

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

**Dr Gary A Rumble**

**PART I**

**ANNEXURE 1**

## **Review of Allegations of Sexual and Other Abuse in Defence**

Our Ref: GAR: 211050

17 December 2012

The Hon Stephen Smith MP  
Minister for Defence  
Parliament House  
CANBERRA ACT 2601

c The Hon Leonard Roberts-Smith QC RFD

Dear Minister

### **Review of Allegations of Sexual and Other Abuse in Defence: Volume 2 assessments and recommendations and Volume 1 Issues for Phase 2 consideration**

Melanie McKean and I have noted and considered your 26 November 2012 announcement of the Government's response to our Report.

There are a number of matters we wish to take up with you.

First, we note that in a number of your statements around the time of announcing the Government response, you have referred to 'the ADFA 24'. We draw to your attention that the number of individuals under suspicion may be more than 24. The number 24 was the number which came from the four years immediately preceding the 1998 Grey Report. As we noted in our Supplement to Volume 1, the Grey Report indicated that the patterns of conduct had been similar at ADFA from the time of its establishment in the mid 1980s.

We draw your attention to our discussion around Issue S1 in the Supplement where we recommended consideration of the 'possibility of establishing a Royal Commission or a Court of Inquiry to clarify whether ... any of the around 24 persons identified by Lieutenant Colonel Northwood in 1998 as being suspected of having committed rape or other serious sexual assault or any other Cadets who engaged in similar conduct at ADFA in the years preceding the Grey report are still in the ADF ... and if so how to deal with that situation'.

Second, we are concerned about significant aspects of our Report to which there was no response or for which there is lack of clarity in the Government's response.

We are writing now to set out those concerns and to ask for a substantive answer to these concerns.

Having made public statements confirming our confidence in the process and having encouraged individuals to provide information to the Review, we feel we must ask you to give us clarification and reassurance about what is happening with the assessments and recommendations contained in Volume 2 of our Report and with the systemic issues identified in Volume 1 and the Supplement to Volume 1 of our Report.

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We were invited to a meeting with the Task Force on Wednesday 12 December 2012. That meeting did not allay our concerns. I am copying in Mr Roberts-Smith so that if he and his fellow Task Force members have a different recollection of the meeting or if they wish to add anything else to the discussion of these matters they can let you know accordingly.

Before we go to those concerns in more detail, we outline our thoughts on the problem with transfer of Phase 1 material to the Task Force outlined to us at the meeting with the Task Force on 12 December.

#### **Transfer of Phase 1 materials to the Task Force**

At the 12 December meeting the Task Force informed us of positions taken by DLA Piper and Defence Legal which have prevented Phase 1 material being provided to the Task Force. On the afternoon of Friday 14 December we met with staff of the Attorney-General's Department supporting the Task Force and with their AGS legal adviser to discuss these issues in greater detail.

The Report contains the findings, conclusions, recommendations and opinions of the Phase 1 Review leaders – not of DLA Piper. DLA Piper's disclaimer appears in the Report.

As the leaders of the Review through Phase 1 we had considered the transfer to the Phase 2 body of information which individuals had sent to you as Minister or had provided to Phase 1 of the Review. There were particular issues about the extent to which information provided to the Review could be disclosed to Defence to enable further investigation and action.

As Review leaders we designed processes to clarify those issues and we signed off on redactions, if any, necessary for a version of our Report to go to Defence.

However, we were of the view that a body external to Defence running Phase 2 of the Review could and would generally 'inherit' the information which individuals had sent to you or to the Review. We have not heard anything to change our views in that regard.

We made numerous recommendations in Volume 2 in relation to specific allegations on the assumption that Phase 2 would inherit the Phase 1 information. DLA Piper personnel were well aware that this was the approach that we were taking and did not raise any concerns with the Review leaders about this approach or suggest that the information could not be transferred to the Phase 2 body.

The Task Force has informed us that – apart from the issue of information which individuals provided to you or to the Review - Defence Legal has taken the view that the Privacy Act prevents the Task Force from seeing Defence file material which was provided to Phase 1 of the Review. It seems to us to be anomalous and surprising that Defence file material could be provided to Phase 1 of the Review but not to Phase 2. If the Privacy Act does have that effect it would significantly hinder the work of the Task Force. No doubt Defence Legal and the Task Force and their advisers are working on resolving that issue.

We recommend that if there is any attempt to deal with the issue of access to Defence file information with a regulation under the Privacy Act, then Defence Legal, DLA Piper and Melanie McKean and I be asked for input on the content of the regulation, to ensure that it fully, finally and clearly resolves impediments to transfer of Phase 1 material to the Task Force.

Meanwhile, we have provided the AGD staff supporting the Task Force with guidance on what directions can be given to DLA Piper to isolate the matters where substantive Defence file material was obtained from Defence in Phase 1 – which we would estimate was probably less than 15% of matters - so that the considerable volume of material unaffected by this issue can be prepared for transfer to the Task Force as soon as possible.

I now turn to the concerns which Melanie and I have after our consideration of the Government's 26 November response to our Report.

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Minister for Defence

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## **SUMMARY OF OUR CONCERNS ABOUT ASPECTS OF OUR PHASE 1 REPORT NOT ADDRESSED IN THE GOVERNMENT RESPONSE**

In April of this year Melanie McKean and I provided you with:

- The Supplement to Volume 1 of our Report which included some issues for Phase 2 consideration additional to those already identified in Volume 1 of the Report which we had provided to you in October 2011.
- Volume 2 of the Report consisting of:
  - ◊ 23 large ring-binder folders containing our initial assessments and recommendations on specific allegations;
  - ◊ 3 folders reporting on Fairness and Resolution Branch (F&R) matters; and
  - ◊ 1 folder dealing with ADFIS matters(with other folders with explanatory material);

We also provided you with some recommendations and suggestions for management of the transition to Phase 2.

Our terms of reference required us to report to the Department of Defence as well as to you. It was emphasised when you established the Review that the Review body was external to Defence. Accordingly, the Review leaders designed processes for clarifying the extent to which individuals coming to the Review consented to disclosure of information to Defence for investigation and action on the matters which they had raised. As Melanie and I worked our way through each of the approximately 1100 allegations on which we reported in Volume 2, we identified what redactions were needed for a working version of Volume 2 to go to Defence Legal.

Shortly after we presented the Report to you in April, DLA Piper confirmed that the redactions had been made electronically and that they could – when directed to do so - produce a hard copy version of the working version within a week.

As far as we are aware, you have not directed that working version of Volume 2 be prepared to go to Defence Legal.

The 26 November 2012 Government Response to our Report is:

- silent on what is to happen to our assessments and recommendations contained in Volume 2; and
- unclear about what if any action the Government proposes to take in relation to the systemic issues for Phase 2 consideration which we identified in Volume 1 and the Supplement to Volume 1.

I had one short conversation with your Deputy Chief of Staff on the day that the Government response was announced seeking clarification of what was to happen to Volume 2 of our Report. His answer was to the effect that parts of Volume 2 would go to the Task Force subject to DLA Piper contacting the individual sources and obtaining their consent for their matters to be referred to the Task Force and subject to a 'sifting' process.

From the 12 December meeting which we had with the Task Force, it is our understanding that DLA Piper has already attempted to contact sources to ask for their consent to transfer of their matters to the Task Force.



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The concerns to which we seek your response are as follows.

### **1. F&R Branch and ADFIS matters**

We are concerned that the four folders of our Volume 2 Report which report on our review of Fairness and Resolution Branch and ADFIS management of matters – including some troubling findings – have not yet gone to Defence or to the Task Force for action.

We believe that – if you have not already done so – you could and should direct that those aspects of our Report be provided to *Defence* immediately with a direction for a substantive response to you on the findings, issues and recommendations which we have raised.

The 26 November 2012 statement of the Government response does not clearly indicate that the *Task Force* is to have a role in relation to these aspects of our Report.

However, if you do wish the Task Force to have a role in relation to these aspects of our Report, then it should be a simple and quick matter for a version of these parts of our Report to be provided to the Task Force as well. These parts of our Report do not contain personal identifying information. (Such information is not recorded in the F&R Branch database and such information was removed before we were provided with the ADFIS matters. There could be further redaction if it is thought to be desirable to remove unit or location details, although we do not see that that would be necessary.)

We ask that you inform us what is the Government's response to the F&R Branch and ADFIS aspects of our Report.

### **2. Volume 2 assessments and recommendations of specific allegations**

The 23 folders of our Volume 2 initial assessments and recommendations are central to the Report which we provided to you. We are very concerned that there was no statement in the Government's response of what is to happen with these initial assessments and recommendations on specific allegations.

We believe that the working version of Volume 2 Folders 1-23 could and should have gone to *Defence* without there being another round of contacting individuals to obtain their consent for transfer of information to the Task Force.

We believe that the working version of Volume 2 can and should still go to Defence Legal subject to our sign-off as Review leaders on the final of this working version *without waiting for the outcome of DLA Piper's approach to individuals for transfer of information to the Task Force*.

We also believe that – subject to some relatively minor modifications to accommodate Defence Legal's issue about Privacy Act application to Defence file material - the working version of Volume 2 Folders 1-23 could and should have gone to the *Task Force* without there being another round of contacting individuals to obtain their consent.

From our meeting with the Task Force last week we have learned that DLA Piper has been contacting sources to ask for their consents for transfer of information to the Task Force.

We are concerned that this process has already at least significantly delayed the Task Force getting access to the working version of Volume 2 Folders 1-23.

We are also concerned that the round of contacting sources to request consents for transfer of their matters to the Task Force could lead to piecemeal dismantling of the Volume 2 Folders 1-23 and significantly weaken the Report and its usefulness to the Task Force.

The Government response refers to the Task Force 'working with those who have made allegations of abuse to determine an appropriate response in individual allegations ...'. Many individuals who provided information directly to you or to the Review were not seeking any outcome for themselves

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personally. For some individuals their intention was to provide information about what they alleged they had experienced so that this could be taken into account by you or by the Review in its report to you to understand the kinds of abuse which had occurred.

It is important to understand that there are aspects of our Volume 2 report which would be very important to Defence and the Task Force *even with redactions*. For example:

- Volume 2's presentation of clusters of allegations at particular establishments/bases/ships by era shows patterns and consistency in allegations which provides some corroboration and which helps to flag trouble spots. Those corroborative aspects of Volume 2 will be weakened or lost if the Volume 2 material is disaggregated and transferred piecemeal, according to whether fresh consents are, or are not, obtained.
- Similarly, cross-referencing between assessments, where there are indications of possible serial perpetrators or otherwise related allegations, could be lost if Volume 2 is disaggregated.
- When the Task Force is considering what further action to recommend in relation to Issue S1 from the Supplement to Volume 1 of our Report (relating to possible establishment of a Royal Commission or Court of Inquiry to look at ADFA legacy issues) it will be very important for the Task Force to have before it the accounts of all incidents – albeit redacted – from the 1980s which are consistent with the accounts of incidents from the 1990s. The consistency of the accounts which are told of incidents across 15 years of ADFA operation from its opening in the mid 1980s until the Grey Report in the later 1990s adds considerable force to the credibility of each allegation and indicates the seriousness of the issue for the ADF *now*.

We believe it is important that the Task Force have as much of Volume 2 before it as is possible.

We strongly recommend that – for those sources who do not consent to transfer of their personal information to the Task Force – our assessment and recommendations of their matter should nevertheless still remain in the working version of Volume 2 Report to go to the Task Force with appropriate further redactions of personal information settled by the Review leaders.

Melanie and I – as the authors of the assessments and recommendations – should sign off on any further redacted working version to ensure that the meaning is not altered. The Report contains the findings of the Review leaders – not of DLA Piper.

We ask you to let us know what approach the Government is taking to get Volume 2 of our Report to Defence and to the Task Force.

### **3. The Four Corners matters**

Some very serious allegations about Defence – including allegations of Defence deliberately misleading successive Ministers – were made in the June 2011 Four Corners program and the program had considerable impact. We received around 550 allegations of abuse from a viewing audience of around 200,000 in the four days following that program.

If the worst allegations in that Four Corners program are not clearly and thoroughly responded to, they are likely to cause continuing damage and to be recycled by the media from time to time to damage the reputation and credibility of Defence.

The day after your announcement of the Government response there were media reports attributed to the 'Perth barrister' repeating aspects of the Four Corners program allegations.

We have gathered our assessments and recommendations on this group of allegations in Appendix 1 to Volume 1. They are also dealt with in Volume 2.

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We recommend that you as Minister give priority to formulating responses on those particular matters without waiting for the Task Force to get to them as 'routine' Volume 2 matters.

We ask that you let us know what approach the Government is taking to responding to our Report on the Four Corners matters.

#### **4. Systemic issues identified in Volume 1 and the Supplement to Volume 1**

There are a number of systemic issues for consideration during Phase 2, which we identified in Volume 1 and the Supplement to Volume 1, which are not expressly referred to in the Government's response which are important and which have not – as far as we know – been addressed either in any of the Culture reviews or in the Pathway to Change strategy.

These issues include Issues 5 and 6 relating to identifying persons at risk of developing mental health issues associated with being victims of and/or perpetrators of abuse.

We are also particularly concerned about whether a decision has been made on the systemic issues S5, S9, S10 and S11 relating to DVA benefits and counselling support - and if no decision has been made on those issues – whether a decision has been made on who will consider those issues.

We particularly draw your attention to this group of issues because we noted that in announcing the capped compensation scheme, you confirmed that the receipt of a payment under that scheme would not prevent an individual bringing any other claim they may have against the Commonwealth.

Many of the individuals who came to us are concerned about the difficulties which they have encountered in obtaining DVA counselling support and benefits for conditions which they say are linked with abuse which they suffered as boys in Defence training establishments.

For many of these individuals, ongoing DVA benefits – including ongoing counselling – could be much more important than a one-off cash payment under the capped compensation scheme.

DVA and Defence could be immediately considering this cluster of issues without waiting for the Task Force – which will have a wide range of other tasks – to look at these issues first.

If DVA and Defence have not been tasked to consider these related issues we recommend that you consider tasking them to do so.

We ask that you let us know how the Government is responding to the systemic issues for consideration during Phase 2 which we identified in Volume 1 and the Supplement to Volume 1.

We attach a detailed discussion of these matters. We are of course happy to meet with you to discuss any of these matters.

Yours sincerely

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Dr Gary A Rumble  
Review of Allegations of Sexual and Other Abuse in Defence

The Hon Stephen Smith MP  
Minister for Defence

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## OUR CONCERNS ABOUT ASPECTS OF OUR PHASE 1 REPORT NOT ADDRESSED IN THE GOVERNMENT RESPONSE

### BACKGROUND

Our Terms of Reference for Phase 1 of the Review required us to report to you and to the Department. As you are aware, in April 2012 when we provided you with Volume 2 with *some* redactions we had made arrangements with DLA Piper for preparation of a working version of Volume 2 to be delivered to Defence Legal within the Department, with *additional* redaction of information where we considered it necessary or appropriate to do so for that working version going to Defence Legal.

As we completed each Volume 2 assessment of an allegation, Melanie McKean and I considered and - on the basis of our detailed knowledge of the matter - instructed DLA Piper staff assisting us on what redactions were required for the working version. The process is described in the Volume 2 Explanatory Material (see Appendix 2 of the Supplement to Volume 1).

DLA Piper informed us that those further redactions were made in electronic form shortly after we delivered Volume 2 to you in April. The final of the working version with those redactions has not been settled by Melanie or me. DLA Piper had advised us that a hard copy working version of Volume 2 could be produced with a week's notice.

We referred to the version which we proposed to deliver to the Department as a 'working version' because it would have informed Defence about the allegations raised and it would have enabled Defence to get under way with digesting our specific recommendations and - once directed by you to do so - to start dealing with many of the matters. For many matters we made recommendations for internal referral within Defence for action/consideration.

As far as we are aware you have not directed the preparation and delivery of that working version.

Melanie and I were concerned that there is no indication in the 26 November 2012 Government response to our Report about what is to happen to Volume 2.

On the day that the Government response was announced I emailed your staff noting that your media release made no reference to what will happen to the initial assessments and recommendations in Volume 2 and asking whether it was intended to provide Volume 2 to the Task Force.

Your Deputy Chief of Staff Mr Hamilton called me promptly and told me that he believed that it was contemplated that the contents of Volume 2 would be made available to the Task Force subject to:

- DLA Piper contacting individuals and obtaining their consent for this to happen; and
- some 'sifting' of what matters are to go to the Task Force. Mr Hamilton did not indicate who would carry out the 'sifting', nor on what basis this would occur.

Mr Hamilton had to terminate the call so I was not able to get further clarification.

Melanie and I were also concerned about the lack of indication in the Government's response about which, if any, of the systemic issues which we had identified for Phase 2 consideration in Volume 1 and the Supplement to Volume 1 are to be dealt with by the Task Force or otherwise.

We were in the process of finalising a letter to you to ask for clarification of what was happening to those major aspects of our Report when we were contacted by the Task Force headed by Mr Roberts-Smith and invited to a meeting. That meeting occurred on the afternoon of 12 December 2012.



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The meeting with the Task Force gave us some information about what has been happening in relation to Volume 2, but did not allay our concerns and raised some further concerns.

I am copying in Mr Roberts-Smith so that if he and his fellow Task Force members have a different recollection of the meeting or if they wish to add anything else to the discussion of these matters they can let you know accordingly.

We have previously drawn to your attention that your establishment of the Review raised expectations amongst individuals that their stories would be heard and that there would be some meaningful response. In June last year - in close consultation with your office and with Defence Legal - we issued a media release which included the following in response to comments made in the media which were critical of the objectivity of the Review:

**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 assessments 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.

Having made a public statement confirming our confidence in the process and thus having encouraged individuals to provide information to the Review, we feel we must ask you directly to give us clarification and reassurance about what is happening with the assessments of those individuals' matters contained in Volume 2 of our Report and with the systemic issues identified in Volume 1 and the Supplement to Volume 1 of our Report.

**VOLUME 2**

Our Volume 2 Report consisted of:

- ◊ 23 large ring-binder folders containing our initial assessments and recommendations on specific allegations;
- ◊ 3 folders reporting on Fairness and Resolution Branch (F&R) matters; and
- ◊ 1 folder dealing with ADFIS matters

(with other folders with explanatory material).

We discuss below our concerns in relation to the 23 folders dealing with specific allegations. First, we comment on the relatively confined concerns we have in relation to the aspects of our Report dealing with samples of F&R and ADFIS matters.

**1. What is happening to the Review's assessments and reports on F&R Branch matters and ADFIS matters?**

For these aspects of the Report we reviewed data provided to us by Defence. We made some findings about troubling aspects of F&R Branch and ADFIS handling of matters. Our findings and related recommendations are contained in Appendixes 4 and 5 to the Supplement to Volume 1.

As far as we are aware, there has not been any announcement about what will happen in relation to those aspects of our Report. Mr Roberts-Smith and the other Task Force members told us that they were not aware of what action is proposed in relation to the F&R Branch and ADFIS aspects of our Report.

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The Task Force also told us that various confidentiality and privacy concerns have been raised by DLA Piper and Defence about the provision of some of the Volume 2 related material to the Task Force. We comment further on those concerns below.

However, the F&R Branch and ADFIS data which we reviewed to prepare these aspects of our Report was provided to us by Defence. We cannot see that there is any confidentiality or privacy constraint on providing those aspects of our Report to Defence. (There will be limits on who within Defence should have access to these folders.)

We believe that – if you have not already done so – you could and should direct that those aspects of our Report be provided to Defence immediately with a direction for a substantive response to you on the findings, issues and recommendations which we have raised.

The 26 November 2012 statement of the Government response does not clearly indicate that the Task Force is to have a role in relation to these aspects of our Report.

However, if you do wish the Task Force to have a role in relation to these aspects of our Report, then it should be a simple and quick matter for a version of these parts of our Report to be provided to the Task Force as well. These parts of our Report do not contain personal identifying information. (Such information is not recorded in the F&R Branch database and such information was removed before we were provided with the ADFIS matters. There could be further redaction if there is thought to be any need to remove unit or location details, although we do not see that that would be necessary.)

We ask that you inform us what is the Government's response to the F&R Branch and ADFIS aspects of our Report.

## **2. What is happening to the Review's Volume 2 Folders 1-23 initial assessments and recommendations on specific allegations?**

The 23 folders of our Volume 2 initial assessments and recommendations are central to the Report which we provided to you. We are very concerned that there was no statement in the Government's response of what is to happen with these initial assessments and recommendations on specific allegations.

We believe that the working version of Volume 2 Folders 1-23 could and should have gone to Defence without there being another round of contacting individuals to obtain their consent.

For many of the matters covered by our Review we have made recommendations for immediate internal referral to Defence for action/investigation/consideration.

In our discussions with Task Force members in our meeting on 12 December, some Task Force members were inclined to the view that the Task Force should see our Report before Defence does. However, we prepared Volume 2 of our Report on the assumption that it would go to Defence Legal in accordance with our Terms of Reference – with redactions in the form of the working version.

There were many matters in Volume 2 which – we believe – should be brought to Defence's attention. There are also recommendations in Volume 2 which Defence could be considering and gathering information for even if they are to be subject to Task Force oversight/monitoring.

We also believe that – subject to some relatively minor modifications to accommodate an issue raised by Defence Legal which the Task Force told us about - the working version of Volume 2 Folders 1-23 could and should have gone to the Task Force without there being another round of contacting individuals to obtain their consent.

From our meeting with the Task Force last week we have learned that DLA Piper has been contacting sources to ask for their consents for transfer of their matters to the Task Force.



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We are concerned that this process has already at least significantly delayed the Task Force getting access to the working version of Volume 2 Folders 1-23.

We are also concerned that the round of contacting sources to request consents for transfer of their matters to the Task Force could lead to piecemeal dismantling of the Volume 2 Folders 1-23 and significantly weaken the Report and its usefulness to the Task Force.

We expand on these matters as follows.

*In our view another round of contacting sources was not required before the working version of Volume 2 Folders 1-23 went to Defence and to the Task Force*

In our view it is clear that there was no privacy or other legal barrier to the working version of the Volume 2 Report going to *Defence* without any further round of requesting consents. We have explained above how we had systematically assessed what redactions were required from the working version of Volume 2 which we had expected to go to Defence Legal shortly after we provided Volume 2 to you in April.

Furthermore, we are of the view that – subject to clarification of an issue raised by Defence Legal – there was no legal requirement for a further round of contacting sources before the working version of Volume 2 Folders 1-23 went to the Task Force. The reasons for our view in this regard are as follows.

The Review leaders – including Dennis Pearce – were of the view that:

- Where individuals had provided information to you, the Minister, directly, by doing so they had usually impliedly consented to your dealing with their information in the way that Ministers usually deal with information which is sent to them – including sharing it with other Ministers, getting advice on the information from Departments and internal and external advisers and having other Ministers get similar inputs and assistance from their Departments and advisers.
- Given the Terms of Reference for the Review, in most circumstances an individual's disclosure to Phase 1 of the Review for purposes of the Review provided sufficient authority for the Phase 2 body outside Defence to 'inherit' the Phase 1 body's information for purposes of the Review and for purposes related to the Review – subject to whatever express restrictions the individual had imposed during Phase 1 on further use or disclosure. It would seem to us that the Task Force is a Phase 2 body contemplated by the Terms of Reference.

However, whatever advice you have been given on that broad issue, it is important to emphasise that Melanie and I did turn our minds to consent to disclosure issues very carefully *for each individual matter* both in relation to preparation of our Report to you and in relation to preparation of the working version of the Report to be provided to *Defence*. It is our recollection that a high proportion of the sources ticked the box for full disclosure and use for investigation and action.

Our directions for redaction for each individual matter were checked by DLA Piper staff supporting the Review and returned to us for confirmation/variation if they disagreed with or queried our approach.

The recommendations we made for each matter took into account the breadth of consent to disclosure of personal information which that individual had given. We believe that we have not recommended any action that would breach an individual's consent.

In our Report we recommended the Phase 2 body make contact with *some* informants in Phase 2 to clarify their position in relation to consent to disclosure. We note that DLA Piper was aware that we were including recommendations to this effect and did not suggest that the Phase 2 body would not be able to carry out this recommendation.

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However, we did not recommend further clarification of consent for all of the matters covered in our Report because not all matters needed further consent to disclosure. The reasons why – in our view – no further consent to disclosure was required included:

- the assessment related to our consideration of media allegations for which there were no privacy or confidentiality issues; or
- the informant had already given broad and unqualified consent to disclosure and use; or
- the informant had already given sufficient consent to disclosure and use to enable the action which we recommended; or
- the action which we recommended did not require any disclosure of identifying information.

Accordingly in our view, there was no need for there to be any further specific consent for delivery to the Task Force and/or Defence of the working version of Volume 2.

It is our understanding from our meeting with Task Force members on 12 December 2012 that Defence Legal has taken the view that the Privacy Act prevents disclosure to the Task Force of any personal information in the Volume 2 Report which has come from Defence files.

Melanie McKean and I are not in a position at the moment to comment on whether or not that is a correct analysis of the effect of the Privacy Act. However, if that proposition is correct and applies generally to disclosure of Defence file material to the Task Force including Phase 1 material on which our Report is based, then it would seem to be a major impediment to the work of the Task Force. No doubt the Task Force, the Attorney-General's Department and Defence Legal are looking for a solution to that issue.

It may be that the Task Force will bring forward their consideration of whether they do need the powers of a Royal Commission or of a Court of Inquiry under the Defence Inquiry Regulations.

There was some suggestion in our discussion with the Task Force of the possibility of a regulation being made under the Privacy Act to deal with this issue.

