

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES  
COMMITTEE: INQUIRY RELATING TO ALLEGATIONS OF SEXUAL  
AND OTHER ABUSE IN DEFENCE**

**UPDATED SUMMARY OF WRITTEN SUBMISSIONS  
DR GARY A RUMBLE**

**23 September 2014**

I divided my written submission into three Parts with a summary for each Part. When I appeared before the Committee on 13 August 2014 I tabled a summary which brought together the summaries from those three Parts and which took into account developments since I lodged my written submission.

This document updates the 13 August Summary document to take into account developments since I tabled that written summary including:

- statements made by other witnesses at the 13 August 2014 hearing
- written responses to Questions put to witnesses at the hearing
- the release of the 7th DART Report.

This updated Summary follows the structure of my written Submissions.

As I am making these submissions, the attention of the Government, the ADF and the Parliament is focused on the international situation and on the risk of terrorist attack in Australia.

Those considerations do not justify ignoring or postponing the matters which I am raising with the Committee. On the contrary, the matters which I raise in this submission are fundamental to the welfare of past, current and future ADF members and are fundamental to the governance and culture of the nation's ADF.

Dr Gary A Rumble

**PART I** (covering)

**ASPECTS OF PHASE 1 (DLA PIPER) REPORT NOT YET DEALT WITH DESPITE ASSURANCES GIVEN TO FADT COMMITTEE IN MARCH 2013**

**MEDIA AND OTHER THIRD PARTY ALLEGATIONS OF ABUSE, MISMANAGEMENT AND DEFENCE COVER-UP**

**ACCESS TO DVA BENEFITS FOR PERSONS AFFECTED BY ABUSE IN THE ADF**

**SYSTEMIC ISSUES**

**VOLUME 1 FINDINGS AND RECOMMENDATIONS**

**FAIRNESS AND RESOLUTION BRANCH AND ADFIS MATTERS**

**PUBLICATION OF VOLUME 2 OF PHASE 1 (DLA PIPER) REPORT IN REDACTED OR SUMMARY FORM**

**MEDIA AND ANONYMOUS ALLEGATIONS OF ABUSE, MISMANAGEMENT OF ABUSE AND COVER-UP**

1. My 8 November 2013 email to the Minister Johnston's Chief of Staff (Attachment 1 to my 3 February 2014 letter to the Committee in Annexure 3 to Part I of my submission) included the following statements about the significance of these matters:

I am reluctant to identify any of the gaps as being more important than the others. However, it will give some idea of the significance of gaps if I mention these examples:

- The DART does not propose to consider any media allegations or anonymous allegations which we reported on in Phase 1 (unless the alleged victim has approached the DART separately and consented to the DART dealing with the allegation): -
- Allegations made on the Four Corners program in June 2011 included that:
  - the Four Corners program had a document - which they showed during the program - which purported to be an internal Defence document containing statements to the effect that Defence had been deliberately misleading Ministers for years about allegations of abuse involving a particular individual - referred to as John the Barrister: and
  - the document also carried handwritten notations directing that the document be removed from the file because it implied criticism

of earlier staff and because it could have liability implications.

- Minister Smith's March letter to me had expressly stated that the DART would be looking at media allegations including the allegations from the Four Corners program.
  - Mr Roberts-Smith told me at our 17 October 2013 meeting that the DART is not dealing, and would not be dealing with, media allegations covered by our Report.
  - It is my understanding that Mr Roberts-Smith has decided that the DART would only consider allegations which a complainant consents to the DART considering.
2. Media allegations are public and should receive a genuine, convincing and public Government or Defence response because so long as media allegations such as those published in the Four Corner program in June 2011 do not receive a public Government or Defence response they can be republished.
  3. For as long as these allegations remain unanswered – and whenever they are republished – these media allegations will discourage victims of abuse in the ADF from reporting the abuse.
  4. No doubt when considering how to frame a public response, the welfare of the alleged victim should be taken into account. But ordinarily consent of the alleged victim should not be a precondition for the Government and/or Defence being able to make a public response to a public media report.
  5. Some of the anonymous allegations addressed in Volume 2 of our Report also raised plausible and very serious matters of what were in 2012 of current concern and – which had the potential to be of ongoing concern.
  6. It is of continuing concern to me, that these aspects of Volume 2 of our Report have been buried because of Mr Roberts-Smith's position.
  7. Mr Roberts-Smith has had ample opportunity to explain why he is not acting in accordance with the specific assurances given in Minister Smith's 8 March 2013 letter (which is Annexure 2 to Part I of my 2 June 2014 Submission).
  8. That letter included the specific assurance:

... the Taskforce will consider all of the specific allegations reported on in Volume 2, including the allegations made in the Four Corners – Culture of Silence program from June 2011 ....
  9. Mr Roberts-Smith had not even acknowledged the existence of Minister Smith's 8 March 2013 letter of assurance let alone given any explanation for failing to carry through with the assurances given in that letter.
    - I first took up these concerns in my letter of 27 August 2013 to then Minister for Defence Smith and then Attorney-General Dreyfus. That correspondence was copied to Mr Roberts-Smith. (See Attachment 2 to

my 3 February 2014 letter to this Committee which is Annexure 3 to Part I of my submission.)

- Mr Roberts-Smith referred to that correspondence in his letter of 23 September 2013 when he invited me to meet with him. (See Attachment 4 to my 3 February 2014 letter to the Committee which is Annexure 3 to Part I of my submission.)
  - In my meeting with him on 17 October 2013 Mr Roberts-Smith spoke at length about positive aspects of the work of the DART but offered no explanation for his position to exclude media and other third party allegations.
  - In my correspondence of 29 October 2013 to Mr Roberts-Smith to confirm my understanding from our meeting I directly asked him to explain why he has ignored the very specific assurances given in Minister Smith's 8 March 2013 letter about the matters which Mr Roberts-Smith had been tasked to undertake. (See attachments 5 and 6 my 3 February 2014 letter to the Committee which is Annexure 3 to Part I of my Submission to this Committee.)
  - Mr Roberts-Smith has not replied to that correspondence.
  - Mr Roberts-Smith has not provided any explanation in the DART Interim Reports of why he has ignored Minister Smith's 8 March 2013 written assurances on these matters which included:
  - Mr Roberts-Smith has not addressed these matters in his written or oral submissions to this Committee for this current reference.
  - Mr Roberts-Smith has made general statements to the effect that he is acting in accordance with his Terms of Reference. However, his decision to ignore these aspects of our Report cannot be justified by those Terms of Reference. Paragraph (i) of his Terms of Reference called on him to 'assess the findings of the DLA Piper review ...' without restriction. The DART's Terms of Reference are clearly wide enough to include all allegations which were reported on in the DLA Piper (Rumble) Report.
  - In any case, whatever ambiguity there may have been in the Terms of Reference, Minister Smith specifically confirmed in his 8 March 2013 letter that these matters were within Mr Roberts-Smith's Terms of Reference.
  - Furthermore that letter was provided to, and relied on by, the FADT Committee for purposes of its 2013 Inquiry.
10. The inevitable inference is that the reason why Mr Roberts-Smith has not provided an explanation for his decision to bury the aspects of Volume 2 of our report which dealt with the Four Corners allegations and other media and third party allegations including anonymous allegations is that he does not have a reason for doing so which would stand scrutiny.

11. I strongly recommend that media and anonymous allegations on which we reported in Volume 2 should be addressed by Government because they raised serious issues of abuse, mismanagement of abuse and – in some cases – cover-up in the ADF.
12. It is of further concern that successive Governments have failed to respond to these concerns and have acquiesced in Mr Roberts-Smith's 'do-nothing' position:
- Then Minister Smith and then Attorney-General Dreyfus did not give any substantive reply to the concerns which I raised in my 27 August 2013 letter to them.
  - Caretaker Conventions did not prevent Minister Smith and Attorney-General Dreyfus from confirming what was the intent of the DART terms of reference which they had signed off on months before.
  - However, Minister Smith informed me by letter of 6 September 2013 that he had referred my correspondence to the incoming Minister for Defence and, Attorney-General for reply. (See Attachment 3 to my 3 February 2014 letter to the Committee which is Annexure 3 to Part I of my Submission to this Committee.)
  - I took up these concerns with the office of the incoming Minister, Senator Johnston and met with him on 9 December 2013 to discuss these and related concerns but I have not had any substantive reply on these issues from the Minister or his office. See:
    - My letter of 3 February 2014 to this Committee which is Annexure 3 to Part I of my submission;
    - Attachment 1 to that letter;
    - Annexure 4 to Part I of my submission
    - The further correspondence with the Minister's office which I tabled at the hearing on 13 August 2014.
13. At the 13 August 2014 Committee hearing Senator Fawcett and the Chair, Senator Gallacher, put some questions to me and I responded as follows:

**Senator FAWCETT:** I hear your call for government to take the lead in responding to media allegations and other things. Are you suggesting that media, anonymous or third-party allegations that the government should direct DART to investigate that or are you saying that in the absence of a DART investigation the government should initiate some other process to investigate those?

**Dr Rumble:** We reported thoroughly on those recommendations in Volume 2 of our report. Mr Robert Smith decided that those allegations are out of scope for him for whatever reason. There is already our report available to the Government and he [they] could read it immediately and deal with those matters. I do not know why Mr Roberts-Smith has set his face against looking at these matters. But it does shake my confidence that if they are handed to him that he

will deal with them with any great vigour or treat them as being high-priority matters. Some of them are very deeply concerning allegations of cover up that have been sitting around for some time.

**CHAIR:** To clarify, when you say that General Roberts-Smith has declared it out of scope, are there any underlying factual reasons for that?

**Dr Rumble:** I met with Mr Roberts-Smith in September [sic] last year and he stated his position was that he was not going to be dealing with them unless the victim came into the DART. There was no justification.

**CHAIR:** So his position was basically unless somebody lays a complaint—

**Dr Rumble:** That is the indicator. If the alleged victim comes in then he would put it into his process of dealing with complainants who approach him.

**CHAIR:** Would that be unusual though?

**Dr Rumble:** Minister Smith's letter on 8 March expressly referred to the media allegations that we had been required to report on and expressly said that that was part of Mr Roberts-Smith's task. That was obviously in conflict with what he had said, what was emerging through the DART's interim reports and what Mr Roberts-Smith said to me in September. We did not have a debate about the scope of his terms of reference so I went back to him in writing querying why he was taking that position. He has not answered that letter and he has not answered my communications asking him whether he will answer that letter.

14. My references to my meeting with Mr Roberts-Smith in September 2013 were incorrect. The meeting occurred in October.
15. However, I otherwise confirm the substance of what I said.
16. I also add the further point that Mr Roberts-Smith emphasised in the 13 August 2014 hearing and has stated on other occasions - the DART is not an investigatory body. Minister Smith had emphasised in the press conference back on 26 November 2012 that he had made clear to Mr Roberts-Smith that if he felt he needed investigatory powers, he could go back to the Minister and ask for them. But Mr Roberts-Smith has not asked for those powers and clearly not wished to take on any investigatory role.
17. The Minister for Defence has available to him Volume 2 of our Report. He could read our recommendations on media and other third party allegations including anonymous allegations and deal with them immediately.
18. Those aspects of the content of our Volume 2 report in which we reported on public media allegations of abuse and Defence cover-up have themselves now been covered up by Mr Roberts-Smith's decisions to ignore Minister Smith's 8 March 2013 confirmation of the scope the DART terms of reference and by successive Government's failures to act.
19. The last communication which I had from Minister Johnston's office in the emails which I tabled on 13 August 2014 was to the effect that he respects the Committee's processes and is waiting to see the outcome of the Committee's current inquiry.

20. The issues involved are of fundamental importance to the welfare of past, future and current members of the ADF and to the governance and reputation of the ADF.
21. As far as I am aware, the current Attorney-General, the current Shadow Minister, current shadow Attorney-General have not made any statement about these issues.
22. If this Committee representing the nation, does not take a stand, it is apparent no-one else will.

I urge this Committee of the Parliament on behalf of the nation to call for decisive action on these matters.

I recommend that the Committee request the Government to consider and respond promptly to those aspects of Volume 2 of our April 2012 Report which reported on media, anonymous and other third party allegations.

I recommend that the Committee request the Government to table in Parliament its responses to the media allegations or to explain to the Parliament why it is not doing so.

I recommend that the Committee request the Government to report to the Parliament what action it is taking on anonymous and other third party allegations reported on in Volume 2 of our Report.

#### **DEFENCE AND DVA TO GATHER AND SHARE INFORMATION RELEVANT TO ACCESS TO DVA BENEFITS**

23. The Third [DART] Interim Report signed off by Mr Roberts-Smith in September 2013 included the following (at page 5):

... many of the Taskforce's complainants are in their fifties or older and, almost 70% are male. They relate tragic stories of lives greatly affected by the abuse and the further trauma they experienced as a result of failure by those in authority to acknowledge or respond to it.

