Chapter 5

Other matters

Introduction

5.1 This chapter will consider some of the other key issues raised during the inquiry. These issues included:

- access to veterans' entitlements and support services;
- the release of Volume 2 of the DLA Piper report;
- the need for a Royal Commission; and
- the Commonwealth's model litigant obligations.

Access to veterans' entitlements and support services

5.2 The access of victims of abuse to veterans' entitlements and support services was a particular area of concern raised during the inquiry. DVA is required to apply specific legislative requirements and a standard of proof to claims. Benefits are usually only accessible where a diagnosed medical condition can be linked to a service-related incident. Mr Shane Carmody from DVA explained:

> DVA is required by legislation to provide compensation for diagnosed injuries or illnesses that were caused by an event linked to service in the ADF. Under our legislation—the Veterans' Entitlements Act [VEA]; the Safety, Rehabilitation and Compensation Act [SRCA]; and the Military Rehabilitation and Compensation Act [MRCA]—before determining whether an injury or illness is related to service a delegate is required to satisfy themselves that the facts of the case are true, including whether the alleged abuse occurred. Under the SRCA this is done in accordance with 'reasonable satisfaction', known as the 'balance of probabilities' standard of proof. Under the VEA and the MRCA—the other two acts—this is done in accordance with the 'balance of probabilities' standard of proof for peace-time service, or the 'reasonable hypothesis' standard of proof for warlike, non-warlike or operational service.
>
> These tests must be applied in establishing that an event occurred, that a medical condition exists and that the condition was caused by service in the ADF.[1]

5.3 Between 1 January 2011 and 31 July 2014, DVA completed 259 claims which wholly or partly related to sexual or physical abuse. These completed claims involved 522 separate conditions. Around half of these claimed conditions (222) were refused. DVA noted:

---

1 *Committee Hansard*, 13 August 2014, p. 40.

Conditions have been refused for a number of reasons, including:

- the assault occurred whilst the member was not on duty, or not undertaking required ADF duties, i.e. the circumstances of the incident did not support a link to service, as required under the relevant legislation;
- there was no diagnosis to support the claimed condition;
- for Veterans' Entitlements Act 1986 (VEA) / Military Rehabilitation and Compensation Act 2004 (MRCA) claims only – the condition did not meet one or more factors in the Statement of Principles (SoPs) for that condition. The SoPs are legislative instruments that set out the factors which can connect particular injuries, diseases or death with a person's Australian Defence Force service.[2]

5.4 DVA also outlined that where 'a claim cannot be accepted on the available evidence, the client is provided with the following options':

- to have the claim rejected so that it can be taken to the review level;
- to take the opportunity to submit more evidence to support the claim; or
- if the client has a claim with the DART, to seek additional information held by the DART that may support the DVA claim.[3]

5.5 DVA noted that, in August 2012, it established a dedicated team in Melbourne to receive and manage all new claims relating to sexual and other forms of abuse following the release of DLA Piper Review report. This included the engagement of a social worker to provide assistance to DVA clients who can, 'when agreed to by the client, act as the single point of contact'.[4]

Concerns regarding DVA assessments

5.6 Concerns were raised regarding the treatment by DVA of victims of abuse in Defence who often had limited documentation or evidence to support their claims. For example, the Association of Victims of Abuse in the ADF highlighted the hurdles that victims of abuse in Defence can have in proving to DVA that abuse occurred. These hurdles included:

- victims discharging at own motion due to abuse;
- having inaccurate medical and military service records; and
- having insufficient periods of service to qualify for benefits.[5]

---

2 Department of Veterans' Affairs, responses to questions on notice from hearing 13 August 2014, pp 5-6.

3 *Submission 11*, p. 2.

4 *Submission 11*, p. 2.

5 *Submission 14*, pp 12-14.

