

# Chapter 6

## Conclusion and recommendations

### Introduction

6.1 The committee's terms of reference are directed to the accessibility and adequacy of the current mechanisms and processes to support victims of sexual and other abuse in Defence. While evidence was received on other issues during the inquiry, such as the issue of serving officers who are the subject of allegations of abuse, the committee's focus is on support and assistance for current and past victims of abuse in Defence.

### Taskforce outcomes

6.2 Having followed the progress of the Taskforce from its establishment through two inquiries, the committee has, in general, been impressed with the results achieved. The reparation payment scheme, the counselling support and the restorative engagement program appear in the majority of cases to have provided positive outcomes and assistance for the victims of abuse in Defence. The nature of the problems faced by victims is particularly revealed by the large number of reparation payments which takes account of the mismanagement by Defence in handling the abuse.<sup>1</sup> The committee recognises that the reparation payment scheme will never fully compensate for the abuse suffered by victims. However, for many of those who have received reparation payments, it can be seen as a tangible acknowledgment that wrongs have occurred and that recognition has its own value.

6.3 On the evidence received, the committee considers that the staff of the Taskforce have undertaken their work effectively and conscientiously, and have dealt compassionately and, on the whole, very professionally with victims of abuse in Defence. This view of the Taskforce has also been reflected in commentary from others, including many of those who have been engaged with its processes as complainants. Some complainants have not been satisfied with the conduct of the Taskforce. However, the committee has not received any evidence which would suggest that the policies and practices implemented by the Taskforce are in any way unjustified. In particular, the committee explicitly rejects the personal criticism received during the inquiry of the Chair of the Taskforce, the Hon Len Roberts-Smith QC. The committee has not engaged with this commentary during the inquiry, and does not intend to give it further attention here.

6.4 Some of those who contacted the committee during the inquiry argued that the Taskforce has been too restrictive in its interpretation of the scope of abuse within its

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1 'Key statistics' tabled by the Defence Abuse Response Taskforce at the public hearing on 26 September 2014, p. 1.

terms of reference. The term 'abuse' is clearly a subjective one and could potentially extend to a broad range of behaviour and practices. The committee considers the Taskforce has appropriately determined the scope of the abuse claims which fall within its terms of reference. The committee notes that other potential remedies exist for most of the claims of abuse, such as employment related disputes, which have been determined by the Taskforce to fall outside of its definition.

6.5 The committee acknowledges the concerns raised by Dr Rumble regarding media, anonymous and third party allegations of abuse in Defence. However, the committee also recognises that the Taskforce is limited by its terms of reference which include 'determining in consultation with those who have made complaints appropriate actions in response to those complaints'. If a person who may have suffered abuse in Defence (and is aware of the processes of the Taskforce) makes a decision not to engage with processes of the Taskforce, their wishes should be respected. It should also be noted that those persons who have suffered abuse in Defence are not restricted to making reports to the Taskforce and can also independently pursue complaints and remedies through other avenues. The Taskforce has indicated the media, anonymous and third party allegations of abuse will be taken into account in its advice to Defence regarding systemic issues.

### **Taskforce legacy issues**

6.6 The Taskforce is funded, and will continue to provide, services in relation to the restorative engagement program into 2016. The committee understands that recommendations in relation to the other 'legacy issues' will form part of the final report of the Taskforce. The committee wishes to comment on one major aspect of these legacy issues.

6.7 A key criticism of the Taskforce's activities concerns the initial stage of awareness raising and communications with potential complainants. It is clear that there remain victims of abuse in Defence who were not aware of the existence of the Taskforce before the 'cut-off' dates for applications, including some of those who have made submissions to the inquiry.<sup>2</sup>

6.8 This is a complex issue. As was pointed out during the inquiry, because of their experiences victims of abuse in Defence may actively avoid mentions in the media of Defence in general, and of abuse in particular.<sup>3</sup> The DLA Piper Review also faced similar issues in raising awareness of its activities. The apology made by former Minister Smith for abuse in Defence and the announcement of the Taskforce and its subsequent activities have received significant media attention. However, there does not seem to have been a communications strategy undertaken to reach out to those victims of abuse in Defence who were unlikely to have been informed about the activities of the Taskforce or would be reluctant to come forward. The committee

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2 For example, Mr Glyn Treadwell, *Submission 26*, p. 1.

