

## Appendix 5

### Combined recommendations, findings and issues of the DLA Piper Review

*Note: Shaded sections indicate recommendations, findings and issues contained in the Supplement to Volume 1.*

#### Chapter 1 – Establishment and conduct of the Review

##### *Recommendation 1 (withdrawn in Supplement to Volume 1)*

We recommend that, for people whose detailed further information has not been received or fully considered before Volume 2 is delivered:

- (ii) any further detailed information which the Review receives should be considered and reported on in a supplementary report to the Minister and Secretary; and
- (iii) the supplementary report should report on whether the preliminary assessment and recommendations which went into Volume 2 need to be changed. (page 10).

##### **Recommendation S1**

We recommend that, if people provide further information after Volume 2 is delivered, that further information not be considered until Phase 2 commences, unless it is information provided by a current Defence member about current Defence/external management of a report of abuse (because recent development may affect the recommendations made). (Sup page 13)

##### **Finding S1**

The Review confirms the Volume 1 Findings. (Sup page 2)

##### **Finding S2**

Problems with Review access to Defence file material generally has significantly delayed the Review's carrying out of its initial assessments report on in Volume 2. (Sup page 17)

##### **Finding S3**

Problems with Review access to Defence file material have caused the Review to qualify some of its initial assessments reported on in Volume 2. (Sup page 17)

***Finding S4***

Problems with Review access to Australian Defence Force Investigative Service [ADFIS] file material in particular have significantly delayed the Review's carrying out of its initial assessments reported on in Volume 2. (Sup page 19)

**Chapter 2 – Abuse risk factors in ADF environments*****Finding 1***

ADF environments typically have factors which indicate a high risk of abuse occurring. (page 29)

***Recommendation S2***

The Review recommends that the Findings and Issues identified in Volume 1 be taken into account and addressed in the formulation of the detailed implementation plan for the Pathway to Change Strategy.

**Chapter 3 – Overview of allegations considered by the Review****Chapter 4 – Historical record of abuse in the ADF*****Finding 2***

Past Reports and Defence file material indicate that, in absolute terms, a substantial number of people have experienced:

- abuse; and/or
- inadequate Defence management of allegations of abuse. (page 50)

***Finding 3***

Past reports have been focused on identifying what needs to be done to reduce the incidence of abuse in the future and/or to improve the management of allegations of abuse in the future rather than with dealing with the impacts of the abuse which had occurred. (page 50)

***Finding 4***

Some, possibly many, perpetrators of abuse or mismanagement of allegations of abuse in the past have not been called to account and/or rehabilitated. (page 51)

***Finding 5***

The apparent failure of Defence to call to account perpetrators of abuse and/or mismanagement of allegations of abuse in the past carries risks for Defence now because some of those persons may be in positions of senior and middle management within the ADF. (page 51)

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***Finding 6***

The apparent failure of ADF members who witnessed abuse in the past and failed to report the abuse has risks for Defence now because some of those persons may now be in positions of senior and middle management within the ADF. (page 52)

***Finding 7***

Previous reports and Defence file material indicate that aspects of the culture in many parts of the ADF have discouraged reporting by victims or witnesses. (page 52)

***Finding 8***

Because of the under-reporting of abuse in the past, there are risks of adverse impacts now on the victims of that abuse in the past and there are risks that those people - if still in the ADF - will leave the ADF. (page 53)

***Finding 9***

People who have been the victims of abuse may need counselling and other assistance. (page 53)

**Chapter 5 – Abuse of boys and young people in the ADF*****Finding 10***

From the 1950s through to the early 1980s, the ADF and successive Australian Governments failed to put in place adequate protections to take into account the special needs, vulnerabilities and lack of maturity of boys of 13, 14, 15 and 16 years of age to protect them from:

- abuse inflicted by other boys and adults in the ADF; and
- being drawn into inflicting abuse on other boys. (page 100).

