

# Chapter 4

## Defence response

### Introduction

4.1 This chapter will cover Defence's response to the abuse within its ranks highlighted by the DLA Piper Review report, the Defence cultural reviews, and the work of the Taskforce. In particular it will consider Defence's approach to abuse, the reporting of abuse in Defence, the implementation of the Pathway to Change strategy including the implementation of policy and administrative changes and the establishment of the Sexual Misconduct Prevention and Response Office (SeMPRO).

### Approach to abuse

4.2 Defence noted that 'the general apology made by the Chief of the Defence Force to members of the ADF and Defence employees in response to the DLA Piper Review [is an] acknowledgement by Defence that abuse is wrong and any abuse that has occurred is deeply regretted'. Defence stated that it had 'made a commitment that abuse of any kind is not to be tolerated and will be dealt with swiftly and appropriately'.<sup>1</sup> The VCDF commented on this approach:

The ADF is using all available mechanisms to actively hold people to account who have failed to live up to our values and our expected behaviours. There have been a significant number that have had their service terminated or have had other disciplinary or administrative sanctions imposed.<sup>2</sup>

4.3 The range of existing Defence support options for persons who report unacceptable behaviour or sexual misconduct were discussed in the committee's previous report. These include:

- the Equity Advisor network;
- Defence Equity Advice Line which provides an information and referral service for all Defence personnel in regards to workplace behaviour and equity issues;
- case officers appointed to assist the complainant or respondent during the complaint management process;
- psychological counselling and support;
- the Employee Assistance Program for Defence public service officers;
- Defence Legal Support;

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1 *Submission 17*, p. 2.

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

- peer support; and
- temporary transfers and the granting of leave.<sup>3</sup>

4.4 Defence argued that commanders and managers in Defence are much better informed and have more resources at their disposal to support victims of abuse when incidents are reported to them than was the case in the past. It noted that commanders have access to medical officers, psychiatrists, psychologists, social workers, chaplains, legal officers, unit equity advisers and other health-care professionals to support victims.<sup>4</sup>

4.5 However, Dr Rumble criticised Defence's current approach to preventing abuse within the organisation. He considered there was a need for the 'ADF leadership to commit to pursuing zero incidence of abuse in the ADF and not to undermine that commitment with any suggestion that there is the level of abuse in the ADF [which] is acceptable'. He argued:

Leaders of the ADF have frequently declared that the ADF has zero tolerance for sexual abuse in the ADF. However, zero tolerance only has meaning for abuse which is reported or otherwise identified by the ADF. Furthermore declarations of zero tolerance put all the emphasis on dealing with perpetrators and do not acknowledge the needs of victims.<sup>5</sup>

4.6 Dr Rumble recommended that reforms in Defence needed to focus on unreported abuse:

Because of the gaps, delay and stonewalling, Defence is refusing to look at indicators of where unreported abuse might be occurring. The leadership of the ADF has a declared zero tolerance of abuse. That necessarily only applies to the less than 20 per cent of victims who report in a way that suits the leaders of the ADF. The ADF is tolerating the other 80 per cent of unreported sexual abuse.<sup>6</sup>

4.7 However, the VCDF, Vice Admiral Griggs rejected the suggestion that Defence should pursue a policy of zero incidence of abuse:

We will never get to zero incidence. We would like to, but we have 58,000 people. Is there a town of 58,000 people in this country with zero incidence? We are committed to zero tolerance and, through that, we will drive down the incidence of sexual assault in the ADF to the lowest possible level. I do not think it is worth it to make a statement of achievability that is not meaningful. It is much more important to say: 'We

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3 Senate Foreign Affairs, Defence and Trade References Committee, *Report of the DLA Piper Review and the government's response*, June 2013, pp. 27-28.

4 Department of Defence, responses to questions on notice 13 August 2014, Question 20, p. 1.

5 *Submission 8*, Part 2, Annexure 1, p. 29.

6 *Committee Hansard*, 26 September 2014, p. 10.

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will not tolerate this. We do not tolerate this. You will get the message because if you don't you will be gone.'<sup>7</sup>

## Reporting and responding to abuse

4.8 The Whole of Defence Unacceptable Behaviour Survey, conducted in 2013, found that the majority of respondents who reported experiencing unacceptable behaviour did not seek advice or assistance, nor did they make a formal report or complaint. The Sex Discrimination Commissioner's audit noted that '[a]larmingly, respondents were even less likely to report or seek assistance in relation to unacceptable behaviours if it related to sexual misconduct or sexual offences'.<sup>8</sup> In contrast, the Inspector General ADF Military Justice Online Survey, launched in 2011, indicated some positive trends in relation to the ADF community's view of reporting abuse:

- respondents who believe appropriate action would be taken if they reported an incident of unacceptable behaviour has increased six per cent (from 82 per cent in 2010 to 86 per cent in 2013);
- respondents who know where to obtain advice or information on unacceptable behaviour has increased by five per cent (from 85 per cent in 2010 to 90 per cent in 2013); and
- respondents who are aware of their avenues of complaint has increased by nine per cent (from 64 per cent in 2010 to 73 per cent in 2013).<sup>9</sup>

4.9 The Inspector General ADF, Mr Geoff Earley, commented that the audit and survey outcomes have shown that 'most ADF members are generally aware of how to go about making a complaint if they need to and that they believe their complaint will be dealt with fairly by the chains of command'. He noted:

A great deal of emphasis is properly put upon dealing with unacceptable behaviour. I remain confident that, from the evidence we collect, monthly through our audit program and through the inquiries that we do, that the problem of abusive behaviour in the ADF is being strenuously tackled and that the processes for reporting such behaviour and the mechanisms for reducing it and for dealing with it swiftly and fairly when it does happen are better now than they have ever been. While it is right that these matters have been brought to attention in the way we have seen, it is important that further responses, whatever they may be, do not develop into an over-reaction.<sup>10</sup>

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7 *Committee Hansard*, 13 August 2014, p. 61.

