

Dissenting report of Senator Jacqui Lambie, Palmer United Party

1.1 It is no secret that I have campaigned for a Royal Commission into staff abuse in the Australian Defence Force. My work on this committee, seeing and hearing the evidence I have, has only strengthened my resolve that this is the only way this matter will ever be properly resolved and fixed now.

1.2 In fact any reasonable person reviewing the evidence presented to the Committee would conclude this can be the only way now, given the total lack of confidence by the public in the ADF to properly care for its people. ADF's appalling failures to care properly for its staff and to protect them from sexual and physical abuse has been known now publicly for many, many years. The former parliamentary Senate Committee inquiries into this very same matter shows it has been known by governments and the ADF for decades, at least as early as 1970. The facts that the abuse is continuing, even now is evidence in itself we can no longer trust the ADF to investigate and properly respond to this issue anymore.

1.3 The ADF has lost all confidence from the public to deal with this matter properly. Even if they had a will now, the public and I think any reasonable person looking into this matter would have absolutely no confidence left in the ADF on this issue.

1.4 It will take ADF management years now to rebuild that confidence with their personnel and the public, in the meantime ADF staff are still at risk of sexual assault and abuse in their workplaces. Failure to act independently of the ADF could, and in my opinion would mean thousands more will suffer terrible abuses of a similar nature in the ADF. Just as we have seen happen between the 1994 Senate inquiry 20 years ago. If we don't act swiftly and call a Royal Commission into this matter now the question remains, given all we know now, how many more ADF staff will be sexually or physically abused, tortured by sexual predators we now know continue to work in the ADF today.

1.5 The long history of this matter dating back 40 years at least has left thousands of men and woman of the ADF scarred for life, mentally traumatised and some have even taken their lives. How many more must suffer this terrible fate or lose their lives before the government accepts the ADF has shown, again and again that it is simply incapable, or totally unwilling (I suspect both) to deal with this very dire issue still continuing to harming so many.

1.6 I am thankful that the Committee has not ruled out that a Royal Commission is needed in this matter. I am however stunned and shocked that the Committee has left this very critical decision in the hands of a former ADF manager, Mr Len Smith-Roberts, himself a former senior manager of the ADF in the period of time these terrible events have unfolded. Whilst he may be an honourable man, it is staggering that the Committee cannot see the clear conflict of interest, or perceived conflict of interest that will be attached to any decision he makes.

1.7 The men and woman, and the families of the men and woman of the ADF past, present deserve better. They deserve a single body, completely separate and independent of the ADF, with appropriate judicial and investigative powers to finally look into this matter properly. To pull it apart and to work it out: What has happened, how did it happen and how did it go on for so long. Answering these questions properly will allow the relevant Royal Commission appointed in this matter to make recommendations that will prevent similar systemic and widespread sexual and physical abuses in the future.

1.8 Both the former head of the famous DLA Piper review (Dr Rumble) and the current head of the DART (Mr Len Roberts-Smith) both acknowledge in their various submissions that there would be high ranking officers currently working in the ADF who are sexual predators and who have the potential to continue to pose enormous ongoing risk to staff.

1.9 The fact that the head of the DART admits in Committee hearings to the Parliament that they know there are sexual predators working in the ADF right now and they are unable to deal with some of them, is truly alarming on its own. To then realise no single body has ever collated all the evidence of abuse across the ADF, over time and across many military facilities to identify other potential predators of this nature, is truly scary. How much risk do these people continue to pose to current ADF staff?

1.10 How on earth can any of these risks be properly identified and dealt with effectively if the current work of DART and the management of the ADF, acknowledge it exists but also acknowledge there are barriers to them sharing and gathering evidence across agencies (i.e.; between the Department of Veterans' Affairs and the ADF) which would identify it all and help prevent others from being seriously harmed. I am certain, based on all the evidence I have seen and heard as a Committee member that if we do not act, and act quickly many more ADF staff will suffer serious sexual assault and physical abuses in the ADF, often repetitive abuse which in many cases could only be described by any reasonable person as tortures.

1.11 Many more ADF staff will be forced to leave the careers they love to avoid those abuses and many will become significantly disabled by debilitating mental health issues that has flow on from these abuses in the past.

