

Chapter 2

Background to the inquiry

Introduction

2.1 The Australian Defence Force (ADF) has had a long history of incidents of reported abuse and harassment (including sexual abuse) within its ranks, and related reviews and reforms. The contemporary relevance of these issues has been highlighted by the recent announcement of action commenced against ADF members who allegedly have been circulating inappropriate material.¹

2.2 Frequently these incidents have been related to ADF training establishments or have involved junior members of the ADF. For example, in May 1970, the *Four Corners* program covered the 'bastardisation scandal' at the Royal Military College, Duntroon.² In particular, in 1998, the Department of Defence released the Grey Review, a report concerning 'bastardisation' and sexual harassment at the Australian Defence Force Academy (ADFA) conducted by a Defence official, Ms Bronwen Grey. The Grey Review found that a high level of unacceptable behaviour was occurring at ADFA, including sexual harassment and sexual offences.³

2.3 The Senate Foreign Affairs, Defence and Trade References Committee has also previously conducted inquiries which have addressed, or touched on, abuse and sexual harassment in Defence. These inquiries have included:

- *Inquiry into an equity and diversity health check in the Royal Australian Navy - HMAS Success* (September 2011);
- *The effectiveness of Australia's military justice system* (June 2005); and
- *Sexual Harassment in the Australian Defence Force* (August 1994).

Events leading to the DLA Piper Review

2.4 In April 2011, media reports indicated that an incident had occurred at ADFA where a first year female cadet was filmed without her consent having sex with a male

1 Department of Defence, 'Chief of Army announces investigation into allegations of unacceptable behaviour', *Defence News*, <http://www.defence.gov.au/defencenews/stories/2013/jun/0613.htm> (accessed 14 June 2013).

2 Australian Broadcasting Corporation, *Duntroon: Marking Time*, Four Corners, 2 May 1970, available at: <http://www.abc.net.au/4corners/stories/2011/08/08/3288457.htm> (accessed 20 May 2013).

3 Department of Defence, *Report of Review into Policies and Practices to Deal with Sexual Harassment and Sexual Offences at the Australian Defence Force Academy*, June 1998, p. xi.

colleague and the footage sent via Skype to other cadets in a nearby room.⁴ Following the so-called 'Skype incident', the Minister for Defence, the Hon Stephen Smith MP, (Minister) described the pursuit of disciplinary proceedings against the female cadet by the management of ADFA in relation to other matters as 'inappropriate, insensitive and wrong' and 'almost certainly faulty in the law'.⁵ The Commandant of ADFA, Commodore Bruce Kafer AM CSC, was subsequently directed to take leave effective from April 2011.⁶

2.5 On 11 April 2011, the Minister announced a range of reviews into Defence culture generally and an inquiry into the 'Skype incident' in particular. These included:

- an inquiry, under Defence regulations, to be conducted by Mr Andrew Kirkham QC, into the management of the 'Skype incident of March 2011' (Kirkham inquiry);
- a review of treatment of women at ADFA and the treatment of women in the ADF and pathways for women into ADF leadership;
- a review into employment pathways for women in the Department of Defence;
- a review of the use alcohol in the ADF;
- a review of social media and Defence;
- a review of personal conduct of ADF personnel; and
- a review of management of incidents and complaints in Defence.⁷

2.6 Further, the Minister noted that 'a large number of public and private allegations of sexual and other forms of abuse' had been drawn to the attention of his office. The Minister stated:

These allegations are of concern and must be dealt with methodically and at arm's length from Defence. The Secretary of the Department of Defence will engage an independent legal firm to review each allegation raised to determine the most appropriate way for these complaints to be addressed

4 For example, Ian McPhedran, 'Defence sex scandal: Cadet secretly filmed liaison with colleague', *Adelaide Advertiser*, 6 April 2011, p. 17.

5 Minister for Defence, the Hon Stephen Smith MP, 'Interview with David Speers SKY News PM Agenda', *Transcript*, 6 April 2011.

6 Commodore Kafer was reinstated as Commandant of ADFA following the inquiry by Mr Andrew Kirkham QC.

7 Minister for Defence, the Hon Stephen Smith MP, 'Sex Discrimination Commissioner to lead review of the Australian Defence Force Academy and the Australian Defence Force', *Media Release*, 11 April 2011, pp. 1–2.

and whether further independent action is required to deal with any such matters.⁸

Defence culture reviews

Kirkham inquiry

2.7 On 7 March 2012, the Minister released the outcomes of the Kirkham inquiry. The Minister stated that the inquiry had found that neither the ADFA Commandant, nor the Deputy Commandant, had made an error of judgement in their decision to commence and conclude disciplinary proceedings against the female cadet. Nonetheless, the Minister remained of the view that this was an error of judgement.⁹ The Minister indicated that the inquiry report would not be publicly released. Commodore Kafer subsequently resumed his position as Commandant ADFA.¹⁰

Treatment of women at ADFA and in the ADF

2.8 The Review into the Treatment of Women at ADFA the Review into the Treatment of Women in the ADF were both conducted by the Australian Human Rights Commission, chaired by Ms Elizabeth Broderick, the Sex Discrimination Commissioner.