5.7 Due to the many challenges involved in proving that abuse in Defence occurred, the Association of Victims of Abuse in the ADF recommended that 'the various Acts under which the Department Of Veterans Affairs operates under have the threshold test for Victim Claims…reduced to that of "Plausibility"'. It also recommended the three year service requirement not be applied to victims of abuse in Defence.[6]

5.8 Similarly, Mr Barry Heffernan considered that DVA assessments in cases such as HMAS Leeuwin 'should work on a plausible basis the same as the DART'.[7] He stated:

> [W]hen the minister announced the setting up of the DART initially, it should have been better thought through. The DVA should have been more a hand-in-hand thing from week one, day one. For people now…talking to DVA, and having them say: 'Well, there is no documentation'. When you think of the situations that these victims have been in—being assaulted and all that—the last thing they are thinking of doing, at 15 years old and fearing for their lives at, say, HMAS Leeuwin, is writing a report. They feared for their safety, so they would not have reported it higher up. Then, through no fault of their own, they are told: 'Sorry, there is no documentation. We can't do anything with you'.[8]

5.9 Dr Rumble noted that many of the DART complainants 'could well be entitled to DVA benefits and assistance which they are not receiving'.[9] He considered that DVA seemed to be 'profoundly, deeply and entrenchedly unaware… [of] the line of Defence reports that say there is a culture which discourages reporting':

> On the DVA checklist, there is 'Did the person report promptly?'. If they say no, that is strike 1. That goes to credibility. They must have it explained to them—and it is in Defence reports and plenty of other places—that if you are a 13-, 14-, 15- or 18-year-old leaving Defence because you have been abused, you are not going to report. You are leaving to get out. You are not going to report at the doorstep so they keep you there while they run a process.[10]

5.10 One of his recommendations was that DVA be asked to commence consultation with veterans' representative organisations:

> - on what legal and practical barriers there are to victims of abuse in the ADF succeeding in establishing the facts necessary to make out entitlements to DVA benefits;

---

6 *Submission 14*, covering letter, p. 2.

7 *Committee Hansard*, 26 September 2014, p. 5.

8 *Committee Hansard*, 26 September 2014, p. 2.

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

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

> - what Defence and DVA could do and what resources they will require to gather and share information which could assist such individuals to establish those facts to the satisfaction of DVA and tribunal decision-makers;
>
> - on what can be done in liaison with Veterans' groups, other Government agencies and community groups and what resources will be required to reach out to individuals affected by abuse who may be eligible for DVA benefits – including individuals who have previously applied and been rejected.[11]

5.11 The Defence Abuse Support Association believed that victims who had been found to have suffered the worst forms of abuse by the Taskforce 'should have their applications to the DVA streamlined to avoid putting them through the trauma of reliving their abuse again'. It stated:

> DVA needs to look at how it can provide short and long term support to victims of abuse in the ADF as required, both past and present. It is a long and very difficult process victims of abuse that have come forward to the DART have gone through, causing enormous mental anguish and anxiety. Many victims also suffer from [post-traumatic stress disorder] as a direct result of the abuse they suffered in the ADF.[12]

5.12 The DVA commented on this issue:

> It is important to be clear that a decision by the DART regarding a person's entitlement to a Reparation Payment will not lead to automatic acceptance of a compensation claim by DVA. The assessment of claims for Reparation Payments is separate from any assessment of claims for compensation payable by DVA and different standards of proof are used in these assessments by the DART and DVA.[13]

5.13 DVA also noted:

> Compensation claim decisions are not affected by the reason for discharge. All claims are investigated and determined on their merits. However, DVA is notified of all medical discharges and engages with members to ensure that, where possible, such members have a continuation of care when transitioning out of the ADF. [14]

5.14 DVA reiterated that eligibility for compensation requires a diagnosed medical condition to be linked to a service-related incident. Under DVA-administered legislation delegates must be satisfied on the 'balance of probabilities' that the facts of the case are true and supported by sufficient evidence before determining whether an injury, illness or death is related to service. This was a higher evidentiary standard

---

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

12 *Submission 23*, p. 4.

13 *Submission 11*, p. 2.