1.12 Recommendation

- A. I recommend the Government immediately call a Royal Commission into the ADF and the sexual and physical abuse suffered by their staffs by other employees of the ADF since 1970. The Commission should be given wide ranging terms of reference which would give it sufficient powers to take and collect evidence from the ADF, the Department of Veteran Affairs, the State and Federal Police Services and any other relevant source in relation to the cases of sexual and physical abuses and tortures, as well as ADF management's response to those events.**
- B. I recommend that the Royal Commission should be given wide terms of reference which would enable it to gather and take evidence from any relevant source necessary, including the ADF to establish what the overall management response was, and has been by management of the ADF to this problem (which has been well known to them by at least the 1970's).**
- C. I recommend that the Royal Commission should be given wide terms of reference which would enable it to gather and take evidence from any relevant source necessary to identify the personal and public costs suffered by ADF staff who were victims of sexual and physical abuses in the ADF and the true number of ADF staff members who have suicided as a result this abuse. The ramifications of the effects on the community and individuals of this would be learning for other agencies in the future. Learning designed to proactively encourage that these terrible chain of events is never allowed to again prosper as it has in the ADF for so long.**
- D. I recommend the Royal Commission which is established be headed by an appropriately qualified judicial officer who has no direct or indirect connect, past of present with the ADF. This will provide confidence to the public and the men and woman of the ADF in its true and perceived independence.**
- E. I recommend that the Royal Commission be given powers to prosecute people it finds has, or may have (to the relevant criminal standard of proof) committed offence/s; or alternatively**
- F. Immediately refer the matter to the relevant State or Federal police for prosecution, any persons it finds during its investigation and hearing of this matter, is responsible for commission of any State or Federal criminal offences.**

The recommendations at D and E are necessary to ensure the public and the victims of these terrible events feel confident that the commission of inquiry is the commencement of change, not just another inquiry which they may perceive will go nowhere. They want, and I think they deserve, those responsible for the terrible crimes, and the cover ups of those crimes, held accountable in an open and transparent process those in no way mirrors that of the past in this matter.

Context: History of staff abuse in the Australian Defence Force

1.13 For the report to be read in context, it is important for the reader to be aware of some background about the very long history of systemic sexual and physical abuse suffered by staff of the Australian Defence Force (ADF).

1.14 For the past 40 years significant evidence has come to light by way of the media, Ministers and former Parliamentary Senate Committee inquiries that has revealed thousands of employees of the ADF have suffered rape, serious sexual assaults and torture by colleagues and senior ranking officers. There have been many cases over many decades of entrenched systemic abuse occurring in various ADF establishments, often involving hundreds of ADF members in single establishments.

1.15 Despite numerous Parliamentary and Ministerial inquiries and reviews over the past 40 years nothing appears to have changed in that time and rape, serious sexual assaults and tortures continue to be suffered by ADF members.

1.16 The management of the ADF responded to each of these inquiries in the same way; they have promised they will stamp it out. 20 years ago they told a Parliamentary Senate inquiry similar to this one that they had developed "systems" and would be fixing the cultural problems which they agreed were causing the widespread abuse in the ADF. 20 years on and they are making similar promises, that they have now implemented new systems and will be working on cultural change to stem the tide of abuse in its ranks.

1.17 A quick review of the submission to DART and the DLA Piper report reveals that there have been at least 11 formal reviews and inquiries into this matter since 1970. These include:

1. In May **1970** there was a Four Corners program covering the 'bastardisation scandal' at the Royal Military College, Duntroon.
2. **1970's**: At some point there was another inquiry which Dr Rumble referred to in his evidence before the inquiry (Dr Rumble was the head of the DLA piper review). Dr Rumble advised this report of Inquiry, which occurred in the 1970's that this report had been lost by the ADF. He sought a copy of it when he commenced the DLA piper Review Inquiry in 2011.
3. In **1994** there was a Senate inquiry into "Sexual Harassment in Australian Defence Force" which found incidents of systemic and serious sexual and physical abuse of members occurring across the ADF, this inquiry also revealed management of the ADF knew about these abuses, or ought to have known about them but had failed to respond to the problem.
4. In **1998** the ADF released the Grey Review, a report concerning 'bastardisation' and sexual harassment at the ADF Academy; the review was conducted by a Defence official, Ms Bronwen Grey. The "Grey Review" found that a high

level of unacceptable behaviour was occurring at ADF Academy, including sexual harassment and sexual offences.

