

## Chapter 3

### Defence Abuse Response Taskforce processes

#### Introduction

3.1 This chapter will consider the processes of the Taskforce (or DART), including:

- the conduct of the Taskforce;
- awareness of the Taskforce;
- the cut-off dates;
- the scope of abuse covered by the Taskforce;
- the use of the evidential threshold of plausibility;
- referrals to law enforcement and Defence;
- the restorative engagement program;
- counselling services;
- the reparation scheme;
- legacy issues: and
- anonymous complaints and complaints in the media.

#### Conduct of the Taskforce

3.2 As at 23 September 2014, the Taskforce indicated that it had assessed 2223 cases as raising plausible allegations of abuse (relating to a total of 1657 complainants). Of these 2223 cases, allegations of abuse were received from complainants across all three services:

- 39 per cent (859 cases) involved abuse of people serving in the Navy;
- 39 per cent (877 cases) involved abuse of people serving in the Army; and
- 17 per cent (376 cases) involved abuse of people serving the Air Force.<sup>1</sup>

3.3 The following types of abuse were raised by complainants (noting that many complainants experienced more than one type of abuse during their careers in Defence):

- Sexual abuse – 38 per cent (834 cases);
- Sexual harassment – 17 per cent (389 cases);

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<sup>1</sup> Defence Abuse Response Taskforce, responses to question on notice from hearing on 26 September 2014, pp 1-2.

- Physical abuse – 48 per cent (1067 cases); and
- Harassment and bullying – 66 per cent (1464 cases).<sup>2</sup>

3.4 A wide range of views were received in evidence regarding the conduct of the Taskforce and the overall outcomes achieved. For example, the Defence Force Welfare Association was of the opinion that 'the Taskforce has been very effective in investigating the cases reported to it, and have been very sensitive in its dealings with the individuals who have been subject to abuse'.<sup>3</sup> Mr Brien Briggs from Slater and Gordon Lawyers also praised the achievements of the DART overall:

Whilst I note that certain individuals, groups and associations have raised issues regarding the DART, the experiences of myself and my team at the Military Compensation Group of Slater and Gordon Lawyers, have been nothing but positive. The job of the DART has been challenging given the fact that within a limited time frame it has had to assist people who have been denied recognition and support for many years.<sup>4</sup>

3.5 Mr Adair Donaldson from Shine Lawyers characterised the DART as an 'overwhelming success'. He highlighted 'the proactive manner in which the DART has been able to deal with survivors with great empathy, understanding and most importantly independence'.<sup>5</sup>

3.6 Other submissions, particularly from some complainants and the Association for Victims of Abuse in Defence, highlighted negative experiences in dealing with the Taskforce. For example, the Association for Victims of Abuse in the ADF considered that the Taskforce was 'controlled by a military general who seems more concerned with keeping a lid on things rather than fully supporting victims and properly informing Parliament'. It considered that 'the issue of investigating, dealing with and compensating the victims of abuse in the Australian Defence Force should be taken out of [the Taskforce's] hands and given to a truly independent statutory civilian authority reporting to the Parliament'.<sup>6</sup>

### ***Terminology***

3.7 The terminology used to describe victims of abuse in Defence was also the subject of comment. The Association for Victims of Abuse in the ADF objected to the use of the term 'complainant' by the Taskforce '[a]s if [victims of abuse in Defence] were whingers'.<sup>7</sup> The Taskforce addressed this terminology issue in their submission:

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2 Defence Abuse Response Taskforce, responses to question on notice from hearing on 26 September 2014, p. 2.

3 *Submission 1*, p. 1.

4 *Submission 4*, p. 1.

5 *Submission 12*, p. 2.

6 *Submission 14*, p. 1.

7 *Submission 14*, p. 21.

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The advice the Taskforce received was that many individuals who have experienced abuse do not see themselves as 'victims' and object to the term being used. They also indicated that some consider themselves to be 'survivors' rather than 'victims' of abuse and view the term 'victim' to be disempowering...

The other reason was that the Taskforce received reports from individuals who were not themselves victims of abuse, rather they reported abuse on behalf of someone else, or, they witnessed the abuse. Therefore, the term 'complainant' captured all individuals who registered with the Taskforce.<sup>8</sup>

## **Awareness of the Taskforce**

3.8 The awareness of victims of abuse of the Taskforce's processes and the deadlines for making applications was questioned during the inquiry. For example, Dr Rumble considered that one of the key reasons that the Taskforce's work could not be relied on to have 'fixed' all or even most issues of abuse in Defence was because it was 'likely that the DART has only reached a small proportion of people affected by abuse in the past'.<sup>9</sup> Similarly, Mr Adair Donaldson from Shine Lawyers identified that 'a lack of appreciation and a lack of knowledge' that the Taskforce existed were key factors which prevented survivors of abuse in Defence from coming forward.<sup>10</sup>

