

Submission
Of
The Association For The Victims Of Abuse In
The Australian Defence Force A0059257
To
The Senate Inquiry Into
The Australian Government's Response To
Abuse In The Australian Defence Force

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Force A0059257

ABSTRACT

[Under the current Government, the abuse has gotten worse as well as the treatment of this victims. Victims need compensation more in line with community standards; A civilian authority to investigate and deal with all aspects of abuse in the Australian Defence Force; Amendments to the various Veterans Affairs Acts; DLA Piper Volume 2 should be released with the victims de-identified; A Royal Commission into the past and ongoing abuse in the Australian Defence Force.]

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1.0 Management Summary

1.1 Overview

Eugene O'Neil said it best:-

“There is no present or future - only the past, happening over and over again - now.”

The response of the current Government to the issue of abuse in the Australian Defence Force and dealing with Victims of that abuse is unacceptable.

It casts a shadow over our souls.

The shadow that it casts is for the following reasons:-

1.1.1 Defence Abuse Response Task Force

1. The DART has narrowed the interpretation of its Terms of Reference excluding abuse that was previously covered.
2. Its reporting to Parliament does not permit Parliament to make an informed decision.
3. It has cost victims lives and if not stopped will cost more in the future.
4. As documented in the more detailed overview it has many more problems.
5. It is controlled by a military general who seems more concerned with keeping a lid on things rather than fully supporting victims and properly informing Parliament.
6. It refuses to engage with victims and their representative Association.

1.1.1.1 Should Be Replaced With Truly Independent Civilian Authority

It should be replaced by an independent civilian authority with an ongoing mandate to deal with all abuse in the Australian Defence Force.

1.1.2 Defence

The abuse continues as witnessed by:-

1. What happened to “Kate” from the Skype Scandal
2. The ADFA Rugby Team
3. The Townsville 3rd Brigade Facebook Scandal and
4. HMAS Ballarat.

This is supported by other submissions, such as Slater and Gordon.

Clearly, despite Defence’s protestations to the contrary, the abuse is ongoing and Defence is clearly unable / unwilling to deal with:-

1. It or prevent it.
2. The abusers.
3. The protectors of the abusers.

It may punish low ranking offenders but it consistently and persistently refuses to punish Senior Officers for the failure to prevent the abuse and their involvement in its cover up.

It continues to disempower and isolate Victims by claiming that there is no Association for Victims and refuses to engage with their Association.

It is like an alcoholic that denies they have a problem.

It may say the words that it has the problem but by its lack of truly effective action gives the lie to those words.

It is very good at making policies but rather less good at enforcing or taking into account the needs of Victims of Abuse in the Australian Defence Force.

By contrast Defence gives the abusers a much better deal.

Most jurisdictions have a Witness Protection programme for witnesses having the courage to speak up against wrong doing.

The Australian Defence Force is the only one we know of that has a Witness Protection programme for the Abusers.

We are sure Tony Mockbel regrets not having access to such a programme.

Also in its advice to the then Defence Minister Smith that the Defence Force advised the Minister that it did not want DLA Piper Volume 2 because then it would have to deal with it.

This indicative of the Australian Defence Force's true stance on abuse.

1.1.2.1 Investigation And Dealing With Abuse Should Not Be Defence But Independent Civilian Authority

Therefore, the issue of investigating, dealing with and compensating the victims of abuse in the Australian Defence Force should be taken out of its hands and given to a truly independent statutory civilian authority reporting to the Parliament.

1.1.3 DLA Piper Two Should Be Released

A partial summary version of Volume 2 via way of the DLA Piper Review Volume 1 Supplement, has already been released.

Our members feel that it is essential to release the details of DLA Piper Volume 2.

How can Parliament make informed decisions if the true extent of the problem is withheld from them?

By providing a version of the report that is de identified i.e. all identifying references to a given removed, it will allow both the Parliament and the electorate to:-

1. Understand the true extent of the problem.
2. The true failure of Defence to deal with it, and
3. Take the appropriate action based on the true facts.

1.1.4 Setting Up Of Independent Civilian Statutory Authority

At the moment the Defence Abuse Response Task Force is not a truly independent civilian authority reporting to the Parliament.

It has:-

Introduced arbitrary cut off dates for both the abuse that it covers and the filing of material for a reparation claim.

What is need is a truly independent oversight authority similar to the Independent Commission Against Corruption which reports directly to the Parliament.

It needs to be:-

1. Independent of Defence
2. Independent of the Government of the Day
3. Able to investigate all abuse and where appropriate refer it for prosecution.

It should be noted that the Defence Force Ombudsman has been found wanting in its investigative and reporting functionality.

1.1.5 The Various Veterans Affairs Acts Need To Be Amended

The best and most appropriate vehicle for the provision of ongoing medical support to Victims is the Department Of Veterans Affairs.

1. Regretfully its governing Acts were never designed with the special disabilities of Victims in mind being:-
2. Defective Military Records
3. Defective Military Medical Records
4. Difficulty of finding witnesses.

The Defence Abuse Response Task Force Test reflects this reality and uses a much lower standard, that being one of plausibility.

For abuse cases, the various Veterans Affairs Acts should be lowered to the same level to take into account the difficulties of victims caused through no fault of their own.

1.1.6 Need For Royal Commission Into Abuse In The Australian Defence Force

Only a Royal Commission can:-

1. Fully expose the extent of past and present abuse in Defence
2. Provide adequate protection and support to Victims as has been shown by the current Royal Commission into Institutional Child Abuse.
3. Allow the Parliament and the Australian to be properly informed on the matter.

1.2 The Defence Abuse Response Task Force

Under Major General Roberts-Smith RFD QC, Chairman of the Task Force:-

1.2.1 Victims Suiciding

- Its delays in processing have led to Victims suiciding, with more on the way.
- The same delays in processing prevent proper counselling and help.

1.2.2 Victims Being Denied A Fair Go

1.2.2.1 Improperly Narrowing What is Covered And What Is Not Covered

- Under the current Government it has narrowed the definitions as to what is and is not abuse, which excludes victims that should be included.
- Whilst the Terms Of Reference are broad they are selectively narrowing and disadvantaging victims.
- Has downgraded its assessment standards so that claims that were originally Category 4 are now being paid out as Category 3.

1.2.2.2 Reparation Not In Line With Community Standards And Expectations

- The maximum payout out of \$50,000 is not in line with Community Standards – See **Oyston v St Patrick 's College (No 3) [2013] NSWCA 324 (3 October 2013)** and **Oyston v St Patrick 's College (No 2) [2013] NSWCA 310 (23 September 2013)**

1.2.2.3 Denying Victims Their DART Appeal Rights

- Is now telling Victims of Abuse in the Australian Defence Force that they do not have appeal rights regarding decisions of the Defence Abuse Response Task Force when they do.
- It's cut off dates of:-
 - 30th April 2011 perpetrates further abuse on this who suffer torture and abuse after that date and
 - 30th November 2013 for filing their paper work with the DART demonstrates a cruel lack of understanding of the pain and suffering that Victims go through when documenting their abuse

1.2.2.4 Restorative Justice Being Watered Down / Apologies Not Happening

- The Restorative Justice is being watered down

- They are still refusing to provide written apologies
- Still hit and miss with regards the provision needs to be made for expenses & living costs of victims who are required to travel e.g. to Canberra for Restorative Justice

1.2.3 Selective / Defective Reporting

- Not giving full details or payments in reporting to the Parliament.
- Not reporting suicides / deaths of victims awaiting payments
- Proposed Leeuwin Report is extremely selective in what is told to the Parliament –Major General Roberts-Smith is engaging in cover up by being extremely selective on information used for his “Report”.

1.2.4 Hindering Department Of Veterans Affairs Claims / Blaming The Department Of Veterans Affairs for Its Own Failings

- When Victims obtain copies of their files at the Defence Abuse Response Task Force, the files being provided to Victims to aid them in the DVA claims are so heavily redacted as to be useless.
- The Defence Abuse Response Task Force attacks the Department Of Veterans Affairs when it refuses to accept claims in accordance with its Acts when it should be joining us in seeking legislative change.

1.2.5 DART Seen As Under Defence Control

- The Defence Abuse Response Task Force is still under effective Defence Control

1.2.6 Refuses To Engage With Victims

- It refuses to engage with Victims and their Association on this and other issues.

1.3 Defence

1.3.1 The Abuse Continues

Despite all of Defence's glossy publications and protestations the abuse continues as witnessed by:-

- What happened to "Kate" from the ADFA Skype Scandal
- The ADFA Rugby Team
- The Townsville 3rd Brigade Facebook Scandal and
- HMAS Ballarat.

This is supported by other submissions such as Slater & Gordon.

1.3.2 Defence Clearly Unable To Deal With Abuse / Need For Independent Authority

Abuse has always been unlawful through Statute and Regulation but still it continues.

Time and time again there have been inquiries such as:-

- The Rapke Report
- The Inquiry into HMAS Success
- DLA Piper Review

A reasonable person would have thought they would have got it right by now.

Clearly they have not.

Furthermore, they have focused on sexual abuse through their SEMPRO Office to the exclusion of other types of torture and abuse being practiced in the Defence Force.

It may punish low ranking offenders but it fails to punish Senior Officers for the failure to prevent the abuse and for covering it up.

Defences true stance on abuse is revealed:-

- The long history of Defence Legal fighting abuse claims e.g. Squadron Leader Vance and
- It's advice to the then Defence Minister Smith that it did not want DLA Piper Volume 2 because then it would have to deal with it is indicative of Defence's attitude on abuse.

This is why an independent civilian statutory authority is needed.

Even their own investigative arm, the Australian Defence Force Investigative Service has been caught out practicing abuse.

1.3.3 Defence Does More For The Abusers Than The Victims

If an abuser is identified:-

1. They are remain on pay whilst on suspension.
2. No military work, no day work.
3. They still get to:-
 - a. Have meals with their mates.
 - b. Drinks in the bar and
 - c. Tamper with victims and witnesses.
 - d. In the case of ASFA Cadets, complete their degrees.
4. If it progresses to termination they are given a minimum of twenty eight days notice to show cause why they should not be terminated.
5. If they are terminated:-
 - a. Most of the time their details and the reason for termination are not publicly announced
 - b. If it is announced, it is done late on a Friday Night e.g. Cadet McDonald
 - c. They can re join the Defence Force at a later date with a new personnel number and file.

Their victims on the other hand get hounded out of the Defence Force.

And of course they never gave their victims thirty days notice to show why they should not be raped or assaulted.

The abusers have greater rights than the Victims!

Who would you rather be Victim or Abuser?

1.3.4 Denies There Is A Victim Association And Refuses To Engage With It

Defence publicly denies that there is a Victims Association – General Hurley Radio National 28th April 2014.

When we, as an Association, have offered to engage with Defence on abuse issues we have been rebuffed.

When we have reported information about abusers of Senior Rank that are still in active service or abusers receiving Order Of Australia Awards, no effective action is taken.

1.3.4.1 Defence Abuse Response Task Force and Defence Ignore The Recommendations Of The Senate Committee (Senate Committee Inquiry Into Abuse 2010)

Yet the Senate Committee itself recommended:-

“7.47

In terms of systemic advocacy, in the view of the committee, Defence would benefit from engagement with advocacy organisations representing the interests of victims of abuse in Defence. These systemic advocacy organisations potentially could provide valuable input and feedback into the ongoing Defence cultural reforms. As a first step, Defence should not discourage serving members of the ADF from forming an association or a support group for those who identify as victims of abuse in Defence.

Further, Defence should proactively engage any associations or organisations which represent members who have suffered abuse in Defence. For example, the committee notes that during the course of the inquiry, an association for victims of abuse in the ADF was established in Victoria 40

40 'Rules of the Victims of Abuse in the Australian Defence Force', http://www.adfabuse.com/Incorporated_Association_files/Rules%2003.pdf (accessed 21 May 2013)”

When we report information about senior abusers still in advance or abusers receiving order of Australia Medals, it is all swept under the carpet.

1.4 DLA Piper Volume Two Should Be Released

It is a fundamental truth that in order to make informed decisions the Parliament must be first informed.

How can Parliament:-

- Make an informed decision
- Take the appropriate action
- Exercise its oversight responsibilities of the Defence Force and the Government's Stewardship

When essential information is withheld from it.

The short answer is that it can't.

The Australian Electorate cannot for the same reasons.

It is essential to release the details of DLA Piper Volume 2 in a de identified format i.e. the identifying details of the victim removed.

This is done all the time in other jurisdictions such as Royal Commissions.

What is the big deal here.

At the moment the horror of the abuse is hidden behind a cloak of secrecy.

Whilst the abusers are so protected they will continue their abuse.

As some of them have reached high rank and thus in line for senior positions such as Governor General, how can Parliament make an appropriate decision?

How can Parliament make informed decisions if the true extent of the problem is withheld from it?

1.5 Setting Up Of Independent Civilian Statutory Authority

The Defence Abuse Response Task Force is purely a creature of agreement between the Department Of Defence and the Attorney General Departments.

It:-

- Can be shut down at any time by decision of the executive government
- Is not responsible for ensuring prosecutions taking place
- Is limited by its establishing instrument to compensating abuse that occurred prior to 30th April 2011 and nothing afterwards
- Is not subject to the more rigorous public scrutiny that would come with it being a permanent statutory authority.

What is needed is an independent statutory authority under civilian control.

It needs to:-

- Be able to investigate and prosecute all abuse current and present
- Make reparation payments in line with Community Standards to those Victims
- Prosecute those abusers or
- Where a prosecution can't be made, have the abusers dismissed from the Defence Force never to be reemployed or any other arm of the Federal Government.

1.6 The Various Veterans Affairs Acts Need To Be Amended to Reflect Difficulties Of Victims

Victims suffer from a number of grave impediments in pursuing a claim through no fault of their own:-

The victims of abuse be it mental, torture or sexual abuse face a number of difficulties unique from other victims.

These are as follows:-

1.6.1 Hurdle 1 – Circumstances Of Discharge / Extreme Difficulty In Proving Abuse took Place

Most will be discharge at own request.

As a result when they leave they really want to have nothing further to do with those:-

- Who practiced the abuse or
- Looked on and did nothing to help them

1.6.2 Hurdle 2 – Trying To Find Witnesses

As a result of the first hurdle, the second hurdle is being able to contact people who actually observed the torture and abuse and seek witness statements.

1.6.3 Hurdle 3 – Getting Witnesses To Give Statements For Fear Of Retribution

Even if the victim is able to find witnesses, quite often they are:-

- Still serving in the Military or
- Engaged in contracts with the Military.

Either way, my our experience has shown that both categories are loathe to provide statements documenting the abuse for fear of prejudicing their careers or contracts with Defence.

Either way the victim ends up with no corroboration.

1.6.4 Hurdle 4 - Service Records Hide The Abuse And Real Reason For Separation

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

- Permitting Torture and Abuse is a breach of the:-
 - Defence Discipline Act and its successors.
 - Queens Regulations And Instructions, as well as government policy.
- If a more senior officer has permitted it in their command, then if they were to write it up in the Victims Service Record, they would, in effect, admitting to a Court Martial Offence.

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

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

Typically, despite having passed extensive testing to get in, your failing performance will be written up as to imply the failure is yourself and not the abuse you are suffering.

The same applies to your medical records.

In one case, the rape of a victim was written up not as a rape but simply "admitted to hospital"

As a result your military and military medical records are unreliable and of no help in making a claim with the Department Of Veterans Affairs.

1.6.5 Hurdle 5 – Having Insufficient Time To Be Covered By The Veterans Affairs Act

In order to be fully covered by the Veterans' Affairs Act, the following criteria needs to be met:-

- Have served three years
- In the case of Officers under training have also achieved the rank of Sub Lieutenant
- Or in any other circumstances be medically discharged.

Since most victims end up resigning before the qualifying service period requirement is met, they are initially left out in the cold by the Department Of Veterans Affairs.

1.6.6 Victims Consequently Can't Meet DVA Burden Of Proof

As a result of the preceding, Victims of abuse in the Australian Defence Force are unable to meet the evidentiary and proof requirements of the current Veteran's Acts through no fault of their own.

1.6.7 Threshold Of Defence Abuse Response Task Force - Plausibility

The threshold for the payment of a reparation payment from the Defence Force Abuse Response Task Force takes this into account.

There the test is plausibility.

1.6.8 Veterans Acts Should Have Threshold For Abuse Claims Lowered To Plausibility

In light of the above, the various Veterans' Acts threshold for abuse claims should be:-

- Lowered to that of Plausibility and
- Not subjected to the three years service requirement.

1.7 Need For Royal Commission

Only a Royal Commission can:-

1. Fully expose the extent of past and present abuse in Defence
2. Provide adequate protection and support to Victims as has been shown by the current Royal Commission into Institutional Child Abuse.
3. Allow the Parliament and the Australian people to be properly informed on the matter.

2.0 Terms Of Reference

On 27 March 2014, the following matter was referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by **28 August 2014**:

With reference to the committee's earlier report into the review of allegations of sexual and other abuse in Defence, the accessibility and adequacy of current mechanisms and processes to provide support to victims of sexual and other abuse in Defence, taking into account:

- a. the Defence Abuse Response Taskforce (DART) process to date;
- b. Defence's response to the DLA Piper Review and the work of DART;
- c. successive governments' responses to the DLA Piper Review and the work of DART;
- d. the desirability of releasing a true reflection of volume two of the DLA Piper report in a redacted form or by way of a summary; and
- e. any related matters.

3.0 About The Association For The Victims Of Abuse In The Australian Defence Force

The Voice For The Voiceless (www.adfabuse.com) (Also on Facebook)

The Association for the Victims of Abuse in the Australian Defence Force A0059257W was incorporated on 29th April 2013.

It is the only National Association advocating on behalf of Victims Of Abuse in the Australian Defence Force.

Membership

Membership is open to:-

- ✓ Victims of Abuse in the Australian Defence Force
- ✓ Supporters and Carers of Victims of Abuse in the Australian Defence Force
- ✓ Those who oppose abuse in the Australian Defence Force.

It has members:-

- ✓ In every state of Australia and Overseas
- ✓ Ranging from civilian, recruit to Flag Rank.

Four of its members have received the full \$50,00 from the Defence Abuse Response Task Force.

One has received \$35,000.

It has the only three known Department Of Veterans' Affairs Gold Cards issued for the abuse the victims suffered in the Australian Defence Force.

“For evil to prosper, it merely requires that good men do nothing!”

Edmund Burke

4.0 Achievements Of The Association

Date	Problem	Result
3/4/13	DART wants to have Defence make final decision on Reparation Payment	As a result of our actions, Defence cut out of loop – final decision remains with the DART
19/6/13	We became aware of a rapist of star rank still serving in the Australian Defence Force.	Reported it for further action to ADFIS.
1/7/13	DVA will not pay travel expenses to Psychiatrist of best fit.	Initiated change of policy with the DVA so that they will pay Travel Expenses to Psychiatrist of best fit.
8/7/13	DART refuses to provide help to Victim on brink of suicide.	We are able to use our excellent relationship with the DVA to get the person the help they desperately needed.
September 2013	Victims need to make abuse and abuse compensation an election issue.	<p>Contacted all Federal Labor, Green, Coalition and other candidates seeking them to pledge support to the victims.</p> <p>Everyone except the coalition did so.</p>
1/10/13	Victims need public commitment from Political Leaders for support.	<p>At the public meeting at the Celtic Club, asked the public questions of Bill Shorten:-</p> <ol style="list-style-type: none"> 1. Would he support better compensation for Victims of Abuse in the Australian Defence Force? and 2. Would he commit to stamping out the abuse in the Australian Defence Force? <p>His response was: “Yes and Yes!”</p>

Date	Problem	Result
1/11/2013	The DART had imposed an artificial and improper filing date on one of our members of 20th September 2013 to file their personal account.	By agitating the matter, we had this improper date removed and an extension of time granted beyond 30th November 2013.
15/11/13	We became aware of a fraudulent claim being submitted to the DART.	Reported it to the DART to ensure that it was subjected to full and proper scrutiny as well as provided documentary evidence.
30/11/13	DART introduces a 30th November 2013 for Victims to file their Personal Account Form. DART offers no practical assistance to Victims.	We were able to help a number of Victims prepare their Personal Account and file on time. Also with the support of a number of Members Of Parliament we were able to get extensions for late filing for Victims finding hard to complete their personal accounts.
27/11/13	DART will not pay the Travel Expenses for Victims when seeking medical treatment from the DART provider.	We were able to get the DART to reverse its position and even wrote the draft travel expenses policy to speed things up.
4/12/13	One of our members had raised with the DART the complaint that we all have, we are Victims not complainants. The DART ignored him.	Sent an email to all members of the Parliament on this issue which resulted in the following:- 1. In future in all correspondence will pay him full marks of respect and call him a victim and 2. Major General Roberts-Smith RFD QC had to ring him and apologise to him.
11/12/13	DART requires Victims to pay for their own support person as part of the restorative justice programme.	We were able to get our member involved to have their money reimbursed and in future all victims will have the DART pay for their support person at Restorative Justice.

5.0 About The Author

The author served as a midshipman in the Royal Australian Navy in the 1980's.

The author was subjected to the most extreme abuse which was subsequently found proven by both the Defence Abuse Response Task Force and the Department Of Veterans' Affairs.

6.0 The Defence Abuse Response Task Force

6.1 There Is A Fox In Charge Of The Henhouse

Major General Roberts-Smith is himself part of the problem.

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_____ -

6.1.3 Is Still An Abuser By Practicing Abuse Against Victims And Their Association

As will be seen elsewhere in this document, he has continued to practice abuse against the victims of abuse in the Australian Defence Force by the manner in which he conducts the Defence Abuse Response Task Force.

He demeans Victims by calling them complainants. As if we were whingers.

Yet in his own Terms Of Reference we are “Victims”.

Our Vice President (in his email to the Defence Abuse Response Task Force) put it best:-

“Danielle, what concerns me is the dumbing down of the language used by D.A.R.T., in particular, the usage of the words "Applicant" and "Complainant" in reference to myself and other victims.

