

**Additional Submission To**

**The Foreign Affairs, Defence and Trade  
References  
Committee Inquiry**

**Into**

**Compensation And Other Matters For  
Victims**

**Sexual Abuse, Torture And Abuse In The  
Australian Defence Force**

**Arising From Defence Minister Smith's  
Statement On 26<sup>th</sup> November 2012**

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A Victim**

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## **1.0 Executive Summary**

### **2.0 Smith's Scheme Doesn't Work- Gravely Flawed**

The scheme announced by Minister For Defence Stephen Smith is gravely flawed and will end up hurting the victims rather than giving them justice and a fair go.

#### **2.1 Flawed Assumptions**

It is based upon the following flawed assumptions:-

- That victims can easily pursue court actions – they can't
- That the counselling as proposed works – it doesn't
- That "restorative" justice helps - it doesn't and
- The police will be able to prosecute – they won't

#### **2.2 Places Reliance Of Flawed Military Records**

The military records are written up to cover the abuse not document it.

#### **2.3 Penurious to The Point Of Insult**

The proposed maximum cap on compensation for the victim for their lifetime of misery is \$50,000.

Yet we paid:-

- \$90,000 to Speaker McLeay for a self inflicted injury
- \$35,000 to a convicted kidnapper for slipping on a puddle of water that they made while mopping the floor at Dame Phyllis Frost Prison

\$65,000 plus costs paid to paedophile Anthony Douglas Walters to pay for plastic surgery and counselling after he was attacked in jail

#### **2.4 Denied Natural Justice To The Victims**

Even though we are directly affected we were never given proper opportunity to have input

#### **2.5 Has Grave Perception Of Bias Issues With Regards The Head Of That Scheme -Major General Roberts-Smith RFD QC**

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.

Under the Lasry standard see *Finnan v Lasry* [2000] VSC 240 (9 June 2000). 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?

Afterall they were never in combat and shot at like his son.

#### **2.6 Proposed Counselling Doesn't Work**

They intend to use the same counselling as for the initial DLA Piper Review which we know doesn't work.



## **1.0 Purpose Of Additional Submission**

The purpose of this additional submission to the Committee is to:-

- Document what the writer sees as the serious flaws with the compensation scheme announced by the Minister For Defence on 26<sup>th</sup> November 2012 for the victims of Sexual and Other abuse in the Australian Defence Force

## **2.0 Terms Of Reference**

This submission comes within the scope of the following terms of reference of the inquiry:-

- Accessibility and adequacy of current mechanisms to provide support to victims of sexual and other abuse in Defence;

## **3.0 Implicit Assumptions In Submission**

This submission assumes that the reader has read the writers previous submission on Compensation And Other Matters For Victims Sexual Abuse, Torture And Abuse In The Australian Defence Force.

In particular Sections:-

- 3.4 The Hurdles And Extreme Difficulties Faced By The Victim In Proving Their Claim
- 3.6 What Is The Impact Of Torture And Abuse On The Victim
- 3.7 What Is The Cost To The Taxpayer
- 3.8 Why It Continues Due To The Attitude Of Senior Officers
- 4.2.3 What Should The Compensation Be?

It also assumes that the reader is familiar with the following:-

- The apology made by Minister For Defence Stephen Smith in the House of Representatives on 26<sup>th</sup> November 2012
- The announcement by the Minister For Defence Stephen Smith of a task force to be headed by retired Major General Len Roberts-Smith RFD QC to amongst other things to assess compensation
- The material being sent out to the victims who make inquiry about this new task force (See Annexure A) Representatives to the victims of abuse in the Australian The remarks by on 29<sup>th</sup> November 2012 Dr James Connor, Senior Lecturer in the School of Business, University of New South Wales at The Australian Defence Force Academy Lecturer in on Drum of the ABC saying that implying that abuse must be accepted.
- The submission of the Director Of Military Prosecutions Brigadier General L.A. McDade

## **4.0 Background – Apology And Task Force 26/11/2012**

On 26<sup>th</sup> November 2012 the Minister For Defence Stephen Smith did the following:-

- Apologized to all Victims of abuse in the Australian Defence Force
- Announced the formation of a Defence Abuse Response Task force headed by retired Major General Les Roberts Smith RFD QC.

This Task Force is

- To assess individual allegations made to DLA Piper, and any additional allegations made to the Taskforce concerning abuse by Defence personnel before 11 April 2011, and work with those who have made allegations to determine an appropriate response in individual cases, which may include:
  - Possible restorative justice/conferencing processes where a victim and alleged perpetrator are brought together in a facilitated process
  - Referral to counselling
  - Determination of compensation
  - Referral of appropriate matters to police for formal criminal investigation and assessment for prosecution
  - Referral of appropriate matters for disposition by the military justice system.

It should be noted that a cap of \$50,000 has been placed upon any compensation

## **5.0 A Brief Word About The Cap Of \$50,000 – Convicted Paedophiles Get More**

The Minister for Defence has placed a cap of \$50,000 on the Victims yet those who perpetrated the abuse and those who looked on and did nothing were able to finish the careers and typically received \$5M.

### ***5.1 Minister Limits Compensation to Only 1% of What The Perpetrators Got***

Therefore Minister Smith intends to limit the compensation to only 1% of what the perpetrators got from Defence.



### **5.2                    *\$90,000 for Speaker McLeay***

Remember Speaker McLeay and how he was compensated for a self inflicted injury. He got on an exercise bike in the Parliamentary Gym when he was told not to and it collapsed.

He received \$90,000 in today's dollars.

What about the compensation payable to the Commonwealth Employee whilst having sex in her motel room?

### **5.3                    *Convicted Felons Get Better Than Victims - \$60,000 For Paedophiles***

And of course convicted felons get better than the victims:-

With regards convicted criminals serving sentence of imprisonment, in Victoria alone we have:-

- A \$135,000 payment to kidnapper Toni Vodopic because she slipped in a puddle as she mopped floors at Dame Phyllis Frost prison.
- \$65,000 plus costs paid to pedophile Anthony Douglas Walters to pay for plastic surgery and counseling after he was attacked in jail.
- \$120,000 paid to drink-driver Alan Philip Brown who claimed a garden roller door closed on him in Loddon Prison.
- A \$27,000 claim by prisoner Patrick Trainor in November 2009.
- \$75,000 plus costs paid to jailed drink-driver Andrew Steel who claimed he hurt his back driving a tractor at Dhurringile Prison.

**(Source Herald Sun, August 21, 2011 "Criminals Cash Up on \$400,000 in Compo – Peter Rolfe)**

It would seem that you are better off to do something really really bad and get sent to jail.

You'll get better compensation than what Minister Smith has put in place for the innocent victims of rape, torture and abuse in the Australian Defence Force

## **6.0 Writers Considered Opinion:- Taskforce – Designed to Subvert And Sabotage Senate Inquiry**

It is the considered opinion of the writer that this Task Force was solely intended to upstage the Senate committee Inquiry and its findings.

The closing date for initial submissions was 22<sup>nd</sup> November 2012, a Thursday and then Minister Smith announces the response to the DLA Piper Report and the Task Force on the following Monday.

As is well said in politics there is no such thing as a coincidence

As will be seen from this report it suffers from grave flaws.

It seems more about beating the committee than delivering genuine beneficial outcomes to the victims and changing the culture of Defence.

## **7.0 The Real Commitment Of Minister Smith And General Hurley – None At All – Refused To Provide Copy Of Apology**

I asked Minister Smith by fax and General Hurley for a copy of their apologies as a victim.

Neither has responded.

They make apologies to others but won't give the victims a copy.

Clearly such an attitude and action casts a pall on the credibility of the Task Force they have created to compensate the victims of sexual and other abuse in the Australian Defence Force.

I think that this shows their real commitment to the victims and that of the Task Force – None at all!

## **8.0 Management Summary – Problems With Proposed Task Force**

There are a number of major problems with the Task Force and what it intends to do.

### **8.1 *Taskforce Will End up Hurting Victims / Not Achieving Change***

As will be seen from the rest of this submission, the flaws with the Task Force as it currently stands will:-

- Harm the victims rather than help them
- Fail to achieve the cultural change in Defence that is required
- Be undermined by the actions and attitudes of people such as Dr James Connor and Brigadier General McDade
- A large and unproductive drain on the taxpayer and treasury.

The victims will be worse off and the underlying problems will not have been effectively addressed.

It needs to be done right and this current mechanism will not do it as it currently stands.

### **8.2 *What Is Wrong With Task Force?***

#### **8.2.1 General Remarks Regarding Task Force – Gravely Flawed**

There is very little information regarding the Task Force.

At the moment DLA Piper is receiving further money to answer calls and questions.

It was announced in haste but its full details are vague.

This has the effect of greater uncertainty on the victims.

The haste in which it has been announced and as will be seen from the rest of this document is that it has not been fully thought through and is gravely flawed.

### **8.2.2 Based Upon Flawed And False Assumptions**

It is clear that this task force is based upon flawed and false assumptions.

Those false assumptions are:-

- That victims can easily pursue court actions – they can't
- That the counselling as proposed works – it doesn't
- That “restorative justice helps - it doesn't and
- The police will be able to prosecute – they won't

### **8.2.3 The DLA Piper Handout**

This was created by created by the Attorney General's Department.

