

**SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND
TRADE**

**DEPARTMENT OF DEFENCE SUBMISSION TO THE INQUIRY INTO THE
GOVERNMENT RESPONSE TO THE DEFENCE ABUSE RESPONSE TASKFORCE
(DART)**

MAY 2014

INTRODUCTION

Following the previous Government's decision to establish the Defence Abuse Response Taskforce ('the Taskforce') on 26 November 2012, Defence set up a dedicated Organisational Response Unit to ensure that appropriate support and assistance could be provided to the Taskforce for as long as needed.

Defence has 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.

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.

Defence has been, and continues to be, appreciative of the Taskforce's efforts to ensure that its work with complainants takes place with the utmost concern for their health and wellbeing. Defence feels a strong sense of responsibility to see that no further harm comes to these individuals. It is hoped that the Taskforce's efforts to provide individual and appropriate outcomes for victims of abuse will prove to be an important part of their recovery process.

Likewise, 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 was a further acknowledgement by Defence that abuse is wrong and any abuse that has occurred is deeply regretted. Defence continues to encourage people to come forward to seek a proper resolution to any matters that are concerning them.

As the Committee is aware, the Taskforce is looking into matters of abuse that are alleged to have occurred in Defence prior to 11 April 2011 and Defence's commitment to working with the Taskforce to finalise all of the matters before it remains a priority. Furthermore, Defence has made a commitment that abuse of any kind is not to be tolerated and will be dealt with swiftly and appropriately. Importantly, Defence is now 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.

This submission will provide a Defence perspective on current work with the Taskforce and provide details of key cultural change activities (including improvements to victim support services) and Defence's response to the DLA Piper Review Volume One (Defence has not and will not be provided with a copy of Volume Two of the DLA Piper Review).

Current work with the Taskforce

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. The information requested has varied from the simple to complex, with supporting documentation requested dating as far back as the 1950s.

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.

While this important work continues, the Organisational Response Unit's role has evolved in response to work in the areas of Restorative Engagement and examining complaints referred from the Taskforce to the Chief of the Defence Force for consideration of administrative or disciplinary action.

Restorative Engagement

On 3 August 2013, the Defence Abuse Response Taskforce Restorative Engagement Program (hereafter referred to as 'the Program') Protocol was agreed between the Chair of the Taskforce, the Chief of the Defence Force and the Secretary of Defence. This Protocol confirms Defence's commitment to the delivery of the Program as a key outcome for complainants whose allegations of sexual or other abuse in Defence have been found by the Taskforce to be plausible.

The Program enables individual complainants to participate in facilitated restorative conferences with senior Defence Representatives. Through this Program, complainants have the opportunity to have their complaint and experiences of abuse personally heard, acknowledged and, where appropriate, responded to by a representative of Defence.

Participation by Defence representatives in the 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.

The first series of conferences under Phase 1 of the Program was held over the period October-December 2013. Defence representatives included the Chief of the Defence Force, Vice Chief of the Defence Force and the Service Chiefs. Phase 2 commenced in February 2014 and has involved Defence Representatives of Colonel or equivalent rank and above.

While the Taskforce tenure is currently approved until 30 November 2014, it is anticipated that this program will need to continue beyond this date. Defence will work with the Taskforce over the coming months to ensure that the Program experiences minimum disruption until all restorative engagement conferences have been held.

Referrals to the Chief of the Defence Force

Under its terms of reference, the Taskforce has been directed to, among other things, assess complaints of sexual and other forms of abuse by Defence personnel, including specifically the so-called 'ADFA 24 cases' and the reports of physical violence and bullying at HMAS *Leeuwin*, and to 'determine whether the alleged victims, perpetrators and witnesses in relation to these cases remain in Defence'. The Taskforce has also been empowered to determine appropriate responses to such complaints and allegations of abuse, including the referral of

appropriate matters to Defence for disposition by the military justice system or other Defence processes.

The Taskforce has commenced referring individual complaints to the Chief of the Defence Force for consideration. 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. The Taskforce has advised that it intends publishing a de-identified report on abuse at ADFA and it will include information on the 'ADFA 24' cases.

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.

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

Pathway to Change: Evolving Defence Culture

In April 2011, the then Minister for Defence instituted a number of reviews into Defence culture and conduct including the *Review of Personal Conduct of ADF Personnel* (Orme Review), the *Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction* (Early Review), the *Review into the Use of Alcohol in the ADF* (Hamilton Review), and the *Review of Social Media and Defence* (Hudson Review). The then Secretary of Defence also commissioned the *Review of Employment Pathways for APS women in the Department of Defence* (McGregor Review). In addition to these reviews, a review into the treatment of women in the Australian Defence Force, which was chaired by the Australian Sex Discrimination Commissioner, was conducted in two phases: the *Review into the Treatment of Women at the Australian Defence Force Academy* (Broderick Review Phase One), and the *Review into the Treatment of Women in the Australian Defence Force* (Broderick Review Phase Two). Defence either agreed or agreed 'in-principle' to all of the recommendations of these reviews.

The terms of reference for Ms Broderick's reviews included independent audits of the implementation of the recommendations. In her audit reports, Ms Broderick has acknowledged that "real progress has emerged in the 18 months since the ADF Review report was tabled" and she congratulated "the ADF on its significant reform efforts to date" (26 March 2014).

The Pathway to Change strategy

While the ‘culture reviews’ made recommendations for change in specific areas, there was no overarching program to address the reformation of Defence’s culture. To that end, Defence developed the *Pathway to Change: Evolving Defence Culture* strategy, which was announced by the then Minister for Defence on 7 March 2012. The strategy articulates Defence’s cultural intent – ‘trusted to defend, proven to deliver, respectful always’ – and incorporates the ‘culture review’ recommendations and 15 key actions to support cultural change. The cultural change program, along with the wider Strategic Reform agenda is expected to produce a more capable and integrated organisation, one that is fully inclusive, collaborative and professional in all respects.

