
The Secretary
Senate Foreign Affairs, Defence and Trade References Committee

Dear Secretary

I attach a submission (with two attachments) on the Government Response dated 30 June 2015 (tabled 16 July 2015) to the Committee's October 2014 *Report on processes to assist victims of abuse in Defence*.

Yours faithfully

Dr Gary A Rumble

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES
COMMITTEE OCTOBER 2014 *REPORT ON PROCESSES TO SUPPORT
VICTIMS OF ABUSE IN DEFENCE***

**SUBMISSION ON GOVERNMENT RESPONSE OF 30 JUNE 2015 TABLED
16 July 2015**

DR GARY A RUMBLE

23 November 2015

INTRODUCTION

The Committee's October 2014 *Report on Processes to Support Victims of Abuse in Defence* recognised that more needs to be done to support victims of abuse in Defence.

The Committee made specific recommendations for ongoing support for ongoing impacts on the victims and their families of abuse in Defence.

The response which the Government tabled on 16 July 2015 to the Committee's October 2014 Report on *Processes to support victims of abuse in Defence* was vague and profoundly inadequate.

In this submission I recommend that the Committee:

- press the Government for substantive positive responses to the Committee's recommendations as a matter of urgency;
- press Government to take ownership of these issues and to direct Defence and DVA to do the work and analysis needed for the Government to make informed and fair decisions no later than the next budget process;
- maintain an ongoing oversight role in relation to abuse in the ADF;
- press for regular substantive reporting from Government and Defence to the Parliament on these issues and on Defence's *Pathway to Change* strategy.

BACKGROUND

The victims of abuse in Defence are some of the most vulnerable and powerless people in our society. In September 2013 in his Third Interim Report, Mr Roberts-Smith RFD QC as the head of the Defence Abuse Response Taskforce said:

Many of the Taskforce's complainants are in their fifties or older and, almost 70 per cent are male. They relate tragic stories of lives greatly affected by the abuse and the further trauma they experienced as a result of failure by those in authority to acknowledge or respond to it.

Many individuals never reported their abuse and have never spoken of it before, even to their partners or families. Many have spoken about their experience of severe mental and emotional harm as a result of the abuse, including alcoholism, drug addiction, social isolation and, mental illness.”
(page 5)

The abuse which victims of abuse in Defence suffered occurred because of failures by Defence, Governments and Parliaments to protect vulnerable people – often children and young people away from home and family support - in the Defence Forces.

The people who continue to suffer the ongoing effects of abuse – many now in their old age - are often isolated and poorly resourced. They have no voice.

It is imperative that the Parliament – especially this Committee of the Parliament – maintain vigorous and regular oversight of the adequacy of Government and Defence responses to abuse in Defence.

Even though much has been said about the commitment of Defence leadership to address these issues it took from the time we reported in October 2011 until the Committee started its hearings in 2014 for Defence to get around to amending the woefully defective Defence Instruction dealing with allegations of sexual assault. It may have been a coincidence but it seems likely that it was the fact that the Committee was looking into these issues which finally got an amendment to this Defence Instruction signed off as the Committee started its hearings.

No doubt the Government is of the view that the work of the DART has done much to respond to the impacts of abuse on ADF personnel. And no doubt the Opposition - which established the DART and other initiatives to address abuse in the ADF - is also satisfied that much has been done.

I agree that much has been done. My concern continues to be about what has not been done. It is clear that not all victims of abuse in Defence in the past would have gone into DART processes and – even for those who did – those processes which are in their final stages do not provide ongoing support in dealing with the ongoing impacts of abuse.

Many of the Committee’s October 2014 recommendations take up the substance of recommendations and issues made in the Volume 1 of the Report from the Review which I led – the *Review of allegations of sexual and other abuse in Defence* - in October 2011 and the Supplement to that Report in April 2012.¹

It took until 16 July 2015 – over three years since our Report put these issues before the then Government and seven and a half months after the Committee delivered its Report – for the Government to table a response dated 30 June 2015 to the Committee’s Report.

¹ The Report from the Review is commonly referred to as the DLA Piper Report. However, the Report set out only opinions and findings of myself and the other two Review leaders - Ms Melanie McKean and – until his withdrawal on account of ill-health in February 2012 - Professor Dennis Pearce. It did not report views of DLA Piper.

I make this submission solely on my own behalf. I do not represent the other Review leaders, DLA Piper or the other law firm which employed me during the conduct of our Review.

As I explained in my submissions to the Committee in 2014, in December 2013 – two years ago – the then Minister for Defence undertook to discuss with his colleague the then Minister for Veterans’ Affairs – concerns which had been identified in our 2012 report about difficulties which victims of abuse find in getting access to DVA benefits and what Defence and DVA could be doing to remove those difficulties.

In the years since our Report and in the seven and a half months taken for the Government to respond to the Committee’s 2014 report and in the months since the Government’s June 2015 Response:

- Victims of abuse and their families have been suffering without the support of DVA benefits which they should have been receiving.
- Inevitably some victims of abuse in Defence would have died and more will die without the support of those DVA benefits and without the comfort of recognition that they were victims.
- New victims of sexual assault in the ADF have had to deal with, and will continue to have to deal with, those assaults without access to genuine restricted reporting and without the support of a properly resourced Sexual Misconduct Prevention and Response Office in Defence.

There is nothing to indicate that the seven and a half months which it took to produce the Government’s June 2015 response were spent in close consideration of the substance of the Committee’s recommendations.

On the contrary, the Government’s response contains vague references to:

- Consideration of Committee recommendations taking into account ‘Government’s broader budget priorities’ – with no timetable for when that consideration will occur and no indication of how these issues will be considered; and
- Defence and DVA having various ‘actions’ under way – it seems Government will leave it to Defence and DVA to do what they think fit.

It is not good enough for Government to let these issues drift and leave it to Defence and DVA to decide what is ‘appropriate’.

- The Government and Defence are dealing with the consequences of abuse in Defence now *because* Governments and Defence have failed to prevent abuse in the past.
- Defence and DVA have not shown any inclination to volunteer for extra work.
- During the Committee’s Inquiry in September 2014 DVA was asked to provide information about resources it would need to carry out analysis of information in its own case files which could assist victims to establish eligibility for benefits. DVA declined to do so.

I was encouraged to see that Senator Xenophon was able to inform the Senate on 12 August 2015:

I am pleased to be able to say that the Minister for Defence has met with me today and has agreed to discuss with his ministerial colleagues whether further direction can be provided to the Department of Veterans' Affairs and to the Department of Defence about what needs to be done to provide an informed basis for decision on the committee's recommendations. I genuinely thank the Minister for that commitment. I will work constructively with all my colleagues for a just and overdue outcome for the all-too-many victims of Defence abuse.

However, since Senator Xenophon made that statement in the Senate, new Ministers for Defence and for Veterans' Affairs have been appointed. There is a real risk that whatever understanding Senator Xenophon had reached with Defence Minister Andrews in August 2015 has been lost in those Ministerial changes.

We will soon be in another Budget process. Unless Government gives Defence and DVA instructions on the information and analysis it requires to enable informed decisions on the Committee's recommendations for support for victims of abuse, lack of information about financial impact can be wheeled out as an excuse for Government to postpone further genuine consideration of the Committee's recommendations.

And victims of abuse in Defence will continue to suffer and die without the support which they could and should be getting.

Government should drive these processes and should give Defence and DVA clear guidance on what Government wants to enable decisions and when it wants it.

If the Parliament does not press for genuine ongoing support for the victims of abuse in the ADF, then no-one else will.

- As far as I am aware, the Opposition has not made any comment on the Government's 30 June 2015 response.
- In the Introduction to the November 2014 Report on abuse in Defence Mr Roberts-Smith stated (page 3):

... the Taskforce is not an inquiry body charged with making recommendations for reform. As such, this report does not include recommendations for change within Defence.

He could have added - *let alone recommendations for change in DVA.*

- Sex Discrimination Commissioner Broderick declined the Committee's invitation to make a submission for its Inquiry in 2014. She responded to the invitation by referring the Committee to her reports from her Review of the Treatment of Women at the Australian Defence Force Academy and in the Australian Defence Force.

- Many of the victims of abuse often had relatively short periods of service and do not see themselves as part of the veterans community represented by veterans groups.

The victims of abuse in the ADF are some of the most powerless people in our society.

The nation owes a special duty to the victims of abuse in Defence because every incident of abuse represents a failure of Defence to protect vulnerable members of the ADF from other members of the ADF and a failure of Governments and the Parliament to supervise the ADF adequately.

I recommend that the Committee:

- press the Government for substantive positive responses to the Committee's recommendations as a matter of urgency
- press Government to take ownership of these issues and to direct Defence and DVA to do the work and analysis needed for the Government to make informed and fair decisions no later than the next budget process
- maintain an ongoing oversight role in relation to abuse in the ADF
- press for regular substantive reporting from Government and Defence to the Parliament on these issues and on Defence's *Pathway to Change* strategy.

I make some more specific recommendations in my Comments on the Government's Response to each of the Committee's 9 Recommendations.

COMMENTS ON THE GOVERNMENT'S RESPONSE

I offer below comments on the Government's response to each of the Committee recommendations. I leave until last my comments on the Government's response to Committee Recommendation 4 – calling for a substantive response to the 35 systemic issues identified in the report from the Review which I led - and Recommendation 8 – calling for consideration of a Royal Commission.

My comments on Recommendation 4 are lengthy because of the number of 'reasons' which have been given for Government and Defence not giving the Committee a statement of what position has been reached on each of those 35 systemic issues. These issues have ongoing significance for welfare and safety of ADF members.

My comments on the Government's Response to Recommendation 8 and developments in relation to the issue of a Royal Commission raise broader issues separate from issues of access to DVA benefits for victims of abuse in the past.

I have left the discussion of the Royal Commission issue to the last in the hope that the Committee can press on with the less challenging issues of processes for support to victims and not delay action on those issues while considering the Royal Commission issue.

I am available to meet with the Committee to expand on any of these matters.

Dr Gary A Rumble

**Comments on Government 30 June 2015 Response (tabled 16 July 2015) to Committee Recommendations in October 2014 Report
*Processes to support victims of abuse in Defence***

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.

Government response

Disagree.

As announced in December 2014, the Taskforce will continue its work until 30 June 2015, however, it is not the Government's intention to open the Taskforce up to new complainants. It remains the Government's view that allegations of abuse by Defence personnel after 11 April 2011 can be adequately dealt with through existing means such as the ADF Investigative Service, Sexual Misconduct Prevention and Response Office and the Values Behaviours and Resolutions Branch, as well as health professionals, chaplains, legal officers and/or Psychologists. In addition to this, independent avenues exist through which complainants can make allegations of abuse by Defence personnel.

Defence will continue to support the Taskforce in achieving its outcomes and fund its activities until its work is concluded.

COMMENT

1. I did not address this issue in my submissions to the Committee last year because my submissions focused on issues which had been addressed in the reports from the Review which I had led – the *Review of allegations of sexual and other abuse in Defence* – for which there had still not been a substantive response.
2. Whatever the deadline for taking a complaint into the DART processes was going to be, the DART processes have only ever offered short-term responses and have not addressed the needs for access to DVA benefits to assist with long-term impacts.
3. Our April 2012 Supplement to the Volume 1 of the Report from our Review identified the need for victims to have access to DVA benefits to provide ongoing support for the ongoing impacts of abuse and to have assistance in information in Defence and DVA file material to establish their entitlements.

4. It is significant that the Government's June 2015 response long list of 'existing means' for responding to allegations of abuse in Defence personnel' does not mention access to DVA benefits.
5. There seems to be a lack of enthusiasm in Government for assisting victims of abuse in Defence to get information to support claims for DVA benefits to which victims are entitled.
6. Defence may well think it is bad for recruiting and ADF morale to provide DVA claimants with access to the detail of abuse incidents in Defence.
7. However, as I set out in my detailed submissions to the Committee in 2014, there is a moral obligation on the nation and a Model Litigant obligation on the Commonwealth to provide victims with that assistance from Defence and DVA records. See also my comments on the Government's Response to Recommendation 6 below.