3 For example, Mr Adair Donaldson, Shine Lawyers, *Committee Hansard*, 13 August 2014, p. 2.

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considers that, with hindsight, more could have been done by the Taskforce, by Defence and the Australian Government to raise awareness of the activities of the Taskforce and the associated support mechanisms available for victims of abuse in Defence.

6.9 The challenges of raising awareness amongst victims of abuse in Defence have contributed to the issues regarding the cut-off dates for making applications to the Taskforce. The committee is concerned that there is a significant cohort of former members of Defence who have suffered abuse who have not had the opportunity to access the outcomes offered by the Taskforce. The committee notes that a large number of complainants have contacted the Taskforce after the 'cut off' date of 31 May 2013.<sup>4</sup> There is also a risk that confusion regarding the limited waiver of non-disclosure agreements could have deterred victims of abuse in Defence from making a claim to the Taskforce before the cut-off dates.<sup>5</sup>

6.10 The committee does not agree that the operations of the Taskforce should be open-ended. However, the Defence cultural reforms are still continuing, and will not be completed for a further two years. Some actions to rectify problems with processes for responding to abuse, such as when administrative action may be taken by commanders, have only recently been undertaken by Defence. The committee is also acutely aware that the incidents of abuse in Defence continue to occur. In the view of the committee, the Australian Government should examine reopening the Taskforce processes to new applications from victims of abuse in Defence with a cut-off date that reflects the expected completion of the Defence cultural reform program. This extension should be accompanied by an extensive communications campaign aimed at reaching those who may be eligible and should not only rely on traditional media advertising and Defence publications.

6.11 The staff of the Taskforce have developed considerable expertise in assisting victims of abuse in Defence, collecting relevant information, assessing complaints and providing outcomes. They should continue to be utilised to assist victims of abuse in Defence until the cultural reforms are completed.

### **Recommendation 1**

**6.12 The committee recommends that the Australian Government extend the activities of the Defence Abuse Response Taskforce to support victims of abuse in Defence, including allowing new complainants to make claims up to 30 June 2015.**

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4 Correspondence from the Hon Len Roberts-Smith, Chair, Defence Abuse Response Taskforce, 17 September 2014.

5 For example, Ms Julia Delaforce, *Submission 16*, pp 1-2.

## Continuing cultural reform in Defence

6.13 A challenging number of recommendations for reform were developed through the Defence cultural reviews – including many which support or assist victims of abuse. Defence has progressed a large number of these reforms through the Pathway to Change strategy, in particular establishing the Sexual Misconduct Prevention Response Office (SeMPRO).

6.14 Defence has also assisted the Taskforce in undertaking its activities. In particular, the committee is pleased to see the broad participation of senior Defence officers in the restorative engagement program. This extensive program, which will continue to operate for some time, is likely to be one of the most valuable in terms of effecting Defence cultural reform.

6.15 The examples provided of administrative and disciplinary action, including termination actions, taken in relation to unacceptable behaviour onboard HMAS *Newcastle*, against the Army personnel involved in the 'Jedi Council' and against Air Force personnel for 'acts of indecency' indicate that Defence's zero tolerance approach is being applied.<sup>6</sup> Additionally, there appears to have been an increase in reports of incidents in Defence, particularly in relation to sexual assault. The committee agrees with the suggestion that this is an indication of successful reform and that victims of abuse may now feel more confident in making reports. The sexual ethics program being developed and rolled out by Defence to its training institutions also appears to be a positive development.

6.16 In contrast to these achievements, Defence could have been more open to consultation in relation to the Rethinking Systems Review and its consequent reform implementation.<sup>7</sup> The committee considers that the overall message of the cultural reviews is that Defence can be strengthened through engaging with external perspectives. In this context, the committee urges Defence to continue its relationship with the Australian Human Rights Commission in reviewing, auditing and assessing cultural change occurring within the organisation.

6.17 The committee also notes the lack of urgency on the part of Defence in undertaking some critical reforms. In particular, the revised Defence Instructions (General) relating to the management of response to sexual assaults (clarifying when administrative and disciplinary action could be taken) was not released until 2014, some three years after this issue was identified by the DLA Piper Review.