***Finding 11***

From the 1950s through to the early 1980s, many boys aged 13, 14, 15 and 16 years of age in the ADF suffered abuse including serious sexual and other physical abuse inflicted by:

- other boys in the ADF; and/or
- adults in the ADF. (page 100)

***Finding 12***

Many of the boys who suffered such abuse later participated in inflicting similar abuse on other boys in the ADF. (page 100)

***Finding 13***

It is likely that many of the boys who endured, and/or participated in inflicting, such abuse may have

- suffered, or be at risk of suffering:
- mental health problems; and/or
- alcohol and drug problems: and/or
- associated physical health and employment problems

affecting them and their families. (page 100)

***Finding 14***

Until the last few years, the ADF and successive Australian Governments have failed to put in place specific protections to take into account the special needs, vulnerabilities and lack of maturity of young people—male and female—to protect them from one another and from more mature adults in at least some ADF environments. (page 101)

***Finding 15***

It is certain that many young males in the ADF have been subjected to serious sexual and physical assault and other serious abuse inflicted by:

- other young males in the ADF; and/or
- mature males in the ADF. (page 101)

***Finding 16***

It is certain that some of the young men who suffered such abuse later participated in inflicting similar abuse on other young men in the ADF. (page 101)

***Finding 17***

It is certain that many young females in the ADF have been subjected to serious sexual and physical assault and other serious abuse inflicted by:

- young males in the ADF; and/or
- mature males in the ADF. (page 101)

***Finding 18***

It is likely that many of the young males who endured, and/or participated in inflicting, such abuse and the young females who endured such abuse have suffered, or be at risk of suffering:

- mental health problems; and/or
- alcohol and drug problems: and/or

associated physical health and employment problems

affecting them and their families. (page 101)

### ***Issue 1***

The Review considers that Phase 2 should follow up the issues raised relating to reporting of abuse by young persons, particularly in training establishments. (page 102)

### ***Issue 2***

The Review considers that Phase 2 should consider whether programs to reduce the risk of sexual assault on young people in the ADF give adequate attention to the predatory nature of some people who commit sexual assault and who may use alcohol and/or who may target young people affected by alcohol. (page 102)

### ***Finding S5***

On the basis of the Review's consideration

- of all the allegations before the Review in relation to the abuse of young boys;
- relevant Defence file material
- publications including published accounts of men who as young boys experienced abuse in training establishment

the Review confirms these findings. (Sup page 56)

### ***Finding S6***

On the basis of the Review's consideration

- of all the allegations before the Review in relation to the abuse of young people;
- relevant Defence file material

the Review confirms these findings. (Sup page 56)

## **Chapter 6 – The current impact of past abuse in the ADF**

### ***Finding 19***

It is likely that a substantial number of people who have been the victims of sexual or other assault in the ADF have not reported that assault to anyone. (page 120)

### ***Finding 20***

It is likely that a substantial number of incidents of abuse - including sexual and other assault - in the ADF have not been reported over the years of the Review. (page 120)

***Finding 21***

It is likely that many people who have carried out abuse - including sexual and other assault in the ADF - have not been identified -or - if identified - have not had any significant action taken in relation to them and are still in the ADF. (page 121)

***Finding 22***

Lieutenant Colonel Northwood working in parallel with the Grey Review identified 24 cases of rape at ADFA in the late 1990s. It seems that none of the matters went to trial. (page 121)

***Issue 3***

It is possible that male cadets who raped female cadets at ADFA in the late 1990s and other cadets who witnessed such rape and did not intervene may now be in 'middle' to 'senior' management positions in the ADF. Those possibilities carry serious risks for the ADF. (page 121)

***Issue 4***

Phase 2 should consider the possibility of establishing a Royal Commission or similar process to clarify whether:

- any of the around 24 persons identified by Lieutenant Colonel Northwood in 1998 as being suspected of having committed rape are still in the ADF;
- whether any persons who witnessed and did not intervene to stop rape in 1998 are still in the ADF;
- if so, how to deal with that situation. (page 121)

***Issue 5***

Phase 2 should consider the issues arising from the connections between past abuse experiences in the ADF and mental health and related problems. (page 122)

***Finding 23***

It is likely that a substantial number of current and former ADF personnel are suffering or may be at risk of developing mental health problems associated with their experience as victims of abuse in the ADF. (page 123)

***Finding 24***

It is possible that a substantial number of current and former ADF personnel have an elevated risk of suicide associated with their experience as victims of abuse in the ADF. (page 123)

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**Finding 25**

Early intervention after an abuse event is important to mitigate the risks of long term mental health problems. (page 124)

**Finding 26**

Because of underreporting of abuse incidents in the ADF and because of the stigma attached to mental health issues many victims of abuse in the ADF will not have received the early assistance which is crucial to mitigate the potential for long-term mental health issues. (page 125)

**Finding 27**

Because of many victims of abuse with mental health problems do not seek assistance, they do not receive the ongoing support which could reduce the impacts long-term mental health issues. (page 125)

**Finding 28**

It is likely that many people who have been involved in abuse in the ADF as perpetrators will be suffering or be at risk of suffering mental health problems. (page 126)

