

**SUBMISSION TO SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
REFERENCES COMMITTEE: INQUIRY RELATING TO ALLEGATIONS
OF SEXUAL AND OTHER ABUSE IN DEFENCE**

Dr Gary A Rumble

PART III

ANNEXURE 1

27 August 2013

The Hon Stephen Smith MP
Minister for Defence

The Hon Mark Dreyfus QC, MP
Attorney-General

cc Senator the Hon David Johnston
Shadow Minister for Defence

Senator the Hon George Brandis QC
Shadow Attorney-General

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

Senate Foreign Affairs, Defence and
Trade References Committee

Dear Minister Smith and Attorney

**THE CASE FOR A ROYAL COMMISSION TO INQUIRE INTO RISKS FOR
THE ADF FROM HAVING IN ITS RANKS OFFICERS WHO MAY HAVE
COMMITTED OR WITNESSED RAPE AT ADFA BEFORE GREY REVIEW**

I was the leader of the *Review of allegations of sexual and other abuse in Defence* commonly but unhelpfully referred to as the DLA Piper Review.¹ Central to the Government's response to the Report of this Review was the establishment of the Defence Abuse Response Taskforce (**DART**).

The list of tasks set for Mr Roberts-Smith who is the sole decision-maker of the DART include:

...

(ii) include in this assessment the 24 Australian Defence Force Academy (ADFA) cases noted by DLA Piper ...;

...

(ix) to advise whether a Royal Commission would be merited into any categories of allegation raised with the DLA Piper review or the Taskforce, in particular the 24 ADFA cases.

In this letter I set out a case for establishing a Royal Commission now to inquire into what we called in our Report ADFA Legacy issues: - the risks for the ADF from having current officers in middle and senior management positions – with potential to rise further in the ADF - who may have raped or committed other serious sexual assaults, or stood by without intervening while rape was occurring, when they were Cadets at ADFA before the reforms following the 1998 Grey Review.

¹ Referring to the Review as being the DLA Piper Review continues the confusion about whether DLA Piper's relationship with Defence may have constrained the rigour applied in the Review. As the disclaimer to the Report of the Review states:
"The opinions expressed in the 'Report of the Review of allegations of sexual and other abuse in Defence (Report)' are solely those of Dr Gary A Rumble, Ms Melanie McKean and Professor Dennis Pearce AO. The opinions expressed in the Report do not necessarily represent the views of other contractors to the Review, nor of DLA Piper Australia."

As we flagged in our Report, the numbers of Cadets who may have been involved as perpetrators or silent witnesses of rape was likely to be more than the particular group of '24 ADFA cases' from the years 1994-1998 referred to in our Report.

The DART's First and Second Interim Reports incorrectly state that this reference to our Report in the DART's terms of reference was referred to '24 allegations of serious sexual assault that were alleged to have occurred at ADFA from 1994 to 11 April 2011 received by DLA Piper as part of its review'.²

It is clear that references in our Report to '24 ADFA Cases' related to that particular group of Cases from the years 1994 to 1998. In any case:

- By the time we had completed reviewing and reporting in Volume 2 of our Report on all allegations before our Review, we confirmed in the April 2012 Supplement to Volume 1 - that the number in issue was greater than the particular group of 24.
- The DART's Second Interim Report says that the DART now has '48 additional complaints alleging incidents of physical abuse, sexual abuse, harassment or bullying at ADFA'.
- The ADFA legacy issues are broad issues of national importance and are not limited to the particular allegations which had reached our Review or the particular complaints which have reached the DART.

The DART Second Interim Report confirms that Mr Roberts-Smith is not inclined to recommend a Royal Commission for any category of allegations and that he sees this as an issue to determine 'at a future date'.³

Meanwhile the DART continues to deal with the particular complaints - including ADFA related complaints - which are before it.

I have not seen any call by the DART for any submissions on the issue of whether or not there should be a Royal Commission in relation to ADFA related or any other category of allegations. The Second Interim Report indicates that Mr Roberts-Smith intends to deal with this issue solely on the basis of advice from the DART leadership group.⁴

The DART's terms of reference require it to focus on the limited group of specific complaints which are before it – rather than to engage in the kind of broad inquiry information-gathering that a Royal Commission would carry out.

I do not doubt that the DART is making an important and positive difference for many individuals.

My main reason for recommending the establishment of a Royal Commission now is that the material provided in the Second Interim Report about the way that the DART

² See DART First Interim Report page 11. The error is repeated in the Second Interim Report at pages 1 and 31.

³: See pages 2 and 39 of the Second Interim Report.

⁴: See page 39 of the Second Interim Report.

under Mr Roberts-Smith's direction is going about its tasks – especially Case Study 2 explaining how the DART would deal with a complaint by a woman that she was raped by two other Cadets at ADFA in 1989: -

- makes it unlikely that even for the limited group of complaints before the DART that the DART processes will result in *any* effective action to call to account current officers who are suspected of sexual assault or who were silent witnesses to assault when they were at ADFA; and
- will reduce the prospects of any later Royal Commission being as effective as it could otherwise be.

Accordingly, after much deliberation, I have decided to make a case for a Royal Commission into the ADFA legacy to the Minister and the Attorney. Because we are in the Caretaker period I am providing a copy of this letter to the Shadow Minister and Shadow Attorney-General.

I am copying in Mr Roberts-Smith so that he can respond if he wishes to do so.

I am also copying in the Senate Foreign Affairs, Defence and Trade Committee which delivered a report in June which considered the Government's response to the Report of the Review which I led. The issue of a possible Royal Commission into the ADFA Legacy was one of the uncompleted aspects of the Government's response when the FADT Committee reported in June.

I am aware from the Second Interim Report of the DART that Mr Roberts-Smith has consulted with the Shadow Minister and Shadow Attorney-General. It may be that there is already bipartisan support for the current DART approach - which seems to be leading away from the possibility of a Royal Commission.

As far as I am aware, no-one else is expressing any concerns about the operation of the DART. That is not surprising given that there is no doubt that the DART is delivering some positive outcomes for some individual complainants and given the complexity and the range of matters which are being dealt with by the DART.

However, I am one of the few people with knowledge of the detail of the information which was before our Review and my approach to these issues is based on that understanding and perspective.

In any case, the matters which I address in this letter are matters of major national importance which call for reasoned and clearly explained decisions from Government and should not go by default.

The terms of reference for a Royal Commission would require careful consideration and drafting but in general terms I believe a Royal Commission should be established as soon as possible to inquire into:

- whether there are officers in the ADF who – when they were Cadets at ADFA in the years before the Grey Report - may have committed rape or other serious sexual assault on other Cadets; and

- whether there are officers in the ADF who – when they were Cadets at ADFA in the years before the Grey Report – stood by during rape or other serious sexual assault on other Cadets without intervening or reporting that rape; and
- what might be done about the risk that there are such people in middle and senior management in the ADF who might progress to even more senior positions without being called to account and without their Service Chiefs being informed about their suspected conduct at ADFA.

To deal with the risks identified in Volume 1 and the Supplement to Volume 1 of our Report (see below), the Royal Commission must not be limited to the ADFA 24.

I believe that the Royal Commissioner should be unconnected with the ADF so that:

- people whose confidence in the ADF has been damaged by their experience as victims of abuse and/or ADF mismanagement are not discouraged from giving evidence to the Royal Commission; and
- so that the Royal Commissioner comes to the task unconstrained by any institutional loyalty and/or uncritical acceptance of how things are done in the ADF.

For similar reasons, I also recommend that the inquiry be a Royal Commission and not be a Court of Inquiry established under the Defence Inquiry Regulations.

In the attachments to this letter I explain in detail why I make these recommendations and I provide some extracts of relevant material from Volume 1 and the Supplement to Volume 1 of our Report. In summary - my recommendations are based on the following broad considerations.

First, it is for me unthinkable that the Government, the ADF and the nation could accept the risk that a person who raped another Cadet or who stood by while another Cadet was being raped could hold sensitive and significant role model and cultural change positions in the ADF and – possibly - in time rise to be a Service Chief or even Chief of the Defence Force - without there being informed decisions in the ADF and the Government about their fitness to hold such positions in the ADF.

Given the culture which prevailed at ADFA from its opening in the mid 1980s until the reforms following the 1998 Grey Review and given the general failure of the ADF to call to account Cadets who engaged in that conduct, those risks are substantial.

In an interview on the ABC Lateline program on 23 July 2013 relating to the alleged involvement of a LtCol in the Jedi Council matter, Sex Discrimination Commissioner Elizabeth Broderick commented:

... middle management. That's where the change needs to occur and that's why I think it will take several years. Those people in the middle are really the cultural ambassadors. They're the keepers of culture. Young recruits, young troops look up

to them to see what it means to be in the military. And I think that there's still a lot of work to be done ...

I agree with Ms Broderick that the ADF's middle management are important 'keepers of the culture'.⁵ The fact that the men who went through ADFA in the years between the mid 1980s and the 1998 Grey Report who are still in the ADF are now in 'senior and middle management' positions and may progress further, reinforces the concerns which I have identified.

Secondly, it is clear from the DART's Second Interim Report that the combined effect of limitations in the DART's terms of reference and of the restrictive processes which Mr Roberts-Smith has adopted make it unlikely that:

- Service Chiefs will get information about which current ADF officers who went through ADFA before the 1998 Grey Report may have raped other Cadets at ADFA;
- any such officers will be called to account in the ADF or in the Courts.
- Service Chiefs will get information about which current ADF officers who went through ADFA before the Grey Report may have stood by while other Cadets were being raped.
- the DART's work will give the Service Chiefs and the Government any confidence about which current officers in the ADF did not rape other Cadets and did not stand by while other Cadets were being raped. This is grossly unfair to these officers.

In May 2011, Lieutenant General Hurley Vice Chief of the Defence Force, as he then was, declared that:

We are willing to face openly and honestly the problems from our past ...

The DART terms of reference and DART processes will not enable the leaders of the ADF to fulfil that commitment. A Royal Commission is more likely to find the information which the Government and the leaders of the ADF need to meet that commitment and deal conclusively with the ADFA legacy.

I am willing to meet any of the recipients of this letter to discuss these issues.

Yours sincerely

Dr Gary A Rumble

5: We made similar points in our Report. See Volume 1 pages 103, 116-119 in attached extracts.

THE CASE FOR A ROYAL COMMISSION TO INQUIRE INTO THE ADFA LEGACY

What is the ‘ADFA Legacy’?

1. The Grey Review in 1998 identified deeply entrenched cultural problems at ADFA including widespread hostility to the presence of female Cadets and abuse of power by more senior Cadets over more junior Cadets with females being particularly targeted for abuse.
2. That abusive conduct included sexual assault.
3. The Grey Review found that this culture and the associated abusive conduct had prevailed at ADFA from the time it opened in the mid 1980s.
4. I attach extracts from Chapter 6 of Volume 1 of our Report and from Chapter 6 of the Supplement to Volume 1 which explain these ADFA Legacy matters more fully.
5. Chapters 2, 4 and 5 of our Report which have more information about the Grey Report are also relevant but are not extracted.
6. The First and Second Interim Reports of the DART both explain the references in the DART’s terms of reference to ‘the 24 ADFA cases noted by DLA Piper’ as being references to ‘24 allegations of serious sexual assault that were alleged to have occurred at ADFA from 1994 to 11 April 2011 received by DLA Piper as part of its review’ (emphasis added).⁶
7. The reference by DART to 11 April 2011 is incorrect. (Our Report received and reported confidentially in Volume 2 on 62 alleged incidents at ADFA.⁷ I do not have available a break down of those incidents by type.
8. In Volume 1 and the Supplement to Volume 1 of our Report the references to ‘24 ADFA cases’ were references to a group of alleged sexual assaults for a period from 1994 to March 1998 referred to in a report from an Investigation Team which worked in parallel with the Grey Review in 1998.⁸
9. That Investigation Team was led by lawyer Lieutenant Colonel (later Colonel) Northwood. As we reported, a 1998 report of the Investigation Team included statements that 24 allegations of sexual offences at ADFA from 1994 to March 1998 were disclosed to the Investigation Team.⁹
10. The material relating to the work of the Investigation Team came to the attention of the Review shortly before we delivered Volume 1. We discussed

⁶ See DART First Interim Report page 11. The error is repeated in the Second Interim Report at pages 1 and 31.

⁷ See Supplement to Volume 1 Chapter 3 page 37 – not extracted.

⁸ See Volume 1 pages 114-118 and 121, and Supplement to Volume 1 pages 57-58 in attached extracts.

⁹ See Volume 1 pages 114 and 115 in attached extracts.

the serious concerns about current impacts for the ADF raised by the information we had gathered.¹⁰

11. We included in Volume 1 the following Finding and recommended for consideration the following Issues:

Finding 22

Lieutenant Colonel Northwood working in parallel with the Grey Review identified around 24 cases of rape at ADFA in the late 1990s. It seems that none of the matters went to trial.

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.