2.9 The report of the Review of the Treatment of Women at ADFA made a large number of recommendations. These included the establishment of an ADFA specific 'hotline' for cadets, staff and families to provide advice and referral and the establishment of a database to record, track and manage complaints and incidents of unacceptable conduct, including sexual harassment, abuse and assault and sex discrimination.¹¹

2.10 The report of the Review into the Treatment of Women in the ADF also made a large number of recommendations in relation to sexual abuse and harassment. In particular, the report recommended the establishment of a dedicated Sexual Misconduct Prevention and Response Office (SEMPRO) 'to coordinate timely responses, victim support, education, policy, practice and reporting for any misconduct of a sexual nature, including sexual harassment and sexual abuse in the

8 Minister for Defence, the Hon Stephen Smith MP, 'Sex Discrimination Commissioner to lead review of the Australian Defence Force Academy and the Australian Defence Force', *Media Release*, 11 April 2011, p. 2.

9 Minister for Defence, the Hon Stephen Smith MP, 'Outcomes of the Kirkham Inquiry', *Media Release*, 7 March 2011.

10 Minister for Defence, the Hon Stephen Smith MP, 'Outcomes of the Kirkham Inquiry', *Media Release*, 7 March 2011.

11 Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force Academy*, Phase 1 Report, October 2011, pp. 99–100.

ADF'.¹² The report also recommended the ADF should investigate mechanisms to allow members to make confidential (restricted) reports of sexual abuse to SEMPRO.¹³

Review of the Personal Conduct of ADF Personnel

2.11 The Review of Personal Conduct was undertaken by Major General CW Orme AM, CSC. The report, titled 'Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms' was completed on 3 August 2011. The recommendations of the review centred on the promotion of 'the Australian profession of arms' framework of values within the ADF. Other recommendations included: continuing initiatives to improve avenues for members to report concerns, improved programs of socialisation; a strategic communication program; and appropriate research to inform policy development.¹⁴

Use of Alcohol in the ADF

2.12 The Review on the Use of Alcohol in the ADF was undertaken by an Independent Advisory Panel on Alcohol, chaired by Professor Margaret Hamilton AO, and completed on 19 August 2011. While the Panel did not explicitly address the relationship between alcohol and abuse in the ADF, it did note that while the ADF is a highly safety focused and discipline based organisation, 'it is not immune to alcohol related transgressions by its members'.¹⁵

Social media and the ADF

2.13 The Review of Social Media and Defence was undertaken by George Patterson Y&R. It found that Defence is in a similar position to other organisations dealing with social media and there is 'no evidence of systemic abuse by Defence personnel in their official or unofficial use of social media'.¹⁶ It made a number of recommendations including a unified social media strategy, a review of policies and training in relation to social media and developing a social media crisis management plan.¹⁷

12 Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force*, Phase 2 Report, August 2012, p. 36.

13 Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force*, Phase 2 Report, August 2012, p. 37.

14 Department of Defence, 'Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms', *Report of the ADF Personal Conduct Review*, August 2011, pp. 43–44.

15 Department of Defence, *The Use of Alcohol in the Australian Defence Force, Report of the Independent Advisory Panel on Alcohol*, August 2011, p. 15.

16 Department of Defence, *Review of Social Media and Defence*, August 2011, p. ix.

17 Department of Defence, *Review of Social Media and Defence*, August 2011, p. ix.

Review of the Management of Incidents and Complaints

2.14 The Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction was undertaken by the Inspector-General of the ADF (Inspector-General ADF), Mr Geoff Earley AM, and completed on 6 September 2011. The review report made 38 recommendations which, in particular, highlighted a number of inconsistencies in Defence policy documents regarding the management of incidents and complaints. The recommendations included that:

- greater use of alternative dispute resolution across Defence should be encouraged;
- DI(G) PERS 35-3 *Management and Reporting of Unacceptable Behaviour* and DI(G) 35-4 *Management and Reporting of Sexual Offences* should be reviewed to clarify the administrative action that may be taken when disciplinary action is pending;
- Defence's administrative policies should be amended to allow for administrative suspension from duty;
- the ADF should not adopt restricted reporting (whereby a victim can report abuse outside of the chain of command and access support services, but an investigation is not triggered without the consent of the victim);
- case officers to support complainants and respondents should be appointed in all cases;
- policy on management of unacceptable behaviour and sexual offences should be combined in a single policy document; and
- privacy law exemptions should be made to enable outcomes of discipline and administrative proceedings with names redacted to be made available to Defence personnel to ensure the transparency of military justice outcomes.¹⁸

The DLA Piper Review

Conduct of the DLA Piper Review

Review members

2.15 While the Review has come to be known as the 'DLA Piper Review', Volume 1 of the report notes that the 'Review leaders were to provide a report based on their own findings and they did not represent the law firm with which they were associated'.¹⁹ The Department selected Dr Gary Rumble, a partner with law firm DLA Phillip Fox (later to become DLA Piper), one of Defence's panel of legal

18 *Submission 19*, Attachment 1.

19 DLA Piper Review, *Report of the Review of allegations of sexual and other abuse in Defence: Facing the problems of the past, Volume 1 – General findings and recommendations*, October 2011, p. xxi (Volume 1).

services providers, as a suitable person to lead the review. Professor Dennis Pearce AO (formerly the Defence Force Ombudsman between 1988 and 1990) and Ms Melanie McKean (both, at that time, also associated with DLA Phillip Fox) were appointed joint leaders of the Review with Dr Rumble.²⁰ All three leaders of the DLA Piper Review moved to another law firm, HWL Ebsworth, during the course of the Review.