8 Australian Human Rights Commission, *Review of the Treatment of Women in the ADF - Audit report*, March 2014, p. 28.

9 Department of Defence, responses to questions on notice 13 August 2014, Question 5, p. 2.

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

4.10 Information provided by the Defence indicated there had been 'a noticeable (46.4 per cent) increase in the reporting of sexual offences in Defence in the last two years to July 2014'. This included 154 incident reports of sexual assault and other related offences recorded by the ADF Investigative Service in financial year 2013-14.<sup>11</sup> Defence suggested that this increased reporting could be viewed as the cumulative success of recent initiatives such as the DLA Piper Review, the Taskforce, the Broderick reports, and the establishment of the Sexual Misconduct, Prevention and Response Office (SeMPRO). Further, Defence considered there was some 'evidence that many affected Defence members were now feeling more confident in the "system", and were more comfortable with making a report to Defence' and reflected efforts by the ADFIS 'to improve sexual assault victims' experience of reporting and their improved understanding of sexual-offence-related trauma'.<sup>12</sup>

4.11 The challenges and disincentives for victims of abuse to make complaints or reports in Defence were reiterated during the committee's inquiry.<sup>13</sup> For example, the Chair of the Taskforce noted that in 'a very large number of cases' dealt with by the Taskforce 'the victim of the abuse has not only never reported it but never told anyone including their own closest family'. He stated:

Even now, while having the courage to come to the Taskforce because they want their story to be known, they often become extremely distressed at the idea of any action being taken which might lead people to know what happened to them—that is to say, which would publicly identify them—and they are fearful of being exposed to further trauma by having to be involved in a police investigation, or the prospect of being examined or cross-examined in a criminal prosecution of their abuser, or any kind of internal Defence administrative process.<sup>14</sup>

4.12 Others expressed scepticism regarding Defence efforts to prevent abuse. Dr Rumble restated concerns he had previously raised with Defence regarding the problem of under-reporting of sexual and other abuse and the importance of creating a 'reporting culture' within Defence.<sup>15</sup> He referred the committee to material which indicated that survey into abuse are not necessarily accurate, and may tend to understate the degree to which there are problems with unreported abuse.

4.13 Dr Rumble argued that the victims of abuse who contacted the DLA Piper review and the Taskforce 'represent a very small proportion of the numbers of former and current members of the ADF affected by abuse in the ADF'. He stated:

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11 Department of Defence, responses to questions on notice 13 August 2014, Question 14, p. 1.

12 Department of Defence, responses to questions on notice 13 August 2014, Question 11, p. 1.

13 For example, Mr Adair Donaldson, Shine Lawyers, *Committee Hansard*, 13 August 2014, p. 5.

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

15 *Submission 8*, Part 2, p. 3.

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Most victims of abuse are silent. The pressures to remain silent are particularly strong for the members of the ADF. It is very likely that less than 20 per cent of abuse in the ADF is reported.<sup>16</sup>

4.14 In particular, he considered that Defence needed to deal with the harassment of people who report with 'the utmost vigour':

No matter what commitments the leadership give, there is always the potential for someone who was known to have reported to be, at the very least, approached with wariness by those around them and for them to suffer ignominy and shame. Very often there were recriminations and repercussions for people who did report. Reporting seemed to be regarded as an act of disloyalty to your unit or your branch of the services.<sup>17</sup>

4.15 Mr Briggs from Slater & Gordon Lawyers acknowledged that the ADF had 'introduced mechanisms in an attempt to improve its handling of abuse cases and to address the "culture of silence" that protects perpetrators'. However he stated:

Many of my clients have expressed scepticism as to the likelihood of these initiatives resulting in any permanent changes in the future conduct of some ADF personnel despite the best intentions of ADF leadership, including its Minister. Unfortunately, we are continuing to receive enquiries and have been retained by clients who have been subjected to various forms of abuse including sexual abuse within the Defence services in more recent years.<sup>18</sup>

4.16 Mr Donaldson from Shine Lawyers identified 'a reluctance to accept that sexual assaults and harassment will continue to occur in the Australian Defence Force'. He stated:

It should be appreciated that no matter how much training and preventative work that is done there will always be a small minority of employees who will do the wrong thing...What will not be accepted is if the ADF does not have in place best practice work systems to deal with and to investigate the complaints and interactive training to reduce the likelihood of assaults and harassment occurring.<sup>19</sup>

4.17 Mr Barry Heffernan thought abuse continued to be 'rife' in the ADF and advocated an independent ombudsman, reporting directly to the Minister of Defence, to investigate all reports of abuse and bastardisation. Similarly, the Defence Abuse Support Association held the opinion there may be a 'culture of abuse' in Defence:

DASA believes that there is a larger problem with members tasked to investigate the allegations fail to fully do so, rather push it under the carpet

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16 Dr Gary Rumble, *Committee Hansard*, 13 August 2014, p. 12.

