

SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Submission to the Senate Inquiry into *The report of the review of allegations of sexual and other abuse in Defence, conducted by DLA Piper, and the response of the Government to the report*

by Dr Carlo Kopp, Defence Analyst

November, 2012

I have deep concerns about the manner in which the DLA Piper Report was produced, and cases scoped.

I have been a Defence analyst for 32 years and have thus considerable exposure over the years to both the best and the worst behaviours produced within the Defence organisation. Sadly I have observed mostly the latter over the last decade.

The critical point in time where behaviours changed dramatically within the Defence organisation was during the tenure of Dr Allen Hawke as SecDef, as this was the period when a concerted effort was made to disempower and break the long established professional military culture within the Defence Organisation, especially its Canberra based elements.

This was the period of the “Great Purge” when a great many senior officers, many with distinguished track records of high achievement, were forced into early retirement, or in the parlance of the day, “*MIERed out the door*”. The Committee will find during the course of this Inquiry many complaints of improper treatment of these personnel by the Defence Organisation, especially instances of unfair or arbitrary dismissal.

A characteristic feature of the period was a dramatic shift in how the Defence Organisation prioritised its activities. The long established professional military focus on national interest, national military capabilities, and long term preparedness for conflict and other contingencies, was replaced by a short term focus on “public relations”, or for want of better words, “appearances on the day”.

The shift in focus exacerbated many extant problems within the organisation, and created many new ones, all of which persist to this day.

A critical problem created during this period was an imperative to hide mistakes and problems from Parliamentary and public scrutiny. This problem is now pervasive and observed repeatedly in the often misleading and poor quality evidence provided by the Defence Organisation to Parliament and the Cabinet of the day. It is exacerbated by the collapse of professional mastery in the three ADF services, itself also a byproduct of the shift in organisational priorities and focus – the path to rapid promotions is no longer via achievement as a professional warrior, who places integrity first, but by displaying the willingness to say and do anything to promote the public image of the Defence Organisation.

This induced behavioural problem in the Defence Organisation has had far reaching consequences, one of which is an almost fanatical hostility toward any views which are not exactly aligned with the Groupthink consensus within the organisation. Any viewpoint, including expert opinion or assessment, which might be perceived to be dissent, criticism,

or exposure of organisational failure elicits a toxic response aimed at the party involved.

The attitude toward any party, inside or outside the Defence Organisation, who chooses to disagree, criticise or report a failure, is thus to “shoot the messenger”. This exacerbated a developing Groupthink problem within the Canberra based elements of the Defence Organisation, the latter itself exacerbated over time by progressive deskilling and loss of professional mastery. The corrosive behavioural problems of Groupthink and increasingly, the Dunning-Kruger effect as professional deskilling progressed, were accelerated and rapidly institutionalised by actively rewarding behaviours which concealed problems within the Defence Organisation.

These three interlocking problems are central to most of the troubles and systemic failures we now observe in Defence, be it in areas such as capability planning, strategy, procurement, and military justice. They are also evidence of the fact that Defence is now a “failed organisation”, in the same sense as a “failed state”, incapable of self-repair.

I am deeply concerned about the manner in which the DLA Piper effort was conducted, especially the manner in which many cases were ruled arbitrarily to be “out of scope” where the cases dealt with active concealment of, or in some instances active involvement in, abusive behaviours by the Senior leadership of the Defence Organisation. Prima facie, the cause of this specific problem was the involvement of the Defence legal organisation in the definition of the Terms of Reference for DLA Piper, and the manner in which they should be interpreted. The Defence legal organisation has frequently been a party to these manifold problems, tying up cases of abuse in litigation, arbitration or ineffective negotiation intended to delay resolution. The involvement of this entity in the process was clearly a conflict of interest and should never have been permitted.

I raised this matter with the Defence secretariat managing the inquiry process, to no avail. The response from the Defence General Counsel is attached for the Committee's consideration.

