SUBMISSION TO

THE SENATE

Foreign Affairs, Defence & Trade Reference Committee

INQUIRY INTO REPORT OF THE REVIEW OF ALLEGATIONS OF SEXUAL AND OTHER ABUSE IN DEFENCE CONDUCTED BY DLA PIPER

from

Whistleblowers Action Group Qld Inc

Submission coordinated by	**Submission approved by**
G McMahon	**G Harris**
Secretary	**President**
6 December 2012	**6 December 2012**

INTRODUCTION

This submission is directed at assisting the Inquiry with respect to the following terms of reference:

1. the accessibility and adequacy of **current mechanisms** to provide support to victims of sexual and other abuse in Defence;

2. whether an **alternative expedited and streamlined system for the resolution of disputes** relating to the support, rehabilitation, treatment and compensation of victims in Defence be considered and established, and the constitutionality of such an alternative system;

3. the **effectiveness and timeliness** of the Government's processes for assessing, investigating and responding to allegations of sexual or other forms of abuse, including:
    a. whether a **dedicated victims advocacy service** ought to be established,
    b. **systemic and cultural issues** in reporting and investigating sexual and other forms of abuse, and
    c. whether **data and information** collection and dissemination of data and information in relation to sexual and other forms of abuse in Defence is adequately maintained and appropriately acted upon and, if not, any alternative mechanisms that could be established; and

4. any related matters.

AIM

This submission proposes that the principal cause of the abuse in Defence rests with the personal involvement of the leadership of the military forces in activities that frustrate the purposes of the military justice system.

The example thus given to subordinate commanders and to Defence members in general, has developed a culture that is opposed to the system of protections for soldiers from

unacceptable behaviour including all forms of abuse, protections that the community is seeking to impose upon military commanders.

The activities that frustrate the intentions of the military justice system, it is herein proposed, are systemic – the mechanisms of frustration are systematically applied to defeat each of the justice mechanisms established for a just outcome, they are implemented on behalf of the military chiefs by 'justice' staff units such as the Fairness & Resolution Branch and the Australian Defence Force Investigation Service, and they are actively and passively supported by supposedly independent watchdog authorities such as the Defence Force Ombudsman (a role held by the Commonwealth Ombudsman) and the Inspector-General Australian Defence Force.

The situation has been best summarized by an authority from the Fairness & Resolution Branch, who, during the annual presentation on 'Sexual Harassment and Unacceptable Behaviour', a presentation that is compulsory for all ranks within the Australian Army to receive each year. At this presentation, the authority reminded the attendees of the 'special situation in the Australian Defence Force', whereby ***the ADF does <u>not</u> have a zero tolerance policy towards unacceptable behaviour***, or words similar.

The nature of 'Command' will require that sometimes unacceptable behaviour will need to be accepted – this is a belief held onto strongly by the culture of commanders in the Defence Forces. The circumstances whereby acceptable forms of unacceptable behaviour arise were left undefined at the presentation, presumably on the basis that the commanders there would know when these special circumstances arose. And that is part of the system of abuse – when a commander exercises the 'special situation of the Australian Defence Force', no other commander will question not interfere with the exercise of that command.

The subordinate who does question the commander's acceptance of unacceptable behaviour is left by the system to the mercies of that commander. Should the subordinate use the redress of wrongs process to raise the unacceptable behaviour with the commander's superior, the commander is protected to the full authority of all commanders up to and including the Chief of the Defence Force. The subordinate is seen by the command culture, not as a user of the approved process for raising wrongs, but as a challenger to the nature of command and the 'special situation' that characterizes command in the ADF.

This ‘misleadership’ from the top of the organisation, the example that the Chiefs set in actions that they take concerning claims of victims and disclosures from witnesses, consolidate the command culture within the ADF. These rogue notions of the requirements of ‘Command’, and the asserted ‘special’ circumstances that allow unacceptable behaviour to be accepted, establish a systemic corruption of the protections sought by the community, the protections designed to identify and deal with abuse and other forms of unacceptable behaviour, and to deter defence members from such behaviours.

There may be benefits to be gained from different protection mechanisms or from improvements to existing mechanisms, including attention to streamlining procedures, protecting data from destruction, disposal and warehousing of evidence, and giving victims a dedicated advocacy system, as may be foreseen by the other terms of reference of this Inquiry.