2.16 Following concerns raised regarding the independence of DLA Piper as a provider of legal services to Defence, the Review released a statement on 21 June 2011 which clarified that the report 'will contain and will only contain assessments, conclusions and recommendations of the Review members':

The Minister expects the Review [members] 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 the Review if we thought it was a sham.²¹

Terms of Reference

2.17 The Terms of Reference were notified to the DLA Piper Review team by the Minister's office on 21 June 2011. The Terms of Reference of the Review are extracted at [Appendix 4](#). The Terms of Reference directed that the Review would be conducted in two phases and that DLA Piper had been engaged by the Secretary of Defence to conduct Phase 1:

The Review will consider all relevant allegations, whether referred from the Minister's Office, raised in the media or coming directly to the Review which have been or are made in the period 01 April – 17 June 2011...

Phase 1 will review all allegations of sexual or other abuse and any related matter to make an initial assessment of whether the matters alleged have been appropriately managed and to recommend further action to the Minister.

Phase 1 will also report on whether Phase 1 has identified any particular systemic issues that will require further investigation in Phase 2...

Phase 2 is expected to provide oversight of Defence's implementation of Phase 1.

Phase 2 will also review Defence's processes for assessing, investigating and responding to allegations of sexual or other forms of abuse to consider with any systemic issues identified in Phase 1 and any other systemic issues

20 DLA Piper Review, *Volume 1*, p. 1.

21 DLA Piper Review, 'DLA Piper Review responds to concerns raised about conduct of Review of Allegations of Sexual and Other Abuse (and Related Matters) in Defence', *News Release*, 21 June 2011, p. 3.

and to make appropriate recommendations about all systemic issues that have been identified.²²

Advertising

2.18 The DLA Piper Volume 1 report noted that following the announcement of the Review via an internal Defence publication on 10 May 2011 the rate of communications to the Review was 'initially slow'.²³ However:

After [Defence] organised print-media advertisements, towards the end of May 2011, there was a clear increase in the number of people contacting the Review. In the beginning of June 2011, as the date for making allegations to the Review was approaching, the number of persons contacting the Review continued at a steady level.²⁴

2.19 A report by the ABC's Four Corners program on abuse in Defence titled 'Culture of Silence' on 13 June 2011 significantly increased the number of persons raising matters with the DLA Piper Review. Approximately 550 communications came to the Review in the four days following the broadcast.²⁵

Review reports and releases

2.20 On 25 August 2011, the Minister announced the reporting date of the DLA Piper Review would be extended to 30 September 2011.

2.21 On 11 October 2011, the Minister received Volume 1 (General Findings and Recommendations) of the DLA Piper Review report and the first tranche of Volume 2 (Individual Allegations). On 7 March 2012, the Minister released an extract of the Executive Summary of Volume 1.

2.22 A Supplement to Volume 1, was delivered to the Minister in April 2012. The Supplement to Volume 1 added to, and updated, the recommendations and findings of the original Volume 1 report. The Supplement to Volume 1 was prepared only by Dr Rumble and Ms McKean, as Professor Pearce had withdrawn from the Review due to ill-health.²⁶ An updated Volume 2 report was also provided in April 2012, which was a consolidated report dealing with all the individual allegations before the Review.

22 DLA Piper Review, *Volume 1*, Appendix 7, pp. 275–276.

23 DLA Piper Review, *Volume 1*, p. 4.

24 DLA Piper Review, *Volume 1*, p. 4.

25 Australian Broadcasting Corporation, *Culture of Silence*, Four Corners, 13 June 2011, available at: <http://www.abc.net.au/4corners/content/2011/s3239681.htm> (accessed 29 October 2012); DLA Piper Review, *Volume 1*, p. 108.

26 DLA Piper Review, *Report of the Review of allegations of sexual and other abuse in Defence: Facing the problems of the past, Volume 1 – General findings and recommendations, Supplement to Volume 1*, April 2012, p. ix (*Supplement to Volume 1*).

2.23 On 14 June 2012, under Freedom of Information provisions, the complete and un-redacted Executive Summary of Volume 1 was released. On 10 July 2012, the Minister released all of the Volume 1 report of the DLA Piper Review, subject to a small range of redactions.²⁷

Cost

2.24 At the Budget Estimates hearing in May 2012, the Department of Defence indicated that \$9.9 million had been expended on the DLA Piper Review for 'over 27,000 hours of activity'.²⁸ At the October 2012 Supplementary Estimates hearing, the Department of Defence indicated this expenditure had increased to \$10.49 million. It also noted that DLA Piper continued to provide on-going services in relation to the Review.²⁹ On 3 June 2013, Defence indicated that about \$11.3 million had been expended on the DLA Piper Review.³⁰

DLA Piper Review—Volume 1

2.25 Volume 1 of the DLA Piper Review report contained 10 recommendations, 23 issues, and 29 findings. The concluding remarks of Volume 1 also called on the ADF, the Australian 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 other in the ADF do, or have done wrong'.³¹

2.26 For convenience, the issues and findings identified in Volume 1 can be grouped into a number of key themes including that:

- ADF environments typically have factors which indicate a high risk of abuse;
- a substantial number of persons suffered abuse in the ADF or experienced inadequate Defence management of abuse allegations;
- a substantial number of boys and young people have suffered abuse, including serious sexual and other physical abuse in the past;
- those who suffered abuse in ADF may have later participated in inflicting abuse on others;
- the ADF and the Australian Government have in the past failed to take steps to protect those vulnerable to abuse;

27 Minister for Defence, the Hon Stephen Smith MP, 'Release of Volume 1 of the DLA Piper Report: Allegations of sexual and other abuse in Defence', *Media Release*, 10 July 2012, p. 1.

