

Chapter 6

Other matters

Introduction

6.1 A number of other matters were raised during the inquiry that, while not specifically mentioned in the terms of reference, were considered by the committee. These included:

- the delay in the government's response and communication with victims;
- the definition of 'abuse' and 'out-of-scope' claims;
- allegations of conflicts of interest and/or perceptions of bias;
- the access to Volume 2 of the DLA Piper Review report by Defence; and
- the response to systemic issues in the DLA Piper Review report.

Delay in government response and communication with victims of abuse

6.2 Several submitters highlighted the personal consequences of the abuse which they had suffered during their time in the ADF. Reflecting the findings of the DLA Piper Review report, these consequences included difficulties with ongoing employment, substance abuse, mental illness and, in some instances, suicidal ideation or suicide attempts. Several victims of abuse in Defence indicated that the abuse that had been inflicted on them in the past continued to affect them.¹

6.3 A number of submissions expressed their frustration with the delay in the government's response to the DLA Piper Review report. These submissions were received by the committee prior to the Minister's announcement of the government's response on 26 November 2012. For example, Mr Paul Hazel commented:

More than a year ago, I submitted my story to DLA Piper. Since then there has been a distinct lack of communication from the government and the Department of Defence. Initially, I did not even know and was not informed that I should put forth a claim for compensation through the Department of Veterans' Affairs.²

6.4 In particular, Ms Angela Ballard highlighted the potential impact of long delays in the government response on victims of abuse:

Those 847 individuals have submitted a grievance or raised their concerns and are waiting on a decision from government how they will proceed. I am concerned at what support they have or have not been provided with since

1 For example, Mr Paul Hazel, *Submission 2*, p. 1.

2 *Submission 2*, p. 1.

coming forward and reporting their issue to the DLA Piper team. I am concerned that old wounds have been opened and concerned if they have not been addressed what additional grief some of these complainants have subsequently endured. Likewise, I imagine the ADF and those in Command, are ready to respond or act as directed by the government of the day in putting closure on this issue for all involved and moving forward with cultural change.³

6.5 Dr Gary Rumble was also concerned that the government's lack of action and decision making in relation to reported incidents of abuse may have:

- distressed individuals who were hoping for some response to their specific issue;
- worn down the willingness of those who told their stories to the Review in Phase 1 to continue to be involved in Phase 2;
- discouraged others who were watching to see whether there would be any effective action from coming forward to Phase 2; and
- encouraged perpetrators and potential witnesses to think that they can wait out the current attention on abuse.⁴

The definition of 'abuse' and 'out of scope' claims

6.6 The DLA Piper Review Volume 1 report noted that the Review had taken a 'practical rather than legalistic approach' to developing a working definition of abuse drawing on Defence's current definitions and categories of 'unacceptable behaviour'.⁵ However, the report indicated that not all 'unacceptable behaviour' constituted 'abuse'. For example, the report outlined that while discrimination would be considered 'unacceptable behaviour', it would not, by itself, be considered 'abuse' falling within the scope of the Review. The Review report stated:

In making its assessment of what is in or is not in scope, the Review has taken a conservative approach and has kept some marginal matters within the initial assessment and recommendation processes. Some workplace personality conflicts are in this marginal category.⁶

6.7 Some submissions received by the committee argued the definition of 'abuse' used by the DLA Piper Review should be extended more broadly to include other forms of unacceptable behaviour. For example, Mr Chris Mills sought to raise the issue of 'blacklisting' of companies by Defence.⁷ Similarly, Dr Ben Wadham argued that the DLA Piper Review had not achieved a genuine picture of 'defence abuse':

3 *Submission 4*, pp 2–3.

4 Dr Gary Rumble, *Opening Statement*, 14 March 2013, p. 3.

5 DLA Piper, *Volume 1*, p. 5.

6 DLA Piper, *Volume 1*, p. 5.

7 *Submission 21*, p. 2.