3.9 The Taskforce noted that it 'relied upon various forms of media to raise awareness of our work' and at different points in time widely advertised its work in newspapers and other media, informing people of the deadlines for registration and the provision of personal account forms.<sup>11</sup> The Chair of the Taskforce considered there was 'a lot of media publicity about the Taskforce to start with'.<sup>12</sup> He stated:

My impression is that there was comprehensive publicity on a number of occasions and generally over the life of the Taskforce. Of course, we should all bear in mind that there was considerable publicity prior to and during the course of the DLA Piper review. So we are talking about a period of probably around three years.<sup>13</sup>

3.10 Defence also advised that it had 'communicated as widely as possible the existence and purpose of the Taskforce, including through establishing internal and external websites, to ensure that current and former members of the ADF were able to access information that would assist them to approach the Taskforce'.<sup>14</sup>

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8 *Submission 21*, p. 2.

9 *Submission 8*, Part 1, p. 3.

10 *Committee Hansard*, 13 August 2014, p. 7.

11 *Submission 21*, p. 2. Also see *Committee Hansard*, 13 August 2014, p. 35.

12 *Committee Hansard*, 13 August 2014, p. 35.

13 *Committee Hansard*, 26 September 2014, p. 31.

14 *Submission 17*, p. 2.

## Cut-off dates

3.11 There were several cut-off dates associated with the work of the Taskforce. In particular, the terms of reference for the Taskforce direct it to assess complaints of abuse which 'occurred prior to 11 April 2011, the date of the announcement of the DLA Piper Review'. On 14 March 2013, the former Minister for Defence tabled the Taskforce's first interim report in Parliament and announced that people would have until 31 May 2013 to make a complaint of abuse to the Taskforce.

This cut-off date was widely advertised in major metropolitan newspapers, Defence publications, on the websites of the Department of Defence and the Taskforce and in a media release from the Taskforce and a joint media release from the Minister for Defence and Attorney-General. The Taskforce also worked with Defence to communicate the cut-off date through internal channels within Defence—including a DEFGRAM on 21 May 2013—and on the Department of Defence intranet.<sup>15</sup>

3.12 It was subsequently announced that '[i]n order for the Taskforce to complete the work set out for it by Government within the agreed timeframes and to ensure complainants receive outcomes that are available to them in a timely manner, it is necessary for complainants to provide all relevant documentation and information to the Taskforce by 30 November 2013'.<sup>16</sup>

3.13 The 'cut-off dates' for applications to the Taskforce were criticised by a number of witnesses and in submissions to the inquiry.<sup>17</sup> For example, Mr Adair Donaldson from Shine Lawyers could not see the rationale in the Taskforce only being able to assess claims in relation to abuse that occurred prior to 11 April 2011. He considered that survivors that were abused between 11 April 2011 and 30 November 2013 should have been entitled to lodge claims with DART. Further, Mr Donaldson highlighted that 'many victims of abuse in the defence force are wary of coming forward'. He explained:

[S]urvivors of abuse had until 30 November 2013 to lodge their claim. For many of the claimants this was their first time reliving the horrors of their past. It took great courage for them to come forward. Further, based on experience with survivors from other institutions the writer believes that there would still be a large number who have not come forward.<sup>18</sup>

3.14 Similarly, Mr Briggs from Slater & Gordon Lawyers stated:

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15 Defence Abuse Response Taskforce, *Sixth Interim Report to the Attorney-General and the Minister for Defence*, June 2014, p. 6.

16 Defence Abuse Response Taskforce, *Third Interim Report to the Attorney-General and the Minister for Defence*, September 2013, p. 3.

17 For example, Ms Rachael James, Slater and Gordon Lawyers, *Committee Hansard*, 13 August 2014, p. 1.

18 *Submission 12*, p. 3.

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I note that the terms of reference [of the Taskforce] only allow abuse cases up to the cut-off date of 1/4/11 to be considered and later abuse is out of scope. The cut-off date of 1/4/11 has created criticism and angst among claimants. This will create a vacuum because some ADF personnel continue to feel unable to report incidents post April 2011 for the usual reasons such as impact on their career, deployment opportunities, the risk of further degradation, humiliation and ongoing abuse etc.<sup>19</sup>

3.15 The Association for Victims of Abuse in the ADF also argued that '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" [but] [t]he reality is as can be seen; the abuse did not stop - only compensation to the Victims'.<sup>20</sup>

3.16 The Taskforce noted that as it had not been established as an ongoing agency 'the former Minister determined a date on or prior to which abuse must have taken place for a complainant to be considered, and, a date upon which to register with the Taskforce. Further, '[d]eadlines for registration and the provision of personal account forms were necessary to ensure the work of the Taskforce could be implemented in an efficient and timely manner'.<sup>21</sup>

