

The Senate

Foreign Affairs, Defence and Trade
References Committee

Report of the DLA Piper Review and the
government's response

June 2013

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Abbreviations

ADF	Australian Defence Force
AFP	Australian Federal Police
ADFA	Australian Defence Force Academy
ADFIS	Australian Defence Force Investigative Service
CDF	Chief of the Defence Force
DI(G)	Defence Instruction (General)
DART	Defence Abuse Response Taskforce
DFDA	Defence Force Discipline Act
DVA	Department of Veterans' Affairs
IGADF	Inspector-General Australian Defence Force
LtCol	Lieutenant Colonel
SEMPRO	Sexual Misconduct Prevention and Response Office

Recommendations

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.

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.

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.

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.

Recommendation 9

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

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.

Chapter 1

Introduction

Referral of inquiry and terms of reference

1.1 On 10 October 2012, the Senate referred matters relating to the report of the review of allegations of sexual and other abuse in Defence, conducted by DLA Piper, and the response of the government to the report, to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 1 March 2013.¹ On 28 February 2013, the Senate granted an extension to the reporting date to 16 May 2013.² A further extension was granted by the Senate to 27 June 2013.³

1.2 The terms of reference for the inquiry are as follows:

The report of the review of allegations of sexual and other abuse in Defence, conducted by DLA Piper, and the response of the Government to the report, including:

- (a) the accessibility and adequacy of current mechanisms to provide support to victims of sexual and other abuse in Defence;
- (b) whether an alternative expedited and streamlined system for the resolution of disputes relating to the support, rehabilitation, treatment and compensation of victims in Defence be considered and established, and the constitutionality of such an alternative system;
- (c) the effectiveness and timeliness of the Government's processes for assessing, investigating and responding to allegations of sexual or other forms of abuse, including:
 - (i) whether a dedicated victims advocacy service ought to be established,
 - (ii) systemic and cultural issues in reporting and investigating sexual and other forms of abuse, and
 - (iii) whether data and information collection and dissemination of data and information in relation to sexual and other forms of abuse in Defence is adequately maintained and appropriately acted upon and, if not, any alternative mechanisms that could be established; and
- (d) any related matters.

1 *Journals of the Senate*, 10 October 2012, p. 3106.

2 *Journals of the Senate*, 28 February 2013, p. 3692.

3 *Journals of the Senate*, 15 May 2013, p. 3930.

Conduct of inquiry

1.3 The committee advertised its inquiry on its website, and in *The Australian*, calling for submissions to be lodged by 22 November 2012. The committee also wrote directly to a range of people and organisations likely to have an interest in matters covered by the terms of reference, drawing their attention to the inquiry and inviting them to make written submissions.

1.4 At the outset of the inquiry, the committee indicated, on its website and in its correspondence, it was not in a position to resolve individual disputes or settle complaints about alleged abuse in Defence. The committee emphasised that its overarching concern in addressing the terms of reference was to develop recommendations for improving the way in which Defence and the Government manage and respond to allegations, such as those raised in the report of the DLA Piper Review. Despite this notification, several submissions received by the committee raised, or focused on, individual complaints or disputes.

1.5 The committee received 25 submissions to the inquiry, some of which were accepted as confidential submissions. Submissions are listed at [Appendix 1](#) and public submissions are available on the committee's website at: www.aph.gov.au/senate_fact.

1.6 On 14 March 2013, the committee held a public hearing for the inquiry at Parliament House in Canberra. A list of the witnesses who appeared at the hearing is at [Appendix 2](#), and the *Hansard* transcript is also available through the committee's website. Additional information, tabled documents and answers to questions on notice received during the inquiry are listed in [Appendix 3](#).

1.7 On 7 June 2013, the committee received a private briefing at Parliament House in Canberra from the Defence Abuse Response Taskforce on its activities.

Structure of the report

1.8 The committee's report is structured as follows:

- Chapter 2 provides a background to the inquiry and summarises the key features of the DLA Piper Review reports and the government's response;
- Chapter 3 deals with the mechanisms to support victims of alleged abuse in Defence;
- Chapter 4 addresses reparation and compensation issues;
- Chapter 5 deals with the processes for responding to allegations of abuse, including: the need for a dedicated victim's advocacy service; systemic and cultural issues in reporting abuse; and data and information collection concerning abuse;
- Chapter 6 addresses other related issues which were raised during the inquiry; and
- Chapter 7 contains the committee's view and recommendations.

Acknowledgements

1.9 The committee thanks all those who contributed to the inquiry by making submissions, providing additional information or appearing at the public hearing to give evidence.

Note on references

1.10 References to the committee *Hansard* are to the official *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

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.

Chapter 3

Mechanisms to support victims of abuse in Defence

Introduction

3.1 This chapter focuses on mechanisms to provide support to victims of sexual and other abuse in Defence. This includes: a background of key Defence funded support options for victims of abuse; issues raised by submitters to the inquiry; the establishment of SEMPRO; and the introduction of restricted reporting.

Background

3.2 A number of support options have potentially been available to victims of abuse in Defence. For example, Annex C to DI(G) PERS 35-3, titled *Defence Funded Support Options for Unacceptable Behaviour Management* lists a number of support options that can be offered to complainants, respondents and witnesses of unacceptable behaviour. These include:

- the Equity Advisor Network—Equity Advisors provide information, options and support for the resolution of workplace equity and diversity issues;
- the Defence Equity Advice Line—a confidential, toll-free telephone line for those who consider they have been subjected to, accused of, or witnessed any form of unacceptable behaviour;
- a case officer—a case officer may be appointed at the discretion of the commander or manager to assist the complainant and the respondent during the complaint management process;
- psychological counselling and support—these include Defence medical support, psychological support, the services of the Defence Community Organisation, the ADF Mental Health Strategy All-hours Support Line and military chaplains;
- the Employee Assistance Program (EAP)—the EAP counselling service is available for Defence APS employees;
- Defence Legal Support—both complainants and respondents may seek legal advice, though from separate legal officers; and
- Peer support—'[t]he complainant, respondent and witnesses may be provided with moral and social support from their peers during the course of any inquiry and judicial proceedings, and after the incident has been resolved'.

3.3 Annex C to DI(G) PERS 35-3 also lists temporary transfers and the granting of leave as options at the commander or manager's discretion and lists factors which should be considered in making decisions on these options.

3.4 Annex B to DI(G) PERS 35-4 *Management and Reporting of Sexual Offences* lists the Defence funded support options for sexual offence management. In addition to many of the support options for unacceptable behaviour, it includes referral to a Defence medical centre for consultation and an assessment of workplace where a 'complainant may feel unsafe as a result of a sexual offence complaint'. It notes that:

Commanders and managers must maintain an environment where complainants, respondents and witnesses to sexual offences are confident that they can access a range of support services. Complainants, respondents and witnesses to incidents of sexual offences must be provided with all practicable and reasonable support.¹

Issues

Support for victims of abuse

3.5 The DLA Piper Review Volume 1 report identified an absence of positive support for those who report abuse, either as a witness or victim, as an indicator of risk of abuse. It commented that '[a]s far as the Review is aware, there was not any such support in the ADF over most of the 60 years considered by this Review'.² It noted that a recurrent theme in the allegations considered by the Review was a perception that 'even where Defence's initial response to an allegation of sexual abuse seems to have been appropriate, the victim then perceives that the positive support fades away very quickly'.³ The Review considered 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'.⁴

3.6 At Supplementary Estimates in October 2012, the Department of Defence confirmed that from the outset of the DLA Piper Review 'counselling and crisis intervention support' was established which remains available 'to existing ADF and APS personnel as well as former ADF personnel and their families'.⁵ It also noted that 'DLA Piper has reviewed its records and has confirmed that 737 of the 775 [complainants] have been provided with details of counselling services'. While noting that it did not know who the 775 complainants are, the Department told the committee that 18 persons who identified themselves as having DLA Piper related matters had accessed support services which Defence managed, including: the employee

1 Defence Instructions (General) PERS 35-4, *Management and Reporting of Sexual Offences*, Annex B—Defence Funded Support Options for Sexual Offence Management.

2 DLA Piper Review, *Volume 1*, p. 22.

3 DLA Piper Review, *Volume 1*, p. 151.

4 DLA Piper Review, *Volume 1*, p. 152.

5 Senate Foreign Affairs, Defence and Trade Legislation Committee, Supplementary Estimates, *Committee Hansard*, 17 October 2012, p. 30.

assistance program; the Defence Community Organisation; and the support telephone line.⁶

3.7 The Department of Veterans' Affairs (DVA) noted that eligible individuals could receive assistance from the Veterans and Veterans Families Counselling Service (VVCS), a free and confidential service available 24 hours a day across Australia:

Although part of the DVA portfolio, for privacy reasons the VVCS is organisationally separate from the Department, maintaining its own systems and separate client data repositories. The VVCS advise that they have received a total of 12 calls or contacts from clients identified as being related to the DLA Piper Review.⁷

3.8 The referral of victims of abuse to counselling is one of the key functions of the Defence Abuse Response Taskforce. The Taskforce noted that:

Case coordinators in the Taskforce work closely with complainants as their matters are dealt with by the Taskforce. If psychological support is required, case coordinators will refer complainants to registered external counselling providers. Taskforce psychologists and case coordinators will not provide counselling to complainants, rather they will assess whether complainants require counselling and refer the complainant to an appropriate external provider.⁸

Support mechanisms

3.9 The Alliance of Defence Service Organisations (ADSO) highlighted the issues involved in appointing a 'case manager' in relation to a complaint under the current Defence Instruction (General).

A case manager is to be appointed *at the discretion* of the commander or manager to assist the complainant, respondent and witnesses during the complaint management process. In particular, the case manager is required to explain the support services available to the parties to the complaint, and facilitate access to these services.

The case manager is to be a compassionate but impartial person, and the role is not to be linked to a specific workplace position. The case manager is not to be, or likely to be, a person involved in the inquiry or disciplinary aspects of the complaint.⁹

6 Senate Foreign Affairs, Defence and Trade Legislation Committee, Supplementary Estimates, *Committee Hansard*, 17 October 2012, p. 30.

7 *Submission 18*, p. 2.

8 Defence Abuse Response Taskforce, *First Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 15.

9 *Submission 8*, p. 2 (emphasis in original).

3.10 In the view of ADSO, this was 'a very good example of an instruction that should give no latitude – whatsoever'.¹⁰ It considered a case manager should be appointed at the first opportunity and it should be mandatory that case managers are appointed. While a case manager should be a 'compassionate but impartial person', not involved in the inquiry or disciplinary aspects of the complaint, the ADSO noted that 'regrettably within the Services, most personnel are either friendly with or know each other in some way or another'.¹¹ Consequently, the ADSO supported the establishment of a specialist Sexual Abuse Unit with Defence, 'preferably within the ADFIS'.¹²

3.11 LtCol Paul Morgan, who is employed in Joint Health Command of Defence, stated that he had seen no improvement in this area:

Defence has made no explicit effort to provide support to victims of sexual and other abuse in Defence. There have been no additional resources applied to this area. There has been little to no effort to train the care providers in abuse related issues. It simply does not rank as a priority for Defence to improve this area, through any kind of specific focus on this issue. Commanders use the ADF health service to 'handball' off their responsibilities. There has been little or no additional effort to train commanders in the specifics of supporting victims of abuse. I have seen no effort by Defence Health Services to plan or implement any improvements in the support services for victims of sexual and other abuse.¹³

DVA support

3.12 DVA provides support to current and former ADF personnel who have suffered injury or conditions related to their service. As previously noted, counselling is available to eligible ADF members and their families through the Veterans and Veterans Families Counselling Service (VVCS) a free and confidential service. The DVA website states:

VVCS staff are qualified psychologists or social workers with experience in working with veterans, peacekeepers and their families. They can provide a wide range of treatments and programs for war and service-related mental health conditions including post traumatic stress disorder (PTSD).¹⁴

3.13 DVA's submission outlined the steps it had taken to support those contacting the DLA Piper Review who required DVA assistance, including the establishment of a specific team in Melbourne:

10 *Submission 8*, p. 2.

11 *Submission 8*, p. 2.

12 *Submission 8*, p. 2.

13 *Submission 22*, p. 2.

14 DVA, VVCS—Veterans and Veterans Families Counselling Service', http://www.dva.gov.au/health_and_wellbeing/health_programs/vvcs/Pages/index.aspx (accessed 19 June 2013).

