

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S PORTFOLIO

**Program: Defence Abuse Response Taskforce**

**Question No. SBE15/106**

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

The Defence Force Abuse Response Taskforce stated in its June 2015 Report on progress, operations and future structure that current leadership group had proposed to the Sex Discrimination Commissioner for her consideration a joint AFP/ACC taskforce as a way to deal with the abuse at ADFA 'as a criminal matter' (pages 24-27). Noting that, the problems with sexual assault at ADFA have been well known to the AFP in its capacity as the provider of ACT Police Services at least since the 1998 Grey Review and that those problems have since been confirmed by Volume 1 of the Review of allegations of sexual and other abuse (the DLA Piper Review) which was made public in the middle of 2012 the Interim and Final Reports of the Defence Abuse Response Taskforce through 2013-2014. ACT Chief Police Officer Rudi Lammers of the AFP has been a member of the Defence Abuse Response Taskforce leadership team since 2012. The establishment of the DART did not prevent the AFP from conducting its own broad investigation into sexual assaults at ADFA.

1. What is the understanding of the DART leadership - including ACT Chief Police Officer Lammers - as to why the AFP has not previously conducted a broad investigation into rape at ADFA?
2. How many prosecutions does the DART leadership group – including ACT Chief Police Officer Lammers - believe are likely to be run against suspected ADFA rapists? More or less than ten? Five? None?
3. How many of the prosecution which are run do they expect will succeed?
4. What is the conviction rate in rape trials in the ACT?
5. If DART have no idea how many convictions are likely to result then why are you putting this forward as a way to get a decisive resolution of these matters?
6. What do DART propose for situations where enough evidence has been gathered by the AFP/ACC which might justify dismissing an officer but not enough to justify a criminal prosecution?
7. How effective was the Australian Crime Commission in the Northern Territory Intervention? In particular: - how many convictions were obtained because of information gathered by ACC investigations?
8. Does the DART consider it important for ADF leaders, Government, Parliament and the nation to be able to be confident that senior officers in the ADF who are role models and drivers of cultural change are fit for those roles?
9. Would DART regard it as acceptable that we could have as a Service Chief or Chief of the Defence Force, someone who raped a fellow Cadet at ADFA – or a someone who acquiesced in this conduct by other Cadets?
10. Is DART confident that its recommendation for an AFP/ACC taskforce will prevent that occurring?

11. The DART June report framed the problem to be addressed as being that none of the suspected perpetrators of serious assaults at ADFA were criminally prosecuted. The current DART leadership group's June recommendation for an AFP/ACC taskforce is focused entirely on criminal prosecution. Why?
12. Why could not a taskforce gathering evidence for prosecutions operate in parallel with a Royal Commission?
13. Does the DART accept that there is a real risk that an AFP/ACC Taskforce would not be able to gather sufficient evidence for many prosecutions to be launched or that even if launched a prosecution will not result in a conviction?
14. It seems to be implied in the DART's recommendation for an AFP/ACC taskforce to gather evidence for criminal prosecutions that if an officer is not proven guilty beyond reasonable doubt in a criminal trial of raping another member of the ADF then he is presumed to be fit for any role in the ADF – even if there are strong grounds for suspecting that he did carry out that rape. Is that the DART's position?
15. The DART report failed to mention that not only were there no criminal prosecutions, there were also no Defence administrative or DFDA procedures. Why does the DART June Report not refer to that failure by the ADF?
16. There is no mention in the DART June Report of the importance of gathering information to enable Government and ADF leaders to assess the fitness of officers for particular roles in the ADF. Why not?
17. A Royal Commission can have that role and could gather information which could be relied on by Government and the ADF in deciding on whether individual officers should be promoted, allocated particular tasks or dismissed. It seems that an AFP/ACC taskforce could not pass on information which it gathers which might be relevant to assessing fitness of officers for their positions in the ADF. Is it not correct that the ACC's statutory powers have strict limitations on the uses which can be made of information gathered using those statutory powers?
18. Is it not correct that an AFP/ACC taskforce could not hand over information to ADF leadership information which might fall short of getting a criminal conviction but which would be relevant to assessing fitness of the officer to be in his position or to be promoted further?
19. Does the DART accept that if the only response to the ADFA legacy is an AFP/ACC Taskforce looking for evidence sufficient to persuade the ACT DPP to run a criminal prosecution and then sufficient for an ACT Court to convict the accused, then there is a real risk that we could get as a Service Chief or even as a CDF a rapist or someone who did not intervene when one of his mates was raping another young Cadet at ADFA?
20. The DART June report at page 3 refers to ...the probability that the women who suffered the most serious abuse at ADFA are unlikely to want to participate in a Royal Commission and at page 26. The ACC's coercive examinations are conducted in private and the witness is examined by an Examiner appointed under the ACC Act or counsel assisting. There are very few people in the hearing room and there is no cross examination. Witnesses may have a lawyer with them. It is possible that at least some of the women abused at ADFA may be prepared to give evidence on oath in this [ACC] environment, particularly as it is away from the public gaze attracted by a Royal Commission. Does the DART's reference to the 'public gaze attracted by a Royal Commission' imply that the DART assumed that evidence from victims will be taken in public hearings?

