

**SUBMISSION TO SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE ON THE REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE, CONDUCTED BY DLA PIPER, AND THE GOVERNMENT'S RESPONSE TO THE REPORT**

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12 March 2013

**INTRODUCTION**

1. I led the Review of Allegations of Sexual and Other Abuse in Defence (the Review). The other Review members were Ms Melanie McKean and Professor Dennis Pearce AO. Professor Pearce withdrew from the Review on account of ill-health in February 2012.
2. This submission to the Senate Foreign Affairs, Defence and Trade References Committee is made solely on my own behalf and does not purport to represent views of the other Review members or of either of the two law firms which employed me during the year in which the Review was conducted.
3. There have from time to time been comments questioning the independence of the Review because of the legal service provider relationship of DLA Piper with parts of Defence.
4. When the Review was set up the Minister made statements to the Review members personally and publicly confirming that he was looking to us to bring a rigorous approach to our task.
5. When doubts were expressed in 2011 about the independence of the Review I joined with the other Review members with the Minister's agreement in making the following statement in a media release:<sup>1</sup>

Allegation this is a cover-up exercise

The members of the Review have met with the Minister.

The Minister expects the Review to provide our own honest assessment and recommendations, regardless of whether or not doing so may involve criticism of aspects of Defence's response to allegations.

The Review members would not be participating in the Review if we thought it was a sham.

6. 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 is stated in the Disclaimer in the Report:

The opinions expressed in the Report ... are solely those of Dr Gary A Rumble, Ms Melanie McKean and Professor Dennis Pearce AO. The opinions expressed in the Report do not necessarily represent the views of other contractors to the Review, nor of DLA Piper Australia.<sup>2</sup>

7. The Review members cannot claim, and never have claimed, complete 'independence' from Defence. However, I believe that the Review members did bring the rigour which the Minister asked for to the Review process and to the Report.

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<sup>1</sup> See Volume 1 Appendix 2, page 224.

<sup>2</sup> The arrangements for the conduct of Phase 1 of the Review are explained in Chapter 1 and Appendix 2 of the October 2011 Report and in the Supplement to Chapter 1.

8. I have given considerable thought to whether I should set out in this submission the matters which I have addressed.
9. In some circumstances an individual who has presented a report to a Minister may feel that it is appropriate – even obligatory - to abide the policy decisions which the Government makes in its response to the report and – even if concerned about the substance of the response – to keep that to themselves.
10. However, the concerns which I have set out in this submission are not to do with the policy *decisions* which the Government has made in its response to the Report.
11. The concerns which I have set out in this submission are about the apparent failure of Government to make decisions and/or about the delay of the Government in making of decisions on many aspects of the Report.
12. Furthermore, when the Review was set up the Minister made statements to the Review leaders personally and publicly confirming that he was looking to us to bring a rigorous approach to our task and I joined in the June 2011 statement set out above expressing confidence in the process.
13. Accordingly, I do believe it is appropriate for me to bring to the attention of the Committee the gaps and delays in the Government's response which are concern to me.
14. The Reference before the Committee focuses on the Report and on the Government's Response to the Report and related issues.

#### **THE GOVERNMENT'S RESPONSE OF 26 NOVEMBER 2012**

15. The Government's Response which was announced by the Hon Stephen Smith MP Minister for Defence on 26 November 2012 includes:
  - a capped compensation scheme
  - a Parliamentary apology
  - the establishment of the Taskforce led by the Hon Mr Roberts-Smith RFD, QC
  - a commitment that the Attorney-General and the Minister for Defence will report to Parliament on a regular basis on the work of the Taskforce.
16. I acknowledge that those aspects of the Response are significant.
17. In particular I acknowledge the standing and qualifications of the individuals who make up the Taskforce.
18. I also acknowledge the importance of the Government decision to introduce restricted reporting which was a systemic issue identified in our Report. This decision was announced in the Minister's 26 November 2012 Media Release on Phase 2 of the *Review into the treatment of women in the Australian Defence Force (ADF)* conducted by the Federal Sex Discrimination Commissioner Ms Elizabeth Broderick<sup>3</sup>
19. However, the Report from our review was very wide-ranging and it was not clear to me from the 26 November 2012 statement what was the Government's Response to significant aspects of the Report nor whether all of our Report was being provided to the Taskforce.

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<sup>3</sup> <http://www.minister.defence.gov.au/2012/11/26/minister-for-defence-treatment-of-women-in-the-adf/>

That statement included: *Today the Minister announced that Defence has accepted all 21 recommendations from the Phase 2 report of the Broderick Review, six in-principle and 15 in full. Key measures to be implemented to address the recommendations include: ...Implementation of restricted reporting, so that personnel can make confidential reports of sexual harassment, sex discrimination and sexual abuse (which was also recommended by the DLA Piper Review);* [Emphasis added]

20. I sought clarification from the Minister on these matters in December 2012.
21. The Minister responded to me in an undated letter which I received on the evening of Friday 8 March 2013. I delayed finalisation of my submission to the Committee so that I could receive and take into account the Minister's letter.
22. The Minister has authorised me to quote from the letter in my submission to the Committee. I attach a copy of his letter.
23. The Minister's letter has clarified the Government's Response in many respects but has not answered my general concerns about delay.

## **SUMMARY**

24. I apologise for not providing a summary.
25. In the interests of getting this submission to the members of the Committee so that they will have some time to consider it before my scheduled appearance on the afternoon of Thursday 14 March – which is only two days away – I am lodging the submission without a summary.

## **BACKGROUND**

### **THE REPORT**

26. Under our Terms of Reference<sup>4</sup> and relevant DEFGRAMs<sup>5</sup> our tasks were to report to the Minister and Defence:
  - identifying broad 'options' for responding to the allegations of abuse which were before the Review.
  - 'identifying' systemic issues for further investigation in Phase 2.
  - for each specific allegation before the Review:
    - making an 'initial assessment' of whether the matter alleged appeared to have been appropriately managed; and
    - making 'recommendations for further action'.
  - reviewing de-identified extracts from the Fairness and Resolution (F&R) Branch database of matters which were current at any time between 10 April 2011 and 17 June 2011.
  - reviewing de-identified summaries of Australian Defence Force Investigative Service (ADFIS) matters which were active at any time between 10 April 2011 and 17 June 2011 which involved allegations within the scope of the Review's Terms of Reference.<sup>6</sup>
27. The Terms of Reference (ToR) and the DEFGRAMs did not state expressly which part or parts of 'Defence' we were reporting and making recommendations to.
28. It had been made clear to the Review members from the outset that we were to report to the Secretary (as well as the Minister). Early in the Review process, we sought clarification of

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<sup>4</sup> Report Volume 1 Appendix 7.

<sup>5</sup> Report Volume 1 Appendixes 8 and 30.

<sup>6</sup> The circumstances leading to the establishment of the Review and the conduct of the Review are explained more fully in Volume 1 and the Supplement to Volume 1 of the Report and in related Appendixes.

whether the references in the ToR and DEFGRAMs to reporting to 'Defence' meant that we would be reporting to the Chief of the Defence Force as well as the Secretary.

29. By email of 15 July 2011 the Minister's office informed the Review that – as well as reporting to the Minister - we were reporting to the Secretary of the Department but we were *not* reporting to the CDF.<sup>7</sup>
30. The fact that we were preparing our Report and recommendations for the Secretary as well as for the Minister was an important consideration in the processes which we developed for the Review including the processes we developed for ascertaining the extent to which people making statements to the Review consented to disclosure to Defence.<sup>8</sup>
31. We also took these considerations into account in structuring the Report of our Review. The Report was delivered as a Volume 1, a Supplement to Volume 1 and Volume 2.