3.17 The Chair of the Taskforce told the committee it would be impossible to estimate how many people affected by abuse in Defence have not been reached by the DART processes.<sup>22</sup> In September, the Taskforce indicated to the committee that since 'the cut-off date of 31 May 2013 the Taskforce has been contacted by 273 individuals wishing to register their complaint with the Taskforce'.<sup>23</sup>

### **Scope of abuse claims**

3.18 At the hearing on 13 August 2014, the Chair of the Taskforce outlined the broad range of sexual and physical abuse cases reported to the Taskforce:

The categories of abuse with which the task force is able to deal are sexual abuse, physical abuse, sexual harassment and workplace bullying and harassment. Factually, the actual abuse and the consequences of it can be horrific. There are many instances of repeated, serious, physical and sexual assaults including gang-rape, ongoing sexual harassment and serious workplace bullying. The consequences on the lives of the victims are often totally devastating.<sup>24</sup>

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19 *Submission 4*, p. 2.

20 *Submission 14*, p 37.

21 *Submission 21*, p. 2.

22 *Committee Hansard*, 13 August 2014, p. 32.

23 Correspondence to the committee from the Hon Len Roberts-Smith, Chair, Defence Abuse Response Taskforce, 20 October 2014.

24 *Committee Hansard*, 13 August 2014, p. 29.

3.19 However, some witnesses and submissions argued that the scope of the abuse claims assessed by the Taskforce as being within its terms of reference was too restrictive. For example, Mr Garry Bates, a retired Air Commodore had determined that his claim as a victim of abuse of power in Defence was 'out of scope'. He outlined that the Taskforce had stated that "'abuse of power" is not a category of abuse with which the Taskforce can deal, unless it amounts to workplace bullying and harassment'.<sup>25</sup> The Association for Victims of Abuse in the ADF also alleged the Taskforce was denying abuse by changing the definition and stated that '[a]buse encompasses all unlawful acts which abuse the individual'.<sup>26</sup>

3.20 Mr Briggs from Slater and Gordon Lawyers commented that 'the restrictive definition of abuse and the limitations on the terms of reference' had led to some of his client's claims not being accepted by the DART:

The DLA Piper categories of 'abuse' were originally much broader than the eventual definition of 'abuse' used by the DART. This has led to some confusion and denial of some claims. For example, the DLA list originally included 'negligently causing injury', which is arguably a broad term.<sup>27</sup>

3.21 The Taskforce submission stated that its work must be undertaken in accordance with its terms of reference and that the Taskforce is 'unable to consider allegations of abuse that do not fall within our definitions of abuse'.<sup>28</sup> Its submission provided some non-exhaustive definitions of abuse for general guidance:

Sexual abuse means unwanted conduct of a sexual nature, committed against a person without their consent. It does not require physical contact between the person and the alleged abuser and can include conduct in the presence of the person.

Sexual harassment is unwanted and non-consensual conduct of a sexual nature.

Workplace harassment includes offensive, demeaning, humiliating, intimidating or threatening behaviour that is unwelcome, unsolicited, usually unreciprocated and often repeated.

Bullying is a form of harassment and is repeated behaviour that does not show respect.<sup>29</sup>

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25 *Submission 2*, p. 2.

26 *Submission 14*, supplementary submission, p. 10.

27 *Submission 4*, p. 1.

28 *Submission 21*, p. 2.

29 *Submission 21*, pp 2-3.

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## Evidential threshold of plausibility

3.22 The Chair of the Taskforce described the use of the plausibility standard as allowing the Taskforce to 'resolve the unresolvable'. He recently commented on the use of evidence in assessments of claims of abuse in Defence:

For many different reasons, including (but not limited to), complainants not reporting the alleged abuse at the time nor for years afterwards; minimising descriptions of the abuse when it was reported; lack of forensic evidence; lack of witnesses; credibility issues because of psychological illness, alcohol or drug addiction (often the result of the abuse itself) and the absence of documentation, many if not most of the complainants to the Taskforce would have no prospect of having their allegations accepted as true in any formal administrative investigation or judicial process. The application of legal standards of proof ("the balance of probabilities" or "beyond reasonable doubt") with the complainant having the onus of proving the truth of their allegation, would be an insurmountable obstacle.

