

The Senate

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Foreign Affairs, Defence and Trade  
References Committee

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Processes to support victims of abuse in  
Defence

October 2014

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# Members of the committee

## Members

Senator Alex Gallacher, ALP, SA (Chair) (from 1 July 2014)  
Senator Chris Back, LP, WA (Deputy Chair) (from 1 July 2014)  
Senator Sam Dastyari, ALP, NSW  
Senator Alan Eggleston, LP, WA (until 1 July 2014)  
Senator David Fawcett, LP, NSW  
Senator Scott Ludlam, AG, WA  
Senator Anne McEwen, ALP, SA  
Senator the Hon Ursula Stephens, ALP, NSW (until 1 July 2014)  
Senator Peter Whish-Wilson, AG, TAS (until 1 July 2014)

## Participating members who contributed to the inquiry

Senator Peter Whish-Wilson, AG, TAS  
Senator Jacqui Lambie, PUP, TAS  
Senator Nick Xenophon, IND, SA

## Secretariat

Mr David Sullivan, Committee Secretary  
Mr Owen Griffiths, Principal Research Officer  
Ms Shennia Spillane, Senior Research Officer  
Ms Kimberley Balaga, Research Officer  
Ms Megan Jones, Administrative Officer  
Mr Josh Wrest, Administrative Officer

Senate Foreign Affairs, Defence and Trade Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Phone: + 61 2 6277 3535  
Fax: + 61 2 6277 5818  
Email: [fadt.sen@aph.gov.au](mailto:fadt.sen@aph.gov.au)  
Internet: [www.aph.gov.au/senate\\_fadt](http://www.aph.gov.au/senate_fadt)



# Table of Contents

<b>Members of the committee</b> .....	<b>iii</b>
<b>Abbreviations</b> .....	<b>ix</b>
<b>Recommendations</b> .....	<b>xi</b>
<b>Chapter 1</b> .....	<b>1</b>
<b>Introduction</b> .....	<b>1</b>
Referral of inquiry .....	1
Conduct of the inquiry .....	2
Structure of the report.....	2
Acknowledgements .....	2
Note on references .....	2
<b>Chapter 2</b> .....	<b>3</b>
<b>Background</b> .....	<b>3</b>
Introduction .....	3
Events leading to the DLA Piper Review .....	3
Defence culture reviews .....	5
The DLA Piper Review .....	7
DLA Piper Review—Volume 1 .....	10
DLA Piper Review—Supplement to Volume 1 .....	12
DLA Piper Review—Volume 2 .....	14
Australian Government response to DLA Piper report and Defence cultural reviews.....	15
Parallel processes.....	25
Previous Senate committee inquiry .....	26

<b>Chapter 3.....</b>	<b>29</b>
<b>Defence Abuse Response Taskforce processes.....</b>	<b>29</b>
Introduction .....	29
Conduct of the Taskforce .....	29
Awareness of the Taskforce .....	31
Cut-off dates .....	32
Scope of abuse claims .....	33
Evidential threshold of plausibility .....	35
Referrals to law enforcement and Defence .....	37
Restorative engagement program .....	40
Counselling services .....	41
Reparation scheme.....	42
Legacy issues.....	44
Anonymous complaints and allegations in the media .....	45
<b>Chapter 4.....</b>	<b>47</b>
<b>Defence response.....</b>	<b>47</b>
Introduction .....	47
Approach to abuse .....	47
Reporting and responding to abuse .....	49
Defence response to the Taskforce.....	52
Pathway to Change .....	53
Response to DLA Piper review and systemic issues.....	57
SeMPRO.....	59

<b>Chapter 5.....</b>	<b>67</b>
<b>Other matters.....</b>	<b>67</b>
Introduction .....	67
Access to veterans' entitlements and support services .....	67
Release of redacted version of Volume 2.....	75
The need for a Royal Commission .....	78
Model litigant obligations.....	81
<b>Chapter 6.....</b>	<b>83</b>
<b>Conclusion and recommendations .....</b>	<b>83</b>
Introduction .....	83
Taskforce outcomes.....	83
Taskforce legacy issues .....	84
Continuing cultural reform in Defence .....	86
Systemic issues raised in DLA Piper review reports .....	87
Access to veterans' entitlements and support .....	88
Community-based support.....	90
The need for a Royal Commission .....	90
Release of Volume 2 of the DLA Piper report.....	92
Conclusion.....	93
<b>Dissenting report of Senator Jacqui Lambie, Palmer United Party.....</b>	<b>95</b>
Context: History of staff abuse in the Australian Defence Force .....	97
The current inquiry .....	102
<b>Additional comments by Senator Xenophon.....</b>	<b>107</b>
<b>Appendix 1 .....</b>	<b>119</b>
<b>Public submissions.....</b>	<b>119</b>

<b>Appendix 2</b> .....	<b>121</b>
<b>Public hearings and witnesses</b> .....	<b>121</b>
<b>Appendix 3</b> .....	<b>123</b>
<b>Tabled documents, answers to questions on notice and additional information</b> .....	<b>123</b>
<b>Appendix 4</b> .....	<b>125</b>
<b>Previous recommendations of the committee and government response</b> .....	<b>125</b>



# Abbreviations

ADF	Australian Defence Force
AFP	Australian Federal Police
ADFA	Australian Defence Force Academy
ADFIS	Australian Defence Force Investigative Service
AHRC	Australian Human Rights Commission
CDF	Chief of the Defence Force
VCDF	Vice Chief of the Defence Force
DI(G)	Defence Instructions (General)
DART or Taskforce	Defence Abuse Response Taskforce
DFDA	Defence Force Discipline Act
DVA	Department of Veterans' Affairs
IGADF	Inspector General Australian Defence Force
MRCA	Military and Rehabilitation and Compensation Act
SCRA	Safety, Rehabilitation and Compensation Act
SeMPRO	Sexual Misconduct Prevention and Response Office
VEA	Veterans' Entitlements Act



# Recommendations

## Recommendation 1

**6.12** The committee recommends that the Australian Government extend the activities of the Defence Abuse Response Taskforce to support victims of abuse in Defence, including allowing new complainants to make claims up to 30 June 2015.

## Recommendation 2

**6.21** The committee recommends that the Sexual Misconduct Prevention and Response Office (SeMPRO) develop resources to clearly advise persons considering contacting SeMPRO regarding options for the collection of forensic evidence and support options for former members of Defence.

## Recommendation 3

**6.22** The committee recommends that the Australian Government provide additional resources to SeMPRO to facilitate further outreach activities and personal support to victims of sexual assault in Defence.

## Recommendation 4

**6.27** The committee recommends that following the next interim report of the Taskforce, the Minister for Defence table a formal substantive response to the systemic issues identified in the DLA Piper Review.

## Recommendation 5

**6.29** The committee recommends the Australian Government introduce amending legislation to remove the three year minimum service requirement for eligibility for Non-Liability Health Care (NLHC) and to make NLHC available to any person who has had completed any service.

## Recommendation 6

**6.33** The committee recommends that the Minister for Veterans' Affairs direct the Department of Veterans' Affairs (DVA) to commence consultation with veterans' representative organisations and to report back on:

- the legal and practical barriers there are to victims of abuse in the ADF succeeding in establishing the facts necessary to access entitlements to DVA benefits;
- 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;

- **what can be done in liaison with veterans' groups, other Australian 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.**

#### **Recommendation 7**

**6.36 The committee recommends the Department of Veterans' Affairs examine options to provide financial assistance to support a national, sustainable community-based approach to assisting veterans who have suffered abuse.**

#### **Recommendation 8**

**6.44 The committee recommends that the Taskforce and the Australian Government assess the appropriateness of a range of responses to abuse in Defence, in addition to determining whether a Royal Commission should be established. The welfare of victims of abuse in Defence should be the primary consideration in any decision made.**

#### **Recommendation 9**

**6.49 The committee recommends that no further parts of Volume 2 of the DLA Piper report should be released in summary or redacted form.**

# Chapter 1

## Introduction

### Referral of inquiry

1.1 On 27 March 2014, the Senate referred an inquiry into the accessibility and adequacy of processes to support victims of abuse in Defence to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 28 August 2014.<sup>1</sup> On 27 August 2014, the Senate agreed to extend the reporting date for the inquiry to 30 October 2014.<sup>2</sup> On 30 October 2014, the Senate extended the reporting date to 31 October 2014.

1.2 The terms of reference for the inquiry are as follows:

With reference to the committee's earlier report into the review of allegations of sexual and other abuse in Defence, the accessibility and adequacy of current mechanisms and processes to provide support to victims of sexual and other abuse in Defence, taking into account:

- (a) the Defence Abuse Response Taskforce (DART) process to date;
- (b) Defence's response to the DLA Piper Review and the work of DART;
- (c) successive governments' responses to the DLA Piper Review and the work of DART;
- (d) the desirability of releasing a true reflection of volume two of the DLA Piper report in a redacted form or by way of a summary; and
- (e) any related matters.

1.3 At the commencement of the inquiry, the committee made the following statement regarding the inquiry:

In terms of setting expectations, the committee emphasises that it is not in a position to resolve individual disputes or settle complaints about alleged abuse in Defence. As the terms of reference of the inquiry indicate, the committee's focus is on the processes established to manage and respond to such allegations. Please note that all documents sent to the inquiry become committee documents on receipt, and are only made public following a decision of the committee. Material which is not relevant to the inquiry's terms of reference or which reflects adversely on others may not be accepted or published by the committee.

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1 *Journals of the Senate*, 27 March 2014, pp 743-744.

2 *Journals of the Senate*, 27 August 2014, p. 1313.

## **Conduct of the inquiry**

1.4 The committee wrote to interested individuals and organisations requesting submissions by 2 June 2014 and advertised the inquiry on its website and in *The Australian*. The committee received 26 submissions, some of which were accepted by the committee as confidential. Other submissions were published with redactions as they contained personal information, adverse comment or material irrelevant to the inquiry. Public submissions are listed at Appendix 1 and are available on the committee's website at: [www.aph.gov.au/senate/fadt](http://www.aph.gov.au/senate/fadt).

1.5 The committee held public hearings for the inquiry in Canberra on 13 August 2014 and 26 September 2014. A list of the witnesses who appeared at the public hearings is available at Appendix 2, and the *Hansard* transcripts are available through the committee's website.

1.6 In relation to term of reference (d), the committee agreed secure access arrangements for Volume 2 of the DLA Piper Review with the Defence Abuse Response Taskforce (Taskforce) and the Minister of Defence, the Hon Senator David Johnston. Members of the committee had the opportunity to view Volume 2 of the DLA Piper Review at Parliament House on 17 July 2014, 1 August 2014 and 11 August 2014.

## **Structure of the report**

1.7 The committee's report is in six chapters. Chapter 2 provides a background to the inquiry including the Defence cultural reviews, the DLA Piper Review, the establishment and progress of the Taskforce and the Pathway to Change reforms. Chapter 3 covers the Taskforce processes. Chapter 4 considers the response to the DLA Piper review report and the work of the Taskforce. Chapter 5 covers other matters raised during the inquiry, such as the release of Volume 2 of the DLA Piper report, access to veterans' entitlements and the need for a Royal Commission into abuse in Defence. Chapter 6 contains the committee's conclusion and recommendations.

## **Acknowledgements**

1.8 The committee thanks all those who contributed to the inquiry by making submissions, providing additional information or appearing at hearings to give evidence. In particular, the committee wishes to acknowledge those victims of abuse in Defence who assisted the committee by sharing their personal experiences.

## **Note on references**

1.9 References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcripts.

# Chapter 2

## Background

### Introduction

2.1 As the terms of reference indicate, the current inquiry follows the committee's previous report titled *Report of the DLA Piper Review and the government's response* which was tabled in the Senate on 27 June 2013. This chapter will draw on, and update, the background material in that report.<sup>1</sup>

2.2 The Australian Defence Force (ADF) has had a history of incidents of reported abuse and harassment (including sexual abuse) within its ranks, as well as related inquiries, reviews and reforms. Abuse in Defence has often been related to Defence training establishments or have involved junior members of the ADF. For example, in May 1970, the *Four Corners* program covered the 'bastardisation scandal' at the Royal Military College, Duntroon.<sup>2</sup> In particular, in 1998, the Department of Defence released the Grey Review, a report concerning 'bastardisation' and sexual harassment at the Australian Defence Force Academy (ADFA) conducted by a Defence official, Ms Bronwen Grey. The Grey Review found that a high level of unacceptable behaviour was occurring at ADFA, including sexual harassment and sexual offences.<sup>3</sup>

2.3 The Senate Foreign Affairs, Defence and Trade References Committee has also previously conducted other inquiries which have addressed, or touched on, abuse and sexual harassment in Defence. Other relevant inquiries undertaken by the committee have included:

- *Inquiry into an equity and diversity health check in the Royal Australian Navy - HMAS Success* (September 2011);
- *The effectiveness of Australia's military justice system* (June 2005); and
- *Sexual Harassment in the Australian Defence Force* (August 1994).

### Events leading to the DLA Piper Review

2.4 In April 2011, media reports indicated that an incident had occurred at ADFA where a first year female cadet was filmed without her consent having sex with a male

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1 Senate Foreign Affairs, Defence and Trade References Committee, *Report of the DLA Piper Review and the government's response*, June 2013, pp 5-24.

2 Australian Broadcasting Corporation, *Duntroon: Marking Time*, Four Corners, 2 May 1970, available at: <http://www.abc.net.au/4corners/stories/2011/08/08/3288457.htm> (accessed 20 May 2013).

3 Department of Defence, *Report of Review into Policies and Practices to Deal with Sexual Harassment and Sexual Offences at the Australian Defence Force Academy*, June 1998, p. xi.

colleague and the footage sent via Skype to other cadets in a nearby room.<sup>4</sup> Following the so-called 'Skype incident', the then Minister for Defence, the Hon Stephen Smith MP, (Minister) described the pursuit of disciplinary proceedings against the female cadet by the management of ADFA in relation to other matters as 'inappropriate, insensitive and wrong' and 'almost certainly faulty in the law'.<sup>5</sup> The Commandant of ADFA, Commodore Bruce Kafer AM CSC, was subsequently directed to take leave.<sup>6</sup>

2.5 On 11 April 2011, Minister Smith announced a range of reviews into Defence culture generally and an inquiry into the 'Skype incident' in particular (the Defence cultural reviews). These Defence cultural reviews included:

- an inquiry, under Defence regulations, to be conducted by Mr Andrew Kirkham QC, into the management of the 'Skype incident of March 2011' (Kirkham inquiry);
- a review of treatment of women at ADFA and the treatment of women in the ADF and pathways for women into ADF leadership;
- a review into employment pathways for women in the Department of Defence;
- a review of the use alcohol in the ADF;
- a review of social media and Defence;
- a review of personal conduct of ADF personnel; and
- a review of management of incidents and complaints in Defence.<sup>7</sup>

2.6 Further, Minister Smith noted that 'a large number of public and private allegations of sexual and other forms of abuse' had been drawn to the attention of his office. The Minister stated:

These allegations are of concern and must be dealt with methodically and at arm's length from Defence. The Secretary of the Department of Defence will engage an independent legal firm to review each allegation raised to determine the most appropriate way for these complaints to be addressed

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4 For example, Ian McPhedran, 'Defence sex scandal: Cadet secretly filmed liaison with colleague', *Adelaide Advertiser*, 6 April 2011, p. 17.

5 Minister for Defence, the Hon Stephen Smith MP, 'Interview with David Speers SKY News PM Agenda', *Transcript*, 6 April 2011.

6 Commodore Kafer was reinstated as Commandant of ADFA following the inquiry by Mr Andrew Kirkham QC.

7 Minister for Defence, the Hon Stephen Smith MP, 'Sex Discrimination Commissioner to lead review of the Australian Defence Force Academy and the Australian Defence Force', *Media Release*, 11 April 2011, pp. 1-2.



