

**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**

**2 June 2014**

**PART I**

**ASPECTS OF PHASE 1 (DLA PIPER) REPORT NOT YET DEALT WITH  
DESPITE ASSURANCES GIVEN TO FADT COMMITTEE IN MARCH 2013**

**MEDIA AND OTHER THIRD PARTY ALLEGATIONS OF ABUSE,  
MISMANAGEMENT AND DEFENCE COVER-UP**

**ACCESS TO DVA BENEFITS FOR PERSONS AFFECTED BY  
ABUSE IN THE ADF**

**SYSTEMIC ISSUES**

**VOLUME 1 AND SUPPLEMENT TO VOLUME 1 FINDINGS AND  
RECOMMENDATIONS**

**FAIRNESS AND RESOLUTION BRANCH AND ADFIS MATTERS**

**PUBLICATION OF VOLUME 2 OF PHASE 1 (DLA PIPER) REPORT IN  
REDACTED OR SUMMARY FORM**

## INTRODUCTION

1. I was the leader of *Review of allegations of sexual and other abuse in Defence* commonly referred to as the DLA Piper Review.<sup>1</sup>
2. The other Review leaders were Ms Melanie McKean and – for Volume 1 of the Report - Professor Dennis Pearce AO. I am making this submission on my own behalf. I am not representing the other Review leaders and I am not representing either of the law firms that have employed me during the course of the Review.
3. In June 2011 I joined with the other Review members and with the then Minister's agreement in making the following statement in a media release:

Allegation this is a cover-up exercise

The members of the Review have met with the Minister.

The Minister expects the Review to provide our own honest assessment and recommendations, regardless of whether or not doing so may involve criticism of aspects of Defence's response to allegations.

The Review members would not be participating in the Review if we thought it was a sham.

4. It is now more than two years since we delivered the final Parts of our Report to the then Minister, the Hon Stephen Smith MP. On 26 November 2012 Minister Smith announced the Government's response to the Report.
5. On 17 December 2012 letter I wrote to Minister Smith raising concerns about uncertainty in the 26 November 2012 whether and how significant aspects of our Report were covered by the Government's 26 November 2012 announcement. (See Annexure 1 to this submission.)
6. Minister Smith's reply of 8 March 2013 contained assurances generally to the effect that the Defence Abuse Response Taskforce (DART) would be considering all aspects of our Report. I annex Minister Smith's 8 March 2013 letter as Annexure 2 to this Submission.
7. I provided Minister Smith's 8 March 2013 letter of assurance to the FADT Committee in March 2013.
8. I am making submissions to this Committee now because – as far as I am aware – there have still not been Government decisions on many significant aspects of our Report and because assurances which Minister Smith gave in the March 2013 letter that significant aspects of our Report were being or

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<sup>1</sup> The Terms of Reference for our Review referred to it as Phase 1 and contemplated that there would be a Phase 2. This 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.*"

would be considered by the Defence Abuse Response Taskforce have not been carried through by the DART – and – in some cases – will not be carried through by the DART.

9. I have taken up my concerns about these matters with the then Minister for Defence, the Hon Stephen Smith MP, the then Attorney-General the Hon Mark Dreyfus QC, with the Hon Mr Roberts-Smith, RFD, QC and with Attorney-General Senator the Hon George Brandis QC and the Minister for Defence Senator, the Hon David Johnston.
10. I have not received a substantive response to any of these communications apart from Mr Roberts-Smith's oral confirmation to me in October 2013 that he has decided not to deal with some significant aspects of our Report at all and that he regarded other aspects of our Report – including the issues which we had raised which are relevant to access to DVA benefits - as low priority.
11. I annex as Annexure 3 to this submission a letter which I wrote to the Committee on 3 February 2014 and the attachments to that letter setting out the history of assurances, delay and inaction and outlining my concerns.
12. I annex as Annexure 4 to this submission extracts from further correspondence I have had with the Minister's office since 3 February 2014.
13. I realise that the material which I am submitting to the Committee is voluminous and that some of the Committee members have seen much of it before.
14. However, this material is still relevant because as far as I am aware there have not yet been Government decisions or effective actions on these important matters. The record of delay and inaction is growing.
15. These issues still matter.
16. The DART's work cannot be relied on to have 'fixed' all or even most issues of past abuse because:
  - it is likely that the DART has only reached a small proportion of people affected by abuse in the past;
  - the way the DART has carried out its work is not likely to result in many suspected perpetrators of abuse being called to account. (See pages 15-18 of my 3 February 2014 letter to this Committee which is Annexure 3 to this Submission)
17. As I stated in my 3 February 2014 letter to this Committee: -

The gaps in the Government response to our Phase 1 Report include important issues of probity in the handling of allegations of abuse within the ADF and – if unresolved – have the potential to damage public and ADF personnel confidence in ADF processes for dealing with such matters. These gaps have the potential to undermine efforts

through the *Pathway to Change* strategy to encourage victims of abuse in the ADF to report.

The gaps in the Government response are also relevant to the welfare of former, current and future ADF personnel.

18. These are matters of great national and - in many cases - individual importance. Some of these matters are matters of urgency. It is likely that individuals damaged by abuse in the ADF have continued to suffer and some may even have passed away without support through DVA benefits because of inaction on issues which we identified in April 2012.
19. Accordingly I ask for the patience of Committee members in considering this voluminous material.
20. I have done my best to make the material accessible. Because of the range and complexity of the matters which I am addressing I am lodging my submissions in three separate Parts.
21. This Part, Part I, sets out Background for all three Parts and contains my submissions on: -

**ASPECTS OF PHASE 1 (DLA PIPER) REPORT NOT YET DEALT WITH DESPITE ASSURANCES GIVEN TO FADT COMMITTEE IN MARCH 2013**

**MEDIA AND OTHER THIRD PARTY ALLEGATIONS OF ABUSE, MISMANAGEMENT AND DEFENCE COVER-UP**

**ACCESS TO DVA BENEFITS FOR PERSONS AFFECTED BY ABUSE IN THE ADF**

**SYSTEMIC ISSUES**

**VOLUME 1 FINDINGS AND RECOMMENDATIONS**

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**PUBLICATION OF VOLUME 2 OF PHASE 1 (DLA PIPER) REPORT IN REDACTED OR SUMMARY FORM**

22. **Part II** will address my concerns about the version of ‘restricted reporting’ which Defence has introduced and which is being run through *SeMPRO* (the Sexual Misconduct, Prevention & Response Office).
23. **Part III** will address the question of whether there should be a Royal Commission into the so-called ‘ADFA 24’ issues.
24. I offer some recommendations for consideration of the Committee and to assist the Committee to find a way forward. However, at this stage my focus

has been on putting information in front of the Committee and identifying issues rather than on attempting to formulate detailed recommendations.

25. However, Minister Johnston's office informed me the Minister intends to make a statement on military justice issues in the Winter sittings. Furthermore, the DART may publish another Interim Report in the near future and a report in the Australian newspaper on 5 May 2014 indicates that Mr Roberts-Smith expects to deliver reports on HMAS Leeuwin and on ADFA in the near future and expects these reports to be tabled.
26. It is likely that other submissions to the Committee will also contain relevant information and perspectives. Any recommendations which I offer at this stage may need to be modified or abandoned to take into account such developments and new information.
27. I would welcome the opportunity to appear before the Committee and to discuss the issues with the Committee members.

Dr Gary A Rumble

## **SUMMARY OF PART 1**

### **ASPECTS OF PHASE 1 REPORT NOT BEEN DEALT WITH BY DART DESPITE ASSURANCES GIVEN TO FADT COMMITTEE**

1. The assurances which Minister Smith set out in his letter of 8 March 2013 (Annexure 2) were given with full knowledge that I was about to appear before the FADT Committee and that I would take into account and rely on those assurances in formulating submissions to the Committee. Minister Smith's office confirmed that he agreed to me providing a copy of his letter to the Committee.
2. Accordingly, Mr Roberts-Smith's decisions not to fulfil some of those assurances in some respect and to delay meeting some other of those assurances indefinitely are matters which go to the effectiveness of the Committee's and the Parliament's scrutiny of the Government's response on these issues.
3. Apart from issues of effective Parliamentary scrutiny, the issues are themselves inherently significant.

### **MEDIA AND ANONYMOUS ALLEGATIONS OF ABUSE, MISMANAGEMENT OF ABUSE AND COVER-UP**

4. My 8 November 2013 email to the Minister Johnston's Chief of Staff (See Attachment 1 to my 3 February 2014 letter to the Committee in Annexure 3 to this submission) included the following statements about the significance of these matters:

I am reluctant to identify any of the gaps as being more important than the others. However, it will give some idea of the significance of gaps if I mention these examples:

- The DART does not propose to consider any media allegations or anonymous allegations which we reported on in Phase 1 (unless the alleged victim has approached the DART separately and consented to the DART dealing with the allegation): -
- Allegations made on the Four Corners program in June 2011 included that:
  - the Four Corners program had a document - which they showed during the program - which purported to be an internal Defence document containing statements to the effect that Defence had been deliberately misleading Ministers for years about allegations of abuse involving a particular individual - referred to as John the Barrister: and
  - the document also carried handwritten notations directing that the document be removed from the file because it implied criticism of earlier staff and because it could have liability implications.

- Minister Smith's March letter to me had expressly stated that the DART would be looking at media allegations including the allegations from the Four Corners program.
  - Mr Roberts-Smith told me at our 17 October meeting that the DART is not dealing with media allegations.
5. It is my understanding that Mr Roberts-Smith has decided that the DART will only consider allegations which a complainant consents to the DART considering.
  6. Media and anonymous allegations on which we reported in Volume 2 should be addressed by Government because they raised serious issues of abuse, mismanagement of abuse and – in some cases – cover-up in the ADF.
  7. Media allegations are public and should receive a genuine, convincing and public Government or Defence response because so long as media allegations such as those published in the Four Corner program in June 2011 do not receive a public Government or Defence response they can be republished.
  8. For as long as these allegations remain unanswered – and whenever they are republished – these media allegations will discourage victims of abuse in the ADF from reporting the abuse.
  9. No doubt when considering how to frame a public response, the welfare of the alleged victim should be taken into account. But ordinarily consent of the alleged victim should not be a precondition for the Government and/or Defence being able to make a public response to a public media report.

#### **DEFENCE AND DVA TO GATHER AND SHARE INFORMATION RELEVANT TO ACCESS TO DVA BENEFITS**

10. The Third [DART] Interim Report signed off by Mr Roberts-Smith in September 2013 includes the following (at page 5):

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

Many individuals never reported their abuse and have never spoken of it before, even to their partners or families. Many have spoken about their experience of severe mental and emotional harm as a result of the abuse, including alcoholism, drug addiction, social isolation and, mental illness.
11. Such people - and many more people like them who may not have come into the DART's processes - could well be entitled to DVA benefits and assistance which they are not receiving.