I note with great interest, that we the people affected by all the abuse, the bashings, beatings, intolerable tortures both mental and physical and psychological as well as mental abuse by various persons mentioned, that the wording used in reference to "us" the abused, is that we are applicants and complainants.

I find it reprehensible and abhorrent and take total offense at these references and remarks.

I make no excuse for expressing my utter disgust at this petty incorrect use of our language.

If I was an applicant, I would be perhaps be, applying for, say a job, a drivers license, an interview or similar.

If I was a complainant, I would perhaps be, say, standing in a queue and waiting to get my money back on faulty goods or complaining about being overcharged by a Telstra or perhaps a take away food shop's food or similar and yes,

I do acknowledge the use in legal circles of this word in reference to a plaintive.

It is an offensive word.

The correct terms of reference are as follows:

We are " victims ".

I am a " victim", not an Applicant not a Complainant.

I draw certain attention to the recent spate of Catholic Church pedophiles epidemic and ensuing court cases.

The persons who were violated by these evil Catholic Church priests were in fact referred to as victims.

These evil priests, who incidentally were people in a position of trust, a position of responsibility and a position of being charge of the absolute welfare of minors and had an absolute responsibility of a duty of care (and I remind you that those under the age of 18years are minors under the law) none of whom were complainants, nor were they applicants.

They all were victims. Yes, V - I - C - T - I - M - S .

What is next?, the rapes on HMAS Ballarat?

Were they just mere incidents ?

Will a D.A.R.T. perhaps be reviewing the court statements as "the involvement in an incident" on HMAS Ballarat ? instead of the correct descriptive and accurate language of the word " rape " , or downgrading it to bastardisation , where do D.A.R.T sit on that one?

*Nowhere in any of **my** "statements" did I state that I had "applied" to be bashed , beaten, abused, bastardised, belittled, tormented, thumped, intimidated, persecuted and any other applicable thesaurically used language that is available that would concisely make the true and accurate statement that I (and many others) were abused.*

*No, I am not an applicant nor a complainant. **I am a victim.***

Please, pass on to your superiors that I require the words "applicant " and " Complainant " stricken from your references to us as "victims" and that these words need to be removed and retracted from any or all of your references, as it is totally gone beyond offensive .

As scripture says :

“You shall know them by their fruits.”

Matthew 7:16 King James 2000

6.2 Victims Suiciding Because Of The DART

6.2.1 Accidental Reporting Of Victim Suicides – Victim A

About three weeks ago, I was contacted by Victim A, who currently has a claim with the Defence Abuse Response Task Force for a Reparation Payment.

He told me that in the course of conversation with his Defence Abuse Response Task Force Co-Ordinator had let slip that a number of victims had already suicided whilst waiting for their Reparation Payment.

6.2.2 Family Of Victims Who Die Before Payment Get Nothing Unlike DVA

6.2.2.1 Estate Of / And Families Of Victims Who Die Get Nothing From The DART

Under the Defence Abuse Response Task Force Reparation Guidelines, if a Victim dies before a reparation payment is made, no payment is to be made to their estate.

Apart from the financial hardship on the family, a number of families and supporters of Victims have expressed concern that they see the reparation payment as justification and vindication that their child was innocent and did not deserve the abuse.

With the death of the Victim, they are denied that justification.

6.2.2.2 DVA Does It Different And Better

The Department Of Veterans' Affairs is more compassionate and caring. If a claim is still under consideration when the Victim dies and then is subsequently approved, they will pay from the date of lodgement of the claim up until the date of death.

The Defence Abuse Response Task Force should adopt the Department Of Veterans' Affairs Approach.

6.2.3 Delays In Processing Prevent Counselling Of Suicidal Victims

There are Victims who still as yet do not know whether they are in scope or not.

Until such time as they are determined to be in scope i.e. eligible for a Reparation Payment they are not eligible for counselling from the Defence Abuse Response Task Force.

Its delays in processing have led to Victims suiciding, with more on the way.

The same delays in processing prevent proper counselling and help.

6.2.3.1 The Case Of Victim B

In the case of Victim B the Defence Abuse Response Task Force at the highest level refused to pay for Counselling for the Victim although it was clear he was extremely suicidal.

It was only through the great efforts of the Department Of Veterans Affairs that proper counselling was made available and the Victim is alive today.

It should be noted that subsequently Victim B was found in scope and paid the full \$50,000.

Had it been left to the Defence Abuse Response Task Force:-

1. He would be dead and
2. His wife would have got nothing!

Victim B said this about Defence and the Defence Abuse Response Task:-

“Defence's reticence about past condoning and enabling of abuses and conduct that was even torture leaves this Victim wondering if Defence is truly sorry for what was done to all Victims or is Defense just a sorry for itself that it got caught out by Parliament? Why is Defence just a little sorry now? Defense only received a flogging with a limp lettuce in the form of DART once Len R.S managed to subvert by minimization the DART processes”

6.2.3.2 But Doesn't The DART Provide Emergency Counselling?

The Defence Abuse Response Task Force:-

1. Promotes Beyond Blue and Lifeline which are best for non defence people
2. Ignores the need for Victims for counsellors with an understanding of their defence background

3. Refuses to engage or promote the Veterans And Veterans Families Counselling Service which has proved most effective for Victims and has been consistently recommended by the Association.

6.2.3.3 *About The Veterans And Veterans Families Counselling Service*

The VVCS – Veterans and Veterans Families Counselling Service provides counselling and group programs to Australian veterans, peacekeepers and their families. It is a specialised, free and confidential Australia-wide service.

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

Furthermore, calls to VVCS – Veterans and Veterans Families Counselling Service 1800 011 046 from two of Australia's largest mobile providers Telstra and Vodafone are now free of charge.

Calls from landlines remain free.

Calls from other mobiles and from pay phones may incur charges.

6.2.4 DART Delays Driving Other Victims To Suicide

6.2.4.1 *The Case Of Victim C – A HMAS Leeuwin “Priority” Case*

Victim C lodged his original Reparation Payment Paperwork in May of last year.

They took over 7 months before they finally contacted him and said they needed him to redo his Statutory Declaration because he had used his Thai Post Office Address and not his residential.

This is despite the facts:-

1. That the Defence Abuse Response Task Force admitted that other payments had been made where the Victim had used their postal address and
2. The Commonwealth Statutory Declarations Act and Regulations are silent on the matter.
3. It would cause him extreme danger having to go back to Bangkok to re do the Statutory Declaration.

In the end he refiled both his Reparation Payment and Statutory Declaration in April of this year, by both email and post.

Despite this instead of processing his application:-

1. They are still asking him if he wants reparation or counselling
2. Refusing to respond to his emails
3. Refusing to process his payments

This is causing him grave family and financial stress.

It is driving him to the brink of suicide.

Yet he is supposedly a “**Priority Case**” being one of the Victims abused at HMAS Leeuwin.

It has led to us taking up his cause with a number of members of the Parliament in order to save his life.

6.2.5 DART Only Reports Payments Not Deaths

By only reporting payments it has made to the Parliament and not the non payments due to Death, it covers up the delays caused by its own processing.

6.2.6 Delays Due To Not Being Fully Staffed

In the DART Fourth Interim Report, Major General Roberts-Smith admitted that he had failed to fully staff the Defence Abuse Response Task Force.

Furthermore, in the Fifth Report he states this is still the case and blames the current Federal Government despite claiming elsewhere in the report that he has an exemption:-

“The Group is currently under-staffed. The Taskforce commenced a recruitment process last year to rectify this, however, due to the Caretaker period, change of Government and the Australian Public Service hiring freeze, progress in this recruitment has been delayed by months.

The lack of human resources in the Complainant Support Group, as well as a number of other areas, has hampered the Taskforce's ability to assess and contact complainants as quickly as we would have liked. Despite these staffing pressures, the Taskforce has made significant progress in assessing complaints, with 1208 complaints assessed as at 3 March 2014.”

P7, Fifth Report March 2014

6.2.7 DART Also Identifies Victims / Has Difficulties Getting Praise From Victims

You will note that in the Fifth Interim Defence Abuse Response Task Force Report on page:-

- 14 it claims to quote Victim A (2013/1433) and
- 17 it claims to quote Victim B (2013/1534)

It begs two key questions:-

- Why is the Defence Abuse Response Task Force releasing file numbers of victims publicly i.e 2013/1433 and 2013/1534 and
- Since the first quoted Victim is Victim 1,433 to praise them, why couldn't they find one of the previous 1,432 Victims to praise them?

I think the number speaks for itself or rather “**Res ipsa loquitur**”

6.3 Victims Being Denied A Fair Go

6.3.1 Improperly Narrowing What is Covered And What Is Not Covered

6.3.1.1 Defence Abuse Response Task Force Terms Of Reference

- (i) *assess the findings of the DLA Piper review and the material gathered by that review, and any additional material available to the Taskforce concerning complaints of sexual and **other forms of abuse** by Defence personnel alleged to have occurred prior to 11 April 2011, the date of the announcement of the DLA Piper Review;*

As can be seen from Annexure I, the terms of reference for the Defence Abuse Task Force are as wide as the DLA Piper Review original terms of Reference.

Under Major General Roberts-Smith in recent times they have arbitrarily decided to narrow their interpretation of abuse so as to restrict what will be paid out to:-

1. Sexual Abuse
2. Physical Abuse and
3. Mental Abuse

Yet under their own Categories Of Payments – See Annexure J – Categories For Payment, Category 3 covers:-

- *Plausible abuse that included a plausible threat to the abused person's job and / or a plausible threat of physical injury if the abused person reported the abuse.*

6.3.1.2 *The Case Of Victim D*

Victim D was clearly in scope by DLA Piper Review.

Under the terms of reference of the Defence Abuse Response Task Force he was clearly within scope.

Yet he had been abused as a serving officer by other serving officers.

As such he meet Category 3 – “*Plausible abuse that included a plausible threat to the abused person’s job and / or a plausible threat of physical injury if the abused person reported the abuse.*”

The Defence Abuse Response Task Force took over a year to determine and advise him that he was out of “Scope”.

Yet clearly he was.

6.3.1.3 *The Case Of Victim E*

Victim E was clearly in scope of DLA Piper.

Under the terms of reference “other forms of abuse” he was clearly in scope.

Not only did the Defence Abuse Response Task Force claim he was out of scope but introduced an early cut off date for him alone of all other victims in order to get rid of him

6.3.1.4 *The Case Of Victim F*

Victim F had experiences on all fours and identical with other members of our Association who had received the full \$50,000.

Instead of paying him out on the same basis, the Defence Abuse Response Task Force:-

1. Paid him out as Category 3 instead of Category 4 and
2. Told him that he had no appeal rights when he did. (See Annexure H).

6.3.2 Reparation Not In Line With Community Standards And Expectations

The maximum payout from the Defence Abuse Response Task Force is \$50,000 regardless of how many rapes, assault or incidents of abuse you suffered.

Under any other Crime Compensation, it is payout by incident, not one small amount that covers everything.

Furthermore it is not in accord with community standards:-

6.3.2.1 Oyston v St Patricks College

Last year in this case it was held that for 2 years of Verbal Abuse the appropriate compensation was \$167, 207.34.

Yet here we are talking about far worse than that and multiple incidents only being compensated by \$50,000.

The relevant cases are:-

- **Oyston v St Patrick 's College (No 3) [2013] NSWCA 324 (3 October 2013)**
and
- **Oyston v St Patrick 's College (No 2) [2013] NSWCA 310 (23 September 2013)**

6.3.2.2 Marathon Runner Receives Multimillion Dollar Payout

As can be seen from Annexure H, a professional marathoner received a multimillion dollar whilst racing in the Kimberley.

A key difference between here and Victims of abuse in the Australian Defence Force:-

- She chose to accept the risk
- Her records were not doctored
- The organisers took responsibility.

Victims of abuse in the Australian Defence Force:-

- Did not choose to be abused
- Had the records doctored
- Their “employer” Defence chose not to take proper financial responsibility despite their duty of care.

6.3.2.3 *Police Man Receives \$3.5 Million Ex Gratia*

As can be seen from Annexure I, a WA Police Officer accused of using such excessive force that those accused of assaulting him were found not guilty still received a \$3.5 Million Ex Gratia payout.

Victims of abuse in the Australian Defence Force:-

- Did nothing wrong.
- Suffered life time injuries and loss of career
- Yet only receive at best a \$50,000 payout.

6.3.2.4 *Bus Driver Receives \$400,000 Compensation From Defence*

As Annexure J, shows, a Bus Driver traumatised by seeing a simulated massacre as part of a Defence Exercise received over \$400,000 as compensation.

The symptoms he suffers are similar to many victims:-

- Recurrent visions
- Difficulty driving and suffers sleep problems and nightmares

Sounds familiar?

The difference between him and the Victims of Abuse in the Australian Defence Force:-

- He got \$400,000 for one incident.
- The Victims who typically have suffered multiple incidents can only get \$50,000 maximum!

6.3.2.5 *Speaker Leo McLeay Gets \$90,000 in 2011 Dollars For Self Inflicted Injury*

As can be seen from Annexure K Speaker Leo McLeay got \$90,000 in 2011 dollars for a self inflicted injury in a once off accident.

The difference between him and the Victims of Abuse in the Australian Defence Force are:-

- His injuries were self inflicted
- They were once off
- He got \$90,000

Victims:-

- Did not inflict the abuse on themselves
- Suffered multiple incidents
- Have had a lifetime of suffering
- Get only a Maximum of \$50,000.

6.3.2.6 *Convicted Criminals Get Treated Better*

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

❖ (Source Herald Sun, August 21, 2011

❖ “Criminals Cash Up on \$400,000 in Compo” – Peter Rolfe)

6.3.2.7 What Should The Ex Gratia Payment Be? – Ex Gratia \$3 Million

The abusers and those who covered up the abuse,:-

- Falsified the Victims Medical Records preventing civil claims for the “good” of the Service and their careers.
- Were allowed to complete those careers.
- Typically they made over \$3 Million (in \$2011) during their careers (See Annexure L)

Their Victims lived lives of suffering and poverty.

On a pure equity basis we say that the compensation for the Victims should be an Ex Gratia Payment of up to \$3 Million.

It has to be:-

- Ex Gratia because the falsification of military records preventing civil claims
- No less than the rewards that their abusers got out of fairness and the failure of Defence to stop the abuse.

As an employer albeit servants of the Crown, Defence was obliged to deal effectively with the abuse and make a safe working environment.

6.3.2.8 If The DART Payment Is A Fine Against Defence Why Is It Not \$210,000 As Per Comcare v Commonwealth of Australia [2012] FCA 1419 (13 December 2012)

Griffiths J said it best at Paragraph 88 when speaking of the obligations of Defence with regards Occupational Health And Safety in Comcare v Commonwealth of Australia [2012] FCA 1419 (13 December 2012)

Part of the statutory context is provided by the objects in s 3 of the OH&S Act, which are as follows:

- (a) to secure the health, safety and welfare at work of employees of the Commonwealth and of Commonwealth authorities and non-Commonwealth licensees; and*
- ...*
- (d) to promote an occupational environment for such employees at work that is adapted to their needs relating to health and safety; and*
- ...*
- (f) to encourage and assist employers, employees and other persons on whom obligations are imposed under the Act to observe those obligations; and*
- (g) to provide for effective remedies if obligations are not met, through the use of civil remedies and, in serious cases, criminal sanctions.*

Clearly it has failed.

Not only has it failed, time and time again it covered up.

In *Comcare v Commonwealth of Australia* [2012] FCA 1419 (13 December 2012) it was fined \$210,00. Yet here the “fine” for more serious ongoing abuse is \$50,000 per victim.

6.3.2.9 *Another Reason For The Compensation To Be \$3 M – More Effective Fine For Defence*

If the fine for using your mobile phone whilst driving was \$1.89 would it be effective?

Of course not!

That is why in all jurisdictions it is substantially higher.

Defence’s budget is \$27 Billion.

A maximum fine of \$50,000 for each abuse victim is like \$1.89 fine for using your mobile phone whilst driving.

A maximum “fine” of \$3 Million:-

- Is enough to get Defence’s attention and motivate it to stamp out abuse and
- Yet not enough to harm the defence of the Country.

As Griffiths J said in *Comcare v Commonwealth of Australia* [2012] FCA 1419 (13 December 2012) at paragraph 112:-

On the issue of specific deterrence, I am mindful of the observations of North J in Cadet Francis at [103], where his Honour commented on the “absurdity” of ordering the Commonwealth to pay to itself a civil pecuniary penalty. In my view, however, that does not mean that, in a case such as the present, specific deterrence is irrelevant. Even where the Commonwealth is the contravener, the imposition of an appropriate pecuniary penalty can serve as a specific deterrent because the imposition of such a penalty can have ramifications beyond purely financial considerations. As the Full Court recently observed in Post Logistics Australasia Pty Limited at [63]:

Acknowledgment at a level of general principle of the relevance of general and specific deterrence in determining civil pecuniary penalties under the OH&S Act should, however, be qualified in the following two respects. First, because of the individual nature of specific deterrence, there may be good reason why that concept has no or little relevance in the circumstances of a particular case. For example, at first blush it may be difficult to see any meaningful role for specific deterrence to play in a case where the Commonwealth is the party which has contravened the OH&S Act and any pecuniary penalty must be paid to the Commonwealth, presumably into the Consolidated Revenue Fund (see, for example, Cadet

Francis at [102]). However, it may be important to appreciate that the individual officer or officers of the Commonwealth with general or particular responsibility for the conduct will ordinarily be publicly associated with the penalty imposed, he or she will have to allocate scarce public funds that were not appropriated to pay such a penalty, and thus cause a reduction in what the Commonwealth department, authority or agency involved can now provide. That is, the imposition of the penalty will have an impact on the department's, authority's or agency's capacity to perform its role, even if the sum is small in its overall budget. And, most importantly, the department, authority or agency will have to account to the Parliament and the public as to why it had had to pay a penalty and not use the money appropriated to it for the purposes that the Parliament intended. The impact of the penalty may vary depending on whether there is any evidence demonstrating the practical effect on internal budget allocations within the Commonwealth if the particular Commonwealth department, authority or agency is ordered to pay a civil pecuniary penalty.

6.3.3 Denying Victims Of Their Appeal Rights

As can be seen from Annexure H a Victim dissatisfied with a decision of the Defence Abuse Response Task Force has right of appeal to the Chairman.

One of our members has already used this Right of Appeal and was successful last year.

We had heard rumours last year that Victims were now being misled and told that they had no Appeal Rights.

We only had proof in the last month.

6.3.3.1 The Case Of Victim F

Victim F received notification last year that he was only rated Category 3.

Instead of being told of his appeal rights, which have allowed him to justify Category 4 (which it clearly was based upon the experience of our other members), he was told that:-

- That the decision was final and
- There was no mechanism for Internal Review.

Yet this is expressly contradicted by the Defence Abuse Response Task Force's own Policy at Annexure H.

6.3.3.2 The 11 April 2011 Cut Off Date Unfairly Discriminates Victims After That Date

This date was chosen on the false assumption that all abuse magically stopped on this date as a result of Defence's "Pathways to Change".

The reality is as can be seen; the abuse did not stop - only compensation to the Victims.

Why should those Victims, such as HMAS Ballarat be denied compensation for what they went through.

The short answer is that this cut off date merely served to abuse those victims further.

It should be removed.

6.3.3.3 *DART's Own Catch 22 - The 30th November 2013 Cut Off Date Unfairly Discriminates Victims.*

The Defence Abuse Response Task Force arbitrarily introduced a cut off date of 30th November 2013 for Victims to file their final statements.

It ignores the pain and suffering that Victims suffer when they document what they have gone through.

Those that have not filed by this date are the ones experiencing the greatest difficulty.

Of course until, they have filed:-

- They cannot be assessed as being in scope and
- Until they are determined as being in scope they can't receive counselling and support
- Without that support they can't complete the paperwork

The Defence Abuse Response Task Force's Own Catch 22

6.3.4 Restorative Justice Being Watered Down / Apologies Not Happening

6.3.4.1 Restorative Justice

Restorative Justice initially:-

- Took place in Canberra
- Took place between the Victim and an Officer of Flag Rank such as the Admiral in Charge of Training.
- Included a verbal apology
- The Admirals, Generals and Air Marshalls had to confront the real human cost of abuse.

This was good because it made sure the appalling nature of the abuse was made aware of at the highest levels of the Australian Defence Force.

It is now proposed to do this:-

- At the state capitol / regional level
- With much lower ranking officers.

The argument is made that this is necessary because of the “cost” to Defence.

They have failed to consider the following:-

- The cost to the Victim of being “downgraded”. It is a downgrading of the pain and suffering they have gone through.
- The abuse the Victim suffered was catastrophic.
- To be downgraded to a Captain or Major sends the message that Defence is not truly sorry for what happened to them.
- If Senior Officers i.e. Generals / Admirals / Air Marshals do not have to see the human cost of abuse, it does not provides motivation to address the issue.

The whole problem all along with abuse has been the insulation of Senior Officers from the human reality of the problem.

The cost of holding the Restorative Justice Meeting in Canberra is trivial compared to the Defence Budget of \$27 Billion.

6.3.4.2 *Written Apologies Not Happening*

As Victim B said:-

“After the money has all gone, it is the apology on the wall which will still be there and mean something”

Our experience is that Defence is extremely reticent to issue apologies.

It is like trying to get blood out of a stone.

None of our Victim members who have been paid out:-

- Victim B
- Victim F
- Victim G
- Victim H
- Victim I

Have received written apologies despite requesting them.

Indeed Victim H early on requested from General Hurley a copy of the “apology” he made to Victims, General Hurley has consistently refused to provide a copy.

Yet it is the apology that is so important to Victims.

Defence should be required to issue the written individual apologies forthwith!

6.4 Selective / Defective Reporting

6.4.1 General Defective Reporting

The Defence Abuse Response Task Force Interim Reports And Reports To Parliament it tells you:-

- The total money paid so far and
- The monies paid by Category
- The time it takes for a payment to be made once a payment decision is made.