It was against this background that the Taskforce is required to accept an allegation of abuse as true, if satisfied on all the material available, that it is plausible.<sup>30</sup>

3.23 The Taskforce stated that 'the standard of "plausibility" was stipulated by the former Minister for Defence so that the Taskforce could provide outcomes to as many complainants as possible':

Noting that much of the alleged abuse occurred many years ago and was never reported at the time, the plausibility standard enables the Taskforce to proceed without the need for extensive, legally admissible evidence, which, over the passage of time, would be difficult if not impossible for a complainant to provide.<sup>31</sup>

3.24 However some concerns were raised regarding the use of 'plausibility' as the standard used by the Taskforce. For example, the Inspector General ADF, Mr Geoff Earley described the evidential threshold of 'plausibility' as 'quite low':

A consequence of this is that a favourable outcome from the DART process may raise in some complainants unrealistic expectations about their likely success in seeking further relief or recompense from other Departmental or Government administrative processes.<sup>32</sup>

3.25 Mr Earley noted his office had started to receive referrals in respect of complainants who had been assessed as plausible and had received a reparation payment. He noted that '[i]n such circumstances some complainants may often feel that their complaint has been vindicated and, understandably, have favourable

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30 The Hon Len Roberts-Smith QC, 'Restorative Engagement – Beyond the Horizon', *Speech*, Institute of Arbitrators and Mediators Australia Conference, 3 May 2014, p. 8.

31 *Submission 21*, p. 5.

32 *Submission 7*, p. 2.

expectations about the outcomes of subsequent investigative processes in respect of their complaints'.<sup>33</sup> He stated:

There will inevitably be some cases where allegations which have been assessed as plausible cannot be proved to the standard required to support further legal or administrative action, particularly compensatory action. The impact on the health and wellbeing of a potentially vulnerable complainant of such an outcome may be ongoing.<sup>34</sup>

3.26 Mr Earley told the committee he had raised his concerns with the Chair of the Taskforce and that 'in consultation with Defence representatives, a public document for the use of complainants and other agencies had been created which clearly sets out the difference between DART processes and the standards of proof, both civil and criminal, used for other purposes'.<sup>35</sup> He also noted that procedural fairness issues could potentially be raised by the use of the plausibility standard where 'it is applied in circumstances where only one side of the story is known'. He observed:

To meet the threshold of plausibility, the DART must be satisfied that the claim of abuse and/or mismanagement has 'the appearance of reasonableness'. I should make it clear I do not wish my comments on this aspect to be taken to be critical of this approach. I strongly support the work of the DART in providing support to victims of abuse. The fact remains, however, that many of the respondents to allegations raised in the DLA Piper report and the DART process have not and perhaps will not ever have an opportunity to present their side of the story in response to those allegations.<sup>36</sup>

3.27 The Department of Veterans' Affairs (DVA) also noted that differences in the assessment of claims by DVA and the Taskforce are not well understood by claimants:

[T]his is being addressed by both agencies through several channels, including the provision of factsheets to all DART applicants, discussions between DART case co-ordinators and Reparation Payment applicants and discussions between DVA staff and compensation claimants.<sup>37</sup>

In February 2014, DVA obtained agreement from the Chair of the DART...that all DART applicants will be provided with an explanatory factsheet outlining the key differences between claims which are assessed by DVA and the DART. This factsheet was developed jointly by both agencies.<sup>38</sup>

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33 *Submission 7*, p. 2.

34 *Submission 7*, p. 2.

35 *Committee Hansard*, 13 August 2014, p. 19.

36 *Committee Hansard*, 13 August 2014, p. 20.

37 *Submission 11*, p. 3.

38 *Submission 11*, p. 3.

## Referrals to law enforcement and Defence

3.28 A key role of the Taskforce was the assessment of incidents of abuse for referral, with the consent of the complainant, to police authorities or Defence for administrative or disciplinary action. The Chair of the Taskforce summarised this process:

Where the complainant consents, we refer those matters to civilian police to consider possible criminal investigation and prosecution or to the Chief of the Defence Force for consideration of disciplinary or administrative action. Where the complainant does not consent and if the alleged abuser is still serving, we conduct a risk assessment. If that indicates the alleged abuser constitutes a potential risk to others in Defence, I would refer the matter to the CDF, notwithstanding the lack of consent from the complainant, but in a way which would maintain the complainant's confidentiality. We in the Taskforce strongly believe that people who abuse others should be held to account, but not at the expense of further damage to their victims.<sup>39</sup>

3.29 The Taskforce indicated that there were 'approximately 163 individuals identified as alleged abusers in cases of sexual abuse or serious physical abuse, who have been identified as still serving in the Permanent Forces or Active Reserves (as at the date the Taskforce received their service records)'. However, the Chair cautioned that the Taskforce was still undertaking a quality assurance process and noted the number provided 'may be subject to change at the conclusion of this process'.<sup>40</sup>

3.30 The Taskforce has referred 80 matters to state and territory police:

The matters referred relate to the following offences: unlawful and indecent assault; threat to kill; threat to inflict [grievous bodily harm] stalking and intimidation with intent to cause fear; assault and common assault; act of gross indecency on a male; rape; use of a carriage service to menace, harass or cause offence; and/or burglary with intent to assault.<sup>41</sup>

3.31 The Australian Federal Police (AFP) submission provided a useful summary of the Taskforce's approach to criminal matters:

The DART's Crime Group was established to assess matters where a criminal offence is alleged to have been committed. The Taskforce Crime Group is comprised of a team of experienced investigators. The AFP has dedicated four investigators from Australian Capital Territory (ACT) Policing and one intelligence officer from AFP National. A further AFP member will commence with DART in June 2014.