12. My 8 November 2013 email to the Minister Johnston's Chief of Staff continued:
- We had identified for consideration:
    - directing Defence to gather copies of relevant reports relating to abuse and to provide information from those reports to DVA with appropriate redactions for confidentiality so that DVA decision-makers could be informed of the kinds of conduct which did occur and could be informed of the recurrent theme through reports that there are strong cultural reasons why people will not report abuse while they are in Defence:
    - directing DVA to analyse their own records of claims to identify patterns and consistency in the kinds of conduct alleged so that decision-makers could be informed.
13. The DART's Fifth Interim Report published in March 2014 reports that Mr Roberts-Smith referred these issues to the Secretary of the Department in February 2014 and stated that Mr Roberts-Smith did not see any continuing role for the DART on these issues.
14. These issues are discussed at length in:
- Chapter 7 of the Supplement to Volume 1 of the Phase 1 Report
  - Supplement Findings, Phase 2 issues and recommendations – pages xii-xiii in the Annexure 5 to this Submission
  - The 17 December 2012 letter to Minister Smith (Annexure 1 to this submission)
  - My submissions to the FADT Committee in March 2013
  - The 3 February letter and its attachments (Annexure 3 to this submission)
15. In 2011 General Hurley told our Review that he and then Secretary of the Department Dr Ian Watt wanted to avoid any process involving publication of allegations about past abuse in Defence because.
- ... the focus of the media and the public, as well as our own people, would inevitably be on the stories that emerged about the past as opposed to how we can learn and take the organisation forward.
16. At present Defence cannot learn from past abuse reports because Defence does not keep any accessible set of reports and proceedings involving abuse. Even reports of inquiries under Defence Inquiry Regulations are not readily available within the ADF. See Chapters 2, 4 and 7 in Volume 1 and Supplement to Volume 1 of our Report.
17. I believe that the ADF and the general community would benefit from understanding this history of the nature of the abuse which has occurred and



the factors which have contributed to abuse occurring as a basis for ongoing risk management.

18. I recommend that the Committee invite the Secretary and the Chief of the Defence Force to inform the Committee whether they do have any 'in-principle' concerns about:
  - gathering these records to assist Defence's own ongoing risk management and moves to eliminate abuse;
  - sharing de-identified information with DVA and potential DVA benefit recipients.
19. In any case, whatever the issues might be for the ADF, I believe that the Commonwealth (including Defence) has moral and Model Litigant obligations to individuals affected by abuse in the ADF to bring into DVA processes relevant information which is currently scattered in Defence and DVA files.
20. In this submission I have added some new related material identifying the possibility of individuals damaged by abuse in the ADF being able to improve their prospects for access to DVA benefits through processes for change of records of discharge and/or going behind recorded grounds for discharge.
21. I recommend that:
  - Defence be asked to start gathering records of past reports and proceedings related to abuse in the ADF immediately and to report on progress by the end of September 2014;
  - DVA be asked to commence consultation with Veterans' representative organisations and to report by the end of September 2014:
    - on what legal and practical barriers there are to victims of abuse in the ADF succeeding in establishing the facts necessary to make out entitlements to DVA benefits;
    - what Defence and DVA could do and what resources they will require to gather and share information which could assist such individuals to establish those facts to the satisfaction of DVA and tribunal decision-makers;
    - on what can be done in liaison with Veterans' groups, other Government agencies and community groups and what resources will be required to reach out to individuals affected by abuse who may be eligible for DVA benefits – including individuals who have previously applied and been rejected.

## **OTHER SYSTEMIC ISSUES**

22. Minister Smith's 8 March 2013 letter gave assurances that the DART would be looking at all of the 35 systemic issues 'identified' – that is recommended – for Phase 2 consideration.

23. It is my understanding that Mr Roberts-Smith does intend to consider systemic issues which our Report identified eventually.
24. It is also my understanding from the Minister's 8 March 2013 letter and from DART Interim Reports that Defence itself may have already considered some of these issues in the course of carrying out its own 'Re-thinking review' review.
25. In the FADT Committee's June report last year the Committee recommended that Defence should formally report on its response to all of the systemic issues identified in our Report. (Recommendation 2)
26. I still believe that the Government should respond to all of the Volume 1 and Supplement to Volume 1 Findings and Recommendations of our Report.
27. However, I supported the Committee's recommendation for Defence also to respond. I have not seen any such formal response from Defence. Another year has gone by.
28. If Defence has not yet made that response then I recommend that the Committee ask for that report from Defence to be delivered by the middle of July so that the Committee can take it into account before it delivers its own report on its current reference.

#### **VOLUME 1 AND SUPPLEMENT TO VOLUME 1 FINDINGS AND RECOMMENDATIONS**

29. It is my understanding from the DART's terms of reference, from Minister Smith's 8 March 2013 letter of assurance and from Mr Roberts-Smith's statements to the FADT Committee in March last year, that Mr Roberts-Smith's tasks include considering and deciding whether he agrees with each of the findings and recommendations in our Report.
30. I recommend that the Committee ask for there to be a public report from Mr Roberts-Smith on what conclusions he has reached in relation to each of the Findings and Recommendations – which are included in the consolidated table from the Supplement to Volume 1 which is Annexure 5 to this submission.
31. There is one group of recommendations and related material from our Report which are of particular relevance to the DART's Restorative Engagement Program and which should be considered before that Program has been completed.
32. I recommend that DART and ADF participants in the Restorative Engagement Program take into account the discussion of 'Apology' in Supplement to Chapter 8 including Recommendations S4 and S5 and the 8 page discussion of 'Apology' in Attachment 6 of the Volume 2 Explanatory Materials (See Appendix 2 to the Supplement to Volume 1.)

**THE FOUR PARTS OF VOLUME 2 OF OUR REPORT DEALING WITH MATTERS WHICH WERE CURRENT WITH FAIRNESS AND RESOLUTION BRANCH AND ADFIS IN 2011**

33. In my December 2012 letter to the Minister I had asked what was happening with those aspects of our Report. The Minister's reply in his letter of 8 March 2013 (at pages 2-3) was:

**3. The Government's response does not refer to the three Parts of Volume 2 on Fairness and Resolution Branch matters and does not refer to the Part of Volume 2 on ADFIS Matters**

In relation to specific Fairness and Resolution Branch matters and Australian Defence Force Investigative matters, all matters included in the Report have been referred to the Taskforce for consideration.

... it is now a matter for the Taskforce to consider and make an independent judgment whether, and in what form, this material may be made available to Defence.

I note your concern that this is an unnecessary delay and duplication of work. However, the Government is strongly of the view that it is appropriate that the Taskforce independently review and determine appropriate responses for all matters which the Report addressed. Accordingly, the Taskforce will determine its response to those matters.

34. In my 27 August 2013 letter I had commented that:

The material on which these four Parts of our Report were based came to us from Defence. There are no apparent reasons why these Parts of our Report should not be provided to Defence. Because these Parts of the Report were based on 'snapshots' of F&R Branch database and ADFIS matters, the longer it takes for these Parts of our Report to be made available to Defence, the less use they will be.

35. I recommend that the Committee ask for a report from Mr Roberts-Smith on how he is dealing with the issues of Defence access to the Four Parts of Volume 2 of the Phase 1 Report which deal with F&R Branch and ADFIS matters which were current in 2011.

**PUBLICATION OF VOLUME 2 OF PHASE 1 (DLA PIPER) REPORT IN REDACTED OR SUMMARY FORM**

36. The Reference which is currently before the Committee asks for a report on 'the desirability of releasing a true reflection of volume two of the DLA Piper report in a redacted form or by way of summary'.

37. Volume 1 and the Supplement to Volume 1 already contain quite a lot of ‘summary’ information - which I believe to be substantially ‘true’ - about the kinds of specific allegations reported on in Volume 2 and about the kinds of recommendations our Report made on specific allegations:
- Chapter 3 of the Supplement to Volume 1 gives an overview of the allegations reported on in Volume 2 and on recommendations made in Volume 2.
  - The Explanatory Materials for Volume 2 which are set out as Appendix 2 to the Supplement to Volume 1 discuss in detail the kinds of recommendations which we made in Volume 2.
  - Chapter 5 of Volume 1 of our Report contained some specific examples of plausible allegations of abuse.
38. It would require a lot of resources to prepare for general publication a summary or redacted version of Volume 2 with identifying information removed.
39. Accordingly, on the information which is available to me at present, I believe that it would not be desirable to try to publish a summarised or redacted form of Parts 1-23 of Volume 2.

I now address these matters in some greater detail

## SUBMISSION

### BACKGROUND

40. We presented Volume 1 of the Report in October 2011 – over two and a half years ago. We presented Volume 2 of the Report and a Supplement to Volume 1 in April 2012 – over two years ago.
41. The Senate Foreign Affairs, Defence and Trade References Committee commenced an inquiry in relation to our Report and the Government’s response to our Report in October 2012.
42. On 26 November 2012 the then Minister for Defence, the Hon Stephen Smith MP announced the Government’s response to our Report.
43. Central to the Government’s response to our Report was the decision that Minister Smith and the then Attorney-General, the Hon Nicola Roxon MP, were jointly establishing the Defence Abuse Response Taskforce (DART). The Hon Mr Len Roberts-Smith RFD, QC former Judge Advocate General and Major-General, was appointed to lead the DART. Mr Roberts-Smith is the sole decision-maker for the DART.
44. I wrote to the Minister on 17 December 2012 noting that the 26 November 2012 announcement did not clearly deal with significant aspects of our Phase 1 Report and asking for clarification of the Government’s response to those aspects of the Phase 1 Report. That letter is annexed at Annexure 1.
45. On 8 March 2013 shortly before my appearance before the Committee Minister Smith MP replied to my 17 December 2012 letter. A copy of that letter is attached as Annexure 2.
46. The Minister’s 8 March 2013 letter included assurances to the effect that the aspects our Report about which I had sought clarification of the Government response were being considered, or would be considered, by the Defence Abuse Response Taskforce (**DART**).
47. In that letter the Minister gave specific assurances about aspects of our Report including aspects of our Report relating to:
  - the current welfare of persons affected by abuse in the ADF; and
  - media allegations of serious mismanagement and cover-up of abuse in the ADF.
48. With the Minister’s consent I provided a copy of the 8 March 2013 letter to the Committee as an attachment to my 12 March 2013 written submission.
49. I relied on the assurances in Minister Smith’s 8 March 2013 letter:
  - in my 12 March written submission to the Committee