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and whether further independent action is required to deal with any such matters.<sup>8</sup>

## **Defence culture reviews**

### ***Kirkham inquiry***

2.7 On 7 March 2012, the Minister released the outcomes of the Kirkham inquiry. The Minister stated that the inquiry had found that neither the ADFA Commandant, nor the Deputy Commandant, had made an error of judgement in their decision to commence and conclude disciplinary proceedings against the female cadet. Nonetheless, the Minister remained of the view that this was an error of judgement.<sup>9</sup> The Minister indicated that the inquiry report would not be publicly released. Commodore Kafer subsequently resumed his position as Commandant ADFA.<sup>10</sup>

### ***Treatment of women at ADFA and in the ADF***

2.8 The Review into the Treatment of Women at ADFA and the Review into the Treatment of Women in the ADF were both conducted by the Australian Human Rights Commission, chaired by Ms Elizabeth Broderick, the Sex Discrimination Commissioner.

2.9 The report of the Review of the Treatment of Women at ADFA made a large number of recommendations. These included the establishment of an ADFA specific 'hotline' for cadets, staff and families to provide advice and referral and the establishment of a database to record, track and manage complaints and incidents of unacceptable conduct, including sexual harassment, abuse and assault and sex discrimination.<sup>11</sup>

2.10 The report of the Review into the Treatment of Women in the ADF also 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

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8 Minister for Defence, the Hon Stephen Smith MP, 'Sex Discrimination Commissioner to lead review of the Australian Defence Force Academy and the Australian Defence Force', *Media Release*, 11 April 2011, p. 2.

9 Minister for Defence, the Hon Stephen Smith MP, 'Outcomes of the Kirkham Inquiry', *Media Release*, 7 March 2011.

10 Minister for Defence, the Hon Stephen Smith MP, 'Outcomes of the Kirkham Inquiry', *Media Release*, 7 March 2011.

11 Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force Academy*, Phase 1 Report, October 2011, pp. 99-100.

ADF'.<sup>12</sup> The report also recommended the ADF should investigate mechanisms to allow members to make confidential (restricted) reports of sexual abuse to SeMPRO.<sup>13</sup>

### ***Review of the Personal Conduct of ADF Personnel***

2.11 The Review of Personal Conduct was undertaken by Major General CW Orme AM, CSC. The report, titled 'Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms' was completed on 3 August 2011. The recommendations of the review centred on the promotion of 'the Australian profession of arms' framework of values within the ADF. Other recommendations included: continuing initiatives to improve avenues for members to report concerns, improved programs of socialisation; a strategic communication program; and appropriate research to inform policy development.<sup>14</sup>

### ***Use of Alcohol in the ADF***

2.12 The Review on the Use of Alcohol in the ADF was undertaken by an Independent Advisory Panel on Alcohol, chaired by Professor Margaret Hamilton AO, and completed on 19 August 2011. While the Panel did not explicitly address the relationship between alcohol and abuse in the ADF, it did note that while the ADF is a highly safety focused and discipline based organisation, 'it is not immune to alcohol related transgressions by its members'.<sup>15</sup>

### ***Social media and the ADF***

2.13 The Review of Social Media and Defence was undertaken by George Patterson Y&R. It found that Defence is in a similar position to other organisations dealing with social media and there is 'no evidence of systemic abuse by Defence personnel in their official or unofficial use of social media'.<sup>16</sup> It made a number of recommendations including a unified social media strategy, a review of policies and training in relation to social media and developing a social media crisis management plan.<sup>17</sup>

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12 Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force*, Phase 2 Report, August 2012, p. 36.

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

14 Department of Defence, 'Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms', *Report of the ADF Personal Conduct Review*, August 2011, pp. 43–44.

15 Department of Defence, *The Use of Alcohol in the Australian Defence Force, Report of the Independent Advisory Panel on Alcohol*, August 2011, p. 15.

16 Department of Defence, *Review of Social Media and Defence*, August 2011, p. ix.

17 Department of Defence, *Review of Social Media and Defence*, August 2011, p. ix.

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## ***Review of the Management of Incidents and Complaints***

2.14 The Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction was undertaken by the Inspector-General of the ADF (Inspector-General ADF), Mr Geoff Earley AM, and completed on 6 September 2011. The review report made 38 recommendations which, in particular, highlighted a number of inconsistencies in Defence policy documents regarding the management of incidents and complaints. The recommendations included that:

- greater use of alternative dispute resolution across Defence should be encouraged;
- DI(G) PERS 35-3 *Management and Reporting of Unacceptable Behaviour* and DI(G) 35-4 *Management and Reporting of Sexual Offences* should be reviewed to clarify the administrative action that may be taken when disciplinary action is pending;
- Defence's administrative policies should be amended to allow for administrative suspension from duty;
- the ADF should not adopt restricted reporting (whereby a victim can report abuse outside of the chain of command and access support services, but an investigation is not triggered without the consent of the victim);
- case officers to support complainants and respondents should be appointed in all cases;
- the policy on management of unacceptable behaviour and sexual offences should be combined in a single policy document; and
- privacy law exemptions should be made to enable outcomes of discipline and administrative proceedings with names redacted to be made available to Defence personnel to ensure the transparency of military justice outcomes.<sup>18</sup>

## **The DLA Piper Review**

### ***Conduct of the DLA Piper Review***

#### *Review members*

2.15 While the Review has come to be known as the 'DLA Piper Review', Volume 1 of the report notes that the 'Review leaders were to provide a report based on their own findings and they did not represent the law firm with which they were associated'.<sup>19</sup> The Department of Defence selected Dr Gary Rumble, a partner with

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18 Department of Defence, *Review of the management of Incidents and Complaints in Defence including Civil and Military Jurisdiction – A report by the Inspector General Australian Defence Force*, September 2011.

19 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*, October 2011, p. xxi (Volume 1).

law firm DLA Phillip Fox (later to become DLA Piper), one of Defence's panel of legal services providers, as a suitable person to lead the review. Professor Dennis Pearce AO (formerly the Defence Force Ombudsman between 1988 and 1990) and Ms Melanie McKean (both, at that time, also associated with DLA Phillip Fox) were appointed joint leaders of the Review with Dr Rumble.<sup>20</sup> All three leaders of the DLA Piper Review moved to another law firm, HWL Ebsworth, during the course of the Review.

2.16 Following concerns raised regarding the independence of DLA Piper as a provider of legal services to Defence, the Review released a statement on 21 June 2011 which clarified that the report 'will contain and will only contain assessments, conclusions and recommendations of the Review members':

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

The Review members would not be participating in the Review if we thought it was a sham.<sup>21</sup>

### *Terms of Reference*

2.17 The terms of reference were notified to the DLA Piper Review team by the Minister's office on 21 June 2011. The terms of reference directed that the review would be conducted in two phases and that DLA Piper had been engaged by the Secretary of Defence to conduct Phase 1:

The Review will consider all relevant allegations, whether referred from the Minister's Office, raised in the media or coming directly to the Review which have been or are made in the period 01 April – 17 June 2011...

Phase 1 will review all allegations of sexual or other abuse and any related matter to make an initial assessment of whether the matters alleged have been appropriately managed and to recommend further action to the Minister.

Phase 1 will also report on whether Phase 1 has identified any particular systemic issues that will require further investigation in Phase 2...

Phase 2 is expected to provide oversight of Defence's implementation of Phase 1.

Phase 2 will also review Defence's processes for assessing, investigating and responding to allegations of sexual or other forms of abuse to consider with any systemic issues identified in Phase 1 and any other systemic issues

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20 DLA Piper Review, *Volume 1*, p. 1.

21 DLA Piper Review, 'DLA Piper Review responds to concerns raised about conduct of Review of Allegations of Sexual and Other Abuse (and Related Matters) in Defence', *News Release*, 21 June 2011, p. 3.

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and to make appropriate recommendations about all systemic issues that have been identified.<sup>22</sup>

### *Advertising*

2.18 The DLA Piper Volume 1 report noted that following the announcement of the Review via an internal Defence publication on 10 May 2011 the rate of communications to the Review was 'initially slow'.<sup>23</sup> However:

After [Defence] organised print-media advertisements, towards the end of May 2011, there was a clear increase in the number of people contacting the Review. In the beginning of June 2011, as the date for making allegations to the Review was approaching, the number of persons contacting the Review continued at a steady level.<sup>24</sup>

2.19 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.<sup>25</sup>

### *Review reports and releases*

2.20 On 25 August 2011, Minister Smith announced the reporting date of the DLA Piper Review would be extended to 30 September 2011.

2.21 On 11 October 2011, the Minister received Volume 1 (General Findings and Recommendations) of the DLA Piper Review report and the first tranche of Volume 2 (Individual Allegations). On 7 March 2012, the Minister released an extract of the Executive Summary of Volume 1.

2.22 A Supplement to Volume 1 was delivered to the Minister in April 2012. The Supplement to Volume 1 added to, and updated, the recommendations and findings of the original Volume 1 report.<sup>26</sup> An updated Volume 2 report was also provided in April 2012, which was a consolidated report dealing with all the individual allegations before the Review.

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22 DLA Piper Review, *Volume 1*, Appendix 7, pp. 275–276.

23 DLA Piper Review, *Volume 1*, p. 4.

24 DLA Piper Review, *Volume 1*, p. 4.

25 Australian Broadcasting Corporation, *Culture of Silence*, Four Corners, 13 June 2011, available at: <http://www.abc.net.au/4corners/content/2011/s3239681.htm> (accessed 29 October 2012); DLA Piper Review, *Volume 1*, p. 108.

26 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, p. ix (*Supplement to Volume 1*). The Supplement to Volume 1 was prepared only by Dr Rumble and Ms McKean, as Professor Pearce had withdrawn from the Review due to ill-health.

2.23 On 14 June 2012, under Freedom of Information provisions, the complete and un-redacted Executive Summary of Volume 1 was released. On 10 July 2012, the Minister released all of the Volume 1 report of the DLA Piper Review, subject to a small range of redactions.<sup>27</sup>

#### *Cost*

2.24 At the Budget Estimates hearing in May 2012, the Department of Defence indicated that \$9.9 million had been expended on the DLA Piper Review for 'over 27,000 hours of activity'.<sup>28</sup> At the October 2012 Supplementary Estimates hearing, the Department of Defence indicated this expenditure had increased to \$10.49 million. It also noted that DLA Piper continued to provide on-going services in relation to the Review.<sup>29</sup> On 3 June 2013, Defence indicated that about \$11.3 million had been expended on the DLA Piper Review.<sup>30</sup>

### **DLA Piper Review—Volume 1**

2.25 Volume 1 of the DLA Piper Review report contained 10 recommendations, 23 issues, and 29 findings. The concluding remarks of Volume 1 also called on the ADF, the Australian Government and the Parliament 'to give proactive support to those in the ADF who have the courage to stand up for what is right when others in the ADF do, or have done wrong'.<sup>31</sup>

2.26 For convenience, the issues and findings identified in Volume 1 can be grouped into a number of key themes including that:

- ADF environments typically have factors which indicate a high risk of abuse;
- a substantial number of persons suffered abuse in the ADF or experienced inadequate Defence management of abuse allegations;
- a substantial number of boys and young people have suffered abuse, including serious sexual and other physical abuse in the past;
- those who suffered abuse in ADF may have later participated in inflicting abuse on others;
- the ADF and the Australian Government have in the past failed to take steps to protect those vulnerable to abuse;

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27 Minister for Defence, the Hon Stephen Smith MP, 'Release of Volume 1 of the DLA Piper Report: Allegations of sexual and other abuse in Defence', *Media Release*, 10 July 2012, p. 1.

28 Senate Foreign Affairs, Defence and Trade Legislation Committee, Budget Estimates, *Committee Hansard*, 28 May 2012, p. 51.

29 Senate Foreign Affairs, Defence and Trade Legislation Committee, Supplementary Estimates, *Committee Hansard*, 17 October 2012, p. 31.

30 Senate Foreign Affairs, Defence and Trade Legislation Committee, Budget Estimates, *Committee Hansard*, 3 June 2013, p. 16.

31 DLA Piper Review, *Volume 1*, pp. 199–200.

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- many perpetrators of abuse, or those responsible for the mismanagement of allegations of abuse, have not been identified, called to account or rehabilitated and these persons may have advanced to more senior positions in the ADF (creating serious risks);
  - the victims of abuse in the ADF may be at risk of suffering mental health, substance abuse and associated physical health and employment problems, and these victims may need counselling and other assistance;
  - Phase 2 of the Review should examine improvements which could be made to the mechanisms which track and record unacceptable behaviour in the ADF to enable commanders to identify and manage potential serial perpetrators;
  - Phase 2 should examine relevant Defence Instructions (General) and other aspects of ADF procedures in responding to allegation of sexual offence to allow appropriate use of administrative action by commanders;
  - the culture of the ADF discourages the reporting of abuse and a substantial number of victims of abuse have not reported abuse they may have suffered;
  - Phase 2 of the Review should consider changes to procedures for Defence procedures for responding to allegations of abuse and to assist victims of abuse;
  - Phase 2 should consider Defence's response to review of the ADF Investigative Service (ADFIS) and the retention of personnel in ADFIS to ensure skills in management of abuse allegations are maintained.

2.27 The recommendations made in Volume 1 included that:

- further information should be considered and reported on in a supplementary report to the Minister and Secretary;
- Phase 2 of the Review should undertake discussion with Defence regarding the clarification or amendment of *Defence Instructions (General) – Management and Reporting of Sexual Offences* to permit administrative action to be taken in respect of sexual offences;
- new Defence Instructions should be considered to direct relevant Commanding Officers to consider taking administrative action even if an incident has been reported to civilian police;
- relevant Defence Instructions should be redrafted to provide simpler advice and guidance to management regarding sexual offences and 'unacceptable behaviour';
- if a new complaint resolution scheme is established, it should not be limited to those who contacted the Review and allegations in Volume 2 should be reassessed;
- further investigations made during Phase 2 should be conducted by an external review body similar to that which conducted Phase 1;

- a capped compensation scheme for the victims of abuse within Defence should be considered;
- a framework of private facilitated meetings between victims, perpetrators and witnesses of abuse with Defence should be considered;
- the special counselling and health services in place for the duration of the Review be extended to Phase 2 while a plan for providing health services to victims of abuse is prepared.

2.28 Finally, Volume 1 of the report recommended that a suite of options be adopted to afford reparations to persons affected by abuse in Defence comprising:

- public apologies/acknowledgements;
- personal apologies;
- a capped compensation scheme;
- facilitated meetings between victims and perpetrators; and
- provision of health services and counselling.

#### *Previous incidents of serious sexual offences at ADFA*

2.29 A particular area of concern for the Review was information regarding the investigations made by Lieutenant Colonel Northwood during the period of the Grey inquiry of ADFA. The Review noted that this material, which was accessed late in the Review process, had affected their consideration of appropriate action for Phase 2.<sup>32</sup> The Review noted that Lieutenant Colonel Northwood had 'identified around 24 cases of rape at ADFA in the late 1990s'. The Review raised the issue that it was possible that 'male cadets who raped female cadets at ADFA...and other cadets who...did not intervene may now be in "middle" to "senior" management positions in the ADF'. The Review noted these possibilities 'carry serious risks for the ADF'.<sup>33</sup>

2.30 The Review raised the issue that Phase 2 should consider the possibility of establishing a Royal Commission to clarify whether persons suspected of having committed rape (or those who did not intervene) were still in the ADF and 'if so, how to deal with that situation'.<sup>34</sup>

### **DLA Piper Review—Supplement to Volume 1**

2.31 The Supplement to Volume 1 report contained five additional recommendations (replacing one recommendation made in Volume 1), 12 additional issues and 9 additional findings. The findings of the Supplement to Volume 1 confirmed the original findings made in Volume 1.