14 DVA, responses to questions on notice from hearing 13 August 2014, p. 6.

than 'plausibility' used by the Taskforce. DVA acknowledged that these differences in the assessment of claims by DVA and DART 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.[15]

> 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.[16]

Information sharing and clusters of abuse

5.15 Dr Rumble also noted that Defence has been gathering and centralising records through Plan Millennium which included closed cases involving sexual assault. He considered if these reports were de-identified it would assist decision makers assess people for DVA benefits.[17] Dr Rumble criticised inaction by DVA in examining what would be required 'to analyse its own material for clusters and patterns of abuse'.[18]

5.16 DVA outlined that it had been in ongoing consultation with the Taskforce since the Reparation Payment Scheme was established. In 2013, DVA and the Taskforce formalised a Memorandum of Understanding (MoU) to allow the reciprocal sharing of personal information with the consent of the claimant to assist with the investigation of claims relating to allegations of abuse. However DVA noted:

> Notwithstanding that a formal MoU is now in place, the information provided to DVA by the DART may be redacted in certain areas to protect the privacy of some individuals and due to the sensitive nature of the information collected by the DART. Consequently, DART claimants are given the option of either providing particularly sensitive information to DVA themselves or expressly requesting the DART to provide this information directly to DVA.

> As at 12 May 2014, DVA has submitted 13 requests for claimant information to the DART and the DART has made one request for information from DVA. To date, all requests for the provision of information have been produced within the agreed timeframes prescribed in the MoU and all are supported by a consent provided by the individual concerned.[19]

---

15 *Submission 11*, p. 3.

16 *Submission 11*, p. 3.

17 *Committee Hansard*, 26 September 2014, p. 14.

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

19 *Submission 11*, p. 2.

5.17 In its submission, the Taskforce also noted that its Compliant Support Group 'provides each complainant with information on whether a reparation payment could have implications in relation to any current or potential claim lodged with the Department of Veterans' Affairs'.[20] However, the Chair of the Taskforce indicated the privacy legislation 'has been a big obstacle to quite a lot of the work'.[21]

5.18 The Taskforce indicated that it recognised that its work may potentially be of assistance to DVA in its consideration of applications from claimants for pensions or other entitlements and could minimise the distress experienced by claimants endeavouring to substantiate their claims of abuse where they have limited evidence:

> To date, the Taskforce has begun to provide DVA with statistical information outlining the locations with the highest incidents of abuse, the types of abuse and date ranges during which the abuse occurred. This information is presented in a manner that ensures it does not identify any personal information or breach any obligations required by the *Privacy Act 1988*. This statistical information may assist in streamlining DVA's evidence gathering process for liability and compensation claims. The Taskforce acknowledges that it is a matter for DVA whether or not they take account of this information in their assessment process, noting that its process is separate to that of the Taskforce and underpinned by different standards of proof.

5.19 The Chair also highlighted that the Taskforce's databases of complaints now allowed them to 'run quite a lot of analytical programs' about particular types of abuse which the Taskforce has identified 'as coming out of particular institutions at particular times'.[22] The Chair also noted that Defence's Plan Millennium project to digitise service police records has allowed it to identify 'a number of people against whom multiple allegations of abuse had been made by different people, different victims'.[23]

5.20 DVA noted that the Military Rehabilitation and Compensation Commission has formally requested information from the Chair of the DART regarding ADF bases and locations where clusters of abuse are known to have occurred (including timeframes and types of abuse), with a view to possibly using this information as part of the DVA claims assessment process to support abuse claims. It indicated that the first tranche of the information has been received and is being analysed.[24] However, DVA also stated that:

---

20 *Submission 21*, p. 3.

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

22 *Committee Hansard*, 13 August 2014, p. 30.

23 *Committee Hansard*, 26 September 2014, p. 26.

