

Chapter 5

Processes for responding to allegations of abuse

Introduction

5.1 This chapter provides an outline of Defence processes for responding to allegations of abuse. It will also address the three issues identified in term of reference (c) relating to the need for a victim's advocacy service; systemic and cultural issues related to reporting and investigating abuse; and data and information collection and dissemination regarding abuse in Defence.

Processes for responding to allegations of abuse

Australian Defence Force

5.2 Currently, the Defence processes for dealing with incidents of abuse are contained in the Defence Instructions (General) (DI(G)) dealing with the management of unacceptable behaviour, sexual offences and notifiable incidents. Defence provided the committee with an outline of the procedures for reporting a sexual assault. This outline referenced a number of Defence policy documents. It noted that all alleged sexual offences which occur in the Defence workplace must be immediately reported to the ADF Investigative Service (ADFIS) who coordinate and determine the appropriate jurisdiction for handling the matter. It explained:

Sexual offences are 'notifiable incidents' and must be reported to ADFIS who must then act in accordance with Defence Instruction (General) ADMIN 45-2 – *The Reporting and Management of Notifiable Incidents*. Irrespective of the decisions made by ADFIS, any sexual offence complaint involving an ADF member, Defence APS employee or Defence contracted staff member as the complainant, respondent or witness must be managed as a workplace issue and in accordance with Defence Instruction (General) PERS 35-4...

Defence policy provides multiple options for the complainant to report an incident of sexual offence. While Defence's policy is that a complaint should be made to the complainant's commander or manager, other options remain available to the complainant. These include health provider, civilian or Service police, a more senior person in the chain of command or line management...

Commanders and managers are responsible for the management of sexual offence complaints in the workplace involving people under their supervision.

Therefore, commanders and managers are responsible to ensure the matter is immediately notified to ADFIS, and with the advice of ADFIS, to determine the most appropriate way to manage the matter in accordance with Defence Instruction (General) PERS 35-4...

Upon notification to ADFIS of a Notifiable Incident, ADFIS must take into account the range of jurisdictional and operational considerations and, where appropriate, report the alleged offence to civilian police. Serious sexual assaults cannot be investigated by ADFIS without consent pursuant to section 63 of the Defence Force Discipline Act. Therefore these matters are referred to the civilian police and ADFIS remains the Defence liaison.¹

5.3 The processes for responding to allegations of abuse were recently assessed as part of the Defence cultural review completed by the Inspector-General ADF—the *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction*. The Inspector-General ADF made 38 recommendations covering a broad range of areas. In relation to the management and reporting of unacceptable behaviour and unacceptable sexual behaviour, the Inspector-General ADF found that:

ADF personnel, including those who have only recently joined, appear to be aware of their complaint avenues. There appears also to be a high level of confidence in management processes for unacceptable behaviour complaints. However, relevant policy is confusing and in urgent need of reform and consolidation.²

5.4 The Inspector-General ADF made a number of specific recommendations in this area, largely focusing on inconsistencies in key policy documents. In summary, these recommendations included that:

- where suitable, greater use of alternative dispute resolution across Defence should be encouraged (Recommendation 18);
- the appointment of case officers to support complainants and respondents should be required in all cases (Recommendation 19);
- Defence Instructions dealing with management and reporting of unacceptable behaviour and sexual offences should be reviewed to clarify the administrative action which may be taken when disciplinary action is pending (Recommendation 20);
- the policy on management of all unacceptable behaviour and sexual offences should be combined in a single policy reference (Recommendation 21); and
- Defence's administrative policies should be amended to provide for administrative suspension from duty, including the circumstances in which a Commander may suspend an ADF member and the conditions which may be imposed on the suspended member (Recommendation 22).³

1 Department of Defence, answers to questions on notice, Question 5, pp. 8–10.

2 Inspector-General ADF, *Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction*, 2011, p. i.

3 Inspector-General ADF, *Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction*, 2011, pp. 25–28.

Defence cultural reforms and the Re-Thinking Systems Review

5.5 The Pathway to Change strategy identified 'Corrective processes' as one of the six key levers for implementing cultural change in Defence. In this area it stated:

Our attitudes towards misconduct and approaches to responding to incidents are informed by our culture. Many of our current challenges in managing bad behaviour are the product of incoherent policy amendments and inconsistent approaches to managing our rules in the past.

