

Senator the Hon. Ursula Stephens
Chair of the Senate Foreign Affairs, Defence and Trade References Committee

Thank you for your letter of 7 April 2014 and the invitation to comment on the mechanisms to support victims of abuse in the Australian Defence Force (ADF).

I make the following submissions in line with the Committees terms of reference.

a. The Defence Abuse Response Task Force (DART) process to date

Slater & Gordon offer our support and praise for the manner in which the Task Force has been conducted and the sensitive nature with which they have carried out an overwhelming undertaking. The leadership and professionalism of Chairman, Mr Len Robert-Smith is worthy of recognition by the Committee.

Whilst I note that certain individuals, groups and associations have raised issues regarding the DART, the experiences of myself and my team at the Military Compensation Group of Slater & Gordon Lawyers, have been nothing but positive. The job of the DART has been challenging given the fact that within a limited time frame it has had to assist people who have been denied recognition and support for many years.

Whilst some of my clients' claims have not been accepted, I do not believe that this was the fault of the DART or its processes, but rather the result of the restrictive definition of abuse and the limitations of the terms of reference in relation to certain claims.

The DLA Piper categories of "abuse" were originally much broader than the eventual definition of "abuse" used by the DART. This has led to some confusion and denial of some claims. For example, the DLA list originally included 'negligently causing injury', which is arguably a broad term.

To date, we have found our dealings with the DART to be extremely professional, cordial and conducted with the utmost good faith. The major pressing issue is that of time taken to process claims.

Whilst it would be easy to criticise the time taken for the DART to deal with the claims and the progress of the Restorative Engagement Group, I do not believe that this would be a fair reflection upon how the Task Force staff have responded and the enormity of the job at hand.

I praise their achievements overall.

b. Defence's response to the DLA Piper review and the work of DART

Slater & Gordon support the zero tolerance of ADF leadership for the failure of some of its personnel to meet appropriate standards of conduct, and the commitment the leadership has shown to stamping out abuse.

There is much commentary about whether some in the ADF are willing participants or have been dragged kicking and screaming into the work of the DART. In particular, recognition of so many past

instances of terrible abuse perpetrated by its personnel appears to have been challenging for many in the ADF.

The ADF has introduced mechanisms in an attempt to improve its handling of abuse cases and to address the “culture of silence” that protects perpetrators. Initiatives such as Pathway to Change, the Sexual Misconduct Prevention and Response Office (SeMPRA) are positive steps. The support lines and Employee Assistance Programs also provide current and former ADF personnel with mechanisms to seek help.

Many of my clients have expressed scepticism as to the likelihood of these initiatives resulting in any permanent changes in the future conduct of some ADF personnel despite the best intentions of ADF leadership, including its Minister.

Unfortunately, we are continuing to receive enquiries and have been retained by clients who have been subjected to various forms of abuse including sexual abuse within the Defence services in more recent years.

I note that the terms of reference only allow abuse cases up to the cut-off date of 1/4/11 to be considered and later abuse is out of scope. The cut-off date of 1/4/11 has created criticism and angst among claimants. This will create a vacuum because some ADF personnel continue to feel unable to report incidents post April 2011 for the usual reasons such as impact on their career, deployment opportunities, the risk of further degradation, humiliation and ongoing abuse etc.

Accordingly, events occurring after 1/4/11 date are being missed in the accurate reporting of more recent abuse.

I acknowledge the ADF and its Commanders have embarked on a strategic reform agenda to respond to the various independent reviews into Defence culture. However, the difficulty remains that the message is still not filtering down through Defence to the lower ranks.

An additional concern is the length of time taken by the ADF to release Volume 1 of the DLA Piper review. The report should have been made available much earlier. Of greater concern is the failure by the ADF to release Volume 2. To the best of my knowledge this delay has not been publicly explained.