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32 DLA Piper Review, *Volume 1*, p. 115.

33 DLA Piper Review, *Volume 1*, p. 121, Issue 3.

34 DLA Piper Review, *Volume 1*, p. 121, Issue 4.



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2.32 The additional recommendations made in the Supplement included that:

- further information received regarding allegations not be considered until Phase 2 commences;
- the findings and issues in Volume 1 be taken into account in Defence's Pathways to Change strategy;<sup>35</sup>
- concerns raised in Volume 1 regarding taking administrative action after an allegation of sexual assault be drawn to the attention of the Inspector-General ADF, the Directorate of Rights and Responsibilities and others reviewing relevant Defence Instructions (General);
- the formulation of personal and general apologies should take into account criteria for formal apologies set out previously by the Law Commission of Canada and the Senate Community Affairs Committee; and
- for each personal apology recommendation which is accepted, a representative of the Service Chief should liaise with individuals regarding details of the apology.

2.33 The Supplement to Volume 1 highlighted the difficulties of the Review in accessing Defence file material and ADFIS material, noting this had 'significantly delayed' the Review's initial assessment of allegations in Volume 2.<sup>36</sup>

2.34 A number of other issues were raised in the Supplement to Volume 1 for consideration in Phase 2 of the Review including:

- improved access to reports of administrative inquiries;
- Defence systems for tracking and responding to media allegations of abuse with the ADF;
- arrangements between Defence and Department of Veterans' Affairs (DVA) regarding abuse in the ADF;
- consultation with DVA regarding its role in informing and contacting those persons who may be eligible for benefits;
- options for increased liaison with DVA and additional roles for DVA; and
- reform of spent convictions legislation to add recruitment into the ADF to existing exclusions.

2.35 The Supplement to Volume 1 also expanded the findings of the Review in relation to possible incidents of rape or indecent assault at ADFA and the possibility that perpetrators (or witnesses who did not intervene) may now be 'middle' to 'senior' management in the ADF. It also found that there 'seems to be a very clear indication

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35 Further information on the Defence Pathway to Change cultural reform strategy is detailed below.

36 DLA Piper Review, *Supplement to Volume 1*, p. 17.

that no action was taken [by Defence] in relation to the suspected individuals'. Issue S1 suggested that Phase 2 of the Review should consider the possibility of a 'Royal Commission or Court of Inquiry' into whether those persons identified by Lieutenant Colonel Northwood and 'any other Cadets who engaged in similar conduct at ADFA in the years preceding the Grey report' are still in the ADF and, if so, how to deal with this situation.<sup>37</sup>

2.36 The Supplement to Volume 1 also contained assessments made by the DLA Piper Review of the allegations raised by the five former defence members featured in the Four Corners report 'Culture of Silence'.<sup>38</sup> This Appendix was redacted in the publicly released Supplement to Volume 1.

### **DLA Piper Review—Volume 2**

2.37 Volume 2 contained the Review's preliminary assessments of, and recommendations in respect of, each individual allegation received by the Review. While Volume 2 has not been publicly released by the Minister, the Supplement to Volume 1 contained information about the structure and format of its contents. It outlined that Volume 2 contains:

- assessments of 1,095 allegations of abuse raised by 775 sources;
- 494 Fairness and Resolution Branch database matters; and
- 49 ADFIS matters.<sup>39</sup>

2.38 A number of other matters were considered by the Review but were determined not to be within the terms of reference, or were matters which were assessed as having been managed appropriately.

2.39 The Supplement to Volume 1 report included 'tallies' of the allegations contained in Volume 2. For example, these tallies indicated that:

- 40% of the subjects of abuse were female;
- 18% of the subjects of abuse were under the age of 18;
- the largest portion (39%) of the subjects of abuse were in the Army at the time of the alleged incident, while the smallest portion was in the Australian Public Service (6%);
- ADFA (5.7%), HMAS Cerberus (5.3%), Kapooka (4.9%) and RMC Duntroon (3.8%) were the four of the most frequent locations for alleged incidents of abuse;

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37 DLA Piper Review, *Supplement to Volume 1*, p. 59.

38 DLA Piper Review, *Supplement to Volume 1*, p. 3 and Appendix 1.

39 DLA Piper Review, *Supplement to Volume 1*, p. 3.

- 80.8% of allegations were assessed as 'plausible', 0.6% of allegations were not assessed as plausible and no finding was made for 18.6% of allegations;
- 58.3% of allegations were identified as having been managed by Defence;
- of those allegations managed by Defence, in 4.5% of cases the management of allegations was appropriate, in 21.2% of cases the management of allegations was not appropriate and 74% of cases the management of allegations required further investigation; and
- 61.6% of the Review's recommendations recommended further external investigation during Phase 2 of the Review; 23.9% recommended internal referral - in the majority of cases to single Service Chiefs and apology. Only 3 incidents (0.2 %) were referred for external review for further action. For 14.3% of incidents the Review recommended no further action.

2.40 The report emphasised that the DLA Piper Review had only carried out an initial assessment of specific allegations, and accordingly has not found as fact that any one of the allegations of abuse received by the Review has been made out. The Review considered that a 'substantial' number of former and current ADF personnel had not reported abuse which they suffered in the ADF.<sup>40</sup>

2.41 The Supplement to Volume 1 stated that 'approximately 100 [Assessment Worksheets]' included a recommendation that:

The 'circumstances of the alleged abuse suggest strongly that the alleged perpetrator(s) might have been serial perpetrator(s)'. The matter should be referred to the ADFIS and Service Chief for consideration on that basis'.<sup>41</sup>

2.42 Many Assessment Worksheets in Volume 2 had a recommendation that allegations be referred to the ADFIS for possible action under the *Defence Force Discipline Act 1982* and/or referral by ADFIS to civilian police.<sup>42</sup>

## **Australian Government response to DLA Piper report and Defence cultural reviews**

### ***Pathway to Change***

2.43 Following the reports of the Defence cultural reviews, Defence released a strategy document titled *Pathway to Change: Evolving Defence Culture: A Strategy for Cultural Change and Reinforcement* (Pathway to Change) in March 2012. This

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40 DLA Piper Review, *Volume 1*, p. 108.

41 DLA Piper Review, *Supplement to Volume 1*, Attachment 7, p. 1.

42 DLA Piper Review, *Supplement to Volume 1*, Attachment 8, p. 1.

strategy document outlined that Defence agreed, or agreed-in-principle, to all of the recommendations made in the reviews into Defence's culture.<sup>43</sup>

2.44 In the Pathway to Change strategy, Defence committed to implementing actions in six areas: leadership and accountability, values and behaviour, right from the start; practical measures; corrective processes; structure and support. The members of the Secretary and CDF Advisory Committee were nominated as leading these 'key levers for change'. While the Pathway to Change strategy noted that implementation 'will commence immediately', it acknowledged that 'substantial change in our culture will take some years'—suggesting five years as the 'likely time for cultural effect' in some areas.<sup>44</sup>

2.45 While the Pathway to Change document did not refer to the findings of the DLA Piper Review, the Supplement to Volume 1 stated that the recommendations of DLA Piper Review 'will positively support the cultural changes that [the Secretary of Defence] and the CDF have identified in the Pathway to Change strategy as being "cultural changes that [Defence] must make if we are to continue to mature and evolve as an institution and as a community of professionals"'.<sup>45</sup>

2.46 Following receipt of Volume 1 of the DLA Piper Review report, Minister Smith stated that the report's findings and recommendations 'will now be considered and dealt with carefully and methodically'.<sup>46</sup> He also noted that this included 'a full opportunity for Defence to carefully consider and respond in relation to the Review report'. Further:

Defence's response to the systemic issues identified in the Review will be based on Defence's 'Pathway to Change: Evolving Defence Culture' document, released by the Secretary of the Chief of the Defence Force in March this year.<sup>47</sup>

### ***The government's response to the DLA Piper Review reports***

2.47 On 26 November 2012, the then Minister for Defence, the Hon Stephen Smith MP, announced the government's response to the DLA Piper Review report. The components of government's response included:

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43 Department of Defence, *Pathway to Change: Evolving Defence Culture—A Strategy for Cultural Change and Reinforcement*, March 2012, p. 31.

44 Department of Defence, *Pathway to Change: Evolving Defence Culture—A Strategy for Cultural Change and Reinforcement*, March 2012, p. 7.

45 DLA Piper Review, *Supplement to Volume 1*, p. vii.

46 The Hon Stephen Smith MP, Minister for Defence, 'DLA Piper report', *Media Release*, 11 October 2011.

47 The Hon Stephen Smith MP, Minister for Defence, 'Release of the Executive Summary of Volume 1 of the DLA Piper Report: Allegations of sexual and other abuse in Defence', *Media Release*, 14 June 2012, p. 3.

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- an apology in Parliament (delivered by Minister Smith on 26 November 2012);
  - a telephone hotline for anyone wishing to find out more about the proposed arrangements or report new information; and
  - a Defence Abuse Response Taskforce (also referred to as DART or the Taskforce), headed by the Hon Len Roberts-Smith QC, to assess individual allegations made to the DLA Piper Review, and any additional allegations made before 11 April 2011, and work with those who have made allegations to determine an appropriate response in individual cases. These responses may include:
    - possible restorative justice/conferencing processes where a victim and alleged perpetrator are brought together in a facilitated process;
    - referral to counselling;
    - determination of compensation (capped at \$50,000);
    - referral of appropriate matters to police for formal criminal investigation and assessment for prosecution; and
    - referral of appropriate matters for disposition by the military justice system.

2.48 Minister Smith noted that the Taskforce would be based in the Attorney-General's Department and '[a]ll the costs of this exercise will be met from within the Defence budget'. He explained:

In the end, when there is inappropriate conduct in an institution, whether it's an agency, a department or an institution outside of Government, in the end, there's a price to pay, and that will be part of the price which Defence has to pay for inappropriate conduct in the past, but, more importantly, with the steps we're putting in place, we want to get zero tolerance and appropriate conduct into the future, and we'll manage that in the same way that we manage other Defence budget issues.<sup>48</sup>

2.49 The Minister also announced the government's response to the Review of Treatment of Women in the ADF conducted by the Sex Discrimination Commissioner, Ms Elizabeth Broderick, and provided an update on the Defence cultural reform program, Pathway to Change. In particular, this included accepting recommendations for the establishment of a dedicated Sexual Misconduct Prevention and Response Office (SeMPRO). Other recommendations accepted included the implementation of restricted reporting (allowing defence personnel to make confidential reports of sexual harassment, discrimination or abuse), and the introduction of waivers for Initial Minimum Provision of Service and Return of

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48 The Hon Stephen Smith MP, Minister for Defence, *Press Conference*, 26 November 2012.

Service Obligations for victims of sexual assault/harassment (to allow them to discharge from the ADF expeditiously and without financial penalty).<sup>49</sup>

2.50 Minister Smith stated that to 'ensure that ongoing implementation of these essential reforms receives the highest levels of oversight, the Minister for Defence will on an annual basis provide a report to the Parliament on Defence's implementation of the reform program'.<sup>50</sup>

2.51 On 26 November 2012, the then CDF, General David Hurley, also made an apology to those who had suffered sexual, physical or mental abuse while serving in the ADF:

Accepting that the rigors of training in the Army, Navy and Air Force will be tough and demanding every ADF member must be able to pursue their aspirations in an environment free from physical, mental and sexual abuse in accordance with the ADF's values and associated behaviours.

The allegations received through the DLA Piper review process demonstrate that the ADF has not always provided such an environment. That it hasn't done so is evident in alleged incidents of sexual, physical and mental abuse... I, as the head of the ADF, recognise the suffering that some have experienced. On behalf of the ADF, I say that I am sorry to those who have suffered sexual, physical or mental abuse while serving in the ADF.<sup>51</sup>

### ***Defence Abuse Response Taskforce***

2.52 The terms of reference for the Defence Abuse Response Taskforce, signed by Minister Smith and the then Attorney-General, were released on 21 January 2013:

The Taskforce is to:

- (i) assess the findings of the DLA Piper review and the material gathered by that review, and any additional material available to the Taskforce concerning complaints of sexual and other forms of abuse by Defence personnel alleged to have occurred prior to 11 April 2011, the date of the announcement of the DLA Piper Review;
- (ii) include in this assessment the 24 Australian Defence Force Academy (ADFA) cases noted by DLA Piper and the cases of abuse identified by reports into physical violence and bullying at HMAS Leeuwin, and whether the alleged victims, perpetrators and witnesses in relation to these cases remain in Defence;

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49 The Hon Stephen Smith MP, Minister for Defence, 'Treatment of Women in the ADF', *Media Release*, 26 November 2012.

50 The Hon Stephen Smith MP, Minister for Defence, 'Implementation of Defence cultural reform—Pathway to Change', *Media Release*, 26 November 2012.

51 Department of Defence, 'Statement from General David Hurley, Chief of the Defence Force', *Transcript*, 26 November 2012, <http://news.defence.gov.au/2012/11/26/statement-from-general-david-hurley-chief-of-the-defence-force/> (accessed 5 August 2014).

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- (iii) determine, in close consultation with those who have made complaints, appropriate actions in response to those complaints;
  - (iv) will also, as appropriate, gather additional information relevant to consideration of the handling of particular allegations eg relevant records held by Defence;
  - (v) take account of the rights and interests of alleged victims, accused persons and other parties;
  - (vi) liaise with the Minister for Defence, Chief of the Defence Force and the Secretary of the Department of Defence on any implications of its work for Defence's 'Pathway to Change' and other responses to the series of reviews into Defence culture and practices in particular the work done by the Sex Discrimination Commissioner into the Australian Defence Force (ADF) and ADFA;
  - (vii) report to the Attorney-General and Minister for Defence every 3 months on its progress and issues arising, including whether the funding it has been provided is adequate so as to enable the Attorney General and Minister for Defence to report to Parliament as appropriate;
  - (viii) report to the Attorney-General and Minister for Defence by October 2013 on whether, in what form, the Taskforce should continue in effect beyond the initial 12 month period and the funding that would be required so as to enable the Attorney General and Minister for Defence to report to Parliament as appropriate; and
  - (ix) to advise whether a Royal Commission would be merited into any categories of allegation raised with the DLA Piper review or the Taskforce, in particular the 24 ADFA cases.<sup>52</sup>

2.53 On 14 March 2013, the Minister tabled in the Parliament the *First Interim Report* of the Taskforce. The report indicated the Taskforce had completed its 'Establishment phase' of constructing the Taskforce, meeting with stakeholders and establishing practices and processes and was moving to its 'Operational phase':

During this phase the Taskforce will conduct an initial assessment of DLA Piper and other allegations of abuse and Defence mishandling of reported allegations. Preliminary enquiries of plausible allegations will be made, including obtaining further information and material from Defence and other sources.

In consultation with complainants, appropriate action will be determined and where necessary appropriate allegations will be referred to external agencies such as Police agencies, the Defence Force Ombudsman or other entities.

With respect to the ADFA and HMAS Leeuwin cases, enquiries will be made as to whether alleged victims, perpetrators or witnesses remain in Defence. Where the circumstances so require, the Chair will make

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52 Defence Abuse Response Taskforce, 'Taskforce releases Terms of Reference', *Media Release*, 21 January 2013.

recommendations to the CDF in relation to appropriate action he may wish to pursue.