The Review of the Management of Incidents and Complaints in Defence reinforces that the actual boundaries we have set for ourselves are mostly fitting, but the actions we take when our people act outside these boundaries are not always effective. The Pathway to Change will simplify approaches for dealing with misconduct through policy amendment, including changes to privacy policy. We will more clearly communicate these approaches to make them easier to understand.

As we make these improvements, we expect that the number of reports of unacceptable behaviour may rise before falling over time. Therefore, we should not be alarmed by an early spike in reported incidents as it may well be a positive sign of renewed confidence in our system. We will test this interpretation through our planned check-point evaluations in implementation.⁴

5.6 Defence informed the committee that some progress has been made in relation to a number of the recommendations of the Inspector-General ADF's review. For example, in relation to the recommendation for consolidation of policy documents, Defence noted that the intent behind the Inspector General ADF's recommendation 'is to be implemented through the establishment of a new Complaints and Alternative Resolution Manual rather than through the recommended consolidation of DI(G) PERS 35-3 and DI(G) 35-4'.⁵

5.7 The implementation of other recommendations was either 'being progressed', 'under further consideration or was 'on hold' pending the completion of the Re-Thinking Systems of Inquiry, Investigation, Review and Audit in Defence Review (Re-Thinking Systems Review):

The *Re-Thinking Systems Review* is considering a number of recommendations in the Pathway to Change strategy, including those in the IGADF review. The aim is to ensure that there is a coherent reform agenda. A number of the *Pathway to Change* recommendations may be overtaken by the *Re-Thinking Systems Review*. However, the underlying intent of the recommendations will be addressed in the models under development....⁶

4 Department of Defence, *Pathway to Change: Evolving Defence Culture—A Strategy for Cultural Change and Reinforcement*, March 2012, p. 21–22.

5 Department of Defence, answers to question on notice, Question 4, p. 6.

6 Department of Defence, answers to questions on notice, Question 4.

These recommendations relate to matters such as quick assessments, administrative inquiries and the redress of grievance process, the continuing viability of which are all being considered as part of the *Re-Thinking System Review*. The underlying concerns of these recommendations, including complexity and delay associated with these processes, will be addressed in the *Re-Thinking Systems Review*, having regard to the direction of the overall *Pathway to Change* strategy.

Australian Public Service (APS)

5.8 The DLA Piper Review identified that a 'low number' of reported incidents of abuse occurred in the Department of Defence APS workforce.⁷ The Defence annual report for 2011-12 noted that:

During 2011-12, the Directorate of Conduct, Performance and Probation in Defence People Group finalised investigations into 96 employees for suspected breaches of the Code...Of the 96 employees investigated, 43 were found to have breached at least one element of the code and 56 sanctions were imposed...Employment was terminated in 12 cases and a financial penalty was applied in 23 cases. A further 16 employees resigned during the investigative process or before any sanctions were imposed. There were 43 employees who breached the Code last financial year.

In 2011-12, the most common type of misconduct (39 out of 43 cases) was inappropriate behaviour during work hours, for example, failing to treat other employees, clients or stakeholders with respect. The second most common type of misconduct (14 cases) was harassment and/or bullying.⁸

5.9 The Australian Public Service Commission (APSC) noted that all APS employees are bound follow to the APS Code of Conduct which 'places a statutory obligation on employees, when acting in the course of employment, to treat everyone with respect and courtesy, and without harassment'. It stated:

One factor that we believe is beneficial to dealing with this issue in the APS is that roles and responsibilities for preventing and responding to harassment and bullying are clearly defined, and employees have several avenues through which they can receive advice or make complaints.⁹

5.10 The APSC noted that APS agency heads have 'all the rights, duties and powers of an employer' and must establish procedures for determining whether an employee has breached the Code of Conduct. Agency heads may impose sanctions where employees are found to have breached the Code of Conduct, ranging from a reprimand to termination of employment.¹⁰ Further, the APSC noted the amendments made by the recently legislated *Public Service Amendment Act 2012* 'will strengthen

7 DLA Piper Review, *Volume 1*, p. 36.

8 Department of Defence, *Annual Report 2011-12*, p. 284.

9 *Submission 6*, p. 1.