28 Senate Foreign Affairs, Defence and Trade Legislation Committee, Budget Estimates, *Committee Hansard*, 28 May 2012, p. 51.

29 Senate Foreign Affairs, Defence and Trade Legislation Committee, Supplementary Estimates, *Committee Hansard*, 17 October 2012, p. 31.

30 Senate Foreign Affairs, Defence and Trade Legislation Committee, Budget Estimates, *Committee Hansard*, 3 June 2013, p. 16.

31 DLA Piper Review, *Volume 1*, pp. 199–200.

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- many perpetrators of abuse, or those responsible for the mismanagement of allegations of abuse, have not been identified, called to account or rehabilitated and these persons may have advanced to more senior positions in the ADF (creating serious risks);
 - the victims of abuse in the ADF may be at risk of suffering mental health, substance abuse and associated physical health and employment problems, and these victims may need counselling and other assistance;
 - Phase 2 of the Review should examine improvements which could be made to the mechanisms which track and record unacceptable behaviour in the ADF to enable commanders to identify and manage potential serial perpetrators;
 - Phase 2 should examine relevant Defence Instructions (General) and other aspects of ADF procedures in responding to allegation of sexual offence to allow appropriate use of administrative action by commanders;
 - the culture of the ADF discourages the reporting of abuse and a substantial number of victims of abuse have not reported abuse they may have suffered;
 - Phase 2 of the Review should consider changes to procedures for Defence procedures for responding to allegations of abuse and to assist victims of abuse;
 - Phase 2 should consider Defence's response to review of the ADF Investigative Service (ADFIS) and the retention of personnel in ADFIS to ensure skills in management of abuse allegations are maintained.

2.27 The recommendations made by in Volume 1 included that:

- further information should be considered and reported on in a supplementary report to the Minister and Secretary;
- Phase 2 of the Review should undertake discussion with Defence regarding the clarification or amendment of *Defence Instructions (General) – Management and Reporting of Sexual Offences* to permit administrative action to be taken in respect of sexual offences;
- new Defence Instructions should be considered to direct relevant Commanding Officers to consider taking administrative action even if incident has been reported to civilian police;
- relevant Defence Instructions should be redrafted to provide simpler advice and guidance to management regarding sexual offences and 'unacceptable behaviour';
- if a new complaint resolution scheme is established, it should not be limited to those who contacted the Review and allegations in Volume 2 should be reassessed;
- further investigations made during Phase 2 should be conducted by an external review body similar to that which conducted Phase 1;

- a capped compensation scheme for the victims of abuse within Defence should be considered;
- a framework of private facilitated meetings between victims, perpetrators and witnesses of abuse with Defence should be considered;
- the special counselling and health services in place for the duration of the Review be extended to Phase 2 while a plan for providing health services to victims of abuse is prepared.

2.28 Finally, Volume 1 of the report recommended that a suite of options be adopted to afford reparations to persons affected by abuse in Defence comprising:

- public apologies/acknowledgements;
- personal apologies;
- a capped compensation scheme;
- facilitated meetings between victims and perpetrators; and
- provision of health services and counselling.

Previous incidents of serious sexual offences at ADFA

2.29 A particular area of concern for the Review was information regarding the investigations by Lieutenant Colonel Northwood during the period of the Grey inquiry of ADFA. The Review noted that this material, which was accessed late in the Review process, had affected their consideration of appropriate action for Phase 2.³² The Review noted that that Lieutenant Colonel Northwood had 'identified around 24 cases of rape at ADFA in the late 1990s'. The Review raised the issue that it was possible that 'male cadets who raped female cadets at ADFA...and other cadets who...did not intervene may now be in 'middle' to 'senior' management positions in the ADF'. The Review noted these possibilities 'carry serious risks for the ADF'.³³

2.30 The Review raised the issue that Phase 2 should consider the possibility of establishing a Royal Commission to clarify whether persons suspected of having committed rape (or those who did not intervene) were still in the ADF and 'if so, how to deal with that situation'.³⁴

DLA Piper Review—Supplement to Volume 1

2.31 The Supplement to Volume 1 report contained five additional recommendations (replacing one recommendation made in Volume 1), 12 additional issues and 9 additional findings. The findings of the Supplement to Volume 1 confirmed the original findings made in Volume 1.

