



INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE

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Committee Secretary

Senate Foreign Affairs, Defence and Trade References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Secretary

1. Thank you for the opportunity to make a written submission to the Committee concerning its inquiry into the accessibility and adequacy of current mechanisms and processes to provide support to victims of sexual and other abuse in Defence.
2. The functions of the Inspector General of the Australian Defence Force (IGADF) include providing a means of review and audit of the military justice system independent of the ordinary chain of command.
3. My office has observed with interest recent initiatives to provide more support to victims of sexual and other abuse. This letter addresses issues relevant to two of those initiatives—the Sexual Misconduct Prevention and Response Office (SeMPRO) and the Defence Abuse Response Taskforce (DART).
4. The SeMPRO was established as part of the implementation of a review by the Sex Discrimination Commission of the treatment of women at the Australian Defence Force Academy. It commenced operations in July 2013.
5. SeMPRO provides support, advice and guidance to Defence personnel who have been affected by an incident of sexual misconduct. ‘Sexual misconduct’ is defined very broadly and includes harassment as well as allegations of sexual offences. SeMPRO operates in a trauma-informed manner to deliver coordinated support to those affected by sexual misconduct, as well as those who are supporting them. It is available to female and male Defence personnel 24 hours a day, seven days a week on email and by telephone.
6. It is possible for Defence personnel who contact SeMPRO to make a ‘restricted disclosure’ which enables them to access support, including medical support, without having to disclose details of their alleged abuse and without their complaint being reported to the chain of command. In moving to this approach, the Australian Defence Force (ADF) expanded on a similar scheme used by the United States Armed Forces by which allegations of sexual assault may be the subject of a restricted report.
7. I considered the United States Armed Forces’ use of ‘restricted reporting’ in my 2011 *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction*. In that report I did not recommend that the ADF adopt restricted reporting because of jurisdictional differences between Australia and the United States, and because of the potential for workplace safety issues to arise in circumstances where commanders had no visibility of offenders in their ADF units following a known incident.

8. Notwithstanding this reservation, I recognise the need to better support victims and to take positive measures to improve what is generally believed to be the under-reporting of incidents of sexual misconduct. I have therefore been supportive of SeMPRO in their efforts to implement the scheme.

9. In relation to the DART process, I note that claims are assessed on the basis of 'plausibility', the threshold for which appears to be quite low. A consequence of this is that a favourable outcome from the DART process may raise in some complainants unrealistic expectations about their likely success in seeking further relief or recompense from other Departmental or Government administrative or legal processes.

10. Recently IGADF has started to receive referrals in respect of complaints which the DART has assessed as 'plausible'. It appears that some of the complainants have received a DART reparation payment as well. In such circumstances some complainants may often feel that their complaint has been vindicated and, understandably, have favourable expectations about the outcomes of subsequent investigative processes in respect of their complaints.

11. The DART has published a *Plausibility Fact Sheet* which makes clear:

The Taskforce or Assessor are not required to be satisfied on the criminal burden of 'beyond reasonable doubt' that a person suffered abuse or mismanagement, nor are they required to be satisfied on the civil burden of the 'balance of probabilities' that a person suffered abuse or mismanagement.

12. There is emerging concern about the ongoing welfare of those current and former ADF personnel who have been informed by the DART that their complaints are 'plausible' and may in consequence have expectations about future outcomes of Government legal and administrative processes. There will inevitably be some cases where allegations which have been assessed as plausible cannot be proved to the standard required to support further legal or administrative action, particularly compensatory action. The impact on the health and wellbeing of a potentially vulnerable complainant of such an outcome may be ongoing.

13. So that my office can deal with such complainants in an informed and sensitive way, I have written to the Chair of the DART to express my interest in gaining a greater understanding generally of the information which the DART provides to complainants at the time they are advised that the DART has assessed their complaints as plausible. In this way I hope to become aware of what general guidance on complainant debriefing is used by the DART in responding to complainants.

14. More generally, despite the disturbing number of (mainly historical) cases of alleged abuse that have been documented through the DLA Piper and DART processes, I am confident that ADF members have available to them adequate avenues to bring alleged abuse to attention and to receive appropriate support. The greater difficulty, which is by no means unique to the ADF, will likely remain in persuading members who believe they have suffered abuse to report it. The establishment of the SeMPRO and the initiatives being implemented in Defence's *Pathway to Change* document should assist in this regard. IGADF has since the start of this year audited the military justice aspects of *Pathway to Change* as part of its program of unit military justice performance audits.

15. Finally, I should like to flag a possible consequential issue for the future. As the inquiry being conducted by your Committee itself underlines, recent years have very properly seen a great deal of emphasis placed upon support for victims of sexual and other abuse in the ADF. Given the nature and age of many of the allegations that are understood to have been made through the DLA Piper and DART processes, it seems unlikely that a comprehensive

investigation of many of these allegations will be possible for a variety of reasons. Persons named or identified as respondents to such unproven allegations may therefore be left in the invidious position of either not knowing that such allegations about them have been made or alternatively, not being given an opportunity to contest the allegation.

16. I do not wish to comment further on this aspect other than to flag it as a consideration your Committee may wish to take into account in contemplating the desirability of whether or not, or how, the content of volume two of the DLA Piper Report should be released.

17. Thank you again for the opportunity to comment on these matters.

Yours sincerely

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