Specialised training on sexual and other abuse was provided to DVA staff. To further ensure support for those claiming compensation as a result of sexual and other forms of abuse, policy and procedural guides were updated to emphasise the need for sensitivity when liaising or requesting information from clients, and when referring clients for specialist medical examinations, etc.¹⁵

3.14 DVA noted that following the release of the DLA Piper Review further arrangements have been introduced for dealing with claims relating to sexual and other abuse.

Where the claim can be accepted it will be. Where the claim cannot be accepted on the basis of the available evidence, it is sent to the Melbourne team who contact the client to advise them of this. The team offers the client the following options:

- having the claim determined,
- taking the time to submit more evidence, or
- asking DVA to hold the claim in case further evidence is available as a result of the response to the DLA Piper Review...

DVA has been contacted by 22 people who have identified themselves as having contacted the DLA Piper Review. Seventeen of those people have also submitted a claim for compensation. In addition, DVA has around 83 claims currently being investigated, that appear to involve abuse.¹⁶

3.15 In his supplementary submission, Dr Gary Rumble noted that while compensation and common law actions had been a focus during the committee's public hearing, there was little attention to the fact that there are already developed 'current mechanisms' administered by DVA providing support for veterans 'who have physical and/or mental problems associated with their service in the ADF'.¹⁷ He stated:

DVA benefits include counselling and medical treatment as well as direct financial support and respond to individuals' circumstances as they change over time. Accordingly DVA benefits could be of much more importance to people affected by abuse in the ADF in the past than a one-off payment under either common law or under the new capped compensation/reparation payment scheme.¹⁸

3.16 Dr Rumble understood that some victims of abuse in the ADF had accessed DVA benefits. However, he cautioned that 'although establishing an entitlement to DVA benefits should be less difficult than succeeding in a common law claim for

15 *Submission 18*, p. 1.

16 *Submission 18*, p. 2.

17 *Submission 24A*, pp. 1–2.

18 *Submission 24A*, p. 2.

damages, individual claimants seeking access to current DVA benefits for current health problems related to past abuse often face significant evidentiary barriers in proving that they were abused in the ADF many years ago'.¹⁹

Sexual Misconduct Prevention and Response Office

3.17 As outlined in Chapter 2, the establishment of a SEMPRO in Defence was a key recommendation made in the *Review of Treatment of Women in the ADF*. The recommendation included:

As a priority, [the Chiefs of Service Committee] should establish 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 ADF. This Office is to be adequately and appropriately staffed, including with personnel that have experience in responding to people who have been subjected to sexual harassment or abuse and is to be headed by a senior leader (of no less than one star rank or at SES level) and located at Defence Headquarters.²⁰

3.18 The recommendation proposed that SEMPRO would perform a number of roles in supporting victims of sexual misconduct (as well as education, training, outreach, and data collections roles). These roles included:

- to respond to complaints of sexual harassment, sex discrimination and sexual abuse including ensuring the immediate safety and well-being of the complainant;
- to provide a 24 hour/seven day a week telephone hotline and online service (click, call or text access) that is staffed by personnel with expertise in responding to complainants—female and male—who report sexual harassment, sex discrimination and sexual abuse; and
- to enter into appropriate arrangements with expert external service providers so as to offer complainants an alternative avenue for support and advice if the complainant does not wish to engage with the ADF's internal complaints system.²¹

3.19 At the public hearing Defence provided some information about the proposed SEMPRO and confirmed that the focus of SEMPRO will be on sexual misconduct. The CDF commented:

Essentially the organisation is there to ensure that there is a point of contact for either members of the ADF to contact themselves or a route for those

19 *Submission 24A*, p. 2.

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

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

who have incidences reported to them to come in and then be pointed in the right direction and connected with the support mechanisms that exist in the organisation and to grow some of those mechanisms to exist in the organisation to support those people.²²

3.20 While SEMPRO will not be launched until July 2013, it has been announced that the office will be headed by Air Commodore Kathryn Dunn. At the public hearing, Defence noted that:

It is a relatively small unit but at the moment we have 14 positions. Importantly we are going to leverage from existing mechanisms within the organisation to facilitate support and also have in place mechanisms to, as the office gets up to speed, make referrals to rape crisis centres and those sorts of external support. That will be very much focused on the victim and their needs.²³

Restricted reporting

3.21 The government's response to the *Review of Treatment of Women in the ADF* agreed with the recommendation that:

As a matter of urgency, the ADF should investigate mechanisms to allow members to make confidential (restricted) reports of sexual harassment, sex discrimination and sexual abuse complaints through SEMPRO.²⁴

3.22 The DLA Piper Review Volume 1 report also specifically commented on the reporting of sexual assaults, noting that ADF processes require all sexual assault allegations to be immediately reported to local State and Territory police:

This can place victims in an invidious position at a time when they are likely to be traumatised. If they report the matter, they will be exposed to the further trauma and stress of the civilian criminal justice system which seems to be very ineffective in calling perpetrators of sexual assault to account and which is—at best—very slow moving...Furthermore, the requirement of immediate reporting to Police can result in no reporting occurring.²⁵

3.23 The DLA Piper Volume 1 report noted that some overseas military forces have implemented a 'restricted reporting' regime, where the victim of a sexual assault can make a restricted report to designated personnel who can provide support to the victim. However, the report is not disclosed within the command structure or investigated by disciplinary authorities, 'unless and until the victim consents to that

22 General David Hurley, CDF, *Committee Hansard*, 14 March 2013, p. 29.

23 Ms Carmel McGregor, Defence, *Committee Hansard*, 14 March 2013, p. 30.

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

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

occurring'.²⁶ The DLA Piper Review identified a number of advantages to restricted reporting:

The purpose of the restricted report is to encourage quick reporting of assault even where the person affected does not want it to be pursued for criminal or disciplinary prosecution. The perpetrator is not identified. Command is at least made aware that there may be a problem within the area affected and can take steps to reduce the possibility of further events occurring without involving the victim. It also ensures that there is a record of the event and that the person affected receives immediate assistance.²⁷

3.24 The DLA Piper Review considered 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'.²⁸ This drew on one of the recommendations made by Ms Angela Ballard in her 2009 Churchill fellowship paper on 'Sexual Assault Prevention and Intervention in a Military Environment':

[A] 'Restricted' and 'Unrestricted' option for disclosure should be provided to ADF victims, allowing them to access medical and mental health services without law enforcement involvement. This will provide Commands with environmental knowledge to ensure future risk reduction measures could be put in place.²⁹

3.25 Ms Ballard's paper noted that there was value in command and policing agencies being initially less visible to victims of sexual assault via a restricted reporting option. She noted 'there is a likelihood that as the victim becomes more empowered and confident in being supported, they will change to "Unrestricted" reporting and the organisation can regain "control" of the situation' and that this had been seen in the United States where a system for restricted reports was in place.³⁰ In Australia, she highlighted that 'counsellors, psychologists, medical staff and Chaplains invoking privacy/confidentiality privileges of their profession, permits ADF victims of sexual assault to access the medical and mental health support they require without reporting the incident to military or state policing agencies'.³¹

3.26 The Inspector-General ADF noted that his office had been consulted in the policy development in relation to this area and would be a keen observer of its implementation.³² While he acknowledged the restricted reporting system has the

26 DLA Piper Review, *Volume 1*, p. 137.

27 DLA Piper Review, *Volume 1*, p. 137.

28 DLA Piper Review, *Volume 1*, p. 139.

29 *Submission 5, Attachment 1*, p. 41.

30 *Submission 5, Attachment 1*, p. 22.

31 *Submission 5, Attachment 1*, p. 22.

32 *Submission 19*, p. 3.

potential to encourage the reporting of abuse that might otherwise go unreported, he also outlined several concerns. These concerns included:

- care to ensure restricted reporting will not be inconsistent with State criminal law dealing with obligation to report offences;
- ADF obligations under the workplace, health and safety legislation may be hard to achieve if restricted reports become 'mainstream rather than exceptional'; and
- a consequence of maintaining confidentiality of a restricted report is that alleged perpetrators will not be the subject of investigation and may reoffend.³³

3.27 Dr Rumble also noted that it not clear whether the announced restricted reporting measure is intended to be available only to current Defence personnel or will also be available to former Defence personnel for incidents which occurred when they were in Defence. He recommended that this be clarified.³⁴

3.28 At the committee's public hearing, Defence indicated that details of the restricted reporting system were still being developed. General Hurley, the CDF, informed the committee that Defence leadership had not settled on the manner of the restricted reporting processes which could be implemented:

We are looking very seriously through SEMPRO at introducing restricted reporting of sexual offences in the ADF. There are pros and cons to doing that in terms of support for the victim on the one hand but not then disclosing offenders who could then repeat before we move. So we have a duty of care in relation to that as well. Again, that is an issue that is being very seriously looked at in the present time and we will settle on a point somewhere on that continuum and put that into effect...³⁵

We will have more restricted reporting, but where on the spectrum from going and finding the guilty person to no reporting until the victim is well and truly ready do we want to sit? We are just thinking that through because there are risks in those positions for both other individuals in the organisation and the institution.³⁶

3.29 The Inspector-General ADF's *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction* noted apparently conflicting advice in DI(G) 35-4 Management and Reporting of Sexual Offences regarding a victim or complainant's wishes. Annex C to DI(G) 35-4 contained form AC875-4 'Record of complainant's wish not to officially report a sexual offence to the police'. While this seemed to imply a complainant could indicate they did not want to

33 *Submission 19*, p. 4.

34 *Submission 24*, p. 7.

35 *Committee Hansard*, 14 March 2013, p. 29.

36 *Committee Hansard*, 14 March 2013, p. 30.

report an allegation, there was provision that the commander or manager still had 'a responsibility to ensure that a sexual offence complaint is notified to State/Territory or relevant Defence Investigative agency'.³⁷ In an answer to a question on notice, Defence noted that DI(G) 35-4 has been amended to permanently remove the requirement for form AC875-4.³⁸

37 Inspector-General ADF, *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction*, September 2011, p. 40.

38 Defence, answers to question on notices, Question 4.

Chapter 4

Reparation and compensation

Introduction

4.1 The framework of responses available to the Defence Abuse Response Taskforce broadly reflects the recommendation made by the DLA Piper Review that a 'suite of options should be adopted to provide means for affording reparation to persons affected by abuse in Defence'.¹ However, witnesses and submitters raised several concerns with the specifics of the Defence Abuse Reparation Payment Scheme (Reparation Scheme) which was subsequently announced as part of the government's response and other related compensation issues.

4.2 The *Interim report* of the Defence Abuse Response Taskforce provided additional detail regarding the Reparation Scheme. The stated purpose of the scheme is to provide recognition that abuse in Defence is 'unacceptable and wrong'. The reparation payments would be provided to victims who have made plausible allegations of being subjected to sexual or other forms of abuse in Defence as a 'broader acknowledgement that such abuse should never have occurred'.² This would include individuals who reported abuse and whose cases were mishandled by Defence management. The Taskforce's report clarified:

Reparation payments are not intended as compensation. They are a way of enabling people to move forward. Payments to individuals will be capped at \$50,000, with the amount provided to each complainant determined on a case by case basis taking into account the individual circumstances of the case.³

4.3 The *Interim report* noted the Taskforce had provided detailed advice to assist ministers to settle on an approved scheme and that the proposed scheme was now 'with the Government for consideration and approval'.⁴ On 10 April 2013, the proposed Reparation Scheme was officially approved by the Prime Minister.⁵

4.4 Under the Reparation Scheme, a number of categories of Reparation Payment are specified:

1 DLA Piper Review, *Volume 1*, p. 194.

2 Defence Abuse Response Taskforce, *Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 15.

3 Defence Abuse Response Taskforce, *Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 15.

4 Defence Abuse Response Taskforce, *Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 15.

5 Defence Abuse Response Taskforce, *answers to questions on notice*, 12 April 2013, p. 1.

- Category 1 (Abuse): \$5,000;
- Category 2 (Abuse): \$15,000;
- Category 3 (Abuse): \$30,000;
- Category 4 (Abuse): \$45,000; and
- Category 5 (Mismanagement by Defence): \$5,000.⁶

4.5 The Scheme Guidelines provide that a Reparation Payment may only consist of one the amounts under Categories 1 to 4, or the amount available under Category 5 (Mismanagement by Defence), or one of the amount under Categories 1 to 4 and the amount under Category 5.⁷ The Scheme Guidelines note Category 4 (Abuse) is intended to provide reparation for the most serious forms of alleged individual or collective abuse.⁸ Effectively, this means the maximum Reparation Payment under the Scheme Guidelines is \$50,000 (\$45,000 plus \$5,000), in instances where a person in Defence has suffered the most serious forms of abuse and Defence has mismanaged this abuse.