### Volume 1

32. We delivered Volume 1 to the Minister in October 2011. Volume 1 included:
  - our 'Findings' including the main conclusions which emerged from our survey of the findings made in previous inquiries and reports which we were able to locate;
  - our identification of 'Options' (including public apologies, personal apologies, Royal Commission, capped compensation and reconciliation processes) for responding to the allegations of abuse;
  - our 'Recommendations' for consideration of some particular combinations of options;
  - our identification of 23 systemic 'Issues' for further investigation in Phase 2 (Phase 2 issues). In accordance with the ToR these were referred to in the Report as issues 'identified' for Phase 2 consideration. In effect these were recommendations that these systemic issues be considered in Phase 2.
33. Volume 1 also included an Appendix providing our interim report on specific allegations about abuse in Defence and Defence management of allegations of abuse which had been made in the ABC *Four Corners – Culture of Silence* program in June 2011.
34. Volume 1 in hard copy consists of one large ring-binder with the body of the report – around 200 pages - and two similar folders containing Appendixes.
35. The April 2012 Supplement to Volume 1:
  - confirmed the findings and recommendations of Volume 1 (except for one superseded recommendation);
  - made some further findings and recommendations;
  - confirmed the 23 systemic issues identified (recommended) in Volume 1 for consideration in Phase 2 (Phase 2 issues) and identified (recommended) another 12 systemic issues for consideration in Phase 2;
  - updated our assessments and recommendations of each of the *Four Corners – Culture of Silence* allegations (Appendix 1 to the Supplement).
36. The Supplement included an updated list of the Findings, Phase 2 issues and recommendations. (I understand that a copy of this extract has been provided to Committee members for ease of reference.)

<sup>7</sup> Report Volume 1 Appendix 2, page 230.

<sup>8</sup> Report Volume 1 Appendix 2, pages 236-243 and Appendixes 50, 51, 53 and 57-59.

37. Volume 1 and the Supplement to Volume 1 were prepared on the assumption they would be substantially be made public. They have been made public with some minor redactions.

## Volume 2

38. Volume 2 consisted of:
- 23 Parts - large ring-binder folders - containing our initial assessments and recommendations on around 1100 specific allegations from 775 sources (including the *Four Corners – Culture of Silence* program allegations). These 23 parts were central to the Review and the Report. I comment further on the content of these 23 parts below.
  - three Parts reporting on 494 Fairness and Resolution Branch (F&R) database matters. We provided an overview of the outcome of our review of the F&R database extracts at Appendix 4 of the Supplement to Volume 1.
  - one Part dealing with 49 ADFIS matters. We provided an overview of the outcome of our review of the ADFIS matters at Appendix 5 of the Supplement to Volume 1.
  - folders of explanatory material.
39. The Volume 2 Explanatory Material explains how we structured these parts. We designed our Volume 2 Report to facilitate the breaking out of streams of work.<sup>9</sup>
40. For most of the 1100 allegations reported on in Parts 1-23 of Volume 2 we made multiple recommendations.
41. Many of the recommendations were specific to a particular allegation. However, to reduce the bulk of the assessment and recommendation forms we also developed some shorthand phrases for more complex recommendations which we were making frequently. Those shorthand phrases are explained in the Volume 2 Explanatory Material.<sup>10</sup>
42. Other recommendations which we made frequently – such as recommendations for a Phase 2 body external to Defence to request more information from Defence and to then consider the matter further – were self-explanatory and accordingly were not discussed in the Volume 2 Explanatory Material.
43. Volume 2 has not been made public and should not be made public.
44. The Volume 2 folders were submitted to the Minister marked:

FOR THE EYES OF THE MINISTER FOR

DEFENCE ONLY

NOT TO BE COPIED

These restrictions are to ensure compliance with confidentiality commitments given to individuals who have provided information to the Review. A working copy of Volume 2 with redactions required by confidentiality restrictions will be made available to Defence Legal.

45. Under our Terms of Reference, we were required to report to the Secretary as well as the Minister. 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 the Review leaders – to go to the Secretary of the Department of Defence (with our Review

<sup>9</sup> See Supplement to Volume 1 Appendix 2 at pages 3-4 and Volume 1 Appendixes 57 and 58.

<sup>10</sup> See Supplement to Volume 1 Appendix 2.

Leader sign-off) as soon as we got clearance from the Minister to provide that Working Version.<sup>11</sup>

46. The notation set out above refers to the Working Version of Volume 2 going to 'Defence Legal' (rather than the Secretary) because a group within Defence Legal in the Department had been our point of contact with the Department throughout the Review. Some of our specific recommendations were for referral on to Service Chiefs and/or the CDF to consider particular actions.
47. In December 2012 I asked the Minister why the Working Version of Volume 2 had not gone to Defence (the Secretary). I have recently also provided the Minister with a draft of this submission in which I set out why the non-delivery of the Working Version of Volume 2 to the Secretary was a matter of concern to me.
48. At page 2 of his 8 March 2013 letter the Minister responded as follows:
- You state that as the working version of Volume 2 did not go to the Secretary, that prevented the Secretary, the Chief of the Defence Force and the Service Chiefs from being informed about what allegations have been raised with the Review, the initial assessments and recommendations made and the bases for those assessments and recommendations.
- 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.
49. This represents a significant shift from the Review's ToR which required us to prepare a report and recommendations for the Secretary as well as the Minister. I comment further on this shift below.

#### **GAPS/UNCERTAINTIES IN THE GOVERNMENT'S NOVEMBER 2012 RESPONSE**

50. I had put to the Minister my concerns about gaps/uncertainties of the Government's November 2012 Response to the Report. Most of the uncertainty has now been clarified by the Minister's letter of 8 March 2013.
51. However, even after considering carefully the Minister's letter of 8 March 2013, I still have major concerns.

#### **A. SYSTEMIC ISSUES FOR PHASE 2 CONSIDERATION**

52. As far as I am aware, 'restricted reporting' is the *only* systemic issue of the 23 issues which were identified in October 2011 Volume 1 and of the 12 issues which were identified in the April 2012 Supplement to Volume 1 of our Report for which a Government *decision* has been announced.<sup>12</sup>
53. This decision was announced in the Minister's 26 November 2012 Media Release on Phase 2 of the *Review into the treatment of women in the Australian Defence Force (ADF)* conducted by the Federal Sex Discrimination Commissioner Ms Elizabeth Broderick<sup>13</sup> and is also referred to at page 4 of the Minister's 8 March 2013 letter.

<sup>11</sup> The process and the bases for making redactions are described in the Explanatory Material for Volume 2 in Appendix 2 of the Supplement to Volume 1 pages 5-6.

<sup>12</sup> Volume 1 Chapter 7 pages 135-139 and Appendixes 23, 31-33 and 72.

<sup>13</sup> <http://www.minister.defence.gov.au/2012/11/26/minister-for-defence-treatment-of-women-in-the-adf/>

That statement included: *Today the Minister announced that Defence has accepted all 21 recommendations from the Phase 2 report of the Broderick Review, six in-principle and 15 in full. Key measures to be implemented to address the recommendations include: ...Implementation of restricted reporting, so that personnel can make confidential reports of sexual harassment, sex discrimination and sexual abuse (which was also recommended by the DLA Piper Review);* [Emphasis added]

