

NEW ADF POLICY FOR HANDLING SEXUAL OFFENCES AND SUPPORT FOR VICTIMS

Proposals to improve support for victims

1. At the direction of the Chief of Defence Force, work is currently under way to ensure that the Australian military justice system adequately deals with the needs of victims. Currently, the ADF military discipline system provides a range of mechanisms to support victims, particularly victims of sexual misconduct, throughout the prosecution and trial of sexual misconduct offences.

2. **Existing mechanisms.** Some of the existing mechanisms worth highlighting include, for example, provisions within the rules of evidence applicable to trials within the Australian military justice system that allow victims of sexual misconduct to – in a limited range of circumstances – provide their evidence remotely. The name of a victim of sexual misconduct is also, generally, prohibited from publication.

3. **Initiatives by the Director of Military Prosecutions.** Further to this, the Director of Military Prosecutions (DMP) has taken an active role in relation to the provision of support for victims. The current Prosecution Policy of the DMP states:

Interests of the victim. In respect of offences against the person of another, the effect upon that other person of proceeding or not proceeding with a charge will always be a relevant consideration. Similarly, in appropriate cases regard may need to be paid to the wishes of the other person in deciding whether charges should be laid, although such considerations are not determinative.

4. Additionally, in the context of charge-bargaining, which involves negotiations between an accused via his or her defending officer and the DMP in relation to charges to be proceeded with, the DMP's Prosecution Policy requires the DMP to take into account all the circumstances of the case and other relevant considerations, including 'the views of the complainant(s)'.

5. As was noted in the DMP's 2011 Annual Report:

My focus on the positive management of victims has continued during the year, including close consultation with more vulnerable victims of offences against the person. Where appropriate during the reporting period, I have arranged for close family members of victims to attend and provide support directly to victims during pre-trial preparations and during trial itself. All of my prosecutors have been instructed to liaise closely with all witnesses, in particular victims.

6. In that vein, as a routine part of post-trial administration, complainants and witnesses receive correspondence from the DMP informing them of the outcome of the trial.

7. **Further proposals.** Senior leadership within the ADF have, however, recognised that more can be done to provide support to victims of sexual misconduct. To that end, the Chiefs of Services have supported a legislative amendment to the DFDA to allow victims to provide victim impact statements during the sentencing of an ADF member before a service tribunal. These statements will be similar to the victim impact statements currently allowed in civilian criminal jurisdictions, and will be allowed to be tendered in either written or verbal form. It is proposed that legislation amending the DFDA to include the use of victim impact statements will be introduced into the Australian Parliament in 2014.

8. **ADFIS initiatives.** As part of a broader review requiring ADFIS to develop victim focused investigation procedures, ADFIS has also initiated several research projects to improve its policies relating to the handling of victims, particularly victims of sexual misconduct. These projects include:

- a. a Victim Care Research Project, headed by a Victimologist from an Australian university. That project will seek to identify a workable victim-care strategy and a suitable 'Victim's Charter';
- b. a Health Policy Review, comprised of a joint effort between the ADF Joint Health Command and ADFIS. That review resulted in the development of an improved medical-management concept, and Joint Health Command are now exploring training options involving civilian experts; and
- c. improvements to Service Police training.

9. **Special Victim's Counsel proposal.** Finally, steps are currently being taken to develop a program to provide dedicated legal assistance for identified ADF members who are victims of sexual assault or sexual misconduct, similar to the 'Special Victim's Counsel' program in the United States military.

Authorised by: Director-General ADF Legal Service, Defence Legal, Department of Defence
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Disclaimer: This paper has been provided to the Response Systems to Adult Sexual Assault Crimes Panel to provide a general overview and understanding of the issues relevant to the Panel's Terms of Reference. This paper is not, and does not purport to be, a definitive examination of all relevant issues. More detailed guidance is available from relevant legislation, Department of Defence policies and from Defence Legal, Department of Defence.