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.

Government Response

Noted.

SeMPRO's policy is to discuss options for the collection of forensic evidence with clients only where the collection of that evidence is possible (i.e. the disclosure is made within the 72 hour window required for primary forensic collections). SeMPRO will facilitate support for clients who have agreed to a medical check.

SeMPRO accepts contact from both current and former members of the ADF. The SeMPRO website has been redesigned and includes clear advice that former members can contact SeMPRO as well as the fact that, in some instances, forensic evidence can be collected. SeMPRO's webpage can be found at www.defence.gov.au/sempro.

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.

Government Response

Noted.

SeMPRO is one of a range of responses to managing sexual misconduct in Defence. Defence strives to achieve a holistic approach to delivering support in response to sexual misconduct, which may include health professionals, the ADF Investigative Service, chaplains, legal officers or Psychologists, as well as SeMPRO support staff.

SeMPRO was established in July 2013 and resourced at that time to support its identified Initial Operating Capability. These levels may or may not remain appropriate for SeMPRO's ongoing activities, and this will need to be considered with reference to the uptake of SeMPRO's services to date and its planned future activities.

COMMENT

1. I explained in my submissions to the Committee during its 2014 Inquiry the basis for believing that the low rate of reporting sexual assault in the general community – generally regarded as being less than 20% - is likely to be even lower in the ADF.

2. The Vice-Chief of the Defence Force – Vice-Admiral Griggs – informed the Committee in its hearing in September 2014 that the ADF leadership would not commit to pursuing zero incidence of sexual assault of ADF members by ADF members because the ADF leadership considered that zero incidence of sexual assault was not achievable.
3. Accordingly it is likely that:
 - There have continued to be victims of sexual assault in the ADF;
 - Less than 20% of victims of sexual assault in the ADF get any assistance;
 - Forensic evidence is not collected for the vast majority – probably more than 80% - of sexual assaults in the ADF;
 - Command gets no information at all about the vast majority - probably more than 80% - of sexual assaults or the risk factors which contribute to those assaults occurring;
 - The overwhelming majority of perpetrators are not identified as being a potential danger to other members of the ADF let alone called to account in any way.
4. The Report of the *Review of allegations of sexual and other abuse in Defence* which I led, supported introduction of ‘restricted reporting’ along the lines recommended by Chief Petty Officer Angela Ballard and supported by the report which she had presented to Defence in 2009 from her Churchill Fellowship study of restricted reporting in the Defence Forces of many other countries.
5. In 2012 Sex Discrimination Commissioner Broderick recommended:

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 *Review of Treatment of Women in the Australian Defence Force Phase 2 Report* August 2012.)
6. Commissioner Broderick’s report referred to the problem of under reporting of sexual assault in the ADF and explained the importance of restricted reporting used by the US and Israeli Defence Forces in the following terms (at page 271-272 with footnote references deleted):

The essence of this approach is to provide victim care for those who have been sexually assaulted, regardless of any law enforcement involvement, investigation or proof of any assault. Restricted reporting allows victims to report an incident confidentially and access medical and counselling support without disclosing identities or initiating an

investigation. It provides command with de-identified information about rates of sexual assault that may help to effect systemic change. Victims can elect to convert to an 'unrestricted' status at a later stage should they wish to do so. The report would then be investigated through the chain of command. The Review notes that the Report of the Review into Allegations of Sexual and other Abuse in Defence has recommended that in Phase 2 of its Review there should be 'further examination of the establishment of a system for permitting the restricted reporting of sexual assaults in Defence with particular regard to the availability of such a system for the receipt of allegations arising from the distant or even middle distant past.' ...

(272) It has been acknowledged that a 'restricted' report does not apportion accountability for the alleged act. The Inspector General ADF 2011 report recommends that this approach should not be adopted by the ADF because of this lack of accountability, as well as the view that such an approach is inconsistent with the maintenance and enforcement of Service discipline, potentially allowing sexual assailants to continue to serve undetected. Certainly, careful consideration would need to be given to the application of a measure of this nature in the Australian context having particular regard to legal obligations imposed on the ADF, including those relating to vicarious liability under the Sex Discrimination Act. Nevertheless, as outlined below, the Review is concerned that to date, the ADF has failed to adopt an approach that appropriately and sensitively focusses on the needs and wishes of a complainant.

The Review was also concerned at the current deficiencies in terms of data collection and strategic use of data in relation to incidents of sexual harassment, sexual misconduct and sexual assault. An accurate picture of the extent of sexually based unacceptable behaviour cannot be gained. This means that offenders cannot be tracked, repeat offenders cannot be identified, outcomes cannot be measured and the level of risk to other ADF members cannot be determined and addressed.

A situation should not endure whereby incidents of sexual harassment, sex discrimination and sexual abuse continue to go unreported and complainants remain without support. Instead, it is incumbent upon any first class employer to take a 'complainant focussed' approach, one which empowers the complainant to make choices and which may aid in the initial stages of recovery. Further, the benefit of more accurate information about rates of sexual assault will significantly aid the ADF's attempts to ensure a safe workplace and appropriately target prevention programs.

7. Commissioner Broderick summarised the intent behind recommendation 19 (page 274 emphasis added):

Confidential (restricted) reports

The ADF, through SEMPRO, must investigate as a matter of urgency, mechanisms to allow for confidential (restricted) reporting of sexual harassment, sex discrimination and sexual offence complaints. Given the extent of under-reporting, this would ensure access to information and support to members who are victims of sexual harassment or sexual assault, but who may not have otherwise reported an incident and would not have access to support services. Experience from other militaries demonstrates that confidential reporting leads to a significant increase in the number of men and women accessing services. A confidential reporting system would also allow for the collection of de-identified data that would not otherwise be available.

8. In November 2012 the then Government agreed to introduce restricted reporting and to establish SeMPRO.
9. With no great urgency shown by Government or Defence, on 1 July 2013 SeMPRO commenced operation and had responsibility for a much weakened version of ‘restricted reporting’ under which SeMPRO is only allowed to accept reports of sexual assault on a restricted (confidential) basis if there was no current risk to the victim or other personnel.
10. The proviso about current risk will usually mean that if the perpetrator is still in the ADF then SeMPRO cannot accept a report on a confidential basis.
11. Accordingly if a victim of a recent assault wants assistance shortly after an assault SeMPRO is not allowed to take the report on a confidential basis.
12. If victims are not allowed to report on a confidential basis then – consistent with broad community experience and with the long history in the ADF – the overwhelming majority are likely to respond by choosing not to report at all.
13. Furthermore, SeMPRO was not given sufficient resources to have representatives at major bases and facilities or on ships. Victims were limited to calling a telephone number.
14. This is ‘Claytons’ restricted reporting.
15. Defence confirmed in writing to the Committee in 2014 that in SeMPRO’s first year of operation SeMPRO had not received a single report of sexual assault within 72 hours of an incident and therefore no issues of collecting forensic evidence had arisen.
16. Not one.
17. The Vice-Chief of the Defence Force, Vice-Admiral Griggs, informed the Committee in its hearing in September 2014 that the ADF leadership would not commit to pursuing zero incidence of sexual assault of ADF members by

ADF members because the ADF leadership considered that zero incidence of sexual assault was not achievable.

18. It follows that:
 - during SeMPRO's first year of operation there must have been victims of sexual assault in Defence;
 - not a single one of those victims of sexual assault in the ADF got counselling or other assistance from SeMPRO in the crucial early hours after the incident;
 - during SeMPRO's first year of operation SeMPRO was not able to alert Command to any current risk situations;
 - during SeMPRO's first year of operations SeMPRO there was not a single occasion when SeMPRO facilitated the collection of forensic evidence which could have assisted later action against an alleged perpetrator.
19. This is a disaster for Defence and for victims.
20. The Committee recommended further resourcing for SeMPRO.
21. The Government's response ominously says:

SeMPRO was established in July 2013 and resourced at that time to support its identified Initial Operating Capability. These levels may or may not remain appropriate for SeMPRO's ongoing activities, and this will need to be considered with reference to the uptake of SeMPRO's services to date and its planned future activities.
22. This seems to mean that – Government having provided SeMPRO with insufficient resources to be successful - if there is not a significant 'uptake' of SeMPRO services, then Government will further reduce SeMPRO's resources.
23. It looks as though – as I submitted to the Committee in 2014 - SeMPRO was set up to fail in relation to restricted reporting.
24. Information on SeMPRO's website about gathering forensic evidence will remain irrelevant if SeMPRO continues not to get any reports of recent incidents within the 72 hours when collection of forensic evidence might be possible.
25. As Commissioner Broderick said in 2012:

A situation should not endure whereby incidents of sexual harassment, sex discrimination and sexual abuse continue to go unreported and complainants remain without support. Instead, it is incumbent upon any first class employer to take a 'complainant focussed' approach, one which empowers the complainant to make choices and which may aid in the initial stages of recovery.

26. That situation has ‘endured’ for four years since we identified the issue in October 2011 and for another three years since Commissioner Broderick confirmed the issue and the Government decided that restricted reporting would be introduced.
27. I recommend that the Committee continue to press Government and Defence to bring in genuine restricted reporting and to resource SeMPRO at a sufficient level to deliver genuine restricted reporting.

[Discussion of the Government's response to Committee Recommendation 4 and Committee Recommendation 8 is set out after discussion of Recommendations 5, 6, 7 and 9.]

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.

Government response

Noted.

An expansion for NLHC along these lines would enable a greater number of victims of abuse to access treatment for specific mental health conditions. This proposal will need to be considered in the context of the Government's broader budget priorities.

COMMENT

1. It seems to be implied that there will be some consideration of this recommendation but there is no indication of the timetable for this consideration nor of how this consideration will be carried out.
2. NLHC with the three year minimum service requirement came into effect on 1 July 2013. The Government has available to it:
 - the financial impact analysis which was carried out when the legislative amendments were made for NLHC with the three year minimum service requirement; and
 - information about the financial impact since NHLC with the three year minimum commenced.
3. Accordingly, it should be a simple task for DVA to provide Government with an assessment of the financial impact of removing the three year minimum service precondition. In its October 2014 Report the Committee recognised that it was grossly unfair that people were damaged and driven out by abuse shortly after they had joined the ADF should be denied access to NLHC.
4. I urge the Committee:
 - to press the Government for substantive positive responses to the Committee's recommendations as a matter of urgency;
 - to press Government to take ownership of these issues and to direct Defence and DVA to do the work and analysis needed for the Government to make informed and fair decisions no later than the next budget process.

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.**

Government response

Noted.

The Government currently engages with a number of veterans' representative groups and ex-service organisations on a range of issues affecting the veteran community. The Government is committed to ongoing consultation with veterans' representative groups and to reviewing its consultative mechanisms and will consider options to broaden engagement in order to better support abuse victims.

The findings of the consultation will be reported back to the Minister for Veterans' Affairs.

COMMENT

1. I addressed these issues at length in my submissions to the Committee in 2014.
2. It is encouraging that there is finally to be some consultation and a report to the Minister for Veterans' Affairs.
3. However, it seems it is left to the Department of Veterans' Affairs to decide on what consultation is appropriate and what options will be put before the Minister for Veterans' Affairs.
4. It is particularly problematic that the Response does not mention Defence.
5. In August 2011 as part of the Review I was then leading I met with representatives of DVA and asked them whether they carried out analysis of their own extensive file material to identify patterns in the kinds of abuse

which had occurred in Defence and which could be relevant to former members of the ADF seeking to establish that they had been the victims of abuse. The answer was no but that they could consider doing so but that DVA would probably need to consider the issue for about two years. At the time that seemed to be a remarkably long period for consideration.