**Issue 6**

Phase 2 should consider how to get people who were involved as perpetrators of abuse in the ADF who are suffering or at risk of suffering mental health problems to be provided with appropriate assistance. (page 126)

**Finding S7**

Having now considered the detail of a large number of statements made to the Review and extensive file material the Review confirms the Finding made in Chapter 6. (Sup page 57)

**Finding S8**

It is possible that male cadets who raped or indecently assaulted female cadets at ADFA from the establishment of the ADFA in the mid-1980s through to the late 1990s and other cadets who witnesses such rapes and did not intervene may now be in 'middle' to 'senior' management positions in the ADF. Those possibilities carry serious risks to the ADF. (Sup page 58)

**Issue S1**

Phase 2 should consider the possibility of establishing a Royal Commission or a Court of Inquiry to clarify whether:

- any of the around 24 persons identified by Lieutenant Colonel Northwood in 1998 as being suspected of having committed rape or other serious sexual assault or any other Cadets who engaged in similar conduct at ADFA in the years preceding the Grey report are still in the ADF;
- whether any persons who as Cadets at ADFA witnessed and did not intervene to stop rape or similar conduct at ADFA in the years preceding the Grey report are still in the ADF
- if so, how to deal with that situation. (Sup page 58)

### ***Issue S2***

The Review confirms the importance of the Issues stated in Issues 5 and 6 of Chapter 6. (Sup page 59)

## **Chapter 7 – Systemic issues**

### ***Issue 7***

In order to ensure that command managers can identify and manage members who are, or have the potential to become, serial perpetrators, the Review considers that Phase 2 should examine:

- the present mechanisms that are available for tracking serial perpetrators and serial suspects
- whether these mechanisms are being used to their optimum capacity
- whether further systems should be put in place. (page 131)

### ***Issue 8***

The Review considers that Phase 2 should discuss with Fairness and Resolution Branch and other appropriate areas of Defence the content of the information that is currently available on the Fairness and Resolution Unacceptable Behaviour database to expand the information recorded there and increase its availability and value to managers. (page 133)

### ***Finding 29***

The Fairness and Resolution database of Unacceptable Behaviour has not been kept up to date and has, therefore, not provided up to date information for Commanding Officers and others in the ADF with the responsibility of managing the welfare of ADF members. (page 135)

### ***Issue 9***

The Review considers that Phase 2 should examine further the issues raised relating to the management and currency of the Fairness and Resolution Unacceptable Behaviour



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database. It would be desirable for an external performance audit to be undertaken of the content and management of the database. (page 135)

### ***Issue 10***

The Review considers that Phase 2 should examine any action being taken to integrate Defence databases relating to unacceptable behaviour with particular reference to the recording of information relating to serial perpetrators. (page 135)

### ***Issue 11***

The Review considers that Phase 2 should undertake further examination of the establishment of a system for permitting the restricted reporting of sexual assaults in Defence with particular regard to the availability of such a system for the receipt of allegations arising from the distant or even middle distant past. (page 139)

### ***Recommendation 2***

The Review recommends that Phase 2 undertake discussions with Defence as a matter of urgency with a view to the clarification and, if necessary, amendment of DI(G) PERS 35-4 to permit administrative action to be taken in respect of actions which may constitute sex offences under applicable criminal law. The other DI(G)s that seem to be relevant to these issues should also be examined.

Consideration should be given to having a DI(G) which directs the relevant Commanding Officer to consider taking administrative action even though the same incident has also been referred to civilian police and to review the status of the matter at regular intervals to see whether administrative action should be taken.

Regard should be had to the desirability of Defence procedures following the APS model for running administrative processes during or after criminal processes for the same facts.

A broader examination should be undertaken of the management of actions which may be sexual offences under applicable criminal law and 'unacceptable behaviour' and the relevant DI(G)s redrafted to provide simpler and appropriate advice and guidance to management. (page 145).

### ***Issue 12***

The Review considers that Phase 2 should pursue with Defence the issue whether it is possible to provide advice to members of the outcome of their reports of 'unacceptable behaviour' and explore mechanisms whereby any Privacy Act limitations may be overcome. APS Circular No. 2008/3 should be used as a starting point for such discussions. (page 147)

***Issue 13***

The Review considers that Phase 2 should identify an appropriate process and timeframe for assessment of whether recently introduced ADF processes are effective in ensuring that inquiries into allegations of abuse (including sexual and other assault) are handled discreetly and sensitively. (page 149)

***Issue 14***

The Review considers that Phase 2 should review Defence's use of language when referring to, and discussing with persons involved in allegations or proven incidents of sexual assault, other assault or other abusive behaviour. (page 151)