54. It is not clear from the response – which refers to restricted reporting being available to ‘personnel’ - whether it is intended that restricted reporting will only be available to current Defence personnel or is also to be available to *former* Defence personnel for incidents which occurred when they were in Defence.
55. I recommend that the Committee clarify the Government’s intention about whether restricted reporting is to be available for former (as well as current) Defence personnel for incidents which occurred when they were in Defence.
56. Whatever the clarification of the Government’s decision on that point, there is no doubt that the decision to implement restricted reporting is a very important decision.
57. However, there was no clear indication in the November 2012 on what *decisions* - if any - the Government has taken on the other 34 Volume 1 systemic issues ‘identified’ (recommended) in our Report for Phase 2 consideration.
58. Nor was it clear what processes there would be for the *consideration* of those 34 issues.
59. The Government’s Response of 26 November 2012 referred to the Roberts-Smith Taskforce looking at some systemic issues but also referred to other issues being considered through other processes including the *Pathway to Change* Strategy. However, the Response did not specify which systemic issues the Taskforce (or anyone else) was to consider. When Ms McKean and I met with the Taskforce in December 2012, the Taskforce leaders were not able to tell us which if any of the systemic issues identified in our Report they were to consider.
60. The Terms of Reference for the Taskforce released in January 2013 do not contain *any* express reference to the Taskforce considering systemic issues. Those Terms of Reference say that the Taskforce is to ‘assess the *findings* of the DLA Piper review and the material gathered by that review ...’.
61. Our report contained ‘Findings’, identified ‘Phase 2 Issues’, outlined ‘Options’ for procedures for responding to the allegations of abuse, made some ‘Recommendations’ for consideration of some broad options and – in relation to specific allegations – made ‘Initial assessments’ and ‘Recommendations’ for further action.
62. It was not clear to me from the Terms of Reference for the Taskforce whether the Taskforce was to consider all aspects of our Report or only the ‘Findings’.
63. The Government’s Response of 26 November 2012 also referred to unspecified ‘Broader issues’ being considered ‘separately, including through the *Pathway to Change* strategy.’
64. Some of the systemic issues which our Report ‘identified’ (recommended) for Phase 2 consideration are particularly relevant to the welfare of individuals – many no longer in Defence – who are affected or at risk *now* because of abuse in the ADF in the *past*. These issues are not within the scope of the *Pathway to Change* Strategy referred to in the 26 November statement because that Strategy is focussed on changing culture and behaviour in *the ADF* for the *future*.
65. In the result, it was not clear to me who – if anyone – would be considering and reporting to Government on the remaining 34 of the 35 important systemic issues which Volume 1 and the Supplement of the Report identified.
66. Nor was it apparent to me why some of the systemic issues - most of which have been before the Government since October 2011 - could not be decided without further inquiry.

**The Minister's letter of 8 March clarifying the Government response on systemic issues**

67. The Minister's letter of 8 March 2013 makes the following statements in relation to systemic issues identified in our Report:

(Page 1)

The systemic issues contained in Volume One and the Supplement to Volume One to which you refer in your letter are being considered by the Defence Abuse Response Taskforce ('the Taskforce'), ....

(Page 2)

The Taskforce's Terms of Reference include that the Taskforce '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 culture and practice'.

I stated in my media release on 26 November 2012 that where the Taskforce's work highlights further possible systemic issues or issues to be considered in these initiatives, the Taskforce will draw these to the attention of the Minister for Defence, Chief of the Defence Force and the Secretary of the Department of Defence.

You also note that some of the systemic issues which the Report identified for Phase 2 consideration are relevant to the welfare of individuals who are affected or at risk now because of abuse in the ADF in the past.

You raised concerns in relation to providing appropriate support services for people who have experienced past abuse in Defence.

As outlined in the Government's response to the Report, the Taskforce will be funded to provide additional counselling and will also liaise with and provide referrals to existing services for people seeking such assistance.

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

...

[I return to the question of 'issues relevant to the welfare of individuals who are affected or at risk now because of abuse in the ADF in the past' and this particular aspect of the Minister's letter below.]

(Page 3)

In relation to more general systematic [sic] issues with Defence processes, including in relation to Fairness and Resolution Branch matters and Australian Defence Force Investigative matters referred to above, Defence is undertaking a fundamental re-think of its existing systems of inquiry, investigation and review.

The Taskforce has been engaged about the scope of this work. The Taskforce will provide its observations about systemic policy issues, made [sic] during the course of its consideration of individual cases in Volume Two, to the Secretary of the Department of Defence for consideration in the context of this work by Defence.

Your general findings and recommendations regarding the sequencing of administrative action during or after criminal processes for the same fact, deficiencies in Defence record keeping practices, Fairness and Resolution Branch and ComTrack database issues have in the meantime informed the development of proposals in that re-think which will be considered by the Secretary and the Chief of the Defence Force shortly.



Implementation of improved systems of inquiry, investigation and review will involve enhancements and changes to the operations of the Fairness and Resolution Branch, which in the meantime has been restructured and renamed Values, Behaviours and Resolutions Branch.

68. The Minister's letter at pages 3 and 4 also refers to the responses to the report of the Inspector General ADF and Phase 2 of the Sex Discrimination Commissioner's Report on treatment of women in the ADF. There is some overlap between the systemic issues identified in our Report and the matters reported on in those reports. For example, as noted above, the Government has decided to implement restricted reporting – a systemic issue identified in Volume 1 of our Report – as part of the Government response to the Sex Discrimination Commissioner's Report.
69. It is not entirely clear to me how the Minister's opening statement – '*The systemic issues contained in Volume One and the Supplement to Volume One to which you refer in your letter are being considered by the Defence Abuse Response Taskforce ...*' fits with what follows in the Minister's letter which indicates that many of the systemic issues which our Report identified are being considered or have already been considered and taken into account through other processes.
70. Perhaps this means that the Taskforce has *oversight* of the consideration of *all* of the systemic issues which our Report identified with some of the systemic issues being subject to detailed consideration by other entities and processes and the Taskforce itself carrying out some of the detailed consideration.
71. There is some risk with so many processes going on in parallel that some issues will 'fall through the cracks' and not be considered because the entities involved in carrying out consideration of some issues will assume that some particular issues are being considered by other entities and/or do not fall within their area of responsibility.
72. I recommend to the Committee that it confirm that the Taskforce has the role of oversight to ensure that all of the systemic issues identified in our Report are being considered.

**The response in the Minister's letter of 8 March in relation to systemic issues of current impacts of past abuse**

73. As foreshadowed above, I now return to the particular systemic issues of current impacts of past abuse on which I had sought clarification of the Government's Response.
74. The 26 November 2012 statement referred to 'Broader issues about the Defence justice and complaints system and Defence culture ... being pursued separately, including through the Defence *Pathway to Change* Strategy.
75. Some of the systemic issues which our Report 'identified' (recommended) for Phase 2 consideration are particularly relevant to the welfare of individuals – many no longer in Defence – who are affected or at risk *now* because of abuse in the ADF in the *past*.
76. These issues are not within the scope of the *Pathway to Change* Strategy referred to in the 26 November statement because that Strategy is focussed on changing culture and behaviour in *Defence* for the *future*.
77. The issues identified in our Report for which I particularly sought clarification of the Government's Response are:
- A group of systemic issues relating to current mental health risks for people who were involved in abuse in Defence in the past as victims and/or as perpetrators.
  - A group of systemic issues affecting access to DVA benefits and counselling now for people affected by abuse in Defence in the past.

*Mental Health impact/risk systemic issues*

78. The group of systemic issues relating to mental health and related impacts and risks now for people involved in abuse in Defence in the past were:

**Issue 5**

Phase 2 should consider the issues arising from the connections between past abuse experiences in the ADF and mental health and related problems. (page 122)

**Issue 6**

Phase 2 should consider how to get people who were involved as perpetrators of abuse in the ADF who are suffering or at risk of suffering mental health problems to be provided with appropriate assistance. (page 126)

79. The findings of fact which provided the basis for our identification (recommendation) of these issues for Phase 2 consideration were as follows.