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.¹¹

12. By the time we delivered the Supplement to Volume 1 in April 2012 we had Defence records confirming that the ADF had decided to take no action – other than referral to the civilian police - in relation to the allegations of sexual assaults identified by the Northwood Investigation Team even though the complainants had decided they did not want to go through an ACT Court trial for their sexual assault allegations.
13. The ADF decision to take no action after referral to the civilian police, was taken in accordance with the ADF's misconceived self-imposed prohibition on taking any action within the ADF if a complainant 'having her options explained by the civilian [police] authorities, chooses not to proceed with the complaint [in a criminal prosecution process]'.¹²
14. In our Report we identified as being major systemic issues arising from misconceptions within the ADF that it could not take any action in relation to an alleged sexual assault other than to refer the allegation to civilian police.

¹⁰ See Volume 1 page 114-119 in attached extracts.

¹¹ See Volume 1 page 121 in attached extracts.

¹² See Supplement to Volume 1 pages 57-58 in attached extracts.

15. During the course of the Review we obtained clarification from Defence Legal confirming that it is open to Command within the ADF to take administrative action even if a matter has also been referred to civilian police. I attach extracts from our Report which deal with that broad issue which show how the ADF management of allegations of sexual assault has been misdirected because of the misconceptions about the possibility of administrative action for conduct which could also involve a criminal offence for sexual assault.
16. The particular significance of this misconception at this point is that it explains why the ADF did not take any ADF action - even to deal with the alleged incidents of rape and other sexual assault by Cadets which were reported.
17. Of course, there was no ADF action to deal with unreported sexual assault which was probably much more frequent than reported sexual assault because of the strong cultural factors discouraging reporting of abuse.¹³
18. We had foreshadowed in Volume 1 of our Report in October 2011 that the number of male Cadets who may have raped other Cadets at ADFA was likely to be greater than the '24' specific suspects in the group of cases referred to above.¹⁴
19. As we reported, Bronwen Grey 'estimated that approximately 30% of female cadets still at ADFA had (in the years prior to the Grey Review) suffered sexual abuse-meaning either rape or serious indecent assault'.¹⁵
20. The number of individual Cadets who may have sexually assaulted other Cadets at ADFA in the years before the Grey Review reforms in 1998 and never been called to account for their conduct, was likely to be higher than a group of 24 suspected cases from the years 1994-1998 referred to in our Report.
21. We also explained in our Report that there are concerns about the implications for the ADF not only that of having current officers who sexually assaulted other Cadets at ADFA but also of having current officers who stood by while other Cadets were being sexually assaulted because of the culture of not 'jacking on mates'.¹⁶
22. In the April 2012 Supplement to Volume 1 of our Report – with more information including our review of all of the specific allegations of abuse at ADFA which we reported on individually and confidentially in Volume 2 - we included the following Finding and recommended the following Issues for consideration:

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*

¹³ See Volume 1 Chapters 2, 4, 5, 6 and 9 – not extracted .

¹⁴ See Volume 1 pages 114 -119 in attached extracts.

¹⁵ See Volume 1 page 118 in attached extracts.

¹⁶: See Volume 1 pages 103, 116-119 in attached extracts.

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.

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. (emphasis added)

23. We had here clearly identified the legacy from conduct at ADFA before the Grey Review is not limited to 24 cases – it is much broader.

Why having in the ranks officers who may have raped other Cadets or stood by while other Cadets were raped at ADFA in the years before the Grey Review matters

24. This issue is addressed in Volume 1 and the Supplement to Volume 1. See the attached extracts. The central points made there were:

6.1 Perpetrators of abuse in the past: current risks

To the extent that individuals who perpetrated abuse in the past have not been called to account and/or removed from the ADF, they may constitute an ongoing risk to the people within the ADF and to the ADF itself.

The main risk that they present to the people within ADF is that they may inflict more abusive behaviour on ADF personnel. The Review is not in a position to assess the likelihood of past abusers re-offending. Some of the relevant considerations would seem to be:

As outlined above, young men are more likely to engage in anti-social behaviour. So as these people have matured they might be less likely to offend.

On the other hand, for reasons which are set out in greater detail in this and the next Chapter, because of the difficulties there have been in calling to account anyone who does commit abuse, they may believe that they can abuse others with impunity. ...

Whether or not they are likely to re-offend, their continued presence within the ADF presents significant risks to the ADF itself:

The male perpetrators who went through ADFA in the years before the Grey report are of particular concern.

There was a high level of sexual assault on female cadets by male cadets before Grey.

With the passing of time the perpetrators - if still in the ADF - will have risen to 'middle' and 'senior' management positions within the ADF.

These people have very important leadership roles and daily 'management' roles.

In their interactions with the people under their command and with everyone they interact with, they should embody and demonstrate the values of the ADF.

They will be expected to drive any culture change - including an increased focus on reporting.

There will be some others in the ADF who know that these people have offended in the past. It will be difficult for them to 'lead' on values with this credibility problem.

There will be some in the broader community - including the victim(s) of their abuse - and other former ADF personnel - who may know the person's history. Again that may affect their ability to represent the ADF with credibility.

And finally there is the risk that sooner or later - especially with the increased emphasis on reporting - their past abuse may become public.

If that did occur, that could damage the reputation of the ADF.

And the higher they have risen, the greater the damage will be.

And of course, their continued presence without being identified casts a shadow over the reputations of their innocent classmates.

This issue may escalate when and if the Minister decides to table this Report. But ultimately most of the information on these issues which is gathered in this Report is on the public record. If this Review managed to find it, then there is a chance that someone else will as well.

6.2 Witnesses of abuse in the past: current risks

The risks associated with the continued (silent) presence of witnesses who have not reported abuse in the past are less than in relation to perpetrators. But there are still some risks.

With the passing of time those silent witnesses who were at ADFA before the Grey report - if still in the ADF - will also have risen to 'middle' and 'senior' management positions within the ADF.

These people also have very important leadership roles and daily 'management' roles.

In their interactions with the people under their command and with everyone they interact with, they should embody and demonstrate the values of the ADF.

They will be expected to drive any culture change - including an increased focus on reporting.

There will be some others in the ADF who know that these people have been witnesses and remained silent in the past. It will be difficult for them to 'lead' on values with this credibility problem.

There will be some in the broader community - including the victim(s) of abuse - and other former ADF personnel - who may know they have been silent witnesses. Again that may affect their ability to represent the ADF with credibility.

...

6.3 What kind of abuse/failure to report is in issue?

In relation to Past Perpetrator and Silent Witness risks the following passage from the Grey Report is particularly important (emphasis added):

1.132. The culture contributes to the problems, but does so in different ways, depending on which problem is examined. ... The culture appears to contribute to the problems of assault in the following ways:

- a. *With regard to sexual assaults that have a 'date rape' character, the lack of understanding of cross-gender communication identified by Samuels and Divers may contribute to the occurrence of some cases.*
- b. *With regard to a more common form of sexual assault, which the Review found at the Defence Academy, one or both parties get drunk and an 'opportunistic' assault occurs. The acceptance of binge drinking, the culture of not 'jacking' on one's mates, (and hence of not intervening despite evidence such as struggling and screaming) and the acceptance of low levels of room security, all contribute directly to the circumstances in which assaults occur, even though they do not 'cause' them.*

Most members of the community would regard opportunistic sexual assaults by male perpetrators on fellow cadets as reprehensible and cowardly and would be inclined to judge the perpetrator accordingly - no matter that the assault occurred a quarter of a century ago.

Most members of the community would find a failure by a cadet to intervene to stop a sexual assault being perpetrated on a fellow cadet as reprehensible and cowardly - again even though it occurred a quarter of a century ago.

Accordingly, there would probably be serious concern in the community about such people holding middle or senior management roles in the ADF let alone rising further in the ADF. ...

25. In broad terms – as I stated in my introductory comments – it is for me unthinkable that the Government, the ADF and the nation could accept the risk that a person who raped another Cadet or who stood by while another Cadet was being raped could hold sensitive and significant role model and cultural change positions in the ADF and – possibly - in time rise to be a Service Chief or even Chief of the Defence Force - without there being informed decisions in the ADF and the Government about their fitness to hold such positions in the ADF.

How many current officers in the ADF may have raped other Cadets or stood by while other Cadets were raped?

26. The numbers of current officers who may be in one or other of these categories may be substantial.
- Many previous reports have found that there is a culture in the ADF which discourages reporting of sexual assault to an even greater degree than occurs in the general community. Accordingly it is likely that the rate of reporting of sexual assault in the ADF has been less than 20%.¹⁷
 - According to Bronwen Grey who led the 1998 report on ADFA – on the basis of her one-on-one interviews, 30% of female cadets who were still at ADFA in 1998 had been subjected to rape or other serious sexual assault by other cadets.
 - It is not known what was the rate of experiencing sexual assault amongst the 40% of females who had left ADFA but it is quite possible that being victims of sexual assault may have contributed to decisions to leave ADFA and/or may have resulted in underperformance which led to discharge from ADFA.
 - According to the Grey report the culture of ‘not jacking on mates’ meant that Cadets would not intervene during a sexual assault by another Cadet even if the victim was screaming and struggling.¹⁸
 - According to the Grey Report the culture at ADFA which contributed to that rate of sexual assault and which dissuaded Cadets from intervening when another Cadet was being assaulted had prevailed at ADFA from the time it was opened in the mid 1980s.
 - Although the DART’s terms of reference refer to the ‘ADFA 24’ those numbers mentioned in Volume 1 of our Report in 2011 relate solely to some briefs in relation to some alleged rapes occurred at ADFA between

¹⁷ See Volume 1 Chapter 2 pages 15-16, 21-22, Chapter 4, Chapter 5, Chapter 6

¹⁸ See Volume 1 pages 104-105 in attached extracts.

1994 and 1997. As we stated in the Supplement to Volume 1 of our report – given the patterns of conduct at ADFA from the time of its opening - the number of incidents was likely to be greater than the 24 mentioned in the October 2011 report.

- There are also issues about the fitness for roles in the ADF of current officers who – as Cadets at ADFA – stood by while other Cadets were being raped because of the culture of not jacking on mates.
 - As referred to above – the ADF in 1998 decided that - once female victims of alleged rape had been referred to the ACT police and decided that they did not wish to go through a rape trial in the ACT Court system – the Defence procedures required that there not be any action in relation to those allegations. And there was no action.
27. At the press conference on 26 November 2012 the Minister referred to investigation which the CDF had directed ADFIS to undertake into how many of the individuals who were suspects in the ‘24 ADFA’ cases were still in the ADF. The Minister said that information would be made available to the DART.
28. That was important but whatever information was obtained through that investigation would only relate to those identified 24 and would not address the broader legacy issues our Report identified.

Why will the DART processes not fully address the ADFA Legacy?

29. The DART’s operations will not, and cannot, give the Service Chiefs and the Government the information which they need to assess, and have confidence about, the fitness for particular roles in the ADF of a broad band of officers in the ADF who were at ADFA between the opening of ADFA in the mid 1980s through to the Grey Report in 1998 for the following reasons.
30. The main reasons why the DART cannot give that confidence are the following.
31. First – the DART does [not]¹⁹ have a broad information-gathering role.
- There has not been any call by the Government, the DART or the ADF for people to come forward to provide information about what they know about sexual assaults at ADFA so that Service Chiefs and the Government can make informed decisions about the fitness of particular officers for particular roles in the ADF and so that the prospects of successful criminal prosecutions or other action could be strengthened.
32. Second - the DART is focussed on resolving only the particular complaints which are before the DART and doing so in consultation with complainants. These limitations leave unexamined:

¹⁹ The word ‘not’ was omitted from the hard copy of the letter sent on 27 August 2013.

- allegations by third parties including media allegations which were reported on in the Report of the Review which I led. Some of those were very significant allegations to which we gave a lot of attention in our confidential Volume 2 Report.
 - findings of previous reports such as the 1998 Grey Report on ADFA;
 - any allegations which have not reached the DART because possible complainants or witnesses with relevant information were not aware that the DART was receiving complaints. (As far as I am aware the DART confined its publicity to press advertising and Mr Roberts-Smith did not participate in television or radio interviews to publicise that the DART was calling for 'complaints'.)
 - any allegations which have not reached the DART because possible complainants or witnesses with relevant information were not attracted to come forward by the outcomes which the DART was offering.
 - For many women and men who were the victims of sexual assault at ADFA the possibility of a reparation payment of \$50,000 would not have provided an incentive for them to come to the DART.
 - Some people with knowledge of what happened at ADFA pre-Grey who are not interested in obtaining a payment might have been willing to provide information to assist the ADF and the Government to deal with systemic issues if this had been called for. It was not.
 - any allegations which have not reached the DART because potential complainants who have lost confidence in the ADF and its processes were concerned about Mr Roberts-Smith's long association with the ADF;
 - issues which reached the DART but which will not progress because the complainant decides not to pursue the limited outcomes which Mr Roberts-Smith allows the DART to pursue;
 - allegations and complaints which reached and were considered by the Review which I led – and which are reported on in Volume 2 of our Report – but which have not got through the processes for transfer of those matters from 'DLA Piper' to the DART.
33. Third - the DART processes include a requirement that no matter can be referred to the ADF for any possible action unless Mr Roberts-Smith approves the referral.
- Mr Roberts-Smith sitting outside the ADF will not have all the information which is available to Service Chiefs.
 - This process of culling by Mr Roberts-Smith means that important information may never reach the relevant Service Chiefs.

