

Chapter 3

Mechanisms to support victims of abuse in Defence

Introduction

3.1 This chapter focuses on mechanisms to provide support to victims of sexual and other abuse in Defence. This includes: a background of key Defence funded support options for victims of abuse; issues raised by submitters to the inquiry; the establishment of SEMPRO; and the introduction of restricted reporting.

Background

3.2 A number of support options have potentially been available to victims of abuse in Defence. For example, Annex C to DI(G) PERS 35-3, titled *Defence Funded Support Options for Unacceptable Behaviour Management* lists a number of support options that can be offered to complainants, respondents and witnesses of unacceptable behaviour. These include:

- the Equity Advisor Network—Equity Advisors provide information, options and support for the resolution of workplace equity and diversity issues;
- the Defence Equity Advice Line—a confidential, toll-free telephone line for those who consider they have been subjected to, accused of, or witnessed any form of unacceptable behaviour;
- a case officer—a case officer may be appointed at the discretion of the commander or manager to assist the complainant and the respondent during the complaint management process;
- psychological counselling and support—these include Defence medical support, psychological support, the services of the Defence Community Organisation, the ADF Mental Health Strategy All-hours Support Line and military chaplains;
- the Employee Assistance Program (EAP)—the EAP counselling service is available for Defence APS employees;
- Defence Legal Support—both complainants and respondents may seek legal advice, though from separate legal officers; and
- Peer support—'[t]he complainant, respondent and witnesses may be provided with moral and social support from their peers during the course of any inquiry and judicial proceedings, and after the incident has been resolved'.

3.3 Annex C to DI(G) PERS 35-3 also lists temporary transfers and the granting of leave as options at the commander or manager's discretion and lists factors which should be considered in making decisions on these options.

3.4 Annex B to DI(G) PERS 35-4 *Management and Reporting of Sexual Offences* lists the Defence funded support options for sexual offence management. In addition to many of the support options for unacceptable behaviour, it includes referral to a Defence medical centre for consultation and an assessment of workplace where a 'complainant may feel unsafe as a result of a sexual offence complaint'. It notes that:

Commanders and managers must maintain an environment where complainants, respondents and witnesses to sexual offences are confident that they can access a range of support services. Complainants, respondents and witnesses to incidents of sexual offences must be provided with all practicable and reasonable support.¹

Issues

Support for victims of abuse

3.5 The DLA Piper Review Volume 1 report identified an absence of positive support for those who report abuse, either as a witness or victim, as an indicator of risk of abuse. It commented that '[a]s far as the Review is aware, there was not any such support in the ADF over most of the 60 years considered by this Review'.² It noted that a recurrent theme in the allegations considered by the Review was a perception that 'even where Defence's initial response to an allegation of sexual abuse seems to have been appropriate, the victim then perceives that the positive support fades away very quickly'.³ The Review considered that 'Phase 2 should consider the quality and provision of ongoing support to ADF members who have made an allegation of abuse or who have been abused'.⁴

3.6 At Supplementary Estimates in October 2012, the Department of Defence confirmed that from the outset of the DLA Piper Review 'counselling and crisis intervention support' was established which remains available 'to existing ADF and APS personnel as well as former ADF personnel and their families'.⁵ It also noted that 'DLA Piper has reviewed its records and has confirmed that 737 of the 775 [complainants] have been provided with details of counselling services'. While noting that it did not know who the 775 complainants are, the Department told the committee that 18 persons who identified themselves as having DLA Piper related matters had accessed support services which Defence managed, including: the employee

1 Defence Instructions (General) PERS 35-4, *Management and Reporting of Sexual Offences*, Annex B—Defence Funded Support Options for Sexual Offence Management.

2 DLA Piper Review, *Volume 1*, p. 22.

3 DLA Piper Review, *Volume 1*, p. 151.

4 DLA Piper Review, *Volume 1*, p. 152.

5 Senate Foreign Affairs, Defence and Trade Legislation Committee, Supplementary Estimates, *Committee Hansard*, 17 October 2012, p. 30.

assistance program; the Defence Community Organisation; and the support telephone line.⁶

3.7 The Department of Veterans' Affairs (DVA) noted that eligible individuals could receive assistance from the Veterans and Veterans Families Counselling Service (VVCS), a free and confidential service available 24 hours a day across Australia:

Although part of the DVA portfolio, for privacy reasons the VVCS is organisationally separate from the Department, maintaining its own systems and separate client data repositories. The VVCS advise that they have received a total of 12 calls or contacts from clients identified as being related to the DLA Piper Review.⁷

3.8 The referral of victims of abuse to counselling is one of the key functions of the Defence Abuse Response Taskforce. The Taskforce noted that:

Case coordinators in the Taskforce work closely with complainants as their matters are dealt with by the Taskforce. If psychological support is required, case coordinators will refer complainants to registered external counselling providers. Taskforce psychologists and case coordinators will not provide counselling to complainants, rather they will assess whether complainants require counselling and refer the complainant to an appropriate external provider.⁸

Support mechanisms

3.9 The Alliance of Defence Service Organisations (ADSO) highlighted the issues involved in appointing a 'case manager' in relation to a complaint under the current Defence Instruction (General).