What it doesn't tell the Parliament:-

- What type of things qualified for each payment e.g. Payment Number 1 for Category 4 was for multiple rapes?
- For a given payment where did the abuse occur e.g. Training Establishment e.g. Payment Number 1 For Category 4 was at a HMAS Cerberus?
- For a given payment when did it occur e.g. Payment Number 1 For Category 1 was in 2010?
- How long it takes for a decision to make a reparation payment to be made?
- Why those claims prepared by Lawyers seem to be getting priority?
- How many Victims have died waiting for a payment?
- How many Victims have suicided awaiting a payment?
- How many claims have been found out of scope and why?
- How many claims were rejected because they referred to abuse after April 2011?

Yet without this vital information how can the Parliament make an informed decision as to what is to be done?

The DART should be required to provide this information for:-

- All payments done so far and
- All future payments.

6.4.2 HMAS Leeuwin Report Questionable Because Of The Highly Selective Use Of Victim Information

Based upon feed back from our members, it seems that Major General Roberts-Smith RFD QC is being very selective as to who he contacts and what he has decided to put in this “report”.

Only one of our HMAS Leeuwin Victim members have been contacted to release information.

The rest remain un-contacted for permission to include their information in the report.

It begs two questions:-

- Why is he being so selective and excluding information from the “Report”?
- How many other victims are having their information excluded from the “Report”?

6.5 Hindering Department Of Veterans Affairs Claims / Blaming The Department Of Veterans Affairs for Its Own Failings

6.5.1 The Problem – DART Pays / DVA Rejects

A victim receives a payment from the Defence Abuse Response Task Force but has their claim rejected by the Department Of Veterans' Affairs.

6.5.2 The Root Cause Of The Problem Of DART Pays / DVA Rejects

The underlying cause of this is as follows:-

Under its terms of Reference the Defence Abuse Response Task Force the standard is simply one of "Plausibility".

6.5.2.1 DART Standard - Plausibility

This is reasonable when you consider the hurdles that Victims face of:-

- Circumstances Of Discharge / Extreme Difficulty On Proving The Abuse Took Place.
- Trying To Find Witnesses.
- Getting Witnesses To Give Statements For Fear Of Retribution.
- Service Records Hide The Abuse And Real Reason For Separation.
- Having Insufficient Time In Service To Be Covered By The Veterans Affairs Act.

6.5.2.2 DVA Standard – Much Higher

The Acts under which the Department of Veterans' Affairs operates under were never designed with the issues and needs of Victims of abuse in mind.

As a result of this, most Victims cannot meet the burden of proof required by those Acts.

As a result it creates distress for the Victim because they feel that on the one hand:-

- One arm is recognising what they have suffered
- The other arm is unfairly rejecting it.

They don't have it explained to them by the Defence Abuse Response Task Force highlighting the different standards.

6.5.3 DART Pours Petrol On The Fire

The Defence Abuse Response Task Force exacerbates the pain for the Victims as follows:-

6.5.3.1 Redacts Their DART File So Heavily So That It Is Useless

When a Victim requests a copy of their Defence Abuse Response Task Force File to aid them in their claim the Defence Abuse Response Task Force so heavily redacts the file provided that is useless for the purpose of the Department Of Veterans Affairs claim.

6.5.3.2 DART Misrepresents The Situation And Blames The DVA For Rejection As A Failure Of DVA When It Is A Different Standard

The Defence Abuse Response Task Force standard is one of “plausibility”.

The standard required by the Acts under which the Department Of Veterans’ Affairs operates requires a much higher burden of proof.

It blames the Department Of Veterans’ Affairs for the application of the higher standard required by its Acts.

Yet, the staff of the Department Of Veterans’ Affairs, are only doing what we would expect any good public servant to do.

They apply the law as it is and not as they would like it to be.

6.5.3.3 DART Fails To Take The Necessary And Requisite Action And Join With The Association To Correct the Problem

The Defence Abuse Response Task Force:-

- Fails to inform the Parliament and the Government on what needs to be done to address the situation, but rather continues on blaming the Department Of Veterans’ Affairs and
- Fails to join with the Association in trying to obtain the necessary legislative change.

They have forgotten the maxim:-

“It is better to light a candle, than curse the darkness!”

Peter Benenson,
English lawyer and
founder of Amnesty International,
at a Human Rights Day ceremony
on 10th December 1961

6.6 DART Seen As Under Defence Control

The whole history of abuse in the Australian Defence Force has involved the:-

- Protection of the abusers by Senior Officers
- The cover up of abuse by Senior Officers.

Defence placed great pressure on the then Minister For Defence Stephen Smith to place Major General Roberts-Smith RFD QC at the head of the Defence Abuse Response Task Force, it makes it clear that he is “Defence’s Man”.

When you consider:-

His refusal to engage with Victims and their Association.

His original narrow interpretation of his Terms Of Reference as to what is abuse.

His initial decision to have Defence have the final say on Reparation Payments.

The recent further narrowing by him as to what is abuse falls into which category.

The historical failure of Defence to investigate itself and deal with abuse.

His selective choice of information for the HMAS Leeuwin Report.

Is it little wonder that Victims:-

- Have no faith in him
- Perceive him as keeping a lid on things to cover up abuse as has been done in the past
- By placing a retired Major General in charge of the Defence Abuse Response Task Force
- See the Defence Abuse Response Task Force as being under Defence Control and not being truly independent

At the very least, in the interim, Major General Roberts-Smith RFD QC must be replaced with a civilian to restore the perception of independence of the Defence Abuse Response Task Force.

6.7 Failing To Consult With Victims And Their Association

6.7.1 DART Obligation Under Its Terms Of Reference Requires Consultation

- (iii) determine, in close consultation with those who have made complaints, appropriate actions in response to those complaints;

6.7.2 What Does Consultation Really Mean? - CPSU v Vodafone Network Pty Ltd - PR911257 [2001] AIRC 1189 (14 November 2001)

In this case, Commissioner came up with the definition of what consultation really means:-

[25] In deciding whether or not to make the orders sought I have considered the importance of consultation. Consultation is not perfunctory advice on what is about to happen. This is common misconception. Consultation is providing the individual, or other relevant persons, with a bona fide opportunity to influence the decision maker....

6.7.3 Association And Victims Have Tried To Engage In Genuine Consultation But DART Under Major General Refuses

Below is a history of our interaction with the Defence Abuse Response Task Force.

As can be seen the Defence Abuse Response Task Force has consistently and persistently only engaged in perfunctory advice as to what has to be done.

1. DLA Piper Submission / Set Up Of Defence Abuse Response Task Force

- a. In 2011, Victim H:-
 - i. Made submission to DLA Piper
 - ii. Submission to the Senate Inquiry
 - iii. Set up a website for Victim's.
 - iv. Started emailing the Parliament.
- b. Initially Victim H asked for the Major General to recuse himself because of his links with the military. The Major General has never responded to this.

2. Meeting With The DART February 2013

- a. On 22 December 2012, Victim H was contacted by Kate Wandmaker, on behalf of Matt Hall, who wanted to discuss with me abuse issues.
Victim H was told that this would be early in the New Year.
- b. When this did not occur Victim H emailed the Parliament which prompted him on 1st February 2013 to make arrangements to meet.
- c. Victim H then wrote a 134 page outline of submission which was dispatched via email on the 14th February 2013 via email.
- d. Victim H was flown up at Defence Abuse Response Task Force expense on 14th February 2013 to meet with them on 15th February 2013.
- e. This meeting was fairly sympathetic.
- f. Present were Jane Caruana, Kate Wandmaker and Matt Hall. It went for two hours and Victim H was asked to prepare papers on a Victims' Conference and also to undertake a review of the Payment Guidelines when they were released.
- g. Everyone parted amicably and I sent an email reflecting this to the Parliament for which they thanked me.
- h. At this meeting Victim H was asked to provide them and their senior management with copies of what Victim H sent the Parliament.

3. Victims Conference Papers 26th February 2013

- a. Victim H promptly wrote two papers (One of seven pages, the other of nine pages) on the Victims Conference and dispatched them on 26 February 2013 via email.
- b. Nothing ever came of it.
- c. It was clear that they never had any intention of doing this but used this as a way of blowing sunshine at Victim H.

4. Lt Col Morgan 14th March 2013

- a. On this date Lt Col Morgan appeared on the 7:30 Report. They were keen to get in contact with him.
- b. Victim H told them that they had his details and provided them to them.

5. Nemo iudex in causa sua – One Cannot Be Judge In Ones Own Cause 14th March 2013

- a. On 14th March 2013 Victim H became aware that the DART intended to have Defence Legal have the final say in compensation payments to Victims.
- b. Victim H sent an email out to the Parliament on this disturbing approach.

- c. At about 12:30 Victim H received a conference phone call from Matt Hall, Kate Wandmaker and Jane Caruana. They assured Victim H that this had now been dropped and that only the DART would have final say.
- d. They then informed Victim H that they would be emailing them the Payment Guidelines later that day and confirmed that they were not embargoed.

6. Payment Guidelines 14th March 2013

- a. Victim H arrived at home at about 4:30 this day.
- b. In their email box were the Payment Guidelines.
- c. Straight away they caused great distress because of the way they were written because at first glance they appeared to exclude Victim H from the Reparation Payment System.
- d. This distressed Victim H so much that it drove Victim H to tears that they contacted Matt Hall and Jane Caruana.
- e. They assured Victim H that this was not the case but when Victim H got a question asked on this very point by Senator Mark Bishop on this matter, my interpretation was confirmed by Major General Roberts Smith when he answered a question at Senate Estimates that night.
- f. It was only overturned after Victim H sent an email to the Parliament on this new novel principle on 15th March 2013 that overturned this.

7. Put Down Letter From Matt Hall CEO DART 25th March 2013

- a. On 25th March 2014 Victim H received a pompous put down letter from Matt Hall which Victim H actually believed was dictated by the Major General.
- b. Victim H responded by saying how whilst Jane Caruana put things on an even keel he kept running things off the rails.

8. Review Of Payment Guidelines 4th April 2013

- a. On 4th April 2013 Victim H finished an extensive review of the Payment Guidelines with recommended corrections.
- b. On 5th April 2013, it was sent out as an email to the Parliament highlighting they were suppose to consult closely with Victims but were not.
- c. On the same day Victim H received an email that the recommendations would be taken into consideration – they never were.
- d. The same email suddenly claimed that the guidelines were embargoed despite what Victim H was told on 14th March 2013.
- e. Victim H further responded with an email and sound effect “Elvis Has Left The Building” to make it clear to them that claim that the guidelines were embargoed after they had been released was too late.

9. Highlighting the Problems With Payment Guidelines 8th – 11th April 2013 To Parliament

- a. A series of emails were done to the Parliament highlighting the lack of consultation and adverse impact of victims of the Payment Guidelines.
- b. Some positive changes occurred as a result of actions by various Members of Parliament.
- c. The Major General and the Defence Abuse Response Task Force did not like being forced to change their policies and procedures.

10. More And More DART Makes It Clear That They Do Not Want To Consult

- a. Over the following months the DART ignored all of our Associations attempts at consultation.
- b. We highlighted that we were a national organisation representing victims – this meant nothing to them.
- c. Their attitude became one of this is our policy no further correspondence will be entered into.
- d. Time and time again we would highlight that they were obliged to consult with victims and quote them. CPSU v Vodafone Network Pty Ltd - PR911257 [2001] AIRC 1189 (14 November 2001)
- e. In that decision at Paragraph 25, Commissioner Smith said:-

“..... Consultation is not perfunctory advice on what is about to happen. This is common misconception. Consultation is providing the individual, or other relevant persons, with a bona fide opportunity to influence the decision maker.”

- f. They ignored this.

11. DART Refusal To Provide Counselling To Suicidal Member 8th July 2013

- a. One of our members, Victim B, was starting to become very depressed and suicidal over making his submission to the Defence Abuse Response Task Force as it made him relive memories that had been buried.
- b. His experiences at HMAS Nirimba were especially horrific.
- c. We sought to get him counselling from the Defence Abuse Response Task Force but they refused saying that they had yet to determine if he was in scope.
- d. It is worth noting that their processes were more important than saving Victim B's life.
- e. We were scathing via email to the Parliament,
- f. In the end, within 24 hours of an email to the Minister For Veterans Affairs, we had counselling from the Vietnam Veterans Counselling Service which was extremely helpful for Victim B.
- g. It is worth noting that Victim B was ultimately paid the full \$50,000 for the abuse he suffered.

12. Unlawful Cut Off Date Victim E (September 2013)

- a. One of our members had an unlawful cut off date on materials he could file with the Defence Abuse Response Task Force.
- b. He was given a date of Late September 2013
- c. No other victim was given this date.
- d. We complained on Victim E's behalf and with his permission and at his request.
- e. We brought the matter to the attention of the Senate Foreign Affairs Defence And Trade Committee and asked for their help in this matter.
- f. We were successful in removing this cut off date.
- g. The Major General was scathing of us in writing for doing this.

13. Attempting To Act As An Appellate Authority For The Department Of Veterans' Affairs And Breach Of Privacy By The Major General (October 2013)

- a. When Victim H initially received the decision in their own matter:-
 - i. The Defence Abuse Response Task Force through the Deputy Chairman purported to act as an Appellate Jurisdiction for the Department Of Veterans' Affairs by rejecting conditions that had been accepted by the Department as being part and parcel of the abuse Victim H suffered in the Royal Australian Navy.
 - ii. Victim H sought more information so they could exercise Victim H's appeal rights, but was delayed by the failure of the Defence Abuse Response Task Force to provide a copy of the Appeal Rules as requested.
 - iii. Victim H eventually wrote a formal letter demanding an extension of their appeal time due to the failure of the Defence Abuse Response Task Force to provide Appeal Rules as it adversely affected Victim H's ability to draft their Appeal.
 - iv. The extension and copy of the Appeal Rules were given.
- b. Victim H then wrote their appeal and was successful.
- c. However, in the process, the Major General breached Victim H's right to Privacy by forwarding copies of his decision to others who had not received copies of their original correspondence on the matter.
- d. Victim H complained about this breach of Privacy by him and he made a very ungenerous apology.

14. Lying To The Association Over The 30th November 2013 Cut Off Date

- a. We had reports from various members in their dealing with the Defence Abuse Response Task Force from middle October 2014 on that the Defence abuse Response Task Force was going to bring in a new cut off date.

- b. That cut off date meant that if the Reparation Payment Applicant had not filed all material that they intended to rely upon by the cut off date, their claim would not be considered.
 - c. We made numerous formal inquiries about this with [REDACTED] and were repeatedly assured:-
 - i. No such date was being considered
 - ii. However, should it be contemplated we would be informed immediately.
 - d. This is because the victims who are having the greatest difficulty in filing their paperwork are the ones who are finding the process most distressing remembering what was done with them.
 - e. Not only was the Defence Abuse Task Force contemplating it, they were in discussions with Shine Lawyers and Slater & Gordon.
 - f. They had even announced the date to Shine Lawyers at the very time they were telling us that no such thing was contemplated.
 - g. We only became aware of it through our own resources when they published it on the web site.
 - h. Needless to say we gave [REDACTED] a serve via her voice mail for lying to us.
 - i. We also got Andrew Wilkie to write a letter on behalf of Victims which has somewhat modified it
- Depending on who a victim deals with at the Defence Abuse Response Task Force, this cut off date will be waived.

15. Imposing Unreasonable Requirements On Members Regarding The Statutory Declaration For A Reparation Payment.

- a. One of our members, Victim C lives in Thailand.
- b. He lives 400 km from the Australian Embassy
- c. At the time of the greatest unrest in Thailand over the recent elections, the Co-Ordinator at the Defence Abuse Response Task Force wanted him to travel into Bangkok at his own expense and hazard and redo his Statutory Declaration because he had put a postal rather than a residential address as part of his Statutory Declaration.
- d. This is notwithstanding that other victims had done the same with other Co-Ordinators and it had been accepted.
- e. With the approval and email authority of the member, we attempted to sort this out.
- f. Initially we were making good progress with this until the intervention of the Major General and the Co-Ordinator of the other victim giving orders not to recognise my authority or act on the instructions I was given on behalf of the victim member.

16. Making Victims Pay for Their Support Person 10th December 2014

- a. On 10th December 2014, Victim I was flown to Canberra for Restorative Justice.
- b. The Major General and the DART failed to provide the funds for the transport from Broadford Airport to Tullamarine or the transfers from Canberra Airport to the hotel or the Defence Abuse Response Task Force.
- c. Indeed they did not pay into Victim I's Bank Account the money for the hotel room until after the Restorative Justice Meeting.
- d. The Major General required him to pay for his own support person being his father.
- e. A Support Person for such things is not a luxury but a necessity.
- f. As a result, Victim I was so out of pocket that neither he nor his father had money for breakfast or lunch the next day.
- g. I had to transfer money to the Hotel to ensure that they at least had breakfast.
- h. I then sent a rather brutal email to the Major General, copy to the Parliament quite rightly demanding that he draw money and pay Victim I.
- i. I make no apologies for the harshness of the email, when Victim I rang me on the night of the 10th, he was in great distress as a result of the conduct of the Major General and the Defence Abuse Response Task Force.
- j. As a direct result of our actions and our representations to the Parliament, the Major General and the Defence Abuse Response Task Force have now agreed to pay the expenses of the support person.

17. Declaring The Association Bogus

- a. I went to Canberra in February of this year to agitate with various members of Parliament to amend the DVA Acts to make it easier for a victim to claim benefits and treatment and to seek greater compensation.
- b. I had sent a polite email to the Major General offering to meet with him to discuss Victim issues.
- c. Instead of taking me up on this offer he chose to instead send me a letter on the Thursday:-
 - i. Alleging that the Association was bogus
 - ii. Stating that in light of the emails we had sent the Parliament he refused to deal with us
 - iii. He also sent letters to those members we had authorities:-
 1. Claimed we were a one person Association
 2. That we were bogus
 3. Informed them that he would not recognise the authorities to Act that we held on their behalf and

4. Informing them that we would have to choose someone else, such as a Parent.
- d. Needless to say, the Committee and the members were outraged and we sent a letter contradicting him and demanding his resignation.
- e. We make no apologies for this for what he had done was beyond the pale.

6.7.4 DART and Defence Ignore The Recommendations Of The Senate Committee (Senate Committee Inquiry Into ADF Abuse And Government 2010)

Yet the Senate Committee itself recommended:-

“7.47

In terms of systemic advocacy, in the view of the committee, Defence would benefit from engagement with advocacy organisations representing the interests of victims of abuse in Defence. These systemic advocacy organisations potentially could provide valuable input and feedback into the ongoing Defence cultural reforms. As a first step, Defence should not discourage serving members of the ADF from forming an association or a support group for those who identify as victims of abuse in Defence.

Further, Defence should proactively engage any associations or organisations which represent members who have suffered abuse in Defence. For example, the committee notes that during the course of the inquiry, an association for victims of abuse in the ADF was established in Victoria 40

*40 'Rules of the Victims of Abuse in the Australian Defence Force',
http://www.adfabuse.com//Incorporated_Association_files/Rules%2003.pdf (accessed 21 May 2013)”*

6.7.5 Defence Abuse Response Task Force Needs To Start Genuine Consultation

It's as simple as that, the Defence Abuse Response Task Force needs to start engaging in genuine consultation with Victims and their Association for the benefit and welfare of the Victims.

7.0 Defence

7.1 The Abuse Continues – The Gift That Just Keeps On Giving

Indira Ghandi once said:-

*“Doctors bury their mistakes
Lawyers hang their mistakes
Journalists put them on the front page”*

In the case of the Australian Defence Force they:-

- Just write a new policy and
- Carry on with abuse as usual.

And that is exactly what has happened here.

7.1.1 What Happens In The Civilian World

7.1.1.1 Malaysian Airlines

After the loss of their plane and the subsequent bad press. Malaysian Airlines has gone out of its way to ensure:-

- Their planes are perfect
- Their air crew are perfect

Result: No more planes lost.

7.1.1.2 Glenroy RSL Inc.

My RSL had a problem with having the President found out to be to have never a war veteran when he was not and wearing decorations he was not entitled to.

As a result of the bad press, the most stringent measures were taken with new members to ensure only people who had served could become service members.

Result: No more imposters

7.1.2.3 *Carlton Football Club Sacks Player for Inappropriate Use Of Social Media*

As can be seen From Annexure Y, like Defence Carlton Football Club had strict policies on Social Media.

Unlike Defence, when those policies were violated, there was no worrying about Abuser rights but rather bang, your out.

That is what happens in the real world.

7.1.2 What Happens In Defence

You would think the Australian Defence Force would do the same as the Civilian World, wouldn't you?

Wrong!

In Defence's Case:-

- Lots Of Press Releases
- Pathways To Change
- Setup new Procedures
- Carry on with abuse as usual!

The proof of it is as follows:-

7.1.2.1 Standard Expected Of Other Ranks, Non Commissioned Officers And Officers

As can be seen the notional level of conduct expected of members of the Australian Defence Force is much higher than that expected of civilians.

Yet it would seem that civilians have a better grasp on dealing and rooting out abuse than the Australian Defence Force.

7.1.2.1.1 Behaviour Standard For Other Ranks And Non Commissioned Officers

The Army Handbook (First issued in 1965 7610-66-021-1631) states:-

"Page 21

The Soldier and Society

302. *You and your fellow servicemen in the Navy and the Air Force, differ in certain important respects from other members of the Australian community. First, you serve the Queen and the people of Australia through their elected representatives in Parliament. Second, your loyalty is to the Government, regardless of the elected party in power.*

303. *In addition, you are still a citizen of Australia and must always obey the laws governing you as a citizen. Indeed, as a soldier, you have the further responsibility of ensuring that by your behaviour and bearing, you set a good example. Your uniform immediately identifies you as a soldier; wear it with pride in the way described in Chapter 5. Never disgrace it."*

7.1.2.1.2 *Behaviour Standard For Officers*

In the Naval Protocol And Customs Handbook, which I was issued when I joined the Navy in 1983 it says:-

“The Officer

- 1. On receiving his commission. An officer attains a special status in the community. It demands a high standard of behavior and bearing and the conscious development of those qualities which make up that elusive attribute, leadership...*
- 5. An officer will be judged by his example. Punctuality must become a habit and he must be meticulous in financial matters. His personal behavior must be above reproach so that his position and the status afforded him by the granting of his Commission, is never compromised.”*

7.1.2.2 *“Kate” From The Skype Scandal*

A reasonable person would think that Defence would take every step to look after her.

