

Dear Senator Xenophon and Dr Dermody:

To Senator Xenophon, congratulations and thank you for the fine efforts outlined in your letter to the Hon Stephen Smith.

The following is submitted to you as much for assisting the causes of the victims of Defence abuses as for informing the Senate Inquiry:

- a. Release of Claimant Information: In regard to the matter you raise in Point 3 under this heading in your letter, after several approaches on our part to DLA Piper (who had deemed me and the abuses perpetrated on me and my companies as being “*out of scope*”), I was sent the standard ‘*Authority and Consent to Release*’ document. The executed version of this form, as amended, is attached.

As you can see, I requested copies of all the data and information also be sent to me. I figured since this materiel was being sent to the DART, little if any additional burden on the Commonwealth’s purse would arise from also sending me copies.

I am happy to advise that I was told today by DLA Piper staff that the data and information I have sought has been collated and only awaits “*being settled by one of the firm’s senior lawyers*” before being despatched to me.

The appended eMail to DART Executive Director, Mr Matt Hall, is to make the DART aware, *inter alia*, they will be receiving these data and information, if they haven’t already.

- b. Access to Independent Legal Advice: This is only fair as well as just and, rightly, is in keeping with the great Australian ethos of “*a fair go*”. Am surprised no-one in Defence or the Government seems to have thought of this, let alone included appropriate directions in the Terms of Reference for the DART.

Since, in such matters, “*time is of the essence*”, I sincerely hope the Defence Minister and his staff correct this oversight, forthwith. I would very much appreciate being advised when they do.

- c. Costs of DART and Proposed Compensation Scheme: Being quite familiar with the types of abuses perpetrated and perpetuated by Defence personnel, particularly by senior Defence Portfolio officials, the proposed compensation scheme capped at \$50,000 will be seen by

many if not most as, yet again, a perpetuation of the abuses they have suffered, many of which are seen to have resulted from Defence being empowered by Government to be “the Prosecution and Defence, Judge and Jury, Chief Appeals Judge, and the Executioner as well as the Father/Confessor/Pardoner of those who perpetrate and perpetuate abuses, in the first place”. Australian honours and awards such as the Order of Australia were not designed nor intended as tools for covering up misfeasance nor malfeasance.

As for the costs, the burden on the Australia people arising from the abuses perpetrated and perpetuated by Defence personnel, particularly the senior Defence Portfolio officials ultimately responsible, has already been great.

Why should those responsible be made to pay or, at the very least, be required to contribute in order to defray the costs borne by the Australian people?

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

Firstly, there are all the costs associated with the perpetration and perpetuation of the abuses, in the first place, combined with the costs of the moribund and dysfunctional way the resulting complaints were mishandled.

Secondly, there will be the costs associated with the DART's and Department of Attorney General activities and all that will entail.

Finally, if these costs are to come out of the Defence Budget, only, then there is the commensurate reduction in the Defence Department funding for ensuring and assuring the defence and security of our sovereign nation and its people.

Most if not all of the perpetrators and perpetuators of abuses in Defence have been handsomely remunerated and will have equally handsome benefits, allowances and post separation incomes (e.g. pensions, superannuation, etc.).

Why shouldn't those responsible for the abuses in Defence be held accountable for their acts and omissions as well as made to contribute, at the very least, into a suitable fund set up to provide appropriate compensation to the victims of their abuses? Naturally, such a fund would be quarantined from the operating costs of the DART as well as the plethora of inordinately costly legal and other consultants such government activities attract.

Hoping this submission proves useful.

Yours Sincerely,

Peter Goon

To: Mr Matt Hall
Executive Director
Defence Abuse Response Task Force

Dear Mr Matt Hall:

My name is Peter Goon. The DLA Piper Reference Nos provided to me are

Back in early December last, the attached "Authority and Consent to Release Information" was executed and provided to enable DLA Piper to despatch to the Task Force all the information pertaining to me and my matters that they have in their files.

I am writing to enquire as to whether the Defence Abuse Response Task Force has received, from DLA Piper, the information covered by this release.

If not, could you please advise me when these data and information are received by the DART?

I realise you are likely very busy but look forward to a response at your earliest.

Yours sincerely,

Peter Goon

Peter Goon



Authority and Consent to Release Information

I, Peter Anthony Goon

_____ (DLA Piper reference no)

authorise and direct DLA Piper to release to the Australian Attorney-General's Department all information that was considered as part of the Review of Allegations of Sexual and Other Abuse in Defence in relation to my communications with the Minister for Defence, the Department of Defence or DLA Piper.

I **consent** to the Australian Attorney-General's Department providing that information to the Taskforce which will be established to facilitate appropriate action in response to my communications.

I further **agree and consent** to that information being provided to any other Agency and or person it is necessary to provide the information to for the work of the Taskforce in facilitating an appropriate response to my communications.

I also **agree and consent** to my relevant personal information held by any Agency, such as the Department of Defence, being provided to the Taskforce or to any other Agency or person it is necessary to provide the information to for the work of the Taskforce in facilitating an appropriate response to my communications.

I **understand and acknowledge** that this consent is given despite any previous consent given by me in relation to the use of that information and is for the purposes described above.

In providing this consent, I also request and require copies of all the information to which this Authority and Consent applies also be sent to me, care of the above address.

Signed

Date: _____

Notes: The Attorney-General's Department and the Taskforce will comply with the *Privacy Act 1988* and all other laws in dealing with the information provided to the Minister, the Department of Defence or DLA Piper, or pursuant to this Authority and Consent to Release Information.

