

Chapter 7

Conclusion and recommendations

Introduction

7.1 The terms of reference of the committee's inquiry are directed to the DLA Piper Review report and the government's response. However, the clear interactions and overlaps between the DLA Piper Review report and the announced Defence cultural reforms mean that some aspects of these reviews and the broader Pathway to Change strategy have also been considered in the committee's report. While the Defence Abuse Response Taskforce aims to assist victims of abuse in the past, the Defence cultural reforms are intended to implement changes to prevent abuse in the future.

7.2 Events have moved relatively rapidly since the Senate referred the inquiry to the committee. In particular, the government's response to the DLA Piper Review report has been released, including an apology in Parliament by the Minister for Defence to victims of abuse in Defence, and the announcement of the establishment of the Defence Abuse Response Taskforce. Subsequently, the Taskforce has now progressed from its establishment phase to its operational phase. The cut-off date for new allegations about abuse in Defence to be raised with the Taskforce, 31 May 2013, has passed. The Taskforce is now in the process of dealing with the estimated 2140 allegations of abuse in Defence which have been received.¹

7.3 In broad terms, the committee has welcomed the announced components of the government's response. The committee also acknowledges the ongoing bipartisan support for the objectives of the Defence Abuse Response Taskforce and the Pathway to Change Defence cultural reforms.² In particular, the committee concurs with the statement of the Minister for Defence to Parliament on 26 November 2012:

Acknowledging the past and taking responsibility for it is only the first step. We must ensure that such abuse can never be tolerated again. We must place the safety and wellbeing of the young men and women of the Australian Defence Force above all else.³

7.4 The committee is constrained in the comments and recommendations it can appropriately make by the fact that most of the government's response to the findings

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

2 For example, Mr Stuart Robert MP, Shadow Minister for Defence Science, Technology and Personnel, *House of Representative Hansard*, 26 November 2012, p. 13107; Mr Stuart Robert MP, Shadow Minister for Defence Science, Technology and Personnel, *House of Representative Hansard*, 14 March 2013, p. 2106; Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and Minister for Defence*, June 2013, p. v.

3 The Hon Stephen Smith MP, Minister for Defence, *House of Representatives Hansard*, 26 November 2012, p. 13106.

and recommendations of the DLA Piper Review is still in the process of implementation. Nonetheless, the committee wishes to express its views and make recommendations in a small number of specific areas.

Apologies to victims of abuse

7.5 The DLA Piper Review report noted that '[a] significant number of the persons who contacted the Review indicated that their primary wish is for Defence to acknowledge that abuse has occurred and to express regret for that action'.⁴ In this context, the committee particularly welcomes the apologies for abuse in Defence made by the Minister and by the Chief of the Defence Force (CDF).

7.6 However, in the view of the committee, it was unfortunate that notice was not provided to victims of abuse in Defence to enable them to be present in the House of Representatives for the Minister's apology. The apologies to the Stolen Generation, the Forgotten Australians and those who suffered from forced adoption practices have highlighted that some individuals can find witnessing these important official statements a significant, and even cathartic, occasion which publicly acknowledges suffering which they have experienced. The committee considers it would be beneficial for victims of abuse and useful for Defence's ongoing cultural reforms if these statements of apology were prominently displayed by Defence and commemorated in its official publications. These actions are likely to reinforce and consolidate the cultural reform Defence intends to achieve in the coming years.

Recommendation 1

The committee recommends that Defence prominently display, and commemorate, the apology by the Minister of Defence and the Chief of the Defence Force to victims of abuse in Defence.

Access to Volume 2 of the DLA Piper Review report

7.7 The committee was concerned to receive evidence from Dr Gary Rumble, one of the leaders of the DLA Piper Review, that Volume 2 (containing the detail of the individual allegations) had not been provided to the Secretary of the Department of Defence, or the CDF or the Service Chiefs.

7.8 The competing public interests inherent in the issue of how Volume 2 should appropriately be distributed were evident in the views of the Defence diarchy. At the public hearing, Mr Dennis Richardson, the Secretary of the Department of Defence, commented on the Minister's decision to withhold Volume 2 of the DLA Piper Review report from Defence:

The minister felt it was best to have the material dealt with by a task force totally independent of the department and that, in that context, it was best not to provide the material to anyone in the department.⁵

4 DLA Piper Review, *Volume 1*, p. 179.

5 *Committee Hansard*, 14 March 2013, p. 25.