5. In **2001** there was a Senate inquiry into the recruitment and retention within the ADF. The Committee examined the reasons for the apparent reluctance of young people to join the ADF and for the growing number of personnel wishing to leave the organisation. Evidence of wide spread abuse arose in that inquiry as well.
6. In **2008** there was a final report released into a review of the Justice System in the ADF. That report also discussed abuse in the ADF and the inadequacies in the ADF justice system to appropriately deal with these matters.
7. **2011- 2012** - DLA Piper Review, Report of the Review of allegations of sexual and other abuse in Defence: "Facing the problems of the past", Volume 1 – General findings and recommendations, Supplement to Volume 1, April 2012.
8. In April **2011**, media reports indicated that an incident had occurred at the Australian Defence Force Academy where a first year female cadet was filmed without her consent having sex with a male colleague and the footage sent via Skype to other cadets in a nearby room.
9. In June **2011** a report by the ABC's Four Corners program on abuse in Defence titled 'Culture of Silence' on 13 June 2011 significantly increased the number of persons raising matters with the DLA Piper Review. Approximately 550 communications came to the Review in the four days following the broadcast.
10. On 7 March **2012**, the Minister released the outcomes of the Kirkham inquiry. The Minister stated that the inquiry had found that neither the ADF Academy Commandant, nor the Deputy Commandant, had made an error of judgement in their decision to commence and conclude disciplinary proceedings against the female cadet who was herself victim of sexual abuse and was charged after reporting the abuse. Despite the report finding the Minister at the time remained of the view that this was an error of judgement.
11. **2011 to 2012** review by the Australian Human Rights Commission - Report of the Review into the Treatment of Women in the ADF made a large number of recommendations in relation to sexual abuse and harassment. In particular, the report recommended the establishment of 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'

Incredibly, the ADF only responded to implement some "systems" after this review by the Human Rights Commission and then only whilst still under constant pressure from adverse media reports and the then Minister of Defence this gives the impression the ADF has only acted recently to manage this matter in any way when forced to and this may be the reason the Committee,

having reviewed some of the systems they have recently implemented have been critical of the steps they have taken to date. Overall it hardly inspires confidence that the ADF really has the will to respond to this even now, after being confronted with a plethora of evidence over decades, that thousands of its members have been seriously harmed. This response by the ADF is even more extraordinary when closely examining the findings of the 1994 Parliamentary Inquiry. After that inquiry the ADF promised to fix this problem and 20 years on even now appear reluctant to accept the seriousness of the matter or the need for urgent and careful response to it.

1.18 The 1994 Parliamentary Senate inquiry looked at sexual harassment and related abuses in the ADF 20 years ago. That inquiry found the same things happening then as we are seeing today, widespread systemic sexual and physical abuse occurring across the ADF and with management failing to respond to it and in some cases, actively covering it up.

1.19 A review of the 1994 Senate inquiry report also reveals the ADF management made assurances and promises to the then government stating they had implemented new systems and would properly deal with the issue. They assured the Senate inquiry that they were determined to stamp it out. 20 years after they made those promises nothing has happened and widespread systemic abuse is continuing to occur.

1.20 Whilst no one can say, due to the secrecy of the response of the ADF to individual cases of abuse, the true numbers of ADF members who are victims of this abuse, even the numbers we now know about due to the work of DART are truly staggering. What I can say is that many more hundreds of victims have suffered terrible sexual and physical abuse since the 1994 Senate inquiry and promises by the ADF at that time that they would deal with the matter and stop the abuse has not happened. Twenty years later the public, Defence Force members are asking for the same promises to be acted upon. Is this going to happen? How can the ADF reasonably expect anyone to have any faith in their ability or true desire to confront this issue, tackle it properly once and for all and really makes changes within the ADF that would stem the tide of these terrible, atrocious abuses within their ranks. How can we expect this at all when you consider the history of this matter, look at what is still happening today and reach the very reasonable conclusion the ADF has been either so unable, or so unwilling to do this over decades now.

1.21 Even when the 2001 Senate committee inquiry found this was an issue causing problems with recruitment and retention they failed to act. In fact along every step of the way they have failed to act since these terrible issues come to light as far back as the 1970's.

1.22 The evidence that has come to light in the many inquiries since 1994 clearly demonstrates that the ADF have failed again and again to meet their duty of care as employers to all of those members who have suffered terrible sexual and physical abuse since that time.

1.23 I was a serving member of the ADF at the time that inquiry took place in 1994. So effective, or rather ineffective was the response of the ADF at that time I did not even learn that an inquiry had occurred at that time, despite being a serving member. In fact I did not learn of this Senate inquiry in 1994 or any of the ADF's promises to fix the problem in 1994 until I commenced working in the Senate four months ago.