Many individuals never reported their abuse and have never spoken of it before, even to their partners or families. Many have spoken about their experience of severe mental and emotional harm as a result of the abuse, including alcoholism, drug addiction, social isolation and, mental illness.
24. Such people - and many more people like them who may not have come into the DART's processes - could well be entitled to DVA benefits and assistance which they are not receiving.
25. My 8 November 2013 email to the Minister Johnston's Chief of Staff continued:

- We had identified for consideration:
    - directing Defence to gather copies of relevant reports relating to abuse and to provide information from those reports to DVA with appropriate redactions for confidentiality so that DVA decision-makers could be informed of the kinds of conduct which did occur and could be informed of the recurrent theme through reports that there are strong cultural reasons why people will not report abuse while they are in Defence:
    - directing DVA to analyse their own records of claims to identify patterns and consistency in the kinds of conduct alleged so that decision-makers could be informed.
26. The DART's Fifth Interim Report published in March 2014 reports that Mr Roberts-Smith had finally referred these issues to the Secretary of the Department in February 2014 but stated that Mr Roberts-Smith did not see any role for the DART on these issues. Mr Roberts-Smith's written answers to questions from the 13 August 2014 hearing confirm that he sees no role for the DART on these issues.
27. Mr Roberts-Smith has not explained why he sees no role for the DART on these issues but in any case, there is obviously no point in trying to engage him on these issues given his consistent resistance to being engaged.
28. These issues are discussed at length in:
- Chapter 7 of the Supplement to Volume 1 of the Phase 1 Report
  - Supplement Findings, Phase 2 issues and recommendations – pages xii-xiii in the Annexure 5 to this Submission
  - The 17 December 2012 letter to Minister Smith (Annexure 1 to this submission)
  - My submissions to the FADT Committee in March 2013.
  - The 3 February 2014 letter and its attachments (Annexure 3 to my written submission to the Committee for this current inquiry). See especially my correspondence to Mr Roberts-Smith of 29 October 2013 at attachments 5 and 6.
29. In 2011 General Hurley told our Review that he and then Secretary of the Department Dr Ian Watt wanted to avoid any process involving publication of allegations about past abuse in Defence because.
- ... the focus of the media and the public, as well as our own people, would inevitably be on the stories that emerged about the past as opposed to how we can learn and take the organisation forward. [See Annexure ??? to Volume 1 of our Report]



30. At present Defence cannot learn from past abuse reports because Defence does not keep any accessible set of reports and proceedings involving abuse. Even reports of inquiries under Defence Inquiry Regulations are not readily available within the ADF. See Chapters 2, 4 and 7 in Volume 1 and Supplement to Volume 1 of our Report.
31. The ADF and the general community would benefit from understanding this history of the nature of the abuse which has occurred and the factors which have contributed to abuse occurring as a basis for ongoing risk management.
32. I recommend that the Committee request the Secretary and the Chief of the Defence Force to inform the Committee whether they do have any 'in-principle' concerns about:
- gathering these records to assist Defence's own ongoing risk management and moves to eliminate abuse;
  - sharing de-identified information with DVA and potential DVA benefit recipients.
33. Whatever the issues might be for the ADF, I believe that the Commonwealth (including Defence) has moral and Model Litigant obligations to individuals affected by abuse in the ADF to bring into DVA processes relevant information which is currently scattered in Defence and DVA files.
34. In my submission I had added some new related material - that is material, not addressed in detail in the DLA Piper Report - identifying the possibility of individuals damaged by abuse in the ADF being able to improve their prospects for access to DVA benefits through processes for change of records of discharge and/or going behind recorded grounds for discharge.
35. I recommend that:
- Defence be asked to start gathering records of past reports and proceedings related to abuse in the ADF immediately and to report on progress by the end of September 2014;
  - DVA be asked to commence consultation with Veterans' representative organisations and to report by the end of December 2014:
    - on what legal and practical barriers there are to victims of abuse in the ADF succeeding in establishing the facts necessary to make out entitlements to DVA benefits;
    - what Defence and DVA could do and what resources they will require to gather and share information which could assist such individuals to establish those facts to the satisfaction of DVA and tribunal decision-makers;
    - on what can be done in liaison with Veterans' groups, other Government agencies and community groups and what resources will be required to reach out to individuals affected by abuse who may be

eligible for DVA benefits – including individuals who have previously applied and been rejected.

36. After I lodged my written submission the DART's 6<sup>th</sup> Interim Report had been published.
37. That report attached a letter to Mr Roberts-Smith co-signed by Defence Department Secretary Mr Richardson and the then CDF General Hurley. That letter which appeared to be a reply to Mr Roberts-Smith's February 2014 letter included the following – *'There presently exists a single access mechanism to streamline passage of information between Defence and DVA and Defence will continue to engage with DVA to address matters of mutual interest.'*
38. This seemed to be a clear enough signal that Defence had no intention of gathering and sharing with DVA the kind of information which we had identified as being relevant to informing DVA decision-makers about:
- the history of abuse in the ADF and
  - the strong cultural factors which have discouraged victims of abuse in the ADF from reporting abuse promptly.
39. On the evening of Friday 8 August 2014 I received an email from the Minister Johnston's office which contained a statement relating to access to DVA benefits. I tabled that email in its entirety at the hearing on 13 August 2014.
40. Of particular significance at this point was the following statement:
2. ....It is the responsibility of the ADF member to submit their own claim, ensuring that the information they provide is adequate for DVA to make a determination about their eligibility for support.
41. There seemed to be no move to take up the recommendation from the DLA Piper Report from April 2012 for DVA to consult with Veterans' representative groups to proactively look for damaged and socially isolated individuals who may be eligible for DVA benefits and support.
42. As I noted in my 13 August 2014 summary document - This fails to recognise that many of the people affected by abuse in the ADF have experienced what Mr Roberts-Smith's Third DART report described as -
- ... severe mental and emotional harm as a result of the abuse, including alcoholism, drug addiction, social isolation and, mental illness
43. I refer the Committee also to the evidence given by Ms James and Mr Donaldson about the isolation of the victims of abuse they see.
44. The 8 August 2014 email from Minister Johnston's office also included:
10. Defence is engaged with DVA in examining enhancements to support for former serving members. One recent enhancement in relation to mental health support will likely be beneficial to Taskforce complainants and others who may have suffered abuse during their service.

On 1 July 2014, the Government announced expansion of the DVA Non-Liability Health Care (NLHC) eligibility for Peacetime service to cover mental health conditions of Anxiety, Depression, PTSD, Alcohol Use Disorder, and Substance Use Disorder without initiating a claim for compensation nor requirement to establish the condition as being related to the individual's service. Access to the NLHC generally requires the member to have served three years continuous full time service or less than three years and discharged under certain conditions.

45. I welcomed the extension of NLHC.
46. However, many of the people who were damaged by abuse in the ADF and who left the ADF shortly after experiencing the abuse would be defeated by the requirement of 'three years continuous full time service or less than three years and discharged under certain conditions'. For many individuals the challenge would then become to get behind the official ground for discharge to prove that their discharge was caused by the impact of abuse.
47. This was confirmed by the DVA spokesman at the 13 August 2014 hearing in answer to questions from Senator Fawcett and Senator Lambie (see pages 47-48):

**Mr Carmody:** To answer both your questions, in terms of non-liability health care, in terms of the availability of health care, they can get health care. There is a circumstance where, if you have got less than three years service, you are unable to get non-liability health care.

**Senator FAWCETT:** How do we deal with a recruit that has left after 11 months?

**Mr Carmody:** There is an exception to it. The exception is that, if you left on medical grounds—and one other ground, I think, but principally medical grounds—then you are exempt from that three-year requirement. But, if you discharged at own request—you just left—and you left under the three years, then that is where you miss out. So, if there is anything that would assist in making sure that people—albeit mainly very few—had health care available to them if they were subject to abuse and if they only served for a short period of time, that is one area where assistance might actually be provided, where in these cases you could go lower than three years. At the moment, there is that three-year threshold.

48. I do not know what possible basis Mr Carmody has for saying that only 'very few' people affected by PTSD or similar issues would have left the ADF with less than 3 years of service. From what I saw while conducting our Review, there were many stories of boys and other young people affected by abuse at training establishments being discharged with considerably less than 3 years service but with life long impacts.
49. The DART's report on *HMAS Leeuwin* acknowledges that the risk factors at HMAS Leeuwin have been present at other training establishments.
50. For reasons I have set out in my written submissions, the numbers of people affected by abuse in the ADF is likely to be much higher than the numbers that

came to our Review or to the DART or to DVA. The evidence Ms James and Mr Donaldson to this Committee gives some idea of the barriers to such people coming forward.

51. We have yet to hear for example, any detailed information of the history of violence at the Army's apprentice school at Balcombe. Army announced an inquiry into that topic in the early 1970s but Defence was unable to find any record of that inquiry when our Review asked for it.
52. Mr Carmody's comment – as a spokesperson for DVA who should know these things - that there would only be 'very few' people in this category demonstrates again why it is crucial for DVA decision-makers to be informed about the history of abuse in the ADF and the strong cultural factors which have discouraged reporting of abuse.
53. DVA's written answers to question 2 (from Senator Xenophon) include:

DVA will also pay for mental health treatment for eligible veterans without the need to lodge a compensation claim, where they have diagnosed PTSD, anxiety, depression and alcohol or substance use disorder. Services available include individual treatment by general practitioners, psychiatrists and allied mental health providers, PTSD treatment programs, and hospital treatment.
54. The significant qualification in this is 'eligible'.
55. DVA's written answer to Question 4 from Senator Xenophon includes:

Compensation claim decisions are not affected by the reason for discharge. All claims are investigated and determined on their merits. However, DVA is notified of all medical discharges and engages with members to ensure that, where possible, such members have a continuation of care when transitioning out of the ADF.

Regardless of the type of discharge, DVA provides eligible veterans with treatment for certain conditions without the need to link the conditions to service. The conditions include diagnosed anxiety, depression, post traumatic stress disorder, alcohol use disorder and other substance use disorders.
56. It is not correct to say that compensation claims are not affected by the reasons for discharge. It is only eligible veterans who get the no-liability treatment for certain conditions. To qualify as eligible it may be necessary to get to the real reason for discharge with less than 3 years service.
57. To get access to compensation on a liability basis it may also be necessary to get to the real incident which led to discharge. See the discussion above.
58. There will now be more people who are eligible for some DVA support who were damaged by abuse in the ADF but who will not get that support unless DVA proactively seeks to alert them of this change and unless they get assistance with information from Defence which could help them make out the 'conditions' of their discharge in less than three years.

59. At the 13 August 2014 hearing the DVA spokesman acknowledged that cluster information could be relevant to establishing eligibility for benefits – see for example at page 47):

**Mr Carmody:** Just to add to that, if a psychiatrist or psychologist were able to diagnose that the person had an injury or an illness—how about a stress-related disorder, post-traumatic stress or anxiety—and would say that that was most likely caused by their time at a location that matches with a cluster, then that makes the case much more straightforward. If the psychiatrist comes in and says, 'It could have been, or it could have been childhood, or it could have been any one of a number of other things,' then it makes it more difficult. You have got the cluster information—well, we hope we have got the cluster information. We have asked the DART for information on clusters and time frames. They are not through their work yet, so they have not given us that ...

60. Obviously if cluster information from the DART could assist in making out eligibility of damaged former members of the ADF, then relevant information from Defence inquiries and disciplinary processes and DVA's own cluster information could also be relevant.

61. Senator Xenophon pressed this point with Mr Carmody (at page 49):

**Senator XENOPHON:** ... Further to the line of questioning that was dealt with—I am nearly done, Chair—you talk about identifying clusters. One of the recommendations from the DLA Piper Rumble review was that DVA analyse their own records of claims to identify patterns and consistency in the claims of conduct alleged so the decision makers could be informed. Are you in effect doing that or do you get to that approach on clusters and claims assessment separately from the DLA Piper Rumble review recommendation?

**Mr Carmody:** I think, on that latter point, we are trying to have the definitive cluster information provided by DLA Piper or by DART, because it is contemporary in the sense that it has been tested by them, so that is where we are trying to get our cluster information from.

**Senator XENOPHON:** We are at cross-purposes: the DLA Piper Rumble review recommended that the DVA analyse their own records of claims to identify patterns and consistencies in the kind of contact—for instance, if you had 10 people saying that they were assaulted in a particular way, scrubbed with a brush or sexually assaulted in a particular modus operandi, is that the sort of thing you are doing now?

**Mr Carmody:** It would be very difficult for us to do that. As I have said, we make 50,000 determinations a year, and some people have made claims under multiple determinations. If they are being paid at the highest level, the only thing that the systems might reflect is the fact that they are being paid at the highest level and this is the sample top complaint. It is very complex to do.

**Senator XENOPHON:** The DLA Piper review was very clear about that recommendation. If you could take on notice why it is so difficult for such analysis to take place and also, if we are talking about a particular form of assault—without putting too fine a point on it; and people are alleging that

they have been raped in a particular way using a particular implement or instrument or they have been scrubbed down with a wire brush—is that the sort of thing that that collation of information may assist in terms of assessing claims?

**Mr Carmody:** I will take it on notice and have a look at it.

62. The written response which DVA lodged with the Committee failed to give a substantive response to Senator Xenophon's question:

The former Minister for Defence announced a Government response to the Report of the DLA Piper Review on 26 November 2012. The Government's response did not include a review of DVA's records.

The Chair of the Military Rehabilitation and Compensation Commission has formally requested information from the Chair of the DART regarding ADF bases and locations where clusters of abuse are known to have occurred (including timeframes and types of abuse), with a view to possibly using this information as part of the DVA claims assessment process to support abuse claims. The first tranche of the information has been received and is being analysed.

Where claims are attributable to service at ADF establishments which are not identified as part of the cluster information, or where the 'cluster' information does not support the contention, the usual DVA process, which relies upon available medical and other corroborating evidence, would need to be followed and claims would be considered on a case by case basis.

63. The clear implication of DVA's written answers to the Committee after the 13 August 2014 hearing is that DVA will not even give consideration to what would be required to develop cluster information from their own records until Government directs them to do so.
64. Meanwhile people who were damaged in the ADF will continue to go without benefits and the support that they should and could be getting through the DVA framework.
65. The evidence given to the Committee on 13 August 2014 and the written answers lodged with the Committee since the hearing reinforce the need for this Committee to make a strong call on the Government to direct both Defence and DVA on actions set out in the recommendations at paragraph 35 above.
66. I confirm those recommendations.

#### **OTHER SYSTEMIC ISSUES**

67. Minister Smith's 8 March 2013 letter gave assurances that the DART would be looking at all of the 35 systemic issues 'identified' – that is recommended – for Phase 2 consideration.
68. It is my understanding that Mr Roberts-Smith does intend to consider systemic issues which our Report identified eventually. However. Somewhat

ominously he has now started referring to only looking at those which he regards as significant.