This seems to be identical to what the Minister sent out last year to those who wanted to make submission to his inquiry.

Thus despite them having made note regarding the issues of problems with Counselling and failing to inform the Victims of the Special Claims Area that I have helped set up with DVA it seems highly unlikely that it will be modified.

Also it is inconsistent with what is on the Attorney General's Website.

### **8.2.4 Having To Do It All Over Again / 12 Months For Processing**

Based upon answers from the DLA Piper hotline it seems clear that:-

- The Victims will be made through re justifying their claims a second time and thus go through further distress and
- It will take upto a year before a decision is made even if you have already made your case in court or Veteran's Review Board.

### **8.2.5 Lack Of Victim Input**

The focus of the original DLA Piper inquiry and submissions was in abuse.

For those of us that submitted, I can only speak for myself, it was hard enough to recount the experience.

If compensation was mentioned, it was only in passing.

Before coming up with a compensation scheme specific input should have been sought from the victims, as we are the ones directly affected.

We were denied natural justice.

### **8.2.6 Lack Of Civilian Control / Parliamentary Oversight**

For years it has been left upto the Military to clean up this mess of sexual and other abuse in the Australian Defence Force.

They have consistently and persistently failed.

Yet the head of the Task Force is a retired Major General.

It should be under civilian control with the military assisting.

Furthermore, since it seems to be funded from Ministerial funds rather than via a specific act of Parliament and thus is not subject to the full scrutiny of Parliament otherwise than would be the case.

This was a valid criticism of the original DLA Piper inquiry.

### **8.2.7 Lack Of Clarity – Is It Defence Or Attorney General**

For the victim there is initially a lack of clarity with whom you are dealing with.

It might be reasonably assumed that this would be the Ministry Of Defence.

However, it turns out that this all being run through the Attorney General's Department.

### **8.2.8 Penurious To Point Of Insult / Failure To Know If It Is To Take DVA Pension Into Account**

The proposed maximum cap on compensation for the victim for their lifetime of misery is \$50,000.

Yet we paid:-

- \$90,000 to Speaker McLeay for a self inflicted injury
- \$35,000 to a convicted kidnapper for slipping on a puddle of water that they made while mopping the floor at Dame Phyllis Frost Prison
- \$65,000 plus costs paid to paedophile Anthony Douglas Walters to pay for plastic surgery and counselling after he was attacked in jail

Thus to place a cap of \$50,000 is penurious to the point of injury.

Furthermore, you cannot find out if the Ex Gratia Payment will be reduced by any benefit you receive from the Department Of Veteran's Affairs.

Even under the States and Federal Victims Of Crime Compensation, the cap only applies to each incident – not the group. It is as if they are saying only the first incident of abuse counts.

### **8.2.9 Proposed Counselling - Doesn't Work**

The recommended solution for those who need counselling as per the DLA Piper hand out, doesn't work.

In addition, the Vietnams Veteran's Counselling Service is a great organisation, they have told me that they can't help the victims of bastardisation – I investigated them last year when my PTSD Counsellor, Dr Mark Creamer went on leave.

Proper Counselling must be set up and now.

It should have mandatory reporting with the identifying details of the victim removed of the abuse to:-

- Minister For Defence
- Chief Of Defence and
- This Committee

To ensure that:-

- The abuse is not just covered up as has been the practice in the past.
- The necessary corrective action to stamp it out is taken

### **8.2.10 Perception Of Bias Issue – Major General Roberts-Smith RFD QC**

The head of the Task Force is Major General Roberts-Smith RFD QC. (RFD – Reserve Forces Decoration)

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.

Under the Lasry standard see *Firman v Lasry* [2000] VSC 240 (9 June 2000). 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?

Afterall they were never in combat and shot at like his son.

Of course such an attitude by Major General Smith would be wrong but certainly understandable.

As a victim, it is certainly a genuine fear I hold.

### **8.2.11 Place Improper Reliance On Military Records**

From the DLA Piper Consent to Release, drafted by the Attorney General's Department, they wish to access your Military Records.

However those records are written to cover up the abuse.

Placing reliance upon them almost ensures that the victim will never get compensated.

### **8.2.12 Restorative Justice – Bad For The Victim - Good For The Abuser**

This may work for the Tiwi Islanders but not for us.

Restorative Justice:-

- Gives the perpetrator a get out of jail free card
- Does not impose punishment
- Does not restore to the victim their life of poverty and struggle and what has been stripped away from them

It makes the victim feel worse not better.

### **8.2.13 Police Prosecution – Will Never Happen**

The likelihood of a successful prosecution is so low it would for the most part be never commenced.

The perpetrators would insist on a *Longman Warning*:-

That warning is:-

*“That the jury be warned that, because of the passage of a number of years, it would be ‘dangerous to convict’ on the complainant’s evidence alone unless the jury is satisfied of its truth and accuracy, having scrutinised the complainant’s evidence with great care.*

The rationale for the warning is that a significant delay puts the accused at a forensic disadvantage because he or she has lost the ‘means of testing the complainant’s allegations which would have been open to him [or her] had there been no delay

The irony is that the delay arose as result of their own actions and the actions of those above them to discourage the complaint and to destroy / cover up evidence.

It would be nonetheless be successful given the difficulties of getting witnesses to come forward.

#### **8.2.14 Creates Problems With DVA Claims**

No consideration has been given to the impact of a decision by the Task Force on any claim before the Department Of Veterans Affairs.

A failure to grant compensation by the Task Force could adversely affect an otherwise meritorious claim at Veterans Affairs.

This is because of the Task Force Reliance on Military Records.

As Veterans Affairs found with my claim, it leads the decision maker to draw the wrong conclusions.

Furthermore, thanks to:-

- The Whiteman Test (See **Paul Raymond Whiteman v Secretary, Department of Veterans Affairs** [1996] FCA 1786 (17 September 1996) and **Re Medcalf and Department of Veteran Affairs** (1991) 23 ALD 502) which binds Veterans Affairs,
- The work I have done at the Veterans Review Board
- The work I have done with Veterans Affairs Senior Executive

The victim is more likely to receive a fair go and receive support from Veterans Affairs.

They have no such benefits with Task Force and for that reason and others listed ion this submission more likely to receive a no.

Were the delegate a Veterans Affairs to become aware of that no, it might well lead them into an excess of jurisdiction and dismiss an otherwise meritorious claim.

#### **8.2.15 Fails To Address Needs To Protect Careers And Effect Change**

The Task Force does not seem to have any mechanism to protect the careers of those who report abuse either form:-

- Retribution of the perpetrators or
- The stigma of mental illness on their records.



**8.2.16 Task Force And Compensation Being Sabotaged By Dr Connor (ADFA) And Brigadier McDade (Director Military Prosecutions)**

Already the work of Task Force is being sabotaged by Dr James Connor and Brigadier General McDade.

Dr James Connor a lecture at the Australian Defence Force Academy essentially argues that abuse is necessary if we are to have an effective fighting force.

Brigadier General McDade in her submission to this inquiry basically says there is no problem with abuse.

Connor ignores our effective fighting forces of World War 1 and 2 which was on the main lead by people who never went through the service Colleges.

McDade ignores the fact that the problem keeps servicing. It is a case of wilful blindness and is actually an insult to the committee.

Implicit in it is the concept that the Senators are so dumb they will fall for it.

## **9.0 Details - Problems With Proposed Task Force**

### **9.1 *Taskforce Will End up Hurting Victims / Not Achieving Change***

It takes a lot of courage to come forward.

It requires you to remember things that you have been suppressing for years.

Speaking from personal experience you become depressed and suicidal.

Especially when people treat what you went through as a joke.

As the matters stands this Task Force will:-

- Hurt victims by:-
  - Making them going things yet again
  - The clearly inadequate counselling - The counselling it currently relies on has been proven to be wrong and ineffective
  - The delays in processing – up to 12 months
  - The reliance it will place on flawed military records
  - The obvious perception of bias with regards its head
  - The fact that it doesn't seem to be bound by the Whiteman Test.
- Fail To Achieve the Cultural changes required because
  - It is not in its brief
  - Whilst it may root out some, the attitudes of people like Dr Connor and Brigadier General McDade create and protect more.

As a result, it will be great for the lawyers from DLA Piper, the Public Servants involved and Major General Les Roberts-Smith RFD QC but of no benefit for the victims.

It raises hope but will then ultimately dashes them.

The victims will be worse off and the underlying problems will not have been effectively addressed.

It needs to be done right and this current mechanism will not do it as it currently stands.

**9.2                    *General Remarks Regarding Task Force – Gravely Flawed***

There is very little information regarding the Task Force.

This causes distress.

Furthermore there are differences between what DLA Piper is sending out and what is on the Attorney General's Website.

At the moment DLA Piper is receiving further money to answer calls and questions.

They have already received \$75M so far and now they are getting more but the victims still have received nothing.

I think I am reasonably safe in saying that DLA Piper will not be waiting 12 months for payment.

The Task Force is:-

- It is based upon false assumptions.
- Has genuine perception of bias problems.
- A clear example of what happens when you do things without proper consultation and ill considered thought due to haste.