**Finding 7**

Previous reports and Defence file material indicate that aspects of the culture in many parts of the ADF have discouraged reporting by victims or witnesses. (page 52)

**Finding 8**

Because of the under-reporting of abuse in the past, there are risks of adverse impacts now on the victims of that abuse in the past and there are risks that those people - if still in the ADF - will leave the ADF. (page 53)

**Finding 9**

People who have been the victims of abuse may need counselling and other assistance. (page 53)

**Finding 13**

It is likely that many of the boys who endured, and/or participated in inflicting, such abuse may have suffered, or be at risk of suffering:

mental health problems; and/or  
alcohol and drug problems: and/or  
associated physical health and employment problems

affecting them and their families. (page 100)

**Finding 18**

It is likely that many of the young males who endured, and/or participated in inflicting, such abuse and the young females who endured such abuse have suffered, or be at risk of suffering:

mental health problems; and/or  
alcohol and drug problems: and/or  
associated physical health and employment problems

affecting them and their families. (page 101)

**Finding 19**

It is likely that a substantial number of people who have been the victims of sexual or other assault in the ADF have not reported that assault to anyone. (page 120)

**Finding 23**

It is likely that a substantial number of current and former ADF personnel are suffering or may be at risk of developing mental health problems associated with their experience as victims of abuse in the ADF. (page 123)

**Finding 24**

It is possible that a substantial number of current and former ADF personnel have an elevated risk of suicide associated with their experience as victims of abuse in the ADF. (page 123)

**Finding 25**

Early intervention after an abuse event is important to mitigate the risks of long term mental health problems. (page 124)

**Finding 26**

Because of underreporting of abuse incidents in the ADF and because of the stigma attached to mental health issues many victims of abuse in the ADF will not have received the early assistance which is crucial to mitigate the potential for long-term mental health issues. (page 125)

**Finding 27**

Because of many victims of abuse with mental health problems do not seek assistance, they do not receive the ongoing support which could reduce the impacts long-term mental health issues. (page 125)

**Finding 28**

It is likely that many people who have been involved in abuse in the ADF as perpetrators will be suffering or be at risk of suffering mental health problems. (page 126)

80. It was of particular concern to me that the Government had not expressly stated its response to these issues and that the *Pathway to Change* strategy – which is central to the response to the Culture Reviews and conduct in the ADF in the future – would not be likely to address these issues.

*DVA benefits and counselling systemic issues*

81. The group of systemic issues relevant to access to DVA benefits and counselling support for people who are affected now by involvement in abuse in Defence in the past are the following.

**Issue S5**

Phase 2 consider, in consultation with Defence, developing a proposal for identifying and collecting a consolidated set of reports of previous inquiries into abuse and related issues in Defence with a view to making those reports available for implementation of other Phase 2 actions and to provide an ongoing resource for Defence and DVA. (page 64)

**Issue S7**

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

**Issue S9**

Phase 2 to consider establishing arrangements for gathering and exchange of information between Defence and DVA about abuse in the ADF including access to previous reports, identification of clusters of abuse, identification of high-risk Defence environments and identification of possible serial perpetrators. (page 71)

**Issue S10**

Phase 2 consult with DVA about:

- whether DVA could issue statements on some of these issues to give guidance to potential claimants and their advisers about information which is available to assist claimants to establish their eligibility for benefits including –if DVA accepts that such information has probative force–the findings made by this Review and the information which has been gathered by this Review and other information which may be gathered and identified in Phase 2; and
- whether DVA could proactively be looking for individuals who may be eligible for benefits and/or support services which they are not currently receiving. (page 72)

**Issue S11**

Phase 2 to consider:

- drawing to the attention of DVA the clusters of abuse allegations which became apparent as allegations were assessed and grouped in Volume 2;
- establishing liaison between the team established to carry out investigations of allegations of possible criminal conduct/breach of DFDA and DVA to identify to DVA at risk individuals and/or groups;
- liaison with Defence research project into previous inquiries into abuse in Defence to make the outcomes of that project available to DVA; and
- exploring with DVA liaison with Veterans' representative bodies and consultative forums about this shift in DVA processes. (page 72)

82. The Government's Response and statements made by the Minister in November 2012 made plain that the fact that a capped compensation scheme was being established would not prevent individuals seeking other remedies.

83. For many individuals affected by abuse in Defence in the past, ongoing access to DVA benefits and counselling could be of much greater significance than a one-off payment under the capped compensation scheme. We received many accounts of the difficulties which individuals confront in attempting to establish that they experienced abuse many years previously in the ADF.<sup>14</sup>

84. It was of concern to me that the Government has not indicated a response to these issues which were not likely to be picked up through the *Pathway to Change* Strategy and in December 2012 I had sought clarification from the Minister of what was intended.

85. The Minister's letter of 8 March 2013 responded to me on these matters with two specific comments.

86. First -

You raised concerns in relation to providing appropriate support services for people who have experienced past abuse in Defence.

As outlined in the Government's response to the Report, the Taskforce will be funded to provide additional counselling and will also liaise with and provide referrals to existing services for people seeking such assistance.

87. It is of course important that counselling be available for people seeking assistance. The Minister did not put forward the availability of counselling and referral to counselling for people seeking it as being a *sufficient* response and it is important to emphasise that the issues which we identified in our Report are more complex than providing 'counselling for people *seeking* such assistance'. As we explained in the Report, because of the stigmas associated with abuse and with mental health, people who are suffering or who are at risk of suffering mental problems associated with abuse *may not seek assistance*. The complex challenge is how to reach such people.

<sup>14</sup> Supplement to Volume 1 pages 70-72.

88. The Minister continued:

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

89. I am pleased that the importance of these issues has been underlined by the Minister's request to Mr Roberts-Smith to consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues.

90. However, to address the mental health and DVA benefits issues which our Report raised, the consultation will need to go wider to include (at least) the Department of Veterans' Affairs, Comcare and Veterans' groups.

91. Furthermore, it seems to me that that the Government could simply have decided some of the issues in these groups of issues without further delay and without adding further consultation to the Taskforce's load.

92. For example, it seems to me that the Government could have made a decision on whether Defence should have a consolidated set of copies of the reports of previous inquiries on abuse in Defence (See Issue S5 set out above) without waiting for the Taskforce to be established and to initiate consultation on that issue.

#### **B. PARTS 1-23 OF THE WORKING VERSION OF VOLUME 2 - INITIAL ASSESSMENTS AND RECOMMENDATIONS ON SPECIFIC ALLEGATIONS**

93. The 23 Parts of Volume 2 providing our initial assessments and recommendations on the 775 sources' specific allegations were central to the Review and to our Report.

94. The impetus for establishing our Review was the need to assist the Minister with initial assessments and recommendations for further action of the specific allegations which had come into his office and/or been reported in the media in April/May 2011. The number of allegations before the Review expanded significantly from that starting group of allegations.

95. We made a very large number of recommendations. Each of the 1100 assessments contained at least one recommendation, most contained several recommendations and many contained six or more recommendations.

96. The Explanatory Material to Volume 2 (Appendix 2 of the Supplement to Volume 1) gives only some indication of the range of recommendations we made.

97. Apart from the recommendations referred to in that Explanatory Material, we also made a number of self-explanatory recommendations including recommendations for Defence to be asked to gather information in relation to aspects of specific allegations and/or detailed recommendations dealing with the particular allegations.

98. Consistently with references in our ToR to Phase 2 to follow on after we had completed Phase 1, we expected that there would be a Phase 2 body external to Defence.<sup>15</sup> We expected Phase 2 to commence much more quickly than it has.

99. Expectations had been raised amongst people who had come to us that there would be some effective action. From our point of view it was important that there be a clear signal to those people and to other people who had not come to the Review, but who could be waiting to see whether there was going to be any effective action, that there would be a meaningful response from Government shortly after delivery of Volume 2 of our Report in April 2012.

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<sup>15</sup> See Volume 2 Explanatory Materials (Appendix 2 to Supplement to Volume 1) pages 2-4.