4.6 The *Interim report* noted that the making of a Reparation Payment to a person under the Scheme is not intended to affect the statutory, common law or other legal rights of the person; however, a court or tribunal may, if it thinks fit, take the making of a Reparation Payment into account in assessing the amount of any damages or compensation otherwise payable to a person under common law or statute.⁹

4.7 On 12 April 2013, the Chair of the Taskforce provided further details on the eligibility of claims of abuse under the Scheme Guidelines:

Under the Guidelines if a complainant makes an allegation to either DLA Piper or the Taskforce, prior to 31 May 2013, that they allegedly suffered abuse in Defence which occurred before 11 April 2011, they may receive a reparation payment of up to \$45,000.

A separate additional reparation payment of \$5,000 may be available under clause 3.1.4(d)(ii) of the Guidelines to a complainant who alleges (prior to 31 May 2013) (i) that they made a verbal or written report or complaint about the alleged abuse to Defence or otherwise prior to 11 April 2011 (notwithstanding that the mismanagement by Defence may have occurred after 11 April 2011), and (ii) that the verbal or written report or complaint that the person made was then allegedly mismanaged by Defence.¹⁰

6 Defence Abuse Response Taskforce, *Defence Abuse Reparation Scheme Guidelines*, p. 11.

7 Defence Abuse Response Taskforce, *Defence Abuse Reparation Scheme Guidelines*, p. 6.

8 Defence Abuse Response Taskforce, *Defence Abuse Reparation Scheme Guidelines*, p. 11.

9 Defence Abuse Response Taskforce, *Interim Report to the Attorney-General and Minister for Defence*, March 2013, p. 15.

10 Defence Abuse Response Taskforce, answer to questions on notice, p. 1.

Compensation issues

4.8 A number of compensation issues were raised in relation to the Reparation Scheme as well as broader compensation issues for victims of abuse in Defence.

4.9 Prior to the announcement of the Taskforce and the Reparation Scheme, Ms Jennifer Jacomb outlined a number of problems she argued existed with the current avenues for compensation through common law actions including: the hurdles of producing corroborating evidence; the misleading nature of service records; the distress of coming forward as a victim; and the difficulties of funding litigation for compensation. She proposed a new compensation system should have a number of key elements:

- not be time limited;
- recognise the hurdles that confront the victims;
- recognise the trauma of the victim and the reasons for delay;
- take account of the misleading nature of service records;
- not affect any pension paid for by the DVA;
- take account of income foregone; and
- not worry about any income that the victim has made in the interim.

4.10 Ms Jacomb calculated a fair figure for compensation to victims of abuse in Defence would be 'at a bare minimum' around \$3.7 million.¹¹ In her supplementary submission, Ms Jacomb was highly critical of the \$50,000 cap on reparations through the Defence Abuse Response Taskforce process.¹²

4.11 While based in the Attorney-General's Department, the estimated \$37.1 million cost of the Taskforce over two years will be met from within the existing resources of the Department of Defence.¹³ Mr Peter Goon questioned the approach taken by the Minister in drawing the cost of the Taskforce and the Reparation Scheme from the Defence budget:

Paying the costs out of the Defence Budget, as proposed by the Defence Minister, is a triple jeopardy and detriment on the people of Australia.

Firstly, there are all the costs associated with the perpetration and perpetuation of the abuses, in the first place, combined with the costs of the moribund and dysfunctional way the resulting complaints were mishandled. Secondly, there will be the costs associated with the DART's and Department of Attorney General activities and all that will entail. Finally, if these costs are to come out of the Defence Budget, only, then there is the

11 *Submission 10*, p. 28.

12 *Supplementary Submission 10A*, pp. 8–9.

13 Attorney-General's Department, *Portfolio Budget Statement 2013–14*, p. 14.

commensurate reduction in the Defence Department funding for ensuring and assuring the defence and security of our sovereign nation and its people.¹⁴

4.12 Shine Lawyers provided the committee with general commentary on an appropriate compensation framework for victims of abuse. It highlighted that traditional compensation structures are generally not appropriate for victims of sexual abuse and focused on the need for flexible compensation structures and frameworks. For example, it noted:

In compensation claims for physiological injuries, assessment is a reasonably standard process whether it be via a statutory framework or a common law framework. In the case of sexual abuse claims, we would suggest that the same standardization simply does not exist given the nature of the claims. It has been our experience that in the area of assessment, flexibility and agility is indeed the most significant criteria required in a compensation framework of this type.¹⁵

4.13 Shine Lawyers made a number of recommendations for the characteristics of an appropriate compensation framework. These included:

- independent representation of claimants;
- a simple lodgement process;
- a process for parties to agree to a single medical expert; and
- settlement of compensation through a negotiated process.¹⁶

4.14 Shine Lawyers noted that 'existing statutory frameworks included in the *Military Rehabilitation and Compensation Act 2004*, are limited in their scope to allow for a flexible model' of compensation:

Alternatives available to government would be amendment of existing legislation to provide appropriate statutory power to develop such structures, or alternatively to call on ministerial powers to effect ex gratia payments to claimants with appropriate processing models to be determined thereafter.¹⁷

A capped reparation scheme

4.15 At the public hearing, Mr Stephen Roche for Shine Lawyers expanded on a number of the above arguments noting that victims of abuse have been 'unrepresented'. He considered that 'no input from any victim in relation to this as a

14 *Supplementary Submission 12A*, p. 2.

15 *Submission 11*, p. 6.

16 *Submission 11*, pp. 7–8.

17 *Submission 11*, p. 9.

stakeholder has been sought'.¹⁸ He highlighted that, while the DLA Piper Review report had recommended 'a capped compensation scheme' which was agreed as part of the government's response, the Taskforce was implementing a reparation scheme and '[r]eparation payments are not intended as compensation per se'.¹⁹

4.16 He also opposed a capped scheme 'because of the specific nature and features of these types of claims': Mr Roche did not consider the compensation for victims of abuse in Defence should be open ended but 'it should be adequate'. He argued that the 'scheme proposed will be inadequate for the upper end of those more serious cases'.²⁰ He stated:

In my experience, these types of schemes result in a much lower payment of around \$5,000 to \$10,000. What you will have is DLA Piper having been paid more money to produce to the report than you will pay out to victims.

4.17 The Chair of the Taskforce, the Hon Len Roberts-Smith QC also commented on the Reparation Scheme:

These are reparation payments; they are not intended to be compensation. Quite clearly, we would have to accept the proposition that, for example, somebody whose allegation involved, perhaps, being pack raped on more than one occasion and suffering all of the consequences that one would expect from that, would, in some other legal environment, be looking a significantly greater sum by way of damages than the maximum of \$50,000.²¹

Time limitation issues

4.18 Mr Roche listed time limitations as a potential obstacle for victims of abuse pursuing common law claims for compensation. He was unaware of any communication from Defence which indicated that the limitation period on claims would be waived. He noted:

The problem with a victims of crime type capped scheme that purports to leave open other options is that it does not bring finality to the victims. It is an attempt to get a quick result for perhaps the department but not the victims. To say that the victim can then go and exercise their legal rights elsewhere is, with respect, trite.²²

4.19 In a response to a question on notice the Department of Defence noted it was bound to comply with *Legal Services Directions 2005* in relation to time limitation periods. Under these rules 'Defence would be required to plead a defence based on the

18 *Committee Hansard*, 14 March 2013, pp. 1 and 3.

19 *Committee Hansard*, 14 March 2013, p. 3.

20 *Committee Hansard*, 14 March 2013, p. 4.

21 *Committee Hansard*, 14 March 2013, p. 16.

22 *Committee Hansard*, 14 March 2013, p. 3.

expiry of an applicable limitation period unless exceptional circumstances existed and the Attorney-General consented'. These exceptional circumstances 'would include where Defence has through its own conduct contributed to the delay in the claimant bringing the claim'.²³ Similarly, consent from the Attorney-General, where there was a claim for an extension to the limitation period, would normally only be given in exceptional circumstances which would justify not pleading a limitation defence or where it was expected that the application would succeed.²⁴

Legal representation

4.20 The Reparation Scheme Guidelines provides that legal or any other costs will not be paid under the Scheme 'in respect of any costs associated with preparing, or pursuing, an Application for Reparation Payment, under the Guidelines, nor in relation to the making of a complaint in relation to the handling of an Application for Reparation Payment under the Guidelines'.²⁵ The importance of independent legal representation of claimants was highlighted by Mr Roche at the public hearing:

You cannot have a situation where the victim has to go to the boss's lawyer. DLA [Piper] are conflicted. They act for the Department of Defence; they do not act for victims. This is an emerging issue. Forms have been filled in and information has been collected, but no independent advice about what their rights are, what their options are, have been provided. Neither, as I understand it, have they ever been warned or advised to get their own independent advice.²⁶

Compensation for abuse in Defence

4.21 The limited options for compensation for abuse in Defence (outside of the Taskforce process) were also highlighted in submissions. DVA outlined that all claims for compensation relating to service in the ADF will be assessed under one of a number of different statutory compensation schemes, 'depending on the time and/or the type of the service, with different liability tests applying'. It noted that '[t]hese statutory compensation schemes will not provide equal access and outcomes for victims of alleged abuse'.²⁷ It noted:

The long period of time over which allegations have been made means that claims lodged with DVA will be subject to the [*Veterans' Entitlement Act 1986*, the *Safety Rehabilitation and Compensation Act 1988* or the *Military Rehabilitation and Compensation Act 2004*]. Different tests for liability and

23 Department of Defence, answer to questions on notice, Question 3.

24 Department of Defence, answer to questions on notice, Question 3.

25 Defence Abuse Response Taskforce, *Defence Abuse Reparation Scheme Guidelines*, p. 13.

26 *Committee Hansard*, 14 March 2013, p. 2.

27 *Submission 18*, p. 4. The three schemes under which claims would be assessed are: the *Military Rehabilitation and Compensation Act 2004*; the *Safety Rehabilitation and Compensation Act 1988*; and the *Veterans' Entitlement Act 1986*.

assessment apply, but each Act requires that there is sufficient evidence that a particular incident occurred and that the incident resulted in a diagnosed condition. The passing of time means that this evidence may not be available and claims may be unsuccessful. Further, claims will result in different compensation outcomes, even in claims where there are similar medical conditions.²⁸

4.22 The Inspector-General ADF also pointed out that the only 'in-house' avenues for victim compensation presently available to ADF members are through the Compensation for Detriment caused by Defective Administration (CDDA) scheme and mechanisms for ex gratia payments under the Chief Executive Instructions. He considered these schemes were not appropriate for compensating an ADF member in relation to sexual or other abuse in Defence, as the CDDA scheme in particular relies on administrative error as a prerequisite for the scheme to apply.²⁹

4.23 The Inspector-General ADF noted that the establishment of a new compensation avenue, specific to the military environment had been recommended by a review of the military justice reforms in 2009.³⁰ He supported the establishment of 'a purpose-designed compensation scheme for the ADF which clearly sets out the circumstances in which it would have application'. He suggested the financial compensation arrangement announced as part of the government's response to the DLA Piper Review report 'could be adapted for ongoing use'.³¹

4.24 LtCol Paul Morgan argued that it was essential that 'the system for support rehabilitation, treatment and compensation for victims in Defence be reconsidered'. He stated:

Victims cannot be seen to seek any kind of compensation for career detriment or career problems caused by their abuse, because to do so [would] lead to derogatory characterisations of their motives. Compensation planning need[s] to be actively managed by an agency external to Defence.

Moreover, government often only changes when it is force[d] to recognise the monetary cost of its actions. It is clear that were an independent agency to actively manage the costs of abuse, and were these costs to be public and affect Defence, that stopping abuse would be a higher priority for ADF commanders. Where the career and health costs are borne by victims of Defence abuse, little intrinsic motivation has been shown by ADF commanders.³²

28 *Submission 18*, pp. 2–3.

29 *Submission 19*, p. 5.

30 *Submission 19*, p. 5, referring to recommendation 48 of the Independent Review on the Health of the Reformed Military Justice System conducted by Sir Lawrence Street and Air Marshal Les Fisher (Rtd) in 2009.