I would not have thought it made any sense to give [Defence] volume 2 and at the same time have a task force proceeding because I would have then needed a team in Defence as big as the [Defence Abuse Response Taskforce] to go through all of the material and you would have the [Taskforce] making judgements and you would have people working for me making judgements. I think that would get rather messy...The minister has taken a proper decision, which was within his prerogative.⁶

7.9 On the other hand, General David Hurley, the CDF, acknowledged at the public hearing that he would like 'to know if there are currently serving members who have serious allegations being made against them that need to be dealt with'.⁷ In relation to Defence's ability to respond to systemic issues without access to the detail of individual allegations in Volume 2, the CDF described the decision as—'You either risk the process by accusations of interference or you bear some risk in terms of dealing with systemic issues...'⁸

7.10 The committee considers this is a particularly vexed issue. The committee shares Dr Rumble's concerns regarding access to Volume 2 and the delays in decision making by the government in relation to the recommendations in that report. The DLA Piper Review Volume 2 report revealed a large number of plausible cases of abuse which demanded a response by government. The delay and the additional assessment of claims by the Taskforce will mean long periods of waiting for victims of abuse. The commencement of action against the alleged perpetrators of abuse has also been delayed, potentially allowing them to commit further acts of abuse.

7.11 Nonetheless, the committee recognises the large volume of material associated with the DLA Piper Review, particularly in Volume 2 containing the detail of individual allegations, as well as the material associated with the Defence cultural reviews could have contributed to the delay in the government's response. The DLA Piper Review also noted that the allegations of abuse it had received were 'plausible and consistent' but acknowledged that it 'had only heard one side of the story'.⁹ Even so, the committee supports the CDF's view that he would like to know if there are serving members who have serious allegations being made against them that 'need to be dealt with'. In this regard, the committee underscores the statement by the Chair of the Taskforce, the Hon Len Roberts-Smith QC who in the second interim report wrote:

[I]n a small number of cases, where an alleged abuser remains in Defence and is alleged to have perpetrated serious sexual or other abuse on one or more occasions, I may decide it is necessary to bring the matter to the attention of Defence. I envisage that such a recommendation could be made

6 *Committee Hansard*, 14 March 2013, p. 26.

7 *Committee Hansard*, 14 March 2013, p. 32.

8 *Committee Hansard*, 14 March 2013, p. 25.

9 DLA Piper Review, *Volume 1*, p. 157.

where I feel that, for the safety and wellbeing of other Defence employees, it is necessary so intervention can occur.¹⁰

7.12 The committee believes that this approach by the Chair of the Taskforce is to be commended, but would like it to go further. The committee believes that the Chair of the Taskforce should inform the Secretary of Defence and the CDF of any serving member who, in the Chair's opinion, has a serious and credible allegation of abuse made against him or her.

7.13 The Taskforce staff includes '[e]xperienced AFP officers, including investigators and intelligence analysts, to assess the allegations received, and, gather and examine additional information on the reporting and management of allegations of abuse by Defence personnel'.¹¹ Other groups have been established within the Taskforce to specifically deal with allegations regarding incidents of abuse at ADFA and HMAS Leeuwin.¹² Further, the second interim report highlighted some of the specialist work being undertaken by the Taskforce that should produce a better understanding of the nature of abuse in Defence. For example:

[P]olice intelligence analysts working within the Taskforce will analyse this data on the Taskforce Case Management and Document Management Systems to identify trends, particular bases, establishments or ships with significant levels of allegations, repeated names of alleged abusers and other relevant information.¹³

7.14 Where appropriate, the Taskforce will refer matters to Defence or to Commonwealth, State and Territory police. The Chair of the Taskforce, the Hon Len Roberts-Smith QC outlined how this process is intended to operate in practice:

The Taskforce will only work towards those outcomes the complainant indicates he or she wants. For example, a complainant may allege a serious sexual assault. If, after gathering further information, the Taskforce is of the opinion there was a clear criminal act, it may refer the matter to the relevant police agency. However, the Taskforce will not make that referral if the complainant does not wish it to occur.

The same approach applies in the majority of situations where there is a matter that I, as the Taskforce Chair, could provide to the Chief of the Defence Force (CDF) or Secretary of Defence with a recommendation for military justice or administrative sanctions against an alleged abuser. This referral will also be subject to agreement from the complainant.

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

11 Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 8.

12 Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, pp 24–26.

