments which have been put by the Inspector-General of the ADF, opposing restricted reporting because of his concern about lack of accountability and possible vicarious liability under the Sex Discrimination Act if reports of sexual assault were accepted on a confidential basis. Commissioner Broderick rejected those arguments in very clear and forceful terms at page 272, and I am happy to put some of these on notice to save time. Commissioner Broderick said in part:

... 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.

She went on to say:

... 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.

She also said: A situation should not endure whereby incidents of sexual harassment, sex discrimination and sexual abuse continue to go unreported and complainants remain without support. Indeed it is incumbent upon any first class employer to take a complainant focussed approach.

And she summarised the intent behind recommendation 19. The Vice Chief of the Defence Force has told this committee that defence had put the limitation on SeMPRO accepting confidential reports to meet defence's legal obligations. It told this committee in September last year that in its first 12 months of operation SeMPRO had not had a single report within 72 hours of an incident and these are including very serious incidents of sexual assault, and that is of course critical for that time of collection for forensic evidence.

The commissioner recommended 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. The recommendation was to investigate how to bring in restricted reporting, not to investigate whether to bring in restricted reporting. My first question is: has the Human Rights Commission had any discussions with Defence about why Defence did not introduce genuine restricted reporting; and what was the outcome of those discussions, if those discussions took place?

Prof. Triggs: Thank you, Senator Xenophon. I will provide you with a fuller answer to that question when I have the documents in front of me. I am of course familiar with that report and I have, subsequent to that and since Ms Broderick completed her term, been taking a supervisory role in relation to that work and met with members of the team in Canberra to look at how the work is progressing for the future, because we have a relationship over the next three years on this matter.

Senator XENOPHON: Given the very serious matters raised back in August 2012—just over three years ago—in respect of the lack of redress for victims of sexual assault within Defence and of course issues of harassment and discrimination, and I am particularly concerned about the allegations of rape not being dealt with appropriately, have there been discussions with Defence at least in respect of those most serious allegations of sexual assault? Can you tell us at this point whether there have been those discussions between the Human Rights Commission and Defence.

Prof. Triggs: I can say that I know discussions have taken place but, what the outcomes have been, I do not know except that, when I have been to meetings, there has been a very clear commitment by the senior officers that they are required to report, investigate and, ultimately, seek redress for the victims. I will respond much more fully to you, if I may—

Senator XENOPHON: Sure. You can understand the sense of urgency for some of the victims who have approached me—

Prof. Triggs: We will get back to you very quickly indeed.

Senator XENOPHON: And also the dates, the outcomes and whether there are further meetings planned in respect of this. Secondly, has Defence told the Human Rights Commission what the outcome was of SeMPRO's research into how to allow for confidential reporting of sexual harassment, sex discrimination and sexual offence complaints—is it appropriate that you take that on notice?

Prof. Triggs: I will take it on notice and get back to you.

**The answer to the honourable senator's question is as follows:**

The Australian Human Rights Commission had a number of discussions with Defence regarding restricted reporting specifically in relation to its *Audit Report* (2014) of the implementation by Defence of the recommendations of the *Review into the Treatment of Women in the Australian Defence Force* (2012) (The Review). The Audit Report examined progress by the Australian Defence Force in implementing the Review's recommendations.

The Audit Report's findings in relation to the restricted reporting recommendation (Recommendation 19) can be found at

<https://www.humanrights.gov.au/sites/default/files/document/publication/adf-audit-2014.pdf> (particularly at pp 173-174).

A number of serious allegations of sexual assault were raised with the Australian Human Rights Commission during the Review into the Treatment of Women in the Australian Defence Force. With the consent of the victims of those assaults, those incidents were raised with the senior leaders of the ADF. In a number of cases, the former Sex Discrimination Commissioner, Elizabeth Broderick arranged for the victims to personally tell their story regarding the sexual assault, to the Chiefs of their Service. These sessions were held on 10 May, 2012, 13 June, 2012 and 3 August, 2012.

Since 1 July 2014, Defence has engaged the Australian Human Rights Commission in a collaborative arrangement to assist it to embed cultural reform across each of the three services. As part of this role the Australian Human Rights Commission has engagement with members

from these services. When an allegation of sexual assault is raised as part of this work, the Australian Human Rights Commission informs Defence, with the consent of the victim.

Information provided by Defence on SeMPRO and restricted reporting is contained in the *Audit Report* (2014) of the implementation by Defence of the recommendations of the *Review into the Treatment of Women in the Australian Defence Force* at <https://www.humanrights.gov.au/sites/default/files/document/publication/adf-audit-2014.pdf> (at pp 163-179)

The Australian Human Rights Commission understands that Defence has implemented a system of restricted reporting, known as “restricted disclosure”. Defence advises that a restricted disclosure:

*“allows you to disclose your experience directly to SeMPRO without involving your chain of command/line management, ADFIS or the State/Territory police. This option has been implemented by Defence to encourage ADF members who may not otherwise report to come forward to receive appropriate support to assist them in their recovery to full health. Please note, SeMPRO cannot accept Restricted Disclosures from APS employees.*

*There are some circumstances, for example if your life was in immediate danger, where SeMPRO cannot approve a Restricted Disclosure. Only SeMPRO authorised staff can determine whether exceptions apply - please contact SeMPRO for more information.*

*Anyone making a Restricted Disclosure to SeMPRO will receive advice, coordination of medical attention, as well as ongoing support and guidance.”* (see <http://www.defence.gov.au/sempro/reporting/restricted.asp>).