31 *Submission 19*, p. 5.

32 *Submission 22*, pp 3–4.

4.25 The Alliance of Defence Service Organisation (ADSO) highlighted the difficulties for victims of abuse in Defence could have in making a claim for compensation under the *Military Compensation and Rehabilitation Act 2004*.

In order to achieve any rehabilitation, support or treatment or compensation for sexual abuse whilst serving, the claimant will need to firstly, make a claim. After the claim is made, a reasonably lengthy investigation of the claim will take place involving administrative, medical, psychological and other examinations together with the compilation of all the 'evidence' to support a claim.

This process can take several months and may take a very long time depending on where the claim is assessed. In some cases the assessor in the Department of Veterans' Affairs, responsible for its progress, may simply be slow or the quantity of claims being dealt with at any given time may slow down determination of a particular claim. No rehabilitation or compensation will be provided unless the claim is accepted.³³

4.26 The ADSO considered that a parallel system should be established within DVA to deal exclusively and specifically with sexual abuse claim cases due to the personal nature of claims and the need to reduce stress on victims. In view of ADSO, the specialised unit created by DVA to process claims from the DLA Piper Review should be established as a specialised area to 'to enable it to respond to any sexually related claim for compensation, rehabilitation or treatment in an expeditious manner'. It strongly recommended that DVA be solely responsible for administering claims received in respect of Defence personnel.³⁴

33 *Submission 8*, p. 6.

34 *Submission 8*, p. 6.

Chapter 5

Processes for responding to allegations of abuse

Introduction

5.1 This chapter provides an outline of Defence processes for responding to allegations of abuse. It will also address the three issues identified in term of reference (c) relating to the need for a victim's advocacy service; systemic and cultural issues related to reporting and investigating abuse; and data and information collection and dissemination regarding abuse in Defence.

Processes for responding to allegations of abuse

Australian Defence Force

5.2 Currently, the Defence processes for dealing with incidents of abuse are contained in the Defence Instructions (General) (DI(G)) dealing with the management of unacceptable behaviour, sexual offences and notifiable incidents. Defence provided the committee with an outline of the procedures for reporting a sexual assault. This outline referenced a number of Defence policy documents. It noted that all alleged sexual offences which occur in the Defence workplace must be immediately reported to the ADF Investigative Service (ADFIS) who coordinate and determine the appropriate jurisdiction for handling the matter. It explained:

Sexual offences are 'notifiable incidents' and must be reported to ADFIS who must then act in accordance with Defence Instruction (General) ADMIN 45-2 – *The Reporting and Management of Notifiable Incidents*. Irrespective of the decisions made by ADFIS, any sexual offence complaint involving an ADF member, Defence APS employee or Defence contracted staff member as the complainant, respondent or witness must be managed as a workplace issue and in accordance with Defence Instruction (General) PERS 35-4...

Defence policy provides multiple options for the complainant to report an incident of sexual offence. While Defence's policy is that a complaint should be made to the complainant's commander or manager, other options remain available to the complainant. These include health provider, civilian or Service police, a more senior person in the chain of command or line management...

Commanders and managers are responsible for the management of sexual offence complaints in the workplace involving people under their supervision.

Therefore, commanders and managers are responsible to ensure the matter is immediately notified to ADFIS, and with the advice of ADFIS, to determine the most appropriate way to manage the matter in accordance with Defence Instruction (General) PERS 35-4...

Upon notification to ADFIS of a Notifiable Incident, ADFIS must take into account the range of jurisdictional and operational considerations and, where appropriate, report the alleged offence to civilian police. Serious sexual assaults cannot be investigated by ADFIS without consent pursuant to section 63 of the Defence Force Discipline Act. Therefore these matters are referred to the civilian police and ADFIS remains the Defence liaison.¹

5.3 The processes for responding to allegations of abuse were recently assessed as part of the Defence cultural review completed by the Inspector-General ADF—the *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction*. The Inspector-General ADF made 38 recommendations covering a broad range of areas. In relation to the management and reporting of unacceptable behaviour and unacceptable sexual behaviour, the Inspector-General ADF found that:

ADF personnel, including those who have only recently joined, appear to be aware of their complaint avenues. There appears also to be a high level of confidence in management processes for unacceptable behaviour complaints. However, relevant policy is confusing and in urgent need of reform and consolidation.²

5.4 The Inspector-General ADF made a number of specific recommendations in this area, largely focusing on inconsistencies in key policy documents. In summary, these recommendations included that:

- where suitable, greater use of alternative dispute resolution across Defence should be encouraged (Recommendation 18);
- the appointment of case officers to support complainants and respondents should be required in all cases (Recommendation 19);
- Defence Instructions dealing with management and reporting of unacceptable behaviour and sexual offences should be reviewed to clarify the administrative action which may be taken when disciplinary action is pending (Recommendation 20);
- the policy on management of all unacceptable behaviour and sexual offences should be combined in a single policy reference (Recommendation 21); and
- Defence's administrative policies should be 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 (Recommendation 22).³

1 Department of Defence, answers to questions on notice, Question 5, pp. 8–10.

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

3 Inspector-General ADF, *Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction*, 2011, pp. 25–28.

Defence cultural reforms and the Re-Thinking Systems Review

5.5 The Pathway to Change strategy identified 'Corrective processes' as one of the six key levers for implementing cultural change in Defence. In this area it stated:

Our attitudes towards misconduct and approaches to responding to incidents are informed by our culture. Many of our current challenges in managing bad behaviour are the product of incoherent policy amendments and inconsistent approaches to managing our rules in the past.

The Review of the Management of Incidents and Complaints in Defence reinforces that the actual boundaries we have set for ourselves are mostly fitting, but the actions we take when our people act outside these boundaries are not always effective. The Pathway to Change will simplify approaches for dealing with misconduct through policy amendment, including changes to privacy policy. We will more clearly communicate these approaches to make them easier to understand.

As we make these improvements, we expect that the number of reports of unacceptable behaviour may rise before falling over time. Therefore, we should not be alarmed by an early spike in reported incidents as it may well be a positive sign of renewed confidence in our system. We will test this interpretation through our planned check-point evaluations in implementation.⁴

5.6 Defence informed the committee that some progress has been made in relation to a number of the recommendations of the Inspector-General ADF's review. For example, in relation to the recommendation for consolidation of policy documents, Defence noted that the intent behind the Inspector General ADF's recommendation 'is to be implemented through the establishment of a new Complaints and Alternative Resolution Manual rather than through the recommended consolidation of DI(G) PERS 35-3 and DI(G) 35-4'.⁵

5.7 The implementation of other recommendations was either 'being progressed', 'under further consideration or was 'on hold' pending the completion of the Re-Thinking Systems of Inquiry, Investigation, Review and Audit in Defence Review (Re-Thinking Systems Review):

The *Re-Thinking Systems Review* is considering a number of recommendations in the Pathway to Change strategy, including those in the IGADF review. The aim is to ensure that there is a coherent reform agenda. A number of the *Pathway to Change* recommendations may be overtaken by the *Re-Thinking Systems Review*. However, the underlying intent of the recommendations will be addressed in the models under development....⁶

4 Department of Defence, *Pathway to Change: Evolving Defence Culture—A Strategy for Cultural Change and Reinforcement*, March 2012, p. 21–22.

5 Department of Defence, answers to question on notice, Question 4, p. 6.

6 Department of Defence, answers to questions on notice, Question 4.

These recommendations relate to matters such as quick assessments, administrative inquiries and the redress of grievance process, the continuing viability of which are all being considered as part of the *Re-Thinking System Review*. The underlying concerns of these recommendations, including complexity and delay associated with these processes, will be addressed in the *Re-Thinking Systems Review*, having regard to the direction of the overall *Pathway to Change* strategy.

Australian Public Service (APS)

5.8 The DLA Piper Review identified that a 'low number' of reported incidents of abuse occurred in the Department of Defence APS workforce.⁷ The Defence annual report for 2011-12 noted that:

During 2011-12, the Directorate of Conduct, Performance and Probation in Defence People Group finalised investigations into 96 employees for suspected breaches of the Code...Of the 96 employees investigated, 43 were found to have breached at least one element of the code and 56 sanctions were imposed...Employment was terminated in 12 cases and a financial penalty was applied in 23 cases. A further 16 employees resigned during the investigative process or before any sanctions were imposed. There were 43 employees who breached the Code last financial year.

In 2011-12, the most common type of misconduct (39 out of 43 cases) was inappropriate behaviour during work hours, for example, failing to treat other employees, clients or stakeholders with respect. The second most common type of misconduct (14 cases) was harassment and/or bullying.⁸

5.9 The Australian Public Service Commission (APSC) noted that all APS employees are bound follow to the APS Code of Conduct which 'places a statutory obligation on employees, when acting in the course of employment, to treat everyone with respect and courtesy, and without harassment'. It stated:

One factor that we believe is beneficial to dealing with this issue in the APS is that roles and responsibilities for preventing and responding to harassment and bullying are clearly defined, and employees have several avenues through which they can receive advice or make complaints.⁹

5.10 The ASPC noted that APS agency heads have 'all the rights, duties and powers of an employer' and must establish procedures for determining whether an employee has breached the Code of Conduct. Agency heads may impose sanctions where employees are found to have breached the Code of Conduct, ranging from a reprimand to termination of employment.¹⁰ Further, the APSC noted the amendments made by the recently legislated *Public Service Amendment Act 2012* 'will strengthen

7 DLA Piper Review, *Volume 1*, p. 36.

8 Department of Defence, *Annual Report 2011-12*, p. 284.

9 *Submission 6*, p. 1.

10 *Submission 6*, p. 2.

the powers available to agencies to investigate suspected breaches of the APS Code of Conduct, including in relation to harassment and bullying, by former employees'.¹¹

5.11 In his Review report, the Inspector-General ADF highlighted that '[i]ncreased integration of Defence workplaces renders mutually consistent ADF and Australian Public Service (APS) complaints handling arrangements more important'.¹² He recommended that a 'review of the interface between ADF and APS complaints management processes in the Defence workplace should be expedited'. The Inspector-General ADF noted that 'some work to deal with this issue has commenced in People and Strategies Division and considered this should be encouraged'.¹³

A dedicated victims' advocacy service

5.12 The need for a dedicated advocacy service for victims of abuse in Defence was not extensively discussed in the DLA Piper Review report. The Australian Government currently funds a range of advocacy services for different groups. In the Defence portfolio, DVA provides funding which supports advocacy services conducted by Ex-Service Organisations to provide a range of services, including assisting individuals prepare applications for military benefits. In other portfolios, funding supports some form of advocacy activities, including some for victims of abuse. For example, the Department of Families, Housing, Community Services and Indigenous Affairs has provided funding to community organisations which advocate for and support persons who suffered abuse as children while in institutional care.¹⁴

5.13 The Alliance of Defence Service Organisations (ADSO) noted that Defence and Ex-Service Organisations currently provide some advocacy and support services to members of the ADF and veterans. However it also stated 'ADSO is not adverse to the establishment of a specific independent Victims Advocacy Service, but cautions that should such a service be introduced it should be truly "independent" and be visibly separate from any Commonwealth department'.¹⁵

5.14 The Inspector-General ADF considered that 'the establishment of the [Sexual Misconduct Prevention and Responses Office] might well meet any need for a victim's advocacy service in cases of sexual misconduct'. He stated that the intention is for the SEMPRO to provide victims of sexual misconduct with a means to access immediate

11 *Submission 6*, p. 1.

12 Inspector-General ADF, Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction, 2011, pp. ii and 48.

13 Inspector-General ADF, Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction, 2011, p. 48.

14 Department of Families, Housing, Community Services and Indigenous Affairs, 'Care Leavers', <http://www.fahcsia.gov.au/our-responsibilities/families-and-children/programs-services/apology-to-the-forgotten-australians-and-former-child-migrants/questions-and-answers/care-leavers> (accessed 8 May 2013).