There is far more to this matter that is evident through an investigation into sexual and physical abuse. There is a foundational element to military culture that runs through these kinds of practice to many other forms of administrative violence.⁸

6.8 Others expressed their concerns that the unacceptable behaviour that they claimed to have suffered had been determined by the DLA Piper Review to be 'out-of-scope'.⁹ For example, Mr Peter Goon argued:

[D]espite the sensationalism-driven attraction of the Media and others to focus on sexual abuses which, not surprisingly and no doubt intentionally on the part of some, distracts from and diminishes the importance of '*the other abuses*', there is a need to maintain a searing focus and ever present vigilance on '*the other abuses*' for a very simple but extremely important reason.

The perpetration of abuses through the misuse and abuse of power, authority and trust as well as their perpetuation through the same means, along with the abuses of '*denial of a fair go*' and '*ignoring the message and shooting the messenger*' are the engines that drive inappropriate behaviours in Defence, particularly at the senior levels in the Canberra based elements.¹⁰

6.9 The Supplement to Volume 1 noted that 190 people who raised matters with the Review raised allegations that were determined to be entirely 'out of scope'.¹¹ These were dealt with by a process which 'involved the Review reporting to Defence Legal (representing the Minister) any matter which the Review assessed to be out of scope so that the Minister could consider what if any further action should be taken'.¹² Where Defence Legal did not agree with the Review's assessment, communications were returned to the Review for consideration.

Conflicts of interest and/or perceptions of bias

6.10 Concerns regarding the appointment of Review leaders were raised in submissions. For example, Dr Ben Wadham claimed that 'given the DLA Piper (previously DLA Phillips Fox) has legally represented the [Department of Defence] in the past in this domain, some victims felt they were reporting to the institution of complaint'. He argued that some claims regarding abuse were not submitted to the Review because of this relationship.¹³ Similarly, Dr Carlo Kopp raised his concerns

8 *Submission 16*, p. 3.

9 For example, Dr Carlo Kopp, *Submission 4*, p. 2.

10 *Submission 12*, p. 8 (emphasis in original).

11 DLA Piper, *Supplement to Volume 1*, p. 10.

12 DLA Piper, *Supplement to Volume 1*, p. 11.

13 *Submission 16*, p. 2.

regarding the involvement of Defence Legal in the terms of reference for the DLA Piper Review. He stated:

The Defence legal organisation has frequently been a party to these manifold problems, tying up cases of abuse in litigation, arbitration or ineffective negotiation intended to delay resolution. The involvement of this entity in the process was clearly a conflict of interest and should never have been permitted.¹⁴

6.11 The DLA Piper Review Volume 1 report included a disclaimer relevant to this issue:

The opinions expressed in the 'Report of the Review of allegations of sexual and other abuse in Defence' (Report) are solely those of Dr Gary A Rumble, Ms Melanie McKean and Professor Dennis Pearce AO. The opinions expressed in the Report do not necessarily represent the views of other contractors to the Review, nor of DLA Piper Australia.¹⁵

6.12 In his submission, Dr Gary Rumble noted that the DLA Piper Review had released a statement when doubts were expressed regarding the independence of the Review. The statement noted that the 'Minister expects the Review to provide our own honest assessment and recommendations, regardless of whether or not doing so may involve criticism of aspects of Defence's response to allegations'. It also asserted that the members of the Review 'would not be participating in the Review if [they] thought it was a sham'.¹⁶ Further, Dr Rumble stated that, while the Review could not claim, and had not claimed, complete independence from Defence, his belief was that the Review members did 'bring the rigour which the Minister asked for to the Review process and to the Report'.¹⁷

6.13 A perception of bias issue was also raised in relation to the appointment of the Hon Len Roberts-Smith QC to head the Defence Abuse Response Taskforce. Ms Jennifer Jacomb commented:

He is one of the club, a club that has unbroken record of failing to deal with Sexual and other abuse in the Defence Force...He should step aside. Also given that his son was awarded a Victoria Cross, a reasonable lay bystander might conclude that he would take an unsympathetic view of the victims?¹⁸

14 *Submission 4*, p. 2.

