ALLIANCE OF DEFENCE SERVICE ORGANISATIONS

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Committee Secretary
Senate Foreign Affairs, Defence and Trade References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Dr. Dermody,

INQUIRY INTO DLA PIPER'S REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE, AND THE GOVERNMENT'S RESPONSE TO THE REPORT

This submission is made on behalf of the Alliance of Defence Service Organisations.

Background to the Alliance of Defence Service Organisations

The Alliance of Defence Service Organisations was formally constituted in July,2010. It was formed as a result of the constituent organisations' desire to work in a more cooperative and coordinated manner.

Membership of the Alliance comprises the Defence Force Welfare Association (DFWA), the Naval Association of Australia (NAA), the RAAF Association (RAAFA), The Royal Australian Regiment Corporation (RARC) and Australian Special Air Services Association (ASASA). The Australian Peacekeepers' and Peacemakers' Veterans' Association (APPVA) and the Vietnam Veterans' Association of Australia (VVAA) are partner associations.

The objective of the Alliance is to provide a stronger voice on issues impacting the conditions and wellbeing of currently serving and former members of the Australian Defence Force.

This important issue concerning a review of allegations of sexual and other abuse in Defence being considered by the Senate Foreign Affairs, Defence and Trade References Committee falls within the remit of the ADSO.

Addressing the issues

(a) The accessibility and adequacy of current mechanisms to provide support to victims of sexual and other abuse in Defence:

Comment:-

Defence's response to the DLA Piper Report was wide-ranging and all-encompassing. There is no doubt that the CDF and the Secretary have applied substantial resources to provide guidance and the mechanisms within Defence and the individual Services to deal with sexual abuse issues.
Having said that, it is apparent that difficulties remain with various instructions and systemic anomalies with regard to appointment of personnel to 'manage' these issues which will persist within the Navy, Army and Air Force simply because of the 'close-knit' environment that exists.

ADSO recognizes that irrespective of instructions put in place sexual abuse continues in a variety of institutions, whether they be Universities, Churches, Schools, Institutions, or indeed the individual Services. ADSO also notes that many of the sexual abuse issues addressed in various investigations through the years, such as that dealing with HMAS LEEUWIN and young serving Defence personnel elsewhere may be examined in the Royal Commission announced by the Prime Minister.

It is worth pointing out some of the extraordinary difficulties involved in providing personnel such as a 'Case Manager' outlined in the Defence Instruction (General) which provides management instructions for ADF serving personnel.

Extract from DI(G):-

"APPOINTMENT OF A CASE MANAGER

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

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

- This is a very good example of an instruction that should give no latitude - whatsoever. A Case Manager should be appointed at the very first opportunity. No discretion should be given. It should be mandatory that Case Managers be appointed.
- Who the Case Manager should be and the access that they have to the individual parties is difficult. Finding a 'compassionate but impartial person' would seem to be an easy 'ask' – regrettably within the Services, most personnel are either friendly with or know each other in some way or another.

It is for these reasons and many others that the ADSO supports the establishment of a specialist Sexual Abuse Unit within Defence, preferably within the ADFIS, to deal specifically with these issues as they arise. This unit would need to have appropriate personnel to deal with the forensic issues involved and the ability to co-opt specialist assistance to manage forensic issues when needed. This would be particularly important with regard to allegations of sexual harassment and other sexually-based complaints.

The establishment of this unit is necessary to manage Defence Force Units who are serving away from the Australian mainland where initial referral may not be to Local Police. Investigation of sexual harassment and other issues falling short of criminal matters would be investigated by this unit which would be considered to be the 'expert' when any matter involving sexual abuse is reported. It is envisaged that sexually-based crime continue to be handed over to the relevant State and Territory Police Forces or that an alternative arrangement be investigated to cover the entire ADF using the Australian Federal Police universally.
Instructions already provide that the ADFIS be informed irrespective of the wishes of victims.

Difficulties with investigations are supported by the following paragraph in the DI(G):

"65. General/administrative inquiries under the Defence (Inquiry) Regulations 1985, or Defence Inquiry Regulations **are not** to be used to investigate sexual offences. The Defence Force Ombudsman has found that administrative inquiries do not provide adequate protection to respondents and have the potential to undermine later criminal or disciplinary proceedings. If, during the course of an administrative inquiry into another issue, a sexual offence is discovered or suspected, further investigation of the offence should be suspended immediately and the provisions of this Instruction applied."

It is clear that any investigation should be handed over to one central expert authority. Whether that authority is within Defence or external to it, is a matter for Government; however it is the ADSO view that full confidence should be extended to Defence to manage this issue. It is recognized that contemporary requirements and societal views regarding sexual abuse and offences have changed and may be different to those views that existed in the recent and distant past. It should also be recognized that the Australian Defence Force and other organizations may not have operated at as high a level of accountability and professionalism as they do today.

Support, Rehabilitation and Treatment

The Military Rehabilitation and Compensation Act 2004 has established various Statements of Principle with respect to ongoing disabilities that may have been suffered by victims of sexual abuse. Chief among them is a disability called 'Acute Stress Disorder'. There are others.