10 *Submission 6*, p. 2.

the powers available to agencies to investigate suspected breaches of the APS Code of Conduct, including in relation to harassment and bullying, by former employees'.¹¹

5.11 In his Review report, the Inspector-General ADF highlighted that '[i]ncreased integration of Defence workplaces renders mutually consistent ADF and Australian Public Service (APS) complaints handling arrangements more important'.¹² He recommended that a 'review of the interface between ADF and APS complaints management processes in the Defence workplace should be expedited'. The Inspector-General ADF noted that 'some work to deal with this issue has commenced in People and Strategies Division and considered this should be encouraged'.¹³

A dedicated victims' advocacy service

5.12 The need for a dedicated advocacy service for victims of abuse in Defence was not extensively discussed in the DLA Piper Review report. The Australian Government currently funds a range of advocacy services for different groups. In the Defence portfolio, DVA provides funding which supports advocacy services conducted by Ex-Service Organisations to provide a range of services, including assisting individuals prepare applications for military benefits. In other portfolios, funding supports some form of advocacy activities, including some for victims of abuse. For example, the Department of Families, Housing, Community Services and Indigenous Affairs has provided funding to community organisations which advocate for and support persons who suffered abuse as children while in institutional care.¹⁴

5.13 The Alliance of Defence Service Organisations (ADSO) noted that Defence and Ex-Service Organisations currently provide some advocacy and support services to members of the ADF and veterans. However it also stated 'ADSO is not adverse to the establishment of a specific independent Victims Advocacy Service, but cautions that should such a service be introduced it should be truly "independent" and be visibly separate from any Commonwealth department'.¹⁵

5.14 The Inspector-General ADF considered that 'the establishment of the [Sexual Misconduct Prevention and Responses Office] might well meet any need for a victim's advocacy service in cases of sexual misconduct'. He stated that the intention is for the SEMPRO to provide victims of sexual misconduct with a means to access immediate

11 *Submission 6*, p. 1.

12 Inspector-General ADF, Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction, 2011, pp. ii and 48.

13 Inspector-General ADF, Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction, 2011, p. 48.

14 Department of Families, Housing, Community Services and Indigenous Affairs, 'Care Leavers', <http://www.fahcsia.gov.au/our-responsibilities/families-and-children/programs-services/apology-to-the-forgotten-australians-and-former-child-migrants/questions-and-answers/care-leavers> (accessed 8 May 2013).

15 *Submission 8*, p. 7.

support and advice.¹⁶ The Inspector-General ADF also noted that the approach of the Sexual Offence Support Person (SOSP) Network, developed at HMAS Cerberus, is 'intended to provide immediate practical and, where necessary, medical support to victims together with assistance in reporting the offence to police and guidance in dealing with other legal matters that flow from a sexual offence'.¹⁷

5.15 Further information on the SOSP Network was included in the Churchill Fellowship paper provided by Ms Angela Ballard. She identified the SOSP Network as one of a number of 'best or promising' practices:

The principle of the SOSP network is that a small pool of personnel, readily identifiable as part of the command element in any ship, military establishment or other military formation, who responds to complaints of a sexual offence and provides the complainant (victim) with the options available to them and facilitates access to any crisis counselling, support, policing, medical and legal services as required by the individual. The SOSP also manages the situation on behalf of the Command, by ensuring all governance requirements are met. The most important aspect of the SOSP network is ensuring the welfare and any medical needs of the complainant (victim) are seen to and that a counselling session is provided. The preference here is to refer them to the local rape crisis centre which is the lead agency in victim care, although they (the victim) does have the option to seek counselling through Defence support services which includes; psychologists, doctors, social workers and chaplains.¹⁸