34. Fourth - the 'list of available outcomes' signed off by Mr Roberts-Smith does not include the possibility of simply providing information to Service Chiefs so that they can consider administrative action.
35. The list of 'available outcomes'²⁰ decided on by Mr Roberts-Smith includes the possibility of referral to a Service Chief to consider administrative action for administrative *sanction* but does not acknowledge the possibility of administrative action *without sanction* to fulfil what Defence Legal describes as '[Command] responsibilities for safety, security and operational issues'.²¹
36. This is a very significant and unexplained omission which I expand on in the next section.

Mr Roberts-Smith has not included in his list of 'available outcomes' the possibility of 'administrative action' being simply referral of information to Service Chiefs for them to consider when managing risk and when deciding the suitability of officers for particular roles

37. In the process adopted by Mr Roberts-Smith it seems that the complainant is not given the option of their matter being referred to the Service Chief so that the information could be taken into account by the Service Chief when managing risks and when making decisions about the suitability of particular officers for particular positions.
38. It seems to me that it would be entirely proper for an individual complainant to be able to have their allegation referred to a Service Chief so that the Service Chief – rather than Mr Roberts-Smith - could make a decision about whether the allegation should be taken into account in making decisions. This possible approach is discussed in Attachment 5 of the Explanatory Material for recommendations in Volume 2 of our Report (see attached extracts):

The intent of recommending Service Chief consideration of possible administrative action is for the Service Chief to consider the full range of possible administrative action relevant to what Defence Legal has referred to as Command 'fulfilling his or her responsibilities for safety, security and operational issues' ...

The allegations of abusive conduct which are serious enough for the Review to have referred them to ADFIS for possible referral to Civilian police or for ADFIS to consider DFDA action typically raises issues about whether the alleged perpetrator:

- is fit to be in a leadership role in the ADF;
- constitutes a risk to other ADF personnel either generally or is unsuitable for some roles such as supervision of junior or vulnerable ADF personnel;
- constitutes a risk to ADF reputation and operational effectiveness.

²⁰ See DART Second Interim Report pages 7-9.

²¹ See Supplement to Volume 1 page 68.

The presumption of innocence-applicable to DFDA and criminal prosecutions-does not provide a basis for Command inaction in relation to risk management of an ADF member who is under suspicion of having engaged in conduct which may make him or her unfit to be in some positions in the ADF.

39. Further at page 5:

Is it valid to take administrative action in relation to events from years ago

...

There is no general statutory time limit on taking administrative action.

No doubt if a Service Command chain decides to take some strong administrative action such as termination of a member of the ADF on account of that member's involvement in abuse of other ADF member(s) many years ago, that ADF member may seek to test the validity of that action through one or more of the means of challenge include [sic] Redress of Grievance and court challenges.

The 'reasonableness' of the decision will probably affect whether or not any such decision to take administrative action survives any attempts to challenge the decision.

The more serious the conduct for which the person has not previously been called to account, the more reasonable it may be to take action now in relation to that conduct.

If the 'action' taken goes no further than Command taking the individual's background into account when deciding what role the individual is to have within the ADF, then that may be less likely to attract a challenge and/or less likely to be susceptible to challenge.²² (emphasis added)

40. The approach being taken by Mr Roberts-Smith is preventing the Service Chiefs being given the information to enable them – the Service Chiefs – to

... consider the full range of possible administrative action relevant to what Defence Legal has referred to as Command 'fulfilling his or her responsibilities for safety, security and operational issues' ...

41. It may be that Mr Roberts-Smith is concerned with fairness to the alleged perpetrator. However, it is not apparent why it should be Mr Roberts-Smith – rather than the relevant Service Chief who has better knowledge of the circumstances of the alleged perpetrator's position - who decides whether or not an allegation is taken into account in making decisions such as posting and promotion and who decides how much procedural fairness is appropriate in the circumstances.

²² See (Attachment 5 to the EM which is Appendix 2 to the Supplement in the attached extracts).

42. On the approach being taken by Mr Roberts-Smith it is possible – for example - that a rapist could become a Service Chief because relevant information which might have been taken into account does not leave the DART.
43. If an individual complainant will not agree to an administrative sanction process which would expose herself or himself to cross-examination and/or confrontation with the alleged perpetrator that would be relevant to what weight could be given to their allegation. But it is not clear why Mr Roberts-Smith is not giving complainants the opportunity to have their allegation go forward to the Service Chief for the *Service Chief's* consideration for appropriate action.
44. In other workplaces including the APS, Executives and managers are expected to take action to manage and deal with known risks – for example - if a staff member was suspected of sexually assaulting another staff member - whether or not the matter was also being investigated by the Police.
45. That management of risk may include not putting an individual into a particular role or shifting a particular individual to another role.
46. Service personnel are used to being subjected to positive vetting. They are aware that there may be some circumstances in the ADF where fitness for some roles needs to be beyond doubt – rather than that they are entitled to be placed in any role unless proven unfit beyond reasonable doubt.
47. Why should not Service Chiefs get information relevant to assessing the fitness of their officers for particular roles? Surely Service Chiefs – with fuller knowledge than is available to Mr Roberts-Smith about the requirements of particular positions – would be better placed to making decisions about those matters including deciding – with advice if needed - what procedural fairness is appropriate.
48. Why should not the Government be able to have full confidence in all future candidates for appointment as Chief of the Defence Force?

How is the DART dealing with complaints of sexual assault at ADFA pre 1998?

49. I was particularly concerned by Case Study 2 in the DART's Second Interim Report (pages 14-17) which illustrates how allegations of rape at ADFA before the Grey Review are being dealt with by the DART in accordance with processes set by Mr Roberts-Smith.
50. This illustrative Case Study is set in 1989. Accordingly it is not one of the ADFA 24 which relate to the period between 1994 and 1997. However, I infer that this Case Study shows how the DART is dealing with those of the ADFA 24 cases which are before the DART as well as any other ADFA sexual assault complaints
51. This Case Study involved a woman who alleges that she was assaulted and raped by two male Cadets – still in the ADF - when she was a Cadet at ADFA

in 1989. The victim reported the assault at the time but an officer advised her against pursuing it.

52. In this Case Study:

- The Chair (Mr Roberts-Smith) considered that a recommendation should be made for military justice or administrative sanctions so ‘ ... the Taskforce contacted Ms Y to advise her of the Chair’s assessment. Ms Y agreed to that referral by the Chair at an appropriate time pending police action.’ (emphasis added)
- DART personnel discussed possible outcomes with Ms Y.
- The matter was referred for consideration for a reparation payment and was assessed for the maximum payment. That outcome implies that the assessor accepted that the allegations had the necessary level of plausibility and were on the more serious end of the scale.
- Mr Roberts-Smith agreed to the matter being referred to civilian police.
- The matter was referred to civilian police.
- The DART then sent Ms Y a ‘final case closure letter’ and ‘her matter is closed.’

53. My concerns about this way of dealing with this kind of allegation are:

- There is no suggestion that any other person witnessed the rape or can otherwise corroborate that the woman did not consent to sex let alone that the alleged rapists knew that she was not consenting.
- There is nothing in the Case Study to indicate that the DART have advised the woman that without an independent witness there would be very little chance of there being a prosecution for sexual assault in 1989 let alone of obtaining a criminal conviction requiring proof of guilt beyond reasonable doubt.
- There is nothing to indicate that the DART advised the woman that it is more likely that a referral to the relevant Service Chief for possible administrative action would result in an outcome than would referral of the matter to the civilian police or referral for military justice.
- There is the curious reference in the Case Study to recommending to Ms Y that she pursue military justice or administrative sanction – but only ‘pending police action’. Once the matter had been referred to the civilian police, it seems that the suggestion of pursuing military justice or administrative action disappeared.
- There is nothing to indicate that the DART advised the woman that referral to the Service Chief for possible administrative action could occur at the same time as the matter was referred to the Police.

- There is nothing to indicate that the DART advised the woman that she could wait to see what happened once the matter was referred to the Police and then consider whether she wanted the matter referred for possible administrative action.
 - The DART regarded the matter as closed as soon as they referred the matter to the Police regardless of whether that referral resulted in any action by the Police and regardless of the outcome of any action taken by the Police.
 - There was no suggestion that the DART at any stage suggested to Ms Y that her allegations should at least be referred to the Service Chief so that he could take this information into account in deciding the suitability of the alleged perpetrators for particular roles in the ADF.
54. My concerns about the story told in Case Study 2 are that the approach taken by the DART:
- is most unlikely to result in any effective action in relation to the perpetrators;
 - is out of line with what happens in other workplaces;
 - reflects the shortcomings and misconceptions built into ADF processes which we reported on at length in the Report of the Review which I led. See attached extracts from our Report dealing with administrative action in relation to conduct which may constitute a criminal offence.
55. The way the DART and Mr Roberts-Smith dealt with this allegation in Case Study 2 did nothing to deal with the continued presence of the alleged perpetrators in the ADF other than to refer the allegations to civilian police.
56. As soon as the matter is referred to the Police the DART then treated the matter as closed.
57. In our Report we outlined why reliance solely on referral of allegations of sexual assault to civilian police is unlikely to achieve an outcome. See for example:
- Our reference to Justice Marcia Neave's reported statement that 'Victoria's criminal justice system is not working for sex offences ...'²³
 - Our reference to the concerns expressed in the ACT DPP's Annual Report for 2010-2011 that long court delays have a major adverse impact on victims involved in sexual assault trials in the ACT.²⁴
58. That background is one of the reasons why in Volume 2 of our Report with matters involving allegations of possible criminal offence we usually recommended that the matter be referred to the Service Chief to consider

²³ See Volume 1 page 21.

²⁴ See Volume 1 page 21.

taking administrative action at the same time as civilian police were considering possible prosecution.²⁵

59. The words of Colonel Northwood before a Senate Committee in 1998 which we quoted in our Report are still in point:

... Currently there is considerable embarrassment for Defence through dissatisfaction with referring complaints of sexual assault to the civil police forces and the civil courts. How can anyone in good conscience recommend to young females that they subject themselves to the trauma of the civil court system when there is little prospect of a conviction for what is known generally as rape. For example, I understand that there was not a conviction for rape in the Australian Capital Territory in 1997 (para 26).

27. Over and over again there is the complaint about Defence by victims of sexual assault that matters are not properly investigated, that because of minor penalties given to offenders the claim by the Defence Force that there is zero tolerance of sexual harassment is empty rhetoric and that the ADF is either washing their hands of the victims or is giving them insufficient support. (para 27)

28. Complainants, once their options are explained to them, are not prepared to subject themselves to the civil process, with the requirement that they relive a very stressful and degrading experience over and over again with complete strangers and in circumstances in which it is quite likely that a jury, having to be satisfied of guilt beyond reasonable doubt, will acquit an accused. ...

How is the DART dealing with the so-called ADFA 24?

60. Mr Roberts-Smith has decided that the DART can only 'progress' 4 out of 24 of the so-called 'ADFA 24' cases (see Second Interim Report page 31) because only 4 of the alleged victims have agreed to their matter being considered by the DART. I comment below on the requirement for the individual to give positive consent for their matter to be referred.
61. The DART also reported that it 'now has 48 additional complainants alleging incidents of physical abuse, sexual abuse, harassment or bullying at ADFA'.²⁶
62. There is nothing in the Interim Report to indicate that the DART has made any attempt to contact the alleged victims in the ADFA 24 matters. It may be that the DART has decided that – in accordance with its general approach of liaising with complainants who have made complaints to the DART – the DART has only looked at the particular matters where the alleged victim has come to the DART.
63. That is a very significant question which should be clarified.
64. In any case, the DART team could only have discussed with the victims the range of available outcomes which Mr Roberts-Smith has signed off on.

²⁵ See attached extracts of material relating to administrative action for allegations which might involve criminal offences. See in particular, Attachment 5 to the Volume 2 EM which is Appendix 2 to the Supplement to Volume 1.
²⁶ Second Interim Report page 31.

65. And – as discussed above - that list of available outcomes leaves out the possibility of administrative action without sanction.
66. If this group had been told – as they could and should have been - that their information could be taken into account by the Service Chiefs in deciding on what positions in the ADF were appropriate for the alleged perpetrators – with as much informal procedural fairness as the circumstances required – then these victims might have been willing to participate in these processes.
67. If the DART had made a public call for information relevant to these matters it may have obtained information from people who did not wish to make a ‘complaint’ and obtain a resolution but who would have been willing to provide information relevant to that broader inquiry into fitness of current officers for particular positions in the ADF.

Mr Roberts-Smith requires complainant’s consent before any information about the alleged abuse can be provided to Service Chiefs

68. It is emphasised throughout the DART’s Interim Reports that the DART will only work towards outcomes which the DART considers to be available and which the complainant indicates that he or she wants to pursue.
69. The requirement for complainant consent is consistent with the focus in the DART’s terms of reference on consulting with complainants which the complainant wishes to pursue to resolve their matter. This underlines that providing information to Service Chiefs for them to make decisions about their Command responsibilities is not seen to be part of the role of the DART.
70. I appreciate that this focus on the needs of complainants and on working with complainants to get outcomes – which are available – which suit them.
71. However, this does raise the difficult issue of information obtained from complainants which may have broader relevance for the welfare of the ADF.
72. In the Foreword to the Second Interim Report Mr Roberts-Smith says that:

However, in a small number of cases, where an alleged abuser remains in Defence and is alleged to have perpetrated serious sexual or other abuse on one or more occasions, I may decide it is necessary to bring the matter to the attention of Defence. I envisage that such a recommendation could be made where I feel that, for the safety and wellbeing of other Defence employees, it is necessary so intervention can occur. In such a circumstance, the referral will be made in a way that protects the confidentiality of the complainant.
73. I infer from the context that Mr Roberts-Smith means that he may make a referral which maintains complainant confidentiality in a case where the complainant has not agreed to their matter being referred either to the police for possible prosecution or to Defence for possible military justice or administrative sanction process – but only if the preconditions he sets out are met.