A case manager is to be appointed *at the discretion* of the commander or manager to assist the complainant, respondent and witnesses during the complaint management process. In particular, the case manager is required to explain the support services available to the parties to the complaint, and facilitate access to these services.

The case manager is to be a compassionate but impartial person, and the role is not to be linked to a specific workplace position. The case manager is not to be, or likely to be, a person involved in the inquiry or disciplinary aspects of the complaint.⁹

6 Senate Foreign Affairs, Defence and Trade Legislation Committee, Supplementary Estimates, *Committee Hansard*, 17 October 2012, p. 30.

7 *Submission 18*, p. 2.

8 Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 15.

9 *Submission 8*, p. 2 (emphasis in original).

3.10 In the view of ADSO, this was 'a very good example of an instruction that should give no latitude – whatsoever'.¹⁰ It considered a case manager should be appointed at the first opportunity and it should be mandatory that case managers are appointed. While a case manager should be a 'compassionate but impartial person', not involved in the inquiry or disciplinary aspects of the complaint, the ADSO noted that 'regrettably within the Services, most personnel are either friendly with or know each other in some way or another'.¹¹ Consequently, the ADSO supported the establishment of a specialist Sexual Abuse Unit with Defence, 'preferably within the ADFIS'.¹²

3.11 LtCol Paul Morgan, who is employed in Joint Health Command of Defence, stated that he had seen no improvement in this area:

Defence has made no explicit effort to provide support to victims of sexual and other abuse in Defence. There have been no additional resources applied to this area. There has been little to no effort to train the care providers in abuse related issues. It simply does not rank as a priority for Defence to improve this area, through any kind of specific focus on this issue. Commanders use the ADF health service to 'handball' off their responsibilities. There has been little or no additional effort to train commanders in the specifics of supporting victims of abuse. I have seen no effort by Defence Health Services to plan or implement any improvements in the support services for victims of sexual and other abuse.¹³

DVA support

3.12 DVA provides support to current and former ADF personnel who have suffered injury or conditions related to their service. As previously noted, counselling is available to eligible ADF members and their families through the Veterans and Veterans Families Counselling Service (VVCS) a free and confidential service. The DVA website states:

VVCS staff are qualified psychologists or social workers with experience in working with veterans, peacekeepers and their families. They can provide a wide range of treatments and programs for war and service-related mental health conditions including post traumatic stress disorder (PTSD).¹⁴

3.13 DVA's submission outlined the steps it had taken to support those contacting the DLA Piper Review who required DVA assistance, including the establishment of a specific team in Melbourne:

10 *Submission 8*, p. 2.

11 *Submission 8*, p. 2.

12 *Submission 8*, p. 2.

13 *Submission 22*, p. 2.

14 DVA, VVCS—Veterans and Veterans Families Counselling Service', http://www.dva.gov.au/health_and_wellbeing/health_programs/vvcs/Pages/index.aspx (accessed 19 June 2013).

Specialised training on sexual and other abuse was provided to DVA staff. To further ensure support for those claiming compensation as a result of sexual and other forms of abuse, policy and procedural guides were updated to emphasise the need for sensitivity when liaising or requesting information from clients, and when referring clients for specialist medical examinations, etc.¹⁵

3.14 DVA noted that following the release of the DLA Piper Review further arrangements have been introduced for dealing with claims relating to sexual and other abuse.

Where the claim can be accepted it will be. Where the claim cannot be accepted on the basis of the available evidence, it is sent to the Melbourne team who contact the client to advise them of this. The team offers the client the following options:

- having the claim determined,
- taking the time to submit more evidence, or
- asking DVA to hold the claim in case further evidence is available as a result of the response to the DLA Piper Review...

DVA has been contacted by 22 people who have identified themselves as having contacted the DLA Piper Review. Seventeen of those people have also submitted a claim for compensation. In addition, DVA has around 83 claims currently being investigated, that appear to involve abuse.¹⁶

3.15 In his supplementary submission, Dr Gary Rumble noted that while compensation and common law actions had been a focus during the committee's public hearing, there was little attention to the fact that there are already developed 'current mechanisms' administered by DVA providing support for veterans 'who have physical and/or mental problems associated with their service in the ADF'.¹⁷ He stated:

DVA benefits include counselling and medical treatment as well as direct financial support and respond to individuals' circumstances as they change over time. Accordingly DVA benefits could be of much more importance to people affected by abuse in the ADF in the past than a one-off payment under either common law or under the new capped compensation/reparation payment scheme.¹⁸

3.16 Dr Rumble understood that some victims of abuse in the ADF had accessed DVA benefits. However, he cautioned that 'although establishing an entitlement to DVA benefits should be less difficult than succeeding in a common law claim for

15 *Submission 18*, p. 1.