For the hundreds of clients that I represent, the devil is certainly in the detail. This is one reason why we are calling upon the ADF to release Volume 2. This will enable the nature of some of the allegations considered by DLA Piper to be transparent and ensure the response by the ADF can be considered for its adequacy in a transparent environment.

It is disappointing to the victims who went to the trouble of contacting DLA Piper and providing submissions.

The initiatives implemented by the Department of Veterans' Affairs through the Veterans' Mental Health Strategy and the Clinical Reference Group are also positive steps in our opinion. However, it needs to be understood that there are members currently serving and recently discharged from the ADF that have been and are being subjected to ongoing abuse, victimisation and bastardisation.

c. Successive Governments responses to the DLA Piper Review and the work of DART

The current Government does not appear to have in any way intruded or impeded upon the work of DART. In fact it appears to have been supportive. As DART has transformed from the establishment phase into the operational phase, there has been significant progress in the Reparation Groups dealing with the serious sexual abuse complaints.

There have been delays with the establishment of the Restorative Engagement Group and these are understood to be due to resourcing issues and the logistical problem of having so many claimants across the country. We have seen progress in the National Counselling Scheme with many claimants now engaged in that process.

Given the nature of the overwhelming task of processing some 2000 claims and no doubt the budgetary constraints overriding same, I believe that the response from the former and present Governments have been compassionate and reasonable. This comment is made with the proviso that I am unsure how the current and future budgets will impact on the DART Scheme and other initiatives.

Of concern is the unknown issue of funding for the other groups established under DART. The Restorative Engagement Program and Counselling Groups appear to be suffering from underfunding and a lack of resources. Whilst I have not been engaged by clients to actively represent them within these areas of DART, I make this comment from feedback and by ongoing communications with my clients.

Some of our clients' do not wish to utilise the services of the Restorative Engagement Group or the Counselling Scheme. It must be acknowledged that the DART process has re-opened old wounds for many. My clients have mainly sought acknowledgement and the Reparation Payment as a means to move on with their lives, and have well before the establishment of these initiatives, been seeking counselling and assistance elsewhere.

There are many victims who do not agree with the amounts of Reparation being offered for the abuse that they may have suffered, however I note, the monetary figure was never meant to take the form of compensation. I note that the maximum Reparation Payment under Category 4 and 5 was in excess of figures I have previously advocated to be paid as an ex- gratia payment.

The ongoing departmental support being offered to the DART by the Attorney-General's Department should continue so that outcomes being provided to victims are undertaken in a respectful, consistent and professional manner.

The DART should be given resources to continue to a conclusion of all claims submitted.

d. Desirability of release Volume 2 of the DLA Piper Report in a redacted form or by way of summary

I submit that Volume 2 of the DLA Piper Review should be released by the ADF in a redacted form to protect the privacy of complainants. At the least a comprehensive summary with examples of the

nature of complaints should be provided. We acknowledge that a public report is being prepared by the Taskforce into HMAS Leeuwin and the ADFA 24.

The reasons why volume 2 should be released are as follows;-:

1. Volume 2, which no doubt contains detailed individual accounts of abuse, will give an overview indicating the extent of the abuse, over what periods of time the abuse has been occurring, specific identification of those bases, institutions and training institutions involved, and the extent to which the army, navy or airforce either ignored, neglected, failed to investigate or “covered up” incidents.
2. It appears that approximately 775 plausible allegations of abuse were identified by the DLA Review. In some instances, those victims may not have submitted claims to the DART.
3. Reports are that the DLA Piper Review was at a cost in excess of \$10 million dollars to the tax payer. The tax payer deserves to know what is contained in the report as do the victims of abuse.
4. In the interests of complete and open transparency, all information (taking into consideration the privacy provisions) gathered by DLA Piper should be made public for consideration, review and comment if necessary.

If Volume 2 is not released then it will give weight and credence to arguments that the ADF is still failing to disclose material that is difficult or prejudicial for it and is unwilling to have the instances of past abuse put into the public domain. This does not accord with the messages from the leadership of the ADF, the Pathway to Change, the numerous other enquiries that have been conducted and the establishment of the Sexual Misconduct Prevention and Response Office (SeMPRO).