69. It is also my understanding from the Minister's 8 March 2013 letter and from DART Interim Reports that Defence itself may have already considered some of these issues in the course of carrying out its own 'Re-thinking review' review.
70. In the FADT Committee's June report last year the Committee recommended that Defence should formally report on its response to all of the systemic issues identified in our Report. (Recommendation 2)
71. The systemic issues – along with the findings and recommendations – were consolidated in a summary document in the Supplement to Volume 1 of our Report. For ease of reference I have provided them to the Committee as Annexure 5 to Part I my written submission.
72. The bulk of the systemic issues which our Report identified were set out in Volume 1 of our Report which was delivered in October 2013.
73. The Systemic issues which we identified were wide ranging and included some very specific issues. For example:

#### **Issue 16**

The ADF should consider establishing a system for liaison with local civilian police forces similar to the US Military's Sexual Assault Regional Team either dealing with ADF/civilian police interactions generally or limited to sexual assault issues. (Volume 1 page 152)

#### **Issue S7**

Phase 2 to consider a proposal for reform of *Defence Inquiry Regulations* requirements for Ministerial approval for access to reports of Administrative Inquiries so that decision-makers and their advisers can make informed decisions and recommendations. (Supplement to Volume 1 page 66)

#### **Issue 15**

The Review considers that Phase 2 should consider the quality and provision of ongoing support to ADF members who have made an allegation of abuse or who have been abused. (Volume 1 page 152)

#### **Issue S12**

Phase 2 to consider whether it would be appropriate for Defence to seek the making of a regulation under s 85ZZH(k) of the *Crimes Act 1914* that would add recruitment into the ADF to the exclusions from the operation of the spent convictions legislation. (Supplement to Volume 1 page 73)

74. We still have no Defence or Government responses to these and other issues.
75. I still believe that the Government should respond to all of the Volume 1 and Supplement to Volume 1 Findings and Recommendations of our Report.
76. I recommend that the Committee ask the Government to publish as soon as possible its response to all 35 of the systemic issues gathered in the Supplement to Volume 1 of our April 2012 Report and also to publish a response on what the Committee Report last year recognised as another systemic issue identified by our Report – underreporting of abuse in the ADF.
77. In my 13 August summary document, I noted that I also supported the Committee’s recommendation for *Defence* also to respond. I had not seen any such formal response from Defence. Another year had gone by since the Committee had called for that report from Defence.
78. I recommended that the Committee ask for that report from Defence to be delivered by the middle of July so that the Committee can take it into account before it delivers its own report on its current reference.
79. After I lodged my written submission there have been developments referred to in the DART’s 6th Interim Report.

The Fifth Interim Report noted that the Chair wrote to the CDF and the Secretary of the Department of Defence on 12 November 2013 requesting a copy of the Report on the “Re-thinking Systems of Inquiry, Investigation and Review in Defence Report” (‘Re-thinking Systems Report’).

On 15 November 2013, the CDF and the Secretary advised they had not yet had the opportunity to consider the recommendations in the Re-thinking Systems Report and had therefore decided it was inappropriate to provide a copy to the Taskforce until they had.

On 19 December 2013, the Chair wrote again to the CDF and the Secretary asking that they reconsider their decision, as consideration of the work of the Review and its recommendations was essential for the Chair to give effect to the Taskforce Terms of Reference relating to the findings of the DLA Piper Review.

The Chair met with the CDF and the Secretary on 3 March 2014, at which time they advised the Re-thinking Systems Report had been to the Chiefs of Services Committee (COSC) and they had reached a view on the approach they would take to it. The CDF and Secretary said the report and advice about their proposed course of action could therefore be provided to the Taskforce and would be made available shortly.

The Re-thinking Systems Report was provided to the Taskforce on 2 April 2014.

In their forwarding letter, the CDF and Secretary noted the Re-thinking Systems Review had considered the outcomes of the DLA Piper Review in formulating its recommendations, although it was not the sole vehicle, and it had considered the outcomes of many reviews and inquiries in formulating its recommendations.



A copy of the letter from the CDF and Secretary is Appendix D to this Report.

It is unfortunate the CDF and Secretary declined to provide a copy of the Re-thinking Systems Report to the Taskforce until COSC had determined what the Defence action on it would be. It may have been more useful if the Taskforce had been afforded an opportunity to provide observations and recommendations before that decision was made.

80. Since the Secretary and CDF letter to Mr Roberts-Smith has informed him that Defence has taken the DLA Piper Review into account, it should be a very simple matter for Defence to report to the Committee promptly and with specificity on what position it has reached on each of those issues.
81. I recommended that the Committee ask Defence to provide by the end of September this year the Report which the Committee Report in the middle of 2013 had requested.
82. Senator Fawcett took that up at the 13 August 2014 hearing (page 54):

**Senator FAWCETT:** ... Dr Rumble in his report was talking about the 35 systemic issues that the previous minister said he would get back to the committee on. Dr Rumble pointed out there has been an election et cetera, but from Defence's perspective have you addressed those 35 issues in a briefing back to the minister so that he can begin considering options? Are you looking to implement or implementing any of those 35 issues that were identified?

**Vice Adm. Griggs:** What we did do as part of the suite of reviews that led to Pathway to Change was a review into military justice which I think picked up a number of those issues. I can provide you the full detail on notice so we can explain exactly what is happening.

**Senator FAWCETT:** Could you take on notice what you are doing to look at the system and specifically if there was a response given to government—either the previous one or this one—about those 35 systemic issues.

83. The written answer which Defence lodged with the Committee was non-responsive. It did not directly answer Senator Fawcett's question about the 35 systemic issues.
84. Defence's written answer included tables of the previous Government's response to some *recommendations* in the DLA Piper report. Those recommendations are not the 35 systemic issues. The Government's response to those recommendations does not answer Senator Fawcett's question – '*was a response given to government [by Defence] – either the previous one or this one – about those 35 systemic issues*'.
85. I have no doubt that Defence would at some time – probably more than once - have prepared a table of the 35 systemic issues which our report identified and would have gathered specific information about:

Defence's response to each of those 35 systemic issues;

what Defence has told Government about each of those 35 systemic issues;

what, if anything, Defence has done in relation to each of these 35 systemic issues.

86. The fact that Defence has provided this non-responsive answer padded with information of marginal if any relevance raises the suspicion that if a table was produced with direct clear answers it would highlight the gaps in Defence's responses
87. If Defence had a good answer for the Committee they could have given it.
88. The clue to why Defence's written answer to Senator Fawcett is so vague may be found in Attachment B:

Pathway to Change does not contain any specific Key Actions or Review Recommendations directly pertaining to the DLA Piper Volume One Report. Due to the independent nature of the DLA Piper Review, the Review was not considered an input to the development of Pathway to Change. However, Pathway to Change and associated Service culture reform programs address risks and systemic issues identified in the Volume One Report (Finding 1) associated with sexual and other forms of abuse in Defence through:

- Broderick Reviews – the treatment of women at ADFA and in the wider ADF;
- Hamilton Review – the use of alcohol in the ADF;
- Hudson Review – the use of social media and Defence;
- Orme Review – the personal conduct of ADF personnel; and
- Earley Review – management of incidents and complaints.

89. The decision not to take the DLA Piper Review into account because it was independent makes no sense.
90. I recommend that the Committee again ask Defence to report what position it has taken on each of the 35 systemic issues from the DLA Piper Report and to answer Senator Fawcett's question with direct specific answers.

### **The reason for Defence not seeing Volume 2**

91. I note that Defence's Submission to the Committee contains the statement –

Defence understands that the *DLA Piper Review Team's Volume Two* report consists of some 23 large binders of highly sensitive personal information, including information that was provided to the DLA Piper Review Team on the strict condition of confidentiality. Accordingly, Defence has not been provided a copy of the Volume Two report.

92. I am surprised that Defence has this misunderstanding.
93. Our Terms of Reference required us to prepare a report for the Minister and for the Secretary of the Department. We had prepared a working version of Volume 2 to go to Defence with redactions as required by any specific

confidentiality requests or uncertainty about the source's position on confidentiality. My recollection is that only about 15% required redaction.

94. The overwhelming majority of people who came to our Review clearly consented to disclosure to Defence so that there could be some effective response. My submissions to the Committee last year outlined my concerns about the then Government's decision not to allow Defence to receive the Working Copy. See also my letter of December 2012 which is Annexure 1 to Part 1 of my written Submission.

## **VOLUME 1 AND SUPPLEMENT TO VOLUME 1 FINDINGS AND RECOMMENDATIONS**

95. It is my understanding from the DART's terms of reference, from Minister Smith's 8 March 2013 letter of assurance and from Mr Roberts-Smith's statements to the FADT Committee in March last year, that Mr Roberts-Smith's tasks include considering and deciding whether he agrees with each of the findings and recommendations in our Report.
96. I recommend that the Committee ask for Mr Roberts-Smith to report on what conclusions he has reached in relation to each of the Findings and Recommendations – which are included in the consolidated table from the Supplement to Volume 1 which is Annexure 5 to my submission to the Committee.
97. The DART's 6<sup>th</sup> report states in the Foreword:
- More detailed reporting on systemic issues will occur in three Taskforce publications:
- the report on abuse at HMAS Leeuwin (the HMAS Leeuwin Report);  
the report regarding abuse at the Australian Defence Force Academy (ADFA); and  
a final Taskforce report.
98. There is one group of recommendations and related material from our Report which are of particular relevance to the DART's Restorative Engagement Program and which should be considered before that Program has been completed.
99. I recommend that DART and ADF participants in the Restorative Engagement Program take into account the discussion of 'Apology' in Supplement to Chapter 8 including Recommendations S4 and S5 and the 8 page discussion of 'Apology' in Attachment 6 of the Volume 2 Explanatory Materials (See Appendix 2 to the Supplement to Volume 1.)

## **THE FOUR PARTS OF VOLUME 2 OF OUR REPORT DEALING WITH MATTERS WHICH WERE CURRENT WITH FAIRNESS AND RESOLUTION BRANCH AND ADFIS IN 2011**

100. In my December 2012 letter to the Minister I had asked what was happening with those aspects of our Report. The Minister's reply in his letter of 8 March 2013 (at pages 2-3) was:

### **3. The Government's response does not refer to the three Parts of Volume 2 on Fairness and Resolution Branch matters and does not refer to the Part of Volume 2 on ADFIS Matters**

In relation to specific Fairness and Resolution Branch matters and Australian Defence Force Investigative matters, all matters included in the Report have been referred to the Taskforce for consideration.

... it is now a matter for the Taskforce to consider and make an independent judgment whether, and in what form, this material may be made available to Defence.

I note your concern that this is an unnecessary delay and duplication of work. However, the Government is strongly of the view that it is appropriate that the Taskforce independently review and determine appropriate responses for all matters which the Report addressed. Accordingly, the Taskforce will determine its response to those matters.

101. In my 27 August 2013 letter I had commented that:

The material on which these four Parts of our Report were based came to us from Defence. There are no apparent reasons why these Parts of our Report should not be provided to Defence. Because these Parts of the Report were based on 'snapshots' of F&R Branch database and ADFIS matters, the longer it takes for these Parts of our Report to be made available to Defence, the less use they will be.

102. I recommend that the Committee ask for a report from Mr Roberts-Smith on how he is dealing with the issues of Defence access to the Four Parts of Volume 2 of the Phase 1 Report which deal with F&R Branch and ADFIS matters which were current in 2011.

## **PUBLICATION OF VOLUME 2 OF PHASE 1 (DLA PIPER) REPORT IN REDACTED OR SUMMARY FORM**

103. The Reference which is currently before the Committee asks for a report on 'the desirability of releasing a true reflection of volume two of the DLA Piper report in a redacted form or by way of summary'.
104. Volume 1 and the Supplement to Volume 1 already contain quite a lot of 'summary' information - which I believe to be substantially 'true' - about the kinds of specific allegations reported on in Volume 2 and about the kinds of recommendations our Report made on specific allegations:

- Chapter 3 of the Supplement to Volume 1 gives an overview of the allegations reported on in Volume 2 and on recommendations made in Volume 2.
  - The Explanatory Materials for Volume 2 which are set out as Appendix 2 to the Supplement to Volume 1 discuss in detail the kinds of recommendations which we made in Volume 2.
  - Chapter 5 of Volume 1 of our Report contained some specific examples of plausible allegations of abuse.
105. It would require a lot of resources to prepare for general publication a summary or redacted version of Volume 2 with identifying information removed.
106. Accordingly, on the information which is available to me at present, I believe that it would not be desirable to try to publish a summarised or redacted form of Parts 1-23 of Volume 2.

**PART II** (covering)

**IDENTIFYING UNREPORTED ABUSE**

**OPTIONS FOR RESPONDING TO POSSIBLE UNREPORTED ABUSE**

**RESTRICTED REPORTING**

**CALLING ON ADF TO COMMIT TO AN OBJECTIVE OF ZERO INCIDENCE OF ABUSE**

**THE IMPORTANCE OF MESSAGING FROM ADF LEADERSHIP TO ENCOURAGE VICTIMS OF ABUSE TO REPORT**

**IDENTIFYING UNREPORTED ABUSE/OPTIONS FOR RESPONDING TO POSSIBLE UNREPORTED ABUSE**

107. Our Report drew attention to the findings of many previous reports that there have been strong cultural factors in ADF environments discouraging the reporting of sexual and other abuse.
108. Since the delivery of the final stages of our Report in April 2012 I continued to think about the related problems of how Defence might identify and deal with unreported abuse and how to encourage reporting.
109. I put some of my thoughts on these problems in a detailed paper which I sent to the Secretary of the Department of Defence Mr Richardson and the CDF General Hurley under cover of a letter dated 9 July 2013 (Annexures 1 and 2).
110. In the cover letter I stated:

The *Pathway to Change: Evolving Defence Culture* strategy commits to taking action to develop, a 'reporting culture' in relation to abusive conduct in the ADF. This commitment impliedly recognises that the ADF does not yet have a reporting culture. It necessarily follows that there is some unreported abuse.

I offer for your consideration the enclosed paper in which I set out some thoughts and suggestions on some aspects of the related challenges of identifying and dealing with unreported abuse and of creating a reporting culture.

The attached paper is put forward in my personal capacity.

My perspective is informed by:

- ◇ consideration as leader of the *Review of allegations of sexual and other abuse in Defence* of a very large amount of material including some ADF records related to the 1100 or so specific allegations which were before the Review; and
- ◇ findings in many previous reports and inquiries into aspects of abuse in the ADF that there is under-reporting of sexual and other abuse

and that aspects of ADF culture exacerbate factors in general society which discourage reporting of abuse.

In its nature, the problem of under-reporting of sexual and other abuse is silent and does not clamour for urgent attention. However, under-reporting is corrosive in its effects on the well-being of the ADF and its people.