16 *Submission 18*, p. 2.

17 *Submission 24A*, pp. 1–2.

18 *Submission 24A*, p. 2.

damages, individual claimants seeking access to current DVA benefits for current health problems related to past abuse often face significant evidentiary barriers in proving that they were abused in the ADF many years ago'.¹⁹

Sexual Misconduct Prevention and Response Office

3.17 As outlined in Chapter 2, the establishment of a SEMPRO in Defence was a key recommendation made in the *Review of Treatment of Women in the ADF*. The recommendation included:

As a priority, [the Chiefs of Service Committee] should establish a dedicated Sexual Misconduct Prevention and Response Office (SEMPRO) to coordinate timely responses, victim support, education, policy, practice and reporting for any misconduct of a sexual nature, including sexual harassment and sexual abuse in the ADF. This Office is to be adequately and appropriately staffed, including with personnel that have experience in responding to people who have been subjected to sexual harassment or abuse and is to be headed by a senior leader (of no less than one star rank or at SES level) and located at Defence Headquarters.²⁰

3.18 The recommendation proposed that SEMPRO would perform a number of roles in supporting victims of sexual misconduct (as well as education, training, outreach, and data collections roles). These roles included:

- to respond to complaints of sexual harassment, sex discrimination and sexual abuse including ensuring the immediate safety and well-being of the complainant;
- to provide a 24 hour/seven day a week telephone hotline and online service (click, call or text access) that is staffed by personnel with expertise in responding to complainants—female and male—who report sexual harassment, sex discrimination and sexual abuse; and
- to enter into appropriate arrangements with expert external service providers so as to offer complainants an alternative avenue for support and advice if the complainant does not wish to engage with the ADF's internal complaints system.²¹

3.19 At the public hearing Defence provided some information about the proposed SEMPRO and confirmed that the focus of SEMPRO will be on sexual misconduct. The CDF commented:

Essentially the organisation is there to ensure that there is a point of contact for either members of the ADF to contact themselves or a route for those

19 *Submission 24A*, p. 2.

20 Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force*, Phase 2 report, August 2012, p. 36.

21 Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force*, Phase 2 report, August 2012, p. 36.

who have incidences reported to them to come in and then be pointed in the right direction and connected with the support mechanisms that exist in the organisation and to grow some of those mechanisms to exist in the organisation to support those people.²²

3.20 While SEMPRO will not be launched until July 2013, it has been announced that the office will be headed by Air Commodore Kathryn Dunn. At the public hearing, Defence noted that:

It is a relatively small unit but at the moment we have 14 positions. Importantly we are going to leverage from existing mechanisms within the organisation to facilitate support and also have in place mechanisms to, as the office gets up to speed, make referrals to rape crisis centres and those sorts of external support. That will be very much focused on the victim and their needs.²³

Restricted reporting

3.21 The government's response to the *Review of Treatment of Women in the ADF* agreed with the recommendation that:

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.²⁴

3.22 The DLA Piper Review Volume 1 report also specifically commented on the reporting of sexual assaults, noting that ADF processes require all sexual assault allegations to be immediately reported to local State and Territory police:

This can place victims in an invidious position at a time when they are likely to be traumatised. If they report the matter, they will be exposed to the further trauma and stress of the civilian criminal justice system which seems to be very ineffective in calling perpetrators of sexual assault to account and which is—at best—very slow moving...Furthermore, the requirement of immediate reporting to Police can result in no reporting occurring.²⁵

3.23 The DLA Piper Volume 1 report noted that some overseas military forces have implemented a 'restricted reporting' regime, where the victim of a sexual assault can make a restricted report to designated personnel who can provide support to the victim. However, the report is not disclosed within the command structure or investigated by disciplinary authorities, 'unless and until the victim consents to that

22 General David Hurley, CDF, *Committee Hansard*, 14 March 2013, p. 29.

23 Ms Carmel McGregor, Defence, *Committee Hansard*, 14 March 2013, p. 30.

24 Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force*, Phase 2 Report, August 2012, p. 37.