The haste in which it has been announced and as will be seen from the rest of this document is that it has not been fully thought through and is gravely flawed.

### ***9.3 Based Upon Flawed And False Assumptions***

It is clear that this task force is based upon flawed and false assumptions.

Those false assumptions are:-

- That victims can easily pursue court actions – they can't
- That the counselling as proposed works – it doesn't
- That “restorative justice” helps - it doesn't and
- The police will be able to prosecute – they won't

#### **9.3.1 Victims Can't Easily Pursue Court Actions**

Victims cannot easily pursue court actions because they face the following hurdles:-

- **Hurdle 1** - Actually Coming Forward
- **Hurdle 2** - Circumstances Of Discharge / Extreme Difficulty In Proving The Abuse Took Place
- **Hurdle 3** – Trying To Find Witnesses
- **Hurdle 4** – Getting Witnesses To Give Statements For Fear Of Retribution
- **Hurdle 5** - Service Records Hide The Abuse And Real Reason For Separation
- **Hurdle 6** – Naming The Guilty – Bringing Them To Justice
- **Hurdle 7** – Having Insufficient Time To Be Covered By The Veterans Affairs Act

And finally there is the stature of limitations.

Since it normally takes a long while for the victim to come forward, they are out of time to pursue civil action.

Yet the Task Force assumes that all victims will be able to obtain satisfactory compensation through the Courts.

Clearly they won't.

Only a well thought out and considered ex gratia scheme can deliver fair outcomes to the victims rather than the lawyers.

### **9.3.2 Counselling As Proposed - Doesn't Work**

Speaking from direct experience the recommended solution for those who need counselling as per the DLA Piper hand out, doesn't work.

The number for former members of Defence doesn't really work.

1. Tells you to ring 1300 361 008 and select crisis intervention - no such option.
2. If you select option 2 you get mucked about
3. If you select option 3 to make an appointment for depression counseling:-
  - a) Know nothing about it
  - b) Ask you what organization you are
  - c) Refuse to make appointment
  - d) Refer you back to DLA Piper

Bottom Line is Counseling is NOT Available despite what the Minister or the Task Force says.

Also speaking from personal experience, whilst the Vietnams Veteran's Counselling Service is a great organisation, they have told me that they can't help the victims of bastardisation – I investigated them last year when my PTSD Counsellor, Dr Mark Creamer went on leave.

### 9.3.3 “Restorative” Justice Helps - It Doesn’t And Isn’t Justice

Restorative Justice may work well with Tiwi Islanders but is not appropriate for a situation like this.

It has the following flaws:-

- It gives the perpetrator a free pass – part of the deal is immunity from prosecution
- Saying sorry doesn’t restore to you what you have lost
- Faith without action is no faith at all – how can a simple apology, which frees the perpetrator from prosecution, restore to you what you have lost – it can’t.

The short answer is that “Restorative Justice:-

- Isn’t Justice
- Is a get out of jail free card for the perpetrator
- Makes the Victim worse
- Doesn’t make things better – except for the perpetrator.

### 9.3.4 Police Prosecution – Will Never Happen

The very same hurdles that apply to the victim making a civil claim also apply to that of a police prosecution

Firstly, typically victims take a long while to come forward.

The reason why I have not come forward before now, is that typically when torture has made front page news, it is rapidly buried and covered up.

There has been no real attempt to make a real cultural change and address the issue.

We who have suffered it from it have been in effect disowned and left to fend for ourselves.

That is why we take a long while to come forward.

It is my experience that those who are most adept at denying the rights of others are the ones most adept and vocal on insisting on those same rights for themselves.

They would insist on a Longman Warning:-

*“That the jury be warned that, because of the passage of a number of years, it would be ‘dangerous to convict’ on the complainant’s evidence alone unless the jury is satisfied of its truth and accuracy, having scrutinised the complainant’s evidence with great care.*

The rationale for the warning is that a significant delay puts the accused at a forensic disadvantage because he or she has lost the ‘means of testing the complainant’s allegations which would have been open to him [or her] had there been no delay

The irony is that the delay arose as result of their own actions and the actions of those above them to discourage the complaint and to destroy / cover up evidence.

The short answer is that for the most part there can not be and will not be any successful prosecutions or prosecutions at all.

It will be well argued that given the passage of time the probability is slim so why spend the money and put the victim through more trauma.

#### **9.4                    *The DLA Piper Handout***

This was created by created by the Attorney General's Department.

This seems to be identical to what the Minister sent out last year to those who wanted to make submission to his inquiry.

Thus despite them having made note regarding the issues of problems with Counselling and failing to inform the Victims of the Special Claims Area that I have helped set up with DVA it seems highly unlikely that it will be modified.

Also it is inconsistent with what is on the Attorney General's Website.

It just makes things worse.

#### **9.5                    *Having To Do It All Over Again / 12 Months For Processing***

It was hard enough to come forward and make submission to the DLA Piper Inquiry.

In my case it caused severe depression and made me suicidal.

Yet from what I can find out, I and the other victims are expected to go through the whole process again.

Combined with the facts that:-

- Inadequate Counselling Support
- The Task Force's Reliance on Service Records
- The clearly reasonable perception of bias on the part of the Head of the Task Force, Major General Roberts-Smith RFD QC
- The cap of \$50,000
- The fact that it will take up to 12 months for your claim to be assessed even if you have proved your case at Veterans Review Board and Veterans Affairs

It places the victims under even greater stress and depression with little likelihood of a fair outcome.

It makes things worse – not better.

## **9.6**                    *Lack Of Victim Input*

### **9.6.1**                    **Clear Denial Of Natural Justice**

The victims are the ones most directly affected by any scheme of compensation and treatment.

As a matter of law, Natural Justice requires that we should have been given an opportunity to be heard. – (See **Re Minister for Immigration and Multicultural Affairs; Ex parte Lam** [2003] HCA 6 12 February 2003 B33/2001 – Procedural Fairness)

The focus of the original DLA Piper inquiry and submissions was on abuse not compensation.

Instead of encouraging victims to make submissions on this issue to the Senate Committee Inquiry or himself, the Minister For Defence has just arbitrarily imposed this scheme without any input from those it most directly affects.

That is why it is so flawed.

Furthermore, the flaws of it make it of questionable benefit to the victims it is intended to help.

We were denied natural justice in the Service.

It seems we are to be denied natural justice for the compensation of the first denial of natural justice.

### **9.6.2**                    **It Ain't Right And It Ain't Fair**

It ain't right and it ain't fair.



### **9.6.3 Victims Denied Opportunity To make Submission To This Committee**

Minister Smith failed to inform those who had made submission to the DLA Piper Inquiry of this Inquiry by the Senate Committee.

Defence Minister Smith:-

- Had the names and addresses.
- Could have let them known
- Chose not to

And as a result ensured that most victims were denied natural justice.

The writer only found out through the kindnesses of Senator Ludlam at the last minute.

### **9.7 Lack Of Civilian Control / Parliamentary Oversight**

It is a fundamental issue in a democracy that the Military be subordinate to the Civilian Government and Parliament.

Parliament is supreme:-

- We have had a civil war on this issue.
- One king lost his head
- Another king lost his crown

The military have been given every opportunity to address this problem over the years.

The have persistently and consistently failed.

What we need is independent civilian control over this inquiry by a retired High Court Justice such as Justice Kirby.

Of course the military such as Major General Roberts-Smith RFD QC can and should assist but it must be under ultimate civilian control.

As it stands with the Military firmly in control of the Task Force, can there be any doubt that we will end up with results like the first Voyager Board of Inquiry.

If the Australian Defence Force Academy and the Australian Defence Force were regulated like builders in the housing industry, they would have been shut down by the regulators by now for the consistent and persistent failure to comply with the required standards.

Their managers, the generals, would have been long ago charged, convicted and gone to jail as per Brodies' Law.

The head of the Task Force is to be a retired Major General, Major General Les Roberts-Smith RFD QC.

Furthermore, since it seems to be funded from Ministerial funds rather than via a specific act of Parliament and thus is not subject to the full scrutiny of Parliament otherwise than would be the case.

This was a valid complaint made about eh DLA Piper Inquiry itself.

### **9.8 *Task Force Lack Of Clarity – Is It Defence Or Attorney General?***

For the victim there is initially a lack of clarity with whom you are dealing with.

It might be reasonably assumed that this would be the Ministry Of Defence.

However, it turns out that this all being run through the Attorney General's Department.

### **9.9 *Penurious To Point Of Insult / Failure To Know If It Is To Take DVA Pension Into Account***

It is less than what Speaker McLeay got for a self inflicted injury (\$90,000 in today's money)

It is less than the standard we gave to convicted criminals under sentence:-

- A \$135,000 payment to kidnapper Toni Vodopic because she slipped in a puddle as she mopped floors at Dame Phyllis Frost prison.
- \$65,000 plus costs paid to paedophile Anthony Douglas Walters to pay for plastic surgery and counselling after he was attacked in jail.
- \$120,000 paid to drink-driver Alan Philip Brown who claimed a garden roller door closed on him in Loddon Prison.
- A \$27,000 claim by prisoner Patrick Trainor in November 2009.
- \$75,000 plus costs paid to jailed drink-driver Andrew Steel who claimed he hurt his back driving a tractor at Dhurringle Prison.