Efforts in these latter areas, however, will have little to no effect if the Chief of the Defence Force, the Service Chiefs, other senior commanders, watchdog authorities such as the Defence Force Ombudsman and the Inspector General Australian Defence Force, and subordinate justice organisations such as the Fairness & Resolution Branch and the Australian Defence Force Investigation Service, participate in and / or turn a blind eye to breaches of those justice mechanisms.

The position adopted within this submission, it is acknowledged, cannot be sustained before your Inquiry without providing examples of these most serious criticisms of the highest commanders in the Australian Defence Force.

It is necessary for this submission, it is accepted, to provide instances of:

1. where the Chiefs of the Australian Defence Force and Service Chiefs have themselves become engaged in actions to defeat the protection mechanisms already in place, when receiving complaints from victims and / or disclosures from witnesses relating to unacceptable behaviour;
2. where the watchdog authorities support these senior commanders in their breach of the protection mechanism, or surrender to the position adopted by the chiefs; and,

3. where the protection mechanism(s) at issue are key to the protection of soldiers from unacceptable behaviour rather than peripheral.

A case study allegedly meeting these prerequisites has thus been provided.

The case study has not been provided to seek redress from the Senate Inquiry over this particular set of alleged wrongdoing. The case study has instead been offered to demonstrate the personal involvement of the highest commanders in such breaches, and the spin-offs of further harm imposed upon victims and witnesses by subordinate commanders with the knowledge that their superiors are acting in breach of military law.

A case study is also necessary in order to satisfy the Senate Inquiry that the suggestions for reform contained in this submission come from direct experience of exchanges with officers while they were filling the most senior positions in the uniformed services.

While it is only one case study, the matter is able to provide a significant volume of material relevant to the criticism of the military chiefs. This is because this case study demonstrates the direct involvement of twelve (12) army generals or equivalent ranks from other services, including three (3) Chiefs of the Defence Force

This submission describes the parties in general terms. The documentation available in evidence of the allegations made will be described by this submission also in general terms. Witnesses, however, are prepared to give evidence at a hearing of your Inquiry and / or provide copies of the documentation in support of the allegations made, if, after 21 inquiries and reviews and audits into military justice over the last 21 years, the central proposition of this submission is still not suspected or believed.

THE CASE STUDY

Preliminaries

The subject officer of the case study is a serving member with a history of both full time periods of service in the Regular Army, and periods of Active Reserve service. The Reserve

service includes many years in what were termed ‘national postings’, as part of principal Regular Army operational headquarters and principal Regular Army training establishments.

The case study material has been reduced, from a description of all events concerning the subject officer, to a selection of particular issues that serve the purposes of this submission in responding from direct experience to the terms of reference for this Senate Inquiry. Expansion to other areas would be available in any hearing wherefrom the Senate sought names, documentary evidence or other information from the service person prepared to give this evidence at such a hearing.

The Issues. Three disclosures made by the subject officer will be used to demonstrate the actions by army generals including service chiefs. The three disclosures are of what the subject officer termed ‘rough justice’, and allegedly were imposed on the subject officer because of a grievance that the subject officer made about the treatment that he was receiving at the hands of his commanding officer. Those three disclosures were:

> **Falsification** by the Commanding Officer of information regarding the subject officer in a document to higher military authorities, to the detriment of the subject officer. This falsification of information sought from the commanding officer by higher military authorities may be an offence contrary to military law – hence termed the ‘Falsification’ issue.
>
> **Imposition of an Illegal Punishment** upon the subject officer. The illegal punishment was a ceiling upon promotion or advance of the subject officer, because the subject officer had allegedly committed an offence, imposed upon the subject officer without any hearing of any charge and without the conduct of any investigation into the alleged offence, all actioned without the knowledge of the subject officer – hence termed the ‘Illegal Punishment’ issue.
>
> **Expulsion** of the subject officer from the Unit, the Formation and the Command to which the subject officer was posted

The Breaches by Senior Commanders. The alleged breaches of military law selected for demonstration of wrongdoing by the upper echelon of commanders within the Australian Army and the Australian Defence Force, are as follows:

1. **Denial of detailed reasons** for decisions made by these commanders, where the commanders are obliged by Defence Instruction (General) PERSONNEL 34-1, *Redress of Grievances* to provide detailed reasons
2. **Reprisals -** disadvantaging and / or attempting to disadvantage a Defence member in their Defence Service for the reason that the Defence member has lodged or may lodge a grievance against a superior officer, where Military Regulation 92 states that such actions are an offence