13 Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and Minister for Defence*, June 2013, p. 6.

7.15 In the committee's view this approach is a sensible and responsible response to these issues. As mentioned above, the committee has noted the consideration that the Hon Len Roberts-Smith is giving to informing Defence of cases of alleged abuse by serving members where intervention is necessary to protect the safety and wellbeing of other Defence employees. In this regard, the committee believes that the Secretary of Defence and the CDF should be made aware of any cases where members currently serving in Defence have had serious allegations of abuse made against them.

Systemic issues

7.16 The evidence of Dr Rumble highlighted to the committee that there is ambiguity in the government's response regarding which body is responsible for responding to the systemic issues which the DLA Piper Review identified for consideration in Phase 2. One of its terms of reference directs the Taskforce to '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'. The committee does not consider this is sufficient to address the systemic issues raised by the DLA Piper Review report.

7.17 At the public hearing, General Hurley told the committee that some information in relation to systemic issues from Volume 1 of the DLA Piper Review report was taken into account when Defence developed the Pathway to Change strategy. Further, he suggested that Defence's continuing engagement with the Taskforce would inform Defence's cultural reforms where there was a 'delta' or policy overlap.¹⁴

7.18 The committee considers that the Taskforce will provide valuable input to Defence's reforms. For example, the intelligence analysis of abuse identified above. However, in the view of the committee, the overlap in the government's response to the DLA Piper Review and the other Defence cultural reviews has resulted in a lack of clarity in relation to how many of the systemic issues and findings identified by the DLA Piper Review will be specifically addressed. The committee agrees with Dr Rumble that there is a risk that some issues could 'fall through the cracks'.¹⁵

7.19 An example is Issue S12 raised by the DLA Piper Review in the Supplement to Volume 1, which deals with spent convictions and recruitment into the ADF:

Phase 2 to consider whether it would be appropriate for Defence to seek the making of a regulation under s 85ZZH(k) of the *Crimes Act 1914* that would add recruitment into the ADF to the exclusions from the operation of the spent convictions legislation.

7.20 While the Review suggested this should be considered by Phase 2 of the Review, further examination of this issue is not part of the Defence Abuse Response

14 *Committee Hansard*, 14 March 2013, p. 25.

15 *Submission 24*, p. 9.

Taskforce's terms of reference which are focused on responding to past victims of abuse. Nor, from the government's response, is it clear how this issue will be considered within the Defence cultural reforms. In the view of the committee, the question of which body deals with the systemic issues and findings raised by the DLA Piper Review report is less important than ensuring these issues are clearly and publicly addressed in a timely manner. Given the Taskforce's focus on providing assistance to past victims, the committee considers that Defence is best placed to respond to these issues and findings as part of its implementation of Defence cultural reforms.

7.21 Mr Robert Cornall AO, the Deputy Chair of the Taskforce, informed the committee that one contribution of the Taskforce's activities to cultural and systemic issues in Defence may be through the restorative engagement program.¹⁶ As this program will include facilitated meetings between victims of abuse in Defence and senior Defence personnel, this is likely to have benefits for both victims and senior Defence officers—who will have first-hand access to the personal experiences of victims of abuse. The committee considers that these senior officers will be best placed to consolidate systemic and cultural change within Defence into the future. The committee hopes to see participation in the restorative engagement program by a broad range of senior Defence officers.

Recommendation 2

The committee recommends that Defence formally respond to the systemic issues and findings of the DLA Piper Review in its public reporting on the progress of the implementation of the Pathway to Change Defence cultural reforms.

Recommendation 3

The committee recommends that Defence actively encourage senior officers to participate in the Defence Abuse Response Taskforce's restorative engagement program with victims of abuse.

Processes for responding to complaints of abuse

7.22 At the public hearing, General Hurley, the CDF, observed that Defence had initiated the Re-thinking of the Military Justice System Review (Re-Thinking Systems Review) in 2011 which has examined elements of the system: the collection of data; inquiry investigation; internal review; and external review processes. General Hurley told the committee:

We are about to receive stage 2, the second major report, from the team that is doing that. Then we will take it from there in terms of which way we will move forward. You can imagine that if we were to change [the military justice system] significantly there would be a lot of regulatory changes and the [A]cts would need to change.¹⁷

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

17 *Committee Hansard*, 14 March 2013, p. 28.