32 DLA Piper Review, *Volume 1*, p. 115.

33 DLA Piper Review, *Volume 1*, p. 121, Issue 3.

34 DLA Piper Review, *Volume 1*, p. 121, Issue 4.

2.32 The additional recommendations made in the Supplement included that:

- further information received regarding allegations not be considered until Phase 2 commences;
- the findings and issues in Volume 1 be taken into account in Defence's Pathways to Change strategy³⁵;
- concerns raised in Volume 1 regarding taking administrative action after an allegation of sexual assault be drawn to the attention of the Inspector-General ADF, the Directorate of Rights and Responsibilities and others reviewing relevant Defence Instructions (General);
- the formulation of personal and general apologies should take into account criteria for formal apologies set out previously by the Law Commission of Canada and the Senate Community Affairs Committee; and
- for each personal apology recommendation which is accepted, a representative of the Service Chief should liaise with individuals regarding details of the apology.

2.33 The Supplement to Volume 1 highlighted the difficulties of the Review in accessing Defence file material and ADFIS material, noting this had 'significantly delayed' the Review's initial assessment of allegations in Volume 2.³⁶

2.34 A number of other issues were raised in the Supplement to Volume 1 for consideration in Phase 2 of the Review including:

- improved access to reports of administrative inquiries;
- Defence systems for tracking and responding to media allegations of abuse with the ADF;
- arrangements between Defence and Department of Veterans' Affairs (DVA) about abuse in the ADF;
- consultation with DVA regarding its role in informing and contacting those person who may be eligible for benefits;
- options for increased liaison with DVA and additional roles for DVA; and
- reform of spent convictions legislation to add recruitment into the ADF to existing exclusions.

2.35 The Supplement to Volume 1 also expanded the findings of the Review in relation to possible incidents of rape or indecent assault at ADFA and the possibility that perpetrators (or witnesses who did not intervene) may now be 'middle' to 'senior' management in the ADF. Issue S1 suggested that Phase 2 of the Review should

35 Further information on the Defence Pathway to Change cultural reform strategy is detailed below at paragraph 2.46.

36 DLA Piper Review, *Supplement to Volume 1*, p. 17.

consider the possibility of a 'Royal Commission or Court of Inquiry' into whether those persons identified by Lieutenant Colonel Northwood and '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 this situation.³⁷

2.36 The Supplement to Volume 1 also contained assessments made by the DLA Piper Review of the allegations raised by the five former defence members featured in the Four Corners report 'Culture of Silence'.³⁸ This Appendix was redacted in the publicly released Supplement to Volume 1.

2.37 The full list of the recommendations, issues and findings made in both Volume 1 report and the Supplement to Volume 1 report are extracted at [Appendix 5](#).

DLA Piper Review—Volume 2

2.38 Volume 2 contained the Review's preliminary assessments of, and recommendations in respect of, each allegation received by the Review. While Volume 2 has not been publicly released by the Minister, the Supplement to Volume 1 contained information about the structure and format of its contents. It outlined that that Volume 2 contains:

- assessments of 1,095 allegations of abuse raised by 775 sources;
- 494 Fairness and Resolution Branch database matters; and
- 49 ADFIS matters.³⁹

2.39 The committee also received evidence during the inquiry that Volume 2 consisted of:

- 23 Parts - large ring-binder folders - containing the Review's initial assessments and recommendations on around 1100 specific allegations from 775 sources (including the *Four Corners—Culture of Silence* program allegations);
- three Parts reporting on 494 Fairness and Resolution Branch database matters;
- one Part dealing with 49 ADFIS matters; and
- folders of explanatory material.⁴⁰

2.40 A number of other matters were considered by the Review but were determined not to be within the terms of reference, or were matters which were assessed as having been managed appropriately.

37 DLA Piper Review, *Supplement to Volume 1*, p. 59.

38 DLA Piper Review, *Supplement to Volume 1*, p. 3 and Appendix 1.

39 DLA Piper Review, *Supplement to Volume 1*, p. 3.

40 For example: Dr Gary Rumble, *Committee Hansard*, 14 March 2013, p. 7; the Hon Len Roberts-Smith, additional information tabled during public hearing, 14 March 2013.

2.41 The Supplement to Volume 1 report included 'tallies' of the allegations contained in Volume 2. For example, these tallies indicated that:

- 40% of the subjects of abuse were female;
- 18% of the subjects of abuse were under the age of 18;
- the largest portion (39%) of the subjects of abuse were in the Army at the time of the alleged incident, while the smallest portion was in the Australian Public Service (6%);
- ADFA (5.7%), HMAS Cerberus (5.3%), Kapooka (4.9%) and RMC Duntroon (3.8%) were the four of the most frequent locations for alleged incidents of abuse;
- 80.8% of allegations were assessed as 'plausible', 0.6% of allegations were not assessed as plausible and no finding was made for 18.6% of allegations;
- 58.3% of allegations were identified as having been managed by Defence;
- of those allegations managed by Defence, in 4.5% of cases the management of allegations was appropriate, in 21.2% of cases the management of allegations was not appropriate and 74% of cases the management of allegations required further investigation; and
- 61.6% of the Review's recommendations recommended further external investigation during Phase 2 of the Review; 23.9% recommended internal referral - in the majority of cases to single Service Chiefs and apology. Only 3 incidents (0.2 %) were referred for external review for further action. For 14.3% of incidents the Review recommended no further action.