17 *Committee Hansard*, 26 September 2014, p. 15.

18 *Submission 4*, p. 2.

19 *Submission 12*, pp 5-6.

and hope it goes away or punish the member that has made the allegations, hoping they will withdraw them.<sup>20</sup>

## **Defence response to the Taskforce**

4.18 The Defence submission noted that following the announcement of the Taskforce, it had established a dedicated Organisational Response Unit to ensure that appropriate support and assistance could be provided to the Taskforce. It noted that:

The focus to date has been in assisting the Taskforce to meet its information requirements to assess matters by providing Defence documentation when requested. This information is utilised by the Taskforce in assessing matters...In support of the Taskforce's work, Defence completed a project to digitise and catalogue Australian Defence Force Investigative Service records. This has enabled Defence to effectively search and identify records that may be of relevance to the Taskforce.<sup>21</sup>

4.19 The 'need for Defence to respect the privacy of individuals and maintain the independence of the Taskforce has meant that Defence has been unable to provide more direct assistance to individuals in bringing their matter forward'. However, it stated that 'Defence continues to encourage people to come forward to seek a proper resolution to any matters that are concerning them'.

4.20 Defence noted that the 'Taskforce has commenced referring individual complaints to the Chief of the Defence Force for consideration'. It outlined:

Defence has established a team within the Organisational Response Unit dedicated to managing referrals from the Taskforce. This team reports directly to the Chief of the Defence Force. Defence is undertaking detailed analysis of all available evidence and information to determine whether criminal, disciplinary or administrative action may be taken in response to allegations.<sup>22</sup>

4.21 However, Defence cautioned that the 'Taskforce assesses matters brought before it using a test of "plausibility", which is a much lower burden of proof than that which Defence will require in order to take specific administrative or disciplinary action in relation to these matters'. It also noted 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

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20 *Submission 23*, p. 1.

21 *Submission 17*, pp 2-3.

22 *Submission 17*, p. 4.

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the complainant to provide information about the substance of the allegations.<sup>23</sup>

4.22 Defence also highlighted its active participation in the Taskforce's restorative engagement program:

Participation by Defence representatives in the [restorative engagement program] is an important step in demonstrating, through action, the commitment of Defence's senior leadership to acknowledging the shameful treatment and experiences of some members of the Australian Defence Force and the Department of Defence. Through this process, Defence will learn invaluable lessons of the past, which is especially important as we engage in significant cultural change across our organisation to ensure a fair, just and inclusive workplace is available to all who chose to serve our country, free from abusive behaviour.<sup>24</sup>

### **Pathway to Change**

4.23 Defence described itself as 'two and a half years into a significant five-year cultural change journey (through *Pathway to Change*) to ensure a future organisation that is safe, inclusive and respectful of all members'.<sup>25</sup> It highlighted the progress achieved in relation to the Pathway to Change reforms:

Actions completed to date include:

- established mechanisms to increase diversity within leadership groups over five years;
- reinforced a whole-of-Defence perspective as the decision making lens for all Colonel/Executive Level 2 and above appointments;
- conducting Defence-wide discussion on values and behaviours;
- Defence education and training programs are being informed by agreed values and behaviours;
- reviewing our communication strategy, including social media strategy, to communicate values and behaviours underpinning cultural reform;
- addressing the backlog of grievances and simplifying responses to, and management of, unacceptable behaviour to make corrective processes faster and more transparent;
- implementing staffing, structures and review processes that enable Pathway to Change;
- developing supporting policies to ensure full implementation of culture review recommendations and associated Defence reform directions; and

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23 *Submission 17*, p. 4.

24 *Submission 17*, p. 3.

25 *Submission 17*, p. 2.

- establishing research and data collection processes to inform ongoing development and implementation of Pathway to Change.<sup>26</sup>

4.24 In June, at Budget estimates, the former CDF, General David Hurley, stated:

As at 29 May this year, 82 per cent of the key actions or recommendations have been finalised. There were 15 major or key actions that needed to be completed; we have done nine of those. There were about six reviews with a total of 160 recommendations, and 135 of those have been finalised to date.<sup>27</sup>

4.25 Defence stated that 'analysis of the metrics and data so far indicates that positive cultural change is occurring within the organisation under each of the six key levers'.<sup>28</sup> In particular, Defence highlighted that the independent audits conducted by the Sex Discrimination Commissioner, Ms Elizabeth Broderick, have acknowledged that 'real progress has emerged in the 18 months since the ADF Review report was tabled' and that she had praised 'the ADF on its significant reform efforts to date'.<sup>29</sup>

### ***Policy and administrative reforms***

4.26 A range of policy and administrative changes resulting from the Pathway to Change strategy were outlined by Defence. These included policy advice in relation to administrative and disciplinary actions, the introduction of a 'good character' test into Defence personnel regulations and changes to minimum service obligations.