1.24 As a former member of the ADF I can speak from personal experience, having been approached by many colleagues who had suffered abuse and who would tell me they could not report them for various reasons ranging from fear of retribution to loss of their career, this was a common perception for all that served in the ADF. It was that simple.

1.25 I can also comment on the hundreds of people, past and present members of the ADF who have been seriously sexually or physically abused, that have contacted my Senate offices. What I do know, at least on anecdotal evidence (and much of this was corroborated by many submissions to the inquiry) that under reporting of sexual and physical abuse in the ADF remains a significant problem today. Given the staggering numbers coming to light of people reporting abuses to the DART and now the Department of Veterans' Affairs the mind boggles at the thought of how many people may have suffered this sort of abuse and have chosen not to report it, or as evidence shows, to leave the ADF without reporting it.

1.26 Despite there having been so many inquiries to date none of them have looked at this issue from a systematic approach, that is to say to study all abuse that has occurred over time, the causes for it and the potential solutions to it. Instead the review and inquiries to date appear to have been done in a piecemeal fashion, looking at series of events that may have occurred at a specific ADF facility but not abuse across the ADF over a period of time. This is the only way we will ever be able to see a true and accurate picture of this matter and the only way to do this is via a Royal Commission. I am supported in my calls for a Royal Commission by Dr Rumble who presided over the DLA Piper Review, perhaps the only wider review of this issue to date.

1.27 The calls for a Royal Commission are strengthened when one looks at the atrocious and very long history of abuse in the ADF over several decades, and then closely considers the evidence taken during the course of the current inquiry. Any reasonable person doing that would be able to conclude at least two things:

1. Despite significant reviews and inquiries over the space of 40 years nothing has changed, widespread systemic sexual and physical abuse is still occurring in the ADF today;
2. Management of the ADF has been given ample opportunity again and again over 40 years to deal with this systemic abuse of its members and have promised to do so a number of times but have demonstrated they are either

unwilling, or unable to respond to the matter. Their failure has allowed the abuse to continue and has caused hundreds more members to suffer.

1.28 The Committee acknowledges in its report that it has heard evidence during this inquiry that leads it to believe abuse is still continuing to happen in the ADF today, in fact they have called upon the DARTs work to be extended to cater for many, many more victims to come forward and use the processes.

1.29 The exact number of members who have suffered is not known due to under reporting of incidents and the secrecy surrounding how both the ADF and the DART are managing certain matters. Despite that, the numbers we do know about are in the thousands and by anybody's measure that is truly staggering.

1.30 The effects on many of these victim's is immeasurable.

1.31 More evidence of continuing abuse came from the Department of Veteran Affairs in the Senate Estimate Committees. They advised they were still receiving around 6 claims a month from ADF staff that had been sexually or physically abused. This is just those Defence force personnel who feel safe to report their abuse, this committee heard evidence that many people still did not feel safe to come forward, even to DART which they know is headed by a former high ranking ADF member.

1.32 Having dealt with the historical matters in this case I now turn to the current inquiry.

The current inquiry

1.33 This Committee's terms of reference were only to look at the *'accessibility and adequacy of the current mechanisms and processes to support victims of sexual and other abuse in Defence'*. The Committee report states: *'While evidence was received on other issues during the inquiry, such as the issue of serving officers who are subject of allegations of abuse, the committee's focus is on support and assistance for the current and past victims of abuse in Defence'*.

1.34 When the Committee's report refers to concerns about current serving officers of the defence force being the 'subject to allegations of abuse', the real concern they are referring to is current serving members of the ADF of all ranks who have been identified as being sexual predators. Whilst DART and the ADF managers have tried to assure the Committee that they are working to identify all these individuals and appropriately deal with them, there are many barriers to that happening. As such current members of the defence force who are sexual predators currently continue to pose a serious and significant risk to the health and safety of their colleagues.

1.35 One major problem with proving sexual assaults, including rapes, is for the victim to prove the offence where often it is one person's word against another. A way to overcome this is through corroborative evidence of multiple victims of the same offender.

1.36 Therefore the only way anyone could ever be confident is to encourage all victims of abuse, or at least as many of them as possible to come forward and only then will patterns of abuse and sexual predators in the ADF begin to emerge and confidence could be had that these predators are removed and the risk eliminated of further abuse by them.

1.37 The ADF is not investigating these matters to establish this pattern of practice and to identify sexual predators who are continuing to pose a serious risk to members of the ADF.