15 *Submission 8*, p. 7.

support and advice.¹⁶ The Inspector-General ADF also noted that the approach of the Sexual Offence Support Person (SOSP) Network, developed at HMAS Cerberus, is 'intended to provide immediate practical and, where necessary, medical support to victims together with assistance in reporting the offence to police and guidance in dealing with other legal matters that flow from a sexual offence'.¹⁷

5.15 Further information on the SOSP Network was included in the Churchill Fellowship paper provided by Ms Angela Ballard. She identified the SOSP Network as one of a number of 'best or promising' practices:

The principle of the SOSP network is that a small pool of personnel, readily identifiable as part of the command element in any ship, military establishment or other military formation, who responds to complaints of a sexual offence and provides the complainant (victim) with the options available to them and facilitates access to any crisis counselling, support, policing, medical and legal services as required by the individual. The SOSP also manages the situation on behalf of the Command, by ensuring all governance requirements are met. The most important aspect of the SOSP network is ensuring the welfare and any medical needs of the complainant (victim) are seen to and that a counselling session is provided. The preference here is to refer them to the local rape crisis centre which is the lead agency in victim care, although they (the victim) does have the option to seek counselling through Defence support services which includes; psychologists, doctors, social workers and chaplains.¹⁸

5.16 The Director of Military Prosecutions, Brigadier Lynette McDade, had the view that there were sufficient mechanisms in Defence to provide support to victims of sexual and other abuse. These included Defence Instructions dealing with the management and reporting of both sexual offences and unacceptable behaviour; annual mandatory training for ADF members on unacceptable behaviour and complaint mechanisms, an extensive equity and diversity network and a complaints hotline. She concluded:

I see little value in establishing a victim's advocacy service. It has been my experience that both the complainant and indeed the accused are well supported by unit members and chaplains throughout the trial process.¹⁹

5.17 In Defence, Fairness and Resolution centres provide advice and assistance to personnel on equity and diversity issues and workplace conflict. The centres are staffed by personnel trained in equity and diversity, dispute resolution, conflict coaching, facilitation, and are accredited mediators. However, LtCol Paul Morgan criticised the advocacy role of the Fairness and Resolution centres:

16 *Submission 19*, p. 6.

17 *Submission 19*, p. 4.

18 *Submission 5*, Attachment 1, p. 14.

19 *Submission 9*, p. 1.

Fairness and Resolution centres do not advocate for individuals or for victims as a group. Fairness and Resolution do not act independently of Defence, and in fact are an intrinsic part of the ADF and Defence abuse management system which has so woefully maintained a culture of abuse across so many decades. ADF members have no capacity to influence the actions of Fairness and Resolution, and it is beholden to ADF commanders particularly when those ADF commanders actively resist allowing Fairness and Resolution to become involved.²⁰

5.18 LtCol Paul Morgan considered that a dedicated victim's advocacy service ought to be established as abuse victims in the ADF face unique problems in advocating their case. He commented:

Unlike any other Australian worker, they are part of an organisation that has its own laws restricting their freedom to speak out combined with its own police force, courts, and detention centres to enforce these laws.

The consequence of this is that Defence members are reliant upon family members to speak out publicly when abuse occurs, and particularly when reported abuse is mismanaged. Defence members are obviously reluctant to drag family members into the fray. This places extraordinary pressures on families, and the fear of repercussion is strong.²¹

5.19 LtCol Paul Morgan also noted that '[t]here is no support group for current or past victims, as there are for abuse in other parts of society'. He commented that ADF members are not authorised to establish such a group, and Defence has shown no interest in supporting victims in this standard method.²²

5.20 Ms Jennifer Jacomb also supported the creation of a national advocacy service funded by the Australian Government 'based upon existing Ex Service Organisations'. She considered it should be arm's length from the Government to maintain its independence and integrity but be staffed by ex-Service members as victims 'will feel more comfortable talking to someone who understands the culture'.²³

Systemic and cultural issues in reporting abuse

The context of abuse in Defence

5.21 Several submissions highlighted that abuse in Defence should be considered in the context of the abuse that exists in other parts of Australian society. For example, the Alliance of Defence Service Organisations emphasised that incidents of abuse are not unique to Defence and stated that 'sexual abuse continues in a variety of

20 *Submission 22*, p. 10.

21 *Submission 22*, p. 4.

22 *Submission 22*, p. 8.

23 *Submission 10*, p. 23.

institutions, whether they be Universities, Churches, Schools, Institutions, or indeed the individual Services'.²⁴

5.22 The Inspector-General ADF noted that the DLA Piper Review report was appropriately 'victim focussed' but considered it should also 'be kept in perspective'. He argued that it would be incorrect 'for the allegations chronicled by DLA Piper to be taken to be generally representative of the service experience of most of the many tens of thousands of ADF members who served in their respective Services over the 60 odd years covered by the Report'.²⁵ Further, he cautioned:

Managing these aspects in a way that is not unduly damaging to those against whom allegations are made but remain unproven, is likely to be a particularly challenging task for the ADF, especially where the parties involved by still be serving members. More broadly, the reputational damage to Services, units and other uninvolved members arising simply by association, may also become an issue if not sensitively managed.²⁶

5.23 While emphasising that the aim of the ADF should be 'zero tolerance of any maltreatment, sexual, bullying or otherwise', Mr James Sandison also highlighted that the number of complaints should be considered in the context of the large number of members of the ADF:

I understand that some 800 complaints have been received covering the 50 year period. 360,000 divided by 800 shows that one person in 450 over the last 50 years has complained of maltreatment, or just over 0.2 per cent...A calculation of this type is only to illustrate the extent of the problem, once again the aim is zero tolerance.²⁷

5.24 Mr James Sandison outlined his personal experiences and treatment in naval service for the committee, which highlighted how accepted cultural norms and practices in military service had changed over time. He also identified an issue relating to the appropriate allocation of responsibility for abuse in Defence training institutions and more generally. He suggested:

If the offences occurred within the first few weeks at ADFA, then the problem may be more ascribed to the problems in the community in general. If the offenders have been in the Cadet Corps for, say longer than two months, then the ADFA system is at fault.²⁸

5.25 Ms Angela Ballard noted that, while her Churchill Fellowship paper identifies 'best practices' of several comparable military forces, 'it does not provide a solution to the problem'. In her view '[s]exual [a]ssault and other abuse is a complex social issue

24 *Submission 8*, p. 2.

25 *Submission 19*, p. 2.

26 *Submission 19*, p. 2.

27 *Submission 1*, p. 4.

28 *Submission 1*, p. 4.

on a global scale, which...the ADF in isolation, does not have the experience, skills or knowledge to respond to'.²⁹

Cultural and systemic issues

5.26 The DLA Piper Review report made a variety of findings in relation the systemic and cultural issues in the reporting of abuse in Defence. In particular the DLA Piper Review found that '[p]revious reports and Defence file material indicate that aspects of the culture in many parts of the ADF have discouraged reporting by victims or witnesses'.³⁰ It commented:

It is well known that under-reporting of abuse (particularly sexual abuse) is common in the wider community. Previous reports and studies show that the strength of the ADF culture, necessary for operational readiness and effectiveness, is, however, responsible for substantially increasing the under-reporting of abuse that already exists in the wider community. There are many reasons for under-reporting both by victims and witnesses (fear of retribution; concern over career consequences; embarrassment; and distrust of the complaint handling process).³¹

5.27 In his review into the management of complaints in the ADF, the Inspector-General ADF noted that:

In the 2009 Unacceptable Behaviour Survey, three-quarters of the respondents (75%) felt that their immediate supervisor was committed to preventing and stopping unacceptable behaviour, to at least a moderate extent. However, of those who indicated in that survey that they had made a complaint about unacceptable behaviour, 41% of the respondents reported "lack of support from supervisor" as a barrier to making the complaint.³²

5.28 The Pathway to Change strategy acknowledged that Defence has cultural issues in relation to the reporting abuse and other unacceptable behaviour. It stated that Defence needed to adopt a 'reporting culture':

We will also take actions to shift attitudes and willingness to speak up when we become aware of inappropriate behaviour by a colleague in Defence. Several of the Reviews indicate that we do not do this sufficiently. The Pathway to Change stipulates that our people must put each other's safety and dignity before loyalty to a peer group.

We particularly need to remove the stigma of communicating distress to those who have a responsibility for our welfare; whether it relates to injury or other ailment, perceived threat, intimidation or harassment. There is no

29 *Submission 5*, p. 3.

30 *DLA Piper Review, Volume 1*, p. 52.

31 *DLA Piper Review, Volume 1*, p. 61.

32 *Submission 19, Attachment 1*, pp. 2–12.

pride to be found in watching others suffer or for remaining in denial about a serious problem.³³

5.29 At the public hearing, Defence indicated it was looking to obtain comparative benchmarks from other organisations. The CDF, General Hurley, commented that Defence had approached the Group of Eight universities to request they undertake the same sexual harassment surveys and other monitoring which was conducted at ADFA. None of the universities agreed to this request.³⁴ General Hurley also discussed the challenges for Defence in communicating public messages around culture:

On the whole though when we appear in front of the media we do not get a positive outcome, regardless of the message. I only need to go to the conference I held on gender in Defence and security over the last two days, when I think there was a great story to be told; but the only report was a quote from me saying we have not increased the number of women in 20 years. That is the focus, so it is very hard for us to push through that. We might need to create the opportunities ourselves to discuss the issues, but it is not a story that the media wants to pick up on.³⁵

5.30 The committee also received a range of viewpoints in relation to systemic and cultural issues in reporting abuse within Defence. In the view of the Inspector-General ADF, the systemic or cultural issues in reporting (or not reporting) sexual or other forms of abuse in the ADF were similar to those in the wider community. However he noted that '[i]n the more closed environment of the ADF, victim concerns about possible recrimination or impact on career *may* act as a stronger disincentive to report sexual abuse than in the community at large'.³⁶ Nonetheless, he considered:

The establishment of SeMPRO together with a renewed emphasis by the ADF on taking swift action against those who attempt to dissuade victims from reporting or who otherwise take recriminatory action against them for making a report should help minimise cultural issues arising specifically from reporting in the military environment.³⁷

5.31 However, other submissions suggested there were serious issues for victims regarding reporting of abuse in Defence. In particular, submitters who indicated they had been victims of abuse noted that they feared they would be targeted if they reported incidents of abuse at the time.³⁸ LtCol Paul Morgan also pointed to several factors which discourage victims in Defence from reporting abuse. For example, he noted that:

33 Department of Defence, *Pathway to Change: Evolving Defence Culture—A Strategy for Cultural Change and Reinforcement*, March 2012, p. 23.

34 *Committee Hansard*, 14 March 2013, p. 29.

35 *Committee Hansard*, 14 March 2013, p. 29.

36 *Submission 19*, p. 6 (emphasis in original).

37 *Submission 19*, p. 6.

38 For example, Mr Douglas Heath, *Submission 23*, p. 1.

Victims fear complaining because they fear that they will not get future employment. They fear that they will have to explain to a potential future employer that they left the Army because of an unresolved complaint of abuse by a colleague. Employers are understandably wary of employing 'complainers' and only when Army admits in writing that the complainant was justified in making their complaint, can an abuse victim explain this to a future employer.³⁹

5.32 LtCol Paul Morgan highlighted the length of time of investigations of claims of abuse as a factor in discouraging the reporting of abuse. He considered that 'Defence is systematically incapable and unmotivated to manage abuse issues in a timely fashion':

The failure to manage abuses in a timely manner is a key problem for the mental health consequences of abuse in the ADF. Most people can accept a timely outcome that doesn't seem quite fair. They struggle most with the unending rollercoaster of hoping the ADF will act, and despair that it will not. This pattern reflects the finding of the Senate Inquiry into the military justice system.

5.33 Another key systemic issue identified by LtCol Paul Morgan was that '[u]nlike any other reasonable Australian workplace, Defence continues to maintain a policy of retaining abusers in the workplace alongside those that they abuse':

The culture and policy in Defence is to maintain victims in the workplace with their abusers while investigations are occurring. These investigations, as in my personal case, can extend well beyond a year. Victims, as in my case, are often asked or pressured to limit their exposure to work that may bring them into contact with their abusers, while abusers face no such limitations. Defence argues due process for abusers, but does not place the same weight on timely 'due process' for victims.⁴⁰

5.34 Whistleblowers Action Group (Qld) considered that principal cause of the abuse in Defence rested with the personal involvement of the leadership of the ADF 'in activities that frustrate the purposes of the military justice system'. It considered 'this example to commanders and to Defence members in general, has developed a culture that is opposed to the system of protections for soldiers from unacceptable behaviour including all forms of abuse'.⁴¹

5.35 The Alliance of Defence Service Organisation (ADSO) thought that it is 'clear that the majority of members of the ADF wish to invoke signature behaviours that reflect high moral and ethical standards'. ADSO noted that recent official statements on Service values in the ADF, including statements made General Hurley, meant that

39 *Submission 22*, p. 5.