### ***Advice on administrative and disciplinary actions***

4.27 Defence noted that following the IGADF *Review of Management of Incidents and Complaints* in 2011, Defence had examined its relevant policy documents to consolidate them into a more user-friendly format. It stated:

In relation to the management of complaints in Defence, many Defence Instructions have been, or are in the process of being, redrafted or consolidated to provide directive policy only. Detailed processes and procedures are being consolidated into one manual, called the *Complaints and Resolution Manual*. Some chapters of that manual have already been promulgated, and others are in the final stages of drafting or stakeholder comment. This means that commanders and personnel managers will in future only need to refer to the one manual to obtain policy guidance relating to management of complaints. Similar action is being taken in relation to the simplification of policy regarding the management of incidents. This includes policy in relation to the conduct of quick

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26 *Submission 17*, p. 5-6.

27 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, 3 June 2014, p. 18.

28 Department of Defence, responses to questions on notice 13 August 2014, Question 9, Attachment, p. 3.

29 *Submission 17*, p. 4.

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assessments, non-statutory fact-finding inquiries, and the development of a centralised system for reporting these matters.<sup>30</sup>

4.28 Previous problems in relation to the advice regarding when managers and commanding officers in Defence could apply administrative or disciplinary sanctions within Defence were highlighted by Dr Gary Rumble:

[A Defence Instructions (General)] has been in place for many years which seems to say that, if there is an allegation of a sexual offence, the commanding officer or whoever is dealing with it should do nothing other than refer it to state and territory police—you have heard the statistics as to why that very seldom results in a prosecution—and then do nothing else. Now, we had correspondence with Defence legal indicating that that DI(G) did not mean what it said and should be construed sensibly and that commanders should still be able to take actions to respond other than simply referring it off to state and territory police. However, it is inevitable that commanding officers would read the DI(G) as meaning what it said and that many of those closed cases would have been closed because of that ridiculous DI(G), which said, 'Send her to the police and don't do anything else'.<sup>31</sup>

4.29 The Vice Chief of the Defence Force (VCDF), Vice Admiral Ray Griggs, acknowledged that there was a period where Defence 'gave primacy' to the formal police investigative process and there was a reluctance to take administrative action. The VCDF noted that formal guidance was issued this year to commanders 'to make it very clear that there can be concurrent administrative and disciplinary action'.<sup>32</sup> The Chair of the Taskforce also commented on this situation:

It was always open to commanders and to Defence to take administrative action in relation to the same things from the point of view of military discipline and good management...The problem was that there was confusion at the time about the Defence Instruction (General), where some people understood that what it meant was that you could not take administrative action. If that was the understanding, it was incorrect. My understanding now is that that situation has changed, because the relevant Defence instructions have been amended and the purpose of the policy has been clarified within Defence.<sup>33</sup>

4.30 Defence confirmed that '[c]ommanders are not prevented from taking concurrent administrative action against Defence members who are suspected of being involved, or alleged to be involved, in an incident that is being investigated or prosecuted'. It noted:

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30 Department of Defence, responses to questions on notice 13 August 2014, Question 19, p. 1.

31 *Committee Hansard*, 13 August 2014, p. 17.

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

33 *Committee Hansard*, 26 September 2014, p. 30.

Formal advice was given in 2014 to commanders to better assist them in balancing the competing interests and their obligations. That advice confirmed that commanders must also ensure that individuals in the workplace are protected, that public confidence in the Defence Force is maintained and that, where concurrent action is contemplated, a respondent's right to fair process is observed. The advice also confirmed that a commander may take subsequent administrative action against the member, even if a Defence member is found not guilty at their trial.<sup>34</sup>

4.31 The updated DI(G) PERS 35-4 *Reporting and management of sexual misconduct including sexual offences* issued on 19 August 2014 provides that:

A manager or commander may consider initiating formal administrative action in respect of Defence personnel while an incident of sexual misconduct is under investigation, while criminal or disciplinary proceedings are pending or after such proceedings have concluded. The fact that an individual is convicted or acquitted of an offence does not, of itself, preclude administrative action being taken in respect of sexual misconduct that is the subject of such disciplinary or criminal proceedings. A decision as to whether or not to initiate administrative action may be reconsidered at any time.<sup>35</sup>

4.32 Defence also provided recent examples in each of the services where 'commanders are taking administrative action concurrently with criminal or disciplinary proceedings, or taking administrative action subsequent to criminal or disciplinary action'.<sup>36</sup>

#### *Good character test*

4.33 One of the outcomes of the cultural reviews was that a number of amendments were made to the Defence (Personnel) Regulations 2002. The Sex Discrimination Commissioner recommended:

The insertion of an addition in the list of matters that must be considered in all personnel determinations and decisions in the Defence (Personnel) Regulations 2002 of the requirement that individuals must be 'fit and proper persons' for service in the ADF.<sup>37</sup>

4.34 These included adding a 'good character' test to the mandatory decision making criteria. A decision-maker must consider these criteria when making a decision that affects an individual ADF member, for example appointment or enlistment, promotion, posting or termination decisions. Air Commodore Ehlers

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34 Department of Defence, responses to questions on notice 13 August 2014, Question 12, p. 2.

35 Defence Instructions (General) PERS 35-4 *Reporting and management of sexual misconduct including sexual offences*, 19 August 2014, p. 6.