Instead she was transferred from Base to Base, spat upon and called the “Skype Slut”

By contrast one of her abusers, Cadet McDonald was allowed to continue his studies and was only dismissed AFTER his conviction.

See Annexure D.

7.1.2.3 *The ADFA Rugby Team*

You would think after the “Skype” Scandal that the word would have gone out to all the cadets at ADFA to ensure no more monkey business.

Yet what do they do? (See Annexure M)

They:-

- Go out to a Canberra Night Club
- Get drunk
- Perform oral sex acts on each other like the Puppets in the Movie “Team America – World Police”

What does the Australian Defence Force do?

Apparently nothing.

If these are the would be future General Monash's, what level of stupidity led them to doing this in a night club with lots of Closed Circuit TV?

Especially in light of the Skype Scandal.

Furthermore, if this is the standard of the exception leadership, wily skill and devilish cunning for our Australian Defence Force Officers, in any future war, **our best option would be to surrender!**

These cadets are suppose to be the leaders of tomorrow.

7.1.2.4 3rd Brigade Townsville

In 2013, one week after Lieutenant General Morrisson's remarks about abuse not being acceptable. It was revealed that members of 3rd Brigade in Townsville had been engaged in abuse via Facebook.

As you will see from Annexure N, they were to be charged.

What is interesting is that we have never seen reported as to whether they have been convicted.

7.1.2.7 HMAS BALLARAT

See Annexure P.

In November 2013, Sailors on HMAS Ballarat were found to be abusing other sailors by putting whiteboard markers and other things in the anal cavities of other sailors.

So here we are three years after the Skype Scandal and Defence's "Pathways To Change" and yet the abuse continues unabated.

Perhaps "Pathways To Change" should be renamed "Road To No Where"!

What is also interesting are the following facts:-

- We know sailors were taken off for the abuse but not how many so we cannot gauge how bad it was.
- It was being investigated by the Australian Defence Force Investigative Service which itself practices abuse – See Annexure G.
- Finally we still do not know what happened to the abusers. Were they:-
 - Terminated/
 - Fined?
 - Other Punishment?
- All we do know at this point is that three were suspended.

**7.1.2.8 *Victims Of ADF Abuse Further Abused By No Reparation For Abuse
Post 11th April 2011***

The cut off date of 11th April 2011 was on the assumption that magically the abuse would stop and therefore there was no need for a reparation payment of Victims of Crime compensation.

Yet the abuse has continued the post 11th April 2011.

The crimes are on all fours with the abuse pre 11th April 2011 but the Victims are being arbitrarily denied compensation.

That in and of itself is:-

- Further abuse and
- Detrimental to the Victims.

It will simply not do!

**7.1.2.9 *11th April 2011 Defeats Defences' Obligations Under Commonwealth
OH & S Act***

As a parent, how would the members of the committee feel if the Government denied compensation for your children for their rape through an arbitrary cut off date.

Under the Commonwealth OH & S Act, Defence is obliged to secure the health, safety and welfare of those in its care.

Yet without the incentive of Reparation Payments, clearly it sees itself as having no need to stamp out the abuse.

This is reflected in its lack of effective action post 11th April 2011.

Clearly its action has been ineffective because the abuse continues.

7.2 Defence Clearly Unable To Deal With Abuse / Need For Independent Authority

The examples in the preceding section make it clear that the Australian Defence Force is inherently:-

- Unable to effectively investigate abuse
- Deal with it.

Furthermore, just like the Defence Abuse Response Task Force, it seems to have limited its focus these days to sexual abuse.

It seems to see:-

- Physical
- Mental and
- Career Abuse / Abuse of power

As “okay”

This is completely unacceptable.

7.2.1 Parliament And Australian People Find Time And Time Again Need For Independent Investigation Into ADF Abuse

Time and time again:-

- The scandal of abuse in the Australian Defence Force breaks out.
- The Parliament and the people of Australia find it necessary to cause an independent investigation
- Like a five year old the Australian Defence Force tells the Parliament and the Australian Defence Force that it will be good from now on.
- Like a five year old, it continues to engage in the abuse that got it into trouble in the first place.

Below is a simple but not exhaustive list of stand alone inquiries into the abuse in the Australian Defence Force.

- The Rapke Report
- The Inquiry into HMAS Success
- DLA Piper Review

It is also clear from Annexure F – “The Long Grey Line Of Abuse”.

There is an old Scottish saying:-

*“Fool me once, shame on you!
Fool me twice, shame on me!”*

Time and time again the Australian Defence fools the Parliament with its assertions that it will:-

- Properly Investigate abuse and
- Deal With it

It is clear that it can't.

Even its own investigative arm for abuse, the Australian Defence Force Investigative Service has been caught as an abuser.

Is it surprising that very little seems to happen to the abusers for the most part?

7.2.2 Secret Justice Is No Justice At All / Defence Justice Is Vapour Ware

In the Information Technology Industry we have a concept called Vapour Ware.

This is an announcement by a company of the really great software they are going to release in a couple of years time.

As members of the Parliament you will have seen the same, when Governments announce some great programme they are going to introduce in three years time.

In both cases:-

- Its about getting the credit and brownie points without doing the work and
- Quite often the great software or programme never eventuates and is forgotten.

It's the same with the Australian Defence Force.

The Australian Defence Force with regards abusers:-

- Announce people have been removed from the Ship / Base
- Announce that abusers have been suspended
- Announce that Charges have been laid

What The Australian Defence Force doesn't do (for the most part):-

- Doesn't announce how many were convicted or their names
- Doesn't announce how many were dismissed and for the most part their names (Cadet McDonald was an exception)
- Doesn't announce how many were subjected to internal discipline and their names.
- The only time we get to find about it is if the accused appeals to the Defence Force Discipline Appeals Tribunal.
- I draw the attention of the Committee to the most recent decision of the Defence Force Discipline Appeals Tribunal in McLaren v Chief of Navy [2013] ADFDAT 5 (29 November 2013)

In this case, where then sublieutenant McLaren had been convicted for an act of sexual indecency, was overturned because of errors by the Judge Advocate in charge of their Restricted Court Martial.

Defence can't even get its own internal court martials right!

It's a fundamental truth that secret justice is no justice at all.

In any other jurisdiction, if you are:-

- Charged, it would be a matter of public record.
- Convicted, it would be a matter of public record.

This applies from the lowest court to the highest courts.

All Courts and their records are open to the public.

It is only in the case of things such as sexual assault that a suppression order can be made to protect the victim – not the abuser.

Yet with Defence it does not.

Its Courts and discipline is for the most part done in secret, and not published on AUSTLII and COMLAW unlike most other courts.

7.2.3 Defence's True Attitude On Abuse – That It Is Okay

A reasonable person would have thought they would have got it right by now.

Clearly they have not.

Furthermore, they have focused on sexual abuse through their SEMPRO Office to the exclusion of other types of torture and abuse being practiced in the Defence Force.

It may punish low ranking offenders but it fails to punish Senior Officers for the failure to prevent the abuse and for covering it up.

Defence's true stance on abuse is revealed:-

- The long history of Defence Legal fighting abuse claims e.g. Squadron Leader Vance (See Annexure Q) and
- It's advice to the then Defence Minister Smith that it did not want DLA Piper Volume 2 because then it would have to deal with it is indicative of Defence's attitude on abuse. (See Annexure R)

7.2.4 It Is Time To Bite The Bullet – Independent Civilian Authority Required

7.2.4.1 Nemo Iudex In Causa Sua (You Cannot Be Judge In Your Own Cause)

Yet that is exactly what Defence has done for the last thirty years.

Not only been judge but investigator as well.

I am sure that Tony Mockbel would have liked to be investigator and his own judge./

He wasn't, because that's crazy.

Yet that is what we have allowed Defence to do and that is crazy too!

7.2.4.2 Defence Needs To Be Judged By Independent Civilian Authority

Time and time again the Civilian Authority being the Parliament, has made it clear that the abuse in the Australian Defence Force is unacceptable.

Defence just doesn't get it.

It is now time and indeed essential to take dealing with abuse out of Defence's hands and place it in an independent civilian authority.

It is clear that what is needed is a full time independent statutory which:-

- Is completely independent of Defence.
- Reports to Parliament
- Has coercive powers to compel production of witness and records
- Has, like the ACCC, the ability to take disciplinary / criminal prosecution against abusers
- Administers the Reparation Scheme
- Is investigative
- Investigates not just abuse pre 11th April 2011 but post 11th April 2011 as well.

7.3 Defence Does More For The Abusers Than The Victims

7.3.1 What Is Suspension (See Annexure A)

In response to a question on notice from Senator Xenophon, Defence answered what this meant.

It should be noted that for the most part an abuser is kept on pay, regardless of what the answer says.

Furthermore, we only know of one case where abusers who were suspended were removed from the base.

That was done two years by the then new commanding Officer of HMAS Cerberus, Captain Richards RAN, who took the quite proper view that she did not want them on her base!

We wish more Commanding Officers took the same approach as Captain Richards RAN.

If an abuser is identified and it is decided to place them on suspension, the following occurs:-

1. They are placed on pay on suspension.
2. No military work, no day work.
3. They still get to:-
 - a. Have meals with their mates.
 - b. Drinks in the bar and
 - c. Tamper with victims and witnesses.
 - d. Complete their degrees.

Great work if you can find it!

Wouldn't you as Senators like to be suspended like this!

7.3.2 What Is Termination (See Annexure A)

In response to a question on notice from Senator Xenophon, Defence answered what this meant.

If the decision is taken to terminate an abuser, the following occurs:-

1. The abusers are given a minimum of 28 days notice to show cause why they should not be terminated.
2. If they are terminated:-
 - a. Most of the time their details and reason for termination are not publicly announced
 - b. If it is announced, it is done late on a Friday Night e.g. Cadet McDonald
 - c. They can re join the Defence Force at a later date with a new personnel number and file.

7.3.2.1 *Victim Never Got 28 Days Notice To Show Cause!*

- They irony of the procedures for the abusers is that the abuser never gave a minimum of twenty eight days to show cause why they should not be:-
- Raped
- Assaulted
- Subjected to Torture and Abuse

Instead the victims on the other hand get hounded out of the Defence Force as was “Kate” from the Skype Scandal – See Annexure D.

7.3.2.2 *Abusers Get Greater Rights Than The Victims*

The abusers have greater rights than the Victims!

Who would you rather be Victim or Abuser?

7.3.2.3 *Defence's Abusers Protection Programme*

Other jurisdictions have Witness Protection Programmes.

Defence has one for the criminals.

If you are dismissed for abuse, the method of dismissal is "Retention Of Services No Longer In Interest Of Service".

This allows you to re join Defence at a later date.

We were told this some time ago by the head of Defence Legal when researching the matter of Dishonourable Discharge.

The head of Defence Legal went on further to inform us that she knew of a number of people who had been discharged "Retention Of Services, No Longer In Interest Of Service" who had been able to re join.

However, given the nature of Computer System i.e. you can't reopen a terminated file, it means:-

- The abuser gets a new Personnel number
- A lovely new blank Personnel File and
- Still gets credit for any military training they have done previously.

I am sure Tony Mockbel would like a deal like that.

But it begs two Public Policy Questions:-

Shouldn't we doing more for the Victims and

Ensuring that abusers never work for Defence or the Federal Government Again.

There is precedence – we don't allow convicted Paedophiles to work with children, do we?

We wouldn't let a convicted spy back I, would we?

So why should we allow abusers back into Federal Service to continue their abuse?

7.3.2.4 Uniformed Members Are Not Employees But Servants Of The Crown – No Unfair Dismissal

It should be noted that it is well established principle in the High Court that uniformed members of the Australian Defence Force are not employees of the Commonwealth but servants of the Crown. (See *Coutts v Commonwealth* [1985] HCA 40; (1985) 157 CLR 91 (20 June 1985))

As was quoted in that judgment by Dawson J at paragraph 8 of his judgment:-

“...At common law Crown servants may be dismissed at pleasure and without notice. As Williams J. said in Kaye v. Attorney-General (Tas.) [1956] HCA 3; (1956) 94 CLR 193, at p 203 :

“Apart from statute, the employment of servants by the Crown, naval, military or civil, is at the will of the Crown, so that the Crown is entitled to dismiss them at any time without notice. Even if they are employed for a definite period, their employment is still subject to a reserval of the right of the Crown to dismiss.”

There is no issues of:-

- The office is held at the pleasure of the Crown and
- No right for unfair dismissal

Abuse of others cannot be pleasing to the Crown.

Therefore, in the case of the abuser, there is no reason why they cannot be dismissed immediately.

And they should.

It should always be remembered, in the Military you don't get suspended or charged unless we are really, really, certain you are guilty, or at least that is what the training I received in Naval Law taught me.

**7.3.2.5 *Alternative Solution For Abusers – Defence Must Stop Failing Deadly
And Start Failing Safe***

At the moment:-

- We give more rights to the abusers than to the Victims.
- Even when we terminate an abuser, they can re join
- We send a message that abuse is okay
- That Defence is not serious about its obligations under the Commonwealth OH & S Act.

This needs to be changed.

As soon as we identify an abuser or a protector of an abuser, we immediately say that the service no longer pleases the Crown.

We then immediately terminate them and set up systems that they can never be:-

- Able to serve in the Australian Defence Force Again and
- Employed in Federal Service

It would be the single most powerful way to stamp out abuse and the protection of abusers.

Of course it could only be reliably done by an independent civilian authority.

Consider this, if a uniformed member of the Defence was strongly suspected of selling our Defence secrets to an enemy or even a reporter, bang they would be gone.

There would be no mucking about because National Security is so important.

Because it is better for our nation, in that circumstance, to fail safe rather than deadly.

The same should apply for abuse.

7.4 Defence Refuses To Comply With The Senate And Engage With Victims And Their Association

7.4.1 The Recommendations Of The Senate Committee To Engage With Victim Associations (Senate Committee Inquiry Into Abuse 2010)

The Senate Committee itself recommended:-

“7.47

In terms of systemic advocacy, in the view of the committee, Defence would benefit from engagement with advocacy organisations representing the interests of victims of abuse in Defence. These systemic advocacy organisations potentially could provide valuable input and feedback into the ongoing Defence cultural reforms. As a first step, Defence should not discourage serving members of the ADF from forming an association or a support group for those who identify as victims of abuse in Defence.

Further, Defence should proactively engage any associations or organisations which represent members who have suffered abuse in Defence. For example, the committee notes that during the course of the inquiry, an association for victims of abuse in the ADF was established in Victoria⁴⁰

⁴⁰ 'Rules of the Victims of Abuse in the Australian Defence Force',
http://www.adfabuse.com//Incorporated_Association_files/Rules%2003.pdf (accessed 21 May 2013)”

7.4.2 Defence Pretends Victims Don't Exist

7.4.2.1 General Hurley Misleading The Public – Claiming No Victim Association

Defence publicly denies that there is a Victims Association – General Hurley interviewed on ABC Radio National Breakfast 28th April 2014.

He said:-

“There's been no advocacy groups come together about this”

What is the truth of the matter?

- The Association for the Victims Of Abuse In The Australian Defence Force A0059257W was formed on 29 April 2013.
- Our website www.adfabuse.com has been running considerably longer.
- Our Facebook Page <https://www.facebook.com/pages/Victims-Of-Abuse-In-The-Australian-Defence-Force/491111244289939> was established on 2nd June 2013.
- Our twitter account is @VicsOfADF_Abuse
- At his request and others in Defence, the following people in Defence receive copies of our emails to the Parliament:-
 - General Hurley
 - Lieutenant General Morrisson
 - Vice Admiral Griggs
 - Air Vice Marshall Brown
 - Air Commodore Ehlers
 - Mr M. Holmes
 - Mr D. Richardson
 - Mr R. Busby
- We have corresponded with him on abuse issues such as Senior Officers (i.e. of General Rank), who are abusers still in Defence, as witnessed by the attached letter from Air Commodore Henrik Ehlers, Director General Cultural Reviews Response. (See Annexure S)

You will no doubt note the last sentence in the first paragraph

“The CDF has asked me to respond on his behalf.”.

- Furthermore, attached is a snapshot from General Hurley's Twitter page (See Annexure T) which:-

- Shows us as followers from his own twitter account and
- Demonstrates that he clearly knows or ought to now
- Then there is the letter from the current Minister For Veterans Affairs that acknowledges our existence. (See Annexure U).
- In February 2014 when I came up to Canberra to raise abuse issues, I offered to meet him (Copy attached) – he refused to respond.

7.4.2.2 *Official Interference By Air Commodore Ehler Affected Dealing With Matter Of Navy Person Alleged To Have An Organised Victim Rape Getting OAM*

It should be noted we were contacted by one Victim who was in great distress in January of this year.

The victim was in great distress because the person who allegedly organised his rape had just been awarded an Order Of Australia Medal in the Military Division.

We acted promptly and contacted Vice Admiral Griggs who quite reasonably delegated this to his subordinate Rear Admiral Michael Van Balen RAN.

In dealing with it, difficulties were experienced in forwarding essential information to Rear Admiral Balen because it would seem that Air Commodore Ehler had put a diversion on our standard email addresses to him.

I was able to get the information through to the Rear Admiral through an account that Air Commodore Ehler did not know about.

However, it begs the question, why did Air Commodore Ehler feel it necessary to intercept emails to prevent them going to the intended recipient.

7.4.2.3 *Defence Rewriting Of Reality Is In The Best Tradition Of Stalin And Beria*

The Australian Defence Force is often seen as an ultra right wing organisation.

Yet this rewriting of reality and history is in the very best traditions of Stalin and Beria e.g. role of Stalin in the October Revolution and that of General Vlasov who was written out of history after he decided to serve the Nazis after being captured.

Perhaps we are all wrong and they are more left wing than we knew!

7.4.3 Defence Thumbs It Nose At The Senate By Non Compliance With Senate Recommendation

7.4.3.1 Defence Must Be Subordinate To Elected Civilian Authority

It is an essential element of a democracy that the military be subordinate and respectful of the elected representatives of the people, being the Parliament of the Day!

If they are not, that is the hallmark of a banana republic.

By Defence's Failure to:-

- Comply with the legislation banning abuse passed by the Parliament for over the past 30 years
- Recommendations of the Senate and its Committees
- Show proper respect and instead display disrespectful conduct towards Senators at Senate Estimates as if the senator should be grateful that the Officers concerned let them speak to them and
- Proper respect and intimidate Senator Elect Jacquie Lambie engaging in proper free speech.

7.4.3.2 Contempt Of Parliament / Breach Of Privilege By Defence And DART

Furthermore both Defence and the Defence Abuse Response Task Force have engaged in breach of Privilege and contempt of Parliament as follows:-

- Defence – When his superior Commodore Waller punished him for making a Senate Submission which was protected by Privilege to the last inquiry and
- Defence Abuse Response Task Force by punishing us for communications to Senators and Members of the House, on matters forming part of their duties, which Major General Roberts-Smith RFD QC did not like.

7.4.3.3 Defence Must Pay Full Marks Of Respect To And Heed Parliament

It must be a concern for anyone who loves our democracy and Parliamentary system of government.

If they have a problem with the legislation of the Parliament or its recommendations their Senior Officers should resign and run for elected office themselves.

In the meanwhile they should respect Parliament and its recommendations and engage with our Victim Association.

After all our Victim Members:-

- Have direct knowledge of the matter and
- Insight in how to stop it and
- Insight in how to support the Victims,

Yet here, the Senate has made a recommendation specifically calling for engagement with Victims Association.

We believe that they have not engaged as per the Senate Recommendation because the Australian Defence Force and its leadership doesn't like what it expects to hear.

Seems that the current leadership of the Defence Force has forgotten what I was once told as a young midshipmen –

“You don't have to like your lawful orders, just obey them.”

It seems that Defence sees the Senate and the Parliament as a whole as a smorgasbord – that it can pick and choose what it will comply with.

This is unacceptable and Defence must be brought to the heel of the elected civilian authority being the Parliament.

8.0 DLA Piper Volume Two Should Be Released

In order to make an informed decision, one must first be informed.

Without DLA Piper Review Volume 2, how can the Parliament and Australian people:-

- Be informed and
- Make informed decisions about abuse in the Australian Defence Force.

Furthermore, since we have been advised that Defence didn't want Volume 2 because then it would then have to take action on the abuse allegations, that is perhaps is the best reason of all.

We say Gary Rumble says it even better in Annexure R.

If we are to have confidence in the Government's Response to abuse in the Australian Defence Force, Volume 2 must be released with the identities of the victims removed, just as we have done in this submission.

No more need be said.

9.0 Setting Up Of Independent Civilian Statutory Authority

9.1 Nemo Iudex In Causa Sua (You Cannot Be Judge In Your Own Cause)

Yet that is exactly what Defence has done for the last thirty years.

Not only has it been its own judge but its own investigator as well.

I am sure that Tony Mockbel would have liked to have been his own investigator and his own judge.

He wasn't, because that's crazy.

Yet that is what we have allowed Defence to do and that is crazy too!

9.2 Defence Needs To Be Judged / Policed By Independent Civilian Authority

What is needed is a full time independent statutory authority which:-

- Is completely independent of Defence.
- Permanent until Parliament decides otherwise – not Defence
- Reports to Parliament
- Has coercive powers to compel production of witness and records
- Has, like the ACCC, the ability to take disciplinary / criminal prosecution against abusers
- Administers the Reparation Scheme
- Is investigative
- Investigates not just abuse pre 11th April 2011 but post 11th April 2011 as well.

It needs to:-

- Be able to investigate and prosecute all abuse current and present
- Make reparation payments in line with Community Standards to those Victims
- Prosecute those abusers or
- Where a prosecution can't be made, have the abusers dismissed from the Defence Force never to be reemployed.