40 *Submission 22*, p. 6.

41 *Submission 13*, pp. 2–3.

is was 'clear that the Services are determined to take whatever action is necessary to address the issues surrounding sexual abuse in the ADF'.⁴²

Data and information collection

5.36 The DLA Piper Review identified the database held by the Fairness and Resolution Branch concerning incidents of unacceptable behaviour as one of a number of key databases of information on abuse in Defence. It noted:

Fairness and Resolution Branch records the information from complaints reported by commanders and managers on a database that records all reported unacceptable behaviour complaints and the outcomes. The name and personal details of Defence respondents who have had formal action taken against them as a result of a substantiated complaint of unacceptable behaviour are recorded in this database. We understand this database is referred to as the Fairness and Resolution Unacceptable Behaviour Database. The database also records all sexual offence complaints and, if formal action has been taken, the details of the respondents in these cases...The database is intended to assist in the identification of repeat behaviour. Access to this database is restricted and controlled by Fairness and Resolution Branch.

5.37 The DLA Piper Review report concluded that the 'fragmentation of storing of relevant data on more than one system or database confuses and possibly impedes the provision of information to those who need it - relevant managers and units'.⁴³ It considered Phase 2 should 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'.⁴⁴ The *Review of the Treatment of Women at ADFA* also included a recommendation for the establishment of a database to manage complaints and incidents. This recommendation was accepted in the Pathway to Change strategy.⁴⁵

5.38 The committee did not receive a large amount of evidence specifically in relation to data and information collection. The Inspector-General ADF's review of the management of complaints considered the administration of complaints in the ADF. It considered that the 'centralisation of complaint administration in Fairness and Resolution Branch [in 2006] and the introduction of the Complaint Management, Tracking and Reporting System (COMTRACK) have been useful initiatives'. Further:

Given the inherent complexity of the various elements of complaint handling from grievances to unacceptable behaviour and sexual offences, the consolidation of the administration of complaint handling in one central

42 *Submission 8*, p. 8.

43 DLA Piper Review, *Supplement to Volume 1*, p. 65.

44 DLA Piper Review, *Supplement to Volume 1*, p. 65.

45 Department of Defence, *Pathway to Change: Evolving Defence Culture*, 2012, p. 46.

agency, which could also provide advice to line managers, is sensible and its continuing role is strongly supported.⁴⁶

5.39 As part of the review, the Inspector-General ADF recommended that '[a]dequate arrangements should be put in place to ensure sufficient resources are available to maintain COMTRACK at optimum currency'.⁴⁷ His submission also noted that his office collects and monitors data about the disciplinary system, the administrative inquiries system, and the military justice system generally through its performance review function. This information is analysed and summarised annually in the Inspector General ADF Catalogue of Military Justice Statistics.⁴⁸

5.40 During the public hearing, Defence noted that one of the tasks of SEMPRO 'will be a central repository for data on offences in the ADF'.⁴⁹ Ms Carmel McGregor commented:

[W]e have a system called COMTRACK within the department where all of the incidents or complaints about unacceptable behaviour are lodged. In terms of setting up SEMPRO, we are also looking at what the best database is that we can leverage from within the department or find elsewhere so that those sorts of issues that were raised can be comprehensively captured. I guess it is a work in progress. We also have the ADFIS database. But trying to get a comprehensive picture is a longer term initiative.⁵⁰

5.41 At the committee's private briefing, the Defence Abuse Response Taskforce highlighted the challenges which exist in relation to the way Defence records have been stored in the past. It noted that the use of previous paper based records systems and the movement of documents over time could result in relevant personnel files being difficult to locate.⁵¹

5.42 DVA outlined a number of factors in dealing with data exchange and information collection with Defence regarding compensation:

DVA is required under the [*Safety Rehabilitation and Compensation Act 1988*] and the [*Military Rehabilitation and Compensation Act 2004*] to provide a copy of claims from ADF members who are still serving at the time they have claimed. In addition, where the person is still serving at the time their claim is determined under the MRCA, DVA must provide a copy of that determination to Defence.

46 Inspector-General ADF, *Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction*, 2011, p. 45.

47 Inspector-General ADF, *Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction*, 2011, p. 45.

48 *Submission, 19*, p. 6.

49 General David Hurley, CDF, *Committee Hansard*, 14 March 2013, p. 29.

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

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

As with all claims for compensation, DVA must investigate the claim to establish the facts of the case. As part of this process DVA will contact Defence through the longstanding Single Access Mechanism arrangements. This can include Service history, medical documents and any other evidence that may be relevant.⁵²

5.43 The Defence Pathway to Change strategy document indicated that, in future, Defence intends to have a greater focus on data collection to inform decisions and track the progress of reforms:

Currently, information about ourselves, our practices and our behaviours tends to be gathered and used for reacting to individual occurrences. In future we will establish databases and importantly, improve our approach to using the data so that we have a strong evidence base.⁵³

5.44 In his supplementary submission, Dr Gary Rumble considered that victims of abuse in the ADF should have access (redacted as necessary) to reports of previous Defence inquiries which could corroborate their accounts and information about DVA claims brought by other individuals which corroborate their allegations by giving similar accounts.⁵⁴ He noted that Defence does not hold a consolidated record of reports of previous inquiries in relation to abuse and that DVA could identify clusters and patterns of alleged abusive conduct in the claims it receives. He argued that this information could assist in the assessment of DVA claims and in general Defence risk management and reform processes, as well as being of assistance to the Taskforce.⁵⁵

Privacy considerations

5.45 The Office of the Australian Information Commissioner (OIAC) noted that the ADF, the Department of Defence and the Defence Materiel Organisation are required to comply with the Information Privacy Principles when handling personal information.⁵⁶ It made a number of suggestions, particularly in relation to the information in the Fairness and Resolution Database (FRD), ensuring ADF personnel are fully informed regarding how their personal information in relation to complaints of abuse and in Service records will be handled. These included:

- emphasising the importance of Defence complying with the Information Privacy Principles when handling personal information;
- recommending Defence consider a Privacy Impact Assessment in relation to the FRD;

52 *Submission 18*, p. 4.

53 Department of Defence, *Pathway to Change: Evolving Defence Culture*, 2012, p. 26.

54 *Submission 24A*, supplementary submission, pp. 2–3.

55 *Submission 24A*, supplementary submission, p. 3.

56 *Submission 7*, p. 4.

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- suggesting consideration of whether Defence Instructions (General) carry the force of law to provide greater certainty regarding Defence's obligations in relation to the handling of personal information in the FRD;
 - noting that Defence has obligations to take reasonable steps to ensure the personal information in the FRD is accurate, up-to-date and complete; and
 - emphasising the importance of ensuring that ADF personnel are fully informed about how their personal information relating to complaints of abuse within Defence will be handled.⁵⁷

5.46 Privacy issues relating to the FRD were also considered as part of the DLA Piper Review. The Review sought advice on the application of the *Privacy Act 1988* to the FRD which suggested that there was scope for more information to be stored in the database. It commented that 'the more information that can be recorded on the database, the more effective it will be as a management tool'.⁵⁸ The Review considered that Phase 2 of the Review 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'.⁵⁹

57 *Submission 7*, pp. 4–8.

58 DLA Piper Review, *Volume 1*, pp. 132–133.

59 DLA Piper Review, *Volume 1*, p. 133.

Chapter 6

Other matters

Introduction

6.1 A number of other matters were raised during the inquiry that, while not specifically mentioned in the terms of reference, were considered by the committee. These included:

- the delay in the government's response and communication with victims;
- the definition of 'abuse' and 'out-of-scope' claims;
- allegations of conflicts of interest and/or perceptions of bias;
- the access to Volume 2 of the DLA Piper Review report by Defence; and
- the response to systemic issues in the DLA Piper Review report.

Delay in government response and communication with victims of abuse

6.2 Several submitters highlighted the personal consequences of the abuse which they had suffered during their time in the ADF. Reflecting the findings of the DLA Piper Review report, these consequences included difficulties with ongoing employment, substance abuse, mental illness and, in some instances, suicidal ideation or suicide attempts. Several victims of abuse in Defence indicated that the abuse that had been inflicted on them in the past continued to affect them.¹

6.3 A number of submissions expressed their frustration with the delay in the government's response to the DLA Piper Review report. These submissions were received by the committee prior to the Minister's announcement of the government's response on 26 November 2012. For example, Mr Paul Hazel commented:

More than a year ago, I submitted my story to DLA Piper. Since then there has been a distinct lack of communication from the government and the Department of Defence. Initially, I did not even know and was not informed that I should put forth a claim for compensation through the Department of Veterans' Affairs.²

6.4 In particular, Ms Angela Ballard highlighted the potential impact of long delays in the government response on victims of abuse:

Those 847 individuals have submitted a grievance or raised their concerns and are waiting on a decision from government how they will proceed. I am concerned at what support they have or have not been provided with since

1 For example, Mr Paul Hazel, *Submission 2*, p. 1.

2 *Submission 2*, p. 1.

coming forward and reporting their issue to the DLA Piper team. I am concerned that old wounds have been opened and concerned if they have not been addressed what additional grief some of these complainants have subsequently endured. Likewise, I imagine the ADF and those in Command, are ready to respond or act as directed by the government of the day in putting closure on this issue for all involved and moving forward with cultural change.³

6.5 Dr Gary Rumble was also concerned that the government's lack of action and decision making in relation to reported incidents of abuse may have:

- distressed individuals who were hoping for some response to their specific issue;
- worn down the willingness of those who told their stories to the Review in Phase 1 to continue to be involved in Phase 2;
- discouraged others who were watching to see whether there would be any effective action from coming forward to Phase 2; and
- encouraged perpetrators and potential witnesses to think that they can wait out the current attention on abuse.⁴

The definition of 'abuse' and 'out of scope' claims

6.6 The DLA Piper Review Volume 1 report noted that the Review had taken a 'practical rather than legalistic approach' to developing a working definition of abuse drawing on Defence's current definitions and categories of 'unacceptable behaviour'.⁵ However, the report indicated that not all 'unacceptable behaviour' constituted 'abuse'. For example, the report outlined that while discrimination would be considered 'unacceptable behaviour', it would not, by itself, be considered 'abuse' falling within the scope of the Review. The Review report stated:

In making its assessment of what is in or is not in scope, the Review has taken a conservative approach and has kept some marginal matters within the initial assessment and recommendation processes. Some workplace personality conflicts are in this marginal category.⁶

6.7 Some submissions received by the committee argued the definition of 'abuse' used by the DLA Piper Review should be extended more broadly to include other forms of unacceptable behaviour. For example, Mr Chris Mills sought to raise the issue of 'blacklisting' of companies by Defence.⁷ Similarly, Dr Ben Wadham argued that the DLA Piper Review had not achieved a genuine picture of 'defence abuse':

3 *Submission 4*, pp 2–3.

4 Dr Gary Rumble, *Opening Statement*, 14 March 2013, p. 3.

5 DLA Piper, *Volume 1*, p. 5.

6 DLA Piper, *Volume 1*, p. 5.

7 *Submission 21*, p. 2.

There is far more to this matter that is evident through an investigation into sexual and physical abuse. There is a foundational element to military culture that runs through these kinds of practice to many other forms of administrative violence.⁸

6.8 Others expressed their concerns that the unacceptable behaviour that they claimed to have suffered had been determined by the DLA Piper Review to be 'out-of-scope'.⁹ For example, Mr Peter Goon argued:

[D]espite the sensationalism-driven attraction of the Media and others to focus on sexual abuses which, not surprisingly and no doubt intentionally on the part of some, distracts from and diminishes the importance of '*the other abuses*', there is a need to maintain a searing focus and ever present vigilance on '*the other abuses*' for a very simple but extremely important reason.

The perpetration of abuses through the misuse and abuse of power, authority and trust as well as their perpetuation through the same means, along with the abuses of '*denial of a fair go*' and '*ignoring the message and shooting the messenger*' are the engines that drive inappropriate behaviours in Defence, particularly at the senior levels in the Canberra based elements.¹⁰

6.9 The Supplement to Volume 1 noted that 190 people who raised matters with the Review raised allegations that were determined to be entirely 'out of scope'.¹¹ These were dealt with by a process which 'involved the Review reporting to Defence Legal (representing the Minister) any matter which the Review assessed to be out of scope so that the Minister could consider what if any further action should be taken'.¹² Where Defence Legal did not agree with the Review's assessment, communications were returned to the Review for consideration.