- in my appearance before the Committee on 14 March 2013
  - in my 20 March 2013 supplementary written submission.
50. In my submissions to the Committee in March 2013 I expressed my concerns about the delay and the failure of Government to make decisions and to take action on most aspects of our Report and my concern that the Government's response to most aspects of our Report was to refer them to the Mr Roberts-Smith for consideration.
  51. The Committee published its report in June 2013. The Committee referred to, and clearly took into account, Minister Smith's 8 March 2013 letter with its assurances and clarifications of the matters being considered by the DART.
  52. The Committee noted in its Report that it was too early in the life of the DART to assess the work of the DART.
  53. On 27 August 2013 I wrote to the then Minister Smith and the then Attorney General the Hon Mark Dreyfus QC setting out my concerns that the assurances given in the 8 March 2013 letter about actions to be taken by Mr Roberts-Smith did not seem to be reflected in the Interim Reports of the DART. (This letter is set out in full in Attachment 2 to my 3 February 2014 letter to this Committee which is Annexure 3 to this Submission.)
  54. Minister Smith wrote to me in September 2013 and informed me he had referred my letter to the incoming Attorney-General Senator the Hon George Brandis QC and the Minister for Defence Senator, the Hon David Johnston. (Attachment 3 to my 3 February 2014 letter to this Committee - Annexure 3 to this Submission.)
  55. At his invitation I met with Mr Roberts-Smith in October 2013. He confirmed that he had decided not to deal with some significant aspects of our Report at all and that he regarded other aspects of our Report – including the issues which we had raised relevant access to DVA benefits - as low priority.
  56. I wrote to Mr Roberts-Smith in October 2013 to confirm my understanding of his position. (Attachments 5 and 6 to my 3 February 2014 letter to this Committee - Annexure 3 to this Submission.)
  57. Mr Roberts-Smith did not reply to my correspondence.
  58. I contacted the office of the new Minister for Defence Senator the Hon David Johnston in early November to raise my concerns. I met with the Minister on 9 December 2013 to discuss these concerns.
  59. I urged the Minister to move on issues affecting the welfare of current and former ADF members affected by abuse in the ADF as soon as possible without waiting for all military justice issues he has under consideration to be decided.
  60. On 3 February 2014 I wrote to this Committee about my concerns and setting out relevant extracts from my communications from August 2013 with former

Minister Smith, Mr Roberts-Smith and incoming Minister Johnston. See Annexure 3.

61. See also the update of communications between me and the Minister's office at Annexure 4.
62. The gaps in the Government response to our Report include important issues of probity in the handling of allegations of abuse within the ADF and – if unresolved – have the potential to damage public and ADF personnel confidence in ADF processes for dealing with such matters.
63. These gaps in Government response to significant aspects of our Report:
  - have the potential to undermine efforts through the *Pathway to Change* strategy to encourage victims of abuse in the ADF to report.
  - are of continuing relevance to the welfare of former, current and future ADF personnel.
64. I address all of these matters in the attached correspondence and in some greater detail in this submission below.

## **THE PHASE 1 (DLA PIPER) REPORT**

### **VOLUME 1**

65. Volume 1 was delivered to Minister Smith in October 2011. Volume 1 – three large ring binder folders in hard copy - included:
  - our broad findings including the main conclusions which emerged from our survey of the findings made in previous inquiries and reports which we were able to locate;
  - our identification of options (including public apologies, personal apologies, Royal Commission, capped compensation and reconciliation processes) for responding to the allegations of abuse;
  - our recommendations for consideration of some particular combinations of options;
  - our 'identification' of 23 systemic issues for further investigation in Phase 2 (Phase 2 issues). In accordance with the Terms of Reference these were referred to in the Report as issues 'identified' for Phase 2 consideration. In effect these were recommendations that these systemic issues be considered in Phase 2; and
  - an Appendix providing our interim report on specific allegations about abuse in Defence and Defence management of allegations of abuse which had been made in the *Four Corners – Culture of Silence* program in June 2011.

66. The April 2012 Supplement to Volume 1:
- confirmed the findings and recommendations of Volume 1 (except for one superseded recommendation);
  - made some further findings and recommendations;
  - confirmed the 23 systemic issues identified (recommended) in Volume 1 for consideration in Phase 2 (Phase 2 issues).
  - identified (recommended) another 12 systemic issues for consideration in Phase 2;
  - updated our assessments and recommendations of each of the *Four Corners – Culture of Silence* allegations (Appendix 1 to the Supplement).
67. Volume 1 and the Supplement to Volume 1 were prepared on the assumption they would be made public. They were made public with some redactions in the middle of 2012 and are available on the Defence website:

<http://www.defence.gov.au/PathwayToChange/Docs/DLAPiper/Background.asp>

68. The April 2012 Supplement included an updated list of the Findings, Phase 2 Systemic Issues and recommendations. A copy of the updated list is attached to this submission at Annexure 5.

## **VOLUME 2**

69. The final version of Volume 2 which we delivered to Minister Smith in April 2012 consisted of:
- 23 Parts - large ring-binder folders - containing our initial assessments and recommendations on around 1100 specific allegations from 775 sources (including the *Four Corners – Culture of Silence* program allegations). These 23 parts were central to the Review and the Report. I comment further on the content of these 23 parts below.
  - three Parts reporting on 494 Fairness and Resolution Branch (F&R) database matters. We provided an overview of the outcome of our review of the F&R database extracts at Appendix 4 of the Supplement to Volume 1.
  - one Part dealing with 49 ADFIS matters. We provided an overview of the outcome of our review of the ADFIS matters at Appendix 5 of the Supplement to Volume 1.
70. The Volume 2 Explanatory Material explains how we structured these parts. We designed our Volume 2 Report to facilitate the breaking out of streams of work.<sup>2</sup>

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<sup>2</sup> See Supplement to Volume 1 Appendix 2 at pages 3-4 and Volume 1 Appendixes 57 and 58.



71. For most of the 1100 allegations reported on in Volume 2 we made multiple recommendations.
72. Many of the recommendations were specific to a particular allegation. However, to reduce the bulk of the assessment and recommendation forms we also developed some shorthand phrases for more complex recommendations which we were making frequently. Those shorthand phrases are explained in the Volume 2 Explanatory Material.<sup>3</sup>
73. Other recommendations which we made frequently – such as recommendations for a Phase 2 body external to Defence to request more information from Defence and to then consider the matter further – were self-explanatory and accordingly were not discussed in the Volume 2 Explanatory Material.
74. The Volume 2 folders were submitted to the Minister marked:
- FOR THE EYES OF THE MINISTER FOR  
DEFENCE ONLY  
NOT TO BE COPIED
- These restrictions are to ensure compliance with confidentiality commitments given to individuals who have provided information to the Review. A working copy of Volume 2 with redactions required by confidentiality restrictions will be made available to Defence Legal.
75. Under our Terms of Reference, we were required to report to the Secretary as well as the Minister. We had made arrangements with the DLA Piper team working with us on the Review to provide a Working Version of Volume 2 – with appropriate redactions settled by the Review leaders – to go to the Secretary of the Department of Defence (with our Review Leader sign-off) as soon as we got clearance from the Minister to provide that Working Version.<sup>4</sup>
76. The notation set out above refers to the Working Version of Volume 2 going to Defence Legal because Defence Legal had been our point of contact with the Department throughout the Review.
77. We never received the clearance from the Minister to send the Working Version of Volume 2 to Defence. Minister Smith explained in his 8 March 2013 letter that the Government had decided that the Working Version of Volume 2 would not go to Defence.
78. In my submissions to the FADT Committee in March 2013 I expressed my concerns about the Government’s decision that the Working Version of Volume 2 would not go to Defence.
79. The current reference to the Committee asks the Committee to consider the desirability of publishing a redacted or summary version of Volume 2. I offer some comments on that issue below.

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<sup>3</sup> See Supplement to Volume 1 Appendix 2.

<sup>4</sup> The process and the bases for making redactions are described in the Explanatory Material for Volume 2 in Appendix 2 of the Supplement to Volume 1 pages 5-6.

**ASPECTS OF PHASE 1 REPORT NOT BEEN DEALT WITH BY DART  
DESPITE ASSURANCES GIVEN TO FADT COMMITTEE**

80. I wrote to then Minister Smith and then Attorney-General, the Hon Mark Dreyfus QC. MP, on 27 August 2013 (the Clarification letter) raising with them my concerns that it was not apparent from the DART's First and Second Interim Reports that the DART had fulfilled or would be fulfilling the assurances given in the 8 March 2013 letter. (See Attachment 2 to 3 February 2014 letter in Annexure 3 to this Submission.)
81. In September 2013 Minister Smith informed me that he had referred my 27 August 2013 letter to the incoming Attorney-General, Senator the Hon George Brandis QC and the incoming Minister for Defence, Senator the Hon David Johnston. (See Attachment 3 to 3 February 2014 letter in Annexure 3 to this Submission.)
82. At his invitation, I met with Mr Roberts-Smith on 17 October 2013. From that meeting and from my consideration of the DART's Interim Reports, it was my understanding that:
- Mr Roberts-Smith had decided not to fulfil at all some of the assurances given in Minister Smith's 8 March 2013 letter;
  - Mr Roberts-Smith had decided to give low priority to other of those assurances;
  - Some of the statements in previous DART Interim Reports about how the DART manages particular kinds of allegations are incorrect and cannot be relied on.
83. On 29 October 2013 I wrote to Mr Roberts-Smith asking him to confirm or correct my understanding from our meeting and to clarify his position on other assurances given in the 8 March 2013 letter which we did not discuss at our 17 October 2013 meeting. (See Attachments 5 and 6 to 3 February 2014 letter in Annexure 3 to this Submission.)
84. Mr Roberts-Smith has not responded to my correspondence.
85. Ms Melanie McKean and I did meet with Minister Johnston on 9 December 2013 and discussed some of these and related matters. (Ms McKean attended that meeting on the basis that she had told the new Minister that she was willing to meet with him - if he wished to meet - to discuss the conduct, findings and recommendations of Phase 1 of the Review.)
86. I have not yet received a written reply from the Minister for Defence or the Attorney-General to the 27 August 2013 Clarification letter which Minister Smith referred to them in September 2013. (See Attachment 1 to 3 February 2014 letter in Annexure 3 to this Submission.)
87. I wrote to the Committee setting out my understanding of these matters on 3 February 2014.

88. I annex a copy of that letter with its attachments. (See Annexure 3.)

89. As I stated in that 3 February letter: -

The gaps in the Government response to our Phase 1 Report include important issues of probity in the handling of allegations of abuse within the ADF and – if unresolved – have the potential to damage public and ADF personnel confidence in ADF processes for dealing with such matters. These gaps have the potential to undermine efforts through the *Pathway to Change* strategy to encourage victims of abuse in the ADF to report.

The gaps in the Government response are also relevant to the welfare of former, current and future ADF personnel. For example, as I explained in an email to Minister Johnston's office early this year:

The Third [DART] Interim Report signed off by Mr Roberts-Smith in September 2013 includes the following (at page 5):

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

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

Such people - and many more people like them who may not have come into the DART's processes - could well be entitled to DVA benefits and assistance which they are not receiving.

In the time that has passed since April 2012 [when we delivered our final Phase 1 Report], it is inevitable that some aged former members of the ADF who were damaged by abuse in the ADF will have continued to suffer and some will have passed away, without the support which could have been provided to them through the DVA framework.

90. I have discussed these matters at length in the attached correspondence and I refer the Committee members to that correspondence.

91. I have no further comments to make at this stage about the importance of there being consideration and response to the aspects of our report which dealt with allegations from media, anonymous and other sources.