As long as the primary imperative within the Defence Organisation remains that of promoting its public appearance at any cost, abusive behaviours will persist, at all levels within the organisation, as any party choosing to behave abusively can be confident that the organisation will continue to spare no effort in hiding the problem, or turning a blind eye to it. A organisational culture which rewards concealment of problems is implicitly incapable of eradicating such problems.

Integrity and trust are central to the function and success of a professional military, and have been for at least two millennia. Unit cohesion in combat depends critically on exceptional standards of personal and organisational integrity, and trust relationships through the chain of command. A primary imperative of promoting the organisation's appearance at any cost is an imperative which punishes personnel with integrity, and rewards personnel lacking integrity, while destroying trust. It is also, implicitly, a fundamental risk to national security, and should neither be accepted nor tolerated.

I urge the Committee to investigate this problem further and impress upon the Parliament the need for fundamental change in the Defence Organisation. Until this happens, abuses in Defence will continue, as will the organisation's downward spiral in all basic professional military competencies, to the detriment of the Nation.

Attachment (Email Dated 26/08/2011):

UNCLASSIFIED

Dear Dr Kopp,

I refer to your email message to MAJGEN Crane on 7 August about the DLA Piper review. Your e-mail was passed to Defence Legal as we are the Defence point of contact for this purpose. I apologise for the delay in responding to you.

Your e-mail appears to imply that Defence Legal has had an improper influence on the development of the terms of reference and conduct of this review. I reject this implication. The Minister sought a legal review by an external law firm. Defence Legal was responsible for engaging that law firm on behalf of the Secretary using the Defence Legal Services Panel.

As you will be aware, the origins of the Review were in allegations of sexual and physical abuse emerging from the 'Skype' incident at ADFA in March this year. The terms of reference reflect that context and were developed by Defence in conjunction with the DLA Piper review team, with input from the Attorney-General's Department and the Commonwealth Ombudsman. The terms of reference were agreed by the Secretary of the Department of Defence and subsequently by the Minister for Defence. In this context, I believe that the terms of reference are appropriate and that the involvement of Defence Legal was not improper.

In accordance with the Minister's intent, the Review is being conducted at arm's length from the Department. In a media statement on 21 June, DLA Piper responded to concerns that had been raised about the independence of the review team's report. The team rejected allegations that the review is a cover up exercise, saying they had met with the Minister, who expected their honest assessment and recommendations, and that they would not be participating if they thought the review was a sham. The team said that the report would contain only their assessments, conclusions and recommendations. The full media statement can be found on the DLA Piper website: <http://www.dlapiper.com/australia/review/>

Thank you for raising your concerns.

Dr David Lloyd
Defence General Counsel

From: Dr Carlo Kopp, PEng
Sent: Sunday, 7 August 2011 17:14
To: Crane, Michael MAJGEN
Subject: DLA Piper Review Matters

Dear Sir,

I have been following the DLA Piper led review from its inception, with much concern. I have observed inappropriate behaviours in parts of the Defence organisation for a decade now, with ever increasing frequency.

I have since learned that Defence Legal have been involved in this process, and specifically involved in the definition of the ToR for the review.

I find this to be an extraordinary development. The conduct of Defence Legal was the very subject of one of my complaints to the review, as it has been previously the subject of other complaints I have made to other parties. I also know that the conduct of Defence Legal has been the subject of a number of complaints by other parties, indeed over a number of years.

The involvement of Defence Legal in this review is akin to having the defendant advise the prosecution during a case. One does not require a postgraduate qualification in legal studies to see that this is an absolute conflict of interest.

If this review is to have any credibility, Defence Legal cannot be involved in any aspect of the process, or the definition of the review, and indeed should be placed on an equal footing with other parties in the Defence organisation who have been the subject of complaints.

If such an arrangement requires that the ToR be revised, then this should be done to restore the integrity of the review.

Sincerely,

Dr Carlo Kopp