

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

Dr Gary A Rumble
Ms Melanie McKean
Professor Dennis Pearce AO

October 2011

© Commonwealth of Australia 2011

ISBN 978-0-646-56581-1 (Volume 1)
978-0-646-56582-8 (Volume 2)

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Department of Defence.

Disclaimer

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.

11 October 2011

The Hon Stephen Smith MP
Minister for Defence
House of Representatives
Parliament House
CANBERRA ACT 2600

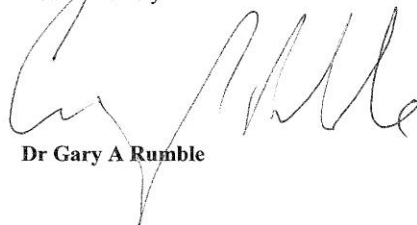
Mr Duncan Lewis AO DSC CSC
Secretary of Defence
Department of Defence
Russell Offices
RUSSELL ACT 2600

Dear Minister and Secretary

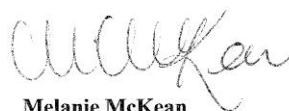
We are pleased to present to you the 'Report of the Review of allegations of sexual and other abuse in Defence, Facing the problems of the past, Volume 1: General findings and recommendations'.

The Report has been prepared in accordance with the Terms of Reference issued by the Minister on 21 June 2011.

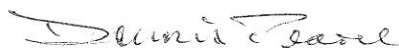
Yours sincerely



Dr Gary A Rumble



Melanie McKean



Professor Dennis Pearce AO

Each member of the ADF, from the most junior cadet to the most senior officer, is a representative of Defence and our nation. The Defence leadership and the Australian community have a right to expect the highest standard of behaviour and professionalism.

—The Hon Stephen Smith MP
Minister for Defence
April 2011

We are willing to face openly and honestly the problems from our past, and we are committed to developing and maintaining an inclusive work environment where all personnel are treated fairly and with respect.

—Lieutenant General David Hurley ASC
Vice Chief of the Defence Force
May 2011

Foreword

The history, traditions and international standing of the Australian Defence Force (ADF) are part of Australia's national identity.¹

The overwhelming majority of Australians—including the members of this Review—are proud of the achievements of the men and women of the ADF in honourably, bravely and unselfishly representing and protecting the interests of the nation in war, in peacekeeping, in border protection and in emergency relief work. Many Australians—including the members of this Review—have direct family connections with the ADF.

During the course of this Review, the Review members have heard a lot about the ADF's need to maintain operational capability and about 'moving forward'. Central aspects of the ADF's operational capability are the loyalty of serving men and women to the ADF and broad community confidence in the ADF.

It was, therefore, not a surprise to the Review members when we encountered resistance in our discussions with current and former leaders of the ADF when we tried to take them back to discuss past problems of abuse and what might be done *now* to respond to the ongoing effects of that past abuse.

At one level there has been hostility simply because we outsiders—civilian lawyers—have been questioning 'their' ADF on the particularly sensitive issue of abuse by members of the ADF inflicted on other members of the ADF.

At another level there is a concern that a report by the Review drawing attention to past abuse in the ADF could damage the ADF's current reputation and, thus, damage the ADF's operational capability.

We have had to consider allegations of abuse back to 1951 and across every decade since then. To carry out our tasks we had to survey the findings and evidence about abuse in the ADF in reports from previous Inquiries identified for us by the Department of Defence.

There have been many Inquiries—usually led or supported by current or former high-ranking ADF members and all receiving extensive evidence from the ADF. With the assistance of the Department we have gone back as far as one major report in 1946 on the trial and punishment of offences against military law² and two major Reports in 1970 and 1971 respectively, on the Royal Military College at Duntroon (RMC)³ and HMAS LEEUWIN.⁴

No organisation—let alone any military organisation of the size and complexity of the ADF and its predecessor Defence Forces—could expect to be free of issues of abuse across the 60 years of allegations which this Review has had to consider.

And our survey of previous reports indicates that parts of the ADF have not been free of issues of abuse at particular times.

It is possible that the Department of Defence—and therefore this Review—has missed some relevant reports. But across the many reports we have surveyed⁵ there are numerous findings indicating that there

¹ See the Glossary for an explanation of the use of the term Australian Defence Force (**ADF**) in the historical context of this Review.

² Board of Inquiry *Report of the Board of Inquiry appointed to investigate the trial and punishment of offences against military law and the administration of places of confinement of military offenders* (Justice Reed and Chaplain General Rentoul).

³ Committee of Enquiry into the Royal Military College, *Report of the Committee of Enquiry into the Royal Military College*, (Justice Fox, chairman), Canberra, 1970.

⁴ Judge Rapke, *Report of an investigation into allegations of initiation practices, physical violence and bullying at HMAS LEEUWIN and on board HMAS SYDNEY*, 2 vols 1971.

⁵ Relevant extracts from the Reports are set out in Chapters 4, 5 and 6.

have been substantial levels of abuse—including sexual and other physical assault—in particular parts of the ADF at particular points in time.

Those previous Inquiries have—consistently with the ADF focus on maintaining operational capability—generally concentrated on fixing identified problems *for the future*.

In those reports there seems to have been a general absence of the kind of risk management methodology which the ADF applies so rigorously when other issues of safety and security arise. In particular, there seems to have been an assumption that problems are localised and are dealt with as being local/isolated problems, without identifying the risk factors which contributed to the incident/problem to see whether those risk factors also apply in other ADF situations and whether they should be dealt with proactively in other ADF environments before problems can arise.⁶ And similar problems have arisen in other parts of the ADF and sometimes even in the same part of the ADF.

There also seems to have been very little attention to the impact of the abuse on the individuals who were the victims of the abuse. And there seems to have been very little success in calling to account and/or rehabilitating the perpetrators of abuse.

The Review has only carried out initial assessments of the specific allegations which have come to the Review. Accordingly, the Review has not found as a fact that any one of the allegations before the Review has been made out. That was not our task.

The Review has heard the stories of many alleged victims.

Although each particular allegation of abuse has its own specific circumstances and is the subject of a specific assessment in Volume 2 of this Report, there are some broad issues from the legacy of past abuse which the Review identifies for consideration and response. We address these issues in this Report and identify some possible solutions which we believe are worthy of consideration in Phase 2 of the Review

However, taking into account the background of the findings of previous Inquiries and the circumstances and content of each allegation, and—where applicable—Defence file material to which the Review has had access—the Review is of the view that the overwhelming majority of the allegations which are before the Review are plausible and probably substantially accurate—and that many other people who did not come to the Review have also been affected by abuse in the past.

Many of the stories involve horrific betrayals of the trust which real people—usually young people, some of them children at the time—who joined the ADF with pride and ambition, had put in the ADF and in the nation behind the ADF.

These stories also involve betrayals of the trust which the leaders of the ADF and the nation put in the people who abused the young Australians in their care.

The ADF does not carry all the responsibility for the past failures to protect ADF personnel from abuse by other ADF personnel and to protect ADF personnel from being drawn into engaging in abusive behaviour.

Successive national Governments and the national Parliament have been on notice of issues of major concern about the welfare of ADF personnel in these areas and they have also failed to respond effectively.

This Report is to the Minister for Defence and to the Secretary of the Department of Defence. However, it is clear to the Review that major issues about the *current* impacts of abuse from the past which we have identified in the course of this Review cannot be successfully addressed unless the leaders and former

⁶ With the possible exception of the 2001 *Report of an inquiry into military justice in the Australian Defence Force* conducted by former Federal Court Judge Mr J.C.S. Burchett, QC, an investigating officer appointed by the Chief of the Defence Force under the *Defence (Inquiry) Regulations 1985*. n.p., 2001. The inquiry team included a number of senior ADF officers and some NCOs.

leaders⁷ of the ADF—NCOs as well as Officers—are persuaded that there are issues which need to be addressed *and* that the options which are outlined in this Report are worthy of consideration.

Accordingly, we ask the leaders and former leaders of the ADF to consider the following propositions which affect the welfare of a large number of current and former members of the ADF and their families and which are fundamental to the ADF's future and operational capability.

First—it is the *nation's* ADF.

The ADF does not 'belong' only to those who have served in, or who are currently serving in, the ADF. As the Minister said on 11 April 2011 when announcing the establishment of the suite of related Defence Culture Reviews:

Each member of the ADF, from the most junior cadet to the most senior officer, is a representative of Defence and our nation.

The nation through its elected representatives is *entitled* to ask not only everyone who *is* a member of the ADF, but also everyone who *has been* a member of the ADF, whether their behaviour has always been appropriate for a representative of the ADF and the nation.

Furthermore, the nation is *obliged* to recognise and help those who have been damaged during their time in the ADF.

Second—the Chief of the Defence Force, General Hurley, has confirmed the ADF's commitment to 'face openly and honestly the problems from our past'.

Soon after the suite of Reviews was launched, there was an article in the Defence Magazine⁸ on 30 May 2011, in which the then Secretary Dr Watt and the then Chief of the Defence Force (CDF) Air Chief Marshal Angus Houston said the reviews would help to 'continue the work of making our workplace safe and equitable for all'.

The same article reported that the then Vice Chief of the Defence Force (VCDF) Lieutenant General Hurley was to chair the 3-star/band 3 SES Steering Committee that was to oversee the suite of reviews into aspects of Defence.⁹

The article stated:

According to LTGEN Hurley, the reviews provide an opportunity to demonstrate to the Australian community that Defence takes seriously the issues that have been raised.

"We are willing to face openly and honestly the problems from our past, and we are committed to developing and maintaining an inclusive work environment where all personnel are treated fairly and with respect."

"The reviews offer a great opportunity to enhance our culture and improve our policies and practices across a range of areas."

"We all want Defence to be seen as an employer of choice, with a first-class Military and public service workforce."

⁷ The bonds are strong between people who have served together and the networks with serving personnel remain even after some in the network have retired. Retired senior personnel continue to command respect from serving members of the ADF and contribute to the debate about issues affecting the ADF.

⁸ www.defence.gov.au/defencemagazine. See Appendix 45.

⁹ This was shortly before Lieutenant General Hurley's appointment as CDF and promotion to the rank of General.

Third—outsiders can and have from time to time strengthened the ADF—and the nation behind the ADF—by testing assumptions and by offering new perspectives on old problems.

Roland Perry's biography of Sir John Monash, one of the dominant figures in Australian military history, is subtitled—'The Outsider Who Won a War'.¹⁰

Monash was an outsider not only because he was from a German Jewish family but also because he went into command positions at Gallipoli and then in France with his prior military experience limited to exercises as a member of the Citizens Forces. He had no prior experience in a war.

Before World War I, Monash had been successful in law and engineering.

Monash was in his 50th year when he first took a command position in live military action. He brought his engineer's project management skills first to the successful withdrawal from Gallipoli and then to battle-planning on the Western Front. On any view, he was a major contributor to significant allied successes which finally brought the War to an end.

Monash also brought his skills as an advocate to persuading those around and above him to change the way the Military did things.

The ADF now takes the welfare of its people as being at the heart of the institution. It was not always so.

The most important change that Monash brought to the way the Military did things was to value highly the lives of his soldiers. His battle plans were driven by a principle of minimising the toll on the men who had to get out of trenches and walk into enemy fire.

The message for our Review from the Monash story is this: although Military organisations often find that the best way to do things, is to do things the way that everyone has been trained to do things, sometimes—probably often in this rapidly changing world—it is necessary to consider the possibility of radical change.

The Review members consider that this is one of those times. The members of this Review are not Monash. However, as outsiders and as lawyers we do know how to challenge the assumptions and we do know how to advocate.

We ask the leaders and former leaders of the ADF to consider the ideas which we put forward in this Report 'openly and honestly' because these issues are so important:

- to the individuals who had the courage to tell us their stories in the hope that it would make a difference for the better;
- to all of the people—whether they came to this Review or not—who have suffered the long term impacts of abuse in the ADF.

And because we believe what we set out for consideration can make the ADF and the nation not only stronger but better.

¹⁰ Roland Perry, *Monash: The Outsider Who Won a War*, Random House Publishers, Australia, 2004.

Acknowledgments

This Review was required to complete its task in a very tight time frame. Our ability to fulfil this task was made possible by the unstinting efforts of a large number of people. The Review leaders wish to acknowledge these efforts and express their sincere thanks to the people who provided the essential assistance without which this Report would not have been written.

The Review was ably assisted by Legal Counsel Craig McConaghy of the Queensland Bar and Steven Whybrow of the Australian Capital Territory Bar, as well as by Consultants Susan Harris-Rimmer and Catherine Cawte.

The staff of a number of Government Departments and agencies met the numerous requests made by the Review for information and also provided advice on matters raised by the Review.

The Review wishes to acknowledge particularly the officers of Defence Legal within the Department of Defence. Other areas within Defence also provided assistance.

The Review thanks also the following agencies which made officers available to discuss issues with the Review:

- Attorney-General's Department
- Commonwealth Ombudsman and Defence Force Ombudsman
- Department of Veterans' Affairs
- Inspector-General of the Australian Defence Force.

The Review leaders owe most to the DLA Piper team who worked unreasonably long hours and devoted deep care and attention to the conduct of the Review and the preparation of this Report. We mention in particular Jessica Bristol, Amanda Cutajar, Edwina Dane, Laura Glover, Igor Golshtein, Philippa Hinton, Nerissa Kitson, Andrew Klein, Stella Koya, Rebecca McCourtie, James McIntyre, Jacqueline Masterman, Brendan O'Brien, Emma Shafron, Felicity Slater and Bryan Wee. We acknowledge that many others not named made completion of our task possible.

We express our profound gratitude to the hundreds of individuals who told us the stories of their experiences as the victims of abuse. Until they told us their stories many of these people had never told anyone—not even their families—about what happened to them. They have told us their very personal stories in the hope that no-one else will ever have to go through what they have. We have done our best to keep faith with the trust which those people have put in us.

Finally, we acknowledge the overwhelming majority of past and present ADF members who always have and who always will treat their fellow ADF members with the respect and mutual support which is at the core of the values and traditions of the ADF.

Contents

Foreword	vii
Acknowledgments	xi
Executive summary	xix
Findings, Phase 2 issues and recommendations	xlili
1 Establishment and conduct of the Review.....	1
1.1 The establishment of the Review	1
1.2 The evolution of the statement of scope of tasks for the Review	1
1.3 The core tasks of the Review were settled early	2
1.4 Phase 1 processes were designed to support Phase 2	3
1.5 Meaning of 'abuse' in the Terms of Reference	3
1.5.1 What definition of 'abuse' has the Review used?	4
1.5.2 Not all 'unacceptable behaviour' is 'abuse'	4
1.6 Assessing whether Defence's management has been 'proper and appropriate'	5
1.7 Communications to the Review	5
1.7.1 Communications referred to the Review.....	5
1.7.2 Communications made directly to the Review up to 17 June 2011	5
1.7.3 Communications made directly to the Review after 17 June 2011	7
1.8 Total number of communications with the Review	8
1.9 How the Review dealt with all communications	9
1.10 Failure by some people to return forms requesting further information.....	10
1.11 Assessing and reporting on specific allegations and matters	10
2 Abuse risk factors in ADF environments	11
2.1 Introduction.....	11
2.2 Preconditions for abuse to occur.....	12
2.3 Our approach as lawyers to the question of what factors might have 'caused' people in the ADF to abuse other people in the ADF.....	13
2.4 What can the Review's perspective add to the ADF's own consideration of what might have 'caused' people in the ADF to abuse other people in the ADF?	14
2.5 The Personal Conduct Review	16
2.6 Abuse risk factors	19
2.6.1 Minority groups	19
2.6.2 Females as a large minority group in the ADF	19
2.7 No adverse consequences for abusive behaviour	20
2.7.1 Factors discouraging reporting of abuse.....	21
2.7.2 Absence of positive support for people who report—either as witness or victim.....	22
2.7.3 Chain of command and power to abuse with impunity	22
2.7.4 Reliance on leadership to ensure power is not abused	23
2.7.5 Alcohol and drugs	23
2.8 Ships at sea/separation from normal family settings etc.....	24
2.9 Combinations of abuse risk factors in relation to boys and young people	24

2.10	Young men	25
2.11	A recent example of an ADF culture discouraging reporting and men displaying team aggression	27
2.12	Summary of risk factors	29
3	Overview of allegations considered by the Review	31
3.1	The range of the allegations raised with the Review	31
3.1.1	The allegations of abuse are diverse	31
3.1.2	What kinds of abuse do <i>not</i> feature in the allegations?	32
3.1.3	The allegations of Defence mismanagement of abuse are diverse	33
3.2	Have all allegations of sexual or other abuse now been reported?	34
3.3	How has each allegation been reviewed and assessed?	34
3.4	The tallies are working tallies which do not provide data	34
3.5	The tallies cannot be relied on to reach conclusions about the Department of Defence's performance in relation to abuse and complaint management	36
3.6	The tallies	38
4	Historical record of abuse in the ADF	47
4.1	The relevance of previous inquiries, reports and Defence file material	47
4.2	Understanding the context	47
4.3	Evidence and findings relevant to specific allegations	48
4.4	Understanding why Defence has in the past adopted particular approaches to managing allegations of abuse	48
4.5	Understanding what options have previously been considered and/or tried	48
4.6	Identifying systemic issues for consideration in Phase 2	49
4.7	Which reports and records have been surveyed?	49
4.8	Main themes from previous reports and Defence file materials	49
4.8.1	There have been substantial levels of abuse and/or inadequate responses to allegations of abuse in some parts of the ADF at particular points of time	50
4.8.2	The reports have been forward looking	50
4.8.3	Defence has not been able to provide records or other information to indicate that all or even many of the perpetrators of specific abuses and/or perpetrators of specific mismanagement of allegations of abuse covered by previous Reports were called to account	51
4.8.4	There are current risks to Defence because of the failure to call to account perpetrators of abuse and/or mismanagement of allegations of abuse in the past	51
4.8.5	Defence culture—or the culture in particular parts of Defence at particular points in time—has discouraged reporting of abuse by witnesses	52
4.8.6	Defence culture—or the culture in particular parts of Defence at particular points in time—has discouraged reporting of abuse by victims or witnesses	52
4.8.7	Because of the under-reporting in the past, there is a risk of adverse impacts from past abuse now on the victims and for the ADF	52
4.9	Extracts of evidence, comments and findings from previous reports and from Defence responses to previous reports and other Defence documents	53
5	Abuse of boys and young people in the ADF	67
5.1	Boys and young people in the ADF	67
5.2	School cadets—very few allegations received	68
5.3	Abuse of boys in the ADF in the past	68
5.4	Abuse of young people in the ADF	69
5.5	Special risks in relation to boys and young people in the ADF	69
5.6	Failure of similar institutions to take steps to protect children and young people	70
5.7	Allegations of abuse committed against boys in the ADF	71
5.8	Allegations of abuse of young people in the ADF	72

5.9	Bastardisation.....	73
5.9.1	Was bastardisation 'legal' in the past?	74
5.9.2	Bastardisation at RMC in the past.....	74
5.9.3	Bastardisation at ADFA in the past?.....	75
5.10	Extracts from evidence to inquiries, reports and Defence files confirming that there has been abuse of boys and young people in the ADF	79
5.11	Past lack of processes to protect children and young people in the ADF	91
5.12	Learning Culture Report 2006.....	92
5.13	ADF's recent introduction of processes to take into account the special vulnerability of minors and young people	98
5.14	Findings in relation to boys in the ADF	100
5.15	Findings in relation to young people in the ADF	100
6	The current impacts of past abuse in the ADF.....	103
6.1	Perpetrators of abuse in the past: current risks.....	103
6.2	Witnesses of abuse in the past: current risks	104
6.3	What kind of abuse/failure to report is in issue?	104
6.4	Victims of abuse in the past: current risks.....	105
6.5	Size and scale of the legacy.....	105
6.6	Is there a basis for concluding that the Review has received most of the previously unreported allegations of abuse?	107
6.6.1	Surge in contacts with the Review in the four days following the 13 June 2011 Four Corners program.....	108
6.6.2	Lack of positive incentive to report abuse to the Review	108
6.6.3	The usual disincentives to report abuse would have discouraged people from reporting to the Review	109
6.6.4	Under-reporting: illustrative examples	109
6.6.5	Defence culture	110
6.6.6	Failure to use full range of options to take action against perpetrators.....	111
6.6.7	Flawed investigations and failed prosecutions.....	111
6.6.8	Criticisms of ADF investigative capability.....	113
6.6.9	Findings of the 1998 ADFA Investigation Team	114
6.6.10	Issues with Defence Instruction interpretation: sexual offences	115
6.7	The legacy issues from ADFA 1990s.....	116
6.8	The Grey Review	118
6.9	Quantifying past abuse: survey data considerations and difficulties.....	119
6.10	Mental health legacy issues	122
7	Systemic issues.....	127
7.1	Serial perpetrators and serial suspects	127
7.2	Information on Fairness and Resolution database	131
7.3	Currency of Fairness and Resolution Branch Unacceptable Behaviour database.....	133
7.4	Restricted reporting of sexual assaults.....	135
7.5	Administrative action following allegations of sexual assault	139
7.6	Information on outcomes of inquiry not always provided to complainant	145
7.7	Respect and support for victims of abuse	147
7.7.1	Insensitive/trivialising responses to allegations of sexual abuse	147
7.7.2	Trivialising language.....	149
7.7.3	Adequacy of ongoing support	151
7.8	ADF liaison with civilian police	152
7.9	Entrenching ADFIS capability.....	153
7.10	Oversight of Defence action in regard to issues raised	155

8	Options	157
8.1	What do complainants want as an outcome of this Review?	157
8.2	Outline of this Chapter	158
8.3	Why is reparation important?	158
8.4	The key features of a new complaints resolution scheme	159
8.5	Interaction of these recommendations on options with recommendations for specific allegations	159
8.6	Further investigation of many matters	160
8.7	No need for investigation of endemic issues	161
8.8	Possible inquiry mechanisms to carry out further investigation of specific allegations	161
8.8.1	Royal Commission	162
8.8.2	Judicial inquiry	163
8.8.3	Parliamentary Committee	164
8.8.4	Defence Force Ombudsman	164
8.8.5	IGADF	165
8.8.6	Defence inquiry mechanisms	166
8.8.7	Establishment of Australian Defence Force Administrative Review Board	167
8.8.8	Complaints Resolution/Fairness & Resolution Branch	168
8.8.9	Appointment of an external review body (similar to this one)	168
8.9	Options	169
8.10	No action	169
8.11	Existing means of redress	170
8.11.1	Common law	170
8.11.2	Commonwealth Anti discrimination legislation	170
8.11.3	State and Territory Anti discrimination legislation	171
8.11.4	Fair Work Act 2009	171
8.11.5	Criminal injuries compensation	172
8.11.6	Occupational health and safety	172
8.11.7	Statutory compensation schemes	173
8.11.8	Commonwealth discretionary compensation schemes	174
8.12	Conclusion on 'no action' option	176
8.13	Reparation to members who have been abused	178
8.14	General apology/acknowledgment	178
8.15	Personal apology	180
8.16	Models for a new reparation scheme	180
8.16.1	State compensation schemes for children in care	180
8.16.2	Catholic Church abuse complaints	181
8.16.3	Bundaberg Hospital Scheme	182
8.16.4	F-111 Deseal/Reseal program	183
8.17	Possible components of a special compensation scheme	184
8.17.1	Eligibility criteria	186
8.18	Truth and reconciliation	187
8.19	Restorative justice	188
8.20	Private facilitated resolution	189
8.21	Lustration	191
8.22	Appointment of independent overseer	192
8.23	Counselling assistance and medical services	193
8.24	Conclusion on suite of options	194
8.25	How to bring allegations raised during Phase 1 to resolution	194
8.26	Dealing with perpetrators of substantiated claims through the military justice framework	197
8.27	Immediate management of allegations of serious abuse	197

9	Concluding remarks	199
	Shortened forms.....	201
	Glossary.....	207
	Bibliography.....	215
	Appendixes [Two separate folders]	

Executive summary

The Review has had before it specific allegations within scope from 847 different people (sources). Many of these sources have more than one allegation within scope.

We have allegations across every decade from the 1950s to date. The earliest date of alleged abuse is 1951 (on a 13 year old boy, now a man in his 70s). We have allegations of events during 2011.

The allegations which have been raised with the Review are incredibly diverse. They are made by men and women in respect of conduct by men, women and groups. They involve minors and adults. They span 60 years. They come from diverse geographical locations. They come from different parts of the Defence organisation. They relate to the full range of possible involvement in the ADF—training, normal duties, deployment, hospitalisation and so on. The incidents range from extremely serious to (relatively) minor. The behaviour complained of ranges from that which has never been acceptable nor tolerated, to that which, whilst not acceptable, has in the past been tacitly tolerated.

It is not possible to summarise the nature of the allegations as a group.

Each allegation has been considered in accordance with its circumstances.

Volume 1

Volume 1 contains:

- an explanation of the evolution of the scope of the tasks set for the Review and a brief explanation of how the Review was run (Chapter 1)
- a consideration of abuse risk factors in the ADF (Chapter 2)
- an overview of the specific allegations considered by the Review and reported on in detail in Volume 2 of the Report (Chapter 3)
- a survey of previous reports and previous Defence material relevant to abuse indicating:
 - levels and nature of abuse in different parts of the ADF at different points in time
 - inadequacies in Defence management of allegations of abuse in parts of Defence at different points in time
 - themes which emerge from those previous reports and Defence file and other material (Chapter 4)
- a discussion of the special issues relating to abuse of boys and young people (Chapter 5)
- a discussion of the current impacts of past abuse in the ADF (Chapter 6)
- a discussion of systemic issues identified during the conduct of the Review for further consideration in Phase 2 (Chapter 7)
- a discussion of the options for responding to the issues which have been identified during the course of the Review (Chapter 8)
- An appended status report on the allegations raised in the Four Corner program of 13 June 2011.

Chapter 1—Establishment and conduct of the Review

The Review was established following receipt by the Minister of hundreds of communications about abuse within Defence following the so-called Skype incident at ADFA.

Dr Gary Rumble, partner, DLA Phillips Fox,¹ was appointed to lead the Review and Ms Melanie McKean, partner, DLA Phillips Fox and Professor Dennis Pearce, AO, Special Counsel with DLA Phillips Fox were appointed as co-leaders.

The initial function proposed for the Review was to review the allegations that had been received by the Minister. The role of the Review was subsequently expanded to consider all allegations that might be made by the public in response to advertisements that were published inviting submissions. The Review was requested to also review media reported allegations. This was to be Phase 1 of a Review that it was recognised would take some time to complete.

The Minister made it clear that the Review was to function independently of Defence. 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.

The Terms of Reference of the Review were published on 21 June 2011. However, the Review had been operating pursuant to draft Terms of Reference from the beginning of May.

From the outset it was settled that :

- The subject matter for the Review's consideration was 'sexual and other abuse—such as bullying, harassment or intimidation—(and related matters) in Defence'.
- In relation to each specific allegation within scope, the Review was to carry out an 'initial assessment'—and report to the Minister and to Defence;
 - whether the alleged incident appears to have received proper consideration and appropriate action has been taken or is being taken by Defence; and
 - recommend what action (or further action) if any should be taken.
- The Review was to identify and report on the full range of options for dealing with the allegations, including not only consideration of the wide range of existing mechanisms but also commentary on the possibility of setting up a Royal Commission or a Judicial Inquiry through to setting up some kind of reconciliation process.
- The Review was also to report on any systemic issues with Defence's management of allegations of abuse which the Review identified for possible further consideration in Phase 2.

The Review adopted a practical approach to determine what conduct should fall within the scope of 'abuse'. It had regard to the dictionary definitions of the term: '*wrongly take advantage of*', '*maltreat esp assault a woman or child*', '*to use wrongly or improperly*' and '*to do wrong to; to act injuriously towards*'.

The cut off date for making complaints to the Review was fixed at 17 June 2011, although complaints made after that date were received and processed up to the end of September 2011.

The rate of communications to the Review was initially slow, but increased dramatically after a Four Corners program on 13 June 2011 referred to the Review and to the closing date for lodging complaints. By 17 June, 983 communications had been received by or referred to the Review. A further 131 matters were raised with the Review up to 30 September.

¹ Shortly after the Review was appointed, DLA Phillips Fox joined the international firm DLA Piper and now continues to function as DLA Piper Australia. Dr Rumble and Ms McKean ceased to be partners of DLA Piper after the Review commenced. The two firms worked together to support the Review.

Some of these communications were outside the scope of the Terms of Reference. Others were duplicated. In all 847 people raised matters within the scope of the Review and many of these communications contain more than one allegation of abuse.

The allegations were examined for their plausibility and where practicable further information was sought from Defence. However, in the time available, it was possible to obtain this information for only a limited number of allegations.

What we were able to do was to assess whether further action was warranted in relation to the allegations. The individual allegations and recommendations are set out in Volume 2 of this Report. They will have to be followed up by Phase 2 of the Review.

Chapter 2—Abuse risk factors in the ADF

This Chapter identifies some of the factors in the ADF generally, and some factors specific to particular ADF environments, which have contributed, which may have contributed, and which may still be contributing to the risk of abuse occurring.

This Review has surveyed these risk factors for three reasons:

- First—to get some understanding of the risk situation in the environment to which each of the specific allegations before the Review relates, so that we can make an initial assessment and make recommendations for further action.
- Second—to understand whether or not what appear to the Review to be systemic issues have an explanation and/or confirmation.
- Third—so that we can provide comments on options for responding to the broad issues identified in this Report.

As this Chapter shows there have been a number of factors in ADF environments, at different times over the 60 years covered by the allegations raised with this Review, which have created or allowed risk of abuse.

Some of these factors have been identified in previous reports and inquiries as factors which contributed to the abuse which those reports found had occurred.

It seems that some problems have recurred in the unit/establishment/base/ship concerned despite that scrutiny.

Where a risk factor has been identified in a previous report and some course of action has been recommended by the relevant Inquiry/Review body, it seems from the information which the Department of Defence has been able to locate for us, that Governments and the ADF have usually endorsed those recommendations. And, from the information which the Department of Defence has been able to provide to us, it seems that to the extent that the recommended actions have been limited to procedural changes, the procedural changes have been implemented.

However, instances of abuse have continued despite the actions taken to give effect to earlier reports. For the reasons set out above, the Review thought it necessary to identify what have in the past, and seem likely in the future, to be factors raising risk of abuse in Defence.

The principal risk factors identified by the Review as being likely to lead to abuse in Defence include:

- *No adverse consequences for abusive behaviour:* where a person knows that it is likely that he or she will not be called to account for abusive actions, the likelihood of abuse occurring is greatly increased. There are factors in the Defence culture and processes which lead to abusive behaviour not being called to account.
- *Culture discouraging reporting of abuse:* there is a very low rate of reporting of sexual assault in the community generally. There is also a low prospect for conviction. This position is exacerbated in Defence because of the strong group loyalty in the ADF. While this is essential to the performance of ADF functions, it also creates an atmosphere of group hostility towards a victim who reports another member of the group. This is particularly applicable to female members of the ADF who are a minority group in any case.
- *Absence of positive support for people who report:* there needs to be positive support for people who report abuse, whether they be victims or witnesses. It seems that such support has often not been forthcoming for persons in the ADF.
- *Chain of command:* the chain of command structure in Defence lends itself to superiors abusing juniors with impunity because it is difficult for a person junior in rank to complain up the chain of

command over the head of his or her superior. There is also the discouragement that the superior can impose burdensome or unpleasant tasks on the junior.

- *Social/environmental factors:* excessive consumption of alcohol and use of drugs is an issue which has been relevant to service personnel. This can lead to advantage being taken of young people, particularly when coupled with the chain of command issue referred to above. Absence from family and friends, often in confined environments, also increases risk of abuse.

The Review notes that particular risk factors apply to young people.

Many of the risk factors surveyed in this Chapter have been present in many of the environments relevant to particular allegations which are reported on in Volume 2. Some of the environments appear to have posed very high risks.

Chapter 3—Overview of allegations considered by the Review

Chapter 3 provides an overview of the allegations, each of which are reported on in detail in Volume 2.

It is important to emphasise that no broad conclusions about the presence or absence of abuse in different parts of the ADF at different points in time can be drawn from the information given in Chapter 3.

- This Review was set up to provide initial assessments of the allegations before the Review—not to attempt to conduct a survey or an assessment of Defence’s or any part of Defence’s overall performance in preventing and/or managing incidents of abuse at any time in the past or at present.
- The number of allegations which have been brought to the Review for consideration cannot be relied on as indicating that all or even most of the people who perceive that they suffered abuse in Defence have now been identified. For reasons which the Review sets out in detail in Chapter 6, the Review believes that there are still very many people who perceive that they suffered abuse in Defence and indeed very many who did suffer abuse in Defence who have not reported their concern to this Review or to anyone in Defence.

Our task in relation to each of these allegations has been to make initial assessments and recommendations to the Minister and the Secretary for further action.

The Terms of Reference of the Review did not put any limit on how far back in time people could go with their alleged event of abuse or mismanagement. The earliest date of an alleged event of abuse before the Review relates to 1951. The Review has also considered allegations relating to events in 2011.

No organisation of the size, diversity and complexity of the ADF could be expected to be entirely free of actual abuse and/or mismanagement of abuse across 60 years—let alone be entirely free of *allegations* about such matters from people who perceive that they have been the victims of abuse or mismanagement of their allegations of abuse.²

Given that the Review was set up as a response to the hundreds or so communications about abuse in Defence which came into the Minister’s Office in the weeks following the Skype incident, only the most optimistic could have hoped that this Review would find that all allegations of abuse either were without substance or had already been properly managed by Defence with no further action required.

The total number of sources (individuals and media reports) with allegations within scope—after removing out of scope matters and consolidating some allegations which had arrived at the Review from more than one entry point—settled to 847. Some of these sources have multiple allegations or issues of abuse and/or mismanagement of abuse within scope.

We have not made any findings that any particular allegation of abuse is established. Nor have we concluded that any particular person has been a perpetrator of any particular alleged abuse.

The Review has found that *some* of the allegations of abuse appear to be without substance and/or are so insignificant as not to justify further investigation or substantive response in Phase 2.

The Review has also found that Defence’s management of *some* of the allegations seems to have been proper and appropriate and that no further investigation or other action is recommended for Phase 2.

However, for many allegations before the Review, the Review has found both that the allegation does not appear to have been reported to Defence or anyone else previously and that the allegation seems to be sufficiently plausible and significant to justify further investigation.

² Even though allegations of abuse within the Department of Defence were within the scope of the Review, the Review received very few allegations relating to the Department.

Many of the people whose allegations are before the Review have told us that they have not reported their allegation to anyone in Defence before. Some say that they have not even told their families about the alleged abuse before.

It may be that some of these people have been untruthful (or evasive) to the Review about having previously reported because they were dissatisfied with the outcome when they did previously report and they are attempting to get the Review to take a fresh look at their issues. We have detected a small number in this category and suspect some others which may be shown to be in this category once further checks are completed.

However, based on telephone conversations by Review support team members with many of these people and the extent to which most of the allegations have stood up to basic checks for coherence and plausibility, it is unlikely that all or even a substantial number of the people who say that they have not previously reported their issues are being untruthful.

On the contrary it seems to the Review more likely that the overwhelming majority of those who have told the Review that they have not previously reported their abuse issues are telling the truth.

For those allegations where it appears the allegation has been previously reported to Defence, apart from confirming that the alleged 'abuse' is within scope, the focus of our initial assessment in Volume 2 has been on the adequacy of Defence's response and on whether or not some further action is recommended.

The emphasis in these matters is not on finding Defence or anyone within Defence who had a role in relation to management of the allegation 'innocent' or 'guilty' but on considering whether any further action is recommended.

With matters where the events occurred many years ago, there is seldom any point in inquiring further into the adequacy of Defence's management. However, with some recent matters, we do identify some aspects of Defence's management of an allegation of abuse which are of concern and where we do recommend some further investigation of Defence's management of that particular allegation.

However, even with these matters, the focus is on addressing the legitimate concerns of victims and on identification of systemic issues which may need to be addressed for the future, rather than on finding fault with Defence or anyone in Defence who was involved in managing and responding to the allegation.

With some matters, the Review has recommended some further action be taken even if Defence's management to date seems to be entirely proper and appropriate.

Chapter 4—Historical record of abuse in the ADF

The Review of previous reports' findings and evidence and Defence file material indicates:

- previous reports have made findings that there have been substantial levels of abuse (up to and including sexual and other assault) and/or inadequate responses to allegations of abuse in some parts of the ADF at particular points in time
- Defence file material has confirmed these concerns
- previous reports have been focused on fixing problems for the future with little attention to the incidents of abuse and/or mismanagement of abuse allegations which the reports indicate had occurred
- Defence records show very little evidence that perpetrators had been called to account for abuse and/or mismanagement
- there is a risk that those perpetrators now hold middle and senior 'management' positions within the ADF
- there is a risk that individuals who witnessed abuse and did not report what they witnessed now hold middle and senior management positions within the ADF
- the culture within parts of Defence at different times has strongly discouraged victims or witnesses from reporting abuse
- 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
- there is a risk that persons who have been victims of abuse may need counselling and other assistance.

Chapter 5—Abuse of boys and young people in the ADF

It is the Review's understanding that:

- Through the 1950s, 1960s—and possibly later—boys as young as 13 years of age were recruited into the Navy. (The Review does not know whether children that young were recruited into the other Services.)
- Until at least the early 1980s boys as young as 15 years of age were recruited into all three Services.
- The minimum age for entry to the ADF is now generally and has been since 2002, 17 years. Males and females can and do enter the ADF at this age. There are still some entries below this age.
- 80 per cent of the members of the ADF are under 30 years of age. 14 per cent of ADF personnel are female.

The Review has received allegations of sexual and other serious physical assaults committed against boys as young as 13 years of age through to 16 years of age.

The Review has also received a number of allegations of sexual and other serious assault on young males and females—including minors of both sexes of 17 years of age and including males and females who were minors of 18, 19 or 20 years of age under the law governing the age of majority at the time of the alleged abuse.

(The criminal law in some States and Territories recognises that sexual relationships between young persons and persons in authority raise special issues of concern and that 18 years of age is generally the minimum age of consent for sexual relationships where one of the persons is in a position of authority over the other.)

The line between boys and 'young men' is not precise. The development of physical and emotional maturity varies from individual to individual. Some of the specific allegations of abuse committed against young males and females are every bit as horrific as some of the allegations of abuse committed against 'boys'. Nevertheless, it is generally accepted that children are less mature physically and emotionally, and are more vulnerable, than youths.

On this basis, in this Chapter the Review separated its discussion of allegations of abuse on 'boys' from 13 to 16 years of age from its discussion of allegations of abuse on young males and females of 17 years and older.

On the material before it, including the complaints that it received, the Review concluded in relation to boys:

- During the years 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 and vulnerability of boys of 13, 14, 15 and 16 years of age to protect them from other boys and from adults in the ADF and to protect them from being drawn into participating in inflicting similar abuse on other children.
- It is certain that many boys were subjected to serious sexual and physical assault and other serious abuse while they were in the ADF from the 1950s through to the 1970s—and possibly into the 1980s.
- Many of the boys who suffered such abuse later participated in inflicting similar abuse on other children in the ADF.
- Many of the boys who endured and/or participated in inflicting such abuse may have suffered, or be at risk of suffering, mental health, alcohol and drug problems and associated physical health problems affecting not only them but their families.

In regard to 'young people', the Review noted that the term has no fixed meaning. For the purposes of the Chapter the expression was taken to refer to 17 to 20 year olds.

On the material before it, including the complaints that it received, the Review concluded in relation to young people that:

- Until very recently the ADF and successive Australian Governments had failed to put in place any *specific* protections to take into account the special needs and vulnerability of young people—male and female—to protect them from other young people and from more mature adults in some of the ADF environments.
- It is certain that many young males and females have been subjected to serious sexual and physical assault and other serious abuse while they were in the ADF from the 1950s at least into the 21st century.
- Some of the young men who suffered such abuse later participated in inflicting similar abuse on other young men in the ADF. (The Review has not seen any sign of female victims of abuse being 'recruited' into the ranks of perpetrating abuse on other females.)
- Many of the women who endured such abuse and many of the men who endured and/or participated in inflicting such abuse may have suffered, or be at risk of suffering, mental health, alcohol and drug problems and consequent physical health problems affecting not only them but their families.

The Review has outlined in Chapter 2 some of the general factors which contribute to the risk of abuse occurring in ADF environments. One significant factor is the imbalance of power associated with rank.

For boys and young people in the ADF there have been other specific factors which contributed to the risk of abuse of those boys and young people by older people and/or by other boys and young people. Those factors included:

- The fact that boys and young males lack maturity of judgment and may inflict abusive behaviour on other boys, young males and young females if not supervised.
- The fact that boys and young people—male and female—lack the maturity to keep themselves out of situations where they may be at risk.
- The fact—well-known for decades at least—that some people who wished to have sexual access to boys and young people sought out positions in orphanages, schools, churches and similar institutions where they could have power over, and access to, boys and young people. There is no reason to think that such people would not have targeted relevant parts of the ADF.
- For some of the relevant years of last century at least, it seems that there was an apparent absence of rigorous general character checking at least for other rank recruiting for some parts of the ADF and a willingness to accept some recruits with a criminal record.
- This approach to recruitment would have meant that boys and young males and females were exposed to some people in the ADF who had anti-social propensities.
- Adults, older males and older boys in the ADF have often had power over young males and boys, based on a combination of physical strength, 'rank' or at least seniority and—in some contexts—a 'tradition' making the infliction of abuse 'right' regardless of official prohibitions of the abuse.
- A correlation between suffering abuse and later becoming an abuser—especially in an environment such as prevailed in HMAS LEEUWIN in the late 1960s/early 1970s where the choice was to join in bashing and assaults on other boys or young males or to continue to be the target of such abuse.

The Chapter sets out examples of abuse inflicted on boys and young people. The examples selected are horrific but they were not specially selected because of their facts but rather because they give an indication of the sort of abuse that has occurred.

The Chapter also discusses the phenomenon of 'bastardisation' which has been rife in the ADF until very recently. Bastardisation was commonly inflicted on new recruits to the ADF who were, by definition, boys or young people. While it seems to have been tacitly accepted as a part of ADF life, it should be noted that the conduct engaged in was very frequently brutal and would have been likely to attract criminal sanctions if practised in the civil community.

The argument that such behaviour was 'legal' in the past is discussed in the Chapter and refuted. It is clear from the examination of previous reports that the practice was recognised as occurring and rejected.

The Chapter contains particular reference to bastardisation practices at RMC Duntroon, including a description of photographs of such activities provided to the Review but which are not included in the Report in case the persons shown being subjected to humiliating and degrading treatment can be identified. The Review reaches the conclusion that, despite the prohibition of such conduct at various times in the past and attempts to prevent it, the practice kept recurring. The Review considers that this cycle is likely to keep on recurring unless the prohibition is continuously monitored and enforced.

The Chapter notes and commends the ADF's recent introduction of specific procedures to take into account the special vulnerability of minors and young people - following an Ombudsman's report in 2005 focused on these issues. However, the fact of the recent introduction of these specific protections underlines the absence of any such specific protections through the last century when boys as young as 13 were in the ADF.

The Review concludes that it may be that some of the ADF's general processes should have provided protection for minors and young people in the past. Clearly they failed on many occasions. However, it seems that the ADF does now have specific procedures in place focused on meeting its responsibilities to these people. It will be incumbent on the ADF to monitor the effectiveness of these procedures. As has been seen, the inappropriate culture that policy directives were intended to overcome has been allowed to creep back in the past and eventually revive. This is an ongoing issue.

Chapter 6—The current impacts of past abuse in the ADF

This Chapter considers the related legacy issues:

- What are the risks that people who perpetrated abuse in the past are still in the ADF?
- What are the risks that people who witnessed abuse in the past without intervening or reporting are still in the ADF?
- What are the risks for people who were the victims of abuse and who have not reported that abuse?

How much abuse has not been reported?

This Chapter looks at the extent to which the levels of past abuse in the ADF can be identified and what are the scale of the legacy issues. This Chapter responds to a request from the CDF to provide data as to the potential size and scale of the legacy of past abuse.

The Review notes that there are difficulties with accurately quantifying the nature and extent of past abuse, not the least of which is the under-reporting of incidents (particularly sexual assault incidents) which the Review has found to exist. What the Review can say (based on the information before it) is that when considering past abuse in the ADF, the Review has found:

- high levels of underreporting
- high levels of dissatisfaction and disillusionment with the ADF's application of military justice processes and approach to complaint handling
- an inconsistent (and in many cases, flawed) application of the military justice procedures in place at particular points in time
- flawed investigations under the ADF's discipline system
- low levels of prosecutions and/or inaction by the ADF (including administrative or *Defence Force Discipline Act 1982 (DFDA)* inaction) in failing to call perpetrators to account for unacceptable behaviour (including serious instances of abuse).

For reasons which are outlined in the Chapter, the Review is inclined to the view that the allegations of sexual and other abuse which are before the Review probably represent a relatively small proportion of the incidents of sexual and other abuse which have occurred in the ADF in the past.

The Review refers to the ADF culture of not reporting because of loyalty, albeit misplaced, to the group and the likely recriminations that will be visited upon a person who complains.

The Review notes that, in the past, the ADF's military justice system has been largely ineffective in handling reported instances of serious abuse (particularly sexual abuse). The inadequacies of the military justice system have been exacerbated by inconsistent and flawed applications of it at different points in time.

The ineffectiveness of the military justice system (which has contributed to diminished confidence in the system by its members) has directly contributed to an under-reporting of abuse in the ADF.

Examples are provided of unsuccessful attempts to impose penalties on abusers.

The Chapter refers to the 2005 Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade Report *Reforms to Australia's Military Justice System* and notes that, following the Report, an audit of the ADF's investigative capabilities was conducted in 2006. The audit report found serious flaws and painted a bleak picture of ADF investigations conducted up until that point in time. The Report found: 'that the ADF investigative capability is in serious decline and that remediation, even if approached with unremitting resolve and commitment, is likely to take no less than five years'.

The Review observes that this serious flaw which existed for many years in the ADF's investigative capability (up until at least 2006) means that it is more likely than not that perpetrators of abuse (including

serious abuse), were not called to account for their actions. It is further likely, therefore, that there are victims of abuse who had the courage to come forward, but who were then let down by the ADF's investigative actions (or inactions).

The Chapter examines the Grey Report³ relating to abuse in ADFA in the 1990s in some detail.

Risks associated with possibility that perpetrators of past abuse are still in the ADF

Risks associated with possibility that silent witnesses to past abuse are still in the ADF

Very late in the life of the Review we located evidence given by Lieutenant Colonel Northwood to the Joint Standing Committee on Foreign Affairs, Defence and Trade for its *Inquiry into Military Justice Procedures in the Australian Defence Force*.

Lieutenant Colonel Northwood, a lawyer who had been a member of the Grey Report Inquiry Team, also headed an Investigation Team looking at specific allegations of sexual assault which had arisen around that time. His evidence to the Senate Committee in June 1998 included:

Can I say—and it has appeared in the newspapers—that we, on the investigation side, identified 26 cases of what we believe were rape—and the old term ‘rape’ is the best way to describe the particular form of sexual assault to which I am referring—between I think it was the beginning of 1994 and the end of 1997. Of those, to the best of my recollection ... only two have ever proceeded to complaints made to the civil courts and have gone to trial. One of those two matters is awaiting trial in the ACT at the present time.⁴

Other material considered by the Review indicates that Defence thought it could not or should not take administrative processes in relation to sexual assault matters which had been referred to civilian police. In any case it seems that no action was taken by Defence in relation to any of the 26 cases. This Chapter includes commentary on the difficulties in estimating the scale of unreported past abuse and the basis for the Review's conclusion.

Mental Health Impact - legacy issues

The Review suggests that Phase 2 should consider the issues arising from the connections between past abuse experiences in the ADF and mental health and related problems, a number of which are outlined in the Chapter.

The Review notes that abuse may exacerbate an existing condition or trigger a propensity to some mental health problem. It may also bring on a condition such as post-traumatic stress disorder for which the individual had no prior condition or propensity.

The Review suggests that 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 in the ADF. It is also 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.

Early intervention is seen as a key in preventing these risks occurring and Defence should recognise this when it becomes aware of an abuse event. Support after abuse is essential.

Defence needs to be aware of the fact that many people who have mental health problems do not seek assistance. Some see a general social stigma with being known for having mental health ‘issues’. Some others have a concern that if they seek professional help for mental health problems, that will affect their long-term employability and/or their ability to obtain insurance.

³ Report of the Review into Policies and Practices to Deal with Sexual Harassment and Sexual Offences at the Australian Defence Force Academy. The ADFA Review team which included 10 ADF officers and consultant Dr Stephen Mugford was led by Ms BD Grey, a senior officer of the Department of Defence.

⁴ June 1998, p. 232.

Conclusions on the legacy issues

The Review concludes:

- If perpetrators of assault and other abuse are still in the ADF, then they may constitute a continuing risk to the safety and well-being of other ADF personnel and they may constitute a risk to the reputation and the operational effectiveness of the ADF.
- Some of the perpetrators of sexual and other assault in ADF in the past including men who were cadets at ADFA before the Grey Report in 1998 have not been called to account and may now be in senior and middle management roles in the ADF.
- People who witnessed this behaviour and did not report it or initiate any process to bring it to an end may also now be in senior or middle management roles in the ADF.

These issues represent significant risks for the ADF.

- Phase 2 should explore the possibility of a Royal Commission being established to clarify:
 - whether any of the suspected rapists who were at ADFA before the 1998 Grey Report are still in the ADF;
 - whether any persons who witnessed and did not intervene to prevent rape at ADFA before the 1998 Grey Report are still in the ADF;if yes to either question, to make recommendations for how to deal with that situation.
- People who have suffered abuse in the ADF are likely to be suffering or at risk of suffering mental health problems.
- People may have been driven out of the ADF by abuse and may have suffered adverse career consequences.

Chapter 7—Systemic issues

The Review's Terms of Reference required it to identify any systemic issues that it observed in the course of the Review. This Chapter notes the following:

- *Serial perpetrators and serial suspects:* as has been noted by previous inquiries, Defence does not have in place systems to track and notify management of persons who can be described as serial low level perpetrators of unacceptable behaviour and/or who are frequently the subject of complaints or reports. If no formal action is taken against a member, no record is made of the events having occurred. This has the effect that a commanding officer or other manager will have no knowledge of the fact that a member may have been constantly under consideration and/or 'managed' at a number of previous postings.

The Chapter also identifies that Defence monitor certain conduct that may alert an inquiry as to whether a member is a serial perpetrator, including frequency of posting and high attrition rates of staff working with him or her.

The Review suggests that the mechanisms available for tracking serial perpetrators and serial suspects should be further examined in Phase 2 with a view to determining whether the existing mechanisms are being used to their optimum capacity and whether further systems should be put in place.

- *Fairness and Resolution Unacceptable Behaviour Database:* the Review encountered a number of issues relating to the Fairness and Resolution Branch unacceptable behaviour database. It is concerned that the information contained on the database is not as comprehensive as it could be. It seemed that this may be caused in part by a misunderstanding of or misapplication of the requirements of the *Privacy Act 1988* (Cth). It considers that this issue should be considered in Phase 2 of the Review with a view to expanding the information on the database and increasing its availability to managers.

The Review was also concerned about the currency of the information on the database. It has not been kept up to date. While recognising that the primary obligation for providing information for inclusion on the database lies with managers of complaints, the Review considers that there is also an obligation on Fairness and Resolution as the manager of the database to ensure its currency.

The Review considers that the issues referred to should be examined further in Phase 2 and suggests that it may be desirable for an external performance audit of the database to be undertaken.

- *Restricted reporting of sexual assaults:* the Review learned that Defence policy requires all sexual assault allegations to be immediately reported to ADFIS. 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. Some people experienced in working in the area have told the Review that they would not usually recommend to a victim of sexual assault that he/she submit himself/herself to those processes. Yet if the victim does not report the matter the victim may not be able to seek the support services that the victim needs at the time - and relevant evidence will not be collected and safeguarded.

In the United States and Israel military there are systems of restricted reporting of sexual offences which have as their primary objectives the welfare of the victim. In the immediate response to a restricted report, the victim is assisted in dealing with the trauma of the event and forensic evidence is gathered. Only afterwards is the issue of criminal action directed to the perpetrator considered. The decision of whether the incident is submitted for criminal investigation is left to the decision of the victim.

ADFIS has expressed concerns about this system from the perspectives both of occupational health and safety and the preservation of evidence. These are valid concerns. However, the safeguarding of

evidence can be managed under a restricted reporting regime. Furthermore, the requirement of immediate reporting to Police can result in *no* reporting occurring. The Review considers it appropriate for the regime of restricted reporting to be considered further by Defence, particularly in regard to the legacy victims of sexual assault. The objections raised by ADFIS to the restricted reporting system have little relevance to past events.

This again is a matter that should be pursued by Phase 2.

- *Administrative action following sexual assault:* the Review received a number of reports indicating that DI(G) PERS 35-4 *Management and Reporting of Sexual Offences* imposed inappropriate constraints on the ability of Defence to manage alleged perpetrators. The DI(G) purports to prevent any administrative action being taken once criminal or disciplinary proceedings are pending. Further no adverse administrative action is to be taken against a person who has been acquitted of a sexual offence charge. We understand that the same approach is adopted if the prosecution authorities choose not to proceed with a prosecution.

This approach does not apply in respect of other offences (DI(G) PERS 35-3 *Management and reporting of unacceptable behaviour*).

The Review heard of instances where the application of DI(G) 35-4 as interpreted by Defence resulted in a victim being obliged to continue working with an alleged perpetrator. The Review considers that this policy reflects a misunderstanding of the legal position of so-called double jeopardy. It also pays no heed to the factors that might be relevant to an acquittal or an election not to prosecute which may have little or nothing to do with whether the event reported occurred.

The Review has recommended that the terms of the DI(G) should be reviewed urgently as it presently has the result that perpetrators of sexual attacks on fellow ADF members are not called to account and sexual assault victims and others are denied essential protection.

The Review was also apprised of wider concerns about the management of the investigation and prosecution of sexual assault allegations arising from confusing aspects of the many DI(G)s that may apply when an assault has occurred. It was suggested that managers are likely to mismanage the required procedures or choose to take no action because of uncertainty as to the effect of the DI(G)s. This has prompted the Review to propose that the whole issue of the investigation and prosecution of sexual and unacceptable behaviour offences be looked at afresh with a view to adopting appropriate and clear procedures that can be followed by managers.

- *Information to complainant on outcomes of inquiries:* many complainants to the Review said that one of their concerns was that they were given no information as to the outcome that followed from the complaint that they made. It appears that Defence takes the view that no information can be disclosed because of privacy issues. The Review suggests that this issue should be revisited. The Report includes advice provided to the Review on the operation of the relevant Privacy Principles.

Appropriate action would do much to alleviate victims' concerns that reporting of abuse is a waste of time because either nothing changes or nothing adverse happens to the perpetrator. This is a matter that should be pursued in Phase 2 of the Review.

- *Respect and support for victims of abuse:* the Review made a number of recommendations and raised issues directed to improving the way in which victims of abuse are treated. The recommendations relate to the sensitivity with which allegations of abuse are handled; the language used when abusive behaviour is being discussed or investigated; the adequacy of ongoing support for abuse victims; the manner in which the ADF liaises with civil police; and ensuring the ongoing capability of ADFIS.
- *Oversight of Defence action:* the Review is concerned lest the systemic issues that it has raised are not followed up. To this end it has recommended that the Minister should consult with the Defence Force Ombudsman to determine a role for that office in overseeing Defence's action in relation to the issues referred to in the Chapter.

Chapter 8—Options

The Review has considered what options may be open to provide some response to persons who have made plausible allegations of sexual assault or other abuse to the Review.

The Review considers that consideration should be given to extending any new options to the very many other people who have not reported - that is - not limit any new options to people who came to the Review.

The Review considers that the development of options needs to take into account that people who may have been victims at first may then have become perpetrators (and witnesses) to abuse. The solutions developed should reach out to people who were drawn into abusive behaviour.

The approach of not adding to existing mechanisms/processes is considered.

This would leave persons affected to pursue whatever remedies are currently available to them. Current remedies include:

- bringing an action in the courts
- seeking compensation under the statutory compensation schemes that cover Defence personnel
- applying for a financial payment under the Commonwealth's discretionary compensation schemes.

The Review considers that none of these mechanisms will be appropriate in most cases of past abuse because of the cost involved and the difficulties of establishing liability/eligibility.

If a person making a complaint to the Review in relation to abuse in the middle or distant past has not obtained relief by now by using any of these mechanisms, they are unlikely to be able to do so in the future. Statutes of Limitations and proof of the elements to make out a claim would represent significant barriers for most tort claims for past abuse.

Under the existing Commonwealth statutory compensation schemes it is generally a precondition for payment of any benefit that the individual must prove some ongoing impairment or injury. The individual is put in an invidious position where the ongoing impairment is a mental health issue. Mental health problems are not always easy to prove. Furthermore, proving a causal link between a particular instance of past abuse and a current mental health issue can also be difficult. Furthermore, individuals may be reluctant to prove that they have a mental health problem because doing so may have ongoing employability and insurability impacts and may have stigma.

The Review is of the view, that the statutory schemes should continue to be open where the individual can meet the preconditions for a benefit. However, the Review is also of the view that consideration needs to be given to the possibility of payments being made to recognise that past abuse was itself a wrong and compensable *as such*. In this respect the approach taken in State and Territory criminal injury compensation schemes provide the model - rape is compensable without proof of ongoing impairment.

The Review also considers that the 'do nothing' approach ignores the fact that persons have been adversely affected by conduct that has occurred in the course of their Defence service and the impact on them should not be dismissed.

The Review has therefore examined the mechanisms by which eligibility for some reparation - in the sense of making amends for wrong or injury - might be ascertained and the sorts of reparations that might be considered to be appropriate.

The Review comments on the possibility of those issues being considered by:

- Royal Commission
- Judicial inquiry
- Parliamentary Committee.

The Review considers each of these to be too formal and cumbersome for the task of identifying persons who might be deserving of reparation. (Chapter 6 discusses the possibility of establishing a Royal Commission to address some of the legacy issues covered by that Chapter.)

The Review looked at the Defence Force Ombudsman as perhaps a body that could conduct Phase 2. However, the Ombudsman is not empowered to undertake the role that Phase 2 embraces. While he could be given such power, the Ombudsman does not think it appropriate for his Office and we are of like mind. However, the role of the Ombudsman in overseeing Defence's actions following on from the Review could be of significance in seeing that all appropriate steps are taken to implement the outcomes flowing from Phase 2.

The Review considered the Inspector-General of the Australian Defence Force (IGADF) as a possible office to conduct Phase 2. There is some doubt whether this would fall within the legislative remit of the IGADF. From a practical viewpoint, the IGADF conducts a small number of very thorough reviews of ADF conduct. It does not appear that the Office is established in a way that would readily allow it to examine the present large and probably increasing number of matters flowing from the Review. Also the IGADF may be seen by many to be too much 'a part of Defence'

The Defence Act and Regulations make provision for the establishment of differing levels of administrative inquiries. These mechanisms could be used to investigate allegations of persons who assert that they have been subjected to abuse. Depending upon the level of the Inquiry, persons may be required to give evidence and produce information. This could be a valuable power in the management of Phase 2.

However, the Review considered that Defence Inquiries may again be too formal a mechanism to manage the various allegations that have been and will continue to be made. They may also be seen as too much in the heartland of Defence to give confidence to people affected that they are receiving an independent hearing.

Consideration is also given to the possibility of taking up the recommendation of the Senate Foreign Affairs, Defence and Trade References Committee made in the 2005 *Report on the Effectiveness of Australia's Military Justice System* for establishment of an Australian Defence Force Administrative Review Board (ADFARB). The then Government rejected that proposal in 2005. The Review is of the view that even if that proposal were revived it would not be well suited to dealing with the issues of past abuse which this Review has been considering.

The Review also comments on the possibility of the Fairness and Resolution Branch within the Department taking a lead role with Phase 2 issues. The Review notes that this Branch is focused on managing *current* complaints and issues and is probably not the appropriate entity to lead Phase 2 actions.

The Review concludes that the appointment of a body similar to the present Review is probably the best way to proceed.

Such a body is probably best placed to manage the next stage of investigation of the complaints that have been received by this Review. When policy decisions have been made on the appropriate reparations, if any, for persons affected, it will be necessary to reconsider the position of a number of those complainants referred to in Volume 2, particularly those who the Review considered warranted no further action at this time because the existing remedies could provide no redress for them. The position may well be different if some of the suite of remedies that we recommend are put in place.

In the meantime, the body appointed will be able to continue to manage the complaints received and any more that might be made. It will also be able to take the steps necessary to implement the recommendations of this Review relating to systemic issues.

The Review identifies the following options to provide reparations for people affected:

- *General apology/acknowledgment*: the Prime Minister on behalf of the Nation, or the Minister for Defence and/or the CDF and Service Chiefs on behalf of the ADF could apologise and acknowledge that

current and former ADF members have in the past suffered sexual and other abuse which they should not have suffered. This would please many complainants to the Review who simply want recognition that they were mistreated. It is also the only practical remedy open for events that have occurred some time ago and which reflected the culture of the time. It would be particularly apt for those former members who have been subjected to bastardisation when this practice was widespread in the ADF.

- *Personal apology*: where evidence establishes that a person suffered abuse, a personal apology from a high level office holder may be all that the person wants from Defence.
- *Compensation scheme*: compensation schemes have been established by the States and by some churches to provide reparation for persons affected by abusive behaviour for which the State or church accepts responsibility.

Defence has such a scheme to compensate persons adversely affected by the F111 Deseal/Reseal program. This scheme is administered by the Department of Veterans' Affairs.

It would be possible to establish such a scheme to provide some compensation for persons who can establish that they have been subjected to abuse in the ADF. The eligibility conditions would have to be carefully drawn to cover only persons who genuinely suffered abuse of sufficient gravity. As with the F111 scheme there could be a two level approach with a low level payment for persons who could establish that they were abused and with an increased payment for those who establish ongoing or substantial damage or very serious abuse.

This scheme could also be administered by DVA.

- *Truth and reconciliation*: this type of scheme has been used successfully in a number of countries where there has been civil strife and parties have inflicted damage on a large group of people. We do not think that it is desirable to follow this approach in regard to complaints about behaviour in the ADF. The circumstances are quite different from the circumstances of countries recovering from civil war.

There is also the practical difficulty that such a scheme may only work if perpetrators of crimes are given an amnesty in return for the acknowledgement of their conduct. State and Territory laws would be the main criminal laws of concern. There would need also to be consideration of possible application of Commonwealth DFDA, *Crimes Act 1914* and *Criminal Code* provisions. Even if the Commonwealth Parliament were inclined to enact a legislative amnesty from State and Territory criminal law to support a reconciliation process, it is not clear that it would be constitutionally valid to do so.⁵

The Executive grant of an amnesty would be a matter for each jurisdiction concerned. The Review has not attempted to review the situation in each State and Territory. However, in the Australian Capital Territory - which may be relevant to events at ADFA and RMC - the *Director of Public Prosecutions Act 1990 (ACT)* gives the (ACT) Director of Public Prosecutions an express power to give a person a binding undertaking that the person will not be prosecuted for a specified offence ((s9(7)(a)). Such an undertaking may be given subject to conditions the Director considers appropriate (s9(9)). These provisions may be of particular relevance if there were to be any reconciliation process to deal with the legacy issues from ADFA in the 1990s.⁶

- *Restorative justice*: this is a process whereby victim and perpetrator are brought together so that the perpetrator can hear directly the effect that his or her actions have had on the victim. It is a process that has been found to provide benefits to both parties. However, it can only be undertaken with the consent of both parties and again the issue of an amnesty arises to cover the confessions made by the perpetrator. The likely difficulty of obtaining amnesties makes it doubtful whether it is a viable option.

⁵ See generally the issues raised by *Re Tracey: Ex p Ryan* (1989) 166 CLR 518 and *Kirk v Industrial Court* (2010) 239 CLR 531.

⁶ See Chapter 6.

- *Private facilitated resolution:* the Review suggests that, among the options that should be available to provide reparation for abuse, Defence should make it possible for there to be formal meetings between victim and perpetrator to discuss the victim's allegations and for the perpetrator to be able to apologise if that is considered appropriate. The Review sees this as a mechanism whereby a member who regrets a youthful indiscretion may be able to make some amends for their conduct. It envisages that retired high level officers or other respected figures would be available to discuss the issues concerned with both parties in an endeavour to ascertain whether they are willing to co-operate in a mediation process. This action could only occur with the consent of both parties and there would have to be arrangements in place that prevented use being made by either party or Defence of the information that was disclosed in the course of the mediation.

The process could also be used in the case of a witness who stood by and did nothing to assist a person being abused or who did not provide supporting evidence. It may also be possible to use a process of this kind in regard to a cohort of members who wish to clear the air in relation to events that have occurred in the past.

- *Appointment of independent overseer:* the Review has recommended that consideration should be given to the appointment of an office or body external to Defence to oversee 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. Such an office has been appointed in the United Kingdom.
- *Counselling assistance:* the Review notes that counselling services are available to Defence personnel. It suggests that arrangements should also be made to assist former members of the ADF who are in need of counselling or medical assistance.

The Review concludes that there should be an appropriate scheme adopted for the resolution of the complaints already received and those which are likely to be made in the future that would comprise the following elements, to be used as appropriate to the particular circumstances:

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

The Review believes this suite of options would present a solution for the great majority of allegations that have been raised with the Review and which are not suitable for resolution through existing processes.

The Review gave consideration as to how best to manage the implementation of its recommendations in the period before decisions are made on reparations. It recommends that a body or team be tasked to develop detailed proposals for the suite of options so that they may be presented for a decision on implementation.

It also recommends that while the proposals are being developed, there should be further external investigation of matters recommended in Volume 2 for further external investigation and internal/external referral of matters recommended for internal/external referral. Matters recommended for 'no further action' in Volume 2 should be held, pending the development of the proposals. There should be appropriate communication to complainants as to what will happen during the transition stage and into Phase 2.

A flow chart summarising the recommended process of the Review from the end of Phase 1, through completion of the complaints investigation part of Phase 2 and to resolution of complaints, follows after the summary of findings, Phase 2 issues and recommendations.

Chapter 9—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 wrong.

Volume 2

Content of Volume 2

Volume 2 of this Report contains the Review's preliminary assessment of, and recommendations in respect of, each allegation.

For each of the allegations under consideration by the Review, Volume 2 will contain:

- an Assessment Worksheet
- a Request for Statement form (some matters will also contain one or more Additional Statement forms).

For each Fairness and Resolution and ADFIS matter being reported on, Volume 2 will contain an Assessment Worksheet.

Structure of Volume 2

The bulk of Volume 2 comprises the reports about each allegation before the Review.

These are presented in Volume 2 in the following hierarchy:

- Tier 1—matters are grouped by the Review's high level recommendation for future management of the matter (Further External Investigation during Phase 2; Internal Referral; External Referral; No Further Action).
- Tier 2—matters are next grouped according to the part of Defence the subject was in at the time of the alleged event (Navy, Army, Air Force, APS, ADFA, Other, Unknown).
- Tier 3—matters are next grouped in chronological order.

The main reason for choosing this categorisation is to make it easy for further action to be taken in respect of each matter, based first on the general type of action to be taken and second on the source of the matter. For example, it will be easy to identify Army matters for referral to external organisations for progression.

The recommendations in Volume 2 are limited to *existing* options and/or referral to a body like this Review.

If any of the Options outlined in Chapter 8 of Volume 1 are adopted, then it would be appropriate to for many of the recommendations in Volume 2 to be reconsidered.

Volume 2 also contains Assessment Worksheets for certain matters within the Fairness and Resolution branch unacceptable behaviour database and certain matters under management by ADFIS. Given that these are current (or at least very recent) matters generally not raised directly with the Review, the Review will report on Fairness and Resolution and ADFIS matters on an 'exception basis'. That is, Volume 2 only contains a report of those Fairness and Resolution and ADFIS matters where an issue has been identified about whether the matter is being handled properly and appropriately by Defence.

Redaction of identifying information

A significant task for the Review has been explaining to people their options for confidentiality and obtaining their consent (or otherwise) to publication of identifying information in the Report.

Many people have not consented to their identifying information (including not just personal information, but also information from which identity could be *inferred*) being included in the Report. The Review has, therefore, redacted identifying information contained in many matters.

In respect of matters referred to the Review by the Minister's Office, the Review takes the view that consent to disclose identifying information is implied, unless there are words to the contrary within the person's submission or the person has later changed their position.

The Review has taken the following approach to redaction of identifying information:

- The Review has aimed to redact not just personal information, but information from which the identity of the source/victim could be deduced.
- If the source did not consent to disclosure of their identifying information, the Review has also redacted the names of alleged perpetrators, witnesses and other victims.
- If the source did consent to disclosure of their identifying information, the Review has not redacted the names of alleged perpetrators, witnesses and other victims, except in limited circumstances. Those circumstances include where the source's submission is implausible or preliminary investigations have not borne out serious allegations made against named individuals.

The Review has felt able to take this approach because its Report is only to the Minister and the Secretary. The allegations contained within the Report are untested and unverified. Caution needs to be exercised in the use of Volume 2 of the Report so that damage is not done to people who have not had any opportunity to know the allegations made about them, let alone an opportunity to respond or natural justice.

Findings, Phase 2 issues and recommendations

Chapter 1 - Establishment and conduct of the Review

Recommendation 1

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. (page 10).

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)

Chapter 3 - Overview of allegations considered by the Review

[This Chapter is subject to revision when Volume 2 assessments are completed.]

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)

Chapter 6 - The current impacts 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)

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)

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

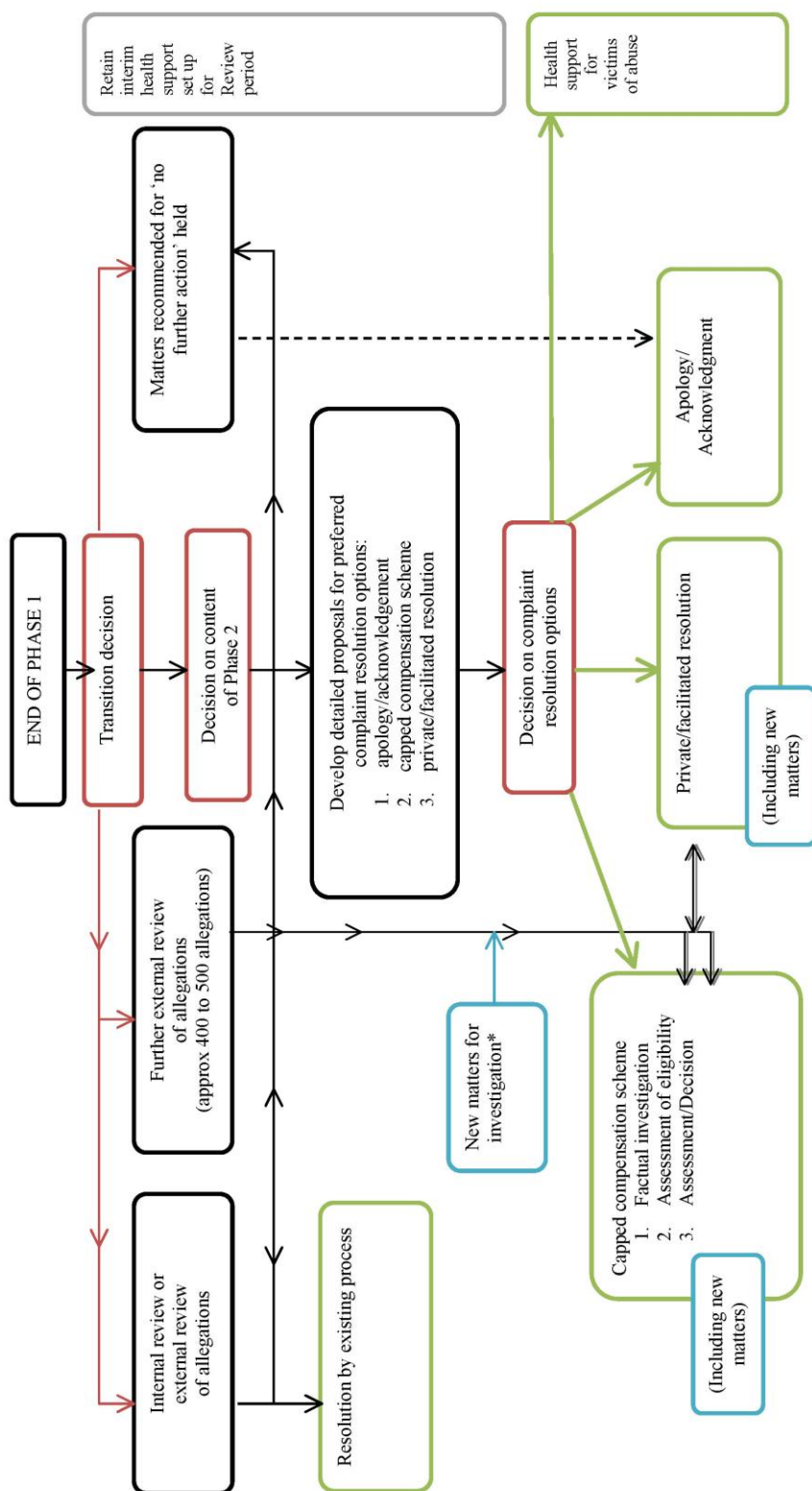
Phase 2 should consider how to monitor the actions taken in relation to specific allegations of serious abuse for which further action is recommended in Phase 1. (page 198)

Chapter 9 - Concluding remarks

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)

Recommended Transition and Phase 2 steps for specific allegations (as at 11 October 2011)



Existing Defence and external options continue to be available for all matters

*New matters: There will need to be limits set on which 'new matters' can enter this scheme, because this scheme should not be a complete alternative to existing processes. For example, you might permit entry of (i) 'new matters' involving allegations from a specified period in the past (whether previously reported or not) and (ii) more recent allegations but only if they have been reported to Defence and reasonable existing avenues for redress have been exhausted. Determining the date range of the 'specified period in the past' will be a complex matter, involving a number of considerations and with the possibility for variation depending on the nature of the allegation.

1 Establishment and conduct of the Review

1.1 The establishment of the Review

In April 2011 the Minister for Defence asked the Secretary of the Department of Defence to identify a suitable team to review and report on hundreds of communications about abuse within Defence which had come into the Minister's office in the two weeks following the so-called Skype incident.

The Department identified Dr Gary Rumble, at the time a partner with law firm DLA Phillips Fox (one of the Department's panel of legal service providers), as a suitable person to lead that Review. At Dr Rumble's suggestion, Professor Pearce AO (DLA Phillips Fox Special Counsel) and Ms Melanie McKean (DLA Phillips Fox Partner) were proposed as joint leaders of the Review¹ with Dr Rumble.²

The Review's findings and recommendations are the findings of Dr Rumble, Professor Pearce and Ms McKean.

By the time DLA Phillips Fox was engaged the task had been expanded beyond reviewing the allegations which had come into the Minister's office to reviewing media reported allegations and advertising to invite current and former Defence personnel to bring allegations of abuse and related matters to the Review.³ The intent of advertising to call for other allegations was to give people who might feel reluctant to bring an allegation to Defence the opportunity to go to an entity outside Defence.

The Minister announced the Review on 11 April 2011.⁴

The ABC broadcast a *Four Corners* story on abuse in Defence named 'Culture of Silence' on 13 June 2011.⁵ That caused a significant increase in the number of people raising matters with the Review. We provide a status report on the Review's initial assessment of the allegations raised by each of the five former Defence members featured on the program.⁶

1.2 The evolution of the statement of scope of tasks for the Review

The Review was set up to allow people an opportunity to tell their stories about what were often sensitive and distressing matters.

The need to provide a means for these people to be heard and for their allegations—including the allegations which had already come into the Minister's office in April—to be quickly reviewed was pressing and the Review was set up in a tight timeframe. Drafts of the Terms of Reference went through some variation as the Review got under way and as issues of the appropriate scope of the Review were discussed between the Review and the Department and—through the Department—with the Minister.

¹ Profiles of Dr Rumble, Professor Pearce and Melanie McKean are at Appendix 1.

² After the commencement of the Review, DLA Phillips Fox changed its structure and became DLA Piper Australia. During the course of the Review both Dr Rumble and Professor Pearce gave notice to DLA Piper that they wished to cease employment with DLA Piper and take up positions with HWL Ebsworth, and Ms McKean resigned from DLA Piper and became a partner of HWL Ebsworth. The two firms set up arrangements to work together to support completion of Phase 1 of the Review.

³ The establishment, scope and management of the Review is set out in greater detail in Appendix 2.

⁴ See media release dated 11 April 2011 at Appendix 3.

⁵ A copy of the transcript of the *Four Corners* program is at Appendix 4 and a copy of Defence's response to questions asked by ABC is at Appendix 5.

⁶ See status update at Appendix 6.

Terms of Reference for the Review were not finalised by the Minister until 21 June 2011—which was well after the Review had commenced operation and was indeed after the 17 June 2011 close of the advertised period for people to bring allegations of abuse to the Review.⁷

Prior to the Minister's 21 June 2011 sign-off, the Review and the Department of Defence worked from draft Terms of Reference, from DEFGRAM NO 284/2011⁸ issued 10 May 2011 and from the advertisements which were published in the print media from 21 May 2011 to 17 June 2011 inviting allegations of abuse to be brought to the Review.⁹

1.3 The core tasks of the Review were settled early

Although some aspects of the statement of the scope of the Review were varied during the life of the Review,¹⁰ the core tasks of the Review were settled early and never varied:

- The subject matter for the Review's consideration was at all times 'sexual and other abuse—such as bullying, harassment or intimidation—(and related matters) in Defence'.
- The 'related matters' was always intended to bring within the scope of the Review allegations of mismanagement of abuse. However, this broad term left open the possibility of other 'related matters' being dealt with by the Review.
- In relation to each specific allegation within scope, the Review was to carry out an 'initial assessment'—and report to the Minister and to Defence:
 - whether the alleged incident appears to have received proper consideration and appropriate action has been taken or is being taken by Defence;
 - recommend what action (or further action) if any should be taken.

The Review provides its report on its initial assessments and recommendations for specific allegations in Volume 2.

As well as carrying out that initial assessment role in relation to each specific allegation, it was also settled from the outset and never varied that the Minister also wanted the Review to identify and report on the full range of options for dealing with such allegations, including not only consideration of the wide range of existing mechanisms but also commentary on the possibility of setting up a Royal Commission or a Judicial Inquiry through to setting up some kind of reconciliation process.¹¹

This was reflected in the Terms of Reference in paragraph 7:

Where the Review considers that further investigation is necessary, the team will make recommendations as to the appropriate mechanisms for such further investigation.