25 DLA Piper Review, *Volume 1*, p. xxxiv.

occurring'.²⁶ The DLA Piper Review identified a number of advantages to restricted reporting:

The purpose of the restricted report is to encourage quick reporting of assault even where the person affected does not want it to be pursued for criminal or disciplinary prosecution. The perpetrator is not identified. Command is at least made aware that there may be a problem within the area affected and can take steps to reduce the possibility of further events occurring without involving the victim. It also ensures that there is a record of the event and that the person affected receives immediate assistance.²⁷

3.24 The DLA Piper Review considered that 'Phase 2 should undertake further examination of the establishment of a system for permitting the restricted reporting of sexual assaults in Defence with particular regard to the availability of such a system for the receipt of allegations arising from the distant or even middle distant past'.²⁸ This drew on one of the recommendations made by Ms Angela Ballard in her 2009 Churchill fellowship paper on 'Sexual Assault Prevention and Intervention in a Military Environment':

[A] 'Restricted' and 'Unrestricted' option for disclosure should be provided to ADF victims, allowing them to access medical and mental health services without law enforcement involvement. This will provide Commands with environmental knowledge to ensure future risk reduction measures could be put in place.²⁹

3.25 Ms Ballard's paper noted that there was value in command and policing agencies being initially less visible to victims of sexual assault via a restricted reporting option. She noted 'there is a likelihood that as the victim becomes more empowered and confident in being supported, they will change to "Unrestricted" reporting and the organisation can regain "control" of the situation' and that this had been seen in the United States where a system for restricted reports was in place.³⁰ In Australia, she highlighted that 'counsellors, psychologists, medical staff and Chaplains invoking privacy/confidentiality privileges of their profession, permits ADF victims of sexual assault to access the medical and mental health support they require without reporting the incident to military or state policing agencies'.³¹

3.26 The Inspector-General ADF noted that his office had been consulted in the policy development in relation to this area and would be a keen observer of its implementation.³² While he acknowledged the restricted reporting system has the

26 DLA Piper Review, *Volume 1*, p. 137.

27 DLA Piper Review, *Volume 1*, p. 137.

28 DLA Piper Review, *Volume 1*, p. 139.

29 *Submission 5, Attachment 1*, p. 41.

30 *Submission 5, Attachment 1*, p. 22.

31 *Submission 5, Attachment 1*, p. 22.

32 *Submission 19*, p. 3.

potential to encourage the reporting of abuse that might otherwise go unreported, he also outlined several concerns. These concerns included:

- care to ensure restricted reporting will not be inconsistent with State criminal law dealing with obligation to report offences;
- ADF obligations under the workplace, health and safety legislation may be hard to achieve if restricted reports become 'mainstream rather than exceptional'; and
- a consequence of maintaining confidentiality of a restricted report is that alleged perpetrators will not be the subject of investigation and may reoffend.³³

3.27 Dr Rumble also noted that it not clear whether the announced restricted reporting measure is intended to be available only to current Defence personnel or will also be available to former Defence personnel for incidents which occurred when they were in Defence. He recommended that this be clarified.³⁴

3.28 At the committee's public hearing, Defence indicated that details of the restricted reporting system were still being developed. General Hurley, the CDF, informed the committee that Defence leadership had not settled on the manner of the restricted reporting processes which could be implemented:

We are looking very seriously through SEMPRO at introducing restricted reporting of sexual offences in the ADF. There are pros and cons to doing that in terms of support for the victim on the one hand but not then disclosing offenders who could then repeat before we move. So we have a duty of care in relation to that as well. Again, that is an issue that is being very seriously looked at in the present time and we will settle on a point somewhere on that continuum and put that into effect...³⁵

We will have more restricted reporting, but where on the spectrum from going and finding the guilty person to no reporting until the victim is well and truly ready do we want to sit? We are just thinking that through because there are risks in those positions for both other individuals in the organisation and the institution.³⁶

3.29 The Inspector-General ADF's *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction* noted apparently conflicting advice in DI(G) 35-4 Management and Reporting of Sexual Offences regarding a victim or complainant's wishes. Annex C to DI(G) 35-4 contained form AC875-4 'Record of complainant's wish not to officially report a sexual offence to the police'. While this seemed to imply a complainant could indicate they did not want to

33 *Submission 19*, p. 4.

34 *Submission 24*, p. 7.

35 *Committee Hansard*, 14 March 2013, p. 29.

36 *Committee Hansard*, 14 March 2013, p. 30.

report an allegation, there was provision that the commander or manager still had 'a responsibility to ensure that a sexual offence complaint is notified to State/Territory or relevant Defence Investigative agency'.³⁷ In an answer to a question on notice, Defence noted that DI(G) 35-4 has been amended to permanently remove the requirement for form AC875-4.³⁸

37 Inspector-General ADF, *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction*, September 2011, p. 40.

38 Defence, answers to question on notices, Question 4.