100. Most of the individuals who brought information to the Review – including individuals who had never told anyone about their experience before - had consented to disclosure of information to Defence to enable further investigation and action on their allegation.
101. We had not expected the Minister to consider personally all of the thousands of recommendations we had set out in Volume 2 Parts 1-23.
102. However, we did expect that the Working Version of Volume 2 with redactions would go to the Secretary so that the Secretary and the Department - with input from the CDF and the Service Chiefs where appropriate - could advise the Minister on high level decisions on how to manage the thousands of recommendations.
103. We also drew to the attention of the Minister a group of what appeared to us to be particularly significant allegations so that he could focus on making decisions about our assessments and recommendations on those allegations.
104. We designed our Volume 2 Report to facilitate the breaking out of streams of work.<sup>16</sup>
105. The Working Version of Volume 2 has not gone to the Secretary and – as I understand the Minister’s letter of 8 March 2013 - will not go to the Secretary at all.
106. It was a matter of concern to me that the working Version of Volume 2 had not gone to the Secretary because:
- Around 180 of the allegations before us had never been reported within/come to the knowledge of Defence. For around another 275 of the allegations we did not know if the allegation had ever been reported within/come to the knowledge of Defence. We believed that the Secretary should be aware of these allegations and prepared the report with such redactions if any as were appropriate.
  - Most people had consented to disclosure to Defence to enable further investigation and action *because they wanted there to be action.*
  - For many of the specific allegations on which we reported in Volume 2 we included recommendations for immediate referral of matters to the relevant Service Chief and/or the CDF and/or the Secretary so that they could be aware of the issues involved and/or commence investigation and consider action.
  - Some of the allegations related to relatively recent matters. Many of the allegations indicated specific risks of which the Secretary and ADF leaders should be aware and could take immediate action about.
  - For many of the specific allegations, we had recommended that Defence be asked to gather some relevant information to enable further consideration of appropriate action in Phase 2.
107. 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:
- what allegations have been raised with the Review;
  - the initial assessments and recommendations we had made;
  - what were the bases for our assessments and recommendations;
  - the individuals matters underpinning the findings, issues, options and recommendations in Volume 1.

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<sup>16</sup> See Volume 2 Explanatory Materials (Appendix 2 to Supplement to Volume 1) pages 3-4.

108. The fact that the Working Version of Volume 2 did not go to the Secretary prevented appropriate responses and/or interventions to deal with continuing issues and situations.
109. The Minister's own version of Volume 2 was marked – as explained above – 'FOR THE EYES OF THE MINISTER FOR DEFENCE ONLY'. Accordingly, officers of the Department would not have been able to peruse that version of Volume 2 as a basis for advising the Minister.
110. The fact that the Working Version of Volume 2 (with redactions) did not go to the Secretary has also necessarily prevented the Minister from obtaining from the Department informed advice about the (redacted) content of Volume 2.
111. Many people who came to us told us that they had not told anyone their stories before. Expectations had been raised that there would be some meaningful response.
112. I acknowledge the standing and qualifications of the Taskforce. However, I was concerned about the effect that delay in the Government's response could have had on the often distressed individuals who had come to the Review.
113. Nothing happened on any of the specific matters reported on in April 2012 in Volume 2, Parts 1-23 until the establishment of the Taskforce in November 2012.
114. For reasons set out in our report including our survey of the findings of fact in many previous reports we were of the view that the number of people affected by abuse in Defence in the past is considerably higher than the number who came to our Review.<sup>17</sup>
115. I was concerned that the delay in the Government's response to our report being announced and the further time taken while the Taskforce re-examines the matters will discourage other people from coming forward.
116. I was also concerned that the delay in setting up the Taskforce will encourage perpetrators and witnesses of past abuse who might have been considering coming forward to think that they can wait out the processes.
117. I had taken up these concerns with the Minister in December 2012.
118. At page 2 of his 8 March 2013 the Minister responded as follows:
- You state that as the working version of Volume 2 did not go to the Secretary, that prevented the Secretary, the Chief of the Defence Force and the Service Chiefs from being informed about what allegations have been raised with the Review, the initial assessments and recommendations made and the bases for those assessments and recommendations.
- 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.<sup>18</sup>
119. This represents a significant shift from the Review's ToR which required us to report, and make recommendations for action, to the Secretary as well as for the Minister.
120. In formulating the recommendations in the Parts 1-23 of the Volume 2, Ms McKean and I had noted that our ToRs contemplated that a 'Phase 2' body external to Defence would carry on the kind of information gathering and assessment which we had carried out in Phase 1 and would have oversight of implementation of Phase 2 recommendations.

<sup>17</sup> See Volume 1 Chapters 4 to 6 and the Supplement to these Chapters.

<sup>18</sup> The Minister makes similar comments on page 4.



121. We had also contemplated that the Government would have to make some major resourcing decisions to bring together the kind of expertise required if there was to be any effective action in relation to some 80 or so particularly serious allegations where criminal or Defence Force Discipline Act prosecution seemed to be possible.<sup>19</sup>
122. The Taskforce which has been established appears to have those kinds of capabilities.
123. When we delivered Volume 2 of the Report and the Supplement to Volume 1 in April 2012 Ms McKean and I had offered the Minister some suggestions on transition to Phase 2 and had offered to meet with the Minister to assist with formulating the detail of transition and set-up of Phase 2 once the Government had made some of the broad decisions about structure and resourcing levels and/or to provide our comments/perspectives on any particular approach that the Government might be considering.
124. We were never called on to provide that assistance.
125. The allegations before the Review varied widely in their nature. We had not assumed that the 'Phase 2 body' with general running of the management of Phase 2 would be the same as any task force body established to deal with the more serious allegations.
126. It seems that the Government has in effect brought these roles together in the Taskforce under Mr Roberts-Smith's leadership. I can understand why it would have seemed an attractive approach to have only a single body involved in running Phase 2.
127. I can also understand that the Government might have a concern that some of the allegations before the Review might be particularly sensitive and care would need to be taken not to alert particular individuals that there might be an allegation in relation to them.
128. However, Ms McKean and I as Review leaders had taken considerable care with the redaction process in signing off on the content of the Working Version and in formulating recommendations.
129. We had expected the Working Version of Volume 2 to go to a group within Defence Legal charged with coordinating action related to the Review. We had no reason to doubt the discretion of that group within Defence Legal.
130. It is not apparent to me why the Government considers it necessary for the Taskforce to reconsider *all* of the individual allegations of abuse in Defence which were before the Review without the Secretary of the Department, the CDF or the Service Chiefs having *any* knowledge of the content of any of those allegations or any knowledge about the Review's assessments and recommendations.
131. Most of the people who brought information to the Review generally did so because they wanted action and/or because they wanted the Minister and Defence to know what had happened to them. For many – probably most - of the allegations, sooner or later information about the allegation will have to be provided to the Secretary, the CDF and/or Service Chiefs if there is ever to be any effective action and/or if there is to be understanding of the accounts which the individuals brought to the Review.
132. In summary - for me it is a matter of deep concern that the Government has not yet made a decision on a single one of the thousands of recommendations which we set out in the 23 large ring binder folders of Parts 1-23 of Volume 2.
133. I see value even now in providing the Working Version of Volume 2 to the Secretary.
134. I also see value in ensuring that the Working Version of Volume 2 is provided to the Taskforce. I comment on that further below.

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<sup>19</sup> See Volume 1 Supplement Appendix 2 – Volume 2 Explanatory Material – Pages 22-25.

