



**Submission by the
Commonwealth Ombudsman**

**PHASE TWO OF THE REVIEW INTO
THE TREATMENT OF WOMEN IN THE
AUSTRALIAN DEFENCE FORCE**

Submission by the Acting Commonwealth Ombudsman, Alison Larkins

December 2011

BACKGROUND

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Commonwealth Ombudsman under the jurisdiction of the Defence Force Ombudsman (DFO) has the specific role of investigating complaints arising from the service of members of the Australian Defence Force (ADF). Complaints can be made by serving and ex-serving members of the ADF and their families.

Complaints made to the DFO include decisions about postings, promotions, discharge, leave, and handling of Redress of Grievance processes. The DFO may also look into the handling of allegations of misconduct, harassment and abuse, but may refer matters to the Inspector General, Australian Defence Force (IGADF) where it is found to be a more appropriate investigation avenue.

RESPONSE TO TERMS OF REFERENCE

INTRODUCTION

Under the Terms of Reference for *Phase Two of the Review into the Treatment of Women in the ADF* the Review is seeking submissions on:

- *The effectiveness of the cultural change strategies recommended by the Chief of the Defence Force Women's Reference Group in the Women's Action Plan including the implementation of these strategies across the Australian Defence Force;*
- *Measures and initiatives required to improve the pathways for increased representation of women into the senior ranks and leadership of the Australian Defence Force; and*
- *Any other matters incidental to the terms of reference such as sexual harassment, sexual abuse and unacceptable behaviour.*

Our office has received a limited number of cases that relate to the issues identified within the Terms of Reference in the last five years. As such, it is not possible to draw any conclusions as to systemic problems or measure the effectiveness of the policies and initiatives of the ADF relating to the treatment of its female members. However, it should be noted that low rates of complaint reporting may be the result of a number of factors including lack of awareness of the role of our office, fear of retribution, or complaint fatigue.

The themes and case studies provided in this submission may be illustrative of the experiences and treatment of women in the ADF, and the impact this may have on career progression in the ADF.

It is important to note that not all of the themes identified in this submission have been the primary reason for the complaint to our office, rather they sometimes emerged as secondary issues upon further examination. Therefore our office may not have investigated those aspects of the complaint, particularly where the issue was addressed through another mechanism, such as the IGADF or Department of Defence (Defence) complaint areas.

SCOPE OF THE DATA

From 1 July 2006 to 30 June 2011 the Ombudsman's office received 1910 complaints about the ADF. Of these, 128 complaints were received from women¹ ²or from a partner or immediate relative³ on behalf of a female ADF member. The main issues⁴ identified in these complaints are provided in the following table.

Main issue	Number of Complaints
Pay, entitlements and conditions	30
Redress of grievance handling or delay	19
Allegations	18
Terminations	17
Promotion, posting and training	13
Medical related	12
Housing and removals	10
Recruitment	9
Total	128

The majority of complaints received from or about women did not identify issues directly relating to discrimination or treatment on the basis of gender. However, 11 complaints did include reference to the impact of their gender on their career.

Our office also identified 19 complaints that identified issues of harassment, abuse and assault. In 14 cases, the complaint related to female ADF employees. A further five cases related to civilians where the unacceptable behaviour had linkages to the ADF. As these latter cases do not relate to the scope of this review, we have not provided any further information.

COMPLAINTS ABOUT CAREER, PROMOTION AND CONDITIONS OF SERVICE

From 1 July 2006 to 30 June 2011 our office received 11 complaints about women who were ADF or former ADF members where the issues raised in the complaint were described as having an adverse impact on the career or conditions of service of the member.

We received six cases that related to sexual harassment. In all of these cases the complainants felt that the behaviours were not adequately addressed by the ADF.

¹ Gender is determined by self-identification of complainant in the majority of cases. Where gender is not identified, analyses of other identifiers, such as preferred title or case issues are used.

