
RE- REJECTION OF INVESTIGATION BY THE DART- AIRCDRE G F BATES (RET'D)

"In terms of setting expectations, the committee emphasises that it is not in a position to resolve individual disputes or settle complaints about alleged abuse in Defence. As the terms of reference of the inquiry indicate, **the committee's focus is on the processes established to manage and respond to such allegations.** Please note that all documents sent to the inquiry become committee documents on receipt, and are only made public following a decision of the committee. Material which is not relevant to the inquiry's terms of reference or which reflects adversely on others may not be accepted or published by the committee. If you have any questions about your submission please contact the committee secretariat."

Dear Sir/Madam,

I note that the on-line submission to the Senate website is currently unavailable. As directed, I have therefore e-mailed you directly. I have also attached a few salient documents related to the activity of the DART which demonstrate the means by which the DART determined that my case was 'out of scope' and therefore the DART would not investigate my case.

While I am very aware that the DLA Piper Review and the DART arose from concerns emanating from the ADFA Skype scandal, the original statements by the then Minister for Defence was that these processes were to redress all forms of abuse in the ADF, not just sexual abuses.

The **DLA Piper Review Report** has been held in quarantine such that its detailed findings in Volume 2 of its report have not been publically released, even in redacted form. That being the case, the intentions of the Minister will never be delivered because those responsible have not been held to account. In my view, the 'abuse of power' is one of the most significant weaknesses in current western societies; it is what led to such major conundrums as the Global Financial Crisis, Watergate, the Iraqi War over WMDs and the Children Overboard fiasco in Australia. Responsibility cannot be assigned without accountability as human failings will emerge to take advantage of positions of authority and its inherent power.

Such is the basis of my case. I note with satisfaction that the **DART has recognised** that:

"May I say at the outset that I fully accept that you and your family have plainly experienced a protracted saga which has caused you considerable distress over many years and continues to do so. In your own case that has also resulted in a need for you to obtain psychological support.

Nor can there be any doubt that the events you describe took place in a volatile political and departmental environment, as you clearly document.

You have put forward material which does on the face of it demonstrate various aspects of defective administration and some failures to afford you procedural fairness (for example, as noted in the report of the IGADF).”

You should note that the Departmental consideration of my **Claim for Compensation for Detriment caused by Defective Administration (CDDA)** as directed by the Defence Delegate in 2002 and administered by Defence Legal, rejected the same issues and total denied my case and claim for compensation including payment for those expenses incurred in complying with the extensive directions and cross-examination I was subjected to by Defence Legal for a decade.

The **Department of Veterans Affairs** has now acknowledgement my detriment by accepting my claim for support for Service related Anxiety Disorder, now being treated both psychologically and psychiatrically .

However, the **DART** also advised that:

“For example, **"abuse of power" is not a category of abuse with which the Taskforce can deal**, unless it amounts to workplace bullying and harassment and the circumstances on which you rely in that respect do not do so.”

I totally disagree with this statement.

In my judgment, the DART has not accepted that the following failings in Defence by their most senior officials constitute harassment or bullying:

- a. slander, intimidation, humiliation and denigration of my character, abilities and my professional ethics by Under Secretary of Defence Materiel (USDMM);
- b. lack of procedural fairness, denial of natural justice, abuse of power and submission of false statements by the most senior officers in my case namely Head Aerospace Systems Division (HASD) and Chief of Air Force (CAF) and USDMM; and
- c. deceptive and misleading conduct, lack of due diligence and failure to act as a model litigant by Defence Legal in its dealings with me, the Ombudsman and the Minister.