92. However, in relation to issues of welfare of former, current and future ADF personnel – including issues of access to DVA benefits and assistance - I do

have some further comments and material to draw to the attention of the Committee.

**FURTHER COMMENTS ON ISSUES OF WELFARE OF FORMER,  
CURRENT AND FUTURE ADF PERSONNEL AFFECTED BY ABUSE**

93. I refer the Committee to:

- the Phase 1 (DLA Piper) Report Volume 1 Chapters 6 and 7 and the Supplement to those Chapters.
- the Phase 1 (DLA Piper) summary of *Findings, Phase 2 issues and recommendations updated with April 2012 Supplement* for Chapters 6 and 7 (See Annexure 5)
- my written and oral submissions to the Committee in March 2013.

94. In the DART's Fifth Interim Report published in March 2014 at page 29 it is stated:

On 26 February 2014, the Chair of the Taskforce wrote directly to CDF and the Secretary of Defence in relation to the recommendations made in the DLA Piper Review report, in particular those concerned with the mental health of former victims of abuse. The Chair also noted DLA Piper's recommendation that Defence and DVA consider establishing arrangements for ongoing gathering and exchange of information about abuse in Defence, including an analysis of records to identify patterns of abuse and high-risk Defence environments. However, he noted that the steps taken in relation to the Chair's letter and the DLA Piper Review recommendations more generally are a matter for Defence and DVA.

95. More than a year has gone by since Minister Smith's March 2013 request for Mr Roberts-Smith to refer these issues to the Secretary and the CDF.

96. I recommend that the Committee call on Defence to give a report on the status of these issues as a matter of urgency.

97. It may be that there will be a lack of enthusiasm and even opposition in Defence for gathering and sharing with the Department of Veterans' Affairs, and potential DVA benefit recipients information about reports, disciplinary proceedings and so forth relating to abuse in Defence in the past.

98. At the very least, gathering the information and putting it into a form which can be shared will need the application of Defence and DVA resources.

99. There may be other considerations which will make Defence reluctant to gather let alone share information about abuse in Defence.

100. During our Phase 1 Review CDF General Hurley expressed to us his concern that reports about abuse in the ADF in the past could result in members of the public treating current members of the ADF with hostility.

101. General Hurley also stated in a letter to us (See Appendix 23):

In summary, my preliminary observations of the matters we discussed are:

- I do not support a truth and reconciliation commission model. I am concerned that this style of activity will be counter-productive as the focus of the media and the public, as well as our own people, would inevitably be on the stories that emerged about the past as opposed to how we can learn and take the organisation forward.

....

The Secretary, Dr Ian Watt, has indicated that he similarly supports the first ...dot point...

102. This reluctance to have an open process is to be contrasted with the May 2011 declaration of the then VCDF LtGen Hurley that Defence was 'willing to face openly and honestly the problems from our past'.
103. I believe that openness will be crucial for entrenching within ADF and the general community an understanding of the kinds of abuse which have occurred and which need to be guarded against within the ADF in the future.
104. And of course Defence cannot learn anything from past reports if it does not keep those reports in a readily accessible collection.
105. The General Counsel and the Head of Defence Legal explained the difficulties in locating information in Defence records. (Supplement to Volume 1 Chapter 7 page 63).
106. As noted in the Supplement to Chapter 7 of our Report (page 63) – despite our express requests to Defence to locate and provide to the Review reports from previous inquiries relevant to abuse in Defence, Defence did not bring forward to the Review a single relevant report over the 60 years of allegations before the Review. This led to our proposal in Issue S5

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

107. But in any case – even if gathering and sharing information will give the ADF some reputational and morale issues - the Commonwealth (including Defence) has moral and Model Litigant obligations to individuals affected by abuse in the ADF to bring into DVA processes relevant information which is currently scattered in Defence and DVA files.
108. I recommend that the Committee invite the Secretary and the Chief of the Defence Force to inform the Committee whether they do have any 'in-principle' concerns about:

- gathering such records to assist and inform Defence’s own ongoing risk management and moves to eliminate abuse;
  - sharing de-identified information with DVA and potential DVA benefit recipients.
109. Some closely related issues which we did not explore in our Report but which need to be brought into consideration of access to DVA benefits are the issues of ‘change of records’ and going behind official records – particularly in relation to recorded grounds for discharge.
110. In Supplement to Volume 1 Chapter 3 we noted:
- A significant number of people who brought allegations to the Review are seeking a change of service records for the reasons for discharge to be changed from ‘retention not in the interests of the service’ to a medical discharge. It is the Review’s understanding that a change to reasons for discharge may affect a person’s entitlement to benefits.
- There are also requests for an allegation of abuse to be noted on a service record because the source believes the fact they were abused explains some of their own later erratic behaviour and underperformance and/or disciplinary issues.
- Requests for change of records have been made by people who felt that their report of abuse was not believed/managed appropriately as well as by some people who did not report the abuse at the time.
- In many allegations—sometimes supported by records obtained by the Review from Defence, the history given is of a Defence member who is performing well, but when they experience abuse their work performance deteriorates, often quite sharply, or their behaviour becomes erratic.
111. My own understanding of the possibility of changing records or going behind official record of grounds for discharge was limited when I was involved in making assessments and recommendations on specific allegations for purposes of Volume 2. I do not recall having made any recommendations for specific matters in relation to seeking to change grounds for discharge.
112. It is my recollection that in Phase 2 we made many recommendations using a formula such as- ‘The Review recommends Phase 2 liaise with source/alleged victim about a possible approach to DVA to be assessed/re-assessed’. Our explanation of this shorthand formula does not make any reference to change of records or going behind official grounds for discharge. (See Appendix 2 to Supplement to Volume 1 Volume 2 Explanatory Material Attachment 11)
113. However, since we delivered Volume 2 and the Supplement to Volume 1, I have become aware of the line of authority referred to and applied in the Veterans’ Review Board decision V12/0011 (Applicant Jennifer Belinda Jacomb).

114. That VRB decision includes the following:

22. The question is whether the applicant is a member of the forces for the purposes of the [*Veterans' Entitlements Act 1986*] as she did not serve for the minimum period of three years ... required by the Act. The relevant section is section 69(1)(d) which applies to deem a person a member of the forces ...

69.(1)(d) *If*

*(i) the person had served as a member of the Defence Force under an engagement to serve for a period of continuous full-time service of not less than 3 years; and*

*(ii) the persons' service as such a member was terminated before the person had completed 3 years effective full-time service as a member of the Defence Force, but after 6 December 1972, by reason of the ... person's discharge on the grounds of invalidity or physical or mental incapacity to perform duties.*

...

26. ...[Madgwick J [of the Federal Court in *Whiteman v Secretary, Department of Veterans' Affairs* (1996) FCA 1786] noted that *The decision-maker's determination of the grounds of discharge for the purpose of the benefits legislation need have no effect at all on the military's procedures, determinations or records.* The court noted that it was dealing with beneficial legislation which should be construed liberally in favour of the applicant, *as it has often been pointed out that it is a matter of great public importance to provide adequately for incapacitated ex-servicemen.* The court concluded that the form and content of the discharge document was not determined by the eligibility criteria of the [Defence Service Homes Act] and the decision maker under the DSHA should look behind the formal reasons for discharge and reach a decision based on the factual material provided.

27. The Board notes that the AAT in *Rana v Repatriation Commission* [2009] AATA 671 accepted that, based on *Whiteman's Case*, notwithstanding the language of section 69(1)(d) it is open to the Tribunal to look behind the administratively noted ground for discharge in order to find the actual reason for the discharge.

...

115. The VRB applied these principles to the facts in the matter under appeal before them and concluded:

36. Having regard to all the material before it, the Board is reasonably satisfied that the applicant experienced the harassment, bullying and bastardisation at HMAS *Creswell* which led to her suffering from then undiagnosed PTSD. This in turn had an adverse affect on her capacity to study and meet the demands of her training. As a result, while the formal record shows that the applicant resigned from the Officer Training Course, the underlying and real cause of the termination was her ill treatment and the underlying PTSD which led in the words of section 69(1)(a)(ii) of the

*[Veterans' Entitlements Act 1986] to her discharge on the ground of invalidity or physical or mental incapacity to perform duties.*

...

37. The decision under review is therefore set aside and the Board's decision substituted that the applicant was a member of the forces as defined in the Act. ...

116. I am not an expert in the law and practice affecting entitlement to Veterans' entitlements.
117. Nevertheless the statement of principles and the application of the principles in this VRB decision suggests the potential for a similar approach to be applied to the circumstances of many people affected by abuse in the ADF who may have been discharged after only a short time in the ADF and who may be unaware that - despite the official grounds for discharge shown in their records - they might be eligible for DVA benefits.
118. I refer again to the statements in the Third [DART] Interim Report signed off by Mr Roberts-Smith in September 2013 includes the following (at page 5):
- ... many of the Taskforce's complainants are in their fifties or older and, almost 70% are male. They relate tragic stories of lives greatly affected by the abuse and the further trauma they experienced as a result of failure by those in authority to acknowledge or respond to it.
- Many individuals never reported their abuse and have never spoken of it before, even to their partners or families. Many have spoken about their experience of severe mental and emotional harm as a result of the abuse, including alcoholism, drug addiction, social isolation and, mental illness.
119. Such people - and many more people like them who may not have come into the DART's processes - could well be entitled to DVA benefits and assistance which they are not receiving.
120. Apart from the possibility of going behind administratively recorded grounds for discharge to find the 'actual' ground for discharge as a basis for assessing eligibility for DVA benefits it is also my understanding that there are some statutory powers which sit in the Defence portfolio for changing the officially recorded grounds for discharge.
121. As noted above, I am not an expert in Veterans' entitlements law and practice.
122. I recommend that the Defence and DVA be asked to consider and report broadly what barriers there are to victims of abuse in the ADF succeeding in establishing the facts necessary to make out entitlements to DVA benefits and to outline what Defence and DVA could do to gather and share information which could assist such individuals to establish those facts to the satisfaction of DVA and tribunal decision-makers.
123. I also recommend that DVA be asked to report on what can be done in liaison with Veterans' groups, other Government agencies and community groups to



reach out to individuals affected by abuse who may be eligible for DVA benefits – including individuals who have previously applied and been rejected.

## **OTHER SYSTEMIC ISSUES**

124. Minister Smith's 8 March 2013 letter gave assurances that the DART would be looking at all of the 35 systemic issues 'identified' – that is recommended – for Phase 2 consideration.
125. It is my understanding that Mr Roberts-Smith does intend to consider all of the systemic issues which our Report identified.
126. It is also my understanding from the Minister's 8 March 2013 letter and from DART Interim Reports that Defence itself may have already considered some of these issues in the course of carrying out its own 'Re-thinking review' review.
127. In the FADT Committee's June report included:

### **Recommendation 2**

The Committee recommends that Defence formally respond to the systemic issues and findings of the DLA Piper Review in its public reporting on the progress of the implementation of the Pathway to Change Defence cultural reform.