24 Department of Veterans' Affairs, responses to questions on notice from hearing 13 August 2014, p. 7.

> Where claims are attributable to service at ADF establishments which are not identified as part of the cluster information, or where the 'cluster' information does not support the contention, the usual DVA process, which relies upon available medical and other corroborating evidence, would need to be followed and claims would be considered on a case by case basis.
>
> This includes establishing a connection between the person's claimed conditions and the acknowledged incident, whether by application of the Statements of Principles regime (for Military Rehabilitation and Compensation Act 2004 and VEA cases) or via specialist medical opinion (for claims under the Safety, Rehabilitation and Compensation Act 1988).[25]

5.21 Mr Carmody from DVA also advised:

> Some submissions to this inquiry argue that individuals approaching DVA may not have any evidence to support their claim, the implication being that the claim would therefore be rejected. It is important to note that DVA delegates are not bound by formal rules of evidence which would apply during a hearing conducted by a civil court. Therefore they can take into account all available evidence regardless of origin. This could include information used by the DART in its assessment of an alleged abuse claim. This is why we work closely with DART to obtain as much information as possible to support the claim, with the consent of the client. This is also why DART has undertaken to provide DVA with additional data, when available, on clusters of abuse which may have occurred, say in a particular location or over a particular period of time.[26]

5.22 However, Mr Mark Harrigan also from DVA cautioned that where a claimant was '[p]urely relying on cluster information in the absence of any other information…it would be difficult to satisfy the balance of probabilities test or the reasonable hypothesis tests that exist in legislation'.[27]

5.23 In relation to its information sharing procedures, Defence stated that 'DVA may seek to clarify or confirm details in relation to members' claims for compensation with Defence and may request further information through a formal process known as the Single Access Mechanism' which 'provides a single point of access for the transfer of records between the departments and is managed by the Defence Community Organisation'. Further, Defence noted that a SeMPRO client could 'request a copy of their SeMPRO file or can ask that their SeMPRO file be released to a third party' including DVA.[28]

---

25 Department of Veterans' Affairs, responses to questions on notice from hearing 13 August 2014, p. 8.

26 *Committee Hansard*, 13 August 2014, p. 41.

27 *Committee Hansard*, 13 August 2014, p. 47.

28 Department of Defence, responses to questions on notice 13 August 2014, Question 10, pp 1-2.

Non-Liability Health Care

5.24 DVA highlighted recent legislative changes in relation to the Non-Liability Health Care arrangements which would potentially assist victims of abuse in Defence:

> Non-Liability Health Care (NLHC) arrangements are prescribed in the [Veterans' Entitlements Act] and provide eligible veterans and ADF members with access to treatment for certain specified conditions, irrespective of whether or not these conditions are related to service. Treatment that can be provided under the NLHC arrangements is also independent of any claims which may be lodged for specific conditions with DVA…
>
> Subject to legislative amendment (that will also remove the 7 April 1994 cut-off date), eligible DART recipients will have access to treatment for conditions including anxiety, depression, post-traumatic stress disorder and alcohol and substance use disorders from 1 July 2014, regardless of whether or not those conditions are deemed to be related to service.[29]

5.25 Mr Carmody commented that claimants eligible for non-liability health care may be able to access treatment and counselling 'virtually immediately'[30]:

> We also pay for treatment for certain conditions without the need to establish that they are service related. This is important and it is called non-liability health care—health care in circumstances where we have not accepted liability. The conditions which can (from 1 July 2014, when the legislation was changed) be treated under non-liability health care include post-traumatic stress disorder, anxiety, depression, and alcohol and substance abuse.[31]

5.26 However, Mr Carmody also indicated that if a person has less than three years service, and did not leave on medical grounds, they are unable to access non-liability health care.[32]

Delays in assessment

5.27 Other issues with DVA processes for assessment compensation claims were also raised during the inquiry. For example, Ms Rachael James from Slater and Gordon Lawyers outlined the frustration of some of her clients in relation to the delays in decision-making in relation to military compensation schemes:

> Unlike other schemes, such as the seafarer scheme, the Commonwealth compensation schemes do not have legislative time frames for the making of decisions. Therefore, there is no recourse available to injured personnel in the event a decision is not made with respect to their claim within a

29 *Submission 11*, pp 3-4.

30 *Committee Hansard*, 13 August 2014, p. 42.

31 *Committee Hansard*, 13 August 2014, p. 40.

32 *Committee Hansard*, 13 August 2014, pp 47-48.