It was also established early that the Review could and should report on any systemic issues with Defence's management of allegations of abuse which the Review identified for possible further consideration in Phase 2.¹² That intent was confirmed in the Terms of Reference:

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

The Terms of Reference also clarified that the scope of the Review was limited to allegations of abuse by Defence personnel on other Defence personnel. The Terms of Reference made clear that the Review was

⁷ A copy of the Terms of Reference is at Appendix 7.

⁸ A copy of DEFGRAM NO 284/2011 is at Appendix 8.

⁹ A copy of the advertisement is at Appendix 9.

¹⁰ See DEFGRAM NO 385/2011 at Appendix 30.

¹¹ Options are discussed in Chapter 8.

¹² Systemic issues are discussed in Chapter 7.

only concerned with alleged abuse perpetrated by Defence personnel in connection with their workplace or in the conduct of their duties (with an explanatory note that the abuse had to be perpetrated by Defence personnel who were Defence personnel at the time).¹³

Paragraph 14 states:

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 by the end of July 2011.

The Minister later made two extensions of time for the completion of the Report—first until the end of August and then until the end of September.

1.4 Phase 1 processes were designed to support Phase 2

The Terms of Reference contain references to ‘Phase 2’. Those references have been taken into account by the Review in carrying out ‘Phase 1’.

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.

The Review has designed its Phase 1 Report to support and facilitate Phase 2.

1.5 Meaning of ‘abuse’ in the Terms of Reference

The meaning of ‘abuse’ for the purposes of the Review was central to the Review’s task and is also central to understanding what matters are covered by this Report.

The Review gave consideration to this important issue very early in the life of the Review.¹⁴

¹³ The reference to ‘Defence personnel’ was to be taken to mean persons who were part of the Australian Defence Organisation (ADO). The ADO comprises the component organisations that together are responsible for supporting the defence of Australia and its national interests. The three most significant bodies of the Organisation are the Department of Defence, the Australian Defence Force and the Defence Materiel Organisation: *Department of Defence Annual Report 2009–2010* at http://www.defence.gov.au/Budget/09-10/dar/dar_0910_v1_s1.pdf#nameddest=c3

¹⁴ The Review tested and confirmed and/or modified its understanding of the term for the purposes of the Review in status reports, in discussion with Defence and through the feedback which Defence Legal gave when the Review reported that we had ruled a particular allegation to be out of scope. On some occasions, Defence Legal sent matters back into the Review which the Review had regarded as out of scope. Where that occurred the Review modified its approach to what was in/out of scope accordingly.

1.5.1 What definition of ‘abuse’ has the Review used?

The original DEFGRAM NO 284/2011 and the Terms of Reference were developed in a practical setting and against a background of public statements by the Minister about his intent in establishing the Review.

The Review has taken a practical rather than a legalistic approach to developing a working definition. The Oxford and Macquarie dictionary definitions include the following definitions of ‘abuse’ which convey the general sense which the Review considered relevant to this Review—‘*wrongly take advantage of*’, ‘*maltreat esp assault a woman or child*’, ‘*to use wrongly or improperly*’ and ‘*to do wrong to; to act injuriously towards*’.

To guide team members involved in the daily reviews of incoming allegations and for later stages in organising materials for information gathering and initial assessment, the Review developed guidelines on what constitutes ‘abuse’ (or a related matter) within scope—and what should be streamed for consideration as being possibly out of scope.¹⁵ In developing these guidelines, the Review used the Terms of Reference and Defence’s current definitions and categories of ‘unacceptable behaviour’ within DI(G) PERS 35-3.¹⁶

The Review has heard some commentary to the effect that notions of what constitutes ‘abuse’ have changed over time. That may be so. But as it has turned out, most of the allegations of abuse from the distant, and even from the middle distant past, which have come to us have involved allegations of extreme ‘abuse’ which would have been criminal assault - sexual or non-sexual - by the law of the times. Accordingly, the Review has not had to spend much time dealing with the complexities of shifting societal values.

1.5.2 Not all ‘unacceptable behaviour’ is ‘abuse’

Not all of Defence’s current definitions of ‘unacceptable behaviour’ constitute ‘abuse’ in any of the senses indicated above.

- For example, a sexual relationship initiated by a member of the ADF with a superior could—depending on the circumstances—be ‘unacceptable behaviour’ in the category of ‘inappropriate workplace relationships’. But such a relationship would not *necessarily* involve any ‘sexual or other abuse’ within the meaning of the Review’s Terms of Reference. (Of course, even if the younger person appears to be attempting to initiate a sexual relationship with the superior, the superior would need to be very sensitive to the power imbalance. Furthermore, both parties need to be aware of the specific criminal law provisions in some States and Territories which deal with sexual relations where one person is in a position of authority.)¹⁷
- Similarly ‘discrimination’ is currently a category of Defence’s definition of ‘unacceptable behaviour’ which the Review does not regard as being *by itself* ‘abuse’ within the meaning of the Terms of

¹⁵ A copy of the Review’s working categories of abuse is at Appendix 10.

¹⁶ A copy of DI(G) PERS 35-3 is at Appendix 11.

¹⁷ Most jurisdictions have recognised that a person in a position of authority has special duties in relation to young persons under their supervision or care and make it an offence for the person in authority to have sexual relations with the young person until the person has attained the age of 18. *Crimes Act 1900* (NSW) s 73; *Criminal Code Act* (NT) s 128; *Criminal Law Consolidation Act 1935* (SA), 49 (5); *Crimes Act 1958* (Vic) s 48; *Criminal Code 1913* (WA), Appendix B, s 322. Victoria has also put an absolute prohibition on a step-parent having sexual relations with a step-child *Crimes Act 1958* (Vic) s 48. The recently published Annual Report of the ACT DPP (at page 22) includes: - ‘Likewise, more generally in the area of sexual offence prosecutions the Office continues to reflect on best practice, and consider developments in other jurisdictions, providing comments to JACS and the Attorney-General which may assist in future policy development. An example is the suggestion that the age of consent for sexual activity be increased to 18 years of age in cases involving school teachers, step-parents and other authority figures. The ACT is one of the only Australian jurisdictions where it is legal for such authority figures to have sexual relations with children once they turn 16 years of age. In other jurisdictions it is either 18 years of age or in the case of step-parents in Victoria, there is a prohibition on any sexual relation’.

¹⁸ http://www.dpp.act.gov.au/files/annual_reports/AR2010-2011.pdf

Reference. If someone had declared—I will not promote women—that would be discrimination, but it would not by itself come within the Terms of Reference for this Review.¹⁸ However, if there was a course of conduct which included discrimination against a woman because she was a woman, the discriminatory element could be relevant to characterising the conduct as ‘abuse’.

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. Some of the issues raised in these allegations for very recent events are relatively minor. Although they have been left in the processes for initial assessment and recommendation, if the issues raised are relatively minor, that fact has been taken into account by the Review in making its assessment and recommendation.

1.6 Assessing whether Defence's management has been 'proper and appropriate'

This aspect of the Review's assessment has involved a broad assessment taking into account consistency with Defence policies and procedures applicable at the time (where Defence has been able to identify the relevant historical versions), Defence structures, advice from Counsel, the Review members' own understanding of good process and administration and risk management.

1.7 Communications to the Review

1.7.1 Communications referred to the Review

Prior to, and immediately following, the announcement of the Review by the Minister on 11 April 2011, the Minister's office received a large number of communications in relation to the Skype incident at ADFA, as well as communications commenting on the Minister's announcement, and/or raising other allegations of abuse within Defence.

By the end of the first week in May 2011 almost 300 communications received by the Minister's office and other bodies had been referred to the Review. The final number of communications referred to the Review by the Minister's Office was 361.

In addition, 79 matters were referred to the Review by the Defence Media Operations area.

A small number of matters were referred by Inspector-General ADF (IGADF) and the Australian Human Rights Commission.

1.7.2 Communications made directly to the Review up to 17 June 2011

After the details of the Review were announced by issue of a DEFGRAM within Defence on 10 May 2011, the rate at which communications were made directly to the Review was initially slow.

After the Cultural Reviews Secretariat 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.

¹⁸ If there had been any such an allegation the Review would—with the consent of the source—have referred it to Defence Legal for appropriate response.

However, immediately after an ABC *Four Corners* story on abuse in Defence named ‘*Culture of Silence*’ aired on 13 June 2011 there was a surge in the number of communications to the Review.¹⁹ The number of people who had communicated directly to the Review increased from around 200 at the beginning of June to almost 700 by 17 June 2011. (The Review received around 550 calls in those four days. Some of these were follow up calls from people who had already made contact with the Review.)

Some people contacted the Review in more ways than one. After reconciling the communications, the total number of people who raised matters with the Review up to 17 June 2011 was 983.

The following table and graph summarise the manner in which we received communications prior to the formal close of the submission period on 17 June 2011.

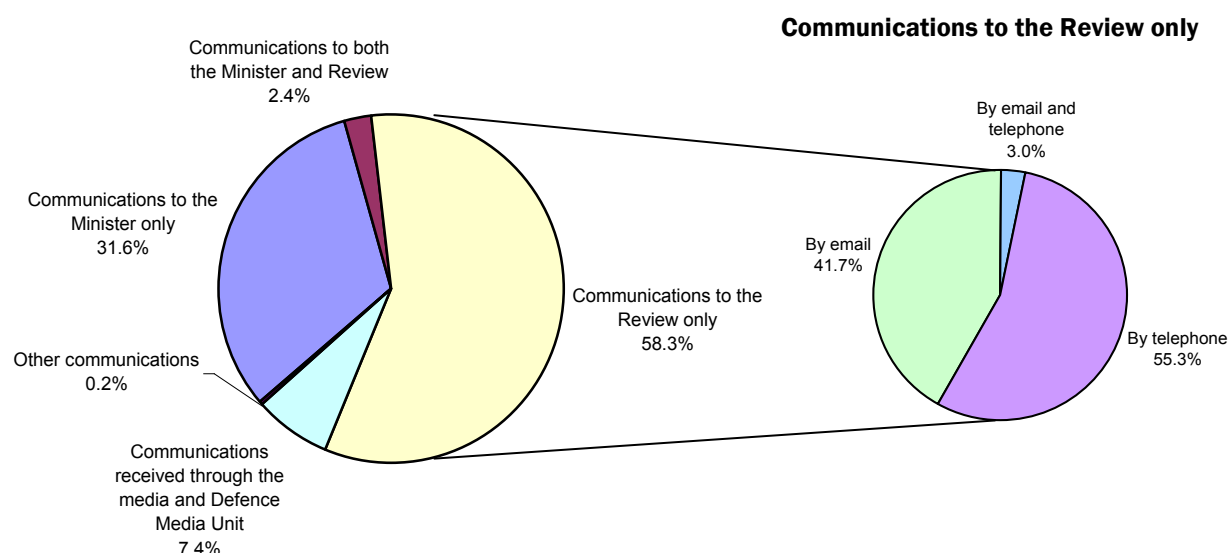
We provide a status report on the Review's initial assessment of the allegations raised by each of the five former Defence members featured on the program.²⁰

How the Review received pre 18 June 2011 communications

Category of communications			Number	Percentage	
Communications to the Minister only			311	31.6%	
Communications made to both the Minister and the Review			24	2.4%	
Communications to the Review only	By email	239	573	24.3%	58.3%
	By email and telephone	17		1.7%	
	By telephone	317		32.2%	
Communications received through the Media and the Defence Media Unit			73	7.4%	
Other communications			2	0.2%	
Total			983	100.0%	

Tallies as at 30 September 2011.

How the Review received pre 18 June 2011 communications



Tallies as at 30 September 2011.

¹⁹ A copy of the transcript of the Four Corners program is at Appendix 4. A copy of Defence's response to questions asked by ABC is at Appendix 5.

²⁰ See status update at Appendix 6.

1.7.3 Communications made directly to the Review after 17 June 2011

Although the formal period for raising matters with the Review closed on 17 June 2011, in an interview on 14 June 2011 the Minister stated:

We've set in a sense a cut off of the 17 June later this week, but of course if further allegations come in then they'll be dealt with in a sensible way as well.

A further 131 matters were raised with the Review by the end of September 2011. However, the later the material was received, the less consideration and/or assessment the information has been able to receive in the Report.

Since 30 September 2011, new matters raised with the Review have been collected but have not been processed.

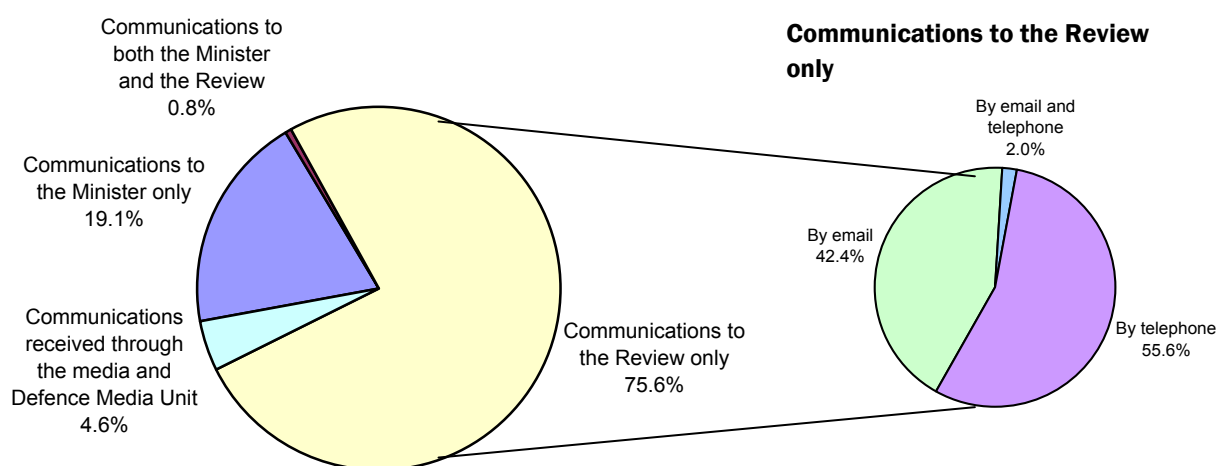
The following table and graph summarise the manner in which we received communications after the formal close of the submission period on 17 June 2011.

How the Review received post 17 June 2011 communications

Category of communications			Number	Percentage	
Communications to the Minister only			25	19.1%	
Communications made to both the Minister and the Review			1	0.8%	
Communications to the Review only	By email	42	99	32.1%	75.6%
	By email and telephone	2		1.5%	
	By telephone	55		42.0%	
Communications received through the Media and the Defence Media area			6	4.6%	
Total			131	100.0%	

Tallies as at 30 September 2011.

How the Review received post 17 June 2011 communications



Tallies as at 30 September 2011.

1.8 Total number of communications with the Review

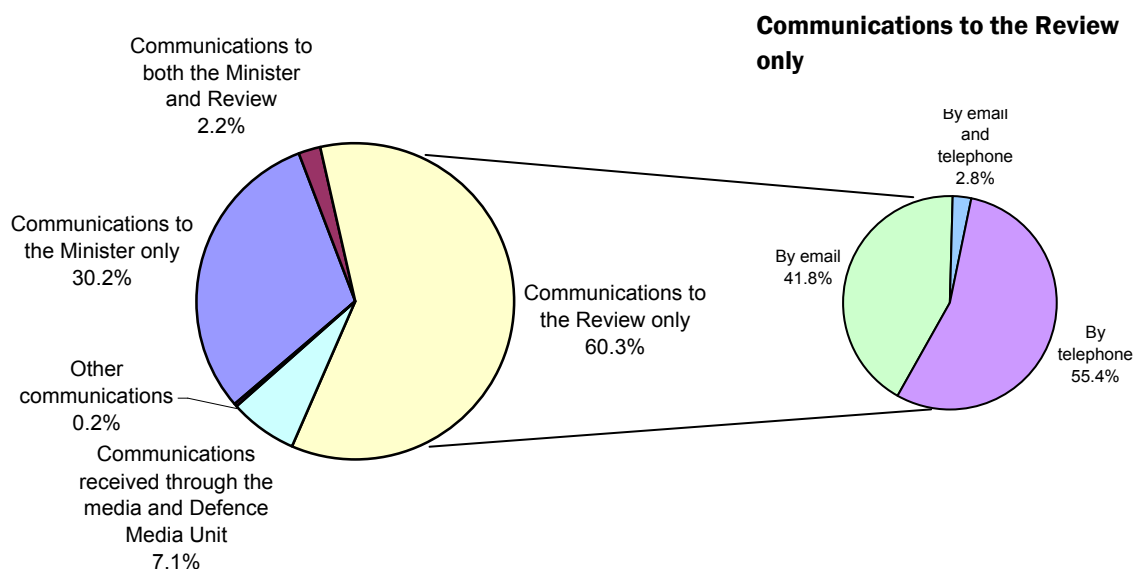
As at 30 September 2011, the total number of people who raised matters with the Review was 1,114. The following table and graph summarise the manner in which we received all of these communications.

How the Review received all communications

Category of communications	Number	Percentage
Communications to the Minister only	336	30.2%
Communications made to both the Minister and the Review	25	2.2%
Communications to the Review only	672	60.3%
By email	281	
By email and telephone	19	
By telephone	372	
Communications received through the Media and the Defence Media area	79	7.1%
Other communications	2	0.2%
Total	1114	100.0%

Tallies as at 30 September 2011. Each person who contacted the Review is counted as one 'communication'.

How the Review received all communications



Tallies as at 30 September 2011.

1.9 How the Review dealt with all communications

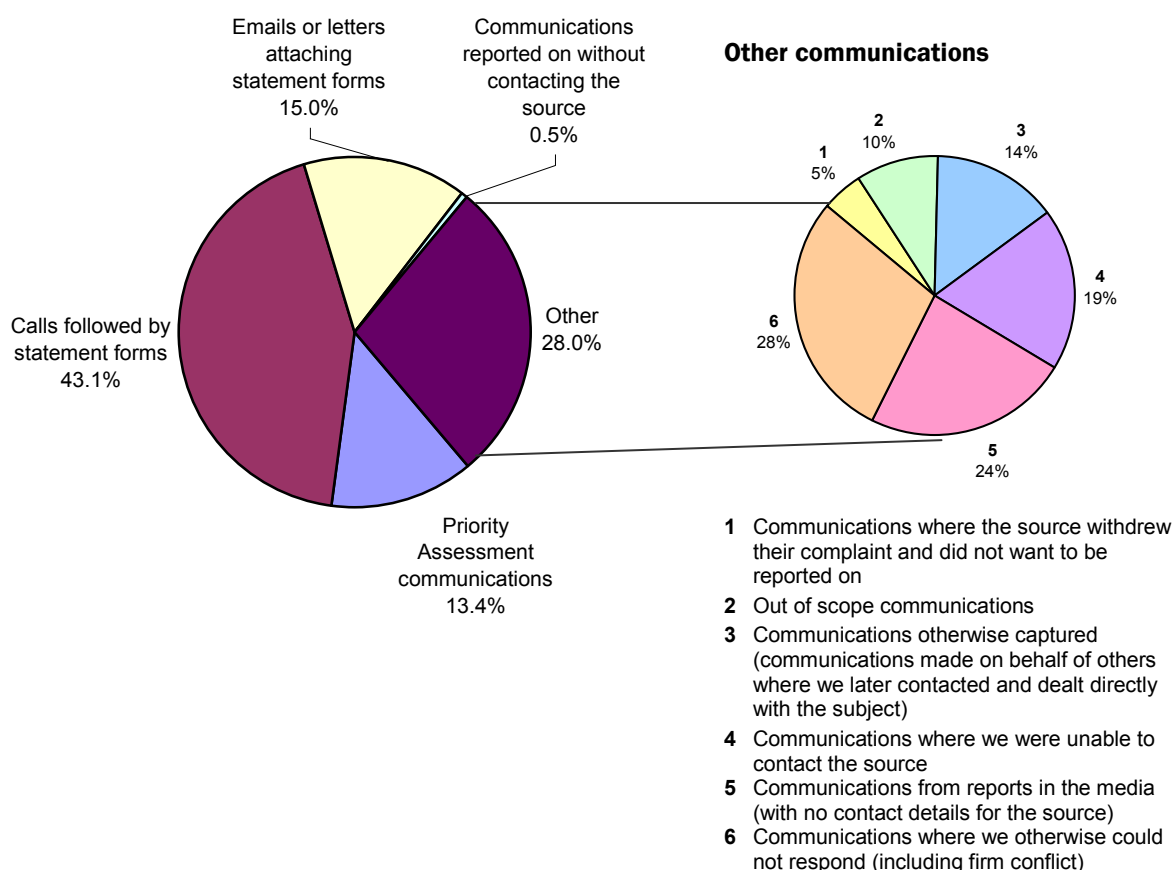
The following table and graph summarise the way in which the Review dealt with all of the communications received by the Review.

How the Review dealt with all communications

Category	Number	Percentage
Priority Assessment communications ²¹	149	13.4%
Calls followed by statement forms	480	43.1%
Emails or letters attaching statement forms	167	15%
Communications reported on without contacting the source	6	0.5%
Communications where the source withdrew their complaint and did not want to be reported on ²²	38	3.4%
Out of scope communications	147	13.2%
Communications otherwise captured (communications made on behalf of others where we later contacted and dealt directly with the subject)	25	2.2%
Communications where we were unable to contact the source	31	2.8%
Communications from reports in the media (with no contact details for the source)	45	4.0%
Communications where we otherwise could not respond (including firm conflict)	26	2.3%
Total	1114	100%

The shaded categories in the table above are matters included in Volume 2 (except conflict matters are not in Volume 2). Tallies at 30 September 2011.

How the Review dealt with communications



Tallies as at 30 September 2011.

²¹ Some priority assessment communications were also later changed to out of scope communications and these were removed. Others which were originally put in priority assessment stream were transferred back to the regular stream. Hence there is some lack of match in the figures.

²² Some of these people were called or emailed then decided to withdraw their complaint.

1.10 Failure by some people to return forms requesting further information

An issue of concern to the Review, was that some people who had made contact with the Review, and who had been sent information and consent forms, failed to return those forms.

The action taken to follow up these people is set out in greater detail in Appendix 2. However, it is significant to note the reasons given by people for failing to return the forms included the following.

- some people had a concern about confidentiality and repercussions from both Defence and/or the alleged perpetrator(s) of the abuse;
- some people told the Review that the process of being asked to request further information was too emotionally confronting;
- some people found difficulty gathering the detail which the form invited them to provide.

Direct contact with people often provided them with some reassurance and there was a significant increase in return of forms after we followed people up. The forms are continuing to come back into the Review.

Recommendation 1

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.

1.11 Assessing and reporting on specific allegations and matters

The 847 people who raised matters within the scope of the Review have raised very many discrete allegations. One individual has 13 separate allegations. The total number of allegations to be considered once detailed responses to draft statements have been returned may be many multiples of the number of people involved.

We are making an initial assessment and giving recommendations in respect of each allegation.

In addition, the Review has before it 606 Fairness and Resolution Branch matters and 31 ADFIS matters to review.

A detailed description of how those complaints have been managed and assessed is in Appendix 2.

2 Abuse risk factors in ADF environments

2.1 Introduction

This Chapter identifies some of the factors in society, in the ADF generally, and some factors specific to particular ADF environments, which have contributed, which may have contributed, and which may still be contributing to the risk of abuse occurring.

This Review has surveyed these risk factors for three reasons:

- First—to get some understanding of the risk situation in the environment to which each of the specific allegations before the Review relates, so that we can make an initial assessment and make recommendations for further action.
- Second—to understand whether or not what appear to the Review to be systemic issues which we were considering flagging for Phase 2 consideration have an explanation and/or confirmation.¹
- Third—so that we can provide comments on options for responding to the broad issues identified in this Report.²

As this Chapter will show there have been a number of factors in ADF environments, at different times over the 60 years covered by the allegations raised with this Review, which have created or allowed risk of abuse.

Some of these factors have been identified in previous reports and inquiries as factors which contributed to the abuse which those reports found had occurred. (Further commentary on, and extracts from, those previous reports are set out Chapters 4, 5 and 6.)

It seems that some problems have recurred in the relevant unit/establishment/base/ship which has been the subject of an inquiry despite that scrutiny.

Where a risk factor has been identified in a previous report and some course of action has been recommended by the relevant Inquiry/Review body, it seems from the information which the Department of Defence has been able to locate for us, that Governments and the ADF have usually endorsed those recommendations. And, from the information which the Department of Defence has been able to provide to us, it seems that to the extent that the recommended actions have been limited to procedural changes, the procedural changes have usually been implemented.

There has been some commentary in those previous reports on aspects of Defence culture and/or on the culture in some specific parts of Defence. However, until the recent suite of Culture Reviews was released, it was unusual for reports to go into issues of culture in any great depth.

¹ Systemic issues are discussed in Chapter 7.

² Options are discussed in Chapter 8.

The two notable exceptions were:

- the Grey Report in 1998 relating to ADFA;³
- the Learning Culture Report in 2006 relating to learning establishments across the ADF.⁴

We offer some comments below on possible explanations for why some problems recurred and why preventative steps were not taken to prevent problems identified in one unit/establishment/base/ship emerging in other parts of the ADF.

2.2 Preconditions for abuse to occur

Abuse is misuse of power. Abuse can only occur where one or more people hold power over another person or persons. A relative power imbalance can come from:

- age (adult over child)
- social status
- legal or institutional authority
- incarceration or any other form of confinement—warder/prisoner
- possession of, or access to, a weapon
- physical superiority
- control over allocation of work tasks including control over allocation of tasks involving exposure to risk
- control over/influence on career advancement and remuneration
- control of access to friends, family, food, water, warmth, rest, sleep, medical treatment
- control over whether a person is accepted by a group and is allowed to continue to be accepted as part of a group.

The power imbalance can be intermittent and can vary from time to time and from situation to situation. For example whether or not there is a power imbalance may be affected by:

- whether the situation is confinement on a ship at sea 24 hours a day—as compared with being on land with the possibility of leaving the situation from time to time.
- whether one person's physical ability to resist abuse is reduced—for example—by injury, drugs, anaesthetic or alcohol.
- whether supervision is in place or absent.

Having power over another person or persons is a *precondition* for abuse to occur. But holding power over another person or persons is not *sufficient* for abuse to occur.

³ The Grey Report - *Report of the Review into Policies and Practices to Deal with Sexual Harassment and Sexual Offences at the Australian Defence Force Academy* (Ms BD Grey, chair) is discussed in more detail in Chapter 6. A copy of the report is at Appendix 73.

⁴ The Learning Culture Report is discussed further in Chapter 5. The full title is Podger, A, Harris, C & Powell, R, *Final report of the Learning Culture Inquiry: inquiry into the learning culture in ADF schools and training establishments*, Department of Defence, Canberra, 2006. A copy of the report is available at <http://www.defence.gov.au/publications/LCReport.pdf>.

2.3 Our approach as lawyers to the question of what factors might have ‘caused’ people in the ADF to abuse other people in the ADF

To this point, the elements required for an abuse event to occur are relatively straightforward. However, abuse only occurs if the person holding power actually exercises that power in an abusive way against the other person or persons.

From here on we enter a set of issues for which current and former members of the ADF at all levels, each of the Culture Reviews, media commentators, politicians, police, victims’ support groups, criminologists, sociologists, psychologists, psychiatrists, organisational theorists, biologists and anthropologists will bring different perspectives—some informed, some not.

We bring the perspective of the Review members’, and other Review team members’ backgrounds of practical working experience as lawyers who have advised and litigated across issues of public sector and other large organisation governance, workers’ compensation, transport safety and public health regulation, due diligence, occupational health and safety, employment and other issues.

We have also had the benefit of advice from our two Counsel - both of whom are reservists - and input from two external consultants—Dr Susan Harris-Rimmer (who has expertise as a lawyer and policy analyst in gender issues, human rights and social policy and practical experience working with rape victims in Bosnia to gather War Crimes evidence) and Dr Katie Seidler (who has expertise in clinical and forensic psychology particularly in respect of sexual and violent offenders).

We have also had significant input from Angela Ballard who is now a reserve Chief Petty Officer. She had been Navy’s most experienced Sexual Offence Support Person prior to taking a 2009 Churchill Fellowship in 2009 to spend time with International Military Organisations and US Subject Matter Advisers to prepare a paper identifying *Best and Promising Practices in Sexual Assault Prevention and Intervention in a Military Environment*.⁵

The views which are set out in this Report take into account the input of those three respected experts but are the views of the Review and do not purport to represent their views.

Like most lawyers who arrive after something has gone wrong, we can find fault with the benefit of hindsight. However, lawyers also spend a lot of time advising on how to avoid things going wrong.

When carrying out due diligence/risk management advising we spend a lot of time testing assumptions and asking ‘what if’. And in *that* risk avoidance advisory role we routinely put ourselves in the position of the plaintiff’s lawyer and ask—if something does go wrong, what will hindsight seize on.

To carry out this kind of risk management/advisory role we have to be negative/pessimistic by focusing on what could go wrong and what will the consequences be if something does go wrong.

As lawyers, we are sensitive to the importance of not making any adverse findings against anyone without due process. Due process is important not only so that the person who stands accused has an opportunity to respond and to put their side, but also so that the decision-maker can make an informed decision. Apparently open and shut cases often turn out not to be so when new information is uncovered during a hearing.

However, as lawyers who advise on risk management, we are well aware that the fact that it is not possible to prove a person guilty beyond reasonable doubt in a criminal trial does not mean the person did not commit the crime of which they are suspected. For example:

⁵ We discuss Ms Ballard’s paper further in Chapter 7 in relation to her proposal for consideration of a restricted reporting system for sexual assault.

- If a person is suspected of being a pyromaniac, they should not be put in charge of a fuel depot—even if they cannot be proven guilty beyond reasonable doubt of having committed arson.
- And putting ourselves in the shoes of a plaintiff lawyer, if an employer has been on notice that issues have been raised about whether an employee has been harassing other staff and the employer has not taken steps to reduce the risk of adverse impacts on other staff from that employee, those circumstances tend to indicate that the employer has breached a duty to take reasonable care if that employee later does assault other staff.

Furthermore, as lawyers we have seen just how brutishly, viciously and cunningly some people can and do act. We also know that some otherwise well-behaved people can lapse when under strain, when affected by alcohol or otherwise ‘not themselves’.

Of course, many ADF members have through their experience in operations also seen how brutish, vicious and cunning some people can be.

Risk management systems should include safeguards against bad people behaving badly and against the possibility of good people lapsing.

2.4 What can the Review’s perspective add to the ADF’s own consideration of what might have ‘caused’ people in the ADF to abuse other people in the ADF?

The ADF knows a lot about risk management, assessing situations and making decisions. The success in reducing the number of aircraft related fatalities and injuries is a shining example of how the ADF has applied itself to reducing those risks and has significantly enhanced the safety of its personnel (and equipment).⁶

The very important paradox which presents itself then is:

- if the ADF cares about its people—and there is no doubt that it does; and
- if the ADF is good at identifying the factors that contribute to failures/accidents causing physical injury and/or death and/or damage to equipment and then adapting systems to remove or reduce the risk of those failures; and
- if the ADF can deliver operational excellence - and there is no doubt that it does;

then

- why have incidents of very serious abuse committed against ADF people reappeared from time to time with lessons not learnt from previous incidents?; and
- why is it that when an Inquiry/Review identified the factors which contributed to failure in one part of the ADF to prevent abuse, that did not seem to trigger a pro-active risk management response across the ADF to see whether those risk factors needed to be addressed in other environments?⁷

For example, the Fox Report on RMC in 1970 identified that a contributor to bastardisation at RMC was that senior cadets had authority over more junior cadets.⁸

⁶ Former CDF Air Marshal (retd) Angus Houston explained to the Review that before 1990, the Air Force had a number of incidents each year with loss of high performance jets and their crews. Through systematic risk management and development and application of the Airworthiness Management System they have not lost any aircrew since April 1999. A ‘zero-tolerance’ approach to loss of life and injury and to loss of high performance aircraft was not only stated as an aspiration but was achieved with much improved airworthiness management including very rigorous flying safety procedures.

⁷ The Learning Culture report in 2006 was an outstanding exception to this general proposition.

⁸ *Report of the Committee of Enquiry into the Royal Military College*, (Justice RW Fox, chairman) paras 1-2. See Chapter 5.

We recognize that there are certain matters which cadets entering the College should learn as soon as possible in order to facilitate their satisfactory transition into what is a new and usually very different environment. These range from the history and traditions of the Australian Army, and particularly those of the Royal Military College, to matters of day-to-day routine, such as the correct wearing of uniforms and the condition in which rooms and equipment are maintained. We feel that the initial instruction in these matters should be completed as soon as possible; this instruction should at all times be productive and never humiliating or harmful.

Over many years the practice has been for the new cadets to be taught most of these things in an informal way by cadets of the senior classes. We believe that this practice has, to some extent, contributed to the excesses that have occurred in the behaviour of cadets of the senior classes towards those of the Fourth Class. We are of the view that this instruction should be given to the new entry in a formal way under arrangements made and supervised by the Commanding Officer of the Corps of Staff Cadets. The only cadets who should be allowed to assist in this formal instruction are the under officers and non-commissioned officers of the First Class.

A year later in 1971 Judge Rapke's Report identified the power of very young but senior cadets over slightly more junior cadets was the cause of the violence and humiliations inflicted on the younger junior recruits.⁹

It seemed that despite both the Fox and Rapke reports, bastardisation survived at RMC through the 1970s and 1980s and was transferred to ADFA in the 1980s¹⁰. It was not until 1998 when the Grey Report was delivered that there was finally a move to remove the authority of more senior cadets over more junior cadets.¹¹

And even then it required very committed efforts by the Commandant and others to push through the reforms which the Grey Report identified—thirty years after the Fox Report first identified the essential factor contributing to the occurrence of abuse.¹²

Another fundamental problem which has been identified in report after report is the under-reporting of abuse.¹³ The nation and ADF cannot wait for thirty years—or even three years—for that problem to be addressed.

It seems to the Review that a significant contributing factor to the failure of the ADF to carry standard risk management techniques into abuse issues has been the fact that leaders of the ADF identify very closely with the ADF, have deep pride in being part of the ADF and have trust in their colleagues. That pride and trust is of course essential to the operational capability and institutional strength of the ADF. It would be deeply concerning if leaders within the ADF did not have that pride and trust.

But for members of the ADF who have that pride and trust—even the individual ADF members who have been closely involved in conducting Inquiries/Reviews and who have seen and been persuaded by the direct evidence of particular incidents of serious abuse—it is extremely difficult to accept that members of *other* parts of the ADF would be capable of committing similar reprehensible abuse against fellow members of the ADF.

Given the focus of the ADF on operational *capability* and given that the ADF's record of operational *performance* is widely held in high regard, it is not surprising that the leaders of the ADF have difficulty in contemplating that there have been any systemic issues within the ADF which give rise to a risk of abuse by ADF members on other ADF members.

Some members of the ADF—including some that we have spoken to in the course of this Review—go beyond a presumption of innocence for the ADF to a presumption of excellence.

⁹ Rapke, T, *Report of an investigation into allegations of initiation practices, physical violence and bullying at HMAS LEEUWIN and onboard HMAS SYDNEY*, 2 vols., Dept. of the Navy, n.p., 1971.

¹⁰ See Chapter 6.

¹¹ See Chapter 6.

¹² See Chapter 6

¹³ See Chapter 6.

For example, although this Review stands outside the suite of Cultural Reviews, Dr Rumble was invited to attend the launch of the steering Committee meeting chaired by then VCDF Lieutenant General Hurley.

The attendees were invited to suggest whether they had any requests for information which might be of general interest across the Reviews. Dr Rumble proposed that it would be of use to gather information from other countries to see what might be regarded as world's best practice in relation to management of sexual abuse issues.

The IGADF, Mr Earley, a retired senior Naval Officer immediately responded 'We are world's best practice'. That is a bold proposition. It may be correct but as a starting position, that does not seem to provide a basis for rigorous and critical examination on topics as sensitive and as challenging as the ADF's image of itself and as sensitive as issues of there being a risk or actuality of abuse committed by trusted ADF personnel against vulnerable ADF personnel.

Another example is provided by the Personal Conduct Review conducted by Major General Orme, Head People Capability for the ADF.

2.5 The Personal Conduct Review

The Terms of Reference for the Review included:

Defence will undertake a Review of the policies and instruments governing ADF personal conduct with the following objectives:

1. Identify whether a robust and fair framework exists to ensure appropriate avenues for redress, fairness, review that can be accessed by members without fear of recrimination.
2. Determine whether the ADF has an effective discipline system that produces an appropriate culture that balances the requirements of military capability while producing the climate and environment which respects its members and promotes the rights and responsibilities of each individual.
3. Determine whether the current Defence Force Discipline Act and supporting policy framework produces the necessary balance of obligations and protections to ensure effective military culture ...

This Review was particularly interested in the Report of the Personal Conduct Review at two levels:

- This Review was looking for information about which Defence processes could be relied on to work well when this Review was considering what further actions to recommend in relation to specific abuse issues;
- This Review was also looking to the Report of the Personal Conduct Review to see whether systemic issues identified in previous Reports and/or identified by this Review had been addressed.

In July Major General Orme circulated to other Reviews including this Review a draft report. It is our understanding that the final of the report delivered in early August did not vary significantly from the Draft. The Draft was entitled: 'Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms'.

It is significant that even though the Terms of Reference for that Review directed Major-General Orme to answer some very specific questions about the working of the internal fairness, redress of grievance and military discipline processes to which the Head People Capability for the ADF should have answers, Major General Orme chose to focus on Professionalism, Trust and Capability.

Major General Orme's 74 page report spent most of its pages addressing Professionalism and Capability. The impression conveyed is that Major General Orme's pride in, and loyalty to, the ADF as an institution

and concern about its operational capability has blunted his ability to analyse the ADF critically and rigorously and to directly address the questions posed.

We found some assertions but no evidence in the report of the Personal Conduct Review on either of the two matters which we expected to find in a Report responding to the Terms of Reference.

In fact, our consideration of the Personal Conduct Review has brought into focus what we see is at the heart of the problem as outlined in the previous section with getting ADF leaders to consider abuse risk issues. There is a lot of talk in the Report of the Personal Conduct Review about the excellent performance of the ADF in operational settings—with no apparent relevance to the Terms of Reference.

Fairly early in the Report (page 5 of a 73-page report) the following statement signals Major General Orme's concern that answering the questions posed by the Terms of Reference might be reported in such a way as to damage the reputation of the ADF and its operational capability.

Risks

12. The risk in this Review is that its focus on instances of inappropriate conduct might provide an unbalanced view of the ADF. In line with its Terms of Reference, the Review has focused on instances of failure. However, these negative aspects must be considered in the context of an extremely high performing organisation that is achieving remarkable results in operations around the globe and in support to domestic crises and natural disasters such as floods and fires. Balance is critical to ensure the Review is not misinterpreted, and that the outcomes and recommendations are not taken out of context. There is a high risk that media reporting of this review will use quotes out of context and sensationalise the analysis.

This indicates a high degree of concern about ADF as an institution and concern about its operational capability. This seems to be excessively cautious given the resoundingly positive findings that the Report reaches.

Early in the draft Report (at page 11—the first page of the body of the Report) under the heading—'Regulating failures of personal conduct—cultural or isolated?' and after setting out some examples of problems with conduct of members of the ADF, this statement appears:

2. While these incidents are clearly unacceptable, the challenge for the ADF is to balance such instances of unacceptable behaviour with the significant evidence of excellence in operations, commitment to service, and the exemplary performance of tens of thousands of ADF members in a wide variety of environments. Over the last decade, over 69,000 ADF members have been deployed on 58 operations around the globe; ranging from domestic support, humanitarian assistance, peacekeeping, peace-making, border protection, and war-fighting. Also, very few incidents of misconduct have occurred in operational areas. The ADF has an international reputation for professional and ethical behaviour on operations. Moreover, scholarly studies of Australian military professionalism indicate not only that members at all levels and of all categories have a strong service ethic, but also that this ethic and its associated sense of professionalism has strengthened appreciably in the last decade.

This seems to imply that *because* (those parts of) the ADF which have been involved in 'domestic support, humanitarian assistance, peacekeeping, peace-making, border protection, and war-fighting' have achieved excellent performance, *it follows* that there are no fundamental problems with Defence culture in relation to internal fairness, redress of grievance and military discipline processes.

After many pages of discussion, commenting on the excellence of the ADF and setting out some broad principles for the future, at page 44 under the heading 'Conclusions and recommendations' it is stated:

The way ahead

125. The Review found that there is an abundance of fundamentally sound guidance, direction and policy that proscribes and regulates the personal and professional conduct of ADF members. ADF members are clearly aware of their obligations and the expectations placed on them. While a

relatively small number of ADF members occasionally fail to live up to those standards, the implication that misconduct is deeply rooted in its culture is unfounded.

It is possible that there was evidence not referred to in the Report which supports this conclusion. However, it does not seem to be very persuasive to rely on the fact that the ADF achieves operational excellence as being an indicator of whether there are any culture/misbehaviour links when ADF members are not on operations.

This Review received a lot of allegations but very few allegations related to an operational context.¹⁴

Our discussion with experienced officers indicated the following reasons as to why ADF members are not likely to be involved in misbehaviour while in operational contexts:

- They are too busy carrying out the operation to get involved in misbehaviour.
- They would not want to prejudice the performance of the operation by imposing abusive behaviour on another ADF member involved in the operation.
- In operational and similar settings there is less opportunity for excessive alcohol intake.
- Operational postings are much sought after and a formal or informal selection process is likely to exclude any individuals who are known to be a risk to other ADF personnel.

The Report does not answer the questions posed by the Terms of Reference until Annex C well to the back of the document. The purported answer to the first paragraph of the Terms of Reference contains the statement:

"Identify whether a robust and fair framework exists to ensure appropriate avenues for redress, fairness and review that can be accessed by ADF members without fear of recrimination."

The framework in question comprises the policies, instruments and practice, and the question against which that framework is being reviewed is (sic) one of the ability of a member of the ADF to have appropriate action taken, without fear of recrimination, if they are subject to or witness inappropriate conduct. In other words, there can be confidence that, if an ADF member recognises unacceptable personal conduct and wants to do something about it, they know that a framework for complaint about unacceptable behaviour exists and where to find it, and they are confident that it is robust and fair.

This important statement is made without any supporting evidence being referred to. It seems to be asserted that *because* there is a framework for making complaints, *it follows* that an individual can access the framework without fear of recrimination and with confidence that the framework is robust and fair.

This simply does not follow. It begs the question which the Terms of Reference poses about whether ADF members can access the framework without fear of recrimination. Moreover, this answer does not answer the mountain of evidence in previous reports—delivered by senior ADF officers—to the effect that there has been under-reporting of abuse in ADF *because* ADF members *do* fear retribution.¹⁵

Major General Orme generously informed this Review that he welcomed the fact that we would bring a different perspective on these issues of such fundamental importance to the ADF. Our point is that Major General Orme's pride in, and loyalty to, the ADF as an institution and concern about its operational capability seems to have blunted his ability to analyse the ADF critically and rigorously and to directly address the questions posed about how the reporting regime is actually working.

Indeed he has gone on to make broad conclusions to the effect that ADF members *are* confident about reporting and do not fear recrimination without referring to any supporting evidence and without any

¹⁴ An overview of allegations is given in Chapter 3.

¹⁵ See Chapter 6.

answer to a long history of report findings indicating that concern about retribution for those who do report has been an area of major concern.¹⁶

2.6 Abuse risk factors

After that excursion to comment on the difficulties with the ADF reviewing and reporting on itself, we now return to the overview of factors which contribute to the risk of individual members of the ADF abusing another member of the ADF. Most of these factors are well known and do not need extensive discussion.¹⁷

2.6.1 Minority groups

Some people may be inclined to abuse a power which they have because they dislike the other person and/or believe that the other person deserves to be punished.

It is well recognised that minority groups or individuals may be at risk of abuse simply because the dominant group does not accept them as being part of the group. When the dominant group consists of males there is a risk of abuse of the minority group or individuals who are female or homosexual or belong to a minority ethnic group or who are religious. There may be other minority indicators which provide a risk of abuse to be taken into account in managing situations.

2.6.2 Females as a large minority group in the ADF

Females are not the only minority group in the ADF but they are a particularly large minority group. It is the Review's understanding that females currently represent 14% of the ADF population. The fact that females are a minority is a risk factor.

And of course, being a female involves the risk of sexual assault by a male or males.¹⁸

Despite being currently only 14% of the ADF population, women have reported 34% of the allegations of abuse reflected within our initial tallies.¹⁹ And this is even though the allegations before the Review are spread over 60 years and include decades when the number of females in the ADF was probably an even lower percentage.

The ADFA experience up to the time of the Grey Report in 1998²⁰ shows how the minority group of females at ADFA were at risk. The Review spoke to a retired ADF officer who was in a supervisory position at ADFA in the early 1990s. He said that on his arrival he quickly understood that the females as a minority were a group at risk. In his view the females fell into three groups:

- Those who could match the males in all of the physical performance. ('Honorary males')
- Those who used their feminine wiles;
- The rest - who were traumatised.

The Grey Report regarding ADFA provides a grim description of a dominant male group treating 'females' as being 'other' and not only *not* entitled to the protection of the group, but a target for abuse by males.²¹

¹⁶ See Chapters 4, 5 and 6 and 2.10 below.

¹⁷ The Personal Conduct Review Report has a useful discussion of many of the factors which contribute to risk of abuse. See also the Learning Culture report.

¹⁸ For general background see the National Plan to Reduce Violence against Women and Children.
<http://www.fahcsia.gov.au/sa/women/progserv/violence/nationalplan/Pages/default.aspx>

¹⁹ See tallies in Chapter 3.

²⁰ See Chapter 6.

²¹ See Chapter 6.

During the preparation of this Report, the website of the ADFA Graduates Association (AGA)²² has included a copy of a 9 April 2011 article from the Canberra Times which gives the response of a Mr Rohan-Jones identified as AGA's Chairman to the Skype incident. The article reports Mr Rohan-Jones as having attended ADFA from 1987 to 1989. The article reports him as saying 'female cadets were treated with tremendous respect at the military institution' and 'I can tell you, that my class ... has had, and still has, tremendous respect for all the women that went through with us, both through ADFA and also through the [Royal Military College]'.

While this Report has been under preparation, LEGOLINGO (set out at Appendix 15) has been available on the website of AGA for any of the (approximately) 2,330 AGA members with a password to access the 'members only' part of the website. On the face of the LEGOLINGO document it seems that in the mid 1980s an ADFA Cadet gathered together a collection of 'The Cadets' Language'. This compilation has an introduction attributed to a member of the English Department at ADFA in November 1987.

LEGOLINGO contains racist and misogynist statements including the following:

SQUID: A term for female cadets. Called squids because they're flabby, they smell of fish, are easy to get into, enfold you with their tentacles and squeeze the moral life out of you. If a female cadet is called a squid in passing, she should not take offence; however, if she is referred to as a 'Dirty fucking squid' then she should get the hint that she is not liked.²³

It is very difficult to reconcile Mr Rohan-Jones' assessment that 'female cadets were treated with tremendous respect' at ADFA when he was there (1987-1989) with the fact that LEGOLINGO was compiled in 1987 and given that LEGOLINGO has been on the AGA website.

It may well be that ADFA is now an entirely healthy institution. However, given that ADFA has been the training institution for officers - whose leadership is fundamental to the culture and values of the ADF - the contemptuous hostility to women (and Asians and Aborigines) expressed in LEGOLINGO represents a significant indicator of abuse risk in the ADF.²⁴

2.7 No adverse consequences for abusive behaviour

People will be more likely to abuse a power which they have over another person, if they believe that there will not be any risk of adverse consequences for them on account of inflicting that abuse.

Professor Malcolm Potts of the University of California and Thomas Hayden journalist and lecturer at Stanford University published a book entitled Sex and War in 2008.²⁵ Professor Potts has extensive experience in war and immediate post war situations working with victims of abuse. The following statement is particularly relevant:

... when a sample of American men was asked what would they do if they found themselves in a situation where they could rape a woman and know they would never be caught, over one-third said they would rape--and it's hard to imagine that as many men or more weren't so honest as to admit that truth. It does seem that human males--and this must include the male authors of this book, had they been dropped into a different set of circumstances--have an intrinsically nasty side.²⁶

This statement from Potts and Hayden should be taken into account by risk managers dealing with situations where males have the opportunity to sexually assault females or other males.

²² www.adfagrad.org.

²³ There are other definitions referring to women in a derogatory fashion and derogatory definitions referring to 'Abos' and Asians ('Clack' and 'Geek').

²⁴ There have until recently been links to the AGA website from the Department's website and from the ADFA website. See Chapter 6 for further discussion of the ADFA legacy issues.

²⁵ BenBella Books Dallas Texas USA.

²⁶ Page 7. Potts and Hayden cite Thornhill R "An Evolutionary Analysis of Psychological Pain Following Rape", *Ethology and Sociobiology* 11: 155-76, 177-93. 1990.

The risk that some males will rape females and other males if they can do so without consequences is a risk factor that needs to be taken into account in risk management.

In ADF environments there seem to have been a number of factors which have increased the risk that an abuser will believe that they will not suffer any adverse consequences for abusive behaviour including sexual assault.

2.7.1 Factors discouraging reporting of abuse

It is well established that, in the general community there is a very low rate of reporting by females of sexual assaults committed against them. It is also established that males who are the victims of sexual assault are even less likely to report than are female victims of sexual assault.²⁷

Justice Marcia Neave of the Court of Appeal of the Supreme Court of Victoria was reported in *The Age* on 8 September 2011 as stating that 'Victoria's criminal justice system is not working for victims of sex offences ...' and providing the following statistics—'fewer than 20 per cent of sexual assault victims report the offences to the police' and that whereas 'from 2004-05 to 2008-09 a conviction was recorded in about 50 per cent of sex cases that went to trial in the County Court ... by 2009-10, the conviction rate had fallen to 38 per cent'.

Of course, not all assaults which are reported go to trial.²⁸ These statistics will provide even further discouragement to females who have been assaulted to report.

The recently released Australian Capital Territory Director of Public Prosecutions- *Annual Report 2010-2011* identified long court delays as having a major adverse impact on victims involved in sexual assault trials in the ACT.²⁹

The low prospect of conviction for a sexual offence is in itself a risk factor which may signal to potential offenders that the prospect of an adverse consequence is low.

Many previous reports³⁰ have found that the factors which discourage reporting of sexual assaults in the general community have been reinforced by other factors in ADF environments which discourage reporting of either sexual or physical assault.

Those other factors include a strong group loyalty of the other members of the ADF who are part of the ADF of which the perpetrator is part. It is recognised that strong group loyalty is important for effective performance in operations.

The paradox is why there is group hostility to a victim who reports—group loyalty should lead to support for the victim including support for the victim for reporting. The fact that there are accounts in previous reports³¹ and in the accounts which have come to this Review of victims being ostracised for reporting, seems to suggest that whatever factors marginalised the victim and made the victim a vulnerable person

²⁷ See generally information available through Australian Centre for the Study of Sexual Assault through the Australian Institute of Family Studies <http://www.aifs.gov.au/acssa/pubs>.

²⁸ *Study of Reported Rapes in Victoria 2000-2003* Summary Research Report of Statewide Steering Committee to Reduce Sexual Assault (Based on a study by Dr Melanie Heenan AIFS and Dr Suellen Murray RMIT); Key Findings (page 5) included: Offenders were charged in only 15 per cent of reported rapes examined: Police did not proceed with more than 60 per cent of investigations: Only 2.1 per cent of reports were designated by police as false: Characteristically rape victims who were most likely to see charges laid were: male; physically injured; medically examined; not influenced by alcohol or drugs at the time of the offence; subject to other offences alongside the rape; and, raped by offenders well known to police for previous sexual offending. This is despite the overwhelming majority of rape victims (92.5 per cent) being female: Cases that resulted in No Further Police Action were typically more likely to involve: younger victims; victims who were acquainted or who had a cursory relationship with the offender; and, victims who had consumed alcohol or other drugs around the time of the offence.

²⁹ Page 20.

³⁰ See Chapter 4 and Ballard, A, *Sexual assault prevention and intervention in a military environment*, Winston Churchill Memorial Trust of Australia, Canberra, 2009, at Appendix 72.

³¹ See Chapter 4 and Chapter 6.

and a target might also mean that when the person is a victim they are not regarded as being part of the group which includes the perpetrator.

Being a female—a minority group in most ADF environments—might be sufficient to put the female on the fringe of the group and thus prone to exclusion from the dominant group culture.

This low rate of reporting of sexual and physical assault is in itself a signal to a potential perpetrator of assault that he—and it is almost always he—is very likely not to suffer any adverse consequences for assaulting another ADF member.

Having a culture which discourages reporting of abuse is a strong indicator of risk.

As is clearly established by the findings of previous report and by a large number of accounts which have come to this Review, parts of Defence have had cultures which strongly discourage reporting.

It is interesting to note the comments of Major-General Michael Crane who coordinated the Culture Reviews Secretariat on some German Ministry of Defence material entitled 'Dealing with Sexuality' which he circulated amongst the Reviews. Major-General Crane's comments were informal and made in passing.³² Nevertheless they do have force:

In Germany reporting an abuse or issue isn't dobbing someone in. It's being a responsible citizen: and everyone has direct access to senior officials outside the chain of Command. (It's all part of the cultural backlash from Hitler where nobody spoke out against him and dissent was crushed. This change in culture is supposed to prevent other Hitlers happening again.)

2.7.2 Absence of positive support for people who report—either as witness or victim

Noting the reference in the preceding section to the factors which discourage reporting as including group loyalty, which is linked with operational effectiveness which must be maintained, there probably needs to be more than just exhortation to report. There probably needs to be some positive support for anyone who does report if they are going to be willing to take the risk.

As 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.

The absence of positive support for witnesses and victims is an indicator of risk of abuse.³³

2.7.3 Chain of command and power to abuse with impunity

This Review has received many plausible allegations of abuse including sexual and other assault committed by superiors in the chain of command against someone of inferior rank.³⁴

Many individuals who have brought to this Review plausible allegations of abuse by a person of higher rank than them say that they did not report the abuse at the time because they were concerned that that person would take retributive action against them.

³² Email 15 July 2011.

³³ See 2.10 below for what appears to be a recent example of Defence failure to give positive support to someone who has reported criminal behaviour by other ADF members.

³⁴ The Review has received one allegation of abuse committed against an individual by persons of lower rank than the person abused. The circumstances of that group assault seem to have been that the 21 year old victim, who cannot recall whether he was Corporal or Sergeant at the time, was coming to the end of his 1950s National Service requirement for attendance at camps etc. So his time as a superior to some of those who allegedly joined in the group assault on him was coming to an end. See Chapter 3 and Appendix 74.

The inference is that because of the perpetrator's superior position, the perpetrator could impose burdensome or unpleasant tasks on the alleged victim, or damage their career advancement, if they report.

Many individuals who have brought to this Review plausible allegations of abuse by a person of higher rank than them say that they did not report the abuse at the time because they were concerned that their word would not be believed as against the word of the superior or that no action would be taken because of the superior's importance to the operational capability of the unit.

So the chain of command structure is itself a risk factor. Of course, the ADF requires a command structure. Accordingly, this risk cannot be eliminated. However, it is clearly an indicator of risk.

2.7.4 Reliance on leadership to ensure power is not abused

The Review has heard numerous comments from ADF and former ADF officers to the effect that abuse does not happen around good leaders. The Review would certainly expect good leadership to discourage abusive behaviour. However, it does seem to be overly optimistic to think that good leadership alone is sufficient.

Good leaders alone cannot reform people's characters and good leaders cannot be everywhere at once. Some people who wish to abuse others do apply cunning to avoid detection.

The corollary of the emphasis on the importance of good leadership is that when leadership is weak or even corrupt then there is a higher risk of abuse.

Of course, if the leader is prone to inflict abuse on others, then the Chain of Command aspect makes being under the Command of that leader a particularly high risk for abuse. (The Review has seen some highly plausible allegations of abuse by some Commanding Officers (in the past)).

The emphasis on leadership and the assumption that the ADF is run on a Chain of Command basis—which has been accepted as being fundamental to operational effectiveness—carries with it the risk that people will not think independently of the signals from the chain of command and will not stand up for values in a way which might risk putting them in conflict with the chain of command. (Contrast the German position.)

So the chain of command structure has carried this risk of abuse not being challenged.

The reliance on leadership - and the corresponding conferral of authority on leaders - has not to date seemed to carry any significant consequences for leaders who have failed to protect ADF members under their command from abuse. It may be that the existing Commonwealth *Occupational Health and Safety Act 1991* could apply to impose personal liability on members of the ADF for failing to protect other members of the ADF from abuse but that legislation does not seem to have been invoked for such issues. Of course, the legislation can only be invoked if it is known that abuse has occurred. Given the aspects of ADF culture which have discouraged reporting of abuse it is likely that the occasions for considering a possible application of that legislation have been limited.³⁵

2.7.5 Alcohol and drugs

Some people are more inclined to use a power which they have to abuse, when alcohol or drugs have made them less inhibited.

³⁵ If the *Model Work Health and Safety Bill* is enacted in its current form and the Commonwealth brings ADF members (and cadets) within the section 7 definition of 'employee', then there may be significant personal liability exposure for 'senior management' in the ADF for future failures to protect ADF members from abuse.

Alcohol and drugs are indicators of risk at two levels—the person inclined to abuse another ADF member may become less inhibited about doing so and a potential victim may be less alert to protecting himself/herself and/or less able to resist an assault.

Where an assault victim has been affected by alcohol or drugs, there is less likelihood of a prosecution even if the assault is reported to Police.³⁶

Obviously there have been times in ADF environments where ADF personnel have had access to alcohol and/or drugs.

2.8 Ships at sea/separation from normal family settings etc

When a ship is at sea, the crew members are necessarily removed from their normal social networks, family and possible opportunities for sexual relations. The possibility that crew members may seek sexual relief with other crew members has been an abuse risk factor.

Postings which remove members of the ADF from their normal social networks, family and possible opportunities for sexual relations have carried similar risks.

ADF environments in which people are together for 24 hours a day, 7 days a week can carry abuse risks because there are more opportunities and more temptations to abuse than there are in work environments where the co-workers are only together for 8 to 10 hours a day.

2.9 Combinations of abuse risk factors in relation to boys and young people

For boys and young people in the ADF³⁷ there have been combinations of factors which have contributed to the risk of abuse of those boys and young people by older people and/or by other boys and young people. Those factors included:

- The fact that boys and young males lack maturity of judgment and may inflict abusive behaviour on other boys/young males if not supervised.³⁸
- The fact that boys and young people—male and female—lack the maturity to keep themselves out of situations where they may be at risk.
- The fact—well-known for decades at least—that some people who wished to have sexual access to boys sought out positions in orphanages, schools, churches and similar institutions where they could have power over, and access to, children. There was no reason to think that such people would not have targeted relevant parts of the ADF.
- For some of the relevant decades of last century at least, it seems that there was an absence of rigorous general character checking at least for other rank recruiting for some parts of the ADF and a willingness to accept some recruits with a criminal record.
- This approach to recruitment would have meant that boys and young males and females were exposed to some people in the ADF who had anti-social behaviours.
- Adults, older males and older boys in the ADF have often had power over young males and boys, based on a combination of physical strength, 'rank' or at least seniority and—in some contexts—a 'tradition' making the infliction of abuse 'right' regardless of official prohibitions of the abuse.

³⁶ *Study of Reported Rapes in Victoria 2000-2003* Summary Research Report of Statewide Steering Committee to Reduce Sexual Assault (Based on a study by Dr Melanie Heenan AIFS and Dr Suellen Murray RMIT): Key Findings (page 5).

³⁷ See discussion of these particular issues in Chapter 5.

³⁸ Major General C.W. Orme, Report of the ADF Personal Conduct Review, *Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms*, (unpublished) page 28-29.

- The correlation between suffering abuse and later becoming an abuser—especially in an environment such as prevailed in HMAS LEEUWIN in the late 1960s/early 1970s where the choice was to join in bashings and assaults on other minors or to continue to be the target of such abuse (see Chapter 5).

2.10 Young men

It is well recognised amongst criminologists, police and the general community that young males, particularly young males in groups, tend to be combative and aggressive risk takers.³⁹

Obviously the ADF has always had a high proportion of young men. Currently 50% of total ADF personnel are under 30 and 86% of the total ADF population are male.

This aspect of ADF environments has been, and will continue to be, a major risk factor. Of course, young males can also be enthusiastic participants in dangerous operations. Having young males in the ADF is essential. However, the risks associated with having young men in the ADF—particularly when they are not on operations and they are bored—are high.

In the Learning Culture Report it is stated: (emphasis added)

The very business of Defence is tough, and there is a fine line at times between toughness and bullying. This is particularly the case when seen through the eyes of the trainee. Servicemen and women are trained to use lethal force which is totally unacceptable in civilian life. Sailors, soldiers and airmen do not kill for patriotism or allegiance to their country, but for the protection of their mates. Willingness to apply lethal force requires not only physical and mental toughness, but also sufficient bonding within the team to override each individual's natural human resistance to kill. The toughness and bonding required increases the closer the contact with the enemy. And the toughness similarly becomes more masculine the more one gets to the sharp end. The cohesion required to build comradeship does involve removing individuals who cannot be socialised into the group and who may undermine unit morale and combat effectiveness. Those perceived to be failing to conform to the group can experience trauma in the process. There is a risk of 'group think' (and, according to the literature, even 'group sanctions for evil') amongst those who succeed in being part of the group, and there is a risk that the pressure for conformity will drive out diversity. A recent article on the British Army concluded that it cannot hope to eliminate all forms of behaviour towards its recruits that might be considered bullying in an increasingly sensitive and litigious civilian employment environment.

Servicemen and women are trained to control the aggression they use, to know the rules of war and the rules of particular engagements, and to understand the complexities of modern warfare, including the need to 'care and nurture'. However, training in the basic skills of applying lethal force ('kill and capture') will always present a risk, in particular of bullying by trainers and by peers, and of disrespect for those who are different (including women in particular), and also of self-harm amongst those who feel bullied and/or excluded. The challenge is in managing these risks.⁴⁰

The Review takes some issue with the assumption that killing is contrary to the 'nature' of young men.

The following extract from Potts and Hayden⁴¹ puts a perspective on male, especially young male, behaviour which is relevant to management of risk in ADF environments and which could have been a factor in HMAS LEEUWIN and other problems which have been reported on in numerous previous reports⁴² and which appear to have been corroborated by many of the specific accounts of experience of abuse which have been raised with this Review. This is a large extract but it is particularly important to identify possible risks in ADF environments with large proportions of young men.

³⁹ DP Farrington *Age and Crime* (1986) 7 Crime & Just. 189; Dr Katie Seidler *Crime Culture & Violence—Understanding How Masculinity and Identity Shapes Offending*, Australian Academic Press Qld 2010

⁴⁰ Podger, A, Harris, C & Powell, R, *Final report of the Learning Culture Inquiry: inquiry into the learning culture in ADF schools and training establishments*, Department of Defence, Canberra, 2006, para 114-115.

⁴¹ Pages 11-13.

⁴² Chapters 4-6.

Team Aggression

Human warfare and terrorism require a special sort of violence in men, which we will call *team aggression*. This behavior is not limited to humans and we will document how in a handful of social mammals, a highly specialized behavior has evolved in which teams of adults--almost always males--attack and kill individuals of the same species. In the process they enlarge their territory and increase the resources available to the group to which they belong, with the side benefit of eliminating potential sexual competitors. In the case of chimpanzees and human beings, the chief practitioners, males are the primary beneficiaries of this kind of team aggression.

It is no accident that modern armies are built on small squads, grouped together into platoons--nor that terrorists almost always organize themselves into cells. Young men in all cultures have a common willingness to work together in small, intensely loyal teams. The majority of men awarded medals for courage on the battlefield are in their twenties--or even younger. And most will tell you that they fought not primarily for king and country; but for their comrades, and because they feared letting this most intimate of teams down. In Chapter 7, we will show how modern warfare, despite its high-tech facade, is based on the same set of behaviors that drives everything from a minutes-long raid conducted by a small posse of illiterate men in the Brazilian rainforest, to the million-plus warriors locked in deadly combat for months on end at Stalingrad in the winter of 1942-1943. The nineteen young men who killed over 3,000 people on September 11, 2001 also fit into this seamless continuum of violent raids.

... We will argue that the predisposition to engage in team aggression against our own species grows out of just these sorts of inherited frameworks, including aggression, group cohesion, and a strong sense of loyalty to our own group backed by hostility toward outsiders. These impulses stretch back five to seven million years or more, to the ancestors we shared with chimpanzees. The evidence suggests that a series of genetic mutations occurred in our ape-like, forest-living forebears, which predisposed adult males to band together with their brothers and cousins to raid and kill their neighbors, and that those who manifested such a trait acquired more territory. A larger territory meant more resources, more resources meant more females, more females meant the opportunity for more sex, and more sex meant more offspring carrying the male's genes, aggressive tendencies and all, to the next generation. Those males who coordinated their violence in teams became the winners in the ruthless war of nature.

Tempting as it is to think of wars or terrorist attacks as temporary aberrations interrupting an intrinsically peaceful world, biology and history show that this simply is not the case. A careful examination of evolutionary clues, the archaeological record, and modern behavior proves that raids and wars are fundamental aspects of our nature, human behaviors going back to our pre-human history, and ones to which men return with remarkable ease. The face of war has changed dramatically as our societies have become more complex and our technologies more lethal, but there is no war without willing warriors, and those have never been in short supply. During the two World Wars, whole generations of young men in more than a dozen countries were recruited to fight, and surprisingly few opted out. Even during the current American war in Iraq, when public awareness of the physical, economic, and psychiatric burdens borne by warriors and their families has arguably never been higher, military recruiters are still able to find considerable numbers of young men not just willing to serve, but eager to fight. A central argument in this book is that violent conflict, terrorism, and war--and the emotions that they are built on--derive from an evolved behavior that once benefited the males who expressed it.

Women

...

The evolutionary perspective we take here highlights the fact that team aggression is predominately an activity of young males, and although it affects women it very often does not benefit them in a lasting way, as we will show. Women compete for resources for themselves and their offspring, and may even benefit from associations with the most aggressive, successful male leaders or groups, but their competition is not usually expressed with such violent destructiveness as among men. There are women gangsters, warriors, and terrorists, of course, just as there have been great

female military leaders. But despite some fanciful misinterpretations of prehistory and anthropology, women have never shared men's propensity to band together spontaneously and sally forth to viciously attack their neighbors.

The same can be said for older males, who may well gain more from war as generals than the young do as foot soldiers, but who also generally have much more to lose. We will show that societies where the proportion of young males to older males is high are often particularly prone to conflict – and that one way to reduce the risk of violence is to empower women and maximize their role in society.

...

Civilization at Its Best

Homo sapiens has been a distinct species for more than 200,000 years. This is a mere blink of the eye in the billions of years life has existed on Earth, but even so, 95 percent of human history was spent surviving and reproducing – and fighting – in small clans of hunter-gatherers. In other words, the behavioral frameworks underlying our sexual behavior and driving violence evolved to suit Stone Age conditions, rather than a globalizing community where cooperation can benefit many and nuclear bombs and biological weapons can harm us all, even those who would use them. Culture evolves more rapidly than biology does, however, which lends hope to the challenge before us: to understand and rein in our Stone Age behaviors.

The final sentence underlines the importance of culture in modifying anti-social instincts and propensities. However, the statement of the behavioural propensities of young males is particularly relevant to the risk issues in many ADF environments. Many ADF personnel have seen 'Team aggression' up close in operational settings and must understand just how destructive this can be.

As for who might be regarded as being 'in' the team and who is regarded as being 'out' of the team, Dr Ben Wadham of Flinders University provided the following perspective in a submission to the Review:

10. Abuse emerging from military culture, and within the organisation, is both general and diverse. The common theme of fraternity is structured by regimentation, hierarchy, chain of command and the development of a capacity for violence. There is a strong distinction between military and civil society that is characterized by a culture gap. The intensity of fraternity generates a hierarchy of oppositions – officer/enlisted; army/navy/airforce; arms/service; squadron vs squadron, corps vs corps, pilot/navigator/the rest; submariners/the surface fleet, sea/vs land, air/vs land, military/civilian; ally/enemy; male/female; 'Australian/immigrant; straight/gay etc. These oppositions establish the potential for abuse and inappropriate conduct.

2.11 A recent example of an ADF culture discouraging reporting and men displaying team aggression

This report appeared in *The Australian* on 12 August 2011.⁴³ The Review has not attempted to verify the report. However, we note that it purports to be a report of statements made in Court proceedings.

A Navy seaman has been assaulted and threatened with death by other navy personnel after he blew the whistle on a drug ring at Sydney's Garden Island naval facility.

The seaman has been ostracised by his fellow sailors, who have yelled "Dead man walking" at him ever since he followed the orders of the chief of navy to inform authorities of illegal drug use in the force.

⁴³ <http://www.theaustralian.com.au/national-affairs/navy-man-abused-for-drug-dob-court-told/story-fn59niix-1226113385896>

The drug ring, revealed by The Australian in December last year, involved at least 21 sailors, of whom nine have been dismissed. Their offences include the illegal possession, use and trafficking of anabolic steroids, possession of prohibited weapons and using mail to transport steroids.

The investigation, which is continuing, has uncovered other substances including ecstasy at the base, which maintains warships and has access to visiting ships.

When questioned by police as part of their investigation into the drug ring in December, the sailor admitted to possessing steroids and is believed to have also named up to 16 others who were allegedly involved.

When his testimony became known at the base, the sailor was subjected to abuse from his colleagues, including those who had no connection to the drug ring.

The intimidation is believed to have included sailors making the sign of a pistol with their fingers and pretending to shoot him as he passed by. In January, he says he received a text from a colleague saying, “u r a f..king dog, u should be lucky u haven’t been put down”. The abuse was such that the sailor went home for lunch rather than eat in the cafe.

When he tried to eat at the cafe on June 29 this year, he was allegedly assaulted by another sailor.

In his account of the incident, handed to naval police and tendered to a NSW court this week, he wrote: “While I was getting my lunch in the line (a sailor) came up to me saying, ‘Why the f..k are you still here? Do you feel big dobbling us all in? I’m going to shoot and kill you.’”

The two men then became involved in a fight in front of other sailors and navy police, who had to separate them.

A Defence spokesman said last night that after the alleged assault the sailor “was invited to make an official complaint to NSW police regarding assault, intimidation or harassment”. He says no formal complaint was lodged.

This report of ‘team aggression’ directed so vehemently against an individual member of the ADF for reporting is entirely plausible given the accounts which the Review has received of how other people who have reported have been treated.

It is concerning that in this report of the Defence spokesman’s statement there is no reference to the possibility of Defence considering possible action under the various provisions which seem to be relevant or potentially relevant to a situation when a member of the ADF who makes a report is victimised for doing so.⁴⁴

⁴⁴ The processes which could be relevant include DI(G) PERS 35-3 *Management and reporting of unacceptable behaviour* issued 28 June 2009 (see especially Annex A); DI(G) ADMIN 45-2 *The reporting and management of notifiable incidents* issued 26 March 2010; DI(G) PERS 35-6 *Formal Warnings and Censures in the Australian Defence Force* issued 16 July 2010; *Defence Force Discipline Act 1982* s29 (failing to comply with a lawful order), s33 (creating a disturbance - using insulting or provocative words to another person) and s60 (prejudicial conduct); Commonwealth *Criminal Code* s149 (interacting with DFDA s61) (obstructing Commonwealth public officials). Administrative sanctions under the *Defence (Personnel) Regulations 2002* may also be relevant.

2.12 Summary of risk factors

Many of the risk factors surveyed in this Chapter have been present in many of the environments relevant to particular allegations which are reported on in Volume 2. Some of the environments appear to have posed very high risks.

This survey also provides a basis for our discussion of systemic issues in Chapter 7 and our comments in Chapter 8 on Options for responding to the broad issues.

Finding 1

ADF environments typically have factors which indicate a high risk of abuse occurring.

3 Overview of allegations considered by the Review

3.1 The range of the allegations raised with the Review

3.1.1 The allegations of abuse are diverse

The allegations of abuse which have been raised with the Review are diverse. The allegations have not been tested and the Review has not made any findings that the allegations are substantiated.

The allegations are spread from the 1950s to date:

- The allegations are across every decade from the 1950s up to and including this year.
- The earliest alleged event is of abuse committed on a 13 year old boy in the Navy in 1951.¹

They range from minor to very serious:

- The allegations range from extremely serious assaults—sexual and non-sexual—through to (relatively) trivial matters of harassment.
- Some of the alleged incidents of abuse fall into the category of behaviour that was acceptable at the time, but is no longer acceptable. However, not many—probably less than 50—allegations before the Review fall into this category.

Some individuals allege more than one experience of being the target of abusive behaviour:

- There are allegations of one-off incidents of abuse and allegations of courses of conduct by individuals or groups constituting abuse.
- Some individuals allege unrelated incidents of abuse with different perpetrators committed against them at different times and stages of their careers in the ADF.

The allegations come from a range of sources (informants):

- Some allegations are made by people who claim to have been the subject of the abuse.
- Some allegations are made by people who claim to have witnessed abuse of others.
- Some allegations are made by people who are a parent or a spouse/partner of an alleged victim.

The allegations relate to a range of ADF activities, bases and ships:

- The allegations of abuse include, but are not limited to abuse at training institutions.
- The Review has received more allegations of abuse in the Army than it has received relating to allegations of abuse in the Navy and has received more allegations relating to abuse in the Navy than it has in relation to abuse in the Air Force. Some of the allegations have not yet provided sufficient detail to determine from which service the allegation arises. Hence, this summary may change as

¹ Chapter 5 deals with some of the specific issues associated with abuse of young people.

further information is provided. The Review cautions against drawing any inferences from this aspect of the allegations before the Review.

- The Review has not had before it any numbers of the relative size of the Services at different points in time across the 60 years of allegations before the Review and has not attempted any analysis of the relative levels of abuse across the Services at any point in time.²

The allegations of abuse cover diverse geographical locations.

Most of the allegations of abuse involve males as perpetrators:

- There are allegations of one-on-one abuse (up to and including sexual and non-sexual assault) by individual males and groups of males committed against:
 - other males
 - females.

They include allegations of abuse—including serious sexual and physical assaults—on minors by other minors and by adults³.

3.1.2 What kinds of abuse do not feature in the allegations?

The Review has before it one account of abuse committed against a person holding a more senior rank than some of a group of alleged⁴ perpetrators who attacked him. Apart from that one exception every allegation of abuse before the Review where the victim knew the identity of the person who allegedly abused them—involves an allegation of abuse by a person who was either at or above the rank of the alleged victim.

That pattern underlines the significance of the Chain of Command in controlling and affecting behaviour in the ADF.

The one exception involved an assault by a group which included some people at the same rank as the victim and some at lower rank. Although the victim was an NCO, he was still relatively young - 21 years of age. He was in the last days of his national service in the 1950s. So even the rank which he had gave him no ongoing power over those in the group who were at a lower rank. And he was gay - which put him in a minority.⁵

This exception underlines that power imbalance and being in a minority group are risk factors for abuse.⁶

There have been few allegations of abuse by individual females. Those that have been made include allegations of abuse committed against:

- other females (including allegations of a course of conduct of sexual harassment/abuse); and
- males (including an allegation of sexual assault),

but are primarily allegations of harassment or bullying in employment contexts (rather than sexual abuse).

The Review has had before it some allegations of mixed male/female groups carrying out some abuse (harassment, bullying) of males.

² The Review discusses in Chapter 6 the difficulties of measuring levels of abuse at any time.

³ Chapter 5 deals with some of the specific issues associated with abuse of minors.

⁴ We refer to 'alleged' perpetrators because the account is not proven. However, the Review has no reason to doubt that it is accurate. The victim - [REDACTED] has agreed to the inclusion of his account in this Report. See Appendix 74.

⁵ See the victim's account at Appendix 74.

⁶ See Chapter 2.

The Review has seen very few allegations of abuse relating to ADF personnel on deployment.⁷ The Review discussed informally with some current and recently retired senior ADF personnel why there might be so few allegations of abuse in relation to personnel on deployment. Reasons suggested are those listed in Chapter 2.

3.1.3 The allegations of Defence mismanagement of abuse are diverse

The allegations of Defence mismanagement are spread from the 1950s to 2011.

The *kinds* of mismanagement which are alleged are diverse. It is not possible to summarise the nature of the allegations as a group.

- A common allegation—especially from the more distant past—is that a superior in the chain of command refused to act on a report of abuse.
- In some cases it is alleged that the person in the chain of command to whom the victim tried to report abuse was himself involved in the abuse and rejected the victim's attempts to initiate processes for consideration of the allegation.
- There are allegations to the effect that there was victimisation of a person who made a complaint.
- There are other allegations of victimisation of a person who was known to have been abused *even if they did not make any report of having been abused*. For example, one person alleges that when he was a junior sailor at sea over 20 years ago he was sexually assaulted by the Captain of his ship. Another officer entered the cabin while this was occurring and left the cabin. That other officer—allegedly—then had the junior sailor moved on as a 'troublemaker'.
- Another person alleges that he was assaulted by some shipmates who were involved in a drug trade. The alleged assailants then put it around the ship that he had informed on the drug dealers—which he had not—and as a result other members of the ship's crew isolated him. The Ship's Captain then allegedly applied pressure to him to leave the Navy.
- There are allegations that the complainant was not kept informed of what action if any was being taken against the alleged perpetrator of the abuse on them.⁸
- There are allegations that the perpetrator and victim were required to keep working together in the same establishment, that the victim was subsequently posted to work with the alleged perpetrator and/or that the perpetrator was posted to work with the victim.⁹
- There are allegations that while civilian police and prosecution authorities were investigating possible criminal prosecution against an alleged perpetrator of sexual assault, the victim had to keep working with the alleged perpetrator.¹⁰
- There are allegations that after civilian police and prosecution authorities had decided not to run a prosecution against the alleged perpetrator of sexual assault, the ADF did not take any other action against the perpetrator.¹¹
- There are allegations that a report of abuse was dismissed or trivialised and/or not handled sensitively. For example, it is alleged that a Commanding Officer's response to an allegation of bullying and obscene comments in the workplace by a senior NCO about a female work colleague's private sex life was—'*I am going on leave. I will look at it next year*'.

⁷ The Culture Review Secretariat informed the Review of the steps which they took to ensure that ADF personnel who are currently on deployment were informed of the existence of the Review. See Appendix 2. Those steps appear to be adequate to notify ADF personnel who were on deployment of the Review.

⁸ This is a systemic issue which is discussed in Chapter 7.

⁹ This is a systemic issue which is discussed in Chapter 7.

¹⁰ This is a systemic issue which is discussed in Chapter 7.