7.23 The committee supports the objectives of the Re-Thinking Systems Review in terms of building a comprehensive approach to restructuring military justice processes. The committee considers that the Inspector-General ADF's review into the management of incidents and complaints identified a number of important issues in relation to when administrative action can be taken by commanders or managers in responding to a report of unacceptable behaviour or a sexual offence. These issues were also highlighted in the DLA Piper Review recommendations. The committee was pleased that the Minister's recent statement to the Parliament included progress in this area:

Defence's administrative policies are being amended to provide for administrative suspension from duty, including the circumstances in which a Commander may suspend an ADF member and the conditions which may be imposed on the suspended member.¹⁸

7.24 The Inspector-General ADF's review also highlighted the complex, and sometimes confusing, Defence policy documents related to the management of reports of unacceptable behaviour. The committee welcomes the evidence from Defence that progress appears to have been made in the consolidation and redrafting of policy documents dealing with processes for responding to incidents of abuse. The Minister also recently noted that 'training and information provided to ADF members in relation to the management of incidents and complaints is being simplified and improved'.¹⁹

Defence Abuse Response Taskforce

7.25 In general, the committee has been impressed with the rapid 'roll out' of the Defence Abuse Response Taskforce as it has moved from the 'establishment' phase to its 'operational' phase. The decisions made by Taskforce in relation to assessing the threshold test of 'plausibility' of claims have been recognised by the committee as a positive development.²⁰ However, a number of issues were raised during the inquiry which relate to the Taskforce's activities.

Communication

7.26 The delays in the government's response to the DLA Piper Review have caused some complainants additional stress and concern. The victims of abuse in Defence can, understandably, be cautious of reporting abuse to authorities, particularly where previous reporting of abuse to Defence may have been mismanaged. The committee understands that some of those making allegations of abuse have not been satisfied with the level of responsiveness from the Defence Abuse Response Taskforce.

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

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

20 Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and the Minister for Defence*, 20 June 2013, Appendix C.

7.27 The Taskforce's first interim report makes it clear that considerable resources are already being directed to communication with stakeholders including: a telephone hotline; a complainant liaison team to make initial contact with complainants and a case coordination team to provide a consistent point of contact for complainants.²¹ The second interim report noted that, by 6 June 2013, the Taskforce had contacted approximately 1380 complainants to answer queries, assist complainants to complete the Taskforce's forms and provide supporting information and to discuss the options available to complainants. It also mentioned that many complainants were concerned about the effect the Reparation Payment could have on other entitlements²²

7.28 The committee considers that the Defence Abuse Response Taskforce could further refine and enhance its liaison and communication efforts with complainants. This could include regular updates to complainants on the status of their claims to reassure them their claims have not been ignored and additional information on the likely impact of the Reparation Payment on their entitlements.

Reparation and compensation issues

7.29 The committee notes some complainants were disappointed with the quantum of the reparation payments being made available under the scheme announced by the Taskforce. While these amounts are in line with some other compensation payment schemes,²³ they clearly will never be capable of compensating those victims who have suffered the worst forms of abuse, including serious sexual offences. Nonetheless, these reparation payments will serve an important purpose in acknowledging that wrong has occurred.

Previously settled matters

7.30 The committee has a concern in regard to matters which may have been settled between Defence and the person abused under terms of confidentiality or a non-disclosure agreement. In these circumstances, a person may feel inhibited from reporting abuse they have suffered to the Defence Abuse Response Taskforce. The committee understands these issues are under consideration by the Taskforce, which will ask the 'Commonwealth to grant a limited waiver of confidentiality obligations and/or deeds of release and indemnity to complainants who wish to report allegations about abuse to the Taskforce'.²⁴

7.31 In the view of the committee, the Reparation Scheme should be considered entirely separate from any other compensation process available to victims of abuse in Defence. It is clear the announced Reparation Scheme is not intended to compensate individuals for incidents of abuse and is not intended to affect the other legal rights of

21 Defence Abuse Response Taskforce, First Interim Report to the Attorney-General and Minister for Defence, March 2013, pp. 9–10.

22 Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and the Minister for Defence*, 20 June 2013, p. 43.

23 DLA Piper Review, *Volume 1*, p. 181.

24 Defence Abuse Response Taskforce, answers to questions on notice, Question 2.

claimants. Given these circumstances, Defence should waive any confidentiality agreement from any previously settled matter which may restrict victims of abuse from engaging with the Defence Abuse Response Taskforce's processes. Furthermore, where a person can demonstrate they were subject to such a confidential agreement, they should be allowed to make a claim to Taskforce despite the fact the date for the receipt of claims has passed.