> timely period or a decision is not made at all. We have long argued that time frames for decision making should be introduced into the compensation process.[33]

5.28 The information provided by DVA indicated that there may be significant delays in the processing of claims for compensation. These included for the last financial year average waiting times of 75 days for claims under the Veterans' Entitlements Act; 144 days for claims under the Military Rehabilitation and Compensation Act; and 160 days under the SCRA.[34] However, Mr Shane Carmody from DVA provided further information on these waiting times:

> [T]he challenge with measuring the claims times that we mentioned is that the clock starts ticking as soon as we receive a claim. The claim may not have very much detail in it at all or no detail—no diagnosis. It might just be the name and address of the person saying, 'I have an injury or illness.' We have then to send them to a doctor and work out what we are going to do from there. So the claims process is quite protracted because claims are not complete when they arrive. Therefore, to even get to that liability stage, it takes some time.[35]

5.29 Suicide by persons who have suffered abuse in Defence but who had not yet received assistance was also raised during the inquiry. DVA outlined the practical difficulties in assessing deaths by suicide in the veteran community. While DVA indicated that it was working with other agencies to improve understanding of the prevalence of suicide among ex-serving personnel, it acknowledged that 'DVA is unlikely to ever obtain complete information in relation to the prevalence of suicide amongst all those who have served with the Australian Defence Force'.[36]

Release of redacted version of Volume 2

5.30 A range of views were expressed during the inquiry regarding access to, and the release of, Volume 2 either redacted or in summary form.

Supporting further release of Volume 2

5.31 The Defence Force Welfare Association considered that 'unless there is the fullest possible disclosure of all volumes of the report and findings compiled by DLA-Piper that lead to this Taskforce being created, then there will inevitably be questions left in the eyes of the general public concerning the veracity of both the inquiry and

---

33 Ms Rachael James, Slater and Gordon Lawyers, *Committee Hansard*, 13 August 2014, pp 1-2.

34 Ms Lisa Foreman, Department of Veterans' Affairs, *Committee Hansard*, 13 August 2014, p. 42.

35 *Committee Hansard*, 13 August 2014, p. 42.

36 Department of Veterans' Affairs, responses to questions on notice from hearing 13 August 2014, p. 2.

the response by the ADF'.[37] Similarly, the Association for Victims of Abuse in the ADF argued that a de-identified version of Volume 2 should be released as it would allow Parliament and the electorate to understand the 'extent of the problem', the 'failure of Defence to deal with it' and take 'the appropriate action based on the true facts'.[38]

5.32 The Defence Abuse Support Association wished to see Volume 2 of the DLA Piper report released and hoped it would negate the need for a Royal Commission on abuse within Defence. It believed that 'perpetrators of abuse in the ADF and their protectors should be named and shamed for their actions'.[39]

5.33 Mr Brian Briggs, from Slater & Gordon Lawyers also supported the release of Volume 2 in redacted form or '[a]t least a comprehensive summary with examples of the nature of complaints should be provided'. He argued the release of Volume 2 would 'enable the nature of some of the allegations considered by DLA Piper to be transparent and ensure the response by the ADF can be considered for its adequacy in a transparent environment'.[40]

Against further release of Volume 2

5.34 In contrast, Dr Gary Rumble, the former leader of the DLA Piper Review, noted that many details of the contents of Volume 2 were already available in Volume 1 and consequently believed 'it would not be desirable to try to publish a summarised or redacted form of Parts 1-23 of Volume 2'.[41] He noted that any redacted version or summary released would need to remove information that may identify complainants, accused perpetrators and individuals accused of mismanaging abuse incidents. This action would 'require a lot of resources and would in many cases not leave enough coherent information to convey the substance of the individual's experience'.[42]

5.35 In particular, he highlighted the potential for the release of Volume 2 to negatively impact victims of abuse:

> If there was to be any publication of a redacted or summarised version of Parts 1-23 of Volume 2, there would need to be well-publicised support available for victims who may be distressed by seeing aspects of their story being publicised even if they have consented to the publication.[43]

---

37 *Submission 1*, p. 1.

38 *Submission 14*, p. 4.

39 *Submission 23*, p. 4.

40 *Submission 4*, p. 2.

41 *Submission 8*, Part 1, p. 12.