2.42 The report emphasised that the DLA Piper Review had only carried out an initial assessment of specific allegations, and accordingly has not found as fact that any one of the allegations of abuse received by the Review has been made out. The Review considered that a 'substantial' number of former and current ADF personnel had not reported abuse which they suffered in the ADF.⁴¹

2.43 The Supplement to Volume 1 stated that 'approximately 100 [Assessment Worksheets]' included a recommendation that:

The 'circumstances of the alleged abuse suggest strongly that the alleged perpetrator(s) might have been serial perpetrator(s)'. The matter should be referred to the ADFIS and Service Chief for consideration on that basis'.⁴²

2.44 Many Assessment Worksheets in Volume 2 had a recommendation that allegations be referred to the ADFIS for possible action under the *Defence Force Discipline Act 1982* and/or referral by ADFIS to civilian police.⁴³

41 DLA Piper Review, *Volume 1*, p. 108.

42 DLA Piper Review, *Supplement to Volume 1*, Attachment 7, p. 1.

43 DLA Piper Review, *Supplement to Volume 1*, Attachment 8, p. 1.

Australian Government response to DLA Piper report

Context to the response—Pathway to Change

2.45 Following the reports of the Defence cultural reviews, Defence released a strategy document titled *Pathway to Change: Evolving Defence Culture: A Strategy for Cultural Change and Reinforcement* (Pathway to Change) in March 2012. This strategy document outlined that Defence agreed, or agreed-in-principle, to all of the recommendations made in the reviews into Defence's culture.⁴⁴

2.46 In the Pathway to Change strategy, Defence committed to implementing actions in six areas: leadership and accountability, values and behaviour, right from the start; practical measures; corrective processes; structure and support. The members of the Secretary and CDF Advisory Committee were nominated as leading these 'key levers for change'. While the Pathway to Change strategy noted that implementation 'will commence immediately', it acknowledged that 'substantial change in our culture will take some years'—suggesting five years as the 'likely time for cultural effect' in some areas.⁴⁵

2.47 While the Pathway to Change document did not refer to the findings of the DLA Piper Review, the Supplement to Volume 1 stated that the recommendations of DLA Piper Review 'will positively support the cultural changes that [the Secretary of Defence] and the CDF have identified in the Pathway to Change strategy as being "cultural changes that [Defence] must make if we are to continue to mature and evolve as an institution and as a community of professionals"'.⁴⁶

2.48 Following receipt of Volume 1 of the DLA Piper Review report, the Minister stated that the report's findings and recommendations 'will now be considered and dealt with carefully and methodically'.⁴⁷ He also noted that this included 'a full opportunity for Defence to carefully consider and respond in relation to the Review report'. Further:

Defence's response to the systemic issues identified in the Review will be based on Defence's 'Pathway to Change: Evolving Defence Culture' document, released by the Secretary of the Chief of the Defence Force in March this year.⁴⁸

44 Department of Defence, *Pathway to Change: Evolving Defence Culture—A Strategy for Cultural Change and Reinforcement*, March 2012, p. 31.

45 Department of Defence, *Pathway to Change: Evolving Defence Culture—A Strategy for Cultural Change and Reinforcement*, March 2012, p. 7.

46 DLA Piper Review, *Supplement to Volume 1*, p. vii.

47 Minister for Defence, the Hon Stephen Smith MP, 'DLA Piper report', *Media Release*, 11 October 2011.

48 Minister for Defence, the Hon Stephen Smith MP, 'Release of the Executive Summary of Volume 1 of the DLA Piper Report: Allegations of sexual and other abuse in Defence', *Media Release*, 14 June 2012, p. 3.

2.49 On 17 October 2012, a media report indicated that the Minister was examining the establishment of a judicial inquiry or royal commission. The Minister was reported as stating:

I am looking in a very focused way at the potential for a royal commission or a judicial inquiry into limited aspects and the DLA Piper report itself draws attention to a couple of areas where there was both inappropriate conduct and systemic failure.⁴⁹

The government's response

2.50 On 26 November 2012, the Minister for Defence, the Hon Stephen Smith MP, announced the government's response to the DLA Piper Review report. A table of the government's response to the DLA Piper Review recommendations is at [Appendix 6](#). The components of government's response included:

- an apology in Parliament (delivered by the Minister for Defence on 26 November 2012);
- a telephone hotline (1800 424 991) for anyone wishing to find out more about the proposed arrangements or report new information; and
- a Defence Abuse Response Taskforce (also referred to as DART), headed by the Hon Len Roberts-Smith QC, to assess individual allegations made to DLA Piper, and any additional allegations made before 11 April 2011, and work with those who have made allegations to determine an appropriate response in individual cases. These responses may include:
 - possible restorative justice/conferencing processes where a victim and alleged perpetrator are brought together in a facilitated process;
 - referral to counselling;
 - determination of compensation (capped at \$50,000);
 - referral of appropriate matters to police for formal criminal investigation and assessment for prosecution; and
 - referral of appropriate matters for disposition by the military justice system.