74. The preconditions which Mr Roberts-Smith sets up before he would bring a matter to the attention of Defence in such circumstances set some high barriers. It seems that he will only refer if:
- the alleged abuser remains in Defence; AND
 - is alleged to have perpetrated serious sexual or other abuse; AND
 - is alleged to have done so on more than one occasion; AND
 - Mr Roberts-Smith considers it necessary to notify Defence for the safety and well-being of other Defence employees.
75. I would have thought that it would have been sufficient to justify notification to Defence – on a basis which maintains the confidentiality of the informant – that it seems necessary to do so for the safety and well-being of other Defence employees.
76. It is not clear why the other preconditions are considered necessary for even a *confidential* notification to Defence.
77. Furthermore, as discussed above – in the process adopted by Mr Roberts-Smith it seems that the complainant is not given the option of their matter being referred to the Service Chief so that the information could be taken into account by the Service Chief when managing risk and when deciding the suitability of particular officers for particular roles in the ADF.
78. The result is that important information does not reach Service Chiefs.

Why would a Royal Commission be appropriate for dealing with the ADFA Legacy?

79. A Royal Commission – with an appropriately wide Commission – would be better suited to dealing with the ADFA legacy issues than the DART processes are, or can be, for the following reasons.
- The appointment of the Royal Commission would send a message that the Government has a serious commitment to gathering relevant information so that the Government and the ADF can make informed decisions about the fitness of particular individuals to hold particular positions in the ADF and to lead cultural change with credibility.
 - The carrying out by the Royal Commission of its functions with regular media coverage would reinforce the message that the Government and the ADF leaders want to be informed through the independent Royal Commission.
 - Individuals who are considering giving evidence would be encouraged by the knowledge that theirs is not an isolated case.
 - The Royal Commission could modify its processes as required to hold closed hearings when appropriate to do so.

- The Chief of the Defence Force could support the effectiveness of the Royal Commission by calling on current and former ADF members – including the silent witnesses of abuse – to bring relevant information to the Royal Commission.
- The Royal Commission processes could provide protection for witnesses.
- The Royal Commission could compel people to appear and to give evidence.
- Although statements made to the Royal Commission by witnesses could not be used as evidence against the person making the statement in a prosecution or other Court process, the Commission will be inquiring into incidents before 1998 where there would be little prospect for effective criminal prosecution now anyway unless there is some independent corroboration or a confession.
- The information gathered could be taken into account in deciding on whether particular individuals are fit for particular positions in the ADF and may direct appropriate lines of further inquiry which might lead to DFDA prosecutions, administrative sanctions or criminal prosecution.
- The Royal Commission would be able to give a high level of confidence about which current officers are not tainted by direct involvement in sexual assault or acquiescence in sexual assault by others when they were Cadets at ADFA.

Why not wait for the DART to complete its work rather than to appoint a Royal Commission now to deal with the ADFA Legacy?

80. The processes which the DART is currently applying in relation to allegations of sexual assault at ADFA before the 1998 Grey Review will restrict the ability of any later appointed Royal Commission to revisit ‘complaints’ about rape at ADFA which the DART has ‘resolved’ without effective action in relation to the perpetrators.
81. Victims will inevitably weary and withdraw from processes which require them to revisit distressing events.
82. After any ineffectual outcome following their dealings with the DART as would be likely to flow from the Case Study 2 method - victims will find it difficult to come forward again to assist a Royal Commission.

What is the case against having a Royal Commission?

83. At the Press Conference on 26 November 2012 when the Government announced the establishment of the DART Mr Roberts-Smith included the following in his introductory comments:
 - ... There are very significant privacy issues here, some may say well why not have a Royal Commission with public hearings- I would have thought one obvious answer to that is the very serious privacy issues.

DLA Piper made it quite clear in their report that very many of the people who raised allegations with them, had never done so before, they had never done so within the ADF, and in many instances they had never even mentioned to their families what they say happened to them. They are concerned not to be publicly identified in the context of the sort of work the task force is going to be doing.

That obviously needs to be respected, we will need to be able to resolve or assist the resolution of their allegations and complaints in an appropriate way, whilst respecting their privacy, and the privacy of their families. ...

84. It is obvious – as the Royal Commission into Child Abuse in Institutions demonstrates – that Royal Commissions can hold closed hearings so that witnesses can come forward and give evidence to the Royal Commission without loss of privacy.
85. In short - concern about privacy is not a sufficient justification not to hold a Royal Commission. Mr Roberts-Smith seemed to acknowledge obliquely that Royal Commissions can manage privacy issues in another comment he made later in the Press Conference.

The focus of this, as the Minister has said, and as I said at the outset, is to do something which Royal Commissions don't do. Royal Commissions conduct inquiries *either in public or not, but they don't produce outcomes in relation to particular cases.*

The whole focus of this taskforce is to produce outcomes in relation to the allegations of abuse by the individual victims or complainants, and those outcomes need to be examined and canvassed with them and tailored to their circumstances, so that they, hopefully, will feel vindicated and satisfied, and feel self-respect in turn, and that they've been listened to at least, ultimately, by Defence, and by the Government and by the taskforce. (emphasis added)

86. That clearly confirms that the focus of the DART is on resolution of particular complaints which are before the DART.
87. The clear implication is that the DART has not and will not focus on gathering information to inform consideration the broader issues of the fitness of particular officers in the ADF to hold particular positions.
88. Obtaining resolution for individual victims is important. However, what is not answered is why there cannot be both a body like DART providing resolutions – including reparation payments and restorative justice – and a Royal Commission to gather information for ADF and Government decision-making.
89. Also relevant are the following statements by the Minister in the same press conference:

.. And over the last 18 months, and in previous years, but particularly over the last 18 months, we've done a lot of work – a lot of work – to try and put the systems and the structures in place to prevent these things from occurring again.

And as [Elizabeth Broderick Sex Discrimination Commissioner] referred to earlier, a very pleasing part of this has been the strength of the commitment by the Chief of the Defence Force, the Vice Chief and the Service Chiefs and respective Secretaries to institute reform and change, zero tolerance, no turning of a blind eye to make sure that these things don't happen again.

And the materials that we've distributed, you can see the no negotiation on these issue statements signed by the various Service Chiefs and the Secretary. It's proposed that that be updated as personnel change, as there are changes in the Service Chiefs, a proposal to be updated annually in any event. So, we have an ongoing structural, system, institutional commitment to not allowing these things to occur.

But in the end, I came to the conclusion that the raft of remedies that we've put out there today is a more appropriate course of action than a broadly-based Royal Commission.

90. I do not doubt the commitment of the CDF and the other Service Chiefs to 'institute reform and change, zero tolerance, no turning of a blind eye to make sure that these things don't happen again'.
91. However, that does not answer the need to deal with the continuing impacts for the ADF of what happened at ADFA between the mid 1980s and 1998.
92. In our survey of earlier the reports relating to abuse in the ADF in Volume 1 of our Report summarised we saw recurring patterns in the responses in those reports:
 - declarations of zero tolerance – which by themselves did not prevent problems recurring
 - a focus on fixing particular processes for the future – which did not address the need for cultural change and underlying risk factors
 - a lack of effective action against those who had committed abuse
 - a lack of attention to the continuing impacts of the identified abuse.
93. That typical package of responses did not cure underlying cultural issues, did not address continuing impacts and did not prevent abuse recurring.
94. The commitment of Service Chiefs to cultural change is fundamental but it is not sufficient. The Service Chiefs also need to have the right people in middle management. As Ms Broderick said in the recent interview already quoted above:
 - [middle management] is where the change needs to occur and that's why I think it will take several years. Those people in the middle are really the cultural ambassadors. They're the keepers of culture. Young recruits, young troops look up to them to see what it means to be in the military. And I think that there's still a lot of work to be done ...

95. It is now clear from the Second Interim Report of the DART that the DART processes are not likely to give the Service Chiefs the information they need to make decisions about which officers are best suited to 'institute reform and change, zero tolerance, [and] no turning of a blind eye to make sure that these things don't happen again'.
96. I do not recommend 'a broadly based Royal Commission'.
97. I recommend a Royal Commission focused on the fitness of officers in middle and senior management who were at ADFA in the years before the Grey Review to lead and drive the cultural changes which are necessary to make sure that – as the Minister says - 'these things don't happen again'.
98. And I repeat what I said above - it is for me unthinkable that the Government, the ADF and the nation could accept the risk that a person who raped another Cadet or who took no action when another Cadet was being raped could hold sensitive and significant role model and cultural change positions in the ADF and – possibly - in time rise to be a Service Chief or even Chief of the Defence Force - without there being informed decisions in the ADF and the Government about their fitness to hold such positions in the ADF.
99. There is another possible argument against establishing a Royal Commission which I have not seen directly enunciated but which may be the subtext in Mr Roberts-Smith's emphasis at the 26 November 2012 press conference on the need to maintain 'procedural fairness' for alleged perpetrators.
100. This possible argument is that it is not 'fair' or 'appropriate' for reputations to be damaged by allegations, or for the ADF to take into account allegations, that a member of the ADF has committed sexual assault against another member of the ADF unless those allegations have been substantiated in a criminal trial.
101. If this is the unspoken argument, it should be rejected:
 - In our Review we identified that approach – which was present in many of the matters we looked at - was based on a misunderstanding of the differences between criminal proceedings and other processes open to the ADF and represented a misinterpretation of relevant Defence Instructions. (See attached extracts.)
 - In other workplaces, the distinction between criminal processes and timely administrative action to deal with the issues of workplace safety and fitness of individuals for positions in the organisation are well understood.
 - ADF officers are used to being positively vetted for their suitability for some sensitive positions. They well understand the importance for their positions in the ADF of being above suspicion – not just not proven guilty beyond reasonable doubt.

102. Similarly, I do not accept that the risk of damage to reputations of some individuals by a Royal Commission process is sufficient justification not to establish a Royal Commission.
- The senior and experienced individuals who are typically appointed as Royal Commissioners understand issues of procedural fairness and will have available to them the option of taking evidence in closed proceedings.
 - It should be Service Chiefs and – for the most senior positions – the Government - who have available to them all relevant information – including information which can be gathered through Royal Commission processes – who make decisions about what procedural fairness requires in their dealings within the ADF with particular officers.
 - A failure to establish a Royal Commission to inquire into the ADFA legacy will leave a shadow over the reputations of all male officers who went through ADFA from the mid 1980s until the 1998 Grey Review.
103. Accordingly, I recommend that Government should establish a Royal Commission to carry out a broad investigation of the ADFA legacy as soon as possible.

What would be the task set for the Royal Commission?

104. The commission for a Royal Commission would require careful consideration and drafting but in general terms I believe a Royal Commission should be established as soon as possible to inquire into:
- whether there are officers in the ADF who – when they were Cadets at ADFA in the years before the Grey Report - may have committed rape or other serious sexual assault on other Cadets; and
 - whether there are officers in the ADF who – when they were Cadets at ADFA in the years before the Grey Report – stood by during rape or other serious sexual assault on other Cadets without intervening or reporting that rape; and
 - what might be done about the risk that there are such people in middle and senior management in the ADF who might progress to even more senior positions without being called to account and without their Service Chiefs being informed about their suspected conduct at ADFA.
105. To deal with the risks identified in Volume 1 and the Supplement to Volume 1 of our Report (see below), the Royal Commission must not be limited to the so-called ADFA 24.

Who should be appointed as the Royal Commissioner?

106. I believe that the Royal Commissioner should be someone unconnected with the ADF so that:

- people whose confidence in the ADF has been damaged by their experience as victims of abuse and/or ADF mismanagement are not discouraged from giving evidence to the Royal Commission; and
- so that the Royal Commissioner comes to the task unconstrained by any institutional loyalty and/or uncritical acceptance of how things are done in the ADF.

107. For similar reasons, it would not be appropriate to set up a Court of Inquiry under the Defence Inquiry Regulations – even though a Court of Inquiry could have similar powers to a Royal Commission – because the Defence connection would deter some individuals.

Dr Gary A Rumble

**SUBMISSION TO SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
REFERENCES COMMITTEE: INQUIRY RELATING TO ALLEGATIONS
OF SEXUAL AND OTHER ABUSE IN DEFENCE**

Dr Gary A Rumble

PART III

ANNEXURE 2

14 February 2014

Senator the Hon David Johnston
Minister for Defence
Parliament House
PARKES ACT 2600

cc. Senator the Hon George Brandis QC, Attorney-General
Senator the Hon Ursula Stephens Chair Senate Foreign Affairs, Defence
and Trade References Committee
The Hon Len Roberts-Smith RFD, QC Defence Abuse Response Taskforce
Senator the Hon Stephen Conroy, Shadow Minister for Defence
The Hon Mark Dreyfus QC, MP, Shadow Attorney-General

Dear Minister

**THE CASE FOR A ROYAL COMMISSION TO INQUIRE INTO RISKS FOR THE ADF
FROM HAVING IN ITS RANKS OFFICERS WHO MAY HAVE COMMITTED OR
WITNESSED RAPE AT ADFA BEFORE GREY REVIEW:
SUPPLEMENTARY COMMENTS**

I have been informed by your office that you:

... will be addressing early this year a range of issues dealing with Military Justice
in general and the outcomes of the Defence Review Taskforce [sic] in particular.¹

I ask that you take into account the matters contained in this letter when you are
addressing these issues.