The Taskforce Chair will also make recommendations for action to the Minister for Defence, Secretary of Defence and CDF or other Service Chiefs in Defence as appropriate in individual cases. Further, the Chair will liaise with the Minister, Secretary and CDF on any implications for *Pathway To Change* or other reviews.<sup>53</sup>

2.54 The report also anticipated a 'Conclusion and Legacy phase' during which the Taskforce would provide its final report to ministers, make recommendations in relation to any outstanding matters and organise storage of the Taskforce's materials.<sup>54</sup>

2.55 The Minister announced that, on the advice of the Chair of the Taskforce, the timeframe for the Taskforce would also be extended to the end of May 2014. Further:

[T]he cut-off for the Taskforce accepting new allegations of abuse that are alleged to have occurred prior to 11 April 2011 will be 31 May this year, giving the Taskforce a full year in which to assess these allegations and conclude its work. This announcement will ensure that people who have experienced abuse prior to 11 April 2011 but who have not yet brought their case forward have the time to consider doing so.<sup>55</sup>

2.56 On 20 June 2013, Minister Smith made a statement on the Taskforce and provided his first annual report on the implementation of the Pathway to Change Defence cultural reforms. In particular, the Minister reported on the progress in implementing the recommendations of the Defence cultural reviews, noting that 82 of the 160 recommendations had been completed. He expected the remaining recommendations to be implemented 'over the coming year'.<sup>56</sup>

2.57 The Taskforce's second interim report was also tabled by the Minister on 20 June 2013. The report indicated that:

Up until the reporting deadline of 31 May 2013, the Taskforce received a total of 3251 enquiries, which were received through DLA Piper, from law firms or directly to the Taskforce. Approximately 331 complaints have been identified as duplicates or multiple lodgements by the same person and

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53 Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 5.

54 Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 5.

55 The Hon Stephen Smith MP, Minister for Defence, 'Response to allegations of abuse in Defence', *Media release*, 14 March 2013, <http://www.minister.defence.gov.au/2013/03/14/minister-for-defence-response-to-allegations-of-abuse-in-defence> (accessed 20 May 2013).

56 The Hon Stephen Smith MP, Minister for Defence, 'Paper presented on the Defence Abuse Response Taskforce', 20 June 2013.



approximately 510 have not provided consent for information to be passed to the Taskforce yet.

As at 31 May 2013, it is estimated there are 2410 complaints which will be assessed by the Taskforce. Of these, 1535 are new complaints (post 26 November 2012) and 875 are complaints that the Taskforce has consent to reassess, which came from DLA Piper....

More than 240 complaints were at various points of the assessment process on 6 June 2013 and eight complaints had been provided to the Reparation Payments Assessor for consideration.<sup>57</sup>

### *Bipartisan support for the Taskforce*

2.58 In the Taskforce's third interim report in September 2013, the Chair of the Taskforce acknowledged the 'ongoing bipartisan support and commitment expressed by both the new Government and Opposition'. This support for the Taskforce's activities was illustrated during the election period when the Chair of the Taskforce met the Minister and the Shadow Minister who 'gave their ongoing support for the procurement activities of the Taskforce during the caretaker period'.<sup>58</sup>

2.59 On 19 March 2014, Senator the Hon David Johnston, the Minister for Defence, announced that the Taskforce had been extended to 30 November 2014.<sup>59</sup>

### *Recent events and progress*

2.60 Once a complaint has been assessed as 'in scope' and 'plausible', the Taskforce consults with the complainant to determine which outcomes they would like to pursue through the Taskforce processes. These outcomes may include:

- a referral for counselling under the Defence Abuse Counselling Program;
- a Reparation Payment of up to \$50,000 under the Defence Abuse Reparation Scheme, with the amount of payment determined by the independent Reparation Payments Assessor, Ms Robyn Kruk AM;
- referral of appropriate matters to civilian police for assessment and possible investigation and prosecution;
- referral to the matter to the CDF for administrative or disciplinary action; and/or
- a Restorative Engagement Conference with a senior Defence representative arranged under the Defence Abuse Restorative Engagement Program.<sup>60</sup>

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57 Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and the Minister for Defence*, June 2013, p. iii.

58 Defence Abuse Response Taskforce, *Third Interim Report to the Attorney-General and the Minister for Defence*, September 2013, p. 4.

59 Defence Abuse Response Taskforce, 'Taskforce Extended to 30 November', *Media Release*, 19 March 2014.

2.61 The fifth interim report of the Taskforce provided an update on the Defence Abuse Restorative Engagement Program. It stated:

One of the Programs likely to continue after 30 November 2014 is the Defence Abuse Restorative Engagement Program. The Taskforce has completed Phase 1 of the Restorative Engagement Program. However, Phase 2 will require significant logistical, administrative and specialised resources in order to provide Restorative Engagement Conferences to the anticipated 1000 plus complainants who request this as an outcome.<sup>61</sup>

2.62 The fifth interim report also noted that delays in the restorative engagement program had resulted from the caretaker period and also noted the Taskforce had been required to seek a partial exemption from the interim public service recruiting arrangements implemented by the new government.<sup>62</sup>

2.63 The seventh interim report stated that, as at 31 July 2014, the Taskforce total expenditure since its establishment was approximately \$67.2 million, comprising \$19.4 million for administration of the Taskforce and \$47.8 for the delivery of outcomes for complainants. It estimated that total cost of funding the Taskforce between 2012-13 and 2015-16 would be \$157.3 million.<sup>63</sup> The seventh interim report also included a summary of the Taskforce's achievements:

As at 11 August 2014, the Taskforce had:

- supported complainants as their matters progress through the various Taskforce processes to resolution;
- provided a Case Coordinator to more than 1277 complainants;
- fully or partially assessed 2272 complaints to determine whether they are within scope of the Terms of Reference and are plausible;
- liaised with complainants and Defence to obtain further information in relation to particular complaints;
- released the details of the national Defence Abuse Counselling Program;
- approved 2361 counselling sessions to complainants under the Defence Abuse Counselling Program;
- made Reparation Payments to 878 complainants, totalling more than \$36 million;

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

61 Defence Abuse Response Taskforce, *Fifth Interim Report to the Attorney-General and the Minister for Defence*, March 2014, p. 11.

62 Defence Abuse Response Taskforce, *Fifth Interim Report to the Attorney-General and the Minister for Defence*, March 2014, p. 11.

63 Defence Abuse Response Taskforce, *Seventh Interim Report to the Attorney-General and the Minister for Defence*, September 2014, p. 30.

- prepared 191 senior Defence representatives across Australia to participate in the Defence Abuse Restorative Engagement Program;
- facilitated 48 Restorative Engagement Conferences (including one follow-up Conference); under the Defence Abuse Restorative Engagement Program;
- referred 73 cases to State and Territory police for assessment and consideration of criminal investigation and prosecution;
- referred 22 matters to the Chief of the Defence Force (CDF) for consideration or administrative or disciplinary action;
- continued collecting and analysing data through the Taskforce Case Management System (CMS) to better inform the Taskforce, the Government and Defence about systemic issues arising in the complaints received by the Taskforce;
- released a detailed parliamentary Report on abuse at HMAS Leeuwin (HMAS Leeuwin Report) during the 1960s to 1980s;
- provided a copy of the HMAS Leeuwin Report to the Royal Commission into Institutional Responses to Child Sexual Abuse...<sup>64</sup>

#### *ADFA 24*

2.64 As noted above the terms of reference for the Taskforce included a requirement to assess the so-called 'ADFA 24' – cases of serious sexual assault highlighted by the DLA Piper Review. Further, the Taskforce was required to advise whether a Royal Commission was merited into any categories of allegations raised with the DLA Piper Review 'in particular the 24 ADFA cases'. The Department of Defence provided the committee with an update on this matter:

On 16 October 2013, the Taskforce referred preliminary information to Defence on 19 cases related to the 'ADFA 24'. Defence is in the process of reviewing the information and considering whether administrative or disciplinary action is available. These matters relate to serving ADF members, active and inactive Reserves.<sup>65</sup>

2.65 In relation to the 'ADFA 24', the seventh interim report stated:

The Taskforce has conducted a thorough analysis of all available information held by Defence on this cluster of cases.

On 16 October 2013, the Taskforce provided its analysis to the former CDF, General David Hurley AC, DSC. This analysis included recommendations in relation to specific cases, where it appeared that it was open to Defence to take administrative, disciplinary or other action against

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64 Defence Abuse Response Taskforce, *Seventh Interim Report to the Attorney-General and the Minister for Defence*, September 2014, p. 4.

65 *Submission 17*, p. 4.

alleged abusers or individuals involved in the management of complaints of abuse who are still serving in Defence...

The Taskforce is continuing to focus on finalising individual complaints relating to abuse alleged to have occurred at ADFA, both from complainants who allege sexual abuse occurring at ADFA in the mid-1990s and from complainants who made allegations of abuse occurring at ADFA during other time periods...

The Taskforce has now received complaints from 11 women who allege that they experienced sexual abuse at ADFA in the mid-1990s. The Taskforce has been contacted by an additional three women who allege that they experienced sexual abuse at ADFA during the same period of time as this cluster of cases (1991—1998) and are considering whether they will make a complaint. The Taskforce will continue to accept complaints from these women and any other woman who experienced sexual abuse at ADFA during this time period. We are able to do this only because of the uncertainty of what cases actually comprised the so-called 'ADFA 24'.

In total, the Taskforce has received 72 complaints relating to abuse alleged to have occurred at ADFA. The assessment of the vast majority of these complaints is complete.

The Taskforce will produce a de-identified public report regarding abuse alleged to have occurred at ADFA, including cases of sexual abuse occurring at ADFA in the mid-1990s, later this year.<sup>66</sup>

### *HMAS Leeuwin*

2.66 The terms of reference for the Taskforce also included a particular requirement to consider allegations of abuse at HMAS Leeuwin, a Junior Recruit Training Establishment operated by the Royal Australian Navy in Fremantle, Western Australia between 1960 and 1984. On 18 June 2014, the Taskforce released its report on abuse at HMAS Leeuwin, which was based on the personal accounts of more than 200 complainants who trained at the facility.<sup>67</sup> Almost all of the complainants were aged between 15 and 17 at the time of the abuse. The report noted complaints of abuse at HMAS Leeuwin formed the single largest group of complaints relating to any Defence establishment received by the Taskforce.

2.67 The HMAS Leeuwin report's findings included:

- widespread abuse of junior recruits occurred at HMAS Leeuwin, particularly during the 1960s and 1970s;
- there were patterns evident in the complaints of abuse at HMAS Leeuwin;

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66 Defence Abuse Response Taskforce, *Seventh Interim Report to the Attorney-General and the Minister for Defence*, September 2014, pp 1-2.

67 Defence Abuse Response Taskforce, *Report on abuse at HMAS Leeuwin*, 2014, available at: <https://www.defenceabusetaskforce.gov.au/HMAS-Leeuwin/Pages/default.aspx> (accessed 1 August 2014).

- Defence failed to take appropriate action to prevent, stop and respond to the abuse at HMAS Leeuwin; and
- the abuse at HMAS Leeuwin has had serious and long lasting impacts.<sup>68</sup>

## Parallel processes

### *Re-thinking systems of inquiry, investigation, review and audit in Defence*

2.68 On 8 November 2011, the Secretary of Defence and the CDF commissioned a review of all investigation, inquiry, review and audit systems in Defence:

The objective of the review is to make recommendations regarding the establishment of a system that is fair, timely, simple to implement, provides whole of Defence outcomes and which takes into account legislative requirements, with the initial step being to:

- summarise current structures, demonstrating key strengths and weaknesses;
- outline the key factors that prevent quick, decisive, whole of Defence outcomes; and
- identify the essential components of an optimal system for the future.<sup>69</sup>

2.69 The Department of Defence provided an update on this process:

In March 2014 following CDF's consideration of the Rethinking Systems Review report, the Chiefs of Service Committee considered proposals to enhance ADF decisions making guidance, redress of grievance process and investigation and inquiry practice.

The proposals include simplifying decision-making and fact-finding guidance to provide more flexible options to empower commanders to act decisively; streamlining the redress of grievance processes to remove multiple layers of internal review and strengthening governance of the process through oversight by the Inspector-General ADF (IGADF); consolidate incident reporting policy; and enhancing the function and independence of the IGADF. Lieutenant General Mark Evans (ret'd) has been appointed to implement the Chiefs of Service Committee decisions.

The end state is a simple and efficient administrative inquiry process, more responsive to command requirements for timely decision making, a fair and succinct ADF Redress of Grievance process that appropriately balances a member's right to complain with interests of timeliness and certainty in decision making, and improved oversight.<sup>70</sup>

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68 Defence Abuse Response Taskforce, *Report on abuse at HMAS Leeuwin*, 2014, pp 90-92.

69 Department of Defence, 'Report on Stage A (Research and Analysis stage)', *Re-thinking systems of inquiry, investigation, review and audit in Defence*, 1 August 2012, p. 5.

70 *Submission 17*, p. 7.

### ***Royal Commission into institutional child abuse***

2.70 On 12 November 2012, the then Prime Minister, the Hon Julia Gillard MP, announced that a Royal Commission into institutional child abuse would be established. Following the announcement, the Acting Minister for Families, the Hon Brendan O'Connor was asked if the Royal Commission's investigation would include consideration of the abuse of Defence cadets. The Acting Minister noted that 'there is an ongoing investigation into those matters' and that the terms of reference of the Royal Commission would be determined 'before the year's end'.<sup>71</sup> The Letters Patent of the Royal Commission into Institutional Responses to Child Abuse do not appear to exclude those who suffered abuse in Defence institutions when they were underage.<sup>72</sup> The Defence Abuse Response Taskforce has reported it has had discussions regarding establishing an information sharing protocol with the Royal Commission.<sup>73</sup>

### **Previous Senate committee inquiry**

2.71 On 10 October 2012, the Senate referred matters relating to the report of the review of allegations of sexual and other abuse in Defence, conducted by DLA Piper, and the response of the government to the report, to the Foreign Affairs, Defence and Trade References Committee for inquiry and report.<sup>74</sup> The committee tabled its report on 27 June 2013. In its conclusion the committee stated:

The committee is hopeful that the legacy of the DLA Piper Review and the Defence cultural reviews—the Defence Abuse Response Taskforce and the Defence cultural reform strategy Pathway to Change—will both bring resolution to victims of past abuse and prevent further abuse from occurring in the future. In both cases it is too early to form a conclusive judgement on the government's response, however, on the evidence received, the committee considers that significant progress has been made.<sup>75</sup>

2.72 The committee's report made 10 recommendations. The Australian Government's response to the committee's report was released in March 2014. For

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71 Australian Broadcasting Corporation, 'Minister explains abuse Royal Commission decision', *7.30 Report*, 12 November 2012, available at: <http://www.abc.net.au/7.30/content/2012/s3631175.htm> (accessed 13 November 2012).

72 Royal Commission into Institutional Responses to Child Sexual Abuse, 'Letters Patent', <http://www.childabuseroyalcommission.gov.au/LettersPatent/Pages/default.aspx> (accessed 20 May 2013).

73 Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and the Minister for Defence*, June 2013, p. 44.

74 *Journals of the Senate*, 10 October 2012, p. 3106.

75 Senate Foreign Affairs, Defence and Trade References Committee, *Report of the DLA Piper Review and the government's response*, June 2013, p. 81.

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convenience both the committee's recommendations and the government response to each recommendation are extracted at Appendix 4.<sup>76</sup>

### *Consideration of access to Volume 2*

2.73 The committee's earlier inquiry considered the matter of appropriate access to Volume 2, particularly the 'vexed issue' of whether Volume 2 should be provided to the Secretary of Defence, the Chief of the Defence Force (CDF) and the Service Chiefs. While noting there were competing interests in relation to this issue, the committee considered that the actions taken in providing Volume 2 to the Taskforce were 'a sensible and responsible approach to these issues'. The committee noted that the Taskforce would be able to refer matters to Defence or to Commonwealth, State or Territory police. Further, the committee noted a statement from the Chair of the Taskforce that:

[I]n a small number of cases, where an alleged abuser remains in Defence and is alleged to have perpetrated serious sexual or other abuse on one or more occasions, I may decide it is necessary to bring the matter to the attention of Defence. I envisage that such a recommendation could be made where I feel that, for the safety and wellbeing of other Defence employees, it is necessary so intervention can occur.