42 *Submission 8*, Part 1, p. 31.

43 *Submission 8*, Part 1, p. 28.

5.36 Similarly, Mr Adair Donaldson of Shine Lawyers noted that Volume 1 'effectively' already provided a summary of Volume 2 and highlighted that while 'it would be desirable for this information to be released the paramount concern should be the protection of an individual's privacy'.[44]

5.37 The Inspector General ADF, Mr Geoff Earley AM, flagged that it would be unlikely that a comprehensive investigation of all the allegations would be possible. In the context of the further release of Volume 2, he commented that:

> Persons named or identified as respondents to such unproven allegations may therefore be left in the invidious position of either not knowing that such allegations about them have been made or alternatively, not being given an opportunity to contest the allegation.[45]

5.38 Defence noted that as the information in Volume 2 had been provided by victims of abuse to the DLA Piper Review on the strict condition of confidentiality, 'Defence has not been provided a copy of the Volume Two report'.[46] In a response to a question on notice Defence discussed some of the issues in relation to the release of Volume 2:

> Volume 2 documents specific incidents and identifies victims and alleged perpetrators, public release poses very considerable risks to both victims and perpetrators. Redactions for privacy reasons may in any case be likely to render the document virtually meaningless. Anything less by way of redaction is likely to lead to an avalanche of speculation in which neither the interests of the victims nor the alleged perpetrators are likely to be well served.
>
> The nature of the alleged abuse suffered by victims has already been widely publicised in general terms; in particular, through the release of a redacted Volume 1. It is not apparent what greater public interest would be satisfied by the disclosure of additional detail of these allegations where they remain unproven or where victims have expressly indicated they do not support more general disclosure of their suffering. The risk to these victims is that their trauma will be revisited. The risk to alleged perpetrators is that their lives, families and reputations are likely to be irrevocably damaged whether or not the allegations against them are proven. Victims who seek accountability on the part of their perpetrators can be informed of the outcome after due process has been followed.[47]

5.39 The Defence Abuse Response Taskforce considered that the question of '[w]hether or not to release Volume 2 [was] a matter for the Minister for Defence, not the Taskforce'. However, it noted that information or recommendations in relation to

---

44 *Submission 12*, p. 4.

45 *Submission 7*, pp 2-3.

46 *Submission 17*, p. 7.

47 Department of Defence, responses to questions on notice 13 August 2014, Question 23, p. 1.

specific allegations set out in Parts 1-23 of Volume 2 are taken into account as part of the Taskforce's assessment processes. Further:

> [T]he Taskforce notes that Volume 2 of the DLA Piper Report contains detailed personal information and specific recommendations dealing with individual complaints of abuse. For privacy and fairness reasons, any published summary or redaction would need to remove information which could identify complainants and alleged abusers, together with information on individuals accused of mismanaging abuse incidents.
>
> Given the fact that the majority of the content of Volume 2 is personal information, a redacted version would contain little information of substance, while still potentially risking the privacy of people who made complaints to DLA Piper.
>
> Redacting Volume 2 in its entirety would be a significant undertaking in terms of time and resources.[48]

The need for a Royal Commission

5.40 One of the Taskforce's terms of reference is 'to advise whether a Royal Commission would be merited into any categories of allegation raised with the DLA Piper review of the Taskforce, in particular the ADFA 24 cases'. A Royal Commission is a formal public inquiry established by the Governor-General on the advice of the government and formally appointed by Letters Patent. A Royal Commissioner has considerable powers in conducting his/her inquiry, but is restricted to the terms of reference of appointment.

5.41 Following the ABC Four Corners report on abuse in Defence titled *Chamber of Horrors* in June 2014, the Chair of the Taskforce made a statement which included commentary on the need for a Royal Commission:

> The question whether a Royal Commission is needed to deal with abuse in Defence is one that will attract serious consideration and ongoing discussion both within the Government and in the public at large. I have expressed some concerns about whether a Royal Commission is the most appropriate way of responding to allegations of abuse in Defence. In particular, I am concerned about the impact that a Royal Commission may have on victims of abuse, if they are compelled to talk about the abuse they suffered, and whether there are practical outcomes that could be achieved from the process.
>
> However, I still believe that it is premature to express a final view on this matter until the Taskforce has finished its work. Our priority remains providing tailored outcomes to people who have made complaints of abuse in Defence.[49]

---

48 *Submission 21*, p. 7.