Regarding 'Detailed Reasons', the officer making a complaint for redress of wrongs is entitled by Defence Instructions applicable to members of all the services, including the Army, to:

- A decision on each complaint
- Detailed reasons for each decision, including findings of fact

> ***Facts, evidence and other documents or factors relied upon in reaching a decision, including***
> ***Findings on relevant facts, that are supported by the evidence***
> ***Legal authorities, such as Defence Regulations and Ministerial Determinations***
> ***Specialist advice, such as engineer, medical or legal advice***
> ***Policy, such as contained in Defence Instructions and the ADF Pay and Conditions Manual***
> ***Weight given to each of the material factors and***
> ***Reasoning – the links between the facts or evidence, and the decision***
> [Defence Instruction (General) PERS 34-1, annex G, para 23]

The Defence Instructions specifically forbid commanders from diminishing upon these entitlements, by giving vague or general reasons in lieu of the detailed reasons:

> ***It is not sufficient to simply state 'no grounds for complaint', 'redress sought is not upheld' or the like***
> [Defence Instruction (General) PERS 34-1, annex G, para 22]

If the officer lodging the grievance is unhappy with the decision and / or the detailed reasons by a commander, the officer can then request that the complaint be referred to the higher commander. Knowledge of the detailed reasons for the decision by the lower commander assists the aggrieved officer to make a more effective submission to the higher commander.

The key importance to an effective military justice system, of the provision of detailed reasons for decisions by commanders, has been captured by the Honourable Sir Laurence Street, AC, KCMG, QC, in his 2008 review of the Military Justice System referred to in DLA

Piper's Report. Here, Sir Laurence Street explained the criticality of detailed reasons to the maintenance of military justice within the administrative regime of Defence:

> ***As the final arbiters of many personnel performance decisions, commanders and managers must provide a clear 'Statement of Reasons' (SOR) for their executive decision making, indicating the factors that they have taken into consideration and any specific weightings that were used in making their executive decisions. These processes allow for executive decision making to be challenged and explained, providing a level of protection that should be reassuring for both the individual and ADO.***

The word, 'must', was put into italics by the Honourable Sir Laurence Street, AC, KCMG, QC in the reference.

An officer also has entitlements when allegations are made that an officer has committed an offence or crime. Those allegations need to be communicated to the accused officer, the need for the allegations to be investigated, and the need for the allegations to be subjected to formal hearing in which the accused is a participant before any punishment can be properly imposed.

Failure to provide these entitlements is referred to as 'rough justice' or 'off the record disciplinary punishments'.

Regarding reprisals, Regulation 92 states:

> ***92(2) A member is guilty of an offence if he or she causes another member to be victimized, penalized or prejudiced in any way for:***
> ***(a) making a complaint; or***
> ***(b) requesting the referral of a complaint.***

Recurrence. The **Expulsion** matter is a recent event, still in force. **The Falsification** and the **Illegal Punishment** issues have come before military authorities repeatedly over two decades because of a number of events, the principal events being:

1. **The Illegal Punishment.** This was not known by the subject officer until defamatory allegations about the subject officer were given to the Chief Executive Officer at the place of civil employment of the subject officer. The subject officer sought an investigation of information being given to the CEO by unknown army officers;

2. **The Illegal Punishment.** This was uncovered by that investigation. It was, however, still kept from the subject officer until the military legal officer acting for the subject officer was given advice, informally, that certain documents should be sought through the Minister for Defence (as against seeking the documents through the military command structure). The subject officer sought investigation of the Illegal Punishment when the documents, disclosed to the subject officer by the Minister for Defence, informed what had been done by military commanders to the officer's detriment both in the military and in the civilian spheres of the subject officer's employment and career;
3. **The Offence.** The 'finding' that this offence had been committed by the subject officer, arising from the illegal practices followed in imposing the **Illegal Punishment**, was subsequently used to support attempts to charge the subject officer with an offence when the subject officer applied for leave to attend his mother's funeral;
4. The subject officer's successive complaints about the **Falsification** matter were used to justify an assessment that the subject officer was irrational, was thus in need of psychiatric evaluation, and was not fit for continued service in the Australian Army

The history of involvement by senior commanders including the Defence Chiefs is described below in stages. This may show how the failure to deal with allegations of offences and unacceptable behaviour magnifies the problem rather than resolves it.