The Statement of Principle for Acute Stress Disorder is reproduced under:-

"For the purposes of this Statement of Principles, 'acute stress disorder' means a psychiatric condition that meets all of the following diagnostic criteria (derived from DSM-IV-TR):
(A) the person has been exposed to a traumatic event in which both of the following were present:

Page 1 of 5 of Instrument No. 33 of 2007:

(1) the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others; and
(2) the person's response involved intense fear, helplessness, or horror; and

(B) either while experiencing or after experiencing the distressing event, the individual has three (or more) of the following dissociative symptoms:
(1) a subjective sense of numbing, detachment, or absence of emotional responsiveness;
(2) a reduction in awareness of his or her surroundings (e.g., "being in a daze");
(3) derealization;
(4) depersonalization;

(5) dissociative amnesia (i.e., inability to recall an important aspect of the stressor); and

(C) the traumatic event is persistently re-experienced in at least one of the following ways: recurrent images,thoughts, dreams, illusions, flashback episodes, or a sense of reliving the experience; or the person is distressed on exposure to reminders of the traumatic event; and

(D) marked avoidance of stimuli that arouse recollections of the trauma (e.g., thoughts, feelings, conversations,activities, places, people); and

(E) marked symptoms of anxiety or increased arousal (e.g.,difficulty sleeping, irritability, poor concentration,hypervigilance, exaggerated startle response, motor restlessness); and

(F) the disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning or impairs the individual's ability to pursue some necessary task, such as obtaining necessary assistance or mobilising personal resources by telling family members about the traumatic experience; and

(G) the disturbance lasts for a minimum of 2 days and a maximum of 4 weeks and occurs within 4 weeks of the traumatic event; and

(H) the disturbance is not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication) or a general medical condition, is not better accounted for by Brief Psychotic Disorder (as described in DSM-IVTR), and is not merely an exacerbation of a pre-existing Axis I or Axis II disorder.

Basis for determining the factors

4. The Repatriation Medical Authority is of the view that there is sound medical-scientific evidence that indicates that acute stress disorder and death from acute stress disorder can be related to relevant service rendered by veterans, members of Peacekeeping Forces, or members of the Forces under the VEA, or members under the Military Rehabilitation and Compensation Act 2004 (the MRCA).

Factors that must be related to service

5. Subject to clause 7, at least one of the factors set out in clause 6 must be related to the relevant service rendered by the person.

Factors

6. The factor that must as a minimum exist before it can be said that a reasonable hypothesis has been raised connecting acute stress disorder or death from acute stress disorder with the circumstances of a person's relevant service is:
   (a) experiencing a category 1A stressor not more than four weeks before the clinical onset of acute stress disorder; or
   (b) experiencing a category 1B stressor not more than four weeks before the clinical onset of acute stress disorder; or
   (c) experiencing the traumatic death of a significant other not more than four weeks before the clinical onset of acute stress disorder; or
   (d) having a significant other who experiences a category 1A stressor not more than four weeks before the clinical onset of acute stress disorder; or
   (e) inability to obtain appropriate clinical management for acute stress disorder.

Factors that apply only to material contribution or aggravation

7. Paragraph 6(e) applies only to material contribution to, or aggravation of, acute stress disorder where the person's acute stress disorder was suffered or contracted before or during (but not arising out of) the person's relevant service.

Inclusion of Statements of Principles

8. In this Statement of Principles if a relevant factor applies and that factor includes an injury or disease in respect of which there is a Statement of Principles then the factors in that last mentioned Statement of Principles apply in accordance with the terms of that Statement of Principles as in force from time to time.

Other definitions

9. For the purposes of this Statement of Principles:

"a category 1A stressor" means one or more of the following severe traumatic events:

(a) experiencing a life-threatening event;
(b) being subject to a serious physical attack or assault including rape and sexual molestation; or
(c) being threatened with a weapon, being held captive, being kidnapped, or being tortured;

"a category 1B stressor" means one of the following severe traumatic events:

(a) being an eyewitness to a person being killed or critically injured;
(b) viewing corpses or critically injured casualties as an eyewitness;
(c) being an eyewitness to atrocities inflicted on another person or persons;
(d) killing or maiming a person; or
(e) being an eyewitness to or participating in, the clearance of critically injured casualties;

"a significant other" means a person who has a close family bond or a close personal relationship and is important or influential in one's life;

"an eyewitness" means a person who observes an incident first hand and can give direct evidence of it. This excludes a person exposed only to media coverage of the incident;

"death from acute stress disorder" in relation to a person includes death from a terminal event or condition that was contributed to by the person's acute stress disorder;

"DSM-IV-TR" means the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. Washington, DC, American Psychiatric Association, 2000;

"relevant service" means:

(a) operational service under the VEA;
(b) peacekeeping service under the VEA;
(c) hazardous service under the VEA;
(d) warlike service under the MRCA; or
(e) non-warlike service under the MRCA;

"terminal event" means the proximate or ultimate cause of death and includes:

(a) pneumonia;
(b) respiratory failure;
(c) cardiac arrest;
(d) circulatory failure; or
(e) cessation of brain function;

"traumatic death" means death due to homicide, suicide, an accident, or other violent or traumatic circumstances.