**C. VOLUME 2 – THREE PARTS REPORTING ON FAIRNESS AND RESOLUTION BRANCH MATTERS AND ONE PART REPORTING ON AUSTRALIAN DEFENCE FORCE INVESTIGATIVE SERVICE MATTERS**

135. The Government's 26 November 2012 statement of response did not refer to the three Parts (large ring binder folders) of Volume 2 which contain our report on Fairness and Resolution (F&R) Branch matters and did not refer to the Part of Volume 2 which reports on Australian Defence Investigatory Service (ADFIS) matters.
136. These aspects of our Report were based on de-identified F&R Branch matters and ADFIS matters.
137. We identified specific problems with management of these matters, including failure to meet timeframes for resolution of matters and non-compliance with record keeping, which could have been drawn to the attention of the Secretary last year for his consideration and response. See Appendixes 4 and 5 to the Supplement to Volume 1.
138. There was no specific reference to F&R or ADFIS matters in the 26 November 2012 statement of Government Response or in the Taskforce's Terms of Reference.
139. When we met with the Taskforce in December 2012 the Taskforce members had not seen these Parts of Volume 2 and were not aware of what was proposed in relation to them.
140. I requested clarification of the Government's response on these matters and on whether these Parts of Volume 2 had gone to the Secretary. I informed the Minister of my view that if the intention was that the Taskforce is to re-assess the review which we have already carried out, that seems to be an unnecessary delay and duplication of work, particularly given that the matters we reviewed were all current during the Review submission period and they ought to have been progressing to resolution.
141. The Minister responded to me in his letter of 8 March 2013 in the following terms (page 2-3)
- In relation to specific Fairness and Resolution Branch matters and Australian Defence Force Investigative matters, all matters included in the Report have been referred to the Taskforce for consideration.
- I have directed the transferral of material to the independent Taskforce and it is now a matter for the Taskforce to consider and make independent judgement whether, and in what form, this material may be made available to Defence.
- I note your concern that this is an unnecessary delay and duplication of work. However, the Government is strongly of the view that it is appropriate that the Taskforce independently review and determine appropriate responses for all matters which the Report addressed. Accordingly, the Taskforce will determine its response to these matters.
142. The Minister then went on to refer to Defence's 'fundamental re-think of its existing systems of inquiry, investigation and review' including F&R Branch and ADFIS.
143. I note the Minister's explanation for the Government's decision to send the F&R Branch and ADFIS aspects of our Report to the Taskforce to decide whether or not to make this material available to Defence.
144. This represents a significant change from the task we were set when we carried out our Review and prepared our Report for the Minister and Defence.
145. Furthermore, it is not apparent to me that there is any particular virtue in a 'one-size fits all' approach to procedure for managing the different aspects of our Volume 2 Report. There was no risk of these aspects of our report tipping off someone in Defence that they might be the subject of an allegation. We did flag that some redaction may be required for some

distribution of information within Defence.<sup>20</sup> But these aspects of our Report were based entirely on de-identified information provided to us by F&R Branch and ADFIS respectively about live matters that they had in their respective systems in the middle of 2011.

146. It is a matter of concern to me that there has been considerable delay since we prepared our report on what were current matters in the middle of 2011 and there will necessarily be further delay before the detail of these aspects of our Report reaches Defence – if it ever does.
147. The relevance and usefulness of our assessments and recommendations will be fading.
148. The Minister refers in his letter to ‘Defence’s fundamental re-think of its existing systems’ including F&R Branch and ADFIS systems.
149. Obviously the content of these four Parts of Volume 2 of our Report have not been available to be taken into account in that fundamental re-think and will not be available until and unless the Taskforce gets time to consider their content and decides to send (or not as the case may be) this material to Defence.

#### **D. RECOMMENDATIONS IN RELATION TO SOME SPECIFIC ALLEGATIONS BEFORE THE REVIEW**

150. Within the specific allegations reported on in Volume 2 are the allegations made in the ABC *Four Corners - Culture of Silence* program from June 2011. That program had considerable impact. From a viewing audience of around 200,000 the Review received around 550 contacts about allegations of abuse and/or Defence mismanagement in the four days after that program went to air.
151. All of the allegations made in that program raise significant issues.
152. However, the Government’s delay in responding to one of the allegations made in that program is of particular concern to me. That is the allegation that Defence has deliberately and systematically misled a series of Ministers about a vicious assault - including anal penetration with an object - by a group of male ADFA cadets on another male ADFA cadet in the 1990s.
153. My particular concern about this allegation - reported on by the respected *Four Corners* program - of deliberate and systematic cover-up by Defence is that it has the potential to damage public confidence in the probity of Defence and to discourage victims of assault to report.
154. The significant cultural changes which are the objectives of the *Pathway to Change* strategy are at risk of being weakened and sabotaged by re-runs of this allegation.
155. This damage can recur *whenever this allegation is recycled in media coverage*.
156. The allegation is given credibility and force by the standing of the victim referred to in the program as a ‘Perth barrister’. In the days following the 26 November announcement of the Government’s response to our report the following media reports appeared:

Among the critics was a Perth barrister raped at ADFA in 1989 by several cadets including some who were now senior officers. The man, who asked not to be named, said the payout figure and choice of an insider is a damning indictment of the unwillingness to tackle abuse in the military. (Herald Sun, 27 November 2012 – ‘Apology for abuse Minister acts on inquiry into military’)

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<sup>20</sup> See Supplement to Volume 1 Appendix 4 Review of Fairness and Resolution Branch database matters at page 1 and Appendix 5 Review of ADFIS matters at page 1

Among those reacting critically was a Perth barrister, who was raped at ADFA in 1989 by several cadets including some still serving as senior officers. The man, who asked not to be named, said the payout figure and the choice of an insider such as Mr Roberts-Smith was a damning indictment of the lack of willingness to tackle abuse. After the assault and while he was in hospital the lawyer was told to "harden up or get out". "They should have appointed someone from outside the military club," he said. (The Advertiser, 27 November 2012, 'Taskforce inquiry, compo for victims Defence says sorry for abuse'.)

157. I recommended to the Minister that he give priority to formulating responses on those particular 'Perth barrister' matters without waiting for the Taskforce to get to them as 'routine' Volume 2 matters.

158. The Minister's response under heading 4 at page 4 was:

As outlined in the Taskforce's Terms of Reference, the Taskforce will

- assess the findings of the DLA Piper review and the material gathered by that review ...
- ...
- determine, in close consultation with those who have made complaints, appropriate actions in response to those complaints;

The Government is of the view that it is most appropriate that the Taskforce, an independent body, make these assessments and determinations. This has commenced.

In the course of this work, the Taskforce will consider all of the specific allegations reported on in Volume 2, including the allegations made in the Four Corners – Culture of Silence program ...

159. The reference to the Taskforce determining 'in close consultation with those who have made complaints, appropriate actions in response to those complaints' has no relevance to our Volume 1 assessments and recommendations to the Minister on allegations made in media reports such as the Four Corners program.

160. Given that the Government's position remains fixed on this point, I recommend that the Committee call on the Taskforce to give priority to the Perth barrister allegations.

#### **E. THE PROVISION OF PARTS 1 TO 23 OF OUR REPORT PROVIDING INITIAL ASSESSMENTS AND RECOMMENDATIONS ON SPECIFIC ALLEGATIONS TO THE TASKFORCE**

161. When Melanie McKean and I met with the Taskforce in December 2012 it was confirmed to us that the Taskforce had not seen any of Volume 2 (redacted or otherwise).

162. It was also confirmed – as had been indicated in media reports – that a process was under way for DLA Piper to contact all individuals who had provided information to the Review to see if they consented to the information they had provided being provided to the Taskforce.

163. It was not apparent to me why that process for obtaining consent was under way at all. During the Review, the Review leaders had considered the issue and concluded that in most if not all cases a Phase 2 body external to Defence could 'inherit' the information provided to the Review in Phase 1.

164. In Volume 2 we made many recommendations for the Phase 2 body to contact the source to clarify his/her consent to disclosure to Defence. Those recommendations were based on the view that the Phase 2 body would have access to the individual's information but may need to clarify whether the person consented to their personal information being provided to Defence to enable further consideration by the Phase 2 body and/or action.

165. The DLA Piper team working with the Review leaders were aware over many months that we were making these recommendations and did not suggest at any time that there was any problem with the underlying assumptions.