We recommend that if there is any attempt to deal with the issue of access to Defence file information with a regulation under the Privacy Act, then Defence Legal, DLA Piper and Melanie McKean and I be asked for input on the content of the regulation, to ensure that it fully, finally and clearly resolves impediments to transfer of Phase 1 material to the Task Force.

In any case, while consideration is being given to how to resolve that issue we note that the issue of Defence file material should not have been a significant impediment to delivering a slightly modified version of the working version of Volume 2 Folders 1 to 23 to the Task Force because: -

- Our recollection is that there would be relatively few matters – probably less than 15% – of the 1100 or so allegations reported on for which we got substantive file information from Defence and even fewer for which personal information from Defence files is contained in our Volume 2 assessments.
- In some matters, we began our assessment by noting 'Service confirmed'. (See Volume 2 Explanatory Material). This was a shorthand reference to indicate that we had material to confirm that the subject of the allegation had in fact been in the part of the ADF referred to in their allegation. Sometimes the confirmation of service came from materials provided by the source, such as copies of correspondence with Defence or copies of reports of Defence processes in relation to their allegation. The issue raised by Defence Legal would not seem to have any relevance to material provided by the source themselves. However, some of the

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confirmation of service came from service records which were provided to the Review by Defence. In some, but not many, matters, the service records related not just to the subject, but also to other persons referred to in the allegation (the alleged perpetrator, alleged witnesses etc). The issue raised by Defence Legal could be relevant to those service records which were provided to the Review by Defence.

- Many of the sources had expressly consented to the Review obtaining information from Defence and to further use and investigation of the information. (That would not have resolved any Privacy Act issues in relation to persons other than the source.)
- It could have been a fairly quick and simple matter for DLA Piper to identify those assessments which contain any Defence file information and to suggest redactions of personal information from Defence file material before those assessments go to the Task Force.

Melanie and I – as the authors of the assessments and recommendations – should sign off on any further redacted working version to ensure that the meaning is not altered. The Report contains the findings of the Review leaders – not of DLA Piper.

*It was not desirable to commission DLA Piper to contact sources to ask for consent for their matters and information to be transferred to the Task Force before providing the Task Force with the working version of Volume 2 Folders 1-23.*

We now set out the reasons for our belief that it was not *desirable* for DLA Piper to contact sources before the working version of Volume 2 Folders 1-23 went to Defence and the Task Force.

We have previously raised with you our concerns about the delay in announcing the Government's response to our Report. We have similar concerns about the effects of delay in getting the working version of Volume 2 to Defence and the Task Force.

Apart from delay which the DLA Piper process of seeking consents necessarily involves, we have other concerns about that process.

First, we are concerned that the approach taken – as we understand it – was one of approaching all sources to ask for their consent for transfer of their matter and their information to the Task Force. Our concerns about this blanket approach are:

- The matters dealt with in Volume 2 are complex and varied. The range of actions which we saw as being involved in implementation of Phase 2 is indicated in our 'Draft for discussion with Minister on 17 April 2012 – Managing and Implementing Volume 2 recommendations for individual matters' - copy **attached**). There were some main groups of Volume 2 recommendations for further action but there is no 'one-size fits all' solution. Our recommendations for further action were complex and varied. For example:
  - Some of the allegations involved allegations of crimes and other serious conduct which were not referred to ADFIS or civilian police during Phase 1, because the conduct occurred some time ago. Nevertheless, they are serious allegations the *substance* of which the Task Force and Defence should be aware of – *whether or not the Source gives further consent*.
  - Not all of those recommended actions require disclosure of personal information or consent to disclosure of personal information, nor the involvement of the informant in all aspects of dealing with the allegation.
- Individuals who have previously clearly indicated their position on consent may be distressed to be contacted again.

The Hon Stephen Smith MP  
Minister for Defence

17 December 2012

- Individuals who have previously clearly indicated their position on consent may fall out of the process if there is difficulty in contacting them for consent or if they are frustrated by this process.
- Some of the individual informants whose allegations are reported on in Volume 2 could be candidates for the new capped compensation scheme. However, the Task Force would be able to identify which informants might be suitable to be considered for the capped compensation scheme from the redacted working version of Volume 2 and – where further consent to disclosure of identifying information to the Task Force would be required – to identify that matter to DLA Piper as requiring further contact with the individual concerned to see if they consent to full disclosure to the Task Force for purposes of consideration in that scheme.

Second, it is our understanding from our meeting with the Task Force that the Task Force leaders had no input into the mail-out which DLA Piper has carried out. We are concerned that – if there was to be a blanket contact with sources – it was not planned and supervised by the Task Force.

- The subject matter is one of great sensitivity for many of these individuals. The delay in deciding on a course of action will have shaken the confidence of many of them that they will be heard sympathetically and that it is worth being in any process. Unless great sensitivity is shown, those most in need of assistance may fall out of the process.
- If there was going to be contact with sources, then it was crucial for there to be a clear message about the operation of the Task Force – who are the leaders of the Task Force, why the Task Force can be relied on to be independent of Defence, what the Task Force can and will do, how the Task Force will interact with them – and sensitivity in delivering the message.
- In our view it would have been preferable for the process of communication with sources to be planned and supervised by the Task Force informed by the working version of our Volume 2 Report.

#### *What can happen now?*

We infer that, if a source does not consent to their information being transferred to the Task Force, the intention is that the source's 'matter' and the information on which our assessments and recommendations are based will not be transferred to the Task Force.

The Report contains the findings, assessments and recommendations of the Review leaders – not of DLA Piper. Melanie McKean and I – not DLA Piper – should settle any version of the Report which is provided to Defence or the Task Force.

For reasons set out above, we recommend that the working version of Volume 2 – settled by the Review leaders – should go to Defence as soon as possible.

We believe that the working version of Volume 2 Folders 1-23 could and should have gone to Defence without there being another round of contacting individuals to obtain their consent for transfer of information to the Task Force.

We believe that the working version of Volume 2 can and should still go to Defence Legal subject to our sign-off as Review leaders on the final of this working version *without waiting for the outcome of DLA Piper's approach to individuals for transfer of information to the Task Force*.

We are concerned that this process has already at least significantly delayed the Task Force getting access to the working version of Volume 2 Folders 1-23.



The Hon Stephen Smith MP  
Minister for Defence

17 December 2012

We are also concerned that the round of contacting sources to request consents for transfer of their information to the Task Force could lead to piecemeal dismantling of the Volume 2 Folders 1-23 and significantly weaken the Report and its usefulness to the Task Force.

The Government response refers to the Task Force 'working with those who have made allegations of abuse to determine an appropriate response in individual allegations ...'. Many individuals who provided information directly to you or to the Review were not seeking any outcome for themselves personally. For some individuals their intention was to provide information about what they alleged they had experienced so that this could be taken into account by you or by the Review in its report to you to understand the kinds of abuse which had occurred.

It is important to understand that there are aspects of our Volume 2 report which would be very important to Defence and the Task Force even with redactions. For example:

- Volume 2's presentation of clusters of allegations at particular establishments/bases/ships by era shows patterns and consistency in allegations which provides some corroboration and which helps to flag trouble spots. Those corroborative aspects of Volume 2 will be weakened or lost if the Volume 2 material is disaggregated and transferred piecemeal, according to whether fresh consents are, or are not, obtained.
- Similarly, cross-referencing between assessments, where there are indications of possible serial perpetrators or otherwise related allegations, could be lost if Volume 2 is disaggregated.
- When the Task Force is considering what further action to recommend in relation to Issue S1 from the Supplement to Volume 1 of our Report (relating to possible establishment of a Royal Commission or Court of Inquiry to look at ADFA legacy issues) it will be very important for the Task Force to have before it the accounts of all incidents – albeit redacted – from the 1980s which are consistent with the accounts of incidents from the 1990s. The consistency of the accounts which are told of incidents across 15 years of ADFA operation from its opening in the mid 1980s until the Grey Report in the later 1990s adds considerable force to the credibility of each allegation and indicates the seriousness of the issue for the ADF *now*.

We believe it is important that the Task Force have as much of Volume 2 before it as is possible.

We strongly recommend that – for those sources who do not consent to transfer of their personal information to the Task Force – our assessment and recommendations of their matter should nevertheless still remain in the working version of the Volume 2 Report to go to the Task Force with appropriate further redactions of personal information settled by the Review leaders.

Melanie and I – as the authors of the assessments and recommendations – should sign off on any further redacted working version to ensure that the meaning is not altered. The Report contains the findings of the Review leaders – not of DLA Piper.

We note that in some of your statements around the time of publishing the Government's response you have referred to the 'ADFA 24'. We draw to your attention that in the Supplement to Volume 1 we have identified the possibility that there were probably more than 24 who may have been involved in such conduct:

**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 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 year preceding the Grey report are still in the ADF
- if so, how to deal with that situation.

We ask you to let us know what approach the Government is taking to get Volume 2 of our Report to Defence and to the Task Force.

**VOLUME 1**

**3. What will happen to the Four Corners matters which were the subject of Appendix 1 to the Supplement to Volume 1?**

The Four Corners program in June 2011 reported the stories of some particular individuals who claimed to have been abused in Defence.

We provided specific assessments and recommendations on each of these matters in Appendix 1 to the Supplement to Volume 1 (redacted from the public version) and in Volume 2.

To the extent that these specific allegations are dealt with in Volume 2, our discussion in the preceding section is relevant.

However, some very serious allegations about Defence – including allegations of Defence deliberately misleading successive Ministers – were made in the Four Corners program and the program had considerable impact. We received around 550 allegations of abuse from a viewing audience of around 200,000 in the four days following that program.

If the worst allegations in that Four Corners program are not clearly and thoroughly responded to, they are likely to cause continuing damage and to be recycled by the media from time to time to damage the reputation and credibility of Defence. For example, the following comment is made in media reports about your announcement of the Government's response to the Review. We believe the 'Perth barrister' is one of the men featured on the Four Corners program:

Among the critics was a Perth barrister raped at ADFA in 1989 by several cadets including some who were now senior officers. The man, who asked not to be named, said the payout figure and choice of an insider is a damning indictment of the unwillingness to tackle abuse in the military. (Herald Sun, 27 November 2012, 'Apology for abuse Minister acts on inquiry into military').

Among those reacting critically was a Perth barrister, who was raped at ADFA in 1989 by several cadets including some still serving as senior officers. The man, who asked not to be named, said the payout figure and the choice of an insider such as Mr Roberts-Smith was a damning indictment of the lack of willingness to tackle abuse. After the assault and while he was in hospital the lawyer was told to "harden up or get out". "They should have appointed someone from outside the military club," he said. (The Advertiser, 27 November 2012, 'Taskforce inquiry, compo for victims Defence says sorry for abuse').



The Hon Stephen Smith MP  
Minister for Defence

17 December 2012

We recommend that you as Minister give priority to formulating responses on those particular matters without waiting for the Task Force to get to them as 'routine' Volume 2 matters.

We ask that you to let us know what approach the Government is taking to responding to our Report on the Four Corners matters.

**4. Clarifying how the Government is responding to systemic issues identified in Volume 1 and the Supplement to Volume 1.**

We are aware of the Government's response on restricted reporting.

We also note the reference in the statement of the role of the Task Force as being to 'assess the individual complaints and any wider systemic issues'. However, there is a later reference in that 26 November announcement to 'Broader issues about the Defence justice and complaints system and Defence culture being pursued separately, including through the Defence Pathway to Change strategy'.

The Task Force members in our meeting last week were not able to indicate which, if any, systemic issues they will be expected to consider.

There are a number of systemic issues for consideration during Phase 2, which we identified in Volume 1 and the Supplement to Volume 1, which are not expressly referred to in the Government's response which are important and which have not – as far as we know – been addressed either in any of the Culture reviews or in the Pathway to Change strategy. See for example Issues 5 and 6 relating to identifying persons at risk of developing mental health issues associated with being victims of and/or perpetrators of abuse.

We are also particularly concerned about whether a decision has been made on the systemic issues S5, S9, S10 and S11 relating to DVA benefits and counselling support - and if no decision has been made on those issues – whether a decision has been made on who will consider those issues.

We particularly draw your attention to this group of issues because we noted that in announcing the capped compensation scheme, you confirmed that the receipt of a payment under that scheme would not prevent an individual bringing any other claim they may have against the Commonwealth.

Many of the individuals who came to us are concerned about the difficulties which they have encountered in obtaining DVA counselling support and benefits for conditions which they say are linked with abuse which they suffered as boys in Defence training establishments.

These issues (contained in the Supplement) are:

*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 DVA. (page 64)

...

*Issue S9*

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

*Issue S10*

Phase 2 consult with DVA about:

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

*Issue S11*

Phase 2 to consider:

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

Given that our Terms of Reference required us to identify systemic issues for possible further consideration in Phase 2 these were framed as 'issues' rather than recommendations. However, as a perusal of the discussion of these issues and of the Explanatory Material to Volume 2 should make clear, we believe that there is a strong case for these changes to be made.

It seems to us to be quite inappropriate that damaged former ADF personnel should be set the challenge of proving that they suffered abuse many years ago at training establishments without access to the background information which Defence and DVA should have and could gather about patterns of abusive conduct and previous inquiries and findings about such conduct in training establishments and elsewhere in Defence.

For many of these individuals, ongoing DVA benefits – including ongoing counselling – could be much more important than a one-off cash payment under the capped compensation scheme.

DVA and Defence could be immediately considering this cluster of issues without waiting for the Task Force – which will have a wide range of other tasks – to look at these issues first.

The Hon Stephen Smith MP  
Minister for Defence

17 December 2012

If DVA and Defence have not been tasked to consider these related issues we recommend that you consider tasking them to do so.

We ask that you let us know how the Government is responding to the systemic issues for consideration during Phase 2 which we identified in Volume 1 and the Supplement to Volume 1.

Yours sincerely



Dr Gary A Rumble  
Review of Allegations of Sexual and Other Abuse in Defence

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

**Dr Gary A Rumble**

**PART I**

**ANNEXURE 2**



**Stephen Smith MP**  
**Minister for Defence**

Dr Gary Rumble

Dear Dr Rumble

Thank you for your letters of 17 December 2012 and 30 January 2013 concerning the DLA Piper Review into allegations of sexual and other abuse in Defence ('the Review').

I regret the delay in reply.

First, I again thank you and your colleagues on the DLA Piper Review team, Ms Mel  nie McKean and Professor Dennis Pearce, for your work on the Review. I am grateful for the diligence, dedication and effort with which you worked to deliver the Report and the concern you have shown for Defence personnel, both past and present.

You have made an invaluable contribution to Defence's ongoing efforts to effect cultural change and to ensure that Defence operates as a respectful, fair organisation in line with modern community expectations.

Your Report was an important body of work which has been considered, in detail, by the Government. As you would expect, the Attorney-General and I considered advice, including legal advice, from a number of sources prior to making decisions on the most appropriate Government response.

I address the concerns raised in your correspondence to me.

**1. What action is to be taken on the 35 systemic issues which your Report recommended for Phase 2 consideration**

The systemic issues contained in Volume One and the Supplement to Volume One to which you refer in your letter are being considered by the Defence Abuse Response Taskforce ('the Taskforce'), which I announced on 26 November as part of the Government's response to the Report.

The Terms of Reference for the Defence Abuse Response Taskforce were released on 21 January 2013. I enclose a copy for ease of reference.



The Taskforce's Terms of Reference include that the Taskforce 'liaise with the Minister for Defence, Chief of the Defence Force and the Secretary of the Department of Defence on any implications of its work for Defence's 'Pathway to Change' and other responses to the series of reviews into Defence culture and practice'.

I stated in my media release on 26 November 2012 that where the Taskforce's work highlights further possible systemic issues or issues to be considered in these initiatives, the Taskforce will draw these to the attention of the Minister for Defence, Chief of the Defence Force and the Secretary of the Department of Defence.

You also note that some of the systemic issues which the Report identified for Phase 2 consideration are relevant to the welfare of individuals who are affected or at risk now because of abuse in the ADF in the past.

You raised concerns in relation to providing appropriate support services for people who have experienced past abuse in Defence.

As outlined in the Government's response to the Report, the Taskforce will be funded to provide additional counselling and will also liaise with and provide referrals to existing services for people seeking such assistance.

Noting your concern that systemic issues are important for responding to cases of past abuse, I have as well asked that the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues.

## **2. The working version of Volume 2**

You state that as the working version of Volume 2 did not go to the Secretary, that prevented the Secretary, the Chief of the Defence Force and the Service Chiefs from being informed about what allegations have been raised with the Review, the initial assessments and recommendations made and the bases for those assessments and recommendations.

It is the Government's strong view that an independent process was the most appropriate way forward for responding to individual allegations of abuse in Defence.

It would not have been appropriate for the Secretary, the Chief of the Defence Force and the Service Chiefs to be provided with details of allegations of abuse in Defence.

This is why the Government established the independent Taskforce which is responsible for assessing the individual complaints and making observations about wider systemic issues.

## **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.



I have directed the transferral of material to the independent Taskforce and it is now a matter for the Taskforce to consider and make an independent judgement 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.

In relation to more general systematic issues with Defence processes, including in relation to Fairness and Resolution Branch matters and Australian Defence Force Investigative matters referred to above, Defence is undertaking a fundamental re-think of its existing systems of inquiry, investigation and review.

The Taskforce has been engaged about the scope of this work. The Taskforce will provide its observations about systemic policy issues, made during the course of its consideration of individual cases in Volume Two, to the Secretary of the Department of Defence for consideration in the context of this work by Defence.

Your general findings and recommendations regarding the sequencing of administrative action during or after criminal processes for the same facts, deficiencies in Defence record keeping practices, Fairness and Resolution Branch and ComTrack database issues have in the meantime informed the development of proposals in that re-think which will be considered by the Secretary and the Chief of the Defence Force shortly.

Implementation of improved systems of inquiry, investigation and review will involve enhancements and changes to the operations of the Fairness and Resolution Branch, which in the meantime has been restructured and renamed Values, Behaviours and Resolutions Branch.

That work has also had regard to many important reviews and recommendations, including the DLA Piper Review, the HMAS Success Commission of Inquiry and the recent reviews into aspects of Defence culture. In particular it will take into account the review by the Inspector General ADF into the management of incidents and complaints in Defence, with specific reference to the treatment of victims, transparency of processes and the jurisdictional interface between military and civil law.

Initiatives in response to the Inspector General's review include:

- Funding will be provided as a matter of priority to contract out the task of reducing the current grievance backlog of cases to suitably qualified legal firms;
- Training and information will be provided to ADF members in relation to the management of incidents and complaints will be simplified and improved;
- Defence's administrative policies will be amended to provide for administrative suspension from duty, including the circumstances in which a Commander may suspend an ADF member and the conditions which may be imposed on the suspended member; and
- An improved process to manage grievances in Defence will also be developed.

This broader work will also take into account the Government's response to implement the recommendations of Phase 2 of the review into the treatment of women in the Australian Defence Force (ADF) conducted by the Federal Sex Discrimination Commissioner, Ms Elizabeth Broderick, on behalf of the Australian Human Rights Commission, including:

- The establishment of a dedicated Sexual Misconduct Prevention and Response Office to coordinate timely responses, victim support, education, policy, practice and reporting for any misconduct of a sexual nature, including sexual harassment and abuse;
- Implementation of restricted reporting, so that personnel can make confidential reports of sexual harassment, sex discrimination and sexual abuse (which was also recommended by the DLA Piper Review);
- The introduction of Waivers for Initial Minimum Provision of Service and Return of Service Obligations for victims of sexual assault/ harassment, so they can discharge from the ADF expeditiously and without financial penalty;

#### **4. Recommendations in relation to specific allegations before the Review set out in Parts 1-23 of Volume 2**

These specific allegations are being considered by the Taskforce.

As outlined in the Taskforce's Terms of Reference, the Taskforce will

- assess the findings of the DLA Piper review and the material gathered by that review, and any additional material available to the Taskforce concerning complaints of sexual and other forms of abuse by Defence personnel alleged to have occurred prior to 11 April 2011, the date of the announcement of the DLA Piper Review;
- include in this assessment the 24 Australian Defence Force Academy (ADFA) cases noted by DLA Piper and the cases of abuse identified by reports into physical violence and bullying at HMAS Leeuwin, and whether the alleged victims, perpetrators and witnesses in relation to these cases remain in Defence;
- determine, in close consultation with those who have made complaints, appropriate actions in response to those complaints;

The Government is of the view that it is most appropriate that the Taskforce, an independent body, make these assessments and determinations. This has commenced.

In the course of this work, the Taskforce will consider all of the specific allegations reported on in Volume 2, including the allegations made in the Four Corners - Culture of Silence program from June 2011 to which you refer, as well as any additional allegations about matters prior to 11 April 2011 received since your Report.

#### **5. The provision of Parts 1 to 23 of Volume 2 of our Report providing initial assessments and recommendations on specific allegations to the Task Force**

I agree that the Taskforce must have access to relevant material to conduct its work. On receipt of comprehensive advice from the Australian Government Solicitor, I directed that material gathered for the purpose of the Review be transferred to the Taskforce including that held by DLA Piper or which has been given to me by DLA Piper. This included, for example, a copy of the Northwood Report.

I have been advised that DLA Piper has transferred most of its material to the Taskforce.

Arrangements are also in place to ensure that the Taskforce has access to any additional material or records it requires which are held by Defence, by DLA Piper or by my office.



In relation to specific information provided by individuals to DLA Piper in relation to their own experiences, I am advised by the Attorney-General's Department that DLA Piper considered that consent must be obtained from those individuals before any material can be handed by DLA Piper to any other person. There has been a process for seeking those consents.

You refer to my use of 'the ADFA 24' to describe the cases of abuse at the Australian Defence Force Academy in the 1990s.

I acknowledge that the number of actual cases may indeed be higher. Since you presented your final report to me in April 2012, the Australian Defence Force Investigative Service has made further enquiries, resulting in the identification of additional material. This has been made available to the Taskforce so that it can assess these cases in accordance with its Terms of Reference.

With respect to all of the above, I am very confident that the Taskforce will deliver the important work it has been asked to do by the Government.

The Hon Len Roberts-Smith RFD QC leads the Taskforce and is being ably assisted by Mr Robert Cornall AO, a former Secretary of the Attorney-General's Department, Ms Susan Halliday, a former Commonwealth Sex Discrimination Commissioner and Australian Federal Police Assistant Commissioner Mr Rudi Lammers.

On 21 January 2013 the Taskforce announced its Terms of Reference and the appointment of key personnel encompassing high level skills and experience across a diverse range of disciplines.

The Government's response to allegations which have been raised is a comprehensive, appropriate and sensitive response to this complex issue. It will provide people who have alleged abuse with a response that is tailored to their own specific circumstances.

In addition, I can assure you of my commitment and that of the Secretary of the Department of Defence and the Chief of the Defence Force to ensuring deep cultural reform in Defence, particularly to address issues of concern in relation to abuse and inappropriate conduct.

I note you have previously copied your correspondence of 17 December to the Taskforce. I have formally referred your correspondence to the Taskforce for its own consideration. I expect the Taskforce will advise me of any issues that it believes require further action.

I trust this information is of assistance.

Yours sincerely

Stephen Smith

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

**Dr Gary A Rumble**

**PART I**

**ANNEXURE 3**

3 February 2014

Senator the Hon Ursula Stephens  
Chair  
Senate Foreign Affairs, Defence and Trade References Committee  
Parliament House  
PARKES ACT 2600

cc. Senator the Hon George Brandis QC, Attorney-General  
Senator the Hon David Johnston Minister for Defence  
Senator the Hon Stephen Conroy Shadow Minister for Defence  
The Hon Mark Dreyfus QC, MP Shadow Attorney-General

Dear Senator Stephens

**INQUIRY ON REFERENCE RELATING TO GOVERNMENT RESPONSE  
TO REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER  
ABUSE IN DEFENCE (PHASE 1 REPORT):**

**CLARIFICATION OF WHETHER THE DEFENCE ABUSE RESPONSE  
TASKFORCE HAS BEEN CONSIDERING OR WILL CONSIDER ASPECTS  
OF THE PHASE 1 REPORT**

1. As you are aware, the Senate Foreign Affairs, Defence and Trade References Committee had before it last year a reference relating to the *Report of the Review of allegations of sexual and other abuse in Defence, conducted by DLA Piper* and the Government response to the Report.
2. I was the leader of this Phase 1 Review.<sup>1</sup> The other Review leaders were Ms Melanie McKean and – for Volume 1 of the Report - Professor Dennis Pearce AO. We presented Volume 1 of the Report of Phase 1 in October 2011 – well over two years ago. We presented Volume 2 of the Report and a Supplement to Volume 1 in April 2012 – almost two years ago.
3. The then Minister for Defence, the Hon Stephen Smith MP, announced the Government's response to the Phase 1 Report on 26 November 2012. Central to the Government's response was the decision that Minister Smith and the then Attorney-General, the Hon Nicola Roxon MP, were jointly establishing

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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.*"

the Defence Abuse Response Taskforce (DART). The Hon Mr Len Roberts-Smith RFD, QC was appointed to lead the DART. Mr Roberts-Smith is the sole decision-maker for the DART.

4. I wrote to the Minister on 17 December 2012 noting that the 26 November 2012 announcement did not clearly deal with significant aspects of the Phase 1 Report asking for clarification of what was the Government's response to those aspects of the Phase 1 Report.
5. On 8 March 2013 shortly before my appearance before the Committee Minister Smith MP replied to my 17 December 2012 letter.
6. The Minister's 8 March 2013 reply 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 Defence Abuse Response Taskforce (DART).
7. 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.
8. 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.
9. In my appearance before the Committee on 14 March 2013 I stated that:

I am appearing on my own behalf. I am not representing my other review leaders and I am not representing either of the law firms that have employed me during the course of this review.
10. I am writing this letter to the Committee on the same basis.
11. 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.
12. I wrote to Minister Smith and then Attorney-General, the Hon Mark Dreyfus QC. MP, on 27 August 2013 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.
13. I copied the 27 August 2013 letter to the Committee and to Mr Roberts-Smith.
14. 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.