**(Source Herald Sun, August 21, 2011 “Criminals Cash Up on \$400,000 in Compo – Peter Rolfe)**

It also assumes that victims can pursue other remedies through the Courts.

As has been shown elsewhere in this submission, normally they can't.

Could \$50,000 make up for what was done to you. Typically this was:-

- Being made to fear for your life and being hunted around the base.
- Being regularly subjected to a Blanket Bash.  
A Blanket Bash is where they cover you with a blanket so that you cannot see who is beating you and they don't have to deal with the consequences
- Regularly having your cabin broken into and destroyed.
- Regular and unlawful public humiliation by your peers and more senior officers
- Subjected to regular bashings
- Being made a prisoner in your own cabin

Could \$50,000 make up for a life time of:-

- Post Traumatic Stress Disorder
- The symptoms of this are often debilitating, and include nightmares, flashbacks, hyper-alert state, anxiety and dissociation when exposed to triggers which remind me of the trauma you suffered.
- Ongoing difficulties and failure with studying
- Ongoing issues of feeling worthless
- Being suicidal
- Depression
- Anxiety attacks
- Later on, after leaving it caused a
  - Mental breakdown
  - Employment Difficulties
  - Relationship Difficulties
- Adverse impact on parents and who were legitimately very concerned for you.

Of course the answer is no.

Would you think \$50,000 was reasonable?

For a lifetime of suffering?

Again, the answer is obviously no, especially when you consider the court remedy is not available for the reasons listed elsewhere.

Also you cannot find out if it will be reduced by any benefit you receive from Veterans Affairs.

It would seem that they have not considered the matter.

Furthermore under the States and Federal Victims Of Crime Compensation, the cap only applies to each incident – not the group. It is as if they are saying only the first incident of abuse counts.

### **9.10 Proposed Counselling - Ineffective**

Speaking from direct experience the recommended solution for those who need counselling as per the DLA Piper hand out, doesn't work.

The number for former members of Defence doesn't really work.

1. Tells you to ring 1300 361 008 and select crisis intervention - no such option.
2. If you select option 2 you get mucked about
3. If you select option 3 to make an appointment for depression counseling:-
  - a) Know nothing about it
  - b) Ask you what organisation you are
  - c) Refuse to make appointment
  - d) Refer you back to DLA Piper

The bottom Line is Counseling is NOT Available despite what the Minister says.

Also speaking from personal experience, whilst the Vietnams Veteran's Counselling Service is a great organisation they can't help.

I investigated them last year when my PTSD Counsellor, Dr Mark Creamer went on leave and they advised me that they could not help victims with effective counselling.

Proper Counselling must be set up and now as per my original submission.

It should have mandatory reporting with the identifying details of the victim removed of the abuse to:-

- Minister For Defence
- Chief Of Defence and
- This Committee

To ensure that:-

- The abuse is not just covered up as has been the practice in the past.
- The necessary corrective action to stamp it out is taken

### **9.11 Perception Of Bias Issues – Major General Roberts-Smith RFD QC**

The head of the Task Force is Major General Roberts-Smith RFD QC. (RFD – Reserve Forces Decoration)

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.

Major General Les Roberts Smith RFD QC:-

- Joined the Army Reserves 1964
- Was commissioned as a Second Lieutenant (Royal Australian Infantry) in 1969
- Promoted to Captain in 1970
- Later on was promoted to Major and appointed a Judge Advocate and Defence Magistrate in 1985

This of course begs the question how many people did he find guilty of abuse

The Judge Advocate General amongst other things is responsible for reporting upon the operation of laws relating to the discipline of the ADF.

- On 6 June 2002 he was promoted to the rank of Major General.

He holds the:-

- Australian Service Medal
- Reserve Forces Decoration with 40 year star
- Australian Defence Medal.

I think it may be safely said that he is well and truly one of the club.

Clearly it would be open to any reasonable lay bystander to apprehend the possibility of bias.

As such it is extremely wrong to have him head the Task Force because there would always be a cloud over the outcomes.

Having Major General Roberts-Smith investigate the abuse in the ADF and that those who practiced abuse in Defence and whether they are still in is like having the police investigating the police.

No matter how well or otherwise he does his job, the outcome will always be and is tainted by that fact.

Had this been a judicial proceeding i.e. court proceeding he would have been forced to step down under the decision of the High Court in British American Tobacco

Australia Services Limited v Laurie [2011] HCA 29 February 2011 S138/2010. This judgment contains the perception of bias test.

The test is “*whether in the mind of a lay person, having no knowledge of the law, might apprehend that bias might exist.*”

As a former supreme court judge he is very well acquainted with this.

It is not essential to prove bias but rather the apprehension that bias might exist.

Of course it can be argued that the bias test is less when applied to Inquiries and Royal Commissions, see Firman v Lasry [2000] VSC 240 (9 June 2000). But even there, the test is as per paragraph 16

*“The test of apprehended bias is this: are the circumstances such that a party or a fair-minded and informed member of the public might entertain a reasonable apprehension that the decision-maker might not bring an impartial and unprejudiced mind to the resolution of the issues before him (or her)”*

Either way, it would seem clear in this case, that apprehension of bias does exist and taints the any report or outcome he produces.

Given the great public debate, controversy and interest in this matter, I believe that Major General Roberts-Smith RFD QC should be replaced by someone clearly not suffering from any possible taint of bias.

No matter how hard he tries it will always seem tainted regardless.

Someone who was clearly independent should be doing it to ensure that the public can have full unquestioned confidence in the outcomes.

Could anyone really expect that Major General Roberts-Smith RFD QC is really going to take out another member of the flag officer's club?

### **9.11.1 Further Issue Of Bias With Major General Roberts-Smith RFD QC – His Son**

There is another bias issue with regards Major General Roberts-Smith RFD QC.

His son was awarded a Victoria Cross, might it not be inconceivable that he would take an unsympathetic view of the victims?

After all they were never in combat and shot at like his son.

Of course such an attitude by Major General Smith would be wrong but certainly understandable

As a victim, it is certainly a genuine fear I hold.

The Task Force and its assessment of compensation must be untainted.

Whilst Major General Roberts-Smith RFD QC heads it that is not possible.

### ***9.12 Task Force Places Improper Reliance On Military Records***

It should be remembered that those who make it to ADFA or its predecessor colleges are the best that Australia has to offer.

In 1983, when I joined the Naval College, there were over 8000 applicants from Australia for just 100 positions at the Naval College.

Those that made it had survived a gruelling medical, IQ, psychological and interview process.

Those who make to the Australian Defence Force Academy and its predecessor Colleges were and are the best of the best of Australia, determined by a Board of experienced Naval Officers and the Psychiatrist of the Navy that we had what it takes.

Whilst that number has declined, the current figures for the Australian Defence Force Academy are:-

<b>Year</b>	<b>Number Of Applicants</b>	<b>ADFA First Year Positions Available</b>
2011	1196	319
2012	1224	331

**(Figures courtesy General Hurley, Chief Of Defence via Captain M. Hammond RAN, COS to CDF)**

Given the exhaustive testing those that go through the Australian Defence Force Academy are still the best that Australia has to offer.

People like this are highly motivated and just don't fail.

They fail for one reason - abuse.

From the DLA Piper Consent to Release, drafted by the Attorney General's Department, they wish to access your Military Records.

The underlying problem with placing reliance on Service and Medical Records is as follows.

No Officer who has aspirations of Commander or higher is going to write up in the victim's service record an admission that they lost control of those under their command and in their care.

The same can be said of those of your peers who did it. They will not do it for two reasons:-

- The same as their seniors and
- They don't have access to your records.

Furthermore, as came out in Jacomb V The Secretary for Veterans Affairs, The abuse is covered up by blaming the victim and doctoring the Military Records.

The official records will cite:-

- Poor Professional Performance
- Poor Academic Performance
- Personality issues
- Discipline Issues

As **the cause of termination** when they are in fact the **symptoms** of the unlawful torture and abuse.

This abuse would cause personality issues, performance problems for any one.

But by writing it up in this manner, those involved effectively cover up their guilty court martial conduct and blame the victim instead.

Placing reliance upon them almost ensures that the victim will never get compensated.

### ***9.13 Restorative Justice – Bad For The Victim - Good For The Abuser***

Restorative Justice may work well with Tiwi Islanders but is not appropriate for a situation like this.

It has the following flaws:-

- It gives the perpetrator a free pass – part of the deal is immunity from prosecution
- Saying sorry doesn't restore to you what you have lost
- Faith without action is no faith at all – how can a simple apology, which frees the perpetrator from responsibility, restore to you what you have lost.

The short answer is that “Restorative Justice:-

- Isn't Justice
- Is a Get Out Of Jail Free Card for the Perpetrator
- Makes the Victim worse
- Doesn't make things better – except for the perpetrator.



### **9.14                      *Police Prosecution – Never Happen***

The very same hurdles that apply to the victim making a civil claim also apply to that of a police prosecution

Firstly, typically victims take a long while to come forward.

The reason why I have not come forward before now, is that typically when torture has made front page news, it is rapidly buried and covered up. There has been no real attempt to make a real cultural change and address the issue.