6.18 A number of criticisms were made of the restricted disclosure processes adopted by Defence in establishing the processes of SeMPRO. The committee accepts

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6 Department of Defence, responses to questions on notice from the hearing on 13 August 2014, Question 12, pp 2-3.

7 Defence Abuse Response Taskforce, *Sixth Interim Report to the Attorney-General and the Minister for Defence*, June 2014, p. 23.

that the approach taken by Defence to restricted disclosures is necessarily constrained by a number of legal and practical realities. However, in the view of the committee there is room for improvement in relation to communication of these exceptions to victims. Other communications to victims of sexual assault could also be improved. In particular, the SeMPRO should develop resources which clearly advise persons considering contacting SeMPRO regarding options for the collection of forensic evidence and to clarify support options for former members of Defence.

6.19 The importance of trust in support services for victims of sexual assault was emphasised by a number of witnesses in relation to SeMPRO. The committee is concerned that, as a telephone service, SEMPRO is not providing the sort of personal assistance which would be most beneficial for victims of sexual offences. A local SeMPRO Support Officer (SSO) Network is being developed to provide on the ground support and information to clients, witnesses and their commanders and managers. However, in the view of the committee, SeMPRO should undertake more 'outreach' activities to build relationships of trust with Defence personnel and to facilitate face-to-face support for victims of sexual assault.

6.20 Defence recruits a large number of new personnel each year. The DLA Piper Review report highlighted that there are aspects of ADF environments which carry risk of abuse occurring and there are strong cultural factors which discourage reporting of abuse in Defence. Defence should not solely rely on the low levels of reported abuse or survey results in monitoring this issue. The committee believes Defence needs to be focused on prevention of abuse occurring at all times, even when there are no signs of trouble and particularly when there are signs of trouble such as spikes in absenteeism, disciplinary problems, or personnel reporting sick or leaving Defence.

## **Recommendation 2**

**6.21 The committee recommends that the Sexual Misconduct Prevention and Response Office (SeMPRO) develop resources to clearly advise persons considering contacting SeMPRO regarding options for the collection of forensic evidence and support options for former members of Defence.**

## **Recommendation 3**

**6.22 The committee recommends that the Australian Government provide additional resources to SeMPRO to facilitate further outreach activities and personal support to victims of sexual assault in Defence.**

## **Systemic issues raised in DLA Piper review reports**

6.23 The committee was not provided with specific responses from Defence or the Australian Government in respect of the 35 systemic issues identified in the DLA Piper Review report. As part of its response to the committee's previous report into the DLA Piper review and related issues, the Australian Government indicated that:

Noting that Pathway to Change is Defence's response to the Reviews initiated in 2011, Defence will consider the systemic issues and findings of the DLA Piper Review in this context.

6.24 The committee notes that the Chair has indicated that systemic issues will be included as part of the Taskforce's final report.<sup>8</sup> Defence has also indicated the systemic issues identified by the DLA Piper Review reports have been considered as part of the Rethinking Systems Review.

6.25 The systemic issues identified (or recommended for further consideration) as part of the DLA Piper Review should be explicitly responded to by the Australian Government. For example, in the committee's previous report it highlighted Issue S12 raised in the Supplement to Volume 1 which asked Phase 2 to consider whether it would be appropriate for Defence to seek the making of a regulation under the *Crimes Act 1914* that would add recruitment into the ADF to the exclusions from the operation of the spent convictions legislation. As far as the committee is aware there does not appear to be a Defence or Australian Government decision on this issue. This issue is relevant to character checks at point of entry into the ADF of personnel who may have access to vulnerable Defence personnel.

6.26 The committee is concerned that a response to these systemic issues may be lost between the Pathway to Change reforms (initiated by the former Minister), the Taskforce's recommendations (developed independently of Defence) and the Rethinking Systems Review (initiated by Defence itself). Following the next interim report of the Taskforce, the Minister for Defence is best-positioned to formally respond to the systemic issues identified in the DLA Piper Review.