The ADF cannot deal with abuse which it is not aware of. As I explain in the attached paper, it is very likely that in the ADF more than 80% of incidents of sexual abuse are not reported. It is likely that the rate of reporting of non-sexual abuse is also low.

Declarations that the ADF has zero tolerance of abuse carry little force if zero tolerance only applies to the low percentage incidents of abuse which are currently reported.

Creating a reporting culture is complex and it will be difficult to know when the ADF is succeeding. There will always be other urgent and more visible matters which will be demanding attention. However, if you maintain focus and resources on the issues of under-reporting and you succeed in creating a reporting culture you will create a virtuous circle:

- ◇ The ADF will get more information enabling:
  - response to conduct departing from those values
  - identification and management of risk factors
  - support for ADF personnel who have been the victims of abusive conduct.
  
- ◇ These actions will:
  - demonstrate that the ADF lives by the values which it espouses and is committed to the welfare of its people
  - further encourage reporting which will give the ADF more information to enable actions to reduce and deal with the impacts of abuse.

...

I would be happy to meet with you or your Advisory Committee looking at *Pathway to Change* implementation to discuss the matters covered in this paper or any other matters related to the systemic issues identified in Volumes 1 and the Supplement to Volume 1 of our Report.

111. I received a discouraging reply from Mr Richardson and General Hurley in September 2013. My offer to meet and discuss the issues with the relevant working group was ignored. (See Annexure 3)
112. The reply proceeded on the basis of an incorrect characterisation of what I had suggested in July. The clear inference was that not a single one of the

suggestions and recommendations which I had set out in the 9 July paper had been accepted or was being considered any further.

113. I tried again in a letter dated 14 December 2013 (Annexure 4). As I said in that letter –

Given the importance of the issues I am writing one more time to correct your September letter's incorrect characterisation of the suggestions which I made for identifying and responding to possible unreported abuse and to ask you – with the benefit of that clarification – to consider those suggestions again.

I also make some comments on other aspects of your response to me.

114. I received a short acknowledgement in January 2014 (See Annexure 5).

115. The 9 July 2013 paper (Annexure 2) and the 14 December 2013 letter (Annexure 3) included:

- Discussion of the destructive effects of under-reporting and the correlative benefits of increasing reporting;<sup>1</sup>
- Discussion of the cultural factors in the ADF discouraging reporting of abuse and the likely extent of under-reporting;<sup>2</sup>
- Explanation of why neither the Defence Abuse Response Taskforce (**DART**) nor SeMPRO processes can be relied on to have captured a substantial portion of previously unreported abuse;<sup>3</sup>
- Specific recommendations for identifying where unreported abuse may have occurred or be occurring in the ADF;<sup>4</sup>
- Discussion of how the ADF could use that information including using it to reduce abuse risk factors and to identify individuals or groups who may have been affected by abuse and who may need assistance;<sup>5</sup>
- Re-stating the case for full-strength 'restricted reporting';<sup>6</sup>
- Discussion of the importance of the messages from ADF leaders and urging the ADF to commit to pursuing zero incidence of abuse.<sup>7</sup>

116. I still believe that the 9 July 2013 paper and the 14 December 2013 letter contain some useful insights and contributions to the discussion of the major challenges of under-reporting and unreported abuse in the ADF.

---

<sup>1</sup> 9 July paper pages 8-10, 14-17.

<sup>2</sup> 9 July paper pages 10-13; 14 December letter pages 2, 6  
<sup>3</sup> 14 December letter pages 1, 6-10.

<sup>4</sup> 9 July paper pages 3-4, 17-20. 14 December letter pages 10-12.

<sup>5</sup> 9 July paper pages 20-21; 14 December letter pages 2-6.

<sup>6</sup> 9 July paper pages 21-26; 14 December letter pages 12-15.

<sup>7</sup> 9 July paper pages 26-32; 14 December letter pages 16-20.



117. If the ADF continues to ignore the kinds of indicators which I outlined in those papers in 2013 and continues to fail to respond to those indicators then – apart from the fact that Defence personnel will needlessly suffer abuse - there is a real risk that individual Commanding Officers and others in the Chain of Command could be prosecuted for failing to meet their workplace safety obligations.
118. I have submitted them to the Minister for Defence, Senator David Johnston for his consideration.
119. I submit them for the Committee’s consideration.
120. The 9 July 2013 paper and 14 December letter which are wide-ranging are annexed to my submission. I will not attempt to re-state or paraphrase their content in the body of this summary of submission.

### ZERO INCIDENCE

121. I noted that in his appearance before the Committee on 13 August 2014 the VCDF Vice-Admiral Griggs resisted the suggestion from Senator Xenophon that the ADF should take up the suggestion I had made for the ADF to commit to pursuing zero incidence of abuse (page 61):

Of course it is our goal, but we understand the realities of life. We will never get to zero incidence. We would like to, but we have 58,000 people. Is there a town of 58,000 people in this country with zero incidence? We are committed to zero tolerance and, through that, we will drive down the incidence of sexual assault in the ADF to the lowest possible level. I do not think it is worth it to make a statement of achievability that is not meaningful. It is much more important to say: 'We will not tolerate this. We do not tolerate this. You will get the message because if you don't you will be gone.'

122. Of course, this statement is important for rebutting any statement or assumption that there is no current or ongoing issue with sexual abuse in the ADF to be concerned about.
123. It was disappointing – and in my view undermines the efforts to change the culture in the ADF – for the VCDF to state expressly that the ADF will not commit to zero incidence.
124. I note that DI(G) PERS 35-4 with an effective date of 19 August 2014 and provided to the Committee in Defence’s written answers opens with the statement:
1. This Instruction outlines Defence’s approach to the prevention, reporting and management of sexual misconduct where it occurs in Defence workplaces, or in connection with Defence workplaces or activities. Defence is committed to providing all Defence personnel with a safe, secure and healthy working environment that is free from sexual misconduct.
125. This appears to be a statement of zero incidence of sexual misconduct.

126. A possible explanation for Vice Admiral Griggs's opposition to Defence committing to zero incidence is that Defence has simply decided to reject anything I suggest or recommend.
127. I again recommend to the Committee consideration of the detailed suggestions I provided in my papers to the CDF and Secretary on how to identify where unreported abuse may be occurring and options for responding to unreported abuse.

## **RESTRICTED REPORTING**

128. In my 13 August 2014 Summary I brought my comments up to date to the extent of noting that the *SeMPRO* website's version of 'restricted reporting'<sup>8</sup> still gave rise to the same concerns which I set out in my 14 December 2013 letter.<sup>9</sup>
129. On 26 November 2012 the then Minister for Defence, the Hon Stephen Smith MP announced that the Government had decided to accept the recommendation from Volume 1 of our Report for introduction of restricted reporting.
130. The *SeMPRO* website's version of 'restricted reporting' fell short of full-strength 'restricted reporting' in three respects.
131. First - According to the *SeMPRO* website, when deciding whether to accept a report on a confidential basis *SeMPRO* must consider whether 'Unrestricted Reporting could reduce the risk of further sexual misconduct to you or another person'.
- If applied conservatively by *SeMPRO* this requirement would almost always mean that if the suspected perpetrator was still in the ADF, *SeMPRO* would have to refuse to accept the report on a restricted basis.
  - Over time fewer victims would report, fewer victims would receive support, Command would receive less information about risk situations, fewer victims would move from restricted reporting to unrestricted reporting and fewer perpetrators would be called to account.
  - This denies the whole rationale for restricted reporting.
132. Second - there was still nothing on the *SeMPRO* website to indicate that forensic evidence may – with the agreement of the victim - be collected and safeguarded when the victim makes a report on a confidential basis.
- If the victim does eventually decide to move from restricted to unrestricted reporting but forensic evidence was not collected and safeguarded, then the prospects of effective action against the perpetrator are significantly reduced.

---

<sup>8</sup> <http://www.defence.gov.au/sempro/>

<sup>9</sup> 14 December letter pages 12-15.

- This denies to the victim control and choice which are at the heart of effective recovery for the victim.
  - This also reduces the prospects of the ADF being able to put some substance into declarations of zero tolerance by effectively calling perpetrators to account.
133. Third – there was nothing on the *SeMPRO* website to indicate that restricted reporting through *SeMPRO* is open to former ADF members.
- Under the heading – ‘What are my options’ the *SeMPRO* website states – ‘Different disclosure options are available to ADF (Australian Defence Force) members as those [sic] for APS (Australian Public Service) employees’. There is nothing to indicate the former ADF members could make a restricted report through *SeMPRO*.
  - That denied to former ADF members *SeMPRO* processes.
  - That denied to the ADF information about risk situations and weakens the prospects of perpetrators being brought to account.
134. The exchanges at the hearing on 13 August 2014 and the written answers to Questions have confirmed that my concerns about each of these three issues was well-founded.

### **Restricted reporting for former members of the ADF**

135. To take the last point first - whether *SeMPRO* is available for former members of the ADF - Defence’s written answer to questions from Senator Xenophon (page 60) include:
- SeMPRO* accepts contact from current and former members of the ADF. The *SeMPRO* website is currently being redesigned and will include clear advice that former ADF members can contact *SeMPRO*.
136. That looks like a positive development albeit belated.
137. However, I note that the freshly made DI(G) PERS 35-4 which was attached to Defence’s written answers in paragraph 15 under the heading ‘Restricted disclosure – Defence members only’ states that ‘Defence members may make a restricted disclosure to *SeMPRO* in limited circumstances. ...’.
138. There is no mention or provision for former Defence members to make any kind of report to *SeMPRO* let alone a restricted report. This denies Defence access to relevant information as well as denying support to former ADF members.
139. I recommend that the Committee to ask Defence whether it will amend DI(G) PERS 35-4 to make restricted reporting available to former Defence personnel.
140. The information elicited on the other two points is even more concerning.

## Forensic evidence

141. On the question of forensic evidence – to a question from Senator Xenophon (page 60):

Can you confirm what protocols there are to say, ‘We can collect forensic evidence’ ...

the written answer was: -

SeMPRO staff will discuss options for collection of forensic evidence with clients where collection of the evidence is possible. To date, SeMPRO has not had a disclosure of penetrative sexual assault within the 72-hour window required for primary forensic collections. Should someone disclose within that window, SeMPRO will facilitate support through a medical check and, if agreed, a forensic examination.

142. It looks very much as though there were no protocols until Senator Xenophon asked his question.
143. Furthermore the answer provided does not explain what the protocols are – it simply states that - *Should someone disclose within that window, SeMPRO will facilitate support through a medical check and, if agreed, a forensic examination.*
144. The ‘answer’ raises more concerns than it answers: - It is my understanding that the ADF has rape kits for use for incidents on ships and during overseas operations and – presumably – there are some ADF personnel who now how to use them.
145. However, given that SeMPRO is limited to telephone contact and that calls could come in from ADF personnel around Australia, from ships at sea or overseas posts, it seems unrealistic to suggest that the telephone staff will arrange and coordinate forensic evidence collection remotely while maintaining confidentiality.
146. In the US Defense Forces, the situation as explained in Churchill Fellow Angela Ballard’s paper, is that there is face to face contact for victims of assault with counsellors assisted by nursing staff trained in dealing with sexual assault and with collection and protection of forensic evidence.
147. It may not be feasible for the ADF to maintain this kind of capability in all ADF situations. However, it would seem possible to provide this kind of capability and support at high risk environments such as training establishments.
148. The wait and see approach from SeMPRO is deeply concerning. If SeMPRO ever gets a report from a victim of sexual assault within the 72 hour window, it is not apparent that, that SeMPRO has procedures and capability to be able to offer to preserve forensic evidence.

149. I recommend that the Committee ask again – what are the protocols and capability for SeMPRO to collect forensic evidence in association with restricted reporting?

**Clayton’s ‘restricted disclosure’**

150. I now turn to the stunning admission made in Defence’s written answers –

To date SeMPRO has not had a disclosure of penetrative sexual assault within the 72-hour window required for primary forensic collections.

151. This means that not one victim of sexual assault in the ADF has got assistance through SeMPRO within 72 hours of the incident.

152. Furthermore, this means that:

- SeMPRO has not been able to alert Defence to any risk situation promptly after an incident.
- If any victim of sexual assault had decided to convert a restricted report to SeMPRO to an unrestricted report, the prospects of effective action against the suspected perpetrator would have been significantly weakened because of the lack of forensic evidence.

153. This is a serious failure with direct impacts on victims and with ongoing implications for weakening any possible response to perpetrators.

154. In my view the reasons for SeMPRO’s failure to get prompt reports of sexual assaults are likely to include Defence’s heavy qualifications on when SeMPRO can accept reports on a confidential basis.

155. On 26 November 2012 when Minister Smith announced that the Government had decided to accept the recommendations made by Sex Discrimination Commissioner Elizabeth Broderick and our Review for restricted reporting, there was no suggestion that it would be the Clayton’s version.

156. At the hearing on 13 August 2014 VCDF Vice Admiral Griggs explained why Defence had so significantly qualified the circumstances in which a report could be accepted on a restricted basis.

157. See at pages 58-59:

**Vice Adm. Griggs:** As I gave evidence earlier, there are a certain number of situations where we are required to take action.

**Senator XENOPHON:** In respect of minors, that goes without question.

**Vice Adm. Griggs:** Yes, and life-threatening serious personal injury. There is a WHS duty-of-care issue for us.

**Senator XENOPHON:** Imminent, yes, apart from that. So minors, imminent risk or—

**Vice Adm. Griggs:** If the incident is already known to civil police or in the public domain, Commonwealth, state and territory laws require mandatory reporting—again it goes back to the minors issue. Or if disclosure to Commonwealth, state or territory courts or tribunals is ordered or required by statute. They are the circumstances where we deviate from what might be considered pure restricted reporting. I do not think they are significant in the sense of dissuading people. I think people clearly understand. We just talked through them there. There is no argument about the logic of those particular instances requiring action to be taken.

158. I first take issue with Vice Admiral Griggs's comment that:

They are the circumstances where we deviate from what might be considered pure restricted reporting. I do not think they are significant in the sense of dissuading people.

159. Something is dissuading people from talking to SeMPRO about sexual assault. According to Defence's own written answers to the Committee, there has not been a single instance of a report to SeMPRO within 72 hours of the incident.