6. In the April 2012 Supplement to our Report we identified that both Defence and DVA would have extensive file material about abuse in Defence which could assist individuals damaged by abuse in Defence to establish the credibility of their claims that they had been abused in Defence.
7. We also identified that individuals damaged by abuse were often socially isolated and out of the usual veterans' networks.
8. Some of them might have previously attempted to access DVA benefits and been turned away because of their lack of supporting evidence.
9. Others would have been defeated by the record of the grounds for their termination. They may well be unaware that it is possible to go behind the recorded grounds for dismissal if there is evidence that – for example – they left because they were damaged by abuse.
10. We recommended that DVA should be asked to consider ways to reach out to these individuals who are missing out on DVA benefits to which they are entitled.
11. We also identified that Defence did not have any consolidated collection of reports of abuse in Defence and that Defence should be directed to bring together that information so that:
 - Defence could draw lessons for its own ongoing risk management; and
 - information could be shared with DVA to assist victims of abuse to establish their entitlement to DVA benefits.
12. It is my understanding that the then Chief of the Defence Force launched Plan Millenium which has brought together thousands of records of past allegations and processes in relation to abuse in Defence.
13. Mr Roberts-Smith asked DVA to consider the extent to which information gathered in DART processes could be taken into account in DVA assessment of claims for benefits and DVA has been considering the relevance of DART information. However, that is limited to the information provided by the DART.
14. In my submissions to the Committee I expressed the view that the Commonwealth's failure to draw and share information from its own DVA and Defence file material which is relevant to DVA entitlements puts it in breach of its Model Litigant obligations.

15. In the 2014 hearing by the Committee DVA were asked to provide a written indication for the Committee on what would be required for DVA to analyse its own file material. DVA declined to provide that outline.
16. I urge the Committee to press Government to take ownership of these issues and to direct both DVA and Defence
 - to do the work and analysis needed for the Government to make informed decisions no later than the next budget process
 - for Defence and DVA to include in their options the options outlined in the Committee's recommendation and related discussion in the Report
 - Defence should be specifically directed to address how information from Plan Millenium and any other Defence records can be extracted to share with DVA.

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.

Government response

Noted.

The Government agrees to examine options to provide financial assistance to support a national, sustainable community-based approach to assisting veterans who have suffered abuse. This proposal will need to be considered in the context of the Government's broader budget priorities.

COMMENT

1. I did not address this issue in my submissions to the Committee.
2. It seems there will be some consideration of this recommendation but there is no indication of the timetable for this consideration nor of how this consideration will be carried out.
3. The Committee may wish to ask the Government to direct DVA to do the work and analysis needed for the Government to bring forward options relevant to this recommendation to enable decisions to be made no later than the next budget process.

[Discussion of the Government's response to Committee Recommendation 4 and Committee Recommendation 8 is set out after discussion of Recommendations 5, 6, 7 and 9.]

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.

Government response

Agreed.

COMMENT

1. My submissions to the Committee supported the Committee's conclusion on this issue. See Part I pages 28-31 of my Submission of 2 June 2014.

2. However, I note that the Committee referred (para 5.38) to Defence having informed the Committee that:

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'.

3. It is not correct that the reason why Defence had not been provided with a copy of Volume Two was because information:

... in Volume 2 had been provided by victims of abuse to the DLA Piper Review on the strict condition of confidentiality

4. Our terms of reference expressly required us to report to the Secretary of Defence as well the Minister. Accordingly we had prepared a version of Volume 2 to go to Defence's Chief Counsel (who was our Defence contact for purposes of the Review) representing the Secretary of Defence.

5. We held that working version back while we waited for the Minister gave clearance for us to deliver that version to Defence.

6. The reason why that version of Volume 2 did not go to Defence was that the Minister decided that Defence should not see Volume 2 in any form.

7. The working version which we had prepared to go to Defence did have some redactions from the version which we provided to the Minister.

8. However, there were very few redactions in that working version to meet confidentiality concerns. There did not need to be extensive redactions in the version of Volume 2 which we had prepared to go to Defence because:

- Volume 2 included four large ring binder folders dealing with our audit of Defence file material in relation to what were then current Fairness and

Resolution Branch and ADFIS matters. The information in those folders had come to us from Defence and some of it was de-identified before it came to us. There was, accordingly, no condition of ‘confidentiality’ preventing those four folders going to Defence to report on information provided to us by Defence.

- Volume 2 also included our assessments and recommendations on media allegations. There was no confidentiality issue preventing those parts of Volume 2 going to Defence either.
 - In relation to the aspects of Volume 2 which reported on information which had been provided to us by sources – victims and witnesses - there were some instances where the source of the allegation had imposed a confidentiality condition preventing full or any disclosure to Defence. However, there were very few allegations in this category.
9. The approach which we took to redaction and preparation of the working version of Volume 2 for Defence is set out in:
- the Explanatory Material for Volume 2 – which is Appendix 2 to the Supplement to Volume 1. The Supplement to Volume 1 – including the Explanatory Material for Volume 2 has been on the public record since the middle of 2012 and is still available on Defence’s own *Pathway to Change* site - <http://www.defence.gov.au/pathwaytochange/>
 - The letter of 17 December 2012 which I sent to Minister Smith on behalf of myself and Ms McKean, the other leader of the Review. A copy of that letter was provided to the Committee as Annexure 1 to Part I of my 2 June 2014 written submission to the Committee.
 - In Part I pages 28-31 of my Submission of 2 June 2014.

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.

Government response

Noted.

The establishment of the Taskforce was the formal Government response to the DLA Piper review. The Taskforce's terms of reference include a requirement to 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 by Defence personnel alleged to have occurred prior to 11 April 2011.

The Taskforce's Report on abuse in Defence was tabled in Parliament on 26 November 2014. The report deals with the Taskforce's conclusions in relation to the systemic issues identified in the DLA Piper review.

The Government is currently considering the findings and conclusions of this report and notes that these findings are relevant to informing Defence's cultural change program, Pathway to Change, which is now in its third year.

In his Additional comments Senator Xenophon made a related recommendation.

1.23 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.

Government response

Disagree.

The Government notes that the Taskforce's Report on abuse in Defence was tabled in Parliament on 26 November 2014. The report deals with the Taskforce's conclusions in relation to the systemic issues identified in the DLA Piper review.

The Government is currently considering the findings and conclusions of this report and notes that these findings are relevant to informing Defence's cultural change program, Pathway to Change, which is now in its third year.

COMMENT

1. The Terms of Reference for the Review which I led in 2011-2012 expressly stated:

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 that have been identified.

2. In our Phase 1 Report we identified a total of 35 systemic issues in Volume 1 (October 2011) and the Supplement (April 2012) to Volume 1 of the *Review of allegations of sexual and other abuse in Defence*.
3. I attach the consolidated table from the April 2012 Supplement to Volume 1 which includes findings, recommendations and the 35 issues for 'further consideration'. (See Attachment 1.)
4. Some of the systemic issues which we identified have had substantive responses. However, many of them have not yet had any substantive response. There are still many matters outstanding which are fundamental to the welfare of past, present and future members of the ADF.
5. In its June 2013 *Report on the DLA Piper Review and the government's response* the FADT Committee noted (see page 53) that our Review had identified under-reporting of abuse as being a 'systemic' issue even though we had not included that issue as one of the 35 numbered systemic issues.
6. With respect, I agree that the Committee was correct to note the importance we attached to under-reporting in our Volume 1 and Supplement to Volume 1 reports in October 2011 and April 2012 and was correct to characterise 'under-reporting' as a major systemic issue.
7. In the 2013 Report the Committee included:

Recommendation 2:

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.

8. The Government's March 2014 response to that Committee Recommendation was:

Agree

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.

9. Note the emphatic and positive – *Agree* – by the Government in its March 2014 Reponse to the Committee’s recommendation. That is the Government had agreed that Defence would formally respond to the issues and findings in the DLA Piper Review.
10. However, as far as I am aware, there has not been any such formal response on those issues.
11. Furthermore, as far as I am aware, there has not been any detailed reporting on progress with *Pathway to Change* since March 2014.
12. And now we have a slide in the Government’s June 2015 Response to merely *Noted* – which is neatly ambiguous. All that the Government says is that it has ‘noted’ the Committee’s recommendation. There is no commitment to doing anything let alone to doing anything within a timeframe.
13. In particular, there is no commitment to give Parliament a substantive response to the 35 (plus under-reporting) systemic issues.
14. The March 2014 commitment that Defence would report as part of its process of reporting on *Pathway to Change* has become meaningless because – as far as I am aware - there has been no substantive public reporting from Defence on the implementation of the *Pathway to Change* strategy.
15. ‘Under consideration’ is not an adequate answer after four years. I set out below why the DART November 2014’s report on the 35 systemic issues is not an answer either.
16. Defence and the Government are long overdue to provide the Committee, the Parliament and the nation with specific unambiguous answers on what substantive position has been reached on each of the 35 (plus under-reporting) issues.
17. The nation through Parliament is entitled – and I would say obliged - to ask for substantive and considered responses to these issues.
18. It is very likely that teams within Defence were long ago tasked to compile tables in relation to each of the 35 issues and to provide internal reports on status of each of these 35 issues.
19. In its 2013 Report the Committee referred to statements made by the then Chief of the Defence Force General Hurley to the Committee in its March 2013 hearings to the effect that Defence had taken the DLA Piper Report systemic issues into account when formulating the *Pathway to Change* Strategy (See Report para 7.17).
20. This Committee and the Parliament should not be required to put together the jigsaw pieces.
21. I recommend that the Committee press for specific unambiguous answers by the end of the calendar year on what substantive position has been reached on each of the 35 issues.

DART's report on the DLA Piper Report's 35 systemic issues.

22. The Government's June 2015 Response refers to the DART's November 2014 *Report on abuse in Defence*:

The Taskforce's Report on abuse in Defence was tabled in Parliament on 26 November 2014. The report deals with the Taskforce's conclusions in relation to the systemic issues identified in the DLA Piper review.

and states that:

The Government is currently considering the findings and conclusions of this report ...

23. That sounds reasonable.
24. However, a quick perusal of the DART Report on abuse in Defence shows that this is a hollow assurance.
25. That Report runs to 360 pages. In those 360 pages the Report spends one page discussing the 35 systemic issues from the DLA Piper Review.
26. I attach a copy of that one page (straddling pages 51-52 in the DART November 2014 Report) as Attachment 2.
27. When the Government comes to read that one page it will find that there is little of substance there.
28. Mr Roberts-Smith made clear through the Interim Reports across 2013-2014 and in a meeting which I had with him in October 2013 that he regarded consideration of the 35 'DLA Piper' systemic issues as a low priority.
29. Mr Roberts-Smith never acknowledged the existence of the letter of 8 March 2013 from Minister Smith confirming that Mr Roberts-Smith was to consider and report on all of the systemic issues from our Review. Mr Roberts-Smith apparently ignored the Minister's letter even though Minister Smith was joint signatory of the terms of reference and even though that letter was provided to the FADT Committee in 2013 during its Inquiry into the adequacy of the Government Reponse to the Report of the Review which I led.
30. The Minister's 8 March 2013 letter (copy provided with my submissions in 2013 and 2014) included assurances that:
- Mr Roberts-Smith and DART would be considering and reporting on all aspects of the DLA Piper Report including those 35 systemic issues; and
 - the Minister had asked Mr Roberts-Smith to liaise with Defence to commence discussions between Defence and DVA on some of the issues relating to access to DVA benefits and current risks to mental health of victims of abuse.

31. The reasons given in Mr Roberts-Smith's November 2014 Report for not systematically and clearly addressing the 35 'DLA Piper' systemic issues and my responses to his reasons are as follows.

An 'exercise of judgment'?