#### **Recommendation 4**

**6.27 The committee recommends that following the next interim report of the Taskforce, the Minister for Defence table a formal substantive response to the systemic issues identified in the DLA Piper Review.**

#### **Access to veterans' entitlements and support**

6.28 The committee considers that the recent changes to access to non-liability health care will operate to assist some victims of abuse in Defence. However, there also appears to be potential gaps in this support. Where a person was discharged at their own request, before the three year requirement and not on medical grounds, they may not be eligible to access these services.<sup>9</sup> One of the challenges identified during the inquiry is that persons who have suffered abuse may leave military service early after an adverse experience and whose true reason for leaving may not be reflected in their official record of service. DVA should examine options to close this gap,

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8 The Hon Len Roberts-Smith, *Committee Hansard*, 26 September 2014, p. 28.

9 Mr Shane Carmody, DVA, *Committee Hansard*, 13 August 2014, p. 48.

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including through a recommendation for legislative change to the Australian Government if necessary.

### **Recommendation 5**

**6.29 The committee recommends the Australian Government introduce amending legislation to remove the three year minimum service requirement for eligibility for Non-Liability Health Care (NLHC) and to make NLHC available to any person who has had completed any service.**

6.30 There was considerable time spent during the inquiry on the various evidentiary tests for access to different assistance for victims of abuse in Defence. It is easy to understand the frustration experienced by victims of abuse who are denied access to DVA assistance 'on the balance of probabilities' after their claims of abuse have been determined to be 'plausible' by the Taskforce. The committee accepts that DVA officers are bound by the evidentiary burdens set by legislation in assessing the eligibility of applicants for compensation and assistance. However, it was made clear during the inquiry that victims of abuse can have a number of difficulties in making their claims, particularly where military records may be inaccurate.

6.31 It is encouraging that DVA is seeking to obtain information regarding 'clusters' of abuse identified by the Taskforce and may be able to take that information into account in assessing the claims of victims of abuse in Defence. However, the committee notes that difficulties with establishing eligibility for DVA benefits and support are relevant to persons affected by abuse in the Defence who have not come into Taskforce processes. Further, the difficulties in establishing eligibility for DVA benefits will continue to be relevant to persons affected by abuse in Defence after the Taskforce has ceased to operate.

6.32 Accordingly, it is the opinion of the committee that it is insufficient for DVA to confine consideration of patterns and clusters to information provided to DVA by the Taskforce. The committee recommends that the Minister for Veteran's Affairs direct the DVA to report to Parliament on what would be required to analyse DVA's own file material for clusters and patterns of abuse which could assist claimants to establish entitlements to DVA benefits.

### **Recommendation 6**

**6.33 The committee recommends that the Minister for Veterans' Affairs direct the Department of Veterans' Affairs (DVA) to commence consultation with veterans' representative organisations and to report back on:**

- **the legal and practical barriers there are to victims of abuse in the ADF succeeding in establishing the facts necessary to access entitlements to DVA benefits;**
- **what Defence and DVA could do and what resources they will require to gather and share information which could assist such individuals to establish those facts to the satisfaction of DVA and tribunal decision-makers;**

- **what can be done in liaison with veterans' groups, other Australian Government agencies and community groups, and what resources will be required to reach out to individuals affected by abuse who may be eligible for DVA benefits – including individuals who have previously applied and been rejected.**

### **Community-based support**

6.34 During the inquiry the committee also received evidence from Mr Barry Heffernan from the William Kibby VC Veterans' Shed regarding a proposal for community based support for veterans who have suffered abuse. He described the initiative, Community-Based Defence Abuse Support (COMBADAS), as taking up where the Taskforce leaves off and providing a low cost alternative assistance program to victims of abuse in Defence:

COMBADAS will provide safe, supportive, non-judgemental community-based facilities for the support of ex-ADF members who have experienced abuse, and will address unmet emotional and communal needs.

COMBADAS will provide emotional, psychological, and financial/legal assistance to family members of veterans, so as to better enable them to come to terms with the emotional traumas experienced by their loved ones, and to handle the subsequently emotional burdens thereby imposed upon them.<sup>10</sup>

6.35 Given the large number of victims of abuse in Defence, many of whom potentially have not accessed the Taskforce or DVA assistance, alternative community based support may be a valuable and accessible resource. In the light of outcomes achieved to date and evidence from the Hon Len Roberts-Smith, the committee considers that the COMBADAS program is worthy of further consideration by the Department of Veterans' Affairs to ascertain if it could form the basis of a sustainable, national approach to supporting victims of Defence abuse. Any funding agreements with community-based support organisations should allow them to continue to advocate for victims of abuse in Defence.