21. Why does the DART believe that it is unlikely that the women who suffered the most serious abuse at ADFA are unlikely to want to participate in a Royal Commission? This is stated as a fact without any supporting explanation or evidence. Is that asserted fact based on DART's informal liaison with the Sex Discrimination Commissioner? Did Ms Broderick speak to individual victims to form this view? Did Ms Broderick tell victims that in a Royal Commission they would have to give evidence in public? If so – that is not correct is it?
22. Does the DART agree that victims of abuse who are still in the ADF might be more willing to participate in a Royal Commission if: the Royal Commission was supported by ADF leadership; and ADF leadership were committed to taking into account information gathered in the Royal Commission to assess the fitness of current officers to be in their current positions and/or their fitness for further promotion and/or particular roles? Did Ms Broderick ask victims whether they would be willing to participate in a Royal Commission with that purpose and with that backing from the ADF leadership?
23. In the Royal Commission into Child Abuse a large number of victims of terrible abuse have chosen to give evidence – some in public and some in private. Why would victims of abuse at ADFA be less likely to choose to participate in a Royal Commission than those victims in institutions?
24. The DART June Report has proposed the AFP/ACC taskforce as a means of getting evidence to support prosecutions for criminal offences. The DART June report refers to ACC coercive hearings being conducted in private and suggests that victims might be more willing to participate in those processes than in a Royal Commission. But those ACC hearings are at best preliminary to a criminal prosecution. Is it correct that in a criminal trial ordinarily unless the Court ordered otherwise: the trial including the cross-examination of the victim would be in open court ; and the victim would have to undergo cross-examination in open court? If so, then why does the DART believe that 'women who suffered the most serious abuse at ADFA' are more likely to participate in a criminal trial than in a Royal Commission?

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

1. ACT Policing responds and investigates every sexual assault which is reported including those which have been reported to it from ADFA. This includes those matters which have been referred to it as a result of DART referrals.
2. It would not be appropriate to speculate on possible prosecutions that could possibly result from the work of the Taskforce.
3. It would not be appropriate for the Taskforce to speculate on the prospects of any possible prosecutions that may result from an investigation of sexual assaults at ADFA.  
  
Prosecution in all matters within the ACT is undertaken by the office of the ACT Director of Public Prosecutions. ACT Policing will not speculate on the success or otherwise of matters before the court.
4. This is a matter for the ACT Director of Public Prosecutions.
5. As outlined in the Taskforce *Report on progress, operations and future structure*, the Taskforce's Leadership Group has carefully weighed up these matters and come to the conclusion that the most important objective is to take all available steps to bring the ADFA abusers (particularly those still serving in Defence) to account for their alleged crimes and ADFA mismanagers to account for their failure to stop or prevent the abuse. The Leadership Group accepts the conclusion in the November Report that a Royal

Commission will not, and cannot, achieve this outcome. The Leadership Group therefore looked for another way to deal with the abuse at ADFA as a criminal matter.

6. The Taskforce has referred 25 alleged abusers and 8 alleged mismanagers to CDF for consideration of administrative or disciplinary action in relation to allegations made by women who were sexually abused at ADFA from 1991 to 1998. Any administrative or disciplinary action taken against those abusers is a matter for Defence.
7. The 2015 June Report included a reference to the Northern Territory Intervention solely to illustrate that the Australian Crime Commission has previously been involved in an important investigation outside its usual remit of serious and organised crime.