Perpetrators of abuse

7.32 The most serious finding of the DLA Piper Review was that those who may have abused others or who have committed serious offences may still be serving within Defence and could now be in senior positions. The Review identified this issue as presenting significant risks for Defence.²⁵ The significance of this issue has been confirmed by the activities of the Defence Abuse Response Taskforce, which has received additional reports of abuse at ADFA and HMAS Leeuwin.²⁶

7.33 In the view of the committee, where the Taskforce finds sufficient evidence that serving members of the ADF have committed criminal or service offences they should be swiftly referred for investigation and prosecution (where the alleged victim consents to this referral). The committee notes that assessing this aspect of claims of abuse is a core part of the activities of the Defence Abuse Response Taskforce. The Taskforce's first interim report outlined that:

Where the Chair forms the view that an allegation of abuse may constitute criminal conduct, and there is (or is reasonably likely to be on further investigation) evidence of it, the Taskforce will refer the matter to the Police agency in the jurisdiction in which the offence was alleged to have occurred. Such referrals will only occur with the consent of individual complainants. Police will then proceed in accordance with their individual jurisdictional policies and procedures. Any decision to conduct further investigations will be determined by the relevant Police jurisdiction.²⁷

7.34 The committee understands that the Taskforce has established protocols with State and Territory police forces for referral of matters. The committee notes that while the Taskforce appears well equipped to assess the plausibility of claims of abuse for the purposes of the Reparation Scheme, the gathering of sufficient evidence for a referral to authorities for investigation and possible prosecution is a different matter. The Taskforce is not a statutory agency and has no special powers of investigation to compel disclosure of information or documents.²⁸

7.35 The Taskforce's terms of reference include advising whether a Royal Commission would be merited into any categories of allegation raised with the DLA

25 DLA Piper Review, *Volume 1*, p. 78.

26 Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and the Minister for Defence*, 20 June 2013, p. 2.

27 Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 14.

28 Defence Abuse Response Taskforce, answers to questions on notice, Question 2.

Piper Review or the Taskforce, in particular the 24 ADFA cases.²⁹ The second interim report of the Taskforce indicated that, at this stage, 'while powers to gather evidence would assist in examining these matters, it is by no means clear that a Royal Commission is the necessary or the most appropriate mechanism to do so'.³⁰ The Chair of the Taskforce, the Hon Len Roberts-Smith QC, told the committee that the Minister has indicated to him, that should he form the view that the powers of a Royal Commission were needed they would be made available.³¹ The committee considers this is an appropriate approach to this matter.

Legal advice

7.36 Concerns were raised during the inquiry in relation to the lack of legal advice to complainants contacting the Defence Abuse Response Taskforce regarding abuse. It was noted during the inquiry that as part of the Defence F-111 Deseal/Reseal compensation process, an Air Force Military Compensation Liaison Office was available to claimants as a source of 'impartial advice and assistance in relation to the preparation, submission and progression of claims'.³² Unfortunately, as the cut-off date for raising claims has expired, in the view of the committee, it is impractical to attempt to retrospectively offer access to legal advice to those making claims to the Taskforce. The committee understands that the Taskforce has put a number of measures in place to clearly communicate its processes to claimants. The committee also notes that the Taskforce reparation process will not affect the other legal rights of claimants and some legal firms are also offering their services in this area.

'Out of scope' claims

7.37 At the outset of the inquiry, the committee emphasised that 'it is not in a position to resolve individual disputes or settle complaints about alleged abuse in Defence'. Nonetheless, several submissions and communications to the committee sought to raise specific allegations of abuse which the DLA Piper Review had determined to be 'out of scope'. While not having seen the individual allegations made to the DLA Piper Review contained in Volume 2, in the view of the committee, the DLA Piper Review had a robust and practical approach in its definition of 'abuse' and 'out of scope' claims.

7.38 The committee also notes that the Defence Abuse Response Taskforce has indicated that it will reassess allegations concerning abuse in Defence made to the DLA Piper Review, if the individual consents to that reassessment, including those

29 Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 41.

30 Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and Minister for Defence*, June 2013, p. 2.

31 *Committee Hansard*, 14 March 2013, p. 21.