Falsification and Illegal Punishment

The subject officer was shown the falsification (but not allowed to make a copy) by two fellow officers, one of whom also informed the subject officer, informally, of the allegations that the subject officer had committed an offence.

First Stage. Regarding both these 'rough justice' complaints against the unit commander, namely the Falsification and Illegal Punishment matters, the response by officers in the rank range of general was carried out to the following details:

A. Commander of the 1st Division, a Major General, rejected the complaint **without giving detailed reasons** for his first decision. The reason he gave was:

> ***I do not consider that*** (the subject officer) ***has suffered any legal wrong or any injustice by the decisions of his Commanding Officer.***

No mention was made of the offence or falsification matters in the either the first or second decisions made by this commander. The Major General had to make a second determination when he was subsequently directed to comply with Defence Instructions by **providing detailed reasons** to the subject officer for his determination. The Defence Force Ombudsman was responsible for forcing the Major General into giving a second determination, but could not get this commander to address the Falsification and Illegal Punishment matters in the second set of detailed reasons.

B. Commander Field Force Command, also a Major General, gave no finding of fact as to whether the document contained false statements. The Commander just stated that '***the allegation …has been noted'***, and asserted that any ***irregularity*** was not the cause of any wrong to the subject officer. This commander further dismissed the concerns that the complainant had about allegations that the subject officer had committed the specified offence, stating that the complaint was ***frivolous*** and based on ***mere suspicion.***

Second Stage. The subject officer requested an investigation from the Army following claims by the subject officer's Chief Executive Officer. These claims indicated that that CEO knew of allegations made by the Australian Army against the subject officer of which the subject officer had no knowledge.

The General Officer Commanding Training Command, a Major General, was appointed the investigating officer.

Regarding the falsification matter, the Major General did not, during their interview, ask the Commanding Officer, who is alleged to have falsified the document at issue, about the falsifications. The Major General made no finding of fact on the falsification, and then used

statements by the Commanding Officer who falsified the document to support findings adverse to the subject officer on other matters.

Regarding the Illegal Punishment matter, the Major General received evidence at different interviews that the 'finding' that the subject officer had committed an offence:

- Originated from the Commanding Officer
- Was briefed to the successor Commanding Officer
- Caused the regional commander to state that the subject officer officer should have been court-martialled for the offence
- Was discussed with others by both Commanding Officers regarding the intent to inform the subject officer's employer.

The Major General did not put the information gained from other interviews about the offence at issue to the subject officer. The Major General also refused the request by the subject officer for the Major General to interview the officer who had informed the subject officer of the Falsification matter and of the offence claims during the First Stage.

As explained in ***R v Crabbe*** (1985) 156 CLR 464, the High Court of Australia, which relevantly said at 470:

> ***"…When a person deliberately refrains from making inquiries because he prefers not to have the result, when he wilfully shuts his eyes for fear that he may learn the truth, he may for some purposes be treated as having the knowledge which he deliberately abstained from acquiring****."*

This display of willful blindness by the Major General, it is proposed, reasonably goes to the issue of bad faith being shown by the investigation officer.

The Major General did send all information received to the higher commander, the Chief of Army, a Lieutenant General. The Lieutenant General made a determination to dismiss the application for redress by the subject officer without giving any finding of fact on the falsified document or the offence matter, and without informing the subject officer of the information gained about the Illegal Punishment.

Third Stage. The subject officer only learned of the Illegal Punishment matter subsequent to a 'tip-off' to the legal officer that the legal officer should try to get access to the investigation

officer's report. The legal officer obtained the full report and transcripts of interviews through the Minister for Defence.

The subject officer sought a review of the actions by the Lieutenant General and the Major General from the higher commander, another Lieutenant General, the new Chief of the Army.

This Lieutenant General also made a decision to dismiss the complaint without giving detailed reasons. In one sentence, the Chief of the Army simply stated the previous investigation was not legally flawed and adequately addressed its terms of reference

This appeared to be in breach of Defence Instructions that stipulated:

> ***It is not sufficient to simply state 'no grounds for complaint', 'redress sought is not upheld' or the like***
>
> [DI PERS 34-1, annex G para 22]

After multiple applications over 4 years, the Chief of the Army eventually released a briefing document and a legal opinion that indicated that the Chief also had not investigated the Falsification and Illegal Punishment matters, but had examined only whether the previous generals were required to have investigated and decided these 'rough justice' complaints.