Application

10. This Instrument applies to all matters to which section 120A of the VEA or section 338 of the MRCA applies.

Date of effect

11. This Instrument takes effect from 7 March 2007.

Dated this twenty-second day of February 2007
The Common Seal of the)
Repatriation Medical Authority)
was affixed to this instrument)
in the presence of:)
KEN DONALD
CHAIRPERSON
Page 5 of 5 of Instrument No. 33 of 2007"

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

This process can take several months and may take a very long time depending on where the claim is assessed. In some cases the assessor in the Department of Veterans' Affairs, responsible for its progress, may simply be slow or the quantity of claims being dealt with at any given time may slow down determination of a particular claim.

No rehabilitation or compensation will be provided unless the claim is accepted.

The ADSO believes and recommends that a parallel system should be established in the Department of Veterans' Affairs to deal exclusively and specifically with sexual-abuse claim cases, if for no other reason other than the very personal nature of the claim and the necessity for these sorts of claims to be expedited in order to reduce the amount of stress suffered by the victim.

The ADSO experience of the Military Compensation and Rehabilitation officers charged with administering the rehabilitation side of the legislation in the Department of Veterans' Affairs is that the officers are usually first-class and helpful. Be this as it may, sexual assault victims involved in making claims for sexually-related disabilities will, we believe, be generally more fragile than the general Defence or Ex-Defence community and are deserving of delicate and special handling of their claims, hence the ADSO strongly supports the introduction of a special agency to handle these claims.

It is ADSO's understanding that the Department of Veterans' Affairs response to the DLA Piper Review was to set up a processing area within the Deputy Commissioner, Victoria's Melbourne office to deal with these issues. We believe that this unit should take on its own special identity and that specialized personnel man this space to enable it to respond to any sexually related claim for compensation, rehabilitation or treatment in an expeditious manner.

The ADSO strongly recommends that the Department of Veterans' Affairs be solely responsible for administering claims received with respect to Defence personnel.

Victims Advocacy Service

The Executive Summary in the DLA Piper Report was crisp in its description of the sexual abuses examined:

"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."

The ADSO and its member Defence and Ex-Service Organisations provide Advocacy and other Welfare services to members of the ADF and its members.

ADSO is not adverse to the establishment of a specific independent Victims Advocacy Service, but cautions that should such a service be introduced it should be truly 'independent' and be visibly separate from any Commonwealth department.

Communicating the moral and ethical requirement for people serving in Defence

The ADSO believes that it is essential to move the question of sexual abuse and the disciplinary and administrative management of these issues to a higher plane.

ADSO recognizes that each Service has attempted to raise the bar in recent years with respect to moral and leadership issues.

ADSO will use the Navy example and talk about the 'New Generation Navy' principles introduced by the former Chief of Navy, Vice Admiral Russ Crane. VADM Crane saw a need to sharpen the moral and ethical calibre of all members of the RAN. He introduced 'NGN' or 'New Generation Navy' principles to the RAN in an attempt to raise the bar across a range of moral and ethical behaviours. His successor Vice Admiral Ray Griggs has endorsed and continued to expand the process.

The Royal Australian Navy's states:-

Our vision is to be:
An Australian Navy renowned for excellence in service to the nation

Our vision is consistently interpreted and shared by all through our motto:
Navy - Serving Australia with Pride

Which we will deliver through our mission:
To fight and win at sea

We demonstrate what we stand for through our values:
Honour, Honesty, Courage, Integrity and Loyalty

We live our values through our signature behaviours:
1. Respect the contribution of every individual
2. Promote the wellbeing and development of all Navy people
3. Communicate well and regularly
4. Challenge and innovate
5. Be cost conscious

6. Fix problems, take action 8
7. Drive decision making down
8. Strengthen relationships across and beyond Navy
9. Be the best I can
10. Make Navy proud, make Australia proud

The Navy further makes statements expanding on the 'NGN' principles:-

"Courage demands unwavering obedience to moral principles. Courage drives responsibility, humility and personal example. No amount of education or experience can overcome a deficiency of courage."

"Honour..... is the fundamental value on which the Navy's and each person's reputation depends!

Honour reflects our moral and ethical standards. It demands strength of will and inspires physical effort and selfless service. Honour guides our actions in a way explicit rules cannot; it shapes our conscience and determines our notions of pride, self-respect and shame."

It is clear from the NGN program developed by Navy and parallel programs developed in Army and the RAAF including statements made by General Hurley, the Chief of Defence, that the Services are determined to take whatever action is necessary to address the issues surrounding sexual abuse in the ADF.

It is also clear that the majority of members of the ADF wish to invoke signature behaviours that reflect high moral and ethical standards. It is for these reasons that the ADSO believes that it is imperative that this matter be finalized and the appropriate 'expert' teams be put in place within Defence to deal with sexual abuse issues specifically.

Yours sincerely,

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