Conflicts of interest and/or perceptions of bias

6.10 Concerns regarding the appointment of Review leaders were raised in submissions. For example, Dr Ben Wadham claimed that 'given the DLA Piper (previously DLA Phillips Fox) has legally represented the [Department of Defence] in the past in this domain, some victims felt they were reporting to the institution of complaint'. He argued that some claims regarding abuse were not submitted to the Review because of this relationship.¹³ Similarly, Dr Carlo Kopp raised his concerns

8 *Submission 16*, p. 3.

9 For example, Dr Carlo Kopp, *Submission 4*, p. 2.

10 *Submission 12*, p. 8 (emphasis in original).

11 DLA Piper, *Supplement to Volume 1*, p. 10.

12 DLA Piper, *Supplement to Volume 1*, p. 11.

13 *Submission 16*, p. 2.

regarding the involvement of Defence Legal in the terms of reference for the DLA Piper Review. He stated:

The Defence legal organisation has frequently been a party to these manifold problems, tying up cases of abuse in litigation, arbitration or ineffective negotiation intended to delay resolution. The involvement of this entity in the process was clearly a conflict of interest and should never have been permitted.¹⁴

6.11 The DLA Piper Review Volume 1 report included a disclaimer relevant to this issue:

The opinions expressed in the 'Report of the Review of allegations of sexual and other abuse in Defence' (Report) are solely those of Dr Gary A Rumble, Ms Melanie McKean and Professor Dennis Pearce AO. The opinions expressed in the Report do not necessarily represent the views of other contractors to the Review, nor of DLA Piper Australia.¹⁵

6.12 In his submission, Dr Gary Rumble noted that the DLA Piper Review had released a statement when doubts were expressed regarding the independence of the Review. The statement noted that the 'Minister expects the Review 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'. It also asserted that the members of the Review 'would not be participating in the Review if [they] thought it was a sham'.¹⁶ Further, Dr Rumble stated that, while the Review could not claim, and had not claimed, complete independence from Defence, his belief was that the Review members did 'bring the rigour which the Minister asked for to the Review process and to the Report'.¹⁷

6.13 A perception of bias issue was also raised in relation to the appointment of the Hon Len Roberts-Smith QC to head the Defence Abuse Response Taskforce. Ms Jennifer Jacomb commented:

He is one of the club, a club that has unbroken record of failing to deal with Sexual and other abuse in the Defence Force...He should step aside. Also given that his son was awarded a Victoria Cross, a reasonable lay bystander might conclude that he would take an unsympathetic view of the victims?¹⁸

14 *Submission 4*, p. 2.

15 DLA Piper Review, *Volume 1*, p. iii.

16 *Submission 24*, p. 1.

17 *Submission 24*, p. 1.

18 *Submission 10A*, p. 8.

Access to Volume 2 of the DLA Piper Review report and response to individual allegations

6.14 As noted in Chapter 2, Volume 2 of the DLA Piper Review report contained the individual allegations received by the Review, and included the recommendations for dealing with each allegation. Dr Rumble noted 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. It also included three Parts reporting on Fairness and Resolution Branch database matters and one Part dealing with ADFIS matters.

6.15 Volume 2 was delivered to the Minister for Defence on 17 April 2012. At the public hearing on 14 March 2013, the Defence Abuse Response Taskforce tabled correspondence from DLA Piper to the Taskforce indicating that all the folders comprising Volume 2 had been received by the Taskforce on 27 February 2013.¹⁹

6.16 Dr Rumble noted that the terms of reference of the DLA Piper Review 'did not expressly state which part or parts of "Defence" the Review was to report or make recommendation to'. The Review sought clarification on this matter:

By email of 15 July 2011 the Minister's office informed the Review that – as well as reporting to the Minister - we were reporting to the Secretary of the Department but we were *not* reporting to the CDF.

The fact that we were preparing our Report and recommendations for the Secretary as well as for the Minister was an important consideration in the processes which we developed for the Review including the processes we developed for ascertaining the extent to which people making statements to the Review consented to disclosure to Defence.²⁰

6.17 Dr Rumble indicated that he held several concerns regarding how Volume 2 of the Review had been distributed, and the subsequent response to the initial assessments and recommendations made by the Review regarding individual allegations. In particular, he noted that:

We had made arrangements with the DLA Piper team working with us on the Review to provide a Working Version of Volume 2 – with appropriate redactions settled by us the Review leaders – to go to the Secretary of the Department of Defence as soon as we got clearance from the Minister to provide that Working Version. The Minister has not given that clearance.

6.18 Dr Rumble raised his concerns with the Minister of Defence and received a written response on 8 March 2013. In relation to the decision not to provide a copy of Volume 2 to the Secretary of Defence, the Minister stated:

19 Correspondence from Mr Bryan Wee to Mr Matt Hall, dated 27 February 2013.

20 *Submission 24*, p. 4 (emphasis in original).

It was the Government's strong view that an independent process was the most appropriate way forward for responding to individual allegations of abuse in Defence.

It would not have been appropriate for the Secretary, the Chief of the Defence Force and the Service Chiefs to be provided with details of allegations of abuse in Defence.²¹

6.19 At the public hearing, Dr Rumble told the committee he was 'astonished that the government considers it is not appropriate for the Secretary, the Chief of the Defence Force and the Service Chiefs to be provided with details of allegations of abuse in Defence'.²²

Response to systemic issues in the DLA Piper Review

6.20 Dr Rumble also highlighted his concern that, following the government's response to the DLA Piper Review report, it was unclear who 'would be considering and reporting' to government on almost all of the systemic issues identified in the Volume 1 and the Supplement to Volume 1 reports. Dr Rumble sought clarification from the Minister regarding this matter. The Minister responded:

Noting your concerns that systemic issues are important for responding to cases of past abuse, I have as well asked that the Taskforce Chair, the Hon Len Roberts-Smith QC, consult with the Secretary of the Department of Defence and the Chief of the Defence Force on options for responding to those systemic issues.²³

6.21 Dr Rumble commented:

There is some risk with so many processes going on in parallel that some issues will 'fall through the cracks' and not be considered because the entities involved in carrying out consideration of some issues will assume that some particular issues are being considered by other entities and/or do not fall within their area of responsibility.²⁴

21 *Submission 24*, attached correspondence from the Hon Stephen Smith MP, Minister for Defence, to Dr Gary Rumble, dated 8 March 2013, p. 2.

22 Dr Gary Rumble, *Opening Statement*, 14 March 2013, p. 2.

23 *Submission 24*, p. 9.

24 *Submission 24*, p. 9.

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).

Additional comments by Senator Nick Xenophon

1.1 For the thousands of current and former serving members in the Australian Defence Force (ADF) who alleged they have been sexually, physically or mentally abused, the announcement by Defence Minister the Hon Stephen Smith MP to establish the DLA Piper Review of Allegations of Sexual and Other Forms of Abuse ('the DLA Piper Review') was long overdue. The subsequent establishment of the Defence Abuse Response Taskforce ('the Taskforce') was a further welcome development, however as noted by the committee, there are several issues regarding how the DLA Piper Review was conducted, as well as issues with the operation of the Taskforce which need to be resolved in order for the needs of victims to be appropriately addressed.

The DLA Piper Review

1.2 The DLA Piper Review was an opportunity for victims to report abuse and, as many thought, finally obtain some form of justice for what they endured. Sadly this was not the case for some ADF members who courageously spoke up, often for the first time.

1.3 One such victim is Neil Batten. Neil was a 15 year old junior recruit at the HMAS Leeuwin training base in Western Australia in 1971 where he was violently and repeatedly raped. Neil made a submission to the DLA Piper Review but was never contacted afterwards. As it remains unclear why Mr Batten was not contacted I will be seeking an explanation from the DLA Piper Review team. I am concerned the absence of follow-up in Mr Batten's case may not be an isolated incident. However, of further concern are the number of current and former ADF members who have not made a submission to the DLA Piper Review or the Taskforce and are still dealing with the aftermath of the abuse suffered on their own.

Appointment of DLA Piper – conflict of interest concerns

1.4 DLA Piper and its predecessor Phillips Fox have long been a preferred supplier of legal services to the ADF. It has been reported in the 2010-11 financial year that DLA Piper received in the vicinity of \$20 million in fees from the ADF. Furthermore, DLA Piper is a member of all 15 legal panels relied on by the ADF. DLA Piper also regularly acts for the ADF in compensation claims where the ADF seeks to challenge applicants making claims for compensation.

1.5 Dr Ben Wadham explained the impact the perception of a conflict of interest could have on complainants:

Given the DLA Piper (previously DLA Phillips Fox) has legally represented the DoD in the past in this domain, some victims felt they were

reporting to the institution of complaint. I argue that claims were not submitted because of that relationship.¹

1.6 It is therefore understandable that many current and former serving member of the ADF hold serious concerns about the appropriateness of utilising DLA Piper as the firm to advance the rights of victims. I note the committee did not accept that the appointment of DLA Piper to conduct the DLA Piper Review presented a conflict of interest in these circumstances. While I still hold concerns regarding this matter I am pleased the committee has recognised that potential claimants may have been reluctant to come forward due to a perception of bias. I therefore share the committee's view that it would be helpful for the Taskforce to highlight its independent character and its arms-length relationship with Defence in its communications with claimants and stakeholders.

Defence's apology to victims

1.7 I share the committee's view that the formal apology to victims of abuse in Defence by the Minister and the Chief of the Defence Force went some way to providing a sense of closure for victims. It is disappointing however that no notice was given to the victims that the apology was forthcoming, resulting in victims not being present for the apology. Many victims felt insulted by that. I only hope the same mistake is not made again in the future.

Access to Volume 2 of the DLA Piper Review

1.8 The committee considered the differing opinions as to the way in which Volume 2 of the DLA Piper Review to be a 'vexed' issue. It is obvious the Taskforce needed Volume 2 of the Review in order to carry out its functions, therefore the delay on the part of the Minister in providing the Taskforce with these documents is a matter for serious concern. This delay has resulted in victims waiting longer for their claims to be assessed and left the door open for further abuses to occur where the alleged offender has been allowed to continue serving.

1.9 The Secretary of the Department of Defence was of the view that the Minister made the right decision in withholding Volume 2 from the Department due to the potential for duplication of work that could occur if the Department and the Taskforce were both required to investigate claims.²

1.10 However, the following interchange I had with the Chief of the Defence Force, General David Hurley, at the committee's public hearing revealed that he did not necessarily agree with this position:

1 Dr Ben Wadham, *Submission 16*, p. 2.

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

Senator XENOPHON:...What I am trying to nail down is that the DLA Piper review a process in itself. It was an extensive process; it cost \$10 million or thereabouts. Should that in itself, should the DLA Piper review, if it contains information of allegations about current members of the Defence Force – is that something you ought to be cognisant of as a matter of some urgency?

Gen. Hurley: I would like to know if there are currently serving members who have serious allegations being made against them that need to be dealt with.³

1.11 Dr Gary Rumble, one of the heads of the DLA Piper Review expressed his concerns in relation to Volume 2 not being shared with the Secretary of Defence of the Chief of the Defence Force in no uncertain terms:

Obviously, that represents a very significant shift away from our terms of reference, which required us to report to and make recommendations to the secretary as well as to the minister. I am, frankly, astonished that the government considers that it is not appropriate for the secretary, the CDF and the service chief to be provided with details of allegations of abuse in Defence.⁴

1.12 Dr Rumble continued:

Further, people came to the review because they wanted action and/or because they wanted their stories heard. Most of them consented to disclosure to Defence so that there could be action and so their stories could be heard. Further, even where there was no consent to disclosure, or limited consent to disclosure, there were still aspects of the redacted report which we recommend be drawn to the attention of service chiefs in some instances. The fact that the working version of volume 2 did not go the secretary has prevented the secretary, the CDF and the service chiefs from being informed about situations needed response and about the individual matters underpinning the findings, issues, option and recommendations in volume 1.⁵

1.13 Dr Rumble also explained the effect of the delay on victims, witnesses and perpetrators:

Furthermore, I am deeply concerned that the government's lack of action and decision last year may have distressed these individuals who were hoping for some response to their issues, worn down the willingness of those who told their stories to the review in phase 1 to hang on and participate further in phase 2, discouraged others who were watching to see whether there would be any effective action from now coming forward and possibly encouraged perpetrators and (potential) witnesses to think that they

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

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

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

can just wait out the current attention on abuse issues. So, I would see value, even now, in letting the working version of volume 2 go to the secretary.⁶

1.14 While the contents of Volume 2 are now being examined by the Taskforce, unfortunately the impact of the confusion and the delay in disseminating this material cannot be undone. It is vital that lines of communication between the Federal Government and the Taskforce are improved in order for any deeper systemic issues identified as part of the Taskforce's work to be acted on quickly and effectively. This is particularly so given Dr Rumble's warning that there is potential for some of these issues to 'fall through the cracks and not be considered because the entities involved in carrying out consideration of some issues will assume that some particular issues are being considered by other entities and/or do not fall within their area of responsibility'.⁷

Recommendation

In the interests of transparency, Volume 2 of the DLA Piper Review be released publicly with the appropriate redactions at this stage to avoid compromising any likely future action.

