



Australian Government

DEFENCE ABUSE RESPONSE TASKFORCE

30 June 2014

Senator the Hon Ursula Stephens
Chair
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Stephens

Thank you for the opportunity for the Defence Abuse Response Taskforce (Taskforce) to present a submission to your Committee's inquiry into the mechanisms to support victims of sexual and other abuse in Defence.

In support of the inquiry, I would like to provide you with further information in relation to the work of the Taskforce as it relates to a. and d. in your Terms of Reference. I do not intend in this submission to offer a view on the Terms of Reference b. and c.

I note information about our consultation and work with the Department of Defence, Department of Veteran's Affairs and the Australian Federal Police has already been provided in submissions to the Committee. I will not duplicate that information here.

Further, much information about our work is already in the public arena and contained in our quarterly reports. These reports document our work and progress to date and also describe some of the hurdles faced along the way. These reports can be found at our website:
<http://www.defenceabusetaaskforce.gov.au>.

The Defence Abuse Response Taskforce Process to Date

On 26 November 2012, the then Minister for Defence announced the Australian Government's response to the DLA Piper review. The response included:

- a general apology,
- the establishment of the Taskforce,
- implementation of a capped compensation scheme to make reparation payments, and
- a telephone hotline.

The primary focus of the Taskforce has been, and remains, the assessment and referral for resolution of all individual allegations considered by DLA Piper and referred, with consent, to the Taskforce, as well as all new allegations of abuse registered with the Taskforce by 31 May 2013.

The Taskforce has approximately 2,400 registered complainants. It is anticipated that approximately 2000 will ultimately be found to be in scope of the Taskforce Terms of Reference and plausible. As

each individual may be offered all or some of the five separate outcomes identified under the Terms of Reference, this results in approximately 10,000 separate individual outcomes staff may have to determine and provide.

The Terms of Reference also require the Taskforce to undertake, amongst other things, an assessment of the 24 Australian Defence Force Academy cases, HMAS Leeuwin cases and to liaise with the Minister for Defence, Chief of the Defence Force, and Secretary on any implications of our work for Defence's *Pathway to Change* or other systemic or cultural reviews.

As well as this, the Taskforce provides the Minister for Defence with Quarterly Interim Reports detailing our work to date, and considers on a frequent basis whether a Royal Commission would be merited into any category of allegations raised.

With the huge tasks required to be undertaken, as you will appreciate, the work has to be prioritised. However, I believe this is being done in a manner that is logical and pragmatic and I am happy to inform the Committee that the Taskforce is undertaking all of the work required under our Terms of Reference.

a. The Defence Abuse Response Taskforce Process to Date

Underlying Principle

The underlying principle of the Taskforce's work is to do no further harm to the complainant. With that in mind, the Taskforce received advice from experts that it should not seek out individuals to register allegations of abuse. Therefore the Taskforce relied upon various forms of media to raise awareness of our work. At different points in time, the Taskforce widely advertised our work in newspapers and other media, informing people of the deadlines for registration and the provision of personal account forms.

Deadlines

As the Taskforce has 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. These dates were 11 April 2011 and 31 May 2013 respectively.

Deadlines 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.

Parameters

Work of the Taskforce is undertaken in accordance with our Terms of Reference. The Taskforce is unable to consider allegations of abuse that do not fall within our definitions of abuse or that did not occur on or prior to 11 April 2011.

The allegations of abuse considered range from sexual abuse, physical abuse, sexual harassment, workplace harassment and bullying.

A number of definitions are provided below. However, these definitions are for general guidance only and should not be considered exhaustive.

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.

Other Terminology

At the commencement of the Taskforce, after receiving expert advice on the issue, the Taskforce decided to use the term 'complainants' rather than 'victims' to describe those individuals who registered allegations of abuse with us. 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.

This is one of the reasons the Taskforce decided to use the term 'complainant' to refer generally to individuals who made reports to the Taskforce. 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.

Assistance

Given the difficult issues that Taskforce is dealing with, it established the Complainant Support Group at the outset. This Group has staff with prior experience in dealing with individuals who have experienced abuse and is the only Group in direct contact with complainants.