² A further 72 complaints were received from women, however, the complaint was on behalf of a male ADF member.

³ In 16 cases the complaint was made by a partner or relative on behalf of a female ADF member.

⁴ Determination of 'main issue' is based on an analysis of the complaint.

Further, four of the complainants cited sexual harassment as the main reason for leaving the ADF.

Case Study 1 – Sexual harassment and impact on a career in the ADF

Our office received a complaint from Ms A's mother, on behalf of Ms A, regarding the delay in processing Ms A's discharge request. Ms A was seeking to discharge as a result of ongoing harassment by certain ADF officers.

Ms A said that she had experienced harassment and intimidation which began whilst she was a staff cadet at Duntroon and continued after her graduation. The harassment was sexual in nature and was perpetrated by a number of male colleagues. The humiliation she experienced was further exacerbated by the unauthorised widespread exposure of training videos which depicted Ms A struggling with military exercises.

Ms A reported the harassment to her commanding officers (COs) but did not make a formal complaint as she did not want to adversely affect the careers of the men involved. However, the reporting to the COs became known and she was further harassed and intimidated.

The stressful environment and psychological impact of the ongoing harassment led Ms A to seek discharge from the ADF. However after requesting discharge she was assessed as having poor performance by her COs. She was also sent for a psychological evaluation when it was rumoured she was suffering from a mental illness. This was not the case.

Ms A eventually had her discharge approved, and the unacceptable behaviours were investigated by the IGADF.

We received four cases related to pregnancy and parenting. In three of these matters the complainants perceived motherhood was an impediment to their career progression. In one matter, the complainant identified inconsistencies in entitlements between biological and adoptive parenting.

Case Study 2 – Pregnancy and workplace implications

Our office received a complaint from Corporal B about her treatment in the workplace while she was pregnant.

When she advised her commander that she was pregnant she was immediately removed from the courses she was undertaking, and her entitlements suspended. Corporal B was advised this was not discrimination on the grounds of pregnancy, but rather issues around the medical restrictions associated with pregnancy.

As the pregnancy progressed Corporal B was expected to undertake duties which fell outside of the medical restrictions of pregnancy, despite the restriction being the basis for her removal from her courses.

Corporal B was advised by our office to submit a Redress of Grievance on the matter, as she had not sought review of her issues through the ADF.

Case Study 3 – Inappropriate conduct and dismissal

Ms C approached our office with a complaint about unfair dismissal.

Ms C felt she had been unfairly dismissed after an incident where she and a more senior male officer had been caught engaging in inappropriate conduct.

Ms C was discharged as a result of the incident, however, the male officer was allowed to continue in the ADF. She felt this was not equitable.

As part of our investigation, Defence advised that there were performance issues that also contributed to the discharge.

COMPLAINTS ABOUT HARASSMENT, ABUSE AND UNACCEPTABLE BEHAVIOUR

From 1 July 2006 to 30 June 2011, our office received 14 complaints from women in the ADF or former ADF members that identified issues of harassment, abuse and assault (of which six cases are detailed above). As in the above cases, some of the issues related to events many years earlier.

Of these, 10 related to harassment or unacceptable behaviour in the workplace. In 13 of these matters other ADF members were identified as the alleged perpetrators.

Case Study 4 – Sexual assault

Our office received a complaint from Corporal D about the treatment by her work colleagues following a sexual assault on base.

Corporal D said that she was sexually assaulted by another trainee while attending a training course. The matter was reported to both local and military police.

As a result of the sexual assault Corporal D needed extensive medical treatment. This led to her being deemed medically unsuitable for service. She also felt her fellow officers were unsupportive of her.

Her medical issues started to improve and she sought to have her medical discharge appealed, however she withdrew the appeal as the stress of appealing her discharge and the ongoing investigations into the assault became too difficult to cope with.

Our office referred Corporal D to the Defence Review of Unacceptable Behaviour.