166. Furthermore it was not apparent to me why – even if consent was thought to be required for some individuals for transfer of information to the Taskforce – there was a general approach of seeking consent from *all* individuals who had provided information to the Review.
167. Ms McKean and I had considered carefully what redactions were required from the Working Version being prepared for Defence. My recollection is that a high proportion of individuals had ticked the box on our statement form enabling full disclosure for use for investigation and action.
168. In December 2012 I informed the Minister of the following concerns about the decision not to provide Volume 2 to the Taskforce pending DLA Piper's consent process.
169. If - as I understood it there had been some blanket approach of DLA Piper contacting sources – that was of concern because:
- The matters dealt with in Volume 2 are complex and varied. Our recommendations for further action were complex and varied:
    - Some of the allegations involved allegations of crimes and other serious conduct which were not referred to ADFIS or civilian police during Phase 1, because the conduct occurred some time ago. Nevertheless, they are serious allegations the *substance* of which the Taskforce should be aware of – *whether or not the Source gives further consent*.
    - Not all of the Volume 2 recommendations for action required disclosure of personal information nor the involvement of the source in all aspects of dealing with/responding to the allegation.
  - Individuals who had previously clearly indicated their position on consent may be distressed to be contacted again.
  - Individuals who had previously clearly indicated their position on consent might fall out of the process if there was difficulty in contacting them for consent or if they were frustrated by the process.
  - Individuals being contacted to be asked whether they wanted to stay in the process would not have had complete information on which to make a decision – in particular they would not have had any information about the Review's initial assessment and recommendation in relation to their allegations.
  - The subject matter is one of great sensitivity for many of the individuals. Any process of contacting the individuals and any messages about the Taskforce process should have been controlled by the Taskforce.
  - The inference was that if an individual did not provide their consent to their information going to the Taskforce, then their matter – even in a redacted form – would not go to the Taskforce.
170. This last point was particularly significant and I expand on it.
- Gaps in fresh consents obtained by DLA Piper could lead to piecemeal dismantling of Volume 2, Folders 1-23 and significantly weaken the Report and its usefulness to the Taskforce.
  - In many cases, transfer of the allegation to the new Taskforce process should not depend on the consent of the source. The Government's Response puts a lot of emphasis on communication with individual informants to find appropriate responses for their complaints. However, it needs to be understood that some of the allegations made by a single source may raise broader issues than the source was aware of and

may be relevant to the situation of other individuals and/or broader Defence risk management issues.

- There are aspects of Folders 1-23 of Volume 2 which would be very important to the Taskforce and to Defence and the Government even with redactions to accommodate any new consent restrictions.
- For example:
  - Volume 2's presentation of clusters of allegations at particular establishments/bases/ships by era shows patterns and consistency in allegations which provide some corroboration and which helps to flag trouble spots.
  - Those corroborative aspects of Volume 2 will be weakened or lost if the Volume 2 material is disaggregated and transferred piecemeal, according to whether fresh consents are, or are not, obtained.
- Similarly, cross-referencing between assessments, where there are indications of possible serial perpetrators or otherwise related allegations, could be lost.
- 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. The Grey report indicated that similar conduct had been occurring at ADFA *since its establishment in the mid 1980s*. In Chapter 6 of the April 2012 Supplement we highlighted that the issues went beyond the 24 cases and related to conduct at ADFA back to the mid 1980s.<sup>21</sup> (The Minister's letter of 8 March 2013 at page 5 acknowledges that the number of actual cases may be higher than 24.)

- 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 a source.
- 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 later 1990s adds considerable force to the credibility of each allegation and indicates the seriousness of the issue for the ADF *now*.

171. The Minister's letter of 8 March 2013 responded to me on these matters (Pages 4-5):

I agree that the Taskforce must have access to relevant material to conduct its work. On receipt of comprehensive advice from the Australian Government Solicitor, I directed that material gathered for the purpose of the Review be transferred to the Taskforce including that held by DLA Piper or which has been given to me by DLA Piper. This included, for example, a copy of the Northwood Report.

I have been advised that DLA Piper has transferred most of its material to the Taskforce.

Arrangements are also in place to ensure that the Taskforce has access to any additional material or records it requires which are held by Defence, by DLA Piper or by my office. In relation to

<sup>21</sup> See Chapter 6 of the April 2012 Supplement to Volume 1. See especially Finding S8 and Issue S1.

specific information provided by individuals to DLA Piper in relation to their own experiences, I am advised by the Attorney-General's Department that DLA Piper considered that consent must be obtained from those individuals before any material can be handed by DLA Piper to any other person. There has been a process for seeking those consents.

172. I note the Minister's opening statement:

On receipt of comprehensive advice from the Australian Government Solicitor, I directed that material gathered for the purpose of the Review be transferred to the Taskforce including that held by DLA Piper or which has been given to me by DLA Piper.

does not say that he directed that *all* material gathered for the purpose of the Review be transferred to the Taskforce.

173. I note also that he then said:

I have been advised that DLA Piper has transferred *most* of its material to the Taskforce.

174. Obviously 'most' is not 'all'.

175. He also said:

In relation to specific information provided by individuals to DLA Piper in relation to their own experiences, I am advised by the Attorney-General's Department that DLA Piper considered that consent must be obtained from those individuals before any material can be handed by DLA Piper to any other person. There has been a process for seeking those consents.

176. It is not clear whether that initial position asserted by DLA Piper is still accepted by the Minister or has been overtaken by the 'comprehensive advice from the Australian Government Solicitor'.

177. Even though Ms McKean and I as Review leaders had designed the Review process and had taken into account transfer of information to the Phase 2 body when doing so –we were not consulted on any of these issues before the consent process was launched.

178. I do not know what was the basis for DLA Piper's assertion about the need for consent.

179. I cannot see how consent could have been an issue for the individuals who in Phase 1 had given broad consents to disclosure and use in Phase 2.

180. I cannot see how consent would have been an issue preventing the Working Version of Volume 2 (with redactions) going to the Taskforce.

181. If only *most* –more than half but not all - of the DLA Piper information has been transferred, then some obvious questions arise: - how much is still to be transferred? Is there some information which will never be transferred? What determines whether or not the remainder is transferred?

182. I also note that the Minister's response does not directly state whether the Working Version of Volume 2 has gone to the Taskforce. Elsewhere in his letter the Minister notes that the Taskforce is to 'assess the findings' of the DLA Piper review. It may be that the 'findings' referred to are intended to include the initial assessments and recommendations which we set out in Volume 2. But that is still not clear.

183. Accordingly, the Minister's response has not resolved the concerns which I set out above.

184. It is still my view that all of Volume 2 – at least the Working Version (with redactions) – could and should go to the Taskforce.

**Dr Gary A Rumble**

12 March 2013





# 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

culture and practices in particular the work done by the Sex Discrimination Commissioner into the Australian Defence Force (ADF) and ADFA;

- (vii) report to the Attorney-General and Minister for Defence every 3 months on its progress and issues arising, including whether the funding it has been provided is adequate so as to enable the Attorney-General and Minister for Defence to report to Parliament as appropriate
- (viii) report to the Attorney-General and Minister for Defence by October 2013 on whether, in what form, the Taskforce should continue in effect beyond the initial 12 month period and the funding that would be required so as to enable the Attorney-General and Minister for Defence to report to Parliament as appropriate; and
- (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.

The terms and conditions of the engagement by the Commonwealth of the Honourable Len Roberts-Smith RFD, QC are to be governed by an agreement between the Honourable Len Roberts-Smith RFD, QC and Roger Wilkins AO, Secretary of the Attorney-General's Department.

.....  
**THE HON NICOLA ROXON MP**  
Attorney-General, Minister for Emergency Management

**DATED:**

.....  
**THE HON STEPHEN SMITH MP**  
Minister for Defence

**DATED:**



**Stephen Smith MP  
Minister for Defence**

Dr Gary Rumble  
HWL Ebsworth  
PO Box 4316  
MANUKA ACT 2603

A handwritten signature in blue ink that reads 'Gary'.

Dear ~~Dr Rumble~~

Thank you for your letters of 17 December 2012 and 30 January 2013 concerning the DLA Piper Review into allegations of sexual and other abuse in Defence ('the Review').

I regret the delay in reply.

First, I again thank you and your colleagues on the DLA Piper Review team, Ms Melanie McKean and Professor Dennis Pearce, for your work on the Review. I am grateful for the diligence, dedication and effort with which you worked to deliver the Report and the concern you have shown for Defence personnel, both past and present.