2.74 While the committee commended this approach, it also believed that the Chair of the Taskforce should go further and 'inform the Secretary of Defence and the CDF of any serving member who, in the Chair's opinion, has a serious and credible allegation of abuse made against him or her'.<sup>77</sup> However, the committee did not make a recommendation on this matter. In his additional comments to the committee's report, Senator Xenophon recommended that '[i]n the interests of transparency, Volume 2 of the DLA Piper Review be released publicly with the appropriate redactions at this stage to avoid compromising any likely future action'.<sup>78</sup>

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

77 Senate Foreign Affairs, Defence and Trade References Committee, *Report of the DLA Piper Review and the government's response*, June 2013, p. 70.

78 Senate Foreign Affairs, Defence and Trade References Committee, *Report of the DLA Piper Review and the government's response*, June 2013, p. 86.





## Chapter 3

### Defence Abuse Response Taskforce processes

#### Introduction

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

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

#### Conduct of the Taskforce

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

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

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

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

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

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

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

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

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

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

### ***Terminology***

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

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

3 *Submission 1*, p. 1.

4 *Submission 4*, p. 1.

5 *Submission 12*, p. 2.

6 *Submission 14*, p. 1.

7 *Submission 14*, p. 21.

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

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

## **Awareness of the Taskforce**

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

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

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

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

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8 *Submission 21*, p. 2.

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

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

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

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

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

14 *Submission 17*, p. 2.

## Cut-off dates

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

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

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

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

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

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

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

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

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

18 *Submission 12*, p. 3.

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

3.15 The Association for Victims of Abuse in the ADF also argued that 'this date was chosen on the false assumption that all abuse magically stopped on this date as a result of Defence's "Pathways to Change" [but] [t]he reality is as can be seen; the abuse did not stop - only compensation to the Victims'.<sup>20</sup>

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

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

### **Scope of abuse claims**

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

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

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19 *Submission 4*, p. 2.

20 *Submission 14*, p 37.

21 *Submission 21*, p. 2.

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

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

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

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

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

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

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

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

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

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

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

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25 *Submission 2*, p. 2.

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

27 *Submission 4*, p. 1.

28 *Submission 21*, p. 2.

29 *Submission 21*, pp 2-3.

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## Evidential threshold of plausibility

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

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

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

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

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

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

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

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

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

31 *Submission 21*, p. 5.

32 *Submission 7*, p. 2.

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

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

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

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

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

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

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

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33 *Submission 7*, p. 2.

34 *Submission 7*, p. 2.

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

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

37 *Submission 11*, p. 3.

38 *Submission 11*, p. 3.



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## Referrals to law enforcement and Defence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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42 *Submission 15*, p.1.

43 *Submission 15*, p. 2.

44 *Submission 15*, p. 3.

45 *Submission 15*, pp 4-5.

46 *Submission 21*, p. 4.

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

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

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

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

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

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

3.39 Vice Admiral Griggs also commented:

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

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

48 *Submission 21*, p. 4.

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

50 *Submission 21*, p. 6.

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

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

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

### **Restorative engagement program**

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

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

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

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

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52 *Submission 17*, p. 4.

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

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

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

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

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

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

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

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

To be downgraded to a Captain or Major sends the message that Defence is not truly sorry for what happened to them. If Senior Officers i.e. Generals / Admirals / Air Marshals do not have to see the human cost of abuse, it does not provides motivation to address the issue.<sup>58</sup>

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

### **Counselling services**

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

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

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

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

58 *Submission 14*, p. 39.

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

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

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

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

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

### **Reparation scheme**

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

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

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

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

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

62 *Submission 14*, p. 25.

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

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

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

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

The maximum payout from the Defence Abuse Response Task Force is \$50,000 regardless of how many rapes, assault or incidents of abuse you suffered. Under any other Crime Compensation, it is payout by incident, not one small amount that covers everything. Furthermore it is not in accord with community standards.<sup>67</sup>

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

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

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

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

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

65 *Submission 11*, pp 3-4.

66 *Submission 23*, p. 3.

67 *Submission 14*, p. 31.

68 *Submission 22*, p. 3.

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

### **Legacy issues**

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

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

3.60 Ms Rachael James from Slater and Gordon Lawyers commented:

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

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

3.62 However, the Chair of the Taskforce observed:

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

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69 *Submission 4*, p. 3.

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

71 *Submission 23*, p. 2.

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

73 *Submission 12*, p. 4.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

79 *Submission 21*, p. 4.

# 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.

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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.

## 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 peacetime 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.<sup>1</sup>

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:

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<sup>1</sup> *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.<sup>2</sup>

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.<sup>3</sup>

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'.<sup>4</sup>

### ***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.<sup>5</sup>

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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.<sup>6</sup>

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'.<sup>7</sup> 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'.<sup>8</sup>

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'.<sup>9</sup> 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.<sup>10</sup>

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;

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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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup>

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

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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.

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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.<sup>15</sup>

In February 2014, DVA obtained agreement from the Chair of the DART...that all DART applicants will be provided with an explanatory factsheet outlining the key differences between claims which are assessed by DVA and the DART. This factsheet was developed jointly by both agencies.<sup>16</sup>

### *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.<sup>17</sup> Dr Rumble criticised inaction by DVA in examining what would be required 'to analyse its own material for clusters and patterns of abuse'.<sup>18</sup>

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.<sup>19</sup>

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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'.<sup>20</sup> However, the Chair of the Taskforce indicated the privacy legislation 'has been a big obstacle to quite a lot of the work'.<sup>21</sup>

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'.<sup>22</sup> 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'.<sup>23</sup>

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.<sup>24</sup> However, DVA also stated that:

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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).<sup>25</sup>

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.<sup>26</sup>

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'.<sup>27</sup>

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.<sup>28</sup>

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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.<sup>29</sup>

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

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.<sup>31</sup>

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.<sup>32</sup>

### ***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

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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.

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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.<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup>

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'.<sup>36</sup>

## **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

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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'.<sup>37</sup> 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'.<sup>38</sup>

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'.<sup>39</sup>

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'.<sup>40</sup>

#### ***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'.<sup>41</sup> 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'.<sup>42</sup>

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.<sup>43</sup>

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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'.<sup>44</sup>

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.<sup>45</sup>

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'.<sup>46</sup> 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.<sup>47</sup>

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

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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.<sup>48</sup>

### **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.<sup>49</sup>

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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.<sup>50</sup>

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.<sup>51</sup>

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.<sup>52</sup>

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.<sup>53</sup>

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.<sup>54</sup>

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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.<sup>55</sup>

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.<sup>56</sup>

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.<sup>57</sup>

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.<sup>58</sup>

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

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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.<sup>59</sup>

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'.<sup>60</sup>

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.<sup>61</sup> 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'.<sup>62</sup>

### **Model litigant obligations**

5.51 The Legal Services Directions 2005 are a set of binding rules about the performance of Commonwealth legal work.<sup>63</sup> 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

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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 ethical 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.<sup>64</sup>

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'.<sup>65</sup>

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

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

# Chapter 6

## Conclusion and recommendations

### Introduction

6.1 The committee's terms of reference are directed to the accessibility and adequacy of the current mechanisms and processes to support victims of sexual and other abuse in Defence. While evidence was received on other issues during the inquiry, such as the issue of serving officers who are the subject of allegations of abuse, the committee's focus is on support and assistance for current and past victims of abuse in Defence.

### Taskforce outcomes

6.2 Having followed the progress of the Taskforce from its establishment through two inquiries, the committee has, in general, been impressed with the results achieved. The reparation payment scheme, the counselling support and the restorative engagement program appear in the majority of cases to have provided positive outcomes and assistance for the victims of abuse in Defence. The nature of the problems faced by victims is particularly revealed by the large number of reparation payments which takes account of the mismanagement by Defence in handling the abuse.<sup>1</sup> The committee recognises that the reparation payment scheme will never fully compensate for the abuse suffered by victims. However, for many of those who have received reparation payments, it can be seen as a tangible acknowledgment that wrongs have occurred and that recognition has its own value.

6.3 On the evidence received, the committee considers that the staff of the Taskforce have undertaken their work effectively and conscientiously, and have dealt compassionately and, on the whole, very professionally with victims of abuse in Defence. This view of the Taskforce has also been reflected in commentary from others, including many of those who have been engaged with its processes as complainants. Some complainants have not been satisfied with the conduct of the Taskforce. However, the committee has not received any evidence which would suggest that the policies and practices implemented by the Taskforce are in any way unjustified. In particular, the committee explicitly rejects the personal criticism received during the inquiry of the Chair of the Taskforce, the Hon Len Roberts-Smith QC. The committee has not engaged with this commentary during the inquiry, and does not intend to give it further attention here.

6.4 Some of those who contacted the committee during the inquiry argued that the Taskforce has been too restrictive in its interpretation of the scope of abuse within its

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

terms of reference. The term 'abuse' is clearly a subjective one and could potentially extend to a broad range of behaviour and practices. The committee considers the Taskforce has appropriately determined the scope of the abuse claims which fall within its terms of reference. The committee notes that other potential remedies exist for most of the claims of abuse, such as employment related disputes, which have been determined by the Taskforce to fall outside of its definition.

6.5 The committee acknowledges the concerns raised by Dr Rumble regarding media, anonymous and third party allegations of abuse in Defence. However, the committee also recognises that the Taskforce is limited by its terms of reference which include 'determining in consultation with those who have made complaints appropriate actions in response to those complaints'. If a person who may have suffered abuse in Defence (and is aware of the processes of the Taskforce) makes a decision not to engage with processes of the Taskforce, their wishes should be respected. It should also be noted that those persons who have suffered abuse in Defence are not restricted to making reports to the Taskforce and can also independently pursue complaints and remedies through other avenues. The Taskforce has indicated the media, anonymous and third party allegations of abuse will be taken into account in its advice to Defence regarding systemic issues.

### **Taskforce legacy issues**

6.6 The Taskforce is funded, and will continue to provide, services in relation to the restorative engagement program into 2016. The committee understands that recommendations in relation to the other 'legacy issues' will form part of the final report of the Taskforce. The committee wishes to comment on one major aspect of these legacy issues.

6.7 A key criticism of the Taskforce's activities concerns the initial stage of awareness raising and communications with potential complainants. It is clear that there remain victims of abuse in Defence who were not aware of the existence of the Taskforce before the 'cut-off' dates for applications, including some of those who have made submissions to the inquiry.<sup>2</sup>

6.8 This is a complex issue. As was pointed out during the inquiry, because of their experiences victims of abuse in Defence may actively avoid mentions in the media of Defence in general, and of abuse in particular.<sup>3</sup> The DLA Piper Review also faced similar issues in raising awareness of its activities. The apology made by former Minister Smith for abuse in Defence and the announcement of the Taskforce and its subsequent activities have received significant media attention. However, there does not seem to have been a communications strategy undertaken to reach out to those victims of abuse in Defence who were unlikely to have been informed about the activities of the Taskforce or would be reluctant to come forward. The committee

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2 For example, Mr Glyn Treadwell, *Submission 26*, p. 1.

3 For example, Mr Adair Donaldson, Shine Lawyers, *Committee Hansard*, 13 August 2014, p. 2.



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considers that, with hindsight, more could have been done by the Taskforce, by Defence and the Australian Government to raise awareness of the activities of the Taskforce and the associated support mechanisms available for victims of abuse in Defence.

6.9 The challenges of raising awareness amongst victims of abuse in Defence have contributed to the issues regarding the cut-off dates for making applications to the Taskforce. The committee is concerned that there is a significant cohort of former members of Defence who have suffered abuse who have not had the opportunity to access the outcomes offered by the Taskforce. The committee notes that a large number of complainants have contacted the Taskforce after the 'cut off' date of 31 May 2013.<sup>4</sup> There is also a risk that confusion regarding the limited waiver of non-disclosure agreements could have deterred victims of abuse in Defence from making a claim to the Taskforce before the cut-off dates.<sup>5</sup>

6.10 The committee does not agree that the operations of the Taskforce should be open-ended. However, the Defence cultural reforms are still continuing, and will not be completed for a further two years. Some actions to rectify problems with processes for responding to abuse, such as when administrative action may be taken by commanders, have only recently been undertaken by Defence. The committee is also acutely aware that the incidents of abuse in Defence continue to occur. In the view of the committee, the Australian Government should examine reopening the Taskforce processes to new applications from victims of abuse in Defence with a cut-off date that reflects the expected completion of the Defence cultural reform program. This extension should be accompanied by an extensive communications campaign aimed at reaching those who may be eligible and should not only rely on traditional media advertising and Defence publications.

6.11 The staff of the Taskforce have developed considerable expertise in assisting victims of abuse in Defence, collecting relevant information, assessing complaints and providing outcomes. They should continue to be utilised to assist victims of abuse in Defence until the cultural reforms are completed.

### **Recommendation 1**

**6.12 The committee recommends that the Australian Government extend the activities of the Defence Abuse Response Taskforce to support victims of abuse in Defence, including allowing new complainants to make claims up to 30 June 2015.**

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4 Correspondence from the Hon Len Roberts-Smith, Chair, Defence Abuse Response Taskforce, 17 September 2014.

5 For example, Ms Julia Delaforce, *Submission 16*, pp 1-2.

## Continuing cultural reform in Defence

6.13 A challenging number of recommendations for reform were developed through the Defence cultural reviews – including many which support or assist victims of abuse. Defence has progressed a large number of these reforms through the Pathway to Change strategy, in particular establishing the Sexual Misconduct Prevention Response Office (SeMPRO).

6.14 Defence has also assisted the Taskforce in undertaking its activities. In particular, the committee is pleased to see the broad participation of senior Defence officers in the restorative engagement program. This extensive program, which will continue to operate for some time, is likely to be one of the most valuable in terms of effecting Defence cultural reform.

6.15 The examples provided of administrative and disciplinary action, including termination actions, taken in relation to unacceptable behaviour onboard HMAS *Newcastle*, against the Army personnel involved in the 'Jedi Council' and against Air Force personnel for 'acts of indecency' indicate that Defence's zero tolerance approach is being applied.<sup>6</sup> Additionally, there appears to have been an increase in reports of incidents in Defence, particularly in relation to sexual assault. The committee agrees with the suggestion that this is an indication of successful reform and that victims of abuse may now feel more confident in making reports. The sexual ethics program being developed and rolled out by Defence to its training institutions also appears to be a positive development.

6.16 In contrast to these achievements, Defence could have been more open to consultation in relation to the Rethinking Systems Review and its consequent reform implementation.<sup>7</sup> The committee considers that the overall message of the cultural reviews is that Defence can be strengthened through engaging with external perspectives. In this context, the committee urges Defence to continue its relationship with the Australian Human Rights Commission in reviewing, auditing and assessing cultural change occurring within the organisation.

6.17 The committee also notes the lack of urgency on the part of Defence in undertaking some critical reforms. In particular, the revised Defence Instructions (General) relating to the management of response to sexual assaults (clarifying when administrative and disciplinary action could be taken) was not released until 2014, some three years after this issue was identified by the DLA Piper Review.

6.18 A number of criticisms were made of the restricted disclosure processes adopted by Defence in establishing the processes of SeMPRO. The committee accepts

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6 Department of Defence, responses to questions on notice from the hearing on 13 August 2014, Question 12, pp 2-3.