This Group provided assistance to complainants to complete their Personal Account Forms and continues to provide assistance to complainants in determining what outcomes they wish to pursue and assist them during the implementation of those outcomes.

The Complainant Support Group also 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. This information is provided in a factsheet and available on our website at:

<http://www.defenceabusetaskforce.gov.au/Outcomes/Pages/DefenceAbuseReparationScheme.aspx>

When the Taskforce can take Action

The Taskforce is able to assess all complaints that were previously made to DLA Piper where those individuals provided consent to transfer their matter. DLA Piper determined not to provide the Taskforce with information where individuals did not provide consent.

In instances where DLA Piper provided the Taskforce with information, recommendations in relation to specific allegations set out in Parts 1-23 of Volume 2 is taken into account as well as all other information received in relation to an individual as part of our assessment process.

The Taskforce also assesses complaints that were made by individuals directly prior to 31 May 2013.

Where complaints fall within our Terms of Reference, the Taskforce is able to offer up to five separate outcomes. It is for complainants to determine which of these outcomes they wish to pursue.

Criminal Action

Whilst the Taskforce will assess whether a particular incident of abuse may constitute a criminal offence, and, in appropriate cases provide the complainant with the option to refer that to the relevant policing agency, the Taskforce will not refer any matter to police without the express consent of the complainant.

Given the number of complaints received by the Taskforce, many interested parties are surprised how few have been referred to police authorities. There are two main reasons for this.

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.

The Taskforce respects this and will not refer a complainant's matter to police without consent.

Administrative Sanction or management action.

The Taskforce takes a similar approach to referrals for disciplinary or administrative sanction or management action by the Taskforce Chair to the Chief of Defence Force or Secretary of Defence. Generally, the Chair will not refer these matters where a complainant has not provided consent.

However, where 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.

When the Taskforce refers a matter to Defence, it is important to ensure that the complainant is aware that Defence may contact them to obtain information and most likely request a statement upon which to make an administrative decision.

Anonymous Complaints or Allegations in the Media

As noted above, the Taskforce 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.

Different Standards of Proof

As mentioned in other submissions, the standard of proof applied by the Taskforce in determining whether or not to accept an allegation of abuse and provide an outcome to a complainant is that of plausibility.

Plausibility is a lower standard of proof than that applied by the Department of Defence when it determines whether or not to commence disciplinary or administrative sanction. It is lower than that

applied by the Department of Veterans Affairs in determining whether or not to accept a claim. And, it is lower than the Australian Federal Police applies in determining whether to proceed to prosecution after a police investigation.

The Taskforce is aware that this different standard of proof can be confusing. However, 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.

The 35 Systemic Issues which the DLAP Piper Review recommended be addressed.

The 35 systemic issues raised in the DLA Piper Review are referenced under our Terms of Reference in relation to the Taskforce liaising with the Minister and others “*on any implications of its work for Defence’s ‘Pathway to Change’ and other responses to a series of reviews into Defence...*”.

The Taskforce has written to, and spoken with, Defence in relation to the DLA Piper recommendations and in relation to Defence’s progress on *Pathway to Change* and the *Re-thinking Systems of Inquiry, Investigation and Review in Defence*.

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.

The Taskforce also notes that information received which can be shared with and is relevant to the work of the Australian Defence Force Investigative Service (ADFIS) or others will be, or has been provided, or, in some cases, returned. This applies to, for example, materials initially provided to the Taskforce by ADFIS in relation to allegations concerning the ADFA 24.

Resourcing

In earlier Interim Reports the Taskforce noted that there was an issue of resourcing compounded by the Caretaker provisions and subsequent recruitment freeze. The Taskforce is now able to inform the Committee that this issue has been alleviated. Throughout, the Taskforce has exercised flexibility in moving staff to areas with high demand and this has worked well so far.

Further, I inform the Committee that having adhered strictly to the Procurement Guidelines and requirements of the Financial Management Act and other relevant legislation, the Taskforce now has all our national programs running, including access to counselling and the Restorative Engagement Program. The strict application of the procurement guidelines now means that all of our programs are robust, fair and of the highest standard.