BACKGROUND

As you are aware, I was the leader of the *Review of allegations of sexual and other
abuse in Defence* (the Phase 1 Review).²

In March 2013 I appeared before the Senate Foreign Affairs, Defence and Trade
References Committee and made submissions on its reference related to the Report of
the Phase 1 Review and the Government response to that Report.

¹ From the context I infer that the reference to the 'Defence Review Taskforce' was intended to refer to the
Defence Abuse Response Taskforce (DART) and was not a reference to the *Review of allegations of sexual and
other abuse in Defence*.

² The Terms of Reference for our Review referred to it as Phase 1 and contemplated that there would be a Phase 2.
The Phase 1 Review is commonly referred to as the 'DLA Piper Review' and the report from the Review is
commonly referred to as the 'DLA Piper Report'. However, as the disclaimer to the Report of the Review states:
"*The opinions expressed in the 'Report of the Review of allegations of sexual and other abuse in Defence (Report)*
are solely those of Dr Gary A Rumble, Ms Melanie McKean and Professor Dennis Pearce AO. The opinions
expressed in the Report do not necessarily represent the views of other contractors to the Review, nor of DLA
Piper Australia."

On 27 August 2013 I wrote two letters to your predecessor as Minister for Defence, the Hon Stephen Smith MP. One of these letters (the Royal Commission letter) recommended the establishment of a Royal Commission in relation to ADFA legacy systemic issues identified in the Phase 1 Review.

I had copied the Royal Commission letter to you as Shadow Minister for Defence and Minister Smith referred it on to you as incoming Minister for Defence in September 2013.

I recently copied to you a letter which I sent to the FADT Committee on 3 February 2014 recommending that the Committee re-open its Inquiry into the Government Response to the Report of the Phase 1 Review.

In that 3 February 2014 letter I foreshadowed that I would be writing a separate letter commenting on developments on issues which I had raised in a 27 August 2013 letter (the Royal Commission letter).

This is the foreshadowed letter.

In my appearance before the Senate Foreign Affairs, Defence and Trade References Committee on 14 March 2013 I stated that:

I am appearing on my own behalf. I am not representing my other review leaders and I am not representing either of the law firms that have employed me during the course of this review.

I am submitting this letter to you on the same basis.

INTRODUCTION

1. The 27 August 2013 letter included the following summary of my reasons for establishing a Royal Commission (pages 3-4):

First, it is for me unthinkable that the Government, the ADF and the nation could accept the risk that a person who raped another Cadet or who stood by while another Cadet was being raped could hold sensitive and significant role model and cultural change positions in the ADF and – possibly - in time rise to be a Service Chief or even Chief of the Defence Force - without there being informed decisions in the ADF and the Government about their fitness to hold such positions in the ADF.

Given the culture which prevailed at ADFA from its opening in the mid 1980s until the reforms following the 1998 Grey Review and given the general failure of the ADF to call to account Cadets who engaged in that conduct, those risks are substantial.

In an interview on the ABC Lateline program on 23 July 2013 relating to the alleged involvement of a LtCol in the Jedi Council matter, Sex Discrimination Commissioner Elizabeth Broderick commented:

... middle management. That's where the change needs to occur and that's why I think it will take several years. Those people in the

middle are really the cultural ambassadors. They're the keepers of culture. Young recruits, young troops look up to them to see what it means to be in the military. And I think that there's still a lot of work to be done ...

I agree with Ms Broderick that the ADF's middle management are important 'keepers of the culture'.³ The fact that the men who went through ADFA in the years between the mid 1980s and the 1998 Grey Report who are still in the ADF are now in 'senior and middle management' positions and may progress further, reinforces the concerns which I have identified.

Secondly, it is clear from the DART's Second Interim Report that the combined effect of limitations in the DART's terms of reference and of the restrictive processes which Mr Roberts-Smith has adopted make it unlikely that:

- Service Chiefs will get information about which current ADF officers who went through ADFA before the 1998 Grey Report may have raped other Cadets at ADFA;
- any such officers will be called to account in the ADF or in the Courts.
- Service Chiefs will get information about which current ADF officers who went through ADFA before the Grey Report may have stood by while other Cadets were being raped.
- the DART's work will give the Service Chiefs and the Government any confidence about which current officers in the ADF did not rape other Cadets and did not stand by while other Cadets were being raped. This is grossly unfair to these officers.

2. Since I sent that letter the Third and Fourth Interim Reports of the Defence Abuse Response Taskforce have been made public and a statement was made on behalf of the Chief of the Defence Force on 'ADFA 24' issues to Senate Estimates in November last year.
3. I have considered the DART's Third and Fourth Interim Reports and the CDF's statement to Senate Estimates. I now write to confirm my recommendation that a Royal Commission be established.
4. I believe that it is crucial for long term public confidence in the ADF and for the cultural changes in the ADF which the *Pathway to Change* strategy is pursuing that everything which could be done, is done *and is seen to be done* to ensure that:
 - officers currently in the ADF who - when they were Cadets at ADFA in the years from the opening of ADFA in the mid 1980s to 1998 - raped or inflicted other serious sexual assault⁴ on female Cadets or who did not intervene to stop when such assault was occurring – are identified and their

3: We made similar points in our Report. See Volume 1 pages 103, 116-119 in attached extracts.

⁴: In this letter I use the term 'rape' as a shorthand expression for 'having penetrative sex with someone without their consent'. Similarly I use the term 'sexual assault' as shorthand meaning sexual contact without consent. This accords with general community usage of these terms.

fitness for their current positions and for future placement and progression in the ADF is assessed by ADF leadership and Government.

- the ADF and Government have confidence about which of the officers currently in the ADF who were at ADFA in the years from the mid-1980s to 1998 were not involved in such conduct when they were at ADFA.
5. As far can be discerned from the DART's Interim Reports and from the CDF's statement to Senate Estimates in November 2013, what has been done falls well short of gathering all information which could be available and falls short of addressing those matters thoroughly. Neither the DART nor the CDF have made any public call for those with information relevant to clarifying the fitness of current officers who were ADFA from the mid 1980s to 1998 to bring that information to the DART.
 6. An appropriately commissioned and resourced Royal Commission would be best placed to encourage individuals who have relevant information – including victims who have not yet spoken about their experience to anyone and/or victims who had no interest in the range of outcomes for complainants which the DART offered – to come forward and to enable informed and convincing resolutions on the systemic issues.
 7. The Royal Commission into Institutional Response to Child Sexual Abuse provides a model of how a Royal Commission can be conducted in a manner which takes into account the sensitivities and needs of victims of abuse and which actually empowers and assists victims of abuse including many who had not previously told their story to anyone.
 8. The Royal Commission into Institutional Response to Child Sexual Abuse is also demonstrating the impact which contemporaneous media reporting of real people's stories told to the Commission can have on raising understanding of the issues amongst the institutions affected and amongst the general community.
 9. I discuss these matters in greater detail below.

Yours sincerely

Dr Gary A Rumble

THE REASONS FOR CONFIRMING THE RECOMMENDATION FOR A ROYAL COMMISSION

1. I refer you again to my letter of 27 August 2013. I direct your attention in particular to the discussion of systemic issues at pages 6-17 of the 27 August 2013 letter.
2. Mr Roberts-Smith has not mentioned my 27 August 2013 letter either in his Third Interim Report or in his Fourth Interim Report. Nor have those Interim Reports acknowledged or given any substantive response to:
 - the systemic ADFA legacy issues which our Phase 1 Report identified;
 - what I set out in the 27 August 2013 Royal Commission letter about my concerns about what the DART's First and Second Interim Reports indicated was the way Mr Roberts-Smith had been dealing with these systemic issues.
3. I remind you of the following key points from our Phase 1 Report and from the 27 August 2013 letter. The DART's Interim Reports now accept some of these points and have not directly disputed any of them. (See especially Fourth Interim Report 22-25).
 - According to the Grey Report around one third of female Cadets who were at ADFA in 1998 had been raped or subjected to other serious sexual assault by male Cadets.
 - The DART's Second and Third Interim Reports stated that the work of the DART's ADFA and HMAS Leeuwin Group indicated – 'the instances of serious abuse at ... ADFA are more widespread and persistent than was reported in the ... 1998 Grey Report ...'. (Third Interim Report page 22.)
 - There had been a 40% attrition rate amongst female Cadets. It is not known to what extent rape or other sexual abuse had contributed to this attrition rate. However, it is likely that rape and other sexual abuse had contributed to the attrition rate.
 - In 1998 a taskforce led by Lt Col Northwood sent to the ACT Police briefs relating to around 24 suspected incidents of rape or other sexual assault occurring at ADFA in the years 1994-1997. It is my understanding that all but one of the complainants ultimately decided not to attempt to proceed with a criminal prosecution. The ADF then decided not to take action in any of these matters because of misconceived Defence procedures. The Fourth Interim Report of the DART itself accepts that:

... in a number of these cases Defence did not take appropriate disciplinary, administrative or management action, in part due to the policy at the time that all matters involving sexual assault were referred to the civil police and once this occurred Defence took no further action even if civil prosecution did not proceed

- The Grey Report in 1998 found that the culture of hostility directed to female Cadets had existed at ADFA since the first intake of females in the mid 1980s and that there had been a strong culture discouraging reporting at ADFA.
 - Accordingly it is likely that - from the opening of ADFA in the mid 1980s until the reforms which followed the Grey Review in 1998 - there were many more suspected perpetrators than the 'ADFA 24 and many more victims than the alleged victims of the ADFA 24.
4. A statement presented on behalf of the CDF in Senate Estimates in November 2013 included:
- Defence recently received the Defence Abuse Response Taskforce assessment on the so-called 'ADFA 24' cases. In accordance with the task force terms of reference, that advice identifies plausible allegations against 12 ADF members. I note that not all of these members are currently performing active duty. Some are reservists and the most senior rank of the individual members identified by the task force is equivalent to lieutenant commander, major or squadron leader.
5. The CDF's statement makes no reference to the facts that:
- our Phase 1 Report had identified that the systemic issues went beyond the ADFA 24 to all current officers who – when Cadets at ADFA from the mid 1980s to 1998 - may have sexually assaulted female Cadets. We set out in our Phase 1 Report the reasons why it was likely that there had been similar levels of rape and other abuse from the mid 1980s until the reforms which took place after the Grey Report in 1998. Those reasons included that – 'specific plausible allegations which individuals brought to this [Phase 1] Review about their experiences at ADFA back into the 1980s indicate a significant risk that similar conduct had occurred before the four years considered by the investigating team'. (See Phase 1 Report, Supplement to Volume 1 page 58.)
 - the DART's Terms of Reference extend to considering:
 - generally - all of the systemic issues identified by our Phase 1 Report (see Minister Smith's letter of 8 March 2013);
 - specifically - whether there should be a Royal Commission into any categories of allegation raised with the Phase 1 Review.
 - Minister Smith confirmed in his 8 March 2013 letter which I copied to the FADT Committee during its inquiry, that ADFIS had already identified that there were issues in relation to more than the ADFA 24 and that ADFIS had passed this information on to DART for its consideration.
6. If individuals who engaged in that conduct when they were Cadets at ADFA in the 1980s are still in the ADF, then they have almost certainly risen to ranks higher than the 'equivalent to lieutenant commander, major or squadron leader'.

7. Furthermore, the CDF's statement does not acknowledge the systemic issues associated with the presence in officer ranks of individuals who – as Cadets at ADFA from the mid 1980s to 1998 - acquiesced in sexual assault on female Cadets. The Grey Report stated that

With regard to a more common form of sexual assault, which the Review found at the Defence Academy, one or both parties get drunk and an 'opportunistic' assault occurs. The acceptance of binge drinking, the culture of not 'jacking' on one's mates, (and hence of not intervening despite evidence such as struggling and screaming) and the acceptance of low levels of room security, all contribute directly to the circumstances in which assaults occur, even though they do not 'cause' them. (emphasis added)

8. Mr Roberts-Smith's Fourth Interim Report acknowledges that 'it is likely that there was a higher incidence of sexual offending at ADFA ... than was reported' and that 'it is possible that there are still serving members of Defence who were responsible for or who witnessed sexual offences at ADFA' (page 24).
9. However, the Fourth Interim Report limits these comments to ADFA 'in the mid 1990s'. This Interim Report makes no reference to conduct at ADFA before the 1990s.
10. As I commented above - if any individuals who carried out or acquiesced in rape at ADFA in the 1980s are still in the ADF they have almost certainly risen to ranks higher than the 'equivalent to lieutenant commander, major or squadron leader' with all of the systemic problems for the ADF associated with having those individuals in increasingly high ranking positions.
11. As far as I can tell from the DART's Interim Reports, neither Mr Roberts-Smith nor the ADF have done anything or propose to do anything about the cloud over officers who were Cadets at ADFA before the mid 1990s.
12. Ignoring the issues in relation to current officers who were at ADFA before the mid 1990s will not make these issues go away.
13. The Fourth Interim Report states (page 24) that Mr Roberts-Smith's:

... preliminary view is that a Royal Commission may not be an appropriate means of further investigating the incidence of sexual offending at ADFA during this time period [the mid 1990s], for the following reasons
14. I set out below Mr Roberts-Smith's stated reasons for his 'preliminary view' and my brief responses to each of them. (See paragraphs 70-144) However, I make these general comments/responses.
15. First – I respond to Mr Roberts-Smith's assertion (Fourth Interim Report – page 25)

... in many cases specific allegations of sexual abuse made to a Royal Commission could only be tested if the alleged victim were to give evidence to the Commission.