Please complete and return to DLA Piper by email to Defence.Inquiry@dlapiper.com or by post to:

DLA Piper
Reply Paid 172
CANBERRA ACT 2601



NICK XENOPHON
Independent Senator for South Australia
AUSTRALIAN SENATE

Our ref: NC-SMI/SKM

The Hon Stephen Smith MP
Minister for Defence
Parliament House
Canberra ACT 2600

URGENT BY EMAIL: defence.minister@defence.gov.au

Dear Minister

RE: The Government's response to the DLA Piper Review

I refer to your recent announcement to establish an independent Taskforce, headed by the Honourable Len Robert Smith, RFD, QC to address issues of sexual abuse and other matters identified in the DLA Piper Australia ('DLA Piper') *Review into Allegations of Sexual and other forms of Abuse in Defence*.

It has recently been brought to my attention that DLA Piper has forwarded letters to alleged victims that contributed to the DLA Pipers' report seeking for them to provide their consent and authorisation to release information held by DLA Piper to the Attorney-General's department and any other agency working in conjunction with the Taskforce. A copy of this letter is attached.

I have considerable concern in relation to not only the letter but also the limitations of the Taskforce as follows:

Release of claimant information

DLA Piper seeks the authority and consent of complainants to release to the Attorney General all information in relation to that person's claim so that it can be provided to the Taskforce. The issues in respect of the release of information are as follows:

1. This information is being used to determine how a person's matter will be handled in future. (For example, whether it will be the subject of police investigation, restorative justice processes or compensation.)

Claimants should be made aware DLA Piper and its predecessor Phillips Fox have long been a preferred supplier of legal services to the ADF. For instance it has been reported in the 2010-11 financial year that DLA Piper

received in the vicinity of \$20 million in fees from the ADF. DLA Piper is also a member of all 15 legal panels relied on by the ADF.

Furthermore, DLA Piper regularly acts for the ADF in compensation claims where the ADF seeks to challenge applicants making claims for compensation.

Based on the above, how do you propose that any potential or perceived conflicts of interest could be dealt with appropriately to give full confidence to victims?

2. There is great uncertainty as to how the Taskforce will operate as the scope and operating procedures have not been established.
3. Claimants have not been provided with access to the information that DLA Piper is now proposing to forward to the Taskforce. In fact, I am advised DLA Piper is telling Claimants they are prohibited from receiving this information.

Given DLA Piper have made a recommendation with respect to each allegation, each claimant should be given access to this information before being asked for their consent to share it with the Taskforce.

4. At no time through the process has there been any recommendation that Claimants obtain independent legal advice before providing information to the DLA Piper Inquiry or now in relation to the release and Authority.
5. I am concerned the Taskforce will be compromised if it has access to the DLA Piper records. Whilst the DLA Piper report is a significant document and it confirms the systemic failures in the ADF that led to the abuse occurring, there remains a potential conflict of interest with the DLA Piper records.

Access to independent legal advice

Alleged victims to date have received no independent legal advice in their communications with DLA Piper and now with the Taskforce. This is in contrast to the Defence F-111 Deseal/Reseal Inquiry and the Bundaberg Hospital Scheme (both mentioned in DLA Piper Review) which provided complainants with access to their own independent legal advice.

Further, I am aware that alleged perpetrators or people potentially adversely affected by the Taskforce and who are currently serving will be entitled to have Reserve Legal Officers appointed to represent them and their fees will be fully paid by the Commonwealth. Why then shouldn't the complainants be entitled to have their own independent legal representation?

The proposed compensation scheme

In relation to the Compensation Scheme being proposed it is important to note that the DLA Piper report reviewed a number of options in relation to dealing with the complaints which included criminal compensation schemes, Catholic Church Abuse Complaints, the F-111 Deseal/Reseal program and the Bundaberg hospital Scheme.

Of these options the Government chose a compensation scheme with a cap of \$50,000 based on a criminal compensation scheme. I am concerned that this decision is based on economics and not one designed to bring about justice for victims.

For instance, the DLA Piper report comments that compensation is difficult because of the "costs involved, difficulties establishing liability and eligibility". This is in contrast to the findings of the Review that acknowledges that there has been systemic failures making liability and eligibility easily proved.

Indeed religious institutions in the past have made similar decisions based on similar investigations and implemented compensation schemes more generous than what is being proposed and yet they have criticised for their actions by the Government.

During your interview with Leigh Sales of the ABC on 26 November 2012 you advised that the capped compensation scheme of \$50,000 "would not in any way detract from the capacity of the individual to take other action by way of a civil claim either against an alleged perpetrator or indeed against the Commonwealth itself". Given your remarks, can you advise that the Commonwealth will not rely on any limitation or procedural defence to preclude any such claims.

Given the above I seek your urgent confirmation of the following:

1. That the DLA Piper letter be withdrawn and that all Claimants that have received the letter be notified that DLA Piper will have no further involvement with the Taskforce other than providing contact names and addresses of all those that have made a complaint.
2. That the Taskforce upon receiving the addresses from DLA Piper write to each individual explaining the role of the Taskforce and providing them with the option of obtaining independent legal and counselling advice in relation to dealing with the Taskforce.
3. That the Commonwealth confirm that it will fund individuals to obtain independent legal advice on the same basis that people adversely affected by the Inquiry and that are currently serving to the ADF would be entitled.
4. Confirm that the Compensation Scheme will be reviewed so that it is not based on a criminal compensation scheme and acknowledges that the offences occurred in the workplace.

5. Confirm that if people wish to pursue a claim for damages, the Commonwealth will not rely on any procedural or limitation of action defences to defeat claims.
6. That the procedures of the taskforce will include a decision on liability such that DVA is bound by the finding and the claimant need not apply separately for an acceptance of their claim by DVA in order to avoid delay and repetitious procedures.

I look forward to receiving your urgent response.

Yours sincerely

NICK XENOPHON

18 / 12 / 2012