¹¹ This is a systemic issue which is discussed in Chapter 7.

- There are allegations of lack of support for the victim of alleged abuse.¹²

3.2 Have all allegations of sexual or other abuse now been reported?

We discuss in Chapters 2, 6 and 7 the systemic problem of under-reporting. In Chapter 6 we look at the difficulties of estimating the levels of un-reported abuse.

The Review is firmly of the view that many allegations of abuse within Defence have not been reported. There are many reasons why victims of abuse would not have reported to this Review, including the fact that the Review has no power to do anything other than make recommendations. We return to this issue in greater detail in Chapter 6.

3.3 How has each allegation been reviewed and assessed?

Each allegation needed to be considered according to its own circumstances. That is what the Review has done.

The task of the Review has been to conduct an initial assessment of each allegation of abuse or mismanagement of a complaint about abuse.

It has not been the task of the Review to fully investigate allegations, to resolve complaints or to advise people bringing complaints to the Review. The Review has been careful in its dealings with people bringing complaints to the Review to make clear to them the limited role of the Review during Phase 1.

The Explanatory Materials for Volume 2 describe the processes of the Review in assessing each allegation and making recommendations.¹³ A copy of the explanatory materials is duplicated at Appendix 12.

In brief, the Review makes one of four high levels recommendations in respect of each allegation raised with the Review, being recommendations for:

- further external investigation
- referral to existing internal Defence processes
- referral to existing external processes
- no further action.

Set out below are some tallies derived from the Review's preliminary assessment of, and recommendations in respect, of each allegation. The tallies must, however, be used with caution, for the reasons explained below.

The Review has asked many of the people who have raised allegations with the Review to provide further information. Further information has not yet been received in many cases.

3.4 The tallies are working tallies which do not provide data

Included below are tallies of information drawn from the Assessment Worksheet which has been completed for each allegation.

It is important to emphasise the limitations on the extent to which any inferences or conclusions can be drawn from these tallies. Those limitations are substantial, for the reasons explained below.

¹² See Chapter 6.

¹³ A copy of the explanatory materials is in Appendix 12.

The Review understands why decision-makers, current and former Defence members and their friends and families, politicians, journalists, commentators and the general community may wish to look to this Report for solid information/data on which to base decisions and/or assessments of Defence's overall performance during the 60 year period encompassed by allegations to the Review and possibly even for some indication of Defence's current performance.

However, it is important to emphasise the context in which these tallies have been compiled and the limitations on the inferences and conclusions which can be drawn from these tallies.

These tallies do not provide a basis for drawing general inferences or conclusions about:

- the absolute number of incidents of actual abuse or mismanagement of abuse in Defence at any time over the 60 years spanned by the allegations;
- the absolute numbers of individuals who perceive that they suffered abuse or mismanagement of their allegation of having been abused in Defence at any time in the past or the present;
- the proportion of the total number of people who have been or who are in Defence who have suffered abuse or who perceive that they have suffered abuse and/or mismanagement in Defence of their allegation of having been abused;
- the effectiveness in the past or the present of Defence's systems, training, personnel development and/or culture to prevent abuse;
- Defence's management of allegations of abuse or individuals' perceptions of abuse in Defence in the past or the present;
- whether a culture or sub-cultures within Defence has discouraged or encouraged abuse in the past or is discouraging or encouraging abuse in the present.

The tallies are tallies of the allegations which have been brought to the Review, based on the Review's initial assessment processes reported on in Volume 2. These tallies do not provide a basis for any such general conclusions to be drawn for the following reasons.

- The tallies are tallies of allegations of abuse (and related matters), not tallies of findings of abuse.
- For reasons expanded further below, there are reasons to believe that some—possibly many—people who have suffered or who believe that they have suffered abuse in the past have not brought their allegations to the Review or to any other relevant forum for receiving and responding to such allegations.¹⁴
- The tallies derive from complaints volunteered directly to the Review, referred to the Review or appearing in the media. The people who have brought matters to the Review do not represent a neutral sample of the Defence population.
- The Review's Terms of Reference called for people who were unhappy about their treatment within Defence to make a submission. They did not call for people who were happy about their treatment within Defence to make a submission.
- The tallies do not include the Fairness and Resolution Branch unacceptable behaviour database matters, nor the current ADFIS matters, of which the Review is conducting a preliminary assessment of current complaints handling.
- Allegations of abuse or mismanagement which involved 'matters raised directly with the Inspector-General Australian Defence Force (IGADF) which fall within the IGADF's statutory functions' were expressly excluded from the scope of the Review.¹⁵

¹⁴ See Chapter 6.

¹⁵ Paragraph 3 of the Terms of Reference at Appendix 7.

- The Review's focus has been on delivering the initial assessments and recommendations required by the Terms of Reference in relation to each specific allegation, not on collecting data.
- The Review was not set up to gather 'data' for statistical analysis, nor indicators of Defence's general performance in preventing abuse and/or responding to allegations of abuse. The Review has not designed its processes or forms with the purpose of gathering any such information. The collection of information has been incidental to the primary tasks of the Review.
- Through the Review process there has not been uniformity of approach in determining whether an aspect of one person's communication should be tagged as a separate allegation or as part of an allegation of a course of conduct:
 - Some of the communications which have come to the Review from a particular individual involve allegations by that individual about incidents which are entirely unrelated. With those kinds of communications it has been a relatively simple matter for the team supporting the Review leaders to prepare separate Assessment Worksheets for each allegation—with one tick in the tally for each allegation.
 - However, some of the communications involve a number of related allegations and/or sub-allegations—such as—*he bullied me by doing A, B and C*—coupled with allegations about more than one aspect of Defence's responses to the original allegation. The decision whether to treat this as one or more allegation requires the exercise of judgment. Accordingly, there has been variation in approach in disaggregating complaints into separate allegations for the purposes of the Review's decisions and recommendations (and consequently for the tallies).

3.5 The tallies cannot be relied on to reach conclusions about the Department of Defence's performance in relation to abuse and complaint management

The tally information set out below indicates that less than 10% of the allegations before the Review relate to alleged abuse within the Department of Defence.

For a Department of the size and longevity of the Department of Defence that is a low number.

The Review cautions against any conclusion being drawn from that number to the effect that the Department of Defence has been almost entirely free of abuse and/or individuals who perceive that they have been the subject of abuse. For commentary on the incidence of harassment and bullying in the Australian Public Service (APS) generally (and under-reporting of both) see the paper at Appendix 13 titled 'Overview of APS disciplinary and administrative action'.¹⁶

The Review gave some consideration to why the number of allegations of abuse within the Department of Defence was low. Two possible relevant factors are:

- The Terms of Reference relate to allegations of abuse in 'Defence' and refer to 'Defence personnel'.
- The Review was established and continued against a background of media focus on allegations of abuse in the ADF. Of the total number of communications considered by the Review, approximately 340 initially came into the Minister's Office soon after the Skype incident (ADFA) was reported in early April 2011 and approximately 550 communications came to the Review in the four days after the 13 June 2011 *Four Corners* program which related entirely to allegations of abuse in the ADF (including ADFA).

While the Terms of Reference were in draft, the Review team queried with Defence Legal whether the term 'Defence personnel' would clearly enough signal to current and former Departmental staff that this Review was intended to reach allegations of abuse within the Department as well as allegations of abuse in the

¹⁶ The author of the paper Michael Will is a partner of HWL Ebsworth. Mr Will worked with the Review on a contract basis.

APS. Defence Legal was strongly of the view that the wording was clear enough in this respect. Information on publication of the Review within the Department is included in Appendix 2.

The Review is not in a position to assess the validity of Defence Legal's confidence that the reference to 'Defence personnel' would have been understood by current and former Department of Defence staff as extending to them.

In any case, the Review considers that the media focus on the ADF makes it likely that some current and former members of the Department of Defence who might have had issues in relation to alleged abuse, may have either assumed that the Review was not open to receive their allegations or that the Review would concentrate on ADF issues even if APS issues were 'within scope'.

3.6 The tallies

These tallies are drawn from our review of the 150 matters contained within Volume 2 of this Report. These tallies will be updated when our review of all matters is complete.

Of the 847 people who raised matters within the scope of the Review, we are reporting at this stage on the allegations raised by 150 people. We call this 'tranche 1' of Volume 2. Between them, these 150 people have raised 175 discrete allegations. The tallies below relate to each allegation. Hence, the totals are generally 175 rather than 150.

Because the following tallies relate to only 18% of the total number of matters raised with the Review, there is still a lot of information relevant to the overview tallies that has not been captured. These tallies must be treated with caution for that reason (as well as for the reasons explained above).

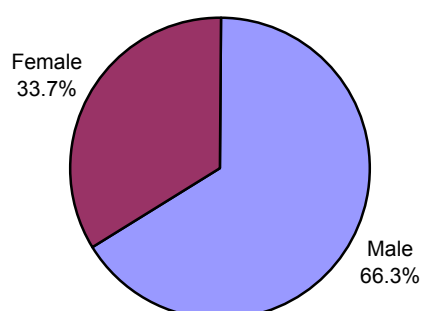
To date, only about half of the Request for Statement forms that the Review sent to sources seeking further information have been returned. Over the rest of October 2011, and as more forms are returned, the Review will complete its initial assessment of each allegation. The overview tallies will be updated and these pages replaced when that has occurred.

These tallies are drawn from our review of the 150 matters contained within Volume 2 of this Report. Tally as at 5 October 2011 for tranche 1 of Volume 2. These tallies will be updated when our review of all matters is complete.

Gender of the subjects of abuse

Category	Number	Percentage
Male	116	66.3%
Female	59	33.7%
Total	175	100.0%

Gender of the subjects of abuse



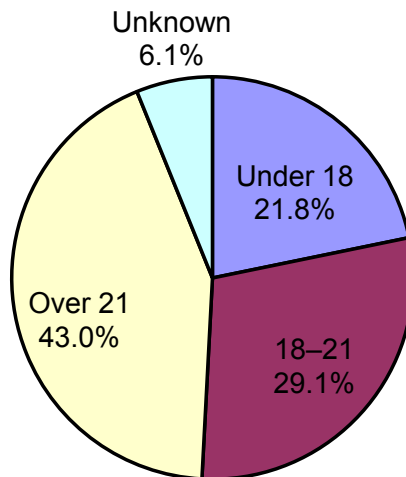
These tallies are drawn from our review of the 150 matters contained within Volume 2 of this Report. Tally as at 5 October 2011 for tranche 1 of Volume 2. These tallies will be updated when our review of all matters is complete.

Age of the subjects of abuse

Category	Number	Percentage
Under 18	39	21.8%
18-21	52	29.1%
Over 21 -	77	43.0%
Unknown	11	6.1%
Total	179	100.0%

Some allegations occurred in a period spanning age ranges and hence the total number exceeds the number of allegations..

Age of the subjects of abuse



These tallies are drawn from our review of the 150 matters contained within Volume 2 of this Report. Tally as at 5 October 2011 for tranche 1 of Volume 2. These tallies will be updated when our review of all matters is complete.

Time period when the incident occurred

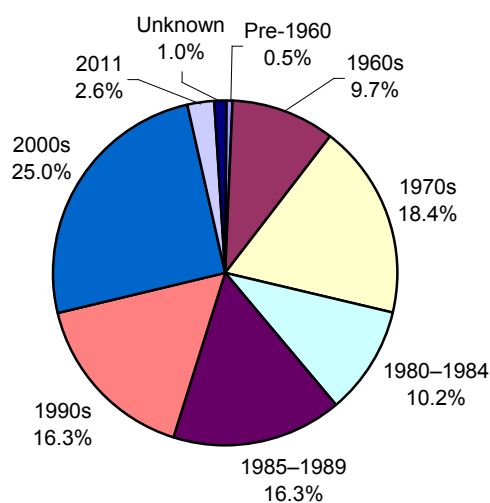
Category	Number	Percentage
Pre-1960	1 *	0.5%
1960s	19	9.7%
1970s	36	18.4%
1980–1984**	20	10.2%
1985–1989**	32	16.3%
1990s	32	16.3%
2000s	49	25.0%
2011	5	2.6%
Unknown	2	1.0%
Total	196	100.0%

Some allegations involve a pattern of behaviour that occurred over extended periods which span two or more time periods. Consequently, the total number exceeds the number of allegations.

*We are aware of and Volume 1 refers to more than one pre-1960 allegation. However, as of 5 October 2011 only one pre-1960 allegation has been through our initial assessment process.

**We split the 1980s into the years before and after the commencement of the *Defence Force Discipline Act 1982*.

Time period when the incident occurred



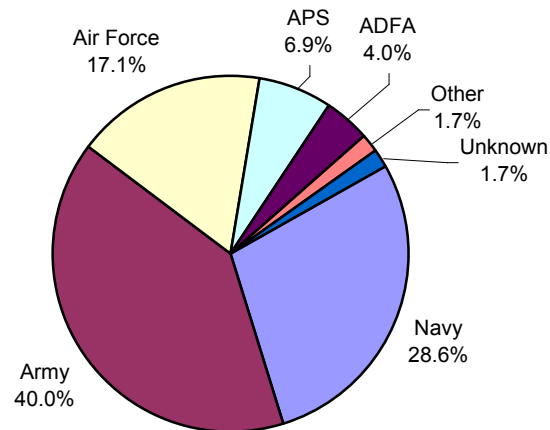
These tallies are drawn from our review of the 150 matters contained within Volume 2 of this Report. Tally as at 5 October 2011 for tranche 1 of Volume 2. These tallies will be updated when our review of all matters is complete.

Part of Defence the subject was in at the time of the incident

Category	Number	Percentage
Navy	50	28.6%
Army	70	40.0%
Air Force	30	17.1%
APS	12	6.9%
ADFA	7	4.0%
Other	3	1.7%
Unknown	3	1.7%
Total	175	100.0%

A figure for 'Other Training Establishments' is not captured in this Tranche. We are seeking to confirm a list of Other Training Establishments with Defence and may revise the tally for this category when this list is obtained. The tally for 'Other' captures categories including School Cadets or Army Reserves, which are too small to report on separately.

Part of Defence the subject was in at the time of the incident



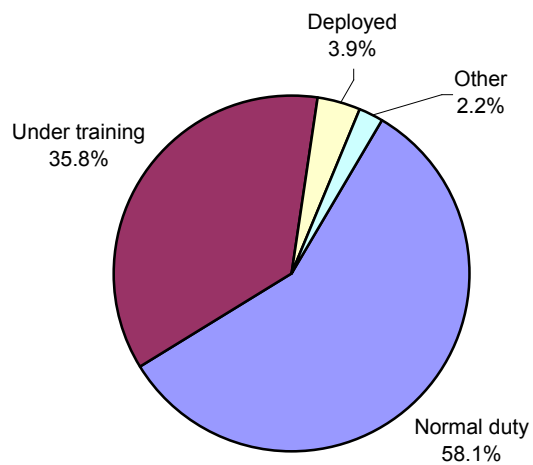
These tallies are drawn from our review of the 150 matters contained within Volume 2 of this Report. Tally as at 5 October 2011 for tranche 1 of Volume 2. These tallies will be updated when our review of all matters is complete.

Subject's activity at the time of the incident

Category	Number	Percentage
Normal duty	104	58.1%
Under training	64	35.8%
Deployed	7	3.9%
Other	4	2.2%
Total	179	100.0%

Some allegations involve a pattern of behaviour that occurred over a number of activities. Consequently, the total number exceeds the number of allegations.

Subject's activity at the time of the incident



These tallies are drawn from our review of the 150 matters contained within Volume 2 of this Report. Tally as at 5 October 2011 for tranche 1 of Volume 2. These tallies will be updated when our review of all matters is complete.

The following are locations from which multiple numbers of allegations arise.

Location of incidents

Category	Service	Number	Percentage of incidents
HMAS CERBERUS	Navy	14	8%
Kapooka	Army	9	5.20%
ADFA	Triservice	7	4%
Balcombe	Army	6	3.40%
Bonegilla	Army	6	3.40%
HMAS LEEUWIN	Navy	6	3.40%
Holsworthy	Army	6	3.40%
Puckapunyal	Army	6	3.40%
RAAF Wagga Wagga	Air Force	6	3.40%
RMC Duntroon	Army	5	2.90%
HMAS CRESWELL	Navy	4	2.30%
Canberra		3	1.70%
HMAS NIRIMBA	Navy	3	1.70%
HMAS STIRLING	Navy	3	1.70%
HMAS SUCCESS	Navy	3	1.70%
RAAF Richmond	Air Force	3	1.70%
Singleton	Army	3	1.70%
Woodside Barracks	Army	3	1.70%

These figures are only in relation to the 150 matters in tranche 1 of Volume 2. We expect the locations will vary when all allegations are captured in the Tally.

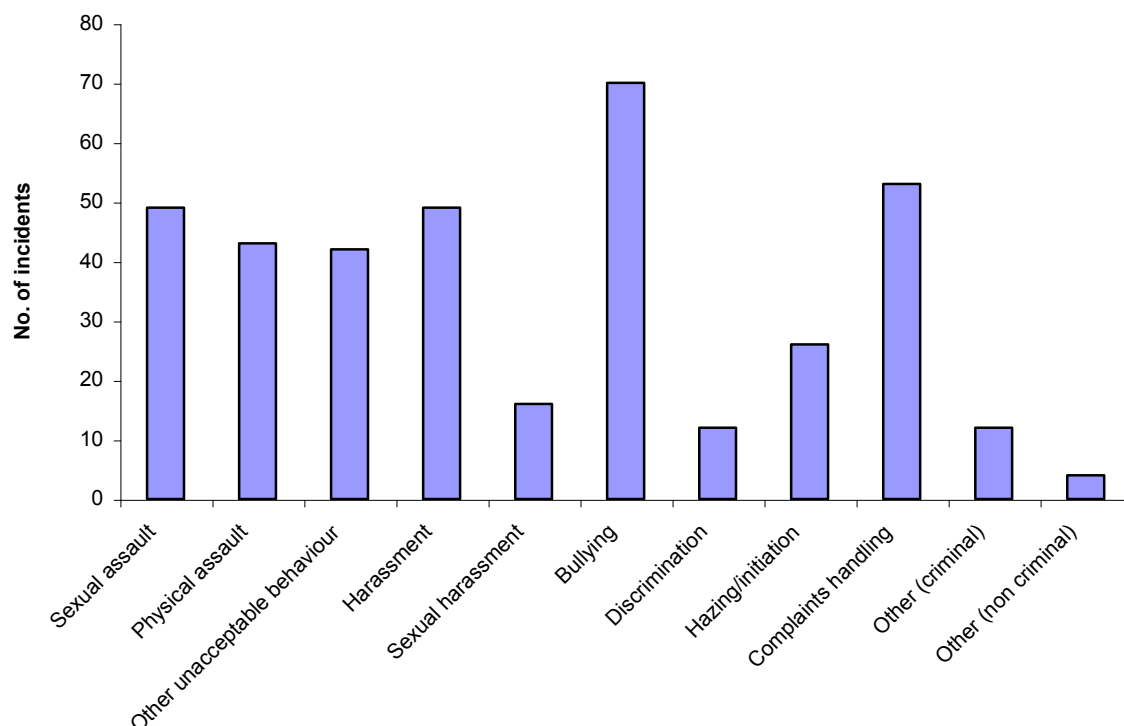
These tallies are drawn from our review of the 150 matters contained within Volume 2 of this Report. Tally as at 5 October 2011 for tranche 1 of Volume 2. These tallies will be updated when our review of all matters is complete.

Types of abuse reported

Type		Number	Percentage
1	Sexual assault —rape, molestation, indecent assault and sexual or other contact such as touching, slapping or kissing	49	13.0%
2	Physical assault —including threat to assault	43	11.4%
3	Other unacceptable behaviour —including intimidation, retribution, abuse of power, inappropriate workplace relationships and conflicts of interest	42	11.2%
4	Harassment —which is not bullying, sexual harassment, discrimination, intimidation and retribution	49	13.0%
5	Sexual harassment	16	4.3%
6	Bullying —including physical abuse, verbal abuse, inappropriate or unfair work practices, undermining or sabotaging another person's reputation, excluding isolating or marginalising others and threats of dismissal or disciplinary action for trivial mistakes or shortcomings	70	18.6%
7	Discrimination —any distinction, exclusion or preference that has the effect of impairing equality of opportunity or treatment in employment or occupation	12	3.2%
8	Hazing/initiation —including harassment, bullying, physical abuse, degradation, forced alcohol consumption and sleep deprivation	26	6.9%
9	Complaints handling	53	14.1%
10	Other (criminal) —including causing intentional injury, causing injury recklessly, common assault, stalking, extortion, kidnapping and false imprisonment	12	3.2%
11	Other (non criminal) —including negligently causing injury	4	1.1%
Total		376	100.0%

These figures are only in relation to the 150 matters in tranche 1 of Volume 2. We expect the figures will vary when all allegations are captured in the Tally.

Types of abuse reported



These tallies are drawn from our review of the 150 matters contained within Volume 2 of this Report. Tally as at 5 October 2011 for tranche 1 of Volume 2. These tallies will be updated when our review of all matters is complete.

Has there been Defence management of the incident (including, is the allegation known to Defence)?

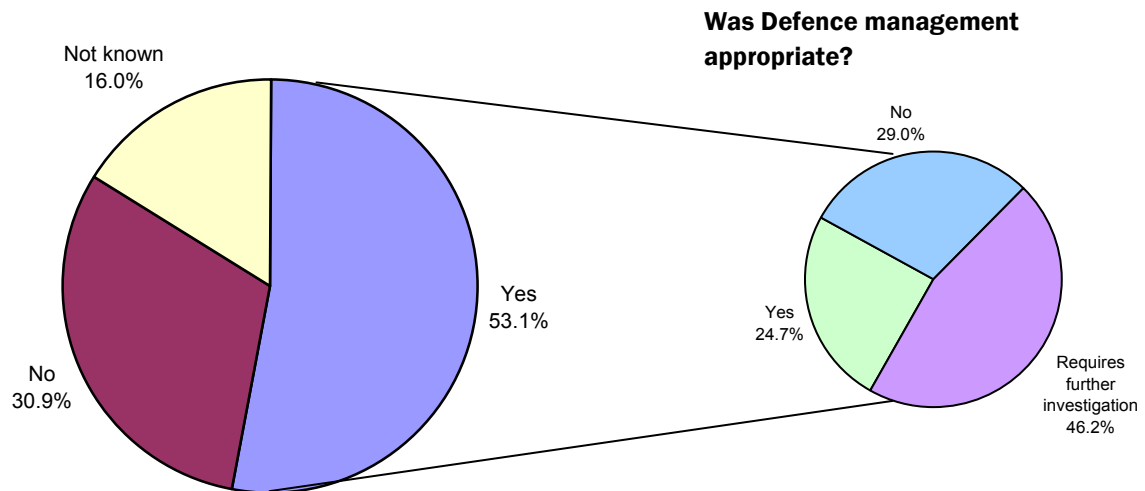
Category	Number	Percentage
Yes	93	53.1%
No	54	30.9%
Not known	28	16.0%
Total	175	100.0%

If there was Defence management, was it appropriate?

Category	Number	Percentage
Yes	23	24.7%
No	27	29.0%
Requires further investigation	43	46.2%
Total	93	100.0%

This total is less than total number of all allegations, because there has not been Defence management for each allegation.

Has there been Defence management of the incident?



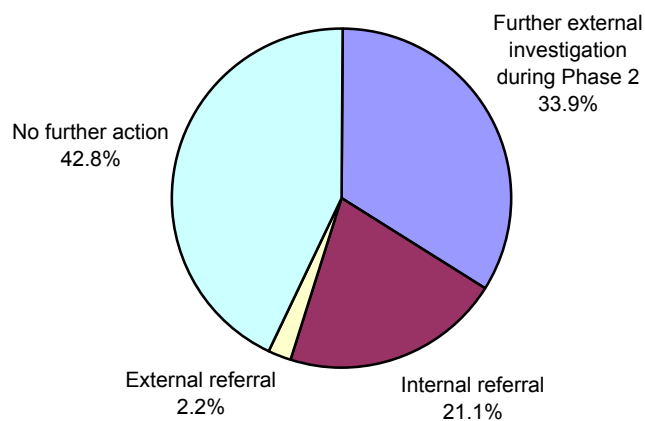
These tallies are drawn from our review of the 150 matters contained within Volume 2 of this Report. Tally as at 5 October 2011 for tranche 1 of Volume 2. These tallies will be updated when our review of all matters is complete.

Review's recommendation for any further action

Category	Number	Percentage
Further external investigation during Phase 2	61	33.9%
Internal referral	38	21.1%
External referral	4	2.2%
No further action	77	42.8%
Total	180	100.0%

The Review has made two recommendations for five of the 175 allegations in Tranche 1. This brings the total number of recommendations for Tranche 1 to 180.

Review's recommendation for any further action



4 Historical record of abuse in the ADF

4.1 The relevance of previous inquiries, reports and Defence file material

This Review has been taken back in time by the specific allegations brought to the Review to each decade from and including the 1950s up to the present.

To carry out the Review's tasks of making initial assessments of every allegation before the Review, of assessing the adequacy of Defence's past response to each allegation before this Review and of formulating recommendations for action now, this Review must look to the past to get some understanding of the ADF and its processes at the time of the alleged abuse and/or allegedly inadequate Defence response.

To get that understanding the Review has asked the Department of Defence to provide what information it can in relation to processes at particular points in time and about particular allegations of events in the past (including the distant past). And of course, the Review has taken into account whatever responses the Department has been able to provide about point-in-time processes and in relation to specific allegations in the initial assessment for each allegation which is contained in Volume 2.

The Review has also carried out a survey of those previous reports and file material relevant to abuse within Defence to which the Review has had access. The findings and the evidence referred to in those reports are relevant to the matters which this Review must consider and report on at a number of levels, as explained in the following sections.

4.2 Understanding the context

Most of the previous reports represent the outcome of Inquiries which have been able to undertake a measured and thorough consideration of the complex issues of abuse and the management of allegations of abuse in the ADF or in particular parts of the ADF.

The previous inquiry bodies have included senior and respected individuals including—for most of the non-Parliamentary Committee reports we have surveyed—current and/or recently retired ADF officers and non-commissioned officers.

Even for the Parliamentary Committees which are constituted by Members of Parliament, who tend to have more generalist skills, the Committees have usually had the benefit of subject matter expert evidence from a range of experts (including senior ADF personnel) and direct factual evidence from eyewitnesses to events.

Parliamentary Committees are, of course, also supported by significant research capability.

The information which the Department has been able to provide to this Review to date in relation to past reports, indicates that Government and ADF responses have consistently accepted the findings of fact in the previous reports and have adopted most—though not all—of the recommendations of the previous reports.

For these reasons—the findings and analysis in these previous reports carry considerable weight and credibility.

A high level survey of those reports has been a necessary and valuable introduction for this Review and has given us some understanding of the complex and long history of these matters and of the previous information, analysis and wisdom which has been gathered on these matters.

Our review of Defence file material has also given the Review access to details about specific abuse issues and to frank commentary from ADF members about their experience in managing abuse issues.

4.3 Evidence and findings relevant to specific allegations

Some previous inquiries have made findings and/or reported evidence to the effect that there have been problems with abuse and/or problems with management of allegations of abuse in parts of the ADF at particular points in time.

Those findings and/or that evidence has been relevant to our initial assessment of some specific allegations because many of the allegations which we have received of past abuse or mismanagement are consistent with the findings and/or evidence of the kinds of abuse and/or mismanagement of allegations of abuse which those previous reports had identified.

Where there is consistency between the findings and/or evidence of previous reports and some specific allegation under consideration by the Review, that consistency has tended to give more plausibility to the allegation for the purposes of our initial assessment.

4.4 Understanding why Defence has in the past adopted particular approaches to managing allegations of abuse

Many of the previous reports have provided commentary on what were—at the time of the report—existing Defence arrangements for managing allegations of abuse. To that extent, our survey of the previous reports has also given us some understanding of the context at that point in time.

However, most of the reports have also recommended changes in Defence processes. Most of the recommendations that the Review has tracked, have in fact been accepted and implemented by the Government and/or the ADF.

This background has assisted the Review to understand why Defence has managed allegations of abuse in a particular way at a particular point in time and assisted the Review's assessment of Defence's management of particular allegations of abuse.

4.5 Understanding what options have previously been considered and/or tried

Many of the previous reports have provided assessments on how well particular processes for managing allegations of abuse have worked and/or are working.

The commentary in the reports and in Defence file material considering the issues raised in reports has assisted the Review in considering what action if any to recommend in relation to each of the specific allegations reported on in Volume 2.

This commentary in previous reports and in Defence file material has also rehearsed some of the issues about the broader options for change which are discussed in Chapter 8 of this Report. We have taken into account the discussion in those previous reports and Defence files in preparing our outline of Options in Chapter 8.

4.6 Identifying systemic issues for consideration in Phase 2

The background of reports and file material also assists the Review to understand and to identify systemic issues which may need further consideration in Phase 2. Our discussion of systemic issues is in Chapter 7.

On the one hand, this background has been relevant in confirming that some issues which the Review has identified as systemic issues have previously been identified as systemic issues and do not appear to have been ‘fixed’ yet. That confirms that the issues are worth bringing to the attention of the Minister and the Secretary.

On the other hand, the Review does not want to waste the time of the Minister and Secretary by putting forward as possible systemic issues for consideration in Phase 2, topics which have already been considered and reported on in a way which has answered what we are flagging as systemic issues.

(As it turned out, none of the systemic issues which we identified for possible further consideration in Phase 2, do seem to have been answered by any of the previous reports or file material which we have seen.)

4.7 Which reports and records have been surveyed?

The Review has relied on the Department of Defence to identify and to provide to the Review copies of previous reports and file materials which are or may be relevant and to track the Government and/or ADF responses to each report and the implementation of recommendations which have been accepted.

The Review experienced some difficulty and delay with the provision of past reports and materials by the Department. This included the identification and provision of past published reports and materials relating to past surveys and investigations conducted by the ADF. As noted above, the Review relied on the Department to identify copies of previous reports (including past published reports) and materials. Delays were encountered with this process and the Review found that in some cases, once the Review had identified a past report and made a request, the report was then provided relatively quickly.

The Department provided a document to the Review titled ‘Overview of Records Management in Defence’ on 16 September 2011.¹ That six page document included many issues (largely personnel related) relating to deficiencies over time with the ADF’s record keeping processes. The document stated at the outset: ‘As the largest Commonwealth agency, the Department of Defence generates an enormous quantity of records’. Further: ‘To understand the history of records management in Defence, it is important to remember that the organisation has existed since Federation, resulting in the Commonwealth holding 110 years worth of Defence records which cover a huge number of policies, projects, and operations, and hundreds of thousands of personnel’.

4.8 Main themes from previous reports and Defence file materials

This Chapter sets out below the main themes identified by the Review from the reports and Defence file materials obtained and includes a sample of illustrative extracts from some of the reports and materials. The main themes from prior reports for the purposes of this Review are outlined in the following sections.

¹ Copy at Appendix 64.

4.8.1 **There have been substantial levels of abuse and/or inadequate responses to allegations of abuse in some parts of the ADF at particular points of time**

We have deliberately used the non-technical term ‘substantial’ to describe the levels of abuse and inadequate Defence responses.

The previous reports have, for the most part, not attempted to compare the levels of abuse which have occurred in parts of the ADF at particular points of time with levels of abuse in society generally or in comparable institutions or with comparable military organisations in other Western democracies.

And the previous reports have generally not attempted to identify what proportion of total ADF personnel have experienced abuse in the ADF or to identify what proportion of ADF personnel who have experienced abuse have then experienced some inadequate response from Defence.

We discuss in Chapter 6 some of the issues with the adequacy of survey information about these topics.

At this point it is sufficient to say that the reports which we survey in this Chapter indicate that, in absolute terms, a substantial number of people have experienced abuse and/or inadequate Defence management of allegations of abuse.

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.

4.8.2 **The reports have been forward looking**

The previous 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*.

The previous reports do not seem to have given much attention to addressing specific incidents of abuse which had occurred—the terms of reference for the Inquiry bodies typically did not direct or allow the Inquiry bodies to carry out any such investigation.

It is likely that the Inquiry bodies were not well-placed to carry out, and did not hold relevant powers to carry out, investigations and/or run any kind of proceeding in relation to specific allegations.

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.

4.8.3 Defence has not been able to provide records or other information to indicate that all or even many of the perpetrators of specific abuses and/or perpetrators of specific mismanagement of allegations of abuse covered by previous Reports were called to account

While some of the inquiries were under way and/or after the Inquiries had reported, there were some attempts to investigate and take action against individuals involved in abuse through the usual investigatory and then criminal, disciplinary or administrative action as the case may be.

However, the information which the Review has been able to gather to date from reports and from the Department of Defence seems to indicate that the number of convictions/adverse actions from those associated investigations and proceedings did not reflect the level of abuse which the related Inquiry report had found to exist.

It seems to follow that some perpetrators were not identified as such and were not called to account.

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.

This raises legacy issues which are further considered in Chapter 6.

4.8.4 There are current risks to Defence because of the failure to call to account perpetrators of abuse and/or mismanagement of allegations of abuse in the past

The apparent failure to identify some perpetrators of past abuse and/or the perpetrators of past mismanagement of allegations of abuse and to call them to account in some way—not necessarily punitive—raises the possibility that these persons if still in the ADF are now occupying positions of authority. This risk may undermine the credibility and/or effectiveness of:

- the ADF's commitment to zero-tolerance of abuse;
- any changes to improve culture to prevent abuse;
- supporting appropriate responses to any incidents of abuse.

Any such changes—especially changes of culture—will depend heavily on senior and middle 'management' within the ADF for successful implementation.

This risk is also emphasised by the content of some of the specific allegations of past abuse (not previously reported at all) and/or inadequate management of allegations of abuse which have been raised with this Review. Although the Review has not found any one of these allegations made out, many of them are generally consistent with the findings in relevant reports and are otherwise sufficiently plausible to warrant further investigation in Phase 2. It is unlikely that all of these allegations are without substance.

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.

We return to examine this important issue in greater detail in Chapter 6.

The apparent lack of convictions/adverse action/rehabilitation following prior reports/inquiries is, in part, explained by the next two themes in the previous reports.

4.8.5 Defence culture—or the culture in particular parts of Defence at particular points in time—has discouraged reporting of abuse by witnesses

This has been a strong and recurrent theme across reports.

The apparent failure of some witnesses to abuse to report perpetrators of past abuse raises the risk that the witnesses (as well as the perpetrators) if still in the ADF are now occupying senior and middle management positions in the ADF.

As above, this risk may undermine the credibility and/or effectiveness of:

- the ADF's commitment to zero-tolerance of abuse;
- any changes to improve culture to prevent abuse;
- supporting appropriate responses to any incidents of abuse.

This risk has been identified in some of the specific allegations and media allegations which are under consideration by the Review.

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.

These risks are discussed further in Chapters 6 and 7.

4.8.6 Defence culture—or the culture in particular parts of Defence at particular points in time—has discouraged reporting of abuse by victims or witnesses

This has been a strong and recurrent theme across prior reports and in many of the allegations this Review has received.

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.

4.8.7 Because of the under-reporting in the past, there is a risk of adverse impacts from past abuse now on the victims and for the ADF

This under-reporting seems to raise the possibility that:

- in the ADF there are perpetrators of abuse who have not been called to account—with all of the risks which that may involve (see above)
- there are victims of abuse who may be at risk of being lost to the ADF

- there are victims of abuse who—whether or not still in the ADF—have not received counselling assistance and who may be at risk of mental health issues.

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.

Finding 9

People who have been the victims of abuse may need counselling and other assistance.

We comment further on these issues below in Chapters 6 and 7.

4.9 Extracts of evidence, comments and findings from previous reports and from Defence responses to previous reports and other Defence documents

A selection of extracts is included below, addressing the themes identified by the Review above. There are a number of additional extracts from the many previous reports considered by the Review (which further illustrate the identified themes) at Appendix 14. The extracted quotes (both below and attached by way of appendix) are illustrative sample extracts only and do not represent all of the material considered by the Review.

The Review also notes that the extracts included below (and in Appendix 14) do not include material specific to children and young people in the ADF (see Chapter 5 for material specific to children and young people in the ADF). Furthermore, Chapter 6 contains extracts from previous reports relevant to the specific legacy issues which are dealt with in Chapter 6.

There have been substantial levels of abuse and/or inadequate responses to allegations of abuse in some parts of the ADF at particular points of time

Review comment

Inadequate responses to allegations of abuse create legacy issues for the future. See Chapter 6.

Inadequate responses reduce members' confidence in the system, which in turn increases the likelihood of under-reporting of abuse in the future. In short, an abused victim with little faith in the very system designed to protect them is unlikely to report abuse if they perceive the system as incompetent or flawed. Confidence in the system is key to reporting. A lack of confidence in the system also creates a culture where witnesses of abuse are less likely to speak out.

A system that fails to respond and that fails to call perpetrators to account contributes to cultural issues which if unaddressed create serious issues in the context of abuse. As noted previously, people will be more likely to abuse a power they have over another person, if they believe that there will not be any risk of adverse consequences for the abuser. Those that 'get away with it' may believe they can continue to inflict abuse (including serious abuse) and/or that the organisation through its complacency, accepts a level of wrongdoing. This is contrary to the ADF's policy of zero tolerance of abuse.

These issues are further addressed in Chapter 6 but the quotes extracted below - in chronological order for each topic - provide some insight into the cultural issues created by inadequate responses to reports of abuse.

Rapke Report 1971

Records of an Inquiry into events that allegedly occurred at HMAS LEEUWIN and onboard HMAS SYDNEY ('Rapke Inquiry')²

Inquiry conducted by Judge Rapke

67. Mrs [name expunged] wrote to your predecessor the Hon. D.J. Killen MP making allegations in general statements about the incidence of male prostitution in the RAN and containing an allegation which was in inverted commas that at LEEUWIN 3 years earlier "Junior Recruits [J.R.s] were the subject of sexual assaults by anyone who was senior to them—(which was practically everyone) and this took many forms from simply forcing tubes of toothpaste up the back passage, blackballing, forcible sexual rape, and forcible unnatural acts"

70 He [de-identified male] names several J.R.'s whom he says had their lives wrecked by treatment at LEEUWIN and he himself has carried his grudge against the Navy into his life [text expunged]. He admits to being a bully when he was a J.R. 1 and says that few of those who started their careers at LEEUWIN could claim to be free of bastardisation procedures.

74. In the light of the large body of evidence which I accept of bullying and violence, it is necessary to stress that LEEUWIN has been the scene for unorganised and repetitive acts of bullying, violence, degradation and petty crime during most of the years of its existence. 1970 was the peak year as my statistical survey hereafter will show. The condemnation which you gave expression to is in my opinion well-justified and the warnings of the action to be taken were necessary. The disgraceful outbursts of rabid behaviour are pernicious in their deep affect on the young sailor at an early and impressionable time in his naval career. The physical and mental damage to the victims was and is deplorable. The intimidatory effect of potential victims who escaped physical violence by "going along with" the bullies was upsetting, and may have led these types to join even victims in their senior days in copying the antics of their former seniors and reviving the will to do surreptitious mischief when they reached the seniority to participate. Youngsters are great copyers. Fashions and tones are set and to eradicate them requires more character, strength and independence of thought and action than the average youth possesses.

HREOC Submission to the Senate Inquiry into HMAS SWAN (see below)³

Human Rights and Equal Opportunity Commission November 1993

3.14. Another issue which appears from the case analysis is the lack of seriousness with which significant incidents of sexual harassment were treated, sometimes by relatively senior staff. This means that the complaint and subsequent correspondence from the Commissioner [Human Rights and Equal Opportunity] are given no priority and no resources are committed. It can sometimes be dealt with in an off-hand manner. Some of the Commissioner's staff endeavouring to investigate and conciliate a complaint have been met with over hostility and rudeness and a complete lack of co-operation. Even where there was no over hostility, there have been some occasions where the contact officer has made it clear to the Commissioner's staff that there will be no efforts made to resolve the issue as the woman has left the workplace.

² The material provided to the Review had been extensively redacted in accordance with an Archives Act decision-maker's decision in 2002.

³ [3.8–3.14] [extracted from Defence file 93/27375/p10].

The HMAS SWAN Report 1994

Senate Committee Report on Sexual Harassment in the Australian Defence Force 1994

Senate Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia

2.59. ... Warrant Officer Pontarolo's submission to the Committee stated:

"Whilst not having any statistical data, nearly all sexual harassment or assaults, or inappropriate sexual conduct that I have knowledge of, has involved Officers, followed by senior sailors. This would indicate that the main offenders are the very ones who are the supervisors, managers and divisional officers."

She perceived that it was not a world where it was easy for a woman to make a complaint:

"To some extent they are also a 'protected species'. If a female member is able to lodge a complaint, a closed shop mentality is formed to protect the offender. This loyalty proffered to Officers and senior sailors is at the expense of the victim. In my opinion, it is done to protect the image of the officer and/or officer corps, or to protect the senior sailors' pension."

Bryson Report 1994

Dealing with a Changing Work Environment: the Issue of Sexual Harassment in the ADFA (report prepared for the Assistant Chief of Defence Force Personnel)

Author: Professor Lois Bryson (Professor of Sociology, University of Newcastle)

Page 19. From [the] survey evidence of the last decade or so, both within the ADF and other work places it becomes very obvious that sexual harassment is a regular feature of working life for most women, though the seriousness of the behaviour to which they are subjected varies. The most serious varieties of sexual harassment are less common though still disturbingly frequent.

Page 36. In Canberra it is known that Lifeline and the Rape Crisis Centre have had dealings with members of the Force, particularly cadets and recruits about cases which were not apparently reported within the Force.

Burton Studies 1996

Women in the Australian Defence Force—two studies:

- (1) The cultural, social and institutional barriers impeding the merit-based progression of women; and***
- (2) The reasons why more women are not making the Australian Defence Force a long-term career***

Author: Dr Clare Burton (Employment Equity, Researcher and Consultant)

2.5.2. It is only when leaders are held accountable that they will take a strong interest in what the anti-discrimination laws actually require, and in the active role they are able to play and must play to provide women with a safe, secure and satisfying work environment.

There is an urgent need for a middle-management development program which will serve the purpose of educating and supporting middle managers through organisational change processes, in order to enhance the overall quality of management practice in the ADF.

4.3.1. Discussions indicate that women are reluctant to report sexual and gender harassment because it breaks the informal bond of the group. Academy cadets and some senior Officers who have worked closely with the issue indicate that the power of the 'code of silence' is such that women are deeply traumatised and are not likely to discuss the events until two or so years after they have occurred, or two or so years after they have left the military.

4.3.2. ... It would be safe to say that many women have learnt to live with a level of harassment that would not be tolerated in, say, most areas of public sector employment.

Submission to the Grey Review (see below) 1998⁴

Authors: Ryan Carlisle, Thomas (lawyers)

4.4. A number of clients report that, after they complained about sexual harassment and/or sex-based discrimination to a superior, they were:

- not taken seriously
- accused of bringing it upon themselves
- subjected to inexcusable delay in the handling of the complaint
- not followed up
- discouraged from proceeding with the complaint
- referred for assistance, to persons who were unsympathetic
- given inferior duties
- placed under extra pressure at work
- threatened with effective demotion and
- denied opportunities for advancement.

...

4.5. Each and every one of the inappropriate responses listed above came, not from the alleged perpetrator but from those who were in a position (and under an obligation) to assist the complainant.

Their failure to do so had the effect of:

- demoralising the complainants
- insulating the alleged perpetrators
- tacitly condoning the actions of the alleged perpetrators
- discouraging potential complainants from taking action and
- discrediting and undermining the complaint-handling process.

We also note the observations of the *Burton Studies* concerning the phenomenon of under-reporting of incidents. The findings of the Report are consistent with our experiences, as described above.

Grey Report 1998

Report of the Review into Policies and Practices to Deal with Sexual Harassment and Sexual Offences at the Australian Defence Force Academy

Defence Academy Review Team: Ms B.D. Grey, Colonel K.E. Northwood, Dr S.K. Mugford, Wing Commander K.I. Powell, Commander J.M. Buchanan, Lieutenant Commander W.J. Downing, Major P.T. Landford, Squadron Leader P.H. Phillips, Major K.E. Quinn, Flight Lieutenant J.J.A. Bishell, Lieutenant L.F. Jakeman, Lieutenant C.M. Rice (27 January – 7 March 1998) and Able Seaman Writer A.A. Burley. Advisers: Squadron Leader C.J. Osborn, Lieutenant O.I. Baden-Clay, Warrant Officer Class One P.W. Rosemond, OAM

4.6 Following the 1994 Senate Inquiry into Sexual Harassment in the ADF the jurisdiction to investigate sexual offences was taken away from the ADF [and given to civil authorities]. While the approach of the Senate Inquiry is understandable, the policy has shortcomings. The current situation suits neither the victim nor the ADF. On the one hand, few victims proceed with a civil complaint, once they understand the trauma associated with the civil court procedures, the delays associated with civil matters coming on for hearing (especially in the case of rape) and the limited prospect of obtaining a conviction. The ADF cannot investigate sexual offences and, given current policy and the benefit of a presumption of innocence enjoyed by the alleged offender, no action can be taken by the ADF.

⁴ Extracted from Defence file Number 98/22438/P1.

4.8 Police forces around Australia are frequently unable to investigate minor acts of indecency. Complainants of sexual assault who are ADF members and who are prepared to refer matters to the civil authorities, complain of delays in civil investigations and that matters are not properly investigated. Even when investigated and prosecuted, offenders are frequently perceived to be given lenient sentences by the civil courts. All in all, the effect of the present policy leads to the charge that the ADF claim that there is zero tolerance of sexual assault is empty rhetoric, and that the ADF is either washing its hands' of victims or giving them insufficient support.

Presentation to COSC on Implementing Grey Report 1998

Progress in Implementing the Recommendations of the Grey Report

Presenter: Commodore Brian Adams, Commandant of ADFA

Rapid action in response to the investigating officer's recommendations will ensure that the guilty are punished⁵ but that will be of little long term use if other measures are not taken on a broader front. If we do not signal, and undertake, radical change at the Academy, a very robust cadet culture will endure, the lives of more young Australians will be trashed and Defence will be forced to endure continuing, avoidable, criticism.

There are many people waiting to see exactly what we do next year. That we would maintain the *status quo* is inconceivable.

Gentlemen, to quote an academic (not an ADFA academic) 'If you do what you've always done, you'll get what you've always got.'

Birrer Report 1999

Report of Review of Disciplinary and Administrative Policy, Processes and Practices (including Management Initiated Early Retirement) in Dealing with Cases of Unacceptable Behaviour in the ADF

Air Commodore K.N. Birrer, Chairman

3.12.3. Management has been provided with effective tools to resolve cases of unacceptable behaviour and must utilise them. Where a member's complaint is either ignored or given very low priority it gives the message to the complainant/s that they are not valued. The complainant's colleagues often see the inefficient handling of the complaint as either management's inability to adequately handle cases of unacceptable behaviour or management's lack of commitment to equity and diversity issues. These issues have serious implications for management.

Burchett Report 2001

Report of an inquiry into Military Justice in the Australian Defence Force

Investigating officer appointed by CDF: Mr JCS Burchett, QC (Former Federal Court Judge)

Members of the Military Justice Inquiry Team: CDRE GJ Earley, AM, RANR, Inquiry Assistant, CAPT WR Overton, CSC, RANR, Inquiry Assistant, COL MD Slater, DSC, CSC, Inquiry Assistant, GPCAPT KR Kelly, Inquiry Assistant, WGCDR JG Wahlberg, Inquiry Assistant

Other full-time members: WGCDR KW Frick, Secretary, WGCDR FB Healy, Legal Adviser, CPONPC CR Gregory, Police Investigator, WO2 BJ Parsons, Administrative Support, CPL D Brand, Administrative Support

Members assisting the Team: CMDR D Thorley, RANR, Legal Adviser, LTCOL P Wilkinson, Legal Adviser, SQNLDR RA Keen, RAAF Police, WO2 Parker, MILPOL, SGT AG Cooper, RAAF POL Investigator]

⁵ Chapter 6 provides information about the apparent lack of success in ensuring that any guilty individuals were punished.

111. ... In the past, bastardisation was rife at various military institutions: the Royal Military College, Duntroon; the Royal Australian Naval College at Jervis Bay; the Recruit Training Centre at Kapooka; and various other training establishments. When the Defence Force Academy was set up in association with the University of New South Wales, as the well known *Grey Report* shows, it became seriously infected with the same virus..... bastardisation is not a dead practice. Also, it is quite certain that, if bastardisation has been eliminated in training institutions, its influence, creating a tolerance and even a taste for unlawful violence in association with discipline, could not have been wholly eliminated at one stroke with it.

Letter from IGADF (Mr Geoff Earley) to a complainant in March 2010

While he [REDACTED] would have preferred to have provided more proactive support [REDACTED] he lacked resources to do so. [REDACTED] there was only one dedicated equity officer at HMAS CERBERUS and three other volunteer sexual offence support staff, to service a unit population of approximately 2300-2600 personnel. During 2009 the unit was managing more than 80 equity cases that had been reported for the year, *including some 20 other alleged sexual or indecent assaults.* ... (emphasis added).

The Military justice system has been inadequate at times in the past

Review comment

As noted above, inadequate responses to reported cases of alleged abuse lead to issues of under-reporting and diminished confidence in the system. The ADF's military justice system has been the subject of a number of previous reports, studies and recommendations. As the extracts included below highlight, the issues were typically recurring indicating that for many years the military justice system was ineffective in dealing with cases of abuse (particularly sexual abuse). The legacy issues stemming from the existence of an inadequate military justice system over a period of many years are addressed further in Chapter 6.

At times in the past, the application by the ADF of its military justice system (including administrative and disciplinary procedures) was inconsistent. Also, at times in the past (and as recently as 2006) the ADF's investigative capabilities were found to be seriously diminished and inadequate.

Burchett Report 2001⁶

84. Although I have not found evidence of a culture of systemic avoidance of due process, the fact that there were individuals in one company of 3RAR who were able to commit a number of assaults, unchecked for a time, is a matter of concern. The extensive discussions the Inquiry has had show that, while the overwhelming majority of the Australian Defence Force rejects unlawful violence, there is a number still influenced by outdated ideas of macho behaviour, sometimes imbibed from parents or grandparents, or learned in military institutions of the past, or simply brought with them from the community they have left, who continue to see some degree of physical force as an appropriate tool of training or discipline....

.....

240. There is no doubt that some members believe they are unable to get satisfaction through the system, particularly where the problem is itself seen to be linked to the chain of command....

....

271. In the course of this Inquiry, I have frequently found that complainants or victims may suffer from a suspicion that the ordinary processes available to them to deal with their problems are lacking in impartiality and independence and are not free from command influence. This attitude, often strongly entrenched, makes complaints that are *about* the chain of command, including

⁶ Full details provided above.

complaints of failure to act, or of inappropriate action and complaints of abuse of process or authority, very difficult for some individuals to launch.

Senate Report on Military Justice System 2005

The Effectiveness of Australia's Military Justice System

Senate Committee on Foreign Affairs, Defence and Trade

...

Australia's Military justice system

Despite several attempts to reform the military justice system, Australian Defence Force (ADF) personnel continue to operate under a system that, for too many, is seemingly incapable of effectively addressing its own weaknesses ...

...

A decade of rolling inquiries has not met with the broad-based change required to protect the rights of Service personnel....

The Disciplinary System

After extensive consideration and significant evidence, the committee considers that the ADF has proven itself manifestly incapable of adequately performing its investigatory function.

...

...It is apparent that Australia's disciplinary system is not striking the right balance between the needs of a functional Defence Force and Service members' rights, to the detriment of both.

...

The inadequacies of the disciplinary process have important consequences for the mental health and well-being of service members, their families and friends. Evidence to the committee illustrates that the stresses placed on individuals under investigation in many cases appear to have had longer term effects, including loss of confidence, loss of employment, suicidal thoughts, attempted and actual suicide....

.....

3.111 The evidence before this committee reveals that a decade of rolling inquiries has not effected the kind of broad-based change required to improve the military police's investigative capacity. Despite constant scrutiny, the system is still plagued by delay and continually fails to equip personnel with the skills and experience necessary to conduct rigorous and fair investigations. Known problems have not been adequately addressed.

The Administrative system

The very fact that two young soldiers at Singleton were not prepared to pursue their right to make a complaint about cruel and abusive treatment, and that the wrongdoing came to light only through the determined efforts of their parents, speaks volumes about the inadequacies of the administrative system. They were not alone in their experiences. This failure to expose such abuse means the system stumbles at its most elementary stage—the reporting of wrongdoing.

Whiddett and Adams Report 2006

Report of an Audit of The Australian Defence Force Investigative Capability

Auditors: Mr AM Whiddett APM and Rear Admiral (rtd) BL Adams AO

3. In the event, this audit has found that the ADF investigative capability is in serious decline and that remediation, even if approached with unrelenting resolve and commitment, is likely to take no less than five years. The audit has also found that the capacity of the SP [service police] in each Service to undertake a general, 'garrison' policing role, has virtually ceased to exist and that this has implications for the prevention and detection of Service-related offences and ultimately for the effectiveness and success of SP investigators.

4. The viability of the investigative elements of the three Services is seriously threatened on several fronts. All are experiencing problems related to staff numbers allocated and their quality and experience. Many investigators have high workloads, poor administrative support and outdated and inadequate information technology support systems. The more fundamental deficiencies are that despite being reviewed, re-organised, restructured and downsized over the last fifteen years, SP still lack clear purpose and direction, a senior 'champion' or advocate to advance their interests, adequate leadership, and modern policy, doctrine, training and tradecraft. In consequence, investigator motivation and morale is suffering and capable people are contemplating leaving the ADF.

8. The SP investigative capability has, in the opinion of the audit team, reached the point where fundamental questions could be asked whether the service it provides justifies the significant resources expended on it. However, given the Government's decision that the ADF will retain its investigative capability, remediation must not be further delayed. It is very likely that unless action is taken as a matter of priority, the capability's depleted condition will eventually be evidenced either by its collapse or by the inability of the ADF to respond appropriately to a serious, sensitive event.

Learning Culture Report 2006

Inquiry into the Learning Culture in ADF Schools and Training Establishments

Inquiry team: Andrew Podger (former Public Service Commissioner); Catherine Harris (former Sex Discrimination Commissioner); Roger Powell (Major General rtd)

The top down driven process of changing culture in the ADF, through a values-based approach, has made significant progress from the 'take him out the back and beat the shit out of him' bullying and harassment, and the pervasive lack of acceptance of E&D that may have applied more often in the past. This progress has been achieved by leadership at the top, but also by a compliance approach further down the system. The fundamental inhibitor to reaching a mature situation is the limited acceptance of the changes by the middle ranking members of the ADF and of their leadership role. If their leadership support can be brought about, the ADF can start 'to get onto the front foot' and move on from its excessive reliance on centralised rules and procedures and its defensive posture. The Inquiry Team found that this is the most profound challenge to the cultural shift being sought by CDF and the Service Chiefs. We also note that the key to achieving cultural change in large organizations is often gaining the active commitment and support of middle management, and that cynicism and frustration at that level is common in the early stages of the change process. [page 25, 26]

Senate Committee Progress Report on Military Justice 2008

Report on Reforms to Australia's Military justice system (Fourth progress report)

Joint Standing Committee on Foreign Affairs, Defence and Trade (September 2008)

4.23. Compelling evidence is already available, however, indicating that one of the primary factors discouraging ADF members from reporting wrongdoing stems from elements within the ADF culture that tolerate bullying and harassment and other forms of victimisation of those who are perceived to be weak or who report wrongdoing.

...

4.35. The committee notes the measures taken to improve the Defence's learning culture such as developing policies, codes of conduct and training programs. The committee commends such measures but believes that their success in promoting a fair and effective system needs to be assessed regularly. Indeed, on a number of occasions the committee has expressed its concern that to achieve lasting change in the military justice system, a 'major shift' is required in the attitudes of ADF personnel. The committee understands that reform will take time and persistence and that the ADF faces a significant challenge.

...

5.9. ... Improvements in process will not of themselves eliminate the underlying culture or deep-seated attitudes that allowed some of the abuses identified in 2005 to once again take root.

Kafer Report 2009

Report of the Review of Australian Defence Force Academy Military Organisation and Culture Part 1: Summary and Recommendations

Commodore B.J Kafer Commandant ADFA

12. In relation to military justice, the Review found that there is an inconsistent application of DFDA charges and infringements at the Academy. This is largely attributable to differing interpretations of standing orders between Squadrons and Divisions and differences in the application of discipline based on the parent service of military staff. Although corrective training is seen as appropriate, it is also managed inconsistently.

13. Management is the weakest aspect of military justice at the Academy. There is a lack of formal guidance, inadequate induction and ongoing education about military justice for military staff, and insufficient analysis of trends. There is also limited feedback to military staff, officer cadets and midshipmen on performance, all of which contributes to an ambiguous environment that impacts good order and discipline. More work is required to educate military staff in military justice to remove inconsistencies in approach and interpretation. Commensurate effort is also required to ensure adult behaviour from officer cadets and midshipmen and to ensure that discipline and military justice matters are dealt with in a proportional, transparent and predictable manner.

Defence culture has discouraged reporting of abuse by witnesses and victims

Review comment

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). The following extracts illustrate the cultural deficiencies and resulting impact on under-reporting of abuse and other issues in the ADF.

Senate HMAS SWAN Report 1994

Sexual Harassment in the Australian Defence Force

Senate Standing Committee on Foreign Affairs, Defence and Trade

2.17. The Nowra study found that “fear, lost pride, and the threat of reprisals” meant that the victim “becomes confused and doesn’t know what to do, so she usually does nothing.”

2.18. Fear of retribution was a theme of the female witnesses to Navy’s Board of Inquiry. The Board said in its report:

“Fear of retribution has been a commonly expressed problem for the victims of unacceptable sexual behaviour throughout the inquiry.”

2.54. The Chief of Naval Staff accepts that hostility to women has been a problem in Navy. Vice-Admiral MacDougall told the Committee:

“There has been a great deal of soul-searching. We acknowledge that historically we are a misogynistic society. The warrior ethos is strong. There are many complexities to this.”

6.111. A key factor to be taken into account also is the culture of non-complaint in the Navy. The inhibitions to complain, at every level in the Armed Forces, have been repeatedly brought to the attention of the Committee during the course of this inquiry. It is clear to the Committee that reluctance to complain has been a widespread phenomenon in relation to sexual harassment. It is equally clear that there are strong factors, not least the rank structure and the disciplinary measures available to those in authority, that work against complaining about many other aspects of work and life in the Armed Forces.

Evidence to Grey Review 1997-1998

Records of Interviews and Statements made to the Review Team in the matter of the ADFA Inquiry

5. During 199█ I was raped by OCDT [CC]. He entered my room in the early hours of the morning, stripped off and got into my bed. He over powered me and raped me. I didn’t report the incident at that time because I thought I would be singled out and slagged off on. The situation was that if females said anything bad about a male cadet she would not be believed. Everyone would stick up for the male cadet saying things like, ‘he wouldn’t do that’, ‘he’s a good bloke’, ‘he’s one of the rugby lad’s’, ‘she’s lying’, ‘she’s trying to get attention’. I can understand in some instances that that does happen, some females do lie and seek attention, however, we were all thought of the same.

...

21. As a 1st year cadet I hated ADFA, because of the treatment handed out by 3rd year cadets. I have no time for the people I knew as 3rd years and if I came across them I would not give them the time of day, in fact I have no respect for them at all.

Grey Report 1998⁷

This ‘code of silence’ has been developed into a culture where an admission of weakness or failure is the greatest sin.... Whilst some cadets might approach chaplains and counselors, not all cadets who need guidance and support for their development will seek help.... They isolate themselves from staff, avoid guidance and revert to the only method they know about dealing with their problems—‘do what has been done to you’. Cadets who were bastardised as first year cadets may become third year bastards themselves. (page 39, para 1.120)

With regard to reporting of, and responding to, cases of assault, the culture exacerbates problems in serious ways. Cadets despise ‘jacking’ on one’s mates’ (sic) and ‘crossing the road’ and because they have a poor understanding of sexual assault matters, female cadets who are victims of sexual

⁷ Full details provided above.

assault find it very difficult to report these crimes and also find it difficult to have them dealt with appropriately. (page 43, para 1.132)

McArthur/Kitay Report 2000

Report of the progress of the reform process implemented at the Australian Defence Force Academy

Authors: Morag McArthur and Jim Kitay

A central finding of the Academy Review [Grey Review] was that these problems were not the result of a few “bad apples”, but a consequence of systemic values and practices at the Defence Academy that had developed over time. Our study leaves us in no doubt that this view is correct. In essence, due to a combination of misguided priorities and real everyday pressures of work, officers were failing to exercise leadership over the cadets. A consequence of this was that the cadets themselves filled the gap with a distorted and highly inappropriate caricature of military life. The formal rules of the Defence Academy were undermined by a pervasive informal set of values and practices that either directly caused or indirectly provided fertile soil for practices that are unacceptable in a modern defence force, including sexual assault, sexual harassment and gender harassment. [Page 2].

[Page 29] The data reveal that the strategy most frequently used by cadets for incidents of sexual and other harassment is to deal with it themselves by ‘ignoring the behaviour,’ ‘asking the person to stop’ or ‘acting as though not bothered by the behaviour.’ However, the cadets report that these strategies did not appreciably improve the situation. Only 17% of cadets who experienced unwanted gender or sex related behaviours chose to make a formal or written report.

Senate Military Justice System Report 2005

The Effectiveness of Australia’s Military Justice System

Senate Committee on Foreign Affairs, Defence and Trade

15.6. One of the major challenges facing the ADF is to counter the attitude that seeking help [for mental health problems] is of itself an admission of weakness.

15.7 Other inquiries have noted that the existing military culture can make individuals reluctant to seek help [for mental health problems] because they believe this will damage their reputation.

...

15.9. The committee again urges the ADF to acknowledge that the military culture makes it difficult for members to seek help, and put in place services that take account of and compensate for this weakness. Hotlines and hand ‘seek help’ cards will not overcome the fear of stigma or ridicule attached to seeking help, nor will they convince ADF members that their concerns will be taken up in a professional manner, treated with respect, and handled in the strictest of confidence.

...

15.55. ... Personnel’s willingness to access services like mental health hotlines will not improve until a cultural shift occurs in the ADF, and personnel begin to accept that penalties or stigma will not and should not occur when mental health services are accessed.

...

6.13. Confidence in the reporting procedures and a willingness to use them are central to the success of such mechanisms [mechanisms that encourage the exposure of impropriety, maladministration, inappropriate conduct, abuse, neglect or unsafe or dangerous work practices within an organisation]. Recent studies, however, suggest that a number of members do not avail themselves of the opportunities to report their concerns about improper conduct. There were a number of reasons for this: ignorance of process, a lack of belief in fair outcomes and a fear of reprisal.

Defence record keeping: has been inadequate at times in the past in recording / tracking cases of unacceptable behaviour

Review comment

The failure to call perpetrators to account clearly creates a number of issues, not the least of which is that the perpetrator typically continues in their career progression (unchecked) and may then at a later point in time, occupy positions of authority which provide further opportunity for abuse to occur. As the extracts also illustrate below, previous reports show that for a period of time (years) in the past, the ADF had inadequate data collection / tracking systems in place for cases of unacceptable behaviour. This has serious consequences in respect of 'serial' or repeat offenders (as outlined below in Chapter 7).

Grey Report 1998⁸

6.37. [Available records and statistics] do not reflect the true position at the Defence Academy, which is:

- a. Reporting requirements in accordance with current policy are not always complied with due to:
 - (1) a common perception that the incident is not to be reported if the complainant wishes no action to be taken, and
 - (2) a lack of awareness of the requirement to report incidents.
- b. There is insufficient knowledge and understanding of the formal DI(G) PERS 35-3 definitions and workplace recognition of both sexual assault and sexual harassment.
- c. Academic staff are loath to report misbehaviour or misconduct in an academic environment.
- d. It is part of the cadet culture to endeavour to deal with incidents within the COOC and hence most incidents are never reported to staff.
- e. Matters contained in sealed envelopes (which have signed caveats attached) have not been officially reported.

Birrer Report 1999⁹

2.4.3.1. There is no central register of 'alleged offenders' in terms of unacceptable behaviour. Quite rightly, policies aim to protect complainants, resolve cases within the command chain and accord natural justice by respecting privacy considerations for respondents. While formal complaints must be reported, they do not contain the name of respondents. Only after a matter has been investigated and the respondent is found to have behaved inappropriately are names forwarded to the DEO. This requirement has been in place since March 1999. The DEO is therefore only able to provide a list of a small number of personnel who have been found guilty of DFDA offences or been subject to administrative action as a result of findings of unacceptable behaviour. There is a lack of information on 'serial offenders'—people who may have offended on several occasions but for relatively minor offences—where cases are resolved informally by counselling, mediation or other measures that are not reported. In terms of reports provided by units, DEO was not confident that all incidents are reported in accordance with the promulgated policy. Calls to the advice lines usually do not name respondents. Even if they did so, DEO would be unable to refer the names because of its confidentiality requirements.

2.4.3.5. Records of DFDA investigations and subsequent action in the Service were incomplete, partly because only Army and Navy Service Police are tasked with investigation of possible DFDA offences associated with unacceptable behaviour. In Air Force such cases are referred to the civil police if formal legal action is possible.

2.4.3.6. Only Air Force was able to provide lists of personnel, excluding officers, who have been subject to formal administrative action.

⁸ Full details of this report are set out above.

⁹ Full details above.

2.4.4.4. An important conclusion based on the lack of a comprehensive list of incidents and respondents...is that the statistics available for unacceptable behaviour...may understate the problem. Moreover, the lack of knowledge within DEO of all incidents and all respondents in the incidents means that, despite this review, 'serial offenders' could emerge at any time, without prior notice. Such offenders could have avoided earlier notice by local resolution of incidents, the unwillingness of complainants to name or give evidence against respondents, or other factors. It is therefore vital that the ADF take prompt, consistent and fair action—and be seen to take such action—when such cases come to notice.

3.2.4. The most reliable data on the reported incidences of unacceptable behaviour in the ADF found was that produced by the DEO... Whether or not it is a true record of all reported incidents of unacceptable behaviour in the ADF cannot be determined. DI(G) PERS 35-3 requires that unacceptable behaviour incidents be reported to the DEO for inclusion in its database. It would appear however, from the relatively low incidence of reporting and from anecdotal advice, that members are either unaware of their responsibility to report such incidents, or are unwilling to do so.

...

5.6 Statistical Analysis of Prima Facie Cases under the DFDA

5.6.1. In the limited time available, the Review obtained statistics from the Service Police of each of the services with respect to investigations into alleged offences (of all types) by officers between 1991 and 30 Sept 1999. ***These statistics have not been verified and no examination of the individual cases has been carried out. The statistics should be regarded as indicative at this stage, and it would be premature to draw firm conclusions.*** The statistics reveal that:

5.6.1.1. In the case of Navy a prima facie case was found in 84 cases. DFDA action was taken in 13 cases, administrative action was taken in six cases, two cases had not been finalised, four cases were referred to civil authorities and no action was taken in 61. Thus DFDA action was taken in 15.5% of cases and no action was taken in 73% of cases.

5.6.1.2. In the case of Army between 1991 and 1998, a prima facie case was made out in 132 cases. Of those only 26 were the subject of DFDA action, administrative action was taken in 31 cases, civil authorities dealt with seven and there was one suicide. No action was taken in 67 cases. Thus in Army DFDA action was taken in only 19.7% of cases and no action was taken in 50.75% of cases.

5.6.1.3. In the case of Air Force a prima facie case was found in 149 cases. DFDA action was taken in 25 cases. Administrative action was taken in 16 cases, 23 had not been finalised, and no action was taken in 99 cases. Thus DFDA action was taken in only 16.7% of cases while no action was taken in 66.4% of cases.

5.6.1.4. Across the whole of the ADF of the 365 cases investigated involving officers only 17.5% of cases were the subject of DFDA action, while no action appears to have been taken at all in 62% of cases.

...

8.1.3. The review team tested the application of ADF policies and processes, including the adequacy of the DFDA and administrative action, by examining past practice in terms of individual cases. Here, several problems confronted the team:

8.1.3.1. The more significant cases require a considerable period to discern the relevant factors and circumstances surrounding the case and its processing. Moreover, the documentation does not always fully set out the relevant issues and the rationale for particular decisions.

8.1.3.2. Only a small number of cases could be examined in the time available.

8.1.3.3. There is no central register of all cases of unacceptable behaviour in the ADF. Many are resolved locally, and not all incidents appear to be reported.

8.1.3.4. The lists of personnel subject to MIER, VR, DFDA and administrative action took some time to compile. The latter two lists are incomplete at this stage.

8.1.4. The constraints on the Review's work made it impossible to comply with the terms of reference to examine the application of current administrative processes, including discharged provisions, to any case since *16 Dec 91*. Measurement of the application of ADF policies on unacceptable behaviour across the three Services was also limited by these constraints.

Review comment

Poor record keeping not only makes it difficult to 'track' offenders / call them to account, it can also present a misleading picture as to levels of abuse within an organisation.

5 Abuse of boys and young people in the ADF

5.1 Boys and young people in the ADF

It is the Review's understanding that:

- Through the 1950s, 1960s—and possibly later—boys as young as 13 years of age were recruited into the Navy. (The Review does not know whether children that young were recruited into the other Services.)¹
- Until at least the early 1980s boys as young as 15 years of age were recruited into all three Services at least into apprentice schemes if not into general Service positions.²
- Since 2002 the general minimum age for entry to the ADF is 17 years. Males and females can and do enter the ADF at this age. However, according to information provided by the Department of Defence to the Review there have continued to be exceptions to this rule for entrants to military schools, apprentices and members of Service cadet schemes.
- 50 per cent of the members of the ADF are under 30 years of age and 14 per cent of total ADF personnel are female.

The Review has received allegations of sexual and other serious physical assaults committed against boys as young as 13 years of age through to 16 years of age.

The Review has also received quite a few allegations of sexual and other serious assault on young males and females—including minors of both sexes of 17 years of age and including males and females who were minors of 18, 19 or 20 years of age under the law governing the age of majority at the time of the alleged abuse.

From the Review's point of view, nothing turns on when the general law of majority changed. The term 'young people' has no fixed meaning. The line between boys and 'young men' is not precise either. The development of physical and emotional maturity varies from individual to individual.

And some of the specific allegations of abuse committed against young males and females are every bit as horrific as some of the allegations of abuse committed against 'boys'.

Some States and Territories have specific legislative provisions making 18 the age of consent for a person to have sexual relations with a person in an authority position.³ In the matters before the Review, the fact that an alleged victim of sexual abuse was under that age may be another factor underlining the seriousness of the abuse alleged. However, generally where an allegation of sexual abuse involving a young person has been before the Review, the young person has not given consent in any case.

¹ See generally Brian Adams, *HMAS LEEUWIN: The Story of the RAN's Junior Recruits* Papers in Australian Maritime Affairs No 29, Sea Power Centre Australia (2009) at Appendix 70 and Appendix 71.

² Defence provided the following statement: 'The minimum voluntary recruitment age of 17 years has been designated in tri-service policy since 28 June 2002 when DI(G) PERS 33-4 Recruitment and Enlistment of Members under 18 years in the Australian Defence Force originated. The drafting of the 2002 policy reflected the Department's responsibility to ensure that its policies comply with the requirements of The United Nations Convention on the Rights of the Child (1990) and Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict of 25 May 2000 to which Australia is a signatory'.

³ See 1.5.2.

Nevertheless, it is generally accepted that children are less mature physically and emotionally, and are more vulnerable, than youths.

Accordingly, the Review has separated its discussion of allegations of abuse on 'boys' from 13 to 16 years of age from its discussion of allegations of abuse on young males and females of 17 years and older.

5.2 School cadets—very few allegations received

The relationship between the Services and School Cadets has gone through a number of changes over the last 60 years. Defence Legal informed the Review that any allegations of abuse relating to School Cadets received by the Review should be regarded as 'in-scope' even though School Cadets are not ordinarily regarded as 'Defence personnel'. The Review did receive a few allegations of abuse relating to matters involving School Cadets. However, these allegations all related to recent events. It seems unlikely that there were not more such incidents across the long history of School Cadets with the risk factors associated with large numbers of children away on camps for up to ten days at a time with opportunities for mischief and worse. The Review suspects that the fact that the number of allegations of abuse involving School Cadets was so small is probably an indicator of the perception—consistent with the Terms of Reference—that this Review has been focused on ADF personnel.⁴

Furthermore, with most School Cadet environments, the participants have been in the environments for limited periods and could usually withdraw from participation at any time.

This is a significant point of difference with the environments in the ADF when boys and young people would not have had any easy or quick escape option and when those abusing them would, as a consequence, have had significant power over their victims.

5.3 Abuse of boys in the ADF in the past

Many of the allegations of abuse which this Review has been called on to consider are very serious and sensitive.

However, the allegations which have been before the Review of sexual and other serious assaults committed on boys in the ADF as young as 13 years of age are particularly horrific.

The Review has not concluded that any particular allegation of such abuse is made out. However, we do not believe that all or even many of these allegations are elaborate fabrications. Very many of the allegations appear not to have been reported to anyone before or—if they were reported—were often not acted on. It is understandable that for many people hearing any one of the allegations in isolation, the allegation is so horrific that it may seem implausible.

The Review has taken into account:

- the material referred to later in this Chapter including the evidence and findings of the Rapke report from 1971 and the Adams' paper covering the history of Navy recruitment;
- the circumstances in which the individual stories have been brought to the Review;
- the detail in the statements;
- the reasons given by the individuals for bringing their allegations to the Review; and
- the consistency across the allegations of the types of abuse which are alleged.

⁴ The Terms of Reference are at Appendix 7 and see Chapter 1. The Joint Standing Committee on Foreign Affairs, Defence and Trade Report on *The Effectiveness of Australia's Military Justice System* (June 2005) paid attention to issues in relation to school cadets—see especially para 14.10 and following.

Taking those matters into account, the Review is of the view that all but a handful of the allegations are very plausible.

Furthermore, for reasons set out in greater detail in Chapter 6, the Review is of the view that the number of boys who suffered similar abuse is likely to be much larger than the number of individuals whose particular stories have been brought to the Review.

This Chapter will demonstrate the basis for the Review's conclusions that:

- During the years 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 and vulnerability of boys of 13, 14, 15 and 16 years of age to protect them from other boys and from adults in the ADF and to protect them from being drawn into participating in inflicting similar abuse on other children.
- It is certain that many boys were subjected to serious sexual and physical assault and other serious abuse while they were in the ADF from the 1950s through to the 1970s—and possibly into the 1980s.
- Many of the boys who suffered such abuse later participated in inflicting similar abuse on other children in the ADF.
- Many of the boys who endured and/or participated in inflicting such abuse may have suffered, or be at risk of suffering, mental health, alcohol and drug problems and associated physical health problems affecting not only them but their families.⁵

5.4 Abuse of young people in the ADF

As noted above, the term 'young people' has no fixed meaning. For the purposes of this Chapter we offer some comments on the allegations of abuse committed against 17 to 20 year olds.

This Chapter will demonstrate the basis for the Review's conclusions that:

- The ADF and successive Australian Governments have, until very recently, failed to put in place specific protections to take into account the special needs and vulnerability of young people—male and female—to protect them from other children and from adults in some of the ADF environments.
- It is certain that many young males and females have been subjected to serious sexual and physical assault and other serious abuse while they were in the ADF from the 1950s at least into the 21st century.
- Some of the young men who suffered such abuse later participated in inflicting similar abuse on other young men in the ADF. The Review has not seen any sign of female victims of abuse being 'recruited' into the ranks of perpetrating abuse on other females.
- Many of the women who endured such abuse and many of the men who endured and/or participated in inflicting such abuse may have suffered, or be at risk of suffering, mental health, alcohol and drug problems and consequent physical health problems affecting not only them but their families.⁶

5.5 Special risks in relation to boys and young people in the ADF

We have outlined in Chapter 2 some of the general factors which contribute to the risk of abuse occurring in ADF environments. One significant factor is the imbalance of power associated with rank.

⁵ See Chapter 6.

⁶ See Chapter 6.

For boys and young people in the ADF there have been other specific factors which contributed to the risk of abuse of those boys and young people by older people and/or by other boys and young people. Those factors included:

- The fact that boys and young males lack maturity of judgment and may inflict abusive behaviour on other boys/young males if not supervised.⁷
- The fact that boys and young people—male and female—lack the maturity to keep themselves out of situations where they may be at risk.
- The fact—well-known for decades at least—that some people who wished to have sexual access to boys and young people sought out positions in orphanages, schools, churches and similar institutions where they could have power over, and access to, boys and young people. There was no reason to think that such people would not have targeted relevant parts of the ADF.
- For some of the relevant years of last century at least,⁸ it seems that there was an apparent absence of rigorous general character checking at least for other rank recruiting for some parts of the ADF and a willingness to accept some recruits with a criminal record.⁹
- This approach to recruitment would have meant that boys and young males and females were exposed to some people in the ADF who had anti-social propensities.
- Adults, older males and older boys in the ADF have often had power over young males and boys, based on a combination of physical strength, ‘rank’ or at least seniority and—in some contexts—a ‘tradition’ making the infliction of abuse ‘right’ regardless of official prohibitions of the abuse.
- The correlation between suffering abuse and later becoming an abuser—especially in an environment such as prevailed in HMAS LEEUWIN in the late 1960s/early 1970s where the choice was to join in bashing and assaults on other minors or to continue to be the target of such abuse. (See below.)
- The evidence presented to, and the findings in, Reports set out below.

5.6 Failure of similar institutions to take steps to protect children and young people

Before the Review sets out the basis for the findings about abuse having occurred, we note that it may well be possible that:

- other military forces around the world have not had in place specific procedures to meet their responsibilities to young people until very recently;
- the ADF was no different from State or Church run orphanages and schools in Australia. The Review notes the following comments from the Senate Community Affairs References Committee Report *Forgotten Australians: A Report on Australians who experienced institutional or out-of-home care as children* (2004):

The Committee considers that there has been wide scale unsafe, improper and unlawful care of children, a failure of duty of care, and serious and repeated breaches of statutory obligations. [p xvi]

The Committee further considers that many comments in recent years by governments, churches and care providers reveal a complete lack of understanding of or acceptance of responsibility for the level of neglect, abuse and assault that occurred in their institutions. [p xvi]¹⁰

⁷ Major General C.W. Orme, Report of the ADF Personal Conduct Review, Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms, (unpublished) page 28-29.

⁸ Police record checks were mandatory from at least 1999, although Service Headquarters and Defence Force Recruiting have informed the Review that anecdotal evidence indicates that police record checks have been undertaken as far back as the 1960s.