36 Department of Defence, responses to questions on notice 13 August 2014, Question 12, p. 2.

37 Australian Human Rights Commission, *Review of Treatment of Women in the Australian Defence Force*, Phase 2 report, 2012, p. 37.

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described it as 'a catch-all phrase that allows a delegate to consider someone's character in assessing their suitability to continue to serve'.<sup>38</sup>

### *Return of Service Obligations and Initial Minimum Periods of Service*

4.35 The Sex Discrimination Commissioner's review of the treatment of women in the ADF also recommended that Defence should 'amend all policies addressing the waiver of Initial Minimum Provision of Service and Return of Service Obligations to ensure that a member who has made a decision to discharge from the ADF because of sexual assault or sexual harassment, is able to do so expeditiously and without financial penalty, upon production of supporting evidence of physical, psychological or emotional trauma'.<sup>39</sup>

4.36 Accordingly, the follow-up audit welcomed the resulting amendments made to the DI(G) 33-5 *Arrangements for Service in the ADF* to include a reference to facilitating release from a service obligation where a member has reported sexual assault, sexual harassment or other significant workplace harassment through the appropriate channels.<sup>40</sup>

### *Victim support in investigations*

4.37 Defence also noted that Provost Marshal, in command of the ADF Investigative Service, had commissioned an Australian Defence Human Research Ethics Council approved study into how best to enhance support for victims in the conduct of Service Police Investigations:

The project was initiated to inform ADF (Service Police) Investigators of best practice in relation to victims' needs, expectations and the nuances of sexually violent crimes. This project aimed to inform Service Police of the critical importance of managing a victim's physical, psychological and emotional needs while ensuring that vital evidence is recovered at the earliest opportunity and the chain of custody strictly maintained in order to have maximum success in any subsequent prosecution.<sup>41</sup>

## **Response to DLA Piper review and systemic issues**

4.38 Defence noted that the recommendations of Volume 1 of the DLA Piper Review 'centred on the establishment of the Taskforce to examine allegations of abuse and work with complainants to achieve an outcome'. It stated that the Taskforce was also asked to draw any implications of its work to the attention of the Minister,

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38 *Committee Hansard*, 13 August 2014, p. 58.

39 Australian Human Rights Commission, *Review of Treatment of Women in the Australian Defence Force*, Phase 2 report, 2012, p. 37.

40 Australian Human Rights Commission, *Review of the Treatment of Women in the ADF - Audit report*, March 2014, p. 176.

41 *Submission 17*, p. 7.

Secretary and Chief of the Defence Force for consideration in the context of *Pathway to Change: Evolving Defence Culture* strategy:

The Volume 1 report highlighted five risk factors that DLA Piper considered as leading to abuse in Defence. This included a lack of adverse consequences for abusive behaviour; a culture discouraging reporting of abuse; absence of positive support for people who report abuse; issues relating to the chain of command; and social/environmental factors, including excessive consumption of alcohol and use of drugs.

The report also highlighted systemic issues in Defence that have been present at historical points in time, or remained present at the time of the DLA Piper Review. The systemic issues broadly related to the management and handling of victims, suspects and the complaint itself; complaint monitoring and reporting systems; and oversight of Defence action.<sup>42</sup>

4.39 In relation to this matter Defence outlined how it had approached the DLA Piper Review recommendations. In particular, it had identified that responsibility for implementation fell within two areas – those areas dependent on the work of the Taskforce and 'systemic issues which were the responsibility of Defence to consider for assimilation into *Pathway to Change* and/or through the Rethinking Systems Review Implementation'. It highlighted that the Taskforce had not yet identified to Defence any specific implications of its work that would require consideration of further new actions under *Pathway to Change*.<sup>43</sup>

4.40 Dr Gary Rumble was concerned by the lack of response to the systemic issues highlighted in the DLA Piper Review report for Phase 2 consideration. He noted the committee's previous report has recommended that Defence 'formally respond to the systemic issues and findings of the DLA Piper Review in its public reporting on the progress of the implementation of the *Pathway to Change* Defence cultural reforms'.

4.41 The Chair of the Taskforce told the committee that the '35 issues with other things, were very much part of a different Defence examination, which was the Rethinking Systems of Inquiry, Investigation and Review in Defence, which has been ongoing for at least two years'.<sup>44</sup> On 2 April 2014, the Taskforce received correspondence from Defence which included discussion of the 35 systemic issues identified in the DLA Piper report:

We note your reference to systemic issues identified in the DLA Piper Review and your statement that you 'understand these 35 systemic issues are being considered by Defence under the Re-Thinking Systems of Inquiry, Investigation and Review in Defence. The Rethinking Systems Reviews considered the outcomes of many reviews and inquiries in

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42 Department of Defence, responses to questions on notice 13 August 2014, Question 9, Attachment, p. 1.