32. The November 2014 DART report referred to Mr Roberts-Smith's 'exercise of judgment'.

DART

The DLA Piper Review identified 35 systemic issues, each of which has been considered by the Taskforce in the course of its work. However, as noted in previous reports, the Taskforce has exercised its judgement in relation to whether action should - and could - be taken in line with the Terms of Reference

My response

33. First - Minister Smith's 8 March 2013 letter had emphatically confirmed that the DART would report on all aspects of the DLA Piper Report – including the 35 systemic issues. Those assurances were relied on by this Committee in 2013 in its Inquiry into the Adequacy of the Government Response to the DLA Piper Report.
34. I am sure that Mr Robert-Smith had a lot to do as he was finalising this Report and the companion *Report on Abuse at ADFA*. He simply may have run out of time to address all the systemic issues we had identified.
35. However, the DART report says Mr Roberts-Smith 'exercised his judgment' – that is, he decided he would not report at all on some of the systemic issues we had identified. That decision was made regardless of the assurances given by Minister Smith in March 2013 and regardless that those assurances had been communicated to this Committee.
36. This shows a remarkable lack of respect for assurances given by the Minister for Defence and indirectly a remarkable lack of respect for Parliament.
37. This Committee should assert that the Parliament and its Committees are not irrelevant to oversight of abuse in Defence.
38. Second – I make the comment that generally DART was not tasked to take 'action' on systemic issues which our Report had identified.
39. Generally the issue for the DART was to comment on whether or not it agreed that issues which we had identified were worthy of further 'Phase 2' consideration.
40. The silence of Mr Roberts-Smith on some of the systemic issues which we identified means that some important issues which our Report had identified for further consideration could just disappear from sight.

41. These issues were identified by our Review as being relevant to the welfare of past, current and future members of the ADF. See the examples set out below.
42. Government and Defence should not be able to avoid accounting to Parliament on these issues by relying on Mr Roberts-Smith's failure to mention them in his *Report on abuse in Defence*.

Defence has been 'considering' systemic issues?

43. The DART report (page 51) referred to Defence consideration of systemic issues.

DART

It is important to note that these issues were identified in 2011. Since then, Defence has made significant progress in dealing with systemic issues giving rise to abuse. The Taskforce has engaged extensively with Defence in relation to the implications of its work for the Pathway to Change strategy ...

... In particular, the Taskforce notes the significance of the establishment of the Sexual Misconduct Prevention and Response Office (SeMPRO), ... The Taskforce also acknowledges the work that Defence is currently undertaking in relation to a number of the other issues identified by DLA Piper, including those relating Defence databases (Issues 7 – 10, S3, S4 and S6).

...

The Taskforce Chair has also written to Defence to confirm the progress that has been made in relation to some of the specific issues identified by the DLA Piper Review, in particular the issues relating to Defence's internal systems and processes. While these issues are primarily a matter for Defence, the Taskforce will continue to liaise with Defence and others in relation to systemic issues in relation to Defence's progress on Pathway to Change strategy

My response

44. First - in relation to the reference to the issues having been raised in 2011 – there may be some in Defence who believe that if they stall long enough they will not have to give Parliament a substantive response to some uncomfortable issues.
45. This Committee should not let the passage of time – and success in stalling - be relied on as a justification for Defence to avoid accounting to Parliament.

46. Second - the statements to the effect that Mr Roberts-Smith was confident that Defence had been considered, or were considering, systemic issues which we raised puts us in a loop:
- the Government and Defence say that the Government's response to our systemic issues was to ask Mr Roberts-Smith to report on those issues.
 - Mr Roberts-Smith reports that he is confident that Defence has considered or is considering the issues.
 - No-one tells the Parliament what has been the outcome of those considerations.
47. This Committee should press Government to break that loop and to give the direct responses which the Government committed that Defence would give in March 2014.

DART 'not able to take action'?

48. The DART report referred to DART being unable to take action on systemic issues identified by the DLA Piper Review.

While each of the systemic issues identified by the DLA Piper Review are matters of general concern, in some cases the Taskforce was ... unable to take specific action ...

For example, the Taskforce was not in a position to consider how to provide alleged perpetrators suffering mental health problems with appropriate assistance because it does not deal directly with perpetrators (Issue 6). ...

My response

49. As discussed above, the DART Terms of Reference did not task the DART to take 'action' to deal with systemic issues. The Terms of Reference certainly did not justify burying systemic issues we had identified because the DART could not deal with them.
50. It was my understanding that the DART's task was to consider whether any of the systemic issues which we had identified should be further considered or addressed.
51. As for the particular example given by the DART about Issue 6: - Issue 6 from our October 2011 Report recognises that members of the ADF who were pressured into abusing other members of the ADF or who became abusive after they were abused in the ADF, are also victims and are likely to be suffering or to be at risk of suffering mental health issues (and related impacts).
52. The Issue which we posed for consideration was what might be done to reach out to these individuals who became abusers and who may think that they do not deserve assistance because of their own guilt as perpetrators of abuse.

53. Mr Roberts-Smith said in his Report that he does not know anything about such people because ‘the DART does not deal directly with perpetrators’.
54. This is surprising given that Mr Roberts-Smith delivered a separate detailed report on abuse of teenage boys at HMAS Leeuwin. Judge-Advocate General Rapke had reported in 1971 that at HMAS Leeuwin teenage boys were pressured to join in assaults on the next intake of more junior boys or to continue to be targetted for beatings and other abuse themselves.
55. In the areas of Defence where abuse of junior recruits has been entrenched many victims of abuse would have become abusers. This is acknowledged at page 6 of the DART’s own report –

Complainants to the Taskforce also revealed that abuse is perpetuated through the manner in which abusive behaviours are ‘learned’ by those who have been subjected to abuse. In some cases abuse against specific individuals was perpetuated across locations and sometimes across services. Some complainants reported that after being subjected to abuse, they went on to abuse others.

56. Mr Robert-Smith’s reason for dismissing the issue which we identified - ‘[the DART] does not deal directly with perpetrators’ - indicates a lack of serious consideration of this important issue.
57. Of course, not many perpetrators would have come into the DART processes which was publicised as being for victims. They would not have come into DART processes *because* they would not have regarded themselves as victims and *because* they would have thought themselves guilty and undeserving.
58. Turning young people into abusers is a particularly insidious impact of abuse.
59. It is still my view that there is an issue of what action can be taken to reach out to assist people who became abusers in the ADF.

No additional material in the DART confirming systemic issues identified by the DLA Piper review

60. The DART report referred to DART not taking up systemic issues identified in the DLA Piper Review because the DART did not receive additional matter confirming systemic issues identified by the DLA Piper Review.

DART

While each of the systemic issues identified by the DLA Piper Review are matters of general concern, in some cases the Taskforce ... did not receive additional material raising similar matters.

My response

61. It seems that Mr Roberts-Smith construed his Terms of Reference as meaning that he only had to report on systemic issues which the DLA Piper Review had

identified if there was material before the DART which in his view raised the same systemic issues that we had identified.

62. That approach may well suit those in Defence who want to close down issues which our Report had identified.
63. For purposes of our Review we carried out and reported in Volume 1 on our survey of previous reports on issues related to abuse in Defence. We also reviewed relevant literature.
64. In 2011 while we were working on our Review, Defence challenged our approach of calling for copies of previous reports from Defence. Minister Smith confirmed that it was appropriate for us to look at previous reports.
65. Defence still did not volunteer any material to us even after the Minister confirmed that it was appropriate for us to carry out that survey of previous reports. Nevertheless, we managed to identify the names of some relevant reports and Defence provided most of the reports which we requested.
66. (A significant omission was the report - which Defence told us they could not find – from an inquiry in the early 1970s into the history of violence at the Army’s Balcombe Apprentice School.)
67. We also carried out a review of some of the literature relating to reporting of sexual abuse including Churchill Fellow, Chief Petty Officer Angela Ballard’s report on Restricted Reporting.
68. Those previous reports and the literature contain a lot of relevant information from which Defence could draw lessons for risk management across Defence.
69. Systemic issues which we identified as being worthy of further consideration were drawn from our survey of previous reports and from our survey of relevant literature included:

From October 2011 Volume 1:

Issue 16

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.

Issue 17

The Review considers that Phase 2 should consider the adequacy of Defence’s response to the issues raised by the Whiddett/Adams Report of an Audit of the Australian Defence Force Investigative Capability (July 2006).

Issue 18

The Review considers that Phase 2 should consider the present practices relating to the appointment to and retention of personnel in ADFIS with a view to ensuring that specialist skills developed by officers in the management of abuse allegations are maintained.

From April 2012 Supplement to Volume 1:

Issue S12

Phase 2 to consider whether it would be appropriate for Defence to seek the making of a regulation under s85ZZH(k) of the Crimes Act that would add recruitment into the ADF to the exclusions from the operation of the spent convictions legislation.

70. Defence typically wants to ‘move on’ – ‘fix’ a problem and put the bad news behind it.
71. Parliament and its Committees have also shown a readiness to ‘move on’ after dealing with a batch of Defence abuse issues.
72. Whether or not he shared this desire of Defence to ‘move on’ it is likely that Mr Roberts-Smith was concerned about narrowing the scope of the tasks which the DART had to carry out.
73. He stated in his November 2012 Report on abuse in Defence (page 2) that:

... the Taskforce is not an inquiry body charged with making recommendations for reform. As such, this report does not include recommendations for change within Defence.’
74. The focus on ‘moving on’ is one of the reasons why we have had at least half a century of serious abuse in Defence.
75. One of the large themes that emerged from our review of previous reports was that Defence seemed to treat emergence of abuse issues as being isolated problems and not being likely to be present in other parts of Defence *even though* the reports frequently identified factors discouraging reporting of abuse which were common across Defence environments and even though the factors identified as causing the abuse were present in other Defence environments.
76. No doubt there has recently been a concentrated effort in Defence to change culture. However, it would be a potentially disastrous triumph of hope over experience if Parliament and the leaders of the ADF believe that the last couple of years of effort have conclusively resolved these issues.
 - The ADF environments continue to have significant factors which contribute to risk of abuse occurring including a high level of intake of young males who arrive without years of immersion in Defence’s new culture.

- The Vice Chief of the Defence told this Committee last year that Defence will not commit to zero incidence of sexual assault in Defence because Defence leadership regard that as unachievable.
77. The learning which is available from previous reports and relevant literature should be drawn on.
78. Accordingly, the fact that Mr Roberts-Smith chose to ignore systemic issues which our Report identified from our survey of previous reports and our survey of the literature should not be accepted by this Committee as sufficient reason for Parliament, Government and Defence not to consider and report to Parliament these issues.

No material before the DART revealing witnesses who did not take action

79. The DART Report gives an example of a systemic issue which we had identified as being an issue that was dropped by Mr Roberts-Smith because the material before the DART did not confirm that issue:

DART

While each of the systemic issues identified by the DLA Piper Review are matters of general concern, in some cases the Taskforce ... did not receive additional material raising similar matters. ... while the Taskforce agrees that the issue of witnesses failing to take action to prevent abuse is concerning, the material before the Taskforce (including that from the DLA Piper Review) did not reveal many witnesses who did not take action. Therefore, the Taskforce was unable to comment on that aspect of Issue 3 with any accuracy.

My response

80. This is an example of the problem with Mr Roberts-Smith's approach of choosing to ignore previous reports and literature.
81. In relation to 'witnesses', our report identified systemic issues for Defence today from having as officers men who – as reported by Bronwen Grey in 1998 – as Cadets at ADFA did not intervene when other Cadets were sexually assaulting female Cadets even when the victim was screaming and struggling because of the culture of 'not jacking on your mates'.
82. 'Witnesses' would include people in adjoining rooms, people who saw an assailant coming or going from a victim's room and people who heard an assailant skiting about the assault.
83. Very often victims – if affected by alcohol or if overpowered and held down - would not have known whether there were any eye witnesses let alone other witnesses.
84. It was from Bronwen Grey's report – coupled with some specific examples in the matters before us where victims were aware of onlookers - that we identified systemic issues in relation to 'witnesses' – members of the ADF

now in officer ranks in particular – who knew that sexual assault was being carried out but who did not intervene or report.