⁹ See also Chapter 2 and Appendix 71 (Brian Adams, *HMAS LEEUWIN: The Story of the RAN's Junior Recruits* Papers in Australian Maritime Affairs No 29, Sea Power Centre Australia (2009) at Appendix 70 and Appendix 71)

The fact—if it is the fact—that other major institutions had not seen and responded to the special duties of care in relation to minors goes some way to explain why the ADF and successive Australian Governments standing behind the ADF had not seen the need to take special care in relation to minors in the ADF.

However, that still leaves to be addressed what is the appropriate national response *now* to the needs of the people who were abused as children and young people in the ADF.

First, however, we set out the material which indicates the basis for the findings which we have foreshadowed at the start of this Chapter.

5.7 Allegations of abuse committed against boys in the ADF

The Review has before it a number of plausible allegations from people and allegations made on behalf of people—some now elderly—about very serious assaults committed on them as 13, 14, 15 and 16 year olds in parts of the ADF.¹¹

The Review has decided to set out some examples of the content of these allegations to give some understanding of the kind of abuse that is in issue. The examples are not specially selected as extreme cases. Regrettably many other serious instances could have been set out.

- From a former ADF member now in his 70s: an allegation of very serious sexual and physical assaults he suffered shortly after he joined the Navy as a 13 year old in 195█

... I was assaulted and raped by a number of 3rd and 4th year cadets at the naval college at HMAS CERBERUS. After lights out, I and most of the other 28 first year cadets were told to get out of our beds by a group of about 50 more senior cadets and we were hit with wet towels and with socks with tennis balls in them. I was then rolled in a blanket and taken to a small dark room and held down by a number of cadets and a cadet named WW took a bucket of fermenting food slops from a 44 gallon drum and forced it down my throat. XX [Another cadet] was also involved. I choked and blacked out and was then hosed down and then chased with other cadets to the gymnasium where I was raped. I was held down by 3 or 4 cadets, there may have been more, and they were chanting. YY [Another cadet]. I was held, bent over forwards, and a wooden Indian club covered in honey was rammed up my bum. Some of the other cadets stopped what was happening, and I was then forced on all fours to push a toothbrush with my nose with someone riding on my back on the road or footpath leading up to the administration building. I complained to the nurse about these events, and to a civilian psychologist ZZ who worked on the base, and to [Named officer]. I can name other cadets involved in initiations and bastardisation ...

- Male who joined the Army in the 1970s as a 15 year old: some older but still young trainees forced his head into a toilet bowl for four flushes after he had resisted the first flush. He was left unconscious. He was found with a toilet brush inserted in his anus. Some other trainees revived him.¹²
- Male who joined the RAN at 15 years of age in 197█ subjected to a number of severe sexual and other assaults at HMAS LEEUWIN in Perth including having a broom handle inserted in his anus on a number of occasions and being forced to drink other recruits' semen.
- Male who joined the RAAF in 198█ as a short (less than five foot tall) 16 year old: during his apprenticeship he regularly suffered beatings, humiliations, 'blanket bashings' (being beaten with cakes of soap in socks) and 'grot baths' (being scrubbed with a wire brush for being deemed a 'grot')

¹⁰ Similar views can be found in other Reports into abuse in the Roman Catholic Church. Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Senate Community Affairs References Committee Secretariat, Canberra, 2004; Commission of Investigation, *Report by Commission of Investigation into the Archdiocese of Dublin* (Yvonne Murphy, chairman), Department of Justice, Equality and Law Reform, Ireland, 2010; Cumberlege Commission, *Keeping Children and Vulnerable Adults Safe in the Catholic Church*, (Julia Cumberlege, chairman), Incorporated Catholic Truth Society, London, 2007; Commission of Investigation, *Report of Commission of Investigation into the Catholic Diocese of Cloyne*, (Yvonne Murphy, chairman), Department of Justice, Equality and Law Reform, Ireland, 2010.

¹¹ For purposes of this Review we refer to the 'ADF' to cover the three branches of the Services even for those years before the term—the Australian Defence Force—was introduced.

¹² He is now close to retirement from the ADF.

inflicted on him by his 'peers'. These assaults occurred with 'the knowledge and encouragement of superiors'.

These allegations all seem to be plausible.

5.8 Allegations of abuse of young people in the ADF

The Review has before it a number of plausible allegations from people and allegations made on behalf of people—about very serious assaults committed on them as young adults of the ages between 17 and 18 years, in parts of the ADF.

The Review has again decided to set out some examples of the content of these allegations so that the reader of this Report will have some understanding of what is in issue. We again note that the examples are not specially selected as extreme cases. The Review received many other like stories..

- Male who joined the Navy in 1966, aged 17: sexually assaulted by a Chief Petty Officer on four occasions whilst undertaking duties to clean the Petty Officers' showers.

I was ordered to clean out the sump in the showers and was told it would be easier to do this if I stripped down to my undies as it was a dirty job. After the Chief took me to do this he left, I locked the shower room door and stripped down and started cleaning the sump. About 10 minutes later the door unlocked and the Chief entered, he told me to get out of the sump so he could look to see what I had done. Upon looking he grabbed me on the genitals. I pushed him away but he grabbed me and told me to shut up. He pulled my undies down. It was easy as they were wet, and then bent me over, let his trousers fall to the floor and then tried to insert his penis into my anus. When he did this I hit him with my elbow and ran out of the showers. I stood in the Chief's Mess till he came out and then retrieved my clothes. After the second time he tried I said I'd report him, and he said if I did, my future would be over and I could end up overboard one day.

- Male who joined the RAAF in 1966 as an apprentice at the RAAF School of Technical Training: allegations of repeated physical assault by senior apprentices:

I was subjected to rumbling where you would be tipped out of bed and thrown against the wall; I was locked in a cupboard and smoke was blown in through the keyhole by senior apprentices until I almost blacked out and on one occasion we were made to haul our mattresses outside and urinate on them. I once had to hide in the ceiling to avoid being beaten up.

- Female in the RAAF in the 1980s: worked in traditional male trade area. In summer trainees could wear shorts and singlets because of the heat:

One of the NCOs put an upturned hat on my work bench to collect coins from anyone staring at my breasts ... Swarfega [heavy duty cleaner] was put down my pants ... I had to share the male toilets which were covered with graffiti in which I was named.

- Female who joined the Navy as a 16 year old in 1986 was in sleeping quarters when duty Petty Officer who was meant to be a trusted member of the senior sailors on duty to ensure the safety of the female apprentices attempted to rape her. Following reporting of the event (and a like assault on another young female):

[we] were made to feel like we were lower than the lowest people on earth. People would shout out words like 'slut', they would suggest that I had 'dobbed' the perpetrator in ... I was ordered to do completely degrading and demeaning acts as a form of punishment for coming forward with an allegation.

- Female who joined the Army Reserve aged 17 was sexually assaulted when on a weekend camp. Matter was reported to CO. At a week night Reserve meeting she and the person who had abused her were called out in the middle of the hall where the meeting was being held:

I was the only girl in the room of 30–40 men and nearly all were much older than me ... The person in charge asked me in front of all those men that he had heard that such and such had happened and was this true. At that point I hesitated. I felt intimidated and felt like I was going to be kicked out. Being in the Army was all I ever wanted to do. So when I was asked in a room full of men whether it was true (that I was abused) I hesitated and looked around. I felt like I was going to lose everything so I basically said to him forget it and just walked out.

Other allegations received relate to sodomy, rape, an incident of sexual assault at ADFA with other cadets looking through the window and other incidents of filming consensual sex and taking photographs. Young sailors who were sodomised were threatened with further like treatment if the incident was reported. Young women had their breasts grabbed. Young men were given 'Regimental' showers which comprised being scrubbed with a wire brush and often thereafter 'nuggeted' which involved having boot polish rubbed on their genitals and anus.

The Review has received more allegations of events of this kind from the last century than from the last few years. But the Review has received a sufficient number of complaints referring to conduct in more recent times to make it apparent that it is not a phenomenon that can be regarded as just historical.

Indeed, we do not wish the historical nature of this and the preceding Chapter to give the sense that abuse, and mismanagement of complaints of abuse, is not still a problem. For example, of the 175 allegations within the first tranche of Volume 2, 29% relate to the period between 2000 and 2011.¹³

Furthermore, the culture issues which discourage reporting¹⁴ are more powerful in relation to victims who are still in the ADF than they are in relation to victims who have left the ADF.

5.9 Bastardisation

'Bastardise' is defined in the Macquarie Dictionary (4th edition) as:

to seek to humiliate, as part of initiation into a regiment, college.¹⁵

'Bastardisation' is defined in 'LEGOLINGO, The Cadet's Language' as:

The boys having fun. Nothing whatsoever as harrowing as the Press make out. Simply Character Building.¹⁶

Bastardisation is a practice that seems to have been rife, at least in the past, in the ADF.

The majority of complaints received by the Review from young people have involved bastardisation of varying kinds. This has ranged from making life temporarily uncomfortable to savage and repeated assaults that, if they occurred in the civilian population, could properly be regarded as criminal offences. There is no doubt from the complaints received and the many previous reviews in which the issue has been discussed that members who were seen as being weaker or who were not prepared to join in with the primary group were subjected to bastardisation.

Many complainants have described the physical and mental consequences of this mistreatment in their later life.

The consistent story has been that reporting of bastardisation was useless in times past. Either the complainant was told to get used to it and/or it resulted in further mistreatment.

¹³ See tally for 'time period when the incident occurred' in Chapter 3.

¹⁴ See Chapters 4 and 6.

¹⁵ It is of interest that there is no equivalent meaning to this in the Concise Oxford Dictionary.

¹⁶ 'LEGOLINGO, The Cadets' Language' by Bill Cowham, 1987. See Appendix 15. During the completion of this Report in October 2011, LEGOLINGO was still available in the members area of the [ADF] Academy Graduates Association (AGA) website. The ADFA and Department of Defence websites each carry links to the AGA website.

5.9.1 Was bastardisation ‘legal’ in the past?

In the short life of this Review, members of the Review have often heard it stated as an assumed historical fact that bastardisation used to be ‘acceptable behaviour’ in the ADF.

As far as the Review can determine, although ‘bastardisation’ may have been practised in some parts of the ADF in the past, the practice has not been regarded as ‘acceptable behaviour’ by the ADF for very many years.

The Review has found some information about bastardisation at RMC and ADFA in the past.

5.9.2 Bastardisation at RMC in the past

The Fox Report, which was chaired by Justice Fox of the Australian Capital Territory Supreme Court¹⁷—himself a returned serviceman—contains a summary of the history of bastardisation at RMC:

Absorption of the Fourth Class into the Corps of Staff Cadets

The first group of cadets to enter the College was known as the Fourth Class. With the arrival of the second entry in 1912 it in turn became the Fourth Class and from that time it seems to have been the practice for the senior classes to give instruction on certain matters in an informal way to the new entry. This instruction has varied in intensity and from time to time has had as a by-product conduct by the senior classes towards the Fourth Class that latterly has become known as ‘bastardization’.

Whatever its manifestation, the justification claimed for it seems to have been principally that it has been a means of absorbing the new entry into the life of the College and giving the incoming class a corporate sense of being. At the same time it was intended to ensure that the new cadets learned as quickly as possible something of the history and tradition of the College and the way of life there. Furthermore the treating of all new cadets in a particular manner, irrespective of whence they have come, and of any particular prowess they may have enjoyed at school, has been seen as a means of contributing to the egalitarian nature of the cadet body at the Royal Military College. That this has been achieved by putting one group of cadets in an inferior position is an interesting paradox. It is claimed too that the application of considerable pressure to a new cadet is one way of ensuring that he is sufficiently robust to withstand pressures that subsequently may be applied during his military career. Additionally it has been regarded as advantageous for the cadet on the one hand and the Army on the other to determine as early as practicable whether he has these qualities. Against all this there is the virtual certainty that, more often than not, there have been perpetrated by senior cadets things that at the best are foolishness and at the worst personally humiliating, sometimes degrading and perhaps harmful both in a physical and mental way to some junior cadets who have undergone them.¹⁸

However, in 1970 there was in place ‘CSC Policy Directive, *The Assimilation and Regimental Training of the Fourth Class*, CSC Standing Orders 239 and 240’ (CSC Policy Directive) which provided:

The training of the Fourth Class is to be carried out only to the extent that it achieves the aims quoted above, and within the following limitations:

- a. It is not to interfere or be at variance with the accepted code of discipline.
- b. Indirect training is to cease at the end of the First Term.
- c. Training is to cease on week nights at 1900 hrs and should be restricted to the minimum over weekends.

¹⁷ *Report of the Committee of Enquiry into the Royal Military College* (April 1970), Members: Major General C.M.I. Pearson, DSO, OBE, MC, Commander, 1st Division: Dr A.J.M. Sinclair, OBE, ED, Consulting Psychiatrist to the Army: Brigadier G.D. Solomon, OBE, Director of Military Training, Army Headquarters: Professor L.C.F. Turner, Chairman of the Faculty of Military Studies, University of New South Wales.

¹⁸ Appendix 1 to Annexure A to the Fox Report.

- d. There is to be no bodily harm done or physical violence offered to a junior cadet.
- e. No cadet is to be subjected to personal indignities and humiliation; ridicule or improper behaviour.
- f. No cadet is to be bullied in any way; or threatened or coerced in any manner.
- g. Nothing improper is to be made either stated or implied to a cadet's background, family, religious beliefs or personal life. Where these appear to violate the accepted code of behaviour and general acceptability with the AMF, the matter is to be reported through the Corps organization, to me.
- h. Training will not be conducted in view of the general public or college staff.
- i. Training is not to be organized in groups. It is a personal responsibility on a one for one basis.¹⁹

The 'limitations' set out above in the CSC Policy Directive do not vary substantially from the current definitions of 'unacceptable behaviour'.

Clearly 'bastardisation' was officially prohibited and condemned at that time.

In a memorandum to the then Minister which the Fox Committee annexed to the Fox Report, the Committee had informed the Minister:

... [The Committee] regards the practices which have come to be known as 'bastardisation' as discriminatory, sometimes humiliating, always potentially harmful to the well-being of some cadets, and generally prejudicial to academic study. Such practices are not countenanced elsewhere in the Army, and there is no place for them in the Royal Military College.²⁰

Again this seems to confirm—contrary to the frequently stated assumption—that bastardisation was not 'countenanced' *anywhere* in the Army in 1970.

We append to this Report some comments on the statements made by Mr Pemberton on the *Four Corners* program of 13 June 2011 about bullying and harassing behaviour at RMC just a few years after the RMC Report 1970.²¹

It seems that the course of conduct which Mr Pemberton described in his interview in the *Four Corners* program would have been in breach of CSC Policy Directive.

The Review has written to the CDF and the Secretary, each of whom graduated from RMC Duntroon in 1975, inviting them to comment to the Review on bastardisation while they were at RMC. The CDF informed the Review that neither he nor the Secretary considered it appropriate to provide a statement.

5.9.3 Bastardisation at ADFA in the past?

The Review received a statement purporting to be from a former ADFA student relating to alleged bastardisation at RMC in 1983 and at ADFA in 1986. The Review has no reason to doubt the source's background.

The statement provided colour photographs in support of the statement. We have not been able to check the information which the statement provides nor whether the photos are genuine. However, an individual who is familiar with the ADFA campus, informed the Review that the buildings shown in the photographs

¹⁹ Appendix 1 to Annexure A to the Fox Report.

²⁰ Annexure B to the Fox Report.

²¹ Neil James of the Defence Association stated on the Four Corners program on 13 June 2011:

'My golden rule when I was at Duntroon, I had several golden rules, and one was you never did anything to anyone else that wasn't done to you. There had to be a military point to it and the person who was on the receiving end had to see the humour of it. And if you couldn't fulfil those three golden rules, you didn't do anything to anyone. Not everyone followed - ah - those type of golden rules. But the real question surely we're addressing here is whether these were widespread and systemic problems or just the odd isolated incident, or whether they're the result of a sick culture. Now my own personal experience and certainly the Defence Association view is that they're not the result of a sick culture.'

appear to be an ADFA building. The explanation of why the individual is providing the statement and the description of what is occurring in the photographs appear to be at least plausible.

We set out below some extracts from the statement with redactions for privacy. The colour photographs which were provided as part of the statement have been removed and replaced with a written statement describing what the photographs show. We have left in some of the commentary which the statement offers so that the context in which this individual provided these photographs can be understood. The Review does not adopt or endorse those statements but notes again that they are at least plausible.

My contribution to the DLA Piper Inquiry is simply one of providing relevant historical context.

From the outset I can state that I was not subject to any instances of physical abuse whilst a cadet at ADFA, although I am aware of some relatively minor instances occurring during 1986. By relatively minor, I mean in comparison to the extreme abuse that was common practice at RMC Duntroon, particularly in 1983 and the years prior.

At RMC Duntroon in 1983 the physical and mental abuse I (and others of my year) experienced was shocking by any measure. I am tormented by it still to this day. The issue back then came to a head on 2 April 1983 when a report appeared in 'The Age' newspaper describing allegations of abuse made by three former cadets against senior cadets. The allegations resulted in an internal enquiry, findings were made, and recommendations implemented.

I took this photo at Duntroon in 1983, it shows a typical example of what went on:

[Review note: The photo shows a naked young man lying on his back spreadeagled. A white patch has been angled across the picture obscuring the eyes and part of the face of the naked man. The lower part of the naked man's face is visible. His face is contorted. The arms and legs of two people crouching are visible in the top left hand corner of the photograph. They appear to be pinning the right arm of the naked man to the ground. The legs of another person—apparently a male—is standing straddling the naked man's left leg and obscuring most of the left arm of the naked man. The upper part of the naked man's left arm also appears to be held away from his body. The top half of a tilted bucket is visible. It appears that the person standing over the naked man is holding the bucket. The word 'Army' is painted on the bucket. A brown liquid is pouring from the bucket onto the naked man's sternum. He is covered with the brown liquid from his chest to his groin. The left side of the naked man's forehead is also covered with brown liquid. His right arm and right leg are splattered with brown liquid.]

Here shown is a cadet being held down by his hands and feet by several other cadets. His groin has been forcefully smothered with Metsal (a liniment ointment similar to Dencorub, it causes excruciating burning pain when applied to genitals). The cadet subject of the activity is being bucketed with a concoction comprising human excrement and a multitude of other things (coffee, vegemite, sour milk, and the like). This is but just one of the types of conditioning activities cadets were subjected to on a daily basis, particularly during military training phases of the calendar year (such instances were less common during academic terms, but never-the-less could occur at any time).

It wasn't considered to be abuse by those involved, it was just 'part and parcel' of the ordinary routine to toughen you up, and to sort out whether a cadet was of the 'right stuff' for arduous Army service. The best judge of suitability of character here was not the Military Establishment through its selection process, but rather the cadets themselves. They were left to do what they thought was necessary to produce the right outcome, and the Military Establishment distanced itself from these events for obvious reasons ...

...

It is difficult for the Military Establishment to deny knowledge of abuse happening, or for its potential. I took the photo below whilst at ADFA, it shows a number of cadets sitting out on their accommodation balconies watching what might be described as an instance of abuse....

[Review note: The photograph is taken from ground level at an angle of approximately 45 degrees looking at a three storey white/cream brick building. The building has three balconies on each level. There is one person looking out from a balcony on the lower floor. On the middle level seven people are sitting along the ledges of two of the three balconies on that level facing out of the building. The photograph has a white patch across the heads and shoulders of the people in this group. There is one person sitting on the ledge of a balcony on the top level who is also facing out from the building. Another two people are visible looking down from the roof of the building.]

....the instance being this

[Review note: The photograph is taken from in front of a young man sitting on the grass with a white/cream brick building similar to the one shown in the previous photo visible in the background. His legs are spread with his legs straightened and his torso leaning back slightly from upright. His left foot appears to be tied to a star picket. His right foot is not in shot. His left hand appears to be tied to another star picket. His right arm is stretched out behind and to the side of his body. There are two males standing behind the man on the ground. Their faces are not visible. The man on the ground appears to be wearing some very brief underpants. There is a white patch across his eyes. He is wearing a shirt which is unbuttoned and pulled back from his body. His torso and legs are smeared with some brown, yellow and white substances, and more white substance appears above his left hand shoulder.]

and this

[Review note: The photo is taken from the side of a young man on the ground stretched out on the ground with his legs extended and his torso at an angle to the ground. A white patch has been placed on the photo obscuring most of his face. It is not clear whether he is the same as the person in the previous photo or someone else. Part of a white/cream brick building is visible in the background and there are star pickets driven into the ground around this man but it is not clear whether he is tied to any of them. One of the other people visible in this photo is wearing clothes similar to the clothes of one of the people in the photo referred to above. The young man on the ground in this photo is also clad only in a very brief pair of underpants and a shirt which has been pulled back from his torso. His left foot is not in shot. His right foot is not in shot either but there appears to be a strap around his ankle and his leg is extended. It appears that his right leg is tied to something or is being pulled out straight. His left hand is tethered and his arm is being pulled back and to the left by a male person who is braced and holding onto the strap with both hands. The man on the ground has raised his right hand to the side of his body but his arm is not visible. One man standing to the right of the man on the ground is leaning over him and pouring some white liquid onto him. Another man is standing behind the shoulders of the man on the ground and is sprinkling some powder or dust onto him.]

Classic RMC Duntroon techniques finding their way into ADFA.

This event happened out in the open, during the day, in view of everybody. It's what the RAAF and Navy were dreading when they signed up for the ADFA concept.

The so-called abuse problems at ADFA today had their genesis many years before ADFA even existed. Only back then it wasn't considered abuse, it was just part of the toughening up process for an Army career. Not something officially sanctioned by the Military establishment, but one that was denounced publicly when necessary, yet sanctioned privately.

...

In conclusion I wish to re-iterate that I do not intend to make allegations over specific incidents. My experience here pre-dates the most recent allegations by many years, however the reasons why instances of abuse at ADFA happened recently are probably not much different to why they have happened on many occasions in the past over the years. As what happened to me and others of the junior class at RMC in 1983.

This account and the accompanying photographs are particularly concerning at a number of levels.

First, there is the plausible account of widespread and serious physical assaults at RMC in 1983 and at ADFA in 1986.

Second, this story strongly suggests that there was a continuum of this behaviour from RMC through to the establishment of ADFA—despite the clear and unambiguous prohibition of this kind of behaviour at RMC no later than 1970.

Third, this story strongly suggests that the authorities within Defence who had responsibility for enforcing compliance with CSC Policy Directive and any similar directives or orders failed to enforce those Directives and acquiesced in flagrant breach of the such standards.

The document from which we quote the definition of 'bastardisation' above, 'LEGOLINGO: The Cadets' Language' is an unofficial collection of slang and terms used at ADFA and compiled in 1987. It seems that the demeaning language and cultural problems from RMC Duntroon carried swiftly across to ADFA. Of particular concern to the Review is the fact that this compilation was still available in the members section

of the [ADF] Academy Graduates Association (**AGA**) website²² as this Report was being completed and that the AGA website was linked by the ADFA²³ and Department of Defence websites.²⁴

The Grey Report delivered in 1998²⁵—and discussed later in this Report—reports on some very serious issues with cadet behaviour at ADFA in the late 1990s.

In parallel with our Review, Sex Discrimination Commissioner Elizabeth Broderick has been conducting a review of the treatment of women at ADFA.

We have had some discussions with Ms Broderick and her colleagues about the findings that were being accumulated for that Review. It seems from those discussions that Ms Broderick's Review may well have been able to give a positive report on *current* culture and personal conduct patterns at ADFA.

However, the plausible story of doings at RMC in 1983 and at ADFA in 1986, combined with the Grey Report at the end of the 1990s, strongly suggests that there was a continuum of this kind of behaviour at ADFA from its establishment until—at least—the end of the 1990s.

Of course, it is possible that behaviour patterns changed over time. We have spoken to one retired officer who says that, when he was in a supervisory role at ADFA for part of the 1990s, he attacked problems with unacceptable behaviour and made some progress in removing a number of cadets whose behaviour was unacceptable.

Nevertheless, the strong suggestion is that across a considerable period, bastardisation was rife at ADFA.

This in turn raises some significant risks:

- people who were involved in carrying out very serious bastardisation may now be in senior and middle management positions in the ADF.
- people who witnessed this behaviour and did not report it or initiate any process to bring it to an end are also now in senior and middle management positions in the ADF.
- people whose mental health was damaged by this behaviour may be in need of assistance.
- people may have been driven out of ADFA by this behaviour and may have suffered adverse career consequences.

Of course, some people may have been involved in all three capacities - as victims, as witnesses and as perpetrators.

We return to these 'legacy' issues later in this Report.²⁶

For the present it is sufficient for us to note that there would seem to be a strong foundation for believing that the many complaints of bastardisation that have been made to the Review are credible. The consideration of the options for dealing with the complaints to the Review that we discuss in Chapters 6 and 8 need to take this into account.

²² <http://www.adfagrad.org>

²³ <http://www.defence.gov.au/adfa/about/graduates.html>

²⁴ <http://www.defence.gov.au/adfa/about/graduates.html>

²⁵ A copy of the report is at Appendix 73.

²⁶ See Chapters 6 and 8.

5.10 Extracts from evidence to inquiries, reports and Defence files confirming that there has been abuse of boys and young people in the ADF

The following extracts are extensive but it is useful to let them tell the story with minimal commentary from the Review. (It may be that there were other Reports or records which Defence has not been able to locate, for reasons noted earlier.)²⁷

On reading these reports, what is so perplexing is why it took until the 21st century for the ADF, Governments and the national Parliament to put in place positive protection of minors—rather than just responding to particular problems that came to light.

Reed Report 1946

Report of the Board of Inquiry appointed to investigate the trial and punishment of offences against military law and the administration of places of confinement of military offenders

Board of Inquiry constituted by Justice Reed (a Judge of the South Australian Supreme Court); and Chaplain General, the Reverend T.C. Rentoul (Rev Rentoul passed away in 1945 and was replaced by R.A. Bidstrup.)

... It has been claimed by some witnesses that the presence in the Army of persons who have been described as “criminals” accounted to some extent for the high rate of delinquency, particularly in relation to A.W.L., and otherwise created many difficulties that would not have arisen if these men had been excluded from the Military Forces.

Figures that have been produced to the Board undoubtedly show that there were in the Army numbers of men who had been convicted by civil courts. Many of those men may well be described as “criminals,” because their convictions were for the more serious offences against the criminal law. It is beyond question that men of this type have very often caused trouble in detention barracks. They have created many difficulties in the administration of the barracks and have put the country to a great deal of expense. Many serious problems would not have arisen, or would have been less difficult to solve, if men of this type had been excluded from the fighting forces, and had been diverted into some other form of national service.

...

It is not intended to suggest that no man with a civil conviction will make a good soldier. The contrary has been proved in many instances. But men who have committed certain types of offences in civil life are likely to continue their activities if they become soldiers, and thereby seriously prejudice discipline and administration. [Page 34 par 346–351.]

Review comment

The significance of this extract from a report from the mid-1940s is that it shows that there were criminals ‘with convictions ... for the more serious offences against the criminal law’ in parts of the ADF. This report was delivered just a few years before 1951, the year of the earliest alleged event before the Review, which involves assaults on a boy in the Navy.

It was the assessment of this Board of Inquiry that—‘men who have committed certain types of offences in civil life are likely to continue their activities if they become soldiers ...’.

These aspects of the Reed Report suggest that boys and young people in at least some parts of the ADF could have been exposed to people who were convicted criminals who had a tendency to re-offend.

²⁷ See Chapter 4 for the explanation of the challenges Defence faces with records management and searching. We have relied on Defence to identify relevant reports and relevant previous procedures. If we have missed some which are relevant we ask that they be drawn to our attention.

Fox Report 1970²⁸

Review comment

The key aspects of the Report of this Inquiry have been discussed at section 5.9.

There is a strong indication that there was a tradition at RMC from its foundation in the early 20th century through until the establishment of ADFA, for bastardisation—including physical assault and humiliation in front of other students—to be inflicted on very young males as new arrivals and for young males to move on to taking the role of inflicting similar treatment in following years.

Rapke Report 1971

Records of an Inquiry into events that allegedly occurred at HMAS LEEUWIN and on board HMAS SYDNEY

Inquiry carried out by Judge Rapke (at the request of the then Minister of State for the Navy, the Honourable Mr Malcolm Mackay).

Review comment

The extracts from the Rapke Report in Chapter 4 are also relevant to the issues of this Chapter.

The copy of the Rapke report provided to this Review was significantly redacted in accordance with a 2002 decision under s33(1)(g) of the *Archives Act 1983* (Cth). Even the extracts which were left after redaction show serious abuse in the late 1960s on a very large scale at HMAS LEEUWIN—a Naval recruit land base. (The extracts from these Records also give considerable credibility to the third example of an allegation outlined at the start of this Chapter of abuse at this time at HMAS LEEUWIN.)

If a new Grub did not submit quietly to the Top Shits demands, the tradition led the Top Shit to seek out the New Grub at a place and time unlikely to involve detection and soften him up by assaulting him. If the Top Shit thought the intended victim was too strong to be tackled alone, the practice required other Top Shits to join in the assault on the New Grub. Once the New Grub surrendered to all these illegitimate demands, he was regarded thereafter as compliant and a raw recruit who knew his place thereby escaped physical violence. Violence appears to be used only when the New Grub was a “mouth” ie answered back cheekily to demands of Tops Shits, or refused to go along with the system. [(6 May 1971) Para 21]

...

Mr [AA] ... aged 19 years, testified before me to the truth of an article containing his account of improper practices at HMAS LEEUWIN in 1967–8 since his entry as a J.R. [Junior Recruit] in October, 1967. He expressed anxiety for the fate of [Mr BB] after the latter’s disclosures of ill-treatment and described his own bashings which led to his having severe migraine headaches and blackouts ... [text expunged] ... He said the bashings occurred in his first 3 months and the place of the occurrence was Garden Island, a recreational spot near LEEUWIN chosen for week-end expeditions for the J.R.’s. He said little supervision was maintained at Garden Island and his bashing was administered to him at 3 a.m. after 15 other new J.R.’s had been bashed by six older recruits. He had difficulty in breathing through his injured nose and after a time he was sent to Hollywood Repatriation Hospital for removal of adenoids. After the operation he commenced having “blackouts”. Migraine headache attacks preceded this blackout trouble ... At no time did AA reveal that he believed a bashing had caused his misery. He stuck to a story that he had tripped over at Garden Island. AA saw his assailant after he had been assaulted and the latter was made to apologise by some senior J.R.’s. AA continued with medical treatment after his discharge and was engaged at the time I saw him with processing a claim for compensation against the Commonwealth. He claimed to have been still frightened after he left the Navy to reveal the cause of his illness, and that the attendant publicity surrounding this inquiry alone persuaded him to come forward and tell the truth. [(3 July 1971) Para 31]

...

²⁸ See Chapter 4 above for full details of the Inquiry membership.

Gauntlet running followed by visits to Sick Bay with injuries from the cans, football boots and broken bottles placed in pillow cases and rained on the naked bodies of the victims were frequently inflicted on the new intake. [Name expunged] had this experience twice but saw others go through it and mentioned the fear all the victims had of dobbing the culprits in. [(3 July 1971) Para 55]

...

He [de-identified male] names several J.R.'s whom he says had their lives wrecked by treatment at LEEUWIN and he himself has carried his grudge against the Navy into his life [text expunged]. He admits to being a bully when he was a J.R. 1 and says that few of those who started their careers at LEEUWIN could claim to be free of bastardisation procedures. [(3 July 1971) Para 70]

Review comment

The link between being abused and becoming an abuser is indicated by this statement.

...

In the light of the large body of evidence which I accept of bullying and violence, it is necessary to stress that LEEUWIN has been the scene for unorganised and repetitive acts of bullying, violence, degradation and petty crime during most of the years of its existence. 1970 was the peak year as my statistical survey hereafter will show. The condemnation which you gave expression to is in my opinion well-justified and the warnings of the action to be taken were necessary. The disgraceful outbursts of rabid behaviour are pernicious in their deep affect on the young sailor at an early and impressionable time in his naval career. The physical and mental damage to the victims was and is deplorable. The intimidatory effect of potential victims who escaped physical violence by "going along with" the bullies was upsetting, and may have led these types to join even victims in their senior days in copying the antics of their former seniors and reviving the will to do surreptitious mischief when they reached the seniority to participate. Youngsters are great copyers. Fashions and tones are set and to eradicate them requires more character, strength and independence of thought and action than the average youth possesses. [(3 July 1971) para 74]

Review comment

Again, the link between being abused and becoming an abuser is indicated.

It is also curious that none of Judge Rapke's evidence or findings in the extracts which the Review has seen include any direct reference to the kinds of anal penetrations and other sexual assaults which are referred to in two of the examples set out earlier in this Chapter—one being from LEEUWIN at this time. The likely explanation for this is the significant redactions referred to above.

It may be that the Judge's reference to 'degradation' was an oblique reference to this kind of assault.

...

In 1969 I have detected four bashings. All were serious enough to require admission to Sick Bay. The injuries were bruised testicles, dislocated right shoulder, bruised leg and a fractured hand. No disciplinary action followed.

In 1970, there were 22 assaults. 7 were minor in the sense used herein. Of these two were reported and disciplinary action followed. Eleven further victims attended Sick Bay for treatment. The injuries included lacerated mouth, lashed face requiring sutures, concussion, (four), dislocated knee-cap, a fractured nose, a burst blood vessel in the hand, bruised knee and lacerated face. Four victims were admitted to hospital. All four had been concussed. Of the minor injuries three were reported. Two resulted in disciplinary action being taken. Of the 11 Sick Bay cases, 3 were reported and disciplinary action was taken. None of the hospital concussion cases led to action against the assailants. I would think this may have been due to the difficulty of a concussed patient having any or any accurate memory due to retrograde amnesia. [(3 July 1971) para 77 (f) and (g)]

Review comment

It is curious that the Judge's comments on why none of the four concussion cases resulted in any disciplinary action did not refer to the possibility that the victims were frightened that they might be assaulted again if they did report their assailants. The evidence set out above in relation to the evidence given by a 19 year old who said that he had been bashed badly by six older recruits but had 'stuck to a story that he had tripped over at Garden Island' seemed to suggest that many of the victims would have been too scared of retribution to report.

It is also curious that none of Judge Rapke's evidence or findings include any reference to the kinds of anal penetrations and other sexual assaults which are referred to in two of the examples set out earlier in this Chapter—one being from LEEUWIN at this time.

Adams paper 2009

*HMAS LEEUWIN: The story of the RAN'S Junior Recruits*²⁹

Author: Rear Admiral Brian Adams AO, RAN (rtd)³⁰

Review comment

We take comments from this paper published in 2009 out of chronological order because they provide an outline of the history of recruiting teenage boys into the Navy up to and including the time of the Rapke Inquiry.³¹

While the Navy had ceased taking in boys as general entry sailors through the *Tingira* scheme in 1926 it had never completely stopped recruiting them for other purposes. From 1913, boys aged 13 had been recruited to undergo three years of training at the Royal Australian Naval College (RANC) in order to become naval officers. Also, in 1956 it began accepting boys as young as 15 to undergo three years of apprentice training at HMAS *NIRIMBA* to become the Navy's technical tradesmen. In an additional, albeit small, step in September 1950, the Naval Board approved in principle the entry of 'Band Boys' aged between 15 and 17 years of age. Also referred to as 'boy musicians', these boys were retitled 'junior musicians' in 1953. (page 12).

... the requirement to place in Category F ["obviously unsuitable"] boys with a 'history of conflict with superiors, incorrigible truants and those with delinquent tendencies', was a clear indication that—like *Tingira* half a century before—*Leeuwin* was not to be a reform school for wayward boys. Boys who had been in prisons or reformatories were still not to be received and while it is impossible to discount the possibility that over the years the recruiting rules may sometimes have been 'bent', stories that later circulated about *Leeuwin* boys being offered the 'Navy or prison', seem to be untrue. (page 29).

Review comment

Rear Admiral Adams infers from the rule that '*incorrigible* truants and those with delinquent tendencies' and 'boys who *had* been in prison or reformatories' were not to be accepted, that HMAS LEEUWIN 'was not to be a reform school for wayward boys.'

However, this conclusion does not seem to answer the possibility that Courts and Police—with their own concerns about getting rid of trouble-makers—might encourage boys who were before them to join the Navy rather than go into prison or reformatory and acquire a record which would bar them from entry to the Navy later. Certainly the behaviour described in the Rapke Inquiry evidence and findings set out above and

²⁹ Papers in Australian Maritime Affairs no. 29, Sea Power Centre Australia (2009).

³⁰ Former Commandant ADFA post Grey Report.

³¹ Further extracts from 'HMAS LEEUWIN: The story of the RAN'S junior recruits', papers in Australian Maritime Affairs no. 29, Sea Power Centre Australia (2009) are set out in Appendix 70.

referred to in the following extracts by Rear Admiral Adams himself seems to indicate that at least some of the boys entering the Navy through HMAS LEEUWIN had some propensity for anti-social behaviour.³²

On arrival in *Leeuwin* all new boys were ranked as Junior Recruit Second Class. After six months they became Junior Recruits First Class, an advancement that meant little except a small but very welcome increase in pay and pocket money. Unofficially, however, it meant much more to the boys as it helped reinforce an informal but strong culture that the boys maintained amongst themselves. In this culture, relative seniority between boys located at the very bottom of RAN's formal rank hierarchy was determined by intake date. The boys—but not the staff—referred to the newest intake members as 'new grubs', the next senior as 'grubs', the next as 'shit' with 'top shit' assuming the position of superiority as the senior intake. It was not simply a matter of vulgar sailor nomenclature. As each intake progressed towards graduation it assumed for itself a level of higher status over the members of the newer intakes and the right to claim privileges. The most common and relatively harmless, though extremely irritating, privilege was to 'jack' or move to the head of the meal queue. Bullying of the members of the newer intakes by some members of the older intakes was the 'dark side' of the culture. While apparently fairly benign in the early days of the junior recruit training scheme, bullying seemed to have become commonplace by the late 1960s when there were four intakes of boys per year (page 41–42).

...

Each donga was patrolled at night by the Naval Dockyard Police who did a bed check and provided a general security service although in the view of some boys they often took their role too seriously. The 'turning out' of complete divisions at night was not unusual because of noise or unruly behaviour and duty divisional staff would often be seen running boys around the parade ground at all hours. page 49.

...

Similarly, throughout the RAN there was a stigma attached to being a too-frequent visitor to the sick bay. Those who did were labelled 'sick bay jockeys' and combined with the fact that a visit to the sick bay was never a pleasant experience this produced a culture in which boys would endure ailments and only seek medical aid when instructed to do so or when the nature or severity of their complaint made it unavoidable. page 62.

...

The Navy did restrict the leave of its minor sailors but had little effective control over them once they were on shore leave, whether that be in Kings Cross or 'Up Top' in Bangkok, Hong Kong or one of the other regular ports of call for Australian sailors. While swearing, smoking, drinking and sexual activities were neither condoned nor actively encouraged by naval authorities neither were they actively discouraged or policed. page 73.

...

Clearly the *Leeuwin* experience had a very strong impact on the majority of junior recruits. Some boys who passed through *Leeuwin* believe that they were hurt or disturbed by their experience. However, others regard it as a character building experience and sound preparation for both the RAN and adulthood. page 73

...

... the higher performing officers and sailors who as trainers at *Leeuwin* were expected to be exemplars for the junior recruits were the very people that the Fleet Command and warship COs were loathe to divert from operational to training functions. page 77.

³² The Review has discussed in Chapter 2 the extent to which character checking and/or psychological testing was or was not carried out and the extent to which decisions may have been made at different times to accept as recruits individuals who had some criminal record. The Review also spoke to a retired Naval Petty Officer/Military Policeman who had been involved in recruiting for the Navy for two years in the late 1960s. He was not aware of any character checking occurring and he and his colleague MPs understood that boys in trouble with the law were encouraged into the services.

...

The problem for *Leeuwin* was not simply one of staff numbers. There was the very significant question of staff members' aptitude for and inclination towards boy sailor training. For many adult sailors a posting to *Leeuwin* was not a matter of choice; they could be posted at the whim of Canberra staff officers. Additionally, in an albeit well-intentioned effort to increase family contact time, preference would frequently be given to Western Australian 'natives' rather than to those with an inclination for training duties. The NOCWA [Naval Officer Commanding Western Australia] put it neatly when, referencing opening day on 18 July 1960, he said in his address to the audience at *Leeuwin*'s first passing out parade in 1961:

I seriously question if any of the officers, CPOs, POs or leading hands who were to be their composite guides, mentors and friends in matters naval, had ever been confronted with such a large mass of teenage youth about whom they had to do something fast.

It is highly likely that he was right. RAN sailors had not experienced boy sailor training since the demise of *Tingira* in 1927 and very few if any would have had any formal instruction in training techniques for adults or boys.

The assumption seems to have been that sailors with a good disciplinary record and of high standards of performance at sea would naturally be adept at training and caring for youths. As with most assumptions this was misplaced, particularly in the case of able rank sailors who would have only been in their early 20s. The problem was well summarised by the NOCWA in April 1971 who commented to Navy Office:

The able ranks have individually and collectively by departments represented some dissatisfaction with one aspect of their working conditions. This is the employment of all able ranks, with few exceptions, in four watches as Block Supervisors in the Junior Recruits' quarters at night. This is a seemingly simple but yet quite onerous task for Junior sailors, and who are required to spend the day from the dog watches until breakfast time keeping order in the blocks. With 112 boys in a two storey block, all letting off steam of some sort and finding their feet by asserting themselves in one way or another, the weak supervisors are soon sorted from the strong and the good influence from the bad. Even backed up by duty leading hands, duty Petty Officers, duty chiefs and duty Officers this is a weakness in our organisation and quickly reveals weaknesses in our adult sailors. A duty adult in each block at night is essential and a disaffected adult sailor can do untold damage to newly joined impressionable Junior Recruits. An unsavoury incident or a few ill-chosen words at 'Option Time' ... [optional discharge decision time] ... could well lead to a massed optional discharge. I cannot emphasise too strongly the need to post the best possible sailors to the staff of the JRTE and to keep the numbers up to complement. page 79. [emphasis added]

Review comment

The description of what was going on with '112 boys in a two storey block, all letting off steam of some sort and finding their feet by asserting themselves in one way or another' is a remarkably euphemistic description of the mayhem that Judge Rapke found to have been occurring.

...

As their training year progressed the great majority of boys quickly conformed to the standards required and avoided, tolerated or laughed off punishments as just part of the game. However, some did not or could not, and thereby put themselves in the miserable position of being the target of instructors' wrath almost every day of their stay in *LEEWIN*. This situation was exacerbated when their individual performance was seen as a poor reflection on the entire class or division. For boys in this position, criticism came not only from staff but from their class and division mates who sometimes would take on a role of either teacher or punisher. This was the cause of bullying and fights between boys and for the more immature, naive or disorganised boy, often became something that made a misery, leaving them with few friends and ruining their entire year at *LEEWIN*. In some

cases it led to a deterioration in attitude and performance that ended in formal punishment of discharge from the RAN. page 86–87

Review comment

Rear Admiral Adams' detailed examination of the circumstances at HMAS LEEUWIN shows how a series of decisions about management of this establishment—no doubt all seemingly appropriate when taken in isolation—could combine to contribute to the appalling outcomes described in the evidence and findings of the Rapke Report set out above.

It also shows that many of those who suffered abuse left the Navy and thus lost the access to the support that might have been available to them as continuing members of the ADF. This is relevant to our later consideration of possible options for responding to the impact of past abuse.

Ryan, Carlisle and Thomas 1998

Submission to the Grey Inquiry

Ryan, Carlisle and Thomas: lawyers representing a number of ADFA cadets.

Review comment

The next extract comes from a March 1998 submission to the Grey inquiry from a law firm which represented ADFA cadets.³³

7.2 One issue which should be carefully considered is the interaction of the ADF with parents of young women recruits. Many parents have privately expressed their disappointment and frustration with the attitude of the ADF to the problems experienced by their daughters. There is an understandable expectation on the part of parents of young women that the ADF will stand *in loco parentis*. This is important because many new recruits are reluctant to alert their families to difficulties, either because they do not wish to upset their parents or because it is seen as a sign of weakness to do so. However, where internal processes fail to produce a solution, parents are sometimes the only real avenue of redress. In one case, our client, who was under 20 years of age, had been repeatedly sexually harassed in a remote location. She had no friends or family in the region and she was extremely traumatised. Her request for assistance in flying to see her parents or for them to visit her was rejected. In our view, the range of support services provided to complainants should be sufficiently flexible to comprehend such requests.

Grey Report³⁴

Review comment

The Grey Report identified very serious patterns of abusive behaviour at ADFA at the time considered by the Report and concluded that similar abusive behaviour had prevailed there for years.

The material relating to the Grey Report which is set out in Chapter 6 is relevant to the theme of this Chapter. In broad terms—the Report found that there had been high incidences of abuse up to and including sexual and physical assault on young male and female Cadets by young male Cadets.³⁵

Those findings are relevant to the topic under discussion in this Chapter.

The following extract from the Report referring to the position of minors is also relevant.

At the Academy there are no special arrangements made for minors. They are accommodated in the same blocks, undertake the same duties and training, and are treated in the same manner as other

³³ Page 9 extracted from Defence File Number 98/22438/P1.

³⁴ Details on the Grey Report appear in Chapter 4.

³⁵ See Grey Report at Appendix 73.

cadets in their year. They are given no additional support. Given the level of harassment ... there must be a doubt that the environment is safe. Para 4.45

There is no doubt that a large number of young males and females were abused at ADFA in the years before the Grey Report.³⁶

Presentation to COSC on Implementing Grey Report 1998

Progress in Implementing the Recommendations of the Grey Report

Presenter: Commodore Brian Adams, Commandant of ADFA

...

Concerns/Difficulties for enduring change

Resistance

There is denial, rejection and intransigence from some members of the ADF military staff and active resistance from UNSW academic staff, particularly those long serving academic staff who, in my view, seek to maintain a comfortable *status quo* and who see themselves as Defence officers rather than university employees providing a tertiary education service to Defence.

These people ignore the fact that the *status quo* is a failure. They ignore the fact that to support the *status quo* is to reject the Grey Review and put Defence at great risk of allowing the unacceptable cadet culture to exist and reinvigorate in future.

Committee members should be aware that despite the publicity, the reform undertaken and planned, and the threat of disciplinary or criminal action, some male cadets either cannot or will not accept the need to change, or simply do not have the wit to recognise that their conduct will no longer be condoned.

The most recent evidence of this is my appointment last week of LCDR Michael Slattery QC to investigate allegations of systematic low level discrimination against, and harassment of, female cadets by male members of a division. So far the investigation has produced allegations of physical, but not sexual assault, and evidence that females have not used common recreational spaces for three months because of male cadet behaviour and attitudes. That staff have not known of this and that females took so long to report it demonstrates the challenges still confronting us.

...

In relation to this division, you may be interested to know that when I addressed them I was struck by the body language—the arrogant, smirking rejection of reform and authority by some male cadets, and the hunched, tense, silent cowering of some female cadets.

Rapid action in response to the investigating officer's recommendations will ensure that the guilty are punished but that will be of little long term use if other measures are not taken on a broader front.³⁷ If we do not signal, and undertake, radical change at the Academy, a very robust cadet culture will endure, the lives of more young Australians will be trashed and Defence will be forced to endure continuing, avoidable, criticism.

There are many people waiting to see exactly what we do next year. That we would maintain the *status quo* is inconceivable.

Gentlemen, to quote an academic (not an ADFA academic) "If you do what you've always done, you'll get what you've always got." (pages 8–9).

³⁶ Our discussions with the staff of the Review of the treatment of women at ADFA, as they have been gathering evidence for their Report, indicate that ADFA is now a healthy institution.

³⁷ See Chapter 6 for a summary report on the outcome of those investigations.

Review comment

This is a powerful and commendable message.

However, the reference to the lives of young Australians having been ‘trashed’ *before* the Grey report, indicates that many young people had been seriously abused at ADFA before the Grey report reforms were implemented.

Defence Abuse Survey 2001

A Survey of Experiences of Unacceptable Behaviour in the Australian Defence Force

Author: Michael Power Directorate of Strategic Personnel Planning and Research

This Report prepared by the Department of Defence in 2001 was based on a survey administered across the ADF in 2000. The references to ‘junior’ personnel overlap with the ‘young people’ who are the focus of this Chapter.

Navy

A small, but significant proportion (14.6%) of junior sailors reported that they had been physically bullied, assaulted or threatened with violence at least once in the previous 12 months, 9.5% of SNCO’s reported the same experience, as did 3.2% of junior officers and 2.4% of senior officers. In addition, 55.8% of junior sailors reported that they had been subjected to behaviour that was offensive, belittling or threatening. [Page 5.]

...

Army

A significant proportion of SNCO’s (29.1%) and other ranks (18.6%) reported they had been bullied, assaulted or threatened with violence, the proportion of officers reporting the same experience was substantially smaller. Almost half the other ranks surveyed (47.2%) indicated that they had experienced offensive, belittling or threatening behaviour in the previous 12 months period. Approximately one third (31.6%) of junior officers and one quarter (23.5%) of the senior officers surveyed reported similar experiences. [Page 7.]

...

7.3% of female respondents to the 2001 Defence Survey of Experiences of Unacceptable Behaviour reporting experiencing ‘sexual bribery/threats’. The most common experiences amongst females of all three services were ‘treated you badly for refusing to have sex’ and ‘implied better treatment if you were sexually cooperative’. [Page 13.]

...

3.9% of female respondents from the army reported being the victims of attempted rape. [Page 15.]

...

Review comment

The Department of Defence issued a ‘Brief’ in April of this year declaring that the results of this survey and similar surveys run by the Department through the 2000s were not reliable. We make some comment on the issue of the ‘reliability’ of the Department’s April 2011 disclaimer of its own survey results in the Appendixes to Chapter 6.³⁸

³⁸ See Appendix 24 for discussion of the reliability of the survey results.

It is sufficient for present purposes that the 2001 report clearly provides some evidence of abusive behaviour across the ADF in 2000 and that that behaviour tended to impact more heavily on the junior ranks—who tend to be the younger members of the ADF.

Burchett Report 2001³⁹

It is clear that, in the past, *bastardisation practices have existed at some military institutions, and discipline by the fist has been practised by some (perhaps always only a few) in a number of units.* [para 8.] (emphasis added)

Review comment

Bastardisation has been a traditional induction for people joining military organisations. Many people joining such organisations are young people.

Similarly, ‘discipline by the fist’, has in the nature of discipline, only been ordered to be administered to those below the rank of those making the decisions about who gets to be disciplined. There is usually a correlation between being young and being junior in rank—with the obvious exception of course that many officers are younger than the other ranks under their command.

Groups and individuals were probed as to whether their experience in the military involved knowledge, by observation or otherwise, of anything in the nature of discipline by the fist, or of deliberate evasion of the lawful enforcement of discipline and substitution of unlawful measures. A generally consistent picture emerged from the discussions, whether in Western Australia, the north, the east or the south. *A significant number of older members recalled in the past either some association with, or at least hearing about, bastardisation activities at training institutions, or some physical assault (not generally in the severe category). Some of the assaults would have been directed to a disciplinary end; others were the result of intoxication or a disposition to quarrel. In general, those who spoke of them, however, firmly asserted their belief that no discipline by assault was or could be tolerated in their own unit, or in the military as they knew it today.* [Para 79.] (emphasis added)

...

Entrenched traditions die hard, and it is not many years since there existed bastardisation practices which created an atmosphere favourable to the use of illicit means of discipline. [Para 81.]

...

In the past, bastardisation was rife at various military institutions: the Royal Military College, Duntroon; the Royal Australian Naval College at Jervis Bay; the Recruit Training Centre at Kapooka; and various other training establishments. When the Australian Defence Force Academy was set up in association with the University of New South Wales, as the well known Grey Report shows, it became seriously infected with the same virus. [para 111]. (emphasis added)

Here is a clear and direct statement—with the authority of another strong Inquiry body—of bastardisation of young people having occurred at the Royal Military College, Duntroon; the Royal Australian Naval College at Jervis Bay; the Recruit Training Centre at Kapooka; and various other training establishments including ADFA.

... bastardisation is not a dead practice. Also, it is quite certain that, if bastardisation has been eliminated in training institutions, its influence, creating a tolerance and even a taste for unlawful violence in association with discipline, could not have been wholly eliminated at one stroke with it. [para 111] (emphasis added).

...

³⁹ Full details on the constitution of this Inquiry are provided in Chapter 4.

What is needed is a means of ensuring that, where harassment has actually been shown to have occurred, some watch is kept on the problem by those responsible for personnel and postings. *This has not always happened; in one case, a sexually harassed young female sailor was twice posted to a position that brought her into contact again with her harasser (whose alleged conduct had been gross).* [para 166] (emphasis added).

...

Senate Committee Military Justice Report 2005

Report on the Effectiveness of Australia's Military Justice System

Joint Standing Committee on Foreign Affairs, Defence and Trade

Review comment

This Senate Committee Report addressed many aspects of the military justice system. The following extracts are of particular relevance to the issues under consideration in this Chapter.

Witnesses appearing before this committee who have been the victims of abuse or are relatives of people who have suffered ill-treatment recount their unwillingness to report wrongdoing. *In some instances, worried and sometimes frightened parents felt that they had no other option but to contact the ADF directly about their concerns of mistreatment.* They did not take this step lightly and, in some instances, even this significant step was still not enough to put a stop to mistreatment or for the ADF to provide the necessary support for the ADF member struggling to cope in the military environment. *Some of these ADF members suffered severe psychological breakdowns and in the most extreme cases took their lives.* (emphasis added)

The very fact that two young soldiers at Singleton were not prepared to pursue their right to make a complaint about cruel and abusive treatment, and that the wrongdoing came to light only through the determined efforts of their parents, speaks volumes about the inadequacies of the administrative system. They were not alone in their experiences. This failure to expose such abuse means the system stumbles at its most elementary stage—the reporting of wrongdoing. [preface page xxiii] (emphasis added).

...

[The Executive Summary of the Investigating Officer's Report into the Death of a Private Feb 2003]

... a widespread use of negative reinforcement to motivate recruits under training. This includes disparaging and negative comments about Weary Dunlop and Digger James Pls (discharge and rehab/remedial training respectively). While the intentions of staff are commendable, in many cases they are using the wrong methods to achieve their aims ... para 6.35.

This commentary on the use of 'negative reinforcement' in relation to recruits is to be contrasted with the more positive findings of the Learning Culture Report in mid-2006.

Nevertheless, this finding in the Inquiry Officer report about the circumstances surrounding the death of the named Private does indicate a concern about a 'widespread use of negative reinforcement to motivate recruits under training' having been occurring at the time of the Inquiry Officer Report.

It is clear that there is something wrong with a reporting system that failed to expose this type of improper conduct [referring to the treatment of Initial Employment Trainees at Singleton]. *Young men chose to remain silent about abusive behaviour; seriously concerned parents raised concerns which were not acted upon; and, more importantly, members of the ADF in command positions were either blind to, or ignored warning signs.* [para 6.47]

The committee draws particular attention to the number of cases mentioned in the previous chapter where the parents of ADF members resorted to taking up their son or daughter's concerns with command or even with the Minister. As indicated in the previous chapter, such action is not taken lightly by the parents of service personnel. That it needs to and does happen and that the results have

included the deaths of soldiers clearly is a serious indictment of the reporting system or the oversight by senior Defence personnel or both. [para 7.1].

The report identifies “an environment in the ADF where one was expected to be strong, stoic and uncomplaining in the face of pain or emotional stress. Any sign of weakness invited abuse of denigration. [para 7.24].

...

The committee is highly critical of the ADF's lack of appropriate action where allegations were made of a sexual nature involving minors. There appears to be two major issues in the handling by the ADF of allegations that personnel including cadets have been mistreated. Firstly, there is no real awareness of the correct way to approach such allegations—particularly the prompt reporting of any suspicion of child sexual assault to civilian police. Secondly, there are no effective mechanisms in place to address such issues in a systematic and efficient manner. [para 14.29].

Many of these statements are broad brush. However, the Committee took evidence from a wide range of individuals and organisations—including representatives of Defence. Furthermore, the membership of the Committee was drawn from a broad representation across the Senate.

This fairly recent report indicates a number of concerns about the serious impact of abusive behaviour on junior ADF personnel.

HMAS SUCCESS Report 2011

Allegations of unacceptable behaviour and the management thereof, Part One: The Asian deployment and immediate aftermath

Commission of Inquiry constituted by: President of the Commission of Inquiry the Honourable Roger Gyles AO QC (former Judge of the Federal Court of Australia). Assisted by Counsel Assisting the Commission, Mr Douglas Campbell SC, Mr Mark Johnston and Flight Lieutenant Janice Fetchick.

Review comment

The following extracts refer to a predatory element amongst the crew of the HMAS SUCCESS which displayed a pattern of targeting junior female sailors for abusive behaviour.

[An email from the Commanding Officer of HMAS SUCCESS, CMDR Simon Brown to CDRE Cullen at Fleet Command describes the situation on Success.]

ME Department

As I have spoken to you over the telephone in recent days I believe there is a significant cultural issue in HMAS SUCCESS, particularly [blank] this has come to my attention very recently and the issue above is only one example that has come to my attention. *I believe that there is currently a number of 'bounties' placed on the very junior female members of my ships company, one is involved in the issue above. There have been instances of junior female sailors being abused, intimidated and threatened ashore.* The sailors in question are currently not willing to come forward due to the potential for incrimination and potential recrimination. This has been brought to my attention through a number of the more senior females onboard. I believe much of the actions/issues that are occurring are condoned by some [blank] onboard [blank]. *A recent incident which came to light after sailing from Qingdao involved a junior female sailor and [blank] in a night club ashore where a sexual act was committed on the pool table in the bar in the full view of POs and other members of the ships company. My executive officer has been approached by junior sailors who have stated that there is a predatory element [blank] onboard that has been onboard for a number of years, it has only been brought to command's attention because there is an understanding that something will now be done about it.*

Sir, it is my firm belief that there is a predatory element onboard that focuses on junior inexperienced females which is led by the [blank] department onboard. I am convinced this has been going on for

some time and is condoned by the members of [blank]. *I am also convinced that there are a [blank] a number of junior sailors onboard who are confident that their actions are condoned thinking that they have the 'consent' of the senior sailors onboard, the junior females that are implicated feel that they have very little recourse and feel that if they speak up there will be consequences.* The members who have brought this to my attention feel they are very much at risk, but feel that enough is enough. [para 1.117]

...

2.238 So far as fear of repercussions is concerned, *[the evidence of one of the main informants] which I accept, was that after the female junior sailors complained about the MR sailors she asked the females what they wanted.* Their response was to the following effect:

We just want it to stop, but we don't want to go to Equity and Diversity because if we do anything or complain we'll have repercussions. We have to live with them, and we'll cop it. They will make our life a misery and they've told us that.

...

2.735 The culture of silence and mutual protection backed up by intimidation of those—whether MT sailors or otherwise—who implicate MT sailors, leading to fear of repercussions on their part, was powerful, and it gave cover to MT sailors who were involved in unacceptable behaviour. As a consequence, *it is most unlikely that the whole truth emerged during this Commission of Inquiry.*

Review comment

The findings of this Commission of Inquiry clearly indicate that a number of junior female sailors from the company of the HMAS SUCCESS were subjected to abuse by fellow crew members.

Ballard Report 2009

Sexual assault prevention and intervention in a military environment

Angela Ballard (Reserve Chief Petty Officer and Churchill Fellow).

Whilst a broad-based program to assist all military personnel to develop a culture of responsible choices (with an emphasis on an individual's responsibility to avoid risky situations) would clearly benefit the ADF, a special focus on those personnel from vulnerable groups (eg young recruits) may also be required. [para 8.11, page 27]

5.11 Past lack of processes to protect children and young people in the ADF

In the 2005 Report of the Commonwealth and Defence Force Ombudsman—*'Australian Defence Force—Management of Service Personnel Under the Age of 18 Years'*—the Defence Force Ombudsman identified some serious gaps in the ADF's processes and attention to the special needs of minors:

3.2 Surprisingly, senior officers across the ADF advised that there is no definition, legal or procedural, setting out the nature and breadth of the ADF's duty of care to minors. Nor is there a broadly applicable explanation of how such a duty should be interpreted within a training context. There appears to have been no ADF-wide, or even service-wide, assessment of the risks associated with the training of minors and how those risks might best be managed.

...

3.15 All staff interviewed acknowledged that Defence had a duty of care to minors. However, there was little agreement within or across services about the nature of that duty. There was also disagreement about whether appropriate care was being delivered, and how and when staff would know if they were delivering it successfully.

...

3.21 When the Commanding Officer at the RAAF STT at Wagga sought legal advice to clarify his responsibilities to minors, the Defence Legal Service (TDLs) response included the following:

'*loco parentis* does not apply to Defence. Minors are employed by Defence. This is an industrial relationship and *loco parentis* cannot apply ... However, Defence has recognised that a higher standard of care should be applied to minors in our employ. If Defence wants to take on this additional responsibility, then it will need to [be] taken on by all three services.'

...

3.29 In my view, it is concerning that the ADF apparently recognises that a higher standard of care should be applied to minors but has done so little to define that standard. There has been very limited assessment of risks associated with employment of minors across the ADF, or of how those risks can be managed effectively in a training environment. In my view there is considerable confusion at senior levels in the ADF and within training establishments about obligations due to minors.

...

3.38 In my view, there is very little evidence of high-level organisational commitment to proactive management of the risks of training for minors. Senior staff, outside training establishments, see responsibility resting primarily with the training establishments themselves. In the absence of a clearly articulated commitment at senior levels and how that should be given effect in practice, it is hardly surprising that commitment among training staff is variable.

...

3.49 There is no service level auditing of the comprehensiveness and consistency of arrangements for minors of the effectiveness with which they are being delivered in training establishments. The lack of reporting against established performance measures is not surprising since there appear to be few, if any, performance standards set at any level in the ADF for managing minors.

...

3.65 In my opinion, accountability for the care of minors is poor. There is little consistency in data collection or reporting procedures. Responsibility has been almost totally devolved to the individual establishment level but without the development of appropriate monitoring and reporting structures. There are no agreed performance standards for delivery of care to minors applicable within services or across the ADF. Exception reporting is considered the norm.

At the time the Ombudsman was writing this Report, the general minimum age of entry to the ADF was 17. The comments which the Ombudsman made have even more force when they are applied to the decades of the last century when boys as young as 13 were recruited into the ADF.

5.12 Learning Culture Report 2006

In November 2005 in a response to the issues identified by the Ombudsman, the then CDF Air Chief Marshal Angus Houston AO, AFC, appointed the Learning Culture Inquiry. The Inquiry team was Andrew Podger AO (former Australian Public Service Commissioner) (Team Leader), Catherine Harris AO, PSM (former Sex Discrimination Commissioner) and Roger Powell AM (Major-General (ret)). The broad task of the Inquiry was to:

... inquire into the culture of Australian Defence Force (ADF) Schools and Training Establishments in order to determine whether the culture is inappropriate, in particular, whether a culture of harassment and bullying exists ...

In the *Final report of the Learning Culture Inquiry: inquiry into the learning culture in ADF schools and training establishments* the Inquiry brought back generally positive findings on the cultures of the different

learning establishments in its report in July 2006.⁴⁰ The Inquiry also made a number of recommendations for improvements.

For the purposes of this Review, an aspect of the Learning Culture Report which is of particular relevance was the recognition of risks associated with gathering young people in training institutions and the care needed to manage and minimise those risks. That recognition is indicated in the following extracts from the Executive Summary:

6. The optimal learning culture for ADF training establishments is also changing. The Inquiry Team has identified and cleared with CDF the following key elements of an optimal learning culture for the ADF:

- **Learner orientation.** A learning culture where the primary driver is the learners' needs. It is not just a training culture.
- **Technical and personal skills.** An appropriate blending of individual technical skills and facilitating personal effectiveness and the right personal behaviours amongst trainees.
- **Training for lethal force and compassion for community.** The development amongst trainees, not only of the skills to 'kill and capture', but also of the skills to 'care and nurture' and help build community capacity.
- **Team effectiveness.** This encompasses more than promoting teamwork, to incorporate the benefits of diversity and mutual respect between trainers and trainees, and the need for continuity and coherence in the learning environment.
- **Trainers skilled in instruction and mentoring.** As well as being equipped with the core skills to instruct and direct, trainers must also be able to mentor and coach the trainees.
- **Trainers continuously learning technically and in enhancing their leadership.** They should be technically expert and up-to-date, but also be leaders who understand their strengths and weaknesses.

7. An increased focus on each of the elements would not only enhance training and education for future ADF operations, but would also go a long way to reduce the risks of bullying and harassment.

...

12. In summary, the Inquiry Team did not find evidence of a culture that supports bullying or harassment. However, it is the Team's view that there is still some way to go before the underlying culture will firmly oppose harassment and bullying, and firmly support explicit policies on such issues and Equity and Diversity (E&D).

Managing the Care and Welfare of Trainees

13. Inappropriate behaviour occurs in all training establishments, whether in the ADF or in the broader community, no matter how effective the culture is. The key issue is how well the risk of inappropriate behaviour is being managed.

...

Conclusions

...

18. The Inquiry Team did find evidence of considerable effort in all training establishments to manage the main risks to the care and welfare of students and trainees. These efforts have had a positive impact, and there are examples of better practice in several establishments. The more significant risks relate to the very nature of training for the profession of arms, and the adjustment

⁴⁰ A copy of the report is available at <http://www.defence.gov.au/publications/LCIreport.pdf>.

by enlistees to military life, breaks in the continuum of training, occupational health and safety, the management of those struggling to meet performance standards, and the broader community risks of alcohol and drugs, personal (including sexual) relationships, suicides and responding to the expectations of the younger generation.

19. The effort to manage the risks is mostly effective, but it varies significantly amongst the training establishments visited, and some of the risks could be managed more effectively.

20. There is increasing appreciation of the need to distinguish carefully between tough training and bullying. Where training is particularly tough and where close bonding and teamwork are essential, greater levels of care are required to apply skills in managing personal relations and to embrace diversity.

...

The Management of Minors

...

Conclusions

25. While the ADF has a particular duty of care towards minors, the Inquiry Team believes Defence has a strong duty of care to all its trainees in view of the level of regulation it applies, the behaviour it demands and the military discipline it imposes. This is particularly relevant to younger trainees with limited experience away from parents and limited employment experience.

26. As previously identified by the Ombudsman, there is a need to develop a new Defence Instruction to provide a clearer framework for the Services and the individual training establishments. This recommendation requires more urgent attention.

27. There is also a need for a more holistic and pro-active approach to managing minors, as distinct from an excessively legalistic approach, in line with the reasonable expectations of good parents. Our conclusions and recommendations on the learning culture and the care and welfare of trainees generally represent the most important means of enhancing the management of minors and reducing the risks of abuse.

28. In summary, the Inquiry Team found no evidence that the current system of managing minors is likely to contribute directly to abuse, but there are weaknesses in the system.

...

Recommendation 9. Particular effort be made to engage with the middle level management group, that is, the NCOs, WOs and junior officers in schools and training establishments, to ensure their understanding and support of the values and of the learning culture being promoted, and associated policies and procedures, and to address the genuine concerns some have.

...

Recommendation 10. While the ADF's change process should rely more on its agreed values and less on prescriptive processes, the ADF's values should continue to be supported for the time being by rules for a fair go, given the culture is far from mature and given the continuing risks of inappropriate behaviour.

- These should include codes of conduct or behavioural compacts that are reasonable instructions and enforceable under the *Defence Force Discipline Act 1982* (DFDA) if required but are also discussed openly with each cohort of trainees and trainers.

...

Review comment

It is these cultural changes that are essential to the protection of minors and young people. The Review recognises this to be an ongoing process. However, on the material before the Review, it appears that there is still some work to be done before it can be said that the changes referred to can be considered to be established in the ADF. For example, the Review has before it credible and detailed allegations of a pattern of harassing and bullying of ADFA graduates on their arrival at RMC by instructors in 2010 followed by a pattern of humiliation and intimidation during 2011 of an individual who was 'showing weakness' by seeking a discharge.

Managing the Care and Welfare of Trainees

31. To improve the care and welfare of trainees, and to manage the risks of inappropriate behaviour better, the Inquiry Team recommends:

Tough Training

Recommendation 14. Tough training be more clearly distinguished from all forms of bullying and harassment, and that the ADF acknowledge that the need for close bonding and teamwork presents real risks that need careful management.

- These risks include more subtle bullying such as social isolation, and risks relating to diversity and 'group think'. The management of these risks requires reconsideration of the way teamwork is encouraged, and increased skills in people management amongst training staff.

Review comment

This recommendation is of particular significance for minors and young people who are still growing both physically and emotionally. The risks referred to are endemic in groups of young people. Their adverse and indeed pernicious effect on members who are 'on the outer' need to be recognised early and acted upon. Reversion to the physical mistreatment referred to previously flows rapidly from these more subtle forms of bullying.

Training Continuum

Recommendation 15. Trainees be case managed from recruitment inquiry through to posting to an operational unit supported by a computerised tracking system.

...

Recommendation 25. Trainees who decide the ADF is not for them be assisted to leave with respect and dignity, and as potential future employees or advocates for the ADF amongst their peers.

- They should be removed from other trainees as quickly as possible and provided with access to career advice and any health and welfare support they need.

Recommendation 26. Reporting of sickness and injury be firmly encouraged.

...

Recommendation 32. Those who are not successful be treated with respect and dignity, and considered as possible ambassadors for the ADF despite their personal lack of success.

...

Review comment

The significance of these recommendations cannot be over-emphasised. The failure to follow the principle on which they are based was mentioned frequently by complainants to the Review. This was usually accompanied by a comment adverse to the ADF as a career. The ADF cannot afford to have badly managed former members commenting adversely on their experience.

Generic Risks

Recommendation 34. The ADF take more active steps to build a professional workplace culture and to counter excessive alcohol consumption, including through improved education programs about alcohol, changing mess arrangements to remove the focus on alcohol, promoting broader recreation and off-duty professionally-related activities, and a more consistent approach be adopted to handling poor behaviour.

Recommendation 35. DFDA be amended to reflect contemporary law so that it is comprehensive in covering all illicit drugs. (We understand this is being progressed as an element of the enhancements to the military justice system.)

Recommendation 36. The ADF introduce measures that not only ensure acceptance of women trainees but support and mentor them to maximise their capabilities and contributions and ensure they are widely valued, and consider some of the initiatives of other organisations such as the Victoria Police.

Recommendation 37. Fraternisation policies be realistic, and based on the Defence values, and complemented by practical advice about sexual relationships.

Recommendation 38. Suicide awareness continue to be included as an essential component of induction programs for all trainees in all schools and training establishments.

Recommendation 39. Security clearance processes be made more responsive to ADF and trainee needs with firm deadlines that limit time in holding platoons.

Reporting

Recommendation 40. Reporting of all incidents of bullying and harassment continue to be encouraged.

Recommendation 41. Decisions on complaints be made in a timely manner, and in the event a complaint is not sustained, follow-up action occur quickly to ensure a trainer is not unfairly penalised and demonstrably vexatious complaints are properly addressed.

Recommendation 42. Greater and earlier use be made of mediation to manage complaints and appeals.

...

The Management of Minors

32. To improve the management of minors, the Inquiry Team recommends:

Recommendation 46. The development of a new Defence Instruction on the management of minors and other vulnerable people be expedited, along with the implementation of the other recommendations made by the Defence Force Ombudsman.

Recommendation 47. In addition to ensuring legal responsibilities are known and fully met, a holistic and pro-active approach be taken to the management of minors in line with the reasonable expectations of good parents. This should include:

- Divisional staff knowing each person in their division who is under 18 years and paying them particular attention over and above that of others, and also knowing the background of other trainees to identify any vulnerabilities that warrant particular attention; and
- Providing regular feedback to the parents of minors about how the trainee is performing and coping with their adjustment to military life.

Review comment

The discussion in Chapter 2 of general abuse risk factors in ADF environments and the discussion of risk factors which are particularly relevant to young people earlier in this Chapter, both draw on the discussion in the Learning Culture Report itself. Perhaps because of the number of detailed stories of sexual and other abuse which the members of this Review have heard in the course of this Review, the members of this Review may have a bleaker view of human nature than is indicated in the Learning Culture recommendations.

Some people do plan sexual abuse including sexual assault - see the recent report on the HMAS SUCCESS issues referred to above. It also needs to be taken into account that 'alcohol is the weapon and drug of choice in non-stranger rapes'.⁴¹ As we have noted in Chapter 2 risk management systems should include safeguards against bad people behaving badly and against the possibility of good people lapsing. Training institutions bring together a lot of vulnerable young people away from their usual social setting. Bad people know that and good people may be tempted by that fact.

In Chapter 4 we have set out the material from previous reports which have found that the factors in general society which lead to under-reporting of sexual assault are exacerbated in the ADF. In Chapter 6 we comment further on under-reporting and we discuss some of the difficulties with estimating what level of abuse may have occurred in the past.

The Review does have some recent direct evidence of the level of reported sexual abuse allegations at a training institution - HMAS CERBERUS. In a letter from IGADF Mr Earley to an individual complainant in March 2010 Mr Earley stated:

While he [REDACTED] would have preferred to have provided more proactive support [REDACTED] he lacked resources to do so. [REDACTED] there was only one dedicated equity officer at HMAS CERBERUS and three other volunteer sexual offence support staff, to service a unit population of approximately 2300-2600 personnel. During 2009 the unit was managing more than 80 equity cases that had been reported for the year, including some 20 other alleged sexual or indecent assaults. ...

Taking into account that:

- in society generally there is a low rate of reporting of sexual assault;
- aspects of ADF culture further discourage the reporting of sexual assault;
- the overwhelming majority of sexual assaults are committed by people known to the victim;⁴²
- across society most reports of sexual assault are made by females;⁴³
- females presumably represented less than half the total 'unit population of between 2300-2600' at HMAS CERBERUS

the IGADF's figure 'of some 20 other' reported allegations of 'sexual or indecent assault' indicates that a significant proportion of the young females at *that* training institution in *that* year were victims of sexual or indecent assault committed by male members of the ADF.

⁴¹ D. Lisak Interview for USAF 'Targeting Sexual Assault - Air Force Campaign Plan for Prevention and Response' DVD quoted in Ballard Sexual Assault Prevention and Intervention in a Military Environment' at page 25. See Appendix 72.

⁴² See Chapter 2 for general information about sexual assault.

⁴³ *Study of Reported Rapes in Victoria 2000-2003* Summary Research Report of Statewide Steering Committee to Reduce Sexual Assault (Based on a study by Dr Melanie Heenan AIFS and Dr Suellen Murray RMIT); Key Findings (page 5) included: the overwhelming majority of rape victims (92.5 per cent) being female; Cases that resulted in No Further Police Action were typically more likely to involve: younger victims; victims who were acquainted or who had a cursory relationship with the offender; and, victims who had consumed alcohol or other drugs around the time of the offence.

The assessment and management of risk of sexual assaults being committed by some ADF members on other ADF members needs to take into account the predatory nature of some people and the potential for some people to be tempted to take advantage of vulnerable young people.

5.13 ADF's recent introduction of processes to take into account the special vulnerability of minors and young people

In March 2009, the then Chief of the Defence Force, Air Chief Marshal Angus Houston AC, AFC made a submission on behalf of the Australian Defence Organisation to the New South Wales Legislative General Purpose Standing Committee (No 2) Inquiry into Bullying of Children and Young People. The submission included the following:

2. ADF members under the age of 18 years (minors) are a specific class of vulnerable person to which additional legal and moral obligations apply. Members of the ADF who deal with and are responsible for such personnel must be aware of their responsibilities when managing minors. Defence aims to train and educate its personnel so that they obtain this level of awareness and are able to adhere to their responsibilities when working with minors.

...

5. Despite the small proportion of minors in Defence ... the ADO recognises its international and national legal obligations to effectively manage under-age personnel in a consistent and proper manner.⁴⁴

These were—with respect—entirely appropriate statements of principle on behalf of the ADF. However, the concern—as indicated by the Ombudsman's 2005 Report summarised above—is that such statements of principle had not been part of the ADF's framework for protecting the welfare of its people until the 21st century.

The need to exercise special care in relation to minors is now reflected in Defence Instructions and other internal documents:

DI(G) PERS 33-4, Management and administration of Australian Defence Force members under 18 years of age⁴⁵

10. The Commonwealth of Australia (through the Department of Defence) has a legal duty of care to ensure reasonable care is taken for the safety of engaged members. There is a requisite standard of care required to be met by the Commonwealth to discharge the duty of care. The standard of care required on the part of the Commonwealth for the care of minors is higher simply because those ADF members are minors. That is, minors fall into a class of person described as vulnerable for whom the law provides a higher standard of care.

This DI(G) was issued on 22 April 2008. Defence has not identified any earlier provision to this effect—and given the comments and findings in the Ombudsman's 2005 report—it seems that there was none.

The 'legal' duty of care of the Commonwealth in relation to its ADF personnel went through some changes last century. The Review takes the view that the *legal* duty of care—whatever it might have been at different times over the past 60 years—should be regarded as the minimum standard of care that the ADF should have been achieving in its care for minors in the ADF.

⁴⁴ The CDF includes reference here to Australia's international obligations. The Review notes from Defence file material provided the following relevant advice: MJ Dean A/DMPP, Brief for HHP, Management of Under-Age Personnel in the ADF—Service Waivers to Recruits Under 17 Years of Age (3 June 2009):

Defence Legal's advice is that the Service's use of Regulation 14 of the Defence Personnel Regulations in the granting of waivers to recruit persons under 17 years of age as Midshipmen and Officer cadets is consistent with Australia's obligations under the Convention [on the Rights of the Child] and Optional Protocol. [Para 8]

⁴⁵ See Appendix 16.

DEOTS SI (PERS) 11-1, Management of Minors and Vulnerable Personnel⁴⁶ (dated 18 January 2011)

5a. In general terms, the level of vulnerability reduces as age increases, with a minor representing the highest level of vulnerability.

The Review agrees with this statement. The fact that the ADF had boys aged 13 to 16 years in the 1950s and 1960s and as young as 15 years of age until the 1980s necessarily meant that the ADF had vulnerable boys under its care across those decades.

DEOTS SI (PERS) 11-1, Management of Minors and Vulnerable Personnel (dated 18 January 2011)

6. ...DEOTS has a responsibility to these personnel and especially if they are under the age of 18 to ensure their safety and wellbeing.

The Review agrees. And given the Review's focus on past abuse, the Review would go further and say—and the ADF has always had this responsibility.

1RTU Standing Instructions PERS 35-16, Management of Recruits Under the Age of 18 at 1RTU⁴⁷
(issued 29 April 2011)

1. There are specific requirements associated with the training of recruits that are below the age of 18 Years. The Royal Australian Air Force has a responsibility to ensure that recruits of this age are provided with a safe learning environment where their welfare requirements are met whilst taking every measure to ensure that they are not taken advantage of or be exposed to illegal age related activities (drinking, smoking, etc).