16. Some victims might welcome the opportunity to present their evidence to a Royal Commission – so long as the Terms of Reference were appropriately set and the Commissioner or Commissioners had appropriate standing and experience.
17. But in any case, the level of ‘testing’ which a Royal Commission would need to apply to specific allegations would depend on the task set for the Royal Commission. For example, the task set for a Royal Commission need not be for the Royal Commission itself to make findings of fact about any specific allegations. The task set by the Royal Commission could be to gather enough information to refer information about specific allegations to the ADF to consider possible action including administrative action.
18. In any other workplace, if female employee A had made a plausible allegation that male employee B had forced her to have sex without her consent, the employer:
 - could and should respond to that situation through breach of Code of Conduct or similar processes; and
 - if sufficiently satisfied that the alleged conduct occurred – would be able to take action including dismissing employee B.
19. There would have to be a reasonable opportunity for employee B to respond to allegations made against him. However, Code of Conduct proceedings are not criminal trials and they ordinarily have flexibility in their procedures. There could be sufficient assessment of allegations without having to put employee A in a witness box to give sworn oral evidence and without subjecting employee A to cross-examination.
20. There has been confusion for years within Defence about whether it is possible for Defence to take administrative action to respond to an allegation that one member of the ADF forced another member of the ADF to have sex without consent. We dealt with this issue at length in our Phase 1 Report. I brought together relevant extracts from Volume 1 and the Supplement to Volume 1 in an attachment to the 27 August 2013 letter.
21. The DART’s Interim Reports indicate that it is now understood that administrative action can be taken by the ADF when there are reasons to believe that a member of the ADF has forced another member of the ADF to have sex without consent – even if that suspected or alleged conduct could also constitute a criminal offence which civilian authorities might be able to prosecute.
22. Where the ADF itself is considering possible administrative action in relation to a specific allegation, then it should be able to make findings of fact and to take action up to, and including, termination of an alleged perpetrator’s service without requiring the victim to give oral evidence and undergo cross-examination.

23. In some cases, existing Defence file records of statements made by victims might be sufficient with any other corroborating information which is available or which can be gathered for some levels of administrative action without any need for further involvement of the victim in the process.
24. So in many matters it should be possible for a Royal Commission to gather sufficient information to refer a matter to the ADF for possible administrative action without having to take oral sworn evidence from the alleged victim.
25. Second - I respond to Mr Roberts-Smith's view (Fourth Interim Report page 25) that a Royal Commission could not be conducted 'without a significant risk of further harm being done to individuals who may have been the victim of sexual assault at ADFA in the mid-1990s'.
26. This conclusion seems to be in part based on the incorrect assumption that a Royal Commission could only deal with allegations by compelling an alleged victim to give sworn oral evidence.
27. Neither our Phase 1 Report nor my 27 August 2013 letter suggested that a Royal Commission should be set up to compel victims of abuse to give evidence.
28. Obviously a Government establishing a Royal Commission would set terms of reference to give guidance to the Royal Commissioner(s) about the objectives and scope of the Royal Commission and the considerations that the Government wanted the Royal Commission to take into account. The Government could clearly indicate that it would want the welfare of victims taken into account by the Commission and could support the Commission by providing it with advisers on such matters. The Government could discuss with possible Royal Commissioner(s) how they would approach their tasks to ensure that they would take into account the welfare of victims before appointing them.
29. Concerns about the 'risk' that a Royal Commission would harm victims by dragging them into Commission processes regardless of their wishes should be allayed by the way in which the Royal Commission into Institutional Response to Child Sexual Abuse is carrying out its tasks.
30. That Royal Commission is demonstrating that:
 - a Royal Commission is not a Court and has considerable flexibility in the way in which it takes evidence and gathers information and can and does adapt its processes to take into account the sensitivities of witnesses affected by abuse;
 - a Royal Commission can be run in a way which enables individuals damaged by abuse to give their evidence and to tell their stories in a way which helps those damaged individuals to heal;
 - the establishment of a Royal Commission sends a strong signal to victims of abuse that Governments are taking their issues seriously;

- participation in a Royal Commission empowers people who have been victims of abuse of power;
 - the hearings of a Royal Commission generate publicity and let victims know that they are not alone and that the abuse was not their fault;
 - the publicity generated by the conduct of a Royal Commission reaches many people and encourages individuals who may not have reported the abuse or talked to anyone about the abuse which they suffered to tell their stories – to their families as well as the Royal Commission.
31. Third – I believe that it is crucial for long term public confidence in the ADF and for the cultural changes in the ADF which the Pathway to Change strategy is pursuing that everything which could be done, is done and is seen to be done, to ensure that:
- officers currently in the ADF who - when they were Cadets at ADFA in the years from the opening of ADFA in the mid 1980s to 1998 - raped or inflicted other serious sexual assault on female Cadets or who did not intervene to stop when such assault was occurring – are identified and their fitness for their current positions and for future placement and progression in the ADF is assessed by ADF leadership and Government.
 - the ADF and Government have confidence about which of the officers currently in the ADF who were at ADFA in the years from the mid-1980s to 1998 were not involved in such conduct when they were at ADFA.
32. Officers who were at ADFA in that period and who were not involved in carrying out or acquiescing in any such conduct deserve to have the cloud over their reputations removed.
33. As far as I can tell from the DART's Interim Reports and from the CDF's statement on these matters made to Senate Estimates in November 2013, what has been done falls well short of addressing those matters thoroughly.
34. As far as I can tell from the DART's Interim Reports the information gathering which the ADFIS and the DART have carried in relation to the ADFA 24 has been limited to reviewing existing Defence file material and – in the case of the DART – taking statements from the 6 alleged victims linked to the ADFA 24. (see especially the Third Interim Report at pages 22-23).
35. As far as I am aware, there has not been any attempt to gather evidence which could corroborate the complaints which are before the DART let alone to identify other perpetrators or silent witnesses.
36. The things which could have been done to gather more information but which have not – as far as I am aware – been pursued include the following.

A public call by the CDF for information about ADFA legacy issues

37. In May 2011 in response to the establishment of the Culture Reviews and our Phase 1 Review into abuse allegations, then VCDF LtGen Hurley stated 'We are willing to face openly and honestly the problems from our past ...'.
38. In 2011 the Review leaders met with the CDF and the then Secretary. We outlined concerns arising from the Grey Report's findings that:
 - there had been under-reporting of sexual assault and other serious abuse;
 - that Cadets had not intervened while male Cadets were struggling and screaming.
39. We asked whether the CDF would use his authority in Phase 2 to make a call for current and former ADF members who had relevant information about such conduct at ADFA before the Grey Report in 1998 to come forward with that information.
40. His written reply – see Appendix 23 to Volume 1 of our Phase 1 Report – did not respond directly to this question. He stated only – 'I strongly support – mechanisms which will encourage witnesses to come forward'.
41. Ms McKean and I met briefly with the DART leadership team in December 2012 to answer questions about access to Phase 1 material. I strongly put to the DART leaders the view that if they wanted to gather information about past abuse, then it would be crucial for the CDF to make a public call for current and former members of the ADF with relevant information to bring that information to the DART.
42. I am not aware whether the CDF has made any such call within the ADF. However, as far as I am aware, the CDF has not made any public call directed to former ADF personnel.
43. Given the authority of the CDF, a call to come forward with relevant information 'for the good of the ADF' would be likely to reach people who were not interested in coming to the DART for a personal outcome on offer from the DART. Such a call could be particularly compelling for currently serving personnel.

A public call by the DART for information about ADFA legacy issues

44. As far as I am aware the DART has not made any call for such information either.
45. As far as I am aware, there has not been any call by the DART for individuals who believe that they may have relevant information about abuse of others to come forward.
46. For reasons which I set out at greater length, at paragraph 58 in my letter of 3 February 2014 which I sent to the Senate FADT Committee and copied to

you (and others), it is most unlikely that the DART's newspaper advertisements will have attracted attention from more than a small proportion of victims.

47. The focus in the DART's advertisements and in its Interim Reports has been on working with individual complainants towards outcomes *for the complainants*. There is no reason to think that people with information which might corroborate an allegation of abuse would have approached the DART.

Failure to reach out to the victims of the ADFA 24

48. The DART in its Interim Reports and its website materials puts a lot of emphasis on the importance for the welfare of the victims themselves of not making an approach to victims who have chosen not to report. The CDF emphasised that theme in his November 2013 statement to Senate Estimates.
49. I do not doubt that Mr Roberts-Smith and the ADF leadership do have a genuine concern for the welfare of victims.
50. However, I take issue with the fact that this concern for the welfare of victims is put forward by Mr Roberts-Smith to explain why the DART has only considered the allegations relating to 6 of the ADFA 24 matters where the complainants have come to the DART.
51. What both Mr Roberts-Smith and the CDF are leaving out of this discussion are the following key points.
52. All of the alleged victims connected with the ADFA 24 chose to report in 1998 and the ADF failed them then.
53. Their matters were referred to the ACT Police for possible prosecution by LtCol Northwood's taskforce. However:
- After it was explained to these female Cadets what being a complainant in an ACT criminal trial would involve and that convictions were seldom obtained through ACT rape trials - all but one of the complainants decided not to attempt to go ahead with an ACT criminal trial.
 - In accordance with his understanding of Defence instructions at the time, the ADFA Commandant then decided that it was not possible for Defence to take any other action and no other action was taken.
54. Mr Roberts-Smith himself acknowledges (see Fourth Interim Report page 23)
- ... Defence did not take appropriate disciplinary, administrative or management action, in part due to the policy at the time that all matters involving sexual assault were referred to the civil police and once this occurred Defence took no further action even if civil prosecution did not proceed; and
55. This situation is quite different from the kind of situations referred to in the DART's Fourth Interim Report – referring to victims who ‘did not make a

complaint at the time or did not wish any action to be taken in relation to their report of assault' and 'have not come forward to either the Phase 1 DLA Piper Review or the Taskforce'.

56. We are talking about women who did make a complaint to LtCol Northwood's Taskforce and who did wish action to be taken'. Given that Defence failed to take action at the time it is not surprising that only 6 of them have responded to a general DART advertisement calling for complaints.
57. How would those women know that Defence now understands that it does have options to take administrative action even if there is no criminal prosecution?
58. As noted above, as far as I am aware there has not been any public call by the DART focussed on ADFA 24 issues.
59. The establishment and conduct of a Royal Commission directed to gathering information to assist the assessment of the fitness of officers for positions in the ADF would itself send a strong message and encourage current and former members of the ADF to come to the Commission with relevant information.
60. Even if there is to be a Royal Commission – it would still be crucial for the CDF to make a clear public statement of support calling for people with relevant information to come forward for the good of the ADF.

My comment on Mr Robert-Smith's stated reasons for preliminary view against a Royal Commission for ADFA 24

61. The DART Fourth Interim Report (page 24) states Mr Roberts-Smith's preliminary view is that a Royal Commission 'may not be an appropriate means of further investigating the incidence of sexual offending at ADFA, for the following reasons ...'.
62. Mr Roberts-Smith's stated reasons as set out in the DART Fourth Interim Report (see pages 25-25) and my brief responses are as follows.

• the general aim of Royal Commissions is to address systemic issues, rather than to investigate and lead to outcomes in individual cases;

63. My response: -
64. There is no reason why a Taskforce such as the DART could not work in parallel with a Royal Commission to lead to outcomes for individual victims while the Royal Commission addresses systemic issues.
65. In any case, our Phase 1 Report did identify and discuss very profound current systemic issues going to role modelling and cultural change because there is good reason to believe that the ADF has amongst its officers some individuals who – when they were Cadets raped or otherwise sexually assaulted female Cadets – or who - when they were Cadets at ADFA did not intervene when victims were screaming and struggling during rape because of the culture of not 'jacking on their mates'.