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39 *Committee Hansard*, 26 September 2014, p. 22.

40 Defence Abuse Response Taskforce, responses to question on notice from hearing on 26 September 2014, p.1

41 'Key statistics' tabled by Defence Abuse Response Taskforce at public hearing on 26 September 2014, pp 1-2; Defence Abuse Response Taskforce, responses to questions on notice from hearing 26 September 2014, p. 2.

If a preliminary view is formed that the complaint relates to criminal conduct and consent is received from the complainant, the matter will be referred to the Taskforce Crime Group to assess whether the matter can be referred to a Commonwealth, State or Territory police agency for assessment and possible criminal investigation. It is noted that matters are then referred to police with the consent of the complainant.<sup>42</sup>

3.32 The Australian Federal Police (AFP) indicated that a number of the matters referred by the Taskforce Crime Group were to the AFP ACT Policing.<sup>43</sup> It outlined:

In the situation of referrals from the Taskforce Crime Group to AFP ACT Policing, the matter in the first instance will be referred to the Sexual Assault and Child Abuse Team (SACAT). The SACAT will assess the matter and, if appropriate, decide which AFP ACT Policing team is the most appropriate to undertake a criminal investigation. Matters relating to general assault offences will be referred to an AFP ACT Policing Crime Team. Matters involving assault with a sexual element will be investigated by the SACAT.<sup>44</sup>

3.33 The AFP also outlined the support which may be available to victims including referrals through the national Supportlink framework, arrangements with local sexual assault victims support organisations and victim liaison officers.<sup>45</sup>

3.34 The Taskforce noted there were two main reasons for the low numbers of complaints referred to police:

The first is that where the alleged abuse occurred a long time ago and was never reported, the prospect of a successful criminal investigation will often not be good.

The second, more important, reason is that the majority of complainants whose allegations could be referred to police simply do not want that. In most instances the abuse has resulted in the complainant being traumatised and suffering physical, emotional and psychological damage, sometimes for decades. They do not wish to experience further trauma from the involvement in a lengthy and difficult process of a police prosecution with an uncertain outcome.<sup>46</sup>

3.35 The Taskforce indicated approximately 107 individuals have been subject of an initial risk assessment regarding possible referral to Defence for administrative and disciplinary action. The Chair of the Taskforce has referred 39 matters to the CDF with a recommendation that he consider administrative, disciplinary or management action:

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42 *Submission 15*, p.1.

43 *Submission 15*, p. 2.

44 *Submission 15*, p. 3.

45 *Submission 15*, pp 4-5.

46 *Submission 21*, p. 4.

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The first cases were those of the ADFA 24, referred to CDF on 16 October 2013. The next referral occurred on 28 November 2013 and the most recent referral at the time of [the question on notice] occurred on 23 September 2014.<sup>47</sup>

3.36 Similar to the approach taken for referrals to law enforcements agencies, the Taskforce submission outlined that referrals usually will not be made to the CDF or Secretary of Defence for disciplinary or administrative sanction or management action unless a complainant consents. However:

[W]here there is a still serving member of the Defence Force against whom allegations of abuse have been made and found plausible by the Taskforce, the Chair will further consider whether there are any potential risks to other still serving members. If the Chair determines it necessary to refer a matter without consent, it will be referred in a way that as far as possible protects the confidentiality of the complainant.<sup>48</sup>

3.37 The Taskforce indicated there have been four cases where matters have been referred by the Chair of the Taskforce to the CDF in a de-identified manner.<sup>49</sup>

3.38 The impact of victim-focused processes of the Taskforce was highlighted in relation to the outcomes of referrals for administrative action:

The Taskforce is acutely aware of the difficulties faced by the Department of Defence in circumstances where matters are referred for disciplinary or administrative sanction where privacy constraints require us to withhold certain information. Where a complainant does not provide consent to act the Department of Defence will often be unable to act given its legal duty to provide procedural fairness to alleged abusers.<sup>50</sup>

3.39 Vice Admiral Griggs also commented:

Additionally, the Taskforce has acknowledged that whether Defence can take further action is affected by whether the complainant has provided their consent for Defence to do so. In some cases Defence may decide that it is not able to take further action because it will not be able to provide procedural fairness to the alleged abuser. This may be the case where Defence does not have the consent of the complainant to provide information about the substance of the allegations. This should not be interpreted as anything else other than the fact that Defence is operating within the law.<sup>51</sup>

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47 Defence Abuse Response Taskforce, responses to questions on notice from hearing on 26 September 2014, p. 6.