Again the Review agrees. And again the Review would go further and say—and the ADF has always had this responsibility.

RAAFSALT SI (PERS) 33-2, Management of Trainees under the Age of 18, Annex A—Duty of Care⁴⁸
(issued 18 October 2010)

6. In the case of minors, the Commonwealth owes a very high standard of care, given that persons under 18 years of age are likely to lack life experience; not have an ability to appreciate the nature of risks or dangers; may be more vulnerable to stress; and require particular care under various State and Territory laws. This responsibility is an affirmative obligation and requires proactive steps to be taken to provide an environment that takes account of the unique vulnerabilities of minors. Those responsible for minors within a unit must take reasonable measures to protect those in their care from risks of injury that they could reasonably foresee. That assessment is ultimately made by a court which objectively determines whether, in the circumstances of a particular case, the duty of care obligations have been satisfied. Therefore, when dealing with minors, members of the ADF are to be mindful of their obligations to provide for a safe and secure environment.

Again the Review agrees. And again the Review would go further and say—and the ADF has always had this responsibility.

It may be that some of the ADF's general processes should have provided protection for minors and young people. Clearly they failed on many occasions. However, it seems that the ADF does now have specific procedures in place focused on meeting its responsibilities to these people. It will be incumbent on the ADF to enforce these procedures. As has been seen, in the past the inappropriate culture that directives were intended to overcome has been allowed to creep back and eventually revive (see, for example, the discussion about bastardisation). This is likely to be an issue long after all phases of this Review have been completed.

⁴⁶ See Appendix 17.

⁴⁷ See Appendix 18.

⁴⁸ See Appendix 19.

5.14 Findings in relation to boys in the ADF

Taking into account the material set out in this Chapter and the specific allegations which have been brought to the Review, the Review makes the following findings in relation to boys who have been 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.

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.

Finding 12

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

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.⁴⁹

5.15 Findings in relation to young people in the ADF

Taking into account the material set out in this Chapter and the specific allegations which have been brought to the Review, the Review makes the following findings in relation to young people. (As discussed above, for purposes of this Report we refer to 17–20 year old males and females as young people.)

⁴⁹ See discussion of mental health issues in Chapter 6.

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.

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.

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.

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.

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.⁵⁰

The Review makes these findings by way of demonstration of the need to recognise and provide reparation to many boys and young people who have suffered egregious abuse while a member of the ADF. It discusses systemic issues relating to the management of Defence in Chapter 7. The Review makes suggestions for options that might be adopted to deal with the abuse suffered by individual members and

⁵⁰ See discussion of mental health issues in Chapter 6.

former members of the ADF in Chapter 8. The adoption of these suggestions may provide some solace for the people affected by the unacceptable conduct referred to in this Chapter.

However, the Review notes that many of the problems alluded to in this Chapter flow from the culture of non-reporting of assaults. It would seem to be appropriate for consideration to be given to the Australian Institute of Family Studies (AIFS) report *Responding to young people disclosing sexual assault: A resource for schools*.⁵¹ While that relates to reporting of sexual offences in schools, much of what it says is of relevance to Defence training establishments.

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.

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.

⁵¹ <http://www.aifs.gov.au/acssa/pubs/wrap/w6.html>.

6 The current impacts of past abuse in the ADF

As outlined in Chapters 4 and 5 a number of previous reports have concluded that there have been substantial levels of sexual and other abuse in the ADF—sometimes as conclusions specific to particular locations, units or training institutions and sometimes as general conclusions across the ADF during certain eras.

The previous reports also indicate under-reporting of abuse.

This Chapter identifies some 'legacy' issues which flow from that history.

6.1 Perpetrators of abuse in the past: current risks

To the extent that individuals who perpetrated abuse in the past have not been called to account and/or removed from the ADF, they may constitute an ongoing risk to the people within the ADF and to the ADF itself.

The main risk that they present to the people within ADF is that they may inflict more abusive behaviour on ADF personnel. The Review is not in a position to assess the likelihood of past abusers re-offending. Some of the relevant considerations would seem to be:

As outlined above, young men are more likely to engage in anti-social behaviour. So as these people have matured they might be less likely to offend.

On the other hand, for reasons which are set out in greater detail in this and the next Chapter, because of the difficulties there have been in calling to account anyone who does commit abuse, they may believe that they can abuse others with impunity¹

Whether or not they are likely to re-offend, their continued presence within the ADF presents significant risks to the ADF itself:

The male perpetrators who went through ADFA in the years before the Grey report are of particular concern.

There was a high level of sexual assault on female cadets by male cadets before Grey.

With the passing of time the perpetrators - if still in the ADF - will have risen to 'middle' and 'senior' management positions within the ADF.

These people have very important leadership roles and daily 'management' roles.

In their interactions with the people under their command and with everyone they interact with, they should embody and demonstrate the values of the ADF.

They will be expected to drive any culture change - including an increased focus on reporting.

¹ In her paper - *Sexual Assault Prevention and Intervention in a Military Environment* (full copy at Appendix 72), Churchill Fellow and Reserve Chief Petty Officer Angela Ballard states (page 26): 'The undetected rapist is the biggest challenge for military organisations. A rapist is defined as 'undetected' when the victim decides not to report the perpetrator. Recidivism for an undetected rapist is likely according to Lisak and Miller (2002) and, for a military perpetrator, this may mean multiple military victims'. The work by Lisak and Miller referred to is *Repeat Rape and multiple offending among undetected rapists* - Violence and Victims Vol 17, No 1 (2002).

There will be some others in the ADF who know that these people have offended in the past. It will be difficult for them to 'lead' on values with this credibility problem.

There will be some in the broader community - including the victim(s) of their abuse - and other former ADF personnel - who may know the person's history. Again that may affect their ability to represent the ADF with credibility.

And finally there is the risk that sooner or later - especially with the increased emphasis on reporting - their past abuse may become public.

If that did occur, that could damage the reputation of the ADF.

And the higher they have risen, the greater the damage will be.

And of course, their continued presence without being identified casts a shadow over the reputations of their innocent classmates.

This issue may escalate when and if the Minister decides to table this Report. But ultimately most of the information on these issues which is gathered in this Report is on the public record. If this Review managed to find it, then there is a chance that someone else will as well.

6.2 Witnesses of abuse in the past: current risks

The risks associated with the continued (silent) presence of witnesses who have not reported abuse in the past are less than in relation to perpetrators. But there are still some risks.

With the passing of time those silent witnesses who were at ADFA before the Grey report - if still in the ADF - will also have risen to 'middle' and 'senior' management positions within the ADF.

These people also have very important leadership roles and daily 'management' roles.

In their interactions with the people under their command and with everyone they interact with, they should embody and demonstrate the values of the ADF.

They will be expected to drive any culture change - including an increased focus on reporting.

There will be some others in the ADF who know that these people have been witnesses and remained silent in the past. It will be difficult for them to 'lead' on values with this credibility problem.

There will be some in the broader community - including the victim(s) of abuse - and other former ADF personnel - who may know they have been silent witnesses. Again that may affect their ability to represent the ADF with credibility.

6.3 What kind of abuse/failure to report is in issue?

In relation to Past Perpetrator and Silent Witness risks the following passage from the Grey Report is particularly important (emphasis added):

1.132. The culture contributes to the problems, but does so in different ways, depending on which problem is examined. ... The culture appears to contribute to the problems of assault in the following ways:

- a. *With regard to sexual assaults that have a 'date rape' character, the lack of understanding of cross-gender communication identified by Samuels and Divers may contribute to the occurrence of some cases.*

- b. *With regard to a more common form of sexual assault, which the Review found at the Defence Academy, one or both parties get drunk and an 'opportunistic' assault occurs. The acceptance of binge drinking, the culture of not 'jacking' on one's mates, **(and hence of not intervening despite evidence such as struggling and screaming)** and the acceptance of low levels of room security, all contribute directly to the circumstances in which assaults occur, even though they do not 'cause' them.*

Most members of the community would regard opportunistic sexual assaults by male perpetrators on fellow cadets as reprehensible and cowardly and would be inclined to judge the perpetrator accordingly - no matter that the assault occurred a quarter of a century ago.

Most members of the community would find a failure by a cadet to intervene to stop a sexual assault being perpetrated on a fellow cadet as reprehensible and cowardly - again even though it occurred a quarter of a century ago.

Accordingly, there would probably be serious concern in the community about such people holding middle or senior management roles in the ADF let alone rising further in the ADF.

Quite late in the life of the Review, we found information about the extent to which the investigating body led by Lieutenant Colonel Northwood working at ADFA around 1998 had identified male cadets who were under a high level of suspicion as having been perpetrators of rape.

This has significantly changed our thinking about what action we should recommend for Phase 2.

6.4 Victims of abuse in the past: current risks

At the end of this Chapter we discuss the links between abuse and mental health issues.

6.5 Size and scale of the legacy

The Review has been asked by the Chief of the Defence Force to provide data as to the potential size and scale of these legacy issues - not just in relation to ADFA but generally across the ADF.

This depends on three main considerations:

How much abuse occurred?

How much abuse was unreported - (and therefore Defence could not respond to)?

How has Defence dealt with perpetrators once identified?

These questions all turn around the conundrum of trying to estimate the level of unreported abuse.

The Review has pressed Defence for relevant information and has spent a lot of time reviewing files and carrying out our own research to try to ascertain how big is the problem of unreported past abuse.

The information which is before the Review in relation to specific allegations and the expert opinion available to the Review are consistent with the findings of previous reports as summarised in Chapter 4 that there has in the past been under-reporting of sexual and other abuse in the ADF.

The Review has also found that in past years, aspects of ADF culture, together with aspects of the military justice system (see Chapter 7) have exacerbated under-reporting of abuse in the ADF (particularly in sexual abuse cases).

There are difficulties with accurately quantifying the nature and extent of past abuse, not the least of which is the under-reporting of incidents (particularly sexual assault incidents) which the Review has found to exist.

Survey data has been used by the ADF in past years as one means of quantifying levels of past sexual and other abuse. The difficulties with relying on survey data are addressed at the conclusion of this Chapter (and include, by way of example, a review of the Grey Report survey data from ADFA in the late 1990s).

What we know about past abuse in the ADF is based on reported/disclosed incidents.

Quantifying the size of past abuse is difficult to do when persons, for a range of reasons, choose to remain silent. The reasons for silence are numerous and include, for example: fear of retribution; distrust/disillusionment in the complaint handling process; concerns over career advancement; and embarrassment.

The issue of under-reporting is not confined to the ADF. As highlighted in earlier Chapters, under-reporting in the wider community of serious instances of abuse, including sexual abuse, is significant and well known (in a 2011 paper it was estimated that 20% of sexual assaults are reported to authorities)². As part of the Review, we have also considered the operation of the APS Code of Conduct and considered reported rates of bullying and harassment in the APS. It was found that the rates of actual bullying and harassment are likely to be significantly higher than reported figures (a peak of 19% in 2007–2008), because of clearly identified under-reporting.³

Even though reporting of misconduct is considered to be an obligation in the APS, and the level of awareness about how to report it is high, rates of reporting are very low. The figures show that more than half of all cases of observed misconduct are not reported. The anecdotal reasons given for not reporting in the APS are consistent over time and consistent with the Review's findings in respect of the ADF, namely: difficulties with proof, lack of protection from victimisation, fear of more bullying or reprisals, and damage to career.

There are a number of factors (including ADF specific factors) which have contributed to an under-reporting of incidents in the ADF. The Review cannot say how many more instances of past abuse (other than those reported during the Review) potentially exist.

What the Review can say (based on the information before it) is that when considering past abuse in the ADF, the Review has found:

- high levels of under-reporting
- a substantial number of people who have been dissatisfied and disillusioned with the ADF's application of military justice processes and approach to complaint handling
- inconsistent (and in many cases, flawed) applications of the military justice procedures (see Chapter 7) in place at particular points in time
- low levels of prosecutions and/or inaction by civilian police or the ADF (including failure to take administrative or DFDA action) in failing to call perpetrators to account for unacceptable behaviour (including serious instances of assault).

These findings are closely linked: poor/incompetent investigations and/or an inconsistent application of military justice procedures breeds disillusionment amongst members, which leads to an increased likelihood of under-reporting.

² <http://www.theage.com.au/victoria/judge-calls-for-sex-trials-rethink-20110907-1jxup.html>. See also the statistics for male sexual abuse at <http://www.livingwell.org.au/Generalinformation/Statistics.aspx>

³ See paper on APS situation at Appendix 13.

Confidence in the system is fundamental to reporting. As the Report of the Senate Standing Committee on Foreign Affairs, Defence and Trade *Sexual Harassment in the Australian Defence Force* (1994) stated:

For people to lodge complaints of sexual harassment, they must know their rights and have access to mechanisms to investigate and resolve their complaints. Furthermore, they must have confidence that their complaints will be treated seriously. Silence becomes an attractive option if the repercussions from lodging a complaint are worse than or are even just perceived to be worse than, the harassment.⁴

The Review has found that at different points in time, ADF members have had a very low confidence in the ADF's ability to appropriately, effectively and sensitively respond to reports of abuse. This has been particularly evident in cases of sexual abuse.

An investigation team (led by Colonel K. E Northwood) into instances of sexual and other abuse at ADFA in the late 1990s (at the time of the Grey Review), found: 'without exception, those females who were interviewed about incidents of sexual assault, expressed dissatisfaction about the manner in which it was handled'⁵.

In another survey, by way of further example:

Less than one quarter of those that had experienced unwanted harassment sought the assistance of an equity advisor, chaplain or psychologist. Fewer still chose to make a formal complaint or to seek a redress of grievance. Respondents that took these actions were generally not satisfied with the results, with many indicating that they felt victimised as a result of their actions.⁶

This Chapter considers firstly, the manner in which allegations were received by the Review (highlighting that the Review believes there are potentially more instances of past abuse than have been reported to the Review). The past cultural, environmental and organisational deficiencies which have existed in the ADF are also considered given their contribution to the high levels of under-reporting found to exist.

6.6 Is there a basis for concluding that the Review has received most of the previously unreported allegations of abuse?

As noted previously in this Report, we have completed initial assessments of the specific allegations which have come before the Review. Accordingly, the Review has not found as a fact that any one of the allegations before the Review has been made out. This was not our task.

However, based on the allegations and material before the Review, the Review is firmly of the view:

- There is no doubt that there are still some people who have been the victims of abuse (including criminal assault) in the ADF who have not reported that abuse to any of the numerous avenues for taking such concerns which existed before the Review was set up or to the Review itself.
- The Review has no doubt that—at least in absolute terms—the number of former and current ADF personnel who have not reported abuse which they have suffered in the ADF is substantial.

Accordingly, the Review is inclined to the view that the allegations of sexual and other abuse which are before the Review represent a relatively small proportion of the incidents of sexual and other abuse which have occurred in the ADF in the past.

⁴ Senate Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Sexual Harassment in the Australian Defence Force* (1994), page 294.

⁵ *Incidents of Sexual Harassment and Sexual Offences in the Australian Defence Force*, redacted version provided on 16 September 2011 to the Review; Col K.E Northwood (undated) (Investigation Team Report), pg 5, para 11.

⁶ *A Survey of Unacceptable Behaviour in the Australian Defence Force* (February 2001), page v.

Some may argue that the Review should have captured most, if not all, complainants of past abuse and that the members who have not reported abuse cannot therefore be significant. They may say that: the Review was set up specifically to look at, amongst other things, sexual abuse in the ADF; that the Review was external to and independent of the ADF; that it was extensively advertised; and that informants could approach the Review on a confidential basis—all factors indicating that the Review should have captured most, even if not all, past instances of abuse.

The factors which lead the Review to conclude that there are likely to be many more people who have experienced abuse in the ADF who have not come to this Review are as follows.

6.6.1 Surge in contacts with the Review in the four days following the 13 June 2011 Four Corners program

Of those that did report to the Review, many said that this was the first time they had ever reported the alleged abuse.

The Review process and communications received by the Review are outlined in Chapters 1 and 3. As can be seen, the Review was extensively advertised for a period of time (6 weeks) in the print media. An advertising campaign by the law firm Slater & Gordon likewise assisted in drawing the Review to the attention of victims.

However, there was a very significant surge in communications to the Review in the four days following the Four Corners program on the ABC (which aired on 13 June 2011).

The Review received approximately 550 communications in that four day period, taking the number of communications to the Review from over 200 at the beginning of June to almost 700 up to and including 17 June 2011. The Review was advised by Media Monitors that approximately 200,000 people only (we understand this is not a high ratings figure for television) viewed the Four Corners program. It should also be noted that the program aired on the ABC (with a lower viewing audience than some commercial channel programs); at a late timeslot on a Monday night; and at the end of a long weekend.

The Review is of the view that to receive 550 communications in four days after a television show aired on a Monday night to an audience of approximately 200,000 indicates (quite strongly) that:

- the print media advertising campaign had not been very successful in bringing the existence of the Review to the attention of people who have suffered abuse in Defence; and
- there are more people out there who were not aware of the Review and who did not therefore come forward.

The following considerations also support this conclusion.

6.6.2 Lack of positive incentive to report abuse to the Review

It must also be considered that the Review was not given any ‘power’ to give any remedies or outcomes in respect of the disclosures received.

The Review was a collection vehicle for disclosures with a power to report to the Minister and the Secretary and had no power to give responses/‘justice’ for the victims.

The perception of a ‘powerless’ Review would probably have contributed to victims who knew that the Review was in operation electing not to subject themselves to a traumatic recounting of past abuse.

6.6.3 The usual disincentives to report abuse would have discouraged people from reporting to the Review

As noted above, the strength of the ADF culture of loyalty to fellow ADF members, not showing weakness and other aspects of Defence culture, has also exacerbated the general reluctance across the community to report sexual and other serious abuse. So too has the inconsistent and flawed application of the ADF's investigative powers and military justice system over a period of many years. We expand on these issues further in this Chapter in Chapter 7. The Review considers both to be important paralysing factors in preventing people from reporting in the past and indeed, from reporting to the Review.

6.6.4 Under-reporting: illustrative examples

The past under-reporting issues in the ADF are outlined in further detail below, but by way of illustrative example, a former long-serving ADF member with many years experience working with victims of sexual abuse in the ADF told the Review that she would not have reported abuse if she were a victim.

Other illustrative examples include: -

Ms Bronwen Grey (who led the Grey Review into sexual and other abuse at ADFA in the late 1990s), also told the Review that she was informed that there was an ADFA 'survivor's group' of women who had been sexually assaulted. Those women met to give one another support; but felt the need to keep their existence and their meetings secret because they were concerned about adverse effects on their career if it was known that they were meeting for such a purpose. The existence of an ADFA 'survivor's group' was also referred to in notes of an interview the Review has seen with Colonel K.E Northwood who led the investigation team during the Grey Review.

It is also reported that in the ACT, Lifeline and the Rape Crisis Centre have had dealings with members of the ADF, particularly cadets and recruits about cases which were not apparently reported within the ADF.⁷ Ms Grey recalled being aware of a small number of male victims of sexual assault at ADFA and that the Grey Review team worked with the ACT Male Rape Crisis Centre.

One of the Review leaders has been told two plausible stories of serious abuse in Defence in the past—one involving a female cadet at ADFA in the late 1990s and another relating to a teenager's experience on his first ship in the 1960s.

The first story was recounted by the victim herself who says that she was sexually assaulted when she was at ADFA in the period immediately preceding the Grey Review. She did not report the allegation at the time because of:

- embarrassment about the event itself
- embarrassment about having got herself into a vulnerable position through use of alcohol
- concern about retribution
- concern about adverse impact on her career.

She still does not wish to report the assault and she does not want the alleged assault brought into the Review's assessment and reporting processes.

The second story was recounted by a doctor who has a patient who had suffered night sweats and night terrors after his an experience on his first ship in the Navy in the 1960s. He was locked in a small maintenance access shaft deep in the ship for five to six hours with no knowledge of whether he was going

⁷ Professor Bryson, *Dealing with a Changing Work Environment: The Issue of Sexual Harassment in the ADFA* [Report Prepared for the Assistant Chief of Defence Force Personnel] (April 1994), p.36.

to be released. He did not report the incident and did not seek any medical help through a long career in the Navy. He finally requested help with his stress issues from his (civilian) doctor of over 20 years but only after he had retired from the Navy after a long and proud career.

These are, of course, unsubstantiated stories and—with the second story—a second-hand report. However, none of the individuals in recounting these stories to the Review member or to the ex-Navy member's own Doctor would appear to have any reason to invent or exaggerate the accounts. And (as far as the Review is aware) neither of the victims appears to have any interest in damaging the reputation of the ADF in general or their own Service in particular.

In summary: there are many reasons why people choose not to report instances of abuse. However, there are aspects of the ADF that exacerbate these reasons. The ADF culture has been a particularly strong deterrent and so too has the ADF's flawed application of its military justice procedures over a period of many years. We comment on each of these considerations.

6.6.5 Defence culture

At particular points in time, Defence culture has been found to have significantly contributed to an under-reporting of abuse. The Grey Review⁸ (which looked at sexual and other abuse at ADFA in the late 1990s), noted:

With regard to reporting of, and responding to, cases of assault, the culture exacerbates problems in serious ways. Cadets despise 'jacking' on one's mates' and 'crossing the road'.⁹

The investigation team (led by Colonel KE Northwood) outlined:

While a number of Defence Academy cadets and graduates sought an interview with the Investigating Team, the response was disappointing. This was understandable, given the strength of the cadet culture. As indicated in the introduction, even though there was clear evidence that offences had occurred and notwithstanding the support which the Review Team may have been able to offer, cadets were reluctant to speak out and were not prepared to submit formal complaints. Fear of retribution in the form of ostracism or victimisation or worse is a very real concern for cadets.¹⁰

In their First Progress Report on Reforms to Australia's Military Justice System (2006), the Joint Standing Committee on Foreign Affairs, Defence and Trade Report, stated:

The committee, however, draws attention to the prevailing cultural environment of the ADF discussed at length in the military justice report. It notes that even where there are formal and known avenues for a person to disclose information or make a complaint about inappropriate conduct, the workplace may effectively render them useless. The committee stresses that a fundamental change in the ADF mindset must also occur to overcome the stigma attached to reporting wrongdoing or making a complaint.

Registering a complaint should not be contrived [sic] as seeking to subvert authority. Authority must command respect, not demand it.¹¹

The problematic stranglehold of the ADF culture on the reporting of abuse and other unacceptable behaviour has again been highlighted very recently. In August 2011, *The Australian* reported that a Navy seaman was assaulted and threatened with death by other Navy personnel after he blew the whistle on a drug ring at Sydney's Garden Island naval facility. The article further outlined that he was subjected to

⁸ *Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy* (June 1998) (the Grey Report).

⁹ Paragraph 1.132. See the Glossary for definition of these expressions.

¹⁰ Investigation Team Report, chapter 2, paragraph 2.2.

¹¹ The Joint Standing Committee on Foreign Affairs, Defence and Trade 2006 Report *Reforms to Australia's Military Justice System*, First Progress Report Page viii.

abuse and intimidation, including from other personnel unrelated to the alleged drug ring. Cultural deficiencies do not appear to be an issue solely confined to the ADF's past.¹² Whilst ever such deficiencies continue to exist so too will under-reporting of instances of abuse.

6.6.6 Failure to use full range of options to take action against perpetrators

Of particular concern to the Review has been the approach taken by the ADF in the past (in particular in the post 1994 period) to handling sexual offences. We expand on this further below in Chapter 7, but for a period of time (in the mid to late 1990s and possibly through to in or around the mid-2000s), the Review understands that the practice (pursuant to a jurisdictional arrangement with the DPP) was to refer all sexual offences (including minor acts of indecency) to the civilian authorities.

This referral was without the ADF investigating or considering concurrent (or even subsequent) disciplinary or administrative action in sexual offence cases for a number of years. As outlined further below, in cases of serious sexual offences (in particular, rape), this led in many cases, to possible perpetrators not being called to account at all.

The manner in which the disciplinary and administrative systems of the ADF intersect has been the subject of many previous military justice reports into the effectiveness of the ADF's military justice system. A confused understanding by administrators, together with the inadequate and inconsistent application of both disciplinary and administrative action, has been a recurring theme in those reports. The ADF's investigation capabilities have also been highlighted as seriously flawed at different times in the past.

As to the current system, (discussed further at Chapter 7), the Review believes it continues to carry some of these legacy issues (particularly with respect to the investigation and prosecution of sexual offences).

The manner in which the ADF has previously handled complaints and administered the disciplinary and administrative systems, creates issues for the ADF's future, as the following examples highlight.

6.6.7 Flawed investigations and failed prosecutions

Example 1

The Investigation Team into complaint handling at ADFA in the late 1990s (led by Colonel Northwood), found (upon reviewing all records which were held in a filing cabinet, referred to as the 'Chamber of Horrors'):

The Review Team was disappointed to find that, under existing policy, DFDA action could have, and should have, been taken with respect to a number of the incidents that had occurred, despite the fact that the complainant did not want to take action. At the very least the members should have been referred for counselling.¹³

Example 2

The Birrer Review (1999)¹⁴ found that:

... across the whole of ADF of the 365 cases investigated involving officers only 17.5% of cases were the subject of DFDA action, while no action appears to have been taken at all in 62% of cases.¹⁵

¹² See further information and commentary on this report in Chapter 2.

¹³ The Investigation Team Report, Chapter 1, p.1–2.

¹⁴ *Report of Review of Disciplinary and Administrative Policy, Processes and Practices (including management initiated early retirement) in dealing with cases of unacceptable behaviour in the ADF*, 1 November 1999 conducted by Air Commodore Birrer. The Birrer Review recommended further study into whether the trend applied to other ranks members. The Review requested further information from Defence as to any subsequent studies. No information about subsequent studies has been received.

¹⁵ Birrer Review, paragraph 5.6.1.4.

Example 3

The 2001 Joint Standing Committee on Foreign Affairs Defence and Trade (JSCFADT) report *Rough Justice? An Investigation into Allegations of Brutality in the Army's Parachute Battalion*, followed the 1999 JSCFADT *Military Justice* report¹⁶ and examined allegations of brutality in 3rd Battalion, Royal Australian Regiment (3RAR) committed between 1996 and 1999. The JSCFADT stated:

It became readily apparent throughout the committee inquiry that there were serious issues regarding the competency of Army Military Police to carry out their policing and investigatory functions.¹⁷

The JSCFADT identified: secrecy in the investigation process; poor management practices; inadequate resourcing, and excessively long investigation times.

The Burchett Report¹⁸, completed in 2001, examined the administration of military justice in the context of the 3RAR allegations. The Burchett Report found procedural fairness and competence issues in investigation conduct¹⁹, amongst other serious flaws with the 3RAR investigations. Fourteen members and former members of 3RAR were charged following investigations into allegations made.

In most cases the members were found not guilty and in other cases, minor penalties (for example a fine equivalent to 7 days and in another 14 days pay) were imposed only. The results of the proceedings can be summarised as follows (emphasis added):²⁰

- A Private (formerly Corporal)
 - (incident with/against another Private)—tried by Commanding Officer (CO) 3 RAR (1999)—Not Guilty.
 - (Assault on another Private)—tried by CO 3 RAR found guilty on 2 February 2001 and ordered reduction in rank to Private and fine equivalent to 14 days pay suspended.
- A Private (aid and abet assault on another Private)—dealt with by CO Parachute Training School on 31 October 2000. Directed that the charge not be proceeded with as there was insufficient evidence; however at law, that decision not available to CO. Director of Discipline Law reviewed evidence and directed that no further action to be taken against the Private.
- A Private (assault against another Private)—tried by CO 3 RAR on 30 October 2000. Not guilty as there was a reasonable doubt about events and the complainant could not identify his attacker.
- A Corporal (ill treat a Private)—tried by CO 3 Brigade Administrative Support Battalion (3 BASB) heard 14 November 2001. Not guilty 1st charge (ill-treat inferior) but guilty of alternative (negligent performance of duty). Convicted and fined equivalent of seven days' pay suspended.
- A Corporal:
 - (assault on a Private)—dealt with by CO Dismounted Combat division (DCD) on 16 November 2001—directed not to proceed with the charge as there was insufficient evidence. (Complainant did not want matter to proceed and provided a statement to that effect).
 - (assault on a Private and prejudicial behaviour)—convicted by CO 4th Battalion Royal Australian Regiment (4 RAR) on 4 April 2001. Fined \$1,423.
- A Corporal (assault on a Private)—matter heard by CO 4 RAR on 14 December 2000. He directed that charge not be proceeded with. (Complainant did not want matter to proceed and provided a statement to that effect.)

¹⁶ Joint Standing Committee on Foreign Affairs Defence and Trade report *Military Justice in the Australian Defence Force* (June 1999).

¹⁷ Joint Standing Committee on Foreign Affairs Defence and Trade report 'Rough Justice? An Investigation into Allegations of Brutality in the Army's Parachute Battalion', April 2001, page 40.

¹⁸ *Report of an Inquiry into Military Justice in the Australian Defence Force*, July 2001.

¹⁹ Burchett Report, page 19.

²⁰ *Government Response to the Report on ROUGH JUSTICE? An Investigation into Allegations of Brutality in the Army's Parachute Battalion* (2002) page 10–11.

- A Private (assault on another Private)—matter heard by CO 3 RAR on 5 December 2000. Convicted and fined equivalent of 28 days pay.
- A Private (assault on another Private)—Defence Force Magistrate (DFM) trial on 6 April 2001. Not guilty. Magistrate had doubts about the complainant's credibility.
- A Warrant Officer Class One (prejudicial behaviour)—matter heard by General Court Martial. After lengthy trial, on 21 June 2001 was found not guilty.
- A Major (assault on Lieutenant)—found guilty by DFM on 23 March 2001. \$2,000 fine imposed. Appeal to the Defence Force Discipline Appeals Tribunal (DFDAT) quashed the conviction and punishment.
- A Lieutenant Colonel (prejudicial behaviour)—pleaded guilty before DFM on 6 July 2001. Reduced in rank to Major with seniority to date from 1991. Petition filed. On petition and review, the sentence set aside and substituted for a fine of \$1,500 and loss of one years' seniority at rank of Lieutenant Colonel.
- A Sergeant (prejudicial behaviour by making an ex Private do push-ups in dress uniform)—Heard by CO 4/3 Royal New South Wales Regiment on 7 September 2001. Ex Private failed to attend trial to give evidence and consequently the member was found not guilty.
- A Sergeant (assault on inferior—pushing an Ex Private)—Heard by CO School of Infantry on 5 October 2001. Ex Private failed to attend trial to give evidence and consequently the member was found not guilty.
- A Private was discharged Jun 2000 with a charge pending (assault on another Private). Ex member resides in USA. Reason for discharge investigated. Matter referred to NSW Police.

At one level the relatively low success rate in obtaining convictions and/or significant adverse consequence for a conviction simply reflects the system at work with all of its appropriate procedural safeguards etc. However, at another level the number of prosecutions which did not proceed because the alleged victim did not wish to give evidence underlines the strength of the cultural aspects discouraging reporting.

6.6.8 Criticisms of ADF investigative capability

The ADF's investigative capability came under strong criticism in 2005 by the Senate Foreign Affairs, Defence and Trade References Committee in the *Report on the Effectiveness of Australia's Military Justice System*. In the report, the following findings were made:

An analysis of the various inquiries conducted into the disciplinary system over the past decade reveals many recurrent flaws. Every major review has, to varying degrees, highlighted issues such as:

- delay in the conduct of disciplinary investigations;
- inadequate evidence gathering and analysis;
- lack of process monitoring or quality control;
- lack of transparency and contravention of principles of natural justice; and
- inadequate Military police training and guidance in basic military justice procedures, investigation conduct and application of relevant policies and instructions.²¹

The 2005 *Military Justice* report further stated that the ADF 'had proven itself manifestly incapable of adequately performing its investigatory function.'²²

²¹ The 2005 *Military Justice* report, p.31.

Following the 2005 *Military Justice* report, an audit of the ADF's investigative capabilities was conducted. It found serious flaws and painted a bleak picture of ADF investigations conducted up until that point in time.²³ The Report found: 'that the ADF investigative capability is in serious decline and that remediation, even if approached with unrelenting resolve and commitment, is likely to take no less than five years'.²⁴

This serious flaw which existed for many years in the ADF's investigative capability (up until at least 2006) means that it is more likely than not that perpetrators of abuse (including serious abuse), were not called to account for their actions. It is further likely, therefore, that there are victims of abuse who had the courage to come forward, but who were then let down by the ADF's seriously flawed investigative actions (or inactions).

In the case of sexual offences, the application taken by the ADF in the past (and potentially over a period of many years) has been inadequate at best, as highlighted in the examples below.

6.6.9 Findings of the 1998 ADFA Investigation Team

Throughout this Review, we have been seeking from Defence clarification of what actions were taken to identify and deal with the alleged perpetrators of sexual assault around the time of the Grey Report.²⁵ That clarification is crucial to the continuing risk issues which we identified at the start of this Chapter.

During our discussions with Ms Grey, she recalled that there were approximately 20 male cadets who were strongly suspected of being involved in carrying out one or more sexual assaults.

In parallel with the Inquiry which Ms Grey was leading in 1998, an investigation team was looking at specific allegations. Very late in the time of this Review we obtained significant information about the outcome of the work of that Investigation Team.

That Investigation Team was led by Lieutenant Colonel Northwood, a lawyer. The Report of the Investigation Team states that 24 allegations of sexual offences at ADFA from 1994 to March 1998 were disclosed to the Investigation Team, that being three times more than the 8 incidents that were in fact reported to the Defence Equity Organisation for the same period.²⁶

It is not clear from the redacted report provided to us, as to what actions were taken in respect of the 24 disclosed accounts, or indeed the 8 reported incidents of sexual offences. A consolidated list of quotes extracted from the Investigation Team Report is at Appendix 20.

In respect of the accounts of rape (and in a very short summary section only), the Investigation Team stated (emphasis added):

Allegations of 15 cases of rape and 9 cases of serious sexual assault since the beginning of 1994 have come to the attention of the investigating team. It is likely that one girl has been raped 3 times. *It is likely that two former cadets graduated at the end of 1997 have each raped 3 female cadets....*One of the chaplains at ADFA in 1997 gave evidence that during 1997 he personally counselled not less than six and not more than ten female cadets who alleged that they had been raped'.²⁷ (emphasis added)

It is important to note that the number of incidents may have been higher than the '24' figure referred to in the Investigation Team Report. The Investigation Team noted that 'allegations about a number of other sexual assaults were received; however, where the alleged victims were not prepared to speak to the Team or to provide evidence, these matters were not recorded for statistical purposes'.

²² The 2005 *Military Justice* report, p. 52.

²³ Mr A.M. Whiddett APM and Rear Admiral (rtd) Brian Adams *Report of an audit of the Australian Defence Force investigative capability* (July 2006) ('the Audit Report').

²⁴ The Audit Report, Executive Summary and Recommendations, paragraph 3.

²⁵ See below for further discussion about the level of sexual assault indicated by the Grey Report.

²⁶ The Investigation Team Report, Introduction, Appendix 20.

²⁷ The Investigation Team Report, Summary to 'Chapter 2'.

On 6 October 2011, the Office of Defence General Counsel provided some material in respect of the actions taken following the Grey Review. In the cover letter, it was stated: 'Fairness and Resolution Branch have interrogated the Access Data base for the period 1994 to March 1998 and have identified six cases that appear relevant and a further case has been identified through a file search. Those are attached'.

Of the six case files provided, four involved allegations of rape and one other involved an allegation of sexual assault. In each of the four allegations of rape, the matter was referred to the AFP. Two out of the four complainants withdrew their complaints (with one citing that she did not wish to have the matter referred to a higher authority); and in the other two cases the AFP found that there was insufficient evidence to press charges. There is no record on the file of any further administrative or DFDA action being taken in respect of the alleged perpetrator in each of these four alleged rape cases.

Colonel Northwood (who led the Investigation Team) gave the following evidence in June 1998 to the Joint Standing Committee on Foreign Affairs, Defence and Trade during its *Inquiry into Military Justice Procedures in the Australian Defence Force*:

Can I say—and it has appeared in the newspapers—that we, on the investigation side, identified 26 cases of what we believe were rape—and the old term 'rape' is the best way to describe the particular form of sexual assault to which I am referring—between I think it was the beginning of 1994 and the end of 1997. Of those, to the best of my recollection ... only two have ever proceeded to complaints made to the civil courts and have gone to trial. One of those two matters is awaiting trial in the ACT at the present time.²⁸

This important material was obtained by the Review very late in the life of the Review. This has affected our consideration of what might be appropriate action for Phase 2. See below.

6.6.10 Issues with Defence Instruction interpretation: sexual offences

As outlined in Chapter 7 Defence Instructions²⁹ (General) PERS 35-4 (DI(G) 35-4) sets out detailed provisions relating to the management and reporting of sexual offences. The DI(G) was issued on 11 February 2004. Prior to that date, the management of all allegations of unacceptable behaviour, including criminal actions, was dealt with in Defence Instructions³⁰ (General) PERS 35-3 (DI(G) 35-3). The general management of unacceptable behaviour including offences other than sex offences is still covered by DI(G) 35-3.

We have outlined in Chapter 7 the Review's concerns with the ADF's apparent interpretation of DI(G) 35-4 in the post 2004 period. When considering potential legacy issues however, the interpretation applied to DI(G) 35-3 which operated in the period prior to 2004 is relevant. As shown below, it appears that at least in the years 1994 to 2000 (and possibly up to 2004), the interpretation being applied to DI (G) 35-3 significantly contributed to perpetrators of sexual offences not being called to account for their actions.

The Grey Review recommended that amendments be made to DI(G) 35-3 and to the arrangement in place at that time with civilian authorities for the investigation and prosecution of sexual offences. The 1999 *Military Justice in the Australian Defence Force* report dated 21 June 1999, further highlighted the issues with the interpretation of DI(G) 35(3) at that time and the arrangement that was in place with respect to reported sexual offences.

The 1999 Report noted that (in the post 1994 period), the ADF had agreed that all allegations of sexual assault (including straightforward acts of indecency) be immediately referred to civilian authorities for investigation and prosecution. The 1999 Report noted: 'the implications of these shortcomings of the

²⁸ June 1998, p. 232.

²⁹ A copy of DI(G) PERS 35-4 is at Appendix 16.

³⁰ A copy of DI(G) PERS 35-3 is at Appendix 11.

current arrangements are that matters of sexual assault are not properly investigated and penalties are invariably minor’.

The Report further noted:

Hitherto the ADF has acted under the presumption that it was unable to initiate disciplinary action in relation to any alleged criminal offences which were referred to civil authorities. Where no complaint is made to civil authorities, the ADF has operated under the belief that it can neither investigate nor prosecute a sexual assault. The complainant may not wish to subject herself or himself to the civil process or indeed may not wish to have the alleged offender prosecuted in civil court, perhaps fearing ostracism or victimisation. Under current arrangements this would give rise to a situation where a commander has identified a serious disciplinary issue but is unable to take action to address the problem.³¹

From the materials reviewed, it would appear that by 2000 (when a review into the Grey recommendations was conducted³²), some amendments were made to DI(G) 35-3. It is clear, however, (as illustrated below) that at least for a number of years in the late 1990s, a flawed approach was being applied to the Defence Instructions, which had serious consequences on the reporting of, and responding to, allegations of sexual abuse in the ADF.

6.7 The legacy issues from ADFA 1990s

In attempting to ascertain what happened to the 24 (or possibly more) alleged perpetrators referred to by the Grey Investigation Team, the Review managed to locate a written submission of Colonel Northwood to the Joint Standing Committee on Foreign Affairs, Defence and Trade *Inquiry into Military Justice Procedures in the Australian Defence Force*.³³

Colonel Northwood outlines that in the period post the Senate inquiry into HMAS SWAN (1994), the position taken was that the ADF did not have jurisdiction to investigate sexual assaults (including relatively minor acts of indecency). In his written submission, Colonel Northwood outlined:

26. Currently there is considerable embarrassment for Defence through dissatisfaction with referring complaints of sexual assault to the civil police forces and the civil courts. How can anyone in good conscience recommend to young females that they subject themselves to the trauma of the civil court system when there is little prospect of a conviction for what is known generally as rape. For example, I understand that there was not a conviction for rape in the Australian Capital Territory in 1997 (para 26).

27. Over and over again there is the complaint about Defence by victims of sexual assault that matters are not properly investigated, that because of minor penalties given to offenders the claim by the Defence Force that there is zero tolerance of sexual harassment is empty rhetoric and that the ADF is either washing their hands of the victims or is giving them insufficient support. (para 27)

28. Complainants, once their options are explained to them, are not prepared to subject themselves to the civil process, with the requirement that they relive a very stressful and degrading experience over and over again with complete strangers and in circumstances in which it is quite likely that a jury, having to be satisfied of guilt beyond reasonable doubt, will acquit an accused. Worse, having regard to resource constraints imposed by government, police forces around the country are not interested in investigating comparatively minor acts of indecency. (para 28)

30. It also needs to be borne in mind that under DI(G) 35-3 (Unacceptable Behaviour) with respect to matters of sexual assault the wishes of the complainant are paramount. Thus if a female does

³¹ Joint Standing Committee on Foreign Affairs Defence and Trade report *Military Justice in the Australian Defence Force* (June 1999), para 4.72.

³² McArthur, M & Kitay, J (2000) *Report of the Progress of the Reform Process Implemented at the Australian Defence Force Academy*.

³³ Dated 15 May 1998.

not want to subject herself to the civil process and does not for whatever reason wish to subject the offender to the civil courts (she may not want to see the offender prosecuted in a civil court, she may have real fears of ostracism and victimisation within the unit if she goes outside the ADF) then nothing is done to the offender. No complaint is made to the civil authorities and the ADF can neither investigate the matter nor prosecute it. (para 30).

31. **An example.** A commanding officer wants to confirm that certain acts of indecency occurred. He is concerned about unit morale, and the safety of the female members in the unit. He needs to be able to conduct an investigation, the sole purpose of the investigation is to consider what administrative action needs to be taken for the proper management of the unit, there is no suggestion of conducting a criminal investigation. It is suggested that under present policy it is not possible to conduct a DI (R) investigation. This is a ridiculous situation.

The following extracts were taken from the evidence given by Colonel Northwood at the Inquiry on 19 June 1998:

It is an appalling situation that, in serious matters like that, the ADF is not in a position to take any action at all because of the present policy. Worse still is the situation that the incidents of acts of indecency ... again cannot be dealt with if the complainant, under the existing guidelines, chooses not to make a complaint. In some situations the incident will come to the notice of the appropriate officer or the commander or the commandant of the Defence Force Academy, but again, unless the person is prepared to proceed with the complaint, under the existing guidelines there is nothing he can do, and technically, those matters should go to the Federal Police for investigation.'

But, where the complainant does not wish to proceed, the commanding officer or the commander at the appropriate level ought to be able to conduct some sort of investigation and, if necessary, take some sort of administrative action. For example, I can recall a particular case where the big problem for one young woman was that the person involved was in the next building and on a slightly different floor, and so she had to look out onto his window every day. Or else it might be that the young woman is going to lectures and he is in the same lecture group and she has to sit within 30 feet of him every day.

You tend to find that, after a short period of time, those young women start to show signs of psychological difficulties, which tend to manifest in a lessening academic performance and a drop-off in their officer qualities performance. It is a very difficult problem for a CO. After all is said and done, we still do have the principle that you are innocent until proven guilty. Nevertheless, there needs to be enough flexibility for a commander to be able to be more proactive in resolving the problem. For example, a recommendation might be that both of them leave the academy and complete their education elsewhere—which has happened on occasions with respect to young women, particularly.

Based on the redacted Investigation Team report provided to this Review (which does not track what in fact happened to each of the known 24 alleged perpetrators) and given the policy interpretations expressed by Colonel Northwood above, it appears very likely that most, if not all, of the 24 alleged perpetrators of sexual assault around the time of the Grey Review, were not called to account.

In short, there did not appear to have been any success in calling perpetrators to account. To ignore the past and to fail to call past perpetrators to account undermines the efforts made (and being made) to improve the ADF's future. It raises some significant future risks, for example:

- If high levels of sexual and other assault and other abuse have occurred in Defence in the past, then some of the perpetrators of such assault and other abuse may still be in the ADF (The Grey Report noted: 'Cadets who were bastardised as first year cadets may become third year bastards themselves').³⁴

³⁴ The Grey Report, paragraph 1.120.

- People who witnessed this behaviour and did not report it or initiate any process to bring it to an end are also now in senior and middle management roles in the ADF.
- People whose mental health were damaged by this behaviour are in need of assistance.
- People may have been driven out of the ADF by this behaviour and may have suffered adverse career consequences. (Ms Grey informed the Review that the attrition rate among female cadets at ADFA in the late 1990s was around 40%.)
- If perpetrators of assault and other abuse are still in the ADF, then they may constitute a continuing risk to the safety and well-being of other Defence personnel and they may constitute a risk to the reputation and the operational effectiveness of the ADF.

Codes of conduct and ADF's declared policy of 'zero tolerance' of unacceptable behaviour have a hollow ring for those persons who have come to the Review pointing out that individuals they allege assaulted or otherwise abused them are still in the ADF. This issue was also emphasised in the recent Four Corners program and in other recent press coverage.

There is a shadow over the reputations of all of the individuals who were part of the group which included perpetrators of abuse or were witnesses of abuse and have done nothing about it.

In previous reports, statements are made that refer briefly to the risk of negative cultures returning but there is no further consideration given to the risk of perpetrators not being called into account. The following statement from McArthur and Kitay's 2000 *Report of the Progress of the Reform Process Implemented at the Australian Defence Force Academy* provides an example:

There will be a lengthy period of time during which graduates of the 'old ADFA' will return to the Academy as staff and possibly bring elements of the previous culture with them'. But what happens then? And what if the returning 'graduates' are perpetrators of past abuse?³⁵

Those seem to the Review to be fair questions.

6.8 The Grey Review

The Review team met with Ms Bronwen Grey (who led the Grey Review team) and Dr Stephen Mugford (a member of the Grey Review team). Their comments on the survey data returned during the Grey Review are referred to in Appendix 22. It is worthwhile noting however, that Grey estimated that approximately 30% of female cadets had (in the years prior to the Grey Review) suffered sexual abuse—meaning either rape or serious indecent assault. The survey data (which surveyed cadets during one calendar year only), reported that approximately 7% of female cadets reported experiencing sexual assault or attempted sexual assault at least once or twice during the 1997 calendar year at ADFA.

In our discussion with Ms Grey, she further recalled (based on information obtained during the Grey Review) that:

- all the assaults reported on female cadets during the review period were carried out by male cadets
- approximately 20 male cadets were reportedly involved and generally, the assaults were carried out by senior cadets
- there was an ADFA 'survivor's group' of women victims of sexual assault
- there were a small number of male victims of sexual assault around the time of the Grey Review and that the Review worked with the ACT Male Rape Crisis Centre.

³⁵ Page 40.

The legacy issues from this period could be more significant than the raw survey data (which is high in any event) suggests in respect of victims of sexual assault from this period.

The figures in respect of male victims of sexual assault may also be much lower than actually occurred in the past (at both ADFA and across the ADF). The Review has received information from the Cairns Sexual Assault Service and Living Well³⁶ (a service dedicated to men who have experienced sexual assault) that highlights the following potential barriers to male victims reporting sexual assault:

- Males are more likely to underreport sexual assault/abuse due to issues of masculinity: 'the act of a man naming an experience of sexual abuse and seeking help requires a man to confront expectations that as a man he should appear strong and powerful, self-reliant, always in control, rational, logical, always ready for sex and especially, not a victim'.
- Males are reluctant to ask for assistance/support—the perception that they should not have allowed the incident to occur in the first place and secondly that they should be able to deal with it themselves.
- Homophobic concerns: whether men seek help or not is influenced by concern that they will be identified or suspected as being 'gay' (a high percentage of sexual abuse of males is committed by males).
- The misconception that being a victim of sexual abuse means the male will go on to perpetrate abuse. This misconception can lead to males withdrawing in fear that they may do this.
- Males generally only tend to come forward and report instances of abuse when they are in crisis (ie when other parts of their lives are unravelling, such as relationship breakdown; loss of job).

6.9 Quantifying past abuse: survey data considerations and difficulties

In considering potential legacy issues (both at ADFA and within the ADF more generally), the Review was asked by the Chief of the Defence Force to provide further information (including data), as to the size and scale of the legacy issues. In particular, the Review was asked to provide data of past alleged abuses that is 'by time period, by Service, by gender, by establishment, and by rank.'³⁷

In respect of ADFA, in a meeting with the Review the CDF sought clarification of what the survey data on sexual and other abuse contained within Appendix 6 of the Grey Report (the Grey survey data) indicated in terms of reporting and incidence of abuse in particular. The full Grey Report (including its own Appendix 6) is at Appendix 73.

Those survey findings (which reported experiences of cadets during one calendar year only), were summarised by the Grey Review Team:

Of particular note are the actual numbers of cadets who indicated they had experienced the SEQ [Sexual Experiences Questionnaire] behaviours which describe sexual assault or attempted sexual assault. Fourteen female cadets indicated that they experienced sexual assault or attempted sexual assault, and one male cadet indicated that he experienced attempted sexual assault.³⁸

Given the focus on the Grey survey data, the Review has, within the limited time available:

- arranged for a leading Australian econometrician, Professor Breusch (Crawford School of Economics and Government, ANU), to review and provide preliminary comment only on the Grey survey data and survey administration factors
- discussed with both Ms Bronwen Grey and Dr Stephen Mugford (a former Grey Review Team member): the Grey Report findings; Grey survey data; and the preliminary comments from Professor Breusch

³⁶ <http://www.livingwell.org.au/Counsellingandsupport/Queenslandsexualassaultservices.aspx>

³⁷ Letter from General D.J Hurley, AC, DSC to the Review dated 13 August 2011. Copy at Appendix 23.

³⁸ Grey Report, paragraph 3.15.

- conducted a preliminary review of available materials relating to the Investigation Team³⁹ responsible for investigating complaints of unacceptable sexual behaviour during the Grey Review.

An outline of this review into the Grey survey data is at Appendix 22.

As outlined in Appendix 22, in considering any potential legacy issues arising from past abuses at ADFA, the size and scale of the issues cannot be measured by a statistical overview of one survey instrument (or one set of survey data) alone.

Rather, survey data provides indicative estimates only and a number of factors must be taken into account when considering the data. In the case of the Grey survey data, a potential for *under-reporting* of experiences during the survey exists and so there is a risk that the legacy issues arising out of past abuses at ADFA are more wide scale than the raw survey data (which is high in any event) would suggest. This, combined with the findings of the Investigation Team (which reveal significant inaction in dealing with perpetrators), presents a concerning picture in light of the significant risks outlined above.

The Review also notes that it received two Defence Brief instructions⁴⁰ during the Review which cautioned against relying on a series of *Unacceptable Behaviour Surveys* conducted in the ADF from 2000 to 2009. The *Unacceptable Behaviour Surveys* contained the Sexual Experience Questionnaire (SEQ) survey instrument and provided comparative data across those years as to the likely levels of sexual abuse in the ADF. Defence Brief 05/2011 concluded:

The Defence Unacceptable Behaviour Survey findings provide Defence with indicators of the prevalence of unacceptable behaviour that are inconclusive and possibly inflated. This is due to reliability problems in unacceptable behaviour measurement, the discrepancies in respondent reporting trends, the difficulty of validly measuring behaviours that are sometimes context-dependent, and the impact of response biases common to survey research.⁴¹

Professor Breusch has reviewed the two Defence Brief documents, together with the 2001 Report of the 2000 *Unacceptable Behaviour Survey*. Professor Breusch (for the reasons explained in his two notes at Appendix 24) does not support the conclusion that the prevalence rates of those surveys is: 'possibly inflated'. Indeed, for the reasons outlined above (and by reference to the Grey survey example), it is more likely that *under-reporting* (rather than over reporting) of sexual abuse incidents has occurred in the past.

It is impossible to give a tight analysis of the size of the problem.

However, taking into account all of the above considerations the Review has formed the following views.

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.

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.

³⁹ Established within the Defence Equity Organisation.

⁴⁰ Included at Appendixes 25 and 26.

⁴¹ See Appendix 25.

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.

Finding 22

Lieutenant Colonel Northwood working in parallel with the Grey Review identified around 24 cases of rape at ADFA in the late 1990s.

It seems that none of the matters went to trial.

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.

A Royal Commission could be appropriate for dealing with this situation.

The Royal Commission would have the power to compel people to answer questions under oath and may be able to identify the individuals who were on Lieutenant Colonel Northwood's list of suspects.

The evidence obtained could not be used against those individuals in prosecutions.

That information could be used to determine whether any of those individuals are still in the ADF.

The information could be taken into account by the ADF to determine whether there was any risk to the ADF in having the person in their current position within the ADF.

The information could also be taken into account by the ADF to determine whether the person should be further promoted.

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.

6.10 Mental health legacy issues

A substantial number of ADF personnel have been affected by abuse—as victims and as perpetrators and some both as victim and as perpetrator. The Review identified as a significant issue for consideration whether the potential for current and future mental health impacts from those past abuse experiences.

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.

The relationship between abuse and mental health risks—victims

Many physical health problems can be linked with a particular injury. However, mental health problems can be caused by a multiplicity of factors in an individual's genetic make-up and life experiences.

The link between any one event—such as a sexual assault—and later mental health problems may not be as clear as can be the case with physical health or disability/physical injury. Except in the most extreme of abuse events—it may not be possible to identify a particular abuse event as being the cause of a mental health problem.

However, it is well accepted that there is a correlation between abuse and later developing mental health problems:

- abuse may exacerbate an existing condition
- abuse may trigger a propensity to some mental health problem
- abuse may bring on a condition such as post-traumatic stress disorder for which the individual had no prior condition or propensity.⁴²

It is also accepted that there is a correlation between experiencing abuse and later having problems with alcohol and drugs which may then further exacerbate mental health issues and cause a destructive cycle.

The Rapke Report 1971 discussed in Chapter 5 noted some of the impacts of abuse on boys at HMAS LEEUWIN. Some other report findings and discussion on the connection between abuse and mental health issues include:

The Quinn Report 1996

Sexual Harassment in the Australian Defence Force para 45

Major Kathryn Quinn

Sexual harassment has been found to affect job satisfaction and commitment to the organisation. Several studies have also found that sexual harassment can negatively affect self-esteem and life satisfaction, and it has been associated with low self-confidence. Some studies have noted the similarities between the symptoms of post-traumatic stress disorder (PTSD) which can appear in healthy individuals in response to unusually traumatic events and, in some cases, sexual harassment. (para 45)

Grey Report 1998

1.139 Some former cadets carry the emotional scars from experiences of harassment and assault that occurred at the Defence Academy. A number have put such experiences behind them; others are still traumatised to the extent that they cannot talk about their time at the Academy. Their

⁴² See generally Rees and others, *Lifetime Prevalence of Gender-Based Violence in Women and the Relationship with Mental Disorders and Psychosocial Function* <http://jama.ama-assn.org/content/306/5/513>.

unpleasant experiences have led them to view themselves as ‘survivors’ of the Defence Academy rather than graduates or former cadets.

...

2.29 Those who are strongest and healthiest may be able to take no real notice [of the harassment], ‘switch off, play the game’ and ‘go somewhere else’ in their head. However, this is not a psychologically healthy way to act, and may have serious long-term consequences. Worse still, for others who cannot distance themselves in such situations, there is enormous psychological pressure to develop unnecessary coping skills that may impair performance at a later date.

...

Australian National Mental Health and Well-being Survey 2007

Commonwealth Department of Health and Ageing

Based on a survey of 4451 women (65% response rate) aged 16 to 85 years the study reported.

Gender-based violence (GBV) was associated with all 3 broad classes (mood, anxiety, and substance use disorders) of lifetime mental health disorders with higher rates of disorder in those women experiencing the greatest exposure. In particular, the prevalence of PTSD increased by a factor of 2, according to the level of exposure to GBV. Women who had experienced GBV reported a higher level of severity and comorbidity of mental disorder, increased rates of physical disorders, greater mental health-related dysfunction, general disability, and impaired quality of life. In addition, women who had experienced GBV reported higher rates of past suicide attempts.

Ballard Report 2009

Sexual Assault Prevention and Intervention in a Military Environment ⁴³

Angela Ballard (reserve Chief Petty Officer) 2009 Churchill Fellow

Victims of sexual assault may suffer anxiety, depression, some symptoms of Post Traumatic Stress Disorder (PTSD) or be diagnosed with PTSD. Recent studies of veterans in the US suggest that those who suffer from trauma as a result of sexual assault in the military (now referred to as ‘Military Sexual Trauma’ or ‘MST’) could be at an increased risk of suffering from PTSD given the levels of stress they are exposed to. The research suggests that some US military members who do not have access to social support, medical or mental health services are at an even higher risk for PTSD. This research further substantiates the benefit of advocacy which may impact on the longer term mental health of the victim. page 8.14.4.

As the material in the Chapters 3, 4 and 5 and in the previous parts of this Chapter demonstrated there is no doubt that a substantial number of people have been victims of abuse while in the ADF. Some of those people must still be in the ADF—many others will have left the ADF.

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.

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.

⁴³ See discussion of this report in Restricted Reporting section of Chapter 7.

Importance of early intervention after abuse

It has long been established that early intervention and assistance as soon as possible after an abuse event are very important in reducing the risk of long term mental health issues.

Guidelines for Commanding Officers and Designated Commanding Officers—to DI(G) PERS 35-3—Management of Unacceptable Sexual Behaviour by Members of the Australian Defence Force (as at August 1994) Annex C

Crisis intervention with long-term psychological counselling is important in the prevention of Post Traumatic Stress Disorder. Experience and research suggests that where such intervention is not made or is inadequate, the potential for long-term stress, including severe depression, increases.

Guide to the Handling of Sexual Offences,

P.J. Dunn (Maj Gen, HDPE), Defence Personnel Executive Minute PE97-3909 DPR 47/98, Handling Incidents Involving Sexual Offences Annex A (16 January 1998) [extracted from file 98/11183/p1].

Counselling is to be arranged in a confidential manner. Crisis intervention with long-term psychological counselling is important in the prevention of Post Traumatic Stress Disorder. Experience and research suggests that where such intervention is not made or is inadequate the potential for long-term stress, including severe depression, increases markedly.

Finding 25

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

The Guidelines referred to above can only work if a person has been identified as being the victim of sexual assault or harassment.

Lack of abuse reporting and mental health issues

The previous sections of this Report have demonstrated why this Review—and other Inquiries and Reviews before it—have concluded that there has been a low level of reporting by victims of abuse in the ADF.

Even with horrific events of abuse where the link between the abuse event and the later mental health problem is clear there may be many years before the mental health problem manifests itself.

Some people do not seek assistance for a mental health issue such as depression because they are not aware that they have a mental health problem. Many people who have mental health problems and are aware that they do have mental health problems do not seek assistance. Some see a general social stigma with being known for having mental health 'issues'. Some others have a concern that if they seek professional help for mental health problems, that will affect their long-term employability and/or their ability to obtain insurance.

David Morton, Director General Mental Health, Psychology and Rehabilitation—within Joint Health Command in Defence has explained to the Review that people within the ADF who have a mental health problem may be reluctant to seek assistance for reasons which include—stigma associated with 'mental health'—not wishing to show weakness in a culture that expects strength—and—very importantly—not wishing to prejudice their prospects for being sent on operations.

The prejudice to prospects of being sent on operations is particularly significant because performing in an operational setting is what professional ADF personnel want to do to fulfil their professional calling, because remuneration is higher while on operations and because operational experience enhances prospects for promotion.

Mr Morton also pointed out that where the mental health problems are associated with abuse such as sexual assault there is a double stigma—mental health and being the victim of sexual assault. That combination may further discourage victims of abuse who are suffering from seeking assistance.

As far as the Review is aware, there has not been any positive program to seek to identify victims of abuse from within the groups who suffered a high level of abuse—such as the children who went through HMAS LEEUWIN or the female cadets at ADFA in the 1990s. We comment further in Chapter 8 on the possibility of having such a program.

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.

Importance of ongoing support after abuse

It is well accepted that ongoing support after abuse is also important to reducing the mental health impacts of the abuse. The Grey Report noted:

4.24 There is no policy which identifies a long-term support strategy for complainants of unacceptable behaviour. While the type of support will depend on the particular requirements of complainants, the effects of unacceptable sexual behaviour tend to last over a long period. These effects may be lowered self-esteem, fear of the workplace, and an inability to work well. Indeed the first sign that a person may be the subject of such behaviour is that frequently the standard of their work diminishes. Therefore, a long-term support strategy is required for complainants, incorporating the opportunity to opt out at any time if the complainant feels that support is no longer required. There should be flexibility for victims to rejoin the support strategy should they feel the need. This is illustrated in the case study in the following paragraph.

4.25 A Defence Academy cadet who alleged she was sexually assaulted by a male cadet asked to leave the Defence Academy and continue her studies elsewhere as she did not want to come into contact with the alleged offender on campus. While her request was being considered she was moved to a single Service Unit in Canberra. Later, when her request was approved she was moved interstate to complete her degree. Neither of the units to which she was posted were advised by the Defence Academy staff that she might require follow up support.

Furthermore, for the reasons outlined above, there is a reluctance from many people—especially while in the ADF—to seek assistance.

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.

Abuse and mental health risks—perpetrators

The Grey Report noted:

4.26 Alleged offenders may also need support, particularly when they are found not guilty of the unacceptable behaviour, as may witnesses in a case. A support strategy similar to that for complainants should be developed, taking into account their special needs.⁴⁴

The Rapke Report on HMAS LEEUWIN in 1971 also noted the destructive effects on children of themselves becoming perpetrators of abuse after being victims of abuse.

⁴⁴ The Grey Report, para 4.26.

It is very unlikely that people who are now suffering mental health issues on account of their past involvement in abuse as perpetrators will have sought assistance. The usual considerations set out above which discourage people from seeking mental health assistance could be overlaid with embarrassment and guilt about their role as perpetrators.

It is important that people who are suffering or who are at risk of suffering mental health issues are encouraged to seek assistance even if they have also had involvement as a perpetrator of abuse.

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.

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.

7 Systemic issues

The Review's Terms of Reference require it to report on systemic issues that will require further investigation or action during Phase 2.

The Review notes the following issues that have arisen from the allegations that it has received, and the consultation it has undertaken, which it considers warrant further attention.

Quotes from previous Reports and Defence documents relevant to the matters raised in this Chapter are to be found in Appendix 27.

7.1 Serial perpetrators and serial suspects

An issue that arose from the complaints received was whether Defence had, and now has, in place effective systems that would enable a member who engages in unacceptable behaviour to be tracked through successive postings in the ADF. It was suggested to the Review that members about whom complaints of a less serious nature had been made were reposted either with or without any disciplinary or administrative action being taken or recorded in relation to them.

This issue had been raised by previous inquiries.¹ The Review notes the following observations.

The Burchett Report (*Report of An Inquiry into Military Justice in the Australian Defence Force* (July 2001)) included the following:

Under the heading "Equity and Diversity Issues", two quite different matters are mentioned. The first is the question of "serial harassers", who are said to flourish where each of a succession of complaints is incapable of proof or not serious enough to warrant more than administrative measures. I suggest that too much emphasis may have been placed at times on resolving the instant complaint (perhaps by a method of alternative dispute resolution which focuses on just that), and not enough on educational or administrative measures to ensure that there is no repetition. Where harassment has actually been shown to have occurred, some watch is required by those responsible for personnel and postings to protect the victim and guard against a repetition of the conduct.²

...

Several of the submissions seemed to demonstrate that "serial harassers" can indeed exist. The difficulty arises where, on a succession of occasions involving complaints against the same person, there is thought to be insufficient evidence to prosecute, or the matter is not serious enough to warrant more than administrative measures ... Sometimes it may be tempting to see a relatively minor complaint of harassment as an embarrassing episode, to be got through, and forgotten, as soon as possible.³

...

What is needed is a means of ensuring that, where harassment has actually been showed to have occurred, some watch is kept on the problem by those responsible for personnel and postings. This has not always happened; in one case, a sexually harassed young female sailor was twice posted to

¹ See also extracts from Birrer Report set out in Chapter 4.

² Para 32.

³ Para 165.

a position that brought her into contact again with her harasser (whose alleged conduct had been gross).⁴

In like vein the *Senate Standing Committee on Foreign Affairs, Defence and Trade—Sexual Harassment in the Australian Defence Force* (August 1994) had said:

Mechanisms should be established for an accurate and comprehensive on-going record of the number and kind of sexual harassment incidents occurring in the ADF. These mechanisms should be such as to enable valid comparisons to be made between the Services and between different units, including training units, within each Service. The records collected should clearly identify the nature of the incident, the action taken and the outcome.⁵

The Review notes that the Defence Force Ombudsman (DFO) had raised this issue in Report 04/2007 *Management of Complaints about Unacceptable Behaviour*:

2.88 In addition, as complaints of unacceptable behaviour can be informally resolved without the identity of the parties being recorded centrally, it is possible for parties to be involved in a series of incidents with no official record being made. Anecdotal evidence obtained during focus group discussions indicates that in at least one case a respondent and complainant, who had previously been separated in response to a complaint about unacceptable behaviour, were later to be posted to the same location. It was fortunate in that case that a commanding officer identified the issue separately to the complaints process.

2.89 Commanders and managers suggested that an alert in the personnel management system, PMKeys, could be added to ensure future posting decisions by Career Management Authorities are consistent with the outcome of earlier complaints.

The DFO made no formal recommendation in relation to the matter. The Review was advised that the DFO had not followed up on the issues raised.

The Review sought comment on the matters raised in the Ombudsman's report from Defence.

The Fairness and Resolution Branch of Defence responded to the Review in correspondence dated 4 August 2011 as follows:

In relation to the specific paragraphs identified at (b) above, Defence is aware of these limitations with the system of management of Unacceptable Behaviour Complaints.

Discussions have been held at the working level around the pros and cons of making changes to mitigate against the risks identified in the extracted paragraphs. It should be noted though, that the purpose of corporate level recording of complaints is to capture statistical and trend data to enable targeted training or interventions if required. If, however, the event is severe enough to warrant a formal sanction, the identifying details of the respondent are recorded on the corporate database and reported to their career management agency.

In addition to the complaints management process, managers have available to them (and this is highlighted during the reporting process) Alternate Dispute Resolution practitioners, who can work with the complainant and respondent to repair any damage to working relationships, provided both parties agree.

It should also be noted that these complaints and the complaint system deal with a very defined scope of unacceptable behaviours. The management of these types of complaints in the first instance should and does rest with the commander or manager of the respondent. Any changes would have to be considered carefully to ensure that transparency doesn't discourage complainants coming forward.

⁴ Para 166.

⁵ Recommendation 39VIII(a) of the *Senate Standing Committee on Foreign Affairs, Defence and Trade—Sexual Harassment in the Australian Defence Force* (June 1994).

It seems to the Review that this matter needs further and fuller consideration - and that the consideration should extend to recording and tracking incidents and accusations against individuals *even if* no adverse finding is made.

It notes that the Joint Directive by the Chief of the Defence Force and Secretary, Department of Defence to the Director-General, Fairness and Resolution (see Appendix 28) at subparagraph g contemplates a somewhat wider role for Fairness and Resolution Branch than the 'capture of statistical and trend data'. That paragraph reads:

g. as the single Defence source of authoritative statistical information in respect of equity, diversity and unacceptable behaviour matters, Director General Fairness and Resolution's duties are to: analyse and report on the incidence of unacceptable behaviour and other sensitive personnel issues, and provide advice to senior commanders and managers where targeted or strategic intervention may be required.

This seems to indicate that there should be some oversight of the possibility of a member being a repeat perpetrator and advice should be provided to commanders and managers accordingly.

The Review returns to the issue of the information recorded on the Fairness and Resolution database below. In the present context it notes with concern that consideration of the issues raised by the Burchett and Senate Committee reports have not gone past 'discussions being held at the working level'.

The DFO's suggestion that the member's personal file and PMKeys record should reflect continuing concerns about a member's conduct has also not been progressed. As we understand it, the position remains that, if properly maintained, an entry on PMKeys should indicate where action has been taken against a member for unacceptable behaviour, if the complaint is established and considered sufficiently serious to warrant formal sanction. Likewise a matter may not be recorded on the member's personal file. An entry will not be recorded if the matter is not considered sufficient to warrant formal sanction.

The Review is concerned that insufficient attention is being paid in Defence to the management of members who repeat unacceptable behaviour and of people who are accused of unacceptable behaviour - *whether or not a formal finding has been made about that behaviour*.

There is evidence in other organisations such as churches and youth organisations that persons who wish to pursue certain types of anti-social conduct contrive to obtain employment in organisations where they can continue with these activities. Experience, particularly in regard to churches, has indicated that these persons when challenged for suspect behaviour may offer some explanation and are then moved on (or engineer their own or the victim's movement on) from one area to another without the recipient area being alerted to the suspect behaviour that has resulted in the move. Having developed an excuse that works in one place, the perpetrator can run the same excuse again in the new setting.

Low level misbehaviour or the fact that complaints have been made against an individual can also be an alert to there being a more serious problem with a member. It should not be assumed that an incident of unacceptable behaviour is a one off action that can be managed on its own.

Similarly, although an explanation to the effect that there has been a 'misunderstanding' and/or that the person 'accidentally' touched someone else inappropriately might be plausible once, it becomes less plausible if the same excuse is offered for repeat incidents. Patterns of incidents recurring - even if no formal finding is made - should put the ADF on notice that there is a risk and/or management issue.

The relevant managers can only be alert to that risk if they have the relevant information.

Even more significant problems will not be able to be identified unless information relating to previous action or even just previous reports can be, and are, tracked. It is standard safety regulator methodology to track near misses and minor incidents as early warnings of potential larger problems.

It may seem harsh on an individual to record in a central database, to which that person's managers have access, accusations for which there is no adverse finding and perhaps for which there has been a complete vindication of the person.

However, the countervailing consideration is to ensure that those with the responsibility and authority to manage the welfare of ADF personnel can do so on a fully informed basis. Even if an individual accused has been entirely vindicated, it is still desirable that people managing the large ADF workforce be aware whether particular individuals - such as the vindicated respondent to a complaint and the complainant - have had personal conflict or misunderstandings before. At the very least, the Commanding Officer should be alerted to the possibility that the person who was accused and vindicated may feel some resentment towards the person who made the accusation against them.

We also question whether there is a link between low level misbehaviour and performance appraisal. If there is no means of tracking misbehaviour or allegations of misbehaviour, there will be no means of ascertaining whether a member's performance has changed such that he or she no longer engages in that unacceptable behaviour. The member may well continue to be promoted, thereby increasing the opportunity to practise that behaviour and reducing confidence of victims and observers in the rigour of the complaint management system.

The Review notes Fairness and Resolution Branch's comment set out above that:

.. the management of these types of complaints in the first instance should and does rest with the commander or manager of the respondent. Any changes would have to be considered carefully to ensure that transparency doesn't discourage complainants coming forward.

The Review is aware of the fact that the more formal are the systems for the management of complaints, the less flexibility there will be for commanders to resolve issues informally. However, it is the repeated informal resolution of complaints that allows members to continue without successive command managers being able to make informed assessment and management of their conduct. This fundamentally undermines the system and fails to protect vulnerable people.

What is of concern in respect to the Fairness and Resolution Branch comment, is that there does not seem to be adequate follow up to that command management. Once a command says a matter has been dealt with, it is taken to be at an end. The Review does not consider that this is sufficient because it does not inform the next command management process.

The Review does not question that management of complaints lies with command. However, command can only manage effectively if command has full information.

The current process assumes that command is fully informed of all relevant circumstances. If there is no means of knowing that a member has engaged or has been accused of particular conduct previously, each incident will be regarded as a single incident and dealt with accordingly. The fact that multiple instances have occurred will pass unnoticed and unsanctioned. This cuts across the obligation of the commander (and Defence as a whole) to provide a safe system of work. It also promotes the perception that has often been expressed to the Review, that perpetrators 'get away with it', that nothing happens and that there are no career consequences for the perpetrator.

It seems that where there has been an accusation or complaint in regard to a member's conduct even though there is no adverse finding, a central record should be made of that accusation and its outcome. Any allegation should be tracked no matter how it has been resolved.

If this tracking is not to be done by the Fairness and Resolution Branch, some other entity within Defence needs to be charged with the task.

The Review is not persuaded that the issues raised in the previous reports about serial perpetrators - let alone the further issue which this Review has identified about serial suspects - have yet been sufficiently addressed.

A further approach to the tracking of serial perpetrators and suspects that has been put to the Review, is that frequent changes in postings of a member should alert a commanding officer to the possibility that there is a problem with the member's prior conduct. If a member is constantly being moved on, this should flag the possibility that there has been 'management' of his or her conduct in a posting and the member is being given a chance to perform in another posting.

The Review does not know whether any attempt is made to track a member's postings, but if not it considers that consideration should be given to inclusion of an alert system on PM Keys that will identify a member who has been frequently posted outside the usual posting cycle. This would enable a new Commanding Officer to inform him or herself of such movements and be aware of any issues that it might be flagging.

A corollary to this is that attention should be paid to a member where there is a higher than usual movement away of persons (by way of resignation, transfer, leave of absence, sick leave etc,) who work under or in association with that member. Again the Review does not know whether any attempt is made to track this information. If it is not, consideration should be given to setting in place means by which it can be ascertained whether there is a pattern of movement of persons away from a location/unit in response to the conduct of a particular member. Again this would enable a new Commanding Officer to inform him or herself of such movements and be aware of any issues that it might be flagging.

Finally on this topic, greater efforts should be made by Defence to ensure that where a member lodges a complaint about the actions of another member, the members are not subsequently posted to serve together. The complaints made to the Review included a number of instances where members who had made complaints of abuse that were subsequently upheld were either obliged to continue working with the alleged perpetrator or were subsequently posted to serve with them. Systems need to be in place to avoid this happening.

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.

7.2 Information on Fairness and Resolution database

Paragraph 46 of DI(G) PERS 35-3 *Management and Reporting of Unacceptable Behaviour*⁶ states that 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. (In the preceding section we have raised the issue of tracking serial suspects as well.) 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.

⁶ DI(G) PERS 35-3 is at Appendix 11.

Paragraph 47 of DI(G) 35-3 says that the collection of unacceptable behaviour records is a 'Government requirement' following the Report of the Senate Standing Committee on Foreign Affairs, Defence and Trade on Sexual Harassment in the Australian Defence Force (1994). The information stored on the database is protected as required by the *Privacy Act 1988* (Cth). The information may be taken into account by the relevant Service for career management and posting decisions. The information is also used for compiling ministerial briefings and in aggregate form for analysing statistical trends.

The Unacceptable Behaviour database does not include the names of alleged perpetrators unless and until a formal decision has been made that their conduct was unacceptable. Fairness and Resolution Branch relies on the commanding officer or other person managing the complaint to advise when the complaint has been resolved and in what way. No names are included while proceedings are pending.

The names of complainants are *never* recorded in the database. We do not at this point comment on the justification for this, but we do observe that it can lead to the situation where a complainant and respondent are later posted to the same location (even where there has been an adverse finding recorded and the name of the respondent is included in the database).

We understand that the principal basis for adopting this approach is that it is thought that earlier disclosure of the names of alleged perpetrators and of complainants would be in breach of the Privacy Act.

The Review sought advice on the effect of the Privacy Act on DI(G)s generally from Simon Bailey of DLA Piper. His full advice is at Appendix 29.

In regard to the application of the Privacy Principles (IPP) to the recording of names on the Fairness and Resolution database, Mr Bailey's advice includes:

It appears that FR's [Fairness and Resolution Branch's] practice of not recording names unless and until formal disciplinary or criminal action has been completed is driven by privacy considerations. DI(G)PERS 35-3 states (at para 38) that 'Defence personnel responsible for handling unacceptable behaviour complaints must comply with the Privacy Principles contained in the Privacy Act'.

However, the IPPs would not prevent the recording of respondents' (and others') names in the Fairness and Resolution database before the complaint has been resolved or if the complaint is not upheld, because they permit use of information for a purpose that is directly related to the purpose for which that information was obtained.

Clearly, complaint details are recorded for a number of purposes, including:

- the investigation of the complaint and determining what action to take;
- providing support and/or redress for the victim; and
- conducting disciplinary or criminal proceedings and sanctioning the offender.

It is clear also that one of the purposes for which Defence uses such information is for managing Defence operations and personnel. For example, Defence needs to fully understand the risks associated with particular operational deployment decisions. Risks relating to unacceptable behaviour or sexual misconduct are clearly relevant. Using information to assess and manage such risks appears to be, if not a primary purpose of collection, at least a purpose that is directly related to the purpose of collection.

There is in my view no impediment in the IPPs to persons and bodies with relevant responsibilities within Defence recording and using personal information, including the names of respondents to unresolved or unsubstantiated complaints, for such purposes. The only limitation is that the information must be relevant to the purpose for which it is used (IPP 9).

Clearly, steps must be taken to prevent inappropriate use of the information. For example, it may be appropriate to use the fact that an offence has been proven in the context of a disciplinary process, whereas use of an untested or unproven allegation in that context would not be appropriate. However, using a serious but unproven allegation, or a series of allegations involving a single

member, would be appropriate where that information is relevant to the management of operational risks. It will obviously be necessary to ensure that measures are taken to prevent inappropriate use, but there is no bar to the use of that information.

The Review suggests that this matter should be pursued further with Fairness and Resolution Branch during Phase 2 with a view of more information being recorded on the database. The more information that can be recorded on the database, the more effective it will be as a management tool.

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.

7.3 Currency of Fairness and Resolution Branch Unacceptable Behaviour database

The Review undertook a spot check of the extract of the Fairness and Resolution Branch Unacceptable Behaviour database (that was provided to the Review in accordance with DEFGRAM 385/2011⁷) applying the filters 'sexual offences' and 'sexual harassment'. Of the 109 matters recorded under those headings, it was found that 72% appeared not to have any entry detailing either an update or a final outcome. The Review then posed a number of questions to Fairness and Resolution Branch. Those questions and the responses from Fairness and Resolution Branch dated 16 August 2011 were as follows:

1. Why are so many matters lacking an update or final outcome?

The question states that—72% (of the relevant matters) appear not to have any entry detailing either an update, or a final outcome. The report provided to DLA Piper was open cases at that date so there should be no cases with final outcome on this list unless there is inconsistency in the database (see the response under 3 below).

In relation to updates, the previous policy required monthly updates which were becoming onerous—particularly in the case of sexual offences that were being handled in the civil courts, it was then changed to 3 monthly at a minimum or when significant milestones occurred. Due to staffing constraints, this element of the governance of the system had lapsed but has recently been reinstated with the appointment of a dedicated staff member to vet entries into the system. The extended length of reporting combined with the absence of the monitoring role, would have contributed to the development of bad reporting habits.