We who have suffered it from it have been in effect disowned and left to fend for ourselves.

That is why we take a long while to come forward.

It is my experience that those who are most adept at denying the rights of others are the ones most adept and vocal on insisting on those same rights for themselves.

They would insist on a Longman Warning:-

*“That the jury be warned that, because of the passage of a number of years, it would be ‘dangerous to convict’ on the complainant’s evidence alone unless the jury is satisfied of its truth and accuracy, having scrutinised the complainant’s evidence with great care.*

The rationale for the warning is that a significant delay puts the accused at a forensic disadvantage because he or she has lost the ‘means of testing the complainant’s allegations which would have been open to him [or her] had there been no delay

The irony is that the delay arose as result of their own actions and the actions of those above them to discourage the complaint and to destroy / cover up evidence.

The short answer is that for the most part there can not be and will not be any successful prosecutions or prosecutions at all.

It will be well argued that given the passage of time the probability is slim so why spend the money and put the victim through more trauma.

## **9.15                    *Creates Problems With DVA Claims***

No consideration has been given to the impact of a decision by the Task Force on any claim before the Department Of Veterans Affairs.

### **9.15.1                    How Does Veterans Affairs Does It At The Moment?**

The Veterans Affairs Act is a beneficial Act.

Under the decision in Whiteman, (see **Paul Raymond Whiteman v Secretary, Department of Veterans Affairs** [1996] FCA 1786 (17 September 1996))

*For the foregoing reasons I conclude: (1) that, in determining eligibility of a member under the DSH Act, the respondent is not limited to adoption of, or inference from, the bare reason for discharge stated in the member's record of service, but should determine the truth and substance of the matter for himself/herself, and (2) that test is not whether the discharge was actuated by the member's unfitness for any military duty, however physically undemanding.*

This means that the decision maker:-

- To make genuine inquiry into the circumstances of discharge and
- Answer the following question:-

“The question for the decision-maker, when determining an applicant's eligibility, would be this: is the applicant to be regarded, as a matter of ordinary language, as having been discharged on the ground of his or her incapacity to perform duties?”

Furthermore as a result of discussions between myself and Veterans Affairs, Veterans Affairs has set up a National Claims Area for the Victims Of Abuse in its Melbourne Office.

The delegates have been especially trained in Whiteman and the hurdles that victim faces.

### **9.15.2                    How Does Task Force Do It At The Moment?**

The short answer is that we don't know for sure.

We do know that the intend to place reliance on Military Records, a clearly flawed choice, more likely to result in an adverse outcome for the victim.

Furthermore, there seems to be no consistency in approach ion assessment between the two – there should.

**9.15.3                    The Problem Created If Task Force Says No To Compensation Because Of Flawed Approach**

If the following should occur:-

- Task Force saying no to the victim based upon flawed records and approach and
- The Veterans Affairs Delegate becomes aware of it

It will result in an adverse decision on an otherwise meritorious claim at Veterans Affairs.

This will result in more distress and harm for the victim.

This should have been considered and addressed before Task Force was announced.

It was not.

It is yet another proof of how flawed and ill considered the scheme is.

**9.15.4                    Action Being Taken By The Writer**

I am in discussion with Veterans Affairs to address this issue.

However, it should have been addressed by the Defence Minister and the Attorney General.

It was not.

**9.16                      *Fails To Address Need To Protect Careers And Effect Change***

The Task Force does not seem to have any mechanism to protect the careers of those who report abuse either form:-

- Retribution of the perpetrators or
- The stigma of mental illness on their records.

In particular it does not seem to have addressed the following issues:-

- There is always a stigma with regards mental illness.
- Whilst your medical records are sealed being withdrawn from class to see a medical person tends to stick out.
- It gives proof to the torturers that they are succeeding
- Humiliates the victim yet again
- Hinders their ability to pass exams and meet professional standards
- As it is only medical treatment, treats the symptom and not the problem i.e. the underlying torture and abuse.

**9.17                    *Task Force & Compensation Being Sabotaged By Dr Connor (ADFA) And Brigadier McDade (Director Military Prosecutions)***

Already the work of Task Force is being sabotaged by Dr James Connor and Brigadier General McDade.

As an elector such behaviour concerns me as it will turn this Task Force compensation into an open ended scheme and blank cheque on the treasury as we never address the underlying problems.

In other words it treats the symptom but does nothing effective to address the problem.

**9.17.1                    *Sabotage By Dr James Connor***

Dr James Connor is a Senior Lecturer in the School of Business, University of New South Wales at The Australian Defence Force Academy.

On Thursday 29th November 2012, he was on the ABC's Drum Opinion and amongst other things argued that abuse (as distinct from stern discipline) was a necessary part of having an effective fighting force.

He further seems to implicitly argue that victims are only selected to provide fresh meat for the other cadets to sharpen their claws on and in the case of women provide, in the words of Field Marshall Montgomery, "horizontal refreshment".

He also explicitly argues:-

*"Part of that code of mateship is the idea of never dobbing in anyone for misbehaviour. The hated soldier is the rat who tells senior military about a wrong-doing, or worse, the rat who goes outside the military chain and tells the media or Parliament.*

*The entrenched culture within the military that it is better to be wrongly punished then tell on your mates goes to why and how there has been such silence on the issue of abuse.*

.....

*Ultimately if we want a military we will have to accept that a certain proportion of people will be broken mentally and/or physically in our service - it is a consequence of what they do and how they do it."*

He effectively argues:-

- Torture and abuse is okay

- That the code our soldiers and Officers should be that of the Waffen SS and that of the best of the Aryan Brotherhood in America's Toughest Prisons.
- That soldiers should never do in a mate be it for treason, theft (misuse of service credit card), murder rape etc.
- That soldiers and officers can and must ignore the will of Parliament.

He of course ignores the facts:-

- That our greatest Military Leaders such as Sir John Monash, responsible for what General Ludendorff called the blackest day in the history in the German Army  
  
Monash never went to the Service College or would have likely survived it, after all Monash was a chocolate soldier (member of the Citizen Militia Force, immigrant and Prussian Jew.
- That most of the leadership of our Victorious Forces of World War 1 and World War 2 retained their humanity, never engaged in torture and abuse, took effective action against those that did such as the British Military Police, never went to a Service College like Duntroon and yet still beat the pants off our enemies
- That it is well documented how Command covered up the torture and abuse, in defiance of Parliament, Statute and Queens Regulations & Instructions.

There seems little point in Task Force rooting out those who practiced torture and abuse, because with attitudes like this, it seems that the Academic Section of the Australian Defence Force Academy will just create a whole heap of replacements and more victims.

It also begs the question has Minister Smith and General Hurley lost control of the Australian Defence Force Academy in that here, not more than four days after their announcements, a civilian academic at the Academy feels its okay to undermine and sabotage those announcements. If nothing else it tells us that there is a cultural problem.

Given this sort of undermining, what chance has Task Force to fairly assess compensation

As an elector such behaviour concerns me as it will turn this Task force compensation into an open ended scheme and blank cheque on the treasury as we never address the underlying problems.

In other words it treats the symptom but does nothing effective to address the problem.

### 9.17.2 Sabotage By Brigadier General McDade

Brigadier General McDade is the Director of Military Prosecutions

She was appointed to this position in 2006.

In 2010 she was the centre of widespread media attention within Australia due to charges against three former members of the Special Operations Task Group deployed to Afghanistan.

In her submission she asserts that *“In all likelihood it will include a number of matters that were appropriately dealt with by a either a Service Tribunal or managed within Defence and the complainant is simply disgruntled with the outcome”*

A wrong assumption demonstrated wrong by:-

- The ongoing abuse resurfacing
- The failure to address the rapes at the Australian Defence Force Academy and
- If nothing else the Skype incident, a thing nothing was done about until it made to papers.

She further goes onto to assert regarding matters that were not reported by the complainant *“In my respectful opinion there is little that can be done with respect of such matters other than to encourage them to report them and continue to assure that are no penalties for doing so.”*

Of course she ignores the realities for serving personnel of:-

- That abuse and sexual abuse is okay
- The extensive coverage in the media over the last year of victims being discouraged to report and cover ups.
- There is always a stigma with regards mental illness.
- Whilst your medical records are sealed being withdrawn from class to see a medical person tends to stick out.
- It gives proof to the torturers that they are succeeding
- Humiliates the victim yet again
- Hinders their ability to pass exams and meet professional standards
- As it is only medical treatment, treats the symptom and not the problem i.e. the underlying torture and abuse.

She then goes onto say that *“There are currently sufficient mechanisms in Defence to provide support to victims of sexual and other abuse. There are Defence Instructions dealing with the management and reporting of both sexual offences and unacceptable behaviour”*

She ignores the fact that the problem has never been an issue of having policy or law to prevent torture and abuse.

The various discipline Acts (with the full authority of Parliament), the various Queens Regulations And Instructions authorised by those and other Acts, and the various Ship and Captain Standing Orders always said that unlawful torture and abuse would not be tolerated and subject to severe disciplinary consequences.

We don't need more paper warfare, we just need the law, regulations and orders already in place actually enforced.

What we need is for the senior officers of the ADF to uphold those laws – not generate more policies.