160. Defence's written answers also provided to the Committee a copy of DI(G) PERS 35-4 signed off by Secretary Richardson and CDF Binskin with an 'Effective Date' of 19 August 2014. It seems that this had only just been made.

161. DI(G) PERS 35-4 includes:

**Restricted disclosure—Defence members only**

15. Defence members may make a restricted disclosure to SeMPRO in limited circumstances. This form of confidential disclosure provides Defence members, who do not wish to make a report to their chain of command or other mechanisms, with an avenue to access support, health and counselling services, if they have not already accessed these services. ... Further information on restricted disclosure and when they may be accepted by SeMPRO is in Annex A.

...

**Allegations of sexual misconduct—risk of harm**

17. Where there is an immediate risk of harm to the victim or others, the incident must immediately be referred to the relevant police authorities. Where such referrals occur, the referrers must also inform ADFIS.

18. Defence has obligations under the Work Health and Safety Act 2011 (<http://www.comlaw.gov.au/Series/C2011A00137>) to take all reasonably practicable steps to protect Defence personnel in danger and will disclose personal information necessary to prevent harm. This may include the individual's name, age, address, date and time of the incident and the nature of the sexual misconduct.

### **Allegations of sexual misconduct involving minors**

19. Allegations of sexual misconduct involving Defence personnel under the age of 18 must be referred to the relevant police and child protection authorities by the quickest means available. Vice Chief of the Defence Force Directive 03/14—Child Protection—Australian Defence Force Cadets dated 02 May 2014

(<http://intranet.defence.gov.au/DRMS/uR3452%5CR18117531.pdf>) provides direction on child protection concerning Australian Defence Force (ADF) Cadets and includes direction on the reporting of sexual offences. Any report of a sexual offence involving a member of the ADF Cadets must be reported to the relevant Federal, State or Territory police. ADFIS must also be informed.

162. Annex A to DI(G) PERS 35-4 includes:

#### **RESTRICTED DISCLOSURE**

5. Defence has introduced a confidential reporting option for Defence members of sexual misconduct, this is known as a 'restricted disclosure'. Defence has introduced restricted disclosure for Defence members who do not wish to involve their chain of command or to report the incident to the police.

6. You can make a restricted disclosure directly to SeMPRO by telephoning ...

7. A restricted disclosure made to SeMPRO will not trigger an investigation. You can change your restricted disclosure to an unrestricted report at any time, at which time the matter may then involve ADFIS, Federal/State/Territory police and/or chain of command action. Where this occurs, SeMPRO will work in accordance with your wishes to engage with these investigative agencies.

8. SeMPRO will encourage a member making a restricted disclosure to undertake a health assessment as soon as practicable (within 24 hours) following their disclosure. This is to ensure that they are not in trauma as a result of either the incident of sexual misconduct, or as a result of making the disclosure.

#### **Non-acceptance of restricted disclosure**

9. In some situations, SeMPRO may not be able to accept a restricted disclosure due to the circumstances of the incident and Defence's obligations. Generally, it is not appropriate for SeMPRO to accept a restricted disclosure if:

- a. you are younger than 18 years of age
- b. there is evidence of serious or imminent threat to the life or health of you or others
- c. the incident involves serious or aggravated sexual offences

d. the alleged offender appears to be a repeat offender and Defence is required to take reasonable steps to prevent similar conduct occurring

e. the incident is already known, eg to the commander/managers/ADFIS, civilian police, or the incident is otherwise in the public domain, including social media

f. it is required to be disclosed by law such as a court order.

10. SeMPRO will advise you if they cannot accept your disclosure of sexual misconduct as restricted and their obligation to report the incident. SeMPRO will encourage and assist you with reporting the incident through your chain of command/ADFIS and/or civilian police, and will continue to work with you to provide appropriate advice and support coordination.

163. I have outlined in detail in my written submission to the Committee why the rate of reporting of sexual abuse in Defence is likely to be below 20%.
164. I am not in a position to provide a full commentary on all of the stated reasons when – according to DI(G) PERS 35-4 – ‘it is not appropriate for SeMPRO to accept a restricted disclosure’.
165. However, it is apparent, that some of these bases in Annex A for SeMPRO refusing to take a disclosure on a restricted basis are not required by law and are self-imposed by Defence.
166. These grounds for SeMPRO refusing to take a report on a confidential basis operate to destroy the potential of restricted reporting to:
- increase reporting
  - increase victim access to support
  - increase de-identified information to alert Defence to risk situations
  - increase information which enables Defence to deal with perpetrators.
167. The perverse outcome of these restrictions is that victims get less support – not one in SeMPRO’s first year of operations for the crucial first 72 hours after an incident – and Defence gets less information to help it to make the workplace safe.
168. For example, to take para c. - *the incident involves serious or aggravated sexual offences* – this defeats the whole rationale of restricted reporting. With this restriction in place, there will be:
- less reporting of any kind
  - less support for victims
  - less information to alert Defence to risk situation
  - less information to enable Defence to deal with perpetrators.



169. The DI(G) makes references to Defence's obligations under the WHS Act.
170. I do not believe that the WHS Act prevents SeMPRO from accepting reports of sexual assault on a confidential basis in a context where it is known that there is an entrenched problem with under-reporting and there is a very strong argument – as made by Angela Ballard's report on restricted reporting in other Defence Forces - that restricted reporting *increases* reporting and therefore *improves* workplace safety.
171. Even in relation to the aspect of para b. which relates to 'threat to the ... health of you [the victim]' and d. – 'the alleged offender appears to be a repeat offender' ...there is a strong argument that the victim would be more likely to report and the workplace would be safer if these restrictions were not in place.
172. Of course the question of minors raises special and complex issues.
173. DI(G) PERS 35-4 Annex B includes the following definition and statement:
- Minor** is a person under 18 years of age. Note: In Australia, child protection is generally a matter of State/Territory, not Commonwealth jurisdiction. Defence adopts the requirements of the New South Wales (NSW) legislation as the model minimum standard. Where a relevant jurisdiction has a more stringent requirement than NSW, the requirement of the relevant jurisdiction should be complied with. (Refer to VCDF Directive 03/14—Child Protection—Australian Defence Force Cadets (<http://intranet.defence.gov.au/DRMS/uR3452%5CR18117531.pdf>) Annex C for list of State and Territory Child Protection Acts).
174. Of course, Defence must comply with the law of the land which applies to it – though ultimately if there were good reason for a uniform standard to apply to Defence across Australia and out of Australia, it could be appropriate for Defence Regulations or other Commonwealth legislation to set up a regime to apply to the exclusion of any State or Territory legislation which might otherwise apply. I am not in a position to pursue that possibility further in this submission but it is a real option for the Commonwealth to keep in mind.
175. It is my understanding that the States and Territories have not adopted a uniform approach to mandatory reporting of abuse of minors.
176. However, the reference in this Note in Annex B to NSW legislation providing the minimum standard – mandatory reporting of abuse affecting anyone under 18 – may not be correct. It is my understanding that NSW's mandatory reporting obligations only apply in relation to suspected abuse of a 'child' defined as 'a person who is under the age of 16 years'. See *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 3 and 27.
177. I do not claim sufficient expertise in this area to argue that restricted reporting *should* be available to Defence personnel aged between 16 and 18 years of age.
178. Nevertheless it is significant to note that it seems that the NSW Parliament has considered that mandatory reporting obligations should not apply to health

care workers etc in that State in relation to victims over the age of 16. That underlines the force of the arguments that restricted reporting encourages victims to get the health care they need and that mandatory reporting can discourage victims from getting the health and other care they need.

179. Noting that in its first year of operations, SeMPRO has not received a single report of penetrative sexual assault within 72 hours of the incident, I recommend that the Committee call on the Government to introduce genuine restricted reporting along the lines recommended by:

- Churchill Fellow, Chief Petty Officer Angela Ballard
- Sex Discrimination Commissioner Elizabeth Broderick
- the DLA Piper Report

and agreed to by the then Government in its Government Responses announced on 26 November 2012.

180. A further point which I drew to the attention of the Committee is the importance of maintaining staffing and resourcing levels for SeMPRO and the importance of Rank/APS level of the staff running SeMPRO. Indeed, it may be that SeMPRO is already under-resourced if all it can offer is telephone counselling.

181. I recommend that this Committee consider the adequacy of SeMPRO's resources including whether there should be on the ground/aboard ship representation at major bases, deployments and training exercises.

### **PART III THE CASE FOR A ROYAL COMMISSION TO INQUIRE INTO ADFA LEGACY ISSUES**

#### **SUMMARY**

182. There was a history of sexual assault and ADF mismanagement at ADFA from its opening of ADFA in mid 1980s through to the 1998 Grey Review reforms.
183. That history continues to have implications for the nation, the ADF and the victims because the ADF and successive Governments have failed to take effective action on these issues.
184. There is a very high risk that the ADF has in its ranks officers in middle and senior management positions with potential to rise further who – when they were Cadets at ADFA from the mid 1980s until 1998 - raped or committed other serious sexual assaults on other Cadets, or who did not intervene while such rape was occurring. The numbers involved are likely to be much higher than the ‘ADFA 24’. The DART 7<sup>th</sup> Report has acknowledged that the numbers are much higher.
185. The DART Interim Reports to date and CDF’s statement to Senate Estimates in November 2013 indicate Mr Roberts-Smith is heading towards recommending shutting down consideration of these issues without effective action.
186. The 7<sup>th</sup> DART Report refers to the DART keeping its books open for women who were raped at ADFA to come into the DART processes.
187. At best this will leave the job partly done.
188. No basis has been laid for effective action because what has been done falls well short of gathering all information which could be available and falls short of addressing those matters thoroughly.
  - There was limited publicity for the DART process. Some people with relevant information would not have known about the DART processes.
  - As far as I am aware DART did nothing to inform women who had reported in 1998 - and who had been told then that Defence could not take any action other than to refer them to ACT police - that Defence is now able to consider other action.
  - Not surprisingly very few of the women in the ADFA 24 cases who were let down by the ADF have opted into DART processes.
  - The DART process has waited for complainants who are interested in outcomes which DART can offer complainants to opt into DART process.
  - Neither DART nor the CDF made any public call for victims who were not seeking one of the DART outcomes – or for witnesses with information relevant to assessing the fitness of current officers who were ADFA from the mid 1980s to 1998 to bring that information to DART or other process.

189. There is an opportunity for the ADFA legacy issues to be dealt with decisively now by establishing a Royal Commission to inquire into these issues.
190. Mr Roberts-Smith has emphasised that the DART offers assistance to complainants which Royal Commission processes ordinarily would not offer.
191. This is not an answer.
192. A Royal Commission need not be and should not be the only response. There should also be assistance for victims – such as the assistance which has been offered by the DART – in parallel with the Royal Commission’s work. There is no reason why a Royal Commission could not coordinate its work with a process providing such assistance.
193. An appropriately commissioned and resourced Royal Commission would be best placed to encourage individuals who have relevant information – including victims who have not yet spoken about their experience to anyone and/or victims who had no interest in the range of outcomes for complainants which the DART offered – to come forward and to enable informed and convincing resolutions on the systemic issues.
194. Male on male sexual assault at ADFA – as well as male on female sexual assault - should be within the scope of the inquiry set for a Royal Commission.
195. The Royal Commission into Institutional Response to Child Sexual Abuse provides a model of how a Royal Commission can be conducted in a manner which takes into account the sensitivities and needs of victims of abuse and which actually empowers and assists victims of abuse including many who had not previously told their story to anyone.
196. The Royal Commission into Institutional Response to Child Sexual Abuse is demonstrating the impact which contemporaneous media reporting of real people’s stories told to the Commission can have in raising understanding of the issues amongst the institutions and amongst the general community.
197. After I lodged my written submission there were some developments:
- Publication of the DART’s Report on abuse at HMAS Leeuwin
  - The Four Corners Program – *Chamber of Horrors* which was broadcast 9 June 2014.
  - The DART report on ADFA has not yet been published.

### ***HMAS Leeuwin Report***

198. I have not previously made any submissions specific to the *HMAS Leeuwin* issues.
199. I do note that Mr Roberts-Smith was quite happy in the *HMAS Leeuwin* report to contemplate (see page 94) that the existing Royal Commission into Institutional Responses to Child Sexual Abuse could consider abuse issues

from *HMAS Leeuwin*. That demonstrates the fallacy of Mr Roberts-Smith's argument that a Royal Commission would be bad for victims.

200. I note that allowing the HMAS Leeuwin survivors to go off to the Child Sexual Abuse Royal Commission is not an option for those individuals who were just physically abused – perhaps severely and frequently and with damage for life – but whose abuse was not sexual.

#### **Four Corners program 9 June 2014**

201. I have tabled the Transcript of the 9 June 2014 Four Corners program. I ask Committee members to read it closely – and if possible to watch the program.

202. The Four Corners Program includes the following:

COLONEL KEN NORTHWOOD, FORMER SENIOR LEGAL OFFICER, ADF: One can't help but feel that what we really need i-is is a royal commission to look into all aspects of this.

203. This is particularly telling. Colonel Northwood led the investigation team in 1998 which gathered the information in relation to the so-called ADFA 24 and he worked on the inside of the DART. He has a very clear understanding of just what has been done by the ADF and the DART.
204. It is also telling that the women who are interviewed in the program demonstrate the weakness of Mr Roberts-Smith's explanation of why the DART has not approached any of the victims associated with the ADFA 24.
205. It seemed from the statements made by the CDF in that program and from statements in the DART's 6<sup>th</sup> Report that Mr Roberts-Smith and the ADF have assumed that the only options for responding to plausible allegations of abuse are DFDA or formal administrative action.
206. The 7<sup>th</sup> DART Report now suggests that Mr Roberts-Smith took a more flexible approach to the kinds of recommendations that he made and that he did not confine himself to just the ADFA 24.
207. However, the 7<sup>th</sup> DART Report also says that – as at 11 August 2014 - the DART had only referred a total 22 matters from the DART's entire caseload to the CDF for consideration for possible administrative or disciplinary action. (See page 23).
208. There have been references to the need to give suspected perpetrators natural justice to justify the apparent lack of action within the ADF.
209. However, ADF personnel are used to requirements of vetting for national security and other issues. There are some roles for which people need to be beyond suspicion.
210. The approach which Mr Roberts-Smith and ADFA have been taking to the ADFA legacy issues is assuming away one of the major systemic issues which a Royal Commission could explore – *if there are doubts about the fitness of*

*officers in the ADF to be in their positions as role models and leaders of cultural change what can be done about that.*

211. The following extracts from the transcript of the Four Corners program from 9 June 2014 are particularly relevant.

MICHAEL BRISSENDEN: This woman we'll call 'Susan' is another cadet from the 90s.