49 Defence Abuse Response Taskforce, 'A Message from the Chair of the Taskforce', June 2014, pp 1-2.

5.42 At the public hearing on 13 August 2014, the Chair told the committee:

> At the moment, however, I have difficulty in seeing what a royal commission could do in this space presently which the Taskforce is not doing and which would achieve what it seems to me people who are advocating for it are claiming—namely, to hold people to account.[50]

5.43 In its seventh interim report, the Taskforce provided an update on complaints in relation to the 'ADFA 24'. It indicated the Taskforce had received complaints from 11 women who allege they had experience sexual abuse at ADFA in the mid-1990s and been contacted by three others who were considering whether they will make a complaint. Overall the Taskforce had received 72 complaints relating to abuse which occurred at ADFA. It noted a de-identified public report regarding abuse alleged to have occurred at ADFA, including the cases of sexual abuse in the mid-1990s, would be released later in the year.[51]

5.44 Several witnesses and submissions put forward positions in relation to the creation of a Royal Commission to investigate incidents of abuse in the Defence. In particular, Dr Rumble supported the creation of a general Royal Commission in relation to abuse in Defence and highlighted the need to address deficiencies in relation to the response to the 'ADFA legacy issues'. He argued that '[m]ale on male sexual assault at ADFA – as well as male on female assault – should be within the scope of inquiry set for a Royal Commission':

> An appropriately commissioned and resourced Royal Commission would be best placed to encourage individuals who have relevant information – including victims who have not yet spoken about their experience to anyone and/or victims who had no interest in the range of outcomes for complainants which the DART offered – to come forward and to enable informed and convincing resolutions on the systemic issues.[52]

5.45 At the hearing on 13 August 2014, Dr Rumble stated:

> I recommend that this committee call for the government to establish a royal commission to inquire into the ADFA legacy and what can be done about it. That should be an open ended inquiry and not limited to options available to the ADF under its current procedures.[53]
>
> A royal commission generates its own publicity and would have the real prospect of attracting a lot more people. The more information that is gathered the more prospect there is of realistic action against individual perpetrators.[54]

---

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

51 Defence Abuse Response Taskforce, *Seventh interim report to the Attorney-General and Minister for Defence*, September 2014, p. 32.

52 *Submission 8*, Part 3, p. 3.

53 Dr Gary Rumble, *Committee Hansard*, 13 August 2014, p. 15.

54 Dr Gary Rumble, *Committee Hansard*, 13 August 2014, p. 15.

> We need to have a high level of confidence about our leaders—and our leaders include our officers and our NCO leadership. There are some things where you need to be above suspicion. If there were a royal commission which was supported by the Defence leadership, and that is crucial, then if people who have witnessed things which they previously have not spoken about believe there is a serious inquiry—people who may have been victims who have not previously spoken but who have confidence that the Defence leadership is actually interested in knowing who is fit to be in the Defence Force, who is fit to lead, who is fit to be the next Chief of Army and who is fit to be the next Chief of the Defence Force—I believe they will step forward.[55]

> A royal commission generates its own publicity. A royal commission is a very strong signal that this is a serious matter and that serious action is going to be taken. The more people you have telling stories of consistent conduct against one person the more likely it is that you will be able to take some definitive action against that person, be it criminal prosecution or be it administrative. As I say, beyond that, a question for the royal commission should always be: if there is nothing available on the current book of remedies, is that appropriate? As I said before, there are some positions where it is not good enough for people not to be proven guilty. There are some positions where we have to have a high level of confidence in the fitness of people for those positions.[56]

5.46 In particular Dr Rumble emphasised that Lieutenant Colonel Ken Northwood, who originally drew attention to the serious sexual assaults at ADFA as part of the Grey Review, had publicly supported the establishment of a royal commission into abuse in Defence.[57]