15. I met with Mr Roberts-Smith on 17 October 2013. From that meeting and from my consideration of the DART's four Interim Reports, it is my understanding that:
  - Mr Roberts-Smith has decided not to fulfil at all some of the assurances given in Minister Smith's 8 March 2013 letter;
  - Mr Roberts-Smith has 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.
16. 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.
17. Mr Roberts-Smith has not responded to my correspondence.
18. The DART's Fourth Interim Report published in December 2013 does not refer to, or resolve, these matters.
19. 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.
20. 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.)
21. 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.
22. 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 a recent email to Minister Johnston's office:

The Third 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.

It was, therefore, a disappointment to me when I met with Mr Roberts-Smith in October 2013 that he confirmed that the consultation which Minister Smith had asked him to undertake had not occurred.

Mr Roberts-Smith has had some consultation with DVA about the possibility of DVA decision-makers taking into account material from the DART. However, that material is much more limited than the material which could be collected as identified in our April 2012 Report.

It is a particular disappointment that the Secretary himself had not taken the lead and initiated the consultation which Minister Smith had requested in March last year.<sup>2</sup>

23. I have been informed by the Minister's office (See email of 17 January 2014 in Attachment 1) that:

At this time it can be expected we would respond to you toward the end of February to ensure we have properly covered off on the issues you have raised.

24. More recently the Minister's office has informed me (see email of 30 January 2014 in Attachment 1.)

Be assured that Minister takes very seriously the issues you have raised. The Minister has been and remains very concerned about the allegations of harm done to current and former Australian Defence Force members. The outcomes of the Defence Abuse Review [sic] Taskforce are of specific concern. The Minister will be addressing early this year a range of issues dealing with Military Justice in general and the outcomes of the Defence Review Taskforce [sic] in particular.

25. I agree that it is time for Government decisions on many of the issues which our Phase 1 Report raised and for active consideration of other matters which we identified in our Phase 1 Report.

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<sup>2</sup> See further discussion of this issue in my 20 March 2013 Supplementary Submission to the Committee and in my 29 October 2013 letter to Mr Roberts-Smith which is Attachment 5.

26. However, the issues of abuse in the ADF are complex and will require ongoing attention and adaptation. Whatever the Minister's foreshadowed actions early in the year 'dealing with Military Justice in general and the outcomes of the Defence Review Taskforce in particular' turn out to be, there cannot be any once and for all resolution of these matters.
27. I particularly emphasise that the DART's work will not have 'fixed' the issue of past abuse because it is likely that the DART has only reached a small proportion of people affected by abuse in the past (See pages 15-18 below.)
28. I agree with the Committee's observation (at paragraph 7.20 of its June 2013 Report):
- In the view of the committee, the question of which body deals with the systemic issues and findings raised by the DLA Piper Review report is less important than ensuring these issues are clearly and publicly addressed in a timely manner.
29. The call for a 'timely' response has not been met for many aspects of the Phase 1 Report. However, the issues reported on in the Phase 1 report have not gone away and should be 'clearly and publicly addressed' as soon as possible.
30. In my view public scrutiny through the FADT Committee is central to achieving strong outcomes for which there can be general community confidence.
31. That scrutiny has been undermined by the fact that Minister Smith's 8 March 2013 assurances about the Government response have not been fulfilled.
32. Accordingly, I ask the Committee to reopen its inquiry into the Government response to the *Report of the Review of allegations of sexual and other abuse in Defence*.
33. I set out below some notes and I attach copies of relevant correspondence which provide more detail and information about these matters.

Yours sincerely

Dr Gary A Rumble

## **BACKGROUND**

### **The Report of the Review of allegations of sexual and other abuse in Defence**

1. I was the leader of the Phase 1 Review. The other Review leaders were Ms Melanie McKean and – for Volume 1 of the Report - Professor Dennis Pearce AO. We presented Volume 1 of the Report of Phase 1 in October 2011 – well over two years ago. We presented Volume 2 of the Report and a Supplement to Volume 1 in April 2012 – almost two years ago.

### **The Government response to the Phase 1 Report**

2. The then Minister for Defence the Hon Stephen Smith MP announced the Government's response on 26 November 2012. Central to the response was the decision that the Minister for Defence and the Attorney-General would jointly established the Defence Abuse Response Taskforce headed by the Hon Mr Len Roberts-Smith RFD, QC.

### **Minister Smith's letter of 8 March 2013**

3. On behalf of myself and Ms McKean I wrote to the Minister in December 2012 seeking clarification of what were the Government's responses to a number of aspects of our Report which were not clearly covered by the 26 November 2012 announcement.
4. On 8 March 2013 the Minister wrote to me replying to the December 2012 letter.
5. The Minister addressed each of the aspects of our Report about which the December letter had raised concerns and gave assurances which included assurances generally to the effect that the matter of concern was already being considered and/or would be considered by the Defence Abuse Response Taskforce (DART).
6. The assurances which Minister Smith gave in his 8 March 2013 letter were a key part of the Government's Response to our Phase 1 Report.

### **The Committee's inquiry into the Phase 1 Report and the Government Response**

7. I provided a copy of Minister Smith's 8 March 2013 letter to the Committee as an attachment to my 12 March 2013 written submission and relied on the assurances it contained in making my oral submission to the Committee.
8. The Committee noted the Minister's 8 March 2013 letter (see Report pages 65-66) and presumably took it into account in formulating the Committee's Report on the Government response.



**My 27 August 2013 letter about whether the DART was fulfilling the 8 March 2013 assurances**

9. After I had considered the DART's Second Interim Report which was published in June 2013 I was concerned that it was not clear from the DART's First and Second Interim Reports that the DART had been fulfilling, or would be fulfilling, the assurances given in the Minister's 8 March 2013 letter.
10. I also had concerns about a particular major issue on which the DART was asked to report relating to current issues for the ADF related to conduct at ADFA before the 1998 Grey Report by Cadets who are now officers in the ADF.
11. On 27 August 2013 I wrote two letters to the then Minister for Defence the Hon Stephen Smith MP and the then Attorney-General, the Hon Mark Dreyfus QC, MP.
12. I copied both these letters to the FADT Committee and to Mr Roberts-Smith.<sup>3</sup>
13. One of these letters was entitled CLARIFICATION OF GOVERNMENT RESPONSE TO REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE (the Clarification letter). This letter took up my concerns about whether the DART was fulfilling the assurances given in Minister Smith's 8 March 2013 letter. I attach a copy of this 27 August 2013 letter at Attachment 2.
14. My 27 August 2013 Clarification letter included the following statements:

I set out below some questions in which – in broad terms – I ask the Minister and the Attorney-General:

To clarify or correct statements in the Minister's 8 March 2013 letter indicating that the DART has been tasked to consider and report to the Government on the aspects of the *Report of the Review of allegations of sexual and other abuse in Defence* which I detail in this letter.

For those aspects of the *Report of the Review of allegations of sexual and other abuse in Defence* which have not been sent to the DART to make recommendations to the Government, to clarify whether there have been Government decisions on these aspects of that Report.

For those matters on which there have not yet been Government decisions – to explain what are the processes to bring those matters to Government for decision.

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<sup>3</sup> The other letter – the Royal Commission letter – was entitled THE CASE FOR A ROYAL COMMISSION TO INQUIRE INTO RISKS FOR THE ADF FROM HAVING IN ITS RANKS OFFICERS WHO MAY HAVE COMMITTED OR WITNESSED RAPE AT ADFA BEFORE GREY REVIEW. I intend to write a separate letter about developments on this issue.

15. The 27 August 2013 Clarification letter also stated:

I am copying this letter to the FADT Committee to alert the Committee that it seems that there needs to be clarification and/or correction of:

- statements about the Government response to the *Report of the Review of allegations of sexual and other abuse in Defence* in the Minister's 8 March 2013 letter which I provided to the Committee with the Minister's consent; and
- the statements I made to the Committee in reliance on my understanding of the letter.

I am also copying this letter to Mr Roberts-Smith. I invite Mr Roberts-Smith to correct or clarify any aspect of the DART's Interim Reports which I have misunderstood.

I am aware that the Government is now in the Caretaker period. I am also aware that Minister Smith is not seeking re-election.

However, neither of those facts precludes the Minister and the Attorney from clarifying decisions already made about the Government's responses to the *Report of the Review of allegations of sexual and other abuse in Defence*.

Indeed, it is highly desirable that these clarifications are given before the election while the Minister is still the Minister.

I also draw to the attention of the Minister and the Attorney that the apparent inaction by the Government in relation to a group of the systemic issues identified in our Report relating to the potential for Defence and DVA to gather and share information relevant to assessing individual eligibility for DVA benefits may now raise issues of whether the Commonwealth is meeting the requirements of the Model Litigant Policy.

16. I did not receive any reply to the Clarification letter from Attorney-General Dreyfus. I received a written reply dated 6 September 2013 from Minister Smith.
17. Minister Smith's reply was to the effect that he had referred my 27 August 2013 letter to the incoming Minister for Defence and the incoming Attorney-General and that progressing the issues and concerns which I had raised would be a matter for 'the incoming Minister, Attorney-General and Government'. I attach a copy of Minister Smith's letter at Attachment 3.

#### **Meeting with Mr Roberts-Smith on 17 October 2013**

18. I received a letter dated 29 September 2013 from Mr Roberts-Smith which referred to my two 27 August 2013 letters and invited me to meet with him to discuss the work of the Taskforce. I attach a copy of Mr Robert-Smith's letter at Attachment 4.
19. Mr Roberts-Smith and I met on 17 October 2013. By the time we met the DART's Third Interim Report had been made public.

20. The meeting confirmed and exacerbated the concerns which I had set out in my 27 August 2013 letter.
21. Mr Roberts-Smith opened that meeting by speaking with understandable passion about the beneficial effects which he believes the work of the DART is having for some individuals who were victims of abuse in Defence. He also spoke about his hopes that the personal involvement of a number of officers in the Restorative Engagement Program would support long term cultural change in the ADF.
22. When I took Mr Roberts-Smith to the matters raised in the Clarification letter he confirmed that he had decided that the DART would not be considering a number of the significant aspects of our Report at all. He did not offer any reasons for these decisions.
23. He also said that he would not consider asking the Minister to widen or remove doubt about the scope of his Terms of Reference so that he would consider these matters.
24. After the meeting I considered again the DART's Terms of Reference and the Minister's 8 March 2013 letter.
25. Some of the matters about which I have expressed concern were clearly within the Terms of Reference set for the DART. It might be argued that some of the matters about which I had raised concerns are not within the DART's Terms of Reference.
26. However, there is no doubt that Minister Smith's 8 March 2013 letter clearly confirmed that all of the aspects of our Report about which I had expressed concerns had been committed to the DART. There is no ambiguity in the Minister's 8 March 2013 letter.
27. I do not know why Mr Roberts-Smith has decided to ignore some aspects of the Terms of Reference and the assurances given by Minister Smith in the 8 March 2013 letter. There has not been any explanation in any of the DART's Interim Reports – including the Fourth Interim Report which was published after our meeting – of why Mr Roberts-Smith has decided on this approach.
28. As I mentioned above, in our meeting Mr Roberts-Smith did speak at length about the beneficial impacts that the work of the DART was having. Mr Roberts-Smith did not expressly link that discussion with the concerns which I had raised in the 27 August 2013 letter but if the implication was that those beneficial effects justify ignoring those other matters, then that is clearly not an adequate response.
  - I have no doubt that the activities which the DART has been focused on have had positive outcomes for some individuals and will contribute to cultural change in the ADF.

- However, I cannot see any reason to think that those positive outcomes would have been prejudiced if the other matters which our Report which Mr Roberts-Smith has decided not to pursue, were pursued.
29. Apart from the aspects of our Report which Mr Roberts-Smith has decided not to consider and report on at all, it is also a matter of concern to me that by the time we met in October 2013 Mr Roberts-Smith had not found any time to consider other matters from our Report which Minister Smith's 8 March 2013 letter acknowledged were important and assured me that Mr Roberts-Smith was already considering and/or would be considering those matters.
30. Mr Roberts-Smith commented in our October meeting that he had to set some priorities. I understand that the DART's resources – although extensive with 100.93 full time equivalent staff referred to at page 25 of the Third Interim Report - are not unlimited.
31. However, many of these matters could have been advanced with minimal involvement from Mr Roberts-Smith or from DART personnel and with significant positive benefits for the welfare of individuals affected by abuse in the ADF in the past. (See below pages 13-15 and my letter of 29 October 2013 to Mr Roberts-Smith attached at Attachment 5)
32. There is nothing in the Fourth Interim Report published in December 2013 to indicate that the Mr Roberts-Smith had moved on those issues.
33. Up until time of our October meeting I had assumed that the DART would at least be considering the initial assessments and recommendations from Parts 1-23 of Volume 2 of our Report for allegations where the complainant had agreed to their matter being transferred to the DART.
34. The Minister's 8 March 2013 letter had clearly confirmed that the DART was considering those aspects of Volume 2 of our Report on specific allegations. Mr Roberts-Smith stated to the FADT Committee that:
- We will look at the recommendation they [Phase 1 Report] have made, and our task, as I understand it, is to determine whether or not we agree with that recommendation and that assessment.
35. However, after the October meeting I looked again at the Case Studies in the DART Interim Reports which explained how the DART handles a matter transferred from our Review. There is no express reference to any such consideration ??.
36. Accordingly I decided I should ask Mr Roberts-Smith to clarify whether the DART under his direction was taking into account those aspects of Volume 2 of our Report.

#### **My 29 October 2013 letter to Mr Roberts-Smith**

37. I wrote to Mr Roberts-Smith on 29 October setting out in detail my understanding of the outcome of the 17 October meeting and providing him with a summary of questions for clarification including a request for



clarification of whether the DART was taking into account initial assessments and recommendations from Parts 1-23 of Volume 2 of our Report. (See attachments 5 and 6.)

38. My 29 October 2013 letter included the following explanation of the purpose of my letter:

As foreshadowed in my telephone conversation with you last week, I am writing to you now to confirm the understanding which I have following my meeting with you on Thursday 17 October 2013 of:

- the scope of the matters being dealt with by the DART;
- the manner in which the DART is carrying out its tasks including the range of 'available outcomes' which the DART discusses with complainants;
- some aspects of the DART's Interim Reports which do not accurately describe how the DART is/has been handling complaints.

I ask that you correct anything that I have misunderstood.

In our meeting you did not have with you any material and you were relying solely on your recollection. Since our meeting you have called me to modify your answer to one question which I had raised in the meeting. Of course, with access to materials you may be able to expand on, or qualify, some of your other answers.

Our meeting ended abruptly because you had another commitment. Accordingly I also include in this letter some questions about other matters which we did not get to in our meeting.

I understand that you are very busy doing important work. However, our meeting has confirmed my concerns that - contrary to my understanding of assurances given to me by the then Minister for Defence, the Hon Stephen Smith MP in a letter of 8 March 2013 - significant aspects of our report have not been, and will not be, dealt with by the DART.

As I foreshadowed to you in our 17 October 2013 meeting, I intend to take up my concerns with the Minister for Defence.

Given the background set out below I also intend to inform the Attorney-General and the Senate Foreign Affairs, Defence and Trade Committee of where I have got to on those matters. I have not yet decided whether or not I will also inform the Shadow Minister for Defence and Attorney-General about these matters but my current inclination is that it would be appropriate to do so.

Accordingly, I ask that you provide review and respond to the matters set out in this letter so that I can communicate with the Minister and others with certainty about these aspects of the DART's work.

To assist you in reviewing and responding to the matters which I have discussed in this letter I have brought together in the attached summary of all of the matters for confirmation/clarification I discuss in this letter.

39. Mr Roberts-Smith has not replied to the 29 October 2013 correspondence and has not replied to my inquiries about whether he will respond. The Fourth Interim Report of the DART published in December last year does not refer to, or resolve, the issues which I have identified and discussed with Mr Roberts-Smith.
40. It is my understanding that:
- Mr Roberts-Smith has decided that he and the DART will not consider some significant aspects of the Phase 1 Report despite unambiguous assurances in Minister Smith's 8 March 2013 letter that he and the DART were already doing so and/or would do so.
  - Despite acknowledgements in Minister Smith's 8 March 2013 letter that matters which I had raised were important and despite unambiguous assurances in that letter that the DART was already considering and/or would be considering other aspects of our Report, Mr Roberts-Smith has not considered these matters and is giving them low priority.
  - Some statements in the first three DART Interim Reports about how the DART manages cases were not accurate. The Fourth Interim Report published in December has not corrected those inaccurate statements.
  - I now also have doubts that the DART has been taking into account initial assessments and recommendations on specific allegations contained in Parts 1-23 of Volume 2 of our Report for matters which have been transferred to the DART with the consent of the complainant. If the DART has not been taking those aspects of Volume 2 of our Report into account, then that indicates a further failure to fulfil the assurances given in the Minister's 8 March 2013 letter and confirmed by the statement made by Mr Roberts-Smith when he appeared before the Committee on 14 March 2013 – 'We will look at the recommendation they [Phase 1 Report] have made, and our task, as I understand it, is to determine whether or not we agree with that recommendation and that assessment'.

#### **The DART's Fourth Interim Report**

41. The Fourth Interim Report did not correct statements in earlier Interim Reports which – so Mr Roberts-Smith informed me in our 17 October 2013 meeting – were not accurate.
42. There is nothing in that Fourth Interim Report to indicate that Mr Roberts-Smith has commenced the consultation which the 8 March 2013 letter said the Minister had specifically asked Mr Roberts-Smith to undertake with the Secretary of the Department of Defence.

#### **A possible role *now* for the DART on these issues?**

43. I indicated in my submissions to the Committee in March 2013 that I was profoundly disappointed that the Government's 'response' to many aspects of our Report was not to make decisions but to send most of the findings,

statements of issues and recommendations from our Phase 1 Report to the newly established DART for its reconsideration.

44. I am now even more concerned that Mr Roberts-Smith as the sole decision-maker for the DART has not even fulfilled the assurances which Minister Smith gave me – and through me – the FADT Committee and the Parliament - in his 8 March 2013 letter.
45. I do not suggest that it would be appropriate to ask Mr Roberts-Smith to consider these matters now. For whatever reason, he has already decided that these matters should not be considered by him and the DART.

#### **Communications with Defence Minister Johnston and Attorney-General Brandis**

46. Minister Smith referred my 27 August 2013 letter to incoming Minister for Defence Senator Johnston and incoming Attorney-General Senator Brandis in September last year.
47. I have not yet received a written reply from either the Minister or the Attorney.
48. I contacted the Minister's office in November 2013 these matters. Ms McKean and I met with Minister Johnston on 9 December 2013. (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.)
49. I attach copies of correspondence with the Minister and his staff on these issues at Attachment 1 (with material on Royal Commission deleted).
50. I have been informed by the Minister's office (See email of 17 January 2014 in Attachment 1) that:

At this time it can be expected we would respond to you toward the end of February to ensure we have properly covered off on the issues you have raised.'

51. More recently the Minister's office has informed me (see email of 30 January 2014 in Attachment 1.)

Be assured that Minister takes very seriously the issues you have raised. The Minister has been and remains very concerned about the allegations of harm done to current and former Australian Defence Force members. The outcomes of the Defence Abuse Review [sic] Taskforce are of specific concern. The Minister will be addressing early this year a range of issues dealing with Military Justice in general and the outcomes of the Defence Review Taskforce in particular.

#### **The significance of these matters**

52. The assurances which Minister Smith set out in his letter of 8 March 2013 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.

53. 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.
54. Apart from issues of effective Parliamentary scrutiny, the issues are themselves inherently significant.
55. My 8 November 2013 email to the Minister's Chief of Staff (See Attachment 1) 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.
- We had identified the difficulties which damaged individuals have in being accepted for DVA benefits when they base their claim on alleged abuse which had occurred decades earlier when they were in Defence training establishments. They were met with incredulity that the appalling abuse alleged could have occurred and/or with scepticism because they did not report at the time.



- 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.
  - In his March letter to me the Minister said that he had asked Mr Roberts-Smith to consult with the Secretary of Defence on these issues.
- However, it is my understanding after reading the DART Interim reports and after meeting with Mr Roberts-Smith that the DART will not consider whether or not to recommend that Defence and DVA be launched on these tasks until the DART has completed all of its other work.

...

56. See also the matters which I asked the Minister's office to draw to the attention of the Minister in my email of 25 January 2014 (See Attachment 1)

The Third 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.

It was, therefore, a disappointment to me when I met with Mr Roberts-Smith in October 2013 that he confirmed that the consultation which Minister Smith had asked him to undertake had not occurred.

Mr Roberts-Smith has had some consultation with DVA about the possibility of DVA decision-makers taking into account material from the DART. However, that material is much more limited than the material which could be collected as identified in our April 2012 Report.

It is a particular disappointment that the Secretary himself had not taken the lead and initiated the consultation which Minister Smith had requested in March last year.

### **Model Litigant**

57. For reasons which I set out in the 27 August 2013 Clarification letter, the failure of the Commonwealth to advance these matters also raises issues of compliance with the letter and the spirit of the Model Litigant Policy.

### **Has the DART resolved all issues of past abuse?**

58. It is most unlikely that the DART has reached all or even most of the people who have been affected by abuse in the past. As I explained in my 5 December 2013 email to the Minister's Chief of Staff (See Attachment 1)

#### **THE DART HAS NOT FIXED ALL OR MOST PAST ABUSE**

##### **How many victims of past abuse are there?**

I emphasise the point I made at the start of our meeting - the 2500 or so individuals whose complaints are before the DART are likely to represent only a small proportion of individuals who have been affected by abuse in the ADF.

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

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

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

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

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

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

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

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

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

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

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

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

#### **The DART has done very little to deal with perpetrators**

Volume 1 of our Report and the Supplement to Volume 1 outlined the confusion that has existed in the ADF for many years about whether or not administrative action can be taken in relation to conduct which might also constitute a sexual offence. Many of our recommendations in Parts 1-23 of Volume 2 for responding to particular allegations included recommendations for Service Chiefs to consider administrative action. See the Volume 2 Explanatory Materials including the Attachments. These are set out at Appendix 2 of the April 2012 Supplement to Volume 1.

I have set out in the August and October correspondence previously forwarded to you my concerns about confusion indicated in DART Interim Reports about the range of possible administrative action and the possible pursuit of administrative action in relation to conduct which might also be criminal.

According to the FAQs on the DART website at the end of September the DART had not referred a single matter to Defence with a recommendation for administrative action.

The DART recently announced that it has referred 18 matters to State and Territory police for consideration for possible criminal investigation. That

seems a small number. My recollection is that in our Report from the smaller number of allegations before our Review we identified over 80 matters for referral to Police. (We usually also recommended that these matters be considered for administrative action if the alleged perpetrator was still in the ADF.)

As far as I am aware Mr Roberts-Smith has not requested powers under the Defence Inquiry Regulations or other investigatory powers.

The DART has focussed on asking complainants what outcomes they want. There has not been any call by the DART or by the CDF for those with information relevant to identifying perpetrators to come forward to inform CDF and Service Chief assessments of the fitness of individuals in the ADF for their current positions and/or for advancement. Such a call may well have encouraged serving personnel to come forward with relevant information. Accordingly - it is likely that other abuse issues are as yet unreported and will come to the surface from time to time.

I can expand on these issues if there is any doubt about the breadth and depth of the issues of unreported abuse. See also Chapter 6 of Volume 1 of our Report.

Dr Gary A Rumble

3 February 2014



## ATTACHMENT 1



Gary Rumble

**Report of the Review of allegations of sexual and other abuse**

1 message

**Gary Rumble**

8 November 2013 18:11

To:

Simeon Gilding  
Chief of Staff  
Office of the Minister for Defence

Dear Simeon

Thank you for taking my call yesterday. I apologise for the delay in forwarding the attached material.

Report of the Review of allegations of sexual and other abuse in Defence (Phase 1)

I was the leader of the Review of allegations of sexual and other abuse - commonly but misleadingly referred to as the DLA Piper report. The report from the Review which I led - Phase 1 for ease of reference - contains only the findings, conclusions etc of the Review leaders and not the views of DLA Piper or any other contractor connected with the Review.

When I appeared before the Senate FADT Committee in March, Minister Johnston - then the Shadow Minister - participated in that hearing and is familiar with the basis on which the Phase 1 Review was conducted.

In June 2011 when the media was carrying reports of concerns that our Review would not be rigorous because we were not independent of Defence, in consultation with Defence Legal and with the office of Minister Smith a media release was issued on behalf of the Review leaders.

That media release included:

**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 this Review if we thought it was a sham.

...

The Report will contain and will only contain assessments, conclusions and recommendations of the Review members - Dr Gary Rumble, Professor Pearce and Melanie McKean.

I have proceeded through this process on the basis that I will not be party to a sham or a cover-up of the findings of our report.

I see it as flowing from the Minister's agreement to the Review being conducted on that basis that I can seek clarification of whether or not there is a genuine response to aspects of our Report.

That is why I am seeking a meeting with Minister Johnston.

Letters to Minister Smith attached have been referred to Minister Johnston

I had copied those letters to then Shadow Minister for Defence Senator Johnston and others in August. I received responses from Minister Smith in September after the election informing me that he would not be making a substantive response and that he was referring my August letters and his replies to the incoming Minister for Defence and Attorney-General.

#### Other summary material I have sent to Mr Roberts-Smith

I will separately forward to you an email with attached notes which I have sent to Mr Roberts-Smith to confirm the outcome of a meeting which I had with him on 17 October. I have not yet had a reply from Mr Roberts-Smith.