She is still connected to Defence and regularly comes into contact with serving officers who dished out abuse as senior ADFA cadets.

....

KEN NORTHWOOD: We found young women subjected to widespread, both low level and high level, sexual harassment and abuse, but worse still, a significant number of cases of rape the, we unearthed there.

MICHAEL BRISSENDEN: Ken Northwood is now retired after a long military career that began in 1959.

He spent 10 years as a Defence Force magistrate and became the director of legal training for all ADF legal officers.

He was engaged as the senior investigator for the Grey Review.

Tasked initially to examine four cases of alleged rape, the Grey Review team found the problem was much bigger.

KEN NORTHWOOD: I believe we unearthed, likely 26 cases of rape, and I had anecdotal evidence - without any real proof - of at least another 13 cases.

MICHAEL BRISSENDEN: But the Grey Review did not have powers to undertake criminal investigation of the sexual assault allegations.

Nearly 20 years on, Ken Northwood remains haunted by the account of one young female cadet.

KEN NORTHWOOD: A drunken cadet came to her room, banged on the door continuously until she opened the door. He then pushed his way in.

There was then a scuffle, ah she was raped and, to add, I guess, gross insult to injury, I recall that he then vomited all over her and her bedding before he left the room.

The thing that was ah so distressing about this, apart from the actual assault itself was, that the commotion must have been heard by cadets in adjoining rooms and not a single person came to her assistance.

MICHAEL BRISSENDEN: Almost as disturbing was the way ADFA was dealing with abuse complaints at the time.

Back then, investigators discovered what they came to call 'The Chamber of Horrors'.

KEN NORTHWOOD: Well The Chamber of Horrors was the name given to a four drawer filing cabinet.

MICHAEL BRISSENDEN: Drawers of the filing cabinet were full of brown envelopes, each containing a complaint lodged by a cadet of alleged assault, sexual harassment or sexual assault.

Many of the envelopes carried an endorsement deeming they could only be opened with the express consent of the victim.

KEN NORTHWOOD: What happened then was that the envelope was simply placed in the four drawer container and forgotten. So the matter was, in many, many cases, never investigated.

MICHAEL BRISSENDEN: So it was never apart from this report that was the only report that was made? Nothing else was done about it?

KEN NORTHWOOD: Nothing. Nothing at all.

...

MICHAEL BRISSENDEN: Naomi Brooks was part of the ADFA intake of 2009.

...

Led by lawyer Gary Rumble, the law firm DLA Piper received and examined hundreds of complaints of physical and sexual abuse from across the Defence Force, stretching from the 1950s to 2011.

Rumble's report also carried an alarming warning.

EXCERPT FROM THE RUMBLE REPORT (voiceover): It is possible that male cadets who raped female cadets at ADFA in the late 1990s and other cadets who witnessed such rape and did not intervene, may now be in 'middle' to 'senior' management positions in the ADF.

Those possibilities carry serious risks for the ADF.

MICHAEL BRISSENDEN: For the former ADFA cadet and serving army officer we've called Jane, that scenario has now become a disturbing reality at the army base where she's stationed.

JANE: To walk around the corner and literally bump into him, was just awful.

I didn't know how to react. I felt fearful; I felt powerless.

And he was standing right behind me, waiting to get his meal. It was awful.

Knowing what he'd done to me and still standing there, laughing and joking with his mates and still part of the organisation I'm part of.

I just can't believe it.

I thought, so long as he's out of sight, out of mind, everything'd be alright.

...

MICHAEL BRISSENDEN: Jane is one of the ADFA sexual assault cases first unearthed by Grey Review investigators and later identified by DLA Piper.

She still struggles with what happened to her almost 20 years ago.

JANE: It all came flooding back, like it was the day before yesterday.

The panic attacks started again, the sleeplessness, nervousness. All of those overwhelming feelings that are related to sexual abuse, they came back. I expect I'll be carrying those with me for the rest of my life.

...

MICHAEL BRISSENDEN: Only seven of the suspected ADFA rape victims from the 1990s have come forward. Jane is not among them.

She didn't see the point of contacting DART.

JANE: I looked at DART as an opportunity for people who hadn't been able to say something, to bring it up. But, I had, so I had no confidence that anything new was going to happen.

It was clear to me that DART just handed out compensation. Which is not a resolution, as far as I'm concerned.

...

MICHAEL BRISSENDEN: Kellie Gunnis's case isn't being considered by DART either. She didn't even know it existed until she was contacted by Four Corners.

KELLIE GUNNIS: When it was mentioned to me for the very first time, I was in complete and utter shock. I just went, 'Wow, how can they have this whole taskforce, have this whole system set up for people who had been through what I'd been through and we weren't made aware of it?'

LEN ROBERTS-SMITH: Well that surprises me.

MICHAEL BRISSENDEN: Have you done enough to reach out to those people?

LEN ROBERTS-SMITH: Well um I would have thought ah we've done quite a lot.

...

MICHAEL BRISSENDEN: As for the former ADFA cadet we've called Susan, she only contacted DART after we tracked her down.

SUSAN: I don't have time to read the papers. I should, but I don't have time to read the papers, um so I didn't know about it. And I wasn't in a position, given what my work was, to contact that body either.

Um and, as I said to the DART team, 'You've got my name, why didn't you call me and say we've got stuff on you?'

MICHAEL BRISSENDEN: Susan also stills runs into her tormentors from ADFA back in the 90s.



SUSAN: I have to sit through functions and have polite black tie dinners and see them walking in and out of you know th-the headquarters offices, see them advising senior people on their careers, I see them, you know, receiving commendations. They're- some of them have commendations they've received, and yet nothing's ever been done.

MICHAEL BRISSENDEN: And the soldier who Kellie Gunnis alleges assaulted her at Enoggera Barracks rose to a senior rank and is still employed by Defence.

KELLIE GUNNIS: No-one hears your story; no-one brings him to accountability and says, 'Hey you've done something wrong'. I don't know if he's done something wrong again to anyone else but you've done something wrong and you need to be accountable for that. And, they won't; they don't do it. You know, he just continues on. He has his nice high profile career, while mine was left.

MICHAEL BRISSENDEN: But will perpetrators still be rising through the ranks?

DAVID HURLEY: I will root this out if you give me the right information. If there are anybody out there who was involved in ADFA in the '80s or '90s who has a complaint about a currently serving officer in relation to a sexual offence, call me.

...

DAVID HURLEY: I've got eight in my hands at the present time. I've had the ah investigative service go over each of those cases again to see for the last time whether or not I can take action under the Defence Force Discipline Act. If not, I'll have to take administrative action. And again, I'm looking what of those processes I can go through there.

I'm bound by the law in all this, and so I'm being very, very particular to make sure that, when I do move, whatever I do will come to a positive outcome.

212. This has a very hollow ring.
213. First - If the CDF had made a call for witnesses and other people with relevant information to go into the DART or some other processes then there might have been more evidence to support decisive action against perpetrators which would have survived legal testing.
214. Second – It seems that the CDF had assumed that the only options were DFDA prosecution or administrative action. Another possibility was to consider whether those are the only options available and if they are to consider whether there should be changes to the options.
215. It cannot be an acceptable outcome that people who are not above suspicion are role models and leaders of cultural change.
216. A Royal Commission would be an appropriate body to consider those broad systemic issues.

MICHAEL BRISSENDEN: Ken Northwood, who also worked as an investigator in the early stages of the DART process says a royal commission is the only way the full extent of the abuse will be uncovered and the perpetrators held to account.

KEN NORTHWOOD: I guess for me personally, a disappointment was that ah the senior leadership group in DART were not prepared to approach the Minister to extend the terms of reference to enable that sort of, er, investigat- investigative work, that is a purs- the pursuit of perpetrators and taking statements from perpetrators, ah that's a disappointment.

MICHAEL BRISSENDEN: Len Roberts-Smith is still weighing up that possibility, but says, at the moment, he's not inclined to support the idea.

LEN ROBERTS-SMITH: I know there are some people out her who say they would want to see a royal commission into ADFA.

The question first of all is: what would that achieve? Most of our complainants do not want to go to the police and, and do not consent to, for us to refer it to the police so that's one thing.

Um likewise, most of them don't want us to ref- don't want me to refer ah their cases to the Chief of the Defence Force for administrative action for the same reason, because that would necessarily involve them becoming identified and known to the ah alleged abuser.

Are they going to be compelled to come forward and give evidence and revisit their abuse on oath? That, I'm quite sure, would cause them significant further damage and that would be a significant concern for me.

SUSAN: I don't think that's his choice. The options you have with DART are to be paid compensation, and if I wanted compensation, I would've sued the Defence Force a long time ago. It's not about compensation.

The other ones are that you can sit down with a senior member of Defence, so that they can apologise for something somebody else did a long time ago.

I don't see that as sincere. I don't, I don't care if the CDF sits me down and says I'm really sorry. It makes no difference to me, because it's not enough to say you're sorry; they did nothing about it and they continue to do nothing about it.

KELLIE GUNNIS: How can they, ah, how can they say that and yet they don't even contact people for simple things like they've had the taskforce, yet they're worrying about subpoenaing people to do that, to stand up and make them accountable for what's happened?

It's, yeah, just another excuse, yep, another excuse that they're using for not being held accountable for what's happened.

NAOMI BROOKS: I think a royal commission is a, a huge deal but necessary, because it's only then that everything truly comes to light and, and they're just, they're just not doing it themselves.

217. These statements in the ABC program confirm my already strong belief that there should be a Royal Commission into the ADFA legacy.
218. I have heard a media report to the effect that the Minister for Defence would only consider a Royal Commission if victims called for one. That indicates a profound lack of understanding of the position of individual victims. .
219. The three women who bravely participated in the June Four Corners Program have supported that call.
220. It is significant that the currently serving ADF officer would not appear in person on the program. It is most unlikely that individual victims who are in the ADF will be stepping forward to make such a call.
221. The evidence of Ms Rachael James and Mr Donaldson to this Committee was that victims who are in Defence are worried about adverse consequences for them if they speak up.
222. Mr Roberts-Smith has explained the very low rate of referral of matters to Defence for possible DFDA or administrative action against perpetrators as by reference to the victims not wanting that referral to occur. That explanation is consistent with there being a high level of concern about adverse consequences for anyone who is identified as alleging abuse against another member of the ADF.
223. And that is consistent with the findings of many reports which we surveyed in Volume 1 of our Report and in the accounts which individual victims brought to our Review.
224. Of course, it should be not be inferred from the fact that this Committee inquiry has not attracted a lot of submissions arguing for a Royal Commission. The terms of reference do not clearly encourage submissions on this topic.

### **The Restorative Engagement program and cultural change**

225. Mr Roberts-Smith has spoken often and persuasively about the positive impact which he believes that the Restorative Engagement program is having – for the victims who participate in the Restorative Engagement sessions.
226. Mr Roberts-Smith also speaks powerfully to his conviction that the Restorative Engagement sessions gives these high-ranking officers of an understanding of how abuse has affected the individual victims that they meet in the Restorative Engagement sessions. Mr Roberts-Smith believes that exposing these high-ranking officers to the realities of abuse and the impacts of abuse on individuals in these sessions will entrench cultural change.
227. I note and respect the statement which Vice-Admiral Griggs made to this Committee about the impact which his participation had on him.
228. However, there are obvious limitations on the contribution that the Restorative Engagement program can make to embedding cultural change.

- The officers participating are only exposed to the stories of – at most – a few individual victims and get no understanding of how broad a problem there may have been.
- These high-ranking officers will in time – some in very short time - move out of the ADF.
- The Sex Discrimination Commissioner has emphasised the role of middle-ranking officers and NCOs in role modelling and being front line of cultural change. Middle-ranking officers and NCOs do not participate in Restorative Engagement sessions.
- The Restorative Engagement program does nothing to inform the other ranks of the ADF and does nothing to inform the general community about abuse in the ADF and about the cultural changes which need to be supported and understood.

229. I note that Mr Roberts-Smith has gathered in the DART reports strong statements from individual victims of abuse about the positive impacts which participation in the Restorative Engagement Program has had on them. I acknowledge those statements and respect what Mr Roberts-Smith and his colleagues and ADF officers have done in that program.

230. However, there are other perspectives. I recommend to the Committee that they read and re-read the submission to this Committee of Mr Neil Stuart who went through a Restorative Engagement session. His submission includes these powerful perspectives:

(pages 3-4) I have been reflecting on my perspective since approaching DLA Piper and what I've heard of abuse experience of other people in Defence. As I'm seeing it, the Response (the institutional response) has been to focus on the individuals who've told their stories and to offer some balm and quieten them down. So all my energy and input has been contained and channeled into the four sets of responses determined by DART. It is as if I am one of a list of cases and one by one they are being methodically ticked off. Now I've been ticked off.

...I submit what we are faced with is an institution which has systematically insulated itself from knowing about the intentional sexual abuse which has happened and is happening. The silence, the failure to talk openly about what happens or might (page 5) happen fosters secrecy, putting it out of sight or hearing. Men do rape men, soldiers rape fellow-soldiers – that has to be said, not just in counselling, not just in the CO's office, not just in the restorative engagement conferences but out there in the public arena.

The DART processes have placed much emphasis on confidentiality. For instance, at the end of the Restorative Engagement Conference, I was asked to sign an agreement that I would not disclose what took place in that Conference. Perhaps there are times for confidentiality. My sense is that what happened is that I have become confined and isolated. My sense is that the practices of secrecy and silence are being reinforced. I have nothing to hide. Does DART? Does Defence?

...

