

**SENATE FADT REFERENCES COMMITTEE
REPORT OF REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE
CONDUCTED BY DLA PIPER AND THE GOVERNMENT'S RESPONSE TO THE REPORT**

OPENING STATEMENT OF DR GARY A RUMBLE FOR HEARING 14 MARCH 2013

1. I led the Review of Allegations of Sexual and Other Abuse in Defence. The other Review members were Ms Melanie McKean and Professor Dennis Pearce until his withdrawal on account of ill health.
2. The Report is commonly referred to as the 'DLA Piper Report'. However, there is no reference to DLA Piper in the title of the Report. This is because the Report is not the Report of the views of DLA Piper. As the disclaimer in the Report states:

The opinions expressed in the Report ... are solely those of Dr Gary A Rumble, Ms Melanie McKean and Professor 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.

3. The written submission which I have lodged with the Committee and the views which I express today are made solely on my own behalf and do not purport to represent the views of the other Review members or either of the law firms which employed me during the course of the Review.

THE REPORT

4. Under our Terms of Reference we were to report to the Minister and to the Secretary and to make recommendations to the Minister and to the Secretary.
5. We took into account that we were reporting to the Secretary as well as the Minister in designing Review processes to clarify the extent to which individuals consented to disclosure of their information to Defence and in our structuring of the Report of our Review.
6. Our Report was wide-ranging.
7. Volume 1 delivered in October 2011 and the Supplement delivered in April 2012 are on the public record.
8. Volume 2 is not on the public record and will not be on the public record. Volume 2 consisted of:
 - 23 Parts - large ring-binder folders - containing our initial assessments and recommendations on around 1100 specific allegations from 775 sources – individuals and media reports. These 23 parts were central to the Review and the Report
 - three Parts reporting on Fairness and Resolution Branch (F&R) database matters.
 - one Part dealing with ADFIS matters.
9. For most of the 1100 allegations reported on in Parts 1-23 of Volume 2 we made multiple recommendations.
10. The Volume 2 folders were submitted to the Minister marked 'For the eyes of the Minister only' but with a further notation indicating that a working copy would go to Defence Legal with appropriate redactions.
11. Most people who gave us information understood that there could not be much effective investigation and/or action without some disclosure of information to Defence. Most gave broad consents accordingly because they wanted there to be some action and/or for their stories to be known.

12. We designed our Volume 2 Report to facilitate the breaking out of streams of actions. We had made arrangements with the DLA Piper team working with us on the Review to provide a Working Version of Volume 2 – with appropriate redactions settled by us the Review leaders – to go to the Secretary of the Department of Defence as soon as we got clearance from the Minister to provide that Working Version.
13. The Minister has not given that clearance.
14. Our Terms of Reference foreshadowed that there would be a Phase 2 to follow on from our review – we expected that a Phase 2 body –external to Defence like us - would be established fairly quickly after we delivered Volume 2 to maintain the momentum of the work which had been done in Phase 1 including continuing the gathering of information from Defence.
15. We also suggested the establishment of a task force with specialised criminal investigation capability for around 80 or so allegations of serious criminality committed by adults.

THE GOVERNMENT RESPONSE OF 26 NOVEMBER 2012 TO THE REPORT

16. I acknowledge that the Government's Response announced by the Minister in November contains significant elements.
17. In particular I acknowledge the standing and qualifications of Mr Roberts-Smith and the other individuals who make up the Taskforce.
18. In December I raised with the Minister my concerns about gaps in the Government's response and concerns about what if anything had happened with the 28 or so folders of Volume 2 of our Report.
19. I received a written response from the Minister last Friday evening – 8 March 2012. With the Minister's consent that letter has been attached to my written submission.
20. That response removes some of the uncertainty but leaves me with major concerns which I detail in the written submission.
21. For purposes of this opening statement I draw attention to two main areas of continuing concern –
 - the decision of the Government not to direct the Working Version of Volume 2 go to the Secretary;
 - the uncertainty about how much of Volume 2 and the material on which it is based is going to the Taskforce.
22. On the first point - the Minister's letter of 8 March says:

It was 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.
23. This represents a very significant shift away from our Terms of Reference which required us to report to and make recommendations for action to the Minister *and* the Secretary.
24. I am astonished that the Government considers it is not 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.

25. People came to the Review because they wanted action and/or because they wanted their story to be heard. Most of them consented to disclosure to Defence so *that* there could be action and/or so that their story could be heard.
26. Even where there was no consent or limited to disclosure there were still aspects of the redacted report which we recommended be drawn to the attention of Service Chiefs.
27. The fact that the working version of Volume 2 did not go to the Secretary has prevented the Secretary, the CDF and the Service Chiefs from being informed about situations needing response and about the individual matters underpinning the Findings, Issues, Options and Recommendations in Volume 1.
28. Furthermore I am deeply concerned that the Government's lack of action and decision last year may have:
 - distressed individuals who were hoping for some response to their specific issue;
 - worn down the willingness of those who told their stories to the Review in Phase 1 to continue to be involved in Phase 2;
 - discouraged others who were watching to see whether there would be any effective action from coming forward to Phase 2
 - encouraged perpetrators and potential witnesses to think that they can wait out the current attention on abuse.
29. I see value even now in providing the Working Version of Volume 2 to the Secretary.
30. On the question of the uncertainty about whether any version of Volume 2 will go to the new Taskforce –
31. I do not understand why it was thought necessary to launch DLA Piper on a process of contacting individuals for consent for transfer of information to the Taskforce.
32. This may well have distressed some individuals needlessly. The Review leaders were not consulted on whether or not this was necessary or appropriate and - as far as I am aware - the process had no input or supervision from the new Taskforce.
33. Furthermore, gaps in fresh consents obtained by DLA Piper's process could lead to piecemeal dismantling of Volume 2 and significantly weaken the Report and its usefulness to the Taskforce. For example -
 - The terms of reference for the Taskforce specifically require it:

‘(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.’

It is important to note that the number of ‘ADFA cases’ may be more than the 24 referred to in the October 2011 Volume 1 report. That number only related to the years 1994 to 1998. We drew attention to this in our April 2012 Supplement to Volume 1 and the Minister's letter of 8 March acknowledges the number may be higher.
 - In any case, when the Taskforce is considering whether to recommend a Royal Commission in relation to ADFA legacy issues, it will be very important for the Taskforce to have before it the accounts of *all* ADFA incidents which were reported to us in Phase 1 from the 1980s which are consistent with the accounts of incidents from the 1990s – *even if redacted* to accommodate the consent position of an individual.

- The consistency of the accounts which we received about incidents across 15 years of ADFA operation from its opening in the mid 1980s until the Grey Report in the late 1990s adds considerable force to the credibility of each allegation and indicates the seriousness of the issue for the ADF *now*.

Finally:

In June 2011 I joined in a public statement expressing my confidence in the Minister's commitment to the Review process.

If I had known then:

that the Working Version of our Report - redacted in accordance with the consents and authorities of the people who gave us information - would not go to the Secretary at all:

and

that nothing would happen in 2012 to advance a single one of the matters reported on in Volume 2 in April 2012

and

that the Government would not make a decision on a single one of the thousands of recommendations in Volume 2 and would ask a new Taskforce to re-consider allegations from scratch

and

that not all of the allegations which were before us will go to the new Taskforce

I would not have made a public statement of confidence in the Minister's commitment to Phase 1 of the Review process.

Gary A Rumble

14 March 2013