5.16 The Director of Military Prosecutions, Brigadier Lynette McDade, had the view that there were sufficient mechanisms in Defence to provide support to victims of sexual and other abuse. These included Defence Instructions dealing with the management and reporting of both sexual offences and unacceptable behaviour; annual mandatory training for ADF members on unacceptable behaviour and complaint mechanisms, an extensive equity and diversity network and a complaints hotline. She concluded:

I see little value in establishing a victim's advocacy service. It has been my experience that both the complainant and indeed the accused are well supported by unit members and chaplains throughout the trial process.¹⁹

5.17 In Defence, Fairness and Resolution centres provide advice and assistance to personnel on equity and diversity issues and workplace conflict. The centres are staffed by personnel trained in equity and diversity, dispute resolution, conflict coaching, facilitation, and are accredited mediators. However, LtCol Paul Morgan criticised the advocacy role of the Fairness and Resolution centres:

16 *Submission 19*, p. 6.

17 *Submission 19*, p. 4.

18 *Submission 5*, Attachment 1, p. 14.

19 *Submission 9*, p. 1.

Fairness and Resolution centres do not advocate for individuals or for victims as a group. Fairness and Resolution do not act independently of Defence, and in fact are an intrinsic part of the ADF and Defence abuse management system which has so woefully maintained a culture of abuse across so many decades. ADF members have no capacity to influence the actions of Fairness and Resolution, and it is beholden to ADF commanders particularly when those ADF commanders actively resist allowing Fairness and Resolution to become involved.²⁰

5.18 LtCol Paul Morgan considered that a dedicated victim's advocacy service ought to be established as abuse victims in the ADF face unique problems in advocating their case. He commented:

Unlike any other Australian worker, they are part of an organisation that has its own laws restricting their freedom to speak out combined with its own police force, courts, and detention centres to enforce these laws.

The consequence of this is that Defence members are reliant upon family members to speak out publicly when abuse occurs, and particularly when reported abuse is mismanaged. Defence members are obviously reluctant to drag family members into the fray. This places extraordinary pressures on families, and the fear of repercussion is strong.²¹

5.19 LtCol Paul Morgan also noted that '[t]here is no support group for current or past victims, as there are for abuse in other parts of society'. He commented that ADF members are not authorised to establish such a group, and Defence has shown no interest in supporting victims in this standard method.²²

5.20 Ms Jennifer Jacomb also supported the creation of a national advocacy service funded by the Australian Government 'based upon existing Ex Service Organisations'. She considered it should be arm's length from the Government to maintain its independence and integrity but be staffed by ex-Service members as victims 'will feel more comfortable talking to someone who understands the culture'.²³

Systemic and cultural issues in reporting abuse

The context of abuse in Defence

5.21 Several submissions highlighted that abuse in Defence should be considered in the context of the abuse that exists in other parts of Australian society. For example, the Alliance of Defence Service Organisations emphasised that incidents of abuse are not unique to Defence and stated that 'sexual abuse continues in a variety of

20 *Submission 22*, p. 10.

21 *Submission 22*, p. 4.

22 *Submission 22*, p. 8.

23 *Submission 10*, p. 23.

institutions, whether they be Universities, Churches, Schools, Institutions, or indeed the individual Services'.²⁴

5.22 The Inspector-General ADF noted that the DLA Piper Review report was appropriately 'victim focussed' but considered it should also 'be kept in perspective'. He argued that it would be incorrect 'for the allegations chronicled by DLA Piper to be taken to be generally representative of the service experience of most of the many tens of thousands of ADF members who served in their respective Services over the 60 odd years covered by the Report'.²⁵ Further, he cautioned:

Managing these aspects in a way that is not unduly damaging to those against whom allegations are made but remain unproven, is likely to be a particularly challenging task for the ADF, especially where the parties involved by still be serving members. More broadly, the reputational damage to Services, units and other uninvolved members arising simply by association, may also become an issue if not sensitively managed.²⁶