This question should be directed to the ACC.

8. It is not appropriate for the Taskforce to express an opinion but all of the Taskforce's reports emphasise the contribution its work can make to change in culture and practice in Defence.
9. See response to Question 8.
10. No one can be confident about the outcome of a criminal investigation or prosecution, particularly when the alleged abuse occurred years earlier.
11. The Taskforce made a recommendation in November 2014 that there should be a Royal Commission into ADFA. That recommendation is still open to the government but it has so far neither accepted nor rejected that recommendation.

As a result, the Taskforce looked for an alternative the government could consider.

As the allegations involve criminal offences, the Taskforce proposed an alternative to a Royal Commission that is within the criminal justice system.

12. A taskforce gathering evidence for prosecutions could operate in conjunction with a Royal Commission.
13. Yes.
14. No. As noted in the Report, the Taskforce has referred a total of 131 cases to the Chief of Defence Force for consideration of administrative or disciplinary sanction. Any action taken on the basis of these referrals is a matter for Defence.
15. This statement is incorrect. The *Report on progress, operations and future structure* includes on page 17 a statement made by Defence in June 2015 about disciplinary or administrative action taken in relation to referrals by the Taskforce. The Report discusses in further detail measures taken or under consideration by Defence in relation to ADFA related cases referred to Defence for consideration (pages 24-25).
16. That purpose falls outside the Taskforce's Terms of Reference.

However, the Taskforce has liaised with Defence about the implications of its work for Defence culture and practices and the Taskforce has referred a total of 131 cases to the Chief of Defence Force for consideration of administrative or disciplinary sanction.

The Taskforce assesses complaints against a standard of plausibility. Any use of Taskforce information in relation to a particular officer would have to meet the requirements of natural justice and procedural fairness.

17. Yes.

The ACC Act contains a number of safeguards to ensure the proper use information gathered using the ACC's coercive powers.

Those safeguards include use immunity which protects the examinee from the use of self-incriminating answers in any subsequent criminal prosecution.

The same protection is afforded to witnesses giving evidence to a Royal Commission.

However, provided lawful disclosure is made under the ACC Act, there is scope to make derivative use of answers and other material arising out of an examination.

It is important to note that the recommendation of a Royal Commission is still open to the government. The suggestion of an ACC-ACT Policing investigation is put forward as an alternative for the consideration.

18. See answers to questions 16 and 17.

Each piece of information proposed for distribution would have to be considered in accordance with the applicable provisions of the ACC Act.

19. It is not appropriate for the Taskforce to speculate about this matter. Persons who read the Taskforce's Reports can form their own conclusions.
20. No. The Taskforce understands that amendments to the *Royal Commission Act 1902* allow the Child Sexual Abuse Royal Commission to conduct private hearings, and that similar amendments could apply to any Royal Commission into sexual abuse at ADFA. However, a Royal Commission is more likely to generate public and media interest than an ACC/AFP joint investigation.
21. The Taskforce cannot say what Ms Broderick told victims as we were not party to those discussions.

However, the former Commissioner advised the Taskforce that the women she had consulted who were sexually assaulted at ADFA want action to be taken but do not believe a Royal Commission is necessarily the best solution (June Report).

This attitude was consistent with the advice received from the Chief of the Defence Force that a considerable number of women abused at ADFA did not want Defence to take any action (June Report).

22. It would not be appropriate for the Taskforce to speculate about whether ADF support would increase the likelihood of Taskforce complainants to consent to participation in a Royal Commission.

The Taskforce cannot say what Ms Broderick asked victims as we were not party to those discussions.

23. It is not appropriate for the Taskforce to speculate about this matter.

See answer to question 21.

24. Ordinarily a criminal prosecution for sexual assault requires the complainant to give evidence, subject to the provisions for protection of vulnerable witnesses, unless the accused pleads guilty. However, evidence obtained through an ACC investigation and the use of its statutory powers may enhance the prospects of a successful prosecution over a standard police investigation.

In addition, the ACC Act includes a number of other offences which could become relevant such as failure to attend a hearing, refusal to answer a question, lying to the Examiner and speaking about the ACC hearing.

The Taskforce understands that a Royal Commission can conduct both public and private hearings. However, a Royal Commission is more likely to generate public and media interest than an ACC/AFP joint investigation.