#### Media interest

Yesterday I was contacted by Channel 10 and Channel 7 each seeking to arrange an interview with me to discuss my submission making the case for a Royal Commission in relation to the ADFA Legacy. It seems that Channel 10's and Channel 7's calls were prompted by News Corp Australia newspaper reports yesterday referring to the submission.

The submission document referred to in the newspaper reports seems to correspond to the 'Case for Royal Commission' document which is forwarded with this email. I do not know how the newspaper reporters obtained a copy of the letter.

I told the Channel 10 representative that - at this stage - I would not participate in any interview without first speaking to the Minister. I have not yet returned the call of Channel 7 and have no plans to do so in the near future.

Coincidentally I had been intending to make contact with the Minister's office yesterday afternoon even before the media reports appeared.

#### My request for a meeting with the Minister

As discussed yesterday - I request a meeting with the Minister as soon as possible.

In that meeting I would be willing to discuss the case for a Royal Commission into the ADFA legacy if the Minister wishes to do so - or any related issues. However, I have set out the main case for that Royal Commission thoroughly in the attached letter and that probably does not need a face to face discussion. (Mr Roberts-Smith has raised a couple of points which I may answer in a short supplementary note.)

The main and pressing reason why I seek the meeting with the Minister is that my meeting with Mr Roberts-Smith has confirmed the concerns set out in the attached clarification letter.

I had sought clarification from Minister Smith of the intended scope of the DART's terms of reference - and - if as seemed to be the case, the DART was not dealing with some significant aspects from the Phase 1 report, then what had been decided about those aspects of the Report.

In broad terms Mr Roberts-Smith has confirmed that - despite what appeared to be unambiguous assurances given to me by Minister Smith in a letter in March of this year - a letter which I passed on to the FADT Committee - Mr Roberts-Smith construes his terms of reference as not reaching to significant aspects of the matters covered in the Report from the Review which I led.

I have detailed those gaps in the coverage of our report by the DART in the clarification letter and the in the notes which I have sent to Mr Roberts-Smith and which I will forward to you.

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.
- We had identified the difficulties which damaged individuals have in being accepted for DVA benefits when they base their claim on alleged abuse which had occurred decades earlier when they were in Defence training establishments. They were met with incredulity that the appalling abuse alleged could have occurred and/or with scepticism because they did not report at the time.
- 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.
- In his March letter to me the Minister said that he had asked Mr Roberts-Smith to consult with the Secretary of Defence on these issues.
- However, it is my understanding after reading the DART Interim reports and after meeting with Mr Roberts-Smith that the DART will not consider whether or not to recommend that Defence and DVA be launched on these tasks until the DART has completed all of its other work.

As I have outlined above, I have proceeded through the Review process on the basis that I will not be party to a sham or a cover-up of the findings of our report.

I am deeply concerned about the matters which I have outlined above.

The gaps in the response to our Phase 1 report go to the probity of Defence and to public confidence in Defence and to the welfare of many current and former Defence personnel.

Let me say now that given Mr Roberts-Smith's lack of enthusiasm for taking up the issues which I have outlined, it will not inspire confidence if the response is now to ask Mr Roberts-Smith to add these matters to his tasks.


Accordingly I seek a meeting with the Minister as a matter of urgency.

I reside near Coffs Harbour and will need to fly to Canberra to meet with the Minister. I can do so if given half a day's notice.

I look forward to hearing from you.

Dr Gary A Rumble

## 2 attachments

 **Ltr to Minister for Defence and AG - clarification.pdf**  
349K

 **Case for Royal Commission.pdf**  
453K





Gary Rumble

## Report of Review of allegations of sexual and other abuse in Defence - Notes for meeting Monday 9 December

1 message

Mr Simeon Gilding  
Chief of Staff  
Office of Minister for Defence  
Dear Simoen

I thank you and your colleague Mr Guy Boekenstein for meeting with me on the afternoon of 2 December.

### Meeting with the Minister next Monday 9 December

I have made a booking to fly back to Canberra for the meeting with the Minister at 10.00am next Monday 9 December. Ms Melanie McKean who was the other leader of the Review of allegations of sexual and other abuse in Defence will also attend that meeting.

### Material for the meeting

You informed me that it was your understanding that the Minister had already read into the material which I had provided when I first made contact with you around 8 November outlining my concerns and seeking a meeting with the Minister.

I am grateful for that.

I believe that - if the Minister has not already been briefed with these materials - he would also be assisted by being provided with copies of:

- The table of Findings, Phase 2 Issues and recommendations which is set out at Pages xv-xxx of the April 2012 Supplement to Volume 1 of our Report
- The April 2012 Volume 2 Explanatory Materials (with 11 Attachments) which are set out as Appendix 2 of the Supplement to Volume 1 of our Report
- Minister Smith's 26 November 2012 statement of the Government response to the Report of the Review of allegations of sexual and other abuse in Defence
- The letter which I sent to Minister on behalf of myself and Ms McKean on 17 December 2012 querying the absence from the response of reference to significant aspects of both Volumes of our Report and highlighting that - although the Government response included reference to an ADFA 24 - that the number involved was likely to be more than 24.
- Minister Smith's reply to the December letter provided to me on the evening of 8 March 2013
- Hansard of the March 2013 hearings of Senate FADT Committee and my submission and supplementary submission to the Committee.

### SUMMARY OF KEY POINTS

As foreshadowed I provide this note to outline the key points from that short meeting in which I focussed on the main matters where actions which Minister Smith had assured me - and through me the Senate FADT Committee - would be undertaken by the DART, have not been undertaken. Mr Roberts-Smith has not replied to my 29 October letter to him. It may be that by the time we meet with the Minister that Mr Roberts-Smith will have provided to the Minister the Fourth Interim Report of the DART.

It may be that Mr Roberts-Smith will have taken into account in that Fourth Interim Report some of the points which I have raised.

However, on the basis of the information which is available to me at this point I also outline the actions which I recommend that the Minister consider taking now.

I apologise for the length of this email.

However, the issues have I have gone into detail with these recommendations:

- to assist the Minister by offering some specific options for action
- because these issues are fundamentally important to the welfare of individuals affected by abuse in the ADF
- because these issues are fundamentally important to the ADF's management of abuse in the ADF and to public and ADF personnel confidence in the ADF's management of abuse
- because significant aspects of our report on these issues have been waiting for attention from April 2012 (and from October 2011 in some cases)
- because - given the history - I have no confidence that broad statements of approach will result in action.

### **THE DART HAS NOT FIXED ALL OR MOST PAST ABUSE**

#### **How many victims of past abuse are there?**

I emphasise the point I made at the start of our meeting - the 2500 or so individuals whose complaints are before the DART are likely to represent only a small proportion of individuals who have been affected by abuse in the ADF.

Over the past decades hundreds of thousands of individuals have been members of the ADF. Many previous reports have identified the deeply entrenched aspects of ADF culture which discourage reporting of abuse.

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

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

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

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

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

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

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

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

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

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

#### **The DART has done very little to deal with perpetrators**

Volume 1 of our Report and the Supplement to Volume 1 outlined the confusion that has existed in the ADF for many years about whether or not administrative action can be taken in relation to conduct which might also constitute a sexual offence. Many of our recommendations in Parts 1-23 of Volume 2



for responding to particular allegations included recommendations for Service Chiefs to consider administrative action. See the Volume 2 Explanatory Materials including the Attachments. These are set out at Appendix 2 of the April 2012 Supplement to Volume 1.

I have set out in the August and October correspondence previously forwarded to you my concerns about confusion indicated in DART Interim Reports about the range of possible administrative action and the possible pursuit of administrative action in relation to conduct which might also be criminal. According to the FAQs on the DART website at the end of September the DART had not referred a single matter to Defence with a recommendation for administrative action. The DART recently announced that it has referred 18 matters to State and Territory police for consideration for possible criminal investigation. That seems a small number. My recollection is that in our Report from the smaller number of allegations before our Review we identified over 80 matters for referral to Police. (We usually also recommended that these matters be considered for administrative action if the alleged perpetrator was still in the ADF.) As far as I am aware Mr Roberts-Smith has not requested powers under the Defence Inquiry Regulations or other investigatory powers. The DART has focussed on asking complainants what outcomes they want. There has not been any call by the DART or by the CDF for those with information relevant to identifying perpetrators to come forward to inform CDF and Service Chief assessments of the fitness of individuals in the ADF for their current positions and/or for advancement. Such a call may well have encouraged serving personnel to come forward with relevant information. Accordingly - it is likely that other abuse issues are as yet unreported and will come to the surface from time to time. I can expand on these issues if there is any doubt about the breadth and depth of the issues of unreported abuse. See also Chapter 6 of Volume 1 of our Report.

## **MEDIA, ANONYMOUS AND OTHER THIRD PARTY ALLEGATIONS**

For the Review of allegations of sexual and other abuse in Defence we were required to report on all relevant allegations made in the relevant period including media, anonymous and other third parties (family, friends, witnesses etc).

It was also clear from our Terms of Reference that we were to report on Defence management.

In Parts 1-23 of Volume 2 of our Report we included our reports on media and other third party and anonymous allegations and we reported on allegations about Defence mismanagement.

It is clear that Mr Roberts-Smith has only been dealing with allegations from 'complainants' - that is with alleged victims who have approached the DART or alleged victims who have agreed to their matter being referred to the DART from DLA Piper. Defence management does not appear to be a central aspect of Mr Roberts-Smith's considerations.

It is also clear from my meeting with him that Mr Roberts-Smith has no wish to consider media or other allegations.

Many of the media and other third party allegations on which we reported in Parts 1-23 of Volume 2 raised serious issues of abuse in the ADF and/or Defence mismanagement.

We made specific and detailed recommendations in Parts 1-23 of our Report about what action should be taken in Phase 2.

Many of our recommendations were for referral to the relevant Service Chief to gather information and/or to consider specific possible actions and for the Phase 2 body to monitor how the ADF resolved the matter. See Volume 2 Explanatory Materials (which are set out as Appendix 2 to the April 2012 Supplement to Volume 1).

If these media and other third party allegations are left without a response, then it is inevitable that Service Chiefs will not be informed of situations of which they should be aware and that abuse and/or mismanagement which should have a response will not be dealt with at all.

However, there is also a broader impact of media allegations - and that is that if there is no clear and public response to media allegations, the allegations can be republished from time to time and can do recurring damage to the public's and ADF personnel's confidence in ADF's commitment to responding to abuse.



This could be particularly damaging for individuals who suffer abuse in the future and who do not report because unanswered media allegations cast doubt on whether the ADF is genuine in its public declarations.

I recommend that the Minister immediately direct the Department to call on DLA Piper:

- To provide the Minister with an unredacted version of Appendix 1 of the April 2012 Supplement to Volume 1 in which we brought together our report to the Minister of our Volume 2 assessments and recommendations on all of the allegations from the June 2011 Four Corners program;
- To provide the Secretary with a version of the same Appendix with such redactions - if any - as Melanie McKean and I signed off on for the working version of these Four Corners program assessments and recommendations. (It is unlikely that there would have been any need for redactions relating to these media allegations in the working version going to the Secretary but it is some time since we prepared the Report and I do not have a clear recollection of whether there were any redactions of our Report on this group of allegations.
- The Minister and the Secretary consider our assessments and recommendations on these allegations.

I also recommend that the Minister direct Defence to engage Melanie McKean and me to work with DLA Piper staff:

- to gather from Parts 1-23 of Volume 2 of our Report all of our assessments and recommendations on the media and other third party and anonymous allegations that Mr Roberts-Smith has not substantively dealt with; and
- to prepare an unredacted version of those extracts from Parts 1-23 for the Minister and a redacted working version for the Secretary.

The redacted working version would have the redactions which Melanie McKean and I signed off on as we prepared our Volume 2 Report.

The Minister could then - with the benefit of advice and assistance from the Secretary - consider what to do about those assessments and recommendations.

In many cases our recommendations were for referral to a Service Chief for consideration of a range of possible actions so this task should not burden the Secretary too much.

It would be appropriate for there to be some monitoring of how the Service Chiefs resolved each of these matters.

We could discuss options for monitoring with the Minister at Monday's meeting.

#### **CURRENT IMPACTS OF PAST ABUSE**

In our letter of 17 December 2012 to Minister Smith we drew attention to some issues of impacts on victims of abuse:

- The Phase 2 Issues 5 and 6 which we had identified for Phase 2 consideration in our October 2011 Volume 1 Report relating to the need to reach people who were involved as victims or as perpetrators who are suffering or are at risk of suffering mental health problems:
- The Phase 2 Issues S5 and S9, S10 and S11 identified in the April 2012 Supplement to Volume 1 - relating to work which the Department of Defence and DVA could have been doing in liaison with Veterans' representative bodies to gather information about the history of abuse in the ADF to enhance the prospects of damaged and poorly resourced individuals gaining access to DVA benefits and counselling and other assistance. (This information could also inform risk management to reduce abuse in the ADF.)

In his letter of 8 March 2013 the Minister referred to these groups of issues. In my submissions to the FADT Committee and in my appearance before that Committee I drew attention to my continuing concern about the adequacy of Minister Smith's response.



However, Minister Smith did at least say that 'I have as well asked the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues'.

Mr Roberts-Smith has confirmed to me that he has not consulted on these issues. I infer that the Secretary of the Department and the CDF have not initiated consultation with Mr Roberts-Smith on these issues either.

It seems to me that there is a real issue of whether the Commonwealth's failure to move on these issues which have been before the Government since April 2012 puts the Commonwealth in breach of the Model Litigant policy.

See my 27 August 2013 'Clarification' letter and my 29 October letter to Mr Roberts-Smith.

See also Attachment 11 to the Volume 2 Explanatory Materials explaining what we meant by the shorthand recommendation which we included for many of the matters reported on in Parts 1-23 of Volume 2 - 'The Review recommends Phase 2 liaise with the source/alleged victim about a possible approach to DVA to be assessed/re-assessed.' The DART's discussion of 'available outcomes' does not include any similar outcome.

Access to ongoing DVA support which adapts to the changing circumstances could be more important to many of these individuals than a one-off reparation payment through the DART scheme.  
I recommend that the Minister for Defence:

- Instruct the Secretary of the Department of Defence to initiate consultation by the end of January 2014 with Mr Roberts-Smith on options for responding to Issues 5 and 6 and by the end of April 2014 to present a plan for responding to those issues. [Volume 1 Issues 5 and 6 - see discussion in October 2011 Volume 1 page 126.]
- instruct the Secretary of the Department of Defence to submit to the Minister by the end of January 2014 a plan for identifying and collecting by the end of March 2014 a consolidated set of all reports of previous inquiries into abuse and related issues in the ADF (including in the different Services before they were grouped as the ADF) from 1950 to date [Compare Supplement to Volume 1 Issue S5 - see discussion at Supplement Page 64)];
- Consult with the Minister for Veterans Affairs about:
  - establishing arrangements for ongoing gathering and exchange of information between Defence and DVA about abuse in the ADF including access to previous and future reports (de-identified as necessary), identification of clusters of abuse, identification of high-risk Defence environments and identification of possible serial perpetrators [Compare Supplement to Volume 1 Issue S9 - see discussion at Supplement Page 71)];
  - considering directing DVA to issue and publicise (through Veterans affairs consultative forums and otherwise) statements to claimants and their advisers about information which is being gathered by Defence and DVA which will be available to assist claimants to establish their eligibility for benefits; [Compare Supplement to Volume 1 Issues S10 and S11 - see discussion at Supplement Page 72)];
  - asking DVA to report to their Minister on the extent to which the findings of reports relating to abuse in the ADF including findings of the Report of the Review which I led and findings of the DART can be accepted as corroborating allegations of abuse in affecting eligibility for DVA benefits. [Compare Supplement to Volume 1 Issue S10 - see discussion at Supplement Page 72)];
  - liaising through Veterans consultative frameworks on how to reach individuals not receiving but who may be eligible for and in need of assistance - including assistance for mental health problems. [Compare Supplement to Volume 1 Issue S11 - see discussion at Supplement Page 72)];
- Regularly report to Parliament jointly with the Minister for Veterans Affairs on the progress with these matters.

#### **OTHER ACTIONS WHICH HAVE NOT BEEN CARRIED THROUGH**

Gmail - Report of Review of allegations of sexual and other abuse in Defence - Notes ... Page 6 of 7

I assume that the Minister will be carrying through with Minister Smith's commitment to report regularly to Parliament on progress with Pathway to Change and other Defence abuse issues.

Accordingly I also recommend that the Minister ask Mr Roberts-Smith to provide a substantive response to my correspondence of 29 October 2013 and that the Minister include that response in a report to Parliament.

There are other aspects of our report on which action by the DART was promised by Minister Smith but the DART had not delivered when I met with Mr Roberts-Smith in the middle of October - referring to Defence the four Parts of Volume 2 reporting on ADFIS and F&R database matters - the other general systemic issues identified for Phase 2 consideration which the DART has not yet considered.

I do not have any specific recommendations on these yet.

**[Material on Royal Commission Deleted]**



11 December 2013

Senator the Hon David Johnston  
Minister for Defence  
Parliament House  
CANBERRA ACT 2600     **ATTENTION: Ms Rebecca Horton**

Dear Minister

**REPORT OF REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER  
ABUSE IN DEFENCE**

I thank you for meeting with Melanie McKean and me on 9 December 2013.  
I note that you propose to provide a written response.

**Administrative action for conduct which might constitute State or Territory  
criminal sexual offence**

One major topic which you raised towards the end of our meeting was the appropriate process for dealing with, and how to ensure natural justice for alleged perpetrators of, alleged conduct which could constitute a sexual offence under relevant State or Territory law but which might also provide a basis for administrative action.

We gave a lot of consideration in our Report to the issues of possible administrative action for conduct which may also constitute a State or Territory criminal sexual offence.

We found that there had been a widespread misconception in the ADF that – although it was possible and often appropriate to take administrative action in relation to conduct which might also be prosecuted as State or Territory non-sexual offence - it was not possible to take any administrative action in relation to conduct which might constitute a State or Territory sexual offence.

We obtained confirmation from Defence Legal that the relevant DI(G)s should not be construed as having that effect and that often it would be appropriate and necessary for Command to take administrative action in relation to conduct which might constitute State or Territory criminal sexual offence – just as it is often necessary and appropriate to take administrative action to respond to conduct which might also constitute a State or Territory criminal non-sexual offence.

We recommended that Defence Instructions be clarified and that APS procedures could provide an appropriate model. It is my understanding that there have been some changes to Defence Instructions but I have not seen them.

I brought together relevant extracts from our Report at Tab B of the spiral bound bundle of EXTRACTS FROM VOLUME 1 AND SUPPLEMENT TO VOLUME 1 OF *REPORT OF REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE* which I provided with my letter of 27 August 2013 relating to the possibility of a Royal Commission.

For your convenience I provide another copy of that bundle of extracts from the Report and another copy of the letter of 27 August 2013. The letter itself also contains some discussion of this topic.

In Parts 1-23 of Volume 2 of our Report on specific allegations we made many recommendations to the effect that specific allegations should be referred both to Service Chiefs for consideration of possible administrative action and to ADFIS to coordinate referral to civilian police for consideration for possible sexual assault charges. See the Volume 2 Explanatory Material which is Appendix 2 to the April 2012 Supplement to Volume 1. Extracts are included in the enclosed spiral bound bundle.

### **Senate FADT Committee**

I noted in my other letter of 27 August 2013 entitled CLARIFICATION OF GOVERNMENT RESPONSE TO *REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE* that I may have to notify the Senate Foreign Affairs, Defence and Trade Committee that there needs to be clarification and/or correction of:

- statements about the Government response to the *Report of the Review of allegations of sexual and other abuse in Defence* in Minister Smith's 8 March 2013 letter which I provided to the Committee with Minister Smith's consent; and
- the statements I made to the Committee in reliance on my understanding of the letter.

As you would be aware from the note of my meeting with Mr Roberts-Smith in the middle of October, my concerns about the matters which Mr Roberts-Smith is not dealing with through the DART processes seem to have been confirmed.

If the Fourth Interim Report of the DART is tabled or otherwise published in the near future then I will of course take into account any clarification which it provides.

However, whether or not the Fourth Interim Report is tabled in the near future, I intend to give the Committee an update before the end of the year on where I have got to with obtaining clarification on those matters.

Yours sincerely

Dr Gary A Rumble





Gary Rumble

## Report of Review of allegations of sexual and other abuse in Defence

1 message

10 January 2014 12:34

Mr Simeon Gilding  
Ms Rebecca Horton

Office of Senator the Hon David Johnston  
Minister for Defence

Dear Simeon and Rebecca

Towards the end of the meeting with the Minister on 9 December he said that he would be writing to respond to the matters which we had discussed.

When I forwarded some material to the Minister in December (marked for the attention of Rebecca Horton), I included in my cover letter the following statements:

As you would be aware from the note of my meeting with Mr Roberts-Smith in the middle of October, my concerns about the matters which Mr Roberts-Smith is not dealing with through the DART processes seem to have been confirmed.

If the Fourth Interim Report of the DART is tabled or otherwise published in the near future then I will of course take into account any clarification which it provides.

However, whether or not the Fourth Interim Report is tabled in the near future, I intend to give the Committee an update before the end of the year on where I have got to with obtaining clarification on those matters.

The Fourth Interim Report does nothing to allay my concerns that the assurances which Minister Smith's March letter gave about the scope of the work of the Taskforce which I passed on to the Senate FADT Committee are not being fulfilled by the Taskforce.

I have not yet carried through with the intention which I stated of providing an update to the Senate FADT Committee but I still do intend to inform the Committee.

When do you expect the Minister to provide the written response which he foreshadowed at our 9 December meeting?

Dr Gary A Rumble



Gary Rumble

## Your December meeting with the Hon David Johnston, Minister for Defence [SEC=UNCLASSIFIED]

1 message

Mason, David MR 1

17 January 2014 18:19

To:

UNCLASSIFIED

Dear Dr Rumble

I am writing to introduce myself as Minister Johnston's adviser on a range of legal issues and, specifically, on issues related to your report and the Defence Abuse Review Taskforce.

As I understand it, you met with the Minister and Simeon Gilding late last year. Your meeting canvassed a range of issues and this office committed to getting back to you on a number of these:

- SEMPRO - and the principle of 'restricted reporting';
- a "no, or loss of confidence" provision and the termination of ADF members; and,
- matters surrounding Department of Veteran's Affairs approach to data matching and looking into patterns of reported abuse to ensure applicants are treated equally.

I note that we undertook to write to you once we have the information and a way forward in dealing with the many issues arising.

As you can understand, many stakeholders who will need to be consulted are away with family on holiday. Consequently, it will take some time after that before we can expect fidelity around the issues and develop a way forward. At this time it can be expected we would respond to you toward the end of February to ensure we have properly covered off on the issues you have raised.

If you do have any queries, please do not hesitate to contact me. Email is best.

Regards

**David Mason**  
**Adviser**  
**Office of Senator the Hon David Johnston**  
**Minister for Defence**

**IMPORTANT:** This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.





Gary Rumble

**Re: Your December meeting with the Hon David Johnston, Minister for Defence [SEC=UNCLASSIFIED]**

1 message

Gary Rumble

25 January 2014 13:41

Mr David Mason  
Adviser  
Office of Senator the Hon David Johnston  
Minister for Defence

Dear Mr Mason

**REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE  
IN DEFENCE**

Thank you for introducing yourself.

As I stated in my 8 November 2013 email to Chief of Staff Gilding:

*The gaps in the response to our Phase 1 report go to the probity of Defence and to public confidence in Defence and to the welfare of many current and former Defence personnel.*

I note that you prefer to communicate by email. I am keen to see these matters moved forward to positive resolution. I am happy to take a telephone call if you have any questions as you are finding your way into the voluminous history of these matters.

**The matters to be covered by the Response which you are co-ordinating**

First I want to be sure that the Minister and I are not at cross-purposes on the matters for which I am seeking a response from the Minister.

You say in your email below:

*I note that we undertook to write to you once we have the information and a way forward in dealing with the many issues arising.*

The 9 December 2013 meeting with the Minister was wide-ranging and went beyond the issues for which I had requested the meeting.

Ms McKean and I were, of course, happy to engage with the Minister across the various matters which he raised and the Minister may well wish to address all of those matters in his written response(s).

However, when I contacted the Minister's Chief of Staff Mr Gilding early in November last year to ask for the meeting with the Minister I emphasised (see my emails of 8 November) that:



*... the main and pressing reason why I seek the meeting with the Minister is that my meeting with Mr Roberts-Smith has confirmed the concerns set out in the attached letter.*

The reference to the 'attached letter' was a reference to a letter - the Clarification letter - which I had sent to the then Minister for Defence the Hon Stephen Smith and then Attorney-General the Hon Mark Dreyfus QC, MP on 27 August 2013. I also copied that 27 August 2013 Clarification letter to the Senate FADT Committee and to Mr Roberts-Smith.

The outgoing Minister for Defence, the Hon Stephen Smith MP, informed me by letter in September 2013 that he had referred the 27 August 2013 Clarification letter to incoming Minister for Defence, Senator the Hon David Johnston and incoming Attorney-General the Hon George Brandis QC.

Minister Smith noted that:

*Progressing this matter is now a matter for the incoming Minister, Attorney-General and Government.*

I met with Mr Roberts-Smith in October 2013. That meeting confirmed and deepened the concerns which I had set out in the 27 August 2013 Clarification letter. I provided notes of that meeting to Mr Gilding on 8 November 2013.

Your email does not make any express reference to the 27 August 2013 Clarification letter.

It was my understanding from the 9 December 2013 meeting that the Minister would be writing to respond to the 27 August 2013 Clarification letter.

Can you please confirm that is your understanding?