If they cannot enforce the law as mandated by Parliament what hope is there for enforcing a mere policy.

Indeed after its release of the Zero Tolerance Policy in Defence, more scandals kept coming out.

But wait, there's more.

Go to <http://www.defence.gov.au/fr/frpublications.htm>

- Try and download “A Guide To Fair Leadership And Discipline In The Australian Defence Force.
- Then try and open it, as of 20 June 2012, it won't open because it is corrupt. I think that says something about the senior Management (I won't demean the word by calling them Leaders) of the ADF's true position on the matter
- Look at the Sexual Offence Management Guide issued 1/4/2004 – It has been withdrawn.
- Look at “Management And Reporting Of Unacceptable Behaviour”

*“21. The complainant has a responsibility to:*

- 1. where practicable, attempt self-resolution at the lowest appropriate level in the circumstances (refer to annex E); and*
- 2. if they make a complaint, to state clearly they have an unacceptable behaviour complaint, and provide a full, fair and honest account of the incident(s), include any supporting information and identify the outcome they seek to achieve.”*

Those who have been through Torture and Abuse have seen that one before and have only received the response “*what's your problem?*”

We then get further torture and abuse for our error of trusting the more senior managers (not leaders)

I believe the latin phrase is **res ipsa loquitur** (the thing speaks for itself) says it all.

As electors we should not accept this and approach our elected representatives to address this problem

In Brigadier McDade's case it displays either:-

- The naïveté of a three year old at best
- The wilful blindness of a member of the club at worst.

Again as an elector such behaviour concerns me as it will turn this Task Force compensation into an open ended scheme and blank cheque on the treasury as we never address the underlying problems.

In other words it treats the symptom but does nothing effective to address the problem.



## Annexure A – Copy Of Materials Being Sent Out To Victims When They Make Inquiries About the Major General Roberts-Smith RFD QC Task Force

The contents of this letter and attachments are confidential to the intended recipient. If you are not the intended recipient please advise us and destroy this letter.



DLA Piper Australia  
Reply Paid 172  
Canberra ACT 2601  
Australia

T 1800 424 991  
F +61 3 9274 5111  
www.dlapiper.com/australia/review

Jennifer Jacomb  
By email [jjacomb@connexus.net.au](mailto:jjacomb@connexus.net.au)

Our reference 420101

27 November 2012

Dear Ms Jacomb

### GOVERNMENT'S RESPONSE TO THE DLA PIPER REVIEW

We are writing to let you know about the actions the Government is taking to respond to the serious allegations of abuse within the Defence Force identified by the DLA Piper review.

As you are aware, after the so-called 'ADFA Skype incident' in April 2011, a large number of allegations of sexual or other forms of abuse in the Australian Defence Force and Defence were made. The Minister for Defence was very concerned about those allegations and announced on 7 May 2011 that DLA Piper would conduct a review of the allegations.

In April this year the Minister for Defence received DLA Piper's final report and since then he has been working with the Attorney General to develop a comprehensive response to address the very serious and deeply concerning allegations that have come forward. This has taken time as the allegations and issues are complex and there was a need to ensure a response that is appropriate and effective with a focus on resolution of individual matters.

The Minister for Defence has made a formal apology in Parliament on behalf of the Government reiterating the Government's commitment to eradicating abuse in the Defence Force. The Minister has also established an independent Taskforce, headed by the Honourable Len Roberts-Smith, RFD, QC (a former State Appeal Court Judge) and based in the Attorney General's Department. If you consent to the information you have provided being handled by the Taskforce, the Taskforce will be able to work with you to action an appropriate response in your case. Without this consent, the Taskforce will not be able to progress a response to the matters you have raised.

That response may, depending on the circumstances, include referral of a matter to police or military justice authorities, restorative justice processes or compensation. The Taskforce will also be able to assist with access to counselling, at no cost to you. Current counselling arrangements will also remain in place.

So that the Taskforce can assist you to identify appropriate next steps, we request you provide your consent, by signing and returning the attached Authority and Consent to Release Information form to the email or postal address indicated on the form. It is

DLA Piper Australia is part of DLA Piper, a global law firm, operating through various separate and distinct legal entities.

A list of offices and regulatory information can be found at [www.dlapiper.com](http://www.dlapiper.com)



important to emphasise that without your consent, the Taskforce will not have access to the information needed to progress your case.

Please feel free to call the information hotline established by the Government on 1800 424 991 if you have any questions, comments or concerns. The Government has engaged DLA piper to assist with the hotline while the Taskforce is being established. Information is also available at [www.ag.gov.au/defenceabusetaaskforce](http://www.ag.gov.au/defenceabusetaaskforce).

Yours sincerely

DLA Piper Australia

**DLA PIPER AUSTRALIA**

Tel: 1800 424 991

Fax: 02 6230 7848

Email: [defence.inquiry@dlapiper.com](mailto:defence.inquiry@dlapiper.com)

Web: <http://www.dlapiper.com/australia/review/>

Post: Reply Paid 172, Canberra ACT 2601

Ene: Authority and Consent to Release Information  
Counselling information sheet



### Authority and Consent to Release Information

I, \_\_\_\_\_ (name) \_\_\_\_\_ (DOB)  
 of \_\_\_\_\_ (address)  
 \_\_\_\_\_ (DLA Piper reference no)

**authorise and direct** DLA Piper to release to the Australian Attorney-General's Department all information that was considered as part of the Review of Allegations of Sexual and Other Abuse in Defence in relation to my communications with the Minister for Defence, the Department of Defence or DLA Piper.

I **consent** to the Australian Attorney-General's Department providing that information to the Taskforce which will be established to facilitate appropriate action in response to my communications.

I further **agree and consent** to that information being provided to any other Agency and or person it is necessary to provide the information to for the work of the Taskforce in facilitating an appropriate response to my communications.

I also **agree and consent** to my relevant personal information held by any Agency, such as the Department of Defence, being provided to the Taskforce or to any other Agency or person it is necessary to provide the information to for the work of the Taskforce in facilitating an appropriate response to my communications.

I **understand and acknowledge** that this consent is given despite any previous consent given by me in relation to the use of that information and is for the purposes described above.

Signed

\_\_\_\_\_

Date:

Notes: The Attorney-General's Department and the Taskforce will comply with the *Privacy Act 1988* and all other laws in dealing with the information provided to the Minister, the Department of Defence or DLA Piper, or pursuant to this Authority and Consent to Release Information.

Please complete and return to DLA Piper by email to [Defence.Inquiry@dlapiper.com](mailto:Defence.Inquiry@dlapiper.com) or by post to:

DLA Piper  
 Reply Paid 172  
 CANBERRA ACT 2601



### **Counselling is available**

If you are distressed and need to speak with someone urgently, you can contact the following support lines:

#### **For currently serving ADF members:**

The All-hours Support Line (ASL) is a confidential telephone service to assist ADF members and their families with accessing mental health services, such as psychology, medical, social work, and chaplain services.

The ASL number is 1800 628 036.

#### **For Defence public service (APS) employees:**

The Employee Assistance Program (EAP) is a confidential and free service. It is provided by professional counsellors who will provide practical assistance to APS employees, and their immediate family members, who may require counselling services.

Appointments can be made via the EAP hotline on 1300 361 008\*.

#### **For former ADF members and former Defence public service employees and their immediate families:**

Special arrangements have been made to extend the EAP service for immediate, initial counselling to former ADF members and former Defence public service employees and their immediate families who raise or have raised allegations affecting them with the external review team and who require counselling assistance. The EAP is a confidential and free service provided by professional counsellors.

This service can be accessed via the EAP hotline on 1300 361 008\* and selecting Crisis Intervention.

\*A single EAP number is now being used although the previous numbers continue to operate.

#### **Other support available:**

The Department of Veterans' Affairs (DVA) handles compensation and support for former or current Australian Defence Force personnel who suffered or suffer injury or conditions related to their service. Please call 1800 816 306 to discuss your circumstances with DVA.

Counselling is also available to eligible ADF members and their families through the VVCS Veterans and Veterans Families Counselling Service on 1800 011 046. It is a free and confidential service, available 24 hours a day across Australia.

## Annexure B –Original Inquiry Material Distributed By DLA Piper



### DLA Piper Review of Allegations of Sexual and Other Abuse (and related matters) in Defence:

#### Information Document

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This Information Document explains:

- what the DLA Piper Review is
- why the Review is requesting you to provide a statement or statements to the Review
- what the Review will do with the information requested
- how to provide the information requested.