The Defence Abuse Response Task Force is purely a creature of agreement between the Defence Department and the Attorney General Departments.

It:-

- Can be shut down at any time by decision of the executive government
- Is not responsible for ensuring prosecutions taking place
- Is limited by its establishing instrument to compensating abuse that occurred prior to the 30th April 2011 and nothing afterwards
- Is not subject to the more rigorous public scrutiny that would come with it being a permanent statutory authority.

10.0 The Various Veterans Affairs Acts Need To Be Amended to Reflect Difficulties Of Victims

10.1 DVA Acts Never Took The Special Needs Of Victims Into Account

The Acts under which the Department Of Veterans Affairs operates under were never written with the specific problems of Victims of Abuse in the Australian Defence Force in mind:-

- Circumstances of Discharge / Extreme Difficulty of proving that the abuse took place.
- Trying To Find Witnesses.
- Getting Witnesses To Give Statements For Fear Of Retribution.
- Service Records Hide The Abuse And Real Reason For Separation.
- Having Insufficient Time In Service To Be Covered By The Veterans Affairs Act.

The hurdles above arise not from the Victims actions but rather the wilful action and inaction of the abusers and the Australian Defence Force.

10.2 Threshold For Victim DVA Claims Need To Be lowered To Plausibility

The Acts need to have their thresholds lowered for the claims of Victims of Abuse in the Australian Defence Force.

10.3 Amendments Need To Have Element Of Retrospectivity

There needs to be an element of Retrospectivity.

If a Victim has submitted a claim that has been rejected, it should be able to be reconsidered and if successful take effect from the date of original lodgement.

11.0 Need For Royal Commission

Only a Royal Commission can:-

1. Fully expose the extent of the past and present abuse in Defence
2. Provide adequate protection and support to Victims as has been shown by the current Royal Commission into Institutional Child Abuse.
3. Allow the Parliament and the Australian people to be properly informed on the matter.
4. Help prevent it for the future.

We have seen the benefits of the current Royal Commission into Child Abuse:-

- Giving all victims a chance to tell their story in a supportive environment
- Providing full and proper counselling and support
- Ensuring monolithic institutions to account and forcing them to confront their wrongs to others
- Ensuring prosecutions where appropriate
- Getting the long held dirty little secrets out into the open.
- Ensuring no child abuser can hide behind a veil of secrecy.

We need a Royal Commission into the Australian Defence Force to do the same and to restore confidence in the Defence Force.

We draw your attention to Annexures X and Y which speak even more eloquently on the need for a Royal Commission.

Annexure A – What Does It Mean To Suspend - Terminate In The Australian Defence Force

Supplementary Budget Estimates hearing – 20 November 2013 Question on Notice No. 49 – DART Abuse Senator Xenophon provided in writing:

1. Can the CDF, or one of the Service Chiefs fully explain and elaborate on the term “suspend” with regard to service personnel when applied under the implemented Cultural Reforms Program?
2. Can the CDF, or one of the Service Chiefs fully explain and elaborate on the term “terminate” with regard to service personnel when applied under the implemented Cultural Reforms Program?
3. Does the Australian Defence Force have the ability/option to dismiss using the term “dishonourable discharge” for the egregious misrepresentation of defence values as expressed to the parliament and the Australian public?
 - a. If not, why not? When was it removed from the military justice options?
4. Once a payment has been approved by the DART, why, as has been reported by the Australian Defence Force Abuse Association, is it taking four-six weeks to process reparation payments?
5. Why has the DART seen fit to outsource the reparation payment process?

Response:

- (1) The term ‘suspend’ in relation to Australian Defence Force (ADF) personnel normally refers to the exercise of legal powers granted to authorised officers under the *Defence Force Discipline Act 1982* (DFDA) to suspend members from duty. An ADF member who has been convicted of an offence, whether that is a service offence, a civil court offence or an offence against foreign law, can be suspended from duty ‘*pending a decision as to the termination of the member’s service*’. An ADF member who has been charged with such a Service or civil law offence, or who is under investigation on suspicion that they have committed a Service offence, may also be suspended from duty. A member who is suspended from duty in both these circumstances is not entitled to pay, unless the relevant authority appointed by CDF or a Service Chief determines that the suspension should be with pay. This is authorised in subsection 98(1) and (2), subsection 99(2) and subsection 100(2) of the DFDA. The operation of this power to suspend with respect to the ADF cultural reform program is therefore limited to persons accused of, charged with, or convicted of offences, such as sexual offences or contravention of existing orders regarding behaviour.
- (2) The ‘termination’ of a member’s service is a process described in the *Defence (Personnel) Regulations 2002* (the Regulations). It may refer to voluntary or compulsory termination of a member’s service in the ADF for the reasons identified in the Regulations at Chapter Nine. A member’s service in the ADF

may be terminated compulsorily if the member becomes a permanent resident of another country, is redundant, is continuously absent without leave for three months or more, or for other reasons. Relevant other reasons are set out in Regulation 85 for officers and Regulation 87 for enlisted members. In the case of ADF members who have behaved contrary to the standards set out in the cultural reform initiatives, extant Defence policy and Defence values, the most relevant ground on which their service may be terminated is that their Service Chief is satisfied that their “retention is not in the interests” of either the ADF or their Service, because of their performance, behaviour or their conviction for an offence. This provision confers a broad discretion on the Service Chiefs and the Governor General (or delegates), in particular to decide what kind of behaviour is not compatible with continued service. Further reasons to terminate the service of an enlisted member or an officer include mental or physical incapacity, failure to become an Australian citizen failure to render required service and the request of a minor member’s parent or guardian. In addition, officers’ service may be terminated if they are inefficient or incompetent for a reason that is within their control, and enlisted members’ service may be terminated for unsuitability for service or for further training.

The Regulations require that the decision-maker on termination of service for any of these reasons also take into account a range of organisational matters and *‘whether, having regard to the individual's past and present conduct, the individual is of good character’* (Regulation 7). This is an important factor with regard to individuals who have behaved contrary to Defence values, standards of behaviour and cultural reform initiatives. The mandatory consideration of good character is a recent addition to the Regulations and commenced operation on 5 March 2013.

The termination of a member’s service must follow the procedure prescribed in the Regulations, which generally includes the issue of a notice setting out the reason for the proposed termination and the provision of a minimum of 28 days for the member to respond. For terminations under Regulations 85 and 87 of the Regulations, a decision to terminate the member’s service cannot be made until the 28 day notice period, or longer if extended, has elapsed. From a practical perspective, this limits the speed with which the service of ADF members can be terminated. Additional time may also be required after a decision is made to complete administration associated with the termination of service, including medical clearances, return of Defence equipment and the departure of the member and their family from Service housing.

The ‘termination’ of an ADF member’s service is also authorised by Part VIIIA of the *Defence Act 1903*, in respect only of members who test positive to prohibited substances. The procedures for testing and for the termination of members’ service on the basis of a positive test result are prescribed in that Act.

In addition to the termination of a member’s service under the Regulations and the *Defence Act*, the *Defence Force Discipline Act 1982* (DFDA) also retains the punishment of *‘dismissal from the Defence Force’* which may be imposed on both officers and enlisted personnel who commit service offences of a

serious nature This ignominious form of termination of service is listed by the DFDA as the third most severe sanction on the scale of punishments (after imprisonment for life or imprisonment for specified period). Given the severity of this punishment, it may only be imposed by a higher level Service tribunal—that is, a Court Martial and Defence Force magistrate.

- (3) Pejorative adjectives such as ‘dishonourable’ are not used in the *Defence (Personnel) Regulations 2002* to describe the legal grounds or reasons for administrative termination of service. Personnel who commit offences or whose behaviour is otherwise unacceptable can still have their service terminated under those Regulations on the basis that their retention is not in the interests of either the Defence Force or one of the three Services. When making a decision whether or not to terminate a member’s service on this basis, misconduct by the member cannot be ignored. Indeed, the Regulations were amended in March 2013 to explicitly require authorised decision-makers to consider whether, *‘having regard to the individual’s past and present conduct, the individual is of good character’* when making such termination decisions.
 - (a) Not applicable, noting that individuals convicted of service offences by Court Martial or Defence Force magistrate may be dismissed from the Defence Force and that, under the *Defence (Personnel) Regulations 2002*, an individual’s good or bad character is a mandatory consideration in respect of decisions to terminate a member’s service in the Defence Force.

Annexure B- Deceptive Nature Of DART Response On Payment Processing

Supplementary Budget Estimates hearing – 20 November 2013 Question on Notice No. 49 – DART Abuse Senator Xenophon provided in writing:

4. Once a payment has been approved by the DART, why, as has been reported by the Australian Defence Force Abuse Association, is it taking four-six weeks to process reparation payments?
5. Why has the DART seen fit to outsource the reparation payment process?

Response:

- (4) To date, the average time to process reparation payments, between receipt of a complainant's Electronic Funds Transfer (EFT) form and payment, is nine days.

In order for a payment to be processed, the Reparations Assessor must have made a final decision and the Taskforce must have received an EFT form from the complainant. Once this has occurred, a payment is made within 28 days.

The longest amount of time between receipt of an EFT form and payment to date has been 23 days.

- (5) The engagement of an external service provider to deliver the Defence Abuse Reparation Scheme payments ensures the confidential details of complainants are protected.

Utilising a service provider is less resource intensive than Commonwealth personnel providing the service, and enables the Taskforce to effectively and efficiently use Commonwealth funding.

Annexure C – Background Of Major General Roberts-Smith RFD QC



Ms Angel's lawyer, Geraldton barrister George Giudice, says in his submission to Mr McGinty that the miscarriage of justice was comparable to such high-profile cases as Lindy Chamberlain, Tim Anderson and John Button, yet authorities had been unwilling to confront the injustice for almost two decades.

He said a litany of lies, police verballing, incompetence by various departments and plain mean-spiritedness had dogged Ms Angel, who had never recovered from the ordeal, particularly the death of her son, for which she blamed herself.

He hoped the Labor Government, which had always been sympathetic to Ms Angel's cause, could come up with a fair and reasonable payment.

The compensation document, obtained by The Australian, also urges Mr McGinty to push for uniform national laws to deal with similar claims in all states. Any compensation to Ms Angel can be made only at the discretion of the Attorney-General.

Ms Angel, a full-blood Goodabinya Aboriginal from the outback Pilbara town of Marble Bar, was just 29 when convicted by an all-white jury in October 1989 of wilfully murdering Richards, the partner of her blind, elderly father.

She was initially questioned by South Hedland detectives and gave them a signed statement saying that she had slapped her stepmother across the face before walking off and never seeing her again.

This statement was not accepted by police and was not led into evidence at the trial by Mr Roberts-Smith or his deputy, Lloyd Rayney, now a prominent Perth lawyer who was recently accused by West Australian police of murdering his wife, Corryn. Mr Rayney, who has not been charged, has denied any role in his wife's murder.

But two subsequent and uncorroborated "confessions" - made under duress, without being properly recorded or without Ms Angel having any legal representation - were. These statements, in which an unknown white man mysteriously appears to help Ms Angel dispose of the body, were pivotal in police securing her murder conviction.

A concerted campaign by Mr Giudice over the next few years led to a parliamentary inquiry and her subsequent acquittal by the Court of Criminal Appeal in October 1991.

A spokesman for Mr Roberts-Smith said he was unaware of Ms Angel's compensation claim and was unable to comment further.

Ms Angel could not be contacted for comment.

The Australian

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Networked Knowledge - Media Report

[This version of the report has been edited by [Dr Robert N Moles](#)
Underlining where it occurs is for editorial emphasis

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[Article: Australian law on miscarriages of justice](#)

[Article: UK law on miscarriages of justice](#)

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On 4 December 2007 Tony Barrass of The Australian reported "Len Roberts-Smith accused of withholding evidence"

He said WA's top corruption fighter has been accused of withholding evidence that could have cleared an Aboriginal woman of murder 18 years ago. The role of Len Roberts-Smith, now the head of the Corruption and Crime Commission but the Crown prosecutor in the 1989 murder trial of itinerant Jeanie Angel, is central to a \$3.5 million compensation claim being considered by Attorney-General Jim McGinty. Ms Angel, now 47, was charged, convicted, then subsequently cleared of murdering her stepmother Jean Richards in South Hedland, 1300km north of Perth, in March 1989. While serving a life sentence at Bandyup Women's Prison in Perth, her three-year-old son, Wayne, died of a brain infection in Princes Margaret Hospital.

Three Aboriginal women received tribal punishment for the crime after Ms Angel's 1991 acquittal by the Court of Criminal Appeal, but no one has been charged over the murder or the police investigation.

Successive governments have refused to apologise or compensate her for the 902 days she spent in jail. Ms Angel's lawyer, Geraldton barrister George Giudice, says in his submission to Mr McGinty that the miscarriage of justice was comparable to such high-profile cases as Lindy Chamberlain, Tim Anderson and John Button, yet authorities had been unwilling to confront the injustice for almost two decades. He said a litany of lies, police verballing, incompetence by various departments and plain mean-spiritedness had dogged Ms Angel, who had never recovered from the ordeal, particularly the death of her son, for which she blamed herself. He hoped the Labor Government, which had always been sympathetic to Ms Angel's cause, could come up with a fair and reasonable payment.

The compensation document, obtained by The Australian, also urges Mr McGinty to push for uniform national laws to deal with similar claims in all states. Any compensation to Ms Angel can be made only at the discretion of the Attorney-General. Ms Angel, a full-blood Goodabinya Aboriginal from the outback Pilbara town of Marble Bar, was just 29 when convicted by an all-white jury in October 1989 of wilfully murdering Richards, the partner of her blind, elderly father. She was initially questioned by South Hedland detectives and gave them a signed statement saying that she had slapped her stepmother across the face before walking off and never seeing her again. This statement was not accepted by police and was not led into evidence at

Aboriginal Reports: Len Roberts-Smith accused of withholdin...

<http://netk.net.au/Aboriginal/Aboriginal64.asp>

the trial by Mr Roberts-Smith or his deputy, Lloyd Rayney, now a prominent Perth lawyer who was recently accused by West Australian police of murdering his wife, Corryn. Mr Rayney, who has not been charged, has denied any role in his wife's murder.

But two subsequent and uncorroborated "confessions" - made under duress, without being properly recorded or without Ms Angel having any legal representation - were. These statements, in which an unknown white man mysteriously appears to help Ms Angel dispose of the body, were pivotal in police securing her murder conviction. A concerted campaign by Mr Giudice over the next few years led to a parliamentary inquiry and her subsequent acquittal by the Court of Criminal Appeal in October 1991. A spokesman for Mr Roberts-Smith said he was unaware of Ms Angel's compensation claim and was unable to comment further. Ms Angel could not be contacted for comment.

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Annexure D – Skype Victim Further Abused By Defence

Skype abuse victim alleges bullying at Amberley RAAF base |...

<http://www.qt.com.au/news/raafamberley-abuse-claims-skype...>



Skype abuse victim alleges bullying at Amberley RAAF base

Kieran Banks | 8th Nov 2013 5:00 AM | Updated: 8:03 AM



HER STORY: The victim of the Skype sex scandal talks to the ABC.

ABC

THE victim of the ADF's Skype sex scandal has claimed she was bullied about the incident after she was posted to serve at Amberley RAAF base.

Known as Kate, the then 18-year-old air force cadet claims she was targeted by male colleagues during her time at the base after she was secretly filmed having sex by fellow cadet Daniel McDonald at the Australian Defence Force Academy in Canberra.

A second cadet, Dylan De Blaquiere, streamed the footage via Internet phone service Skype to five other cadets watching in another room.

In an interview with the ABC, the woman revealed that RAAF colleagues at Amberley had forced her to stay in her room.

"I suffered victimisation and bastardisation, it seemed, from every angle in my life when it came to the defence force," she said.

"Everywhere I went, there seemed to be a new incident that would occur. It follows you everywhere you go.

"When I was living on base at Amberley I couldn't leave my room except to go to work because the boys in the room across from me thought it was fun to terrorise me and call me the Skype slut continually every time I left my room.

"So, it takes its toll. You get to the point where you just want it to stop, you want everything - you do question whether or not you made the right decision."

An Australian Defence Force spokesperson said the complaints made by Officer Cadet Kate had been investigated as a top priority.

"Defence has provided extensive support including logistics, medical, administrative and legal support to assist the member and will continue to do so," the QT was told.

McDonald and De Blaquiere were eventually found guilty of sending offensive material over the Internet without consent and placed on 12-month good behaviour bonds.



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Annexure E – Ongoing Abuse – ADFA Rugby / AFL Club Scandal

10 ADFA cadets now suspended over drunken pub crawl bast

<http://www.news.com.au/national-news/adfa-cadets-now-sus>

News.com.au (<http://www.news.com.au>)

National News - Syndicated (/national-news)

10 ADFA cadets now suspended over drunken pub crawl bastardisation scandal

- by: IAN MCPHEDRAN Defence Writer
- From: News Limited Network
- July 02, 2013 3:57PM

A TOTAL of 10 future military leaders from the Australian Defence Force Academy have been suspended over their roles in the latest bastardisation scandal to hit the elite taxpayer-funded military university.

Up to 20 cadets and midshipmen are under investigation over a series of incidents that culminated in a drunken pub/club crawl last month in Canberra by members of the academy's rugby and AFL clubs.

During the so-called "hazing" or initiation rituals that went on over several months, cadets were allegedly forced to;

- * Fondle other cadets' genitalia
- * Drink urine
- * Have sex with a prostitute for a bet
- * Remove their pants when a particular song was played

Some cadets allegedly were also forced to stand on their heads while drinking.

Seven of the 10 suspensions took place before the vice-chief of Defence, Air Marshal Mark Binskin, who is responsible for ADFA, went public with details of the incidents.

Defence has denied claims from some insiders that the investigation has hit a brick wall.

"ADF Investigative Service personnel are continuing to make inquiries and take statements. A total of ten ADFA officer cadets and midshipmen have now been suspended and further suspensions may occur," Defence said.

"The vast majority of ADFA cadets and midshipmen understand what is expected of them as future leaders of the ADF and they act accordingly."

However News Corp Australia has been told investigators cannot substantiate many of the allegations due to wildly differing accounts of timings and locations from alleged perpetrators and whistleblowers.

"No one is admitting to any of the serious allegations," a Defence source said.

The move follows the suspension of eight senior soldiers, including elite commandos, from the army over the so-called "Jedi Council" video sex email ring.

A further 90 troops remain under investigation by the ADF Investigative Service in relation to the email scandal where women were filmed having sex with ringleaders who distributed the images and a dossier on the women to other members of the defence force.

Defence said its senior leadership team was "strongly committed to ensuring that those who cannot meet Defence's values and standards will be held to account for their conduct."

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3/07/13 8:56 AM

Annexure F – The Long Grey Line Of Abuse

Will Defence ever stop defending the indefensible? | Article |...

<http://www.thepunch.com.au/articles/will-defence-ever-stop-d...>



by Ben Wadham
06 Apr 12:00pm

Will Defence ever stop defending the indefensible?

FILED UNDER: ADF, ARMY, DEFENCE, RAAF, SCANDALS, WOMEN

400 COMMENTS

Like

The reputation of the defence force has once again been tarnished by its personnel behaving badly. A defence force cadet has allegedly filmed himself having sex with another cadet and broadcasting it to his peers in an adjacent room.



I am dreaming of a wa Christmas - s is a caption

I am dreaming of a wa Christmas

60



Why a suburban m gave her kids' r guns the bullet - s is a caption

Why a suburban

The 18-year-old female RAAF cadet spoke of her sense of betrayal and abuse on Tuesday as the federal police and Defence investigators launched an investigation. She alleges she had consensual sex with the fellow cadet who was broadcasting their moment of intimacy by webcam to his mates in a separate room.

UPDATE: Defence Minister Stephen Smith said this afternoon that the ADF will not tolerate conduct that was sexist, vilified women or was indecent or undivulised. He also said it was possible the female cadet could face disciplinary action.

Similar types of incidents persistently mar the ADF, and have done so over the course of its existence. At a time when the ADF is attempting to improve the employment and retention of female personnel the question is once again raised. Is the ADF female friendly? Are sexism, and other forms of prejudice and violation culturally endemic?

The ADF Defence Equity Organisation was established in 1997 following a recommendation emerging from several inquiries into a culture of sexism and harassment on its ships, its bases and in its training establishments. Only recently the ADF contracted the development of a gender equity education program service wide.

The Defence Force Academy forbids fraternisation and the cadet accommodation is gender segregated.

However, the ADF is a highly masculinised institution. Militarism is a traditionally male enterprise. If true, this alleged incident highlights the disregard with which the woman in question was held by the young cadet and his group of peers. It highlights the way men bond together at the expense of women, and others, in order to buttress their privilege. Youth is another factor.

Will Defence ever stop defending the indefensible? | Article | ..

<http://www.thepunch.com.au/articles/will-defence-ever-stop-d..>

num gave her kids' oy guns he bullet

25



ur survival guide
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four surv uide of he school holida

The HMAS Success is fresh in our minds. The Australian public has been exposed to a culture of sexual predation by a group of young men, embedded within an environment of habitual binge drinking, bullying and intimidation. Six years ago Defence Chief Air Chief Marshal Angus Houston claimed he would stamp out this culture after the release of the 2005 Senate Inquiry into the Effectiveness of Australia's Military Justice System.

So why do these practices persist?

Military training, and in particular specialised arms corps units, like infantry battalions, or Navy ships, generate an intense environment of group solidarity. They are dominated by men and their values, beliefs and practices. Group solidarity requires something to rally against, degrade or subordinate to the group identity.

All others, including female classmates are subject to this cultural form. At best women are guests in this environment. Sex, ethnicity, gender, ability, or other forms of social status are the key axes of differentiation. Sexualisation, sexism, racism and bullying and abuse are the instruments of group bonding.