The Defence Abuse Response Taskforce

Communication

1.15 Victims of abuse can often be vulnerable and deserve to know that when they make a complaint, this complaint is being investigated and taken seriously. I acknowledge the Taskforce is handling approximately 2410 complaints and that with such a high number of cases there will be challenges in terms of communicating effectively. However I support the committee's suggestion that the Taskforce could take steps to refine and enhance its communication with complainants, especially by providing updates as to the status of their claims.

The Repatriation Scheme

1.16 The Taskforce has been clear that payments made through their process are to be characterised as repatriation payments rather than compensation:

Repatriation payments are not intended as compensation. They are a way of enabling people to move forward. Payments to individuals will be capped at \$50,000, with the amount provided to each complainant determined on a case by case basis taking into account the individual circumstances of the case.⁸

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

7 Dr Gary Rumble, *Submission 24*, p. 9.

8 Defence Abuse Response Taskforce, *Interim report to the Attorney-General and the Minister for Defence*, March 2013, p. 15.

1.17 Some submitters were concerned by the payment cap being set at \$50,000. For example, Ms Jennifer Jacomb compared this amount with compensation that has been awarded to prisoners in Victorian jails for injuries they suffered while incarcerated. Ms Jacomb noted that some of these prisoners received in excess of \$100,000.⁹ It is understandable that victims of abuse feel aggrieved by the payment cap, particularly when comparisons such as the one above are made.

1.18 Shine Lawyers also expressed to the committee their view that:

Given the sensitivities of abuse claims, we strongly recommend a process that allows negotiated rather than arbitrary decisions to bring about the conclusion of claims.¹⁰

1.19 It is therefore vital that the Taskforce is clear as to how they have determined the amount of compensation payable in each instance so that victims are not left with any doubt as to how their particular payment amount was arrived at.

Previously settled matters

1.20 I share the committee's view that the Repatriation Scheme should be considered an entirely separate process from any other mechanism in Defence through which compensation can be obtained. The Taskforce has stated they 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'.¹¹ The Commonwealth should confirm as a matter of urgency that they will provide such a waiver in order to give complainants confidence their matters can be investigated by the Taskforce.

Lack of legal advice to claimants

1.21 Victims and advocates were dismayed to learn that claimants would not be entitled to legal advice to assist them prepare their claims for the Taskforce. This is particularly concerning given the legal resources available to Defence. Mr Roche, Executive Director of Shine Lawyers told the committee:

Victims are significant stakeholders in this, and they are the only stakeholders who have been unrepresented.¹²

1.22 Mr Roche further explained the importance that victims received legal advice:

First and foremost, victims must be given access to their own independent legal advice. You cannot have a situation where the victim has to go to the boss's lawyer. DLA are conflicted. They act for the Department of Defence;

9 Ms Jennifer Jacomb, *Submission 10*, p. 4.

10 Shine Lawyers, *Submission 11*, p. 8.

11 Defence Abuse Response Taskforce, answers to question on notice, Question 2.

12 *Committee Hansard*, 14 March 2013, p. 2.

they do not act for victims. This is an emerging issue. Forms have been filled in and information has been collected, but no independent advice about what their rights are, what their options are, have been provided. Neither, as I understand it, have they ever been warned or advised to get their own independent advice.¹³

1.23 As the cut-off date for receiving complaints has been passed it is too late for complainants to seek legal advice in relation to claims they have already submitted. I am deeply concerned by this absence of legal advice. For many victims the Taskforce process may be the only viable way for them to seek redress for the abuse they endured, particularly if it occurred decades ago. There will inevitably be difficulties for such claimants making out the required evidentiary standard of proof in order to bring a claim through Defence's other compensation mechanisms.

'Out of scope' claims

1.24 I note that some submitters considered the scope of the terms of reference for the DLA Piper Review and for the Taskforce to be too narrow and as a result, did not take into account other unacceptable behaviour. For example, Mr Peter Goon told the committee that the focus on sexual abuses 'distracts from and diminishes the importance of "the other abuses"... The perpetration of abuses through the misuse and abuse of power, authority and trust as well as their perpetuation through the same means, along with the abuses of "denial of a fair go" and "ignoring the message and shooting the messenger" are the engines that drive inappropriate behaviours in Defence...'.¹⁴

1.25 Despite the prevailing view these 'other abuses' fall outside the terms of reference for the DLA Piper Review and the Taskforce, consideration should be given to establishing a similar process through which victims of other abuses can have their claims investigated, assessed and addressed. Such a process would address the serious claims that there are 'engines that drive inappropriate behaviours in Defence'.

Conclusion

1.26 Unfortunately there is a long history of abuse in the Australian Defence Force, with some cases occurring over 50 years ago. Recent reports in the media that inappropriate material was disseminated by members of Defence using Defence communication systems demonstrates how despite numerous reviews, findings and reforms, a culture still exists today whereby inappropriate behaviour continues to occur.

1.27 The Taskforce presents an opportunity for those who suffered abuse prior to 11 April 2011 to achieve some form of closure for what has occurred. However, consideration should be given to establishing a permanent mechanism with similar

13 *Committee Hansard*, 14 March 2013, p. 2.

14 *Submission 12*, p. 8.

functions and powers as the Taskforce so that those who have suffered abuse after 11 April 2011 are provided with the same opportunity for closure. I fully support the committee's recommendation in that respect.

1.28 In closing I wish to acknowledge the tireless work and dedication of Mr Barry Heffernan, Welfare Coordinator for the South Australian branch of the Vietnam Veterans' Association. It was through Mr Heffernan's selfless work and the cases that he brought to me that I was prompted to move for this inquiry. For that, I and many victims of abuse are most grateful.

1.29 Mr Heffernan has spent the past two years speaking with victims of abuse, often taking the time to visit them face to face because he recognises conversations over the phone or via letters is not enough. Mr Heffernan has performed these duties on an entirely voluntary basis, funding his trips himself. He should be applauded for his selfless and invaluable work.

Senator Nick Xenophon
Independent Senator for South Australia

Appendix 1

Public submissions

- 1 Mr James Sandison
- 2 Mr Paul Hazel
- 3 Centre for Military and Veterans' Health
- 4 Dr Carlo Kopp
- 5 Ms Angela Ballard
- 6 Australian Public Service Commission
- 7 Office of the Australian Information Commissioner
- 8 Alliance of Defence Service Organisations
- 9 Director of Military Prosecutions
- 10 Ms Jennifer Jacomb
- 11 Shine Lawyers
- 12 Mr Peter Goon, Air Power Australia
- 12A Supplementary Submission
- 13 Whistleblowers Action Group Qld Inc
- 14 Confidential
- 15 Confidential
- 16 Dr Ben Wadham
- 17 Confidential
- 18 Department of Veterans' Affairs
- 19 Inspector General Australian Defence Force
- 20 Dr Mark Drummond
- 21 Mr Chris Mills
- 22 Lieutenant Colonel Paul Morgan
- 23 Mr Douglas Heath
- 24 Dr Gary Rumble
- 24A Supplementary Submission
- 25 Mr Michael Price

Appendix 2

Public hearings and witnesses

Thursday 14 March 2013—Canberra

CUNLIFFE, Mr Mark, Head, Defence Legal, Department of Defence

EHLERS, Air Commodore Henrik, Director General, Cultural Reviews Response Branch, Department of Defence

HALL, Mr Matthew, Executive-Director, Defence Abuse Response Taskforce, Attorney-General's Department

HURLEY, General David, Chief of the Defence Force, Department of Defence

MCGREGOR, Ms Carmel, Deputy Secretary, Defence People Group, Department of Defence

RICHARDSON, Mr Dennis, Secretary, Department of Defence

ROBERTS-SMITH, The Hon. Leonard William, Chair, Defence Abuse Response Taskforce, Attorney-General's Department

ROCHE, Mr Stephen, Executive Director, Shine Lawyers

RUMBLE, Dr Gary Albert, Private capacity

TOMKINS, Mr Neville, First Assistant Secretary, Defence People Solutions Division, Department of Defence

Appendix 3

Additional information, tabled documents, and answers to questions on notice

Additional information and tabled documents

- 1 Australian Human Rights Commission, Sex Discrimination Commissioner, Elizabeth Broderick-Additional information dated 9 November 2012
- 2 Report into the Treatment of Women in the Australian Defence Force Academy (ADFA)
- 3 Report into the Treatment of Women in the Australian Defence Force (ADF)
- 4 Dr Gary Rumble - Opening Statement (public hearing, 14 March 2013, Canberra)
- 5 The Hon. Len Roberts-Smith - Additional information (public hearing, 14 March 2013, Canberra)
- 6 Defence Abuse Reparation Scheme Guidelines (provided by the Defence Abuse Response Taskforce, 12 April 2013)

Answers to questions on notice

14 March 2013

1. Shine Lawyers - Answers to Questions on notice (from public hearing, 14 March 2013, Canberra)
- 2 Defence Abuse Response Taskforce - Answers to Questions on notice (from public hearing, 14 March 2013, Canberra)
- 3 Department of Defence - Answers to Questions on notice (from public hearing, 14 March 2013, Canberra)

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.

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)

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)

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

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)

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)

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)

Appendix 6
Government Response to DLA Piper Recommendations

Government Response to DLA Piper Recommendations

RECOMMENDATIONS – DLA PIPER REPORT	
<p>Recommendation 1</p> <p>We recommend that, for people whose detailed further information has not been received or fully considered before Volume 2 is delivered:(i) any further detailed information which the Review receives should be considered and reported on in a supplementary report to the Minister and Secretary; and(ii) the supplementary report should report on whether the preliminary assessment and recommendations which went into Volume 2 need to be changed.</p>	<p>Agreed.</p> <p>The Taskforce will examine additional allegations concerning incidents to 11 April 2011.</p>
<p>Recommendation 2</p> <p>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.</p>	<p>Agreed.</p> <p>The Taskforce will examine these matters in the course of its work.</p>
<p>Recommendation 3</p> <p>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.</p>	<p>Agreed.</p> <p>The Taskforce will examine additional allegations.</p>
<p>Recommendation 4</p> <p>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.</p>	<p>Agreed.</p> <p>The Taskforce will directly handle resolution of complaints to DLA Piper.</p>
<p>Recommendation 5</p> <p>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.</p>	<p>Agreed.</p> <p>The Taskforce will gather additional information as appropriate and report to the Minister on implications for ‘Pathways to Change’.</p>

<p>Recommendation 6</p> <p>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.</p>	<p>Agreed.</p> <p>The Taskforce is oriented towards the resolution of cases.</p>
<p>Recommendation 7</p> <p>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.</p>	<p>Agreed.</p> <p>A capped compensation scheme will be administered by the Taskforce.</p>
<p>Recommendation 8</p> <p>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.</p>	<p>Agreed.</p> <p>Restorative justice is one of the options open to the Taskforce to resolve individual complaints.</p>
<p>Recommendation 9</p> <p>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.</p>	<p>Agreed.</p> <p>The Taskforce will be funded to provide additional counselling and will also liaise with and provide referrals to existing services.</p>
<p>Recommendation 10</p> <p>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;</p> <ul style="list-style-type: none"> - facilitated meeting between victim and perpetrator; - health services and counselling. <p>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.</p> <p>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.</p>	<p>Agreed.</p> <p>The Government response is based on a similar suite of options. The Taskforce will be responsible for an expanded role than that recommended by DLA Piper and is strongly oriented towards the resolution of cases.</p>