7 Defence Abuse Response Taskforce, *Sixth Interim Report to the Attorney-General and the Minister for Defence*, June 2014, p. 23.

that the approach taken by Defence to restricted disclosures is necessarily constrained by a number of legal and practical realities. However, in the view of the committee there is room for improvement in relation to communication of these exceptions to victims. Other communications to victims of sexual assault could also be improved. In particular, the SeMPRO should develop resources which clearly advise persons considering contacting SeMPRO regarding options for the collection of forensic evidence and to clarify support options for former members of Defence.

6.19 The importance of trust in support services for victims of sexual assault was emphasised by a number of witnesses in relation to SeMPRO. The committee is concerned that, as a telephone service, SEMPRO is not providing the sort of personal assistance which would be most beneficial for victims of sexual offences. A local SeMPRO Support Officer (SSO) Network is being developed to provide on the ground support and information to clients, witnesses and their commanders and managers. However, in the view of the committee, SeMPRO should undertake more 'outreach' activities to build relationships of trust with Defence personnel and to facilitate face-to-face support for victims of sexual assault.

6.20 Defence recruits a large number of new personnel each year. The DLA Piper Review report highlighted that there are aspects of ADF environments which carry risk of abuse occurring and there are strong cultural factors which discourage reporting of abuse in Defence. Defence should not solely rely on the low levels of reported abuse or survey results in monitoring this issue. The committee believes Defence needs to be focused on prevention of abuse occurring at all times, even when there are no signs of trouble and particularly when there are signs of trouble such as spikes in absenteeism, disciplinary problems, or personnel reporting sick or leaving Defence.

## **Recommendation 2**

**6.21 The committee recommends that the Sexual Misconduct Prevention and Response Office (SeMPRO) develop resources to clearly advise persons considering contacting SeMPRO regarding options for the collection of forensic evidence and support options for former members of Defence.**

## **Recommendation 3**

**6.22 The committee recommends that the Australian Government provide additional resources to SeMPRO to facilitate further outreach activities and personal support to victims of sexual assault in Defence.**

## **Systemic issues raised in DLA Piper review reports**

6.23 The committee was not provided with specific responses from Defence or the Australian Government in respect of the 35 systemic issues identified in the DLA Piper Review report. As part of its response to the committee's previous report into the DLA Piper review and related issues, the Australian Government indicated that:

Noting that Pathway to Change is Defence's response to the Reviews initiated in 2011, Defence will consider the systemic issues and findings of the DLA Piper Review in this context.

6.24 The committee notes that the Chair has indicated that systemic issues will be included as part of the Taskforce's final report.<sup>8</sup> Defence has also indicated the systemic issues identified by the DLA Piper Review reports have been considered as part of the Rethinking Systems Review.

6.25 The systemic issues identified (or recommended for further consideration) as part of the DLA Piper Review should be explicitly responded to by the Australian Government. For example, in the committee's previous report it highlighted Issue S12 raised in the Supplement to Volume 1 which asked Phase 2 to consider whether it would be appropriate for Defence to seek the making of a regulation under the *Crimes Act 1914* that would add recruitment into the ADF to the exclusions from the operation of the spent convictions legislation. As far as the committee is aware there does not appear to be a Defence or Australian Government decision on this issue. This issue is relevant to character checks at point of entry into the ADF of personnel who may have access to vulnerable Defence personnel.

6.26 The committee is concerned that a response to these systemic issues may be lost between the Pathway to Change reforms (initiated by the former Minister), the Taskforce's recommendations (developed independently of Defence) and the Rethinking Systems Review (initiated by Defence itself). Following the next interim report of the Taskforce, the Minister for Defence is best-positioned to formally respond to the systemic issues identified in the DLA Piper Review.

#### **Recommendation 4**

**6.27 The committee recommends that following the next interim report of the Taskforce, the Minister for Defence table a formal substantive response to the systemic issues identified in the DLA Piper Review.**

#### **Access to veterans' entitlements and support**

6.28 The committee considers that the recent changes to access to non-liability health care will operate to assist some victims of abuse in Defence. However, there also appears to be potential gaps in this support. Where a person was discharged at their own request, before the three year requirement and not on medical grounds, they may not be eligible to access these services.<sup>9</sup> One of the challenges identified during the inquiry is that persons who have suffered abuse may leave military service early after an adverse experience and whose true reason for leaving may not be reflected in their official record of service. DVA should examine options to close this gap,

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8 The Hon Len Roberts-Smith, *Committee Hansard*, 26 September 2014, p. 28.

9 Mr Shane Carmody, DVA, *Committee Hansard*, 13 August 2014, p. 48.

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including through a recommendation for legislative change to the Australian Government if necessary.

### **Recommendation 5**

**6.29 The committee recommends the Australian Government introduce amending legislation to remove the three year minimum service requirement for eligibility for Non-Liability Health Care (NLHC) and to make NLHC available to any person who has had completed any service.**

6.30 There was considerable time spent during the inquiry on the various evidentiary tests for access to different assistance for victims of abuse in Defence. It is easy to understand the frustration experienced by victims of abuse who are denied access to DVA assistance 'on the balance of probabilities' after their claims of abuse have been determined to be 'plausible' by the Taskforce. The committee accepts that DVA officers are bound by the evidentiary burdens set by legislation in assessing the eligibility of applicants for compensation and assistance. However, it was made clear during the inquiry that victims of abuse can have a number of difficulties in making their claims, particularly where military records may be inaccurate.

6.31 It is encouraging that DVA is seeking to obtain information regarding 'clusters' of abuse identified by the Taskforce and may be able to take that information into account in assessing the claims of victims of abuse in Defence. However, the committee notes that difficulties with establishing eligibility for DVA benefits and support are relevant to persons affected by abuse in the Defence who have not come into Taskforce processes. Further, the difficulties in establishing eligibility for DVA benefits will continue to be relevant to persons affected by abuse in Defence after the Taskforce has ceased to operate.

6.32 Accordingly, it is the opinion of the committee that it is insufficient for DVA to confine consideration of patterns and clusters to information provided to DVA by the Taskforce. The committee recommends that the Minister for Veteran's Affairs direct the DVA to report to Parliament on what would be required to analyse DVA's own file material for clusters and patterns of abuse which could assist claimants to establish entitlements to DVA benefits.

### **Recommendation 6**

**6.33 The committee recommends that the Minister for Veterans' Affairs direct the Department of Veterans' Affairs (DVA) to commence consultation with veterans' representative organisations and to report back on:**

- **the legal and practical barriers there are to victims of abuse in the ADF succeeding in establishing the facts necessary to access entitlements to DVA benefits;**
- **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;**

- **what can be done in liaison with veterans' groups, other Australian 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.**

### **Community-based support**

6.34 During the inquiry the committee also received evidence from Mr Barry Heffernan from the William Kibby VC Veterans' Shed regarding a proposal for community based support for veterans who have suffered abuse. He described the initiative, Community-Based Defence Abuse Support (COMBADAS), as taking up where the Taskforce leaves off and providing a low cost alternative assistance program to victims of abuse in Defence:

COMBADAS will provide safe, supportive, non-judgemental community-based facilities for the support of ex-ADF members who have experienced abuse, and will address unmet emotional and communal needs.

COMBADAS will provide emotional, psychological, and financial/legal assistance to family members of veterans, so as to better enable them to come to terms with the emotional traumas experienced by their loved ones, and to handle the subsequently emotional burdens thereby imposed upon them.<sup>10</sup>

6.35 Given the large number of victims of abuse in Defence, many of whom potentially have not accessed the Taskforce or DVA assistance, alternative community based support may be a valuable and accessible resource. In the light of outcomes achieved to date and evidence from the Hon Len Roberts-Smith, the committee considers that the COMBADAS program is worthy of further consideration by the Department of Veterans' Affairs to ascertain if it could form the basis of a sustainable, national approach to supporting victims of Defence abuse. Any funding agreements with community-based support organisations should allow them to continue to advocate for victims of abuse in Defence.

### **Recommendation 7**

**6.36 The committee recommends the Department of Veterans' Affairs examine options to provide financial assistance to support a national, sustainable community-based approach to assisting veterans who have suffered abuse.**

### **The need for a Royal Commission**

6.37 The committee notes that some of the abuse suffered in Defence training institutions, where the victims were under 18 years of age, appear to fall within the scope of the terms of reference of the existing Royal Commission into Institutional

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10 *Submission 22*, p. 9-10.

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Responses to Child Sexual Abuse.<sup>11</sup> In the view of the committee, these cases of institutionalised abuse of minors, illustrated by the Taskforce report into HMAS Leeuwin, should be considered as part of that Royal Commission. The committee notes that the Taskforce has provided a copy of its HMAS Leeuwin report to the Royal Commission and understands some victims have already raised their experiences with the Royal Commission.<sup>12</sup>

6.38 The question of whether a Royal Commission into abuse in Defence is necessary is a key part of the terms of reference of the Taskforce. The Chair of the Taskforce is in the best position to make that recommendation, and the committee has confidence that he will make an appropriate decision. That said, the committee considers that this should not be perceived as a limited binary choice. While royal commissions have extensive inquiry powers, the committee does not agree with the concept that they are the sole possible solution if a further investigation or inquiry into abuse in Defence is considered necessary. Any further response to past abuse in Defence should be appropriately tailored to achieve defined outcomes and minimise the risk of creating further suffering for past victims of abuse in Defence.

6.39 The situation in relation to abuse in Defence is not always clear-cut. As the DLA Piper Review reports made clear, some of those who were initially victims of abuse in Defence, were influenced by their experiences and the prevailing institutional expectations and culture to become abusers themselves. Witnesses also emphasised to the committee that Defence does not exist in a vacuum and is constantly impacted by the problems of abuse which exist in the wider Australian community. In this context, the allocation of personal, institutional and societal responsibility can be ambiguous.

6.40 A key issue is the presence of persons within Defence, identified by the Taskforce, who are the subject to allegations of abuse. Some submitters to the inquiry considered that a Royal Commission was the only way to 'get' the perpetrators of abuse in Defence. However, the Taskforce through its processes (and with the consent of the complainant) has referred a number of allegations for investigation by the police or to Defence for administrative and disciplinary action. Existing administrative and disciplinary options within Defence may be sufficient to remove perpetrators of abuse. For example, the committee notes that amendments to Defence regulations have introduced a 'good character' consideration for personnel determinations and there are existing provisions to terminate the service of Defence personnel based on broad criteria such as 'performance', 'behaviour' or where the retention is not in the interest of the Defence Force.<sup>13</sup>

6.41 The committee notes that the Taskforce in its seventh interim report stated that in October 2013 Mr Roberts-Smith had made recommendations to the CDF to

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11 Royal Commission into Institutional Responses to Child Sexual Abuse, *Terms of Reference*, available at: <http://www.childabuseroyalcommission.gov.au/about-us/terms-of-reference>.

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

13 Defence (Personnel) Regulations 2002.

take action in relation to at least 12 serving members of the ADF, and to consider further action in another 13 cases.

6.42 Procedural fairness issues should not be ignored in considering any appropriate approach to abuse in Defence. Royal commissions can also produce negative outcomes in the course of their proceedings.<sup>14</sup> The committee notes that the *Royal Commissions Act 1902* was amended to facilitate private sessions of the Royal Commission into Institutional Responses to Child Sexual Abuse. Additional legislative amendments may be required if a Royal Commission into abuse in Defence is considered necessary.

6.43 The committee encourages the Taskforce and the Australian Government to consider a range of flexible options or mechanisms. The committee notes that overseas jurisdictions have successfully established and operated commissions to achieve truth and reconciliation outcomes in relation to past wrongs committed in a variety of institutions. For example, the Truth and Reconciliation Commission of Canada established to reveal past abuse in relation to the Canadian Indian residential school system demonstrates how such commissions can be tailored to meet the specific requirements.

### **Recommendation 8**

**6.44 The committee recommends that the Taskforce and the Australian Government assess the appropriateness of a range of responses to abuse in Defence, in addition to determining whether a Royal Commission should be established. The welfare of victims of abuse in Defence should be the primary consideration in any decision made.**

### **Release of Volume 2 of the DLA Piper report**

6.45 During the inquiry, the committee requested access to Volume 2 of the DLA Piper report. This was undertaken in private at Parliament House with access arrangements which reflected the confidentiality of the material, as well as the needs of senators to consider the material. The committee wishes to acknowledge its appreciation for the efforts of staff of the Taskforce and the Minister of Defence who facilitated this process.

6.46 On 21 August 2014, the committee wrote to the Taskforce requesting that specific parts of Volume 2 flagged by senators be released to the committee and, where necessary, redacted of any personal information or any material which could potentially identify any individual. The first tranche of these flagged documents containing summary and explanatory material (which did not require extensive redaction) were provided to the committee on 25 September 2014.

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14 Saxby Pridmore and Milford McArthur, 'Suicide and reputation damage', *Australian Psychiatry*, Vol 16, No. 5, October 2008, p. 312. Malcolm Brown, 'Holding judgement', *Sydney Morning Herald*, 9 June 2007, p. 28.



6.47 On 14 October 2014, the Taskforce wrote to the committee regarding the second tranche of flagged documents which contained sensitive personal information and had been requested by the committee to be provided following redaction. The Taskforce included correspondence with the Minister of Defence regarding the release of this second tranche of documents which discussed a number of privacy concerns, including the situation of victims of abuse who had provided information to the DLA Piper Review in confidence. In particular, the Taskforce requested the Minister consider making a public interest immunity claim in relation to the documents. The Minister agreed there were grounds for a valid public interest immunity claim but requested the Taskforce consider further negotiation with the committee that may negate the need for the claim to be made.

6.48 The committee acknowledges that differing views exist in regard to the value of the releasing of Volume 2 of the DLA Piper report. In particular, the committee does not wish to cause any additional concern or anxiety for persons who provided information to the DLA Piper Review in confidence. Due to the subject matter and the privacy concerns raised by the Taskforce and the Minister, the committee has made the decision not to further pursue the release of the second tranche of the flagged parts of Volume 2 which contained information about specific allegations and detailed personal information.

### **Recommendation 9**

**6.49 The committee recommends that no further parts of Volume 2 of the DLA Piper report should be released in summary or redacted form.**

### **Conclusion**

6.50 Overall, the committee's views have not significantly changed in relation to this topic since its previous report. While the committee shares the frustration expressed by some during the inquiry with the slow progress of reforms, it was always anticipated it would take time to achieve cultural change within Defence. As noted in the committee's previous inquiry, it is important to recognise that the issue of sexual and other abuse is not unique to Defence. It is a serious issue facing workplaces, educational institutions, cultural and religious organisations across Australia. Like any other large organisation, Defence will be required to undertake constant work both to prevent abuse, and to support and assist victims of abuse. In this context it is important for Defence's cultural reform programs to continue to be implemented and reviewed to ensure they are achieving success.

6.51 In the view of the committee, real progress has been achieved by Defence since the commencement of the Pathway to Change strategy. Support mechanisms for victims of abuse in Defence have improved since the DLA Piper Review. In particular, the committee was heartened by the evidence that there is an upward trend in the number of people within Defence who understand how they can make a complaint and have confidence that the Defence chain of command will act on their

behalf.<sup>15</sup> Nonetheless, there is clearly more work to be done. The committee anticipates that the Taskforce will have further recommendations to assist Defence to improve its cultural reform programs and prevent further abuse from occurring.

6.52 The establishment and operation of the Taskforce has been a bold initiative in assisting past victims of abuse in Defence. While many of its processes have not yet been completed it has achieved an impressive range of positive outcomes for victims of abuse. In contrast to the previous failures of the Australian Government's duty of care to protect victims of abuse in Defence, the Taskforce has professionally and respectfully provided assistance. In the view of the committee, its operations should be extended to assist the victims of abuse in Defence who are still seeking support.