5.47 Mr Neil Stuart's submission to the inquiry highlighted his experiences with DLA Piper review and Taskforce processes, in particular what he perceived as a lack of genuine commitment to institutional reform in Defence and a 'culture of silence' concerning abuse. He stated:

> I need for there to be a process which enables me, as a person who has experienced sexual abuse within Defence, to make common cause with others who have experienced like abuse. Maybe the process needs to be widened to provide for something like a Royal Commission so that the secrecy and silence are blown away and Defence is held publicly accountable for how it must change.[58]

5.48 However, Mr Brian Briggs from Slater and Gordon Lawyers noted:

---

55 *Committee Hansard*, 26 September 2014, p. 18.

56 *Committee Hansard*, 26 September 2014, p. 19.

57 Transcript of ABC, 'Chamber of Horrors', Four Corners program, 9 June 2014, tabled by Dr Gary Rumble at the hearing on 13 August 2014, p. 2.

58 *Submission 3*, p. 7.

> Whilst there is an invitation with the DART to request a possible referral to a Royal Commission in the areas of the ADFA 24 and HMAS Leeuwin, it is my belief that given the enormous expense of a Royal Commission, the money would be better invested on support for the victims utilizing current schemes. In addition, Volume 2 of the DLA Piper Review and the information provided to DART, we expect has already resulted in sufficient information to Government and the current leadership of the ADF.
>
> It would appear that many of the ADFA 24 have not come forward to DART. A Royal Commission may prompt them to do so, alternatively it may not.[59]

5.49 Similarly, Mr Barry Heffernan considered a Royal Commission 'would be a complete waste of time'. He considered that it was clear there was ongoing abuse in abuse in ADF and stated '[w]e do not need a royal commission to tell us that'.[60]

5.50 The Taskforce report on HMAS Leeuwin noted that in relation to incidents of abuse at that training establishment while 'the powers of a Royal Commission may lead to a more comprehensive understanding of the institutional response to abuse…a Royal Commission may not necessarily result in a broader understanding of the nature or extent of abuse at HMAS Leeuwin'. Further, many of the incidents of abuse at HMAS Leeuwin could be investigated by the existing Royal Commission.[61] In the seventh interim report of the Taskforce, it noted that '[t]he question whether a Royal Commission is warranted for any other categories of complaints received by the Taskforce, including those relating to abuse at ADFA, will be considered in the next Taskforce report'.[62]

Model litigant obligations

5.51 The Legal Services Directions 2005 are a set of binding rules about the performance of Commonwealth legal work.[63] Under the Directions, Commonwealth agencies have various obligations, including an obligation to act as a model litigant. Some witnesses considered that the Commonwealth was not acting in accordance with these model litigant obligations in relation to claims for compensation for abuse in Defence. For example, Ms Rachael James described litigation as being 'conducted in a very aggressive and adversarial way'. Mr Adair Donaldson also commented:

> [T]he Australian government, as that model litigant, has obligations which stipulate that it should not put claims to proof on matters it knows to be true and not to rely on technical defences. The duty to act as a model litigant

59 *Submission 1*, pp 4-5.

60 *Committee Hansard*, 26 September 2014, p. 7.

61 Defence Abuse Response Taskforce, *Report on abuse at HMAS Leeuwin*, 2014, p. 94.

62 Defence Abuse Response Taskforce, *Seventh Interim Report to the Attorney-General and the Minister for Defence*, September 2014, p.7.

63 Legal Services Directions 2005, Appendix B.

> goes beyond the requirement for lawyers to act in accordance with ethnical obligations. Put bluntly, the government and its legal advisers have a higher duty than religious or private organisations and, accordingly, they should be held to a higher standard.[64]

5.52 Dr Gary Rumble also considered that there was a real risk that the Commonwealth was in breach of its model litigant obligations. He believed the Commonwealth had both moral and model litigant obligations 'to individuals affected by abuse in the ADF to bring into DVA processes relevant information which is currently scattered in Defence and DVA files'.[65]

64 Mr Adair Donaldson, Shine Lawyers, *Committee Hansard*, 13 August 2014, p. 4.

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