

Appendix 4

Terms of reference of the DLA Piper Review

Terms of Reference

On 11 April 2011, the Minister for Defence announced that an external law firm would be engaged by the Secretary of Defence to review the allegations of sexual or other forms of abuse that have been drawn to the attention of the Minister's office, as well as to the Department of Defence and the media since the recent Australian Defence Force Academy (ADFA) incident.

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.

The Review will be conducted in two phases.

Phase 1 will review all allegations of sexual or other abuse and any related matters 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.

DLA Piper has been engaged by the Secretary of Defence to conduct Phase 1 of the Review.

Phase 2 is expected to provide oversight of Defence's implementation of recommendations 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 and to make appropriate recommendations about all systemic issues that have been identified.

Allegations made within Defence between 01 April 2011 and 17 June 2011 regarding sexual or other forms of abuse, will continue to be dealt with in accordance with standing Defence procedures in parallel with the review.

The Review will attempt to address late submissions in its Report although depending on when they are received, it may not be able to address all late submissions. The Report will, however, include recommendations about what steps should be taken in relation to those late allegations/complaints.

Allegations received after Friday, 17 June 2011 will be dealt with in accordance with current Defence procedures or such new procedures as may be introduced following the review.

Phase 1 Terms of Reference

1. The review is only concerned with alleged abuse perpetrated by Defence personnel in connection with their workplace or in the conduct of their duties.
2. The review team will assess all allegations raised, or otherwise under consideration, in the period Friday, 01 April 2011 to Friday, 17 June 2011 of sexual or other forms of abuse (such as bullying, harassment or intimidation) or related matters.
3. The review is not concerned with matters raised directly with the Inspector-General Australian Defence Force (IGADF) which fall within the IGADF's statutory functions.
4. The review team will make an initial assessment of each allegation.
5. For each allegation, the review team will:
 - a. advise the Ministers and Defence as to whether the alleged incident appears to have received proper consideration and appropriate action has been taken, or is being taken, by Defence; and
 - b. make recommendations to the Minister and Defence on further action to be taken.
6. Any matter referred to the Review that is considered by the Review Team to be out of scope of this review will be identified to the Minister with the basis of the Review Team's assessment that it is out of scope so that the Minister may consider what if any further action should be taken.
7. Where the Review considers that further investigation is necessary, the team will make recommendations as to the appropriate mechanisms for such further investigation.
8. Where requested, the review team will offer anonymity and/or confidentiality subject to the provisos that the Review may have to reveal the identity of an informant or other information:
 - a. if required by law to do so; and/or
 - b. to prevent threat of injury or abuse of others.
9. The Attorney-General's Department and the Ombudsman's Office will assist Defence with governance and will undertake 'quality assurance' of the process.

10. In the event that DLA Phillips Fox or Professor Pearce has had any previous involvement in any matters referred for review, those matters will be referred to the Ombudsman's Office.
11. The Review team is to refer any matters requiring urgent referral to police to the ADF Investigative Service (ADFIS). ADFIS is to keep the Review team informed of steps taken in relation to those matters.
12. The Review team will provide fortnightly interim reports to Defence and the Minister on its assessment of allegations and other relevant issues for the duration of Phase 1.
13. The Review team may need to access and review records held by Defence as part of Phase 1.
14. This review will continue until all matters raised in the period have been assessed. The report on Phase 1 is expected to be provided to the Minister before the end of August 2011.