128. I believe that there should be a Government response to the Systemic issues and Findings from Volume 1 and the Supplement to Volume 1 of our Report (see Annexure 5 of this Submission).
129. However, I supported the Committee's recommendation that Defence should also formally respond.
130. Another year has gone by. I have not seen any such formal response from Defence itself.
131. If that formal response has not been made by Defence, then I recommend that the Committee ask for that report to be delivered by the middle of July so that the Committee can take it into account before it delivers its own report on its current reference.

## **VOLUME 1 AND SUPPLEMENT TO VOLUME 1 FINDINGS AND RECOMMENDATIONS**

132. It is my understanding from the DART's terms of reference, from Minister Smith's 8 March 2013 letter of assurance and from Mr Roberts-Smith's statements to the FADT Committee in March last year, that Mr Roberts-Smith's tasks including considering and deciding whether he agrees with each of the findings and recommendations in our Report.

133. I recommend that the Committee ask for there to be a public report from Mr Roberts-Smith on what conclusions he has reached in relation to each of the Findings and Recommendations which are set out in Volume 1 and the Supplement to Volume 1 of our Report. These are gathered in extract from the Supplement which is in Annexure 5 to this submission.
134. There is one set of recommendations issue from our Report to which I draw attention at this stage because this issue is of particular relevance to the DART's Restorative Engagement Program. I refer the Committee to the Supplement to Chapter 8 and in particular to the following:

Having further considered the individual matters against the background of the historical reports confirming there has been abuse, and having further considered how an apology might be framed, we now recommend the apologies should not seek to justify the abuse, or mismanagement of a report of abuse, because of different values, policies or practices in the past. This would be seen as avoiding taking responsibility and would undermine the sincerity of the apology.<sup>5</sup>

We make the following further recommendations:

#### **Recommendation S4**

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

#### **Recommendation S5**

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

135. We also recommend that our 8 page discussion of 'Apology' recommendations set out in Attachment 6 of the Volume 2 Explanatory Materials be considered by those participating in the Restorative Engagement Program (See Appendix 2 to the Supplement to Volume 1.)

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<sup>5</sup> See discussion re 'taking responsibility' in the context of forced adoptions at paragraphs 9.59 to 9.75 of Senate Community Affairs References Committee, *Commonwealth Contribution to Former Forced Adoption Policies and Practices*, 2012.

**THE FOUR PARTS OF VOLUME 2 OF OUR REPORT DEALING WITH MATTERS WHICH WERE CURRENT WITH FAIRNESS AND RESOLUTION BRANCH AND ADFIS IN 2011**

136. In these Parts of Volume 2 we carried out a ‘desktop’ review of de-identified information provided to us by Fairness and Resolution Branch and ADFIS on matters which were in their databases in mid 2011.
137. In my December 2012 letter to the Minister I had asked what was happening with those aspects of our Report. The Minister’s reply in his letter of 8 March 2013 (at pages 2-3) was:

**3. The Government’s response does not refer to the three Parts of Volume 2 on Fairness and Resolution Branch matters and does not refer to the Part of Volume 2 on ADFIS Matters**

In relation to specific Fairness and Resolution Branch matters and Australian Defence Force Investigative matters, all matters included in the Report have been referred to the Taskforce for consideration.

... it is now a matter for the Taskforce to consider and make an independent judgment whether, and in what form, this material may be made available to Defence.

I note your concern that this is an unnecessary delay and duplication of work. However, the Government is strongly of the view that it is appropriate that the Taskforce independently review and determine appropriate responses for all matters which the Report addressed. Accordingly, the Taskforce will determine its response to those matters.

138. In my 27 August 2013 letter (See Annexure 3 to this submission) I had commented that:

The material on which these four Parts of our Report were based came to us from Defence. There are no apparent reasons why these Parts of our Report should not be provided to Defence. Because these Parts of the Report were based on ‘snapshots’ of F&R Branch database and ADFIS matters, the longer it takes for these Parts of our Report to be made available to Defence, the less use they will be.

139. When I met with Mr Roberts-Smith in October last year he accepted that his tasks included deciding whether or not to provide to Defence the four Parts of Volume 2 dealing with ADFIS and F&R Branch matters. He commented that he had given other matters higher priority and noted that the content of those Parts of our Report would be of little relevance given the time which had elapsed.
140. I have not seen any reference in the DART reports to Mr Roberts-Smith having dealt with the issue of whether or not to allow Defence to see the Four Folders which we had prepared on the assumption that Defence would see them.

141. I recommend that the Committee ask for a report from Mr Roberts-Smith on how he is dealing with the issues of Defence access to the Four Parts of Volume 2 of the Phase 1 Report which deal with F&R Branch and ADFIS matters which were current in 2011.

## **PUBLICATION OF VOLUME 2 IN REDACTED OR SUMMARY FORM**

142. We prepared Volume 2 for the Minister and the Working Version (with some redactions) of Volume 2 for Defence on the assumption that they would not be made public.
143. In my submission to the Committee in March 2013 I stated that Volume 2 should not be made public. I did not offer any explanation for the basis for my view at that time.
144. The Reference which is currently before the Committee asks for a report on ‘the desirability of releasing a true reflection of volume two of the DLA Piper report in a redacted form or by way of summary’. I have now considered the issue of publication of a redacted or summary form of Volume 2.
145. I do not know what concern lies behind the current reference asking the Committee to consider the desirability of finding a way of publishing a ‘true reflection’ of Volume 2 ‘in a redacted form or by way of summary’.
146. If there was to be any publication of a redacted or summarised version of Parts 1-23 of Volume 2, there would need to be well-publicised support available for victims who may be distressed by seeing aspects of their story being publicised even if they have consented to the publication.
147. Second - any version of Volume 2 to be published would need to be de-identified to remove information which could identify individuals except to the extent that the individuals have consented to disclosure.
148. Our Terms of Reference required us to report to the Secretary of the Department of Defence as well as the Minister. As we made assessments and recommendations on each of the 1100 allegations before our Review we considered what redaction of identifying information was necessary – first from the version of Volume 2 going to the Minister and then from the Working Version going to Defence. We explained our approach to redaction Volume 2 Explanatory Materials (pages 4-5) which is Annexure 2 to the Supplement to Volume 1
149. During our Review the position of individuals on disclosure varied.
- Some people told our Review that they wanted the world to know their stories. Their reason for telling their stories to our Review was so that there could be an understanding of what had happened to them and so that similar abuse was not inflicted on other members of the ADF.
  - Some people only wanted the Minister to know their stories.

- Most people clearly indicated that they wanted Defence to know their stories so that there could be some action by Defence and accepted that action would require some disclosure for Defence to be able to take action.
  - Some people wanted Defence to know their stories so that there could be an understanding of the kind of abuse which had occurred but did not want Defence to take any action.
  - Some people did not clearly indicate what disclosure they wanted and we usually recommended further contact with them in Phase 2 to clarify their position.
  - Some of the allegations which we reported on in Volume 2 were allegations reported in the media where the identity of the alleged victim had already been disclosed in the media with the apparent consent of the alleged victim.
  - Some of the allegations which we reported on in Volume 2 were allegations where much of the relevant information was in Defence file material so there was no ‘disclosure’ concern in going back to Defence with that information but where there was no consent or basis for public disclosure.
150. In Volume 1 Chapter 5 and Volume 1 Appendix 74 we gave some specific examples of plausible allegations which were before our Review. Perhaps we should have included more. I can see that it could increase community and ADF understanding of abuse and the impacts of abuse for the substance of more of the stories which we saw to be made public.
151. I have come to understand more fully from watching the media coverage of the Royal Commission into Institutional Responses to Child Abuse just what a powerful effect it has on understanding the realities and the impacts of abuse for real people to tell their stories about what happened to them in a public forum.
152. I have seen a newspaper report indicating that the DART is preparing a report on HMAS Leeuwin matters involving over 200 individuals and another report on abuse affecting 70 individuals at ADFA and expects these reports to be tabled in Parliament.
153. Depending on what information is contained in these DART Reports when they are tabled they may be important to give a broad understanding across the community and a broad understanding across the ADF of:
- the kinds of abuse which occurred at HMAS Leeuwin forty to fifty years ago and at ADFA from the mid 1980s;
  - the continuing impacts of that abuse; and
  - the risk factors which contributed to that abuse occurring and which need to be guarded against in the future.

154. Meanwhile on the issue of whether it would be desirable to publish a redacted or summary form of Volume 2 from our Phase 1 (DLA Piper) Report I offer the following thoughts.
155. Volume 1 and the Supplement to Volume 1 already contain quite a lot of 'summary' information - which I believe to be substantially accurate and in that sense 'true' - about the kinds of specific allegations reported on in Volume 2 and about the kinds of recommendations we made on specific allegations:
- Chapter 3 of the Supplement to Volume 1 gives an overview of the allegations reported on in Volume 2. This Chapter 3 Overview includes a breakdown of the allegations before the Review by – gender of subject – age of subject – time period of incident – Part of Defence subject was in – subject's activity at the time (normal duty, under training, deployed etc) – numbers of incidents by Service/base/establishment/decade/year – type of abuse.
  - The Chapter 3 overview includes figures on what kinds of recommendations were made in Volume 2 and on how many allegations were found to be plausible/not plausible/no finding.
  - The Explanatory Materials for Volume 2 which are set out as Appendix 2 to the Supplement to Volume 1 discuss in detail the kinds of recommendations which we made in Volume 2.
  - And as noted above – Chapter 5 of Volume 1 of our Report contained some specific examples of plausible allegations of abuse.
156. For privacy reasons, any summary or redacted version of Volume 2 would need to remove identifying information which the subject of the abuse allegation had not agreed to being published. Some individuals indicated to the Minister and/or to our Review broad consents to public disclosure of the information which they provided. However, the consents to disclosure which were given to the Minister and/or our Review have now been overtaken by the approach taken from late 2012 onwards of DLA Piper going back to all sources to ask them about referral to the DART and by whatever communications the DART has had with individuals about outcomes – and disclosure to pursue those outcomes.
157. For privacy and fairness reasons, any published summary or redaction would also need to remove information which could identify accused perpetrators and individuals accused of mismanaging abuse incidents.
158. The Explanatory Materials for Volume 2 (set out as Appendix 2 of the Supplement to Volume 1) include at Attachment 3 the assessment sheet which we used for reporting on each of the 1100 or so allegations on which we reported in Parts 1-23 of Volume 2.
159. Some of these assessment worksheets expanded considerably when we inserted our assessments and recommendations. Behind each of these

worksheets was information in a Request for Statement form built on a set of standard questions.

160. Sometimes the information Request for Statement form set out the source's own words but sometimes the information sheets contained summaries. Some of these Statement forms expanded quite substantially because of the complexity and volume of material for some particular allegations. (It is my recollection that for one individual there were 10 archive boxes of materials.)
161. We organised the material in these Parts 1-23 of Volume 2 by – Recommendation – Service – Chronological order.
162. Redacting this material to remove all information which could identify victims, accused perpetrators or individuals alleged to have mismanaged an allegation of abuse would require a lot of resources and would in many cases not leave enough coherent information to convey the substance of the individual's experience.
163. Accordingly, on the information which is available to me at present, I believe that it would not be desirable to try to publish a summarised or redacted form of Parts 1-23 of Volume 2.