Restorative Engagement hasn't changed/restored what happened and can't change/restore what's happened. That's an illusion. I haven't (page 6) bought into that illusion. Nothing makes up for what has been broken. ... My life, the lives of others abused, aren't going to be restored. The main good thing, I was thinking, is that my story had been truly listened to and seems to have been believed. Now, having read about the experience of Aaron Frazer ... I wonder just how fair dinkum is the statement that my story is believed. If it is to be fair dinkum there's got to be more than individual solace. That listening has to come out of the confessional/clinical reporting process, the Restorative Engagement Conference, into which it's been channeled and into the wider culture of Defence which permits these abuses.

...

There has to be more than treating the hurt of the injured individuals – which is akin to keeping everything within the confessional or within the treatment room or within the family, which is the way the DART casework approach has been shaped. I'm not a case – it's bigger than me or any other individuals. ...

I challenge the Committee to understand Defence's responsibility for an institutional culture which permits, maintains and maybe even rewards silence around rape and other sexual abuses within Defence. I challenge (page 7) the Committee to understand how stigma works as a tool of silencing and of removal of freedoms, especially freedom to speak. I challenge the Committee to break open the culture of silence. I don't need pity. I have never needed pity. What I need is to see emerge a culture which permits, even celebrates, my right and the rights of others to speak of what we have experienced. I need an end of silence. If the Committee does not understand these things, then it understands very little.

I need for there to be a process which enables me, as a person who has experienced sexual abuse within Defence, to make a common cause with others who have experienced like abuse.

Maybe the process needs to be widened to provide for something like a Royal Commission so that the secrecy and the silence are blown away and Defence is held accountable for how it must change.

231. Another victim – a woman who experienced two years of abuse and bullying at ADFA pre-1998 – told me:

The ADF preferred its own interests over those it was entrusted to care for at the time and I believe it continues to do so. It was and it continues to be wrong.

It is time that the ADF was held to account. A Royal commission would be the most powerful statement that this is not an acceptable part of Australian society. I feel also feel that ADF needs to weed out the bad eggs, if for no other reason than that the decent people of the ADF do not have a shadow cast over their careers. They should also ensure that people who have been abused are cared for, as not everyone is OK.

232. There is a final but – in my view – very telling point about the limitations of the Restorative Engagement program for entrenching cultural change.
233. There is no doubt that CDF Hurley has detailed knowledge of the ADFA 24 matters. See 7<sup>th</sup> DART Report pages 26-27.
234. On Sunday 27 April 2014 this year I was interviewed by Laurie Oakes on the Weekend Today program. The interview was mostly directed to my concern that the Government not delay action which would assist damaged former ADF members to get access to DVA benefits just because this Committee had its current reference.
235. In that interview in answer to a question I made reference to the fact that 30% of the female cadets who were at ADFA in 1998 had been raped.
236. Despite the CDF's detailed knowledge of the history of the ADFA 24 issues, the next morning he stated on Radio National that the rate of sex without consent at ADFA at that time was only one percent. I tabled the transcript of this interview at the 13 August 2014 hearing.
237. I set out in a letter of 12 May 2014 to the Minister for Defence and copied to the CDF, this Committee and others, the basis for my firm belief that 30% - not one percent - was the correct figure. Indeed, how could it possibly be one percent given the history of the ADFA 24 matters. (A copy of the letter is at Annexure 3 to Part 1 of my written submission.)
238. The 30% figure is, of course, a deeply concerning figure.
239. However, the particular point which I draw to the Committee's attention is that even though the CDF had access to the detailed basis for the 30% figure set out in Volume 1 of our Report and had detailed knowledge of the history of the ADFA 24 matters, and even though he had been participating in Restorative Engagement sessions *he was still unable to accept the 30% figure*.
240. Clearly the Restorative Engagement program had failed to bring the CDF to acceptance of the very serious history of abuse at ADFA reported on in the Grey Review and further detailed in Volume 1 of our Report.
241. The fact that the CDF made his public statement that the figure was only one percent would send a deeply discouraging message to all of the women who had been victims of sexual assault at ADFA.
242. This for me is a very compelling reason to have a Royal Commission because a Royal Commission could do a lot to bring understanding to the ADF and the general community and the ADF from top to bottom.

### **The Scope of a Royal Commission**

243. In October 2011 when we delivered Volume 1 of our Report, I joined with the other Review leaders in concluding that it would not be appropriate to call for a general Royal Commission in relation to abuse and mismanagement in Defence.

244. We did make a recommendation that the Government consider establishing a targeted Royal Commission to look at the ADFA rape legacy issues.
245. As I have explained in my previous submissions to the Committee, I have since moved to making a positive recommendation that the Government should establish a Royal Commission to inquire into ADFA rape legacy issues.
246. However, since we delivered our Report I have seen:

The previous Government's delay before doing *anything* to respond to our Report and then making very few decisions.

The previous Government's decision not to allow the working version of Volume 2 to go to Defence even though we had prepared it – in accordance with our terms of reference – to go to Defence.

The previous Government's decision to send our Report to Mr Roberts-Smith for him to start again.

DLA Piper's insistence on a drawn out process for transfer of the materials from our Review to the DART despite DLA Piper's awareness and participation in processes which we as Review leaders had previously put in place to facilitate transfer of Phase 1 materials to the Phase 2 body.

Mr Roberts-Smith's rejection of the offer of a handover briefing from myself and Ms McKean.

The failure of either Defence or DVA to take the lead on analysing and sharing information which they already have which would assist people damaged by abuse to get access to DVA benefits and support.

The failure of Governments to direct Defence and DVA to do so.

Defence's sabotage of the restricted reporting reform.

Defence's tardiness in reforming clearly faulty DI(G)s which were discouraging effective and prompt responses to sexual assault.

Defence's refusal to accept a single one of the specific recommendations I made to them for identifying where unreported abuse may be occurring and how they could respond to it. I can only conclude – they just do not want to know.

Mr Roberts-Smith's decision to ignore aspects of his Terms of Reference

Mr Roberts-Smith's decision to bury very significant aspects of our report relating to media allegations of Defence cover up.

Mr Roberts-Smith's decision not to ask for investigatory powers.

Mr Roberts-Smith's failure to respond to questions about his apparent failure to implement aspects of his terms of reference which I put to him in our October 2013 meeting in my October 2013 correspondence.

The failure of any of the DART reports to acknowledge let alone respond to any of the matters about the DART processes and about the Royal Commission issue which I have been setting out from August last year onwards.

The likelihood that very few matters will make it from the DART to Defence for possible action against suspected perpetrators. There have only been 22 referred across so far and another 39 assessed by DART as requiring no further action (See 7<sup>th</sup> DART Report page 23).

The failure of the CDF to make a call for current and former ADF personnel who may have witnessed sexual assault or who may have been victims to bring that information to an appropriately constituted investigatory body.

The failure of Mr Roberts-Smith to go on electronic media while the Review's books were open to try to reach out to damaged individuals let alone to call for witnesses to abuse to come to DART.

There is no doubt that many individuals who could have been reached were not reached.

Stone-walling and avoidance from Defence, DVA and Mr Roberts-Smith in their 'answers' to this Committee.

The current Government's failure to act on any of the concerns which I have raised with them about delay and inaction.

Delay

Delay

Delay

247. I have no doubt that there has been a genuine attempt from Mr Roberts-Smith and others to support and respond to the needs of many of the individuals who have made it into the DART processes.
248. However, the processes adopted seem to have been coloured by a concern to contain and close down the issues and to minimise the impact on Defence, and – to a lesser degree – the workload impacts for DVA.
249. It may be that the previous and the current Governments have encouraged or at least acquiesced in this approach of containment and of attempting to close these issues down. This may be bipartisan. That does not make it right.
250. I now support a general Royal Commission – including but not limited to ADFA legacy issues.



**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES  
COMMITTEE: INQUIRY RELATING TO ALLEGATIONS OF SEXUAL  
AND OTHER ABUSE IN DEFENCE**

**DR GARY A RUMBLE**

**23 September 2014**

**RECOMMENDATIONS FROM UPDATED SUMMARY OF  
WRITTEN SUBMISSIONS**

I have lodged with the Committee an Updated Summary which updated the Summary document which I tabled at the hearing on 13 August 2014 to take into account developments since that hearing.

In this document I set out the recommendations which I have made through the Update Summary document with the paragraph numbers to indicate where they appear with discussion and supporting material in the Updated Summary document.

**MEDIA AND ANONYMOUS ALLEGATIONS**

11. I strongly recommend that media and anonymous allegations on which we reported in Volume 2 should be addressed by Government because they raised serious issues of abuse, mismanagement of abuse and – in some cases – cover-up in the ADF.

22. If this Committee representing the nation does not take a stand, it is apparent no-one else will.

I urge this Committee of the Parliament on behalf of the nation to call for decisive action on these matters.

I recommend that the Committee request the Government to consider and respond promptly to those aspects of Volume 2 of our April 2012 Report which reported on media, anonymous and other third party allegations.

I recommend that the Committee request the Government to table in Parliament its responses to the media allegations or to explain to the Parliament why it is not doing so.

I recommend that the Committee request the Government to report to the Parliament what action it is taking on anonymous and other third party allegations reported on in Volume 2 of our Report.

**DEFENCE AND DVA TO GATHER AND SHARE INFORMATION RELEVANT TO  
ACCESS TO DVA BENEFITS**

32. I recommend that the Committee request the Secretary and the Chief of the Defence Force to inform the Committee whether they have any 'in-principle' concerns about:

- gathering these records to assist Defence's own ongoing risk management and moves to eliminate abuse;
- sharing de-identified information with DVA and potential DVA benefit recipients.

35. I recommend that:

- Defence be asked to start gathering records of past reports and proceedings related to abuse in the ADF immediately and to report on progress by the end of September 2014;
- DVA be asked to commence consultation with Veterans' representative organisations and to report by the end of December 2014;
- on what legal and practical barriers there are to victims of abuse in the ADF succeeding in establishing the facts necessary to make out entitlements to DVA benefits;
- what Defence and DVA could do and what resources they will require to gather and share information which could assist such individuals to establish those facts to the satisfaction of DVA and tribunal decision-makers;
- on what can be done in liaison with Veterans' groups, other Government agencies and community groups and what resources will be required to reach out to individuals affected by abuse who may be eligible for DVA benefits – including individuals who have previously applied and been rejected.

63. The clear implication of DVA's written answers to the Committee after the 13 August 2014 hearing is that DVA will not even give consideration to what would be required to develop cluster information from their own records until Government directs them to do so.

64. Meanwhile people who were damaged in the ADF will continue to go without benefits and the support that they should and could be getting through the DVA framework.

65. The evidence given to the Committee on 13 August 2014 and the written answers lodged with the Committee since the hearing reinforce the need for this Committee to make a strong call on the Government to direct both Defence and DVA on actions set out in the recommendations at paragraph 35 above.

66. I confirm those recommendations.

#### **OTHER SYSTEMIC ISSUES**

82. [At the 13 August 2013 Senator Fawcett directly asked Defence]

Could you take on notice what you are doing to look at the system and specifically if there was a response given to government—either the previous one or this one—about those 35 systemic issues [from the DLA Piper report].

83. The written answer which Defence lodged with the Committee was non-responsive. It did not directly answer Senator Fawcett's question about the 35 systemic issues.

90. I recommend that the Committee again ask Defence to report what position it has taken on each of the 35 systemic issues from the DLA Piper Report and to answer Senator Fawcett's question with direct specific answers.

#### **VOLUME 1 AND SUPPLEMENT TO VOLUME 1 FINDINGS AND RECOMMENDATIONS**

96. I recommend that the Committee ask for Mr Roberts-Smith to report on what conclusions he has reached in relation to *each* of the Findings and Recommendations – which are included in the consolidated table from the Supplement to Volume 1 which is Annexure 5 to my submission to the Committee.

99. I recommend that DART and ADF participants in the Restorative Engagement Program take into account the discussion of 'Apology' in Supplement to Chapter 8 including Recommendations S4 and S5 and the 8 page discussion of 'Apology' in Attachment 6 of the Volume 2 Explanatory Materials (See Appendix 2 to the Supplement to Volume 1.)

#### **THE FOUR PARTS OF VOLUME 2 OF OUR REPORT DEALING WITH MATTERS WHICH WERE CURRENT WITH FAIRNESS AND RESOLUTION BRANCH AND ADFIS IN 2011**

102. I recommend that the Committee ask for a report from Mr Roberts-Smith on how he is dealing with the issues of Defence access to the Four Parts of Volume 2 of the Phase 1 Report which deal with F&R Branch and ADFIS matters which were current in 2011.

#### **PUBLICATION OF VOLUME 2 OF PHASE 1 (DLA PIPER) REPORT IN REDACTED OR SUMMARY FORM**

106. Accordingly, on the information which is available to me at present, I believe that it would not be desirable to try to publish a summarised or redacted form of Parts 1-23 of Volume 2.

#### **IDENTIFYING UNREPORTED ABUSE/OPTIONS FOR RESPONDING TO POSSIBLE UNREPORTED ABUSE**

117. If the ADF continues to ignore the kinds of indicators which I outlined in those papers in 2013 and continues to fail to respond to those indicators then – apart from the fact that Defence personnel will needlessly suffer abuse - there is a real risk that individual Commanding Officers and others in the Chain of Command could be prosecuted for failing to meet their workplace safety obligations.

118. I have submitted them to the Minister for Defence, Senator David Johnston for his consideration.

119. I submit them for the Committee's consideration.

### **ZERO INCIDENCE**

123. It was disappointing – and in my view undermines the efforts to change the culture in the ADF – for the VCDF to state expressly that the ADF will not commit to zero incidence.

124. I note that DI(G) PERS 35-4 with an effective date of 19 August 2014 and provided to the Committee in Defence's written answers opens with the statement:

1. This Instruction outlines Defence's approach to the prevention, reporting and management of sexual misconduct where it occurs in Defence workplaces, or in connection with Defence workplaces or activities. Defence is committed to providing all Defence personnel with a safe, secure and healthy working environment that is free from sexual misconduct.

126. This appears to be a statement of zero incidence of sexual misconduct.

127. A possible explanation for Vice Admiral Griggs's opposition to Defence committing to zero incidence is that Defence has simply decided to reject anything I suggest or recommend.

128. I again recommend to the Committee consideration of the detailed suggestions I provided in my papers to the CDF and Secretary on how to identify where unreported abuse may be occurring and options for responding to unreported abuse.