**Senator Alex Gallacher**  
**Chair**

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15 Mr Geoff Earley, IGADF, *Committee Hansard*, 13 August 2014, p. 27.

## **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.

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## 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 or 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

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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**



## Additional comments by Senator Xenophon

1.1 While I support recommendations 1 to 7 in the committee's report, I cannot support recommendation 8. It is important to set out how successive governments, parliaments, and our Defence Force have, over half a century, abysmally failed - boys and girls, men and women who have suffered horrendous abuse while serving their country. The failure of the committee to call for a Royal Commission into defence abuse is a chasm that cannot be ignored.

1.2 In relation to the *Pathway to Change* strategy released by Defence in March 2012 as to the response to the Culture Reviews, it should be noted that Volume 1 of the DLA Piper Review report<sup>1</sup> appears not have been considered in the formulation of this strategy, notwithstanding that Volume 1 was available at the time. This is a glaring omission.<sup>2</sup>

1.3 Further to 2.51 of the committee's report related to CDF General David Hurley's apology to the victims, it should be noted that the CDF's comments were high-level general statements, and failed to be an adequately powerful statement. The fact that General Hurley had not seen, at the time of the apology, the detailed accounts in Volume 2 of the DLA Piper Review report may explain the lack of force in his apology. General Hurley had not seen Volume 2 because the Government decided that Volume 2 not go to Defence, contrary to DLA Piper's terms of reference.<sup>3</sup> This too is most unsatisfactory.

1.4 In relation to the ADFA 24, I am concerned that the Taskforce has yet to provide a report on this, almost two years since the Taskforce was established. Given the gravity of the issues raised - the alleged rape of 26 female cadets by 24 male cadets - and recognition that there were many more similar incidents in the years preceding 1998, this is simply unacceptable.

1.5 I am also concerned that this drawn out process in respect of the ADFA 24 will discourage victims of abuse from participating in any investigation and may dissuade other victims from coming forward.

1.6 Further on the ADFA 24, I note that the Taskforce in its 7th report (page 26) in September 2014, stated that in October 2013 Mr Roberts-Smith had made recommendations to the CDF to take action in relation to at least 12 still serving members of the ADF, and to consider further action in another 13 cases. These are matters of great national importance, that go to the heart of the integrity of the processes that are meant to protect ADF personnel. The fact the outcomes of those

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1 <http://www.defence.gov.au/pathwaytochange/docs/DLAPiper/Background.asp>

2 Department of Defence, responses to questions on notice from the hearing on 13 August 2014.

3 *Submission 8*, Supplementary 1, Annexure 2.

recommendations are not yet known to the committee is indicative of deep systemic failures within Defence and government.

1.7 In relation to the report on HMAS Leeuwin, I note that although the Taskforce delivered a lengthy 98 page report, the Taskforce did not offer any detailed recommendations to respond to the ongoing aspects of the abuse.

1.8 I would also note that the Taskforce acknowledged that that Defence training establishments like HMAS Leeuwin may still have a high risk of abuse occurring, and flagged there would be recommendations in later reports. However, it is extraordinary that not even basic or preliminary recommendations were included in that report, given such establishments are high risk for abuse of the most vulnerable members of the ADF. The lack of any recommendations on the part of the Taskforce shows an appalling lack of urgency on its part.

1.9 One of the ten recommendations set out by the 2013 Senate committee inquiry was a recommendation that Defence should formally report on each response to all of the systemic issues identified in the DLA Piper Review report.<sup>4</sup> When again asked to provide a response at the 13 August 2014 hearing, the ADF provided a written response which was general, without stating what actual decisions have been made. Frankly, I find this to be offensive to the Senate and the victims of abuse.

1.10 On the topic of whether there was sufficient publicity for the Taskforce, I note that many of the victims of abuse are so socially isolated and marginalised that they would be unlikely to see conventional newspaper advertising of the Taskforce.<sup>5</sup>

1.11 Further I also query whether the Taskforce could have used other forms of media including talkback radio, breakfast TV, and social media to raise the profile of its important work and reach out to victims.

1.12 In addition, the Taskforce appears to have done nothing to inform victims of sexual assault in the ADF, who previously were told that Defence would do nothing with their complaints because of the former flawed DI(G)<sup>6</sup>, that Defence could now consider action.<sup>7</sup>

1.13 On the issue of the rank of ADF personnel participating in the restorative engagement program, I note that Dr Rumble in his evidence raised the legitimate concern that the program only involved senior officers and therefore would not bring

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4 *Report of the DLA Piper Review and the Government's Response*, June 2013, p. xii.

5 Mr Barry Heffernan, *Committee Hansard*, 26 September 2014, p. 8

6 Dr Rumble, *Committee Hansard*, 13 August 2014, p.17. Dr Rumble, responses to questions on notice from hearing 26 September 2014 – Answer to Question 1. DLA Piper Review, *Volume 1*, pp 139-145; DLA Piper Review, *Supplement to Volume 1*, pp 67-70.

7 *Submission 8*, Supplementary 4, p. 35.



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understanding of abuse impacts across the ADF ranks generally.<sup>8</sup> Limiting the restorative engagement program to senior officer limits its capacity to effect cultural change.

1.14 In relation to access to counselling services and other support for victims of abuse in the ADF - the Taskforce Chair's comments beg the broader question of the role of the Department of Veterans Affairs (DVA) in providing ongoing support to victims of abuse.

1.15 In relation to whether Taskforce consideration of media allegations should be dependent on a complainant opting in to the Taskforce process, I am concerned that the narrow construction the Taskforce has taken of its role may mean, for instance, the lack of a public Government response to unsubstantiated allegations of a cover-up which can be republished at any time may discourage other victims from coming forward. The fact that such allegations have been published in the media should have triggered action from the Taskforce - and ultimately the Government - irrespective of the specific consent of a victim. Furthermore, some of the allegations involved allegations of Defence mismanagement which could and should be investigated, reported on and publicly responded to by Defence without any need to involve a victim.

1.16 It is not clear to me why the ADF have not committed to zero incidence of sexual assault and abuse, when employers generally commit to zero incidence of workplace injury.<sup>9</sup>

1.17 I am concerned at the apparent lack of urgency in Defence introducing the new DI(G) to replace the flawed DI(G) dealing with management of allegations of sexual assault. The flawed DI(G) directed that if there was an allegation of sexual assault against an ADF member no administrative or disciplinary action should be taken. Defence had been alerted to the problems with the DI(G) by the DLA Piper Review report of October 2011.<sup>10</sup> Vice Admiral Griggs acknowledged in his appearance before the committee that there had been problems with the DI(G):

I would say it was fair to say that there was a period there where we gave primacy to the investigative process, the formal police investigative process, and there was a reluctance to take administrative action because there was a fear that this was some sort of double-jeopardy thing. Now it

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8 *Submission 8*, Supplementary 4, pp 43-44.

9 Vice Admiral Ray Griggs, *Committee Hansard*, 13 August 2014, p.60.

10 <http://www.defence.gov.au/pathwaytochange/docs/DLAPiper/Background.asp>. DLA Piper Review, Volume 1, pp.139-145. Dr Gary Rumble, *Committee Hansard*, 13 August 2014, p. 17. Dr Gary Rumble responses to questions on hearing 26 September 2014 – Answer to Question 1. DLA Piper Review, *Volume 1*, pp 139-145.; DLA Piper Review, *Supplement to Volume 1*, pp 67-70.

actually is not...there was a policy statement earlier this year to reinforce that.<sup>11</sup>

1.18 The fact that it took from 2011 to 2014 for there to be any Defence response to this disastrous DI(G) which in effect protected abusers, including perpetrators of rape, is shameful.

1.19 I also note with concern that it seems the replacement DI(G) - DI(G) PERS 35-4 - which was provided to the committee by Defence after the 13 August 2014 hearing, appears not to have come into force until 19 August 2014.

1.20 The committee's report has noted that in its first year of operation, SeMPRO has not had a single report of sexual assault within 72 hours of the incident.<sup>12</sup> I am concerned that victims therefore have not been getting prompt assistance from SeMPRO. Further, as no forensic evidence has been collected this has minimised the chance of effective action against perpetrators. SeMPRO has also not been able to alert the ADF promptly of risks to serving ADF personnel.

1.21 The new DI(G) PRS 35-4 which came into effect on 19 August 2014, sets out the basis upon which SeMPRO will refuse to accept a disclosure on a restricted basis. Dr Rumble raised a pertinent question as to whether those grounds of refusal are actually required by law as asserted by Defence. This assertion based on Dr Rumble's detailed analysis is dubious at best.<sup>13</sup> If the law does prevent Defence from being able to offer victims genuine restricted reporting then a real question is raised as to whether the law should be changed.

1.22 The 35 systemic issues identified in the DLA Piper Review report over two years ago are wide-ranging. It is not acceptable that all that the ADF has told the committee is that they are taking those issues 'into account'. For example, surely the ADF has had enough time to make a decision about Issue 16, as set out in October 2011 in Volume 1 of the DLA Piper Review report:

The ADF should consider establishing a system for liaison with local civilian police forces similar to the US Military's Sexual Assault Regional Team, either dealing with ADF/civilian police interactions generally or limited to sexual assault issues.

1.23 Surely Defence could have reached a prompt conclusion one way or the other over such an unambiguous recommendation.

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11 Vice Admiral Ray Griggs, *Committee Hansard*, 13 August 2014, p. 57.

12 Department of Defence, responses to questions on notice from the hearing on 13 August 2014.

13 *Submission 8*, Supplementary 4, pp.30-34.

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## Recommendation

**The Minister of Defence should direct Defence to report to the committee on what specific decisions have been made by the ADF and the Government about each of the 35 systemic issues identified in the DLA Piper Review report within 30 days of tabling of this report.**

1.24 Further to the committee's recommendation 6 in this report I make the following comments:

1.25 Over the course of this reference the Committee has heard some very disturbing accounts of abuse, and of ADF mismanagement of abuse and abuse allegations. Many of these accounts relate to incidents from many years back. However, some of the accounts relate to quite recent events.<sup>14</sup>

1.26 Volume 1 of the DLA Piper Report summarised many previous reports identifying cultural pressures which have discouraged reporting in the ADF (Chapters 4 and 5).

1.27 The committee heard consistent evidence from many witnesses to the effect that there are still very strong cultural factors discouraging current ADF personnel from reporting abuse.<sup>15</sup> That indicates a very serious systemic issue.

1.28 I note further that Mr Roberts-Smith has explained to the Committee that only a small minority of individuals who have come into the Taskforce's processes have agreed to have their matters referred to the ADF for possible disciplinary or administrative action against the perpetrators.<sup>16</sup> This indicates a very concerning lack of confidence and trust in ADF processes. That lack of confidence signals an underlying major systemic issue.

1.29 If ADF personnel do not report abuse and do not want to participate in disciplinary or administrative processes to deal with perpetrators, then it must follow that there are still perpetrators in the ADF who represent risks to other ADF personnel. The Taskforce itself has not carried out any investigation.<sup>17</sup>

1.30 It must also follow that many of these perpetrators will still be amongst the ranks of the officers and NCOs. Officers and NCOs are the very people who should be role models and who should be driving and entrenching positive cultural change.

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14 Ms Rachael James and Mr Adair Donaldson, *Committee Hansard*, 13 August 2014, p. 3.

15 Ms Rachael James and Mr Adair Donaldson, *Committee Hansard*, 13 August 2014, pp 3, 5; Mr Barry Heffernan, *Committee Hansard*, 26 September 2014, p. 3; Dr Gary Rumble, *Committee Hansard*, 26 September 2014, pp 13, 16-17.

16 Mr Barry Heffernan, *Committee Hansard*, 13 August 2014, p. 3.

17 The Hon Len Roberts-Smith, *Committee Hansard*, 26 September 2014, p. 21.

Having any perpetrators serving in Defence, particularly in these roles, is a cancer on the ADF.

1.31 This must represent a threat to the culture of the ADF and has the potential to undermine the *Pathway to Change* strategy for cultural change. That signals another underlying major systemic issue.

1.32 I note that Mr Roberts-Smith in his recent appearance before this Committee on 26 September 2014 stated that:

We have seen so many cases where it would have taken just one person in the chain of command to do the right thing to either stop an incident of abuse or at least deal with it and hold the abuser to account immediately.

1.33 That raises very serious issues about the adequacy of ADF's response to abuse over time.

1.34 That is yet another major systemic issue.

1.35 There is no doubt - over the last few years - the ADF has moved to change culture at many levels. However, the ADF has shown a reluctance to change in some other ways which are directly relevant to the welfare and safety of ADF personnel. For instance:

- In its first year of operations, the version of 'restricted reporting' which Defence has introduced through SeMPRO failed to attract a single report of sexual assault within the first 72 hours after an incident.
- The Vice Chief of the Defence Force told the Committee that the ADF refuses to commit to zero incidence of abuse in the ADF 'because 'We will never get to zero incidence'.<sup>18</sup>
- Defence has refused to seek to identify areas where unreported abuse may be occurring.<sup>19</sup>
- It took Defence three years to amend the defective DI(G) which told Commanding Officers that they should not take any administrative action on allegations of sexual assault. That signals a breathtaking complacency and lack of urgency on the part of Defence to deal with sexual assault issues.

1.36 These failures approach culpable negligence in relation to the safety and welfare of ADF personnel.

1.37 These decisions are very bad news for individual ADF members affected by abuse. These decisions also very bad news for the integrity of the ADF.

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18 Vice Admiral Ray Griggs, *Committee Hansard*, 13 August 2014, p. 61.

19 *Submission 8*, Part II, Annexures 1-5.

1.38 We have also seen that individuals who were damaged by abuse in the ADF face considerable barriers to making out their eligibility for DVA benefits and support.<sup>20</sup>

1.39 Serious questions have been raised about whether the Commonwealth through Defence and DVA has fulfilled its model litigant and moral obligations to these individuals and their families.<sup>21</sup>

1.40 The fact that there is this institutional resistance to change demonstrates why the important systemic issues can only be attacked effectively by a well-resourced body with authority and standing to apply rigour and intensive investigation. Only a Royal Commission can do this.

### **Recommendation**

**That there be a Royal Commission to inquire into:**

- **the adequacy of Defence and Government responses to abuse in the ADF;**
- **the adequacy of Defence and Government responses to support all victims of abuse in the ADF – not just those who have come into the Taskforce's processes;**
- **what can be done to improve rates of reporting of abuse in the ADF;**
- **what can be done to improve confidence of ADF personnel in ADF processes for responding to allegations of abuse; and**
- **whether there are still perpetrators of abuse in the ADF and if so what to do about that.**

1.41 It has been suggested that a Royal Commission would in some way be unfair to suspected perpetrators. To this I say:

- ADF personnel are used to requirements of vetting for national security and other issues. There are some roles for which people need to be beyond suspicion.
- No doubt a Royal Commission would be sensitive to the need to provide procedural fairness in the conduct of its investigations.

1.42 A Royal Commission need not be and should not be the only response. There should also be assistance for victims – such as the assistance which has been offered by the Taskforce and DVA – in parallel with the Royal Commission's work. There is no reason why a Royal Commission could not coordinate its work with processes providing such assistance.

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20 Department of Veterans' Affairs, *Committee Hansard*, 14 August 2014, pp 40-50.

21 *Submission 8*, Attachment 2, Annexure 3.

1.43 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 Taskforce offered – to come forward and to enable informed and convincing resolutions on the systemic issues.

1.44 The Royal Commission into Institutional Response to Child Sexual Abuse provides a model of how a Royal Commission can be conducted in a manner which takes into account the sensitivities and needs of victims of abuse and which actually empowers and assists victims of abuse including many who had not previously told their story to anyone.