Dr Gary A Rumble

2 June 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**

**2 June 2014**

**PART II**

**IDENTIFYING UNREPORTED ABUSE**

**OPTIONS FOR RESPONDING TO POSSIBLE UNREPORTED  
ABUSE**

**RESTRICTED REPORTING**

**CALLING ON ADF TO COMMIT TO AN OBJECTIVE OF ZERO  
INCIDENCE OF ABUSE**

**THE IMPORTANCE OF MESSAGING FROM ADF LEADERSHIP  
TO ENCOURAGE VICTIMS OF ABUSE TO REPORT**



## **INTRODUCTION**

I was the leader of *Review of allegations of sexual and other abuse in Defence* commonly referred to as the DLA Piper Review.<sup>1</sup>

The other Review leaders were Ms Melanie McKean and – for Volume 1 of the Report - Professor Dennis Pearce AO. I am making this submission on my own behalf. I am not representing the other Review leaders and I am not representing either of the law firms that have employed me during the course of the Review.

Given the range and complexity of issues raised by the Reference to the Committee I am making my submission in three Parts.

In this Part – Part II – I submit the Annexed material relating to:

### **IDENTIFYING UNREPORTED ABUSE**

### **OPTIONS FOR RESPONDING TO POSSIBLE UNREPORTED ABUSE**

### **RESTRICTED REPORTING**

### **CALLING ON ADF TO COMMIT TO AN OBJECTIVE OF ZERO INCIDENCE OF ABUSE**

### **THE IMPORTANCE OF MESSAGING FROM ADF LEADERSHIP TO ENCOURAGE VICTIMS OF ABUSE TO REPORT**

## **BACKGROUND**

1. Our Report drew attention to the findings of many previous reports that there have been strong cultural factors in ADF environments discouraging the reporting of sexual and other abuse.
2. Since the delivery of the final stages of our Report in April 2012 I have continued to think about the related problems of how Defence might identify and deal with unreported abuse and how to encourage reporting.
3. I put some of my thoughts on these problems in a paper which I sent to the Secretary of the Department of Defence Mr Richardson and the CDF General Hurley under cover of a letter dated 9 July 2013 (Annexures 1 and 2).

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<sup>1</sup> The Terms of Reference for our Review referred to it as Phase 1 and contemplated that there would be a Phase 2. This 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."*

4. In the cover letter I stated:

The *Pathway to Change: Evolving Defence Culture* strategy commits to taking action to develop, a 'reporting culture' in relation to abusive conduct in the ADF. This commitment impliedly recognises that the ADF does not yet have a reporting culture. It necessarily follows that there is some unreported abuse.

I offer for your consideration the enclosed paper in which I set out some thoughts and suggestions on some aspects of the related challenges of identifying and dealing with unreported abuse and of creating a reporting culture.

The attached paper is put forward in my personal capacity.

My perspective is informed by:

- ◇ consideration as leader of the *Review of allegations of sexual and other abuse in Defence* of a very large amount of material including some ADF records related to the 1100 or so specific allegations which were before the Review; and
- ◇ findings in many previous reports and inquiries into aspects of abuse in the ADF that there is under-reporting of sexual and other abuse and that aspects of ADF culture exacerbate factors in general society which discourage reporting of abuse.

In its nature, the problem of under-reporting of sexual and other abuse is silent and does not clamour for urgent attention. However, under-reporting is corrosive in its effects on the well-being of the ADF and its people.

The ADF cannot deal with abuse which it is not aware of. As I explain in the attached paper, it is very likely that in the ADF more than 80% of incidents of sexual abuse are not reported. It is likely that the rate of reporting of non-sexual abuse is also low.

Declarations that the ADF has zero tolerance of abuse carry little force if zero tolerance only applies to the low percentage incidents of abuse which are currently reported.

Creating a reporting culture is complex and it will be difficult to know when the ADF is succeeding. There will always be other urgent and more visible matters which will be demanding attention. However, if you maintain focus and resources on the issues of under-reporting and you succeed in creating a reporting culture you will create a virtuous circle:

- ◇ The ADF will get more information enabling:
  - response to conduct departing from those values
  - identification and management of risk factors
  - support for ADF personnel who have been the victims of abusive conduct.

◇ These actions will:

- demonstrate that the ADF lives by the values which it espouses and is committed to the welfare of its people
- further encourage reporting which will give the ADF more information to enable actions to reduce and deal with the impacts of abuse.

...

I would be happy to meet with you or your Advisory Committee looking at *Pathway to Change* implementation to discuss the matters covered in this paper or any other matters related to the systemic issues identified in Volumes 1 and the Supplement to Volume 1 of our Report.

5. I received a discouraging reply from Mr Richardson and General Hurley in September 2013. (See Annexure 3)
6. The reply proceeded on the basis of an incorrect characterisation of what I had suggested in July. The clear inference was that not a single one of the suggestions and recommendations which I had set out in the 9 July paper had been accepted or was being considered any further.
7. I tried again in a letter dated 14 December 2013 (Annexure 4). As I said in that letter –

Given the importance of the issues I am writing one more time to correct your September letter's incorrect characterisation of the suggestions which I made for identifying and responding to possible unreported abuse and to ask you – with the benefit of that clarification – to consider those suggestions again.

I also make some comments on other aspects of your response to me.

8. I received a short acknowledgement in January 2014 (See Annexure 5).
9. I have reviewed my 9 July 2013 paper (Annexure 2) and my 14 December 2013 letter (Annexure 3).
10. The 9 July 2013 paper (Annexure 2) and the 14 December 2013 letter (Annexure 3) included:
  - Discussion of the destructive effects of under-reporting and the correlative benefits of increasing reporting;<sup>2</sup>
  - Discussion of the cultural factors in the ADF discouraging reporting of abuse and the likely extent of under-reporting;<sup>3</sup>

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<sup>2</sup> 9 July paper pages 8-10, 14-17.

<sup>3</sup> 9 July paper pages 10-13; 14 December letter pages 2, 6

- Explanation of why neither the Defence Abuse Response Taskforce (DART) nor SeMPRO processes can be relied on to have captured a substantial portion of previously unreported abuse;<sup>4</sup>
  - Specific recommendations for identifying where unreported abuse may have occurred or be occurring in the ADF;<sup>5</sup>
  - Discussion of how the ADF could use that information including using it to reduce abuse risk factors and to identify individuals or groups who may have been affected by abuse and who may need assistance;<sup>6</sup>
  - Re-stating the case for full-strength ‘restricted reporting’;<sup>7</sup>
  - Discussion of the importance of the messages from ADF leaders and urging the ADF to commit to pursuing zero incidence of abuse.<sup>8</sup>
11. I still believe that the 9 July 2013 paper and the 14 December 2013 letter contain some useful insights and contributions to the discussion of the major challenges of under-reporting and unreported abuse in the ADF.
12. I have submitted them to the Minister for Defence, Senator David Johnston for his consideration.
13. I also now submit them for the Committee’s consideration.
14. The 9 July 2013 paper and 14 December letter are wide-ranging are annexed to this submission. I will not attempt to re-state or paraphrase their content in the body of this submission.
15. I do, however, bring my comments up to date to the extent of noting that the SeMPRO website’s version of ‘restricted reporting’<sup>9</sup> still gives rise to the same concerns which I set out in my 14 December 2013 letter.<sup>10</sup>
16. On 26 November 2012 the then Minister for Defence, the Hon Stephen Smith MP announced that the Government had decided to accept the recommendation from Volume 1 of our Report for introduction of restricted reporting.
17. The version of restricted reporting which is set out on the *SeMPRO* website still falls short of the ‘restricted reporting’ argued for in our Volume 1 Report.
18. The *SeMPRO* website’s version of ‘restricted reporting’ falls short of full-strength ‘restricted reporting’ in three respects.

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4 14 December letter pages 1, 6-10.

5 9 July paper pages 3-4, 17-20. 14 December letter pages 10-12.

6 9 July paper pages 20-21; 14 December letter pages 2-6.

7 9 July paper pages 21-26; 14 December letter pages 12-15.

8 9 July paper pages 26-32; 14 December letter pages 16-20.

9 <http://www.defence.gov.au/sempro/>

10 14 December letter pages 12-15.

19. First - According to the *SeMPRO* website, when deciding whether to accept a report on a confidential basis *SeMPRO* must consider whether ‘Unrestricted Reporting could reduce the risk of further sexual misconduct to you or another person’.
- If applied conservatively by *SeMPRO* this requirement would almost always mean that if the suspected perpetrator was still in the ADF, *SeMPRO* would have to refuse to accept the report on a restricted basis.
  - Over time fewer victims would report, fewer victims would receive support, Command would receive less information about risk situations, fewer victims would move from restricted reporting to unrestricted reporting and fewer perpetrators would be called to account.
  - This denies the whole rationale for restricted reporting.
20. Second - there is still nothing on the *SeMPRO* website to indicate that forensic evidence may – with the agreement of the victim - be collected and safeguarded when the victim makes a report on a confidential basis.
- If the victim does eventually decide to move from restricted to unrestricted reporting but forensic evidence was not collected and safeguarded, then the prospects of effective action against the perpetrator are significantly reduced.
  - This denies to the victim control and choice which are at the heart of effective recovery for the victim.
  - This also reduces the prospects of the ADF being able to put some substance into declarations of zero tolerance by effectively calling perpetrators to account.
21. Third – there is nothing on the *SeMPRO* website to indicate that restricted reporting through *SeMPRO* is open to former ADF members.
- Under the heading – ‘What are my options’ the *SeMPRO* website states – ‘Different disclosure options are available to ADF (Australian Defence Force) members as those [sic] for APS (Australian Public Service) employees’. There is nothing to indicate the former ADF members can make a restricted report through *SeMPRO*.
  - This denies to former ADF members *SeMPRO* processes.
  - This denies to the ADF information about risk situations and weakens the prospects of perpetrators being brought to account.

I would appreciate the opportunity to discuss these matters further with the Committee.

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**

**5 June 2014**

**PART III**

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

## **INTRODUCTION**

I was the leader of *Review of allegations of sexual and other abuse in Defence* commonly referred to as the DLA Piper Review.<sup>1</sup>

The other Review leaders were Ms Melanie McKean and – for Volume 1 of the Report - Professor Dennis Pearce AO. I am making this submission on my own behalf. I am not representing the other Review leaders and I am not representing either of the law firms that have employed me during the course of the Review.

Given the range and complexity of issues raised by the Reference to the Committee I am making my submissions in three Parts.