48 *Submission 21*, p. 4.

49 Defence Abuse Response Taskforce, responses to questions on notice from the hearing on 26 September 2014, p. 4.

50 *Submission 21*, p. 6.

51 *Committee Hansard*, 13 August 2014, p. 51.

3.40 This issue was also raised in the Defence submission which emphasised that plausibility 'is a much lower burden of proof than that [which] Defence will require in order to take specific administrative or disciplinary action'.<sup>52</sup>

3.41 However, in relation to this approach, Dr Rumble commented that 'the way the DART has carried out its work is not likely to result in many suspected perpetrators of abuse being called to account'.<sup>53</sup> It was also argued during the inquiry that the fact so few victims have agreed to have their cases referred by the Taskforce to the ADF for disciplinary or administrative action may indicate a widespread lack of confidence amongst victims of those processes.

### **Restorative engagement program**

3.42 One of the outcomes the Taskforce can offer complainants is participation in the Defence Abuse Restorative Engagement Program which gives complainants the opportunity to have their complaint 'heard, acknowledged and responded to by a senior Defence representative'.<sup>54</sup> The Chair of the Taskforce indicated this was being undertaken in two phases:

Phase 1 consisted of the Chief of the Defence Force, the Vice Chief and all the service chiefs each sitting down for more than two hours each with an individual complainant, listening to their account and acknowledging it. The impact of that experience on those complainants and, indeed, on the Defence representatives was profound. We are now moving into phase 2. We have conducted about 40 of these conferences so far. They involve people from the CDF down to colonel-equivalent across Army, Navy and Air Force. We have contracted close to 50 facilitators to facilitate these conferences around Australia. We are in the process of gearing up to be running possibly about 60 of these a month shortly.<sup>55</sup>

3.43 The Chair of the Taskforce argued that, apart from the resolution for victims of abuse, the restorative engagement program was also 'having a very significant effect on cultural change within Defence':

The whole dynamic of those senior Defence representatives sitting down and listening to the accounts of abuse that these people relate to them and those victims having their account listened to by senior representatives and acknowledged as having happened and acknowledged as being wrong is, as I say, incredibly profound. The impact on the Defence representatives is going to be, in my view, very long-lasting and will contribute materially to significant cultural change within Defence. These people cannot walk out of

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52 *Submission 17*, p. 4.

53 *Submission 8*, Part 1, p. 3.

54 Defence Abuse Response Taskforce, *Seventh Interim Report to the Attorney-General and Minister for Defence*, September 2014, p. 13.

55 *Committee Hansard*, 26 September 2014, p. 37.

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those conferences without being emotionally affected by them. That will be a cultural driver.<sup>56</sup>

3.44 This view of the importance of the restorative engagement program was reflected in the evidence of Vice Admiral Griggs:

The Restorative Engagement Program is, I think, an extremely valuable program for both victims of abuse and for Defence... Participation by senior ADF representatives is, I think, an important step in demonstrating, through action, the commitment of our senior leadership to acknowledge the unacceptable treatment and experiences of some people in the past. Importantly, this program is exposing today's and tomorrow's senior ADF leaders to the pain and to the damage caused by abuse. You simply cannot come away from one of these encounters unaffected.<sup>57</sup>

3.45 Defence noted it was 'actively participating' in the restorative engagement program, and that the CDF and the Secretary of Defence had issued a joint Directive to all staff regarding participation.

3.46 However, the Association for Victims of Abuse in the ADF criticised what it perceived as a downgrading of the restorative engagement program over time and a lack of written apologies being provided to victims of abuse from the process. It stated:

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.<sup>58</sup>

3.47 Mr Briggs also noted feedback from his clients that the restorative engagement program and counselling groups appear to be suffering from underfunding and a lack of resources.

### **Counselling services**

3.48 The Taskforce noted that as at 22 September 2014, 371 complainants have been referred to the Taskforce's Counselling Outcome Group. 2731 counselling sessions have been endorsed by the Chair and 1147 counselling sessions have taken place.<sup>59</sup> The Chair of the Taskforce outlined:

[W]here a complainant needs or seeks counselling as a result of abuse they suffered in Defence or the consequences of it, their case coordinator will make that recommendation to me. The policy is to approve initially 10

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56 *Committee Hansard*, 26 September 2014, p. 37.