You have made an invaluable contribution to Defence's ongoing efforts to effect cultural change and to ensure that Defence operates as a respectful, fair organisation in line with modern community expectations.

Your Report was an important body of work which has been considered, in detail, by the Government. As you would expect, the Attorney-General and I considered advice, including legal advice, from a number of sources prior to making decisions on the most appropriate Government response.

I address the concerns raised in your correspondence to me.

**1. What action is to be taken on the 35 systemic issues which your Report recommended for Phase 2 consideration**

The systemic issues contained in Volume One and the Supplement to Volume One to which you refer in your letter are being considered by the Defence Abuse Response Taskforce ('the Taskforce'), which I announced on 26 November as part of the Government's response to the Report.

The Terms of Reference for the Defence Abuse Response Taskforce were released on 21 January 2013. I enclose a copy for ease of reference.

The Taskforce's Terms of Reference include that the Taskforce '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 culture and practice'.

I stated in my media release on 26 November 2012 that where the Taskforce's work highlights further possible systemic issues or issues to be considered in these initiatives, the Taskforce will draw these to the attention of the Minister for Defence, Chief of the Defence Force and the Secretary of the Department of Defence.

You also note that some of the systemic issues which the Report identified for Phase 2 consideration are relevant to the welfare of individuals who are affected or at risk now because of abuse in the ADF in the past.

You raised concerns in relation to providing appropriate support services for people who have experienced past abuse in Defence.

As outlined in the Government's response to the Report, the Taskforce will be funded to provide additional counselling and will also liaise with and provide referrals to existing services for people seeking such assistance.

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

## **2. The working version of Volume 2**

You state that as the working version of Volume 2 did not go to the Secretary, that prevented the Secretary, the Chief of the Defence Force and the Service Chiefs from being informed about what allegations have been raised with the Review, the initial assessments and recommendations made and the bases for those assessments and recommendations.

It is 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.

This is why the Government established the independent Taskforce which is responsible for assessing the individual complaints and making observations about wider systemic issues.

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

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

I have directed the transferral of material to the independent Taskforce and it is now a matter for the Taskforce to consider and make an independent judgement whether, and in what form, this material may be made available to Defence.

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

In relation to more general systematic issues with Defence processes, including in relation to Fairness and Resolution Branch matters and Australian Defence Force Investigative matters referred to above, Defence is undertaking a fundamental re-think of its existing systems of inquiry, investigation and review.

The Taskforce has been engaged about the scope of this work. The Taskforce will provide its observations about systemic policy issues, made during the course of its consideration of individual cases in Volume Two, to the Secretary of the Department of Defence for consideration in the context of this work by Defence.

Your general findings and recommendations regarding the sequencing of administrative action during or after criminal processes for the same facts, deficiencies in Defence record keeping practices, Fairness and Resolution Branch and ComTrack database issues have in the meantime informed the development of proposals in that re-think which will be considered by the Secretary and the Chief of the Defence Force shortly.

Implementation of improved systems of inquiry, investigation and review will involve enhancements and changes to the operations of the Fairness and Resolution Branch, which in the meantime has been restructured and renamed Values, Behaviours and Resolutions Branch.

That work has also had regard to many important reviews and recommendations, including the DLA Piper Review, the HMAS Success Commission of Inquiry and the recent reviews into aspects of Defence culture. In particular it will take into account the review by the Inspector General ADF into the management of incidents and complaints in Defence, with specific reference to the treatment of victims, transparency of processes and the jurisdictional interface between military and civil law.

Initiatives in response to the Inspector General's review include:

- Funding will be provided as a matter of priority to contract out the task of reducing the current grievance backlog of cases to suitably qualified legal firms;
- Training and information will be provided to ADF members in relation to the management of incidents and complaints will be simplified and improved;
- Defence's administrative policies will be amended to provide for administrative suspension from duty, including the circumstances in which a Commander may suspend an ADF member and the conditions which may be imposed on the suspended member; and
- An improved process to manage grievances in Defence will also be developed.

This broader work will also take into account the Government's response to implement the recommendations of Phase 2 of the review into the treatment of women in the Australian Defence Force (ADF) conducted by the Federal Sex Discrimination Commissioner, Ms Elizabeth Broderick, on behalf of the Australian Human Rights Commission, including:

- The establishment of a dedicated Sexual Misconduct Prevention and Response Office to coordinate timely responses, victim support, education, policy, practice and reporting for any misconduct of a sexual nature, including sexual harassment and abuse;
- Implementation of restricted reporting, so that personnel can make confidential reports of sexual harassment, sex discrimination and sexual abuse (which was also recommended by the DLA Piper Review);
- The introduction of Waivers for Initial Minimum Provision of Service and Return of Service Obligations for victims of sexual assault/ harassment, so they can discharge from the ADF expeditiously and without financial penalty;

#### **4. Recommendations in relation to specific allegations before the Review set out in Parts 1-23 of Volume 2**

These specific allegations are being considered by the Taskforce.

As outlined in the Taskforce's Terms of Reference, the Taskforce will

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

The Government is of the view that it is most appropriate that the Taskforce, an independent body, make these assessments and determinations. This has commenced.

In the course of this work, the Taskforce will consider all of the specific allegations reported on in Volume 2, including the allegations made in the Four Corners - Culture of Silence program from June 2011 to which you refer, as well as any additional allegations about matters prior to 11 April 2011 received since your Report.

#### **5. The provision of Parts 1 to 23 of Volume 2 of our Report providing initial assessments and recommendations on specific allegations to the Task Force**

I agree that the Taskforce must have access to relevant material to conduct its work. On receipt of comprehensive advice from the Australian Government Solicitor, I directed that material gathered for the purpose of the Review be transferred to the Taskforce including that held by DLA Piper or which has been given to me by DLA Piper. This included, for example, a copy of the Northwood Report.

I have been advised that DLA Piper has transferred most of its material to the Taskforce.

Arrangements are also in place to ensure that the Taskforce has access to any additional material or records it requires which are held by Defence, by DLA Piper or by my office.

In relation to specific information provided by individuals to DLA Piper in relation to their own experiences, I am advised by the Attorney-General's Department that DLA Piper considered that consent must be obtained from those individuals before any material can be handed by DLA Piper to any other person. There has been a process for seeking those consents.

You refer to my use of 'the ADFA 24' to describe the cases of abuse at the Australian Defence Force Academy in the 1990s.

I acknowledge that the number of actual cases may indeed be higher. Since you presented your final report to me in April 2012, the Australian Defence Force Investigative Service has made further enquiries, resulting in the identification of additional material. This has been made available to the Taskforce so that it can assess these cases in accordance with its Terms of Reference.

With respect to all of the above, I am very confident that the Taskforce will deliver the important work it has been asked to do by the Government.

The Hon Len Roberts-Smith RFD QC leads the Taskforce and is being ably assisted by Mr Robert Cornall AO, a former Secretary of the Attorney-General's Department, Ms Susan Halliday, a former Commonwealth Sex Discrimination Commissioner and Australian Federal Police Assistant Commissioner Mr Rudi Lammers.

On 21 January 2013 the Taskforce announced its Terms of Reference and the appointment of key personnel encompassing high level skills and experience across a diverse range of disciplines.

The Government's response to allegations which have been raised is a comprehensive, appropriate and sensitive response to this complex issue. It will provide people who have alleged abuse with a response that is tailored to their own specific circumstances.

In addition, I can assure you of my commitment and that of the Secretary of the Department of Defence and the Chief of the Defence Force to ensuring deep cultural reform in Defence, particularly to address issues of concern in relation to abuse and inappropriate conduct.

I note you have previously copied your correspondence of 17 December to the Taskforce. I have formally referred your correspondence to the Taskforce for its own consideration. I expect the Taskforce will advise me of any issues that it believes require further action.

I trust this information is of assistance.

Yours sincerely

*Best Wishes*

Stephen Smith