This Part – Part III – sets out:

## **THE CASE FOR A ROYAL COMMISSION TO INQUIRE INTO ADFA LEGACY ISSUES**

### **SUMMARY**

1. There was a history of sexual assault and ADF mismanagement at ADFA from its opening of ADFA in mid 1980s through to the 1998 Grey Review reforms.
2. That history continues to have implications for the nation, the ADF and the victims because the ADF and successive Governments have failed to take effective action on these issues.
3. There is a very high risk that the ADF has in its ranks officers in middle and senior management positions with potential to rise further who – when they were Cadets at ADFA from the mid 1980s until 1998 - raped or committed other serious sexual assaults on other Cadets, or who did not intervene while such rape was occurring. The numbers involved is likely to be much higher than the ‘ADFA 24’.
4. The DART Interim Reports to date and CDF’s statement to Senate Estimates in November 2013 indicate Mr Roberts-Smith is heading towards recommending shutting down consideration of these issues without effective action.
5. No basis has been laid for effective action because what has been done falls well short of gathering all information which could be available and falls short of addressing those matters thoroughly.
  - There was limited publicity for the DART process. Some people with relevant information would not have known about the DART processes.

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<sup>1</sup> The Terms of Reference for our Review referred to it as Phase 1 and contemplated that there would be a Phase 2. This 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.”*

- As far as I am aware DART did nothing to inform women who had reported in 1998 - and who had been told then that Defence could not take any action other than to refer them to ACT police - that Defence is now able to consider other action.
  - Not surprisingly very few of the women in the ADFA 24 cases who were let down by the ADF have opted into DART processes.
  - The DART process has waited for complainants who are interested in outcomes which DART can offer complainants to opt into DART process.
  - Neither DART nor the CDF made any public call for victims who were not seeking one of the DART outcomes – or for witnesses with information relevant to assessing the fitness of current officers who were ADFA from the mid 1980s to 1998 to bring that information to DART or other process.
6. There is an opportunity for the ADFA legacy issues to be dealt with decisively now by establishing a Royal Commission to inquire into these issues.
  7. Mr Roberts-Smith has emphasised that the DART offers assistance to complainants which Royal Commission processes ordinarily would not offer. This is not an answer. A Royal Commission need not be and should not be the only response. There should also be assistance for victims – such as the assistance which has been offered by the DART – in parallel with the Royal Commission’s work. There is no reason why a Royal Commission could not coordinate its work with a process providing such assistance.
  8. 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.
  9. Male on male sexual assault at ADFA – as well as male on female sexual assault - should be within the scope of the inquiry set for a Royal Commission.
  10. 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.
  11. The Royal Commission into Institutional Response to Child Sexual Abuse is demonstrating the impact which contemporaneous media reporting of real people’s stories told to the Commission can have in raising understanding of the issues amongst the institutions and amongst the general community.

My submission is set out below.

Dr Gary A Rumble

5 June 2014



## **THE CASE FOR A ROYAL COMMISSION TO INQUIRE INTO ADFA LEGACY ISSUES**

### **THE VOLUME 1 REPORT IDENTIFIED ADFA 24/ADFA LEGACY ISSUES**

1. Volume 1 of our Report – delivered in October 2011 - recommended against a wide-ranging Royal Commission to consider Defence abuse issues generally.<sup>2</sup>
2. However, because of information received by the Review shortly before we delivered Volume 1, we did identify the ADFA legacy issues – issues including but wider than the ‘ADFA 24’ - as raising concerns for which establishing a Royal Commission should be considered.<sup>3</sup>
3. The terms ‘ADFA 24’ and ‘ADFA Legacy’ come from the material referred to in Volume 1 of our Report:

#### **6.6.9 Findings of the 1998 ADFA Investigation Team (page 114)**

Throughout this Review, we have been seeking from Defence clarification of what actions were taken to identify and deal with the alleged perpetrators of sexual assault around the time of the Grey Report. That clarification is crucial to the continuing risk issues ....

During our discussions with Ms Grey, she recalled that there were approximately 20 male cadets who were strongly suspected of being involved in carrying out one or more sexual assaults.

In parallel with the Inquiry which Ms Grey was leading in 1998, an investigation team was looking at specific allegations. Very late in the time of this Review we obtained significant information about the outcome of the work of that Investigation Team

That Investigation Team was led by Lieutenant Colonel Northwood, a lawyer. The Report of the Investigation Team states that 24 allegations of sexual offences at ADFA from 1994 to March 1998 were disclosed to the Investigation Team, that being three times more than the 8 incidents that were in fact reported to the Defence Equity Organisation for the same period. [Investigation Team Report Introduction – Appendix 20]

It is not clear from the redacted report provided to us, as to what actions were taken in respect of the 24 disclosed accounts, or indeed the 8 reported incidents of sexual offences. ...

In respect of the accounts of rape (and in a very short summary section only), the Investigation Team stated (emphasis added):

Allegations of 15 cases of rape and 9 cases of serious sexual assault since the beginning of 1994 have come to the attention of the investigating team. It is likely that one girl has been raped 3 times. It is likely that two former cadets graduated at the end of 1997 have

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<sup>2</sup> See Volume 1 Chapter 8 pages 162-163.

<sup>3</sup> See Volume 1 Chapter 6 pages 114-115, 116-118, 121, Chapter 8 page 163 and Appendix 20.

each raped 3 female cadets....One of the chaplains at ADFA in 1997 gave evidence that during 1997 he personally counselled not less than six and not more than ten female cadets who alleged that they had been raped'. [Summary of Chapter 2]

It is important to note that the number of incidents may have been higher than the '24' figure referred to in the 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'.

... (page 115)

Colonel Northwood (who led the Investigation Team) gave the following evidence in June 1998 to the Joint Standing Committee on Foreign Affairs, Defence and Trade during its *Inquiry into Military Justice Procedures in the Australian Defence Force*:

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. Of those, to the best of my recollection ... only two have ever proceeded to complaints made to the civil courts and have gone to trial. One of those two matters is awaiting trial in the ACT at the present time. [June 1998, p232]

This important material was obtained by the Review very late in the life of the Review. This has affected our consideration of what might be appropriate action for Phase 2. ...

4. Volume 1 of our Report identified that Defence had adopted a flawed policy – entrenched in Defence Instructions - of not taking any administrative or disciplinary action on an allegation of sexual assault. It was left to the victim to decide whether she or he wanted the incident dealt with as a Police matter – which seldom resulted in prosecution - and Defence itself took no action.<sup>4</sup>
5. In Volume 1 of our Report we referred to evidence given by LtCol Northwood to a Senate inquiry on the impacts of this flawed Policy in relation to the ADFA legacy:

#### **6.7 The legacy issues from ADFA 1990s (page 116)**

In attempting to ascertain what happened to the 24 (or possibly more) alleged perpetrators referred to by the Grey Investigation Team, the Review managed to locate a written submission of Colonel Northwood to the Joint Standing Committee on Foreign Affairs, Defence and Trade *Inquiry into Military Justice Procedures in the Australian Defence Force*. [15 May 1998]

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<sup>4</sup> See Volume 1 Chapter 6 pages 115-116, Chapter 7 pages 139-145. See also April 2012 Supplement to Volume 1 Chapter 7 pages 67-70.

Colonel Northwood outlines that in the period post the Senate inquiry into HMAS SWAN (1994), the position taken was that the ADF did not have jurisdiction to investigate sexual assaults (including relatively minor acts of indecency). In his written submission, Colonel Northwood outlined:

26. 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.

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.

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. Worse, having regard to resource constraints imposed by government, police forces around the country are not interested in investigating comparatively minor acts of indecency.

30. It also needs to be borne in mind that under DI(G) 35-3 (Unacceptable Behaviour) with respect to matters of sexual assault the wishes of the complainant are paramount. Thus if a female does not want to subject herself to the civil process and does not for whatever reason wish to subject the offender to the civil courts (she may not want to see the offender prosecuted in a civil court, she may have real fears of ostracism and victimisation within the unit if she goes outside the ADF) then nothing is done to the offender. No complaint is made to the civil authorities and the ADF can neither investigate the matter nor prosecute it.

...

(page 117)

The following extracts were taken from the evidence given by Colonel Northwood at the Inquiry on 19 June 1998:

It is an appalling situation that, in serious matters like that, the ADF is not in a position to take any action at all because of the present [ADF] policy. Worse still is the situation that the incidents of acts of indecency ... again cannot be dealt with if the complainant, under the existing guidelines, chooses not to make a complaint. In some situations the incident will come to the notice of the appropriate

officer or the commander or the commandant of the Defence Force Academy, but again, unless the person is prepared to proceed with the complaint, under the existing guidelines there is nothing he can do, and technically, those matters should go to the Federal Police for investigation.

But, where the complainant does not wish to proceed [with a Police investigation], the commanding officer or the commander at the appropriate level ought to be able to conduct some sort of investigation and, if necessary, take some sort of administrative action. ...

You tend to find that, after a short period of time, those young women start to show signs of psychological difficulties, which tend to manifest in a lessening academic performance and a drop-off in their officer qualities performance. It is a very difficult problem for a CO. After all is said and done, we still do have the principle that you are innocent until proven guilty. Nevertheless, there needs to be enough flexibility for a commander to be able to be more proactive in resolving the problem. ...

## **THE CONTINUING IMPLICATIONS OF ADFA LEGACY ISSUES**

6. Volume 1 of our Report – taking up a number of concerns expressed by LtCol Northwood in 1998 - identified the continuing implications of the Defence's failure to take administrative or disciplinary action on sexual assaults at ADFA (page 117).

Based on the redacted Investigation Team report provided to this Review (which does not track what in fact happened to each of the known 24 alleged perpetrators) and given the policy interpretations expressed by Colonel Northwood above, it appears very likely that most, if not all, of the 24 alleged perpetrators of sexual assault around the time of the Grey Review, were not called to account.

In short, there did not appear to have been any success in calling perpetrators to account. To ignore the past and to fail to call past perpetrators to account undermines the efforts made (and being made) to improve the ADF's future. It raises some significant future risks, for example:

- If high levels of sexual and other assault and other abuse have occurred in Defence in the past, then some of the perpetrators of such assault and other abuse may still be in the ADF ...
- (page 118) People who witnessed this behaviour and did not report it or initiate any process to bring it to an end are also now in senior and middle management roles in the ADF.
- People whose mental health were damaged by this behaviour are in need of assistance.
- People may have been driven out of the ADF by this behaviour and may have suffered adverse career consequences. (Ms Grey informed the Review that the attrition rate among female cadets at ADFA in the late 1990s was around 40%.)

- If perpetrators of assault and other abuse are still in the ADF, then they may constitute a continuing risk to the safety and well-being of other Defence personnel and they may constitute a risk to the reputation and the operational effectiveness of the ADF.

Codes of conduct and ADF's declared policy of 'zero tolerance' of unacceptable behaviour have a hollow ring for those persons who have come to the Review pointing out that individuals they allege assaulted or otherwise abused them are still in the ADF. This issue was also emphasised in the recent Four Corners program and in other recent press coverage.

There is a shadow over the reputations of all of the individuals who were part of the group which included perpetrators of abuse or were witnesses of abuse and have done nothing about it.

In previous reports, statements are made that refer briefly to the risk of negative cultures returning but there is no further consideration given to the risk of perpetrators not being called into account.