32 Department of Veterans' Affairs, 'F-111 Fuel Tank Maintenance website', <http://f111.dva.gov.au/tier.htm> (accessed 22 May 2013).

determined to be 'out of scope'.³³ The Taskforce has outlined that types of alleged abuse that fall within the scope of the Taskforce are allegation of:

- sexual abuse;
- physical abuse;
- sexual harassment; and
- workplace harassment and bullying.³⁴

Legacy issues and permanent functions

7.39 As previously noted, the cut-off date for raising allegations with the Defence Abuse Response Taskforce has now passed. Complaints of abuse to the Taskforce were required to relate to alleged abuse in Defence which occurred before 11 April 2011. Accordingly, new claims of abuse will be dealt with by Defence, outside of the Taskforce processes.

7.40 The Taskforce has indicated that its operations will conclude with a 'legacy phase':

Recommendations will be made with respect to any ongoing action required or outstanding matters that require resolution after the Taskforce has completed its role and been disbanded (for example, monitoring any subsequent prosecutions or other action).

The storage and delivery of all Taskforce materials will be organised to adhere to appropriate requirements of handling and storing such material.³⁵

7.41 The Inspector-General ADF has also suggested there is a possibility that the Taskforce's compensation arrangements 'could be adapted for ongoing use'.³⁶ In the view of the committee, at the conclusion of the Taskforce's operation, the Minister for Defence, together with the Attorney-General and the Minister for Veterans' Affairs, should investigate whether any of the functions and capabilities which have been developed as part of the Taskforce's operation should be continued. The committee considers that any functions of the Taskforce which are determined to have ongoing value should be located externally to Defence.

7.42 The Taskforce has also indicated to the committee that the database of complaints it has developed (once the information is depersonalised), could potentially provide a valuable statistical resource in relation to incidents of abuse in

33 For example, the Hon Len Roberts-Smith, Defence Abuse Response Taskforce, *Committee Hansard*, 14 March 2013, p. 21; Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 3.

34 Defence Abuse Response Taskforce, *Second Interim Report to the Attorney-General and Minister for Defence*, June 2013, p. 6.

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

36 *Submission 19*, p. 5.

Defence over time.³⁷ In the view of the committee, this information will be an important asset developed from the process which should not be wasted.

Recommendation 4

The committee recommends that Defence provide a waiver of any confidentiality or non-disclosure agreement which could prevent a person from engaging with the Defence Abuse Response Taskforce.

Recommendation 5

The committee recommends that, following the conclusion of the Defence Abuse Response Taskforce's operation, the Minister for Defence facilitate the productive use of the Taskforce's depersonalised statistical database of information regarding reported incidents of abuse in Defence.

Recommendation 6

The committee recommends that the Australian Government commission an independent review to determine whether any of the functions of the Defence Abuse Response Taskforce's should continue and how to ensure these functions can continue to be performed effectively. This independent review will report its findings and make recommendations to the Minister for Defence, the Attorney-General and the Minister for Veterans Affairs.

The committee recommends that, at the conclusion of this independent review, the Minister for Defence, the Attorney-General and the Minister for Veterans' Affairs, should assess whether any of the functions of the Defence Abuse Response Taskforce should continue in another form.

Advocacy services for victims

7.43 The committee considers there is scope for improvement in the provision of advocacy services to victims of abuse in Defence. This includes advocacy for individual victims and advocacy on behalf of victims of abuse as a group.

Individual advocacy

7.44 The committee notes that support for victims of sexual abuse will increase with the establishment of the SEMPRO in July this year. However, it is not clear to the committee whether the support services for victims of sexual abuse will extend to active advocacy. It is clear that while there are a number of contact points for support for victims of abuse in Defence, there does not appear to be a person or group within Defence tasked with advocating on behalf of victims' interests.

7.45 For example, under the current Defence Instructions, 'case managers' are appointed at the discretion of the commander or manager to assist complainants, respondents and witnesses during the complaint management process. While case managers are required to explain the support services available to the parties to the complaint, and facilitate access to these services, they do not appear to have any

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

advocacy role. During the inquiry, the Alliance of Defence Service Organisations made the point that a case manager should be appointed in every reported case of abuse. This was also a recommendation of the Inspector General ADF in his review of the management of complaints.³⁸ Defence indicated this was one of a number of recommendations that were 'either being progressed or are under further consideration'.³⁹ The committee considers this recommendation should be implemented.