Implementation

Implementation will cover a series of systemic changes, as well as more immediate and specific initiatives. Implementation of *Pathway to Change* is being led from the top; requiring up to three years of dedicated work and out to five years to achieve the desired cultural effect. Immediate efforts have focussed on reviewing Defence values and behaviours and their role in creating a safe, equitable, fair and inclusive workplace. Specific initiatives include an increased focus on increasing the representation of women in the workforce and specifically in leadership positions.

In implementing the recommendations Defence will also examine its facilities and policies to ensure they reflect modern social values and practices, especially with respect to the employment of women, serving of alcohol and use of social media. It will also seek to create the ‘right’ Defence culture from the moment personnel join the organisation, regardless of Service, rank or location.

Progress to date

Nine key actions contained in *Pathway to Change* have been finalised and a further six are progressing. These are the higher-level actions considered necessary to achieve cultural change while integrating the review recommendations. 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

- establishing research and data collection processes to inform ongoing development and implementation of *Pathway to Change*.

So far, 134 recommendations and advice from the Defence culture reviews and reform directions have been finalised (including 25 items which have been closed because they have been overtaken by subsequent activities or reviews, or have been addressed through other means).

The remaining 26 recommendations are being implemented.

Victim support services

The Sexual Misconduct Prevention and Response Office (SeMPRO) was officially launched by the then Minister for Defence, the Chief of the Defence Force and the Australian Sex Discrimination Commissioner on 23 July 2013. The establishment of SeMPRO represents a fundamental change in the way Defence approaches and manages incidents of sexual misconduct in the Australian Defence Force (ADF).

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.

SeMPRO is also an avenue for ADF members to make a restricted (confidential) disclosure of sexual misconduct, for the initial purpose of accessing counselling or medical support. 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.

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. A 'Sexual Ethics and Healthy Relationships' package, which was trialled at the Australian Defence Force Academy, has been provided to all new starter training institutions for widespread implementation.

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. This understanding will inform the development of targeted prevention and education strategies as well as other cultural reform initiatives.

Victim Support in the conduct of Service Police Investigations

The Provost Marshal – ADF, in command of the ADF Investigative Service (ADFIS), 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. This study, entitled "Service Police Investigations of Sexual Offences: Modelling Best Practice" was conducted in conjunction with a leading academic in the field of Victimology from

Charles Sturt University (Goulburn)/NSW Police College) and ADFIS. The aim is to develop protocols for 'victim focussed' investigations, to develop a critical understanding of victim expectations and to illustrate the issues specifically related to sexual offences in the ADF.

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.

The report was delivered in March 2014 and is under consideration by Defence.

Defence's response to the DLA Piper Review of Allegations of Sexual and other Abuse in Defence

DLA Piper Review

The DLA Piper Review Team reported to the Minister for Defence in two volumes. *Volume One (General Findings and Recommendations)* was provided to the Minister on 11 October 2011. The Review Team provided the full and final tranche of *Volume Two (Individual Allegations)* on 17 April 2012 along with a supplement to *Volume One*.

Defence understands that the *DLA Piper Review Team's Volume Two* report consists of some 23 large binders of highly sensitive personal information, including information that was provided to the DLA Piper Review Team on the strict condition of confidentiality. Accordingly, Defence has not been provided a copy of the Volume Two report.

The Government's Response to the DLA Piper Review, announced on 26 November 2012, addressed the 10 recommendations of the Volume One main report, which centred on the establishment of the Taskforce to examine allegations of abuse and work with complainants to achieve an outcome. The Taskforce has been provided the Volume Two report. The Taskforce was also asked to draw any implications of its work to the attention of the Minister, Secretary and Chief of the Defence Force for consideration in the context of *Pathway to Change: Evolving Defence Culture* strategy.

The *DLA Piper Review Team's Volume One* report suggested that there were high levels of dissatisfaction with the ADF's application of military justice processes and approach to complaint handling as well as low levels of prosecutions and inaction in failing to call perpetrators to account.

Actions Associated with the Rethinking Systems Review

Simultaneously, in November 2011, the Secretary and CDF commissioned an internal review in response to concerns that current systems of inquiry, investigation, review and audit within Defence were unnecessarily complex, inefficient, legalistic, and not delivering effective outcomes. The Review (which became known as the Rethinking Systems Review) referenced historical and more recent reviews, including for example the HMAS SUCCESS Commission of Inquiry and aspects of the *DLA Piper Review Volume One*, and it examined structural arrangements, legislation and policy requirements. It delivered its report in October 2013. 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.

The Chair of the Taskforce has been provided with information on the Rethinking Systems Review and subsequent considerations for assistance in considering the Taskforce Terms of Reference.

SeMPRO

The *DLA Piper Review Team's Volume One* report commented on a perceived failure to adequately record and track incidents and accusations against alleged abusers, even if no adverse finding is made. SeMPRO's role as a central point of data collection (as outlined earlier in the submission) addresses this concern.

Conclusion

Defence remains committed to working with the Taskforce as it finalises its work and will continue to adjust its cultural change activities where necessary on the basis of lessons learnt out of the Taskforce process.

Defence has made significant progress in implementing cultural change initiatives through its *Pathway to Change* strategy to meet the requirements of a large number of recommendations from a series of wide-ranging reviews.

That being said, Defence recognises that to bring about true cultural change takes time and being diligent in seeing the *Pathway to Change* journey through to completion over the next few years will be critical to ensuring that cultural change in Defence is enduring.