#### WHAT IS THE DLA PIPER REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE AND RELATED MATTERS IN DEFENCE?

A media release issued by the Minister for Defence on 21 May 2011 explains what the DLA Piper Review is and who is conducting it. The media release explained the review would cover:

*'allegations of sexual or other forms of abuse that have been raised since the recent Australian Defence Force Academy incident'.*

The role of the review is to:

*'make an initial legal assessment of all complaints and allegations raised with the office of the Minister for Defence, the Department of Defence, or reported in the media since 1 April 2011 to put the Government in a position to make further decisions about how to deal with these matters'.*

The review is conducted by a DLA Piper Review Team

*'led by DLA Piper Special Counsel, Dr Gary Rumble, assisted by former Commonwealth Ombudsman and DLA Piper Special Counsel, Professor Dennis Pearce AO, and by partner Melanie McKean.'*

The Minister encouraged

*'current and former Defence personnel (including members of the Australian Defence Force)' to 'make or refer allegations relating to sexual or other forms of abuse in Defence to the review until 17 June 2011'.*

The Minister also asked

*'community associations and Australian media outlets that may have been notified of complaints or allegations to provide any information about those matters which they can reveal to the review by 17 June 2011'.*



#### WHY IS THE DLA PIPER REVIEW ASKING YOU FOR INFORMATION?

The DLA Piper Review is gathering and considering information about allegations /complaints/reports of sexual and other abuse and related matters which have been made in the period 1 April 2011 to 17 June 2011:

- to the Minister for Defence;
- in reports in the media;
- by referral to the Review from Defence or other agencies;
- by direct contact with the Review.

The Review believes that you have information which comes within one of these categories.

#### WHY DOES THE DLA PIPER REVIEW NEED THE DETAILED INFORMATION IT IS ASKING FOR?

The DLA Piper Review will make a Report on the allegations /complaints/reports covered by the Review to the Minister for Defence and the Department of Defence as soon as possible.

The Review is aiming to deliver the Report by the end of August (extended from the end of June as originally proposed).

The Report to the Minister and the Department will report for each allegation /complaint/report:

- if it has not previously been reported to Defence - whether action should be taken;
- where a matter has been previously reported to Defence - whether - on the information available to the Review - it appears that the allegation or complaint brought has been properly and appropriately dealt with by Defence; and
- make recommendations on any further action which should be taken.

In making its Report to the Minister and to the Department of Defence the Review needs enough information to form a view for each allegation /complaint/report:

- whether the allegation /complaint/report comes within the 'sexual and other abuse and related matters' covered by the Review;
- whether the allegation /complaint/report is plausible;
- how serious is the conduct referred to in the allegation /complaint/report;
- whether the conduct covered by the allegation /complaint/report has been reported to or otherwise submitted to any Defence or other process;
- if so, what was the outcome of that process;



- whether Defence's response to the allegation /complaint/report has been proper and appropriate;
- what has been the impact of the conduct on the person concerned;
- how long ago the conduct occurred.

The Review understands that it may be distressing for you to recall and write out for others to read details of your experience. Information about counselling services is provided below.

If you cannot recall every detail of an incident that does not mean that your information cannot be considered. However, the Review will not be able to give as much weight to a general statement such as 'I was abused' as it will to statements which include details such as 'Corporal A held me by the arms and Sergeant B punched me in the face'.

Similarly, the Review will not be able to attach as much weight to a general statement such as 'I was sexually assaulted' as it will to statements such as 'I was held down by A and B while C removed my trousers and underwear and then touched my genitals.'

The more information which you can provide to the Review, the better placed the Review will be to report on your allegations/complaint.

Furthermore the Review will seek to provide to the Minister and to the Department of Defence a base of information on which there can be further investigation and/or action if the Minister decides that further investigation or action is appropriate.

The more detail which you can provide, the more complete will be the base information for the Minister to direct further investigation or action.

#### HOW DOES THE DLA PIPER REVIEW WANT YOU TO PROVIDE THE INFORMATION?

The DLA Piper Review asks you to fill out and return the attached forms with:

- Your consent/restrictions on disclosure of personal information
- Your personal details (if you are happy to provide them)
- A summary of your history with Defence
- A detailed Statement for each allegation /complaint/report you wish the Review to consider.

If we have already received information about your allegation /complaint/report, then we have already completed some of the Statement using information you gave us. We ask you to check that information and correct it or confirm it.



#### HOW DO YOU RETURN THE INFORMATION TO THE DLA PIPER REVIEW?

Please return the completed form by email to  
[gary.a.rumble@dlaphillipsfox.com](mailto:gary.a.rumble@dlaphillipsfox.com) - or [melanie.c.mckean@dlaphillipsfox.com](mailto:melanie.c.mckean@dlaphillipsfox.com)

or by reply paid post (no postage stamps required) to:

DLA Piper  
Defence D.R.  
Reply Paid 172  
CANBERRA ACT 2601

If you have documents to attach with your completed Statement form(s) please only send copies of documents. The Review will not be returning documents so please do not send original documents to the Review.

#### HOW QUICKLY DOES THE REVIEW NEED YOUR INFORMATION RETURNED?

The Review has to consider and report on a significant number of allegations /complaints/reports.

The sooner that you return your forms to the Review, the more time the Review will have to take your information into account in preparing the Report.

We ask that you return the completed forms no later than 10 days after receiving our letter.

If you cannot meet that turnaround, the Review will still receive your information up to delivery of the Report. However, the later your information arrives, the more difficult it will be for the Review to consider the information in its Report.

The Review will include in its Report recommendations on what action should be taken in relation to information which has not been considered by the Review in time for the Report.

#### IF YOU HAVE ALREADY PROVIDED A STATEMENT TO THE REVIEW, DOES THE REVIEW STILL WANT YOU TO COMPLETE THE STATEMENT FORM?

Even if you have already provided a statement to the Review, the Review still asks you to complete the Statement Form because:

- the more detail the Review has about your allegation / complaint/report, the better placed it will be to make recommendations to the Minister and the Department of Defence;
- the more detail which is gathered about your allegation / complaint/report, the better placed the Minister and the Department of Defence will be to consider taking action on your allegation/ complaint/report.

If you have already provided the Review with a statement which answers particular questions in the Statement Form, you can refer to that statement/document. It is not necessary to repeat the statement or send another copy of the documents.





**CAN YOU TALK TO SOMEONE WITH THE REVIEW INSTEAD OF FILLING IN THE FORM?**

The Review understands that you may find telling the story of your experience distressing.

If you have already put your story in writing in a Defence or other process you may find it easier to provide us with a copy of that statement rather than to fill in the Statement Form.

The Review has provided a 1 800 number Monday to Friday between 2.00 pm and 9.00 pm. This number will no longer be available after 17 June 2011 for new contacts with the Review.

The number of persons who have contacted the Review has now reached a level where it is not feasible for the Review to speak to all those persons in time for the Review to prepare and deliver its Report.

If you have difficulty completing the Statement Form then please let the Review know what your difficulty is by leaving a message on

1 800 424 991; or

send the Review an email:

[gary.a.rumble@dlaphillipsfox.com](mailto:gary.a.rumble@dlaphillipsfox.com) - or - [melanie.c.mckean@dlaphillipsfox.com](mailto:melanie.c.mckean@dlaphillipsfox.com)

If you wish to speak to a person who is the same gender as you please let us know that in your message or in your email.

The Review will attempt to arrange a caller to make contact for those who have difficulty in completing the forms.

If the Review is not able to speak directly to all people who have difficulty completing the Forms before delivering the Report, the Review will make recommendations about what follow up there should be with such people after the Report.

**IS COUNSELLING AVAILABLE IF YOU FIND IT DISTRESSING TO RECALL YOUR EXPERIENCE WITH ABUSE?**

Defence has arranged counselling for people who are distressed by recalling their experience with abuse.

For currently serving ADF members:

The All-hours Support Line (ASL) is a confidential telephone service to assist ADF members and their families with accessing mental health services, such as psychology, medical, social work, and chaplain services.

The ASL number is 1800 628 036.



For Defence public service (APS) employees:

The Employee Assistance Program (EAP) is a confidential and free service. It is provided by professional counsellors who will provide practical assistance to APS employees, and their immediate family members, who may require counselling services.

Appointments can be made via the EAP hotline on 1300 366 789.

For former ADF members and former Defence public service employees and their immediate families:

Special arrangements have been made to extend the EAP service for immediate, initial counselling to former ADF members and former Defence public service employees and their immediate families who raise or have raised allegations affecting them with the external review team and who require counselling assistance. The EAP is a confidential and free service provided by professional counsellors.

This service can be accessed via the EAP hotline on 1800 451 138 and selecting Option 1 - Crisis Intervention.

**DO YOU HAVE TO FILL IN ALL OF THE FORM?**

The Review understands that you may not be able to recall all of the detail requested in the Form. Please fill in as much detail as you can remember because:

- the more detail the Review has about your allegation / complaint/report, the better placed it will be to make recommendations to the Minister and the Department of Defence;
- the more detail which is gathered about your allegation / complaint/report, the better placed the Minister and the Department of Defence will be to consider investigating further or taking action on your allegation/ complaint/report.

**HOW WILL THE INFORMATION YOU PROVIDE BE USED BY THE REVIEW?**

The Report to the Minister and the Department will report for each allegation /complaint/report:

- if it has not previously been reported to Defence - whether action should be taken;
- where a matter has been previously reported to Defence - whether - on the information available to the Review - it appears that the allegation or complaint brought has been properly and appropriately dealt with by Defence; and
- make recommendations on any further action which should be taken.

The Review will not carry out full investigations of all allegations /complaints/reports.

Furthermore, the Review can only report and make recommendations. The Review does not have power to 'fix' any of the matters which are raised with the Review.



It is possible that the Report will make recommendations for some of the matters to be investigated further.

It is also possible that the Report will contain recommendations for specific action by Defence in relation to specific allegations /complaints/reports.