If you have a different understanding I ask that you let me know as soon as possible.

In a 5 December email to Mr Gilding I made some suggestions for a range of actions the Minister could take to respond to the concerns which I had.

These suggestions were put together at short notice after I had had a preliminary meeting with Mr Gilding and were not intended to be comprehensive. Nevertheless, I ask that they be taken into account in considering responses to my 27 August Clarification letter.

And of course, it would be appropriate for the Minister to take into account the copies of notes about my meeting with Mr Roberts-Smith in October which I provided to Chief of Staff Gilding on 8 November 2013. Mr Roberts-Smith has not responded to me on those notes.

### **Communicating the Minister's responses in stages**

I also note that you say:

*As you can understand, many stakeholders who will need to be consulted are away with family on holiday. Consequently, it will take some time after that before we can expect fidelity around the issues and develop a way forward. At this time it can be expected we would respond to you toward the end of February to ensure we have properly covered off on the issues you have raised.*

I particularly ask that the Minister not delay responding and acting until *all* 'stakeholders' have been consulted on *all* issues.



The aspects of our Report which are in issue are wide-ranging. They are not all connected and can and should be dealt with separately without any further unnecessary delay.

These issues should not be new to the stakeholders.

We delivered Volume 1 of our Report in October 2011 and Volume 2 and the Supplement to Volume 1 in April 2012. Volume 1 and the Supplement to Volume 1 of our Report – with minor redactions – have been publicly available since the middle of 2012.

My 27 August 2013 letter was referred to Senator Johnston as the incoming Minister in September 2013.

As mentioned above, I stated in my 8 November 2013 email to Chief of Staff Gilding:  
*The gaps in the response to our Phase 1 report go to the probity of Defence and to public confidence in Defence and to the welfare of many current and former Defence personnel.*

I indicated to the Senate FADT Committee in March 2013 my deep disappointment that the previous Government took so long to make *any* decisions on our Report.

I also informed the Committee of the concern I had that the Government Response announced on 26 November 2012 did not clearly indicate what had been decided in relation to many aspects of our Report. Minister Smith wrote to me on 8 March 2013.

That letter contained assurances about the aspects of our Report about which I had sought clarification in my December 2012 letter to him.

The general theme of Minister Smith's 8 March 2013 letter was that Mr Roberts-Smith would consider and report on the issues, recommendations, findings etc made by our Report.

It was not apparent to me why the then Government could not have moved to make decisions on many of those matters immediately without sending them for further consideration and report by Mr Roberts-Smith.

It is particularly concerning that Mr Roberts-Smith has decided that he will not consider and report on many aspects of our Report despite the assurances given in Minister Smith's 8 March 2013 letter and despite the fact that I passed that letter with its assurances on to the FADT Committee.

I ask the Minister to move on each of these matters as they are ready for decision and action and not wait until all of them have been considered.

### **Gathering information to support applications for DVA benefits and reaching out to Veterans in need**

There is one particular set of issues for which I ask for urgent attention and action and for which after the 9 December meeting I had some hope that the Minister would move quickly.

I had hoped that the Minister would move quickly to consult with the Minister for Veterans Affairs so that they could make decisions on moving to get Defence and DVA started on gathering and sharing the kinds of information which could assist former members of the ADF who have been damaged by abuse in the ADF to get access to DVA assistance and benefits

and to liaise with Veterans' groups to notify them of this approach and to reach out to veterans in need.

It is now nearly two years since the Supplement to Volume 1 of our Report identified that Defence and DVA could be gathering this information and proactively assisting damaged former members of the ADF - as well as assisting Defence with abuse risk identification and management.

I drew particular attention to these issues in my submissions and evidence to the FADT Committee in March 2013. See especially my Supplementary Submission.

In his 8 March 2013 letter to me Minister Smith referred to these aspects of our April 2012 Supplement to Volume 1 and gave me the assurance:

*Noting your concern that systemic issues are important for responding to cases of past abuse, I have as well asked that the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of Defence and the Chief of Defence for responding to these systemic issues.*

The Third 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, 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.

It was, therefore, a disappointment to me when I met with Mr Roberts-Smith in October 2013 that he confirmed that the consultation which Minister Smith had asked him to undertake had not occurred.

Mr Roberts-Smith has had some consultation with DVA about the possibility of DVA decision-makers taking into account material from the DART. However, that material is much more limited than the material which could be collected as identified in our April 2012 Report.

It is a particular disappointment that the Secretary himself had not taken the lead and initiated the consultation which Minister Smith had requested in March last year.

I ask the Minister to move on these issues with urgency.

#### **Four Corners Program allegations**



My recollection is that towards the end of the 9 December meeting the Minister stated that he had seen everything which 'you [Ms McKean and I] had to say' on one of the particular Four Corners allegations on which we reported.

This surprised me because:

- I was not aware that the Minister had seen *any* of the 30 Parts of Volume 2 - which included our assessments and recommendations on the Four Corners allegations- or that he had seen an unredacted version of the appendix to Volume 1 which brought together our initial assessments and recommendations on the Four Corners allegations.
- We had not been able to finalise our initial assessment and recommendations on the particular Four Corners allegations which we were discussing with the Minister because as we were finalising our April 2012 Report, Defence informed us that they had found some more relevant material. We recommended to Minister Smith that he direct Defence to provide the material to us so that we could finalise our assessment and recommendations on those particular allegations. However, we never received those instructions.

Can you please clarify what the Minister meant with this comment that he had seen everything we had to say on these allegations?

### **Senate FADT Committee**

I intend to write to the Senate FADT Committee in the near future to let them know where I have got to with seeking clarification of whether the DART is carrying through with the assurances given by Minister Smith in his 8 March 2013 letter.

I intend to inform the Committee where I have got to with seeking a response from Minister Johnston on how the Government intends to deal with the aspects of our Report which are not being dealt with by the DART.

It would simplify that process for me if I could provide the Committee with copies of:

- my email correspondence on 8 November and 5 December 2013 with the Minister's Chief of Staff Mr Gilding
- my letter of 11 December 2013 to Minister Johnston
- this email to you.

Do you have any concern if I do so?

### **Media**

I informed Mr Gilding in November that I had been contacted by media seeking to interview me. I have been contacted again recently by media seeking to interview me.

Given that the meeting with the Minister was very encouraging I am not inclined to participate in such an interview.

### **Royal Commission**

**[Material on Royal Commission Deleted]**





Gary Rumble

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**RE: Your December meeting with the Hon David Johnston, Minister for Defence [SEC=UNCLASSIFIED]**

1 message

**Mason, David MR 1**  
To: Gary Rumble

30 January 2014 10:50

**UNCLASSIFIED**

Dear Dr Rumble

Of course you are entitled to make any representations you believe appropriate to the Senate Committee.

Be assured that Minister takes very seriously the issues you have raised. The Minister has been and remains very concerned about the allegations of harm done to current and former Australian Defence Force members. The outcomes of the Defence Abuse Review Taskforce are of specific concern. The Minister will be addressing early this year a range of issues dealing with Military Justice in general and the outcomes of the Defence Review Taskforce in particular.

Regards

**David Mason**  
**Adviser**  
**Office of Senator the Hon David Johnston**  
**Minister for Defence**

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**From:** Gary Rumble [mailto:]  
**Sent:** Wednesday, 29 January 2014 19:22  
**To:** Mason, David MR 1  
**Subject:** Re: Your December meeting with the Hon David Johnston, Minister for Defence [SEC=UNCLASSIFIED]

Mr David Mason  
Adviser  
Office of Senator the Hon David Johnston  
Minister for Defence

Dear Mr Mason

I expect to dispatch my foreshadowed letter to the Senate FADT Committee on Monday.

If you have any concerns about the copies of correspondence referred to in my last email I ask that you call me to discuss those concerns before the weekend.

regards

Dr Gary A Rumble

On 29 January 2014 17:50, Mason, David MR 1

wrote:

**UNCLASSIFIED**

Dear Dr Rumble

Thankyou for taking the time to set out your concerns and questions.

I will look into these as a priority and will contact you in due course.

Regards

**David Mason**  
**Adviser**  
**Office of Senator the Hon David Johnston**  
**Minister for Defence**

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**From:** Gary Rumble  
**Sent:** Saturday, 25 January 2014 13:42  
**To:** Mason, David MR 1  
**Subject:** Re: Your December meeting with the Hon David Johnston, Minister for Defence  
[SEC=UNCLASSIFIED]

Mr David Mason  
Adviser  
Office of Senator the Hon David Johnston  
Minister for Defence

Dear Mr Mason

**REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER  
ABUSE IN DEFENCE**

Thank you for introducing yourself.

## **ATTACHMENT 2**



27 August 2013

The Hon Stephen Smith MP  
Minister for Defence

The Hon Mark Dreyfus QC, MP  
Attorney-General

ccThe Hon Mr Len Roberts-Smith RFD, QC Senate Foreign Affairs, Defence and  
Defence Abuse Response Taskforce Trade References Committee

Dear Minister and Attorney

**CLARIFICATION OF GOVERNMENT RESPONSE TO REPORT OF THE  
REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE**

In this letter I ask for clarification of the Government's response to the *Report of the Review of allegations of sexual and other abuse in Defence*.<sup>1</sup> I was the leader of this Review.

Minister Smith announced the Government's response to the Report of the Review of allegations of abuse in Defence on 26 November 2012. Central to the Government's response to our Report was the decision that the Minister and the Attorney-General would establish the Defence Abuse Response Taskforce (DART).

In December 2012 I wrote to the Minister seeking clarification of the Government response to significant aspects of our Report which were not expressly referred to in the 26 November 2012 announcement.

On 8 March 2013 the Minister wrote to me replying to the December 2012 letter. The Minister's letter contained statements to the effect that significant aspects of our Report were being considered and/or would be considered by the DART.

With the Minister's consent, I provided a copy of his letter of 8 March 2013 to the Senate Foreign Affairs, Defence and Trade References Committee (FADT Committee) with my 12 March 2013 written submission to the Committee for its Reference relating to the Government response to our Report.

I also referred to the Minister's 8 March 2013 letter in my written submission and in my appearance before the Committee hearing on 14 March 2013.

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<sup>1</sup> 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.*"

Two Interim Reports from the DART to the Attorney and the Minister have been made public. The First Interim Report dated 8 March 2013 was made public the day of the FADT Committee hearing on 14 March 2013. The Second Interim Report is dated 17 June 2013 and was made public on 20 June 2013.

I have considered the DART's First and Second Interim Reports closely.

The issues which I raise in this letter relate to significant aspects of the *Report of the Review of allegations of sexual and other abuse in Defence* which I believed – on the basis of the Minister's letter of 8 March 2013 – were already under consideration, or were to be considered by the DART - but which:

- are not mentioned in the DART's Second Interim Report; and
- do not seem to come within the DART's statements in the Second Interim Report of its tasks of how it is carrying out its tasks.

Accordingly it seems that – despite the statements in the Minister's 8 March 2013 letter - these aspects of the *Report of the Review of allegations of sexual and other abuse in Defence* have not been, and will not be, considered by the DART.

As far as I am aware there has not been any other Government response to these aspects of our Report.

I set out below some questions in which – in broad terms – I ask the Minister and the Attorney-General:

To clarify or correct statements in the Minister's 8 March 2013 letter indicating that the DART has been tasked to consider and report to the Government on the aspects of the *Report of the Review of allegations of sexual and other abuse in Defence* which I detail in this letter.

For those aspects of the *Report of the Review of allegations of sexual and other abuse in Defence* which have not been sent to the DART to make recommendations to the Government, to clarify whether there have been Government decisions on these aspects of that Report.

For those matters on which there have not yet been Government decisions – to explain what are the processes to bring those matters to Government for decision.

I am copying this letter to the FADT Committee to alert the Committee that it seems that there needs to be clarification and/or correction of:

- statements about the Government response to the *Report of the Review of allegations of sexual and other abuse in Defence* in the Minister's 8 March 2013 letter which I provided to the Committee with the Minister's consent; and

- the statements I made to the Committee in reliance on my understanding of the letter.

I am also copying this letter to Mr Roberts-Smith. I invite Mr Roberts-Smith to correct or clarify any aspect of the DART's Interim Reports which I have misunderstood.

I am aware that the Government is now in the Caretaker period. I am also aware that Minister Smith is not seeking re-election.

However, neither of those facts precludes the Minister and the Attorney from clarifying decisions already made about the Government's responses to the *Report of the Review of allegations of sexual and other abuse in Defence*.

Indeed, it is highly desirable that these clarifications are given before the election while the Minister is still the Minister.

I also draw to the attention of the Minister and the Attorney that the apparent inaction by the Government in relation to a group of the systemic issues identified in our Report relating to the potential for Defence and DVA to gather and share information relevant to assessing individual eligibility for DVA benefits may now raise issues of whether the Commonwealth is meeting the requirements of the Model Litigant Policy.

Yours sincerely

Dr Gary A Rumble



## INTRODUCTION

### **The matters covered by the *Report of the Review of allegations of sexual and other abuse in Defence***

1. The *Report of the Review of allegations of sexual and other abuse in Defence* was wide-ranging.

- Volume 1 delivered in October 2011 and the Supplement to Volume 1 delivered in April 2012. Volume 1 and the Supplement to Volume 1 included:
  - Findings (on high level issues not specific to particular allegations)
  - Systemic Issues recommended for Phase 2 consideration;
  - Recommendations on possible options for responding to the allegations of abuse;

Volume 1 has been published with some minor redactions:

The consolidated list of Volume 1 and Supplement to Volume 1 of Findings, Phase 2 issues and Recommendations is attached.

- Volume 2 delivered 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 allegations made in the media. These 23 parts were central to the Review and the Report. They contained thousands of recommendations relating to specific allegations.
  - 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.
  - folders of explanatory material including material explaining the intent behind a number of the frequently made recommendations in relation to specific allegations.

Volume 2 has not been made public.

**The process for transfer to the DART of the specific allegations reported on in Volume 2 of the *Report of the Review of allegations of sexual and other abuse in Defence***

2. Mr Roberts-Smith informed the FADT Committee on 14 March 2013 that on 27 February 2012, the DART had received from DLA Piper 31 folders of Volume 2 and related material under cover of a letter from DLA Piper which included the statement:

This constitutes volume 2 of our report, as delivered to the Minister on 17 April 2012’.

3. This appears to be a reference to the unredacted version of Volume 2 of the Report which my fellow Review Leader Ms McKean and I delivered to the Minister on 17 April 2012.
4. For most of the allegations which were reported on in Volume 2, there was other documentation – some provided by the individuals whose allegations were before our Review and some provided by Defence. I do not know how much of that material has been transferred to the DART.
5. Accordingly I infer that the DART will only have received that other file material if the ‘complainant’ has consented to the DART dealing with their matter because under the processes which the DART has adopted the DART will only consider an allegation which was before our Review if the complainant has consented to the DART dealing with the matter (See page 4).
6. In Volume 2 we reported on around 1100 allegations from 775 different sources.
7. The DART’s Second Interim Report states that of the total of 2410 complaints which were before the DART as at 31 May 2012 included – ‘875 are complaints that the Taskforce has consent to reassess which came from DLA Piper’ (page iii).
8. I infer that around 225 allegations reported on in Volume 2 of our Report will not be considered by the DART at all unless the ‘complainants’ who had not given consent as at 31 May have since then given that consent or give their consent some time before the DART ceases its operations.
9. I draw attention to the significant difference between the task set for our Review and the task being undertaken by the DART: -
  - We were asked to consider and make initial assessments and recommendations for action on *allegations* relating to abuse or *mismanagement* of allegations of abuse in Defence *regardless of the source of the allegation*.
  - The DART’s Terms of Reference – and the processes which the DART has adopted – are focussed on liaising with *complainants* to resolve their complaints about abuse in Defence.

10. That narrowing of focus may explain why significant aspects of our report do not seem to be under consideration or proposed for consideration by the DART.

**ASPECTS OF REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE WHICH IT SEEMS THE DART HAS NOT, AND WILL NOT, CONSIDER AND REPORT ON TO GOVERNMENT**

11. I now outline:

- the aspects of the *Report of the Review of allegations of sexual and other abuse in Defence* which seem to be outside the scope of the tasks being carried out by DART;
- sets out what the Minister stated in his letter of 8 March 2013 about how those aspects of the *Report of the Review of allegations of sexual and other abuse in Defence* are being dealt with.
- states questions to the Minister and the Attorney-General to clarify the Government's responses on those aspects of the *Report of the Review of allegations of sexual and other abuse in Defence*.

**A. SYSTEMIC ISSUES – GENERAL**

12. Volume 1 of our Report delivered in October 2011 'identified' (recommended for Phase 2 consideration) 23 systemic Issues. The Supplement to Volume 1 of our Report delivered in April 2012 identified another 12 systemic Issues.
13. See attached consolidated list of Volume 1 and Supplement to Volume 1 of Findings, Phase 2 issues and recommendations.
14. The 35 systemic Issues identified in our Report included:
- a systemic issue relating to restricted reporting
  - groups of systemic issues relating to:
    - mental health risks for people affected by abuse in the ADF
    - access to DVA benefits for people affected by abuse in the ADF
15. I discuss those particular systemic issues below. At this point I comment on the broad statement made in the Minister's 8 March 2013 letter relating to the total 35 systemic issues (at page 1):

**1. What action is being taken on the 35 systemic issues which your Report recommended for Phase 2 consideration**

The systemic issues contained in Volume One and the Supplement to Volume One to which you refer in your letter *are being considered by the Defence Abuse*



*Response Taskforce* ... which I announced on 26 November as part of the Government's response to the Report. ... (emphasis added).

16. There is nothing in either of DART's Interim Reports to indicate that any such consideration by the DART of the issues which our Report identified has been carried out or is planned.
17. In particular I note that:
  - neither of the two DART Interim Reports contains any *express* reference to the systemic issues recommended for consideration in Volume 1 and the Supplement to Volume 1 of the *Report of the Review of allegations of sexual and other abuse in Defence*.
  - none of functions for the nine Groups within the DART as stated in the Second Interim Report of the DART (see pages 25-35) seems to encompass any consideration of specific systemic issues identified in Volume 1 and the Supplement to Volume 1 of the *Report of the Review of allegations of sexual and other abuse in Defence*.
  - the terms of reference for the DART do not contain any reference to systemic issues identified in Volume 1 and the Supplement to Volume 1 of the *Report of the Review of allegations of sexual and other abuse in Defence*.
18. Accordingly, it seems that the statement in the Minister's 8 March 2013 letter that:

The systemic issues contained in Volume One and the Supplement to Volume One to which you refer in your letter *are being considered by the [DART]* ...

was incorrect when that statement was made in March.

19. Furthermore, it seems from the Second Interim Report that the DART does not see itself as tasked to consider the systemic issues identified in Volume 1 and the Supplement to Volume 1 of the Report of the Review of allegations of sexual and other abuse in Defence and does not propose to consider those issues.
20. Accordingly: -

**Q.1** I ask the Minister to clarify the statement in his letter 8 March that:

The systemic issues contained in Volume One and the Supplement to Volume One to which you refer in your letter *are being considered by the Defence Abuse Response Taskforce* ...

**Q.2** I ask the Minister and the Attorney to:

- a. clarify whether the DART has been tasked to consider and report to the Government on any or all of the 35 systemic

issues recommended for consideration in Volume 1 and the Supplement to Volume 1 of the *Report of the Review of allegations of sexual and other abuse in Defence*; and

- b. if the DART has not been tasked to consider and report on these issues - to state whether there have been Government decisions on these aspects of that Report; and
- c. if the DART has not been tasked to consider and report on these issues – to explain what processes are proposed to bring those systemic issues to Government for decision.

## **B. SYSTEMIC ISSUES - RESTRICTED REPORTING**

21. In Volume 1 we identified this as a significant issue for Phase 2 consideration. We identified this as being particularly relevant to reporting of past abuse. We recommended the following Issue for Phase 2 consideration.

### **Issue 11**

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

22. In his 8 March 2013 letter (at pages 3-4) to me the Minister referred to the Government decision to implement recommendations of Phase 2 from the Sex Discrimination Commissioner Elizabeth Broderick's *Review of Treatment of Women in the ADF*:

Implementation of restricted reporting, so that personnel can make confidential reports of sexual harassment, sex discrimination and sexual abuse (which was also recommended by the DLA Piper Review) (emphasis added)

23. In my submission to the FADT Committee (paragraphs 54-55) I noted that it was not clear whether restricted reporting would only be available to current Defence personnel. I recommended that this be clarified.
24. The Minister and the CDF made announcements on 23 July 2013 that with the establishment of SeMPRO, restricted reporting with confidentiality has commenced.
25. This is a very important development. However, it is apparent from the information on the SeMPRO website that restricted reporting is limited to current ADF personnel.

### **Q.3 I ask the Minister and the Attorney to:**

- a. state whether there has been a Government decision on whether restricted reporting will be available to former Defence personnel; and



- b. if the Government has already made a decision - to make that decision public; and
- c. if the Government has not made a decision on whether restricted reporting will be available to former Defence personnel, to state what process will be followed to enable a Government decision to be made on this issue.

### **C. SYSTEMIC ISSUES - CURRENT IMPACTS ON VICTIMS OF PAST ABUSE - MENTAL HEALTH AND ACCESS TO DVA BENEFITS**

26. The systemic issues relating to current impacts on victims of past abuse which we identified in our Report fall into two broad categories:
- Systemic issues relating to current mental health risk for people who were involved in abuse in the past in Defence as victims and/or as perpetrators (See Volume 1 Chapter 5 and Chapter 6 – especially Findings 10-19, 23-28 and Issues 5 and 6, and Supplement to Volume 1 Chapter 5 Findings S5 and S6 and Issue S2.).
  - Systemic issues affecting access to DVA benefits and counselling now for people affected by abuse in Defence in the past (Issues S5, S7, S9-11. See also my Supplementary Submission to the Senate FADT Committee).
27. In my correspondence with the Minister I had directed his attention to both sets of issues – current mental health risks and access to DVA benefits.
28. In his letter to me of 8 March 2013 (at page 2) the Minister stated:
- You also note that some of the systemic issues which the Report identified for Phase 2 consideration are relevant to the welfare of individuals who are affected or at risk now because of abuse in the ADF in the past. ...
- Noting your concern that systemic issues are important for responding to cases of past abuse, I have as well asked that the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues. (emphasis added)
29. There is nothing in the DART's Second Interim Report to indicate that any such consultation has occurred or will occur in relation to either of the sets of systemic issues which I had referred to in my correspondence which are 'relevant to the welfare of individuals who are affected or at risk now because of abuse in the ADF in the past'.
30. The issues in relation to access to DVA benefits are connected with issues of Model Litigant Policy – see below.



31. In relation to the group of mental health systemic issues referred to in my correspondence with Minister Smith I ask for clarification:

**Q.4** I ask the Minister and the Attorney to clarify:

- a. whether the consultation which the Minister referred to in his 8 March 2013 letter to me:

Noting your concern that systemic issues are important for responding to cases of past abuse, I have as well asked that the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues.

was intended to include consultation by the DART Chair on the group of mental health systemic issues identified in our Report and referred to in my correspondence with the Minister.

- b. If yes - why is this task not referred to in the tasks to be undertaken in the DART's Interim Reports?
- c. If no – then what process is being followed to enable a decision to be made on these Issues?

#### **D. MODEL LITIGANT POLICY AND ACCESS TO DVA BENEFITS SYSTEMIC ISSUES**

32. In the Supplement to Volume 1, we discussed these issues in Chapter 7 (pages 70-72) and we identified the following issues for Phase 2 consideration:

##### **Issue S9**

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

##### **Issue S10**

Phase 2 consult with DVA about:

- whether DVA could issue statements on some of these issues to give guidance to potential claimants and their advisers about information which is available to assist claimants to establish their eligibility for benefits including—if DVA accepts that such information has probative force—the findings made by this Review and the information which has been gathered by this Review and other information which may be gathered and identified in Phase 2; and

- whether DVA could proactively be looking for individuals who may be eligible for benefits and/or support services which they are not currently receiving.

#### **Issue S11**

Phase 2 to consider:

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

33. See also my Supplementary Submission to the FADT Committee.
34. As far as I am aware there has not been any Government decision on these issues.
35. Closely related to these Volume 1 systemic issues were the recommendations which we made in Parts 1-23 of Volume 2 for many specific allegations in the following or similar terms:
- The Review recommends Phase 2 liaise with the source/alleged victim about a possible approach to DVA to be assessed/re-assessed. See EM on DVA.
36. In the DART's discussion of outcomes (resolutions) available there is no reference to DART giving assistance to individuals to make an approach to DVA to have their eligibility for DVA benefits assessed or re-assessed. I infer that the DART does not consider that outcome as being 'available'.
37. It seems to me that there is now a question of whether the Commonwealth may be failing to comply with the Legal Service Directions and the Model Litigant Policy because - by failing to gather the relevant information which is in Commonwealth archives and records and in failing to gather and analyse the potentially corroborating information in the mass of DVA claims detail - arguably -
- The Commonwealth is not avoiding unnecessary delay in the handling of claims and litigation (including tribunal proceedings) for DVA benefits and change of records (Model Litigant Policy paragraph 2(a));
  - The Commonwealth is putting claimants to the proof of allegations of abuse in the ADF which the Commonwealth should 'know to be true' from their consistency with records of reports and patterns of abuse in other claims (Model Litigant Policy paragraph 2(e)(i));



- The Commonwealth is ‘taking advantage’ of claimants who lack the resources to identify and research relevant Commonwealth records (Model Litigant Policy paragraph 2(f)); and
- The Commonwealth is failing to assist Tribunals to make decisions (Model Litigant Policy paragraph (4)).