While the ADF might excuse these acts as the transgressions of a few bad apples, we are left with the enduring experience of a culture of depravity. Sure, these things happen across other parts of society such as football clubs or among groups of other men. But they are not the military, they are not trained within a purportedly elite institution, manned by professional elites.

This cadet should, and will, face the force of civilian and military law. But we should as a community continue to hold our focus on the obligations of the military command. Ultimately, no amount of gender equity education will overcome the imperative of military training - to elevate the self and degrade the other.

This dilemma is one the ADF command must grapple. Given their own training they are best placed to understand it.

Like

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not your Santa Claus
Punch on: Open thread
19/12/2012
170 Changing US gun laws will be nigh
impossible
170
170 COMMENTS

L. says:

12:09pm / 06/04/11

Will Defence ever stop defending the indefensible?"

Sorry, but I can't see were Defence is trying to defend or condone what happen to the RAAFy at ADFA..??

Reply

24 MatLon says:

12:26pm / 06/04/11

@L. Because they initially tried to cover it up until the young lady in question went to the media. Only then was an investigation decided.

Have to wonder how many other incidents have gone under the radar due to a successful cover-up.

L. says:

Annexure G – ADFIS Practicing Abuse

ADF Investigation Service sent 'insulting and humiliating' ema...

<http://www.theaustralian.com.au/news/adf-investigation-servi...>

THE AUSTRALIAN

ADF Investigation Service sent 'insulting and humiliating' emails

PATRICK LION NEWS LIMITED NETWORK JUNE 21, 2013 5:57AM



"Guys, I need the above idiot's paperwork for his appt tomorrow," the staffer allegedly wrote. Source: Supplied

THE Defence internal investigation service probing the army email porn scandal was itself busted last month for inappropriate email use after "humiliating" a suicidal soldier scarred from recovering dead diggers' bodies in Afghanistan.

The Inspector-General overseeing military justice also described the offensive emails by Australian Defence Force Investigation Service staff as "insulting" after a complaint from the sick ADFIS investigator's wife.

The ill investigator, who was on sick leave after returning from the Middle East, had emailed his work office last year seeking approval for weekly travel to be treated for post traumatic stress disorder.

He was accidentally forwarded emails showing his office allegedly described him as an "idiot" to the Canberra ADFIS headquarters.

"Guys, I need the above idiot's paperwork for his appt tomorrow," the staffer allegedly wrote.

After another request for his travel was approved, a senior ADFIS investigator allegedly wrote: "!!!!!!".

Other allegations centred on a staffer writing on his file that he was attempting to manipulate the system and emails showing the comment "same ... different week".

The sick investigator's wife said the comments had devastated their family at an extremely sensitive time.

"They treat him with this disrespect ... this is the last thing my husband needed to see at this particular time in his treatment and, in fact, has set him back a few more steps," she said.

96 / 134

ADF Investigation Service sent 'insulting and humiliating' ema...

<http://www.theaustralian.com.au/news/adf-investigation-servi...>

The revelations come amid an ADFIS probe into the "Jedi Counsel" email porn affair, which has embroiled more than 100 ADF members linked to an email ring circulating degrading films and photos taken of women while they had sex with some army members.

In a May 8 letter obtained by News Limited, Inspector-General Geoff Earley told the sick investigator's wife he was tasked with the probe because her bullying and harassment claims were "serious and indicative of systemic issues within ADFIS".

"The inquiry found evidence demonstrating that during your husband's management on sick leave he was subjected to comments by Defence personnel in emails that could reasonably be regarded as being insulting and humiliating and, therefore, to be likely in breach of Defence policy," he wrote.

"The inquiry did not, however, find evidence that this was the result of a premeditated or intentional or wilful attempt by the two Defence members to bully or harass your husband."

Defence has declined to say if the specific ADFIS office subject to the IG inquiry was the same one running the email porn probe.

But a spokeswoman said the ADFIS staff found to have humiliated the soldier were not involved in investigating the email porn probe.

"The Provost Marshal ADF, who commands ADFIS, is currently considering what action may be appropriate," she said.

The sick ADFIS investigator, who requested anonymity for privacy, has since been medically discharged from the ADF.

RSL spokesman Don Rowe said he was horrified by the episode.

"If this is an example of how they behave, it doesn't give a lot of confidence in how they are going to handle the issue of these other inappropriate emails," he said.

"I'm horrified this stuff got back to the officer. You'd think he'd be treated with respect by people who should know better given they are working around investigations themselves."

Follow Patrick Lion on Twitter [@patricklion](https://twitter.com/patricklion) (<http://www.twitter.com/patricklion>) or contact him at patrick.lion@news.com.au

#####

Annexure H – Defence Abuse Response Task Force Reconsideration Policy



DEFENCE ABUSE RESPONSE TASKFORCE

RECONSIDERATION OF DECISIONS

Background

The Defence Abuse Response Taskforce was established and operates under the executive power of the Government.

The Taskforce's responsibilities are set out in its Terms of Reference. In discharging those responsibilities, the Taskforce will investigate and make decisions about many serious, complex and sensitive matters.

Those decisions will determine:

- whether a complaint is within the scope of the Terms of Reference;
- whether the complaint is plausible; and
- the range and extent of the outcomes provided to complainants whose complaints with the Taskforce are within scope and plausible.

While the Taskforce's aim is to treat all complainants fairly and equitably, it is important to note that:

- complainants are not required to give up any legal rights or remedies they may have open to them to have their complaint dealt with by the Taskforce; and
- decisions made by the Taskforce are discretionary based on the Taskforce's assessment of the complainant's complaint, supporting material and decisions in similar matters(if any).

Reconsideration of decisions

However, the Taskforce recognise that some complainants will wish to query decisions it makes in respect of their complaint.

Accordingly, the Taskforce has established this internal reconsideration process.

The purpose of this process is to allow the complainant the opportunity to provide the Taskforce Chair with new or additional material which could lead the Chair to reconsider his decision.

Matters that may be reconsidered

The sorts of matters that may be reconsidered include but are not limited to a decision:

- that a complaint is out of scope;
- that a complaint is not plausible;
- concerning the rejection of an application for counselling by a complainant or the number of counselling sessions approved for the complainant;
- concerning the appropriateness of a matter for participation in the Restorative Engagement Program;
- that a complaint should not be referred to Defence for consideration of military justice or administrative sanctions;
- that a complaint should not be referred to the police for consideration of a criminal investigation and possibly prosecution; and
- made in response to a request for access to documents under the Taskforce administrative access scheme.

Where there is a reasonable expectation that the complainant may seek a review of a Taskforce decision, the letter or advice to the complainant setting out the decision will:

- clearly set out the reasons for the Taskforce's decision; and
- advise the complainant of this internal, informal reconsideration process.

Decisions made by the Reparations Assessor under the Defence Abuse Reparation Scheme Guidelines cannot be reconsidered.

Taskforce reconsideration requirements

A complainant seeking reconsideration should comply with the following requirements:

- Requests for reconsideration must be in writing (the Complainant Support Group will assist complainants who have difficulty writing);
- The request must be made within 28 days from the date the complainant received the original decision;
- Requests for reconsideration should identify the basis of the request for reconsideration and the complainant's preferred outcome; and
- Requests for reconsideration should be supported by any additional information (verified by Statutory Declaration where appropriate or requested by the Taskforce) the complainant wishes the Chair to consider.

Requests for reconsideration should be addressed to a Director, Complainant Support Group.

Reconsideration process and possible outcomes

The Taskforce will acknowledge a request for reconsideration in writing within seven days of receipt.

The Chair of the Taskforce will consider and determine the outcome of all requests for reconsideration. The Chair's decision is final.

The result of that reconsideration could include:

- upholding the original decision and explaining why;
- making a new decision in place of the original decision and explaining why; and
- varying the original decision and explaining why.

The complainant will be advised in writing of the Chair's decision and the reasons for it promptly after the decision is made to finalise the reconsideration.

Once the reconsideration is finalised, the matter will be closed.

Annexure I – Defence Abuse Response Task Force Terms Of Reference



Australian Government

DEFENCE ABUSE RESPONSE TASKFORCE

APPOINTMENT OF TASKFORCE CHAIR AND TASKFORCE TERMS OF REFERENCE

We hereby appoint the Honourable Len Roberts-Smith RFD, QC to lead the Defence Abuse Response Taskforce to operate in accordance with the following terms of reference as part of the Australian Government's response to DLA Piper's *Report of the Review of allegations of sexual and other forms of abuse in the Australian Defence Force*.

The Taskforce is to:

- (i) assess the findings of the DLA Piper review and the material gathered by that review, and any additional material available to the Taskforce concerning complaints of sexual and other forms of abuse by Defence personnel alleged to have occurred prior to 11 April 2011, the date of the announcement of the DLA Piper Review;
- (ii) include in this assessment the 24 Australian Defence Force Academy (ADFA) cases noted by DLA Piper and the cases of abuse identified by reports into physical violence and bullying at HMAS Leeuwin, and whether the alleged victims, perpetrators and witnesses in relation to these cases remain in Defence;
- (iii) determine, in close consultation with those who have made complaints, appropriate actions in response to those complaints;
- (iv) will also, as appropriate, gather additional information relevant to consideration of the handling of particular allegations eg relevant records held by Defence
- (v) take account of the rights and interests of alleged victims, accused persons and other parties;
- (vi) liaise with the Minister for Defence, Chief of the Defence Force and the Secretary of the Department of Defence on any implications of its work for Defence's 'Pathway to Change' and other responses to the series of reviews into Defence

Annexure J – Defence Abuse Response Task Force Categories Of Reparation Payment

Category	Example / Description	Range
1	<p>The complainant alleges he required medical attention following the assault. The complainant said he tried to report the matter to his supervisor who told him “not to be a sook, and to toughen up”. This response was repeated by his Commanding Officer, to whom he had subsequently complained.</p> <ul style="list-style-type: none">• As a result of the assault and his supervisor’s dismissive response, the complainant said he had experienced an ongoing psychiatric medical condition. He had resigned from the Army, but has remained an active member of the Army Reserve.	\$5000
2	<p>The complainant, a Navy Midshipman, alleged she was sexually assaulted in her room by an officer cadet while another cadet watched. The complainant said she required medical attention but did not report the matter to military or civil police because she feared being victimised by the wider cadet group. The complainant said she also sought assistance from the ADFA Chaplain and the Canberra Rape Crisis Centre.</p> <ul style="list-style-type: none">• The complainant alleged that, as a consequence of the sexual assault and the environment which seemed to condone the behavior, she experienced ongoing depression and anxiety. However, she has continued to serve in the Royal Australian Navy.	\$15,000

Category	Example / Description	Range
3	<ul style="list-style-type: none">• One plausible instance of physical or sexual abuse• Plausible abuse which involved repeated targeted behaviour including physical violence by more than one abuser.• Plausible abuse that included a plausible threat to the abused person's job and / or a plausible threat of physical injury if the abused person reported the abuse.• One instance of plausible physical abuse which was serious the person needed hospital treatment (regardless of whether the treatment was sought) or• Multiple incidents of plausible abuse which when considered together are sufficiently serious to warrant a Category 3 (abuse) payment.	\$30,000
4	Is intended to provide reparation for the most serious forms of alleged individual or collective abuse.	\$45,000
5	Additional payment for when Defence is held to have mismanaged the incidents (s).	\$5,000

Annexure H – Marathon Winner Payout

Turia Pitt posts picture of rescuer hours after winning multi-mi...

<http://www.news.com.au/national/turia-pitt-posts-picture-of-r...>



Turia Pitt / Picture: Simon Cross. Source: News Corp Australia

BURNS survivor Turia Pitt has posted a photo of the chopper pilot who rescued her, just hours after being awarded a reported multi-million dollar settlement against organisers of the ultra-marathon where she was left for dead.

Ms Pitt, 26, suffered burns to 64 per cent of her body after being trapped by a bushfire during the 2011 100km race in the remote Kimberley Region of WA. Her injuries were so severe doctors told her she might not make it.

Race organisers ignored reports of flames and smoke before the racers became trapped.

The confidential settlement was agreed with organisers Racing The Planet — a Hong Kong-based company founded and run by former Sydney investment banker Mary Gadams — in the NSW Supreme Court yesterday.

A short time later Pitt posted a photo of herself with partner Michael Hoskin and the caption: "With the chopper pilot who rescued me..."

Ms Pitt, from the south coast, launched the case after a damning WA parliamentary inquiry into the race and after Racing The Planet refused to pay her massive medical bills.

The inquiry heard that RTP's organisers in Hong Kong were hopelessly underprepared for the emergency that unfolded.



2 of 4

1/06/14 2:09 PM

104 / 134



Organiser did not have proper satphones, resulting in communication black spots and WA's Fire and Emergency Services Authority said it was not notified of the race until it was too late, contradicting RTP's claims that all relevant services had given the "necessary approvals".

The authority went so far as to say that in the middle of an above-average bushfire season, it would have had the race moved - or even cancelled - had it known about it.

Competitors were alerted to the dangers of snake bites and crocodiles but not bushfires, despite organisers knowing there were fires on or near the course.

Pitt lost her fingers and thumb on her right hand, spent five months in hospital and will require further operations.

However, with the support of her boyfriend, Michael Hoskin, Ms Pitt has fought her way back to fitness and now plans to walk the Great Wall of China for the Interplast charity.



Tura Pitt with her partner Michael Hoskin as part of the 20-day Varsity Cycle across Australia. Pic by Simon Cross/Screeno; News Corp Australia



3 of 1

1/06/14 2:09 PM

Annexure I – Senior Constable Butcher Payout

Constable Matthew Butcher paralysed in pub brawl awarded ...

<http://www.theaustralian.com.au/news/nation/constable-matt...>

THE AUSTRALIAN

Constable Matthew Butcher paralysed in pub brawl awarded record \$3.3m

AMANDA O'BRIEN THE AUSTRALIAN JANUARY 25, 2011 12:00AM

A PERTH police officer who was left paralysed after being flattened by a "flying head butt" during a vicious pub brawl has been awarded a record \$3.3 million ex-gratia payment by the West Australian government.

The payout is believed to be the highest in Australia for any similar incident.

It narrowly exceeds the \$3.25m the state paid to Andrew Mallard for being wrongly jailed for 12 years for a murder he did not commit, and the \$3.2m paid to the family of an Aboriginal elder, Mr Ward, who died of heatstroke in the back of a prison van.

State Attorney-General Christian Porter said the attack on Constable Matthew Butcher in 2008 was horrific and disgusting, and the payment acknowledged the sacrifice he had made for doing his duty.

Mr Porter said the officer would never fully recover from his injuries, and his life had "changed in a terrible way".

Constable Butcher, now 36, said the payout was a "massive relief" and the money would give his family financial security.

"We don't know how I'm going to age, what sort of care I'm going to need. The list of the expenses I will have for the rest of my life is pretty much endless," he said.

Mr Porter said he would require "serious and significant care" for the rest of his life.

Despite the incident being captured on video, Constable Butcher's attacker, Barry McLeod, 29, was found not guilty of assault in 2009, sparking community outrage.

Mr McLeod's lawyer successfully argued that he acted in self-defence and that police had used excessive force to break up the brawl. Mr McLeod said he was alarmed that police were using a Taser on his father.

Mr Porter showed his disquiet over the case yesterday.

"The behaviour that occurred, even though it was not found to be criminal in the criminal standard, was reprehensible behaviour, excessively violent, the sort of behaviour that none of us would want to see or witness or be part of or be near," he said.

"What occurred to Matthew Butcher was nothing short of a horrific act of violence."

He said the larger payment for a police officer did not diminish the harm done to Mr Mallard or Mr Ward, and said it was wrong for people to compare them.

"In the case of Mr Ward and Mr Mallard, they were recognition of a failure on the part of the

Constable Matthew Butcher paralysed in pub brawl awarded

<http://www.theaustralian.com.au/news/nation/constable-matt>

state. In this instance, it couldn't be said that what we are recognising is a failure on the part of the state government," he said.

Mr Porter admitted that the government wanted to show its support for all police -- not just Constable Butcher -- by providing such a large payment.

He said this factor was taken into account when deciding the amount of the payout.

The Liberal government has had a troubled relationship with the police force, particularly due to its funding cuts and public battles with the Treasury.

Mr Porter said legislation introduced in 2009 after the attack on Constable Butcher, which provided mandatory jail sentences for assaults on police, had already seen such incidents fall by 28 per cent in the past year.

Constable Butcher can still take civil action against Mr McLeod, but he said yesterday he had not made a decision.

✕

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Annexure J – Bus Driver Compensation

Bus driver awarded \$400k compensation after simulated mass...

<http://www.abc.net.au/news/2013-12-09/bus-driver-awarded...>



Bus driver awarded \$400k compensation after simulated massacre

By Elizabeth Byrne

Updated Mon 9 Dec 2013, 6:37pm AEDT

A bus driver from Canberra has been awarded more than \$400,000 by the ACT Supreme Court, after being traumatised during an Australian Defence Force (ADF) exercise.

MAP: ACT

The 55-year-old man who is originally from Yugoslavia, claimed he had been left with mental health problems after seeing a simulated massacre scene, at a training area in the Blue Mountains.

The man had been employed to drive a bus for cadets taking part in the exercise.

The ADF said he had been warned about what he would see, but the man said he had not been warned and has been traumatised since.

His symptoms have included recurrent visions, difficulty driving and he suffers sleep problems and nightmares.

Justice Anthony Besanko found the man had suffered a shock reaction and awarded him compensation to cover loss of earnings as well as non-economic loss.

Topics: courts-and-trials, defence-forces, act, canberra-2600

First posted Mon 9 Dec 2013, 6:33pm AEDT

Annexure K – Speaker McLeay's \$90,000 Payout

Canberra Speaker skids into scandal - World - News - The In...

<http://www.independent.co.uk/news/world/canberra-speaker-s...>

News » World

Canberra Speaker skids into scandal

FROM ROBERT MILLIKEN IN SYDNEY | Thursday 34 February 1993

IN THE midst of the worst economic downturn and the highest unemployment for 60 years, Australians have been preoccupied by one issue: the drama over Leo McLeay, Speaker of the Parliament, falling off a bicycle.

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The uproar was not so much over the fall, as how he was quietly awarded compensation of Adollars 65,000 (pounds 28,000) by the government.

Mr McLeay is an MP with the ruling Labor Party and a long-time colleague of Paul Keating, the Prime Minister. The affair might normally have gone unnoticed, but with a general election looming it has shot into headlines and threatens to rock Mr Keating's campaign strategy.

The central question being asked is: why did the Speaker receive such swift and generous compensation after he sued the

Joint House Department - a parliamentary body of which he is jointly in charge - when thousands of ordinary Australians often have to wait years for redress?

Mr McLeay's accident happened in 1990 when he hired a folding bicycle from the health and recreation centre at Parliament House in Canberra. On his ride through the capital's leafy streets with his son, the bike hit a bump and collapsed. Mr McLeay broke his arm and suffered facial and hand injuries.

His compensation payment came to light only in December, but more details are leaking out. According to a report from the Joint House Department, an official warned a member of Mr McLeay's staff that the bike 'may not be suitable for such a big person'. The staffer ignored the warning with the retort: 'We know all about bikes.'

Even more curious was the revelation that Adollars 10,000 of Mr McLeay's payment was compensation for his being unable to resume work as a technician with Telecom Australia - a job he left 17 years ago to enter Parliament, and one to which he once said he was unlikely to return.

The opposition parties, which outnumber the government in the Senate, the upper house, threatened to set up a Senate inquiry. Mr McLeay said he would refer the payment to an independent inquiry. Meanwhile, his doctor said the accident left Mr McLeay unable to pick up a glass at receptions for fear of knocking it over.

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Annexure L – What The Typical Abuser Got (2011 Figures)

Calcultaion Assuming No Promotion Beyond Lieutenant No Military Qualifications

1.0 Base Salary

Rank	Year	Salary	
2nd Year Mid	2	\$33,086.00	19
3rd Year Mid	3	\$38,176.00	20
4th Year Mid	4	\$43,266.00	21
1st Yr SubL	5	\$50,400.00	22
2n yr SubL	6	\$52,328.00	23
1st Yr Lieut	7	\$60,629.00	24
2nd Yr Lieut	8	\$63,119.00	25
3rd Yr Lieut	9	\$65,599.00	26
4th Yr Lieut	10	\$68,079.00	27
5th Yr Lieut	11	\$70,574.00	28
6th Yr Lieut	12	\$73,061.00	29
7th Yr Lieut	13	\$73,061.00	30
8th Yr Lieut	14	\$73,061.00	31
9th Yr Lieut	15	\$73,061.00	32
10th Yr Lieut	16	\$73,061.00	33
11th Yr Lieut	17	\$73,061.00	34
12th Yr Lieut	18	\$73,061.00	35
13th Yr Lieut	19	\$73,061.00	36
14th Yr Lieut	20	\$73,061.00	37
15th Yr Lieut	21	\$73,061.00	38
16th Yr Lieut	22	\$73,061.00	39
17th Yr Lieut	23	\$73,061.00	40
17th Yr Lieut	24	\$73,061.00	41
18th Yr Lieut	25	\$73,061.00	42
19th Yr Lieut	26	\$73,061.00	43
20th Yr Lieut	27	\$73,061.00	44
20th Yr Lieut	28	\$73,061.00	45
21st Yr Lieut	29	\$73,061.00	46
22nd Yr Lieut	30	\$73,061.00	47
23rd Yr Lieut	31	\$73,061.00	48
24th Yr Lieut	32	\$73,061.00	49
25th Yr Lieut	33	\$73,061.00	50
26th Yr Lieut	34	\$73,061.00	51
27th Yr Lieut	35	\$73,061.00	52
28th Yr Lieut	36	\$73,061.00	53
29th Yr Lieut	37	\$73,061.00	54
30th Yr Lieut	38	\$73,061.00	55
		\$2,517,903.00	

2.0 Service Allowance

Years	Amount	Total
3	\$9,092.00	\$27,276.00
35	\$12,128.00	\$424,480.00
		\$451,756.00

3.0 Seagoing Allowance

8	\$11,758.00	\$94,064.00
---	-------------	--------------------

4.0 Total Income Lost \$3,063,723.00

5.0 Superannuation Benefits Foregone

Years	Rate	FAS	Employer Benefit Foregone
7	0.18	\$73,061.00	\$92,056.86
13	0.23	\$73,061.00	\$218,452.39
18	0.28	\$73,061.00	\$368,227.44
			\$678,736.69

6.0 Total Income Benefit Lost:
\$3,742,459.69

Annexure M – ADFA Rugby Scandal

10 ADFA cadets now suspended over drunken pub crawl bast

<http://www.news.com.au/national-news/adfa-cadets-now-sus>

News.com.au (<http://www.news.com.au>)

National News - Syndicated (/national-news)

10 ADFA cadets now suspended over drunken pub crawl bastardisation scandal

- by: IAN MCPHEDRAN Defence Writer
- From: News Limited Network
- July 02, 2013 3:57PM

A TOTAL of 10 future military leaders from the Australian Defence Force Academy have been suspended over their roles in the latest bastardisation scandal to hit the elite taxpayer-funded military university.