57 *Committee Hansard*, 13 August 2014, p. 51.

58 *Submission 14*, p. 39.

59 'Key statistics' tabled by the Defence Abuse Response Taskforce at the public hearing on 26 September 2014, p. 1.

counselling sessions, with the counsellor to report back after the first five. Ordinarily, a maximum of 20 counselling sessions may be approved, although approval may be given for more than 20 sessions in exceptional circumstances.<sup>60</sup>

3.49 The Taskforce outlined that it took a flexible approach in relation to the provision of counselling services, allowing complainants to continue to utilise their own counsellor provided they have appropriate qualifications.<sup>61</sup>

3.50 The Association for Victims of Abuse in the ADF gave examples of its members' experiences where delays in processing of claims as either 'in scope' or 'plausible' by the Taskforce had resulted in delays in accessing to counselling services.<sup>62</sup> However, the Chair of the Taskforce pointed out:

Under our terms of reference, we cannot spend Commonwealth money on complainants who are not within our terms of reference or plausible—that is to say, who have not crossed the threshold, if you like—to become eligible for Taskforce outcomes.<sup>63</sup>

### **Reparation scheme**

3.51 Under the Taskforce's reparation scheme, a number of categories of reparation payment are specified:

- Category 1 (Abuse): \$5,000;
- Category 2 (Abuse): \$15,000;
- Category 3 (Abuse): \$30,000;
- Category 4 (Abuse): \$45,000; and
- Category 5 (Mismanagement by Defence): \$5,000.

3.52 The Scheme Guidelines provide that a reparation payment may only consist of one of the amounts under Categories 1 to 4, or the amount available under Category 5 (Mismanagement by Defence), or one of the amounts under Categories 1 to 4 and the amount under Category 5. The Scheme Guidelines note Category 4 (Abuse) is intended to provide reparation for the most serious forms of alleged individual or collective abuse. Effectively, this means the maximum reparation payment under the Scheme Guidelines is \$50,000 (\$45,000 plus \$5,000), in instances where a person in Defence has suffered the most serious forms of abuse and Defence has mismanaged this abuse.

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60 *Committee Hansard*, 26 September 2014, p. 21.

61 Defence Abuse Response Taskforce, *Seventh Interim Report to the Attorney-General and Minister for Defence*, September 2014, p. 13.

62 *Submission 14*, p. 25.

63 *Committee Hansard*, 13 August 2014, p. 31.

3.53 The Taskforce provided the committee with some key statistics on the reparation payments made to complainants as at 22 September 2014. This outlined that 1028 reparation payments have been made to complainants with the total amount being \$42.01 million. The largest group of payments (577) were those received maximum amount of \$50,000 (Category 4 (Abuse) and Category 5 (Mismanagement by Defence)). The overwhelming majority of the reparation payments made to complainants, 1010 payments out of 1028, included the Category 5 (Mismanagement by Defence) component.<sup>64</sup>

3.54 DVA noted that, in accordance with the intention that reparation payments are not intended to adversely affect an individual's rights and entitlements, an amendment has been made to the *Income Tax Assessment Act 1997* to exempt these payments from income tax.<sup>65</sup>

3.55 Both of the associations representing victims of abuse in Defence criticised the amount of the reparation payment. In particular, they contrasted the generous compensation that alleged abusers would receive for their military service, with the situation of victims of abuse who were often forced out of Defence by their experiences.<sup>66</sup> For example, the Association for Victims of Abuse in the ADF stated:

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.<sup>67</sup>

3.56 Mr Barry Heffernan questioned monetary reparation being provided to victims of abuse without regard to their individual situation:

Rather than throw 'up to \$50K' to each victim, irrespective of their problem I would have given a more accurate view of what I really considered really needed in the short term to actually assist these people. It may have even meant that the government initially provide something similar to a Gold Card to each to allow them to seek all sorts of specialist support and in turn possibly showing that the government DOES care and IS showing it.

I question how 'up to \$50K' will assist an alcoholic to 'move ahead'.<sup>68</sup>

3.57 However, Mr Briggs from Slater & Gordon Lawyers noted that while there are 'many victims who do not agree with the amounts of Reparation being offered for

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64 'Key Statistics' tabled by the Defence Abuse Response Taskforce at public hearing on 26 September 2014, p. 1.

65 *Submission 11*, pp 3-4.

66 *Submission 23*, p. 3.

67 *Submission 14*, p. 31.