43 Department of Defence, responses to questions on notice 13 August 2014, Question 9, Attachment, p. 2.

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

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formulating its recommendation, including the DLA Piper Review but it was not the sole vehicle by which those matters were considered. With respect to the risk factors and systemic issues identified by the DLA Piper Review, Defence has and continued to address these through the implementation of the Pathway to Change strategy and associated activities.<sup>45</sup>

4.42 In relation to this issue, the Taskforce noted it had contacted Defence in relation to the DLA Piper Review recommendations and in relation to Defence's progress on *Pathway to Change* and the Rethinking Systems Review in Defence. It stated:

The Taskforce will continue to liaise with Defence and others in relation to these matters and when analysis of all of the documentation received is complete, any systemic issues or matters that may be significant and of interest will be raised with relevant parties. In that regard, the Taskforce will take into account the 35 systemic issues raised in the DLA Piper Report.<sup>46</sup>

## SeMPRO

4.43 The establishment of a Sexual Misconduct Prevention and Response Office (SeMPRO) was a recommendation of Sex Discrimination Commissioner, Ms Elizabeth Broderick as part of her review of the treatment of women in the ADF. Her recommendations included:

- As a priority, [Defence] should establish a dedicated Sexual Misconduct Prevention and Response Office (SeMPRO) to coordinate timely responses, victim support, education, policy, practice and reporting for any misconduct of a sexual nature, including sexual harassment and sexual abuse in the ADF. This Office is to be adequately and appropriately staffed, including with personnel that have experience in responding to people who have been subjected to sexual harassment or abuse and is to be headed by a senior leader (of no less than one star rank or at SES level) and located at Defence Headquarters (Recommendation 18); and
- As a matter of urgency, the ADF should investigate mechanisms to allow members to make confidential (restricted) reports of sexual harassment, sex discrimination and sexual abuse complaints through SeMPRO (Recommendation 19).<sup>47</sup>

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45 Defence Abuse Response Taskforce, *Sixth interim report to the Attorney-General and Minister for Defence*, June 2014, Appendix D, p. 41.

46 *Submission 21*, p. 5.

47 Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force*, Phase 2 report, 2012, pp 36-37.

4.44 Defence described the establishment of the Sexual Misconduct Prevention and Response Office (SeMPRO) as a 'fundamental change in the way Defence approaches and manages incidents of sexual misconduct in the Australian Defence Force'. It outlined that the SeMPRO would undertake a number of roles:

SeMPRO's key role is to coordinate trauma-informed support to victims and guide commanders and managers in dealing with reports of sexual misconduct in their workplaces in a sensitive manner...In addition to its victim support responsibilities, SeMPRO has an important prevention and education role as part of Defence's wider Pathway to Change cultural change program...SeMPRO is now a central point of data collection and analysis for all known incidents relating to sexual misconduct across the ADF, which, over time will enable the Defence to develop a deeper understanding of the level and nature of sexual assault across the ADF.<sup>48</sup>

4.45 The staff of SeMPRO include 'five Australian Defence Force (ADF) personnel (one of whom is a part-time reservist), 10 Australian public servants, a contracted mental health professional and four remotely located part-time ADF reservists, who are primarily psychologists'.<sup>49</sup> Air Commodore Ehlers commented:

We have set up a small team particularly to deal with support for our clients. These are all mental health professionals who are trained in dealing with victims of sexual abuse and misconduct. They provide a confidential phone service. We call it call, click, text. We have a 1800 telephone number, the ability to send emails and the ability to send texts 24/7...<sup>50</sup>

4.46 He noted that one of SeMPRO's major roles is 'providing advice and support to commanders, managers, health providers et cetera [and] the vast majority of our calls have in fact been requests for advice from commanders, managers, ADFIS...'.<sup>51</sup> Defence advised that SeMPRO has had 176 interactions with victims of sexual assault covering 50 clients during the period 1 January – 30 June 2014. It noted that many of the interactions have referred to incidents which are 'historic' - which it defined as incidents which occurred more than a year ago.<sup>52</sup>

4.47 A range of criticisms were expressed during the inquiry regarding the establishment of SeMPRO. Mr Donaldson from Shine Lawyers acknowledged the establishment of SeMPRO but drew the committee's attention to the United States military's Sexual Assault Prevention and Response Office (SAPRO). He considered there was 'much that the Australian Government could learn from SAPRO in relation to: resourcing and staff; streamlined process; and focus on prevention'. The Association for Victims of Abuse in the ADF argued that Defence 'have focused on

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48 *Submission 17*, p. 6.

49 Department of Defence, responses to questions on notice 13 August 2014, Question 17, p. 1.

50 *Committee Hansard*, 13 August 2014, p. 55.

51 *Committee Hansard*, 13 August 2014, p. 55.

52 Department of Defence, responses to questions on notice 13 August 2014, Question 13, p. 1.

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sexual abuse through their SEMPRO Office to the exclusion of other types of torture and abuse being practiced in the Defence Force'.