5.23 While emphasising that the aim of the ADF should be 'zero tolerance of any maltreatment, sexual, bullying or otherwise', Mr James Sandison also highlighted that the number of complaints should be considered in the context of the large number of members of the ADF:

I understand that some 800 complaints have been received covering the 50 year period. 360,000 divided by 800 shows that one person in 450 over the last 50 years has complained of maltreatment, or just over 0.2 per cent...A calculation of this type is only to illustrate the extent of the problem, once again the aim is zero tolerance.²⁷

5.24 Mr James Sandison outlined his personal experiences and treatment in naval service for the committee, which highlighted how accepted cultural norms and practices in military service had changed over time. He also identified an issue relating to the appropriate allocation of responsibility for abuse in Defence training institutions and more generally. He suggested:

If the offences occurred within the first few weeks at ADFA, then the problem may be more ascribed to the problems in the community in general. If the offenders have been in the Cadet Corps for, say longer than two months, then the ADFA system is at fault.²⁸

5.25 Ms Angela Ballard noted that, while her Churchill Fellowship paper identifies 'best practices' of several comparable military forces, 'it does not provide a solution to the problem'. In her view '[s]exual [a]ssault and other abuse is a complex social issue

24 *Submission 8*, p. 2.

25 *Submission 19*, p. 2.

26 *Submission 19*, p. 2.

27 *Submission 1*, p. 4.

28 *Submission 1*, p. 4.

on a global scale, which...the ADF in isolation, does not have the experience, skills or knowledge to respond to'.²⁹

Cultural and systemic issues

5.26 The DLA Piper Review report made a variety of findings in relation the systemic and cultural issues in the reporting of abuse in Defence. In particular the DLA Piper Review found that '[p]revious reports and Defence file material indicate that aspects of the culture in many parts of the ADF have discouraged reporting by victims or witnesses'.³⁰ It commented:

It is well known that under-reporting of abuse (particularly sexual abuse) is common in the wider community. Previous reports and studies show that the strength of the ADF culture, necessary for operational readiness and effectiveness, is, however, responsible for substantially increasing the under-reporting of abuse that already exists in the wider community. There are many reasons for under-reporting both by victims and witnesses (fear of retribution; concern over career consequences; embarrassment; and distrust of the complaint handling process).³¹

5.27 In his review into the management of complaints in the ADF, the Inspector-General ADF noted that:

In the 2009 Unacceptable Behaviour Survey, three-quarters of the respondents (75%) felt that their immediate supervisor was committed to preventing and stopping unacceptable behaviour, to at least a moderate extent. However, of those who indicated in that survey that they had made a complaint about unacceptable behaviour, 41% of the respondents reported "lack of support from supervisor" as a barrier to making the complaint.³²

5.28 The Pathway to Change strategy acknowledged that Defence has cultural issues in relation to the reporting abuse and other unacceptable behaviour. It stated that Defence needed to adopt a 'reporting culture':

We will also take actions to shift attitudes and willingness to speak up when we become aware of inappropriate behaviour by a colleague in Defence. Several of the Reviews indicate that we do not do this sufficiently. The Pathway to Change stipulates that our people must put each other's safety and dignity before loyalty to a peer group.

We particularly need to remove the stigma of communicating distress to those who have a responsibility for our welfare; whether it relates to injury or other ailment, perceived threat, intimidation or harassment. There is no

29 *Submission 5*, p. 3.