38. Accordingly:

**Q.5** I request the Minister and the Attorney-General to note the Model Litigant issues so that they can be taken into account in formulating a Government response to the systemic issues relating to access to DVA benefits.

**Q.6** I ask the Minister and the Attorney to clarify:

- a. whether the consultation which the Minister referred to in his 8 March 2013 letter to me:

Noting your concern that systemic issues are important for responding to cases of past abuse, I have as well asked that the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues.

was intended to include the group of systemic issues relating to access to DVA benefits identified in our Report and referred to in my correspondence with the Minister.

- d. If yes - why is this task not referred to in the tasks to be undertaken in the DART’s Interim Reports?
- e. If no – then what process is being followed to enable a decision to be made on these issues?

**Q.7** I ask the Minister and the Attorney-General to clarify:

- a. Whether the Government has made a decision not to direct the Department of Defence and DVA to gather and share the kinds of information about patterns and incident of abuse in the ADF in the past as outlined in Issues S9, S10 and S11 which would be of assistance for individuals seeking to access to DVA benefits based on claims for current conditions for which abuse in the ADF in the past; and
- b. If there has not yet been a Government decision on these issues – what process if any is under way to provide a basis for the Government to make that decision?



**E. CATEGORIES OF ALLEGATIONS REPORTED ON IN PARTS 1-23 OF VOLUME 2 OF THE REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE WHICH THE DART IS NOT DEALING WITH**

39. In his 8 March 2012 letter to me the Minister stated (at page 4):

**4. Recommendations in relation to specific allegations before the Review set out in Parts 1-23 of Volume 2**

These specific allegations are being considered by the Taskforce. ...

40. Now that I have seen the DART's Second Interim Report, it appears to me that there are significant categories of allegations which were examined and reported in our Report which the DART is not considering, and will not be considering, at all.

41. The categories of allegations in our Report which do not seem to be on the DART's agenda are as follows.

**F. MEDIA AND OTHER 'THIRD PARTY' ALLEGATIONS REPORTED ON IN PARTS 1-23 OF OUR REPORT**

42. In our Review we were required to make initial assessments and recommendations for Phase 2 actions on allegations regardless of whether the allegation was made by the alleged victim or by the media or other third parties. 'Third party' allegations included allegations made by parents, spouses and witnesses and allegations by individuals about the way Defence had dealt with an incident.

43. When our Review was set up, it was emphasised to us that our Review was required to report on media allegations. We liaised with the media area of Defence to identify all relevant media allegations for the period of our Review.

44. As noted above, in his 8 March 2012 letter to me the Minister stated (at page 4):

**4. Recommendations in relation to specific allegations before the Review set out in Parts 1-23 of Volume 2**

These specific allegations are being considered by the Taskforce. ...

45. It seems from the Second Interim Report that the DART is in fact only considering complaints by alleged victims and is not considering and is not proposing to consider, media allegations and may not be considering other third party allegations.

46. Closely related to this point is that the Second Interim Report explains that Mr Robert-Smith has decided to require consent from the 'complainant' as a precondition for action or referral for action. (See Second Interim Report (See for example - pages iii, iv, 2, 4-5.)

47. The media allegations on which we reported included some serious allegations of incidents of:
- abuse
  - Defence mismanagement of allegations of abuse
  - Defence cover up of allegations of abuse.
48. Many of these media allegations raised serious issues calling for Government and/or Defence investigation and action if there was substance to the allegations regardless of whether the alleged victim could be located and/or gave consent.
49. For example, allegations made by the Four Corners program in June 2011 involving allegations in relation to an alleged victim of abuse in the ADF referred to as 'John the barrister' are particularly concerning if left on the public record without any Government or ADF response.
50. Those allegations included the display during the program of a document described by the Four Corners reporter as apparently being an internal Defence Document which included statements:
- ... that the representations and materials provided to various ministers in response to past ministerial requests could be construed as misleading and not a true representation of the actual facts.
51. The Four Corners program also suggested that the document carried handwritten notations -
- Unacceptable. Remove from file and do not distribute. This document criticises former decision makers!!
- ...
- This may have civil liability issues.
52. In effect the Four Corners program suggested a long course of conduct within Defence of misleading Ministers about some allegations of abuse and deliberate decisions by some within Defence to conceal material which might expose that conduct.
53. There were other media allegations which raised serious concerns about conduct within Defence and about Defence management of abuse allegations.
54. The DART process which is focussed on managing complaints in consultation with 'complainants' and which does not take action without the consent of the 'complainant' will not pick up media allegations if:
- the alleged victim has not been in contact with the DART; or
  - the alleged victim does not consent to the DART taking action on the matter because an alleged victim who gave the story to the media knows



that the story was without substance or was a distortion or an exaggeration;  
or

- the alleged victim – even if there story is genuine and well-founded - does not wish to participate in Defence processes for handling such allegations.
55. The DART's requirement of consent of complainant a pre-condition for any action is not appropriate for media allegations which are on the public record and which may be revived from time to time if there is no Government or Defence response to these allegations.
56. Leaving the media allegations unanswered may discourage genuine victims of abuse in Defence from reporting.
57. Failing to act on media allegations may mean that serious abuse and/or Defence mismanagement is not investigated by Defence.
58. Accordingly:

**Q.8** I ask the Minister and the Attorney-General to clarify:

- a. whether the Government has made a decision to act or not act on any of the recommendations about media allegations which we reported on in Parts 1-23 of Volume 2 of our Report; and
- b. noting that the DART processes are not likely to result in any substantive consideration of media allegations: - what will provide a basis for the Government to make decisions on the to the recommendations on media allegations in Parts 1-23 of Volume 2 of our Report?
- c. what decision the Government has made on responding to the allegations made by the Four Corners Program in June 2011 including the allegations that Defence had misled Ministers about treatment of alleged ADFA Cadet abuse victim 'John the Barrister' and that there was a Defence cover-up?

#### **G. OTHER 'THIRD PARTY' ALLEGATIONS REPORTED ON IN PARTS 1-23 OF OUR REPORT**

59. My recollection is that the 'third parties' who made allegations included:
- parents of the alleged victim;
  - spouses of the alleged victim;
  - people who claimed to have witnessed the alleged abuse;
  - people who had observed the way Defence had dealt with an allegation of abuse.



60. It is my recollection that in some situations when a parent or spouse made contact with our Review they did so because:
- the alleged victim was too distressed or unwell to make direct contact with the Review;
  - the alleged victim was deceased – sometimes because of suicide.
61. We included our initial assessments and recommendations for Phase 2 action in Parts 1-23 of Volume 2 of our Report. In many cases our recommendations included seeking clarification of whether the alleged victim consented to their matter being considered for further action.
62. However, there were some matters where the documentary record which we saw – both from documents provided by the source and from documents which we obtained from the Department of Defence – was sufficient to raise concerns about Defence’s handling of an incident of abuse and to provide a basis for our recommendations for actions in Phase 2.
63. It is not clear from the Second Interim Report that allegations made by third parties which were before our Review are being or will be considered by the DART at all.
64. Failing to take action on third party allegation may mean that serious abuse and/or Defence mismanagement is not investigated by Defence.
65. Accordingly:

**Q.9** I ask the Minister and the Attorney-General to clarify:

- a. Whether the Government has made a decision on any of the recommendations about allegations from third parties (parents, spouses, witnesses etc) which were reported on in Parts 1-23 of Volume 2; and
- b. Noting that the DART processes are not likely to pick up these third party allegations: - what processes if any are under way to provide a basis for the Government to make decisions on the appropriate response to the recommendations on third party allegations in Parts 1-23 of Volume 2 of our Report?

**H. ALLEGATIONS ABOUT DEFENCE’S HANDLING OF ABUSE INCIDENTS/ALLEGATIONS REPORTED ON IN PARTS 1-23 OF OUR REPORT**

66. In our Review we were specifically required to consider and report on Defence’s management of allegations of abuse. We made initial assessments and a range of recommendations on those matters in Parts 1-23 of Volume 2 of our Report.

67. The example of a DART newspaper advertisement which I saw inviting complaints of abuse in Defence did not call for complaints about Defence management of an abuse incident. It seems from the Second Interim Report that the DART is only looking at Defence mismanagement as being a matter to be taken into account in assessing reparation payment.
68. Therefore, it seems the DART has not and will not be looking at the aspects of Parts 1-23 of Volume 2 which provide our recommendations relating to particular aspects of Defence management of allegations.
69. Accordingly:

**Q.10** I ask the Minister and the Attorney-General to clarify:

- a. Whether the Government has made a decision on any of the recommendations about Defence management of allegations of abuse which we reported on in Parts 1-23 of Volume 2; and
- b. Noting that the DART processes are not likely to pick up these Defence management allegations: - what processes will provide a basis for the Government to make decisions on the recommendations on these allegations in Parts 1-23 of Volume 2 of our Report?

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

70. 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 then current matters.
71. 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.

72. There is no reference to these Parts of our Report in the DART's Interim Reports and no indication in those Reports that the DART has, or will, consider the content of these four Parts of our Report or that the DART has or will consider whether to make this material available to Defence.
73. The DART's focus on dealing with complaints in liaison with complainants does not 'fit' the F&R database and ADFIS matters which we reported on these four Parts of Volume 2 of our Review.
74. 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.
75. Accordingly:

**Q.11** I ask the Minister and the Attorney-General to clarify whether the DART is tasked on whether or not to make available to Defence these four Parts of Volume 2 of the *Report of the Review of allegations of sexual and other abuse in Defence*.

I am available to discuss any of these matters.

Dr Gary A Rumble



## **ATTACHMENT 3**



**Stephen Smith**  
**Minister for Defence**

**6 SEP 2013**

  
Dear Dr Rumble

I refer to your letter of 27 August 2013 in relation to the Government's response to the *Report of the Review of allegations of sexual and other forms of abuse in Defence*.

I received this letter on 29 August, after the issuing of the writs for the Federal Election on 5 August.

I have copied your letter and my reply to the Attorney-General, the Shadow Attorney-General, the Shadow Minister for Defence and the Chair of the Defence Abuse Response Taskforce, The Hon Len Roberts-Smith RFD QC.

Progressing this matter is now a matter for the incoming Minister, Attorney-General and Government.

Yours sincerely

Stephen Smith

## **ATTACHMENT 4**





## DEFENCE ABUSE RESPONSE TASKFORCE

23 September 2013

Dear Dr Rumble *Gary,*

I refer to your two letters copied to me dated 27 August 2013 addressed variously to the then Minister and Shadow Minister for Defence, the then Attorney-General and Shadow Attorney-General and the Senate Foreign Affairs Defence and Trade References Committee.

The first letter was headed "Clarification of Government response to *Report of the Review of Allegations of Sexual and Other Abuse in Defence*". The second letter was headed "The Case for a Royal Commission to inquire into risks for the ADF from having in its ranks officers who may have committed or witnessed rape at ADFA before Grey Review."

Having read those letters, it occurs to me that it might be useful for you and I to meet and have a personal discussion about the work of the Taskforce.

I would be happy to do that in Canberra should we both be there at the same time., or alternatively, if more convenient for you, in Sydney should we be able to arrange that.

If you would like to do that, please let me know your availability and we will endeavour to make suitable arrangements.

## **ATTACHMENT 5**

29 October 2013

The Hon Mr Len Roberts-Smith RFD, QC  
Defence Abuse Response Taskforce  
Robert Garran Offices  
4 National Circuit  
BARTON ACT 2600

Dear Mr Roberts-Smith,

**CONFIRMATION OF OUR MEETING ON THURSDAY 17 OCTOBER 2013**

As foreshadowed in my telephone conversation with you last week, I am writing to you now to confirm the understanding which I have following my meeting with you on Thursday 17 October 2013 of:

- the scope of the matters being dealt with by the DART;
- the manner in which the DART is carrying out its tasks including the range of 'available outcomes' which the DART discusses with complainants;
- some aspects of the DART's Interim Reports which do not accurately describe how the DART is/has been handling complaints.

I ask that you correct anything that I have misunderstood.

In our meeting you did not have with you any material and you were relying solely on your recollection. Since our meeting you have called me to modify your answer to one question which I had raised in the meeting. Of course, with access to materials you may be able to expand on, or qualify, some of your other answers.

Our meeting ended abruptly because you had another commitment. Accordingly I also include in this letter some questions about other matters which we did not get to in our meeting.

I understand that you are very busy doing important work. However, our meeting has confirmed my concerns that - contrary to my understanding of assurances given to me by the then Minister for Defence, the Hon Stephen Smith MP in a letter of 8 March 2013 - significant aspects of our report have not been, and will not be, dealt with by the DART.

As I foreshadowed to you in our 17 October 2013 meeting, I intend to take up my concerns with the Minister for Defence.



Given the background set out below I also intend to inform the Attorney-General and the Senate Foreign Affairs, Defence and Trade Committee of where I have got to on those matters. I have not yet decided whether or not I will also inform the Shadow Minister for Defence and Attorney-General about these matters but my current inclination is that it would be appropriate to do so.

Accordingly, I ask that you provide review and respond to the matters set out in this letter so that I can communicate with the Minister and others with certainty about these aspects of the DART's work.

To assist you in reviewing and responding to the matters which I have discussed in this letter I have brought together in the attached summary of all of the matters for confirmation/clarification I discuss in this letter.

I review these issues in the attached summary and in this letter in the order in which I dealt with them in my letter of 27 August seeking clarification of the Government Response to the *Report of the Review of allegations of sexual and other abuse in Defence* - rather than in the order in which we discussed these matters in our 17 October meeting.

At the conclusion of our 17 October meeting I offered to meet with you again to discuss any of the matters which I have raised with you or any other issues which you are considering. I confirm that offer. You may find it convenient to confer by telephone.

Yours sincerely

Dr Gary A Rumble

## BACKGROUND

1. The 17 October meeting took place at your suggestion after I had copied to you two letters dated 27 August 2013 which I had addressed to the then Minister for Defence – the Hon Stephen Smith MP and the then Attorney-General, the Hon Mark Dreyfus QC, MP.
2. I had also copied those two 27 August letters to the Senate FADT Committee and the then Shadow Minister for Defence, Senator the Hon David Johnston and the then Shadow Attorney-General, the Hon George Brandis QC, MP.
3. One of my 27 August letters was headed: - ‘Clarification of Government Response to *Report of the Review of Allegations of Sexual and Other Abuse In Defence*’.
4. This Clarification Letter related primarily to clarifying whether the DART is dealing with aspects of the *Report of the Review of Allegations of sexual and other abuse in Defence* which Review leaders Ms Melanie McKean and I and - for Volume 1 of that Report – Professor Dennis Pearce had presented to Minister Smith.
5. I had understood Minister Smith’s letter of 8 March 2013 to mean that significant aspects of the our Report were already being considered by the DART and that other significant aspects of our Report would be considered by the DART.
6. In March 2013 I provided a copy of the Minister’s letter to the Senate FADT Committee and made statements to the Committee in reliance on the Minister Smith’s 8 March 2013 letter when I appeared before the Committee on 14 March 2013.
7. The Interim Reports of the DART have not borne out my understanding of the Minister Smith’s 8 March letter.
8. If – contrary to my understanding of the Minister Smith’s 8 March letter – those aspects of the report from the Review which I led are not being considered by the DART and will not be considered by the DART - then I need to inform the Senate FADT Committee accordingly.
9. I also intend to request the Minister for Defence, Senator Johnston to clarify what will be done to respond to those aspects of our Report.
10. My other 27 August letter was headed: ‘The Case for a Royal Commission to inquire into risks for the ADF from having in its ranks Officers who may have committed or witnessed rape at ADFA before Grey Review’. You will be making a recommendation to the Government on whether or not there should be such a Royal Commission.
11. Statements made in First and Second Interim Reports of the DART about the way the DART handles matters involving possible criminal conduct and about



your understanding of the scope of your Terms of Reference gave me the impetus to set out and submit to the Minister and Attorney-General and the Shadow Minister and Attorney-General what I see as a compelling case for the establishment of a Royal Commission now.

12. I may make a further supplementary submission on that topic once I have considered the implications of the clarifications of the DART's work.
13. After the election I received two letters from Minister Smith: - one dated 29 August 2013 which replied to the ADFA Royal Commission letter and another dated 6 September 2013 which replied to the Clarification letter.
14. Both of Minister Smith's letters stated that he had:

... copied your letters and my reply to the Attorney-General, the Shadow Attorney-General, the Shadow Minister for Defence and the Chair of the Defence Abuse Response Taskforce, the Hon Len Roberts-Smith RFD QC.

Progressing this matter is now a matter for the incoming Minister, Attorney-General and Government.

15. You wrote to me in a letter dated 23 September 2013. You referred to my two 27 August 2013 letters and after commenting that - 'Having read those letters, it occurs to me that it might be useful for you and I to meet and have a personal discussion about the work of the Taskforce' - you invited me to meet with you'. I took up your invitation and we met in the Robert Garran offices on 17 October 2013.

#### **THE MEETING OF 17 OCTOBER 2013**

16. You opened our meeting on 17 October 2013 by speaking in detail and with understandable passion about the positive impacts for individual complainants which the work of the DART is having through:
  - case officer communications with victims
  - the Defence Abuse Reparation Scheme
  - the Restorative Engagement Program
  - clarification of the tax status of reparation payments and clarification of the impact on Commonwealth benefits of any reparation payments.
17. You also spoke about your belief that the Restorative Engagement Program will not only benefit individual victims of abuse who participate in the Program but will also have important impacts on the ADF leaders and officers who participate in the Program and will - because of that impact on this group of officers - support long term cultural change within the ADF.
18. I was interested and encouraged to hear about the positive impacts which those aspects of the work of the DART are having.



19. However, it was not clear to me why you responded to my 27 August letters by telling me about *those* aspects of the DART's work. Nothing in either of my letters of 27 August suggested that I have any doubt about the positive impacts that the work of the DART is having. On the contrary in the Case for ADFA Royal Commission letter I had directly stated '... I do not doubt that the DART is making an important and positive difference for many individuals'.
20. In any case, after you had spoken about those positive impacts, when I took you to matters raised in my Clarification of DART's Tasks letter and some related matters arising from my consideration of your Third Interim Report which was published after my 27 August letters were written, you did respond and answer my questions. I thank you for doing so.
21. In what follows I have summarised the understanding which I took from our discussion.
22. In this letter I follow the order in which I have raised matters for clarification in my 27 August letter rather than the order in which we discussed these matters in our meeting.

#### A. SYSTEMIC ISSUES – GENERAL

23. Volume 1 of our Report delivered in October 2011 'identified' (recommended for Phase 2 consideration) 23 systemic Issues. The Supplement to Volume 1 of our Report delivered in April 2012 identified another 12 systemic Issues.
24. I discuss the position in relation to some particular systemic issues below.
25. In the Minister's 8 March 2013 letter relating to the total 35 systemic issues which we identified he gave the following broad assurance (at page 1 with emphasis added):

**1.What action is being taken on the 35 systemic issues which your Report recommended for Phase 2 consideration**

The systemic issues contained in Volume One and the Supplement to Volume One to which you refer in your letter *are being considered by the Defence Abuse Response Taskforce* ... which I announced on 26 November as part of the Government's response to the Report. ...

26. There was nothing in either of DART's first two Interim Reports to indicate that any such consideration by the DART of the issues which our Report identified had been carried out or was planned.
27. However, after I had written my 27 August letter, the Third Interim Report signed off by you on 19 September 2013 became public. The Third Report included the following at page 25 (emphasis added):

## Systemic issues

Under the Terms of Reference, the Taskforce is required to assess the findings of the Phase 1 Review Report and the material gathered by that review. The Taskforce must also liaise with the Minister for Defence, the CDF and the Secretary of Defence on any implications of its work for Defence's 'Pathway to Change' and other responses to the series of reviews into Defence culture and practices in particular the work done by the Sex Discrimination Commissioner into the ADF and ADFA.

In relation to these requirements under the Terms of Reference, the Taskforce, once all information has been gathered from complainants, will analyse the information in the case management system to ascertain whether and what systemic issues are apparent.

The Taskforce will take into account the systemic issues identified by the Phase 1 Review Report and provide advice based on information it has, as to whether the Taskforce agrees with the assessment and recommendations of the Phase 1 Review Report.

28. This statement in the Third Interim Report gave me some reassurance.
- It was reassuring that there was an express reference that the systemic issues which we identified will be taken into account and reported on by the DART.
  - I inferred that the DART is proceeding on the basis that the reference's in the DART's Terms of Reference and in the Ministers' 8 March 2013 letter to the DART assessing the 'findings' of our Phase 1 report includes our identification of systemic issues.

29. I ask for your confirmation:

### Q.1

Have I correctly understood that the DART will:

- consider each of the systemic issues which our Report identified for consideration; and
  - report on whether the DART considers there should be further consideration of the issue?
30. In our meeting I noted that the Third Interim Report's stated approach of providing advice about the systemic issues which our Phase 1 Report had identified, as being based on 'information [the DART] has' if applied narrowly could exclude material which we took into account in identifying systemic issues including:
- The survey and extracts from previous reports on matters related to abuse in Defence which we had included in Volume 1 and the Supplement to Volume 1 of our Report.

31. I ask for your confirmation:

**Q.2** It is my understanding that the DART will take into account the survey of, and extracts from, previous reports in Volume 1 and the Supplement to Volume 1 of our Report as information relevant to assessing whether the DART agrees with our identification of systemic issues for consideration.

Is that correct?

32. I mentioned - but I am not sure that you responded directly - some other information which we took into account in identifying systemic issues but which would not come into the DART's own complaint handling processes.

33. Volume 1 and the Supplement to Volume 1 have been available to the DART from its establishment. The DART had been provided by the end of February 2013 with all of Volume 2 – including the aspects of Volume 2 of our Report dealing with specific allegations which were reported on by us in Phase 1 and which are not being considered by the DART.

34. Accordingly, I ask for your clarification:

**Q.3**

The DART has access to all of the Phase 1 Report – Volume 1, the Supplement to Volume 1 and Volume 2 - which include:

- Information about our dealings and communications with Defence through the year we conducted our Review; and
- Information about specific allegations including Defence file material relating specific allegations on which we made assessments and recommendations in Volume 2 but which will not be dealt with through the DART's complaint handling processes because of limitations in the DART's Terms of Reference.

Will the DART take into account this information when assessing what systemic issues merit further consideration?

35. One issue which we did not get to discuss in our meeting is the issue of when the DART will consider and report on what systemic issues should be further considered. The Third Interim Report states:

In relation to these requirements under the Terms of Reference, the Taskforce, once all information has been gathered from complainants, will analyse the information in the case management system to ascertain whether and what systemic issues are apparent.

36. This seems to state that the DART will not report on any systemic issues until 'all information has been gathered from complainants'.



37. It is not apparent to me why the DART would delay consideration and any reporting on systemic issues until 'all information has been gathered from complainants'. There is no such limitation in your Terms of Reference.
38. Indeed this proposed approach of waiting until 'all information has been gathered from complainants' does not seem to be calculated to support the flexible response supporting Defence's current steps to achieve cultural reform as contemplated by paragraph (vi) of your Terms of Reference. That aspect of your terms of reference is reflected in the words in the Third Interim Report set out above:

The Taskforce must also liaise with the Minister for Defence, the CDF and the Secretary of Defence on any implications of its work for Defence's 'Pathway to Change' and other responses to the series of reviews into Defence culture and practices ...

39. Accordingly, I ask for your clarification:

#### Q.4

The DART's Third Interim Report at page 25 seems to indicate that the DART will not start considering or reporting on what systemic issues should be considered until all information is gathered from complainants.

It is now over 2 years since Volume 1 of our Report identified 23 issues for consideration. It is now over 18 months since the Supplement to Volume 1 of our Report identified another 12 systemic issues.

In conducting our Review we found that some of the systemic issues worthy of further consideration emerged quite quickly in our consideration of allegations and related material.

The DART's Terms of Reference require it to 'liaise with the Minister for Defence, the CDF and the Secretary of Defence on any implications of its work for Defence's 'Pathway to Change' and other responses to the series of reviews into Defence culture and practices'.

Defence is pressing on with its 'Pathway to Change' and responses to other culture reviews. It would seem to be more supportive of Defence in that work for the DART to liaise on systemic issues from time to time rather than to wait until 'all information is gathered from complainants'.

Do you confirm that it is your intent to delay your assessment and reporting of systemic issues until all information is gathered from complainants?

## **B. SYSTEMIC ISSUES - RESTRICTED REPORTING**

40. In Volume 1 we identified this as a significant issue for Phase 2 consideration. We identified this as being particularly relevant to reporting of past abuse. We recommended the following Issue for Phase 2 consideration.

### **Issue 11**

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

41. It is clear that the restricted reporting through SEMPRO is only available to current members of the ADF. I will take this issue up with the Minister for Defence and the Attorney-General.

## **C. SYSTEMIC ISSUES - CURRENT IMPACTS ON VICTIMS OF PAST ABUSE - MENTAL HEALTH AND ACCESS TO DVA BENEFITS**

### **D. MODEL LITIGANT POLICY AND ACCESS TO DVA BENEFITS SYSTEMIC ISSUES**

42. I will take up the issues of Model Litigant Policy with the Minister for Defence and the Attorney-General.
43. The systemic issues relating to current impacts on victims of past abuse which we identified in our Report fall into two broad categories:
- Systemic issues relating to current mental health risk for people who were involved in abuse in the past in Defence as victims and/or as perpetrators (See Volume 1 Chapter 5 and Chapter 6 – especially Findings 10-19, 23-28 and Issues 5 and 6, and Supplement to Volume 1 Chapter 5 Findings S5 and S6 and Issue S2.).
  - Systemic issues affecting access to DVA benefits and counselling now for people affected by abuse in Defence in the past (Issues S5, S7, S9-11. See also my Supplementary Submission to the Senate FADT Committee).
44. In my correspondence with Minister Smith I had directed his attention to both sets of issues – current mental health risks and access to DVA benefits.
45. In his letter to me of 8 March 2013 (at page 2) the Minister stated:

You also note that some of the systemic issues which the Report identified for Phase 2 consideration are relevant to the welfare of individuals who are affected or at risk now because of abuse in the ADF in the past. ...