4.48 Mr Barry Heffernan spoke to the committee about questioning a victim of abuse regarding the reason why they did not make a report to SeMPRO:

[H]aving spoken to quite a number of Defence abuse victims, if you ask them the general question, 'Why didn't you reported to Defence?' they say, 'You're kidding,' 'How do I know that the guy or person I am reporting to isn't related or best friends with the perpetrator?'. It goes to a privacy thing, it goes to a confidence thing and it goes to a trust thing.<sup>53</sup>

4.49 Dr Rumble also commented:

[I]t is significant that SeMPRO is a telephone number and not an on-the-round presence, as is the case, as I understand it, in the US Army. Obviously, there needs to be a very high level of trust and confidence involved for someone who has recently been sexually assaulted to contact anyone. Without a physical presence at the main training establishments and perhaps in operational settings, without the physical representation of SeMPRO there, the prospects of ever building that confidence and then of collecting fresh forensic evidence to enable action should the victim decide they do want some process to happen—I just think that is unrealistic.<sup>54</sup>

4.50 The 2014 audit conducted by Ms Elizabeth Broderick, while broadly positive about the establishment of SeMPRO, noted it only responds to issues of sexual abuse and the existing 'Values, Behaviour and Resolutions Branch in Defence continue to manage complaints of sexual harassment and discrimination'.<sup>55</sup>

### ***Restricted reporting/disclosure***

4.51 Reflecting the recommendations of the Sex Discrimination Commission, SeMPRO was established with an option for victims of sexual offences to make a restricted (confidential) disclosure. Defence commented:

In adopting this approach, Defence has consciously shifted the immediate focus from pursuing an investigation of the incident, to caring for and supporting personnel who have experienced sexual misconduct. This is a significant policy change for Defence and one that is hoped will ultimately increase ADF members' confidence in formal reporting and response systems.<sup>56</sup>

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53 *Committee Hansard*, 26 September 2014, p. 3.

54 *Committee Hansard*, 26 September 2014, p. 17.

55 Australian Human Rights Commission, *Review of the Treatment of Women in the ADF - Audit report*, March 2014, p. 15.

56 *Submission 17*, p. 6.

4.52 The SeMPRO website provides the following guidance to victims of sexual assault regarding restricted disclosures:

A Restricted Disclosure allows you to disclose your experience directly to SeMPRO without involving your chain of command/line management, ADFIS or the State/Territory police. This option has been implemented by Defence to encourage ADF members who may not otherwise report to come forward to receive appropriate support to assist them in their recovery to full health. Please note, SeMPRO cannot accept Restricted Disclosures from APS employees.

4.53 However there are a number of exceptions listed where 'SeMPRO may not be able to maintain complete confidentiality':

The exceptions when the SeMPRO can refuse to accept a restricted disclosure are circumstances where:

- there is a death related to the assault;
- there is a life-threatening serious personal injury;
- there is a serious or imminent threat to others' safety;
- the incident is already known, eg to the commander/managers/ Australian Defence Force Investigative Service, civilian police or the incident is otherwise in the public domain;
- Commonwealth/State/Territory laws require mandatory reporting (such as if the victim is believed to be less than 18 years of age); and/or
- disclosure to Commonwealth/State/Territory courts or tribunals is ordered or required by statute.<sup>57</sup>

In addition, when assessing whether a restricted disclosure can be accepted, SeMPRO will consider whether:

- unrestricted reporting could reduce the risk of further sexual misconduct to the victim or another person.
- unrestricted reporting could reduce the risk of serious personal injury of the victim or another person.
- any national security issues or risk to operations exist.<sup>58</sup>

4.54 Defence highlighted that while SeMPRO was developed to reflect a similar office established by the United States armed forces there were 'significant jurisdictional differences between the law applicable to dealing with sexual offences...and that 'American practice in this area is not therefore directly transferable to the ADF':

Initial concerns with the concept of restricted reporting or disclosures included the potential for inconsistencies to arise between protecting the

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57 Department of Defence, responses to questions on notice 13 August 2014, Question 22, p. 1.

58 Department of Defence, responses to questions on notice 13 August 2014, Question 22, p. 1.

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confidentiality of victims complaints (where they desired this) and complying with Australian law and ADF policy requiring the reporting of allegations of criminal acts and issues affecting workplace health and safety.<sup>59</sup>

4.55 Defence considered the exceptions to restricted disclosure 'all appear to be appropriate and consistent with legal and policy requirements'. It noted that 'Australian law requires that, in certain circumstances, a victim's desire for confidentiality must be overridden for the greater good; such as where failure to do so would result in the continuation of a dangerous situation or where the exceptions listed above would apply'.<sup>60</sup>

4.56 Defence highlighted that restricted disclosures have been received by SeMPRO and 'there have been no instances where a restricted disclosure could not be accepted':

Of the 311 interactions SeMPRO had during the period 1 January – 30 June 2014, 176 were interactions with clients who alleged they were victims of sexual assault. Note that there can be multiple interactions per victim. The 176 interactions covered 50 clients; 39 clients with unrestricted reports and 11 clients with restricted disclosures. During the period, three restricted disclosures became unrestricted reports.<sup>61</sup>

4.57 The approach Defence had taken to restricted reporting of abuse was discussed during the inquiry. In particular, Dr Rumble described the SeMPRO restricted reporting framework as a 'much-compromised Clayton's version [that]...looks as though it has been set up to fail'.<sup>62</sup> He outlined three concerns with the version of 'restricted reporting' used by the SeMPRO.

First - According to the SeMPRO website, when deciding whether to accept a report on a confidential basis SeMPRO must consider whether 'Unrestricted Reporting could reduce the risk of further sexual misconduct to you or another person'...This denies the whole rationale for restricted reporting...

Second - there is still nothing on the SeMPRO website to indicate that forensic evidence may – with the agreement of the victim - be collected and safeguarded when the victim makes a report on a confidential basis...