7.46 The committee notes that an equivalent of the Sexual Offence Support Persons Network does not appear to currently exist for other forms of abuse in Defence. There does not seem to be an equivalent advocacy network of support persons in Defence for non-sexual forms of abuse. Similarly, the initial focus of SEMPRO is on supporting victims of sexual unacceptable behaviour, harassment and assault. The exception appears to be the Residential Support Officer scheme at ADFA. In the view of the committee a gap exists in the Defence cultural reforms in relation to a specific support for victims of non-sexual forms of abuse.

Systemic advocacy

7.47 In terms of systemic advocacy, in the view of the committee, Defence would benefit from engagement with advocacy organisations representing the interests of victims of abuse in Defence. These systemic advocacy organisations potentially could provide valuable input and feedback into the ongoing Defence cultural reforms. As a first step, Defence should not discourage serving members of the ADF from forming an association or a support group for those who identify as victims of abuse in Defence. Further, Defence should proactively engage any associations or organisations which represent members who have suffered abuse in Defence. For example, the committee notes that during the course of the inquiry, an association for victims of abuse in the ADF was established in Victoria.⁴⁰

Recommendation 7

The committee recommends that Defence implement recommendation 19 of the Inspector-General of the Australian Defence Force's review—that the appointment of case officers to support complainants and respondents should be required in all cases.

Recommendation 8

The committee recommends that Defence assess whether additional support services for victims of non-sexual forms of abuse should be included within the Pathway to Change cultural reforms.

38 Inspector-General ADF, Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction, 2011, p. 26.

39 Defence, answers to questions on notice, Question 4.

40 'Rules of the Victims of Abuse in the Australian Defence Force', http://www.adfabuse.com/Incorporated_Association_files/Rules%203.pdf (accessed 21 May 2013).

Recommendation 9

The committee recommends that Defence engage in dialogue with associations which represent the interests of victims of abuse in Defence.

Conflicts of interest

7.48 The committee does not accept the assertions made during the inquiry regarding claimed conflicts of interest in the appointment of senior lawyers from DLA Piper to conduct the DLA Piper Review or the appointment of the Hon Len Roberts-Smith QC to head the Defence Abuse Response Taskforce. In the opinion of the committee, these persons have undertaken complex and difficult tasks and demonstrated the highest levels of integrity in the performance of their functions.

7.49 Nonetheless, the committee is concerned that there is the potential that some victims of abuse may feel reluctant to communicate their claims to the Taskforce by these claims or the perception that the Taskforce is not independent of Defence. As previously noted, it is very likely that victims of abuse will be reticent to report abuse to an institution they do not completely understand or trust. In the view of committee, it would assist the Taskforce to prominently highlight its independent character, its arms-length relationship to Defence and its lines of responsibility to the Minister in its communications with potential claimants and other stakeholders.

Recent reports of unacceptable behaviour

7.50 The committee has been disappointed to see recent reports of Defence personnel allegedly engaged in unacceptable behaviour.⁴¹ This has included circulating inappropriate material, sometimes using Defence communication systems, or uploading inappropriate material to social media. The committee does not propose to comment specifically on matters which are the subject of Defence and police investigation. However, the committee notes that the Pathway to Change strategy identified that as improvements in Defence occurred 'the number of reports of unacceptable behaviour may rise before falling over time'.⁴² The committee also noted that Pathway to Change will implement the recommendations of the Review of Social Media and Defence.⁴³ These recent reports of unacceptable behaviour in the ADF highlight the need for reform in this area.

41 For example: Matthew Grimson, 'Army stands down personnel over explicit emails and images', *ABC News*, 13 June 2012, <http://www.abc.net.au/news/2013-06-13/lieutenant-general-david-morrison/4751800> (accessed 20 June 2013); Natalie O'Brien, 'ADF probes online race-hate posts', *The Age*, 2 June 2013, <http://www.theage.com.au/victoria/adf-probes-online-racehate-posts-20130601-2niuz.html> (accessed 20 June 2013); Rhiannon Elston, 'Townsville soldiers cautioned over sexist Facebook posts', *SBS News*, 19 June 2013, <http://www.sbs.com.au/news/article/1779911/Townsville-soldiers-cautioned-over-sexist-Facebook> (accessed 20 June 2013).

42 Department of Defence, *Pathway to Change: Evolving Defence Culture—A Strategy for Cultural Change and Reinforcement*, March 2012, p. 22.

43 Department of Defence, *Pathway to Change: Evolving Defence Culture—A Strategy for Cultural Change and Reinforcement*, March 2012, p. 16.