I contend that I have repeatedly and consistently presented a case to the Department of Defence (three Delegates), the Secretary (two of), CDF (remained at “arm’s length”), the Street/Fisher Review (accepted my submission as reflected in its recommendations) , the Ombudsman (three investigators, the last one refused to investigate on the grounds that Defence had already investigated), the DLA Piper Review (declined to accept my submission because of ‘Conflict of Interest’ with one

of their investigators) and the DART ('out of scope' of definition of abuse) as well as various Parliamentary Inquiries into Military Justice and the JSCFADT. My submissions demonstrate the fact that I was the pawn in a dispute between the then USDM and the then CAF which culminated in my appointment and promotion to a two-star position being vetoed, my service career as an aerospace engineer terminated and my professional character so besmirched such that I was no longer employable in the Defence industries community at the age of 52 as attested in the **Witness statement by a Major General, former Head Defence Personnel** in his submission to Head Defence Legal.

I have contended to these bodies that I was denied procedural fairness, firstly by Head HASD for failing to complete mandatory Annual Officer Evaluation Reports on me (and many others) over a number of years, then by USDM in his malicious misuse of his power of veto without justification, by CAF in his failure to consult with USDM as required by the Defence Committee instructions and by then Acting Assistant Secretary Legal Service (AASLS), a newly appointed civil litigation lawyer, who engaged in a litany of delay, deceit, deprecation, dishonesty and denial and failed to comply with Financial Instructions on CDDA.

Defence Legal based their case on statements by CAF (in about 2003) and USDM (in about 2006) which Defence Legal deliberately withheld until final mediation in 2009 (failure to disclose). I was able to prove both statements to be false, misleading and not coherent. Defence did not subject these statement to due diligence as they should have at the time of receipt, in which case names and dates would have been found to be incorrect, nor did Defence Legal carry out due diligence after receipt of my rebuttal; the Delegate had predetermined his finding before mediation, as I also proved. The Delegate also dismissed the numerous witness statements supporting my contentions from very senior officers of the three services (failure to act as a model litigant).

I draw your attention to the findings of a **Report by the Inspector General ADF**, 'Management of Incidents and Complaints in Defence' 2011, ISBN 978-0-642-29749-5.

The Inspector General accurately summarised my case as follows:

“11. A former officer claimed he had not been shown procedural fairness when being considered for a promotional position in 2000, and that he was denied promotion for reasons which should not have been taken into consideration. The officer was not informed of those reasons at the time, and was therefore not given the opportunity to respond. Subsequently, on resigning from the ADF, the officer was denied permission for Defence industry employment, and this decision materially disadvantaged his family. The officer made a defective administration claim, which was poorly managed over several years by the delegate and involved the officer’s being made what he thought was a satisfactory offer of settlement. It appears that **the delegate may not have had authority to make that offer and the delegate subsequently asserted that any discussion of the offer had**

been on a 'without prejudice' basis.”

Please note that the Delegate never told me he had acted outside of his authority, in fact I have it on record that he specifically advised me and my legal adviser that he was not limited by a cap in his ability to compensate. Nor did the delegate declare “without prejudice” at the time he made a bona fide offer of \$400,000 compensation to me in the presence of my legal adviser. That was a lie to remove himself from scrutiny by the Minister.

The Report drew on the findings of the Street/Fisher Report:

“The current CDDA administrative scheme is not well suited to correct wrongs associated with ADF service. A new discretionary compensatory delegation, controlled by the CDF, needs to be developed to meet the expectations and unique service considerations of the uniformed workforce.

85. To date this recommendation has not been implemented. This review agrees with the recommendation made by the Street/Fisher Report.”

“Recommendation 12. The Street/Fisher recommendation to establish a discretionary delegation to CDF to compensate administrative/management/financial errors in addition to the current CDDA scheme should be implemented.”

“d. **Management of defective administration claims.** Two of the submissions referred to confusion and long delays in the management of defective administration claims. The confusion, including the apparent raising of false expectations by Defence’s scheme managers, caused a great deal of stress to the applicants. As Defence Legal advises Defence commanders and managers regarding administrative matters on the one hand—and a Defence Legal employee is the departmental delegate for the *Compensation for Detriment caused by Defective Administration* (CDDA) scheme on behalf of Defence on the other—concerns were also expressed about apprehension of bias in the making of these compensation decisions.”