68 *Submission 22*, p. 3.

the abuse that they may have suffered... the monetary figure was never meant to take the form of compensation'.<sup>69</sup>

## Legacy issues

3.58 The Chair of the Taskforce noted that while the current terms of reference for the Taskforce expire on 30 November 2014, the work of the Taskforce would continue. He noted the Taskforce was already funded 'out to June 2016 to continue delivering the Taskforce programs that we are providing and to do the work that we are doing, so the work of the Taskforce will continue'.<sup>70</sup>

3.59 There was support expressed during the inquiry for the Taskforce to continue its work or function in another form after the current completion date of 30 November 2014. For example, the Defence Abuse Support Association believed the DART 'should continue, obviously restructured to an appropriate size, so that members, both past and serving in the ADF have somewhere to go that is independent from and not under control of Defence'. It noted that the DART 'had been trained to deal with this situation and it would be an absolute waste of money and resources to see it disbanded completely'.<sup>71</sup>

3.60 Ms Rachael James from Slater and Gordon Lawyers commented:

[W]e continue to receive inquiries from clients, and that is a mixture of people either not knowing about [the Taskforce] in the first instance or not feeling comfortable when they did know about it and wanting to see for themselves whether there was credibility in the process and also the fact that abuse is continuing. So we would say that there should not be an end date to the process.<sup>72</sup>

3.61 Similarly, Mr Donaldson from Shine Lawyers stated that the Taskforce had 'provided survivors with an avenue of support where they are comfortable to share what has happened to them without the fear of someone dismissing their claims'. He was concerned the expertise and outcomes that the Taskforce had achieved to date will be lost when DART have finalised their investigations. He argued that 'DART should form the basis of a permanent independent body to investigate and deal with all allegations of sexual abuse and sexual harassment in the Australian Defence Force'.<sup>73</sup>

3.62 However, the Chair of the Taskforce observed:

I would point out that one cannot simply say, 'We'll extend it another 12 months,' or however long it might be and then have a blaze of publicity

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69 *Submission 4*, p. 3.

70 *Committee Hansard*, 26 September 2014, p. 32.

71 *Submission 23*, p. 2.

72 *Committee Hansard*, 13 August 2014, p. 5.

73 *Submission 12*, p. 4.

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about that, because the reality is that, for all the sorts of reasons that people have taken a long time to come forward in the past, that will still happen into the future. We have had people who just cannot bear to go into the garage and open the boxes to look at the documents.<sup>74</sup>

[I]f the Taskforce is extended or if there is some other entity taking them on, there will continue to be people coming forward for years in the future I would think.<sup>75</sup>

3.63 The seventh interim report stated that '[t]he final Taskforce report will provide an important record of the complaints to the Taskforce of abuse occurring within Defence over many decades, and will make a constructive contribution to ongoing efforts in Defence to prevent, stop and respond to abuse'. This will include:

- detailed statistical information about the complaints received by the Taskforce, including information about the types of abuse, where abuse occurred and during what time period, and collated information about both complainants and alleged abusers;
- a narrative description of the abuse that has occurred across Defence including locational case studies on establishments where abuse appears to have been most common;
- analysis of patterns of abuse that are evident in the complaints received by the Taskforce and of any factors that appear to have contributed to abuse occurring; and
- note areas in which there may be benefit in conducting more detailed analysis of the significant amount of data held by the Taskforce.<sup>76</sup>

### **Anonymous complaints and allegations in the media**

3.64 Dr Rumble argued that media and anonymous allegations reported on in DLA Piper in Volume 2 'should be addressed by Government because they raised serious issues of abuse, mismanagement of abuse and – in some cases – cover-up in the ADF'. He noted his understanding was the DART would 'only consider allegations which a complainant consents to the DART considering'.<sup>77</sup> Dr Rumble told the committee:

This is simply not good enough. Either the allegations have substance and they should be dealt with or they do not have substance and they should be answered and rebutted. I recommend the committee request the government

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74 *Committee Hansard*, 13 August 2014, p. 32.

75 *Committee Hansard*, 13 August 2014, p. 35.

76 Defence Abuse Response Taskforce, *Seventh Interim Report to the Attorney-General and Minister for Defence*, September 2014, p. 32.

77 *Submission 8*, Part 1, p. 7.

to consider and respond promptly to our volume 2 assessments and recommendations on media, anonymous and other third-party allegations.<sup>78</sup>

3.65 However, the Taskforce stated that the 'underlying principle of the Taskforce's work is to do no further harm to the complainant' and that it had received advice from experts that it should not seek out individuals to register allegations of abuse. It noted it 'was established to provide outcomes to complainants':

The provision of outcomes to an individual necessarily requires the Taskforce to know who that individual is. Therefore, the Taskforce is unable to deal with anonymous complaints or allegations in the media in relation to individuals not registered with the Taskforce. That said, the Taskforce does consider allegations in the media and anonymous complaints it may hold when considering cultural and systemic issues.<sup>79</sup>

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78 *Committee Hansard*, 13 August 2014, p. 12.

79 *Submission 21*, p. 4.