Parliamentary oversight and review

7.51 The committee welcomes the Minister's and Defence's commitment to informing the Parliament and the Australian public on the progress and outcomes of the Defence Abuse Response Taskforce and the Defence cultural reforms. Further, the committee notes that, being based in the Attorney-General's Department, the operations of the Defence Abuse Response Taskforce will continue to fall under the scrutiny of the Senate Legal and Constitutional Affairs Legislation Committee's estimates process. The Senate Foreign Affairs, Defence and Trade Legislation Committee will also be able to monitor the ongoing implementation of the Defence cultural reforms through its estimates process. Despite this ongoing parliamentary scrutiny, the committee considers there will be a need to specifically review the progress that has been made by Defence in effecting cultural reform when the Pathway to Change strategy implementation concludes.

Recommendation 10

The committee recommends that, at the completion of the implementation of the Pathway to Change strategy, the Australian Government conduct an independent review of its outcomes and an assessment of the need for further reform in Defence.

Conclusion

7.52 The occurrence of abuse in Defence, as identified by the DLA Piper Review and by other processes, has caused a terrible legacy of physical and psychological harm to many men and women serving in the ADF. Accordingly, the committee supports Defence's ongoing zero tolerance approach to dealing with incidents of abuse within its ranks. As a community we expect members of Australia's armed forces to uphold the highest ethical and moral standards. This high expectation has contributed to the close attention and scrutiny that incidents of abuse in Defence have received.

7.53 It would be unrealistic to expect that in an organisation the size and complexity of Defence that incidents of abuse would never occur. It is also important to acknowledge that the problem of abuse is not unique to Defence. As some submitters noted, similar abuse has occurred, does occur and unfortunately likely will continue to occur (despite the best policies to prevent it) in other areas of Australian life—tertiary institutions, workplaces and community organisations. The challenge for Defence is to evolve its processes, procedures, values and behaviour to minimise incidents of abuse and appropriately address incidents of abuse where they occur.

7.54 The committee is hopeful that the legacy of the DLA Piper Review and the Defence cultural reviews—the Defence Abuse Response Taskforce and the Defence cultural reform strategy Pathway to Change—will both bring resolution to victims of past abuse and prevent further abuse from occurring in the future. In both cases it is too early to form a conclusive judgement on the government's response, however, on the evidence received, the committee considers that significant progress has been made. The committee has been disappointed by the response of Defence when matters relating to abuse have been raised in the past. Previous assurances by senior officers have not translated in to effective reform. Nonetheless, the committee recognises that

the problem of abuse has been acknowledged at the highest levels within both Defence and the Australian Government and substantial resources have been directed to addressing it.

7.55 The committee recognises that effecting cultural change within large organisations and communities, including those such as Defence, is a particularly difficult endeavour. In a different context but pertinent to the problems confronting Defence, the Secretary of Defence, Mr Dennis Richardson, told the committee recently that:

The easiest thing in the world is to play around with structure. I could change the structure of Defence any time within a week. That is not hard. Structure is normally the superficial surface level of issues. Addressing issues below the structure is far more difficult and, indeed, takes time. I have seen too many cases of people who play around with structure and walk out and declare victory. More often than not, the big issues you are talking about are not structural. They are attitudinal and they are cultural.⁴⁴

7.56 During times of transition, clear direction and symbolic action by leadership can send important messages regarding appropriate standards of behaviour to the lower ranks. In this regard, the committee wishes to highlight the ADF's response to the alleged circulation of emails within Defence containing content demeaning to women announced by the Lieutenant General David Morrison AO, Chief of Army, on 13 June 2013.⁴⁵ The tenor and character of the response by Defence to these allegations provides some evidence to the committee that cultural change in Defence is occurring. This is one of a number of signals from Defence that it intends to become an inclusive workplace where abuse is not tolerated. The incident is also evidence that the ongoing reforms to evolve Defence's culture need to continue. The committee is hopeful that further positive cultural change in relation to responding to abuse will be achieved in Defence.

Senator Alan Eggleston
Chair

44 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, Budget Estimates, 4 June 2013, p. 25.

45 Lieutenant General David Morrison, Chief of Army, *Press conference*, 13 June 2013, <http://www.army.gov.au/Our-work/Speeches-and-transcripts/Chief-of-Army-Press-Conference> (accessed 13 June 2013).