It is possible that before completion of its main Report that the Review will report to the Minister and/or Defence on matters that may require urgent action.

**WILL THE PERSONAL IDENTIFYING INFORMATION WHICH YOU PROVIDE TO THE REVIEW GO INTO THE REPORT?**

The Report to the Minister and the Department will include a summary and report on each allegation /complaint/report considered by the Review with recommendations about whether there should be further investigation or other action on each allegation / complaint/report.

The Review will not include in its Report personal identifying information which you provide to the Review if you do not consent to your information being provided to the Minister and the Department.

However, if you do consent to the Review including your personal information in the Report then the Minister and the Department of Defence will be in a position to direct further investigation and/or action on particular allegations /complaints/reports covered by the Report.

The Minister does not propose to publish personal identifying information provided to him in the Report unless compelled to do so by some law or legally binding process or to the extent necessary to prevent threat of injury or abuse of other persons.

It is possible that during preparation of the Report the Review will report to the Minister and/or Defence on matters that may require urgent action.

**HOW DO YOU TELL US WHETHER YOU CONSENT OR DO NOT CONSENT TO DISCLOSURE OF THE PERSONAL INFORMATION YOU PROVIDE TO US?**

The Consent/Restrictions form asks you to state whether you consent to the Review disclosing to the Minister and the Department some or all of the personal information which you provide to the Review and whether you consent to your personal information being disclosed and used for further investigation and action.

Even if you have already filled in a form like this with the Review, the Review asks you to fill in the form attached because it now includes some new questions and some new information.



**IF YOU COMPLETE THE FORM STATING THAT YOU DO NOT WANT YOUR PERSONAL INFORMATION DISCLOSED, DOES THE REVIEW GUARANTEE THAT IT WILL NOT BE DISCLOSED?**

The Review cannot guarantee not to disclose your identity or your information because:

- The Review might be made to disclose your identity or your information by a law or by legally binding order (such as a Court order); or
- The Review might need to reveal your identity or the information which you have provided to prevent injury or abuse to other persons.

Subject to those points:

- If you ask not to be identified then the Review agrees not to give your identifying information to the Minister, Defence or others; and/or
- If you ask that some or all of the information you give the Review be kept confidential - the Review agrees to that information being kept confidential.

If you put limits on how the Review can use and disclose your information then DLA Piper in its Report and the Minister and Defence after receiving the Report may not be able to use your information to follow up your allegations /complaints/reports.

However, it is your right to ask for these limits and even with those limits, your information may still help the Review to make recommendations to the Minister and Defence.

DLA Piper Review

## Annexure C – Information On Task Force From Attorney General's Website

Government response to the DLA Piper review of claims of a...

<http://www.ag.gov.au/Consultationsreformsandreviews/Pages...>



**Australian Government**  
Attorney-General's Department

### Government response to the DLA Piper review of claims of abuse in Defence

For more information about the Government's response please ring the information Hotline on: **1800 424 991**.

The Minister for Defence has announced the Government's response to the DLA Piper *Report of the Review of allegations of sexual and other abuse in Defence*. The Government's response includes:

- an apology in Parliament (delivered by the Minister for Defence)
- a telephone Hotline (1800 424 991) for anyone wishing to find out more about the proposed arrangements or report new information, and
- a Defence Abuse Response Taskforce to assess individual allegations made to DLA Piper, and any additional allegations made to the Taskforce concerning abuse by Defence personnel before 11 April 2011, and work with those who have made allegations to determine an appropriate response in individual cases, which may include:
  - possible restorative justice/conferencing processes where a victim and alleged perpetrator are brought together in a facilitated process
  - referral to counselling
  - determination of compensation
  - referral of appropriate matters to police for formal criminal investigation and assessment for prosecution
  - referral of appropriate matters for disposition by the military justice system.

Anyone who wants to find out more about the Government's response can look at the [frequently asked questions](#) or ring the information Hotline on: 1800 424 991.

If you are feeling distressed and need to speak with someone urgently, you may wish to contact the following support lines.

#### Further support

##### Currently serving ADF members - 1800 628 036

The All-hours Support Line is a confidential telephone service to assist ADF members and their families with accessing mental health services, such as psychology, medical, social work and chaplain services.

##### Current Defence public service employees - 1300 361 006

The Employee Assistance Program (EAP) is a confidential and free service. It is provided by professional counsellors who will provide practical assistance to APS employees, and their immediate family members, who may require counselling services.

##### Former ADF members and Defence public service employees - 1300 361 008 (and selecting Option 2)

Special arrangements have been made to extend the EAP service for immediate, initial counselling to former ADF members and former Defence public service employees and their immediate families who raise or have raised allegations affecting them and who require counselling assistance. The EAP is a confidential and free service provided by professional counsellors.

#### Related links

- [Frequently asked questions](#)

Annexure D – Sabotage Material By Dr James Connor, Lecture ADFA  
(From ABC Drum Website - <http://www.abc.net.au/unleashed/4397026.html>)

Abuse is inevitable if you want a fighting military - The Dru...

<http://www.abc.net.au/unleashed/4397026.html>



The Drum on ABC News 24

29 NOVEMBER 2012

## Abuse is inevitable if you want a fighting military

JAMES CONNOR



*Developing a culture that allows soldiers to kill is a central concern of military indoctrination.*



*But the ADFA's Dr James Connor says the problem for the military is that the cultural practices needed for effective fighting forces also create the conditions for abuse.*

A culture which ignores sexual assault, bullying and victimisation is not a culture that can survive in contemporary Australia.

The Minister for Defence, Stephen Smith, has signalled a change in course for the Australian military with the plethora of current and recent reviews into conduct and culture and, most telling of all, an apology to all the current and former members of the armed forces hurt within and by the military.

The apology itself is an acknowledgement at the highest level that the military has been doing wrong by its members for decades.

As unpalatable as it might be, to have an effective military your armed forces need to be able to kill the enemy - and the problem is that it is remarkably hard to get people to kill another person. This was apparent during and after WWII where studies showed that most soldiers did not fire at the enemy and avoided killing if they could. Since then, significant effort has been put into how you train soldiers for battle, primarily to desensitise them to the reality of a human enemy.

Developing a culture that allows soldiers to kill is thus a central concern of military indoctrination. Key components of that culture in Australia are mateship and loyalty, never 'ratting' on your mates and excluding any 'outsiders'. The problem faced by the military is that these cultural practices

make for effective fighting forces, yet also create the conditions for abuse.

Mateship and loyalty born out in the Anzac and Gallipoli traditions are meant to be embodied by our soldiers. This idea of 'mates first' is fundamental in war, especially in tight knit groups - like the section or platoon. It is a truism that soldiers fight for each other, not for lofty ideologies or questions of State. Strong cohesion, this us-versus-them mentality, works for a military when it needs to fight other people.

The problem is that in training soldiers to be like this they need to be convinced that only the unit matters, that other people are inferior and less valuable than them and their mates. This view is useful (while problematic) in war, but tends to be catastrophic in peace as a culture of bullying the outsider, of refusing to 'rat on your mates' and cover-ups occur.

This bullying or 'othering' of the outsider - a person who is a bit different or a woman - is a great way to build cohesion while getting rid of the 'undesirable'. Traditionally the unwanted fails to live up to some imagined hyper-masculine white fighting figure - the supposed 'ideal warrior' type. Soldiers learn rapidly that you never want to be the victim and the way to avoid that is always stick by your mates and attack the outsider.

Part of that code of mateship is the idea of never dobbing in anyone for misbehaviour. The hated soldier is the rat who tells senior military about a wrong-doing, or worse, the rat who goes outside the military chain and tells the media or Parliament. The entrenched culture within the military that it is better to be wrongly punished than tell on your mates goes to why and how there has been such silence on the issue of abuse.

The consequences for whistle-blowers in society tend to be severe, but in the military it can literally be life and death. Some of the most egregious immoral and illegal acts by soldiers only come to light after return and stand-down, when testimony, photos or comments creep out. Yet at the time of the atrocity nothing is said or done - as you cannot be a traitor.

The problem confronting the Australian military is that 99 per cent of it is a large public service-like bureaucracy that enables a tiny front line to actually engage in combat. Front line troops might need a bit of bastardry - they need to have strong unit cohesion, an us-versus-them attitude and a willingness to kill, maim and hurt people. Problematically though, the military trains *all* recruits for this role, *all* the time - so the mentality of war permeates the actions of *all* personnel. The purpose of initial training is to strip a person of who and what they were and rebuild them into a soldier model.

This process works if you need to fight in a war but not to manage a diverse organisation in contemporary Australia. Indeed, the very cultural practices that make the military effective at war make it dangerous to its people.

Ultimately if we want a military we will have to accept that a certain proportion of people will be broken mentally and/or physically in our service - it is a consequence of what they do and how they do it.

Mitigating the worst excesses of wrong behaviour is good. However, the sting is that to be effective, soldiers need to fight for each other and the only way we

get that poses serious risks for everyone else. Fierce group loyalty means the other is inconsequential, a mere target, no more real than the paper targets used to train with.

*Dr James Connor is a Senior Lecturer in the School of Business, University of New South Wales at The Australian Defence Force Academy. View his full profile [here](#).*



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