2.51 The Minister for Defence noted that the Taskforce would be based in the Attorney-General's Department and '[a]ll the costs of this exercise will be met from within the Defence budget'. He explained:

In the end, when there is inappropriate conduct in an institution, whether it's an agency, a department or an institution outside of Government, in the end, there's a price to pay, and that will be part of the price which Defence has to pay for inappropriate conduct in the past, but, more importantly, with the steps we're putting in place, we want to get zero tolerance and appropriate

49 Brendan Nicholson, 'ADF set to face probe into abuse', *The Australian*, 17 October 2012, p. 5.

conduct into the future, and we'll manage that in the same way that we manage other Defence budget issues.⁵⁰

2.52 The Minister for Defence also announced the government's response to the *Review of Treatment of Women in the ADF* conducted by the Sex Discrimination Commissioner, Ms Elizabeth Broderick, and provided an update on the Defence cultural reform program, Pathway to Change. In particular, this included accepting recommendations for the establishment of a dedicated Sexual Misconduct Prevention and Response Office (SEMPRO). The implementation of restricted reporting (allowing defence personnel to make confidential reports of sexual harassment, discrimination or abuse), and the introduction of waivers for Initial Minimum Provision of Service and Return of Service Obligations for victims of sexual assault/ harassment (to allow them to discharge from the ADF expeditiously and without financial penalty).⁵¹

2.53 The Minister for Defence stated that to 'ensure that ongoing implementation of these essential reforms receives the highest levels of oversight, the Minister for Defence will on an annual basis provide a report to the Parliament on Defence's implementation of the reform program'.⁵² The Minister later announced that the first annual report on Defence's implementation of the cultural reform program under the Pathway to Change strategy would be provided in June 2013.⁵³

2.54 On 26 November 2012, the CDF, General David Hurley also made an apology to those who had suffered sexual, physical or mental abuse while serving in the ADF:

Accepting that the rigors of training in the Army, Navy and Air Force will be tough and demanding every ADF member must be able to pursue their aspirations in an environment free from physical, mental and sexual abuse in accordance with the ADF's values and associated behaviours.

The allegations received through the DLA Piper review process demonstrate that the ADF has not always provided such an environment. That it hasn't done so is evident in alleged incidents of sexual, physical and mental abuse... I, as the head of the ADF, recognise the suffering that some

50 The Hon Stephen Smith MP, Minister for Defence, *Press Conference*, 26 November 2012.

51 The Hon Stephen Smith MP, Minister for Defence, 'Treatment of Women in the ADF', *Media Release*, 26 November 2012.

52 The Hon Stephen Smith MP, Minister for Defence, 'Implementation of Defence cultural reform—Pathway to Change', *Media Release*, 26 November 2012.

53 The Hon Stephen Smith MP, Minister for Defence, 'Response to allegations of abuse in Defence', *Media release*, 14 March 2013, <http://www.minister.defence.gov.au/2013/03/14/minister-for-defence-response-to-allegations-of-abuse-in-defence> (accessed 20 May 2013).

have experienced. On behalf of the ADF, I say that I am sorry to those who have suffered sexual, physical or mental abuse while serving in the ADF.⁵⁴

Defence Abuse Response Taskforce

2.55 The terms of reference for the Defence Abuse Response Taskforce, signed by the Minister for Defence and the Attorney-General, were released on 21 January 2013:

The Taskforce is to:

- (i) 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;
- (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;
- (iii) determine, in close consultation with those who have made complaints, appropriate actions in response to those complaints;
- (iv) will also, as appropriate, gather additional information relevant to consideration of the handling of particular allegations eg relevant records held by Defence;
- (v) take account of the rights and interests of alleged victims, accused persons and other parties;
- (vi) 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 practices in particular the work done by the Sex Discrimination Commissioner into the Australian Defence Force (ADF) and ADFA;
- (vii) report to the Attorney-General and Minister for Defence every 3 months on its progress and issues arising, including whether the funding it has been provided is adequate so as to enable the Attorney General and Minister for Defence to report to Parliament as appropriate
- (viii) report to the Attorney-General and Minister for Defence by October 2013 on whether, in what form, the Taskforce should continue in effect beyond the initial 12 month period and the funding that would be required so as to enable the Attorney General and Minister for Defence to report to Parliament as appropriate; and

54 Department of Defence, 'Statement from General David Hurley, Chief of the Defence Force', *Transcript*, 26 November 2012, <http://news.defence.gov.au/2012/11/26/statement-from-general-david-hurley-chief-of-the-defence-force/> (accessed 20 May 2013).

(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.⁵⁵

2.56 On 14 March 2013, the Minister tabled in the Parliament the *First Interim Report* of the Defence Abuse Response Taskforce. The report indicated the Taskforce had completed its 'Establishment phase' of constructing the Taskforce, meeting with stakeholders and establishing practices and processes and was moving to its 'Operational phase':

During this phase the Taskforce will conduct an initial assessment of DLA Piper and other allegations of abuse and Defence mishandling of reported allegations. Preliminary enquiries of plausible allegations will be made, including obtaining further information and material from Defence and other sources.

In consultation with complainants, appropriate action will be determined and where necessary appropriate allegations will be referred to external agencies such as Police agencies, the Defence Force Ombudsman or other entities.

With respect to the ADFA and HMAS Leeuwin cases, enquiries will be made as to whether alleged victims, perpetrators or witnesses remain in Defence. Where the circumstances so require, the Chair will make recommendations to the CDF in relation to appropriate action he may wish to pursue.