### **Recommendation 7**

**6.36 The committee recommends the Department of Veterans' Affairs examine options to provide financial assistance to support a national, sustainable community-based approach to assisting veterans who have suffered abuse.**

### **The need for a Royal Commission**

6.37 The committee notes that some of the abuse suffered in Defence training institutions, where the victims were under 18 years of age, appear to fall within the scope of the terms of reference of the existing Royal Commission into Institutional

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10 *Submission 22*, p. 9-10.

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Responses to Child Sexual Abuse.<sup>11</sup> In the view of the committee, these cases of institutionalised abuse of minors, illustrated by the Taskforce report into HMAS Leeuwin, should be considered as part of that Royal Commission. The committee notes that the Taskforce has provided a copy of its HMAS Leeuwin report to the Royal Commission and understands some victims have already raised their experiences with the Royal Commission.<sup>12</sup>

6.38 The question of whether a Royal Commission into abuse in Defence is necessary is a key part of the terms of reference of the Taskforce. The Chair of the Taskforce is in the best position to make that recommendation, and the committee has confidence that he will make an appropriate decision. That said, the committee considers that this should not be perceived as a limited binary choice. While royal commissions have extensive inquiry powers, the committee does not agree with the concept that they are the sole possible solution if a further investigation or inquiry into abuse in Defence is considered necessary. Any further response to past abuse in Defence should be appropriately tailored to achieve defined outcomes and minimise the risk of creating further suffering for past victims of abuse in Defence.

6.39 The situation in relation to abuse in Defence is not always clear-cut. As the DLA Piper Review reports made clear, some of those who were initially victims of abuse in Defence, were influenced by their experiences and the prevailing institutional expectations and culture to become abusers themselves. Witnesses also emphasised to the committee that Defence does not exist in a vacuum and is constantly impacted by the problems of abuse which exist in the wider Australian community. In this context, the allocation of personal, institutional and societal responsibility can be ambiguous.

6.40 A key issue is the presence of persons within Defence, identified by the Taskforce, who are the subject to allegations of abuse. Some submitters to the inquiry considered that a Royal Commission was the only way to 'get' the perpetrators of abuse in Defence. However, the Taskforce through its processes (and with the consent of the complainant) has referred a number of allegations for investigation by the police or to Defence for administrative and disciplinary action. Existing administrative and disciplinary options within Defence may be sufficient to remove perpetrators of abuse. For example, the committee notes that amendments to Defence regulations have introduced a 'good character' consideration for personnel determinations and there are existing provisions to terminate the service of Defence personnel based on broad criteria such as 'performance', 'behaviour' or where the retention is not in the interest of the Defence Force.<sup>13</sup>

6.41 The committee notes that the Taskforce in its seventh interim report stated that in October 2013 Mr Roberts-Smith had made recommendations to the CDF to

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11 Royal Commission into Institutional Responses to Child Sexual Abuse, *Terms of Reference*, available at: <http://www.childabuseroyalcommission.gov.au/about-us/terms-of-reference>.

12 Defence Abuse Response Taskforce, *Report on abuse at HMAS Leeuwin*, June 2014, p. 94.

13 Defence (Personnel) Regulations 2002.

take action in relation to at least 12 serving members of the ADF, and to consider further action in another 13 cases.

6.42 Procedural fairness issues should not be ignored in considering any appropriate approach to abuse in Defence. Royal commissions can also produce negative outcomes in the course of their proceedings.<sup>14</sup> The committee notes that the *Royal Commissions Act 1902* was amended to facilitate private sessions of the Royal Commission into Institutional Responses to Child Sexual Abuse. Additional legislative amendments may be required if a Royal Commission into abuse in Defence is considered necessary.

6.43 The committee encourages the Taskforce and the Australian Government to consider a range of flexible options or mechanisms. The committee notes that overseas jurisdictions have successfully established and operated commissions to achieve truth and reconciliation outcomes in relation to past wrongs committed in a variety of institutions. For example, the Truth and Reconciliation Commission of Canada established to reveal past abuse in relation to the Canadian Indian residential school system demonstrates how such commissions can be tailored to meet the specific requirements.