Up to 20 cadets and midshipmen are under investigation over a series of incidents that culminated in a drunken pub/club crawl last month in Canberra by members of the academy's rugby and AFL clubs.

During the so-called "hazing" or initiation rituals that went on over several months, cadets were allegedly forced to;

- * Fondle other cadets' genitalia
- * Drink urine
- * Have sex with a prostitute for a bet
- * Remove their pants when a particular song was played

Some cadets allegedly were also forced to stand on their heads while drinking.

Seven of the 10 suspensions took place before the vice-chief of Defence, Air Marshal Mark Binskin, who is responsible for ADFA, went public with details of the incidents.

Defence has denied claims from some insiders that the investigation has hit a brick wall.

"ADF Investigative Service personnel are continuing to make inquiries and take statements. A total of ten ADFA officer cadets and midshipmen have now been suspended and further suspensions may occur," Defence said.

"The vast majority of ADFA cadets and midshipmen understand what is expected of them as future leaders of the ADF and they act accordingly."

However News Corp Australia has been told investigators cannot substantiate many of the allegations due to wildly differing accounts of timings and locations from alleged perpetrators and whistleblowers.

"No one is admitting to any of the serious allegations," a Defence source said.

The move follows the suspension of eight senior soldiers, including elite commandos, from the army over the so-called "Jedi Council" video sex email ring.

A further 90 troops remain under investigation by the ADF Investigative Service in relation to the email scandal where women were filmed having sex with ringleaders who distributed the images and a dossier on the women to other members of the defence force.

Defence said its senior leadership team was "strongly committed to ensuring that those who cannot meet Defence's values and standards will be held to account for their conduct."

1 of 1
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3/07/13 8:56 AM

Annexure N - 3rd Brigade Facebook Scandal 2013

Brigadier Shane Caughey says Townsville soldiers linked to ...

<http://www.perthnow.com.au/news/national/brigadier-shane-caughey-says-townsville-soldiers-linked-to-derogatory-facebook-pages-will-be-charged>

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Perth Now

News

Brigadier Shane Caughey says Townsville soldiers linked to derogatory Facebook pages will be charged

- by: EMILY MACDONALD
- From: News Limited
- June 19, 2013 10:00PM

TOWNSVILLE soldiers linked to derogatory Facebook pages will be charged under the Australian Defence Force Disciplinary Act, with Brigadier Shane Caughey saying they deserve to be held to a higher account than the average person due to their position of trust within the community.

The small group of Townsville soldiers are under investigation for associating themselves with two Facebook pages which label women as "sluts" and "fat chicks".

Brigadier Caughey, the 3rd Brigade Commander, confirmed the soldiers would be charged and that further disciplinary action may result as the investigation continues.

The incident comes just one week after a scathing Chief of Army ordered members not prepared to respect their female counterparts to "get out" after about 100 ADF members were implicated in an email scandal involving video footage of sexual acts.

Brigadier Caughey said people made a commitment to protect the nation and all its people when they chose to join the army.

"That is a commitment that is to all Australians regardless of their gender, regardless of their religion, regardless of their ethnicity, or any other distinguishing feature," he said.

"So, it is inappropriate for any member of the ADF or the army to express views which denigrate a particular part of our society.

"Our responsibility is to serve the people of Australia and to protect the freedoms and interests of all Australians.

"Absolutely we have to be held to higher account otherwise all Australians cannot trust the institution."

Brigadier Caughey said anyone who was unable to live up to the core army values wasn't wanted in the service.

"There is no place for them here in Townsville and no place for them in 3rd Brigade," he said.

"That is a message that every soldier needs to understand. I know they understand it, but some are obviously still struggling to comply with it.

"If you talk about courage, it's not only the physical courage to do the things that are dangerous.

113 / 134

Brigadier Shane Caughey says Townsville soldiers linked to ...

<http://www.perthnow.com.au/news/national/brigadier-shane-caughey-says-townsville-soldiers-linked-to-...>

"It's about moral courage to have the fortitude to do what's right, to stand up to poor and unacceptable behaviour that they see in the workplace or farther afield and demand that as a member of the army that serves the nation 24 hours a day, seven days a week, to demand that others adhere to the standards."

Soldiers in 3rd Brigade will continue to participate in routine education programs about behavioural expectations and community responsibility.

###

Annexure O – Major General Caughey

General confirms Caughey's censure | Townsville Bulletin News

<http://www.townsvillebulletin.com.au/article/2012/12/22/372...>

General confirms Caughey's censure

KATHLEEN SKENE | December 22nd, 2012



Report

DEFENCE Force Chief General David Hurley has acknowledged the "devastating consequences" of multiple sexual assaults and rapes committed by Sergeant Malcolm John Russell in 1994-96.

In a letter to the editor, published today on page 42, Gen Hurley describes the sexual assaults and rapes of soldiers under the command of Brigadier Shane Caughey when he was their Major as "serious incidents".

Documents obtained by the Townsville Bulletin this week revealed that Brig Caughey, then a Major commanding Rifle Company Butterworth in Malaysia, had mishandled a report of two sexual assaults by one of his sergeants, who had gone on to rape another soldier.

Gen Hurley described the publication of the information as "a trial by media" and revealed that after the internal inquiry, Brig Caughey, by then a lieutenant colonel, had been formally censured.

"These are serious incidents," Gen Hurley wrote.

"I acknowledge the devastating consequences they have had on those men who were assaulted, as does Brigadier Caughey, who was censured for failing to adequately deal with these matters at the time."

The Federal Government last month launched a high-powered investigation into past cases of abuse in the ADF following the release of the CLA Piper report, which served as the investigation's preliminary phase.

In the five months it was open to submissions, the first phase of the review received 847 reports of abuse, many containing numerous allegations, dating from 1951 to 2011.

Among the 29 findings, the report noted that ADF environments had high risk factors for abuse; that a "substantial" number of people had been abused and/or experienced inadequate management of their complaints; and people who had either directly abused others, or had mishandled abuse complaints, now occupied senior and middle management positions.

It notes that a Defence acknowledgment of the abuse could help their recovery: "Many people have requested a personal apology from Defence/ADF".

Defence Force Welfare Association National President David Jamison said the next phase of the review would help bring closure to victims.

"I think it's an opportunity for (victims of abuse) to be heard and for the issues that they've suffered to be dealt with," he said.

"If we have people in the services who really have been abused and misused their power, they need to be dealt with, and quickly, because there's nothing worse than having these sorts of allegations hanging around and rumours starting that can break down discipline very quickly."

Mr Jamison said there had been a systemic failure in discipline and command responsibilities, which had likely contributed to the now-Brigadier's case.

"When these sort of incidents happen, they need to be taken seriously and dealt with properly," he said.

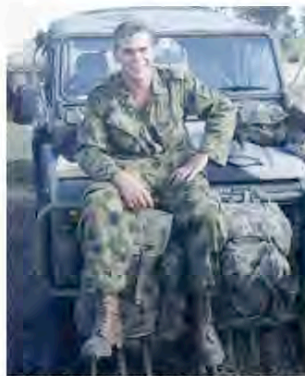
"They need to be dealt with properly and not swept under the carpet."

"I can understand the way these things might transpire, but we need to protect those that we're responsible for and make sure individuals are respected and are part of the team."

Mr Jamison said Brig Caughey's behaviour since landing the top Townsville post would dictate how his troops would be reacting to revelations of his past actions over sexual abuse.

"The respect that he has engendered in his present job would be the major determinant in that," he said.

"It would be the way he has performed since he's been there that would be the most important determinant."



TRAINING CAMP: Private Nigel Ramm is photographed in uniform during a training camp he attended in September, 1993. Mr Ramm was raped by his platoon sergeant, Malcolm Russell, in 1995.

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Annexure P – HMAS Ballarat – Whiteboard Markers Where The Sun Doesn't Shine

HMAS Ballarat sailors removed as Defence investigates after...

<http://www.abc.net.au/news/2013-11-10/sailors-removed-fro...>



HMAS Ballarat sailors removed as Defence investigates after hazing sexual assault claims

Updated 18 minutes ago

The Defence Force says a number of sailors have been taken off HMAS Ballarat with investigators now aboard the ship after allegations crew members have been sexually assaulted.

The investigators include an Australian Defence Force Investigative Service (ADFIS) team and an officer from the Sexual and Misconduct and Response Office.

Defence will not say why or how many sailors have left the ship, or reveal their identity.

But it said on Sunday that they were now on mainland Australia after disembarking on Christmas Island.

It has taken several days for investigators to join the crew as the Anzac-class guided missile frigate is currently taking part in border protection operations.

Channel Ten had reported allegations that members on board HMAS Ballarat had been anally penetrated with objects including pens and water bottles as part of an initiation ritual.

Defence will not confirm the nature of the alleged behaviour being investigated.

A former Navy member who identified herself as Bridget told Channel Ten that sailors on board the ship have told her that young men are being attacked.

"People were set upon by members and stripped off and had things essentially put in their bums," she said.

1 of 2
"I think people are scared."



PHOTO: Investigators have now boarded HMAS Ballarat, which is taking part in border protection operations. (file photo)
(Australian Defence Force: Sarah Williams)

RELATED STORY: Navy ship embroiled in claims of hazing ritual sexual assaults

MAP: Australia

11/11/13 6:13 AM

116 / 134

HMAS Ballarat. "If it happened in a normal workplace the police would be called, charges would be laid and the person would be investigated."

The Chief of Navy, Vice Admiral Ray Griggs, says the investigators will be continuing their probe into alleged inappropriate behaviour now that they are aboard the HMAS Ballarat.

"Navy will continue to be as open and transparent about this matter as we can be, but the investigation is now at the point where the ADFIS team needs to be able to get on with the job," he said in a statement.

"As such, no further public statements regarding these allegations will be made until the investigation is complete.

"I reiterate how seriously Navy takes allegations of this type and that inappropriate behaviour is neither consistent with our values nor tolerated in Navy."

Know more? Contact investigations@abc.net.au

Topics: navy, defence-forces, defence-and-national-security, law-crime-and-justice, australia, christmas-island-6798

First posted 9 hours 49 minutes ago

Annexure Q – Squadron Leader Vance

Defence loses \$15m fight

<http://www.smh.com.au/national/defence-loses-15m-fight-20...>

11:13AM Friday, Jan 17, 2014 27.156 online now Do you know more about a story? Read Estate Care 1/60c Caring Newsletter Factors Made Network

The Sydney Morning Herald

National

Defence loses \$15m fight

June 21, 2009 [Read later](#)

Russell Vance fought in the courts for justice against an antagonistic Defence for over a decade, reports Paul Daley.

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Vindicated... Russell Vance at his home in Gilmore, south of Canberra. Vance now designs and makes guitars for a living. Photo: Anthony Johnson

THE Department of Defence has settled one of its longest-running, most contentious and costly legal disputes with a former Royal Australian Air Force officer it sacked for suffering depression.

After a decade-and-a-half of legal action costing taxpayers an estimated \$15 million, Defence has finally made a generous settlement with former Wing Commander Russell Vance.

The settlement with the Canberra-based Mr Vance, 55, is an admission of the Defence Department's liability for his loss of earnings because his promising Royal Australian Air Force career was destroyed after a petty dispute involving subordinates. Defence also paid his \$1 million-plus legal bill.

The department moved to settle the case last December after the former defence minister Joel Fitzgibbon demanded answers about unsatisfactory aspects of its conduct of the case.

The Commonwealth requires its authorities involved in legal action to behave as model litigants.

But the Attorney-General's Department found Defence had breached this obligation "by causing unnecessary delay in the handling of the litigation arising from a failure to undertake all reasonable and necessary inquiries" relating to the discovery of relevant documents.

The extraordinary intervention by the Attorney-General's Department came after a judgement by the Australian Capital Territory Supreme Court Justice, Ken Crippin that the Commonwealth should no longer defend Mr Vance's unfair dismissal case.

Mr Vance's solicitor, John Little of Maliganis Edwards Johnson, confirmed that Defence formally settled with his client on May 15.

"This brings to an end a case that highlights that Defence operates as anything but a model litigant... on the basis of what has happened to Russ you wouldn't let your dog - let alone your children - join Defence."

Mr Vance said: "I feel very sorry for other people in my situation who haven't had the luck or the serendipity to find people like John Little who will support their cases... The money is really just compensation for them destroying my career."

Mr Vance wants an apology from Defence for the suffering it caused him. "I think an apology is the very least they owe me."

Mr Vance's troubles began in 1993 when he was posted to Butterworth, Malaysia, with orders to fix an RAAF base reputed to be a "holiday camp".

Mr Vance, by his own admission a "tough bastard" and a stickler for military protocol, fell foul of his subordinates whose wives complained to a social worker about his abrasive management approach.

When Mr Vance sought details under Freedom of Information, Defence ordered a military board of inquiry into his conduct. The board sat in two continents for over two years at a cost of \$6 million.

It was scrapped when Mr Vance suffered a nervous breakdown under the pressure, and reconvened when a board member discovered he was working part-time in Defence as part of his treatment.

Defence loses \$15m fight

<http://www.smh.com.au/national/defence-loses-15m-fight-20...>

After the inquiry findings criticised Mr Vance's management style, the RAAF sacked him, only to reinstate him when Mr Little commenced Federal Court proceedings.

The RAAF sacked Mr Vance again on the basis of his depression.

The case went on for another decade at an estimated cost of \$8 million. The cost to taxpayers, including the settlement and Mr Vance's legal bill, is estimated at \$15 million.

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


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Annexure R – Submission by Dr Gary Rumble

SENATE EADT REFERENCES COMMITTEE REPORT OF REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE CONDUCTED BY DLA PIPER AND THE GOVERNMENT'S RESPONSE TO THE REPORT

OPENING STATEMENT OF DR GARY A RUMBLE FOR HEARING 14 MARCH 2013

1. I led the Review of Allegations of Sexual and Other Abuse in Defence. The other Review members were Ms Melanie McKean and Professor Dennis Pearce until his withdrawal on account of ill health.
2. The Report is commonly referred to as the 'DLA Piper Report'. However, there is no reference to DLA Piper in the title of the Report. This is because the Report is not the Report of the views of DLA Piper. As the disclaimer in the Report states:

The opinions expressed in the Report ... are solely those of Dr Gary A Rumble, Ms Melanie McKean and Professor Pearce AO. The opinions expressed in the Report do not necessarily represent the views of other contractors to the Review, nor of DLA Piper Australia.
3. The written submission which I have lodged with the Committee and the views which I express today are made solely on my own behalf and do not purport to represent the views of the other Review members or either of the law firms which employed me during the course of the Review.

THE REPORT

4. Under our Terms of Reference we were to report to the Minister and to the Secretary and to make recommendations to the Minister and to the Secretary.
5. We took into account that we were reporting to the Secretary as well as the Minister in designing Review processes to clarify the extent to which individuals consented to disclosure of their information to Defence and in our structuring of the Report of our Review.
6. Our Report was wide-ranging.
7. Volume 1 delivered in October 2011 and the Supplement delivered in April 2012 are on the public record.
8. Volume 2 is not on the public record and will not be on the public record. Volume 2 consisted of:
 - 23 Parts - large ring-binder folders - containing our initial assessments and recommendations on around 1100 specific allegations from 775 sources – individuals and media reports. These 23 parts were central to the Review and the Report
 - three Parts reporting on Fairness and Resolution Branch (F&R) database matters
 - one Part dealing with ADFIS matters.
9. For most of the 1100 allegations reported on in Parts 1-23 of Volume 2 we made multiple recommendations.
10. The Volume 2 folders were submitted to the Minister marked 'For the eyes of the Minister only' but with a further notation indicating that a working copy would go to Defence Legal with appropriate redactions.
11. Most people who gave us information understood that there could not be much effective investigation and/or action without some disclosure of information to Defence. Most gave broad consents accordingly because they wanted there to be some action and/or for their stories to be known.

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12. We designed our Volume 2 Report to facilitate the breaking out of streams of actions. We had made arrangements with the DLA Piper team working with us on the Review to provide a Working Version of Volume 2 – with appropriate redactions settled by us the Review leaders – to go to the Secretary of the Department of Defence as soon as we got clearance from the Minister to provide that Working Version.
13. The Minister has not given that clearance.
14. Our Terms of Reference foreshadowed that there would be a Phase 2 to follow on from our review – we expected that a Phase 2 body –external to Defence like us - would be established fairly quickly after we delivered Volume 2 to maintain the momentum of the work which had been done in Phase 1 including continuing the gathering of information from Defence.
15. We also suggested the establishment of a task force with specialised criminal investigation capability for around 80 or so allegations of serious criminality committed by adults.

THE GOVERNMENT RESPONSE OF 26 NOVEMBER 2012 TO THE REPORT

16. I acknowledge that the Government's Response announced by the Minister in November contains significant elements
17. In particular I acknowledge the standing and qualifications of Mr Roberts-Smith and the other individuals who make up the Taskforce.
18. In December I raised with the Minister my concerns about gaps in the Government's response and concerns about what if anything had happened with the 28 or so folders of Volume 2 of our Report.
19. I received a written response from the Minister last Friday evening – 8 March 2012. With the Minister's consent that letter has been attached to my written submission.
20. That response removes some of the uncertainty but leaves me with major concerns which I detail in the written submission.
21. For purposes of this opening statement I draw attention to two main areas of continuing concern –
 - the decision of the Government not to direct the Working Version of Volume 2 go to the Secretary;
 - the uncertainty about how much of Volume 2 and the material on which it is based is going to the Taskforce.
22. On the first point - the Minister's letter of 8 March says:

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

It would not have been appropriate for the Secretary, the Chief of the Defence Force and the Service Chiefs to be provided with details of allegations of abuse in Defence.
23. This represents a very significant shift away from our Terms of Reference which required us to report to and make recommendations for action to the Minister *and* the Secretary.
24. I am astonished that the Government considers it is not appropriate for the Secretary, the Chief of the Defence Force and the Service Chiefs to be provided with details of allegations of abuse in Defence.

25. People came to the Review because they wanted action and/or because they wanted their story to be heard. Most of them consented to disclosure to Defence so that there could be action and/or so that their story could be heard.
26. Even where there was no consent or limited to disclosure there were still aspects of the redacted report which we recommended be drawn to the attention of Service Chiefs.
27. The fact that the working version of Volume 2 did not go to the Secretary has prevented the Secretary, the CDF and the Service Chiefs from being informed about situations needing response and about the individual matters underpinning the Findings, Issues, Options and Recommendations in Volume 1.
28. Furthermore I am deeply concerned that the Government's lack of action and decision last year may have:
- distressed individuals who were hoping for some response to their specific issue;
 - worn down the willingness of those who told their stories to the Review in Phase 1 to continue to be involved in Phase 2;
 - discouraged others who were watching to see whether there would be any effective action from coming forward to Phase 2
 - encouraged perpetrators and potential witnesses to think that they can wait out the current attention on abuse.
29. I see value even now in providing the Working Version of Volume 2 to the Secretary.
30. On the question of the uncertainty about whether any version of Volume 2 will go to the new Taskforce —
31. I do not understand why it was thought necessary to launch DLA Piper on a process of contacting individuals for consent for transfer of information to the Taskforce.
32. This may well have distressed some individuals needlessly. The Review leaders were not consulted on whether or not this was necessary or appropriate and - as far as I am aware - the process had no input or supervision from the new Taskforce.
33. Furthermore, gaps in fresh consents obtained by DLA Piper's process could lead to piecemeal dismantling of Volume 2 and significantly weaken the Report and its usefulness to the Taskforce. For example -
- The terms of reference for the Taskforce specifically require it:

 '(ix) to advise whether a Royal Commission would be merited into any categories of allegation raised with the DLA Piper review or the Taskforce, in particular the 24 ADFA cases.'
- It is important to note that the number of 'ADFA cases' may be more than the 24 referred to in the October 2011 Volume 1 report. That number only related to the years 1994 to 1998. We drew attention to this in our April 2012 Supplement to Volume 1 and the Minister's letter of 8 March acknowledges the number may be higher.
- In any case, when the Taskforce is considering whether to recommend a Royal Commission in relation to ADFA legacy issues, it will be very important for the Taskforce to have before it the accounts of *all* ADFA incidents which were reported to us in Phase 1 from the 1980s which are consistent with the accounts of incidents from the 1990s — *even if redacted* to accommodate the consent position of an individual.

- The consistency of the accounts which we received about incidents across 15 years of ADFA operation from its opening in the mid 1980s until the Grey Report in the late 1990s adds considerable force to the credibility of each allegation and indicates the seriousness of the issue for the ADF *now*.

Finally:

In June 2011 I joined in a public statement expressing my confidence in the Minister's commitment to the Review process

If I had known then:

that the Working Version of our Report - redacted in accordance with the consents and authorities of the people who gave us information - would not go to the Secretary at all:

and

that nothing would happen in 2012 to advance a single one of the matters reported on in Volume 2 in April 2012

and

that the Government would not make a decision on a single one of the thousands of recommendations in Volume 2 and would ask a new Taskforce to re-consider allegations from scratch

and

that not all of the allegations which were before us will go to the new Taskforce

I would not have made a public statement of confidence in the Minister's commitment to Phase 1 of the Review process.