7. We made the following findings and identified the issue of establishing a Royal Commission (page 121):

#### **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.

A Royal Commission could be appropriate for dealing with this situation.

The Royal Commission would have the power to compel people to answer questions under oath and may be able to identify the individuals who were on Lieutenant Colonel Northwood's list of suspects.

The evidence obtained could not be used against those individuals in prosecutions.

That information could be used to determine whether any of those individuals are still in the ADF.

The information could be taken into account by the ADF to determine whether there was any risk to the ADF in having the person in their current position within the ADF.

The information could also be taken into account by the ADF to determine whether the person should be further promoted.

#### 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.

### **THE SUPPLEMENT TO VOLUME 1 REPORT CONFIRMED ADFA 24/ADFA LEGACY ISSUES**

8. By the time we delivered the Supplement to Volume 1 in April 2012 we had found more information which confirmed and broadened our concerns about the ADFA legacy issues. We reported in the Chapter 6 Supplement (pages 57-58)

The Review sought through Defence Legal a statement of whether or not there was any record of action having been taken in relation to the 24 persons identified by Lieutenant Colonel Northwood in 1998 as being suspected of having committed rape.

Defence Legal provided a response to the Review in November 2011 after a review of file material and after making enquiries with Bronwen Grey who led the Grey Review, Colonel Northwood (retired) who led the Investigating Team and authored its report and Group Captain Kathleen Powell who was part of the Investigating Team.

Defence Legal's response quoted from correspondence from the then (in 1998) Head Defence Personnel Executive, MAJ GEN Peter Dunne to the Minister at the time. That correspondence included:

... DI(G) 35/3, which not only requires that allegations of sexual offences be referred to civilian police for investigation, but also requires that if a complainant, after having her options explained by the civilian authorities, chooses not to proceed with the complaint, her wishes are paramount. *Therefore, her commanding officer is prevented from conducting any further investigation ...* [emphasis added].

That seems to be a very clear indication that no action was taken in relation to the suspected individuals concerned and, accordingly, that the risk identified in Issue 3 is a real risk.

The Review also spoke directly to Colonel Northwood (retired). It was also his understanding that no action by Defence was taken in relation to any of the suspects.

The risk may well be greater than stated in Issues 3 and 4 of Chapter 6 because-so the Review understands-the Investigating Team focussed its investigation on the Grey Review period-which was 1994-1998.

There is no reason to think that the kind of conduct at ADFA which is in issue only occurred in that period. The Grey Report itself indicates that there had been significant conduct issues at ADFA for years. See Volume 1 Chapter 6.

Furthermore specific plausible allegations which individuals have brought to this Review about their experiences at ADFA back into the 1980s indicate a significant risk that similar conduct had occurred before the seven years considered by the Investigating Team.

9. The April 2012 Supplement stated (emphasis added)<sup>5</sup>:

**Finding S8**

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

Those possibilities carry serious risks for the ADF.

**Issue S1**

Phase 2 should consider the possibility of establishing a Royal Commission or a Court of Inquiry [under the Defence Inquiry Regulations] 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.

**THE DART TERMS OF REFERENCE**

10. The Terms of Reference for the Defence Abuse Response Taskforce (**DART**) include:

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.

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<sup>5</sup> See Supplement to Volume 1 Chapter 6 page 58.

11. It is my understanding from my brief discussion on these issues with Mr Roberts-Smith in October 2013 that he accepts that the numbers involved are more than the 'ADFA 24'.

#### **27 AUGUST 2013 LETTER TO MINISTER SMITH**

12. On 27 August 2013 I submitted to then Minister for Defence, the Hon Stephen Smith MP and the then Attorney-General the Hon Mark Dreyfus QC that there should be a Royal Commission on the ADFA Legacy issues. A copy of that letter (without its attachments) is **Annexure 1** to this submission.<sup>6</sup>
13. I summarised my position as follows:

[page 1] ... 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.

[page 2] 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.

...

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 [Defence Abuse Response Taskforce] [page 3] 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.

...

... 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.

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<sup>6</sup> After I sent the 27 August 2013 letter I noticed that in original the word 'not' was omitted from the first line of paragraph 31. I have inserted that word in the copy of the letter which is set out in Annexure 1 to this submission.



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 ... the Royal Commission must not be limited to the ADFA 24.

... 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'.<sup>7</sup> The fact that the men who went through ADFA in

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<sup>7</sup>: We made similar points in our Report. See Volume 1 pages 103, 116-119 ... .

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.

14. I copied the 27 August 2013 letter to the then Shadow Minister for Defence and Shadow Attorney-General, Mr Roberts-Smith at the DART and the Senate FADT Committee.
15. I received a letter from Minister Smith in September 2013 informing me he had referred my letter on to the then incoming Minister for Defence incoming Attorney-General.
16. I have not had a substantive reply to the 27 August 2013 letter.

#### **14 FEBRUARY 2014 LETTER TO MINISTER JOHNSTON**

17. The Third and Fourth Interim Reports published in September and December 2013 set out Mr Roberts-Smith's 'preliminary views' on the issue of a Royal Commission into ADFA 24 issues.
18. In November 2013 in Senate Estimates VCDF Binskin made a statement on behalf of the Chief of the Defence Force on 'ADFA 24' issues.

19. On 14 February 2014 I wrote to Minister for Defence, Senator the Hon David Johnston, commenting on Mr Roberts-Smith's preliminary views and the November 2013 statement to Senate Estimates and confirming my recommendation for a Royal Commission. A copy of the 14 February 2014 letter is **Annexure 2** to this submission.
20. I summarised my position as follows:
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 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.
  5. As far as 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.

## MALE ON MALE SEXUAL ASSAULT

21. There was a focus in the identification of the ADFA legacy issues in Volume 1 and in the Supplement to Volume 1 on sexual assault committed against female Cadets. There has been a corresponding focus in my submissions in the letters of 27 August 2013 and 14 February 2014.
22. However, the Grey Report identified that there were also some sexual assaults on male cadets. In Volume 1 of our Report (pages 118-119) we reported:

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

...

- 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.

The figures in respect of male victims of sexual assault may also be much lower than actually occurred in the past (at both ADFA and across the ADF). The Review has received information from the Cairns Sexual Assault Service and Living Well <sup>8</sup> (a service dedicated to men who have experienced sexual assault) that highlights the following potential barriers to male victims reporting sexual assault:

- Males are more likely to underreport sexual assault/abuse due to issues of masculinity: ‘the act of a man naming an experience of sexual abuse and seeking help requires a man to confront expectations that as a man he should appear strong and powerful, self-reliant, always in control, rational, logical, always ready for sex and especially, not a victim’.
- Males are reluctant to ask for assistance/support—the perception that they should not have allowed the incident to occur in the first place and secondly that they should be able to deal with it themselves.
- Homophobic concerns: whether men seek help or not is influenced by concern that they will be identified or suspected as being ‘gay’ (a high percentage of sexual abuse of males is committed by males).
- The misconception that being a victim of sexual abuse means the male will go on to perpetrate abuse. This misconception can lead to males withdrawing in fear that they may do this.
- Males generally only tend to come forward and report instances of abuse when they are in crisis (ie when other parts of their lives are unravelling, such as relationship breakdown; loss of job).

<sup>8</sup>

<http://www.livingwell.org.au/Counsellingandsupport/Queenslandsexualassaultservices.aspx>

23. My recollection is that some of the specific allegations before our Review and reported on in Volume 2 involved sexual assault by male cadets on other male cadets at ADFA.
24. Accordingly I recommend that male on male sexual assault – as well as male on female sexual assault - should be within the scope of the inquiry set for a Royal Commission.

#### **12 MAY 2014 LETTER TO MINISTER JOHNSTON**

25. On 28 April 2014 I was interviewed by Mr Laurie Oakes on the Weekend Today program.<sup>9</sup>
26. The following day CDF General Hurley in an interview on ABC Radio National rejected some of the matters of fact I had referred to in my Weekend Today interview.
27. I checked my facts and wrote to the Minister for Defence on 12 May 2014 confirming those facts. This letter is **Annexure 3** to this submission.
28. First – I referred to the information we obtained while preparing our Volume 1 Report indicating that 30% of female Cadets who were at ADFA in 1998 had been raped. In his Radio National the CDF had asserted that one percent was the relevant percentage.
29. I confirmed 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. I referred to the relevant sections of Volume 1 of our Report and to the steps which we took to confirm this figure with Bronwen Grey before we published it.
30. The fact that Lt Col Northwood had sent 26 briefs to ACT Police in 1998 – and referred to other victims who did not want to go into those processes and who were not counted for ‘statistical purposes’ demonstrates that 30% is much more credible than is the one percent stated by General Hurley.
31. Second I defended the statements which I had made to the effect that there had not been any direct 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.
32. General Hurley did not state directly that there had been such a call. This seems to acknowledge that there had not been such a call.
33. The DART’s Fifth Interim report in March 2014 at page 29 stated:

The Chair also drew CDF and the Secretary of Defence’s attention to the recommendation that Defence may itself want to request current and former serving members and staff report abuse and identify alleged abusers so that

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<sup>9</sup> <http://news.ninemsn.com.au/national/2014/04/27/13/30/calls-for-defence-abuse-royal-commission>.

this information can be taken into account in operational and management decisions. Again, this is a matter for Defence rather than the Taskforce.

34. The clear implication is that Mr Roberts-Smith is not aware of there being any such call from the CDF and that he has never asked the CDF to make such a call.
35. General Hurley's comments in the Radio National interview were to the effect that he thought enough had been done to get across the message that people with information about abuse should come forward.
36. In the 12 May 2014 letter I responded:
  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.

#### **FORTHCOMING DEVELOPMENTS**

37. There may soon be some developments affecting these issues – the Minister proposes to make a statement on Military Justice and some more DART reports are likely to be made public.

38. Of course, it is my earnest wish that the Government will move to take some decisive action and render my submission irrelevant. I hope that the Government will see the force of the submissions I have put in the 27 August 2013 and 14 February 2014 letters and – if the Committee decides to publish it – force of this Submission to this Committee.
39. On 5 May 2014 the Australian newspaper carried a report to the effect that
  - The Defence Abuse Response Taskforce (DART) intended to present a report to the Minister for Defence and the Attorney-General on abuse at HMAS Leeuwin in June and expected that report to be tabled in Parliament;
  - Soon after presenting its report on HMAS Leeuwin, DART would present a report on abuse at ADFA and expected that report to be tabled.
40. It is likely that the DART will present another of its Interim Reports in the near future.
41. When the DART reports are made public, I will consider whether I should modify or withdraw this submission.
42. However, if Mr Roberts-Smith confirms his preliminary views against having a Royal Commission and does so on the basis foreshadowed in his Third and Fourth Interim Reports and outlined again in the 5 May 2014 Australian report, then the concerns which I have identified are not likely to be answered.
43. To ignore the past and to fail to call past perpetrators to account undermines the efforts made (and being made) to improve the ADF's future.

I would welcome the opportunity to discuss these matters with the Committee.

Dr Gary A Rumble

5 June 2014