“Recommendation 13: To avoid any perception of apprehended bias in compensation decisions, the decision maker with respect to compensation—whether as part of CDDA or an ADF-specific scheme if established—should be organisationally separate from Defence Legal.”

These abuses of power by very senior members of Defence is not an issue to be set aside by denying natural justice to a subordinate. I have fought for my case in the hope that the numerous member of Defence who lack the capacity to appeal against abuse are empowered by actions that cause the abusers to be publically held to account.

As demonstrated in the rejection to independently investigate my case by Defence Legal, the Ombudsman, DLA Piper and now the DART, the interpretation of the legal Instructions and the Terms of Reference utilised by such bodies does not enable the Minister’s intentions or public perception of the role of these bodies to be achieved.

My previous experiences of procedural flaws in the grievance processes are many and

are well documented in my numerous submissions. I am in no doubt that organisational reputation management (a euphemism for deception) has been at play in my case and many others. It seems however that those who engage the services of QCs or national media are the ones who achieve justice and compensation as have my colleagues in similar circumstances and the same superior officers. I acknowledge that the hundreds of Defence members who have received “reparation” payments in an attempt to placate the public outrage that ensued post ADFA scandal was a genuine effort. Such payments are doomed to be proven inadequate as was demonstrated in the flawed F-111 Deseal/Reseal Inquiry, however, it in no way addresses the commensurate need to administer accountability. Cases such as mine and my colleagues clearly demonstrate abuse at the highest levels and therefore impart a message to our upcoming leaders that you can get away with it once you’re at the top.

As acknowledged by the DART, the Department in Canberra was a volatile and hostile work environment in the late 90’s early to mid-2000’s period. In my view this was a direct consequence of the hurried Defence Reform Program and the subsequent politicisation of Defence leadership. The outcome was an every man for himself culture which brought out the worst in the best of people. I and many others of admirable service records were unfortunate to have our careers terminated as a result of this volatility in leadership. Few have been compensated appropriately.

I am on speaking terms with many of the current and recent Defence leadership and I do not imply such lack of ethics is currently prevalent. However, I and my colleagues can identify some past deviants who have utilised their position to achieve advancement. I strongly concur with the sentiments of the **current CDF** as follows:

“Senators, our message to ADF personnel and to the Australian public is clear; and a number of us have stated this quite publicly on many occasions. We will not accept or excuse illegal, offensive or discriminatory behaviour in the Australian Defence Force. Such behaviour contradicts our defence values and will have swift and decisive consequences.”

*Statement of Acting CDF, AM Mark Binskin
to Senate FADT Estimates Committee
Wednesday, 20 November 2013*

Recommendations:

My recommendations and request to the Committee are as follows:

- a. Publically acknowledge the skewed and incomplete processes of the DART,
- b. Direct the DART to reconsider the term “Abuse” in its full meaning of the word, and
- c. Specifically address the issue of ‘abuse of power’ by a sub-committee empowered to exercise its authority to name those found deviant and to adequately compensate, in accordance with civil precedence, those who have suffered by their actions.

I also ask that the Committee to refer my case to the Minister for Defence with the

recommendation:

To review the actions of Defence Legal and its relationships with the Ombudsman, the DLA Piper Review and the DART to ensure probity and ethical procedures are in place through appropriate firewalls that will distance and ensure that Model Litigant responsibilities are enacted for all legal AND administrative processes of grievance in Defence.

Finally, I respectfully remind the Committee of **Concluding Remarks of the DLA Piper Review:**

“ The Reviews calls on the ADF, the Government and the Parliament to give proactive support to those in the ADF who have the courage to stand up for what is right when others in the ADF do, or have done wrong. (page 199-200)”

I remain awaiting such support.

Yours sincerely,

(Signed)

Garry Bates AM
Air Commodore (Ret'd)
FIEAust, CPEng (Ret'd), FRAeS
Formerly Director General Aerospace Combat Systems
Defence Materiel Organisation

Please Note:

My wife and I have had more than enough of this torturous process.
We are going overseas on holiday and will not return until mid-July.