The Interim Reports

I am aware that one individual asserts that some material within the Taskforce’s Interim Reports is incorrect and cannot be relied on. In fact, Taskforce staff work extremely hard to ensure that each report is accurate and to the best of my knowledge every Report reflects correct statements of how the Taskforce works and manages particular kinds of allegations. Necessarily, the Reports do not contain every piece of information being worked on by staff nor do they describe in minute detail

every step of the processes undertaken; however, this does not and should not be taken to mean that case studies or statements in the Reports are incorrect.

Consultation and the Work of Others

The Taskforce has consulted and worked with the Department of Defence, Department of Veterans Affairs, Australian Federal Police and other policing agencies, the Royal Commission into Institutional Responses to Child Sexual Abuse, the William Kibby VC Veterans Shed and other organisations.

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.

The Taskforce is also aware that the lower standard of proof of plausibility is causing a great deal of concern for the Department of Defence. This is because when the Taskforce accepts a matter as plausible it increases a complainant's expectations that their case will be similarly assessed under a higher standard of proof. This is not necessarily the case.

This lower standard of proof has also garnered much negative commentary in the public arena about the Department of Veteran's Affairs. Again, because the Taskforce is able to apply a lower standard of proof to complainant's matters to accept their complaint this has increased the expectations that their case will be similarly assessed under a higher standard of proof when, this is not necessarily the case.

In spite of these difficulties (caused by the respective Terms or Reference or legislative foundations under which the Taskforce and other Departments and Agencies work), in each instance, the Taskforce has found the people it has worked with to be professional, courteous and genuinely supportive of our task.

The Taskforce would also like to note and thank Defence representatives who have volunteered to be part of the Restorative Engagement Program and have met individually with complainants. As a result of these Restorative Engagement Conferences, I note that in three cases the Department of Defence has agreed to look into amending the service records of certain individuals to correct a specific issue of concern, for example, the reason for discharge. Again, the Taskforce is aware there are different processes and standards of proof that must be applied in determining whether any change is possible, but I am grateful to the Department of Defence for its willingness to look itself at other ways in which to assist complainants during these Conferences.

The Taskforce looks forward to continued support as it further provides outcomes to complainants.

Despite the general professional behaviour displayed by those organisations named above, the Taskforce must note that a few organisations and individuals have appeared to actively hinder our work. The Taskforce has both written and oral feedback from complainants stating that the tactics undertaken by one individual has caused them considerable distress. In each instance, the Complainant Support Group has worked as a matter of urgency to assist these individuals and endeavour to reduce the detrimental impact created.

As a result of complainant feedback and given the personal attacks upon both them and members of the Taskforce staff, it is now our policy to cease contact with these individuals and organisations in an attempt to minimise further harm.

Where a complainant wishes to be represented by such individuals and organisations our policy is explained to them and an offer is made for them to choose another person or organisation to represent them.

d. The desirability of releasing a true reflection of Volume 2 of the DLA Piper report in a redacted form or by way of a summary

There has been much discussion in the public arena as to why the Taskforce has not publicly released Volume 2 of the DLA Piper report. Whether or not to release Volume 2 is a matter for the Minister for Defence, not the Taskforce.

However, the 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.

The Taskforce is committed to protecting the privacy of people who have made complaints of abuse. However, I reiterate that the decision whether or not to release Volume 2—and if so, in what form—is a matter for the Minister.

Volume 2 of the DLA Piper Report was provided to the Taskforce as it would not have been appropriate to provide the information to the Secretary of Defence, Chief of the Defence Force and Service Chiefs given the information was provided for a specific purpose and the provision of such would likely breach the requirements of the *Privacy Act 1988*.

I hope this assists you with your important work. Should you wish to know any other information in relation to the Taskforce I am happy to provide a written response or to meet with you in person.

Yours sincerely,

The Hon Len Roberts-Smith RFD, QC
Chair, Defence Abuse Response Taskforce