***Issue 15***

The Review considers that Phase 2 should consider the quality and provision of ongoing support to ADF members who have made an allegation of abuse or who have been abused. (page 152)

***Issue 16***

The ADF should consider establishing a system for liaison with local civilian police forces similar to the US Military's Sexual Assault Regional Team either dealing with ADF/civilian police interactions generally or limited to sexual assault issues. (page 152)

***Issue 17***

The Review considers that Phase 2 should consider the adequacy of Defence's response to the issues raised by the Whiddett/Adams Report of an Audit of the Australian Defence Force Investigative Capability (July 2006). (page 155)

***Issue 18***

The Review considers that Phase 2 should consider the present practices relating to the appointment to and retention of personnel in ADFIS with a view to ensuring that specialist skills developed by officers in the management of abuse allegations are maintained. (page 155)

***Issue 19***

The Review considers that Phase 2 should consult with the Defence Force Ombudsman to determine a role for the Defence Force Ombudsman in overseeing Defence's actions in relation to the systemic issues raised in Chapter 7. (page 155)

***Finding S9***

The Review's survey of information in the Fairness and Resolution Branch database indicates that commanders and managers have not dealt with complaints of

unacceptable behaviour that amount to abuse within the Terms of Reference of this Review promptly and/or have not complied with reporting requirements. (Sup page 62)

### ***Issue S3***

In relation to Issue 9 identified for Phase 2 consideration in Volume 1 Chapter 7:

- the audit should consider the actions of commanders/managers and Fairness and Resolution Branch in managing reports of unacceptable behaviour and in providing/maintaining information in the database.
- the audit should be conducted with a view to identifying the underlying reasons for the shortcomings in management/reporting of database matters which this Review has identified and should provide recommendations for fixing those shortcomings and any additional shortcomings identified by the audit. (Sup page 62)

### ***Issue S4***

Phase 2 should consider as a matter of priority (and not dependent on the outcome of the audit) any of the database matter which have not yet been concluded.

In respect of any such matters which have still not been managed appropriately, Phase 2 should have oversight of, and be able to make recommendations in respect of, future management of those matters. (Sup page 62)

### ***Issue S5***

Phase 2 consider, in consultation with Defence, developing a proposal for identifying and collecting a consolidated set of reports of previous inquiries into abuse and related issues in Defence with a view to making those reports available for implementation of Phase 2 actions and to provide an ongoing resource for Defence and for DVA. (Sup page 64)

### ***Issue S6***

Phase 2 to consider a review of all databases that record performance, conduct issues and complaints relevant to abuse/unacceptable behaviour and that consideration be given to creating a centralised and integrated database system. (Sup page 65)

### ***Issue S7***

Phase 2 to consider a proposal for reform of Defence Inquiry Regulations requirements for Ministerial approval for access to reports of Administrative Inquiries so that decision-makers and their advisers can make informed decisions and recommendations. (Sup page 66)

**Issue S8**

Phase 2 to consider the adequacy of Defence systems for tracking, internally reporting on and reporting to media allegations of abuse involving ADF personnel. (Sup page 67)

**Recommendation S3**

The Review confirms Recommendation 2 and recommends that the discussion of concerns which are discussed in this section of the Supplement be drawn to the attention of the IGADF, the Directorate of Rights and Responsibilities and other involved in review and oversight of the relevant DI(G)s relating to options for taking administrative action after an allegation of sexual assault. (Sup page 70)

**Issue S9**

Phase 2 to consider establishing arrangements for gathering and exchange of information between Defence and DVA about abuse in the ADF including access to previous reports, identification of clusters of abuse, identification of high-risk Defence environments and identification of possible serial perpetrators. (Sup page 71)

**Issue S10**

Phase 2 consult with DVA about:

- whether DVA could issue statements on some of these issues to give guidance to potential claimants and their advisors about information which is available to assist claimants to establish their eligibility for benefits including- if DVA accepts that such information has probative force- the findings made by this Review and the information which has been gathered by this Review and other information which may be gathered and identified in Phase 2; and
- whether DVA could proactively be looking for individuals who may be eligible for benefits and/or support services which they are not currently receiving. (Sup page 72)

**Issue S11**

Phase 2 to consider:

- drawing to the attention of DVA the clusters of abuse allegations which became apparent as allegations were assessed and groups in Volume 2;
- establishing liaison between the team established to carry out investigations of allegations of possible criminal conduct/breach of DFDA and DVA to identify to DVA at risk individuals and/or groups;
- liaison with a Defence research project into previous inquiries into abuse in Defence to make the outcomes of that project available to DVA; and
- exploring with DVA liaison with Veterans' representative bodies and consultative forums about this shift in DVA processes. (Sup page 72)