The Taskforce Chair will also make recommendations for action to the Minister for Defence, Secretary of Defence and CDF or other Service Chiefs in Defence as appropriate in individual cases. Further, the Chair will liaise with the Minister, Secretary and CDF on any implications for *Pathway To Change* or other reviews.⁵⁶

2.57 The report also anticipated a 'Conclusion and Legacy phase' during which the Taskforce would provide its final report to ministers, make recommendations in relation to any outstanding matters and organise storage of the Taskforce's materials.⁵⁷

2.58 The Minister announced that, on the advice of the Taskforce Chair, the timeframe for the Taskforce would also be extended to the end of May 2014. Further:

[T]he cut-off for the Taskforce accepting new allegations of abuse that are alleged to have occurred prior to 11 April 2011 will be 31 May this year, giving the Taskforce a full year in which to assess these allegations and conclude its work. This announcement will ensure that people who have

55 Defence Abuse Response Taskforce, 'Taskforce releases Terms of Reference', *Media Release*, 21 January 2013.

56 Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 5.

57 Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 5.

experienced abuse prior to 11 April 2011 but who have not yet brought their case forward have the time to consider doing so.⁵⁸

2.59 Once claims of abuse are processed and assessed by the Taskforce as plausible and in scope, claimants will be offered a number of options, including:

- referral to police;
- referral to Defence for administrative or military justice outcomes;
- restorative engagement;
- reparation payment; and
- counselling.⁵⁹

2.60 On 20 June 2013, the Minister made a statement on the Defence Abuse Response Taskforce and provided his first annual report on the implementation of the Pathway to Change Defence cultural reforms. In particular, the Minister reported on the progress in implementing the recommendation of the Defence cultural review:

As at 12 June 2013, a total of 108 of the Pathway to Change Actions and Defence Review Recommendations have been finalised:

6 of 15 key actions have been completed;

82 of 160 recommendations have been completed; and

20 of 160 recommendations have been overtaken by subsequent activities or reviews or have been addressed through other means.

It is expected that many of the remaining actions and recommendations currently being implemented will be completed over the coming year.⁶⁰

2.61 The Defence Abuse Response Taskforce second interim report was also tabled by the Minister on 20 June 2013. The Taskforce's second interim report indicated that:

Up until the reporting deadline of 31 May 2013, the Taskforce received a total of 3251 enquiries, which were received through DLA Piper, from law firms or directly to the Taskforce. Approximately 331 complaints have been identified as duplicates or multiple lodgements by the same person and approximately 510 have not provided consent for information to be passed to the Taskforce yet.

As at 31 May 2013, it is estimated there are 2410 complaints which will be assessed by the Taskforce. Of these, 1535 are new complaints (post 26

58 The Hon Stephen Smith MP, Minister for Defence, 'Response to allegations of abuse in Defence', *Media release*, 14 March 2013, <http://www.minister.defence.gov.au/2013/03/14/minister-for-defence-response-to-allegations-of-abuse-in-defence> (accessed 20 May 2013).

59 Defence Abuse Response Taskforce, private briefing, 7 June 2013.

60 The Hon Stephen Smith MP, Minister for Defence, 'Paper presented on the Defence Abuse Response Taskforce', 20 June 2013.

November 2012) and 875 are complaints that the Taskforce has consent to reassess, which came from DLA Piper....

More than 240 complaints were at various points of the assessment process on 6 June 2013 and eight complaints had been provided to the Reparation Payments Assessor for consideration.⁶¹

Parallel processes

Re-thinking systems of inquiry, investigation, review and audit in Defence

2.62 On 8 November 2011, the Secretary of Defence and the CDF commissioned a review of all investigation, inquiry, review and audit systems:

The objective of the review is to make recommendations regarding the establishment of a system that is fair, timely, simple to implement, provides whole of Defence outcomes and which takes into account legislative requirements, with the initial step being to:

- summarise current structures, demonstrating key strengths and weaknesses;
- outline the key factors that prevent quick, decisive, whole of Defence outcomes; and
- identify the essential components of an optimal system for the future.⁶²

Royal Commission

2.63 On 12 November 2012, the then Prime Minister, the Hon Julia Gillard MP, announced that a Royal Commission into institutional child abuse would be established. Following the announcement, the Acting Minister for Families, the Hon Brendan O'Connor was asked if the Royal Commission's investigation would include consideration of the abuse of Defence cadets. The Acting Minister noted that 'there is an ongoing investigation into those matters' and that the terms of reference of the Royal Commission would be determined 'before the year's end'.⁶³ The Letters Patent of the Royal Commission into Institutional Responses to Child Abuse do not appear to exclude those who suffered abuse in Defence institutions when they were underage.⁶⁴

61 Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and the Minister for Defence*, June 2013, p. iii.

62 Department of Defence, 'Report on Stage A (Research and Analysis stage)', *Re-thinking systems of inquiry, investigation, review and audit in Defence*, 1 August 2012, p. 5.

63 Australian Broadcasting Corporation, 'Minister explains abuse Royal Commission decision', *7.30 Report*, 12 November 2012, available at: <http://www.abc.net.au/7.30/content/2012/s3631175.htm> (accessed 13 November 2012).

64 Royal Commission into Institutional Responses to Child Sexual Abuse, 'Letters Patent', <http://www.childabuseroyalcommission.gov.au/LettersPatent/Pages/default.aspx> (accessed 20 May 2013).

The Defence Abuse Response Taskforce reported it has commenced discussions regarding establishing an information sharing protocol with the Royal Commission.⁶⁵

65 Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and the Minister for Defence*, June 2013, p. 44.