Noting your concern that systemic issues are important for responding to cases of past abuse, I have as well asked that the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of



Defence and the Chief of the Defence Force on options for responding to those systemic issues. (emphasis added)

46. There was nothing in the DART's first two Interim Reports to indicate that any such consultation had occurred or was going to occur in relation to either of those sets of systemic issues which our Report had identified.
47. The Third Interim Report at page 28 included the following statements which has some relevance to access to DVA benefits (emphasis added):

The Taskforce is also working with DVA and the Royal Commission into Institutional Responses to Child Sexual Abuse to develop information sharing protocols.

Where the Taskforce is working with external agencies and is asked or required to provide information in relation to complainants, the primary premise is that information will not be shared unless consent has been provided by the complainant or, otherwise, will be provided in accordance with the Privacy Act.

The ongoing discussions with DVA in this regard however, have centred on the Taskforce providing as much information as possible to the Department to best inform its considerations of Veterans' applications for pensions or other benefits.

In discussions with the Taskforce Chair, the Secretary of the Department of Veterans' Affairs reiterated the Department's earlier intent that, wherever appropriate, it would take account of Taskforce information which supports a veteran's application.

48. There was still no indication in the Third Interim Report that you have carried out the consultation which the Minister's 8 March 2013 letter stated he had asked you to carry out.
49. Accordingly, I ask for your clarification:

**Q.5**

In December 2012 I had written to the then Minister for Defence expressing particular concern about delay in action on two groups of systemic issues which had been identified in our Phase 1 Report relating to current impacts on the welfare of present and former ADF personnel of past abuse. I expanded on these issues and concerns in my submission and supplementary submission to the Senate FADT Committee and in my appearance before the Committee. The two groups of issues are:

- Systemic issues relating to current mental health risks for people who were involved in abuse in the past in Defence as victims and/or as perpetrators.
- Systemic issues affecting access to DVA benefits and counselling now for people affected by abuse in Defence in the past. We



identified that it seemed appropriate to consider whether the Department of Defence and DVA could be directed to gather information from their records – including records of previous reports and analysis of patterns of alleged abusive conduct through DVA claims – which could assist individuals seeking benefits to establish their entitlement to DVA benefits.

In his 8 March 2013 letter to me the Minister stated:

You also note that some of the systemic issues which the Report identified for Phase 2 consideration are relevant to the welfare of individuals who are affected or at risk now because of abuse in the ADF in the past. ...

Noting your concern that systemic issues are important for responding to cases of past abuse, I have as well asked that the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues. (emphasis added)

I have assumed that the Minister did ask you to consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues before his 8 March letter.

Did he?

50. In our meeting on 17 October in response to my question of why you had not yet carried out the consultation referred to in the Minister's 8 March 2013 letter, you referred to the aspect of the Third Interim Report set out above and commented on the apparent readiness of DVA to consider the possibility of taking into account material provided by DART to DVA which might be relevant to supporting veterans' applications for benefits.
51. This does not seem to be a particularly remarkable statement of intent by the Secretary of DVA. It is likely that – as a matter of law – decision-makers considering a veteran's application for benefits would be obliged to consider any relevant material which might support the application.
52. You did not seem to be aware that the issues which were referred to in that part of the Minister's 8 March letter 2013 included issues of getting the Department of Defence and DVA – not the DART – to gather and share information which could support veterans' applications and to liaise with veterans' groups about this approach.
53. Changes along these lines would involve work for the Department of Defence and for DVA but minimal work for the DART - other than for you to consult with the Secretary of the Department of Defence to get the Department of Defence and DVA to commence this work.

54. We had identified these issues in the Supplement to Volume 1 which we delivered in April 2012 – 18 months ago.
55. The second group of systemic issues covered by this aspect of the Minister's 8 March 2013 letter contemplated that you would consult with the Secretary of the Department of Defence and the CDF on options for reaching individuals who may be suffering, or at risk of suffering, mental health problems linked to involvement in abuse in the ADF – whether in the past or in the future.
56. We had identified this group issues in Volume 1 of our Report which was delivered over two years ago in October 2011.
57. I understand that you have a heavy workload but your consultation with the Secretary and the CDF on these mental health impact issues need not go much further in the first instance than asking Defence to get under way with considering the issues and formulating options for consideration and coming back to you for further consultation.
58. Accordingly I ask the following questions:

**Q.6**

The consultation by you contemplated in the Minister's letter of 8 March could have launched the Department of Defence and DVA on gathering information and developing options which could have significant impacts on the welfare of current and former ADF personnel.

It is my understanding from our meeting on 17 October 2013, that although you have consulted with the Secretary of the Department of Defence, the CDF and DVA on many issues relating to the DART's work, you had not carried out the consultation relating to the systemic issues relevant to the welfare of previous and current ADF personnel which we had raised in our correspondence with the Minister.

Is that correct?

**Q.7**

If yes - When do you propose to carry out that consultation?



**E. CATEGORIES OF ALLEGATIONS REPORTED ON IN PARTS 1-23 OF VOLUME 2 OF THE REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE WHICH THE DART IS NOT DEALING WITH**

59. The DART's Terms of Reference include (emphasis added):

The Taskforce is to:

(i) assess the findings of the DLA Piper review and the material gathered by that review, ..

(ii) include in this assessment the 24\* Australian Defence Force Academy (ADFA) cases noted by DLA Piper and the cases of abuse identified by reports into physical violence and bullying at HMAS Leeuwin, and whether the alleged victims, perpetrators and witnesses in relation to these cases remain in Defence;

(iv) will also, as appropriate, gather additional information relevant to consideration of the handling of particular allegations e.g. relevant records held by Defence;

...

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

60. \*As you are aware the number of ADFA cases is higher than the so-called '24'. The Minister also acknowledged that at page 5 of his 8 March 2013 letter.
61. I had understood your Terms of Reference to mean that the DART was to assess all of the findings made by myself, Ms McKean and Professor Pearce in the so-called DLA Piper Review – that is the all of the 'findings' – whether labelled in Volume 1 and the Supplement to Volume 1 as 'Findings', 'Recommendations' or 'Systemic Issues' or labelled in Volume 2 dealing with specific allegations as 'Initial Assessments' and 'Recommendations'.
62. You confirmed in your appearance before the Senate FADT Committee on 14 March 2013 that at the end of February 2013 you had received all of Volume 2 of our Report.
63. I noted that in your appearance before the Senate FADT Committee on 14 March 2013 you:
- confirmed that by the end of February 2013 the DART had received from DLA Piper all of Volume 2 including Folders 1-23 which contain the initial assessments and recommendations made by Ms McKean and me on specific allegations ; and



- in answering a question from Senator Xenophon about what weight you would be giving to assessments of particular allegations made by Ms McKean and me in Volume 2 of our Report you stated:

We will look at the recommendations they have made, and our task, as I understand it, is to determine whether or not we agree with that recommendation and that assessment.

64. I had assumed that the DART would be acting accordingly. I did not seek any confirmation from you on this point in our 17 October 2013 meeting.
65. However, I now ask for confirmation.

### Q.8

On 14 March you confirmed to the Senate FADT Committee that you regarded it as your task – in relation to the assessments and recommendations which Ms McKean and I had made in Volume 2 of our Report: -

... to determine whether or not we agree with that recommendation and that assessment.

I have assumed that the DART has been acting accordingly.

However, I note that the explanations in the Interim Reports of the DART systems including the Case Study examples for dealing with allegations transferred from DLA Piper do not make any reference to consideration of the initial assessments and recommendations on those allegations in Volume 2 of our Report.

For those allegations which have been transferred to the DART from DLA Piper with the consent of the individual concerned, is the DART considering the initial assessments and recommendations which Ms McKean and I made in Volumes 1-23 for each of those allegations?

66. After I had seen the DART's Second Interim Report, it appeared to me that there were significant categories of allegations which were examined and reported in our Report which the DART was not considering, and would not be considering, at all.
67. Now that I have met with you it is my understanding that significant categories of allegations covered by our Report will not be dealt with by the DART.

## **F. MEDIA AND OTHER 'THIRD PARTY' ALLEGATIONS REPORTED ON IN PARTS 1-23 OF OUR REPORT**

## **G. OTHER 'THIRD PARTY' ALLEGATIONS REPORTED ON IN PARTS 1-23 OF OUR REPORT**

68. In our Review we were required to make initial assessments and recommendations for Phase 2 actions on allegations regardless of whether the allegation was made by the alleged victim or by the media or other third parties.
69. My recollection is that – apart from media - the 'third parties' who made allegations included:
- parents of the alleged victim;
  - spouses of the alleged victim;
  - people who claimed to have witnessed the alleged abuse;
  - people who had observed the way Defence had dealt with an allegation of abuse.
70. It was my understanding after reading your First and Second Interim Reports and it was confirmed in our 17 October 2013 meeting - that you construe your Terms of Reference as being limited to dealing with allegations made by the alleged victim (the complainant) to the DART or allegations made by complainants to our Review and transferred to the DART.
71. I ask for confirmation of your position in relation to media and other third party allegations:

### **Q.9**

The language used in paragraphs (i), (ii), (iv) and (ix) of your Terms of Reference is broad enough to cover all of the allegations considered and reported on in our Report regardless of the source including allegations made in the media and allegations brought to our Review by other third parties.

Your Terms of Reference at paragraph (iii) do emphasise the importance of consultation with complainants – but your Terms of Reference do not state they you will only consider allegations brought to the DART by the alleged victims.

In his 8 March 2012 letter to me the Minister stated (at page 4 – emphasis added):

#### **4. Recommendations in relation to specific allegations before the Review set out in Parts 1-23 of Volume 2**

These specific allegations are being considered by the Taskforce.

...

In the course of this work, the Taskforce will consider all of the specific allegations reported on in Volume 2, including the allegations made in the Four Corners – Culture of Silence program from June 2011 to which you refer ...

It is my understanding following our meeting on 17 October 2013 that - despite the breadth of the language used in your Terms of Reference and despite the assurances given to me in the Minister's 8 March letter which made specific reference to allegations made in the June 2011 Four Corners program: -

- You have construed your Terms of Reference as only requiring and authorising you to consider complaints by alleged victims (complainants) who have brought their complaints to the DART or who have consented to their complaints being transferred by DLA Piper to the DART.
- Your interpretation of the DART's Terms of Reference excludes all of the media and other third party allegations which we considered and reported on.
- Accordingly, you have not been considering, and you do not intend to consider, the findings in Folders 1-23 of Volume 2 of our Report dealing with media and other third party allegations.
- I raised with you the specific example of the allegations made by the Four Corners program itself about a Defence cover-up of matters related to 'John the Barrister' in the Culture of Silence program in June 2011. You confirmed that those allegations will not be considered by you because the alleged victim has not come to the DART.
- You do not propose to seek any widening or clarification of your Terms of Reference to bring those aspects of our Report within your Terms of Reference.

Have I correctly understood your position?

#### Q.10

We did not discuss in our meeting why you have construed your Terms of Reference in this way.

Can you explain why you have construed your Terms of Reference this way despite the breadth of the language in paragraphs (i), (ii), (iv) and (ix) of your Terms of Reference and despite the assurances given in the Minister's 8 March letter that media allegations reported on in our Report would be considered by the DART?



## **DART DECISION THAT THERE WILL NOT BE ANY APPROACHES TO SUSPECTED VICTIMS OF ABUSE**

72. A related issue which I discussed with you at our 17 October meeting is the rule which the DART has adopted that the DART will not approach any individual who may have been the subject of abuse in the ADF or affected by alleged Defence mismanagement of a report of abuse to see whether they consent to their matter being considered by the DART.
73. Following our meeting on 17 October it is my understanding that you have decided on this as a firm rule of DART process because of the adverse impact which such an approach might have on the victim.
74. Accordingly you will only consider allegations of abuse if the alleged victim has contacted the DART directly or has consented to DLA Piper transferring their matter to the DART.
75. Of course, in framing recommendations in Volumes 1-23 of our Report, Ms McKean and I – and Professor Pearce while he was involved – also took into account issues of consent and confidentiality including possible impacts on victims. See for example, Supplement to Volume 1, Appendix 2 - Volume 2 Explanatory Materials pages 4-6 and page 21.
76. We adapted our recommendations according to the circumstances of particular allegations. For example, it is my recollection that:
  - For some allegations which had been brought to the Review by a parent or partner of an alleged victim, we recommended that the Phase 2 body contact the parent or partner to see whether the parent could clarify whether the alleged victim wanted their matter to be considered.
  - With some allegations which had been brought to our Review by a member or former member of the ADF who alleged Defence mismanagement of a previously reported incident of abuse of another member of the ADF, our perusal of relevant Defence paper file material raised issues about the appropriateness of Defence's management of the incident. With some of these matters where it had been accepted in the Defence processes that the incident had occurred and there had been some resolution in relation to the particular incident, the only issues related to the appropriateness of Defence's management and possible lessons for the future. Accordingly, with some of those matters we could and did make recommendations for further consideration in Phase 2 of issues of Defence management of such incidents which did not require any re-opening of investigation of the initial incident or the resolution of the initial incident and which did not need to further involve the victim.
  - For most allegations where the alleged victim had participated in a media broadcast or was quoted in a print media report which was before our Review, then the risks of distressing the individual through Phase 2 actions responding to those public allegations seemed to be minimal and – in our view - needed to be weighed against the ongoing adverse impacts if

Defence did not respond to the allegations – either to remedy any alleged problem or to refute the public allegation as appropriate so that victims of abuse in the ADF can be confident that if they report abuse, there will be an appropriate Defence response.

77. Can you please clarify:

**Q.11**

You have decided that the DART will only consider allegations of abuse if the alleged victim has contacted the DART directly or has consented to DLA Piper transferring their matter to the DART.

You informed me that the DART had decided to adopt this rule on the basis of advice from a Rape Crisis Centre and other relevant experts to the effect that if a victim of sexual assault had decided not to report the assault that it could be distressing for them to be contacted directly by the DART.

I infer that you have adopted the ‘no-approach’ rule for all categories of abuse – not just sexual assault.

Is that correct?

**Q.12**

If yes, then what is your reason for not approaching alleged victims of non-sexual abuse or alleged victims of sexual harassment not involving sexual assault?

**Q.13**

As I pointed out to you in our meeting, even for matters involving allegations of sexual assault, some of the matters on which we had reported in Volumes 1-23 involved media and other third party allegations of Defence mismanagement of an incident of sexual assault where the victim had reported the incident and had previously complained about Defence management of the incident within Defence and/or with the Ombudsman and/or - in some cases - through the media.

For those matters, the Rape Crisis Centre’s advice that the DART should not contact people who had decided not to report an incident is not directly in point.

What is the basis for your decision not to contact individuals who have previously reported an incident of abuse?

What is the basis for your decision not to contact individuals who have participated in media reporting of alleged abuse?



#### **Q.14**

Given that you have decided not to contact possible victims of abuse, then if only one victim has made a complaint to the DART about an alleged perpetrator:

- On what basis do you assess whether the alleged perpetrator might have been a serial perpetrator?
- Does the DART ask Defence to provide information about the record of the alleged perpetrator to see whether the alleged perpetrator has been involved in other incidents which might be relevant to:
  - assessing plausibility of the allegation which is before the DART;
  - considering whether it is appropriate to refer the allegation which is before the DART to Police for possible prosecution and/or to Defence for possible DFDA or administrative action.

#### **ANONYMOUS ALLEGATIONS**

78. I did not mention this category of allegations in my 27 August letter. However, it is my recollection that there were some anonymous allegations before our Review. I can recall one anonymous allegation which raised an allegation of a group targeting vulnerable individuals for sexual assault. Although anonymous, the allegation contained enough specific elements to provide a realistic basis for investigation of these allegations of very serious ongoing conduct.
79. Can you please clarify:

#### **Q.15**

I infer that because of the interpretation which you have put on your Terms of Reference and because of your requirements for the consent of the alleged victim for the DART to consider the allegation, you are not considering those aspects of Parts 1-23 of Volume 2 of our Report which assessed and made recommendations about anonymous allegations of abuse.

Is that correct?



## **H. ALLEGATIONS ABOUT DEFENCE'S HANDLING OF ABUSE INCIDENTS/ALLEGATIONS REPORTED ON IN PARTS 1-23 OF OUR REPORT**

80. Can you please clarify:

### **Q.16**

In our Review we were specifically required to include our assessments and recommendations in relation to allegations about Defence's management of allegations of abuse (as well as reporting on allegations of abuse).

We included initial assessments and a range of recommendations on allegations about Defence management of abuse allegations in Parts 1-23 of Volume 2 of our Report.

Your terms of reference direct you to 'assess the findings' of our Review but do not expressly direct you to inquire into allegations about Defence management.

You informed me in our 17 October meeting that the DART had in fact received a lot of allegations about Defence management.

However, the example of a DART newspaper advertisement which I saw inviting complaints of abuse in Defence did not call for complaints about Defence management of an abuse incident.

It appeared from the Second Interim Report that the DART would only be looking at Defence mismanagement as being a matter to be taken into account in assessing reparation payment.

It seems to me that the lack of direct reference to allegations about Defence management in the DART's Terms of Reference and in the DART's newspaper advertisements may have meant that some individuals with issues about Defence management of abuse may not have approached the DART.

Therefore, it seems the DART has not and will not be looking at the aspects of Parts 1-23 of Volume 2 which provide our recommendations relating to particular aspects of Defence management of allegations.

Is that correct?

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

81. 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.
82. 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.

83. In my 27 August letter I had also 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.

84. Can you please confirm:

### **Q.17**

At our meeting on 17 October you indicated that you accepted that the tasks for the DART included deciding whether or not to provide to Defence the four Parts of Volume 2 dealing with ADFIS and F&R Branch matters but you had given other matters higher priority

Have I correctly understood your position in relation to these four Parts of Volume 2 of our Report?

85. That concludes my summary of where we got to on clarifying the range of matters that are being considered by the DART.



## CLARIFYING DART COMPLAINT HANDLING

86. In our 17 October meeting we also discussed some statements in Interim Reports about the way the DART handles complaints where the sexual abuse alleged could involve a criminal offence.
87. You informed me that some of those statements in the Interim Reports do not correctly describe the way in which the DART handles complaints which involve allegations of sexual assault.
88. I ask that you confirm my understanding of these aspects of how the DART handles and has been handling complaints.

## ADMINISTRATIVE ACTION NOT INVOLVING ADMINISTRATIVE SANCTION/ADMINISTRATIVE ACTION NOT REQUIRING PERSONAL INVOLVEMENT OF COMPLAINANT

89. In our 17 October meeting I drew to your attention concerns about statements in the First and Second Interim Reports which I had referred to in my letter of 27 August:
- The Second Interim Report indicated that the DART's list of 'available outcomes' which you signed off on<sup>1</sup> and which was being discussed with complainants to determine which of the 'available outcomes' they wanted to pursue, did not include in the possibility of referral to a Service Chief to consider administrative action *without sanction* to fulfil what Defence Legal has summarised as '[Command] responsibilities for safety, security and operational issues'.<sup>2</sup>
  - That is - it seemed that DART was not discussing with complainants the option of their matter being referred to the Service Chief so that the information from their matter could be taken into account by the Service Chief when managing risks and when making decisions about the suitability of particular ADF personnel including personnel for particular positions.
90. In our 17 October meeting you informed me that:
- The statements in the second Interim Report which seemed to limit administrative action to the possibility of referral for a process leading to administrative sanction were misleading and the DART does actually consider the possibility of referral for administrative action without sanction.
  - Those statements in the Second Interim Report referring to processes for possible administrative sanction - rather referring broadly to administrative action - had gone into the Second Interim Report because the DART team member drafting that part of the second Interim Report

<sup>1</sup> See DART Second Interim Report pages 7-9.

<sup>2</sup> See Supplement to Volume 1 of our Report at page 68.



was familiar with administrative sanctions processes.

- The DART has in fact regarded the possibility of referral to a Service Chief to consider the possibility of administrative action without sanction.

91. You also commented that the DART processes had been evolving.

92. I note that the Third Interim Report - which came out after I had sent my 27 August letter raising concerns about the apparent absence of administrative action without sanction from the DART's consideration of available outcomes - did include at page 14 an unambiguous reference to the possibility that you as Chair of the DART might refer matters for consideration for 'appropriate administrative or management action' other than action for administrative sanction.

93. I note also that the Third Interim Report also reports that (emphasis added):

To support this function the Taskforce has created the position of Administrative Action Officer (AAO). The AAO assesses allegations of abuse and mismanagement by Defence, and refers these to the Chair for consideration of possible referral. To date, 73 matters have been referred to the AAO for further assessment for administrative or disciplinary sanction or other action and are currently being processed.

And later (at page 15):

As with possible criminal referrals, many complainants feel unable to cope with the stress and possible retraumatisation from being involved in disciplinary proceedings or Defence administrative action. That constraint of course will not apply in respect of other administrative action which would not involve the complainant.

...

The Taskforce is continuing to examine the possibility of other ways of dealing with such matters, and as observed above, there may be other administrative or management action which could be taken not involving the complainant.

94. These references to administrative action without sanction, administrative action not involving the complainant, and the position of AAO did not appear in your Interim Reports until your Third Interim Report.

95. Noting also your explanation to me that DART processes had been 'evolving' - I am not sure whether the statements about 'available outcomes' in the Second Interim Report - which seemed to limit the 'available outcome' of administrative action to administrative action for possible administrative sanction - was an accurate description of how DART was managing complaints at that time.

96. Can you please clarify which it is?

**Q.18**

The Second Interim Report referred to administrative action for sanction as being in the list of available outcomes but did not refer to the possibility of referral to Defence for administrative action without sanction – management decisions etc - to fulfil what Defence Legal has summarised as ‘[Command] responsibilities for safety, security and operational issues’.<sup>3</sup>

The Third Interim Report clearly indicates that administrative action without sanction is now being considered as a possible available outcome.

The Third Interim Report includes the following:

As with possible criminal referrals, many complainants feel unable to cope with the stress and possible retraumatisation from being involved in disciplinary proceedings or Defence administrative action. That constraint of course will not apply in respect of other administrative action which would not involve the complainant.

...

The Taskforce is continuing to examine the possibility of other ways of dealing with such matters, and as observed above, there may be other administrative or management action which could be taken not involving the complainant

Given that it seems that the DART’s list of possible available outcomes has been evolving, will the DART re-open its previous discussions with complainants about available outcomes and discuss with them the possibility of referral for administrative action without sanction and the possibility of administrative action which would not involve the complainant?

**Q.19**

Does the DART include referral to Defence for ‘possible administrative or disciplinary sanction or other action’ in relation to alleged perpetrators who are still in the ADF in its discussions of available outcomes with complainants who are part of the ‘ADFA 24’ group?

**COORDINATION OF POSSIBLE REFERRAL TO DEFENCE FOR DFDA PROSECUTION OR ADMINISTRATIVE ACTION OF MATTERS WHICH**

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<sup>3</sup> See Supplement to Volume 1 of our Report at page 68.



## **ARE ALSO BEING REFERRED TO POLICE FOR CONSIDERATION FOR POSSIBLE CRIMINAL PROSECUTION**

97. In our 17 October meeting I discussed with you concerns about Case Study 2 in the Second Interim Report. The Second Interim Report stated (page 9) that the Case Studies were included in the Report to 'provide information on the processes and procedures the Taskforce will follow ...'.
98. Case Study 2 involved a woman who alleged that she was assaulted and raped by two male Cadets – still in the ADF - when she was a Cadet at ADFA in 1989. The victim reported the assault at the time but an officer advised her against pursuing it.
99. I had set out my concerns about this Case Study at length in paragraphs 49-59 of my 27 August ADFA Royal Commission letter. My concerns were summarised as follows:

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

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



- There was no suggestion that the DART at any stage suggested to Ms Y that her allegations should at least be referred to the Service Chief so that he could take this information into account in deciding the suitability of the alleged perpetrators for particular roles in the ADF.

58. My concerns about the story told in Case Study 2 are that the approach taken by the DART:

- is most unlikely to result in any effective action in relation to the perpetrators;
- is out of line with what happens in other workplaces;
- reflects the shortcomings and misconceptions built into ADF processes which we reported on at length in the Report of the Review which I led. See attached extracts from our Report dealing with administrative action in relation to conduct which may constitute a criminal offence.

59. The way the DART and Mr Roberts-Smith dealt with this allegation in Case Study 2 did nothing to deal with the continued presence of the alleged perpetrators in the ADF other than to refer the allegations to civilian police.

60. As soon as the matter is referred to the Police the DART then treated the matter as closed.

100. In my meeting with you on 17 October 2013 I drew to your attention a statement in the Third Interim Report about the processes involving the Administrative Action Officer (AAO).

Once a complaint is assessed as in scope and plausible, the Assessment Group assessor identifies any instances that amount to Defence mismanagement or abuse, which are not criminal, but do amount to unacceptable conduct. Under these circumstances, the assessor confirms if any of those involved are still-serving members, and if so, refers the case to the AAO for further assessment. ... In regard to unacceptable behaviour, examples include workplace bullying or harassment.

101. This seemed to indicate that the DART might be taking the view that administrative action cannot be taken in relation to conduct which might constitute criminal conduct.
102. As I outlined in the 27 August 2013 letter making the Case for and ADFA Royal Commission, in our Report we had given a lot of attention to the problems which have come from Defence for many years proceeding on the basis that conduct which might constitute a crime of sexual assault could not be dealt with by Defence through administrative action.