1.38 As stated, people are still reluctant to come forward and report abuses because they lack faith in the ADF processes and many fear retribution which could end their careers and leave them without employment. Indeed the case of one lady who did report abuse only to be charged by management herself is a case which deters would be victims from reporting the crimes committed against them.

1.39 Although the work of DART has helped many victims, it has not looked at the systemic causes of abuse in the defence force and more importantly how abuse in the ADF could be prevented more broadly now. DART's focus which is based on their reports to the inquiry, have been largely based on responding to victims of abuse, not preventing continuing abuse in the ADF.

1.40 Given that there is a plethora of evidence available showing that the highest ranks of the ADF have failed in their duty to respond to systemic abuse in the ADF I am extremely alarmed that the Committee seems comfortable with leaving the decision about what should happen now to the head of the DART Taskforce.

1.41 Whilst I acknowledge Mr Len Roberts-Smith may be an honourable man he is a former long serving member and high ranking officer of the ADF. A review of his DART records submitted to the inquiry show that he has spent a considerable period of his time consulting with current senior members of the ADF during his work on DART, work that is supposed to be dealing more directly with the victims of ADF abuse.

1.42 Putting that aside, given the enormous failings of senior ranking officers over decades to respond appropriately to systemic sexual and physical abuse of its members it is extremely alarming that the Committee would not see that there is a clear conflict of interest, or perceived conflict of interest in this matter for Mr Len Roberts-Smith. I have had former and current members of the ADF approach my Senate Officers and tell me they are scared to approach DART to report their abuse because it is headed up and staffed by ADF personnel. To then see that the Committee intends to leave the decision about whether a Royal Commission should be called in this matter is, to be frank, appalling.

1.43 Given that the failures by management to respond to these matters over decades occurred whilst Mr Len Roberts-Smith was himself a senior member of the ADF one wonders how sound it would be to suggest he should make this decision.

1.44 I feel that the only way this matter can be properly dealt with at this point is by Royal Commission. Only a Royal Commission will have the powers necessary to properly examine what has occurred in the past, why it has happened and make appropriate recommendations to stop the ongoing systemic sexual and physical abuse of ADF members.

1.45 In August 2014 I indicated publicly I was concerned that Mr Len Roberts-Smith should not have been appointed as the head of DART and that a retired judicial officer, someone separate to the ADF, should have been appointed to this role. I stand by those comments. It is not a matter of whether one had an actual conflict of interest but clearly in this case many people already "perceive" Roberts-Smith has a conflict of interest both in heading up the DART processes and now in being tasked with being the sole decision maker on whether or not a Royal Commission is warranted in this matter.

1.46 The reasons for my own concerns are logical; as a committee member, unlike ordinary Australians, I had the right to view the explosive, highly sensitive and secret second report authored by Dr Rumble, into defence sexual assault and other abuse. And while I had strict conditions imposed on me, I viewed and attempted to read the 33 top secret, lever arch files. *(This filled the Senate Committee Room table and have been kept secret by the Department of Defence for 2 years).*

1.47 I'm still able to reveal that, while I was shocked and sickened by the individual alleged incidents of sexual assault and other abuse – what shocked and sickened me even more, is the evidence of a complete failure, over a long period of time, by the Australian military justice system and a high-level cover up of alleged serious crimes. This accords with the many previous inquiries and Ministerial reviews dating back 40 years.

1.48 In those files I saw for example that there are strong indications of high-level systemic destruction and/or cover up of military files and service police records containing evidence or allegations of sexual assaults.

1.49 On reviewing those files it became very clear to me then, that should a Royal Commission into ADF Abuse with broad terms of reference be established - then many former senior leaders of the Australian Military including, Governor General Cosgrove and Hurley and the DART Taskforce Chairman himself - Mr Len Roberts-Smith, a career soldier who was also Judge Advocate General (JAG) of the ADF - could all be important Royal Commission witnesses.

1.50 Indeed, I am personally shocked and stunned, having served on this Committee, and reviewed the evidence I have now because of that; that successive Governments have allowed a situation to develop where Mr Len Roberts-Smith, who has a long work history in the area of Australian Military Justice, should be placed in a position where he has to recommend or not, a Royal Commission which fundamentally scrutinizes Australian military justice.

1.51 As I have said, you don't need a law degree to understand the legal concept of *Conflict of Interest*. Any Google search will show you that for a *Conflict of Interest* to exist, all that's needed is the appearance of - or potential for, a clash between the current professional obligations of Mr Len Roberts-Smith as chair of the DART and his personal or former professional interests.

Senator Jacqui Lambie