### **RESTRICTED REPORTING**

139. I recommend that the Committee ask Defence whether it will amend DI(G) PERS 35-4 to make restricted reporting available to former Defence personnel.

### **FORENSIC EVIDENCE**

149. The wait and see approach from SeMPRO is deeply concerning. If SeMPRO ever gets a report from a victim of sexual assault within the 72 hour window, it is not apparent that SeMPRO has procedures and capability to be able to offer to preserve forensic evidence.

150. I recommend that the Committee ask again – what are the protocols and capability for SeMPRO to collect forensic evidence in association with restricted reporting?

### **CLAYTON'S RESTRICTED REPORTING**

150. I now turn to the stunning admission made in Defence's written answers –

To date SeMPRO has not had a disclosure of penetrative sexual assault within the 72-hour window required for primary forensic collections.

151. This means that not one victim of sexual assault in the ADF has got assistance through SeMPRO within 72 hours of the incident.

152. Furthermore, this means that:

- SeMPRO has not been able to alert Defence to any risk situation promptly after an incident.
- If any victim of sexual assault had decided to convert a restricted report to SeMPRO to an unrestricted report, the prospects of effective action against the suspected perpetrator would have been significantly weakened because of the lack of forensic evidence.

153. This is a serious failure with direct impacts on victims and with ongoing implications for weakening any possible response to perpetrators.

165. However, it is apparent, that some of the bases in Annex A of DI(G) PERS 35-4 for SeMPRO refusing to take a disclosure on a restricted basis are not required by law and are self-imposed by Defence.

166 These grounds for SeMPRO refusing to take a report on a confidential basis operate to destroy the potential of restricted reporting to:

- increase reporting
- increase victim access to support
- increase de-identified information to alert Defence to risk situations
- increase information which enables Defence to deal with perpetrators.

167 The perverse outcome of these restrictions is that victims get less support – not one in SeMPRO’s first year of operations for the crucial first 72 hours after an incident – and Defence gets less information to help it to make the workplace safe.

179 Noting that in its first year of operations, SeMPRO has not received a single report of penetrative sexual assault within 72 hours of the incident, I recommend that the Committee call on the Government to introduce genuine restricted reporting along the lines recommended by:

- Churchill Fellow, Chief Petty Officer Angela Ballard
- Sex Discrimination Commissioner Elizabeth Broderick
- the DLA Piper Report

and agreed to by the then Government in its Government Responses announced on 26 November 2012.

180 A further point which I drew to the attention of the Committee is the importance of maintaining staffing and resourcing levels for SeMPRO and the importance of Rank/APS level of the staff running SeMPRO. Indeed, it may be that SeMPRO is already under-resourced if all it can offer is telephone counselling.

181 I recommend that this Committee consider the adequacy of SeMPRO's resources including whether there should be on the ground/aboard ship representation at major bases, deployments and training exercises.

### **THE CASE FOR A ROYAL COMMISSION TO INQUIRE INTO ADFA LEGACY ISSUES**

182 There was a history of sexual assault and ADF mismanagement at ADFA from its opening of ADFA in mid 1980s through to the 1998 Grey Review reforms.

183 That history continues to have implications for the nation, the ADF and the victims because the ADF and successive Governments have failed to take effective action on these issues.

184 There is a very high risk that the ADF has in its ranks officers in middle and senior management positions with potential to rise further who – when they were Cadets at ADFA from the mid 1980s until 1998 - raped or committed other serious sexual assaults on other Cadets, or who did not intervene while such rape was occurring. The numbers involved are likely to be much higher than the 'ADFA 24'. The DART 7th Report has acknowledged that the numbers are much higher.

185 The DART Interim Reports to date and CDF's statement to Senate Estimates in November 2013 indicate Mr Roberts-Smith is heading towards recommending shutting down consideration of these issues without effective action.

186 The 7th DART Report refers to the DART keeping its books open for women who were raped at ADFA to come into the DART processes.

187 At best this will leave the job partly done.

188 No basis has been laid for effective action because what has been done falls well short of gathering all information which could be available and falls short of addressing those matters thoroughly.

- There was limited publicity for the DART process. Some people with relevant information would not have known about the DART processes.
- As far as I am aware DART did nothing to inform women who had reported in 1998 - and who had been told then that Defence could not take any action other than to refer them to ACT police - that Defence is now able to consider other action.
- Not surprisingly very few of the women in the ADFA 24 cases who were let down by the ADF have opted into DART processes.
- The DART process has waited for complainants who are interested in outcomes which DART can offer complainants to opt into DART process.
- Neither DART nor the CDF made any public call for victims who were not seeking one of the DART outcomes – or for witnesses with information relevant to assessing the fitness of current officers who were ADFA from the mid 1980s to 1998 to bring that information to DART or other process.

189 There is an opportunity for the ADFA legacy issues to be dealt with decisively now by establishing a Royal Commission to inquire into these issues.

192 A Royal Commission need not be and should not be the only response. There should also be assistance for victims – such as the assistance which has been offered by the DART – in parallel with the Royal Commission’s work. There is no reason why a Royal Commission could not coordinate its work with a process providing such assistance.

193 An appropriately commissioned and resourced Royal Commission would be best placed to encourage individuals who have relevant information – including victims who have not yet spoken about their experience to anyone and/or victims who had no interest in the range of outcomes for complainants which the DART offered – to come forward and to enable informed and convincing resolutions on the systemic issues.

194 Male on male sexual assault at ADFA – as well as male on female sexual assault - should be within the scope of the inquiry set for a Royal Commission.

195 The Royal Commission into Institutional Response to Child Sexual Abuse provides a model of how a Royal Commission can be conducted in a manner which takes into account the sensitivities and needs of victims of abuse and which actually empowers and assists victims of abuse including many who had not previously told their story to anyone.

196 The Royal Commission into Institutional Response to Child Sexual Abuse is demonstrating the impact which contemporaneous media reporting of real people’s stories told to the Commission can have in raising understanding of the issues amongst the institutions and amongst the general community.

215 It cannot be an acceptable outcome that people who are not above suspicion are role models and leaders of cultural change.

216 A Royal Commission would be an appropriate body to consider those broad systemic issues.

228 However, there are obvious limitations on the contribution that the Restorative Engagement program can make to embedding cultural change.

- The officers participating are only exposed to the stories of – at most – a few individual victims and get no understanding of how broad a problem there may have been.
- These high-ranking officers will in time – some in very short time - move out of the ADF.
- The Sex Discrimination Commissioner has emphasised the role of middle-ranking officers and NCOs in role modelling and being front line of cultural change. Middle-ranking officers and NCOs do not participate in Restorative Engagement sessions.

- The Restorative Engagement program does nothing to inform the other ranks of the ADF and does nothing to inform the general community about abuse in the ADF and about the cultural changes which need to be supported and understood.

230 However, there are other perspectives. I recommend to the Committee that they and re-read the submission to this Committee of Mr Neil Stuart who went through a Restorative Engagement session. His submission includes these powerful perspectives:

(pages 3-4) I have been reflecting on my perspective since approaching DLA Piper and what I've heard of abuse experience of other people in Defence. As I'm seeing it, the Response (the institutional response) has been to focus on the individuals who've told their stories and to offer some balm and quieten them down. So all my energy and input has been contained and channeled into the four sets of responses determined by DART. It is as if I am one of a list of cases and one by one they are being methodically ticked off. Now I've been ticked off.

...I submit what we are faced with is an institution which has systematically insulated itself from knowing about the intentional sexual abuse which has happened and is happening. The silence, the failure to talk openly about what happens or might (page 5) happen fosters secrecy, putting it out of sight or hearing. Men do rape men, soldiers rape fellow-soldiers – that has to be said, not just in counselling, not just in the CO's office, not just in the restorative engagement conferences but out there in the public arena.

The DART processes have placed much emphasis on confidentiality. For instance, at the end of the Restorative Engagement Conference, I was asked to sign an agreement that I would not disclose what took place in that Conference. Perhaps there are times for confidentiality. My sense is that what happened is that I have become confined and isolated. My sense is that the practices of secrecy and silence are being reinforced. I have nothing to hide. Does DART? Does Defence?

...

Restorative Engagement hasn't changed/restored what happened and can't change/restore what's happened. That's an illusion. I haven't (page 6) bought into that illusion. Nothing makes up for what has been broken. ... My life, the lives of others abused, aren't going to be restored. The main good thing, I was thinking, is that my story had been truly listened to and seems to have been believed. Now, having read about the experience of Aaron Frazer ... I wonder just how fair dinkum is the statement that my story is believed. If it is to be fair dinkum there's got to be more than individual solace. That listening has to come out of the confessional/clinical reporting process, the Restorative Engagement Conference, into which it's been channeled and into the wider culture of Defence which permits these abuses.

...

There has to be more than treating the hurt of the injured individuals – which is akin to keeping everything within the confessional or within the treatment room or within the family, which is the way the DART casework approach



has been shaped. I'm not a case – it's bigger than me or any other individuals. ...

I challenge the Committee to understand Defence's responsibility for an institutional culture which permits, maintains and maybe even rewards silence around rape and other sexual abuses within Defence. I challenge (page 7) the Committee to understand how stigma words as a tool of silencing and of removal of freedoms, especially freedom to speak. I challenge the Committee to break open the culture of silence. I don't need pity. I have never needed pity. What I need is to see emerge a culture which permits, even celebrates, my right and the rights of others to speak of what we have experienced. I need an end of silence. If the Committee does not understand these things, then it understands very little.

I need for there to be a process which enables me, as a person who has experienced sexual abuse within Defence, to make a common cause with others who have experienced like abuse.

Maybe the process needs to be widened to provide for something like a Royal Commission so that the secrecy and the silence are blown away and Defence is held accountable for how it must change.

- o Another victim – a woman who experienced two years of abuse and bullying at ADFA pre-1998 – told me:

The ADF preferred its own interests over those it was entrusted to care for at the time and I believe it continues to do so. It was and it continues to be wrong.

It is time that the ADF was held to account. A Royal commission would be the most powerful statement that this is not an acceptable part of Australian society. I feel also feel that ADF needs to weed out the bad eggs, if for no other reason than that the decent people of the ADF do not have a shadow caste over their careers. They should also ensure that people who have been abused are cared for, as not everyone is OK.

240 Clearly the Restorative Engagement program had failed to bring the CDF to acceptance of the very serious history of abuse at ADFA reported on in the Grey Review and further detailed in Volume 1 of our Report.

241 The fact that the CDF made his public statement that the figure was only one percent would send a deeply discouraging message to all of the women who had been victims of sexual assault at ADFA.

242 This for me is a very compelling reason to have a Royal Commission because a Royal Commission could do a lot to bring understanding to the ADF and the general community and the ADF from top to bottom.

### **The Scope of a Royal Commission**

243 In October 2011 when we delivered Volume 1 of our Report, I joined with the other Review leaders in concluding that it would not be appropriate to call for a general Royal Commission in relation to abuse and mismanagement in Defence.

244 We did make a recommendation that the Government consider establishing a targeted Royal Commission to look at the ADFA rape legacy issues.

245 As I have explained in my previous submissions to the Committee, I have since moved to making a positive recommendation that the Government should establish a Royal Commission to inquire into ADFA rape legacy issues.

246 However, since we delivered our Report I have seen:

The previous Government's delay before doing *anything* to respond to our Report and then making very few decisions.

The previous Government's decision not to allow the working version of Volume 2 to go to Defence even though we had prepared it– in accordance with our terms of reference – to go to Defence.

The previous Government's decision to send our Report to Mr Roberts-Smith for him to start again.

DLA Piper's insistence on a drawn out process for transfer of the materials from our Review to the DART despite DLA Piper's awareness and participation in processes which we as Review leaders had previously put in place to facilitate transfer of Phase 1 materials to the Phase 2 body.

Mr Roberts-Smith's rejection of the offer of a handover briefing from myself and Ms McKean.

The failure of either Defence or DVA to take the lead on analysing and sharing information which they already have which would assist people damaged by abuse to get access to DVA benefits and support.

The failure of Governments to direct Defence and DVA to do so.

Defence's sabotage of the restricted reporting reform.

Defence's tardiness in reforming clearly faulty DI(G)s which were discouraging effective and prompt responses to sexual assault.

Defence's refusal to accept a single one of the specific recommendations I made to them for identifying where unreported abuse may be occurring and how they could respond to it. I can only conclude – they just do not want to know.

Mr Roberts-Smith's decision to ignore aspects of his Terms of Reference

Mr Roberts-Smith's decision to bury very significant aspects of our report relating to media allegations of Defence cover up.

Mr Roberts-Smith's decision not to ask for investigatory powers.

Mr Roberts-Smith's failure to respond to questions about his apparent failure to implement aspects of his terms of reference which I put to him in our October 2013 meeting in my October 2013 correspondence.

The failure of any of the DART reports to acknowledge let alone respond to any of the matters about the DART processes and about the Royal Commission issue which I have been setting out from August last year onwards.

The likelihood that very few matters will make it from the DART to Defence for possible action against suspected perpetrators. There have only been 22 referred across so far and another 39 assessed by DART as requiring no further action (See 7<sup>th</sup> DART Report page 23).

The failure of the CDF to make a call for current and former ADF personnel who may have witnessed sexual assault or who may have been victims to bring that information to an appropriately constituted investigatory body.

The failure of Mr Roberts-Smith to go on electronic media while the Review's books were open to try to reach out to damaged individuals let alone to call for witnesses to abuse to come to DART.

There is no doubt that many individuals who could have been reached were not reached.

Stone-walling and avoidance from Defence, DVA and Mr Roberts-Smith in their 'answers' to this Committee.

The current Government's failure to act on any of the concerns which I have raised with them about delay and inaction.

Delay

Delay

Delay

247 I have no doubt that there has been a genuine attempt from Mr Roberts-Smith and others to support and respond to the needs of many of the individuals who have made it into the DART processes.

248 However, the processes adopted seem to have been coloured by a concern to contain and close down the issues and to minimise the impact on Defence, and – to a lesser degree – the workload impacts for DVA.

249 It may be that the previous and the current Governments have encouraged or at least acquiesced in this approach of containment and of attempting to close these issues down. This may be bipartisan. That does not make it right.

250 I now support a general Royal Commission – including but not limited to ADFA legacy issues.