30 DLA Piper Review, *Volume 1*, p. 52.

31 DLA Piper Review, *Volume 1*, p. 61.

32 *Submission 19, Attachment 1*, pp. 2–12.

pride to be found in watching others suffer or for remaining in denial about a serious problem.³³

5.29 At the public hearing, Defence indicated it was looking to obtain comparative benchmarks from other organisations. The CDF, General Hurley, commented that Defence had approached the Group of Eight universities to request they undertake the same sexual harassment surveys and other monitoring which was conducted at ADFA. None of the universities agreed to this request.³⁴ General Hurley also discussed the challenges for Defence in communicating public messages around culture:

On the whole though when we appear in front of the media we do not get a positive outcome, regardless of the message. I only need to go to the conference I held on gender in Defence and security over the last two days, when I think there was a great story to be told; but the only report was a quote from me saying we have not increased the number of women in 20 years. That is the focus, so it is very hard for us to push through that. We might need to create the opportunities ourselves to discuss the issues, but it is not a story that the media wants to pick up on.³⁵

5.30 The committee also received a range of viewpoints in relation to systemic and cultural issues in reporting abuse within Defence. In the view of the Inspector-General ADF, the systemic or cultural issues in reporting (or not reporting) sexual or other forms of abuse in the ADF were similar to those in the wider community. However he noted that '[i]n the more closed environment of the ADF, victim concerns about possible recrimination or impact on career *may* act as a stronger disincentive to report sexual abuse than in the community at large'.³⁶ Nonetheless, he considered:

The establishment of SeMPRO together with a renewed emphasis by the ADF on taking swift action against those who attempt to dissuade victims from reporting or who otherwise take recriminatory action against them for making a report should help minimise cultural issues arising specifically from reporting in the military environment.³⁷

5.31 However, other submissions suggested there were serious issues for victims regarding reporting of abuse in Defence. In particular, submitters who indicated they had been victims of abuse noted that they feared they would be targeted if they reported incidents of abuse at the time.³⁸ LtCol Paul Morgan also pointed to several factors which discourage victims in Defence from reporting abuse. For example, he noted that:

33 Department of Defence, *Pathway to Change: Evolving Defence Culture—A Strategy for Cultural Change and Reinforcement*, March 2012, p. 23.

34 *Committee Hansard*, 14 March 2013, p. 29.

35 *Committee Hansard*, 14 March 2013, p. 29.

36 *Submission 19*, p. 6 (emphasis in original).

37 *Submission 19*, p. 6.

38 For example, Mr Douglas Heath, *Submission 23*, p. 1.

Victims fear complaining because they fear that they will not get future employment. They fear that they will have to explain to a potential future employer that they left the Army because of an unresolved complaint of abuse by a colleague. Employers are understandably wary of employing 'complainers' and only when Army admits in writing that the complainant was justified in making their complaint, can an abuse victim explain this to a future employer.³⁹

5.32 LtCol Paul Morgan highlighted the length of time of investigations of claims of abuse as a factor in discouraging the reporting of abuse. He considered that 'Defence is systematically incapable and unmotivated to manage abuse issues in a timely fashion':

The failure to manage abuses in a timely manner is a key problem for the mental health consequences of abuse in the ADF. Most people can accept a timely outcome that doesn't seem quite fair. They struggle most with the unending rollercoaster of hoping the ADF will act, and despair that it will not. This pattern reflects the finding of the Senate Inquiry into the military justice system.

5.33 Another key systemic issue identified by LtCol Paul Morgan was that '[u]nlike any other reasonable Australian workplace, Defence continues to maintain a policy of retaining abusers in the workplace alongside those that they abuse':

The culture and policy in Defence is to maintain victims in the workplace with their abusers while investigations are occurring. These investigations, as in my personal case, can extend well beyond a year. Victims, as in my case, are often asked or pressured to limit their exposure to work that may bring them into contact with their abusers, while abusers face no such limitations. Defence argues due process for abusers, but does not place the same weight on timely 'due process' for victims.⁴⁰

5.34 Whistleblowers Action Group (Qld) considered that principal cause of the abuse in Defence rested with the personal involvement of the leadership of the ADF 'in activities that frustrate the purposes of the military justice system'. It considered 'this example to commanders and to Defence members in general, has developed a culture that is opposed to the system of protections for soldiers from unacceptable behaviour including all forms of abuse'.⁴¹

5.35 The Alliance of Defence Service Organisation (ADSO) thought that it is 'clear that the majority of members of the ADF wish to invoke signature behaviours that reflect high moral and ethical standards'. ADSO noted that recent official statements on Service values in the ADF, including statements made General Hurley, meant that

39 *Submission 22*, p. 5.

