

SUBMISSION TO SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE ON THE REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE, CONDUCTED BY DLA PIPER, AND THE GOVERNMENT'S RESPONSE TO THE REPORT

SUPPLEMENTARY SUBMISSION

Dr Gary A Rumble

20 March 2013

1. I provided a written submission on Tuesday 12 March 2013. I appeared before the Committee on Thursday 14 March 2013.
2. In this Supplementary Submission I address two matters.
3. First – I respectfully direct the attention of the Committee members to the following material in Volume 1 which should assist the Committee to understand the design and content of Volume 2 of the Report:
 - Supplement to Volume 1 Chapter 3 - Overview of allegations considered by the Review;
 - Volume 2 Explanatory Materials; (Appendix 2 to the Supplement to Volume 1.)
 - Supplement to Volume 1 Appendix 4 – Review of Fairness and Resolution Branch database matters; and
 - Supplement to Volume 1 Appendix 5 – Review of ADFIS matters.
4. Secondly, on reviewing the proof of Hansard of my appearance before the Committee I see that I only addressed part of a question which Senator Fawcett put to me seeking from me an overview on:
 - mental health systemic issues; and
 - DVA benefit and counselling systemic issues.
5. In my response I only addressed the first aspect of Senator Fawcett's question relating to mental health systemic issues.¹
6. Accordingly, in this Supplementary Submission I provide a brief overview of the systemic issues in relation to DVA benefits and counselling.²
7. These issues have particular relevance to paragraph (a) of the Reference before the Committee which directs the Committee's attention to:
 - (a) the accessibility and adequacy of current mechanisms to provide support to victims of sexual and other abuse in Defence.
8. I noted that in the questioning of other witnesses at the hearing, some Senators focused on the difficulties which the Statute of Limitations presents to the victims of abuse trying to pursue a common law action for damages.
9. There seemed to be little attention to the fact that there are already developed 'current mechanisms' administered by DVA for providing support for veterans

¹ Mental health systemic issues are addressed in Volume 1 of the Report Chapter 6 at pages 122-126. See also my written submission of 12 March 2013 paragraphs 78-80.

² These systemic issues are addressed in the Supplement to Volume 1 of the Report Chapter 7 pages 62-64 and 70-73 and in my written submission of 12 March 2013 paragraphs 81-92.

- who have physical and/or mental health problems associated with their service in the ADF.
10. DVA benefits include counselling and medical treatment as well as direct financial support and respond to individuals' circumstances as they change over time.
 11. Accordingly DVA benefits could be of much more importance to people affected by abuse in the ADF in the past than a one-off payment under *either* common law *or* under the new capped compensation/reparation payment scheme.
 12. The Statute of Limitations *as such* does not apply in relation to claims for eligibility for DVA benefits. Delay in bringing a DVA claim has to be explained by a claimant and *can* defeat a DVA claim. However, it has been accepted in Tribunal consideration of a claim being brought many years after an alleged incident that the culture in a Defence establishment discouraging reporting and the well recognised and complex reasons which discourage a young person from reporting sexual abuse may sufficiently explain the delay.³
 13. It is also important to emphasise that access to DVA benefits including counselling, does *not* depend on a claimant being able to establish the elements which must be made out to succeed in a common law claim against the Commonwealth:
 - a duty of care on the Commonwealth and/or Commonwealth vicarious liability for an ADF member's duty of care;
 - a breach of a duty of care; and
 - injury caused by the breach of the duty of care.⁴
 14. Even without the issue of the Statute of Limitations, making out all of those elements to support a common law claim in relation to an incident of sexual or other abuse many years ago could be very difficult.
 15. Establishing an entitlement to DVA benefits and support for current health issues such as post traumatic stress disorder associated with an incident of sexual or other abuse in the ADF many years ago should be less difficult than making out a common law claim for such an incident. And it is my understanding that DVA benefits have been availed of by *some* individuals who suffered sexual or other abuse while in the ADF.
 16. However, although establishing an entitlement to DVA benefits should be less difficult than succeeding in a common law claim for damages, individual claimants seeking access to current DVA benefits for current health problems related to past abuse often face significant evidentiary barriers in proving that they were abused in the ADF many years ago.⁵
 17. The related systemic issues which we identified in Chapter 7 of the Supplement to Volume 1 of our Report are gathered in my written submission at paragraphs 81-92.
 18. My response to Senator Fawcett's request for an overview of these issues is as follows.
 19. Damaged and vulnerable individuals trying to prove that they were abused at a Defence training establishment when they were children or teenagers decades ago should have access to:
 - reports of previous Defence inquiries (redacted as necessary) which could corroborate their accounts; and

³ *Farnaby and MPRC* [2008] AATA 603. See Supplement to Volume 1 Chapter 7 pages 71-72.

⁴ See Volume 1 Chapter 8 pages 170-172 and Appendix 36.

⁵ See Supplement to Volume 1 Chapter 7 pages 70-73 and Attachment 11 to the Volume 2 Explanatory Material which is Appendix 2 to the Supplement to Volume 1.

- information (redacted as necessary) about DVA claims brought by other individuals which corroborate their allegations by giving similar accounts of abuse at the same or similar establishments.
20. Defence and DVA are much better resourced than are individuals to gather such information.
 21. Defence does not hold a consolidated record of reports of previous inquiries, Courts Martial and similar processes in relation to abuse issues. Apart from informing reviews of Defence processes and general risk management, such a record (redacted as necessary) could provide information informing DVA processes and corroborating individual claims for DVA benefits.
 22. DVA could – but had not when the Review discussed the issue with DVA officers in 2011⁶ – identify clusters and patterns of alleged abusive conduct across the thousands of claims which DVA has received and continues to receive.
 23. It is now almost a year since these high level systemic issues were put before the Government in the Supplement to Volume 1.
 24. The Government could immediately:
 - direct Defence to start putting together a consolidated set of copies of the reports of previous inquiries and Courts Martial and other proceedings involving issues of abuse in Defence;
 - direct DVA to report on how it could go about analysing the claims information, which it already holds and continues to gather, to identify clusters, patterns and trends in patterns of abusive behaviour;
 - commence discussions with Veterans representative bodies on these issues through the established consultative forums.
 25. Such information could assist in assessment of DVA claims and in general Defence risk management and reform of processes. Such information could also be of assistance to the Taskforce.
 26. This information and analysis may also assist in formulating the response to systemic issues related to mental health risks by identifying particular groups who may be at risk.

Dr Gary A Rumble

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⁶ The DVA submission to this Committee does not indicate that they have changed their practices on this issue since 2011.