2. Who is responsible for providing the information to enable the database to be updated?

The manager of the complaint (usually the line manager or commander) is responsible for providing the information to update the status of the complaint. The reporting form or entry via self service can be done by one of (sic) two people, the manager of the complaint or the reporting officer—designated at the time of the initial report (in the case of some military units can be the Admin officer or Senior equity advisor, in some civilian environments can be a Group HR member).

3. If matters are not updated in accordance with DI(G) PERS 35-3 Management and Reporting of Unacceptable Behaviour then what, if any, mechanisms are in place to ensure compliance?

As stated above, we have recently engaged a dedicated staff member to monitor and report on system entries. She has been developing her knowledge of the relevant Defence instruction and its application to the database and has been working through various elements confirming compliance

⁷ DEFGRAM 385/2011 is at Appendix 30.

and reporting to myself, areas of non compliance which are then managed by the Director of Rights and Responsibilities.

In a subsequent email dated 12 September 2011 Fairness and Resolution Branch observed:

It has become apparent during a recent exercise in relation to providing data to DLA Piper that a number of commanders/managers have not been maintaining currency in the information reported to Fairness and Resolution in accordance with DI(G) PERS 35-3. This has meant that a number of entries in the corporate reporting system, COMTRACK are not up to date. The failures appear to be limited to three areas:

1. The recording of closures. While all action has occurred and all parties notified, the form that formally records the outcomes on COMTRACK and closes the matter has not been provided, or it has not been actioned correctly, thereby showing the matter as an open case. A number of these will also show as not having been updated for some time.
2. Fairness and Resolution has not been advised of a change in commander/manager of an area with active complaints.
3. Fairness and Resolution has not been advised when a respondent in an active complaint has moved and the complaint has been transferred to the new commander/manager.

In terms of the review, the implications are:

- in relation to point 1 above, complaints that have been resolved some time ago have been reported to DLA Piper as 'open' at least sometime between April and Jun (sic) this year. Where the parties have "moved on" (emotionally at least, if not physically) contact, and the resultant "re-opening" of the situation, could be difficult.
- in relation to the other 2 points, Fairness and Resolution are working with commanders/managers and Service Headquarters to resolve inaccuracies in the database.

The Review observes that, at least in the recent past, the database has not been managed as well as it should have been. (It is significant that it appears that it was not until the Review raised questions as to the currency of the database that its currency was checked and found wanting.)

It seems to the Review that there should be an obligation not only on those who are expected to provide information to carry out this task, but also on those who are charged with the management of the database to check that it is up to date. In this context, we refer again to paragraph g. of the Joint Directive set out above.

If, as has been the case, the database is not kept up to date, that deprives managers of information that is of significance to their decision-making and undermines Defence's risk management strategies. For example:

- If one or two adverse outcomes are recorded against a respondent, that *may* trigger a 'show cause' notice to be issued to the person, requiring them to explain why their service should not be terminated. If three adverse outcomes are recorded against a respondent, that *must* trigger a 'show cause' notice to be issued to the person.⁸ Clearly if the information in the database is not up to date Defence management processes are undermined.
- If an adverse outcome is not recorded promptly or at all, those deciding on career postings will not have all the relevant information to them. This could lead, for example, to someone against whom a sexual harassment allegation has been substantiated being posted to a training environment where they would supervise young recruits. That is poor risk management.

⁸ DI(G) PERS 35-4, paras 109 and 113.

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.

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.

An associated issue that emerged in discussions with ADFIS was the lack of interconnectivity between the various ADF databases. The Review was informed that there was very little sharing of information between various databases. For example, incident managers within the Army use the AIMS database, but this database does not interface at all with the Fairness and Resolution database (which it was conceded was created to serve a different purpose, but which it was put to the Review still holds information that would be useful to incident managers).

The Review understands that there is a project under way to integrate a number of relevant databases. In the time available, the Review was unable to obtain further information as to this project. However, it would be desirable for it to be followed up at Phase 2. It may assist in the tracking of serial perpetrators among other management issues.

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.

7.4 Restricted reporting of sexual assaults⁹

The ADF processes currently require prompt reporting of an allegation of sexual assault to the local State or Territory police.

It is well known that there is substantial under-reporting of sexual assaults. Justice Marcia Neave of the Victorian Supreme Court is reported as stating in a recent paper said that fewer than 20 per cent of sexual assaults are reported to authorities.¹⁰ Professor Kathleen Daly in a paper recently published by the Australian Institute of Family Studies puts the figure at 15 per cent¹¹. The reasons for this under-reporting are numerous. However, as we have alluded to previously, it has been noted in a number of previous inquiries and surveys that, in the ADF, the under-reporting of such action is likely to be magnified by virtue of the close culture that exists and the possible adverse effects of reporting on career and income.¹²

⁹ This section draws heavily on the paper of 2009 Churchill Fellow Chief Petty Officer Angela Ballard - *Sexual Assault Prevention and Intervention in a Military Environment*. www.churchilltrust.com.au/site-media/fellows/2009_Ballard_Angela.pdf. A copy of the paper is Appendix 72.

¹⁰ <http://www.theage.com.au/victoria/judge-calls-for-sex-trials-rethink-20110907-1jxup.html>

¹¹ Kathleen Daly, *Conventional and innovative justice responses to sexual violence*, <http://www.aifs.gov.au/acssa/pubs/issue/i12/i12.pdf>, and see further Chapter 2.

¹² See further Chapters 4, 5 and 6.

Statements to the effect that there is significant pressure both societal and sometimes physical exerted upon ADF members not to report incidents are set out in each report relating to unacceptable behaviour from the Grey Report in 1998 to the HMAS SUCCESS report in 2011.

Sexual assaults are more commonly committed by members of the victim's family or by acquaintances of the victim than by strangers. The ADF is often the victim's 'family'.

Excessive consumption of alcohol is a common precursor to sexual assault. Excessive consumption of alcohol by members of the ADF has not been uncommon in the past and many of the allegations that have been made to the Review have arisen in the context of either or both victim and perpetrator being drunk.

The issue of consumption of alcohol in the ADF is the subject of the Independent Advisory Panel review of the use of alcohol in the ADF.

Not only are there factors dissuading many persons from reporting sexual assault but there is a further issue in that the number of convictions for sexual assault following prosecution is very low. Justice Neave cites a conviction rate of only 38 per cent for 2009–10 in the Victorian County Court. This is a fall from around 50 per cent in previous years.¹³ Kathleen Daly presents an even more worrying statistic: a decline from 17 per cent of reported offences between 1970 and 1989 to 11.5 per cent between 1990 and 2005.¹⁴ More information indicating the failure of the civil criminal justice system to deal with sexual assault effectively is set out in Chapter 2 above.

The combined effect of unwillingness to report, ADF's reliance upon civilian prosecutors to commence actions and the notoriously low rate of prosecutions or convictions for sex offences results in a very low number of convictions of members of the ADF who have committed a sexual assault.

It is desirable to consider, therefore, whether there are other means that might be used to increase the possibility of members of the ADF who commit sexual assaults against other members of the ADF being dealt with promptly and effectively.

The problems relating to reporting and trial of sex offences led to recognition both in the ADF and in overseas armed forces that special efforts have to be made to deal with sexual assault by members on other members. The ADF has for many years had a zero tolerance policy as do overseas forces. However, such a policy is not likely to achieve its purpose if sexual assaults are not reported.

The Report of the Senate Standing Committee on Foreign Affairs, Defence and Trade on *Sexual Harassment in the Australian Defence Force* (1994) recommended that sex offences should no longer be dealt with under the Defence Force discipline procedures but should be referred to the civil police for investigation and prosecution.

This recommendation was based on a conclusion that the investigation and prosecution of sex offences was not being well handled in Defence. It was considered that the civil authorities were better equipped to carry out this task.

This recommendation was given effect to originally in DI(G) 35-3 and subsequently in DI(G) 35-4 as discussed below. As part of the management of allegations of sexual assault, DI(G) 35-4 requires any such incident to be reported to Command and requires Command to bring the assault to the attention of ADFIS for investigation. If there is evidence to support the allegation and the assault is of such a kind as to constitute an offence under civil law, ADFIS is required to report the matter to the civilian police. This procedure followed in relation to the matters that have come to the attention of the Review.

Apart from the desirability of bringing a perpetrator to justice, the ADF justifies its approach to the reporting of sexual assaults on the basis of its obligation to provide a safe place of work. If a member is likely to

¹³ Note 8.

¹⁴ Note 9.

assault another member and the ADF is aware of this, it would be in breach of its occupational health and safety obligations if it did not take action to prevent the member offending again.

ADFIS also observed to the Review that quick reporting is necessary if valuable crime scene evidence is not to be lost.

The Review appreciates these arguments. However, they proceed on the premise that there is nothing in the system that discourages the reporting of assaults. In particular they proceed on the assumption that a victim will not suffer, either personally or in career or financial terms, as a result of making a report. If this is not the position in practice and the culture of the ADF is such that a member may suffer disadvantage or recriminations of some kind, this will discourage victims from lodging complaints. If this is in fact the position, the stance taken by the ADF is self-defeating. The ADF will not become aware of the perpetrator because the victim will not come forward.

The Review heard suggestions that the manner of interrogation of a complainant by ADFIS and civilian police after making a report and the reaction of the victim's fellow service members were such as to discourage reporting. This issue is not confined to the ADF. It is common in the community generally. However, it seems that it has been exacerbated in the close military community in which victim and perpetrator may work and live in close proximity 24 hours a day.

The US military recognised this issue of unwillingness to report sexual assault as one of considerable significance for the health of its Defence Force. It put in place a means whereby members who are assaulted may make what is termed a 'restricted report' of an assault. Such reports are not disclosed within the command structure and are not investigated by disciplinary authorities, unless and until the victim consents to that occurring.

However, at the outset forensic evidence is collected and safeguarded so that it is available should the victim agree later to remove the restriction and make an open report with the possibility of prosecution action against the alleged perpetrator.

A restricted report can only be made to designated personnel, whose immediate task then is to provide assistance to the victim. The assistance may be medical, psychological or counselling. Forensic evidence is also collected immediately after the report.

The victim may later agree to his or her complaint becoming unrestricted. It can then be fully investigated.

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. Forensic evidence is also collected and protected. It is a considerable advance on non reporting.

The Israeli military appears to follow a similar path. General Staff Regulation 33.0145 rules 14-17 emphasise that the first consideration is the welfare of the soldier. Filing of a complaint or the taking of legal action against the offender will not occur without the consent of the victim.

The ADF system which applies to the victims in the complaints raised with the Review is institutionally oriented. The ADF system emphasises the need to be able to take action against a perpetrator for the good of the ADF. This overrides the interests of the victim and may ultimately not be protecting the ADF's interests either.

The US and Israeli systems start from a focus on the position of the victim. The primary focus in those jurisdictions is on supporting the victim. In these countries the Defence Force's interest is seen as lying in the restoration of a valuable asset (the victim) to working capacity ahead of punishing the perpetrator. It is also recognised that the chance of securing a conviction is increased if the victim has had time to recover her or his composure. Victims of assaults are notoriously poor witnesses because of the trauma to which

they have been subjected. Declining to act until the victim agrees also re-empowers the victim after their power has been forcibly taken from them.

The review considers that, as this system of restricted reporting is found to have benefits in the US and Israeli Armies, it would be appropriate for its adoption by the ADF to be explored.

The Review raised this question with the Inspector-General of the Australian Defence Force (IGADF) as the matter falls within the scope of the review that he was undertaking. The Review was informed that the IGADF has concerns about restricted reporting because of 'duty of care' issues and past experience.

The Review also brought to IGADF's attention the detailed Report on the restricted reporting procedure contained in a paper written in 2009 by Churchill Fellow, Angela Ballard.¹⁵ and the complementary paper 'Strategic Policy Review Proposal: *How can a unified framework for responding to allegations of sexual offences be implemented throughout the Australian Defence Force?*' prepared by Commander Fiona Sneath.¹⁶

These papers and communications from the Attorney-General's Department and from ADFIS on restricted reporting of sexual offences are set out in Appendixes 31 and 32.

The Ballard paper was also drawn to the attention of the other reviews in the suite of reviews through the Culture Review Secretariat on 25 May 2011.

The Review considers that a restricted reporting regime would be of particular value for legacy victims of sexual assaults. The adoption of such an approach to receiving allegations of past assaults would not raise the objections around 'duty of care' that are set out above.

As the events occurred in the past, the importance of early collection of evidence is irrelevant. The occupational health and safety concerns of protecting other members of the ADF are not likely to be as pressing as with current sexual assaults.

To allow reporting of events without disclosure to the civil police would enable victims to seek assistance without the fear that the incident in which they were involved will be brought to the attention of the police (perhaps long after the event has occurred) and with the possible consequence of public disclosure.

Many of the victims who approached the Review said that they were telling their story for the first time. Many of them had not disclosed and would not want to disclose the incident to their family. Many of them say that they have had significant psychological problems stemming from the assault and desire or seem to be in need of counselling assistance.

Commander Sneath in the paper referred to above makes the point that sexual assault is about the misuse of power. The victim has had their power taken away. The restricted reporting restores to the victim some of this control in that it at least allows them to control the process following from the assault. This in turn may encourage reporting of events.

The Review does not believe that the adoption of a procedure for restricted reporting of sexual assaults runs counter to the recommendation of the Senate Committee referred to above requiring reports of sexual assault to be referred to the civil police. That approach is concerned with reports of assaults made to Defence and was driven by a suggestion that Defence was not always acting in victims' best interests. The restricted reporting approach is directed to protecting victims' interests in another way.

The Review recommends that this issue be pursued in Phase 2. It may well be appropriate for it also to be considered in the context of one or more of the 'forward looking' Reviews in the suite of Culture Reviews.

¹⁵ www.churchilltrust.com.au/site-media/fellows/2009_Ballard_Angela.pdf. A copy of the paper is Appendix 72. Ms Ballard informed the Review that she had presented this paper to the Chief of the Navy and the Deputy Secretary People Strategies and Policy on 15 July 2010. The Review understands that the paper was also referred to Fairness and Resolution Branch and IGADF for consideration in 2010.

¹⁶ A copy of the Sneath paper is at Appendix 33.

It is important to record some significant support for restricted reporting:

- From CDF General Hurley and the then Secretary to the Department, Dr Ian Watt in a letter to the Review;¹⁷ and
- From the Head, People Capability, Department of Defence, Major General Orme in a meeting with the Review.

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.

7.5 Administrative action following allegations of sexual assault

Allegations of sexual assault by an ADF member that constitutes an offence under State or Territory law are usually referred to the civil police for investigation and action.¹⁸

The Review received a number of complaints asserting that no action was taken by Defence against alleged perpetrators of sexual assaults when the alleged perpetrator was acquitted of a criminal offence in the civil courts. Similar inaction resulted when the civil authorities chose not to prosecute an alleged perpetrator. It was also claimed that no administrative action was taken on occasions despite an allegation of rape having been made against a member. The ADF has wrestled with these issues. It has issued Defence Instructions from time to time setting out how these situations are to be managed.

We have had to rely on Defence to provide us with all relevant DI(G)s and other relevant instructions over the period relevant to the Review and to provide us with the documents to explain what processes have been in place over time. We are not entirely confident that what Defence has been able to provide is a complete picture. However, what we have does seem to indicate to us some issues of major concern.

Defence Instruction (General) PERS 35-4 *Management and Reporting of Sexual Offences* (DI(G) 35-4) sets out detailed provisions relating to the management and reporting of sexual offences. The DI(G) was issued on 11 February 2004. Prior to that date, the management of all allegations of unacceptable behaviour, including criminal actions, were dealt with in Defence Instructions (General) PERS 35-3 *Management and reporting of unacceptable behaviour* (DI(G) 35-3). The general management of unacceptable behaviour including offences other than sex offences is still covered by DI(G) 35-3. This DI(G) was amended and reissued on 28 June 2009. These DI(G)s are at Appendixes 21 and 11.¹⁹

The background documents relating to DI(G) 35-4 provided to the Review indicated that the 'main aim of splitting the very long DI(G) PERS 35-3 into two separate instructions was to assist commanders to perform their function by distinguishing unacceptable behaviour from allegations of a criminal sexual nature'. It noted that the current DI(G) 35-3 was too large and complicated. It confused commanders and affected persons.

It was also said '[DI(G) 35-4] provides a clear and easy to understand personnel policy instruction for guidance of Commanders and Managers on the management of the incident and personnel involved, and on mandatory reporting requirements'. Comments to the Review indicate that this worthy aim has not been

¹⁷ See letter reproduced at Appendix 23.

¹⁸ See Appendix 34 for the Memorandum of Understanding between the Australian Directors of Public Prosecutions and Director of Military Prosecutions dated 22 May 2007 in relation to prosecution of sex offences.

¹⁹ The comments of the Review that follow are based on these DI(G)s. The Review has had to rely upon Defence to provide it with all relevant documents.

achieved. And to the extent that DI(G) 35-4 provides 'clarity' the operation of the provision is highly problematic.

In the context of this Review, one of the most significant issues that has arisen is the prohibition of administrative inquiries or action by Defence in regard to conduct that constitutes a sexual offence.

Paragraph 12 of DI(G) 35-4 sets out the principles of the policy to which the DI(G) relates. Subparagraph 12h. reads:

Sexual offence complaints are to be investigated by the state/territory or Defence Investigative Authorities, as appropriate—administrative inquiries are not to be used to investigate sexual offences.

Paragraph 73 says (in part):

General/administrative inquiries under the *Defence (Inquiry) Regulations 1985* or the Defence Inquiry Regulations **are not** to be used to investigate sexual offences...

Paragraph 95 includes the sentence:

... No formal administrative action should be taken against Defence personnel or Defence contracted staff while criminal or disciplinary proceedings are pending.

Paragraph 96 reads:

If an ADF member, Defence APS employee or Defence contracted staff member is acquitted of a sexual offence following disciplinary or criminal proceedings, no adverse administrative action should be taken against that person in relation to the sexual offence. An acquittal may not prevent administrative action being taken in relation to the behaviour that was the subject of the complaint or in relation to some other kind of unacceptable behaviour distinct from the sexual offence. If this is being contemplated, legal advice should be sought.

In contrast with this approach, DI(G) 35-3 relating to other criminal offences which was amended and reissued in 2009 says at Annex E, paragraph 12:

In most circumstances, administrative sanctions against respondents should not be taken until all disciplinary action is finalised. However, circumstances may be such as to require action of an administrative nature to be initiated, for example relocation from the workplace, reassignment of duties, or in significant cases administrative action leading to termination or suspension of employment....

In response to the question why there was this difference in approach, the Review was advised by Defence that DI(G) 35-3 represented 'a maturity in the understanding of the management of people in such circumstances'.

The Review has received examples which indicate that the paragraphs of DI(G) 35-4 set out above have resulted in Defence declining to take any administrative action against a perpetrator of a sexual offence while an alleged sexual offence is under investigation. This can result in the victim and the alleged perpetrator being required to continue working together, possibly in close proximity. It can also result in the alleged perpetrator maintaining a position of influence and authority such as being an instructor for new recruits or young persons. It can promote the sense among victims that reporting is not worthwhile because 'nothing happens'.

This is clearly a most unsatisfactory situation. Paragraph 95 should be considered as a matter of urgency.

Paragraph 96 is particularly problematic. We have looked hard to find a justification for paragraph 96 and we have not been able to find any sensible explanation for it. A former senior HR officer of the Department explained her understanding of the intent of paragraph 96 with the following example:

A male breaks down the door of a female's room and then forces her to have sex with him against her will. The incident is reported to the Police and the male is charged with a sexual offence and goes through a criminal trial process. The male is acquitted. In accordance with paragraph 96 no administrative action can be taken against the male for forcing the female to have sex with him. However, a Defence process can be brought for damaging the door.

This seems to be a most unsatisfactory outcome.

Paragraph 96 seems to be based on confusion between a 'sexual offence'—a crime with criminal penalties attached—and the activities—forcing a person to have sex without their consent—which if proven to criminal standard of proof would be a crime—but which if proven to the standard of proof required for administrative action purposes could also constitute 'unacceptable behaviour' or have some other administrative consequence.

Where a person is proven guilty of a criminal offence they are subject to criminal penalties and they have a criminal record. The evidentiary and procedural protections for defendants in criminal trials are very high. Where an adverse finding is made against a person in an administrative process—even if the findings are that the person forced a colleague to have sex with him against the colleague's will—that finding in the administrative process does not amount to a finding that the person has committed a crime and that administrative finding does not subject the person to criminal penalties.

The Review cannot see any good reason in law or in policy why a person who forces a colleague to have sex against the colleague's will could not be dealt with in an administrative process even if there has been an acquittal for a criminal charge based on the same facts. Whether or not it would be appropriate to run an administrative process after an acquittal should depend on the circumstances and should be addressed on a case by case basis. It may even be appropriate to take administrative action while a criminal trial was under way—though there would need to be care not to do anything which could prejudice the criminal trial.

The approach presently followed also appears to run counter to the Defence policy set out in see DI(G) PERS 35-5 *Formal Warnings and Censure in the Australian Defence Force* issued 16 July 2010, para 11:

11. Regardless of the outcome of DFDA proceedings or a civilian criminal trial, an administrative sanction can still be imposed on the member out of the same set of facts that led to the disciplinary and/or criminal proceedings. Similarly, the fact that a member is given a punishment or receives no punishment is no bar to imposing an administrative sanction. Disciplinary and administrative proceedings are essentially different in character, purpose and result. A punishment is a penalty that is imposed by statute on a member for a breach of a disciplinary or criminal offence, whereas the imposition of an administrative sanction such as a formal warning or censure has a whole of organisation protective purpose and is designed to reinforce the need for and to encourage members to maintain high standards of conduct and performance. Accordingly, the imposition of a formal warning or censure has a protective purpose and should not be imposed in order to punish a person.

This approach presently followed in the application of paragraph 96 seems to the Review to place an inappropriate inhibition on Defence's management of unacceptable behaviour.

A person may be acquitted for many reasons. The standard of criminal proof (beyond reasonable doubt) is very high. In contrast, an administrative inquiry has only to be satisfied that an event has occurred on the balance of probabilities (recognising that the *Briginshaw* test²⁰ requires the seriousness of the allegation to be reflected in the standard adopted²¹).

A person could have confessed to the crime but his confession may be inadmissible having regard to the strict evidentiary requirements applicable in criminal trials. Such a confession could be relevant in an administrative inquiry.

²⁰ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

²¹ Admin Inquiry Manual and ADFP 06.1.3 Guide to Administrative Decision Making, para 3.27.

The availability of witnesses can be different between criminal and administrative proceedings.

These are but a few of the differences between the two types of investigations.

Equally troubling is that we understand that Defence takes the matter further and declines to take administrative action where, after an investigation, the civil authorities decide not to prosecute. This is taken to be an acquittal, notwithstanding the fact that the matter has never gone to court.

The effect of DI(G) PERS 35-4 is that complainants receive responses like the following to their complaints. This response was given in 2003 (at which time the preceding version of the DI(G), DI(G) PERS 35-3 applied) to a 25 year old female Able Seaman who reported rape and sexual abuse while drunk or drugged. She was able to name one alleged perpetrator and had photographs of other alleged perpetrators, all fellow RAN members. We have not investigated the matter and we do not comment on the merits of the allegations, nor criticise the civilian police response. However, it does seem that, even though the civilian police declined to prosecute, the Defence policy is unnecessarily restrictive in preventing any administrative action (even interview of the alleged perpetrators) in respect of what was a very serious allegation. The following is an extract from a letter from the Commanding Officer, a Commander, to the Able Seaman complainant [emphasis added]:

OUTCOME OF INVESTIGATION INTO COMPLAINT OF SEXUAL OFFENCES

...

1. The purpose of this minute is to inform you of the outcome of the investigation into your complaint of sexual offences allegedly committed by other members of the Royal Australian Navy at [location] on [date].

2. The complaint was investigated by the [State] Police Service, which has advised that it will not be proceeding with charges because of insufficient evidence. I understand that [State] Police have personally informed you of the outcome of the police investigation.

3. Your complaint falls within the jurisdiction of the [State] Police Service. The Senate has recommended, and it is ADF policy, that a complaint of a sexual assault occurring in Australia must be handled by civilian authorities and must never be dealt with under the Defence Force Discipline Act 1982 (Cth) (Reference A [DI(G) PERS 35-3], Annex C, paragraph 27). This policy reflects the limited jurisdiction of service tribunals (see Reference B [DI(G) PERS 45-1]). Administrative action is not available to a commander in relation to a complaint of sexual assault (Reference A, Annex E, paragraph 2).

4. Although I am not able to take any formal action in relation to your complaint, I wish to emphasise that counselling and support services are available to you if you need them and I encourage you to make full use of them. If you have any questions regarding this matter please raise them with your Divisional Officer, or if necessary, advise me in writing.

...

As with an acquittal, there can be many reasons other than the belief that the offence did not occur for the prosecution authorities to take no action, including even budgetary constraints.

The following comment included in the March 2006 Report of the Victorian Ombudsman *Improving responses to allegations involving sexual assault*²² indicates that this issue is not only relevant to Defence. The Victorian Ombudsman's comment also supports our view that this is not the correct approach to take:

A problem lies in the perception of some agencies that their responsibilities are fulfilled by reporting incidents to the police. There is also a strong perception that if the police decide not to prosecute

²² http://www.ombudsman.vic.gov.au/resources/documents/Improving_responses_to_allegations_involving_sexual_assault_report.pdf.

for any reason, this means that the alleged perpetrator has been found to be innocent and that the organisation can do nothing to remedy the situation. There should be strong parallel processes supported by organisational policy to investigate and deal with issues of abuse, including sexual abuse.²³

It apparently has been claimed that to subject a person to an administrative inquiry after an acquittal or a decision not to prosecute is to place the person in 'double jeopardy'. In answer, the Review draws attention to the decision of the Full Federal Court in *Hardcastle v Commissioner of Australian Federal Police*.²⁴

That case was concerned with the issue whether disciplinary proceedings could be taken when criminal proceedings had been instituted against a member of the police force. It was claimed that so to act would constitute double jeopardy.

The court dismissed the argument. It said:

In our opinion there is no substance in this submission. It misconceives the character of disciplinary proceedings in general and under the Discipline Regulations in particular. The object of disciplinary proceedings under the Discipline Regulations is to protect the public, to maintain proper standards of conduct by members of the Australian Federal Police and to protect the reputation of that body. The object of disciplinary proceedings is not to punish...or to exact retribution. The expression 'disgraceful or improper conduct' [the disciplinary offence with which the member was charged] is of wide import; sometimes it will and, at other times will not, encompass conduct which is also criminal conduct. We see no warrant for construing the words of para 18(1)(d) otherwise than according to their ordinary and natural meaning, a construction which is consonant with the evident purpose of the paragraph when considered in the context of the Discipline Regulations as a whole. There is no room for the application of what is sometimes misleadingly called the principle of double jeopardy in this case. If the appellant were charged with, and convicted of, the same unlawful assaults as are the subject of the disciplinary offences he would not face double jeopardy or be punished twice for the same offence. He would be convicted of an offence against the criminal law and be guilty of a breach of the disciplinary code of the Australian Federal Police. The two proceedings are essentially different in character and result.²⁵

That case concerned an inquiry before criminal proceedings had commenced. It makes it apparent that the policy adopted in paragraph 96 of DI(G) 35-4 should be revisited.

The Review sought comment from the Attorney-General's Department on this issue of 'double jeopardy' and the general issue of administrative action being taken where criminal action is also in contemplation or may have commenced.

The Department pointed out that the double jeopardy provision in Section 4C of the *Crimes Act 1914* (Cth) is concerned with conduct constituting an offence under two or more criminal laws. It observed that it is not double jeopardy for there to be both a criminal prosecution and a civil or administrative proceeding. These are completely different proceedings and the 'jeopardy' to which the accused/defendant is subject is different in those separate proceedings, even if the factual matrix is the same.

The Department also provided a number of general comments. First, it said that it could not see any basis for drawing a distinction in the approach that should be adopted between sexual and other offences. It considered the principles underlying the approach to be the same. It is thus interesting to again note that DI(G) 35-3 does not impose the restrictions found in DI(G) 35-4.

Second, the Department observed that any application of administrative action, in the context of a potential criminal offence—whether sexual assault or another offence—needed to be carefully considered, to avoid conflicting with the criminal justice process.

²³ Page 14.

²⁴ (1984) 53 ALR 593.

²⁵ Page 597.

Third, it noted that the factual situations will determine the approach that should be adopted. It suggested that specific advice on the practical overlap of administrative action and criminal justice processes should be sought from the Commonwealth Director of Public Prosecutions.

A further significant issue relevant to the policy approach adopted by Defence on this issue is that it is at odds with the approach adopted by the Australian Public Service. The commission of an offence may well involve conduct that breaches the Australian Public Service Code of Conduct (APS Code). Administrative action alleging a breach of the Code is commonly instituted notwithstanding any criminal charge.

As is indicated by the advice from the Attorney-General's Department set out above, care must be taken not to take any action that conflicts with the criminal proceedings. However, that is the limit of the constraint on action under the APS Code. In the APS, administrative action may be taken in parallel with the criminal action.

See further Appendix 13 for a description of the APS procedures for investigating bullying and harassment.

Defence has not been able to provide the Review with any explanation as to why there is this apparently anomalous position in relation to allegations sexual assault in the ADF.

The Review believes that Defence *may* have reached its present position by attempting to give effect to the recommendations of the Report of the Senate Standing Committee on Foreign Affairs, Defence and Trade on Sexual Harassment in the Australian Defence Force (1994).

The removal of the role of Defence in the investigation and prosecution of sex offences as recommended by that Committee was based on the Committee's perception that sex offences were being badly handled by Defence. Defence met this criticism by requiring the immediate referral of complaints of sexual assault to the civil police. This 'complied' with the Committee's recommendation. However, Defence seemed to misinterpret what the Committee contemplated. It seems to the Review that what the Committee intended was that Defence should not be in charge of criminal trials. It did not intend that Defence not be able to take appropriate administrative action.

Further, not only does it seem that Defence hands over the management of the investigation of sex offences to the civil police, Defence also seems to withdraw from taking any part in the process. The Review is aware of at least one case where the ADF had evidence that was relevant to the investigation, but it did not bring this to the attention of the civil police. The Review was left to question whether there is too great a turnover of staff in ADFIS leading to the loss of members with appropriate training for the management of the sensitive task of investigating sexual offences.

As we have indicated, administrative action is not the same as the criminal action that the Committee was seeking to remove from Defence's control. In seeking to meet the Committee's concerns, Defence went further than was necessary and has prevented itself from properly managing all aspects of a sexual assault.

Allegations which have been brought to the Review indicate that the requirements imposed by DI(G) 35-4 act as a constraint additional to those already mentioned on victims of sexual assault reporting the incident. Victims are aware that no immediate action will be taken in regard to the alleged perpetrator and that they may well have to continue working with him (or, less often, her). They also know that this situation may continue for an indefinite period pending the civil authorities' consideration of the allegation. We were given instances where this period was in excess of a year.

The Review has been advised that a rewrite of DI(G) 35-4 has commenced but is on hold pending the outcome of the various reviews that are presently under way. The Review is of the opinion that the present requirements of DI(G) 35-4 are the source of a number of the problems relating to management of sexual offences in the ADF and the DI(G) should be reviewed as a matter of urgency. The matters referred to above should be taken into account.

The Review notes that DI(G) PERS 45-4 *Reporting, recording and dealing with Civil Offences, Service and Civil Convictions and Diversionary Programs* and DI(G) PERS 45-2 *The reporting and management of notifiable incidents* may also be relevant to the matters discussed above. However, it is not apparent on their face how those DI(G)s are meant to apply in relation to DI(G) 35-4. Is it the position that sexual offences are dealt with exclusively in accordance with DI(G) 35-4? Or do these other DI(G)s operate where no express provision is made in DI(G) 35-4? It appears to the Review that the management of sexual offences is not dealt with clearly or appropriately and that attention needs to be given to ensuring that they can be managed effectively and efficiently. This does not appear to be the case at present.

We have been advised that many commanding officers have problems finding their way through the multiplicity of relevant DI(G)s and that this can result in charges being wrongly brought or no action being taken because of confusion. The Grey Report in 1998 noted that under-reporting can occur because confusing administrative and disciplinary procedures inconsistently applied causes loss of confidence in the system.

That there are difficulties for management comes as no surprise as we have found the patchwork of requirements very difficult to follow. We appreciate the size of the task but it seems to us that a review and rewriting of the various DI(G)s relating to sexual offences and unacceptable behaviour is the only way out of the morass. Such a review could take as its model the equivalent legislation and codes used by the APS.²⁶ The problems that have been dealt with are similar and the APS procedures seem very much simpler. Regard should also be had to the Report of the Victorian Ombudsman 2006 Report *Improving responses to allegations involving sexual assault*.²⁷

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.

7.6 Information on outcomes of inquiry not always provided to complainant

A number of sources said that, having reported unacceptable behaviour they received no further information. They were not informed whether any action was taken in relation to their report or what the outcome of any such action was. We were informed that this can be the case because Defence believes that to provide such information could constitute a breach of the Privacy Act.

The Review observes that this approach serves only to exacerbate any harm that a person might have suffered as a result of the reported behaviour. It also leads to the claims made frequently in the complaints

²⁶ See Appendix 13.

²⁷ http://www.ombudsman.vic.gov.au/resources/documents/Improving_responses_to_allegations_involving_sexual_assault_report.pdf

to the Review that Defence is not interested in protecting its members who are the subject of unacceptable behaviour and are inclined to sweep complaints under the carpet.

The Review notes the following from previous reports:

Senate HMAS SWAN Report 1994

Sexual Harassment in the Australian Defence Force

Senate Standing Committee on Foreign Affairs, Defence and Trade

Recommendation Five: The Committee recommends that the Defence Instructions covering Inquiries into Matters Affecting the Defence Force be amended to include a requirement, in the case of an inquiry into personnel matters such as sexual harassment, to inform all witnesses, including those who are not directly the subject of recommendations, of their status at the conclusion of the inquiry. Consideration should also be given to advising all those directly involved in an inquiry of the outcome of any action taken pursuant to the inquiry as soon as possible after decisions on the implementation of the inquiry's recommendations have been made.²⁸

Burchett Report 2001

Report of an inquiry into Military Justice in the Australian Defence Force

Investigating officer appointed by CDF: Mr JCS Burchett, QC (Former Federal Court Judge)

Members of the Military Justice Inquiry Team: CDRE GJ Earley, AM, RANR, Inquiry Assistant, CAPT WR Overton, CSC, RANR, Inquiry Assistant, COL MD Slater, DSC, CSC, Inquiry Assistant, GPCAPT KR Kelly, Inquiry Assistant, WGCDR JG Wahlberg, Inquiry Assistant

An important source of complaint about the operation of military justice is the victim's and the complainant's lack of information concerning the outcome. A number of the submissions made to me were the direct result of this problem. It is, of course, impossible to be sure empirically, because the events cannot be run through twice by way of experiment, but I think it can be concluded that at least some of the long running complaints which have plagued the Australian Defence Force for years might have been avoided had the complainant, as a victim, been fully enlightened about the action taken and the reasons for it at an earlier stage. Certainly, cases have been referred to me where administrative action was taken in order to meet a victim's need, but without satisfying the victim, because insufficiently explained, or not explained at all.²⁹

The Review sought the advice of Simon Bailey of DLA Piper as to the privacy issues to which disclosure of the outcome of an investigation give rise. Mr Bailey advised, in short, that if the perpetrator is a member of the ADF, the provision of his or her name and details of the outcome of an investigation to the complainant is likely to be regarded as a 'use' of the information and would not breach the IPPs.

Mr Bailey said that if Defence had procedures in place to ensure that all personnel were informed about how their personal information might be used in the event of a complaint or incident of sexual misconduct or other unacceptable behaviour, it would overcome concerns about unauthorised disclosure, and would provide a clear basis for informed consent to uses or disclosures of any information collected.

The Review notes that paragraph 11.52 of the *Discipline Law Manual*³⁰ relating to notification after review under the DFDA says that the individual whose conduct has been the subject of the review should be advised of the outcome. It also says:

²⁸ Page xxii.

²⁹ Para 177.

³⁰ Department of Defence, Australian Defence Force Publication (ADFP 06.1.1) *Discipline Law Manual*, Edition 4 (issued 7 October 2009), Volume 2.

In addition, in some cases it will be appropriate for the Reviewing Authority to advise other affected parties of the results of a review. For example, in respect of offences against the person of another, it would normally be appropriate to advise the victim of the results of any review.

It is not known what comprises the 'some cases' in which advice to the affected party is considered appropriate.

It is an old proposition but it still remains valid that justice is only done when it is seen to be done. The fact that complainants are not advised of the outcome of their complaint leads to a loss of confidence in the system. Many persons complaining to the Review observed that there was no point in reporting a matter as nothing would come of it. This attitude flows inevitably if the complainant is given no information as to the outcome of any investigation or even whether there has been one.

This in turn only exacerbates the culture of under-reporting of sex offences and other abuse. The reporting of sex offences and abuse will only occur if members have confidence in the system of military justice.

The Review draws attention to APS Circular No 2008/3: *Providing information on Code of Conduct investigation outcomes to complainants* as a guide for the provision of advice. That Circular states as its starting point '2. Complainants have a legitimate interest in knowing that alleged 'wrongs' have been addressed'. The Circular then proceeds to discuss the balance that must be achieved between this principle and individual employee's rights to privacy. It notes that the circumstances of each individual case must be considered. It sets out procedures to be followed that will enable the disclosure of personal information to persons who have a legitimate reason to receive that information.

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.

7.7 Respect and support for victims of abuse

7.7.1 Insensitive/trivialising responses to allegations of sexual abuse

Previous reports indicate that there have been low levels of reporting of abuse including sexual and other assaults within parts of the ADF. A significant contributor to that past under-reporting appears to be the fear and, in some cases, the actuality, of retribution against and/or hostility to people who have reported abuse by the respondent and/or other ADF colleagues.³¹

A related issue for some of the sexual abuse (including sexual assault) allegations before the Review has been the perception of the ADF member concerned and/or their family, that Defence's response to the allegation of sexual abuse seems to have been insensitive and/or trivialised the alleged abuse.

The Review has seen copies of relevant correspondence which do seem on their face to show some bluntness in dealing with the issues. For example we were provided with a copy of a letter from a RAAF commanding officer to a female corporal who had made a complaint about some incidents involving the Flight Sergeant under whose direction she worked.

³¹ Chapters 4, 5 and 6.

The Commanding Officer (a Group Captain) wrote to the Corporal:

1. I have investigated your allegations as reported to the RAAF Police Victoria on ... and further to our conversation during an interview with yourself and FLGOFF XX on ... I have found a case to answer against FSGT YY. Accordingly, I have taken the necessary administrative action and placed the FSGT on a formal warning.
2. In accordance with para 17 of Reference A, I have counselled the FSGT in regard to any recurrence of sexual harassment and victimization toward you. As these allegations are viewed seriously by the Air Force, I feel it only fair to advise you also that you should maintain your Service relationship with the FSGT (ie, subordinate to superior), in a proper manner leaving this an incident as such. (emphasis added.)
3. If this action has resolved your complaint to your satisfaction I would appreciate your confirmation in writing to that effect within the next seven days.

For the Review members looking at this from outside the ADF environment this letter—issued with Commanding Officer authority to a junior NCO—seems intimidating and focused on checking off required procedural steps, ticking a box—‘matter taken seriously’—and closing the matter. On the face of the letter there is not to be any opportunity to discuss, whether or not ‘this action’ had resolved the Corporal’s complaint to her satisfaction. Nor is there any interest in ensuring that the Corporal was comfortable with working as ‘subordinate to superior’ with the Sergeant. On the contrary she is directed to ‘maintain her Service relationship’ with the Sergeant.

The complainant who provided the copy of the letter to the Review says that she was required to make the handwritten endorsement on the back of the letter:

I am satisfied by the steps you have taken with regard to the sexual harassment allegations. I am happy now working in the ... and no longer feel the need exists for an exchange posting for myself. However, I still feel the situation will remain unresolved as long as the FSGT remains at ...

The complainant left the RAAF the following year. This—and some other incidents which she reported to the Review—occurred over two decades ago. The complainant has still got the letter and she went to the trouble to come to the Review to register her concern about this and other matters. It seems that her adverse perception of the way her concerns were dealt with had an impact on her.

The bluntness may reflect the pressure on superiors managing many different issues to get problems ‘fixed’ and to ‘move forward’—an expression which we have heard very often from ADF leaders with whom we have met.

Of course, dealing with someone who has been the victim of sexual abuse is not a simple matter. The Directorate of Alternative Resolutions and Equity within Defence recognises that gender is a relevant consideration when choosing an appropriate mediator for sensitive mediations.

The Review has seen very few complaints about the way a female has managed an allegation of sexual abuse. It may be that some female victims of sexual abuse have perceived the response of the male supervisor as being insensitive because the supervisor was male. It may be that some male supervisors have not related well to females in these sensitive situations and/or have had difficulty understanding sexual harassment issues from the perspective of the female victim.

The Review is not in a position to assess whether there is, or has been, any broad issue with the sensitivity shown in responding to allegations of sexual abuse.

The Review is generally aware of the multiple levels at which these issues have been, and are being, addressed in the ADF. Paragraphs 3.3 to 3.4.3.2 in Appendix 35 (which contains an overview of the Military Justice System) outline some of the ways in which these issues have been and are being addressed.

We note in particular:

- The express requirement for complex matters concerning personnel issues, to make a selection of personnel to conduct the inquiry on the basis of ‘ability to undertake the inquiry discreetly and sensitively’ (discussed at para 3.4.2 of the Appendix).
- the CDF’s requirement (discussed in para 3.4.2 of that Appendix) that for any inquiry into a serious or complex incident³², the Inquiry Officer must have either completed the IGADF Inquiry Officer Familiarisation course or have received a special briefing from IGADF (or his staff);
- The Chief of Army Directive 17/11 of 16 August 2011 (discussed in para 3.4.3.2 of that Appendix) creating a dedicated Army Administrative Inquiries Cell (AAIC) to support Inquiry Officer Inquiries. That Directive includes a requirement that all serious and complex inquiries within Army, are to be conducted by IOs who have completed both:
 - the IGADF Inquiry Officer Familiarisation course
 - an advanced administrative inquiry officer course conducted by the Military Law Centre.

These look like very positive developments. Many of them are very recent. It seems to the Review that it would be worthwhile for there to be some tracking and assessment of how effective and successful these processes are.

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.

7.7.2 Trivialising language

The Australian Centre for the Study of Sexual Assault (ACSSA) in ACSSA Issues Paper No 6 December 2006 available on the website of the Australian Institute of Family Studies (AIFS)³³ includes the following discussion (emphasis added):

Stages of the healing process:

1. The establishment of safety
2. Remembrance and mourning
3. Reconnection with ordinary life.

The main focus of mental health interventions for victim/survivors of sexual violence include issues of guilt, shame, anxiety, depression, hypervigilance, anger, mood swings, and social discomfort.

Naming sexual assault is seen by researchers and therapists as essential to recovery, however many women (for a range of reasons) do not name their experience as sexual assault even though it meets legal definitions of rape. Sexual assault services can provide an antidote to the culture of censorship and silence that victims can experience in the wider society.

³² It is our understanding that matters involving allegations of sexual abuse would often come into this category.

³³ <http://www.aifs.gov.au/acssa/pubs/issue/summarysheet6.html>.

ACSSA Wrap No 6, 2008 (available on the AIFS website)³⁴ includes the following further comments on the importance of language:

Young people themselves rarely use the terms 'sexual assault', 'rape' or 'sexual abuse' to describe unwanted sexual experiences and they can have difficulty naming an incident as sexual assault ... This is for two reasons. Firstly, a relationship that is presumed to be based on trust and care can leave victim/survivors and those around them unable to recognise sexual assault by those within it. Secondly, commonly held myths about sexual assault can mean that even where an incident would legally classify as sexual assault, it is not seen as such by victim/survivors. These myths include the beliefs that: perpetrators of sexual assault are always strangers; sexual assault always involves the use of physical force or physical violence; a weapon would be involved; it occurs in dark, dangerous public places; or additional physical injuries are sustained.

... As the studies summarised in Table 1 demonstrate, sexual assault is common among young people. Further, contrary to the myth that perpetrators are strangers, the majority of perpetrators are known to victim/survivors ...

And later:

... a negative reaction which conveys that the assault was not that serious (when it is), was not a sexual assault at all (when it was), or that the victim/survivor was partially to blame, such as by being drunk or alone with the perpetrator at the time (when the victim is never to blame) can have a negative impact ... Reactions that validate the experiences of victim/survivors can encourage reporting to police and utilising available support services. They can also help a victim/survivor recover from the sexual assault/s.

Although the following comments were made in relation to school environments, they do seem to be relevant to the ADF context—particularly when young people are involved.

The response of principals and their schools to a disclosure of sexual assault can have a significant long-term impact on future behaviour of students:

Whether the person reporting the incident is believed; terminology such as 'victim', 'perpetrator'; how an incident is classified, such as 'serious' or 'trivial'; and behaviour intervention strategies adopted by the Principal will affect not only the students involved but others witnessing the events as they unfold. (Victorian Ombudsman, 2005, p. 15)

It is of concern to the Review to note that Defence (including the ADF) tends to use the language—'unacceptable behaviour' even *when the allegation is an allegation of criminal assault*.

As the Review was finalising this Report a media item appeared in the following terms (emphasis added):

A female Australian soldier serving in the Middle East Area of Operations was allegedly sexually assaulted at a military base in Tarin Kot, Uruzgan Province, last month while on deployment in Afghanistan.

The soldier reported the alleged assault to superiors on Wednesday (5 October, 2011) and the matter is now the subject of an investigation.

Further details regarding the alleged assault will not be released while this process is underway.

Defence does not condone inappropriate behaviour and treats such allegations seriously.

Our immediate priority at this time is to provide support and assistance to the soldier and ensure the safety and welfare of our members.

Media contact:

³⁴ <http://www.aifs.gov.au/acssa/pubs/wrap/w6.html>.

The language attributed to the Defence spokesperson referring to an allegation of a sexual assault is 'inappropriate behaviour.' That coupled with the oblique statement that Defence 'does not condone' seems to be diminishing the significance of the alleged assault. If the words 'sexual assault' instead of 'inappropriate behaviour' were put into the sentence so that it read—'Defence does not condone sexual assault'—the weakness of the statement is exposed all the more starkly. Surely Defence is strongly opposed to sexual assault?

The Review does not know anything about the circumstances of this particular matter. However, the use of such language by Defence raises the concerns indicated above in that—this language may 'convey that the [alleged] assault was not that serious ... was not a [allegation of] sexual assault at all'.

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.

7.7.3 Adequacy of ongoing support

Another recurrent theme in allegations considered by the Review, has been the perception of some 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.

The 2007 DSPPR Report by Graham *Experiences in making and managing complaints of Unacceptable Behaviour* states:

I'm tired, frightened, confused. I don't want to work here anymore.

Forty-one of the 56 Complainants provided comments relating to the impact of the unacceptable behaviour and/or complaint on the Complainant's health and wellbeing, most of which focused on the emotional and psychological suffering caused by being subjected to unacceptable behaviour and being involved in the complaint process. Complainants spoke of how their self-esteem and morale was negatively affected, and how they experienced a loss of confidence in their ability to either perform their job or interact with others. Initial anger over the unacceptable behaviour was often replaced by feelings of fear and confusion as the complaint process dragged on and the situation remained unresolved. In some cases making the complaint accelerated the anxiety Complainants felt. Many of the Complainants explained they had difficulties in concentrating or focusing on their work tasks, and that the ongoing anxiety and stress brought them close to emotional and physical breaking point ...³⁵

To the extent that the provision of ongoing support depends on continuing attention from the victim's busy superiors, those busy superiors are often under a wide range of pressures which call for their attention. And, of course, a victim who does in fact need ongoing support, may seem to those around her or him to be 'coping'. There may also be risks in approaching a victim who is coping to ask them to re-open the topic of their abuse.

One of the individuals who came to the Review consented to the Review quoting from a letter to her from Mr Geoff Earley the IGADF in March 2010 which included the following statement:

While he [REDACTED] would have preferred to have provided more proactive support [REDACTED] he lacked resources to do so. [REDACTED] there

³⁵ DSPPR Report 31/200 (2007) page 111.

was only one dedicated equity officer at HMAS CERBERUS and three other volunteer sexual offence support staff, to service a unit population of approximately 2300-2600 personnel. During 2009 the unit was managing more than 80 equity cases that had been reported for the year, *including some 20 other alleged sexual or indecent assaults*. ...

The Review is aware that there are contact points for ADF members to obtain counselling. However, beyond that the Review does not know what structures or systems there are for ongoing support for persons who report (allegations of) sexual and other abuse.

Given that the surrounding culture discourages individuals from showing weakness, a system which depends on the victim to make the approach to seek assistance may mean that some victims do not ask for the ongoing assistance which they need.

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.

7.8 ADF liaison with civilian police

Any involvement in a criminal court process is stressful. It is well known that such processes can be particularly stressful for individuals involved in a trial on an allegation of a sexual assault. There are usually long delays in such matters coming to trial.³⁶

It is the Review's understanding that under current DI(G)s 35-3 and 35-4 case managers should be appointed to assist both the complainant and the respondent. Those case managers carry a significant responsibility.

The ADF personnel have numerous interactions with the communities around their bases, establishments etc. It seems to the Review that there could be advantages for those bases—and it could enhance their ability to proactively protect the interests of ADF personnel—if they were to establish and maintain relationships with the civilian police of the surrounding communities on an ongoing basis *before* problems arise.

It is the Review's understanding that in the United States, the Military Forces have a Sexual Assault Regional Team (in each location with a large military presence) which works with regional networks (both civilian police and civilian support agencies) to discuss policy, processes and trends and ways to deal with issues.

The introduction of a similar framework by the ADF could contribute to *avoiding* problems arising. However, if such a framework was established it could also mean that there could be trusted lines of communication in place when and if any incident occurs. A similar framework could be limited to sexual assault issues or it could involve broad law and order issues of the relationship of the ADF personnel with the surrounding community.

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.

³⁶ See Chapter 2.

7.9 Entrenching ADFIS capability

In 2006 the then CDF Air Chief Marshall Houston commissioned an audit of the ADFs' investigative capability. The audit was conducted by Mr AM Whiddett APM and Rear Admiral (rtd) BL Adams AO. The auditors presented their report entitled *Report of an Audit of the Australian Defence Force Investigative Capability* in July 2006.³⁷ The report raised a number of very serious concerns about ADF investigative capability.

...

2. Quite early, audit team members perceived that the recommendations of the reports of a number of earlier reviews, including that undertaken of the Army's investigative capability by Ernst and Young in 2004, all of which identified deficiencies in the ADF investigative capability, did not seem to have produced decisive, measurable reforms or improvements.

The fact that it took a series of reviews—including the Whiddett/Adams report itself—to get decisive action, is itself a matter of concern. The implication is that Defence had not seen value in having effective investigative capability and that suggests that Defence does not put a high value on detecting breaches.

1. In the event, this audit has found that the ADF investigative capability is in serious decline and that remediation, even if approached with unrelenting resolve and commitment, is likely to take no less than five years. The audit has also found that the capacity of the SP in each Service to undertake a general, 'garrison' policing role, has virtually ceased to exist and that this has implications for the prevention and detection of Service-related offences and ultimately for the effectiveness and success of SP investigators.

Again this seems to imply no interest in preventing and detecting 'Service-related offences' which could include abuse.

4. The viability of the investigative elements of the three Services is seriously threatened on several fronts. All are experiencing problems related to staff numbers allocated and their quality and experience. Many investigators have high workloads, poor administrative support and outdated and inadequate information technology support systems. The more fundamental deficiencies are that despite being reviewed, re-organised, restructured and downsized over the last fifteen years, SP still lack clear purpose and direction, a senior 'champion' or advocate to advance their interests, adequate leadership, and modern policy, doctrine, training and tradecraft. In consequence, investigator motivation and morale is suffering and capable people are contemplating leaving the ADF.

5. The plight of the investigative capability is further exacerbated by a higher tempo of operations, integrated military and civilian workforces, and new investigative challenges which have neither been foreseen nor responded to adequately.

6. The audit has revealed that from senior commanders down, and even among SP themselves, there is no shared view as to the *place, purpose and standing* of investigators in fulfilling the mission of the contemporary ADF.

7. A most significant finding, however, is the influence on SP investigations brought to bear by the dominant ADF command culture. It is clear that many commanders are ignorant or dismissive of the limitations of, or restraints on, their command authority when an incident leads to an SP investigation. The apparent level of obstruction of, and interference by commanders into, SP investigations, suggests that there is at least a poor understanding that a SP investigation is an integral component of the ADF military justice system and must be allowed to proceed independently and without interference.

³⁷ <http://www.defence.gov.au/publications/spauditreport.pdf>.

The statement that ‘many commanders are ignorant or dismissive of the limitations of, or restraints on, their command authority when an incident leads to an SP investigation’ and that there is an ‘apparent level of obstruction ... and interference by commanders into SP investigations’ raises very serious concerns about the extent to which lower ranking members of the ADF can have confidence that any report they might have made of an abuse issue would be investigated and handled objectively.

8. The SP investigative capability has, in the opinion of the audit team, reached the point where fundamental questions could be asked whether the service it provides justifies the significant resources expended on it. However, given the Government’s decision that the ADF will retain its investigative capability, remediation must not be further delayed. It is very likely that unless action is taken as a matter of priority, the capability’s depleted condition will eventually be evidenced either by its collapse or by the inability of the ADF to respond appropriately to a serious, sensitive event.

Major Conclusions

9. The first of two major conclusions of this audit is that the ADF investigative capability is in a state of serious decline. Principal amongst the reasons for the decline are:

- There is no shared understanding amongst ADF commanders and commanding officers, and indeed among SP themselves, as to place, purpose and standing of SP in fulfilling the mission of the contemporary ADF.
- An unhealthy environment exists in the ADF which, in places, is hostile to police, in others resistant to SP activity and in many other areas simply ignorant of both the role an investigative capability must play in the military justice system and the responsibility ADF commanders and commanding officers have to support and assist SP in their investigations.
- A joint SP culture does not yet exist and aspects of the three single SP cultures are old fashioned, misguided and a source of acrimony between them and many in the organisations they exist to serve.
- All three SP organisations, and particularly the investigative elements thereof, are under-resourced, lacking administrative support, functional information technology support, coherent and accurate guiding policy and modern ‘tradecraft’.
- While many in the existing investigator workforce are loyal, enthusiastic and hard working people, they are too widely geographically dispersed and their workload is not effectively planned, prioritised, coordinated or quality assured.

10. The second major conclusion is that it would be futile to maintain the ADF investigative capability as it presently exists. To overcome the problems identified the viii audit team recommends that an Australian Defence Force Investigative Service (ADFIS) be formed to operate under joint rather than single Service command.

11. If considered together in a coherent program and implemented resolutely, all the recommendations made in this report should arrest the decline and help transform the existing ADF investigative capability into a highly trained service capable of investigating Service and criminal matters independently, impartially and to a standard that equals best practice in the Australian civilian police and investigation services.

ADFIS has been brought into existence and is in operation.

However, the concerns which the Whiddett/Adams report raised are very wide-ranging and indicate entrenched cultural issues which ADFIS alone could not be expected to address. It may be that Defence already has in place some oversight of these issues. The existence of the Whiddett/Adams report came to the attention of the Review too late for us to obtain much information.

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).

An associated issue that the Review considers needs to be followed up is the preservation of specialist investigative skills within ADFIS. It is the Review's understanding that personnel are rotated through ADFIS in accordance with traditional posting arrangements. This can have the effect that specialist skills built up by officers in the investigation of sensitive areas like sexual assault are lost. This is a waste of resource. It also discourages officers from putting the effort into learning the skills and investigation techniques that are essential to the management of abuse allegations if they know that they may only use them for a limited period.

The selection of officers to perform these functions is also important. Not all service personnel have the right personality and approach to be able to manage the sensitive issues relating to investigation of sexual offences. ADFIS management should be given a role in the selection and retention of appropriate officers.

The Review suggests that the creation of ADFIS investigatory services as a separate area of employment may be a way to deal with this issue.

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.

7.10 Oversight of Defence action in regard to issues raised

The Review considers that the actions taken by Defence in relation to the matters raised by the Review should be the subject of oversight by an appropriate body lest they simply be put to one side. The Review notes that the DFO has previously raised with Defence some of the issues alluded to. The Review considers that the DFO could perform an ongoing role in overseeing Defence's actions in regard to these issues.

We appreciate that the undertaking of an own motion investigation is at the discretion of the Ombudsman. The DFO cannot be directed to undertake such an investigation. However, we consider that it would be appropriate for the Minister to consult with the DFO with a view to determining a role for that office in overseeing the action taken by Defence in relation to the systemic issues referred to in this Chapter.

Resources for the performance of this function would need to be provided.

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.

8 Options

The persons who have made complaints to the Review have described a disturbing litany of unacceptable behaviour, some of which cannot be described as other than brutal. We have only heard one side of the story. Further investigation is needed of many specific allegations. But too many accounts are plausible and consistent with the documented history of abuse for the legacy matters, and for current matters, to be ignored as a group.

Many of the complainants state that the unacceptable behaviour to which they were subjected has affected them throughout life. Some have been physically injured. Others are in receipt of medical treatment for long term stress, alcohol and mental health problems. Many talk of the humiliation, anger and loss of self-esteem that the abuse directed against them caused.

Other complaints relate to the way in which members were dealt with when they did make a complaint. Too often they were told to go away. Many cite retribution and mistreatment from others for making a complaint. Even where the complaint was treated seriously, sometimes, as mentioned in Chapter 7, the member was not informed whether action was taken or what the outcome was of that action.

The Review has concluded that complainants have a justifiable scepticism and in many cases mistrust that anything will be done to recognise and deal with their circumstances. This is in spite of the fact that most of the recommendations of many previous reports following very serious instances of abuse having been implemented.

Many, the Review accepts, believe that the Defence culture has provided comfort to abusers despite the rules and regulations. This is because a blind eye has been turned to conduct which was seen as a necessary initiation and bonding of individuals into the corps of warriors. In other words the Defence culture effectively has sanctioned abuse as being part and parcel of building and maintaining in the field respect for command and the cohesion of units within the ADF which has a reputation as a professional fighting force second to none.

Complainants unfortunately have regularly received reinforcement of this belief through statements by very senior officers of the ADF who in using the “one bad apple in the barrel” analogy, in referring to publicised instances of abuse, have gone on immediately to contrast the outstanding operational performance of particular units of the ADF, eg in Afghanistan.

8.1 What do complainants want as an outcome of this Review?

Most complainants are seeking recognition that they suffered abuse and recognition that they should not have had to suffer that abuse.¹ The Defence culture of not dobbing on others often meant that what occurred was not reported. A number of the complainants state that this is the first time that they have raised the incident in question with anyone, including their family.

Apart from recognition, the most commonly requested action is an apology from the perpetrator and from Defence.

Some also seek compensation. Others want the perpetrator punished. Others want assistance with their medical problems.

¹ See for example the statement set out in Appendix 74.

While one, or a combination, of these remedies will be important in dealing with the complaints received by the Review we have doubts that in the longer term any new approach will be effective unless there is now a public recognition at the highest level of the national Government and the ADF that elements of the Defence culture such as: 'don't jack on your mates', 'don't cross the road', etc have had no positive part to play in establishing and maintaining the ADF's enviable operational record. In fact, to the contrary, those aspects of ADF culture have led to the loss of many high quality members and the dissipation of much ADF human capital.

8.2 Outline of this Chapter

This Chapter contains the Review's discussion of:

- Why further investigation of many allegations is needed.
- Options and our recommendation for continuing, during Phase 2 of the Review (and during the transition to Phase 2), the investigation of many of the allegations;
- Options and recommendation for providing reparation to people who have been abused in Defence or had complaints of mismanagement of abuse by Defence;
- A suggestion for the way in which perpetrators and witnesses who feel remorse may be encouraged to come forward so that they can apologise and try to make amends.

This Chapter deals primarily with the options that are available to provide some reparation² to the victims of abuse and serious mismanagement of complaints of abuse, as well as the mechanisms by which eligibility for any such reparation may be determined. The development of options needs to take into account that people who may have been victims at first may then have become perpetrators (and witnesses) to abuse. The solutions developed should reach out to people who were drawn into abusive behaviour as well as to people who were only ever victims.

A diagrammatic representation of our recommendations and how we see them unfolding is at page 196.

8.3 Why is reparation important?

The Review considers that it will be necessary to adopt some of these options to initiate a healing process for victims of abuse in Defence. It considers below the option of 'no change'. It concludes that the existing mechanisms are not sufficient to deal with the abuse suffered by people sometimes many years ago. The remedies are also limited and often expensive to pursue.

In recent times there have been many instances of institutional loyalty and protection prevailing over recognition of harm inflicted on persons in the institution. Sexual and other assaults in churches and State institutions have been the most obvious examples. It has only been after there has been acceptance by these bodies of the harm that has been done to persons in their care, that the reputation of the institutions has been able to be restored and the affected persons' concerns ameliorated to some extent.

This Chapter proposes mechanisms that, if adopted, may provide a means for Defence to deal with the allegations of abuse that are being levelled at it in a manner that will enable the institution to go forward in a positive way and also provide solace to the members and ex-members affected.

The options we canvas here will not be appropriate to deal with all aspects of all complaints. A combination of approaches may have to be pursued to satisfy all the issues which the complaints disclose.

² We use the word 'reparation' in its primary Macquarie Dictionary (4th ed) meaning 'the making of amends for wrong or injury done'.

8.4 The key features of a new complaints resolution scheme

A significant matter in considering options for future management of complaints, and more particularly the handling of claims of past abuse, is that the 847 people who have made complaints to the Review probably represent only a small portion of the number of people affected. The Review considers that any complaints resolution options that are implemented following this Review should be open to all current and past Defence members who wish to raise a complaint of the type covered by the new options. That is, the availability of any new complaints resolution options should not be limited to people who have raised matters with the Review. Accordingly, it can be expected that whatever mechanism is adopted to deal with the complaints that have already been received, will have to manage a perhaps markedly increased number once new complaints begin to be received.

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.

Careful consideration will need to be given to the scope of new matters that may be raised. We do not recommend the adoption of a new complaints resolution scheme run in parallel with existing Defence processes for all complaints, no matter when they arose or whether they have been reported. We envisage that the type of ‘new’ matters which might be accepted are:

- matters involving allegations from the distant past whether previously reported or not;
- more recent matters that have been reported to Defence and that have been mismanaged by Defence, where reasonable existing avenues for redress have been exhausted.

Some other considerations relevant to the selection of options are that:

- whatever scheme is put in place, should aspire to be ‘fair, just, economical, informal and quick’;³
- the scheme must be such as to attract the confidence of those who are seeking redress for their complaints, many of whom will not have previously raised their concerns with Defence because they lack confidence in the existing reporting mechanisms, fear of retribution or the like;
- the scheme must be capable of dealing with a variety of claims in a variety of locations;
- the scheme adopted must not preclude Defence from taking appropriate disciplinary or administrative action against perpetrators where it wishes to do so;
- the scheme must recognise that the complaints received cover the full gamut of service life;
- the scheme should provide final resolution of complaints, providing certainty to all parties;
- the scheme should offer confidentiality as far as reasonably possible.

8.5 Interaction of these recommendations on options with recommendations for specific allegations

In Volume 2, the Review makes recommendations in respect of each allegation raised with the Review. In broad terms, the recommendations fall into four categories, being recommendations for:

- further external investigation
- referral to existing internal Defence processes

³ Drawn from the objective of the Administrative Appeals Tribunal set out in s 2A of the *Administrative Appeals Tribunal Act 1975*.

- referral to existing external processes
- no further action.

There is further explanation of these recommendations in the Explanatory Materials for Volume 2.

The recommendations made in Volume 2 are, with the exception of the recommendation for ‘further external investigation’, based on existing processes. In contrast, the recommendations made in this Chapter are for new processes to be established.

Establishing new processes will take time.

While that occurs, an external review body (like this one which has conducted Phase 1) can be continuing investigation of matters that have been identified during Phase 1 as raising real questions as to the occurrence of abuse or mismanagement by Defence of reports of abuse. We anticipate that about 400 to 500 allegations (out of the more than 1,000 allegations raised with the Review) will fall into this category when our assessment of all allegations is complete.

We explain in more detail below why we recommend the further investigation be carried out by an external body.

The further external investigation can include arrangements whereby matters which are eligible for any new complaints resolution scheme which is implemented can move from the investigation stream into the new scheme.

If and when a new complaints resolution scheme is implemented, all matters which were raised with this Review should be reviewed to assess whether they should be referred into the new scheme. For example, there are many matters within Volume 2 in which allegations are raised, consistent with the historical reports, of serious bastardisation many years ago by/against people who have now left Defence. This Review has recommended there be ‘no further action’ for those matters at this stage because there is little that could be achieved by further external investigation or referral to internal or existing processes. However, those matters may be suitable for assessment for capped compensation.

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.

8.6 Further investigation of many matters

As described in Chapter 1, the Review was not tasked to conduct full investigations of the allegations raised with the Review. Rather, the Review was tasked to make an ‘initial assessment’ of each allegation.⁴

The Review’s initial assessment of each allegation is contained in Volume 2.

The outcome of our initial assessment is that about half of the allegations raise real concerns as to the occurrence of abuse and/or mismanagement by Defence of reports of abuse. As noted above, we

⁴ See Chapter 1 and Terms of Reference at Appendix 7.

anticipate that about 400 to 500 allegations (out of the slightly more than 1,000 allegations raised with the Review) fall into this category.

In most cases, this Review has only obtained one side of the story—being the complainant’s version of events. The Review’s focus on making an ‘initial assessment’ and limits on time and resources, have meant that in only about 10% of the cases has the Review taken steps to actively investigate the matter. The most common form of further investigation has been to ask Defence (including ADFIS) to provide copies of service records and/or records about incidents of abuse or management of complaints of abuse.

For some matters, complainants have provided comprehensive accounts (including provision of contemporaneous documents) or Defence has provided full records in response to the Review’s request. In these cases, the Review is able to make a more informed assessment about the matter.

We recommend that there be further investigation during Phase 2 of each of the 400 to 500 matters that raise real concerns as to the occurrence of abuse and/or mismanagement by Defence of reports of abuse. That further investigation will primarily take the form of obtaining from Defence or others (such as civilian police, the Ombudsman, DVA or health care providers) further information and documentation. In some cases, the further investigation will take the form of obtaining additional or clearer information and/or documentation from the complainant.

Once those investigations have been advanced, it will be possible for the body which conducts Phase 2 to make more informed recommendations about what further action, if any, should be taken in respect of each matter. Having more information will assist matters to be dealt with appropriately and will remove from the group of matters those that do not meet a basic level of substantiation or gravity.

The further external investigation can and should be carried out in such a way that matters which are eligible for any new complaints resolution scheme which is implemented can transition from the investigation stream into the new scheme.

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.

8.7 No need for investigation of endemic issues

We consider that, against the historical background of abuse which is laid out in Chapter 4 and Chapter 5, sufficient information has been obtained by this Review to indicate that there are a large number of people who deserve some reparation. We do not think there needs to be further inquiry to establish whether or not a problem exists or what impact that problem is having.

We note that a suite of cultural reviews has run in parallel with this Review. Other reviews will no doubt address some of the cultural problems connected with abuse within Defence.

8.8 Possible inquiry mechanisms to carry out further investigation of specific allegations

There are a number of means that could be adopted to further investigate matters, whether as a stand-alone investigative stage or in conjunction with making findings and recommendations about specific matters.

In the following pages we discuss some inquiry mechanisms, before concluding that the best way to conduct further investigation will be by use of an external review body.

8.8.1 Royal Commission

A Royal Commission may be established under the *Royal Commissions Act 1902* (Cth). Section 1A of that Act says that the Governor-General may, by Letters Patent in the name of the Queen, issue such commissions, directed to such person or persons, as she thinks fit, requiring or authorising them to make inquiry into and report upon any matter specified in the Letters Patent, and which relates to or is connected with the peace, order, and good government of the Commonwealth, or any public purpose or any power of the Commonwealth.

It would thus be possible for a Royal Commission to be established to inquire into and report on allegations of abuse in Defence. A Royal Commission could also inquire into and report on the systemic issues referred to in this Report.

A Royal Commission can compel the attendance of persons to give evidence or to produce documents. It can require evidence to be given on oath. Failure to comply with an order of the Royal Commission is an offence, as is giving false evidence.

A person summoned to give evidence before a Royal Commission cannot refuse to appear or refuse to give evidence on the basis that to do so would incriminate them. An exception to this abolition of the defence of self-incrimination exists where the questions relate to an offence with which the person has been charged and the charge has not been finally dealt with or where to answer would expose the person to a penalty (section 6A).

The Review suggests that the appointment of a Royal Commission should be seen as an action of last resort. Royal Commissions are resource intensive and very expensive. It is usual for lawyers to appear before a Commission both as counsel assisting the Commission and as representatives of the parties giving evidence. Commissions traditionally take a long time to conduct their business and report. And at the end of the day, they can only make recommendations.

Royal Commissions are valuable for ascertaining the facts of significant one-off events, such as fires, floods or major societal concerns such as corruption issues. The capacity to require the giving of information enables facts to be obtained where persons are reluctant to disclose them. A Commission could thus examine alleged perpetrators about allegations made by a victim. The perpetrator would be obliged to attend and give evidence. However, the value of this in regard to events that happened a long time ago would be questionable, in that events might simply not be recalled.

This Review is not concerned with the management of unacceptable behaviour in the ADF generally. That is the subject of other reviews and is the sort of inquiry more suited to a Royal Commission (although we make no comment on whether a Royal Commission is needed or appropriate in that respect). Rather, this Review is concerned primarily with the way in which individuals affected by abuse, or by mismanagement of complaints of abuse, should be responded to by Defence or the Government. As such, in the next phase of consideration of allegations, it will be necessary to review a large number of claims to ascertain both whether an alleged incident has occurred and whether a person has suffered as a result.

As noted above, we consider that sufficient information has been obtained by this Review to indicate that there are a number of people who deserve some reparation. We do not consider that a Royal Commission is needed to identify that fact or those people.

Nor do we think that a Royal Commission is the best means to determine what might be the appropriate redress for each individual who has raised a matter with the Review, nor for new matters which might be raised. It seems that a simpler, less formal, mechanism should be established.

For these reasons, we do not recommend the establishment of a Royal Commission.

If it were thought that there were an endemic problem of sexual and other assaults in Defence that Defence is not making adequate attempts to deal with or is covering up, it may be that the only way to

ascertain the extent of the problem would be by establishing a Royal Commission to inquire into the problem. Whilst we have not been asked to consider this issue, we can observe that the material before us does not demonstrate this to be the case. The material before us does not indicate that conduct constituting sexual and other assaults is presently widespread in Defence.

There are special circumstances that exist in the nature of the relationships between serving members of the ADF that require the adoption of the ADF's zero tolerance policy. The information before us, and the consultations we have had, suggest that, in general, that policy is being enforced. While there are elements of ADF procedure and practices which the material before us suggests is inadequate to deal with sexual and other assaults, we do not think that it requires a Royal Commission to identify these, nor to make recommendations on how to remedy these inadequacies.

This is not to say that, in the past, the behaviour patterns in the ADF were satisfactory. As discussed earlier, there is considerable evidence in previous reports and in the complaints that we have received that indicate that there has, at times and/or in certain locations, been a high incidence of sexual abuse and other abuse, including bastardisation and bullying. However, this situation and the procedures that should be followed in dealing with unacceptable behaviour have been the subject of numerous reviews by Defence. Whether these procedures need to be further refined is the subject of the Review by the IGADF.

What has emerged from this Review is that there are many instances of members and ex-members of the ADF who have in the past been subjected to abuse and either suffered, are suffering or are at risk of suffering as a result. Some of those people have raised matters with this Review and we expect there are others who have not. The question is how best to redress that situation.

In the present context, a Royal Commission could only recommend that, for example, criminal proceedings be commenced against alleged perpetrators or that recompense of some kind be made to alleged victims. The final decisions in the matter would still have to be taken by the government.

The ascertainment of whether a case can be made out against an alleged perpetrator will have to be determined by prosecution authorities. Whether an individual, as distinct from a class of people, qualifies for reparation of some kind is not the sort of task that would normally be undertaken by a Royal Commission.

We consider that the mechanism for determining whether further action should be taken against alleged perpetrators needs careful management in the interests of alleged victims as well paying appropriate regard to the rights of the alleged perpetrators. The mechanism of a Royal Commission seems to us to be generally too heavy handed for it to be appropriate to deal with this aspect of the matters that this Review has canvassed.

Late in the life of the Review, we obtained information relating to allegations of sexual assault at ADFA prior to the Grey Report in 1998. For reasons set out in Chapter 6 we consider that a Royal Commission may be appropriate to deal with the issues outlined there and we recommend Phase 2 consider this possibility.

8.8.2 Judicial inquiry

An inquiry may be established by the Commonwealth chaired by a judge or former judge. For a recent example see the Clarke Inquiry into the case of Dr Mohamed Haneef (November 2008)⁵. Inquiries of this kind are commonly referred to as 'judicial inquiries'. To the extent that they involve the use of a judge as chair, this nomenclature can be justified. However, there is usually an expectation associated with the name 'judicial inquiry' that such an inquiry can compel the attendance of witnesses, can compulsorily

⁵ [http://www.haneefcaseinquiry.gov.au/www/inquiry/rwpattach.nsf/VAP/\(3A6790B96C927794AF1031D9395C5C20\)~Volume+1+FINAL.pdf/\\$file/Volume+1+FINAL.pdf](http://www.haneefcaseinquiry.gov.au/www/inquiry/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~Volume+1+FINAL.pdf/$file/Volume+1+FINAL.pdf)

require the production of documents and can impose sanctions on persons. Unlike some of the States which can establish general inquiries with compulsory powers, the Commonwealth has no power to establish an inquiry with such powers.

A Commonwealth 'judicial inquiry' may make recommendations to the Commonwealth (again, see the Clarke inquiry) but its access to information is limited by the willingness of parties to co-operate with the inquiry.

This procedure would not be suitable to identify abuse claims that might be eligible for reparation because of the wide range of claims, the fact that they arise in disparate locations, the time it would take to address all matters through an inquiry and the burden this would place on one judicial officer or even a panel of judicial officers. Lack of immunity from prosecution for witnesses who appear before the inquiry may also impose difficulties.

8.8.3 Parliamentary Committee

The Bibliography for this Report lists a number of inquiries conducted by parliamentary committees into aspects of Defence Force discipline. These have in the main been directed to the method of investigation and management of complaints of misbehaviour. The Reports of the inquiries have provided valuable guidance to Defence and most of the recommendations contained in the Committees' reports have been implemented.

Parliamentary committees have the power to summon witnesses and to require the giving of evidence. Failure to comply with a summons to appear or giving false evidence may constitute a breach of the privileges of the House of the Parliament that has established the committee. Such a breach is punishable under the *Parliamentary Privileges Act 1987* (Cth).

It is something of a moot point whether the witness privileges such as legal professional privilege and the privilege against self-incrimination apply to parliamentary proceedings. Committees are disinclined to press a witness who pleads such exceptions to the obligation to give evidence.

Parliamentary committees are rather like Royal Commissions, except that witnesses are seldom represented by lawyers. Committees perform a useful role when looking at big picture policy issues. They are less useful where it is necessary to determine whether an individual should be entitled to some form of reparation for damage suffered.

The remarks above which question the justification for or desirability of appointing a Royal Commission are applicable also to parliamentary committees.

8.8.4 Defence Force Ombudsman

The Commonwealth Ombudsman performs the function of the Defence Force Ombudsman (DFO) (*Ombudsman Act 1976* (Cth), section 19B). The Ombudsman has powers equivalent to a Royal Commissioner in that witnesses may be summoned and information can be acquired compulsorily. The DFO's office has staff trained in the carrying out of investigations. Staff have immunity from action arising from the performance of their investigative role.

The DFO's role is to review complaints that relate to a matter of administration 'with respect to a matter that is related to the service of a member of the Defence Force or that arises in consequence of a person serving or having served in the Defence Force' (section 19C). The DFO could, it seems, investigate a complaint from a member or former member of the ADF that related to the management of an allegation of abuse.

However, the DFO could not receive and consider an allegation of abuse that has not already been reported to and dealt with by the ADF (including referred to the civil police in the case of a sexual assault). Such a complaint could only be made about the administration of a complaint after it had been considered by Defence.

The Ombudsman may also undertake an own motion investigation into any aspect of government administration. The DFO could, therefore, if he so decided, investigate the actions of Defence in regard to some or all of the systemic issues raised in this Report. Indeed, as is referred to in Chapter 7, the DFO has raised some of these issues in the past. We suggest in Chapter 7 a role for the DFO in regard to the overseeing of Defence's actions on the systemic issues referred to in that Chapter.

It would be possible for the government to amend the Ombudsman Act to vest in the DFO the additional discrete task of determining whether a member or ex-member had suffered that should be recompensed in some way. However, this has not been a traditional role of the Ombudsman. If this course were adopted it would require sufficient resourcing. We do not recommend that the DFO be given this power. However, we do suggest that there should be liaison with the DFO during Phase 2 of this Review to determine a role for the DFO in overseeing the actions of Defence/Government/external review body in implementing whatever processes for investigation and reparation are adopted following this Report.

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.

8.8.5 IGADF

The other existing office with investigatory powers and relevant expertise is the Inspector General Australian Defence Force (IGADF).

Sections 110C and 110D of the *Defence Act 1903* (Cth) provide:

110C Functions of the Inspector-General ADF

- (1) The Inspector-General ADF has the following functions:
 - (a) to inquire into or investigate matters concerning the military justice system;
 - (b) to conduct performance reviews of the military justice system, including internal audits, at the times and in the manner the Inspector-General ADF considers appropriate;
 - (c) to advise on matters concerning the military justice system, including making recommendations for improvements;
 - (d) to promote military justice values across the Defence Force;
 - (e) to do anything incidental or conducive to the performance of any of the preceding functions.
- (2) In addition to his or her functions under subsection (1), the Inspector-General ADF also has:
 - (a) the functions conferred on the Inspector-General ADF by or under this Act or any other law of the Commonwealth; and
 - (b) such other functions as are prescribed by the regulations.

- (3) The function referred to in paragraph (1)(a) includes the following:
 - (a) carrying out preliminary assessments as to whether an inquiry or investigation should be conducted by the Inspector-General ADF;
 - (b) referring matters to other appropriate authorities to be dealt with.