85. On a *Four Corners* program in June 2014 Colonel Northwood gave an example of a victim attempting to keep a drunken assailant out of her room and of then resisting him in her room until he overpowered her. After the assailant had raped the woman he then vomited over her and her kit. Other Cadets in neighbouring rooms in the corridor could have heard the attack and the aftermath and may have seen the assailant coming or going. None of these witnesses intervened or came to the victim after the assault to assist her.
86. The DART report comments:

... the material before the Taskforce (including that from the DLA Piper Review) did not reveal many witnesses who did not take action. Therefore, the Taskforce was unable to comment on that aspect of Issue 3 with any accuracy
87. The Committee should not conclude, however, that, because the DART processes did not attract such witnesses, there are no witnesses out there.
88. It was not likely that the material brought into DART processes by victims would ‘reveal witnesses’ because the DART process was limited to offering responses for victims who opted into its processes.
89. DART did not offer a process for witnesses with information about assaults on other members of the ADF to bring forward that information.
90. In our Report – in accordance with our terms of reference - we reported on allegations from witnesses as well as allegations from victims. However, DART only took over allegations on which we had reported if the victim - on being contacted by DLA Piper after the establishment of DART, consented to the DART dealing with the allegation.
91. That restriction would have closed down some serious media and other third party allegations on which we reported.
92. After our Review, there has not been a process for witnesses to bring forward relevant information. Given the nature of our Review and its low profile it is unlikely that we attracted more than a small proportion of the current and former members of the ADF who have knowledge of abuse incidents. (A Royal Commission could provide such a forum to attract witnesses as well as victims.)
93. It seems that Mr Roberts-Smith decided that it was consistent with his terms of reference not to look at previous reports or to survey relevant literature – and to ignore the aspects of our Report which drew on such sources – and only to consider allegations if the victim consented the DART considering the allegations.
94. There is no point now in having a debate about whether Mr Roberts-Smith’s approach was consistent with his terms of reference as clarified by Minister

Smith's 8 March 2013 letter. Mr Roberts-Smith has been gone from the DART for almost a year and the DART is heading toward a wind-up of most of its activities.

95. The issue now for the Committee is whether Defence and the Government should report on systemic issues which we identified through our survey of previous reports and literature and from our consideration of third party allegations.

Is the Government's consideration of DART's report on systemic issues which it (DART) identified sufficient so that the Government does not have to revisit the 'DLA Piper review' list ?

96. At page 50 of the November 2014 *Report on abuse in Defence* Mr Roberts-Smith introduces his discussion of the systemic issues identified by the DLA Piper Review by stating:

This section should be read in conjunction with the broader discussion of systemic issues contained in Part C of this report and the Report on abuse at the Australian Defence Force Academy.

97. In the preceding discussion I have explained how Mr Roberts-Smith excluded from his own consideration any systemic issues which we identified from perusing previous reports and excluded any systemic issues which we identified from allegations which did not transfer from our Review to the DART processes.

98. However, apart from those limitations in the approach which Mr Roberts-Smith chose to take to reviewing the systemic issues which our Report had identified for consideration, there is a more fundamental reason why the DART November 2014 Report on abuse in Defence cannot be relied on by Government for an exhaustive or even an adequate identification of systemic issues.

99. And that reason is as follows:

100. As set out above, the November 2014 Report on abuse in Defence says that its discussion of DLA Piper report systemic issues:

... should be read in conjunction with the broader discussion of systemic issues contained in Part C of this report should be

101. I have read the 290 pages of Part C of the November 2014 *Report on abuse in Defence*. (I have also read the 97 pages of the body of the November 2014 *Report on abuse at the Australian Defence Force Academy*. I make some comments on the ADFA Report below.)

102. The 290 pages of the *Report on abuse in Defence* set out in detail the kinds of abuse and mismanagement which were considered by the DART. Those incidents included incidents which had occurred up to the April 2011 cut-off for DART consideration.

103. Through those 290 pages of Part C of his November 2014 Report Mr Roberts-Smith did not identify as such a single systemic issue let alone recommend that any systemic issue was worthy of further consideration.
104. What is Government to do with those 290 pages of description of abuse and mismanagement of abuse?
105. It seems that Mr Roberts-Smith considered that Government, the Parliament, the nation, the parents who entrust the ADF with their sons and daughters and the young people who trust the ADF and respond to the ADF recruiting advertisements should accept his assurances (see page 51) that he – Mr Roberts-Smith – had:

... engaged extensively with Defence in relation to the implications of its work for the Pathway to Change strategy

and

... written to Defence to confirm the progress that has been made in relation to some of the specific issues identified by the DLA Piper Review ...'. (see page 51).

106. So for the Government to respond to Recommendation 4 of the Committee's October 2014 Report relating to 35 systemic issues identified by the 'DLA Piper review' by saying that it [the Government] 'is currently considering the findings and conclusions of [Mr Roberts-Smith's Report on abuse in Defence] is meaningless.
107. Surely Parliament is entitled to know the detail of what has been done to respond to systemic issues – including the 35 systemic issues (plus under-reporting) – which our Review identified?
108. This Committee of the Parliament should demand to know what has been done and to maintain a watching brief on these issues.
109. I recommend that the Committee press for Government and Defence to address and report on these issues promptly because they are important to the welfare of past, current and future members of the ADF and because the Government undertook in March 2014 to direct Defence to provide that report.
110. I have also read the November 2014 *Report on abuse at the Australian Defence Force Academy* – not referred to in the Government Response to Recommendation 4. The body of that Report runs to 97 pages.
111. That Report includes the very significant recommendation (at page 96):

The Taskforce accordingly recommends that the Government establish a Royal Commission to inquire into, report and make recommendations in respect of allegations of abuse, and the management of reports of allegations of abuse, at ADFA from its inception to the present day.

112. That Report manages to include one paragraph – the final paragraph of that Report – which states what are in effect systemic issues requiring further consideration. The discussion leading up to that paragraph and the paragraph were:

... As recent reviews have made clear, ADFA is a very different institution today to what it was when first established and during the period of the Grey Review, particularly in relation to the approaches taken to supervision, education and management of cadets; and in approaches taken to the management of reports of abuse. However, the Taskforce has found that abuse has continued to occur at ADFA and that some of the significant risk factors found to have contributed to the occurrence of abuse continue to be identified as issues at ADFA, as well as in other recruit and training establishments.

The complaints of abuse outlined in this report raise continuing issues of concern for Defence to consider. These issues include: that abuse at ADFA did not stop in the 1990s but continued well into the 2000s; that the abuse, and the inadequate efforts made to prevent, stop and respond to abuse, have had long lasting impacts on those concerned; and that efforts to build an appropriate culture at ADFA, particularly in relation to appropriate sexual conduct, must be ongoing. Most critically, this report illustrates the importance of establishing a safe reporting culture at ADFA as well as at other recruit and training institutions, and the need for ongoing vigilance to ensure that the youngest and most vulnerable members of Defence, who in the case of cadets at ADFA are also its future leaders, are protected from abuse.

113. I note Mr Roberts-Smith's assumption – never explained or justified – that these are issues solely for Defence to consider.
114. I remind the Committee that issues of abuse in Defence have arisen because Defence has failed to protect its most vulnerable personnel – and because successive Governments and Parliaments have failed to supervise Defence adequately.
115. Parliament and this Committee on behalf of Parliament are entitled and obliged to know the detail of what has been done to respond to systemic issues and should – including the 35 systemic issues (plus under-reporting) – which our Review identified.
116. Again I say - this Committee of the Parliament should demand to know what has been done and should maintain a watching brief on these issues.

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.

Government response

Noted.

Defence has a range of resources to support victims of abuse. In particular, Defence is working closely with the Taskforce to conduct Restorative Engagement conferences and learn from the experiences of these conferences to incorporate the lessons learnt into alternative dispute resolution measures within Defence.

Senator Lambie Dissenting Report and Senator Xenophon Additional Comments – Recommendations for a Royal Commission

In her Dissenting Report Senator Lambie made recommendations for the establishment of a Royal Commission (see 1.12 at page 97).

In his Additional Comments Senator Xenophon also made a Recommendation for the establishment of a Royal Commission (see 1.40 at page 113).

Government response

Noted.

[In response to Senator Lambie’s recommendation only.] The Government notes Senator Lambie’s dissenting report and that the recommendations contained within the report are premised on the establishment of a separate Royal Commission into matters of abuse within Defence.

[In response to both Senator Lambie’s and Senator Xenophon’s recommendations.] The Government notes that the Taskforce’s Report on abuse in Defence was tabled in Parliament on 26 November 2014. This report deals with the Taskforce’s conclusions in relation to a general Royal Commission and notes that the Taskforce does not make a final recommendation.

The Government has issued revised Terms of Reference to the Taskforce which require it to make a recommendation in relation to this matter by 30 June 2015.

COMMENT

1. I am sure that the Restorative Engagement conferences have had a significant positive impact for those few who have participated in them.

2. However, I set out in my submissions to the Committee last year why I believe that these conferences cannot and will not have anything like the benefits for victims and the long-term impact on ADF culture which the Royal Commission into Child Abuse is having for other institutions.
3. I stand by those submissions.
4. If the ADF escapes the rigorous scrutiny which a Royal Commission can provide, the safety and welfare of current and future members of the ADF is and will continue to be compromised – and victims will not receive the benefits in acknowledgement and recognition which the Royal Commission into Child Abuse is providing for those victims.
5. When he delivered his final reports on 26 November 2014, Mr Roberts-Smith left open the question of whether there should be a general Royal Commission.
6. However, he reached a firm position on a Royal Commission specifically looking at ADFA abuse. He summarised his position as follows (at page 14 of the Report of abuse in Defence:

As the Report on abuse at the Australian Defence Force Academy makes clear:

- *there was a disturbingly high incidence of sexual abuse of female cadets at ADFA during the 1990s;*
- *in a number of these cases, Defence did not take appropriate disciplinary, administrative or management action;*
- *in some cases, reports of sexual abuse were seriously mismanagement by Defence; and*
- *the Taskforce is aware of at least 13 individuals allegedly responsible for perpetrating sexual abuse at ADFA in the 1990s still serving in the Permanent Forces or Active Reserves, and an additional three individuals who have transferred to the Inactive/Standby Reserves.*

The Taskforce considers that there is a very real risk that the ranks of officers in the ADF include a number of individuals who sexually assaulted or otherwise seriously abused other members of the ADF and include officers who acquiesced to that conduct.

Defence has known the identity of some of the people who experienced sexual assault at ADFA and some of the alleged abusers for many years. However, there are very likely a significant number of cases of which Defence is not aware.

Although the Taskforce appreciates that there are real difficulties for Defence in responding to allegations of sexual abuse at ADFA, outlined both in section 13.3(f) and in the Report on abuse at the Australian

Defence Force Academy, *the fact remains that many of these allegations were not appropriately managed at the time they were made. Further, there are constraints on Defence's capacity to respond to them now. This means that a significant cluster of very serious allegations within Defence have never been thoroughly investigated and abusers have never been called to account.*

The Taskforce considers that the only way of ensuring confidence that the allegations of very serious abuse at ADFA can be thoroughly and completely investigated, and appropriately dealt with is by way of Royal Commission.

The Taskforce accordingly recommends that the Government establish a Royal Commission to inquire into, report and make recommendations in respect of allegations of abuse, and the management of reports of allegations of abuse, at ADFA from its inception to the present day.

7. Mr Roberts-Smith had effectively got to the same position that the *Review of allegations of sexual and other abuse in Defence* – which I had led - had got to in October 2011.
8. I infer that the then Government was uncomfortable with that recommendation when we made it in October 2011.
9. In the Government's Response June 2015 to this Committee's October 2014 Report, there is no mention that Mr Roberts-Smith had made this very significant recommendation in November 2014.
10. On 26 November 2014 – the day on which Mr Roberts-Smith delivered his Report - the then Minister for Defence Senator Johnston announced

The Government will respond in the near future to these reports, and will consider Mr Roberts-Smith's recommendations, including that of a Royal Commission, very carefully.

11. Minister Johnston's Media Release that day also stated he had:

... directed the Department of Defence to engage the Sex Discrimination Commissioner to work with him to examine the issues raised in the report on Defence Abuse at ADFA.

and that the Sex Discrimination Commissioner was in an:

... ideal position to consider the appropriate response to the DART report including the recommendation around a Royal Commission into ADFA.