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***Issue S12***

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 to the ADF to the exclusions from the operation of spent convictions legalisation. (Sup page 73)

**Chapter 8 – Options*****Recommendation 3***

If a new complaint resolution scheme is established, it should not be limited to people who have come to this Review but should be open to people who have not raised matters with this Review. (page 159)

***Recommendation 4***

If a new complaint resolution scheme is established, each allegation reported on within Volume 2 should be reviewed to see if the allegation is suitable for the new scheme. This is particularly important to allegations identified in Volume 2 for 'no further action'. That recommendation is based on the remedies currently available for the members concerned. If new remedies are put in place, some of the 'no further action' matters may be suitable for reparations under the new system. (page 160)

***Recommendation 5***

There should be further investigation of matters identified during Phase 1 as raising real concerns as to the occurrence of abuse and/or mismanagement by Defence of reports of abuse. (page 161)

***Issue 20***

The Review considers that Phase 2 should consult with the Defence Force Ombudsman to determine a role for the Defence Force Ombudsman in overseeing whatever processes for investigation and reparation are adopted following this Report. (page 165)

***Recommendation 6***

Further investigations to be made during Phase 2 should be conducted by an external review body. A body similar to that which has conducted Phase 1 of the Review should be established for this purpose. (page 169)

***Recommendation 7***

Consideration should be given to establishing a capped compensation scheme for the victims of abuse within Defence. During Phase 2 a detailed proposal for a capped compensation scheme could be developed for the Government's consideration at the end of Phase 2. (page 187)

***Recommendation 8***

Consideration should be given to establishing a framework for private facilitated meetings between victims, perpetrators and witnesses of abuse within Defence. During Phase 2 a detailed proposal for such a framework could be developed for the Government's consideration at the end of Phase 2. (page 191)

***Issue 21***

Consideration should be given in Phase 2 to the appointment of an office or body external to Defence to oversight implementation of the recommendations made by this Review (including in relation to systemic issues) and thereafter to oversee the operation of the complaints system in practice, including, in particular, the treatment of victims. (page 193)

***Recommendation 9***

Special counselling and health services in place for the duration of this Review should be extended into Phase 2 of the Review whilst a plan for providing health services to victims of abuse is prepared.

Thereafter, the plan should be implemented such that victims of abuse within Defence have access to counselling and health services. (page 193)

***Recommendation 10***

A suite of options should be adopted to provide means for affording reparation to persons affected by abuse in Defence comprising:

- public apology/acknowledgements;
- personal apology;
- capped compensation scheme;
- facilitated meeting between victim and perpetrator;
- health services and counselling.

A body or team should be tasked to develop detailed proposals for the suite of options, so that they may be presented for a decision on implementation.

While the suite of options are being developed, there should be further external investigation of matters recommended in Volume 2 for further external investigation. There could be referral of matters recommended for internal/external referral. Volume 2 recommendations are limited to existing options. Accordingly, matters recommended for 'no further action' in Volume 2 should be 'held', pending the development of the proposals and then - where appropriate - considered for possible action under any new processes adopted. There should be appropriate communication to complainants as to what will happen during the transition stage and into Phase 2. (page 194)

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***Issue 22***

The Review considers that Phase 2 should consider how existing Defence military justice systems may need to be modified to deal with perpetrators of complaints received in Phase 1. (page 197)

***Issue 23***

Phase 2 should consider how to monitor the actions taken in relation to specific allegations of serious abuse for which further action is recommended in Phase 1. (page 198)

***Recommendation S4***

The Review recommends that the formulation and delivery of Personal and General apologies should take into account the five criteria for formal apologies set out by the Law Commission of Canada and previously noted by the Senate Community Affairs Committee in its reports *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* (2004) and *Commonwealth Contribution to Former Forced Adoption Policies and Practices* (2012). (Sup page 76)

***Recommendation S5***

The Review recommends that, for each personal apology recommendation which is accepted, a representative of the Service Chief should liaise with the individual to explore matters such as whether they wish to receive an apology (if not clear from their submission to the Review), whether they wish the apology to extend to their family, the conduct to be covered by the apology and the manner in which they would prefer to receive an apology. (Sup page 76)

***Concluding remarks***

The Review calls on the ADF, the 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 others in the ADF do, or have done, wrong. (page 199-200)