Note: The regulations may make provision in relation to the procedures and powers of the Inspector-General ADF in respect of the performance of the Inspector-General ADF's functions (see paragraph 124(1)(h)).

110D When the Inspector-General ADF can conduct inquiries or investigations

- (1) The Inspector-General ADF may conduct an inquiry or an investigation on his or her own initiative.
- (2) The Inspector-General ADF may be directed to conduct an inquiry or an investigation by the Chief of the Defence Force.
- (3) The Inspector-General ADF may be requested to conduct an inquiry or an investigation by a service chief, but is not required to comply with the request.
- (4) The Inspector-General ADF may be requested to conduct an inquiry or an investigation by any other individual, but is not required to comply with the request.

It would seem possible for the IGADF to inquire into the past receipt and investigation of allegations of abuse, including the manner in which any complaints have been dealt with. The IGADF has wide powers under the *Defence (Inquiry) Regulations 1985* to obtain evidence and compel the attendance of witnesses.

It is questionable, without an amendment of the legislation, whether the IGADF could receive initial complaints of abuse and investigate them. In addition, without a change in approach, the IGADF would not be able to deal with the very large number of complaints that have been brought to this Review and which it can be expected will be lodged in the future. The IGADF conducts very thorough investigations of the matters that come to him. The Office of the IGADF completes a relatively small number of investigations each year with a small staff.⁶ The numbers involved in the present circumstances would overwhelm the Office as it is presently conducted.

There may also be a question whether members and former members would wish to have their matter investigated by the IGADF. While notionally independent of the ADF, the IGADF is accountable to the CDF. The Inspector-General is a former senior ADF member and the office is largely staffed by ADF members. Many people who have raised matters with the Review have not previously raised their matter with Defence. The IGADF may be seen by many to be too much 'a part of the ADF'.⁷

8.8.6 Defence inquiry mechanisms

The existing Defence administrative inquiry mechanisms are described in Appendix 35.

These mechanisms could be used for the investigation of complaints and eligibility for reparations.

Depending upon the level of the inquiry appointed, an inquiry can compulsorily obtain material necessary for the resolution of claims. Administrative inquiries can, however, only make recommendations.

⁶ For example, the IGADF's annual report for 2007/2008 reveals 40 submissions were received, 52 submissions were finalised and 15 administrative inquiries were commenced as a result of the submissions received that year.

⁷ See also Chapter 2 discussion of ADF difficulties with critical examination of issues related to abuse in the ADF.

There are some individual matters reported on within Volume 2 that we recommend be considered for administrative inquiry. We have been able to make that recommendation where the facts are such that administrative inquiry is the logical next step and the parties appear to have confidence in the system.

However, we recommend against using existing Defence administrative inquiry mechanisms to try to investigate and/or resolve most of the matters. Such mechanisms will be regarded—by the people who have raised allegations with the Review, by victims who have not yet raised an allegation and by the public generally—as part of, or too close to, Defence to ensure impartiality and confidence in the outcome.

8.8.7 Establishment of Australian Defence Force Administrative Review Board

In its 2005 Report *The effectiveness of Australia's Military Justice System*⁸ the Senate Foreign Affairs, Defence and Trade References Committee recommended the establishment of an Australian Defence Force Administrative Review Board (ADFARB) modelled on the Canadian Forces Grievance Board.

The recommendation (Recommendation 29) proposed a radical restructure of grievance handling processes in the ADF including:

- ADFARB would have an independent chairperson appointed by the Governor-General for a fixed term;
- ADFARB would have a statutory mandate to review military grievances and to submit findings and recommendations to the CDF;
- all Redress of Grievance and other complaints to be referred to the ADFARB unless resolved at unit level or after 60 days of lodgement;
- CDF be required to give a written response to ADFARB findings and recommendations;
- CDF to give a statement of reasons if not acting on a finding or recommendation of ADFARB;
- ADFARB to have the power to summon and enforce the attendance of witnesses and compel them to give evidence on oath;
- ADFARB to take over the work of IGADF;
- (To answer concerns about conflict of interest and fear of reprisal) ADFARB be able to receive complaints directly from ADF members in some circumstances.

The Government's October 2005 response⁹ rejected the recommendation to establish ADFARB. The main reasons for rejecting the recommendation were that ADFARB 'would not support the relationship between command and discipline, would reduce contestability and introduce duplication' and would 'duplicate the role of the Defence Force Ombudsman'.

This Review does not need to enter into discussion of the large issues raised by the ADFARB proposal. It is sufficient for purposes of this Review to note that the ADFARB proposal was focused on fast track management of *current* complaint and grievance issues.

The Review considers that ADFARB as proposed by the Senate Committee would not be an appropriate structure for management of the legacy issues of past abuse identified in this Report.

⁸ http://www.aph.gov.au/Senate/committee/fadt_ctte/completed_inquiries/2004-07/miljustice/report/index.htm

⁹ Government response to the Senate Foreign Affairs, Defence and Trade References Committee *Report on the effectiveness of Australia's Military Justice System* October 2005 (pages 17-20).

http://www.aph.gov.au/Senate/committee/fadt_ctte/completed_inquiries/2004-07/miljustice/gov_response/gov_response.pdf

8.8.8 Complaints Resolution/Fairness & Resolution Branch

The Government response to the 2005 Senate Committee Report's recommendation for the establishment of ADFARB included a statement that 'Defence's Complaint Resolution Agency (**CRA**) – an existing body which is established outside the ADF – will become the lead agency in the coordination of complaints and redresses of grievances'.¹⁰

CR sits within the Fairness and Resolution Branch of the Department. The focus of that Branch is necessarily on management of *current* complaint and grievance issues. The Review's dealings with some areas of the Branch during the course of this Review have indicated that Branch is under stress – no doubt exacerbated by the extra work imposed on that Branch by the questions put to it by this Review and Cultural Reviews.

Furthermore, many of the people who have come to the Review have stated that their decision to come forward was influenced by the fact that this Review is outside of the Department and the ADF.

The Review considers that, although Fairness and Resolution Branch may be the appropriate entity to carry out some Phase 2 further investigation and to implement some specific recommendations for Phase 2, that Branch will not be the appropriate entity to carry through all or even most of the Phase 2 actions.

8.8.9 Appointment of an external review body (similar to this one)

We recommend that the further investigations to be made during Phase 2 be conducted by an external review body. We suggest that a body similar to that which has conducted Phase 1 of the Review be established for this purpose.

In our view, an external review body is best suited to continuing the investigations commenced by this Review because it is independent of Defence, it can proceed quickly and informally and it can follow on the experience gained by this Review.

Further, an external review body can accept new matters, can adapt quickly to developments, can offer some protection on non-disclosure of confidential information (although offering confidentiality limits the investigations which can be made) and does not preclude resort to existing Defence or external processes at a later time.

If this option is adopted, it will be necessary for the external review body to have access to considerable back up staff, as our experience has been that the management of numbers of complaints raising such sensitive information is extremely resource intensive. While it should be possible during Phase 2 to deal with complaints in a more structured way and at a somewhat slower pace than has been possible for this Review, the need to produce results in response to complaints and to communicate with complainants is a time consuming activity. There will be pressure to respond as some time has already passed since many of the complaints were first made.

An external review body will encounter the limitations that have been apparent in the course of the conduct of this Review, the most significant of which is that it has no power to compel the production of documents. See our comments in Appendix 2 relating to problems that we encountered in obtaining documents and information from some areas of Defence. Nevertheless, this can be addressed by issue of directives from senior leaders and the provision of greater support and co-operation from some areas of Defence than has been afforded to this Review.

¹⁰ Page 18.

An external review body could also:

- retain oversight of the specific allegations which we have recommended be referred to existing internal or Defence processes; and
- retain oversight of the consideration and rectification of systemic issues identified in Chapter 7;
- have a role in formulating the detail of a new complaints resolution scheme as discussed below.

We consider that these functions are best performed by an independent, informal body working closely with Defence.

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.

8.9 Options

We discuss in this section some options for providing reparation to people who have been abused in Defence or had complaints of abuse mismanaged by Defence.

We conclude this section with a recommendation that an appropriate scheme, for the management of the complaints already received and new complaints which are likely to be made in the future, would comprise the following elements to be used as appropriate to the particular circumstances:

- general apology/acknowledgment
- personal apology
- capped compensation scheme
- facilitated meeting between victim and perpetrator
- health support.

8.10 No action

We use the term ‘no action’ in this Chapter to describe an outcome whereby no new complaints resolution scheme is implemented following this Review.¹¹ The option of doing nothing to establish a complaints resolution option for claims as a group, would not limit the capacity of members and ex-members of Defence to individually pursue the remedies presently available to them to seek reparation for abuse that they have suffered.

However, in our view—for the reasons explained below—the ‘no action’ approach will not adequately address the full range of allegations which have been raised, in large part because it will not enable many people to receive reparation for what they have suffered.

The expectation has been raised that there will be something done in relation to the allegations that have been made to this Review and it is our recommendation that something also be done for the people who have suffered abuse but not raised a matter with this Review.

¹¹ This is in contrast with the use of the short hand ‘no further action’ in the recommendations for specific matters in Volume 2 of this Report. In a Volume 2 a recommendation for ‘no further action’ is a recommendation for no further action *within existing processes*. If any of the options discussed in this Chapter are adopted, then there should be reconsideration of whether any of the *new* processes should be applied to any of the Volume 2 matters including those for which the recommendation has been ‘No further action’.

The Review does not consider it appropriate that people who have been affected by what is recognised to be abuse should be expected to endure that action without any reparation. The many previous reports that are referred to in this Report have recognised the existence of unacceptable behaviour and we have discussed the legacy this has created. Efforts have been made to prevent the re-occurrence of such behaviour. Regard should now be paid to the impact of the behaviour identified in those reports, and in more recent times, on individuals and to what reparation might be made to them.

8.11 Existing means of redress

Appendix 36 sets out the means available to persons to seek compensation or damages for harm. These mechanisms are summarised briefly here, but reference should be made to the Appendix for a better understanding of what is available.

8.11.1 Common law

Where legislation has not abolished the right to sue, members and ex-members may have an entitlement to commence a common law damages action against both the person who caused harm to them and that person's employer (if it arose in the course of the person's employment). Those proceedings are usually brought in State and Territory Courts and to succeed in recovery of damages, a claimant must, on the balance of probabilities, prove negligence and injury, loss and damage that flow from the employer's (direct or vicarious) negligence.

Leaving aside issues of codified changes to the law of negligence brought about by tort reform legislation, which may or may not apply to proceedings brought by persons who suffer personal injury during employment by or engagement with the Commonwealth, for a negligence action to succeed, the plaintiff will in general terms need to establish:

- that there was a duty of care owed by the defendant
- that there was a breach of the duty of care by failing to meet the requisite standard of care
- that there was injury, loss or damage resulting from the defendant's breach of duty that was not too remote in law.

A significant issue that arises in regard to persons who were subjected to sexual or other abuse in the past is the effect of statutes of limitation on the ability to bring an action. The limitation periods (including capacity to extend them) vary in different jurisdictions and in regard to different actions. However, in general terms, if the harm suffered by a person occurred more than six years ago, it is unlikely that they will be able to bring a common law action because the defendant will be able to rely on a limitation defence. The position would be different where the action occurred many years ago but the harm only manifested itself recently (eg PTSD). In such a case, an action might be available. However, such actions can be very difficult to prove because of the passage of time since the events occurred.

A problem for members and former members who suffered injury arising from the unacceptable behaviour of another member is the cost of bringing such an action (which is likely to be defended by Defence). Such actions can also take a long time (up to years) to resolve.

8.11.2 Commonwealth Anti discrimination legislation

A person whose abuse can be characterised as unlawful discrimination under the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Disability Discrimination Act 1992, or the Age Discrimination Act 1992, can make a complaint to the Australian Human Rights Commission and if the matter cannot be resolved by conciliation, the person may apply to the Federal Magistrates Court or the Federal Court

alleging unlawful discrimination. Either of those Courts can order a person, including the Commonwealth if found to be vicariously liable as an 'employer' broadly defined, to pay damages by way of compensation for any loss or damage suffered by the complainant.

In the case of *Lee v Smith and Ors* [2007] FMCA 59, the Commonwealth and three individual Department of Defence employees were found to have 'discriminated' against Ms Lee in a case involving sexual harassment and victimisation, and all were ordered to be jointly and severally responsible to pay damages (in excess of \$350,000) plus costs and interest.

The case involved a rape at a private residence following a social dinner party. The Court in *Lee v Smith* applied a broader nexus test for 'vicarious liability' under s106(1) of the Sex Discrimination Act 1984 than the common law test, making it easier for applicants to argue that sexual harassment outside of an immediate work context - can be sheeted home to the employer if it is an extension or culmination of events occurring at the workplace. The definition of 'Commonwealth employee' for the purposes of the sex, disability, and age discrimination legislation specifically includes members of the Defence Force.

The decision in *Lee v Smith* suggests a possible approach for persons who have been abused in the ADF to bring actions against the Commonwealth and/or against individual members of the ADF who participated in abuse or allowed abuse to occur.

However, for continuing members of the ADF who might be considering bringing an action under Commonwealth Anti-Discrimination legislation the aspects of ADF culture which discourage reporting abuse inflicted on them by other ADF members would probably also strongly discourage people who wished to stay in the ADF from bringing Anti-Discrimination legislation actions against other ADF members.

For former members of the ADF, an action based on Commonwealth Anti-Discrimination legislation would only be available for incidents which occurred after the relevant legislation came into operation. Delay in bringing an action until the individual had left ADF would also present significant difficulties of proof and statute of limitations problems.

8.11.3 State and Territory Anti discrimination legislation

The extent to which State and Territory Anti-Discrimination legislation could be available as the basis for a current or former member of the ADF to bring an action against the Commonwealth and/or individual ADF or former ADF members would be affected by a number of considerations including the precise terms of the particular State or Territory legislation.¹² In any case the Federal jurisdiction is generally regarded as being more attractive to applicants than State and Territory anti-discrimination frameworks.¹³ Accordingly, existing State and Territory Anti-Discrimination legislation is not likely to provide significant options for an individual who has suffered abuse in the ADF.

8.11.4 Fair Work Act 2009

For APS employees, the Fair Work Act 2009 provides another mechanism for obtaining compensation where an employee can establish that he or she has had adverse action taken against them because they sought to exercise a workplace right, or because of the persons' race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, or social origin. There are civil penalty provisions that apply to such action, as

¹² The decision of Heerey J in *Commonwealth v Wood* (2006) 148 FCR 276 in the Federal Court holding that the Tasmanian Anti-Discrimination legislation applied to the Commonwealth in a matter involving Defence was not followed by the majority of the Full Court of the Federal Court in *Commonwealth v Anti-Discrimination Tribunal (Tasmania)* [2008] FCAFC 104. The Full Court decision depended on the interpretation of the Tasmanian legislation.

¹³ Brook Hely 'Open all hours: the reach of vicarious liability in "off-duty" sexual harassment complaints' [2008] 36(2) Federal Law Review 173.

well as the ability to obtain orders for the payment of compensation by the employer. However, the remedies under this Act do not seem to have application to ADF settings.

8.11.5 Criminal injuries compensation

Individuals who are victims of criminal acts have an entitlement under State and Territory legislation to receive criminal injuries compensation. The qualifications for receipt of a payment vary between the different jurisdictions. If the requirements of the relevant legislation are satisfied, a victim of that criminal act can seek compensation. The legislation is designed to compensate a victim for the injury suffered.

Excluding Western Australia, there is power across all Australian jurisdictions for the Courts to order, as part of sentencing, that an offender pay compensation for injury, damage or loss as a consequence of the offence.¹⁴ In Western Australia, this power is restricted only to property damage or property offences.¹⁵

In addition, the Commonwealth, each State and the Territories have introduced legislation which contains a power for Courts to order restitution and compensation against an offender who has been found guilty in favour of the victim. A conviction of the perpetrator is a necessary pre-condition to being able to seek compensation. In only a very small number of the matters that have been raised with this Review has the perpetrator been convicted of an offence.

Again there is a time limit within which claims can be made.

There are some caps on the amount of compensation which can be awarded. For example, in the Australian Capital Territory, under s14 of the *Victims of Crime (Financial Assistance) Act 1983* (ACT), the maximum aggregate financial assistance that may be awarded in compensation is \$50, 000 (including any award of special assistance and any award to a person responsible for the maintenance of the primary victim).

8.11.6 Occupational health and safety

Under the *Occupational Health and Safety Act 1991* (Cth), in general terms the Commonwealth as an employer must take all reasonably practicable steps to protect the health and safety of employees at work (section 16). The obligation extends to providing and maintaining a working environment that is safe and without risk to health.

However, a breach of the *Occupational Health and Safety Act* does not confer a right on an individual who has suffered injury to bring civil proceedings against the Commonwealth or another individual for the breaches of obligations under the safety legislation. This Act is not likely to be of any assistance to persons who have made allegations of abuse to the Review.

It is proposed that the Commonwealth replace its existing OH&S legislation with enactment of the Model Work Health and Safety Bill as part of a national scheme. That Bill includes provision for the Commonwealth to bring new ADF members and cadets to the definition of 'worker'. The enactment of that Bill may see significantly higher liability exposure for senior 'management' in the ADF in relation to ADF workplace safety including - possibly - in relation to abuse. However, when and if enacted that legislation will also have an express declaration that the legislation does not give individuals any right to sue for damages based on breach of the legislation and will not address issues from past failures to keep ADF personnel safe.

¹⁴ *Victims Support and Rehabilitation Act 1996* (NSW) ss 71, 77B; *Sentencing Act 1991* (Vic) s 85B; *Penalties and Sentences Act 1992* (Qld) s 35; *Criminal Law (Sentencing) Act 1988* (SA) s 53; *Sentencing Act 1997* (Tas) s 58; *Crimes (Sentencing) Act 2005* (ACT) s 18, ch 7; *Sentencing Act 1995* (NT) s 88.

¹⁵ Section 116 of the *Sentencing Act 1995* (WA), which defines 'victim' as a person who or which has suffered loss of or damage to his, her or its property as a direct or indirect result of the offence.

8.11.7 Statutory compensation schemes

The compensation entitlements of ADF members have traditionally been governed by a number of criteria, the most important one being whether the injury resulted from peacetime service or wartime (operational) service. Different levels of compensation have been paid in respect of each.

This was because after World War II a distinction was made between veterans who had suffered the rigours of service that exposed them to harm from enemy forces and those that had not.

Until the introduction of the *Military Compensation and Rehabilitation Act 2004*, this distinction was maintained by two separate schemes which are summarised in Appendix 36. They have been designated 'Peacetime Military Compensation' to cover compensation for injury/disease suffered during peacetime and 'Operational Service Compensation' to cover compensation for injury/disease suffered during warlike, non-warlike and peacekeeping service.

The *Military Compensation and Rehabilitation Act* commenced on 7 April 2004. A member's access to dual entitlements under the *Veterans' Entitlements Act* and the *Safety Rehabilitation and Compensation Act* thereafter ceased, except for members of the Defence Force who had operational service. Members of the Defence Force on operational, peacekeeping or hazardous service continue to be able to choose between *Veterans' Entitlements Act* or *Safety Rehabilitation and Compensation Act* coverage.

These various compensation schemes provide compensation for ongoing physical or psychiatric disability of some kind. They are, and will continue to be, available to members and former members who meet the criteria set out in the legislation. The Review believes this offers an appropriate remedy for this type of disability and is of the view there is no need for action to be taken in regard to reparation for this sort of disability. However, what is not covered by the past or current schemes are persons who suffered abuse but who do not satisfy the eligibility requirements for compensation under the schemes. This can arise, for example, where there is no ongoing disability or where the 'harm' suffered (eg humiliation) was not physical nor a recognised ongoing psychiatric impairment. It is likely that most of the persons who have made allegations of abuse to the Review will fall into this latter category. Those who fall in the former category will probably have already made a claim for compensation.

Under the existing Commonwealth statutory compensation schemes it is generally a precondition for payment of any benefit that the individual must prove some ongoing impairment or injury. The individual is put in the invidious position where the ongoing impairment is a mental health issue. Mental health problems are not always easy to prove. Furthermore, proving a causal link between a particular instance of past abuse and a current mental health issue can also be difficult. Furthermore, individuals may be reluctant to prove that they have a mental health problem because doing so may have ongoing employability and insurability impacts and may have stigma.

The Review is of the view, that the statutory schemes should continue to be open where the individual can meet the preconditions for a benefit. However, the Review is also of the view that consideration needs to be given to the possibility of payments being made to recognise that past abuse was itself a wrong and compensable as *such*. In this respect the approach taken in State and Territory criminal injury compensation schemes provides the model - rape is compensable without proof of ongoing impairment.

Compensation for civilian members of Defence is provided for by the *Safety Rehabilitation and Compensation Act 1988*. A person who sustains an injury arising out of or in the course of their employment may claim compensation for medical and other costs arising out of the injury. There is also provision for disability pensions to be paid.

8.11.8 Commonwealth discretionary compensation schemes

The Commonwealth may make payments in limited circumstances where persons have suffered harm as a result of the actions of Commonwealth officers. Payments under these schemes could be looked at as a means of providing reparation to members and ex-members, either directly or through a compensation scheme.

The discretionary compensation mechanisms are set out in Finance Circular No. 2009/09.¹⁶

The various schemes are fully described in Appendix 37 to this Report. The following is a summary of the various mechanisms and an indication of their possible use in the present context.

The three relevant compensation mechanisms are:

- Payments made under the Scheme for Compensation for Detriment Caused by Defective Administration (CDDA Scheme).
- Act of Grace payments made pursuant to section 33 of the *Financial Management and Accountability Act 1997* (Cth).
- Ex-gratia payments.

CDDA Scheme

The CDDA Scheme is an administrative scheme to enable Commonwealth agencies to compensate persons who have suffered detriment as a result of an agency's 'defective' actions or inaction and who have no other avenue of redress.

There are two key features of the CDDA Scheme:

- decisions are made at the discretion of a decision maker within the agency (in this case, Defence);
- payments are approved on the basis that there is a moral, rather than a legal, obligation to the applicant.

There is no time limit in which applications must be submitted.

The CDDA Scheme is an avenue of 'last resort' for persons who believe they have suffered detriment. Consequently, it does not generally apply to:

- common law claims for monetary compensation where it is reasonable to conclude that the Commonwealth will be found liable if the matter is litigated (for example, a personal injury claim based on negligence)
- applications that would more appropriately be considered under the statutory Commonwealth workers' compensation legislation referred to above.

The Finance Circular defines defective administration as:

- (a) a specific and unreasonable lapse in complying with existing administrative procedures; or
- (b) an unreasonable failure to institute appropriate administrative procedures; or
- (c) an unreasonable failure to give to (or for) an applicant, the proper advice that was within the official's power and knowledge to give (or reasonably capable of being obtained by the official to give); or
- (d) giving advice to (or for) an applicant that was, in all the circumstances, incorrect or ambiguous.

¹⁶ The Finance Circular is available at <http://www.finance.gov.au/publications/finance-circulars/2009/09.html>

The Finance Circular states that detriment includes personal injury, as well as mental injury. Compensation is not payable for grief or anxiety, hurt, humiliation, embarrassment or disappointment that is unrelated to a personal injury. However, applicants may seek compensation for financial detriment relating to a recognised psychiatric injury suffered as a result of defective administration.

Claims for compensation must be considered on their own merits and on a case by case basis.

The CDDA Scheme is an appropriate mechanism for considering 'one-off' compensation claims arising out of unique circumstances. However, it does not appear to provide an appropriate framework for assessing compensation claims for events arising out of matters reported to the Review as some claims may be excluded due to the following matters identified in the Finance Circular:

- The possible availability of compensation under statutory compensation schemes or via common law claims; or
- In the case of mental injury, the requirement for claimants to demonstrate that they have sustained a recognised psychiatric injury, as opposed to hurt or humiliation; and
- The need to assess whether 'defective administration' has occurred. For example, does a criminal act perpetrated by one Defence member against another constitute 'defective administration' if relevant supervisors had no reason to believe such conduct might occur?

Consequently, the CDDA Scheme does not appear to be an appropriate mechanism for assessing compensation claims arising out of matters reported to the Review. Nevertheless, the scheme is available and may be suitable for some individuals to pursue, if they have not already done so.

Act of grace payments

Section 33 of the *Financial Management and Accountability Act 1997* (Cth) (FMA Act) allows the Finance Minister or a delegate to authorise one-off and/or periodic payments to individuals or other bodies if it is appropriate in special circumstances.

The FMA Act does not define 'special circumstances'. However, Finance Circular 2009/09 states that the circumstances are considered to apply where the decision maker is satisfied that (among other things) a loss has arisen directly from an alleged act or omission on the part of an agency/agent of the Australian government.

The Finance Circular notes that the key features of the act of grace mechanism are:

- each request is considered on its individual merits
- decisions are made at the discretion of the decision maker (Finance Minister or delegate)
- such a payment is appropriate in cases where there is a moral, rather than a legal, obligation to the person or body concerned
- decisions do not establish a precedent.

Like the CDDA Scheme, the mechanism for act of grace payments under section 33 of the FMA Act would be appropriate for one-off compensation claims arising out of unique circumstances, but less suited to a large volume of claims arising out of similar, but not identical, circumstances.

The act of grace mechanism also necessitates consideration of whether there has been a loss arising from an act or omission of an agency. As noted in the discussion of the applicability of the CDDA Scheme, it is uncertain whether unforeseen criminal conduct by a defence member would constitute an act or omission for the purposes of section 33 of the FMA Act.

The Finance Circular also sets out a number of circumstances where act of grace payments would not be authorised by section 33 of the FMA Act. One of these is where the proposed payments would have the effect of establishing a payment scheme to apply to a group of applicants, without considering the merits

of their request on an individual basis. It seems that payments to victims of Defence abuse may fall within this proscription.

Accordingly, the act of grace power does not appear to be an appropriate mechanism for assessing compensation claims arising out of matters reported to the Review.

Ex-gratia payments

The power to make ex-gratia payments is not set out in legislation but arises from the government's executive powers under section 61 of the Constitution.

The Finance Circular notes that this power is flexible to provide workable outcomes and does not have criteria in the same way as other discretionary schemes.

The Finance Circular notes that ex-gratia payments are generally only considered after full consideration of all the other available schemes.

If the Prime Minister and/or cabinet give written authorisation for ex-gratia payments to be made, the relevant agency is required to:

- develop eligibility criteria for payment
- confirm the amount to be paid
- arrange for the processing and delivery of the payment.

In the context of this Review, the alleged abuse has occurred in a variety of circumstances and over a protracted period of time covered by differing statutory compensation schemes. The timescale over which the events have occurred impacts upon the evidence that may be available to corroborate and assess such claims. Events reported to the Review have had differing effects upon those reporting them, ranging from significant psychiatric injury to mere embarrassment.

Consequently, any compensation scheme designed to address this wide range of complaints will require flexibility to take into account the varying types of abuse and the effects of that abuse upon complainants.

Key features of the ex-gratia mechanism are that it does provide flexibility to formulate eligibility criteria and payment amounts and it does avoid the risk of potentially inequitable outcomes (depending upon the timing of the claimed events and availability of evidence) that may arise under the CDDA Scheme or FMA mechanism.

The ex-gratia mechanism would provide the appropriate means to fund a compensation scheme.

8.12 Conclusion on 'no action' option

A media report of 6 May 2011 said that Retired Admiral Chris Barrie, a former Chief of the Defence Force, warned that the government is opening itself to 'compensation disease' by inviting complaints about sexual misconduct in the military.¹⁷

The report claimed that Admiral Barrie said the Government's promise to investigate any complaint, no matter how dated, could unleash claims with 'the potential to divert people's attention for five to 10 years'.

'At the end of the day, particularly for the historical cases, you will have compensation disease—it's not really about justice, it's [an attitude of] how much are you going to pay me,' he said.

¹⁷ Deborah Snow, 'Admiral warns of open slather on sex misconduct' *The Sydney Morning Herald* (Online) 6 May 2011 <<http://www.smh.com.au/national/admiral-warns-of-open-slather-on-sex-misconduct-20110505-1eac9.html> - ixzz1Y5gLbDNx>

‘People can have very inventive memories when it comes to getting money out of the government and here is just another opportunity.

‘They will go back 60 years and ... no one will end up being satisfied.’

In contrast, the Review notes the following comments from a recent draft report by Major General Craig Orme:¹⁸

28 ... there is a strongly-held informal view within the ADF that the events in question are not only isolated but represent a failure of individuals rather than a failure of culture. Those holding such a view maintain that these incidents are the product of atypical behaviour by a few ‘bad apples’, behaving independently of cultural norms; and that the true character of the organisation is exemplified by the high level of performance the ADF continues to achieve on operations around the world. Some also maintain that, in any case, this atypical behaviour is not only to be expected in any large organisation but is at a lower level in the ADF than that of the societal norm.

29 Such arguments, however, do not address the problem with sufficient rigour. One possibility that must be taken seriously is that such incidents should be heeded as an early warning signal of a culture at risk of even more severe incidents of misconduct when subjected to greater levels of organisational stress. The ADF’s deployment and operational load since deployment to East Timor in 1999 and operations since 9/11 has been far higher than for the previous two decades. Similar institutions placed under greater stress, such as the US Army, have been much more prone to incidents of misconduct and ethical failures. [footnotes omitted]

The Review notes that these comments were made in the context of members of the ADF deployed on operations. However, the Review considers that they are equally applicable to abuse when ADF members are not deployed.

Also relevant are the caustic comments from the Grey Report:

2.51 Changing the culture of the Defence Academy will not be easy. In terms of wider ADF culture and psychological comfort, it may be that people will prefer to insist that the Defence Academy as a system is fine, even if there are a few bad people in it. In other words, remove the rotten apples and the rest of the barrel will be saved.

2.52 However, the analysis of this Review is that it is the barrel which is the problem. It is saturated with a ‘rot virus’ which takes decent young people and starts to rot their judgment and morals from the very start. For some the rotting process is complete within days. Others may take some weeks or even months to rot beyond recognition. Unless the barrel is changed, the process of rotting will easily survive the culling out of the more obviously rotten members it contains.

The ‘no action’ approach pays no heed to the damage done to the victim of unacceptable behaviour. It places the reputation of the institution above that of the person affected. Doing so means that person must simply accept their mistreatment as a consequence of their having chosen to join the ADF. The longer term effect of such an approach on the morale of members of Defence, on the culture of Defence and in particular on Defence’s capacity to recruit and retain members is ignored.

Nor does it pay attention to the reputation of the ADF in the community. General Orme elsewhere in his draft report makes much mention of the need to ensure that the community has confidence in its military forces.

The ‘no action’ approach would leave it to the persons affected to pursue the remedies described above. The fact that they have chosen not to do so most likely means that those remedies are not suitable or not practicable for reasons such as lack of knowledge about the remedy, cost, uncertainty of outcome or an unwillingness to trust the systems available. For example, in regard to the majority of the allegations that

¹⁸ Major General C. W. Orme AM, CSC, Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms, Report of the ADF Personal Conduct Review, 2011.

have been made to the Review, it would not be open to bring litigation because of the passage of time and the absence of evidence that would be sufficient to establish a case in court.

Further, the strict conditions necessary to establish eligibility under the statutory compensation schemes and the legalistic application of the administrative compensation schemes mean that few would qualify for compensation.

The 'do nothing' approach will result in the persons who have come to the Review being unlikely to receive any reparation for what they have suffered. The expectation has been raised that there will be something done in relation to the allegations that they have made, if those allegations are substantiated.

To repeat our preliminary conclusion, the Review does not consider it appropriate that people who have been affected by what is recognised to be abuse should be expected to endure that action without any reparation. The many previous reports that are referred to in this Report have recognised the existence of unacceptable behaviour and we have discussed the legacy this has created. Efforts have been made to prevent the re-occurrence of such behaviour. Regard should now be paid to the impact of the behaviour identified in those reports, and in more recent time, on individuals and what reparation might be made to them.

We discuss in the following sections what that might be. We look first at how eligibility for any reparation might be ascertained.

8.13 Reparation to members who have been abused

There are a number of forms of reparation to members and former members that could be established and overseen either by Defence, by another part of Government or by an independent body.

We believe that there should be no constraint on a person from seeking reparation flowing from a failure to report the incident at the time. As mentioned earlier in this Report, there are many barriers to reporting and this should not be a relevant factor in considering a person's eligibility. Indeed the inability to report or any adverse consequences that flowed from having reported could be regarded as aggravating factors in considering appropriate reparation.

8.14 General apology/acknowledgment

There have been a number of recent examples of authority figures expressing a general apology acknowledging that actions taken in the past are now seen as being detrimental to a class or group of persons. The most widely publicised instance of such an apology was that made by Prime Minister Rudd on 13 February 2008 to Australia's Indigenous peoples.

The Senate Community Affairs Reference Committee said in its 2004 Report *Forgotten Australians: A Report on Australians who experienced institutional or out-of-home care as children*:

The Committee believes that governments, the Churches and agencies should issue formal statements acknowledging their role in past institutional care policies and practices and the impact this had on the lives of many care leavers. These statements should express sorrow and apologise for the physical, psychological and social harm caused as a result of the care leavers' experiences as children in institutional care. The Committee also considers that these acknowledgments must be accompanied by other positive measures as recommended in the report to ensure that they are not regarded as merely 'empty gestures' by the care leavers and the community generally.

The Prime Minister on behalf of the Nation, or the Minister for Defence and/or the CDF and Service Chiefs on behalf of the ADF could apologise and acknowledge that current and former ADF members have in the past suffered sexual and other abuse which they should not have suffered.

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.

I desire nothing more than acknowledgement that this occurred and was part of Service life at the time, and that the impact of this treatment had a lasting effect on me. (Minor, apprentice in Air Force at RAAF Wagga Wagga in 1980s subjected to physical assault and bastardisation because of his small size).

Acknowledging past abusive behaviour would be particularly apposite in the case of persons who were subjected to bastardisation, hazing and other abuse of this nature. Many of the complaints to the Review have cited such behaviour. Often the complaints are very old. They none the less have rested heavily on the persons who were subjected to them.

The events that have been brought to our attention are often very disturbing. Considerable pain was inflicted on new recruits for what was said to be ‘toughening up’ but which in reality had an element in many cases of sadism or at the least exertion of power for its own sake. The conduct would not be tolerated today and was not acceptable as long ago as the 1960s, but was common practice and tacitly accepted in the past.

Most of the allegations relate to the time before 2000. Proof of the particular incidents referred to in the allegations made to the Review would be very difficult to establish because of the lapse of time and the absence of witnesses. However, the allegations are, in the most part, plausible, consistent with the findings of numerous reports and Defence has conceded that events of this kind have occurred. When this kind of conduct has been identified by other reviews, steps have been taken by the ADF to prevent it recurring. That implies acceptance that abuse had occurred.

A general apology/acknowledgment would need to be carefully crafted. (The Prime Minister’s apology provides an example.) It would also need to be drafted in such a way as to avoid any suggestion that it was expressing a view not genuinely held.

The apology/acknowledgment could indicate that there is recognition that conduct that was considered acceptable (or tacitly accepted) in the past is no longer so, express regret, apologise and indicate that steps have been taken to prevent that culture recurring.

Such an approach may go far towards assuaging the sense of injustice that is held by many people about their treatment while serving in the ADF/Defence and improve the perception of the general public about commitment to values within the ADF/Defence. It may reduce the number of persons who would otherwise bring new complaints to a new complaints resolution scheme or Phase 2 of the Review.

In this context, the following remarks of Dr Stephen Mugford on the ABC *Four Corners* program on 13 June 2011 are relevant.¹⁹ Dr Mugford said:

Whether money is the answer to that I rather doubt. I mean the studies are fairly clear on this. If I come back and say to you I am genuinely sorry, I should not have done that, this was not your problem but mine, that’s going to be worth in most cases a lot more than money. And again the studies support that forgiveness, apology, reconciliation work a lot better than dollars.

The objection has been advanced in the past that the making of a general apology is tantamount to an invitation to sue for compensation. This has not been borne out in practice, nor does an apology as a matter of law found an action for damages in any specific case. There does not appear to have been a surge in litigation following the giving of an apology in other subject areas. It is apparent that the fact of the apology being made has been sufficient and worthwhile remedy and closure for many affected people.

¹⁹ The transcript of the *Four Corners* program is at Appendix 4.

8.15 Personal apology

Many people have requested a personal apology from Defence/ADF for abuse suffered. This issue is returned to below in relation to action that might be taken by the perpetrators of abuse to try to effect some reconciliation with affected members. However, it is apparent that, if a mechanism were adopted for the relevant Service Chief to provide a written apology to a person in a serious case where the facts and the abuse inflicted on the person affected have been established, this would do much to overcome the concerns of the person. It is the failure of Defence to acknowledge that abuse occurred and should not have occurred that causes continuing distress to many of the persons who have approached the Review.

8.16 Models for a new reparation scheme

Where persons affected by adverse ADF/Defence action are unable to seek redress through the mechanisms presently available—and we believe there are many such persons—it would be possible to establish a special compensation scheme.

There have been numerous instances in recent times of the establishment of such schemes to compensate persons who have been subjected to mistreatment or who have been harmed as a result of a failure of a government or other organisation to provide protection.

While these schemes have been tailored to meet the circumstances of the particular cases, they have a common base. The body that accepts responsibility for the harm done to a group of people acknowledges that responsibility and establishes a means for providing reparation for the victims outside traditional legal avenues.

The form of reparation varies according to the circumstances and may or may not include financial payments.

8.16.1 State compensation schemes for children in care

In Australia a number of schemes have been directed to providing reparations for children who were abused when in State care. Four States (Tasmania, Queensland, Western Australia and South Australia) have established such schemes. The following table summarises the schemes.

State	TAS	SA	WA	QLD
Eligibility criteria	Sexually abused, or experienced physical or emotional injury or other abuse, or neglect whilst in State care	Sexually abused whilst in State care	Abused or neglected whilst a child in State care	Abused or neglected whilst a child in institutional care
Assessment authority	Applications assessed by an Independent Assessor	South Australian Attorney-General	Redress WA within the Department of Communities portfolio	Level 2 claims assessed by a panel of experts
Time open for applications	Open ended	No closing date announced.	May 08 to Apr 09	May 07 to Sept 08
Amount	Initially \$60,000 max. Claims from August 2008 \$35,000 max.	Usually \$30,000 max. \$50,000 max. in 'exceptional circumstances'	Payments vary according to the categorisation of level of abuse into four levels—moderate (Level 1), serious (Level 2), severe (Level 3) or very severe (Level 4) abuse or neglect. Payments have ranged from \$5,000 to \$45,000. Initially max payment was set at \$80,000.	<u>Level 1 payment</u> of \$7,000 to applicants who met the eligibility criteria and for those who were assessed by a 'panel of experts' as having suffered more serious harm a further <u>Level 2 payment</u> of up to \$33,000. Level 2 payments were made from the residual of the \$100 million allocated for the scheme
Deed of release/waiver	Yes	Yes	No	Yes
Major exclusions	People placed in care arrangements voluntarily by their parents or relatives	People who suffered neglect or other forms of abuse.		People abused or neglected while in foster care or in adult institutions.

It can be seen that there is some difference in approach between the schemes. The Senate Constitutional and Legal Affairs References Committee in its Report *Review of Government Compensation Payments*, 6 December 2010, was critical of some aspects of these schemes. One of its recommendations was that the Australian Government pursue all available policy and political options, including through the Council of Australian Governments and other appropriate national forums, to ensure that:

- New South Wales and Victoria establish redress schemes for people who suffered abuse or neglect in institutional or foster care in those states
- Queensland and Western Australia make provision to ensure continued receipt of redress claims
- greater consistency between the criteria applied under State redress schemes is achieved.

8.16.2 Catholic Church abuse complaints

The Catholic Church (among others) has been faced with allegations of misbehaviour on the part of its clergy. It has reacted in Australia by establishing a scheme for reparations. The policy, principles and procedures of this scheme are detailed in *Towards Healing: principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia* (last revised 2010).²⁰

A fundamental principle of the scheme is that it urges people coming forward with allegations to approach the civil police in the first instance so that any criminal action is treated according to the law. If the Church Authority is satisfied of the truth of the complaint, whether through admission of the offender, a finding of a court, a penal process under canon law, an assessment under the scheme or otherwise, the Church Authority must respond to the needs of the victim with justice and compassion. Responses may include the provision of an apology on behalf of the Church, the provision of counselling services or the payment of counselling costs. Financial assistance or other reparation may also be made to victims of a criminal offence or civil wrong, even though the Church is not legally liable.

²⁰ http://www.catholic.org.au/index.php?option=com_docman&task=doc_view&gid=952&tmpl=component&format=raw&Itemid=395

The main elements of the process may be summarised:

- Complaints are referred to the Director of Professional Standards who determines whether it is a matter to be dealt with under the protocol. Where at any stage during the process it becomes clear that the matter is more appropriately dealt with under civil, criminal or industrial jurisdictions the claimant is advised accordingly.
- When the complaint concerns an alleged crime, the complainant is encouraged to refer the matter to the police. Church personnel are required by law to report suspected child abuse.
- Where the complaint does not concern a criminal matter and falls within the ambit of the *Towards Healing* process, the Director of Professional Standards determines how the matter is to be addressed. The accused is informed about the complaint and asked for a response and where there is a significant dispute the matter may be investigated.
- At any time, the Director of Professional Standards may recommend to the Church Authority that the accused be asked to stand aside from a particular office or from all offices held in the Church, pending investigation.
- Assessors are appointed to investigate the facts, interviews are conducted with both parties, a written report is presented to the relevant Church Authority and the Director of Professional Standards.
- If the assessors consider the complaint to be sustained, then the Church Authority must consider what action needs to be taken.
- There is an appeal process available to successful complainants which is heard by an independent person who considers whether the required processes have been followed. A review of the process and its findings is, however, not a review of the outcomes relating the victim or the accused. At the end of the review, the reviewer provides a written report with recommendations to the National Review Panel which may then substitute its own findings.

All proceedings are conducted in confidence and it is not known what, if any, amounts have been paid by way of compensation.

8.16.3 Bundaberg Hospital Scheme

A compensation scheme was established to address a large number of compensation claims arising out of the actions of a surgeon at the hospital, Dr Patel. The scheme covered the period from January 2003 to December 2005. It opened for claims on 3 September 2005 and closed on 28 April 2006. All known patients of the surgeon were contacted and offered a review of their circumstances. A total of 384 claims were lodged under the scheme of which 58 were out of scope. The scheme resulted in a mediated payment of compensation to victims of the surgeon's incompetence together with an apology from the government.

There were a number of key features of the process:

- The State accepted that it was vicariously liable for any provable injury or adverse outcome arising from the actions of Dr Patel.
- Independent legal representation was provided for the claimants—this was largely conducted by one law firm with a small number of other claimants being represented by other law firms.
- There was an agreed costs structure for the payment of claimants' legal fees regardless of the amount of compensation.
- Independent medical assessment of claimants was provided by practitioners from a jointly agreed list of medical experts.
- There was a relaxation of the usual restrictions on claims arising from the death of a patient.

- Mediation of the claims occurred in the patient's home city of Bundaberg—the effect being that the State 'came to' the claimant.
- During the course of the mediation a personal apology was offered by an officer of Queensland Health on behalf of the Minister for Health and the Queensland Government. In addition, a letter of apology under the hand of the Minister for Health was provided to each and every claimant.
- The claimants had the opportunity of receiving a lump sum payment for future ongoing medical expenses or electing to remain within a clinical support scheme managed out of the Bundaberg Base Hospital. This gave claimants a choice of open-ended clinical support.

8.16.4 F-111 Deseal/Reseal program

On 19 August 2005 the Commonwealth Government announced a one off ex-gratia payment scheme to be made available to ADF members who were involved in the F-111 Deseal/Reseal Program (DSRS Program). This was in recognition of the harmful working conditions endured by those working in the F-111 fuel tanks. The scheme, which is ongoing, is administered by the Department of Veterans' Affairs.

The scheme involves participants in the DSRS Program being classified as falling into a Tier 1, Tier 2 or Tier 3 category according to the nature of the work that they were required to undertake.

The aim of the scheme is, in part, to provide a one-off ex-gratia payment of \$40,000 to personnel involved in the program who meet the Tier 1 definition and \$10,000 to personnel who meet the Tier 2 definition. It is not a means of compensation for injury or medical compensation, nor is it a substitute for such compensation. However, persons who are eligible for an ex gratia payment are also provided with a range of healthcare and compensation assistance. Persons who fall within a Tier 3 category are not eligible for an ex gratia payment but can receive healthcare and compensation assistance.

The scheme covers the four formal F-111 DSRS programs which operated between 1 June 1973 and 28 January 2000.

On 30 May 2008 the Commonwealth Government announced a parliamentary inquiry into the DSRS Program. The Inquiry by the Joint Committee of Foreign Affairs Defence and Trade released a report of its findings *'Sealing a just outcome: Report from the Inquiry into RAAF F-111 Deseal/Reseal workers and their families'* (July 2010). The report specifically dealt with the effectiveness of the ex gratia payment scheme.

In particular, the report noted that some participants in the F-111 DSRS program had been omitted from the ex-gratia scheme, including those personnel involved in Squadrons 1, 6 and 482 who were involved in 'pick and patch' work which required working in confined tanks of F111 aircraft.

The Inquiry acknowledged that substantial assistance had been provided by the Commonwealth to F-111 personnel and the ex gratia payment scheme had been accessed successfully by many but nevertheless made recommendations in relation to expanding the definitions for Tier 3 (ie not eligible for an ex gratia payment but for other assistance) to include personnel assigned to F111 maintenance in Squadrons 1, 6 or 482.

The Inquiry also recommended a review of cases where statutory declaration evidence had been rejected by DVA in relation to an application for ex-gratia payment.

The Commonwealth accepted these recommendations and others made by the Inquiry.

8.17 Possible components of a special compensation scheme

The events reported to the Review occurred over a significant period of time, in a range of locations and resulted in varying degrees of abuse being suffered by ADF personnel. Consequently, the reported events pose novel challenges for the formulation of compensation processes.

The special compensation programs arising from the State schemes relating to the abuse of children in institutions have particular relevance to the Review in view of the following matters:

- they address the consequences of events which span a long period of time and which occurred long ago;
- the consequences of the institutional abuse (psychiatric injury) are similar to the effect in some cases of the events reported to the Review.
- they take into account the varying levels of harm suffered by claimants.

The Catholic Church scheme points to two issues that will need consideration if any Defence scheme is being formulated:

- Unless the alleged action is criminal in nature²¹, the alleged perpetrator is informed and asked to respond.
- There is an appeal process against decisions, albeit limited to matters of compliance with processes only.

The special compensation process for Bundaberg Hospital patients would have limited applicability to the consequences of events reported to the Review as the process was consistent with Queensland personal injuries legislation and was confined to a specific set of incidents that occurred within a limited time. However, the points relating to procedure set out in relation to the scheme provide useful guidance as to how a scheme might be managed. In particular the method of use of lawyers and medical assessment panels provides a useful precedent.

The compensation scheme for the F111 workers is also relevant as it illustrates how a special compensation scheme can be based on a tiered qualification and structured to allow claimants to retain access to statutory benefits under legislation such as the SRC Act and the Veterans' Entitlement Act.

Accordingly, a potential scheme could adopt the following elements from the prior schemes:

- A capped Level 1 payment to claimants who meet the scheme's eligibility criteria ie, persons who can establish that they suffered some abuse meeting a minimum threshold and/or suffered more than trivial physical or mental harm as a result of the abuse or failure to properly investigate and deal with a report of abuse. This would require more than being treated aggressively (such as being shouted at or verbally abused), one-off low scale bullying, or minor bastardisation during the period that this was tolerated. A failure to investigate an allegation properly could be considered an aggravating factor.
- An additional (Level 2) payment to certain claimants who are assessed by a panel of experts as having suffered more serious abuse, humiliation or distress. A cap is probably necessary on any such payment. Claimants who can establish damage in excess of the cap should be left to their other remedies, except in exceptional circumstances.
- Retention of access to statutory benefits for workers compensation.
- Access to appropriate health care and counselling programs.

²¹ Very often the abuse in issue will be criminal in nature. We discuss the issue of a possible indemnity below.

It would need to be determined whether acceptance of a payment under the scheme precluded a person from bringing an action for damages and required a waiver of legal rights. Likewise, whether commencing proceedings precludes consideration of an application for compensation under the scheme. Both these issues will be relevant to the statement by a legal firm that it is organising the bringing of a class action in respect of injuries suffered by former Defence employees.²²

A decision would need to be taken whether the administrator of the compensation scheme should actively seek out prospective claimants or should be only reactive to claims that are made by persons who fall within the eligibility criteria. It will also have to be considered whether there is to be a time limit on the right to make claims.

There are many other matters that would need consideration including:

- whether there should be a panel to assess claims: cf the Bundaberg Hospital scheme which used a designated panel of medical experts and lawyers
- should the tier 1 payment be of a fixed amount or should it reflect the seriousness of the allegation and/or its effect on the victim?
- should complaints be grouped by time periods—separate ‘open’ periods for submissions from each period/different panels to assess complaints from each period?
- should there be penalties for false claims?
- the confidentiality/privacy of proceedings
- should there be any time limit on the duration of the scheme?
- can third parties, eg spouse, parents, claim in any capacity (eg, where the member affected is dead, including where they have committed suicide)?
- if an apology is given to an applicant, does this reflect in the compensation to be awarded?

The scheme could, like the F111Deseal/Reseal Program, be administered by the Department of Veterans’ Affairs with oversight by the DFO.

A problem that can arise with the establishment of an executive, as distinct from legislative, based compensation scheme is that the administrators of the scheme have no compulsory power. This may not be of major concern as most decisions will be able to be reached on the basis of Defence records. However, if it were thought necessary to obtain information from a person outside Defence, there would be no power to compel attendance or the production of information.

Care needs to be taken in the development and implementation of such a scheme not to cut across the message that abusive behaviour will not be tolerated. That is, Defence must be careful not to be seen to putting a price on its values.

Similarly, care needs to be taken to ensure people understand that the payment of compensation in a particular matter does not necessarily mean there has been a finding against any particular alleged perpetrator. However, the investigation of a claim for compensation may indicate that a criminal offence may have been committed. It may therefore be appropriate to have a mechanism for referral of matters (where the consent of the victim is given or public interest otherwise requires it) from the administrator of the scheme to an investigatory or personnel area within Defence, such as ADFIS.

The Review notes concerns that have been expressed by Defence relating to its duty of care under Occupational Health and Safety legislation to ensure that it provides a safe place of work for its employees. This requires consideration in regard to any compensation scheme of the question whether claimants can

²² See Transcript of Four Corners Program at Appendix 4.

decline to name perpetrators or can decline to have their complaint disclosed to Defence. This is a matter that will require further examination.

It would be a sensible course of action to consult the Ombudsman in the formulation of the basis of a compensation scheme. He has had considerable experience observing the administration of executive compensation schemes and can provide valuable advice on circumstances that are otherwise likely to give rise to problems leading to complaints to his office.

8.17.1 Eligibility criteria

The allegations made to the Review cover a wide spectrum of conduct. We do not doubt that the persons who have made the effort to contact the Review feel deeply concerned about the conduct to which they were subjected.

However, there is a vast difference in seriousness between being raped and being shouted at. If it is considered that it would be appropriate to establish a compensation scheme, it will be necessary at Phase 2 of the Review to give close attention to the level of conduct that should be eligible to attract compensation.

Conduct that might be unacceptable by today's standards was not always considered inappropriate in earlier times. There was a greater tolerance of violence and bullying. However, it was often that tolerance which resulted in the harm to the complainant. It should not be an answer to a claim for compensation that the activity was accepted by the unofficial standards of the time when it occurred. Nevertheless, not all conduct that is unacceptable today may be considered to be grave enough to attract compensation. There will have to be carefully drawn guidelines for eligibility. There should also be an appropriately constituted assessment panel including members to represent victims' perspectives and not just former or current ADF members.

The matters reported to the Review also pose significant evidentiary challenges in establishing eligibility. Some of the events reported to the Review occurred over 50 years ago and records corroborating a claimant's postings or medical attendances may no longer be in existence. Further, by their very nature, the types of conduct reported to the Review are often unlikely to be formally recorded as having taken place. Even if claimants are able to locate living witnesses who might be able to corroborate a claim, the passage of time may have dimmed the ability of witnesses to provide meaningful evidence in relation to the claimed events.

A possible approach may be to structure eligibility criteria around the periods in which the conduct is alleged to have occurred. For example, in regard to eligibility for claims relating to events occurring prior to a certain date, proof of service and medical records supported by a statutory declaration from the claimant regarding the alleged conduct might be sufficient. For more recent events a higher level of evidence such as corroboration through service records, corroborating witness statements or contemporaneous medical evidence may be required. The corollary is that a narrower range of conduct from earlier periods will be compensable because of changes over time as to what conduct was unacceptable.

Consequently, eligibility criteria may need to be formulated to take into account the varying levels of evidence that may be available depending upon when the conduct complained of is alleged to have occurred.

It will need to be considered how far back in time the event had to have occurred to qualify to come under the Scheme.

The Review considers that the provision of compensation may be the only effective way in which Defence can heal the literal and metaphorical wounds that have been inflicted on some of its members. The establishment of such a scheme will not be easy and there are many issues that will need to be

considered. However, if a scheme can be established for State wards, it should not be impossible to devise a scheme for damaged service men and women.

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.

8.18 Truth and reconciliation

This is the process that was perhaps most famously used in South Africa to try to reconcile the black and white communities at the end of the apartheid era. In return for an indemnity against prosecution, people were invited to confess publicly to, and apologise for, crimes that they had committed. It is a procedure that has also been used with some apparent success in countries that have been torn by civil war.

The principal value of the process is in cases where mistreatment of one group in society has been widespread and the groups needs to co-exist, but attempting to deal with the hardship caused to members of that group through traditional court procedures is impractical or divisive. Those procedures are also likely to perpetuate the animosity between the parties affected.

Advice from Attorney-General's Department to the Review indicated that the operation of a truth and reconciliation process in Australia would be complicated as far as the ADF is concerned by the fact that it is the States and Territories which administer the majority of the criminal laws. It may also be desirable for the Commonwealth to provide an indemnity from prosecution under Commonwealth laws including the Defence Force Discipline Act.

We provide some brief comment below on how an indemnity could be secured, but otherwise have not, in the time available, fully considered this issue.

Without a guarantee of not being prosecuted, a truth and reconciliation scheme would probably have little appeal to the perpetrators of the alleged crimes.

It may also be difficult to persuade ADF members to take part in a process of this kind because of the adverse effect that it would have on their careers even if they were not subjected to the threat of prosecution. Any scheme that is adopted will have to provide some inducement to persons who are prepared to take part in it. Volunteering information prejudicial to oneself will have to result in a better outcome than would occur if 'found out' - as might occur if a witness steps forward.

There have been studies which indicate that the truth and reconciliation approach and like processes which are based on the making of a public apology but with no other reparation or sanction may not satisfy the demands of victims who tend to feel that it means that perpetrators are not made accountable for their misdeeds.²³

We doubt if a public truth and reconciliation process is suitable for adoption as a general measure for dealing with the complaints that have been made to this Review. The circumstances of the alleged victims vary considerably and the reparation to which they see themselves as being entitled also varies greatly. It seems doubtful whether many would be prepared to allow the perpetrators of improper action against them to escape sanction and there would be some inconsistency with Defence's 'zero tolerance' message.

²³ Cheryl Regehr and Thomas Gutheil, 'Apology, Justice and Trauma Recovery' (2002) 30 *The Journal of the American Academy of Psychiatry and the Law* 425.

Further, unlike the position in countries that have seen widespread violence and general breakdown of societal norms, the circumstances of incidents involving the ADF do not appear to be comparable.

The Review considers that a better approach which has similar aims to truth and reconciliation but which is more personalised is a facilitated private resolution reached between victim and perpetrator. Such an option could draw informally on restorative justice approaches.

8.19 Restorative justice

This is a procedure somewhat akin to the truth and reconciliation process, but directed to interaction between individuals.

The victim of a criminal act or civil wrong is given the opportunity to confront the perpetrator of the act and inform the perpetrator of the effect of his or her action on the victim. It has been found that, in appropriate cases, this can be a more effective way of bringing a perpetrator to an understanding of the effect of his or her conduct than traditional court procedures.

The procedure can result in the victim and the perpetrator agreeing on action that can provide some reparation for the victim for the wrongdoing of the perpetrator.

Studies in support of restorative justice indicate that there is less risk of recidivism on the part of the perpetrator or, in civil cases, repetition of the conduct, than is achieved through traditional court procedures.

However, restorative justice procedures require:

- Knowledge of the identity of the perpetrator(s). That is lacking in many of the complaints which have been raised with the Review.
- Consent of the parties before the procedures can be implemented or be effective. If a victim feels that the alleged perpetrator needs to be punished, there is likely to be no agreement to the procedure being followed.
- Acknowledgment by the perpetrator of his or her or their wrongdoing and an agreement to be confronted by, and accept the recriminations expressed by, the victim.

In relation to criminal conduct, there needs to be a legislative base for the procedure to avoid issues of self-incrimination. In the case of civil proceedings there would have to be an agreement between the parties as to the effect that participation might have on the right to claim for damages.

It was suggested to the Review that the States and Territories could designate through legislation the ACT restorative justice program as that which is applicable to crimes committed by ADF personnel. It was also suggested that it might be possible for the Commonwealth to amend the Defence Act to make the ACT law that which was applicable to such personnel. We have not considered the Constitutional issues nor other legal impediments which might arise on these suggestions because we doubt that the ACT restorative justice program offers a solution. The ACT program applies only to young offenders, has not been used for adult offenders and is not used in relation serious sexual offences.

In regard to criminal conduct, as with the truth and reconciliation option, in order to induce perpetrators to participate in restorative justice there would need to be an indemnity against prosecution given to the perpetrator. We discuss this possibility below.

While restorative justice procedures could be included among the suite of options available for the resolution of complaints of abuse, there are significant limitations as noted above. Whilst it might be possible to remove some of these limitations and to establish a formal restorative justice program for abuse within Defence, a more flexible option, which would be easier to implement, is to establish a

framework for facilitated private resolution of complaints. This framework could draw on some restorative justice features.

8.20 Private facilitated resolution

A variant on the theme of truth and reconciliation and restorative justice which we believe could play a useful role in dealing with the complaints that have been made is mediated or facilitated private meetings between the parties.

It may be the case that a person who was involved in juvenile misbehaviour or who has failed to report unacceptable behaviour has come to regret their action and would like to make amends with the victim. The person may be senior in rank and have much to lose by admitting to unacceptable behaviour. None the less, their action may weigh heavily upon them. They may feel it their duty to the ADF to disclose their actions. Indeed a failure to do so could lead to criticism should the person be appointed to a position of high level authority.

The availability of a mediation/facilitated process may provide a mutually satisfactory mechanism for parties to be reconciled. An acknowledgment of bad behaviour and an apology may be all that a victim wishes to receive from an alleged perpetrator. A perpetrator (or a witness who stood by and did nothing) may wish to be reconciled with a victim and be willing to offer an appropriate acknowledgment that their conduct was unacceptable.

We believe there is some prospect of achieving reconciliation and making amends between a victim and a perpetrator through a framework for private facilitated resolution. The basic elements of this framework would include:

- The engagement and training of highly respected, thoughtful, sensitive men and women to be facilitators. We have in mind people of the standing of former CDFs, other senior ADF members, agency heads, judges and the like. Having a facilitator of such standing would assist the victim in not being overborne during the meeting by a person who may be/have been of higher rank.
- Perpetrators, or witnesses who stood by and did nothing, could approach a facilitator, on a confidential basis, to express desire to participate.
- The facilitator could explore with the perpetrator/witness what is involved, what concessions or apology that person is willing to make and whether they have a genuine commitment to the process. The facilitator would have to be sure that the meeting is not only desired by both parties but that neither will try to take advantage of the situation to the cost of the other.
- The facilitator could explore with criminal prosecution authorities the possibility of securing an agreement not to prosecute the perpetrator. The facilitator could also explore within Defence the possibility of securing agreement not to take disciplinary or administrative action against the perpetrator in consequence of any confessions made.
- The facilitator could explore with the victim their interest, preparedness and fitness to participate, as well as their views on the perpetrator being granted an indemnity against adverse criminal or Defence actions. The facilitator would also explore the victim's commitment to the process. A victim's motivation for participation ought not to be to use the meeting to gather evidence that can be used against the perpetrator.
- The facilitator would convene a private meeting between victim, perpetrator/witness and their support people and assist the parties to try to discuss the issues and reach some acceptance of each other's position.

A perpetrator would have to be given some inducement to come forward. It is hoped that the main inducement would be the opportunity to attempt to explain, apologise and seek forgiveness for action that may be very troubling to a person in their mature years.

For a serving member, an inducement may be that they are spared the ignominy of a formal investigation of his or her conduct. However, if it appeared that the perpetrator was only acting to avoid other proceedings, the point of a meeting would be lost. The facilitator and victim must be satisfied that the perpetrator is genuine in seeking a rapprochement.

Reconciliation through meetings between the parties could only be achieved if the discussions could proceed confidentially on a without prejudice basis and without any statements that might be made being able to be used in other proceedings, whether criminal or civil. Hence, one difficulty which would need to be overcome before this option could be implemented would be establishing that indemnities against criminal prosecution could be given. Such indemnities need to come from the States and Territories because State or Territory criminal law would apply to the conduct under discussion. However, the Commonwealth would also have to provide an indemnity against prosecution for any possible breach of Commonwealth law, including the Defence Force Discipline Act.

In the ACT (which has jurisdiction over crimes committed at some significant Defence establishments such as ADFA and RMC Duntroon), the Director of Public Prosecutions can give an undertaking that a person will not be prosecuted for a specific offence or in respect of specified acts or omissions that may constitute an offence²⁴. The undertaking may be given with conditions attached. Where such an undertaking is given, no proceedings may be instituted.²⁵ The ACT Attorney-General can issue directions or guidelines about the circumstances in which such undertakings should be given.²⁶ The Attorney-General has issued two directions to the effect that certain acts should not be prosecuted, neither of which is relevant in this context.

It has been suggested to the Review that the power to give undertakings is rarely exercised. It is significant in the present context, however, because it means that there is, within the ACT at least, a legislative framework which might be used to offer indemnity from prosecution to perpetrators. Clearly there would be many factors to weigh in deciding whether such an indemnity would be granted in a particular case, including the wishes of the victim and the gravity of the offence(s).

This Review has not considered whether there are equivalent provisions in each State or Territory. Nor has the Review considered the possibility that there could be some Commonwealth legislative solution to which each State and Territory could opt in. Those are questions for further consideration during Phase 2.

[REDACTED]

One of the issues that has attracted the attention of the Review is the making of allegations about particular cohorts of members. Where an alleged victim maintains that he or she has been assaulted by a person or a group of persons without specifying the name of the person or persons involved, it is apparent that a shadow has been cast over all members who could be so identified. This means that the innocent are damned with the guilty. It must be recognised that, on the one hand, the sense of loyalty to both the institution and colleagues acts a strong disincentive to persons naming a perpetrator. On the other hand, members who did not take part in any abuse may feel that their future advancement is under some threat because of the actions of others.

If it be accepted that circumstances may have occurred within an identifiable cohort of members of the ADF, eg, a graduating year at RMC or ADFA, it may be that the group may be prepared to meet to discuss

²⁴ Sections 9(7)(a) and 9(9) of the *Director of Public Prosecutions Act 1990* (ACT).

²⁵ Section 9(8) of the *Director of Public Prosecutions Act 1990* (ACT).

²⁶ Section 20 of the *Director of Public Prosecutions Act 1990* (ACT).

past conduct. From such a gathering, concerns of both victims and perpetrators could be aired to the mutual advantage of all members of the group.

Such an approach could only be adopted with the encouragement of senior management and the consent of all of the members of the cohort. Peer pressure to participate or to take a particular stance during the mediation could affect the success of this approach, perhaps thereby reinforcing the problem which led to abuse in the first place. However, with the help of a facilitator, much good could come of such a gathering among the right group of people.

The Review was advised by the Directorate of Alternative Resolutions and Equity (within the Fairness and Resolution Branch) that it can assist in the delivery of mediation services. These services are only undertaken where it is clear that no harm will be done to the parties. The mediator is chosen taking into account the circumstances of the particular case. There are Fairness and Resolution Practitioners in all capital cities except Hobart and some of these are of star rank. Fairness and Resolution Branch also offer Conflict Coaching whereby a party is assisted to have a challenging conversation with another person.

For the services of the Directorate to be of use in the context of the matters being considered by the Review, they would have to be available to former members, not just serving members. This may give rise to a resource issue both in terms of personnel and financially.

The Review recommends that further consideration be given to establishing a framework for private facilitated resolution.

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.

8.21 Lustration

This is a process whereby persons who have been found to have been associated with unacceptable behaviour but who may not have been a principal party to that action are dealt with administratively. It is based on the concept that, in certain circumstances, there should be group responsibility for actions. It is directed to a concern that people who do not act to limit unacceptable action on the part of their fellows should not be able to escape all consequence for that action.

The approach usually adopted is for the files of the persons concerned to be annotated. This has the consequence that they cannot hold certain offices or proceed past a certain point in their career pathway. Disciplinary action is not otherwise taken against the person. There will not be any public disclosure of their conduct or the sanction imposed on them.

This process, which has found favour in Eastern European countries wishing to impose sanctions on persons who collaborated with the secret police of previous regimes, is not known in Australia. It seems that equivalent action could be taken administratively now, but only in regard to individual members and after proper inquiry.

Lustration is a process that may be worth exploring further in conjunction with the option of private facilitated resolution that is discussed above. A member may be prepared to accept that his or her career cannot advance further without making amends for earlier conduct. This may involve some end point to advancement but that may be preferable to the ignominy of having to answer in disciplinary proceedings.

8.22 Appointment of independent overseer

One possible further action that should be considered is whether an independent body should be appointed to oversee whatever system might be adopted to provide reparations for the legacy of victims of sexual and other assaults and the management of future claims arising from such behaviour.

A precedent exists in respect of such a body in the United Kingdom.

To protect victims of unacceptable behaviour and to ensure that the systems adopted to deal with complaints of such conduct are being properly implemented, the UK established the new post of Service Complaints Commissioner. This post was created by the *Armed Forces Act 2006*. The Commissioner has a remit which covers any complaint made after 1 January 2008.²⁷ The Commissioner's role is to provide a rigorous and independent oversight of how the complaints system is working and to report back to Ministers and to Parliament. The Commissioner also provides an alternative point of contact for Service personnel, or someone acting on their behalf, such as a member of their family, a friend or MP to raise concerns.

The Commissioner has set priorities for the Armed Forces for them to:

- deal with complaints quickly
- at a level which can make fair decisions and make changes where things have gone wrong
- in a way that keeps all those concerned informed of progress and able to understand the outcome and the reasons behind it.

Because of concerns that Service men and women should be treated properly, the Commissioner has special powers where a complaint is about unacceptable behaviour such as:

- bullying
- harassment
- discrimination
- victimisation
- dishonest or improper behaviour.

In these cases the Commissioner has to be kept informed by law about the handling of a complaint and the outcome.

The Commissioner presents an annual report to Parliament on how efficient, effective and fair the complaints process has been during the year. This report is available to the public.

Such an office may be thought in the Australian context to replicate the DFO and the IGADF. However, neither of those offices is established to carry out this role specifically, nor are they resourced in such a way as would enable them to perform the functions.

A service commissioner could not undertake Phase 2 of the Review as it requires original decision-making and both offices are review bodies only.

We believe that consideration should be given 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

²⁷ The material here is extracted from the Commissioner's website: <http://armedforcescomplaints.independent.gov.uk>.

systemic issues) and thereafter to oversee the operation of the complaints system in practice, including, in particular, the treatment of victims.²⁸

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.

8.23 Counselling assistance and medical services

Many of the persons who have complained to the Review have indicated that they have suffered, and in many cases are still suffering, mental health problems arising from the events the subject of their complaint. Serving members can seek assistance with these problems from the Defence counselling services. There is a problem with this in that a member may be loath to seek assistance for mental health problems because of the effect that an admission of such a problem will have on his or her career. This is an issue that is being addressed in Defence.

However, greater problems exist for former members. Unless there is acceptance of an ex-members' complaint as compensable under a compensation scheme, there is no available means for a non-serving victim to obtain assistance other than from their own resources.

The Review's consultation with DVA has indicated that the Vietnam Veterans' Counselling Service may be available as a means of assistance for former members of the ADF generally.²⁹

The Review recommends:

- special counselling and health services in place for the duration of this Review 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, regardless of whether they are still serving or not and regardless of whether they have seen operational service or not.

Funding for health services is obviously a significant issue but the provision of appropriate medical and counselling support would be a major step in acknowledging responsibility for the harm caused by abuse to members and could reduce long terms costs for the Government.

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.

²⁸ In Germany there is an elected member whose role is to investigate, independently of the Defence Force, any matter he sees fit. We are informed that he spends much of his time travelling all over the country and overseas to talk to Defence members directly, bypassing COs and officers. Information contained in email from Major-General Crane 15 July 2011.

²⁹ For a record of the Review's consultation with DVA, see Appendix 38.

8.24 Conclusion on suite of options

This Review recommends that an appropriate scheme to be adopted for the resolution of the complaints already received and those which are likely to be made in the future would comprise the following elements, to be used as appropriate to the particular circumstances:

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

We believe this suite of options would present a solution for the great majority of allegations that have been raised with the Review and which are not suitable for resolution through existing processes.

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 'parked', 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.

8.25 How to bring allegations raised during Phase 1 to resolution

We began this Chapter by explaining that our recommendations in respect of specific matters divide the allegations into four categories, being allegations suitable for:

- further external investigation
- referral to existing internal Defence processes
- referral to existing external processes
- no further action.

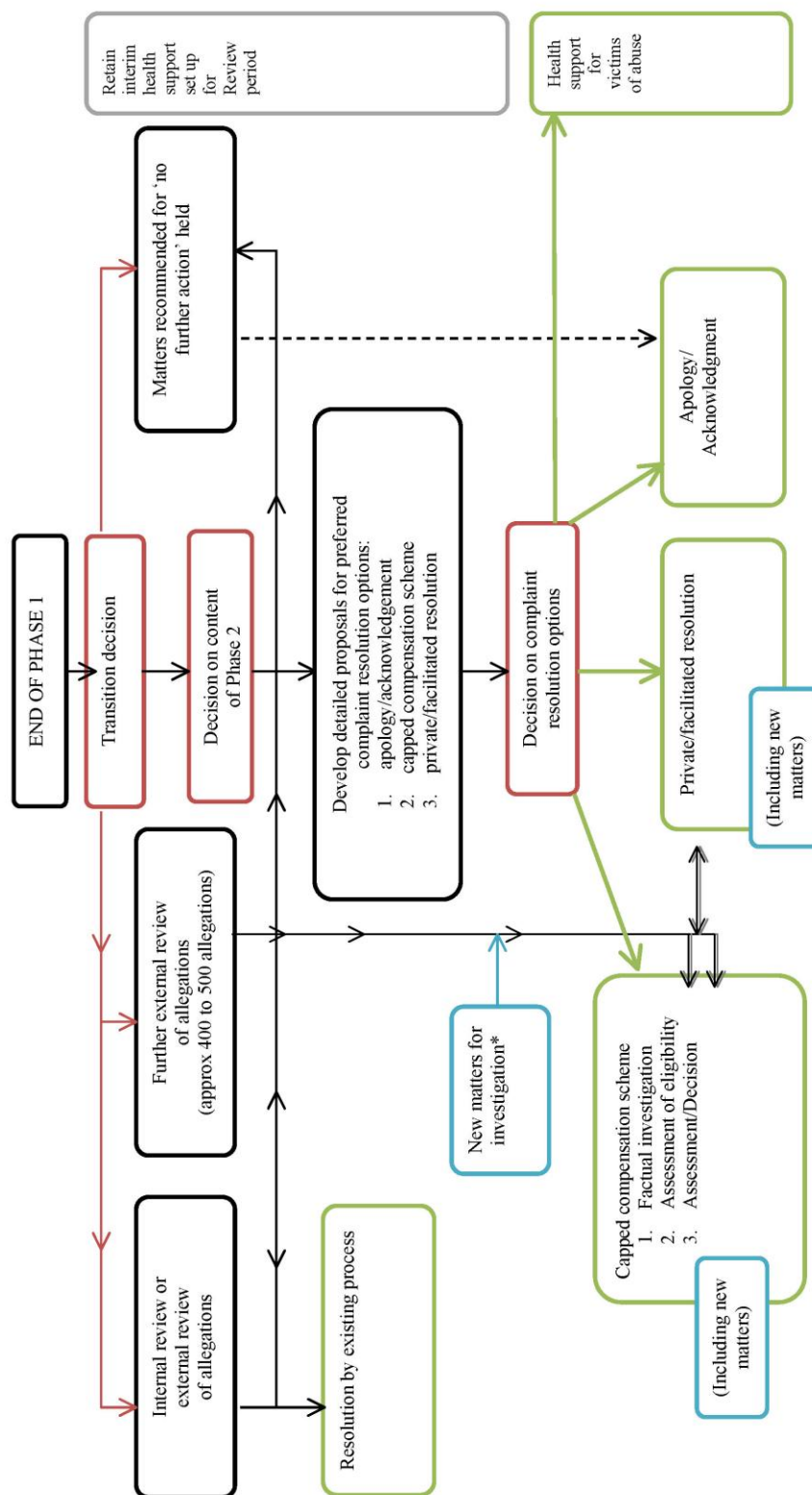
We have explained in this Chapter why we believe further investigation of about half of the allegations raised with this Review is needed and we have explained why we believe that investigation should be conducted by an external review body.

We have set out above the suite of options which we recommend be adopted to address people's complaints.

In the flowchart that follows, we represent in summary form how we see the process moving from the end of Phase 1, through a brief transition stage, into Phase 2 and ultimately to outcomes. In the flow chart:

- red—represents decision points
- black—represents process
- green—represents outcomes
- blue—represents points at which new matters can be introduced
- the lines track how allegations might move between the four streams
- the horizontal bar at the bottom of the page signifies that all existing processes continue in parallel
- the vertical bars at the right of the page represent the ongoing need to provide health support.

Recommended Transition and Phase 2 steps for specific allegations (as at 11 October 2011)



Existing Defence and external options continue to be available for all matters

*New matters: There will need to be limits set on which 'new matters' can enter this scheme, because this scheme should not be a complete alternative to existing processes. For example, you might permit entry of (i) 'new matters' involving allegations from a specified period in the past (whether previously reported or not) and (ii) more recent allegations but only if they have been reported to Defence, have been mismanaged by Defence and reasonable existing avenues for redress have been exhausted. Determining the date range of the 'specified period in the past' will be a complex matter, involving a number of considerations and with the possibility for variation depending on the nature of the allegation.

8.26 Dealing with perpetrators of substantiated claims through the military justice framework

The enforcement of discipline in respect of allegations that have been made to the Review can be undertaken in accordance with existing military justice systems. These are set out in Appendix 35. To date, it is only matters recommended for internal or external referral that raise the prospect of disciplinary action being taken if the complaint is substantiated. We have already recommended above that our recommendation to refer matter for internal and external investigation be actioned during Phase 2.

In regard to non-sexual offences, it would seem appropriate to proceed in the usual manner for investigating and either prosecuting offences and/or, if the perpetrator is still a member of the ADF, conducting an administrative inquiry.

However, there is an issue in proceeding in this manner in regard to allegations of sexual offences. As discussed in Chapter 7, DI(G) PERS 35-4 *Management and Reporting of Sexual Offences* directs that sexual offences are to be investigated by the civil police. Further, no administrative action may be taken while proceedings are pending. If a person is acquitted of a sexual offence charge, no adverse administrative action may be taken against the person in relation to the sexual offence.

We indicated in Chapter 7 that we consider the Defence policy reflected in this DI(G) is based on some misapprehensions of the law and legal practice and causes significant problems in the management of sex offences. For present purposes, we note in regard to the allegations of sexual offences that have been brought to the Review, that it presents a significant barrier to the general investigation of allegations of these offences.

In many cases the allegations are very old and are unlikely to be entertained by the civil police. The circumstances surrounding them, and at least the reaching of a conclusion that they are plausible, requires an administrative inquiry. It would seem that the effect of DI(G) 35-4 may be to preclude Defence from carrying this out. Yet such an inquiry will be necessary if a person is to be satisfied that their complaint has been properly dealt with. Punishment of perpetrators is an outcome desired by many complainants. It would be possible for the DI(G) to be amended to enable an administrative inquiry into complaints of sexual assault that are, say, more than 10 years old if a specified person decides that to be an approach that is preferable to referral to the civil police.

We have suggested in Chapter 7 that, in any case, the DI(G) should be examined afresh as it imposes unwarranted restrictions on the management of sexual offence cases. However, in regard to the perpetrators of the complaints made to the Review, the management of allegations of sexual offences would also seem to require an amendment of the existing Defence procedures.

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.

8.27 Immediate management of allegations of serious abuse

It seems appropriate for some allegations contained in the complaints to the Review to be dealt with in accordance with the current Defence procedures. The Review has in Volume 2 of its Report made recommendations in regard to each allegation as to how it should be managed. Some of the matters have been recommended for referral to existing internal Defence processes or existing external processes. Those processes are described in the introduction to Volume 2.

Where there appears to be sufficient information to enable an investigation of either a criminal act or unacceptable behaviour that might warrant administrative action, the Review has indicated this in its

recommendation. In such cases the Review would expect the allegation to be investigated in accordance with current procedures.

A significant issue arises because of the age of many of the allegations. Where it is satisfied that there is sufficient information to form a judgment that a serious sexual or other assault may have occurred, the Review has recommended referral of the allegation to ADFIS. It is likely that, in many of these cases, the event will have occurred so long ago that identification of the alleged perpetrator or any witness will make it impossible for the matter to be pursued in a criminal context. However, the Review considers that this decision should be made by ADFIS and not by the Review.

Phase 2 of the Review should follow up on these matters in a number of ways.

It should carry out the further review of the individual allegations as suggested by this Review. In many cases this will involve contacting the source to seek further information and, where it has not already been given, obtaining the consent of the person affected to the disclosure of information to Defence.

Phase 2 should also ascertain the outcome of consideration of an allegation that has been referred to another body at the suggestion of this Review. It should be in the position to report this outcome to the person or persons affected by Defence's actions. This will be of particular significance in those cases where the decision has been made to take no further action. This will need to be explained sensitively to the person making the allegation, together with any concise explanation that can be given about how things have changed since the conduct occurred.

Depending upon what action is taken to provide reparation to persons affected by abuse, Phase 2 will need to track those cases referred to other bodies in order to ensure that they are not lost from sight if some form of reparation is effected.