12. Paragraph (h) of the terms of reference for the DART as amended in December 2014 required the DART to:

Liaise with the Minister for Defence, Chief of the Defence Force, Secretary of the Department of Defence and the Sex Discrimination

Commissioner 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; and in particular for the consideration of an appropriate response to the Taskforce's recommendation in its Report on abuse in Defence regarding a Royal Commission into ADFA.

13. The new DART's position was summarised in a report dated June 2015 which was released on 30 July 2015 (at pages 3-4 as follows):

The Chair [Robert Cornall] and the Leadership Group (comprising Ms Susan Halliday and ACT Chief Police Officer Rudi Lammers APM) carefully reconsidered the ADFA recommendation in the light of:

- *the probability that the women who suffered the most serious abuse at ADFA are unlikely to want to participate in a Royal Commission, and*
- *therefore, a Royal Commission may tell us little of substance that we do not already know and leave us more or less where we are now.*

While more cases of sexual abuse (of both women and men) could be brought to light by a Royal Commission and former ADFA officers could be publicly questioned, the Taskforce's Reports have clearly identified:

- *the culture of abuse that prevailed at ADFA, particularly in the 1990s*
- *the scope, nature and contributory causes of that abuse, and*
- *Defence's failure to deal with it at the time and prevent the culture and abuse from continuing for so long.*

The real issue is what to do about the unacceptable situation that, while serious criminal offences were, based on the plausible information available to the Taskforce, committed at ADFA, few of the alleged abusers have been held to account and some of them are believed to be still serving in Defence. The Taskforce acknowledges that Defence faces real difficulties in responding to these allegations, as noted in the Report on Abuse in Defence and Section 3 of this Report.

In these circumstances, the Chair and the Leadership Group looked for another way to deal with this unresolved problem. As a result, the Taskforce suggested that the Sex Discrimination Commissioner should consider, as an alternative to a Royal Commission, a joint Australian Crime Commission and Australian Federal Police investigation.

14. There has been an astonishing lack of urgency in responding to the undoubted fact that there are amongst the ranks of officers in the ADF men who - when they were at ADFA - sexually assaulted other Cadets and other men who - when they were at ADFA - were aware that such assaults were occurring and who acquiesced in that conduct.
15. It is surely not acceptable that – at least without informed consideration by Government and ADF leaders of their fitness for such roles – rapists and their mates who acquiesced in rape of their fellow ADFA cadets are now in positions as role models and drivers of cultural change.

16. It is now over four years since Volume 1 of the *Review of allegations of sexual and other abuse in Defence* identified that:
- there had been a significant number of sexual assaults at ADFA pre-1998 for which perpetrators had not been called to account through criminal prosecution or through any Defence process;
 - according to the Grey Review in 1998 other Cadets who were aware that sexual assaults were occurring had not intervened because of the code of not ‘jacking on mates’;
 - prosecutions were not likely to succeed;
 - the perpetrators and those who had acquiesced in the conduct if still in the ADF would be in middle to senior management roles with risks for the ADF
 - consideration should be given to establishing a Royal Commission to consider what action was appropriate to deal with this situation
17. These findings were confirmed in April 2012 by the Review which I led.
18. It took the then Labor Government until November 2012 to respond to this issue – the response was limited to setting up the DART and asking Mr Roberts-Smith to consider this issue along with all of the other tasks handed to the DART.
19. It took Mr Roberts-Smith two years to report on this issue – which he did in November 2014.
20. He recommended a Royal Commission into the ADFA legacy.
21. The Government responded with further delay and sent the issue off – again - to the Sex Discrimination Commissioner and the new ‘DART’ now headed by Mr Cornall.
22. The new DART’s June 2015 Report abandoned Mr Roberts-Smith’s November 2014 recommendation for a Royal Commission and put forward instead for the consideration of the Sex Discrimination Commissioner:
- ... a joint Australian Crime Commission and Australian Federal Police investigation.*
23. This in turn raises a number of questions:
- What has been stopping the ACT Police – headed by Inspector Rudi Lammers who has been a member of the DART leadership group – from investigating rape at ADFA up until now?
 - Why would women who are reluctant to participate in a Royal Commission be more likely to want to go through the stress of giving evidence in a criminal prosecution;
 - The Australian Crime Commission was set up to concentrate on organised crime. It was given a role in relation to the Northern

Territory intervention. But what has been its effectiveness in achieving convictions in criminal trials?

- Why has Sex Discrimination Commissioner Broderick's Report not been released?
24. Mr Roberts-Smith was correct in his assessment of the difficulties of obtaining criminal convictions. But in any case there is not now and there has never been a requirement to pursue either a Royal Commission or criminal prosecutions. Both can be pursued in parallel.
 25. However, it is clear that unless a body with the powers and flexibility of a Royal Commission – supported by ADF Leadership calling on those with knowledge to come forward – we will continue to have rapists and others who acquiesced in their conduct in officer and role model ranks.
 26. Victims – including female career officers who have managed to stay in the ADF despite being the victims of sexual assault by other members of the ADF - should be given the opportunity to contribute to identifying those unfit to lead the nation's ADF
 27. I urge this Committee to show leadership and to press for Royal Commission recommended by Mr Roberts-Smith:

... that the Government establish a Royal Commission to inquire into, report and make recommendations in respect of allegations of abuse, and the management of reports of allegations of abuse, at ADFA from its inception to the present day.

ATTACHMENT 1

TO SUBMISSION OF DR GARY RUMBLE

**Extract from April 2012 Supplement to Volume 1 of the Report
of the *Review of allegations of sexual and other abuse in Defence.***

**Updated Table of Findings, Phase 2 issues (for further
consideration) and recommendations**

Findings, Phase 2 issues and recommendations

Updated with April 2012 Supplement

The following is a consolidation of findings, issues and recommendations from Volume 1 (October 2011) and this Supplement to Volume 1.

Chapter 1—Establishment and conduct of the Review

Recommendation 1—WITHDRAWN

Recommendation S1

We recommend that, if people provide further information after Volume 2 is delivered, that further information not be considered until Phase 2 commences, unless it is information provided by a current Defence members about current Defence/external management of a report of abuse (because recent developments may affect the recommendations made). (page 13)

Finding S1

The Review confirms the Volume 1 Findings. (page 2)

Finding S2

Problems with Review access to Defence file material generally has significantly delayed the Review's carrying out of its initial assessments reported on in Volume 2. (page 17)

Finding S3

Problems with Review access to Defence file material have caused the Review to qualify some of its initial assessments reported on in Volume 2. (page 17)

Finding S4

Problems with Review access to ADFIS file material in particular have significantly delayed the Review's carrying out of its initial assessments reported on in Volume 2. (page 19)

Chapter 2—Abuse risk factors in ADF environments**Finding 1**

ADF environments typically have factors which indicate a high risk of abuse occurring. (page 29)

Recommendation S2

The Review recommends that the Findings and Issues identified by Volume 1 be taken into account and addressed in the formulation of the detailed implementation plan for the Pathway to Change Strategy. (page 24)

Chapter 3—Overview of allegations considered by the Review**Chapter 4—Historical record of abuse in the ADF****Finding 2**

Past Reports and Defence file material indicate that, in absolute terms, a substantial number of people have experienced:

- abuse; and/or
- inadequate Defence management of allegations of abuse. (page 50)

Finding 3

Past reports have been focused on identifying what needs to be done to reduce the incidence of abuse *in the future* and/or to improve the management of allegations of abuse in the future rather than with dealing with the impacts of the abuse which had occurred. (page 50)

Finding 4

Some, possibly many, perpetrators of abuse or mismanagement of allegations of abuse in the past have not been called to account and/or rehabilitated. (page 51)

Finding 5

The apparent failure of Defence to call to account perpetrators of abuse and/or mismanagement of allegations of abuse in the past carries risks for Defence now because some of those persons may be in positions of senior and middle management within the ADF. (page 51)

Finding 6

The apparent failure of ADF members who witnessed abuse in the past and failed to report the abuse has risks for Defence now because some of those persons may now be in positions of senior and middle management within the ADF. (page 52)

Finding 7

Previous reports and Defence file material indicate that aspects of the culture in many parts of the ADF have discouraged reporting by victims or witnesses. (page 52)

Finding 8

Because of the under-reporting of abuse in the past, there are risks of adverse impacts now on the victims of that abuse in the past and there are risks that those people—if still in the ADF—will leave the ADF. (page 53)

Finding 9

People who have been the victims of abuse may need counselling and other assistance. (page 53)

Chapter 5—Abuse of boys and young people in the ADF

Finding 10

From the 1950s through to the early 1980s, the ADF and successive Australian Governments failed to put in place adequate protections to take into account the special needs, vulnerabilities and lack of maturity of boys of 13, 14, 15 and 16 years of age to protect them from:

- abuse inflicted by other boys and adults in the ADF; and
- being drawn into inflicting abuse on other boys. (page 100).

Finding 11

From the 1950s through to the early 1980s, many boys aged 13, 14, 15 and 16 years of age in the ADF suffered abuse including serious sexual and other physical abuse inflicted by:

- other boys in the ADF; and/or
- adults in the ADF. (page 100)

Finding 12

Many of the boys who suffered such abuse later participated in inflicting similar abuse on other boys in the ADF. (page 100)

Finding 13

It is likely that many of the boys who endured, and/or participated in inflicting, such abuse may have suffered, or be at risk of suffering:

- mental health problems; and/or
- alcohol and drug problems; and/or
- associated physical health and employment problems

affecting them and their families. (page 100)

Finding 14

Until the last few years, the ADF and successive Australian Governments have failed to put in place specific protections to take into account the special needs, vulnerabilities and lack of maturity of young people—male and female—to protect them from one another and from more mature adults in at least some ADF environments. (page 101)

Finding 15

It is certain that many young males in the ADF have been subjected to serious sexual and physical assault and other serious abuse inflicted by:

- other young males in the ADF; and/or
- mature males in the ADF. (page 101)

Finding 16

It is certain that some of the young men who suffered such abuse later participated in inflicting similar abuse on other young men in the ADF. (page 101)

Finding 17

It is certain that many young females in the ADF have been subjected to serious sexual and physical assault and other serious abuse inflicted by:

- young males in the ADF; and/or
- mature males in the ADF. (page 101)

Finding 18

It is likely that many of the young males who endured, and/or participated in inflicting, such abuse and the young females who endured such abuse have suffered, or be at risk of suffering:

mental health problems; and/or
alcohol and drug problems; and/or
associated physical health and employment problems

affecting them and their families. (page 101)

Issue 1

The Review considers that Phase 2 should follow up the issues raised relating to reporting of abuse by young persons, particularly in training establishments. (page 102)

Issue 2

The Review considers that Phase 2 should consider whether programs to reduce the risk of sexual assault on young people in the ADF give adequate attention to the predatory nature of some people who commit sexual assault and who may use alcohol and/or who may target young people affected by alcohol. (page 102)

Finding S5

On the basis of the Review's consideration

- of all the allegations before the Review in relation to abuse of young boys;
- relevant Defence file material
- publications including published accounts of men who as young boys experienced abuse in training establishments

the Review confirms these findings. (page 56)

Finding S6

On the basis of the Review's consideration

- of all the allegations before the Review in relation to abuse of young people;
- relevant Defence file material

the Review confirms these findings. (page 56)

Chapter 6—The current impacts of past abuse in the ADF**Finding 19**

It is likely that a substantial number of people who have been the victims of sexual or other assault in the ADF have not reported that assault to anyone. (page 120)

Finding 20

It is likely that a substantial number of incidents of abuse—including sexual and other assault—in the ADF have not been reported over the years of the Review. (page 120)

Finding 21

It is likely that many people who have carried out abuse—including sexual and other assault in the ADF—have not been identified—or—if identified—have not had any significant action taken in relation to them and are still in the ADF. (page 121)

Finding 22

Lieutenant Colonel Northwood working in parallel with the Grey Review identified 24 cases of rape at ADFA in the late 1990s.