66. See further Volume 1 and the Supplement to Volume 1 of the Phase 1 Report and my letter of 27 August 2013.
67. The DART Interim Reports do not address those systemic issues.
- *while it does appear that there were systemic issues underpinning the incidence of sexual assault at ADFA in the mid-1990s, and at times an inadequate response to these incidents by Defence, ...*
68. My response: -
69. The Grey Report did not limit its findings to the mid-1990s. The Grey Report found that the culture of hostility to female Cadets had prevailed from the first arrival of female Cadets at ADFA in the mid 1980s. We set out in our Phase 1 Report the reasons why it was likely that there had been similar levels of rape and other abuse from the mid 1980s until the reforms which took place after the Grey Report in 1998.
70. We had before our Phase 1 Review – reported on in Volume 2 - plausible specific allegations of conduct at ADFA back into the 1980s which we reported on in Volume 2 of our Report and which were consistent with the conclusions of the Grey Review. See Supplement to Chapter 6 of Volume 1.
71. The DART’s reference to ‘at times an inadequate response to these incidents by Defence’ suggests that generally Defence’s response to such issues was adequate. This understates the findings of the Grey Review. I do not recall the Grey Report indicating that Defence’s response in that period was generally adequate.
- *a Royal Commission is not needed to uncover these issues, as: - many such issues have already been well documented through other reviews; and ...*
72. My response: -
73. Neither our Phase 1 Report nor my Royal Commission letter of 27 August 2013 suggested that there should be a Royal Commission to uncover what was wrong at ADFA before the Grey Review.
74. At the heart of the current systemic issues which our Phase 1 Report identified is that Defence chose not to do anything to call to account Cadets who were perpetrators of rape and other serious sexual assault or who acquiesced in that conduct.
75. What we suggested was a Royal Commission to consider the current systemic issues because of the possible continued presence of those individuals in the ADF.

• further information about systemic issues has been revealed through analysis of the Defence documents to which the Taskforce has access.

76. My response: -

77. If this is a reference to ‘systemic issues’ which prevailed at ADFA before the Grey Review, then it is no answer to the current systemic issues associated with the continuing presence in the ADF of officers who were associated with rape at ADFA pre1998.

78. If this is a cryptic reference to current systemic issues, then public confidence requires more than that Mr Roberts-Smith is satisfied with information which Defence has shown him.

• the identities of many of the suspected abusers in respect of these cases are already known, as is whether or not they are still serving in Defence;

79. My response:

80. If ‘these cases’ means the ADFA 24 then I have no doubt that the identities of the ADFA 24 are known and that it is also known whether or not they are still serving in Defence.

81. The DART’s Interim Reports indicate that ADFIS had established those facts and briefed Mr Roberts-Smith accordingly in December 2012 – well over a year ago.

82. However, it is also my understanding from those materials and from the CDF’s statement in Senate Estimates that – despite assurances in Minister Smith’s 8 March 2013 letter that the DART would be looking at more than the ADFA 24 - ADFIS has restricted its investigation to the ADFA 24 and has not looked beyond that group to other suspected ADFA rapists and has not looked for any of the individuals who failed to intervene during sexual assaults.

• on the accounts given, there were no witnesses to most of the alleged sexual assaults;

• it is highly unlikely that a Royal Commission would lead to the criminal prosecution of any individual given the time that has elapsed since the alleged abuse and the ongoing issue that the alleged victims in many instances are unlikely to want to make report;

83. My response: -

84. I infer that the reference to ‘accounts’ means accounts given by victims.

85. The DART itself has had complaints from only 6 victims associated with the ADFA 24. It may be that ‘accounts’ also includes accounts which have been sitting in Defence files of all victims in the ADFA 24 matters.

86. Whichever it is, it is surely not sufficient to rely solely on information known to the victim.
87. If other alleged victims also gave accounts of alleged assaults by a particular Cadet then the consistency of those allegations would itself be a strong indicator that the alleged perpetrator was a serial perpetrator and that the allegations were well-founded.
88. The more information is gathered which indicates a consistent pattern of conduct, then the better will be the prospects for successful criminal prosecution or other action against the perpetrator. (See the Volume 2 Explanatory Materials for our Phase 1 Report.)
89. The chances of corroboration of this kind have been minimised by the way the DART has conducted its inquiry because:
 - The DART has decided only to consider the complaints of the 6 alleged victims they have identified to be victims in the ADFA 24 group;
 - The DART has not made a call for people with relevant information to come forward; and
90. There is no suggestion in DART Interim Reports that either DART or ADFIS have been resourced to carry out, or have carried out, analysis and information gathering of the kind which the Phase 1 Report suggested and which might have opened lines of inquiry which could have led to other victims coming forward and/or possible victims being identified and – with appropriate sensitivity and discretion – being invited to provide any relevant information. See Phase 1 Report, Volume 2 Explanatory Materials (published as Appendix 2 to the Supplement to Volume 1) – Pages 22-25 (‘Resource, policy and implementation structure decisions to be made about recommendations relating to allegations of possible criminal/DFDA breach’) and Attachment 7 (‘Serial Perpetrators’)
91. I accept that corroboration of an alleged sexual assault would be crucial to prospects of a criminal prosecution succeeding.
92. However, our Report acknowledged that it was relatively unlikely that criminal prosecutions would be run for alleged sexual assaults from 15 or more years ago.
93. Our report (see especially Volume 2 Explanatory Material attached to Supplement to Volume 1) emphasised that there should be a focus on the ADF being ready to consider other options – including administrative action - *because* of the unlikelihood of criminal prosecutions being run.
94. For example, it might be that a coherent and credible account from an alleged victim could be sufficient for Service Chiefs to take into account when considering whether to put the alleged perpetrator in a particular role in the ADF.

95. As for whether there were ‘witnesses’ - there may not have been many instances of there being witnesses who saw an alleged sexual assault take place.
96. However, eye-witnesses are not the only ones who could have information to support an allegation that sexual assault had occurred.
97. The Grey Report stated that
- With regard to a more common form of sexual assault, which the Review found at the Defence Academy, one or both parties get drunk and an ‘opportunistic’ assault occurs. The acceptance of binge drinking, the culture of not ‘jacking’ on one’s mates, (and hence of not intervening despite evidence such as struggling and screaming) and the acceptance of low levels of room security, all contribute directly to the circumstances in which assaults occur, even though they do not ‘cause’ them. (emphasis added)
98. This indicates that there were Cadets who heard victims struggling and screaming during a sexual assault.
99. Other Cadets might also be able to provide information supporting allegations of sexual assault even if they were not present during the assault.
100. For example, another Cadet or Cadets might have:
- seen the alleged perpetrator entering or leaving the alleged victim’s room
 - heard a perpetrator boasting about having had sex with the alleged victim
 - seen the victim in a distressed and/or dishevelled state shortly after the alleged assault
 - seen the alleged perpetrator plying the alleged victim with alcohol and/or spiking the alleged victim’s drink.
101. A victim would often not be aware of whether there were people who would be able to give that kind of indirect support for her allegations. Depending on the circumstances, a victim might not even have been aware if that there had been an eye-witness of the assault.
102. Accordingly, if all that ADFIS and the DART have done is to assess statements made by alleged victims about whether the victims themselves knew of any witnesses to assaults, then significant sources of potential corroboration have not been explored.
103. And as outlined above, it seems that to date there has not been a call from the CDF for people with relevant information to come forward.

• *were alleged abusers compelled to appear before a Royal Commission, any evidence given by them could not be used against them in a criminal prosecution;*

104. My response: -
105. Our Report acknowledged that it would be relatively unlikely that a criminal prosecution could be run now.
106. Indeed, our Report noted that because of the unlikelihood that criminal prosecutions would be run now for sexual assaults which occurred 15-20 years ago, a Royal Commission would not prejudice the possibility of criminal prosecutions being run.
107. Our Report emphasised that criminal prosecution is not the only possible response to conduct by a male Cadet of forcing a female cadet to have sex without her consent and that Defence should routinely consider other options.
108. Even though answers given by an alleged perpetrator in a Royal Commission process could not be used against them in a criminal prosecution, I am not aware of any reason why their answers could not be taken into account in ADF and Government decision-making about which positions in the ADF that alleged perpetrator should hold.
109. There is nothing in the Royal Commissions Act nor as far as I am aware otherwise in general law which would prevent evidence given by a witness in a Royal Commission:
 - being used against an alleged perpetrator in a criminal prosecution
 - being taken into account in Defence administrative action in relation to the alleged perpetrator
 - being taken into account in Defence decision-making about posting and/or promotion of the alleged perpetrator.
110. If there is anything in Defence Instructions or other internal Defence processes which does prevent evidence given by witnesses being used in administrative processes or decision-making then those processes should be reviewed.
111. Defence Instructions should not be relied on to do nothing on this important matter – that is what went wrong in 1998.
112. As the Grey Report noted, there were Cadets who – because of the culture of not jacking on mates - did not intervene during sexual assaults even when victims were screaming and struggling.
113. If the CDF were to make a call for people with relevant knowledge to come forward and cooperate with a Royal Commission that could lead to information being obtained from such people who did not speak up when they were Cadets.

- *in many cases specific allegations of sexual abuse made to a Royal Commission could only be tested if the alleged victim were to give evidence to the Commission;*
- *given the advice provided by services working with victims of sexual assault that seeking out alleged victims of abuse could cause more harm, it is likely to be inappropriate for a Royal Commission to compel the alleged victim of sexual assault in the mid-1990s to testify, as in many cases these women:*

o did not make a complaint at the time or did not wish any action to be taken in relation to their report of assault;

o have not come forward to either the Phase 1 DLA Piper Review or the Taskforce;

o may not wish to now give evidence about an allegation of abuse that occurred between 15-20 years ago; and/or

o may not have disclosed the matter to anyone, including their families.

114. My response -
115. My introductory comments above are relevant.
116. Our Report did not suggest that victims should be compelled to give evidence to a Royal Commission.
117. The Royal Commission into Institutional Responses to Child Sexual Abuse demonstrates that it is possible to have a Royal Commission which takes evidence from victims who choose to come forward to give evidence.
118. That Royal Commission has the power to summon witnesses and to compel them to give evidence but as far as I am aware the Commission has not invoked that power to compel victims to give evidence and there is no suggestion that the Commission would use power to compel victims to give evidence.
119. There has been frequent media coverage of victims who make statements after giving evidence in that Royal Commission saying what a positive healing experience it has been for them to be able to give their accounts before the Royal Commission about what they experienced many years ago.
120. The Commission has been flexible in its processes and taken some evidence in closed sessions to take into account the concerns of victims that they do not want public exposure.
121. It could be expected that the Government would choose a person or persons to constitute a Royal Commission to inquire into the ADFA legacy who would have relevant experience and sensitivity with such matters.
122. The Royal Commission which the Phase 1 Report suggested for consideration and my 27 August 2013 letter developed, would be concerned with confidence in the fitness of a group of officers – those who attended ADFA from its

opening in the mid 1980s until 1998 - for their roles in the ADF. A Royal Commission could not be and would not be a Court conducting a criminal trial. A Royal Commission can be flexible in how it receives evidence and how it allows evidence to be tested.

123. A Royal Commission may well choose to allow victims to provide statements in affidavit form without being required to appear in person or to undergo vigorous cross-examination. The extent to which a particular victim does or does not undergo cross-examination would go to the weight to be attached to their evidence or statement.
124. Mr Roberts-Smith refers to the advice provided by services working with victims of sexual assault that 'seeking out alleged victims of abuse could cause more harm'.
125. I accept that as a general proposition.
126. However, I make the following comments.
127. First - The victims of the ADFA 24 matters all chose to report to the taskforce led by LtCol Northwood and to have their matters referred to the ACT Police.
128. Defence then let these young women down by not offering them any alternative response and failing to consider any other action to call to account the perpetrators once the victims had decided that they did not wish to go through an ACT criminal trial process.
129. Second - if there was a Royal Commission, then that may encourage victims who have not previously reported or approached the Phase 1 Review or the DART to come forward for the reasons which I discussed in the 27 August 2013 letter. I refer you to that extensive discussion again.
130. The very powerful messages which a Royal Commission process with media coverage would send to a victim who has not previously reported are:
 - The issues are being taken very seriously;
 - They are not alone – there are other victims.
131. These messages would go a long way to removing the guilt and shame which many victims feel and that there is a real prospect of action.
132. A Royal Commission – with advice from experts in working with victims of abuse – could surely devise other sensitive means for raising the profile of the work of the Commission with groups which include possible victims of abuse at ADFA between mid 1980s-1998 and providing ways for victims and witnesses with corroborating information to find out more about Commission processes discreetly and – when they are ready to do so – choose to come into the Commission's processes.
133. In media interviews with victims who have given evidence to the Royal Commission into Institutional Responses to Child Sexual Abuse, the victims

have frequently referred to the importance of knowing that they are being taken seriously and that they were not alone.

134. Third - It is my understanding that experts who work with victims of sexual assault take the view that a crucial aspect of assisting victims to recover is to give them back power and control which was taken away from them in the sexual assault.
135. If there is no Royal Commission, then the victims are denied the choice and the empowerment which the victims of child abuse in Institutions have been given by that Royal Commission.

Dr Gary A Rumble
14 February 2014

**SUBMISSION TO SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
REFERENCES COMMITTEE: INQUIRY RELATING TO ALLEGATIONS
OF SEXUAL AND OTHER ABUSE IN DEFENCE**

Dr Gary A Rumble

PART III

ANNEXURE 3

12 May 2014

Senator the Hon David Johnston
Minister for Defence
Parliament House
PARKES ACT 2600

cc. Senator the Hon George Brandis QC, Attorney-General
Senator the Hon Ursula Stephens Chair Senate Foreign Affairs, Defence
and Trade References Committee
General David Hurley AC, DSC Chief of the Defence Force
Senator the Hon Stephen Conroy, Shadow Minister for Defence
The Hon Mark Dreyfus QC, MP, Shadow Attorney-General
The Hon Mr Len Roberts-Smith RFD, QC Defence Abuse Response Taskforce

Dear Minister

**THE CASE FOR A ROYAL COMMISSION TO INQUIRE INTO RISKS FOR
THE ADF FROM HAVING IN ITS RANKS OFFICERS WHO MAY HAVE
COMMITTED OR WITNESSED RAPE AT ADFA BEFORE GREY REVIEW:**

**RESPONSE TO COMMENTS MADE BY GENERAL HURLEY ON RADIO
NATIONAL ON 28 APRIL 2014**

I wrote to you on 14 February 2014 setting out the case for a Royal Commission to inquire into the risks for the ADF having in its ranks officers who may have committed or witnessed rape at ADFA before the Grey Review.