5. Three years have passed since the external legal review was announced on 11 April 2011 by the then Minister for Defence, the Hon. Stephen Smith. Volume 1 was received on 11 October 2011 by the Minister and was released on 7 March 2012 in a redacted form. The failure to release Volume 2, which we believe is likely to contain plausible allegations, leaves a cloud over the process, including the process of the DART.⁶
6. It is important for the purposes of closure for the victims that everything that the ADF or Government have in its possession is made available. To release information may assist with the healing process for many.

e. Other related matters

Royal Commission

Whilst there is an invitation with the DART to request a possible referral to a Royal Commission in the areas of the ADFA 24 and HMAS Leeuwin, it is my belief that given the enormous expense of a Royal Commission, the money would be better invested on support for the victims utilizing current schemes. In addition, Volume 2 of the DLA Piper Review and the information provided to DART, we expect has already resulted in sufficient information to Government and the current leadership of the ADF.

It would appear that many of the ADFA 24 have not come forward to DART. A Royal Commission may prompt them to do so, alternatively it may not.

One of the difficulties raised with the DLA Piper Review was a perception in relation to their independence because the firm have not been known to represent ADF personnel (victims of abuse). They have in fact been routinely briefed by the Department of Veterans' Affairs to oppose claimant's seeking compensation or access to benefits under existing compensation schemes.

From the material released to date it appears that DLA Piper's investigations were comprehensive, noting as submitted above Volume 2 contains information that should be available for review.

Evidentiary Requirements

An ongoing problem is the difference in evidentiary requirements for claims under DART compared to the 'Determinations' being made by the Department of Veterans' Affairs under the statutory compensation schemes.

We are aware of a number of claimants who have received DART Reparation Payments and yet liabilities for benefits under the DVA compensation schemes have still been denied by DVA.

It is extremely difficult for victims to appreciate and fathom why a Reparation Payment can be made for abuse and yet liability for the same abuse is denied in the assessment of DVA claims.

One of the issues is the non-reporting of abuse within the military service and a lack of contemporaneous records. By the very nature of the abuse, assaults are rarely reported.

We are broadly aware of references to DVA and DART to sharing information between the agencies (with the consent of the claimants) to facilitate the acceptance of liability, disability, pension and impairment claims. However, in practice, we have not seen DVA accept a DART Reparation Payment as a basis for liability to be accepted under the DVA scheme. To the contrary, DVA appears to continue to take a hard line approach contrary to the beneficial nature of the compensation scheme legislation it administers.

We again commend DART for the sensitive manner in which they have investigated claims. It is unfortunate that I would report that DVA does not seem to be taking a similar approach and is continuing to require strict adherence to the Statements of Principles and the need for conclusive and contemporaneous evidence to appear in the members medical and personnel records.

This approach has left many victims confused, angry and alienated about the discrepancies and the manner in which their claims are being dealt with under DART and DVA.

Duplication of Services

One of the difficulties and issues that we perceive as advocates is not only in the abuse area but in general in the multitude of organisations across the country providing support. I am of the view that there is significant duplication of services and the quality and consistency of services is also highly variable.

It is my submission that there should be a clear mapping of the numerous organisations in the ADF support field and if necessary consolidation of groups with clearly defined goals. More should be done to lift the overall quality of service provision.

Even within the DART, I note that a bureaucracy has built up around the Counselling and Restorative Engagement Groups. There seems to be funding issues and these are not helped by this level of duplication.

It is also noted that where there has been denial of DVA claims this is problematic because the counselling provided by DART is limited in terms of the number of sessions available. If DVA denies a claim the applicants have no ongoing support in terms of payment for psychological treatment or medications.

My observations are made with a view to the standing committee's examination of the mechanisms to support not only the victims of abuse in the ADF, but injured personnel on a whole.

Thank you for the opportunity to comment.