### **Recommendation 8**

**6.44 The committee recommends that the Taskforce and the Australian Government assess the appropriateness of a range of responses to abuse in Defence, in addition to determining whether a Royal Commission should be established. The welfare of victims of abuse in Defence should be the primary consideration in any decision made.**

### **Release of Volume 2 of the DLA Piper report**

6.45 During the inquiry, the committee requested access to Volume 2 of the DLA Piper report. This was undertaken in private at Parliament House with access arrangements which reflected the confidentiality of the material, as well as the needs of senators to consider the material. The committee wishes to acknowledge its appreciation for the efforts of staff of the Taskforce and the Minister of Defence who facilitated this process.

6.46 On 21 August 2014, the committee wrote to the Taskforce requesting that specific parts of Volume 2 flagged by senators be released to the committee and, where necessary, redacted of any personal information or any material which could potentially identify any individual. The first tranche of these flagged documents containing summary and explanatory material (which did not require extensive redaction) were provided to the committee on 25 September 2014.

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14 Saxby Pridmore and Milford McArthur, 'Suicide and reputation damage', *Australian Psychiatry*, Vol 16, No. 5, October 2008, p. 312. Malcolm Brown, 'Holding judgement', *Sydney Morning Herald*, 9 June 2007, p. 28.

6.47 On 14 October 2014, the Taskforce wrote to the committee regarding the second tranche of flagged documents which contained sensitive personal information and had been requested by the committee to be provided following redaction. The Taskforce included correspondence with the Minister of Defence regarding the release of this second tranche of documents which discussed a number of privacy concerns, including the situation of victims of abuse who had provided information to the DLA Piper Review in confidence. In particular, the Taskforce requested the Minister consider making a public interest immunity claim in relation to the documents. The Minister agreed there were grounds for a valid public interest immunity claim but requested the Taskforce consider further negotiation with the committee that may negate the need for the claim to be made.

6.48 The committee acknowledges that differing views exist in regard to the value of the releasing of Volume 2 of the DLA Piper report. In particular, the committee does not wish to cause any additional concern or anxiety for persons who provided information to the DLA Piper Review in confidence. Due to the subject matter and the privacy concerns raised by the Taskforce and the Minister, the committee has made the decision not to further pursue the release of the second tranche of the flagged parts of Volume 2 which contained information about specific allegations and detailed personal information.

### **Recommendation 9**

**6.49 The committee recommends that no further parts of Volume 2 of the DLA Piper report should be released in summary or redacted form.**

### **Conclusion**

6.50 Overall, the committee's views have not significantly changed in relation to this topic since its previous report. While the committee shares the frustration expressed by some during the inquiry with the slow progress of reforms, it was always anticipated it would take time to achieve cultural change within Defence. As noted in the committee's previous inquiry, it is important to recognise that the issue of sexual and other abuse is not unique to Defence. It is a serious issue facing workplaces, educational institutions, cultural and religious organisations across Australia. Like any other large organisation, Defence will be required to undertake constant work both to prevent abuse, and to support and assist victims of abuse. In this context it is important for Defence's cultural reform programs to continue to be implemented and reviewed to ensure they are achieving success.

6.51 In the view of the committee, real progress has been achieved by Defence since the commencement of the Pathway to Change strategy. Support mechanisms for victims of abuse in Defence have improved since the DLA Piper Review. In particular, the committee was heartened by the evidence that there is an upward trend in the number of people within Defence who understand how they can make a complaint and have confidence that the Defence chain of command will act on their

behalf.<sup>15</sup> Nonetheless, there is clearly more work to be done. The committee anticipates that the Taskforce will have further recommendations to assist Defence to improve its cultural reform programs and prevent further abuse from occurring.

6.52 The establishment and operation of the Taskforce has been a bold initiative in assisting past victims of abuse in Defence. While many of its processes have not yet been completed it has achieved an impressive range of positive outcomes for victims of abuse. In contrast to the previous failures of the Australian Government's duty of care to protect victims of abuse in Defence, the Taskforce has professionally and respectfully provided assistance. In the view of the committee, its operations should be extended to assist the victims of abuse in Defence who are still seeking support.

**Senator Alex Gallacher**  
**Chair**

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15 Mr Geoff Earley, IGADF, *Committee Hansard*, 13 August 2014, p. 27.