It seems that none of the matters went to trial. (page 121)

Issue 3

It is possible that male cadets who raped female cadets at ADFA in the late 1990s and other cadets who witnessed such rape and did not intervene may now be in 'middle' to 'senior' management positions in the ADF.

Those possibilities carry serious risks for the ADF. (page 121)

Issue 4

Phase 2 should consider the possibility of establishing a Royal Commission or similar process to clarify whether:

- any of the around 24 persons identified by Lieutenant Colonel Northwood in 1998 as being suspected of having committed rape are still in the ADF;
- whether any persons who witnessed and did not intervene to stop rape in 1998 are still in the ADF;
- if so, how to deal with that situation. (page 121)

Issue 5

Phase 2 should consider the issues arising from the connections between past abuse experiences in the ADF and mental health and related problems. (page 122)

Finding 23

It is likely that a substantial number of current and former ADF personnel are suffering or may be at risk of developing mental health problems associated with their experience as victims of abuse in the ADF. (page 123)

Finding 24

It is possible that a substantial number of current and former ADF personnel have an elevated risk of suicide associated with their experience as victims of abuse in the ADF. (page 123)

Finding 25

Early intervention after an abuse event is important to mitigate the risks of long term mental health problems. (page 124)

Finding 26

Because of underreporting of abuse incidents in the ADF and because of the stigma attached to mental health issues many victims of abuse in the ADF will not have received the early assistance which is crucial to mitigate the potential for long-term mental health issues. (page 125)

Finding 27

Because many victims of abuse with mental health problems do not seek assistance, they do not receive the ongoing support which could reduce the impacts of long-term mental health issues. (page 125)

Finding 28

It is likely that many people who have been involved in abuse in the ADF as perpetrators will be suffering or be at risk of suffering mental health problems. (page 126)

Issue 6

Phase 2 should consider how to get people who were involved as perpetrators of abuse in the ADF who are suffering or at risk of suffering mental health problems to be provided with appropriate assistance. (page 126)

Finding S7

Having now considered the detail of a large number of statements made to the Review and extensive file material the Review confirms the Findings made in Chapter 6. (page 57)

Finding S8

It is possible that male cadets who raped or indecently assaulted female cadets at ADFA *from the establishment of ADFA in the mid-1980s through to the late 1990s* and other cadets who witnessed such rape and did not intervene may now be in 'middle' to 'senior' management positions in the ADF.

Those possibilities carry serious risks for the ADF. (page 58)

Issue S1

Phase 2 should consider the possibility of establishing a Royal Commission or a Court of Inquiry to clarify whether:

- any of the around 24 persons identified by Lieutenant Colonel Northwood in 1998 as being suspected of having committed rape or other serious sexual assault or any other Cadets who engaged in similar conduct at ADFA in the years preceding the Grey report are still in the ADF;
- whether any persons who as Cadets at ADFA witnessed and did not intervene to stop rape or similar conduct at ADFA in the years preceding the Grey report are still in the ADF
- if so, how to deal with that situation. (page 58)

Issue S2

The Review confirms the importance of the Issues stated in Issues 5 and 6 of Chapter 6. (page 59)

Chapter 7—Systemic issues

Issue 7

In order to ensure that command managers can identify and manage members who are, or have the potential to become, serial perpetrators, the Review considers that Phase 2 should examine:

- the present mechanisms that are available for tracking serial perpetrators and serial suspects
- whether these mechanisms are being used to their optimum capacity
- whether further systems should be put in place. (page 131)

Issue 8

The Review considers that Phase 2 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. (page 133)

Finding 29

The Fairness and Resolution database of Unacceptable Behaviour has not been kept up to date and has, therefore, not provided up to date information for Commanding Officers and others in the ADF with the responsibility of managing the welfare of ADF members. (page 135)

Issue 9

The Review considers that Phase 2 should examine further the issues raised relating to the management and currency of the Fairness and Resolution Unacceptable Behaviour database. It would be desirable for an external performance audit to be undertaken of the content and management of the database. (page 135)

Issue 10

The Review considers that Phase 2 should examine any action being taken to integrate Defence databases relating to unacceptable behaviour with particular reference to the recording of information relating to serial perpetrators. (page 135)

Issue 11

The Review considers that Phase 2 should undertake further examination of the establishment of a system for permitting the restricted reporting of sexual assaults in Defence with particular regard to the availability of such a system for the receipt of allegations arising from the distant or even middle distant past. (page 139)

Recommendation 2

The Review recommends that Phase 2 undertake discussions with Defence as a matter of urgency with a view to the clarification and, if necessary, amendment of DI(G) PERS 35-4 to permit administrative action to be taken in respect of actions which may constitute sex offences under applicable criminal law. The other DI(G)s that seem to be relevant to these issues should also be examined.

Consideration should be given to having a DI(G) which directs the relevant Commanding Officer to consider taking administrative action even though the same incident has also been referred to civilian police and to review the status of the matter at regular intervals to see whether administrative action should be taken.

Regard should be had to the desirability of Defence procedures following the APS model for running administrative processes during or after criminal processes for the same facts.

A broader examination should be undertaken of the management of actions which may be sexual offences under applicable criminal law and 'unacceptable behaviour' and the relevant DI(G)s redrafted to provide simpler and appropriate advice and guidance to management.. (page 145).

Issue 12

The Review considers that Phase 2 should pursue with Defence the issue whether it is possible to provide advice to members of the outcome of their reports of 'unacceptable behaviour' and explore mechanisms whereby any Privacy Act limitations may be overcome. APS Circular No. 2008/3 should be used as a starting point for such discussions. (page 147)

Issue 13

The Review considers that Phase 2 should identify an appropriate process and timeframe for assessment of whether recently introduced ADF processes are effective in ensuring that inquiries into allegations of abuse (including sexual and other assault) are handled discreetly and sensitively. (page 149)

Issue 14

The Review considers that Phase 2 should review Defence's use of language when referring to, and discussing with persons involved in allegations or proven incidents of sexual assault, other assault or other abusive behaviour. (page 151)

Issue 15

The Review considers that Phase 2 should consider the quality and provision of ongoing support to ADF members who have made an allegation of abuse or who have been abused. (page 152)

Issue 16

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. (page 152)

Issue 17

The Review considers that Phase 2 should consider the adequacy of Defence's response to the issues raised by the Whiddett/Adams *Report of an Audit of the Australian Defence Force Investigative Capability* (July 2006). (page 155)

Issue 18

The Review considers that Phase 2 should consider the present practices relating to the appointment to and retention of personnel in ADFIS with a view to ensuring that specialist skills developed by officers in the management of abuse allegations are maintained. (page 155)

Issue 19

The Review considers that Phase 2 should consult with the Defence Force Ombudsman to determine a role for the Defence Force Ombudsman in overseeing Defence's actions in relation to the systemic issues raised in Chapter 7. (page 155)

Finding S9

The Review's survey of information in the Fairness and Resolution Branch database indicates that commanders and managers have not dealt with the complaints of unacceptable behaviour that amount to abuse within the Terms of Reference of this Review promptly and/or have not complied with reporting requirements. (page 62)

Issue S3

In relation to Issue 9 identified for Phase 2 consideration in Volume 1 Chapter 7:

- the audit should consider the actions of commanders/managers and Fairness and Resolution Branch in managing reports of unacceptable behaviour and in providing/maintaining information in the database.
- the audit should be conducted with a view to identifying the underlying reasons for the shortcomings in management/reporting of database matters which this Review has identified and should provide recommendations for fixing those shortcomings and any additional shortcomings identified by the audit. (page 62)

Issue S4

Phase 2 should consider as a matter of priority (and not dependent on the outcome of the audit) any of the database matters which have not yet concluded.

In respect of any such matters which have still not been managed appropriately, Phase 2 should have oversight of, and be able to make recommendations in respect of, future management of those matters. (page 62)

Issue S5

Phase 2 consider, in consultation with Defence, developing a proposal for identifying and collecting a consolidated set of reports of previous inquiries into abuse and related issues in Defence with a view to making those reports available for implementation of other Phase 2 actions and to provide an ongoing resource for Defence and for DVA. (page 64)

Issue S6

Phase 2 to 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. (page 65)

Issue S7

Phase 2 to consider a proposal for reform of Defence Inquiry Regulations requirements for Ministerial approval for access to reports of Administrative Inquiries so that decision-makers and their advisers can make informed decisions and recommendations. (page 66)

Issue S8

Phase 2 to consider the adequacy of Defence systems for tracking, internally reporting on and responding to media allegations of abuse involving ADF personnel. (page 67)

Recommendation S3

The Review confirms Recommendation 2 and recommends that the discussion of concerns which are discussed in this section of the Supplement be drawn to the attention of the IGADF, the Directorate of Rights and Responsibilities and others involved in review and oversight of the relevant DI(G)s relating to options for taking administrative action after an allegation of sexual assault. (page 70)

Issue S9

Phase 2 to consider establishing arrangements for gathering and exchange of information between Defence and DVA about abuse in the ADF including access to previous reports, identification of clusters of abuse, identification of high-risk Defence environments and identification of possible serial perpetrators. (page 71)

Issue S10

Phase 2 consult with DVA about:

- whether DVA could issue statements on some of these issues to give guidance to potential claimants and their advisers about information which is available to assist claimants to establish their eligibility for benefits including—if DVA accepts that such information has probative force—the findings made by this Review and the information which has been gathered by this Review and other information which may be gathered and identified in Phase 2; and
- whether DVA could proactively be looking for individuals who may be eligible for benefits and/or support services which they are not currently receiving. (page 72)

Issue S11

Phase 2 to consider:

- drawing to the attention of DVA the clusters of abuse allegations which became apparent as allegations were assessed and grouped in Volume 2;
- establishing liaison between the team established to carry out investigations of allegations of possible criminal conduct/breach of DFDA and DVA to identify to DVA at risk individuals and/or groups;
- liaison with a Defence research project into previous inquiries into abuse in Defence to make the outcomes of that project available to DVA; and
- exploring with DVA liaison with Veterans' representative bodies and consultative forums about this shift in DVA processes. (page 72)

Issue S12

Phase 2 to consider whether it would be appropriate for Defence to seek the making of a regulation under s 85ZZH(k) of the *Crimes Act 1914* that would add recruitment into the ADF to the exclusions from the operation of the spent convictions legislation. (page 73)

Chapter 8—Options

Recommendation 3

If a new complaint resolution scheme is established, it should not be limited to people who have come to this Review but should be open to people who have not raised matters with this Review. (page 159)

Recommendation 4

If a new complaint resolution scheme is established, each allegation reported on within Volume 2 should be reviewed to see if the allegation is suitable for the new scheme.

This is particularly important to allegations identified in Volume 2 for 'no further action'. That recommendation is based on the remedies *currently* available for the members concerned. If new remedies are put in place, some of the 'no further action' matters may be suitable for reparations under the new system. (page 160)

Recommendation 5

There should be further investigation of matters identified during Phase 1 as raising real concerns as to the occurrence of abuse and/or mismanagement by Defence of reports of abuse. (page 161)

Issue 20

The Review considers that Phase 2 should consult with the Defence Force Ombudsman to determine a role for the Defence Force Ombudsman in overseeing whatever processes for investigation and reparation are adopted following this Report. (page 165)

Recommendation 6

Further investigations to be made during Phase 2 should be conducted by an external review body. A body similar to that which has conducted Phase 1 of the Review should be established for this purpose. (page 169)

Recommendation 7

Consideration should be given to establishing a capped compensation scheme for the victims of abuse within Defence. During Phase 2 a detailed proposal for a capped compensation scheme could be developed for the Government's consideration at the end of Phase 2. (page 187)

Recommendation 8

Consideration should be given to establishing a framework for private facilitated meetings between victims, perpetrators and witnesses of abuse within Defence. During Phase 2 a detailed proposal for such a framework could be developed for the Government's consideration at the end of Phase 2. (page 191)

Issue 21

Consideration should be given in Phase 2 to the appointment of an office or body external to Defence to oversight implementation of the recommendations made by this Review (including in relation to systemic issues) and thereafter to oversee the operation of the complaints system in practice, including, in particular, the treatment of victims. (page 193)

Recommendation 9

Special counselling and health services in place for the duration of this Review should be extended into Phase 2 of the Review whilst a plan for providing health services to victims of abuse is prepared. Thereafter, the plan should be implemented such that victims of abuse within Defence have access to counselling and health services. (page 193)

Recommendation 10

A suite of options should be adopted to provide means for affording reparation to persons affected by abuse in Defence comprising:

- public apology/acknowledgements;
- personal apology;
- capped compensation scheme;
- facilitated meeting between victim and perpetrator;
- health services and counselling.