Third – there is nothing on the SeMPRO website to indicate that restricted reporting through SeMPRO is open to former ADF members.<sup>63</sup>

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59 Department of Defence, responses to questions on notice 13 August 2014, Question 21, p. 1.

60 Department of Defence, responses to questions on notice 13 August 2014, Question 22, p. 1.

61 Department of Defence, responses to questions on notice 13 August 2014, Question 15, p. 1.

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

63 *Submission 8*, Part 2, pp 5-6.

4.58 Dr Rumble also highlighted that '[i]n the first year of operation, SeMPRO has not had a single report of sexual assault within 72 hours of the incident. He considered this meant that 'the victims of abuse in Defence are not getting prompt support when it is most important, in that first period after the assault'.<sup>64</sup>

4.59 In relation to SeMPRO accepting restricted disclosures, Vice Admiral Griggs did not consider that the exceptions would be 'significant in the sense of dissuading people':

If the incident is already known to civil police or in the public domain, Commonwealth, state and territory laws require mandatory reporting—again it goes back to the minors issue. Or if disclosure to Commonwealth, state or territory courts or tribunals is ordered or required by statute. They are the circumstances where we deviate from what might be considered pure restricted reporting.<sup>65</sup>

4.60 In relation to the collection of forensic evidence, Air Commodore Ehlers told the committee:

Our first priority is to stabilise the client and make sure they are supported. We will talk them through their options for making a report. We will talk them through the ability for forensic evidence to be gathered. We will work with, for example, rape crisis centres to refer them to those institutions where they have the ability to capture forensic evidence and secure it until the individual is prepared to come forward. We are absolutely supporting that.<sup>66</sup>

4.61 Defence noted that 'SeMPRO staff will discuss options for collection of forensic evidence with clients where collection of the evidence is possible'.

[T]o date, SeMPRO has not had a disclosure of penetrative sexual assault within the 72-hour window required for primary forensic collections. Should someone disclose within that window, SeMPRO will facilitate support through a medical check and, if agreed, a forensic examination.<sup>67</sup>

4.62 Mr Geoff Earley, the Inspector General ADF, noted that he had considered the use of restricted reporting in the United States in his review of the management of incidents and complaints in Defence (one of the Defence cultural reviews). He stated:

In that report I did not recommend that the ADF adopt restricted reporting because of jurisdictional differences between Australia and the United States, and because of the potential for workplace safety issues to arise in

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64 *Committee Hansard*, 26 September 2014, p. 11.

65 *Committee Hansard*, 13 August 2014, p. 59.

66 *Committee Hansard*, 13 August 2014, p. 60.

67 Department of Defence, responses to questions on notice 13 August 2014, Question 16, p. 1.

circumstances where commanders had no visibility of offenders in their ADF units following a known incident.<sup>68</sup>

4.63 However, at the hearing on 13 August 2014, Mr Earley commented:

SeMPRO has been in operation now for over 12 months. I must say I have been impressed with the approach it has taken to providing support to victims and with the positive efforts it makes to encourage victims and bystanders to come forward...I understand there has actually been only a small number of restricted disclosures made to the SeMPRO and these have been almost entirely of a historical nature. The workplace safety concerns I had originally about the possible impact on units of a restricted reporting regime have not therefore materialised, at least so far.<sup>69</sup>

### ***Prevention and education***

4.64 SeMPRO also has a role in prevention and education in relation to sexual assaults in Defence. In her audit of the treatment of women in the ADF, Ms Elizabeth Broderick commented:

Targeted sexual ethics training is fundamental to establishing a positive ethical climate. It is fundamental to ensuring that all members build healthy relationships with each other based on mutual respect. It is also fundamental to minimising the risk of unacceptable behaviour and the exploitation of the most vulnerable across the organisation.<sup>70</sup>

4.65 However the audit found that 'progress on the provision of sexual ethics training has been slow' and 'urged that ADF to ensure that a robust sexual ethics program is also delivered across the broader ADF as soon as possible and in collaboration with experts in the field'.<sup>71</sup>

4.66 Defence noted that the 'Sexual Ethics and Healthy Relationships' package, trialled at the Australian Defence Force Academy, has been provided to all new starter training institutions for widespread implementation.<sup>72</sup> Air Commodore Ehlers advised:

[W]e have been working with external experts to develop—I think for the first time in any large organisation—a sexual ethics education program. I think the previous Chief of Defence Force described it as industrial scale. We are looking to create a sexual ethics education in defence strategy. We are starting with initial institutions such as the Australian Defence Force Academy recruit schools and going through a program of sexual ethics

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68 *Submission 7*, p. 1.

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

70 Australian Human Rights Commission, *Review of the Treatment of Women in the ADF - Audit report*, March 2014, p. 2.

71 Australian Human Rights Commission, *Review of the Treatment of Women in the ADF - Audit report*, March 2014, p. 173.

72 *Submission 17*, p. 6.

education—much akin to what some of the sporting codes have done with the sporting players, but we are dealing here with a very much wider demographic. These are young people, through either enlisted entry or officer entry at ADFA et cetera, and exploring with them the issues of sexual ethics education.<sup>73</sup>

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73 *Committee Hansard*, 13 August 2014, p. 56.