40 *Submission 22*, p. 6.

41 *Submission 13*, pp. 2–3.

is was 'clear that the Services are determined to take whatever action is necessary to address the issues surrounding sexual abuse in the ADF'.⁴²

Data and information collection

5.36 The DLA Piper Review identified the database held by the Fairness and Resolution Branch concerning incidents of unacceptable behaviour as one of a number of key databases of information on abuse in Defence. It noted:

Fairness and Resolution Branch records the information from complaints reported by commanders and managers on a database that records all reported unacceptable behaviour complaints and the outcomes. The name and personal details of Defence respondents who have had formal action taken against them as a result of a substantiated complaint of unacceptable behaviour are recorded in this database. We understand this database is referred to as the Fairness and Resolution Unacceptable Behaviour Database. The database also records all sexual offence complaints and, if formal action has been taken, the details of the respondents in these cases...The database is intended to assist in the identification of repeat behaviour. Access to this database is restricted and controlled by Fairness and Resolution Branch.

5.37 The DLA Piper Review report concluded that the 'fragmentation of storing of relevant data on more than one system or database confuses and possibly impedes the provision of information to those who need it - relevant managers and units'.⁴³ It considered Phase 2 should consider 'a review of all databases that record performance, conduct issues and complaints relevant to abuse/unacceptable behaviour and that consideration be given to creating a centralised and integrated database system'.⁴⁴ The *Review of the Treatment of Women at ADFA* also included a recommendation for the establishment of a database to manage complaints and incidents. This recommendation was accepted in the Pathway to Change strategy.⁴⁵

5.38 The committee did not receive a large amount of evidence specifically in relation to data and information collection. The Inspector-General ADF's review of the management of complaints considered the administration of complaints in the ADF. It considered that the 'centralisation of complaint administration in Fairness and Resolution Branch [in 2006] and the introduction of the Complaint Management, Tracking and Reporting System (COMTRACK) have been useful initiatives'. Further:

Given the inherent complexity of the various elements of complaint handling from grievances to unacceptable behaviour and sexual offences, the consolidation of the administration of complaint handling in one central

42 *Submission 8*, p. 8.

43 DLA Piper Review, *Supplement to Volume 1*, p. 65.

44 DLA Piper Review, *Supplement to Volume 1*, p. 65.

45 Department of Defence, *Pathway to Change: Evolving Defence Culture*, 2012, p. 46.

agency, which could also provide advice to line managers, is sensible and its continuing role is strongly supported.⁴⁶

5.39 As part of the review, the Inspector-General ADF recommended that '[a]dequate arrangements should be put in place to ensure sufficient resources are available to maintain COMTRACK at optimum currency'.⁴⁷ His submission also noted that his office collects and monitors data about the disciplinary system, the administrative inquiries system, and the military justice system generally through its performance review function. This information is analysed and summarised annually in the Inspector General ADF Catalogue of Military Justice Statistics.⁴⁸

5.40 During the public hearing, Defence noted that one of the tasks of SEMPRO 'will be a central repository for data on offences in the ADF'.⁴⁹ Ms Carmel McGregor commented:

[W]e have a system called COMTRACK within the department where all of the incidents or complaints about unacceptable behaviour are lodged. In terms of setting up SEMPRO, we are also looking at what the best database is that we can leverage from within the department or find elsewhere so that those sorts of issues that were raised can be comprehensively captured. I guess it is a work in progress. We also have the ADFIS database. But trying to get a comprehensive picture is a longer term initiative.⁵⁰

5.41 At the committee's private briefing, the Defence Abuse Response Taskforce highlighted the challenges which exist in relation to the way Defence records have been stored in the past. It noted that the use of previous paper based records systems and the movement of documents over time could result in relevant personnel files being difficult to locate.⁵¹

5.42 DVA outlined a number of factors in dealing with data exchange and information collection with Defence regarding compensation:

DVA is required under the [*Safety Rehabilitation and Compensation Act 1988*] and the [*Military Rehabilitation and Compensation Act 2004*] to provide a copy of claims from ADF members who are still serving at the time they have claimed. In addition, where the person is still serving at the time their claim is determined under the MRCA, DVA must provide a copy of that determination to Defence.