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.

9 Concluding remarks

Each member of the ADF, from the most junior cadet to the most senior officer, is a representative of Defence and our nation. The Defence leadership and the Australian community have a right to expect the highest standard of behaviour and professionalism.

—The Hon Stephen Smith MP
Minister for Defence
April 2011

The nation's pride in the ADF is expressed in this passage from the classic Australian novel *My Brother Jack* by George Johnston:

The march was by one of the good AIF divisions, which was going away somewhere or had just come back from somewhere, I no longer remember, and I left Helen and Mr Brewster, and I met Jack, and we found a good position in the crowd, almost on the barricades up near the top end of Collins Street.

It was the usual patriotic thing—there were other units in the march, and half a dozen bands, and WAAFs and AWAS and some garrison units and contingents from the Air Force and the Navy, and it moved along to the jumping bursts of applause and showers of torn paper and the waving of little flags, but the big thing—and you could hear it coming by the growling, rolling, thunderous note in the cheering—was the march past by the fighting troops.

... and I was almost afraid to see them again after not having seen them for so long, but I was craning my neck like all the others, craning through the tumult and the frantic shimmer of the little flags and the overhanging foliage of the plane-trees, and I heard the shrill pipe of the whistle and the slow nasal wail and bark of the order, and my stomach seemed to cramp into a hard knot of pain as I saw them wheeling at the top of the street within the thick green frame of the trees, the first ranks of fifteen thousand fighting men, swinging on the inside man in the steady slow up-and-down beat of the white gaiters and then rising to the forward stride and coming down, marching nine abreast, with the rippling blue flash of the fixed bayonets on their shouldered rifles. They marched as they liked to march, in their slouch hats with the grey-bordered colour-patches on the bleached-out puggarees, in khaki shorts and their open-neck shirts with sleeves rolled up above bunched brown muscles, and the white wide belts and the white canvas gaiters over the brown boots, and on practically every chest were the multi-coloured campaign ribbons of the deserts and the jungles and the mountains and the islands and the beaches, and they came towards us behind the colour-party with the drawn swords and the hoisted flags and the brave emblazonings of the old-familiar and the new-familiar names. And I had to blink and gulp and fight with the emotion and sentiment and pain that racked me to the very guts.

They were going past now in the rhythmic thunder of the boots, with the clip of metal in the sound, beating through the roar of cheering, and they marched, not like Guardsmen, but in their big loose straight easy way, the hard brown faces under the tipped-up hats, lean faces with the chin-straps taut and shining on the harsh slanting planes, and the strong brown downy legs above the socks and the white gaiters, the men of the far adventure, the soldiers of far fortune. And the anguish inside me had twisted and turned into an awful irremediable sense of loss and I thought of Dad and the putteed men coming off the *Ceramic*, and I thought of Jack when I had seen him at Puckapunyal five long years before, looking just like these men, hard and strong and confident and with his brown legs planted in the Seymour dust as if the whole world was his to conquer, a man fulfilled in his own rightness, and suddenly and terribly I knew that all the Jacks were marching past me, all the Jacks were still marching.....

That passage is a beautiful and moving statement of pride and love and recognition of sacrifice.

There are also within that passage signals of risks which must be kept in sight as the Nation and the ADF move forward.

First - there is the dismissive reference to women and non-fighting units and even to the AirForce and Navy contingents. The ADF is now not just 'Jacks' but also 'Jacquelines'. There must be constant vigilance so that *all* members of the ADF are treated as full members of the ADF.

As the Minister said - Each member of the ADF... is a representative of Defence and our nation.¹

That carries with it not only the *obligation* on the individual ADF member to represent the ADF and the Nation appropriately but also an *entitlement* for each ADF member to the full protection and support of the ADF and the nation and for that support to continue after the person has left the ADF if they have been damaged in their time in the ADF.

Second - Johnston used the term 'Jack' to mean the essential Australian. The term 'Jack' has become a derogatory term to mean someone who betrays his mates by reporting them for wrongdoing - even if the mate has assaulted another member of the ADF.

From what we have seen it takes enormous courage in the ADF to 'Jack' on your mates. That courage needs proactive support from the ADF, the Government and the Parliament.

Standing up for what is right when your 'mates' do the wrong thing should be regarded as being essentially Australian.

¹ The ADF and the Nation are connected not only through the *Defence Force Act 1903* (Cth): ss.8 and 9 but also through the Command in Chief vested in the Governor-General by s68 of the Constitution and exercisable on the advice of a Minister of the democratically elected Government. See Appendixes 39 and 40.

Shortened forms

3RAR	3rd Battalion, Royal Australian Regiment
AA	Appointing Authority
AIM	Administrative Inquiries Manual
AAC	Australian Army Cadets
AAFC	Australian Air Force Cadets
AAT	Administrative Appeals Tribunal
ABR	Australian Book of Reference
ADC	Australian Defence College
ADDP	Australian Defence Doctrine Publication
ADF	Australian Defence Force
ADFA	Australian Defence Force Academy
ADFARB	Australian Defence Force Administrative Review Board
ADFC	Australian Defence Force Cadets
ADFAITS	Australian Defence Force Administrative Inquiry Tracking System
ADFIS	Australian Defence Force Investigative Service
ADFP	Australian Defence Force Publication
ADJR Act	Administrative (Judicial Decisions) Review Act
ADO	Australian Defence Organisation
ADR	Alternative Dispute Resolution
AFP	Australian Federal Police
AGA	Australian Defence Force Academy Graduates Association
AGIS	Australian Government Investigation Service
AGS	Australian Government Solicitor
AHRC	Australian Human Rights Commission
AMC	Australian Military Court
AMCR	Australian Military Court Rules
AMR	Australian Military Regulations
ANAO	Australian National Audit Office
ANC	Australian Navy Cadets
AO	Area of Operations
APS	Australian Public Service
ARA	Australian Regular Army
ARes	Army Reserve
ARTC	Australian Recruit Training Centre
AWAS	Australian Women's Auxiliary Service
BOI	Board of Inquiry
C2	Command and Control
CA	Chief of Army
CAF	Chief of Air Force

CAO	Courts Administration Officer
CBOI	Combined Board of Inquiry
CCDA	Compensation for Detriment caused by Defective Administration
CDF	Chief of the Defence Force
CIRTS	Conduct and Investigation Report and Tracking System
CIVPOL	Civilian Police
CJA	Chief Judge Advocate
CJOPS	Commander Joint Operations
CLO	Command Legal Officer
CM	Courts Martial
CMJ	Chief Military Judge
CN	Chief of Navy
CO	Commanding Officer
COI	CDF Commission of Inquiry
COMDT	Commandant
ComTRACK	Complaint Tracking
COOC	Corps of Office Cadets
COS	Chief of Staff
COSC	Chiefs of Service Committee
CPO	Chief Petty Officer
CR	Complaint Resolution
CRA	Complaint Resolution Agency
CRIMINT	Criminal Intelligence
CRTS	Conduct Reporting and Tracking System
Cth	Commonwealth
CWO	Command Warrant Officer
DARE	Directorate Alternative Resolutions and Equity
DADRCM	Directorate Alternative Dispute Resolution and Conflict Management
DAS	Defence Attitude Survey
DCA	Deputy Chief of Army
DCAF	Deputy Chief of Air Force
DCJOPS	Deputy Commander Joint Operations
DCN	Deputy Chief of Navy
DCO	Defence Community Organisation
DCOMDT	Deputy Commandant
DCS	Defence Counsel Services
DDCS	Director Defence Counsel Services
DE	Defence Establishment
DEO	Defence Equity Organisation
DETC	Defence Education and Training Committee
DFC	Deputy Fleet Commander
DFCE	Defence Force Corrective Establishment
DFDA	Defence Force Discipline Act 1982

DFDAT	Defence Force Discipline Appeal Tribunal
DFM	Defence Force Magistrate
DFO	Defence Force Ombudsman
DFR	Defence Force Recruiting
DGADFLS	Director General Australian Defence Force Legal Service
DGFR	Director General Fairness and Resolution
DGS	Defence General Counsel
DI	Defence Instruction
DIA	Defence Investigative Authority
DICA	Defence Investigative Capability Audit
DI(A)	Defence Instruction (Army)
DI(AF)	Defence Instruction (Air Force)
DI(G)	Defence Instruction (General)
DI(G) ADMIN	Defence Instruction (General) Administration; (DI(A) ADMIN etc)
DI(G) PERS	Defence Instruction (General) Personnel; (DI(AF) PERS etc)
DI(N)	Defence Instruction (Navy)
DIPLO	Discipline Officer
D(I)R	Defence (Inquiry) Regulations
DJAG	Deputy Judge Advocate General
DL	Defence Legal
DLAA	Defence Legislative Amendment Act
DLAB	Defence Legislative Amendment Bill
DLIT	Director Litigations
DLM	Discipline Law Manual
DLO	Defence Legal Officer
DLS	Defence Legal Service
DMJ	Director Military Justice
DMP	Director of Military Prosecutions
DPP	Director of Public Prosecutions
DPSMS	Defence Policing and Security Management System
DPTC	Defence Police Training Centre
DRMS	Defence Records Management System
DRN	Defence Restricted Network
DSG	Defence Support Group
DSOM	Directorate of Senior Officer Management
DTCFMS	Discipline Tracking and Case Flow Management System
DTM	Defence Training Model
DWS	Defence Whistleblowers Scheme
EA	Equity Advisor
ECHR	European Convention on Human Rights; also used for European Court of Human Rights
E&D	Equity and Diversity
EWO	Executive Warrant Officer
F&R	Fairness and Resolution Branch

FCAUST	Fleet Commander Australia
FEG	Force Element Group
FOI	Freedom of Information
GCM	General Court Martial
GCOI	General Court of Inquiry
GD	General Duties (Military Police)
GE	General Entry
GIR	General Investigations and Reviews
GORPS	Graded Other Ranks Pay Structure
HCP	Head of Cadet Policy
HDL	Head of Defence Legal
HMAS	Her Majesty's Australian Ship
HPC	Head People Capability
HREOC	Human Rights and Equal Opportunity Commission
IET	Initial Employment Training
ICCPR	International Convention on Civil and Political Rights
IG	Inspector General
IGADF	Inspector General Australian Defence Force
IJM	Investigation Jurisdiction Model
IO	Investigating/Inquiry Officer
IOA	Instrument of Appointment
IPP	Information Privacy Principle
JA	Judge Advocate
JAA	Judge Advocate Administrator
JAG	Judge Advocate General
JIO	Joint Investigation Office
JSCFADT	Joint Standing Committee on Foreign Affairs, Defence and Trade
JTF	Joint Task Force
KPI	Key Performance Indicator
LCAUST	Land Commander Australia
LCI	Learning Culture Inquiry
MCI	Minor Criminal Investigation
MFU	Major Fleet Unit
MIER	Management Initiated Early Retirement
MIT	Major Investigation Team
MOU	Memorandum of Understanding
MJCC	Military Justice Coordination Committee
MJS	Military Justice System
MLC	Military Law Centre
MP	Military Police
MPCRO	Military Police Central Records Office
MWV	Minor War Vessel
NCO	Non-Commissioned Officer

NI	Notifiable Incident
NIS	Naval Investigation Service
NOK	Next of Kin
NPC	Naval Police Coxswain
NTSC	Notice to Show Cause
OC	Officer Commanding
OIC	Officer In Charge
ODMP	Officer of the Director of Military Prosecutions
OHS	Occupational Health and Safety
OIGADF	Officer of the Inspector General Australian Defence Force
OPM ADF	Office of the Provost Marshall ADF
OR	Other Rank—other than officer
PA	Public Affairs
PAP	Potential Affected Person/Party
PERS	Personnel
PLO	Permanent Legal Officer
PM-ADF	Provost Marshall—Australian Defence Force
PM-A	Provost Marshall—Army
PM-AF	Provost Marshall—Air Force
PM-N	Provost Marshall—Navy
PMKeys	Personnel Management Key Solutions
PO	Petty Officer
PSPG	People Strategies and Policy Group
QA	Quick Assessment
QC	Queen's Counsel
R2	Recruitment and Retention
RAAF	Royal Australian Air Force
RACMP	Royal Australian Corps of Military Police
RAN	Royal Australian Navy
RANC	Royal Australian Navy College (at Jervis Bay)
RANR	Royal Australian Navy Reserve
RMC-D	Royal Military College—Duntroon
RCM	Restricted Court Martial
RIO	Routine Inquiry Officer
RLO	Reserve Legal Officer
RMC	Royal Military College (at Duntroon)
RMJ	Registrar of Military Justice
ROG	Redress of Grievance
RS	Recruit School
RSM	Regimental Sergeant Major
RTA	Return to Australia
RTU	Returned to Unit
SA	Summary Authority

SAR	Summary Authority Rules
SECPOL	Security Police (RAAF)
SIB	Special Investigations Branch
SME	Subject Matter Expert
SNCO	Senior Non-Commissioned Officer
SOP	Standard Operating Procedure
SOR	Statement of Reasons
SP	Service Police
SPCRO	Service Police Central Records Office
SPI	Service Police Investigation(s)
SC	Senior Counsel
SUA	Serviceman Under Arrest
SUBSA	Subordinate Summary Authority
SUPSA	Superior Summary Authority
SUS	Serviceman Under Sentence
SWO	Ship's Warrant Officer
TC-A	Training Command Army
TOR	Terms of Reference
USO	Unit Standing Orders
VCDF	Vice Chief of the Defence Force
WAAAF	Women's Auxiliary Australian Air Force
WO-AF	Warrant Officer of the Air Force
WO-N	Warrant Officer of the Navy

Glossary

accused person	a person who has been charged with a service offence under the DFDA. ¹ See 1999 report
administrative sanction	see Annex A to DI(G) PERS 34-1 ROG
airmen	a member of the Australian Air Force, not being an officer ²
appointing authority	(a) in relation to a Court of Inquiry appointed by the Minister, means the Minister; and (b) in relation to a Board of Inquiry, means the officer who appointed the Board or, where the Board was appointed by the Chief of the Defence Force and the Secretary acting concurrently, both of those persons acting concurrently ³
appointing officer	in relation to an Inquiry Officer or an inquiry assistant, means the officer who appointed the Officer or assistant ⁴
Australian Defence Force	For the purposes of this Report, includes both APS and the three arms of the Defence Force—Navy, Army, Air Force. The three arms of the Defence Force have been collectively referred to as the Australian Defence Force (ADF) since the mid 1990s. Even though the term was not used until then, it is convenient to use the term Australian Defence Force (ADF) to refer to allegations of abuse in any arm of the Services even for the years before the mid 1990s when the term was not in use. Where it is appropriate for the Report to concentrate on one or other of the arms of the Services in a particular era or at a particular time, the Report makes clear which arm of the Services is involved.
Australian Defence Organisation	The Australian Defence Organisation (ADO) comprises the component organisations that together are responsible for supporting the defence of Australia and its national interests. The three most significant bodies of the ADO are the Department of Defence, the Australian Defence Force and the Defence Materiel Organisation: Department of Defence Annual Report 2009–2010 at http://www.defence.gov.au/Budget/09-10/dar/dar_0910_v1_s1.pdf#nameddest=c3
authorised officer	an officer, or an officer included in a class of officers, authorised, in writing, by the Chief of the Defence Force or a service chief for the purposes of the provision in which the expression occurs ⁵
bastardise	'to seek to humiliate, as part of initiation into a regiment, college' ⁶
bishing	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe vandalising the room or property of another cadet with or without malicious intent. Can include attacks on the person usually associated with hosing, throwing water or being forced into/under water ⁷
bogging	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe cleaning and communal activities and preparing uniforms for inspection ⁸

¹ Section 3(1) DFDA.

² Section 3(1) DFDA.

³ Reg 3, D(I) R.

⁴ Reg 3, D(I) R.

⁵ Section 3(1) DFDA.

⁶ Macquarie Dictionary, 4th ed.

⁷ Page xxiii Grey Review.

⁸ Page xxiii Grey Review.

charge	a charge of a service offence ⁹
civil court	a federal court or a court of a State or Territory ¹⁰
civil court offence	(a) an offence against a law of the Commonwealth (other than a service offence); or (b) an offence against a law of a State or Territory ¹¹
convicted person	a person convicted of a service offence by a service tribunal, a reviewing authority or the Defence Force Discipline Appeal Tribunal ¹²
Court of Inquiry	under the <i>Defence (Inquiry) Regulations</i> , means any of the following: (a) a General Court of Inquiry under Part II; (b) a Board of Inquiry under Part III; (c) a Combined Board of Inquiry under Part IV; (d) a Chief of the Defence Force Commission of Inquiry under Part VIII ¹³
crossing the road	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe a road which physically exists between the cadets' accommodation blocks and squadron offices in the Military Building at ADFA. 'Crossing the road' means taking a problem out of the hands of the corps and to the staff ¹⁴
custodial offence	(a) an offence against subsection 54A(1) or (2); or (b) an offence that: (i) is an ancillary offence in relation to an offence against subsection 54A(1) or (2); and (ii) was committed by a person at a time when the person was a detainee ¹⁵
custodial punishment	a punishment of a kind referred to in subsection 68A(1) ¹⁶
defence civilian	a person (other than a defence member) who: (a) with the authority of an authorised officer, accompanies a part of the Defence Force that is: (i) outside Australia; or (ii) on operations against the enemy; and (b) has consented, in writing, to subject himself or herself to Defence Force discipline while so accompanying that part of the Defence Force ¹⁷
Defence Force magistrate	a Defence Force magistrate appointed under section 127 DFDA ¹⁸
Deputy Judge Advocate General	a Deputy Judge Advocate General appointed under section 179 DFDA ¹⁹

⁹ Section 3(1) DFDA.

¹⁰ Section 3(1) DFDA.

¹¹ Section 3(1) DFDA.

¹² Section 3(1) DFDA.

¹³ Reg 3, D(I) R.

¹⁴ Page xxiii Grey Review.

¹⁵ Section 3(1) DFDA.

¹⁶ Section 3(1) DFDA.

¹⁷ Section 3(1) DFDA.

¹⁸ Section 3(1) DFDA.

¹⁹ Section 3(1) DFDA.

detainee	a person who is undergoing a punishment of detention in a detention centre ²⁰
detention centre	a place, not being a prison, that is operated by the Defence Force as a place for the detention of persons ²¹
elective punishment	a punishment set out in column 2 of an item of Table B or C in Schedule 3 in the DFDA ²²
fratting	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe a friendship (not necessarily a sexual relationship) between male and female cadets which other cadets consider inappropriate ²³
frat bust	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe an attempt by cadets to catch out other cadets who are fratting ²⁴
general order	<p>(a) a Defence Instruction (General), a Defence Instruction (Navy), a Defence Instruction (Army) or a Defence Instruction (Air Force);</p> <p>(b) any other order, instruction or directive issued by, or under the authority of, the Chief of the Defence Force or a service chief; or</p> <p>(c) a general, standing, routine or daily order in force with respect to a part of the Defence Force²⁵</p>
going grey	a term used at ADFA to describe a cadet deliberately setting out to ensure that neither under nor over-performance attracts unwanted staff or cadet attention ²⁶
hazing	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe inappropriate humiliation and degradation of others to produce a stressful environment ²⁷
hearing	in relation to a service tribunal, includes the announcement of the verdict of the tribunal and the taking of action by the tribunal under Part IV in relation to a convicted person ²⁸
hoser	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe a groveller. A cadet who seeks to place him or herself in a favourable light with staff ²⁹
investigating officer	<p>(under DFDA Part VI—Investigation of Service Offences) means:</p> <p>(a) a police member; or</p> <p>(b) an officer, warrant officer or non-commissioned officer (not being a police member) engaged in the investigation of a service offence³⁰</p>
jacking	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe informing on fellow cadets. Putting oneself ahead of the team. Not showing the required effort. Not a team player ³¹

²⁰ Section 3(1) DFDA.

²¹ Section 3(1) DFDA.

²² Section 3(1) DFDA.

²³ Page xxiii Grey Review.

²⁴ Page xxiii Grey Review.

²⁵ Section 3(1) DFDA.

²⁶ Page xxiii Grey Review.

²⁷ Page xxiii Grey Review.

²⁸ Section 3(1) DFDA.

²⁹ Page xxiii Grey Review.

³⁰ Section 101(1) DFDA.

³¹ Page xxix Grey Review.

judge advocate	in relation to a court martial, means the judge advocate of the court martial ³²
Judge Advocate General	the Judge Advocate General appointed under section 179 DFDA ³³
judge advocates' panel	the panel referred to in subsection 196(1) DFDA ³⁴
legal officer	in the DFDA, an officer who is a legal practitioner ³⁵
legal practitioner	in the DFDA, a person who is enrolled as a barrister, a solicitor, a barrister and solicitor or a legal practitioner of a civil court ³⁶
non-commissioned officer	(a) a sailor holding a rank not higher than the rank of chief petty officer and not lower than the rank of leading seaman; (b) a soldier holding a rank not higher than the rank of staff sergeant and not lower than the rank of lance-corporal; or (c) an airman holding a rank not higher than the rank of flight sergeant and not lower than the rank of corporal ³⁷
officer	(a) in relation to the Australian Navy—a person appointed as an officer of the Australian Navy, including a person who holds the rank in the Australian Navy of Acting Sub-Lieutenant or of Midshipman; and (b) in relation to the Australian Army and the Australian Air Force—a person appointed as an officer of the Australian Army or the Australian Air Force ³⁸
old system offence	an offence under previous service law that was committed by a member of the Defence Force at any time during the period of 3 years that ended on the day immediately before the proclaimed date ³⁹
order	includes: (a) a general order; and (b) a command given to a member of the Defence Force by a superior officer ⁴⁰
overseas court	a court of a place outside Australia that has jurisdiction to try charges of offences against the law of that place ⁴¹
overseas offence	an offence against a law of a place outside Australia ⁴²
President	in relation to a court martial, means the President of the court martial ⁴³

³² Section 3(1) DFDA.

³³ Section 3(1) DFDA.

³⁴ Section 3(1) DFDA.

³⁵ Section 3(1) DFDA.

³⁶ Section 3(1) DFDA.

³⁷ Section 3(1) DFDA.

³⁸ Section 3(1) DFDA.

³⁹ Section 3(1) DFDA.

⁴⁰ Section 3(1) DFDA.

⁴¹ Section 3(1) DFDA.

⁴² Section 3(1) DFDA.

⁴³ Section 3(1) DFDA.

previous service law	<p>the following laws as in force at any time during the period of 3 years that ended on the day immediately before the proclaimed date:</p> <p>(a) the Naval Defence Act 1910 and regulations in force under that Act;</p> <p>(b) the Defence Act 1903 in its application to and in relation to the Australian Navy and the members of the Australian Navy;</p> <p>(c) where any law of the United Kingdom applied during that period to or in relation to the Australian Navy or the members of the Australian Navy—that law in that application;</p> <p>(d) the Defence Act 1903 and the regulations in force under that Act in their application to and in relation to the Australian Army and the members of the Australian Army;</p> <p>(e) where any law of the United Kingdom applied during that period to or in relation to the Australian Army or the members of the Australian Army—that law in that application;</p> <p>(f) the Air Force Act 1923 and regulations in force under that Act;</p> <p>(g) the Defence Act 1903 in its application to and in relation to the Australian Air Force and the members of the Australian Air Force;</p> <p>(h) where any law of the United Kingdom applied during that period to or in relation to the Australian Air Force or the members of the Australian Air Force—that law in that application⁴⁴</p>
prisoner	a convicted person on whom a punishment of imprisonment has been imposed ⁴⁵
punishment	includes a combination of punishments ⁴⁶
putsch	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe the staff ⁴⁷
quick assessment	see Annex A to DI(G) PERS 34-1 ROG
rapid uniform change	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe a former practice (known as splits) in which senior cadets assemble first years and order them to change uniform combinations and reappear in the same location, for example the Divisional breezeway in a specified time. The number of changes is increased and the times shortened to increase pressure ⁴⁸
redress	a provision of a remedy, correction, relief or adjustment in response to a member's complaint ⁴⁹
relevant Territory offence	in relation to an offence against section 61, means the Territory offence on which the offence against section 61 is based ⁵⁰
Reserves	the Naval Reserve, the Army Reserve and the Air Force Reserve ⁵¹
review	a review by a reviewing authority, or by the Chief of the Defence Force or a service chief, in accordance with Part VIIIA, of the proceedings of a service tribunal ⁵²
reviewing authority	a reviewing authority appointed under section 150 DFDA ⁵³

⁴⁴ Section 3(1) DFDA.

⁴⁵ Section 3(1) DFDA.

⁴⁶ Section 3(1) DFDA.

⁴⁷ Page xxix Grey Review.

⁴⁸ Page xxix Grey Review.

⁴⁹ Para 1(j), Annex A, DI(G) PERS 34-1 *Redress of Grievance - Tri Service Procedure*.

⁵⁰ Section 3(1) DFDA.

⁵¹ Section 3(1) DFDA.

⁵² Section 3(1) DFDA.

⁵³ Section 3(1) DFDA.

rules of procedure	the following: <ul style="list-style-type: none"> (a) the Summary Authority Rules; (b) the Court Martial and Defence Force Magistrate Rules⁵⁴
sailor	a member of the Australian Navy, not being an officer ⁵⁵
service chief	the Chief of Navy, the Chief of Army or the Chief of Air Force ⁵⁶
service land	land (including a building or other structure) used or occupied by: <ul style="list-style-type: none"> (a) the Defence Force; (b) an allied force; or (c) an institution of the Defence Force or of an allied force⁵⁷
service offence	(a) an offence against this Act or the regulations; <ul style="list-style-type: none"> (b) an offence that: <ul style="list-style-type: none"> (i) is an ancillary offence in relation to an offence against this Act or the regulations; and (ii) was committed by a person at a time when the person was a defence member or a defence civilian; or (c) an old system offence⁵⁸
service police officer	an officer who is a member of a police corps or service, and includes a provost marshal and a deputy provost marshal ⁵⁹
service property	property used by, or in the possession or under the control of: <ul style="list-style-type: none"> (a) the Defence Force; (b) an allied force; or (c) an institution of the Defence Force or of an allied force; and service aircraft, service armoured vehicle, service missile, service ship, service vehicle and service weapon have corresponding meanings ⁶⁰
service tribunal	a court martial, a Defence Force magistrate or a summary authority ⁶¹
ship	a vessel or boat of any description, and includes: <ul style="list-style-type: none"> (a) any floating structure; and (b) any air cushion vehicle⁶²
soldier	a member of the Australian Army, not being an officer ⁶³
splits	see <i>rapid uniform change</i>

⁵⁴ Section 3(1) DFDA.
⁵⁵ Section 3(1) DFDA.
⁵⁶ Section 3(1) DFDA.
⁵⁷ Section 3(1) DFDA.
⁵⁸ Section 3(1) DFDA.
⁵⁹ Section 3(1) DFDA.
⁶⁰ Section 3(1) DFDA.
⁶¹ Section 3(1) DFDA.
⁶² Section 3(1) DFDA.
⁶³ Section 3(1) DFDA.

squeezer	a term formerly used at ADFA prior to the 'Report of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy' June 1998 (the Grey Review) to describe a malingerer. Derogatory term used by cadets and some staff to describe other cadets who cannot or will not reach acceptable standards of physical fitness, academic, military and/or social performance ⁶⁴
subordinate summary authority	a subordinate summary authority appointed under subsection 105(2) DFDA ⁶⁵
summary authority	(a) a superior summary authority; (b) a commanding officer; or (c) a subordinate summary authority ⁶⁶
superior officer	in relation to a member of the Defence Force, means another member of the Defence Force who holds a higher rank, or a higher relative rank, in the Defence Force than the member, and includes any other member of the Defence Force who, by virtue of his or her office or appointment, is entitled to exercise command over the member ⁶⁷
superior summary authority	a superior summary authority appointed under subsection 105(1) DFDA ⁶⁸
Territory offence	(a) an offence against a law of the Commonwealth in force in the Jervis Bay Territory other than this Act or the regulations; or (b) an offence punishable under any other law in force in the Jervis Bay Territory (including any unwritten law) creating offences or imposing criminal liability for offences ⁶⁹
warrant officer	a sailor, soldier or airman who holds the rank of warrant officer ⁷⁰
woofering	a practice of applying a vacuum cleaner nozzle to another cadet's testicles/genitals ⁷¹ (military) initiation punishment for a male cadet in which the nozzle of a vacuum cleaner is applied to the genitals ⁷²

⁶⁴ Page xxix Grey Review.

⁶⁵ Section 3(1) DFDA.

⁶⁶ Section 3(1) DFDA.

⁶⁷ Section 3(1) DFDA.

⁶⁸ Section 3(1) DFDA.

⁶⁹ Section 3(1) DFDA.

⁷⁰ Section 3(1) DFDA.

⁷¹ Source: ABC *Four Corners* June 2011.

⁷² <http://thesaurus.babylon.com/woofering>.

Bibliography

The Review ran under tight timeframes and relied on Defence to provide copies of previous reports and other relevant material. The Office of Defence General Counsel which had the task of gathering information for the Review from many parts of the Australian Defence Organisation—also under tight timeframes—was not always able to capture full bibliographical information from the parts of ADO which provided materials. Furthermore on some occasions the material which the ADO has been able to provide is limited to extracts of material found on files.

Accordingly, the Review is not able to provide full Bibliographical details for all items.

Scholarly articles, books, reports and surveys

Adams, B, *HMAS LEEUWIN: the story of the RAN's junior recruits*, Papers in Australian maritime affairs no. 29, Sea Power Centre Australia, Canberra, 2009.

Attorney-General's Department, *Australian administrative law policy guide*, Attorney-General's Department, Canberra, 2011, viewed 30 September 2011, <[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(9A5D88DBA63D32A661E6369859739356\)~Australian+Administrative+Law+Policy+Guide+-+July+2011.PDF/\\$file/Australian+Administrative+Law+Policy+Guide+-+July+2011.PDF](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(9A5D88DBA63D32A661E6369859739356)~Australian+Administrative+Law+Policy+Guide+-+July+2011.PDF/$file/Australian+Administrative+Law+Policy+Guide+-+July+2011.PDF)>.

Astbury, J., Services for victim/survivors of sexual assault, ACSSA issues no. 6, Australian Institute of Family Studies, Australian Centre for the study of sexual assault, Melbourne, 2006, viewed 9 October 2011, http://www.aifs.gov.au/acssa/pubs/issue/acssa_issues6.pdg.

Birrer, KN, 'Report of review of disciplinary and administrative policy, processes and practices (including management initiated early retirement) in dealing with cases of unacceptable behaviour in the ADF', staff-in-confidence, limited distribution, Department of Defence, n.p., 1 November 1999.

Brief for DGFR Summary of directorate of strategic personal policy planning (DSPPR) findings to inform the DGFR component of the personal conduct review. DSPPR Brief (June 2011).

Brubaker, SJ, 'Sexual assault prevalence, reporting and policies: comparing college and university campuses and military service academies', *Security Journal*, vol. 22, 2009, pp. 56-72.

Burton, C, *Women in the Australian Defence Force: two studies*, Director Publishing and Visual Communications, Defence Centre, Canberra, 1996.

Canada, National Defence Headquarters, *Fundamentals of Canadian defence ethics*, Defence ethics program = Programme d'éthique de la défense, National Defence, n.p., 2002, viewed 7 October 2011, <<http://www.dep-ped.forces.gc.ca/dl-tc/dep-ped/about-ausujet/fundamentals-fondements-eng.pdf>>.

CASA House Centre Against Sexual Assault, Royal Women's Hospital, Melbourne, *A pastoral report to the churches on sexual violence against women and children of the church community*, CASA House Centre against Sexual Assault, Royal Women's Hospital, Melbourne, 1990.

Commission of Investigation, *Report by Commission of Investigation into the Archdiocese of Dublin* (Yvonne Murphy, chairman), Department of Justice, Equality and Law Reform, Ireland, 2010.

- Commission of Investigation, *Report of Commission of Investigation into the Catholic Diocese of Cloyne*, (Yvonne Murphy, chairman), Department of Justice, Equality and Law Reform, Ireland, 2010.
- Committee of Enquiry into the Royal Military College, *Report of the Committee of Enquiry into the Royal Military College*, (RW Fox, chairman), The Committee, Canberra, 1970.
- Commonwealth Ombudsman, *Australian Defence Force: management of complaints about unacceptable behaviour*, Commonwealth Ombudsman, Canberra, 2007, viewed 4 October 2011, <http://www.ombudsman.gov.au/files/investigation_2007_04.pdf>.
- Commonwealth Ombudsman, *Australian Defence Force: management of service personnel under the age of 18 years*, Commonwealth Ombudsman, Canberra, 2005, viewed 4 October 2011, <http://www.ombudsman.gov.au/files/investigation_2005_04.pdf>.
- Commonwealth Ombudsman, *Complaint by a young person (under the age of 18) of an incident involving unacceptable behaviour at a Navy training establishment in mid-1996*, Commonwealth Ombudsman, n.p., 2004, viewed 4 October 2011, <http://www.ombudsman.gov.au/files/investigation_2004_04.pdf>.
- Commonwealth Ombudsman, *Managing unreasonable complainant conduct: practice manual*, Better practice guides, Commonwealth Ombudsman, Canberra, 2009, viewed 4 October 2011, <http://www.ombudsman.gov.au/docs/better-practice-guides/Online_UnreasonableComplainantConductManual_CwthOmb.pdf>.
- Commonwealth Ombudsman, *Own motion investigation into how the Australian Defence Force responds to allegations of serious incidents and offences: review of practices and procedures*, Commonwealth Ombudsman, n.p., 1998, viewed 4 October 2011, <http://www.ombudsman.gov.au/files/investigation_1998_04.pdf>.
- Commonwealth Ombudsman, *Submission by the Acting Commonwealth Ombudsman: HMAS SUCCESS Commission of Inquiry: system of administrative inquiries in the Australian Defence Force*, Commonwealth Ombudsman, n.p., 2010.
- Connor Review—see Defence Force Discipline Legislation Board of Review (1989)
- Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children 2010–2022*, Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, 2011, viewed 30 September 2011, <<http://www.fahcsia.gov.au/sa/women/progserv/violence/nationalplan/Pages/default.aspx-natplan>>.
- Crome, S., *Male Survivors of Sexual Assault and Rape*, ACSSA Wrap no. 2 September 2006, Australian Institute of Family Studies, Australian Centre for the Study of Sexual Assault, Melbourne, 2011, viewed 11 October 2011, <http://www.aifs.gov.au/acssa/pubs/wrap/acssa_wrap2.pdf>.
- Cumberlege Commission, *Keeping Children and Vulnerable Adults Safe in the Catholic Church*, (Julia Cumberlege, chairman), Incorporated Catholic Truth Society, London, 2007.
- Daly, K, *Conventional and innovative justice responses to sexual violence*, ACSSA issues no. 12, Australian Institute of Family Studies, Australian Centre for the Study of Sexual Assault, Melbourne, 2011, viewed 7 October 2011, <<http://www.aifs.gov.au/acssa/pubs/issue/i12/i12.pdf>>.
- Defence Force Discipline Legislation Board of Review, *Report of the Defence Force Discipline Legislation Board of Review, May 1989*, (Hon. Xavier Connor, chairman), The Board, Melbourne, 1989.
- Department of the Army, *Report of the Board of Inquiry Appointed to Investigate the Trial and Punishment of Offences Against Military Law and the Administration of Places of Confinement of Military Offenders*, (GS Reed, chairman), Department of the Army, n.p., 1946.

- Department of Defence & Commonwealth Ombudsman, *Review of Australian Defence Force redress of grievances system 2004: a joint report*, Commonwealth Ombudsman, Canberra, 2005, viewed 4 October 2011, <http://www.ombudsman.gov.au/files/investigation_2005_01.pdf>.
- Department of Defence, Fairness and Resolution Branch, *Ombudsman investigation into the management of unacceptable behaviour complaints (2007): review of implementation of recommendations*, Department of Defence, Canberra, 2011.
- Evans, S, Krogh, C & Carmody, M, 'Time to get cracking': the challenge of developing best practice in Australian sexual assault prevention education, ACSSA issues no. 11, Australian Institute of Family Studies, Australian Centre for the Study of Sexual Assault, Melbourne, 2009, viewed 4 October 2011, <http://www.aifs.gov.au/acssa/pubs/issue/acssa_issues11.pdf>.
- Fidell, Eugene R, 'A world-wide perspective on change in military justice', in *The Air Force Law Review*, vol. 48 (2000).
- Fitzgerald, LF, Gelfand, MJ & Drasgow, F, 'Measuring sexual harassment: theoretical and psychometric advances', *Basic and Applied Social Psychology*, vol. 17, 1995, pp. 425-45.
- Fitzgerald, LF, Magley, VJ, Drasgow, F & Waldo, CR, 'Measuring sexual harassment in the military: the sexual experiences questionnaire (SEQ-DoD)', *Military Psychology*, vol. 11, 1999, pp. 243-63.
- Fitzgerald, LF & Shullman, SL, 'The incidence and dimensions of sexual harassment in academia and the workplace', *Journal of Vocational Behavior*, vol. 32, 1988, pp. 152-75.
- Fox Enquiry—see Committee of Enquiry into the Royal Military College (1970).
- Gutek, B, Murphy, R & Douma, B, 'A review and critique of the sexual experiences questionnaire (SEQ)', *Law and Human Behavior*, vol. 28, 2004, pp. 457-82.
- Harrell, MC & Castaneda, LW, *A compendium of sexual assault research*, Technical report TR-617-OSD, Santa Monica, Rand, 2009.
- Howes, R, *Teaching ethics to officer cadets at the Australian Defence Force Academy*, Sub-Thesis, ADFA, University of New South Wales, 1991.
- Ilies, R, Hauserman, N, Schwochau, S & Stibal, J, 'Reported incidence rates of work-related sexual harassment in the United States: using meta-analysis to explain reported rate disparities', *Personnel Psychology*, vol. 56, 2003, pp. 607-31.
- Johnston, George, *My Brother Jack* (Harper Collins, Australia 1964).
- Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1987*, Department of Defence, Canberra, 1988.
- Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1988*, Department of Defence, Canberra, 1989.
- Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1989*, Department of Defence, Canberra, 1990.
- Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1990*, Department of Defence, Canberra, 1991.
- Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1991*, Department of Defence, Canberra, 1992.
- Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1992*, Department of Defence, Canberra, 1993.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1993*, Department of Defence, Canberra, 1994.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1994*, Department of Defence, Canberra, 1995.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1995*, Department of Defence, Canberra, 1996.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1996*, Department of Defence, Canberra, 1997.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1997*, Department of Defence, Canberra, 1998.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1998*, Department of Defence, Canberra, 1999.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 1999*, Department of Defence, Canberra, 2000.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2000*, Department of Defence, Canberra, 2001.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2001*, Department of Defence, Canberra, 2002.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2002*, Department of Defence, Canberra, 2003.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2003*, Department of Defence, Canberra, 2004.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2004*, Department of Defence, Canberra, 2005.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2005*, Department of Defence, Canberra, 2006.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2006*, Department of Defence, Canberra, 2007.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2007*, Department of Defence, Canberra, 2008.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2008*, Department of Defence, Canberra, 2009.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2009*, Department of Defence, Canberra, 2010.

Judge Advocate General, *Defence Force Discipline Act 1982: report for the period 1 January to 31 December 2010*, Department of Defence, Canberra, 2011.

Kelly, C, *The problem of workplace bullying and the difficulties of legal redress: an Australian perspective*, Student working paper no. 7, Centre for Employment and Labour Relations Law, University of Melbourne, 2011, viewed 6 October 2011,
[http://celrl.law.unimelb.edu.au/files/Student_Working_Paper_no._7_-_FINAL_\(amended\).pdf](http://celrl.law.unimelb.edu.au/files/Student_Working_Paper_no._7_-_FINAL_(amended).pdf).

National Plan—see Council of Australian Governments (2011).

O’Leary-Kelly, AM, Bowes-Sperry, L, Bates, CA & Lean, ER, ‘Sexual harassment at work: a decade (plus) of progress’, *Journal of Management*, vol. 35, 2009, pp. 503-36.

Office of the Privacy Commissioner, *Plain English Guidelines to Information Privacy Principles 8-11* (November 1996).

Peacock, AS (Minister for the Army), *Statement on the Report of the Committee of Enquiry into the Royal Military College, Duntroon*, ministerial statement, 12 June, The Minister, Canberra, 1970.

Perry, R, *Monash: The Outsider Who Won A War*, Random House Australia, Australia, 2007.

Phillips, J. & Park, M., *Measuring domestic violence and sexual assault against women: a review of the literature and statistics*, E-Brief 6 December 2004, updated 12 December 2006, Parliament of Australia Parliamentary Library, 2006, viewed 11 October 2011 <<http://www.aph.gov.au/library/intguide/sp/ViolenceAgainstWomen.htm>>.

Quadara, A, *Responding to young people disclosing sexual assault: a resource for schools*, ACSSA wrap no. 6, Australian Institute of Family Studies, Australian Centre for the Study of Sexual Assault, Melbourne, 2008, viewed 7 October 2011, <<http://www.aifs.gov.au/acssa/pubs/wrap/w6.html>>.

Reed Report—see Department of the Army (1946).

Regehr, C & Gutheil, T, ‘Apology, justice and trauma recovery’, *Journal of American Academy of Psychiatry Law*, vol. 3, 2002, pp. 425-30.

Seidler, K (Dr), *Crime, Culture & Violence: Understanding How Masculinity and Identity Shapes Offending*, Australian Academic Press, Bowen Hills, Qld, 2010.

Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Senate Community Affairs References Committee Secretariat, Canberra, 2004.

Sloan, C, *Safe universities blueprint: talk about it survey: results & recommendations*, National Union of Students, n.p., 2011, viewed 7 October 2011, <<http://www.whiteribbon.org.au/uploads/media/talk-about-it-survey-results-and-recommendations.pdf>>.

Statistics: Facts and figures relating to the childhood sexual abuse and sexual assault of males, Living Well, viewed 7 October 2011 <http://www.livingingwell.org.au/GeneralInformation/Statistics.aspx>.

Thompson, M & Australian Strategic Policy Institute, *Serving Australia: control and administration of the Department of Defence*, Special report, iss. 41, Australian Strategic Policy Institute, Barton, ACT, 2011, viewed 5 October 2011, <http://www.aspi.org.au/publications/publication_details.aspx?ContentID=301&pubtype=10>.

United Kingdom, Ministry of Defence, ‘Formal response: Service Complaints Commissioner’s annual report 2009: Ministry of Defence response to the new and updated recommendations’, laid before the House of Commons on 14 September 2010.

United Kingdom, Ministry of Defence, ‘Formal response: Service Complaints Commissioner’s annual report 2010: Ministry of Defence response to the new recommendations and goals for the service complaints system by 2014’, laid before the House of Commons on 11 July 2011.

Weaver, M, Culture check: reviews set to shape future policy and practices, *Defence Magazine*, iss. 2, 2011, pp. 16-9, viewed 5 October 2011, <http://www.defence.gov.au/defencemagazine/editions/2011_02/mag.pdf>.

Will, K, 'Blocking bullies in your workplace', *Ethos: Official Publication of the Law Society of the Australian Capital Territory*, vol. 220, 2011, p. 17.

Wither, JK, 'Battling bullying in the British Army 1987-2004' *The Journal of Power Institutions in Post-Soviet Societies*, iss. 1, 2004, viewed 5 October 2011, <<http://pipss.revues.org/index46.html>>.

Case law

Australian case law

Antoniak v The Commonwealth (1962) 4 FLR 454.

Commonwealth v Bourne (1960) 104 CLR 32.

Commonwealth v Mewett (1997) 191 CLR 471.

Gittani Stone Pty Ltd v Pavkovic (2007) NSWCA 355.

Groves v Commonwealth (1982) 160 CLR 113.

Kondis v State Transport Authority (1984) 154 CLR 672.

Lane v Morrison (2009) 239 CLR 230.

Millar v Bornholt [2009] FCA 637.

Modbury Triangle Shopping Centre Pty Ltd v ANZIL (2000) 2005 CLR 254.

New South Wales v Lepore (2003) 212 CLR 511.

Re Colonel Aird; Ex parte Alpert (2004) 209 ALR 311.

Re Nolan and another; Ex Parte Young (1991) 172 CLR 460.

Re: Tracey; Ex Parte Ryan (1989) 166 CLR 518.

Re Tyler and Others; Ex Parte Foley (1994) 181 CLR 18.

White v Director of Military Prosecutions (2007) HCA 29.

Overseas case law

R v Genereux [1992] 1 SCR 259.

R v MacKay [1980] 2 SCR 370.

The Azanian Peoples Organization (AZAPO) v The President of the Republic of South Africa (1996) CCT 17/96.

Legislation and Bills

Commonwealth legislation

Administrative Decisions (Judicial Review) Act 1977 (Cth).

Australian Military Regulations 1927 (Cth).

Commonwealth Employees' Compensation Act 1930 (Cth).

Commonwealth Employees' Rehabilitation and Compensation Act 1988 (Cth).

Commonwealth of Australia Constitution Act (the Constitution) (Cth).

Compensation (Commonwealth Government Employees) Regulations 1983 (Cth).

Court Martial and Defence Force Magistrate Rules 2009 (Cth).

Crimes Act 1914 (Cth).

Criminal Code Act 1995 (Cth).

Defence (Inquiry) Regulations 1985 (Cth).

Defence (Personnel) Regulations 2002 (Cth).

Defence Act 1903 (Cth).

Defence Force Discipline (Consequences of Punishment) Rules 1986 (Cth).

Defence Force Discipline Act 1982 (Cth).

Defence Force Discipline Appeals Act 1955 (Cth).

Defence Force Discipline Appeals Regulation 1957 (Cth).

Defence Force Discipline Regulations 1985 (Cth).

Defence Force Regulations 1952 (Cth).

Evidence Act 1995 (Cth).

Financial Management and Accountability Act 1997 (Cth).

Judiciary Act 1903 (Cth).

Military Compensation Act 1994 (Cth).

Military Compensation and Rehabilitation Act 2004 (Cth).

Military Justice (Interim Measures) Act (No. 1) 2009 (Cth).

Military Rehabilitation and Compensation Act 2004 (Cth).

Naval Defence Act 1910 (Cth).

Occupational Health and Safety Act 1991 (Cth).

Ombudsman Act 1976 (Cth).

Privacy Act 1988 (Cth).

Public Service Act 1999 (Cth).

Repatriation Act 1920 (Cth).

Safety Rehabilitation and Compensation Act 1988 (Cth).

Summary Authority Rules 2009 (Cth).

Veterans' Entitlements Act 1986 (Cth).

ACT legislation

Crimes Act 1900 (ACT).

Evidence Act 1971 (ACT).

Overseas legislation

Army Act of 1881 (UK).

Bill of Rights 1689 (UK).

Mutiny Act 1879 (UK).

Queen's Regulations and Admiralty Instructions 1861 (UK).

Bills

Military Court of Australia Bill 2011 (Cth).

Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2011) (Cth).

Australian Defence Force and Department of Defence: reports, inquiries, briefs and directives

Abadee, AR (Deputy Judge Advocate General), 'A study into judicial system under the Defence Force Discipline Act', report presented to the Chief of Defence Force on 11 August 1997.

Acumen Alliance, *The Defence Legal Service: Board of Inquiry management audit*, Acumen Alliance, n.p., 2003.

Australian Defence Force, 'Incidents of Sexual Harassment and Sexual Offences in the Australian Defence Force', Australian Defence Force, n.p., c 1999.

Australian Defence Organisation, *Inquiry into bullying of children and young people*, submission no. 10 to the NSW Legislative Council General Purpose Standing Committee No. 2, 6 March 2009, Australian Defence Organisation, n.p., 2009.

Australian National Audit Office, *Redress of grievances in the Australian Defence Force (Audit Report No.46 1998-99)*, ANAO, Canberra, 1999.

Ballard, A, *Sexual assault prevention and intervention in a military environment*, Winston Churchill Memorial Trust of Australia, Canberra, 2009.

Brown, L, *A survey of experiences of unacceptable behaviour at the Australian Defence Force Academy*, Directorate of Strategic Personnel Planning and Research, DSPPR research note 17/99, Department of Defence, Canberra, 1999.

Burchett, JCS, *Report of an inquiry into military justice in the Australian Defence Force conducted by Mr J.C.S. Burchett, QC, an investigating officer appointed by the Chief of the Defence Force under the Defence (Inquiry) Regulations 1985*, Military Justice Inquiry, n.p., 2001.

Bryson, L, *Dealing with a changing work environment: the issue of sexual harassment in the ADF: report prepared for the Assistant Chief of Defence Force Personnel, Headquarters, Australian Defence Force*, Directorate of Publishing Defence Centre, Canberra, 1994.

Department of Defence, *ADF Mental Health Strategy: Anxiety*, Fact sheet, Department of Defence, Canberra, n.d., viewed 6 October 2011, <<http://www.defence.gov.au/health/DMH/Fact%20Sheets/Anxiety.pdf>>.

Department of Defence, *ADF Mental Health Strategy: Conflict resolution and prevention at work*, Fact sheet, Department of Defence, Canberra, n.d., viewed 6 October 2011, <<http://www.defence.gov.au/health/DMH/Fact%20Sheets/Conflict.pdf>>.

Department of Defence, *ADF Mental Health Strategy: Depression*, Fact sheet, Department of Defence, Canberra, n.d., viewed 6 October 2011, <<http://www.defence.gov.au/health/DMH/Fact%20Sheets/Depression.pdf>>.

Department of Defence, *ADF Mental Health Strategy: Everything you wanted to know about mental health but were afraid to ask*, fact sheet, Department of Defence, Canberra, n.d., viewed 6 October 2011, <<http://www.defence.gov.au/health/DMH/Fact%20Sheets/Everything.pdf>>.

- Department of Defence, *ADF Mental Health Strategy: Post traumatic stress disorder*, Fact sheet, Department of Defence, Canberra, n.d., viewed 6 October 2011, <<http://www.defence.gov.au/health/DMH/Fact%20Sheets/PostTrauma.pdf>>.
- Department of Defence, *ADF Mental Health Strategy: Suicide*, fact sheet, Department of Defence, Canberra, n.d., viewed 6 October 2011, <<http://www.defence.gov.au/health/DMH/Fact%20Sheets/Suicide.pdf>>.
- Department of Defence, *Annual Report 2009-2010*.
- Department of Defence, Australian Defence Doctrine Publication (ADDP 00.1) *Command and Control* (issued 27 May 2009).
- Department of Defence, Australian Defence Force Publication (ADFP 06.1.1) *Discipline Law Manual*, Edition 4 (issued 7 October 2009).
- Department of Defence, Australian Defence Force Publication (ADFP 06.1.3) *Guide to Administrative Decision-Making* Edition 2 (issued 25 January 2010).
- Department of Defence, Australian Defence Force Publication (ADFP 06.1.4) *Administrative Inquiries Manual* (issued 7 August 2007).
- Department of Defence, *Australian Defence Organisation Personnel Report* dated 31 May 2011, Directorate of Workplace Information.
- Department of Defence, *CDF Directive 04/2010, Chief of Defence Force Directive—Interim Arrangements, Quick Assessments and Administrative Inquiries*, issued 23 Apr 2010.
- Department of Defence, Chief of Army Directive 17/11, *Formation of Army Administrative Inquiries Cell* of 16 August 2011.
- Department of Defence, *Defence Enterprise Collective Agreement (DECA)* 2009.
- Department of Defence, 'Defence response to the recommendation of the Inquiry into the learning cultures in ADF schools and training establishments', c. 2006.
- Department of Defence, DMP Directive 02/2009, *Prosecution and Disclosure Policy*, issued 1 October 2009.
- Department of Defence, 'I have received a complaint: what do I need to know?', produced for commanders and managers who are responsible for the management and reporting of unacceptable behaviour, n.p., n.d.
- Department of Defence, *Implementation plan: enhancements to the ADF military justice system*, Department of Defence, n.p., 2005.
- Department of Defence, *Report of an Audit of the Australian Defence Force Investigative Capability*, Canberra, 2006, viewed 7 October 2011 <http://www.defence.gov.au/publications/spauditreport.pdf>.
- Department of Defence, *Report to the Senate on the elimination of sexual harassment in the Australian Defence Force*, Directorate of Publishing, Canberra, December 1995.
- Department of Defence, Chiefs of Service Committee, 'Report of the review of the system of Australian Defence Force administrative inquiries', (Geoff Hurley AM, chair), 2010/1053985/1, 19 November 2010.
- Ernst & Young, *Department of Defence: review of the MPIC: final report*, Department of Defence, Ernst & Young, n.p., 2004.

Explanatory memorandum to the *Defence Force Discipline Bill 1982* (Cth).

Graham, E, *Experiences in making and managing complaints of unacceptable behaviour (ADF & APS): report*, Directorate of Strategic Personnel Planning and Research, DSPPR report 31/2007, Department of Defence, Canberra, 2007.

Grey report—see Review into Policies and Practices to Deal with Sexual Harassment and Sexual Offences at the Australian Defence Force Academy (1998).

HMAS SUCCESS Commission of Inquiry, *Allegations of unacceptable behaviour and the management thereof, Part One: the Asian deployment and immediate aftermath*, HMAS SUCCESS Commission of Inquiry, Canberra, 2011, viewed 4 October 2011, <<http://www.defence.gov.au/coi/success/index.htm>>.

HMAS SUCCESS Commission of Inquiry, *Allegations of unacceptable behaviour and the management thereof, Part Two: the management of the allegations and personnel involved*, HMAS SUCCESS Commission of Inquiry, Canberra, 2011, viewed 4 October 2011, <<http://www.defence.gov.au/coi/success/index.htm>>.

Houston, AG (Chief of the Defence Force), *Defence response to the Report of the independent review on the health of the reformed military justice system: the Street & Fisher report*, Department of Defence, n.p., 2009.

Houston, AG (Chief of the Defence Force), 'HMAS SUCCESS Commission of Inquiry report, part one: Chief of the Defence Force response', CDF/OUT/2011/194, 22 February 2000.

Johnson, K & Jacka, E, *2004 Australian Defence Force exit survey report: reasons for leaving*, Directorate of Strategic Personnel Planning and Research, DSPPR research report 26/2005, Department of Defence, Canberra, 2005.

McArthur, M & Kitay, J, 'Report of the progress of the reform process implemented at the Australian Defence Force Academy: report to Joint Education and Training, Department of Defence', 31 March 2000. [unable to verify]

Military justice implementation plan—see Department of Defence (2005).

Mitchell, B, *Unacceptable behaviour survey: 2009 (ADF and APS)*, Directorate of Strategic Personnel Planning and Research, DSPPR report 01/2010, Restricted staff-in-confidence, Department of Defence, Canberra, 2010.

Naval Forces Regulations (undated) (Cth).

Podger, A, Harris, C & Powell, R, *Final report of the Learning Culture Inquiry: inquiry into the learning culture in ADF schools and training establishments*, Department of Defence, Canberra, 2006.

Power, M, *A survey of experiences of unacceptable behaviour in the Australian Defence Force*, Directorate of Strategic Personnel Planning and Research, DSPPR research note 5/2000, not to be released outside Defence without DSPPR permission, Department of Defence, Canberra, 2001.

Quinn, KE, *Sexual harassment in the Australian Defence Force*, Director Publishing and Visual Communications, Defence Centre, Canberra, December 1996.

Quinn, KE, *Women in the armed services: career and family intentions and expectations*, Department of Defence, Canberra, 1989.

Rapke, T, *Report of an investigation into allegations of initiation practices, physical violence and bullying at HMAS LEEUWIN and onboard HMAS SYDNEY*, 2 vols., Dept. of the Navy, n.p., 1971.

Review into Policies and Practices to Deal with Sexual Harassment and Sexual Offences at the Australian Defence Force Academy, *Report of the Review into Policies and Practices to Deal with Sexual Harassment and Sexual Offences at the Australian Defence Force Academy*, (BD Grey, chair), Director Publishing and Visual Communications, Department of Defence, Canberra, 1998.

Shepherd, GD, *Update from the Chief of Air Force on unacceptable behaviour*, CAF update, 17 August 2006, Department of Defence, Canberra, 2006.

Street, Sir Laurence & Fisher, L, *Report of the independent review on the health of the reformed military justice system*, Military Justice System Review, Canberra, 2009.

Working Party on Defence Force Disciplinary Code, 'Defence Force Disciplinary Code: report of 1973 Working Party', report presented to the Department of Defence, December 1973.

Documents relating to minors in the ADF

Extract of Chapter 4, Defence, Ausstats ABS military (1970). TF 1110565614 Australia, Senate, Notice Paper Question No. 1494 (42nd Parliament), Schedule No. 160: Australian Defence Force, 17 August 2009.

See also: Australia, Senate, *Debates*, no. 9, 2009, pp. 5110-1, viewed 6 October 2011, <<http://www.aph.gov.au/hansard/senate/dailys/ds170809.pdf>>.

Dean, MJ (ADMPP), 'Management of under-age personnel in the ADF: service waivers to recruits under 17 years of age', brief for HPP and HPC, 3 June 2009.

Department of Defence, 'Defence Explosive Ordnance Training School Standing Instructions DEOTS SI (PERS) 11-1: Management of minors and vulnerable personnel', 18 January 2011.

Department of Defence, *Defence Instruction (Army) DI(A) PERS 9/2006: Waivers of entry requirements and provisional entry*, Department of Defence, Army Headquarters, Canberra, 2 November 2006.

Department of Defence, *Defence Instruction (General) DI(G) PERS 33-4: Recruitment and employment of members under 18 years in the Australian Defence Force*, Department of Defence, Canberra, 28 June 2002.

Department of Defence, *Defence Instruction (General) DI(G) PERS 33-4 AMDT No. 1 Complete revision: Recruitment and employment of members under 18 years in the Australian Defence Force*, cancelled, Department of Defence, Canberra, 4 July 2005.

Department of Defence, *Defence Instruction (General) DI(G) PERS 33-4 AMDT No. 2 Complete revision: Management and administration of Australian Defence Force members under 18 years of age*, Department of Defence, Canberra, 22 April 2008.

Department of Defence, 'Preface' and 'Part 1: Policies and procedures affecting all members of the regular army', in *Manual of Personnel Administration*, [Department of Defence], [Canberra], n.d. [unable to verify], Jones, RK (Commanding Officer, No. 1 Recruit Training Unit), '1RTU Standing Instructions PERS 35-16: Management of recruits under the age of 18 at 1RTU', 29 April 2011.

Senate and Joint Standing Committee on Foreign Affairs, Defence and Trade and related documents

'Army submission to the Parliament of the Commonwealth of Australia Joint Committee on Foreign Affairs, Defence and Trade inquiry into personnel wastage rates in the Australian Defence Forces', April 1988.

Australia, 'Responses to the specific recommendations in the Joint Committee on Foreign Affairs, Defence and Trade report on 'Personnel wastage in the Australian Defence Force', 11 May 1989.

Department of Defence, *Government response to the report on Rough justice?: an investigation into allegations of brutality in the army's parachute battalion by the Joint Standing Committee on Foreign Affairs, Defence and Trade*, Department of Defence, n.p., 2002.

Department of Defence, 'Government response to the Senate Foreign Affairs, Defence and Trade References Committee report on the effectiveness of Australia's military justice system', October 2005, <http://www.aph.gov.au/Senate/committee/fadt_ctte/completed_inquiries/2004-07/miljustice/gov_response/gov_response.pdf>.

Department of Defence, *Submission to Defence Sub-Committee of the Joint Committee on Foreign Affairs, Defence and Trade inquiry into 'Personnel wastage rates in the Australian Defence Force'*, Department of Defence, n.p., April 1988.

Department of Defence, Air Force Office, 'Personnel wastage in the ADF: report and recommendations', AF86/29142 Pt6, Department of Defence, Air Force Office, Canberra, 25 November 1988.

Government response to Facing the future together: report on sexual harassment in the Australian Defence Force by the Senate Standing Committee on Foreign Affairs, Defence and Trade, (G Jones, chairman), Australian Government Publishing Service, Canberra, 1994.

Government response to the report on military justice procedures in the Australian Defence Force by the Joint Standing Committee on Foreign Affairs, Defence and Trade, tabled 5 April 2001, n.p., 2001.

Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into military justice procedures in the Australian Defence Force*, (DJ MacGibbon, chairman), report no. 89, tabled 21 June 1999, Parliament of the Commonwealth of Australia, Canberra, 1999, viewed 7 October 2011, <<http://www.aph.gov.au/house/committee/jfadt/military/reptindx.htm>>.

Joint Standing Committee on Foreign Affairs, Defence and Trade, *Rough justice?: an investigation into allegations of brutality in the army's parachute battalion*, Parliament of the Commonwealth of Australia, Canberra, 2001, viewed 30 September 2011, <http://www.aph.gov.au/house/committee/jfadt/DOD_Rept/MJindex.htm>.

Senate, Foreign Affairs, Defence and Trade Legislation Committee, *Reforms to Australia's military justice system: first progress report*, (D Johnston, chair), Senate Foreign Affairs, Defence and Trade Committee, Canberra, 2006, viewed 7 October 2011, <http://www.aph.gov.au/Senate/committee/fadt_ctte/legmiljustice/report01/index.htm>.

Senate, Foreign Affairs, Defence and Trade References Committee, *The effectiveness of Australia's military justice system*, (S Hutchins, chair), Foreign Affairs, Defence and Trade References Committee, Canberra, 2005, viewed 7 October 2011, <http://www.aph.gov.au/Senate/committee/fadt_ctte/completed_inquiries/2004-07/miljustice/report/index.htm>.

Senate, Standing Committee on Foreign Affairs and Defence, *Report on the Australian Army*, Parl. paper 280 of 1974, Govt. Printer, Canberra, 1975.

Senate, Standing Committee on Foreign Affairs, Defence and Trade, *Reforms to Australia's military justice system: second progress report*, (D Johnston & M Payne, chair), Senate Foreign Affairs, Defence and Trade Committee, Canberra, 2007, viewed 7 October 2011, <http://www.aph.gov.au/Senate/committee/fadt_ctte/legmiljustice/report02/index.htm>.

- Senate, Standing Committee on Foreign Affairs, Defence and Trade, *Reforms to Australia's military justice system: third progress report*, (M Payne, chair), Senate Foreign Affairs, Defence and Trade Committee, Canberra, 2007, viewed 7 October 2011, <http://www.aph.gov.au/Senate/committee/fadt_ctte/legmiljustice/report03/index.htm>.
- Senate, Standing Committee on Foreign Affairs, Defence and Trade, *Reforms to Australia's military justice system: fourth progress report*, (M Bishop, chair), Senate Foreign Affairs, Defence and Trade Committee, Canberra, 2008, viewed 7 October 2011, <http://www.aph.gov.au/Senate/committee/fadt_ctte/legmiljustice/report04/index.htm>.
- Senate, Standing Committee on Foreign Affairs, Defence and Trade, *The incidence of sexual harassment or sexual assault in the Royal Australian Navy and the other armed forces: official Hansard report*, (G. Jones, chairman), 9 vols., Standing Committee on Foreign Affairs, Defence and Trade, Canberra, 1994.
- Senate, Standing Committee on Foreign Affairs, Defence and Trade, *Sexual harassment in the Australian Defence Force: facing the future together*, Standing Committee on Foreign Affairs, Defence and Trade, Canberra, 1994.
- Simmons, D (Minister for Defence Science and Personnel), 'Ministerial statement in response to the 'Personnel wastage in the Defence Force' report of 10 December 1988 by the Defence Subcommittee of the Joint Committee on Foreign Affairs, Defence and Trade', ministerial statement, 11 May 1989.
- Answers to Questions: Senate Foreign Affairs, Defence and Trade Legislation Committee, Estimates: Official Committee Hansard, (November 2003).
- Senate Foreign Affairs, Defence and Trade Legislation Committee, *Estimates: Official Committee Hansard*, (November 2003).

Media reports and websites

- Bumiller, E, 'Sex assault reports rise in military', *New York Times*, 16 March 2010, viewed 4 October 2011, <<http://www.nytimes.com/2010/03/17/us/17assault.html>>.
- Farouque, Farah, 'Judge calls for Sex Trials Rethink', *The Age*, 8 September 2011, viewed 9 September 2011 <http://www.theage.com.au/victoria/judge-calls-for-sex-trials-rethink-20110907-1jxup.html>.
- Feeney, D (Parliamentary Secretary for Defence) 'Cadet election commitment fulfilled', media release, 18 August, Department of Defence, Canberra, 2011, viewed 4 October 2011, <<http://www.minister.defence.gov.au/2011/08/18/parliamentary-secretary-for-defence-cadet-election-commitment-fulfilled/>>.
- Geddes, J, Nolen, S & Nicol, J, 'Military response to rape charges', *The Canadian Encyclopaedia*, 8 June 1998, viewed 4 October 2011, <<http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=M1ARTM0011718>>.
- Hurley, General David, AC DSC, Chief of Defence Force, *Defence Magazine*, Issue 2, 2011, 30 May 2011, p. 16.
- McCaskill, C, 'A scary number: 3,000 military sexual assaults', *The Huffington Post*, 13 June 2011, viewed 4 October 2011, <http://www.huffingtonpost.com/claire-mccaskill/a-scary-number-3000-milit_b_876001.html?ir=Crime>.

McClelland, R (Attorney-General), 'Statement from the Attorney-General: Queensland case involving US navy officer', media statement, 17 August, The Attorney-General, Canberra, 2011, viewed 4 October 2011, <<http://www.robertmcclelland.com.au/2011/08/17/media-statement-statement-from-the-attorney-general-queensland-case-involving-us-navy-officer/>>.

'Report finds relatively high rate of sex abuse in Canada's military: assaults on children, child pornography most common', *Macleans.ca*, 18 January 2011, viewed 4 October 2011, <<http://www2.macleans.ca/2011/01/18/report-finds-relatively-high-rate-of-sex-abuse-in-canada%E2%80%99s-military/>>.

Smith, The Hon Stephen, MP, Minister for Defence, *Media Release*, 11 April 2011, <<http://www.minister.defence.gov.au/2011/04/11/sex-discrimination-commissioner-to-lead-review-of-the-australian-defence-force-academy-and-the-australian-defence-force/>>.

US Army, SHARP Program: Sexual Harassment/Assault Prevention and Response, I. A.M. STRONG, viewed 31 May 2011 <<http://www.sexualassault.army.mil>>.

'US veterans say military fails in rape claim inquiries', *BBC News: US & Canada*, 15 February 2011, viewed 4 October 2011, <<http://www.bbc.co.uk/news/world-us-canada-12469368>>.

'Victims too frightened to report sexual assault', *Canberra Times*, 19 July 2011

Department of Defence: Defence Instructions (General) Personnel, Defence Instructions (General) Administration, Defence Instructions (Air Force) Personnel and Defrags

Department of Defence Instructions (General) Personnel

Department of Defence, DI(G) PERS 03-4 - *Management Initiated Early Retirement and termination of service in the Australian Defence Force* (issued 19 December 2003).

Department of Defence, DI(G) PERS 16-20 - *Privacy of health information in Defence* (issued 30 July 2008).

Department of Defence, DI(G) PERS 26-2 - *ADF policy on religious practices of Australian Defence Force Members* (issued 19 December 2002).

Department of Defence, DI(G) PERS 34-1—*Redress of Grievance -Tri Service Procedure* (issued 8 September 2010).

Department of Defence, DI(G) PERS 34-2—*Complaints of discrimination and harassment through the Australian Human Rights Commission* (issued 18 April 2009).

Department of Defence, DI(G) PERS 34-3—*Inquiries and investigations by the Commonwealth Ombudsman and the Defence Ombudsman* (issued 10 February 2009).

Department of Defence, DI(G) PERS 34-4—*Use and Management of Alternative Dispute Resolution in Defence* (issued 27 June 2003).

Department of Defence, DI(G) PERS 35-2—*Application of the Sex Discrimination Act to the Australian Defence Force* (issued 3 November 1986).

Department of Defence, DI(G) PERS 35-3 - *DMAL Aspects - Policy on Handling Sexual Offences & Sexual Assault - Reporting and Confidentiality*.

Department of Defence, DI(G) PERS 35-4—*Management and Reporting of Sexual Offences* (issued 11 February 2004).

Department of Defence, DI(G) PERS 35-5—*Defence multicultural policy* (issued 15 August 2002).

Department of Defence, DI(G) PERS 35-6—*Formal Warnings and Censures in the Australian Defence Force* (issued 16 July 2010).

Department of Defence, DI(G) PERS 35-7—*Defence Equity Advisor Network* (issued 9 May 2003).

Department of Defence, DI(G) PERS 36-3—*Inherent requirements of service in the Australian Defence Force* (issued 9 November 2009).

Department of Defence, DI(G) PERS 42-3—*Defence Community Organisation* (issued 4 October 1986).

Department of Defence, DI(G) PERS 45-1—*Jurisdiction Under Defence Force Discipline Act - Guidance for Military Commanders* (issued 17 February 1999).

Department of Defence, DI(G) PERS 45-4 -*Australian Defence Force Prosecution Policy* (issued 29 August 2000).

Department of Defence, DI(G) PERS 45-5 - *Defence Whistleblower Scheme* (issued 1 July 2002).

Department of Defence, DI(G) PERS 50-1—*Equity and Diversity in the Australian Defence Force* (issued 18 October 2001).

Department of Defence, DI(G) PERS 55-4- *Reporting, recording and dealing with Civil Offences, Service and Civil Convictions and Diversionary Programs* (issued 25 November 2006).

Department of Defence Instructions (General) Administrative

Department of Defence, D(I) G ADMIN 0-0-001*The System of Defence Instructions* (issued 26 March 2007).

Department of Defence, DI(G) ADMIN 10-8- *Conduct Reporting and Tracking System* (issued 10 July 2008).

Department of Defence, DI(G) ADMIN 45-2 *The reporting and management of notifiable incidents* (issued 26 March 2010).

Department of Defence, DI(G))ADMIN 58-1—*Authority in an Integrated Defence Organisation* (issued 25 August 2006).

Department of Defence, DI(G) ADMIN 61-1 *Inspector-General of the Australian Defence Force - role, functions and responsibilities* (issued 27 August 2003).

Department of Defence, DI(G) ADMIN 67-2- *Quick Assessment* (issued 7 August 2007).

Defence Instructions (Air Force) Personnel

Department of Defence, DI(AF) PERS 4-19 *Administrative Sanctions in the Royal Australian Air Force*, (issued 15 October 2007).

Defgrams

Department of Defence, Information DEFGRAM No 284/2011 – *Review of Management of allegations of unacceptable behaviour* (issued 10 May 2011).

Department of Defence, Information DEFGRAM No 385/2011 – *Change to procedures advised in DEFGRAM 284/2011 Review of Management of allegations of unacceptable behaviour* (issued 10 June 2011).

Department of Defence, Information DEFGRAM No 453/2011 - *The System of Defence Instructions revised business process* (issued 4 July 2011).

Department of Defence, Information DEFGRAM 571/2011 *Removal of interim policy and information DEFGRAMs from the System of Defence Instructions* (issued 23 August 2011).

Department of Defence, Information DEFGRAM No 625/2011 *Launch of the Administrative Inquiries Officer Familiarisation Court on CAMPUS* (issued 13 September 2011).

United States Department of Defense documents

US Department of Defense, *Defense Manpower Data Centre 2010 Service Academy Gender Relations Survey*, DMDC Report No. 2010-023 (December 2010).

US Department of Defense, *Defense Manpower Data Centre 2010 Workplace and Gender Relations Survey of Active Duty Members*, DMDC Report No. 2010-025 (March 2011).

US Department of Defense, *Report of the Defence Task Force on Sexual Assault in the Military Services* (December 2009).

US Department of Defense, *Response to the Report of the Defence Task Force on Sexual Assault in the Military Services* (May 2010).

US Department of Defense, Directive 6495.01, *Sexual Assault Prevention and Response Program* (as at 6 June 2011).

US Department of Defense, *Annual Report on Sexual Assault in the Military Fiscal Year 2010* (March 2011).

US Department of Defense, *Annual Report on Sexual Harassment and Violence at the Military Service Academies—Academic Program Year 2009-2010* (December 2010).

US Department of Defense, Army Regulation 600-20, *Army Command Policy* (November 2009).

Materials relating to ADF codes of conduct

Army

Army Training Instruction 1-19/10: Codes of conduct for instructors and trainees, current as at 30 August 2011.

Gillespie, KJ (Chief of Army) and Morrison, DL (Chief of Army Designate), *Army Submission into the Review of ADF Personal Conduct*, 24 June 2011.

Navy

HMAS CERBERUS: Code(s) of Conduct (2003).

HMAS CERBERUS: Code(s) of Conduct (2004).

HMAS CERBERUS: Code(s) of Conduct (2005).

HMAS CERBERUS: Code(s) of Conduct (2006).

HMAS CERBERUS: Code(s) of Conduct (2007).

HMAS CERBERUS: Code(s) of Conduct (2008).

HMAS CERBERUS: Code(s) of Conduct (2009).

HMAS CERBERUS: Code(s) of Conduct (2010).

HMAS WATSON: Code of Conduct (2008).

HMAS WATSON: Code of Conduct (2010).

Navy values: serving Australia with pride (September 2009 – present).

The Royal Australian Navy: leadership ethic (1 June 2010 – present).

Royal Australian Navy Recruit School, *Recruit School code of conduct*, Royal Australian Navy Recruit School, n.p., n.d. [unable to verify - Defence indicates that this is not a current document].

HMAS ALBATROSS, Base instruction: appropriate leadership and behaviour for military personnel (17 June 2011 – present).

ADF Physical Training School: Student Responsibilities, Discipline and Bearing (current).

Mine Warfare Faculty: Code of Conduct (current).

The Royal Australia Naval College, Trainee Code of Conduct (current).

The Royal Australia Navy, Instructors Professional Code of Conduct (current).

Royal Australian Navy, Diving School: Code of Conduct (current).

Royal Australian Navy, Hydrographical School: Code of Conduct (current).

Training Authority Submarines (TASM): Instructor Code (current).

Training Authority Submarines (TASM): Trainee Code (current).

Air Force

SATC Code of Conduct for Air Traffic Control Training (2011).

Air Command Training: Codes of Conduct (2009).

Commandant RAAF College: Commanders Appreciation and Intent (2010).

RAAF Security and Fire School: Instructor's Code of Conduct (2010).

RAAF Security and Fire School: Student Code of Conduct (2010).

RAAF Security and Fire School: Trainees' Code of Conduct (2010).

Officers' Training School Plan (2010-2013).

Commandant RAAF College: Command Philosophy (2011).

1 Recruitment Training Unit Recruit Code of Conduct (2011).

1 Recruitment Training Unit Staff Code of Conduct (2011).

SATC Code of Conduct for Military Air Traffic Control Training (2005 to present).

Instructor Learning Outcomes: Appropriate Instructor Attributes, n.d. [unable to verify - Defence indicates that this is not a current document].

Submission to the ADF Personal Conduct Review: Air Force (current).

ADFA

Australian Defence Force Academy: Student Code (2005).

Australian Defence Force Academy: Cadet Attributes (2006).

Australian Defence Force Academy: Staff Code (2006).

Australian Defence Force Academy: Staff Code (current).

Files provided by Defence to the Review

Defence File 2000.14071.2, Equity and Diversity (Issues and Policy).

Defence File 2001.14071.2, Department of Defence, Equity and Diversity (Issues and Policy).

Defence File 2002.14490.1, Sexual Harassment and Sexual Offences in the ADF.

Defence File 2009.1040970.1, CDF Military Justice Inquiry, Burchett QC, Submission 006, Northwood, COL Ken.

Defence File 2010.1047037.1, ADFA Admin and Office Organisation Senate Inquiry.

Defence File 93.25604.p13, HMAS SWAN, Sexual Harassment, Senate Inquiry.

Defence File 93.26131.p17, Report into Sexual Harassment in the Australian Defence Force.

Defence File 93.27375.p6, Inquiry into Sexual Harassment in the ADF, DPP-A Aspects.

Defence File 93.27375.p8, Inquiry into Sexual Harassment in the ADF, DPP-A Aspects.

Defence File 93.27375.p10, Inquiry into Sexual Harassment in the ADF, DPP-A Aspects.

Defence File 93.27375.p11, Inquiry into Sexual Harassment in the ADF, DPP-A Aspects.

Defence File 94.24989.p2, Navy response to Senate Inquiry into Sexual Harassment in the ADF.

Defence File 94.24989.p3, Navy response to Senate Inquiry into Sexual Harassment in the ADF.

Defence File 94.26916.p1, Response to Recommendations on Report into Sexual Harassment in the Australian Defence Force.

Defence File 94.26916.p2, Response to Recommendations on Report into Sexual Harassment in the Australian Defence Force.

Defence File 94.27364.p1, Report into Sexual Harassment in the Australian Defence Force.

Defence File 98.13742.p2, Review of Sexual Harassment and Assault at the Australian Defence Force Academy (ADFA), Interview Transcripts, 1997/98, DEO Aspects.

Defence File 98.13742.p5, Review of Sexual Harassment and Assault at the Australian Defence Force Academy (ADFA), Interview Transcripts, 1997/98, DEO Aspects.

Defence File 98.22438.p1, Review of Policy & Procedures to Deal with Sexual Harassment and Sexual Offences at the Defence Force Academy.

Defence File 98.8315.p1, Investigation of Defence Force Discipline Act (DFDA), Service Offences & Sexual Assault by Civilian State Police or Australian Federal Police (AFP), Jurisdictional Issues, DLO Aspects.

Defence File 99.30762.p1, Review of Disciplinary and Administrative Policy & Processes and Practices (Including MIER) in dealing with Cases of Unacceptable Behaviour in the ADF, DLO Aspects.

Defence File 97.39223.3, Review of Sexual Harassment and Assault at the Australian Defence Force Academy, Submissions, 1997/98, Defence Equity Organisation Aspects.

Defence File 97.43088.1, Review of Sexual Harassment and Assault at the Australian Defence Force Academy, Corp of Officer Cadets (COOC) Survey, 1997/98, DEO Aspects.

Defence File 94.26720.3, Senate Report on Sexual Harassment, Implementation, Legal Services Branch Aspects.

Defence File 92.7438.1, Comments on Draft DI on Unacceptable Sexual Behaviour.

Defence File 94.26720.1, Senate Report on Sexual Harassment, Implementation, Legal Services Branch Aspects.

Defence File 94.26720.2, Senate Report on Sexual Harassment, Implementation, Legal Services Branch Aspects.

Defence File 98.10772.1, Sexual Harassment Surveys of Training Institutions, 1998/99.

Defence File 98.13749.1, Review of Sexual Harassment and Assault at the Australian Defence Force Academy (ADFA), Management of Complaints, 1997/98, DEO Aspects.

Defence File 98.13749.2, Review of Sexual Harassment and Assault at the Australian Defence Force Academy, Management of Complaints, 1997/98, DEO Aspects.

GNDL