1.45 The Royal Commission into Institutional Response to Child Sexual Abuse is demonstrating the impact which contemporaneous media reporting of real people's stories told to the Commission can have in raising understanding of the issues amongst the institutions and amongst the general community.

1.46 I note there have not been many voices to date calling for such a Royal Commission.

1.47 Given the strong cultural factors which discourage members of the ADF from reporting even within ADF processes it is not surprising that members of the ADF have not been stepping out of the ranks to make that call.

1.48 However, there have been two individuals who have deep knowledge of these issues who have supported the establishment of a Royal Commission.

1.49 One of these individuals is Colonel (ret) Ken Northwood who conducted the investigations of the ADFA 24 in 1998 and who worked with the Taskforce on these issues again in 2013. On a recent Four Corners program, Colonel Northwood called for a Royal Commission.<sup>22</sup>

1.50 Dr Gary Rumble who led the DLA Piper Review has also called for a Royal Commission and has supported that call with his detailed submissions to the Committee.

1.51 I give weight to the fact that these two individuals who have deep knowledge of the issues and of the ADF's and successive Governments' responses to these issues have supported a Royal Commission.

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22 Australian Broadcasting Corporation, Chamber of Horrors, Four Corners, 9 June 2014, available at: <http://www.abc.net.au/4corners/stories/2014/06/09/4019501.htm> (accessed 30 October 2014). Transcript tabled by Dr Gary Rumble at public hearing 13 August 2014.

1.52 I also give weight to the submission to this committee of Mr Neil Stuart who went through a Restorative Engagement session. His submission includes these powerful perspectives:

I have been reflecting on my perspective since approaching DLA Piper and what I've heard of abuse experience of other people in Defence. As I'm seeing it, the Response (the institutional response) has been to focus on the individuals who've told their stories and to offer some balm and quieten them down. So all my energy and input has been contained and channelled into the four sets of responses determined by DART. It is as if I am one of a list of cases and one by one they are being methodically ticked off. Now I've been ticked off.

...I submit what we are faced with is an institution which has systematically insulated itself from knowing about the intentional sexual abuse which has happened and is happening. The silence, the failure to talk openly about what happens or might (page 5) happen fosters secrecy, putting it out of sight or hearing. Men do rape men, soldiers rape fellow-soldiers – that has to be said, not just in counselling, not just in the CO's office, not just in the restorative engagement conferences but out there in the public arena.

The DART processes have placed much emphasis on confidentiality. For instance, at the end of the Restorative Engagement Conference, I was asked to sign an agreement that I would not disclose what took place in that Conference. Perhaps there are times for confidentiality. My sense is that what happened is that I have become confined and isolated. My sense is that the practices of secrecy and silence are being reinforced. I have nothing to hide. Does DART? Does Defence?

Restorative Engagement hasn't changed/restored what happened and can't change/restore what's happened. That's an illusion. I haven't (page 6) bought into that illusion. Nothing makes up for what has been broken... My life, the lives of others abused, aren't going to be restored. The main good thing, I was thinking, is that my story had been truly listened to and seems to have been believed. Now, having read about the experience of Aaron Frazer...I wonder just how fair dinkum is the statement that my story is believed. If it is to be fair dinkum there's got to be more than individual solace. That listening has to come out of the confessional/clinical reporting process, the Restorative Engagement Conference, into which it's been channelled and into the wider culture of Defence which permits these abuses.

...

There has to be more than treating the hurt of the injured individuals – which is akin to keeping everything within the confessional or within the treatment room or within the family, which is the way the DART casework approach has been shaped. I'm not a case – it's bigger than me or any other individuals...

I challenge the Committee to understand Defence's responsibility for an institutional culture which permits, maintains and maybe even rewards silence around rape and other sexual abuses within Defence. I challenge (page 7) the Committee to understand how stigma works as a tool of

silencing and of removal of freedoms, especially freedom to speak. I challenge the Committee to break open the culture of silence. I don't need pity. I have never needed pity. What I need is to see emerge a culture which permits, even celebrates, my right and the rights of others to speak of what we have experienced. I need an end of silence. If the Committee does not understand these things, then it understands very little.

I need for there to be a process which enables me, as a person who has experienced sexual abuse within Defence, to make a 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 the silence are blown away and Defence is held accountable for how it must change.

1.53 Another victim – a woman who experienced two years of abuse and bullying at ADFA pre-1998 – told Dr Rumble:

It is time that the ADF was held to account. A Royal commission would be the most powerful statement that this is not an acceptable part of Australian society. I feel also feel that ADF needs to weed out the bad eggs, if for no other reason than that the decent people of the ADF do not have a shadow cast over their careers. They should also ensure that people who have been abused are cared for, as not everyone is OK.

1.54 I agree. If a Royal Commission is not established, I fear this Parliament may well revisit these issues again in the next few years, when the next scandal of abuse in Defence surfaces.

1.55 I acknowledge that the Government and the Opposition do not support calls for a Royal Commission - yet my plea to any member or former member of the ADF reading this who has experienced or knowledge of abuse, particularly victims of the ADFA 24, to speak out in support of such a Royal Commission. I understand that survivors of abuse may not wish to speak out publicly. However, if survivors wish to meet with members of the Government and Opposition to tell them face-to-face of what happened to them, I am prepared to assist personally to facilitate any such private and confidential meeting. To para-phrase Edmund Burke:

All that is necessary for the triumph of evil is that good men, and women do nothing.

I can be contacted at [Senator.Xenophon@aph.gov.au](mailto:Senator.Xenophon@aph.gov.au) or on 08 8232 1144.

1.56 Finally, I dedicate these additional comments to Neil Batten who had the enormous courage to come and see me over three and half years ago (with the tremendous assistance and advocacy of Barry Heffernan from COMBADAS). His recounting of the abuse he suffered over 40 years ago as a 15 year old naval junior recruit at HMAS Leeuwin still shocks and appals me. The dreams of a boy wanting to proudly serve his country were destroyed in a disgusting and brutal manner. However, what is even worse is that the perpetrators went on to pursue successful careers in the



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Navy, whilst Neil's life was deeply traumatised. This is for you Neil, and so many others like you.

**Senator Nick Xenophon**



# **Appendix 1**

## **Public submissions**

- 1 Defence Force Welfare Association
- 2 Mr Garry Bates
- 3 Mr Neil Stuart
- 4 Mr Brian Briggs, Slater & Gordon Lawyers
- 5 Confidential
- 6 Mr Peter Nathan
- 7 Mr Geoff Earley AM, Inspector General ADF
- 8 Dr Gary Rumble
- 9 Confidential
- 10 Ms Julia Delaforce
- 11 Department of Veterans' Affairs
- 12 Mr Adair Donaldson, Shine Lawyers
- 13 Ms Elizabeth Broderick, Sex Discrimination Commissioner
- 14 Victims of Abuse in the Australian Defence Force Association
- 15 Australian Federal Police
- 16 Ms Nicalene Jones
- 17 Department of Defence
- 18 Confidential
- 19 Mr Michael Price
- 20 Mr Peter Criss AM
- 21 Defence Abuse Response Taskforce
- 22 Mr Barry Heffernan

23 Defence Abuse Support Association

24 Confidential

25 Confidential

26 Mr Glyn Treadwell

## **Appendix 2**

### **Public hearings and witnesses**

#### **Wednesday 13 August 2014 — Canberra**

CARMODY, Mr Shane, Chief Operating Officer, Department of Veterans' Affairs

DONALDSON, Mr Adair, Shine Lawyers

EARLEY, Mr Geoff, Inspector General, Inspector General Australian Defence Force

EHLERS, Air Commodore Henrik, Director General, Cultural Reviews Response, Department of Defence

FOREMAN, Ms Lisa, First Assistant Secretary, Rehabilitation & Support, Department of Veterans' Affairs

GRIGGS, Vice Admiral Ray, Vice Chief of the Defence Force, Department of Defence

HARRIGAN, Mr Mark, Assistant Secretary, Rehabilitation & Entitlements Policy, Department of Veterans' Affairs

JAMES, Ms Rachael, Slater & Gordon Lawyers

ROBERTS-SMITH, The Honourable Len, Chair, Defence Abuse Response Taskforce

RUMBLE, Dr Gary, former DLA Piper Review leader

#### **Friday 26 September 2014 — Canberra**

HALL, Mr Matthew, Executive Director, Defence Abuse Response Taskforce

HEFFERNAN, Mr Barry John, Shed Coordinator, William Kibby VC Veterans Shed

ROBERTS-SMITH, Hon. Leonard William, RFD, QC, Chair, Defence Abuse Response Taskforce

RUMBLE, Dr Gary Albert, Private capacity



## **Appendix 3**

### **Tabled documents, answers to questions on notice and additional information**

#### **Correspondence**

- Correspondence from the Hon Len Roberts-Smith RFD QC, Chair of the Defence Abuse Response Taskforce, received 17 September 2014
- Correspondence from the Hon Len Roberts-Smith RFD QC, Chair of the Defence Abuse Response Taskforce, received 20 October 2014

#### **Additional Information**

- ABC Four Corners episode "Chamber of Horrors" (9 June 2014) - Tabled by Dr Gary Rumble at public hearing on 13 August 2014, Canberra.
- Transcript of Radio National interview with CDF General David Hurley (28 April 2014) - Tabled by Dr Gary Rumble at public hearing on 13 August 2014, Canberra.
- Correspondence with the office of the Minister for Defence (part 1)- Tabled by Dr Gary Rumble at public hearing on 13 August 2014, Canberra
- Correspondence with the office of the Minister for Defence (part 2) - Tabled by Dr Gary Rumble at public hearing on 13 August 2014, Canberra.
- Opening statement by Inspector General Australian Defence Force at public hearing on 13 August 2014, Canberra.
- Opening statement by Hon Len Roberts-Smith RFD, QC at public hearing on 13 August 2014, Canberra.
- Opening statement by Vice Admiral Griggs AO, Vice Chief of the Defence Force, Department of Defence at public hearing on 13 August 2014, Canberra
- Key Statistics tabled by Defence Abuse Response Taskforce at public hearing on 26 September 2014, Canberra
- Feedback from Complainants tabled by Defence Abuse Response Taskforce at public hearing on 26 September 2014, Canberra
- Opening statement by Hon Len Roberts-Smith RFD, QC at public hearing on 26 September 2014, Canberra

#### **Answers to questions on notice**

##### **Wednesday 13 August 2014 — Canberra**

- Roberts-Smith, The Hon Leonard William, RFD, QC, Chair, Defence Abuse Response Taskforce
- Department of Defence
- Department of Veteran's Affairs
- James, Ms Rachael, Slater & Gordon Lawyers

##### **Friday 26 September 2014 — Canberra**

- Roberts-Smith, The Hon Leonard William, RFD, QC, Chair, Defence Abuse Response Taskforce
- Rumble, Dr Gary Albert, Private capacity





## Appendix 4

### Previous recommendations of the committee and government response

<p><b>Recommendation 1</b></p> <p>The committee recommends that Defence prominently display, and commemorate, the apology by the Minister of Defence and the Chief of the Defence Force to victims of abuse in Defence.</p>	<p>Government Response - Agree</p> <p>The apologies delivered by the Chief of the Defence Force and the then Minister are accessible to all Australians on the Defence Abuse Response Taskforce website and on Defence's internal and external websites. Defence referred to the apologies in its Annual Report.</p>
<p><b>Recommendation 2</b></p> <p>The committee recommends 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.</p>	<p>Government Response – Agree</p> <p>Noting that Pathway to Change is Defence's response to the Reviews initiated in 2011, Defence will consider the systemic issues and findings of the DLA Piper Review in this context.</p>
<p><b>Recommendation 3</b></p> <p>The committee recommends that Defence actively encourage senior officers to participate in the Defence Abuse Response Taskforce's restorative engagement program with victims of abuse.</p>	<p>Government response – Agree</p> <p>Defence has affirmed to the Chair of the Defence Abuse Response Taskforce...its commitment to supporting and participating in the Restorative Engagement Program.</p> <p>The Defence Abuse Response Taskforce and Defence are working collaboratively to establish arrangements for implementing the program, including a framework underpinned by the best practice principles and values of restorative practice and mediation.</p>

<p><b>Recommendation 4</b></p> <p>The committee recommends that Defence provide a waiver of any confidentiality or non-disclosure agreement which could prevent a person from engaging with the Defence Abuse Response Taskforce.</p>	<p>Government response – Agree</p> <p>Defence, in consultation with the Defence Abuse Response Taskforce, has prepared a 'limited waiver of confidentiality and deed of release and indemnity' so that persons who have previously settled a claim against Defence involving allegations of sexual or other forms of abuse by Defence personnel are not prevented from having their matter dealt with by the Taskforce</p>
<p><b>Recommendation 5</b></p> <p>The committee recommends that, following the conclusion of the Defence Abuse Response Taskforce's operation, the Minister for Defence facilitate the productive use of the Taskforce's depersonalised statistical database of information regarding reported incidents of abuse in Defence.</p>	<p>Government response – Agree</p> <p>Defence and the Defence Abuse Response Taskforce have agreed the value of providing an appropriately depersonalised database. Work is underway to achieve this outcome.</p>
<p><b>Recommendation 6</b></p> <p>The committee recommends that the Australian Government commission an independent review to determine whether any of the functions of the Defence Abuse Response Taskforce's should continue and how to ensure these functions can continue to be performed effectively. This independent review will report its findings and make recommendations to the Minister for Defence, the Attorney-General and the Minister for Veterans Affairs.</p> <p>The committee recommends that, at the conclusion of this independent review, the Minister for Defence, the Attorney-General and the Minister for Veterans'</p>	<p>Government response – agree in principle</p> <p>The Australian Government notes that the Defence Abuse Response Taskforce is independent of Defence and it has advised that it sees value in some form of review taking place toward the end of its outcome delivery phase. Such a review could then be assessed by the Minister for Defence, the Attorney-General and the Minister for Veterans' Affairs, to decide if any of the functions of the Taskforce should continue in another form.</p> <p>While the Australian Government is supportive of a review taking place, it considers that it is too early, at this time, to form a clear view on exactly what form the review should take. The Taskforce is</p>

<p>Affairs, should assess whether any of the functions of the Defence Abuse Response Taskforce should continue in another form.</p>	<p>currently approved to operate to the end of November 2014 and the terms and scope of any review should be reconsidered at a later stage</p>
<p><b>Recommendation 7</b></p> <p>The committee recommends that Defence implement recommendation 19 of the Inspector-General of the Australian Defence Force's review—that the appointment of case officers to support complainants and respondents should be required in all cases.</p>	<p>Government response – Agree</p> <p>This recommendation was agreed as part of Pathway to Change and is being implemented.</p>
<p><b>Recommendation 8</b></p> <p>The committee recommends that Defence assess whether additional support services for victims of non-sexual forms of abuse should be included within the Pathway to Change cultural reforms.</p>	<p>Government response – Agree</p> <p>The Australian Government notes action by Defence in Pathway to Change that will, through sustained effort to implement practical measures, corrective processes and structure and support, achieve Defence's cultural intent.</p>
<p><b>Recommendation 9</b></p> <p>The committee recommends that Defence engage in dialogue with associations which represent the interests of victims of abuse in Defence.</p>	<p>Government response – Agree</p> <p>Defence will examine, in conjunction with the Department of Veterans' Affairs, avenues for dialogue.</p>
<p><b>Recommendation 10</b></p> <p>The committee recommends that, at the completion of the implementation of the Pathway to Change strategy, the Australian Government conduct an independent review of its outcomes and an assessment of the need for further reform in Defence.</p>	<p>Government response – agree in principle</p> <p>Noting existing mechanisms of reporting and oversight of Pathway to Change by Government and the Parliament, the Australian Government will consider the necessary activity for evaluating Defence's efforts to achieve cultural change and measures of success.</p>