103. Can you please confirm and clarify:

**Q.20**

It is my understanding from our meeting on 17 October that:

- You do accept that administrative action can and often should be taken in relation to conduct which might also constitute criminal sexual assault.
- Case Study 2 in your Second Interim Report was not correct in stating that as soon as the matter had been referred to civilian police for possible criminal prosecution the file would be closed.
- You said that the DART definitely monitors what happens to matters which are referred to civilian police for possible criminal prosecution.

Have I correctly understood your position?

**Q.21**

Given the importance of your Interim Reports for providing the Parliament, the general public and members of the ADF with an understanding of how the DART is managing complaints of sexual assault, will you publish a correction of Case Study 2 in your next Interim Report?

**PLAN MILLENIUM**

104. The following statement appears at page 18 of your Third Interim Report:

ADFIS is continuing to categorise and collate material relevant to the work of the Taskforce, through Plan Millennium. Plan Millennium is a project initiated by ADFIS and Defence as a result of the DLA Piper Review, which is forecast to be completed before May 2014. Once all documents have been catalogued and scanned, ADFIS will conduct further searches of all Persons of Interest referenced in the Taskforce Requests for Information to satisfy all requests made by the Taskforce.

The Taskforce anticipates receiving further information from ADFIS until all relevant documents have been received in relation to the complaints before it.

105. I have not been able to find a explanation of 'Plan Millenium' on the Defence website.

**Q.22**

Your Third Interim Report (at page 18) contains a reference to Plan Millenium – an ADFIS project 'initiated by ADFIS and Defence as a

result of the DLA Piper Review' which is 'continuing to categorise and collate material relevant to the work of the Taskforce,'

It seems that Plan Millenium is an important part of the overall Government response to our Report and is important to understanding the way in which the DART is carrying out its tasks.

Can you please explain what ADFIS is doing under Plan Millenium.

I thank you for your consideration.

Yours sincerely

Dr Gary A Rumble



**SUMMARY OF QUESTIONS FOR CLARIFICATION/CONFIRMATION  
FOLLOWING MEETING ON THURSDAY 17 OCTOBER 2013 BETWEEN  
THE HON LEN ROBERTS-SMITH RFD QC AND DR GARY RUMBLE**

**Q.1** It is my understanding that the DART will:

A - consider each of the 35 systemic issues which our Report identified for consideration; and

B - report on whether the DART considers there should be further consideration of each of these issues?

Is that correct?

**Q.2** It is my understanding that the DART will take into account the survey of, and extracts from, previous reports in Volume 1 and the Supplement to Volume 1 of our Report as information relevant to assessing whether the DART agrees with our identification of systemic issues for consideration.

Is that correct?

**Q.3**

The DART has access to all of the Phase 1 Report – Volume 1, the Supplement to Volume 1 and Volume 2 - which includes:

- Information about our dealings and communications with Defence through the year we conducted our Review; and
- Information about specific allegations including Defence file material relating specific allegations on which we made assessments and recommendations in Volume 2 but which will not be dealt with through the DART's complaint handling processes because of limitations in the DART's Terms of Reference.

Will the DART take into account this information when assessing what systemic issues merit further consideration?

**Q.4**

The DART's Third Interim Report at page 25 seems to indicate that the DART will not start considering or reporting on what systemic issues should be considered until all information is gathered from complainants.

It is now over 2 years since Volume 1 of our Report identified 23 issues for consideration. It is now over 18 months since the Supplement to Volume 1 of our Report identified another 12 systemic issues.

In conducting our Review we found that some of the systemic issues worthy of further consideration emerged quite quickly in our consideration of allegations and related material.

The DART's Terms of Reference require it to 'liaise with the Minister for Defence, the CDF and the Secretary of Defence on any implications of its work for Defence's 'Pathway to Change' and other responses to the series of reviews into Defence culture and practices'.

Defence is pressing on with its 'Pathway to Change' and responses to other culture reviews. It would seem to be more supportive of Defence in that work for the DART to liaise on systemic issues from time to time rather than to wait until 'all information is gathered from complainants'.

Do you confirm that it is your intent to delay your assessment and reporting of systemic issues until all information is gathered from complainants?

#### Q.5

In December 2012 I had written to the then Minister for Defence expressing particular concern about delay in action on two groups of systemic issues which had been identified in our Phase 1 Report relating to current impacts of past abuse on the welfare of present and former ADF personnel.

I expanded on these issues and concerns in my submission and supplementary submission to the Senate FADT Committee and in my appearance before the Committee.

The two groups of issues are:

- Systemic issues relating to current mental health risks for people who have been involved in abuse in the past in Defence as victims and/or as perpetrators.
- Systemic issues affecting access to DVA benefits and counselling now for people affected by abuse in Defence in the past. We identified that it seemed appropriate to consider whether the Department of Defence and DVA could be directed to gather information from their records – including records of previous reports and analysis of patterns of alleged abusive conduct through DVA claims – which could assist individuals seeking benefits to establish their entitlement to DVA benefits.

In his 8 March 2013 letter to me the Minister stated:



You also note that some of the systemic issues which the Report identified for Phase 2 consideration are relevant to the welfare of individuals who are affected or at risk now because of abuse in the ADF in the past. ...

Noting your concern that systemic issues are important for responding to cases of past abuse, I have as well asked that the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues. (emphasis added)

I have assumed that the Minister did ask you to consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues before his 8 March letter.

Did he?

#### Q.6

The consultation by you contemplated in the Minister's letter of 8 March could have launched the Department of Defence and DVA on gathering information and developing options which could have significant impacts on the welfare of current and former ADF personnel.

It is my understanding from our meeting on 17 October 2013, that although you have consulted with the Secretary of the Department of Defence, the CDF and DVA on many issues relating to the DART's work, you had not carried out the consultation relating to the systemic issues relevant to the welfare of previous and current ADF personnel which we had raised in our correspondence with the Minister.

Is that correct?

#### Q.7

If yes - when do you propose to carry out that consultation?

#### Q.8

On 14 March you confirmed to the Senate FADT Committee that you regarded it as your task – in relation to the assessments and recommendations which Ms McKean and I had made in Volume 2 of our Report: -

... to determine whether or not we agree with that recommendation and that assessment.

I have assumed that the DART has been acting accordingly.

However, I note that the explanations in the Interim Reports of the DART systems including the Case Study examples for dealing with allegations transferred from DLA Piper do not make any reference to consideration of the initial assessments and recommendations on those allegations in Volume 2 of our Report.



Is the DART considering the initial assessments and recommendations which Ms McKean and I made in Volumes 1-23 for each of the allegations which have been transferred to the DART from DLA Piper with the consent of the individual concerned?

**Q.9**

The language used in paragraphs (i), (ii), (iv) and (ix) of your Terms of Reference is broad enough to cover all of the allegations considered and reported on in our Report regardless of the source - including allegations made in the media and allegations brought to our Review by other third parties.

Your Terms of Reference at paragraph (iii) do emphasise the importance of consultation with complainants – but your Terms of Reference do not state they you will only consider allegations brought to the DART by complainants.

In his 8 March 2012 letter to me the Minister stated (at page 4 – emphasis added):

**4. Recommendations in relation to specific allegations before the Review set out in Parts 1-23 of Volume 2**

These specific allegations are being considered by the Taskforce.

...

In the course of this work, the Taskforce will consider all of the specific allegations reported on in Volume 2, including the allegations made in the Four Corners – Culture of Silence program from June 2011 to which you refer ...

It is my understanding following our meeting on 17 October 2013 that - despite the breadth of the language used in your Terms of Reference and despite the assurances given to me in the Minister's 8 March letter which made specific reference to allegations made in the June 2011 Four Corners program: -

- You have construed your Terms of Reference as only requiring and authorising you to consider complaints by alleged victims (complainants) who have brought their complaints to the DART or who have consented to their complaints being transferred by DLA Piper to the DART.
- Your interpretation of the DART's Terms of Reference excludes all of the media and other third party allegations which we considered and reported on.
- Accordingly, you have not been considering, and you do not intend to consider, the findings in Folders 1-23 of Volume 2 of our Report dealing with media and other third party allegations.
- I raised with you the specific example of the allegations made by the Four Corners program itself about a Defence cover-up of matters related to 'John the Barrister' in the Culture of Silence program in June 2011. You confirmed that those allegations will not be considered by you because the alleged victim has not come to the DART.

- You do not propose to seek any widening or clarification of your Terms of Reference to bring those aspects of our Report within your Terms of Reference.

Have I correctly understood your position?

**Q.10**

We did not discuss in our meeting why you have construed your Terms of Reference in this way.

Can you explain why you have construed your Terms of Reference this way despite the breadth of the language in paragraphs (i), (ii), (iv) and (ix) of your Terms of Reference and despite the assurances given in the Minister's 8 March letter that media allegations reported on in our Report would be considered by the DART.

**Q.11**

You have decided that the DART will only consider allegations of abuse if the alleged victim has contacted the DART directly or has consented to DLA Piper transferring their matter to the DART.

You informed me that the DART had decided to adopt this rule on the basis of advice from a Rape Crisis Centre and other relevant experts to the effect that if a victim of sexual assault had decided not to report the assault that it could be distressing for them to be contacted directly by the DART.

I infer that you have adopted the 'no-approach' rule for all categories of abuse – not just sexual assault.

Is that correct?

**Q.12**

If yes, then what is your reason for not approaching alleged victims of non-sexual abuse or alleged victims of sexual harassment not involving sexual assault?

**Q.13**

As I pointed out to you in our meeting, even for matters involving allegations of sexual assault, some of the matters on which we had reported in Volumes 1-23 involved media and other third party allegations of Defence mismanagement of an incident of sexual assault where the victim had reported the incident and – in some cases - had previously complained about Defence management of the incident within Defence and/or with the Ombudsman and/or - in some cases - through the media.

For those matters, the Rape Crisis Centre's advice that the DART should not contact people who had decided not to report an incident is not directly in point.



What is the basis for your decision not to contact individuals who have previously reported an incident of abuse?

What is the basis for your decision not to contact individuals who have participated in media reporting of alleged abuse?

**Q.14**

Given that you have decided not to contact possible victims of abuse, then if only one victim has made a complaint to the DART about an alleged perpetrator:

- On what basis do you assess whether the alleged perpetrator might have been a serial perpetrator?
- Does the DART ask Defence to provide information about the record of the alleged perpetrator to see whether the alleged perpetrator has been involved in other incidents which might be relevant to:
  - assessing plausibility of the allegation which is before the DART;
  - considering whether it is appropriate to refer the allegation which is before the DART to Police for possible prosecution and/or to Defence for possible DFDA or administrative action.

**Q.15**

I infer that because of the interpretation which you have put on your Terms of Reference and because of your requirements for the consent of the alleged victim for the DART to consider the allegation, you are not considering those aspects of Parts 1-23 of Volume 2 of our Report which assessed and made recommendations about anonymous allegations.

Is that correct?

**Q.16**

In our Review we were specifically required to include our assessments and recommendations in relation to allegations about Defence's management of allegations of abuse (as well as reporting on allegations of abuse).

We included initial assessments and a range of recommendations on allegations about Defence management of abuse allegations in Parts 1-23 of Volume 2 of our Report.

Your terms of reference direct you to 'assess [all] the findings' of our Review but do not expressly direct you to inquire into allegations about Defence management.

You informed me in our 17 October meeting that the DART had in fact received a lot of allegations about Defence management.



However, the example of a DART newspaper advertisement which I saw inviting complaints of abuse in Defence did not call for complaints about Defence management of an abuse incident.

It appeared from the Second Interim Report that the DART was only looking at Defence mismanagement as a matter to be taken into account in assessing reparation payment.

It seems to me that the lack of direct reference to allegations about Defence management in the DART's Terms of Reference and in the DART's newspaper advertisements may have meant that some individuals with issues about Defence management of abuse may not have approached the DART.

Therefore, it seems the DART has not and will not be looking at some of the aspects of Parts 1-23 of Volume 2 which provide our recommendations relating to particular aspects of Defence management of allegations.

Is that correct?

#### **Q.17**

At our meeting on 17 October you indicated that you accepted that the tasks for the DART included deciding whether or not to provide to Defence the four Parts of Volume 2 dealing with ADFIS and F&R Branch matters but you had given other matters higher priority

Have I correctly understood your position in relation to these four Parts of Volume 2 of our Report?

#### **Q.18**

The Second Interim Report referred to administrative action for sanction as being in the list of available outcomes but did not refer to the possibility of referral to Defence for administrative action without sanction – management decisions etc - to fulfil what Defence Legal has summarised as '[Command] responsibilities for safety, security and operational issues'.<sup>1</sup>

The Third Interim Report clearly indicates that administrative action without sanction is now being considered as a possible available outcome.

The Third Interim Report includes the following:

As with possible criminal referrals, many complainants feel unable to cope with the stress and possible retraumatisation from being involved in disciplinary proceedings or Defence administrative action. That constraint of course will not apply in respect of other administrative action which would not involve the complainant.

...

---

<sup>1</sup> See Supplement to Volume 1 of our Report at page 68.

The Taskforce is continuing to examine the possibility of other ways of dealing with such matters, and as observed above, there may be other administrative or management action which could be taken not involving the complainant

Given that it seems that the DART's list of possible available outcomes has been evolving, will the DART re-open its earlier discussions with complainants about available outcomes and discuss with them the possibility of referral for administrative action without sanction and the possibility of administrative action in which they would not have to be involved in a potentially traumatising process?

**Q.19**

Has the DART included referral to Defence for 'possible administrative or disciplinary sanction or other action' in relation to alleged perpetrators who are still in the ADF in its discussions of available outcomes with complainants who are part of the 'ADFA 24' group?

**Q.20**

It is my understanding from our meeting on 17 October that:

- You do accept that administrative action can and often should be taken in relation to conduct which might also constitute criminal sexual assault.
- Case Study 2 in your Second Interim Report was not correct in stating that as soon as the matter had been referred to civilian police for possible criminal prosecution the file would be closed.
- You said that the DART definitely monitors what happens to matters which are referred to civilian police for possible criminal prosecution.

Have I correctly understood your position?

**Q.21**

Given the importance of your Interim Reports for providing the Parliament, the general public and members of the ADF with an understanding of how the DART is managing complaints of sexual assault, will you publish a correction of Case Study 2 in your next Interim Report?

**Q.22**

Your Third Interim Report (at page 18) contains a reference to Plan Millenium – an ADFIS project 'initiated by ADFIS and Defence as a result of the DLA Piper Review' which is 'continuing to categorise and collate material relevant to the work of the Taskforce.'

It seems that Plan Millenium is an important part of the overall Government response to our Report and is important to the way the DART is carrying out its tasks.

Can you please explain what ADFIS is doing under Plan Millenium.

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

**Dr Gary A Rumble**

**PART I**

**ANNEXURE 4**





## Re: Your December meeting with the Hon David Johnston, Minister for Defence [SEC=UNCLASSIFIED]

1 message

**Gary Rumble**

9 April 2014 07:10

To: "Mason, David MR 1"

Mr David Mason  
Adviser  
Office of Senator the Hon David Johnston  
Minister for Defence  
Dear Mr Mason

This is disappointing but is noted. Meanwhile can you answer the following question that I raised in my email of 25 January.

Gary Rumble

### **Four Corners Program allegations**

My recollection is that towards the end of the 9 December meeting the Minister stated that he had seen everything which 'you [Ms McKean and I] had to say' on one of the particular Four Corners allegations on which we reported. This surprised me because:

- I was not aware that the Minister had seen *any* of the 30 Parts of Volume 2 - which included our assessments and recommendations on the Four Corners allegations - or that he had seen an unredacted version of the appendix to Volume 1 which brought together our initial assessments and recommendations on the Four Corners allegations.
- We had not been able to finalise our initial assessment and recommendations on the particular Four Corners allegations which we were discussing with the Minister because as we were finalising our April 2012 Report, Defence informed us that they had found some more relevant material. We recommended to Minister Smith that he direct Defence to provide the material to us so that we could finalise our assessment and recommendations on those particular allegations. However, we never received those instructions.

Can you please clarify what the Minister meant with this comment that he had seen everything we had to say on these allegations?

On 8 April 2014 12:30, Mason, David MR 1

- wrote:

**UNCLASSIFIED**

Dear Dr Rumble

Thankyou for your email. As indicated in earlier correspondence with you, the Minister has flagged his intention to make a statement to Parliament on Military Justice during the Winter Sittings. It will address many of the issues you raise.

Also, you will be aware that in a Notice of Motion passed in the Senate on 27 March 2014, it is proposed that the Senate Foreign Affairs Defence and Trade References Committee inquire into the operation of the Defence Response Taskforce and report back to the Senate on 28 August 2014. It is reasonable to anticipate that the proposed Senate Inquiry would take evidence from a number of stakeholders.

Regards

**David Mason**  
**Adviser**  
**Office of Senator the Hon David Johnston**  
**Minister for Defence**

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**From:** Gary Rumble [mailto:gary.rumble@defence.gov.au]  
**Sent:** Friday, 28 March 2014 10:58  
**To:** Mason, David MR 1  
**Cc:** Gilding, Simeon MR; Horton, Rebecca MS  
**Subject:** Re: Your December meeting with the Hon David Johnston, Minister for Defence [SEC=UNCLASSIFIED]

Dear Mr Mason

I am perplexed why the Minister's interest in improving the Military Justice system and the associated need to consult on those Military Justice improvements is put forward by you as an explanation for why the Minister has not moved on the issues going to impacts on victims of abuse in the ADF which were identified in the April 2012 Supplement to Volume 1 of our Report and which I have outlined a number of times including in my submissions to the Senate FADT Committee in March 2013.

In our December meeting the Minister seemed to understand that I was asking him to consult with the Minister for Veterans Affairs on these issues.

Those issues do not appear to have any connection with possible changes to the Military Justice system for the future.

In my previous communications I have asked that the Minister not to delay taking action on matters going to the welfare of former ADF personnel affected by abuse while he considers the full range of issues raised by my correspondence. I repeat that request.

Dr Gary A Rumble

On 19 March 2014 16:40, Mason, David MR 1

> wrote:

UNCLASSIFIED

Dear Dr Rumble

Thankyou for your email.

You may be assured that the Minister has taken and continues to take a serious interest in matters relating to Military Justice in general and the Defence Abuse Response Taskforce in particular. As I have indicated in earlier correspondence, the Minister is committed to improving the Military Justice system. As you would understand, this is not something that can be done in a few months. It involves close engagement with relevant stakeholders including the Attorney General, the Defence Abuse Response Taskforce and the Australian Defence Force.

Since meeting with you the Minister has taken a number of steps to progress his intentions in the Military Justice area. Among other things, he intends to make a Parliamentary Statement in the next Sitzings of Parliament.

Finally, of course you may discuss matters with the Senate Foreign Affairs Defence and Trade Committee and most certainly this Office would not seek to dissuade any person from speaking with the press on important issues such as Military Justice and the operation of the Defence Abuse Response Taskforce.

**David Mason**  
**Adviser**  
**Office of Senator the Hon David Johnston**  
**Minister for Defence**

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**From:** Gary Rumble [mailto: ]  
**Sent:** Tuesday, 18 March 2014 19:54  
**To:** Mason, David MR 1  
**Cc:** Gilding, Simeon MR; Horton, Rebecca MS  
**Subject:** Re: Your December meeting with the Hon David Johnston, Minister for Defence [SEC=UNCLASSIFIED]

Mr David Mason  
Adviser  
Office of Senator the Hon David Johnston  
Minister for Defence

Dear Mr Mason

I will be meeting with the Senate FADT Committee on Thursday of this week to discuss the matters raised in my letter of 3 February 2014 -which follow on from issues raised in my submissions to the Committee in March last year and which were further developed in my correspondence with Minister Smith in August last year, which were referred to Minister Johnston



over six months ago in September last year and which were discussed in the meeting with Minister Johnston over three months ago in early December last year.

In your email of 17 January you informed me - *'At this time it can be expected we would respond to you toward the end of February to ensure we have properly covered off on the issues you have raised.'*

In my email of 25 January I asked that the Minister not to delay taking action on matters going to the welfare of former ADF personnel affected by abuse while he considered the full range of issues raised by my correspondence.

I expect that the DART will be putting out another Interim Report in the near future. Given that Mr Roberts-Smith has decided not to consider most of the issues which I have raised, that does not provide any reason for further delay by the Minister in making some decisions.

I have not received a substantive response on any of the issues raised.

When might I expect to receive a substantive response or responses?

You prefer to communicate by email.

Just in case you have not picked up the message from our email exchanges- I am angry about the apparent inaction and about the fobbing off.

My current inclination is to respond the media who have been seeking to interview me by giving them those interviews.

Yours sincerely

Dr Gary A Rumble

On 30 January 2014 10:50, Mason, David MR 1

wrote:

**UNCLASSIFIED**

Dear Dr Rumble

Of course you are entitled to make any representations you believe appropriate to the Senate Committee

Be assured that Minister takes very seriously the issues you have raised. The Minister has been and remains very concerned about the allegations of harm done to current and former Australian Defence Force members. The outcomes of the Defence Abuse Review Taskforce are of specific concern. The Minister will be addressing early this year a range of issues dealing with Military Justice in general and the outcomes of the Defence Review Taskforce in particular

Regards

**David Mason**  
**Adviser**  
**Office of Senator the Hon David Johnston**  
**Minister for Defence**

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

**Dr Gary A Rumble**

**PART I**

**ANNEXURE 5**

# Findings, Phase 2 issues and recommendations

## Updated with April 2012 Supplement

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

### Chapter 1—Establishment and conduct of the Review

#### Recommendation 1—WITHDRAWN

#### Recommendation S1

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

#### Finding S1

The Review confirms the Volume 1 Findings

#### Finding S2

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

#### Finding S3

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



#### **Finding S4**

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

## **Chapter 2—Abuse risk factors in ADF environments**

#### **Finding 1**

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

#### **Recommendation S2**

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

## **Chapter 3—Overview of allegations considered by the Review**

## **Chapter 4—Historical record of abuse in the ADF**

#### **Finding 2**

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

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

#### **Finding 3**

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

#### **Finding 4**

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

#### **Finding 5**

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

#### **Finding 6**

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

#### **Finding 7**

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

#### **Finding 8**

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

#### **Finding 9**

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

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

#### **Finding 10**

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

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

#### **Finding 11**

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

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

#### **Finding 12**

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

#### **Finding 13**

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

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

affecting them and their families. (page 100)

#### **Finding 14**

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

#### **Finding 15**

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

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

#### **Finding 16**

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



#### **Finding 17**

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

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

#### **Finding 18**

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

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

affecting them and their families. (page 101)

#### **Issue 1**

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

#### **Issue 2**

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

#### **Finding S5**

On the basis of the Review's consideration

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

the Review confirms these findings.

#### **Finding S6**

On the basis of the Review's consideration

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

the Review confirms these findings.

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

#### **Finding 19**

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

#### **Finding 20**

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

#### **Finding 21**

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

#### **Finding 22**

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

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

#### **Issue 3**

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

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

#### **Issue 4**

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

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

#### **Issue 5**

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

#### **Finding 23**

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

#### **Finding 24**

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

#### **Finding 25**

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

#### **Finding 26**

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

#### **Finding 27**

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



#### **Finding 28**

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

#### **Issue 6**

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

#### **Finding S7**

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

#### **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 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.

#### **Issue S2**

The Review confirms the importance of the Issues stated in Issues 5 and 6 of Chapter 6.

## Chapter 7—Systemic issues

### Issue 7

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

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

### Issue 8

The Review considers that Phase 2 should discuss with Fairness and Resolution Branch and other appropriate areas of Defence the content of the information that is currently available on the Fairness and Resolution Unacceptable Behaviour database to expand the information recorded there and increase its availability and value to managers. (page 133)

### Finding 29

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

### Issue 9

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

### Issue 10

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

### Issue 11

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

## **Recommendation 2**

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

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

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

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

## **Issue 12**

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

## **Issue 13**

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

## **Issue 14**

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

## **Issue 15**

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



#### **Issue 16**

The ADF should consider establishing a system for liaison with local civilian police forces similar to the US Military's Sexual Assault Regional Team either dealing with ADF/civilian police interactions generally or limited to sexual assault issues. (page 152)

#### **Issue 17**

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

#### **Issue 18**

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

#### **Issue 19**

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

#### **Finding S9**

Commanders and managers have not dealt with the complaints of unacceptable behaviour that amount to abuse within the Terms of Reference of this Review promptly and/or have not complied with reporting requirements.

#### **Issue S3**

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

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

#### **Issue S4**

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

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

#### **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.

#### **Issue S6**

Phase 2 to consider a review of all databases that record performance, conduct issues and complaints relevant to abuse/unacceptable behaviour and that consideration be given to creating a centralised and integrated database system.

#### **Issue S7**

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

#### **Issue S8**

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

#### **Recommendation S3**

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

#### **Issue S9**

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

#### **Issue S10**

Phase 2 consult with DVA about:

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

#### **Issue S11**

Phase 2 to consider:

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

#### **Issue S12**

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



## Chapter 8—Options

### Recommendation 3

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

### Recommendation 4

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

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

### Recommendation 5

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

### Issue 20

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

### Recommendation 6

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

### Recommendation 7

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

#### **Recommendation 8**

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

#### **Issue 21**

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

#### **Recommendation 9**

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

#### **Recommendation 10**

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

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

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

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

#### **Issue 22**

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

#### **Issue 23**

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

#### **Recommendation S4**

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

#### **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.

## **Chapter 9—Concluding remarks**

#### **Concluding remarks**

The Review calls on the ADF, the Government and the Parliament to give proactive support to those in the ADF who have the courage to stand up for what is right when others in the ADF do, or have done, wrong. (page 199-200)