15 DLA Piper Review, *Volume 1*, p. iii.

16 *Submission 24*, p. 1.

17 *Submission 24*, p. 1.

18 *Submission 10A*, p. 8.

Access to Volume 2 of the DLA Piper Review report and response to individual allegations

6.14 As noted in Chapter 2, Volume 2 of the DLA Piper Review report contained the individual allegations received by the Review, and included the recommendations for dealing with each allegation. Dr Rumble noted that Volume 2 consisted of 23 Parts—large ring binder folders—containing the Review's initial assessments and recommendations on around 1100 specific allegations from 775 sources. It also included three Parts reporting on Fairness and Resolution Branch database matters and one Part dealing with ADFIS matters.

6.15 Volume 2 was delivered to the Minister for Defence on 17 April 2012. At the public hearing on 14 March 2013, the Defence Abuse Response Taskforce tabled correspondence from DLA Piper to the Taskforce indicating that all the folders comprising Volume 2 had been received by the Taskforce on 27 February 2013.¹⁹

6.16 Dr Rumble noted that the terms of reference of the DLA Piper Review 'did not expressly state which part or parts of "Defence" the Review was to report or make recommendation to'. The Review sought clarification on this matter:

By email of 15 July 2011 the Minister's office informed the Review that – as well as reporting to the Minister - we were reporting to the Secretary of the Department but we were *not* reporting to the CDF.

The fact that we were preparing our Report and recommendations for the Secretary as well as for the Minister was an important consideration in the processes which we developed for the Review including the processes we developed for ascertaining the extent to which people making statements to the Review consented to disclosure to Defence.²⁰

6.17 Dr Rumble indicated that he held several concerns regarding how Volume 2 of the Review had been distributed, and the subsequent response to the initial assessments and recommendations made by the Review regarding individual allegations. In particular, he noted that:

We had made arrangements with the DLA Piper team working with us on the Review to provide a Working Version of Volume 2 – with appropriate redactions settled by us the Review leaders – to go to the Secretary of the Department of Defence as soon as we got clearance from the Minister to provide that Working Version. The Minister has not given that clearance.

6.18 Dr Rumble raised his concerns with the Minister of Defence and received a written response on 8 March 2013. In relation to the decision not to provide a copy of Volume 2 to the Secretary of Defence, the Minister stated:

19 Correspondence from Mr Bryan Wee to Mr Matt Hall, dated 27 February 2013.

20 *Submission 24*, p. 4 (emphasis in original).

It was the Government's strong view that an independent process was the most appropriate way forward for responding to individual allegations of abuse in Defence.

It would not have been appropriate for the Secretary, the Chief of the Defence Force and the Service Chiefs to be provided with details of allegations of abuse in Defence.²¹

6.19 At the public hearing, Dr Rumble told the committee he was 'astonished that the government considers it is not appropriate for the Secretary, the Chief of the Defence Force and the Service Chiefs to be provided with details of allegations of abuse in Defence'.²²

Response to systemic issues in the DLA Piper Review

6.20 Dr Rumble also highlighted his concern that, following the government's response to the DLA Piper Review report, it was unclear who 'would be considering and reporting' to government on almost all of the systemic issues identified in the Volume 1 and the Supplement to Volume 1 reports. Dr Rumble sought clarification from the Minister regarding this matter. The Minister responded:

Noting your concerns that systemic issues are important for responding to cases of past abuse, I have as well asked that the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues.²³

6.21 Dr Rumble commented:

There is some risk with so many processes going on in parallel that some issues will 'fall through the cracks' and not be considered because the entities involved in carrying out consideration of some issues will assume that some particular issues are being considered by other entities and/or do not fall within their area of responsibility.²⁴

21 *Submission 24*, attached correspondence from the Hon Stephen Smith MP, Minister for Defence, to Dr Gary Rumble, dated 8 March 2013, p. 2.

22 Dr Gary Rumble, *Opening Statement*, 14 March 2013, p. 2.

23 *Submission 24*, p. 9.

24 *Submission 24*, p. 9.