46 Inspector-General ADF, Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction, 2011, p. 45.

47 Inspector-General ADF, Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction, 2011, p. 45.

48 *Submission, 19*, p. 6.

49 General David Hurley, CDF, *Committee Hansard*, 14 March 2013, p. 29.

50 *Committee Hansard*, 14 March 2013, p. 31.

51 Defence Abuse Response Taskforce, private briefing, 7 June 2013.

As with all claims for compensation, DVA must investigate the claim to establish the facts of the case. As part of this process DVA will contact Defence through the longstanding Single Access Mechanism arrangements. This can include Service history, medical documents and any other evidence that may be relevant.⁵²

5.43 The Defence Pathway to Change strategy document indicated that, in future, Defence intends to have a greater focus on data collection to inform decisions and track the progress of reforms:

Currently, information about ourselves, our practices and our behaviours tends to be gathered and used for reacting to individual occurrences. In future we will establish databases and importantly, improve our approach to using the data so that we have a strong evidence base.⁵³

5.44 In his supplementary submission, Dr Gary Rumble considered that victims of abuse in the ADF should have access (redacted as necessary) to reports of previous Defence inquiries which could corroborate their accounts and information about DVA claims brought by other individuals which corroborate their allegations by giving similar accounts.⁵⁴ He noted that Defence does not hold a consolidated record of reports of previous inquiries in relation to abuse and that DVA could identify clusters and patterns of alleged abusive conduct in the claims it receives. He argued that this information could assist in the assessment of DVA claims and in general Defence risk management and reform processes, as well as being of assistance to the Taskforce.⁵⁵

Privacy considerations

5.45 The Office of the Australian Information Commissioner (OIAC) noted that the ADF, the Department of Defence and the Defence Materiel Organisation are required to comply with the Information Privacy Principles when handling personal information.⁵⁶ It made a number of suggestions, particularly in relation to the information in the Fairness and Resolution Database (FRD), ensuring ADF personnel are fully informed regarding how their personal information in relation to complaints of abuse and in Service records will be handled. These included:

- emphasising the importance of Defence complying with the Information Privacy Principles when handling personal information;
- recommending Defence consider a Privacy Impact Assessment in relation to the FRD;

52 *Submission 18*, p. 4.

53 Department of Defence, *Pathway to Change: Evolving Defence Culture*, 2012, p. 26.

54 *Submission 24A*, supplementary submission, pp. 2–3.

55 *Submission 24A*, supplementary submission, p. 3.

56 *Submission 7*, p. 4.

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- suggesting consideration of whether Defence Instructions (General) carry the force of law to provide greater certainty regarding Defence's obligations in relation to the handling of personal information in the FRD;
 - noting that Defence has obligations to take reasonable steps to ensure the personal information in the FRD is accurate, up-to-date and complete; and
 - emphasising the importance of ensuring that ADF personnel are fully informed about how their personal information relating to complaints of abuse within Defence will be handled.⁵⁷

5.46 Privacy issues relating to the FRD were also considered as part of the DLA Piper Review. The Review sought advice on the application of the *Privacy Act 1988* to the FRD which suggested that there was scope for more information to be stored in the database. It commented that 'the more information that can be recorded on the database, the more effective it will be as a management tool'.⁵⁸ The Review considered that Phase 2 of the Review should 'discuss with Fairness and Resolution Branch and other appropriate areas of Defence the content of the information that is currently available on the Fairness and Resolution Unacceptable Behaviour database to expand the information recorded there and increase its availability and value to managers'.⁵⁹

57 *Submission 7*, pp. 4–8.

58 DLA Piper Review, *Volume 1*, pp. 132–133.

59 DLA Piper Review, *Volume 1*, p. 133.