Gary A Rumble

14 March 2013

Annexure S – Letter By Air Commodore Ehler Acknowledging The Association's Existence On General Hurley's Behalf



Australian Government
Department of Defence
Defence People Group

Director General Cultural Reviews Response
R8-LG-018
Russell Offices
CANBERRA ACT 2600

REF: AB14557324

Dear Ms Jacomb,

I refer to your email correspondence of 21 June 2013 entitled *'FW: [Warlords] ADF Abuse Now Targets Civilian Women In Townsville -Townsville Brigade Commander Was The One Who Let A Rapist Go Free'*, and your subsequent email of 24 June 2013, which has been received by a number of Defence personnel, including the Chief of the Defence Force (CDF). The CDF has asked me to respond on his behalf.

Defence is strongly committed to cultural reform, victim support and the vigorous pursuit of allegations of serious crimes or misconduct. I understand that the Provost Marshal - Australian Defence Force recently spoke with you about allegations concerning a senior Army officer that you raised in the above e-mail. Please be advised that, although the information is not first-hand, given the seriousness of these allegations your e-mail has been referred to the Australian Federal Police (AFP).

I strongly encourage you to notify the AFP of any information you may have regarding any other criminal conduct so that appropriate action can be taken. I would similarly request that you encourage others in your network with first hand information or evidence regarding these or other allegations (that is, direct witnesses or complainants) to do the same.

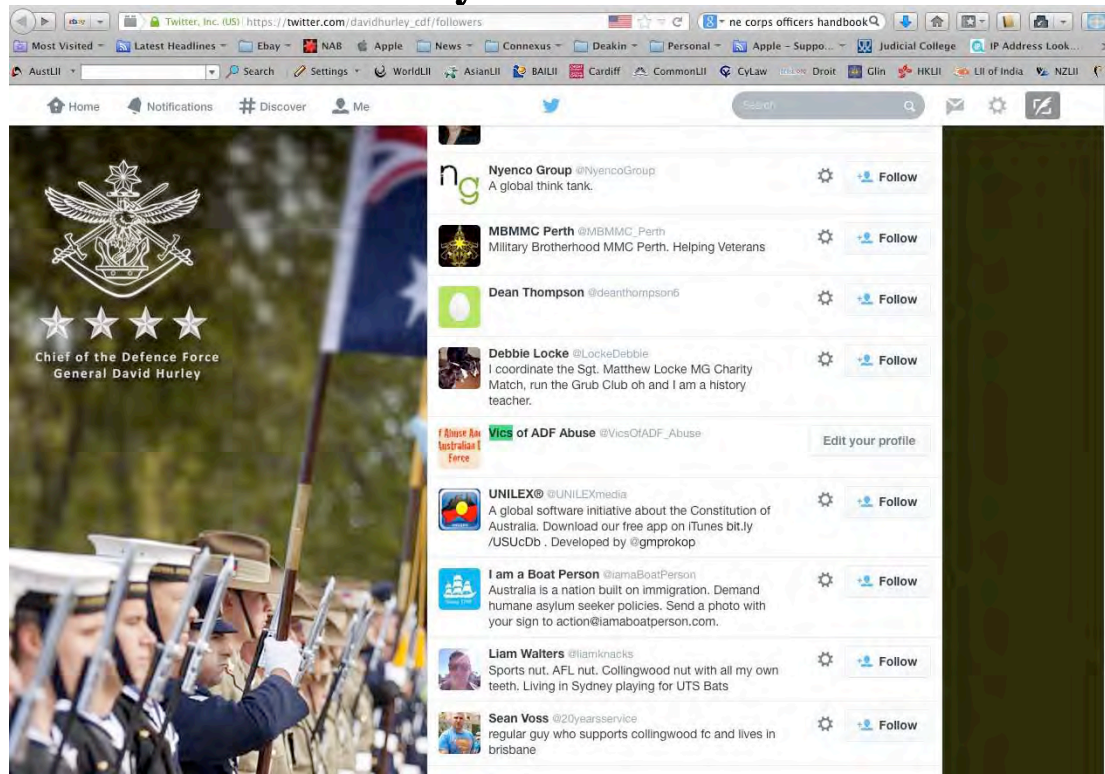
If you wish to raise any additional matters with Defence, I am the appropriate Defence point of contact. I therefore request that you direct any future correspondence to my office, rather than the Defence personnel you have included in your 'Members of the Warlords Mailing List'. This will ensure that any further information you provide to Defence can be dealt with expeditiously.

Yours Sincerely

HENRIK EHLERS
Air Commodore
Director General Cultural Reviews Response

27 June 2013

Annexure T – Copy Of Listing On General Hurley’s Twitter Account



Annexure U – Copy Of Letter From Minister Ronaldson Acknowledging Association's Existence



Senator the Hon. Michael Ronaldson
Minister for Veterans' Affairs
Minister Assisting the Prime Minister for the Centenary of ANZAC
Special Minister of State

Ref: B14/0092

Ms Jennifer Jacomb
Secretary and Public Officer
Victims of Abuse in the Australian Defence Force Association
jennifer@adfabuse.com

Dear Ms Jacomb,

Thank you for your e-mails dated 17 December 2013 and 15 January 2014, regarding differences in evidentiary requirements for claims for Reparation Payments assessed by the Defence Abuse Response Taskforce (DART) and claims determined under Department of Veterans' Affairs (DVA) administered legislation.

While receipt of a Reparation Payment from the DART may lead to an expectation that compensation will automatically be provided through DVA, it is important to be clear that the two processes operate independently, with each containing separate and distinct eligibility criteria. The primary difference between DART and DVA payments is that DART payments are "incident" or "event" based, while DVA payments are linked to incapacity which are sustained due to service.

DART payments are not compensation, rather they are an acknowledgement by the Government that abuse is wrong and should not have occurred. Evidentiary standards under the DART scheme are less rigorous than those that have historically existed under compensation legislation. The findings of fact under DVA administered legislation is, however, critical to making appropriate and robust decisions.

While acknowledging that evidence of an assault and/or abuse from the DART can be used in the assessment of DVA claims, it is important to recognise that DART payments are based on a tiered structure according to the type and severity of abuse.

DART payments are not meant to assess the long-term impact of abuse on an individual, rather they assess the relative severity of the incident(s) of abuse which took place. This is different to a DVA compensation payment. As you may be aware, long-standing policy of the Repatriation Commission is that a claimant for compensation from DVA must be able to prove a link between their injury, incapacity or disease with their service. Once a link is established an assessment of the level of incapacity is undertaken to determine what rate of disability pension or permanent impairment can be paid.

While a DART reparation payment is paid in respect to an incident, a DVA compensation payment is paid for the effects of a condition which may be linked to an incident in time.

Further, in order to assist with the determination of claims, DVA and the DART have established mechanisms to allow the sharing of information between both agencies (with the consent of the claimant) to simplify the process and remove some of the burden for the claimant in having to recount the details of their assault(s) on more than one occasion.

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With regard to your suggestion that improved support mechanisms be put in place by DVA for victims of abuse, I can advise that numerous processes have already been implemented to ensure that all claims are investigated with the necessary level of sensitivity that would be expected in such circumstances. These processes include the establishment of a dedicated team in Melbourne to receive and manage all new claims for sexual and other forms of abuse, the allocation of a social worker to act as a single point of contact with the Department, the training of staff members by the Australian Centre of Post Traumatic Mental Health and the referral of claimants to the Veterans and Veterans Families Counselling Service where appropriate.

Turning to your comments regarding DVA's use of discharge information as a basis for decisions, it is important to clarify that policy guidelines are already in place that direct delegates to "look behind" the official or stated reasons for discharge. This approach is particularly useful when considering cases that, as you suggest, align with the Federal Court's decision in the matter of *Whiteman v Secretary, Department of Veterans' Affairs* (1996) 43 ALD 225. The rationale for this is to ensure that all valid reasons for the person's discharge are taken into account when assessing their claim for compensation.

I note you have also suggested that a nominated DVA representative be in attendance at all future Restorative Justice meetings involving DART claimants or, alternatively, that any information pertaining to the DVA claims process be vetted by the Department before being provided to DART applicants.

Regrettably it would not be practical to ensure that DVA representatives attend all future Restorative Justice proceedings, nor would it be necessary as not all proceedings will involve discussion of compensation. However, I can advise that DVA has provided input to a DART factsheet that distinguishes between the two processes and outlines the impact of receiving a reparation payment on other benefits. This factsheet is now being provided to all DART applicants once a case co-ordinator has been allocated.

I have also written to the Chair of the Taskforce, the Hon Len Roberts-Smith RFD QC on this matter to ensure that all queries relating to DVA claim processes are directed to my Department for response by the appropriate policy or operational area.

Thank you for taking the time to raise your concerns.

Yours sincerely,

SENATOR THE HON. MICHAEL RONALDSON

Annexure V – Email To Warlords Mailing List 9th February 2014

From: Ms Jennifer Jacomb

Subject: [Warlords] I Will Be In Canberra This Week If
You Wish To Discuss Abuse And Its Prevention

Date: 9 February 2014 9:11:41 AM AEDT

To: warlords@adfabuse.com, dart@adfabuse.com

Cc: members@adfabuse.com,
goodguys@adfabuse.com,
friends@adfabuse.com

Dear Members Of The Warlords And DART Mailing List,

I will be in Canberra this week from Monday to Thursday
inclusive raising abuse issues with various members of the
Parliament

If ,you would like to meet discuss abuse and its prevention
or DART related matters, please call me on my mobile

Yours Respectfully

Jennifer Jacomb
Ms Jennifer Jacomb
Secretary and Public Officer Victims Of Abuse In The
Australian Defence Force Association Inc. A0059257W

Annexure W – Reasons For Holding A Royal Commission

AM - Defence victim speaks out 15/06/2012

<http://www.abc.net.au/am/content/2012/s3525625.htm>

AM with Chris Uhlmann

Monday to Saturday from 8:00 am on ABC Local Radio and 7:10 am on Radio National.

Defence victim speaks out

Samantha Hawley reported this story on Friday, June 15, 2012 17:13:00

TONY EASTLEY: One of the 847 victims who lodged a complaint with the DLA Piper review says he has never recovered from his abuse.

The 63 year old man who wants to be known as "Bill" says a Royal Commission is needed. He says he raised his abuse with a defence psychologist in 1968 but he was ignored.

He wants an apology and compensation.

He spoke to our reporter Samantha Hawley.

BILL: One morning, fairly early in the morning, I was dragged from my bed by six or eight people. I was dragged out the back to the outside shower. I was stripped naked. I was bumped a couple of times. They threw me naked under a cold shower, scrubbed me down with a brush broom. And then somebody stuck the broom handle in a very embarrassing and inappropriate place shall we say. (Pause) Um, yeah.

SAMANTHA HAWLEY: And what impact did that have on you at the time?

BILL: Same impact it's got on me now. I just felt totally humiliated, um, I spent on and off the next few days bleeding. I was too frightened to go and get any help. I was only 18 and a half at the time.

Anyway, eventually I succeeded in getting a discharge on medical grounds. I got out with 30 per cent disability after 12 months service. I was 100 per cent fit when I went in. And it's never left me.

I haven't, I reckon I have probably had about 10 good nights' sleep since 1968.

SAMANTHA HAWLEY: What action do you think needs to be taken? Why did you put in the complaint to the DLA Piper review?

BILL: Um, so what do I want? I want it to stop happening, I want it to stop happening because you don't achieve anything by victimising or bastardising or bullying anyone.

As far as compensation goes, I'd like to see an apology, I would like to see, I would like to see some sort of compensation.

SAMANTHA HAWLEY: And do you think there needs to be a Royal Commission into what occurred?

BILL: Yes, without a doubt.

But in some of these older cases, particularly cases like mine, the simple fact of the matter is that

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AM - Defence victim speaks out 15/06/2012

<http://www.abc.net.au/am/content/2012/s3525625.htm>

half the perpetrators are probably bloody dead by now.

What I do think there should be and what I'd like to see - and there is nothing out there - I would like to see a, some sort of support group for people who have made submissions to DLA Piper, even if it was a secure web site or something, where people could talk to each other anonymously because now it's very difficult carting all of this around and not having anyone to talk to about it.

I think you would find that for every one of us that put our hand up and complained, there's probably 10 or 20 more that didn't.

TONY EASTLEY: Bill, a defence force abuse victim, speaking to AM's Samantha Hawley.

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27/05/14 11:09 AM

Annexure X – Other Groups Who Feel a Royal Commission Is Essential

Sky News: Pressure mounts for ADF royal commission <http://www.skynews.com.au/topstories/article.aspx?id=7613...>

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Pressure mounts for ADF royal commission

Updated: 06:35, Saturday June 16, 2012

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A child abuse survivors group and the Australian Defence Force Association say the federal government must hold a royal commission into abuse allegations.

Child abuse survivors and the Australian Defence Force Association (ADFA) agreed on Friday a high-level commission of inquiry with the power to subpoena witnesses was needed, after disturbing details of a previously redacted government review into the issue were released.

Prime Minister Julia Gillard said a royal commission was an option and while Defence Minister Stephen Smith said it was not 'inevitable' he did not discount the proposal.

ADFA executive director Neil James believes there is a fifty-fifty chance of commission being held, saying it was needed to 'clear the air' around the ADF, test the allegations and give victims a voice.

'It's also important for public confidence in the ADF,' he told AAP.

The executive summary of a government-initiated review into Defence abuse conducted by law firm DLA Piper was released on Thursday, more than three months after Mr Smith made public extracts only.

The summary says previous findings and defence files show very little evidence of perpetrators being called to account.

The review includes allegations of abuse, ranging from incidents of inappropriate language to serious sexual allegations, from 775 people and suggests the overwhelming majority are 'plausible'.

Some cases relate to teenage minors that occurred up to 60 years ago, when young apprentices were taken into the navy.

Ms Gillard said there were 'some deeply distressing matters' outlined in the report, which she described as 'truly disturbing reading'.

But she said it was going to be complicated to deal with because there were system-wide issues as well as individual cases.

'We now have to work out what's the best way of dealing with all of this given how far back in time many of these claims go,' she told reporters in Sydney.

'A royal commission for this matter or at least for some of the more serious allegations is one option.'

The group Adults Surviving Child Abuse says there has been a lack of accountability and justice for victims, as well as a failure in terms of compensation and ongoing support.

President Cathy Kezelman called on Mr Smith to announce a royal commission immediately.

'The system needs to change - the ADF must put in place an open, transparent culture of reporting,' she said in statement.

1 of 2

23/06/12 2:51 PM

Annexure Y - Carlton Football Club Sacks Player For Inappropriate Social Media Conduct

Carlton sacks defender Josh Bootsma over inappropriate beha...

<http://www.heraldsun.com.au/sport/afl/carlton-sacks-defender..>



Josh Bootsma has been sacked by Carlton. Picture: Michael Klein.
Source: News Limited

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EXPLICIT images sent by Carlton defender Josh Bootsma to a teenage girl led to his sacking yesterday.

Carlton acted after the mother of the girl provided the club with photos that Bootsma, 21, had sent.

The Blues terminated Bootsma's contract after discussions with his manager and the AFL Players' Association.

TITUS O'REILLY: MICK MALTHOUSE'S MOCK SOCIAL MEDIA SPEECH ([/news/opinion/mick-malthouse-addresses-carlton-members-over-josh-bootsmas-misuse-of-social-media/story-fni0ffsx-1226941757670](#)) ([/news/opinion/mick-malthouse-addresses-carlton-members-over-josh-bootsmas-misuse-of-social-media/story-fni0ffsx-1226941757670](#))

NICK RIEWOLDT CALLS FOR TOUGHER SOCIAL MEDIA PENALTIES ([/sport/afl/nick-riewoldt-calls-for-legislation-to-charge-social-media-trolls-in-response-to-hawthorns-cyril-noli-receiving-racial-abuse/story-fni5f22o-1226939205871](#))

The images were sent via social media app Snapchat.

The club was contacted about the pictures on Monday.

Carlton football operations manager Andrew McKay said Bootsma had lost the players' trust after a series of indiscretions in the past year.

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Carlton sacks defender Josh Bootsma over inappropriate beha...

<http://www.heraldsun.com.au/sport/af1/carlton-sacks-defender...>



Carlton football manager Andrew McKay explains Carlton's decision to the media. Picture: Mark Dadswell

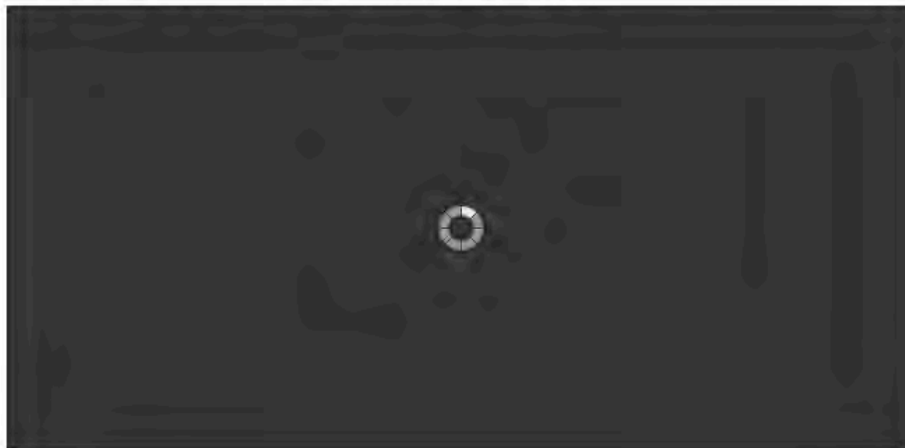
Source: News Corp Australia

Bootsma was contracted for next year and the Blues will meet his management today, but the gangly defender is not expected to be paid out.

"He continues to not uphold the standards we require," McKay said.

"If (captain) Marc Murphy had behaved in the same way, then he would be facing the same situation.

"Management made the decision. We acted quite swiftly. We needed to. I think it was above a decision of the leadership group. He was endeavouring to gain (trust) back over the last few months, but this final act has obviously not enabled him to do that."



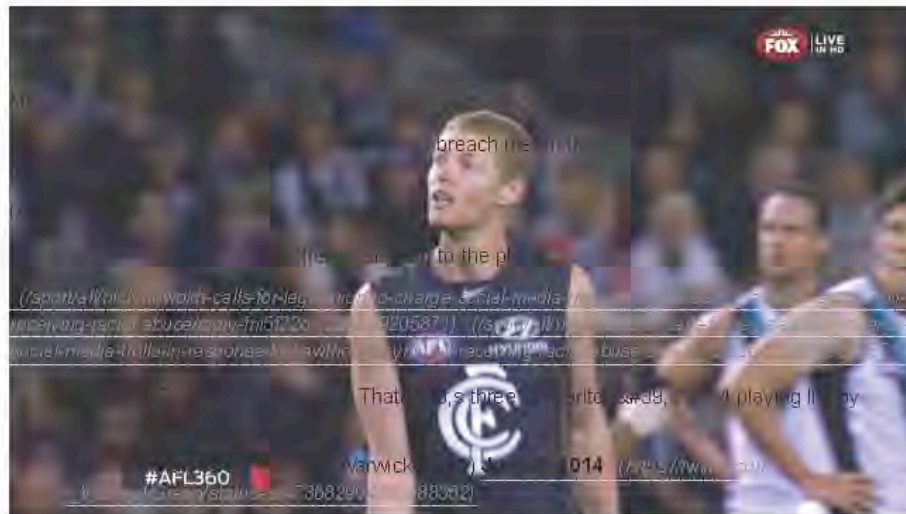
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Carlton sacks defender Josh Bootsma over inappropriate beha...

<http://www.heraldsun.com.au/sport/afl/carlton-sacks-defender..>



The immediate sacking of the struggling backman was supported by the AFLPA. McKay said Bootsma was "devastated" but denied the club had a social media problem.

The players were called to Visy Park yesterday and rules surrounding social media were reiterated after they had been told of Bootsma's sacking.

Bootsma was not given a chance to speak to the group.

LISTEN TO THE LATEST EPISODE OF THE SUPERFOOTY PODCAST BELOW OR CLICK HERE TO SUBSCRIBE FOR FREE IN ITUNES (<https://itunes.apple.com/au/podcast/the-superfooty-podcast/id852852904>)

(<https://itunes.apple.com/au/podcast/the-superfooty-podcast/id852852904>) Carlton coach Mick Malthouse defended the summary dismissal.

"The easiest thing to do is not to do anything," he said.

"The hardest thing to do is do what we've done. We've taken the hardest course of action and it has not been easy."

AFLPA players relations manager Brett Murphy said last night: "The club has kept the PA informed throughout the course of the matter and was involved in discussions.

"We are comfortable with the process the club has gone through.

"The association will continue to make our wellbeing services available to Josh."

Bootsma played the most recent of his 14 AFL games in Round 21 last year and has struggled in the VFL this year.

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Carlton sacks defender Josh Bootsma over inappropriate beha...

<http://www.heraldsun.com.au/sport/afl/carlton-sacks-defender...>



The South Fremantle export was selected with Carlton's first pick, No.22, in the 2011 draft and was often maligned by supporters.

The axing leaves Carlton with three list vacancies before the halfway mark of the season after the retirements of defenders Heath Scotland and Nick Duigan.

Two years ago, Carlton midfielder Brock McLean was fined \$5000 for comments he posted on Twitter.

McKAY confirmed last night he had applied for the position of chief executive at Carlton, soon to be vacated by Greg Swann.

Do you know more? Email us at news@heraldsun.com.au (<mailto:news@heraldsun.com.au>)

</sport/afl/nick-riewoldt-calls-for-legislation-to-charge-social-media-trolls-in-response-to-hawthorns-cyruil-nail-receiving-racial-abuse/story-fni5f22o-1226939205871>

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Jennifer ▾

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Martin

The moral of the story: Whatever you do, don't misbehave when your employer is looking for reasons to clear the decks and save money.

5 of 14

4/06/14 8:57 AM