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

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 Report 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.

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 De-seal/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.

---


\(^6\) 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.