The Government may be getting close to making a decision about whether or not there should be a Royal Commission. This is a significant national issue. I urge you to consider the following closely.

Your office has encouraged me to engage with the media in discussion of important issues of military justice. In an interview with Laurie Oakes on the Weekend Today program on the morning of Sunday 27 April 2014 I touched on the possibility of a Royal Commission in relation to the ADFA legacy.

General Hurley took part in a Radio National interview the next day and rejected two important factual aspects of in my comments.

I have considered what General Hurley said in his Radio National interview. I have not altered my understanding of the factual background for those matters.

The factual matters which I address in this letter and in other related correspondence with you are crucial to the Government's decisions on these significant national issues.

I urge you to consider closely what I have set out in this letter and in other correspondence with you on these matters before the Government makes decisions.

I am of course available to meet to discuss any of these matters with you.

30% OF FEMALE CADETS WHO WERE AT ADFA IN 1998 HAD BEEN RAPED

1. First I defend the statement which I made in the Weekend Today interview that 30% of female cadets who were at ADFA in 1998 had been raped at least once while they had been at ADFA.¹
2. In the interview on Radio National the following morning the Chief of the Defence Force rejected the 30% figure and referred to the report of the 1998 Grey Report as indicating:

‘women who experienced attempted sex without consent - I think - was six per cent and sex without consent in the previous year ... one percent’.
3. General Hurley also made statements to the effect that even underreporting would not take the figure close to the 30% figure which I had stated.
4. I infer that General Hurley was relying to a summary of the outcome of a survey which was an Appendix to the Grey Report.
5. I confirm the figure of 30% - that is, it is my understanding that 30% of female Cadets who were at ADFA in 1998 had been victims of rape or other serious sexual assault at some time (not necessarily in 1998) while they had been at ADFA.
6. The basis for the 30% figure is explained at pages 118-121 and in Appendix 22 of Volume 1 of the *Report of the Review of allegations of sexual and other allegations of abuse in Defence* which we delivered to the then Minister for Defence in October 2011 and which has been public since the middle of 2012. See also our report on the outcomes of LtCol Northwood’s investigation team at pages 114-115 of Volume 1 and pages 57-58 of the Supplement to Volume 1.
7. As we reported in Volume 1 (page 118) (emphasis added):

The Review team met with Ms Bronwen Grey (who led the Grey Review team) and Dr Stephen Mugford (a member of the Grey Review team). Their comments on the survey data returned during the Grey Review are referred to in Appendix 22. It is worthwhile noting however, that Grey estimated that

¹ I was the leader of the *Review of allegations of sexual and other abuse in Defence* commonly referred to as the DLA Piper Review. I have previously made submissions to the Senate Foreign Affairs, Defence and Trade Committee and communicated with you and your predecessor on related issues in my capacity as leader of that Review. In the interview on 27 April 2014 I was not, and in this correspondence I am not, representing the other Review leaders or either of the law firms that have employed me during the course of the Review.

approximately 30% of female cadets had (in the years prior to the Grey Review) suffered sexual abuse—meaning either rape or serious indecent assault. The survey data (which surveyed cadets during one calendar year only), reported that approximately 7% of female cadets reported experiencing sexual assault or attempted sexual assault at least once or twice during the 1997 calendar year at ADFA.

In our discussion with Ms Grey, she further recalled (based on information obtained during the Grey Review) that:

- all the assaults reported on female cadets during the review period were carried out by male cadets
- approximately 20 male cadets were reportedly involved and generally, the assaults were carried out by senior cadets
- there was an ADFA ‘survivor’s group’ of women victims of sexual assault
- there were a small number of male victims of sexual assault around the time of the Grey Review and that the Review worked with the ACT Male Rape Crisis Centre. ...

The legacy issues from this period could be more significant than the raw survey data (which is high in any event) suggests in respect of victims of sexual assault from this period. ...

8. I have spoken to the lawyer who was the note-taker for my Review’s 2011 meeting with Ms Grey and Dr Mugford. That lawyer has reminded me that:
 - Ms Grey put forward the 30% figure in our meeting with her;
 - Because we were surprised by the 30% figure we queried it with Ms Grey and she orally confirmed this estimate;
 - The 30% estimate was based on information obtained during the conduct of the Grey Review including Ms Grey’s face to face interviews with female cadets; and
 - We sent a summary of the meeting including the 30% figure to Ms Grey for confirmation before we used this figure in our Report. Ms Grey promptly replied confirming the note and the 30% figure.
9. It is important to understand that while General Hurley relies on a survey result for one year Ms Grey’s estimate was based on her face to face interviews in 1998 with Cadets about their experiences across all of the years that they had been at ADFA.
10. I am confident that Ms Grey’s 30% estimate is a much more reliable indicator of percentage of female cadets who were at ADFA in 1998 who had been victims of rape over the years than is the survey relied on by General Hurley.
11. In the 2011 meeting referred to above we had some discussion with Ms Grey and Dr Mugford about the disparity between the estimate of 30% and the

survey results. See Appendix 22 to Volume 1 of our Report. We discussed and offered some possible explanations for the disparity between the 30% estimate and the survey results in Volume 1 of our Report – see pages 118-121 and Appendix 22.

12. The 1998 ADFA Investigation Team led by LtCol Northwood worked in parallel with the Grey Review. It may be that the statistics and outcomes of the Investigation Team were not referred to in the Grey Report itself is because the Investigation Team's work had not been finalised at the time the Grey Report was delivered.
13. The reliability of Ms Grey's estimate is indicated by the history in relation to the so-called ADFA 24. See Volume 1 pages 114-121, Appendices 20 and 22 and the Supplement to Volume 1 pages 57-59 of our Report.
14. See also Volume 1 Executive Summary page xxxii from our Report:

Lieutenant Colonel Northwood, a lawyer who had been a member of the Grey Report Inquiry Team, also headed an Investigation Team looking at specific allegations of sexual assault which had arisen around that time. His evidence to the Senate Committee in June 1998 included:

Can I say—and it has appeared in the newspapers—that we, on the investigation side, identified 26 cases of what we believe were rape—and the old term 'rape' is the best way to describe the particular form of sexual assault to which I am referring—between I think it was the beginning of 1994 and the end of 1997.

15. It is my understanding that there were 26 cases referred to by LtCol Northwood here with only 24 suspected rapists referred to elsewhere because some suspects were involved in more than one incident.
16. At page 114 of our Volume 1 Report we reported.

It is important to note that the number of incidents may have been higher than the '24' figure referred to in the [LtCol Northwood's 1998] Investigation Team Report. The Investigation Team noted that 'allegations about a number of other sexual assaults were received; however, where the alleged victims were not prepared to speak to the Team or to provide evidence, these matters were not recorded for statistical purposes'.
17. The fact that LtCol Northwood identified 26 cases of rape from the beginning of 1994 to the end of 1997 – and reports that there were other possible victims who did not wish to speak to the Investigation Team - is consistent with Ms Grey's estimate of 30%.
18. It is also important to note that Mr Roberts-Smith reported in the Fourth Interim Report of the Defence Abuse Response Taskforce in December last year that he had provided General Hurley with an analysis of the 'ADFA 24' cases which included 'the following general observations' (emphasis added):
 - ...
 - It is clear that there was a high incidence of sexual offending at ADFA in the mid 1990s;

- In no 'ADFA 24' case was there a successful criminal prosecution;
- It appears that Defence did not take appropriate disciplinary or administrative action in many 'ADFA 24' cases;
- It appears that Defence seriously mismanaged allegations of sexual assault in a few 'ADFA 24' cases.

19. In summary – I am satisfied that the 30% figure is a reliable approximation of the percentage of female Cadets who were at ADFA in 1998 who had been victims of sexual assault.

NO CALL FROM CDF FOR WITNESSES OR VICTIMS OF RAPE AT ADFA PRE 1998 TO COME FORWARD

20. During the Weekend Today interview I made statements to the effect that - as far as I was aware - there has not been a public call by General Hurley for individuals who have knowledge about sexual assault at ADFA before the 1998 reforms at ADFA to bring that information to a relevant body.
21. General Hurley's main response in the Radio National interview was to the effect that he believed that enough had been done to get the message across that 'we want people to come forward'.
22. General Hurley also said he believed that the message on what needs to be reported had been sufficiently communicated because – 'If you look at the response to the DART, over two thousand allegations were received'.
23. I discuss these matters at greater length in my 14 February 2014 letter.
24. I confirm that as far as I am aware there has not been any public call by General Hurley (or by the DART processes) for people outside the ADF who may have information as witnesses or victims about sexual assaults by male Cadets on female Cadets pre-1998 to come forward with that information.
25. I do not share General Hurley's confidence that nevertheless the ADF has 'got the message across' that the ADF leadership wants to hear about involvement of current officers of the ADF in rape at ADFA pre-1998.
26. According to the DART reports only a handful of the women who were victims of the ADFA 24 have come to the DART processes.
27. In 1998 Defence decided – in accordance with its then procedures – that it could not take any administrative or disciplinary action in relation to the ADFA 24 alleged sexual assaults. See Volume 1 of our Report pages 114-121, Appendices 20 and 22 and Supplement to Volume 1 of our Report pages 57-58.
28. It is my understanding that Defence now accepts that the fact that conduct might constitute criminal sexual assault does not prevent Defence taking administrative or disciplinary action. However, as far as I am aware nothing has been done to let the victims of the ADFA 24 suspected perpetrators – or any other victims pre-1998 - know that other action is now possible.

29. Why would the women who were let down by Defence's decision in 1998 that Defence could not take any action on the incidents in which they were victims choose to come forward now – without at least a clear and unambiguous statement that Defence now considers it can take action on their incidents?
30. Why would women – including continuing ADF career officers – who were victims pre 1998, put their careers at risk by coming forward with information relevant to assessing the fitness of other officers without a clear call from the CDF that he wants to hear from them about those matters?
31. In my view there can be no confidence that the DART has attracted all or even most of the victims of abuse in the ADF. The DART has – according to its Interim reports – only attracted a few of the victims of the ADFA 24.
32. I explained my views on these issues in a 5 December 2013 email to your Chief of Staff:

THE DART HAS NOT FIXED ALL OR MOST PAST ABUSE

How many victims of past abuse are there?

... - the 2500 or so individuals whose complaints are before the DART are likely to represent only a small proportion of individuals who have been affected by abuse in the ADF.

Over the past decades hundreds of thousands of individuals have been members of the ADF.

Many previous reports have identified the deeply entrenched aspects of ADF culture which discourage reporting of abuse.

The rate of reporting of sexual and non-sexual abuse in the ADF has probably been well below 20%.

Volume 1 and the Supplement to Volume 1 of our Report reported our conclusion that factors which create risks of abuse occurring have been common in ADF environments and that abuse in training establishments in particular has been severe and widespread. It seems that Mr Roberts-Smith now shares these views.

As far as I am aware the publicity for the DART outside of the ADF was limited to newspaper advertisements. It is very likely that appearances by Mr Roberts-Smith in radio and TV programs would have attracted many more contacts than did the newspaper advertisements.

The experience with our Review was that many weeks of national newspaper advertising and DEFGRAM notification within the ADF brought in around 180 contacts.

However, in only four days after a Four Corners program in June 2011 made a reference to our Review we got 550 contacts from a viewing audience of around 200,000.

Individuals affected by abuse when they were children or young people in the ADF are often damaged and socially isolated. They are not likely to spot newspaper ads.

Even for victims who were aware that the DART was in operation there would have been factors discouraging approaching the DART including:

- distrust of anyone closely associated with the ADF [Mr Roberts-Smith - former Major-General and Judge Advocate General has had a very long association with the ADF.]
- lack of enthusiasm for the 'outcomes' on offer by the DART.
- individuals reach a readiness to acknowledge to themselves - let alone to others - that they were abused at different stages in their lives and depending on how they are affected by other events in their lives.

SeMPRO is still establishing itself and cannot be expected to quickly shift the rate of reporting of sexual abuse in the ADF - which is probably less than 20%.

SeMPRO is working in an environment of deeply entrenched factors discouraging reporting. Furthermore - SeMPRO is limited to sexual abuse and SeMPRO's website indicates SeMPRO is only available to current ADF personnel.

...

The DART has focussed on asking complainants what outcomes they want.

There has not been any call by the DART or by the CDF for those with information relevant to identifying perpetrators to come forward to inform CDF and Service Chief assessments of the fitness of individuals in the ADF for their current positions and/or for advancement. Such a call may well have encouraged serving personnel to come forward with relevant information.

Accordingly - it is likely that other abuse issues are as yet unreported and will come to the surface from time to time. ...

I am available to meet to discuss any of these matters with you.

Yours sincerely

Dr Gary A Rumble