A body or team should be tasked to develop detailed proposals for the suite of options, so that they may be presented for a decision on implementation.

While the suite of options are being developed, there should be further external investigation of matters recommended in Volume 2 for further external investigation. There could be referral of matters recommended for internal/external referral. Volume 2 recommendations are limited to *existing* options. Accordingly, matters recommended for 'no further action' in Volume 2 should be 'held', pending the development of the proposals and then—where appropriate—considered for possible action under any new processes adopted. There should be appropriate communication to complainants as to what will happen during the transition stage and into Phase 2. (page 194)

Issue 22

The Review considers that Phase 2 should consider how existing Defence military justice systems may need to be modified to deal with perpetrators of complaints received in Phase 1. (page 197)

Issue 23

Phase 2 should consider how to monitor the actions taken in relation to specific allegations of serious abuse for which further action is recommended in Phase 1. (page 198)

Recommendation S4

The Review recommends that the formulation and delivery of Personal and General apologies should take into account the five criteria for formal apologies set out by the Law Commission of Canada and previously noted by the Senate Community Affairs Committee in its reports *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* (2004) and *Commonwealth Contribution to Former Forced Adoption Policies and Practices* (2012). (page 76)

Recommendation S5

The Review recommends that, for each personal apology recommendation which is accepted, a representative of the Service Chief should liaise with the individual to explore matters such as whether they wish to receive an apology (if not clear from their submission to the Review), whether they wish the apology to extend to their family, the conduct to be covered by the apology and the manner in which they would prefer to receive an apology. (page 76)

Chapter 9—Concluding remarks**Concluding remarks**

The Review calls on the ADF, the 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. (page 199-200)

ATTACHMENT 2

TO SUBMISSION OF DR GARY RUMBLE

**Extract from November 2012 Defence Abuse Response
Taskforce Report on abuse in Defence**

13. Other observations and conclusions

13.1 DLA Piper Review – systemic issues and recommendations

This section of the report provides a brief discussion of the action taken by the Taskforce in relation to the recommendations and systemic issues identified by the DLA Piper Review. This section should be read in conjunction with the broader discussion of systemic issues contained in Part C of this report and the *Report on abuse at the Australian Defence Force Academy*.

On 31 October 2014, the Senate Committee released its report on processes to support victims of abuse in Defence (see above section 11.4). One of the recommendations made by the Senate Committee was that the Minister for Defence table a formal substantive response to the systemic issues identified by the DLA Piper Review after this report is released.

The discussion below should demonstrate the ongoing work that the Taskforce has undertaken in relation to these issues. This work will continue beyond 30 November 2014.

The DLA Piper Review was the immediate precursor to the establishment of the Taskforce, as well as a number of reviews into Defence culture. It is important to note that recommendations and systemic issues identified by DLA Piper were made before the Taskforce was established. The Taskforce has been guided by its Terms of Reference in relation to the scope of its work, including in determining what action to take in relation to specific aspects of the DLA Piper Review.

It should also be noted that since the DLA Piper Report was published, Defence has continued to consider and address systemic and other issues that have come to light in through the various reviews that have been conducted into Defence's culture.

(a) DLA Piper Recommendations

Since its establishment, the Taskforce has closely considered the material gathered by DLA Piper, particularly the information and recommendations made in Volume 2 of the DLA Piper Review. In fact, DLA Piper transferred the cases it considered in the course of its review to the Taskforce for assessment where the individual complainant provided consent for this to occur. These complaints were independently assessed by the Taskforce and complainants were given the opportunity to provide further information to support their complaint.

It is the Taskforce's view that the majority of the recommendations made by the DLA Piper Review were satisfied by the establishment of the Taskforce itself. For example, the Taskforce is an external review body (Recommendation 6) that has accepted and considered fresh and additional allegations of abuse occurring up to April 2011, in addition to those already made to DLA Piper (Recommendation 1 and 3).

In addition, the Taskforce provides outcomes largely corresponding with those recommended by DLA Piper, including:

- private facilitated conferences between complainants and senior Defence representatives arranged under the Restorative Engagement Program, which provide the complainant with the opportunity to have their complaint of abuse heard, acknowledged and responded to – sometimes including apologies (Recommendation 8 and 10);
- access to counselling under the national Counselling Program (Recommendation 9 and 10); and
- a Reparation Payment of up to \$50 000 made under the Reparation Scheme (Recommendation 10).

The DLA Piper Review made two recommendations that have been relevant to the development of the Restorative Engagement Program (discussed above at section 9.3). For example, the Taskforce provides guidance to Defence representatives on how to deliver an apology, taking into account the key criteria outlined by the Law Commission of Canada (Recommendation S4). In addition, a Facilitator accredited by the Taskforce works with both the complainant and a senior Defence representative to ensure any acknowledgement or apology meets the individual needs of the complainant (Recommendation S5).

The *Report on abuse at the Australian Defence Force Academy*, which is tabled alongside this report, contains discussion of Defence's failure to investigate or take appropriate action in relation to complaints of abuse because of the way in which Defence Instructions were being interpreted and applied. In that report, the Taskforce notes that Defence have taken steps to address this issue, including by modifying Defence Instruction (General) PERS 35-4 on 'Reporting and management of sexual misconduct including sexual offences', which was identified by the DLA Piper Review as a priority matter of concern (Recommendation 2).

(b) Systemic Issues

The DLA Piper Review identified 35 systemic issues, each of which has been considered by the Taskforce in the course of its work. However, as noted in previous reports, the Taskforce has exercised its judgement in relation to whether action should - and could - be taken in line with the Terms of Reference. The Taskforce has also publicly released information about systemic issues it has identified in complaints received in the *Report on abuse at HMAS Leeuwin*, the *Report on abuse at the Australian Defence Force Academy* and this report.

The Taskforce has considered each of the systemic issues identified by DLA Piper. It is important to note that these issues were identified in 2011. Since then, Defence has made significant progress in dealing with systemic issues giving rise to abuse. The Taskforce has engaged extensively with Defence in relation to the implications of its work for the Pathway to Change strategy (discussed at section 10.4) and in relation to more recent reviews that have been undertaken into Defence's systems.

In particular, the Taskforce notes the significance of the establishment of the Sexual Misconduct Prevention and Response Office (SeMPRO), which was established to coordinate timely responses, victim support, education, policy, practice and reporting for any misconduct of a sexual nature and to create a mechanism for restricted reporting of sexual misconduct (see Issue 11). The Taskforce also acknowledges the work that Defence is currently undertaking in relation to a number of the other issues identified by DLA Piper, including those relating Defence databases (Issues 7 – 10, S3, S4 and S6).

With the release of this report, and the *Report on abuse at the Australian Defence Force Academy*, it will be clear that a number of the systemic issues identified by the DLA Piper Review have been confirmed by the work of the Taskforce. For example, the Taskforce is particularly concerned by the high incidence of abuse of young people during the initial stages of their careers in Defence, particularly in training establishments (Issue 1).

This report also contains the Chair of the Taskforce's recommendation in relation to the establishment of a Royal Commission into abuse at ADFA (section 13.3(g)), which involved the consideration of certain issues identified by the DLA Piper Review (see Issues 3 and 4). The Taskforce Chair has written to, and spoken with, Defence in relation to some of the specific systemic issues identified by the DLA Piper Review. For example, on 26 February 2014, the Chair wrote to the then CDF and the Secretary of the Department of Defence in relation to the connection between mental health and abuse (Issue 5). This is an issue that also informs all of the Taskforce's interactions with complainants and was influential in the establishment of the Complainant Support Group, which is discussed in detail at section 8.

The Taskforce Chair has also written to Defence to confirm the progress that has been made in relation to some of the specific issues identified by the DLA Piper Review, in particular the issues relating to Defence's internal systems and processes. While these issues are primarily a matter for Defence, the Taskforce will continue to liaise with Defence and others in relation to systemic issues in relation to Defence's progress on Pathway to Change strategy.

As has already been noted, the work of the Taskforce is dictated by the Terms of Reference, and the primary purpose of the Taskforce is to assess and respond to complaints of abuse in Defence.

While each of the systemic issues identified by the DLA Piper Review are matters of general concern, in some cases the Taskforce was either unable to take specific action or did not receive additional material raising similar matters. For example, the Taskforce was not in a position to consider how to provide alleged perpetrators suffering mental health problems with appropriate assistance because it does not deal directly with perpetrators (Issue 6). Further, while the

Taskforce agrees that the issue of witnesses failing to take action to prevent abuse is concerning, the material before the Taskforce (including that from the DLA Piper Review) did not reveal many witnesses who did not take action. Therefore, the Taskforce was unable to comment on that aspect of Issue 3 with any accuracy.

13.2 Information and data sharing

(a) The Case Management System

The Taskforce has received a significant volume of personal information from complainants and Defence. The Taskforce has included this information into the Case Management System (CMS) and extracted key data from the narrative of complaints and their administration to aid in searching and reporting.

The CMS was designed to aid the Taskforce in achieving meaningful outcomes in line with the Terms of Reference. The CMS has the potential to provide valuable information relating to the nature of abuse contained in complaints received by the Taskforce and the progress of the programs and outcomes administered by the Taskforce.

The CMS captures demographic information about the complaints submitted and the individuals involved such as the location and date range of an incident and details of persons of interest. It provides an understanding of the nature of abuse reported and aids in meeting the Taskforce Terms of Reference regarding contributing to Defence in its Pathway to Change strategy and reporting on potential systemic issues.

The CMS also assists in the administration of outcome delivery including tasking and workflows and records who has taken action in relation to a complaint, what action was undertaken and how long it took.

This administrative information is captured to ensure that complaints were actioned in a timely manner and to aid in forecasting outcome delivery. In doing this, the Taskforce has recorded valuable information that can be used in an academic review, providing an understanding of the effectiveness and efficiency of the programs administered.

Finally, the CMS records outcomes and decisions made in respect to individual complaints.

In 2013, the Taskforce Operations Group considered whether it would be possible to create a depersonalised version of the CMS. However, it was ultimately concluded that depersonalising or redacting the information to the point necessary to protect the privacy of complainants would significantly compromise the functionality of the CMS.

Part C of this report provides an overview of the complaints received, using information gathered from the CMS. The Taskforce hopes that this information will provide a valuable resource to Defence as they progress with their Pathway to Change strategy.

(b) Information sharing with the Department of Veterans' Affairs

A key Taskforce priority beyond 30 November 2014 will be to maintaining an information and data exchange between the Taskforce and Defence. Maintaining this exchange of information is vital to ensuring that the lessons learned as a result of the Taskforce's work are captured and analysed, with a view to achieving meaningful cultural change within Defence.

Additionally, the Taskforce is conscious of the need to embed processes to ensure that the diverse array of information it has gathered may be handled and stored securely.

The information contained in the CMS is already being put to use outside of the Taskforce in a trial process with DVA.

Section 11.2 of this report provides an overview of the statistical information that the Taskforce is providing to DVA to assist with the process of assessing claims for pensions and other entitlements.

The Taskforce continues to work with DVA to determine how best to provide statistical information to support their assessment of claims. There are a number of issues to be worked through in relation to privacy and the provision of information. The Taskforce is committed to assisting DVA to gain any relevant information and will continue to build on ways to effectively share this information, having regard to the Taskforce's privacy obligations.