Fourth Stage. The subject officer then lodged a complaint against the Chief of Army, with the Chief of the Defence Force, claimimg that the Chief of Army had acted in breach of Defence Instruction DI(G) PERS 34-1, annex G, para 23, with respect to the complaints about Falsification and the Illegal Punishment. This breach, it was claimed, denied the subject officer a finding on the facts about these complaints:

1. Whether or not the information in the document at issue was false and misled military authorities about aspects of the subject officer relevant to the purpose of that document
2. Whether or not the subject officer had been given fair process regarding the alleged offence and treatment received in any absence of fair process,

and had denied detailed reasons for the Chief of Army's determination based on these complaints.

The letter of complaint was acknowledge by the CDF, but has never been responded to by way of a determination with or without detailed reasons. The Chief of the Defence Force, through a sequence of officers holding this position, has engaged in breaches of the same Defence Instruction, by not giving a determination to the complaint against the Chief of Army, and by not giving detailed reasons for any such determination.

These mutually supporting breaches by the Chief of Army and the Chief of the Defence force have denied the subject officer all entitlements under DI(G) PERS 34-1.

Fifth Stage. The actions by the subject officer to lodge complaints against two Chiefs of the Army, the Chief who withheld knowledge of the Illegal Punishment, and the Chief who denied determinations and detailed reasons for the Falsification and Illegal Punishment matters, drew a response from commanders at the Regular Army Unit at which the subject officer had a National Posting.

The failure of the second Chief of Army to follow the Defence Instruction caused the subject officer, acting on legal advice, to make the complaint about the Falsification and Illegal Punishment matters again, this time to the current commanding officer at Regular Army Unit. The treatment received by the subject officer, and the subject officer's attempts to navigate this treatment, ended up with the subject officer being expelled from the Unit, the Formation and the Command.

The complaints about the Falsification and Illegal Punishment matters were used, in general and specific terms, in several recommendations and decisions adversely affecting the subject officer, including the decision by a Major General that the subject officer be expelled from the Command.

The subject officer therefore sought an investigation into the Falsification and Illegal Punishment matters again, as part of the complaint at the expulsion from the Command, which decision was based upon past complaints about these two issues.

The subject officer was encouraged to this course of action because the subject officer's principal witness on the Falsification and Illegal Punishment matters had been appointed

Chief of the Army. The then current Chief had been the same officer who allowed the subject officer to come to know of and to see the falsified document and who had warned the subject officer of the allegations of the offence that were being held against the subject officer.

During that Chief of Army's term in office, however, despite that Chief's personal knowledge of these two 'rough justice' issues:

1. The Chief made no statement on his knowledge of the matters or otherwise responded to the request by the subject officer for the Chief to be a witness. The Chief of the Army, a Lieutenant General, did not take any step known to the subject officer that brought to notice that the subject officer's claims about the falsified document and the Illegal Punishment were genuine, were true, and did not constitute evidence of mental imbalance or need for psychiatric examination. The Chief retired leaving the subject officer to fend for himself.
2. An investigation was conducted, but that investigation:
    - Did not interview the Chief of Army or the subject officer,
    - Did not inspect the falsified document, and,
    - Did not make any finding of fact or determination regarding the Falsification and Illegal Punishment complaints

That investigation, by an officer from another service, did state in general terms that the previous investigation should have looked into all matters in the complaint. That which is a clear requirement of the relevant Defence Instruction is still being stubbornly resisted and refused by the Chiefs.

Sixth Stage. The last mentioned investigation did recommend that the investigation, conducted by the Major General who expelled the subject officer from the Command, be put aside and re-investigated.

The subject officer complained to the Chief of the Defence Force, who decided not to conduct any investigation until the re-investigation was completed.

The new investigation or re-investigation, ordered by the new Chief of Army, specifically excluded from investigation the Falsification matter and any interview of the previous Chief,

his predecessor and the subject officer's principal witness. The new investigation would also investigate the offence component of the Illegal Punishment, by reference solely to the documents and without any interviewing of Defence members. This exclusion effectively ruled out any investigation into the Illegal Punishment, which punishment was not committed to Army records – it was an illegal procedure informally conducted – and was only learned about in the Second Stage of this narrative by interviewing several senior officers. Interviewing senior officers is the technique that was now being deliberately excluded.

And that is where the two matters of 'rough justice' rest, as part of the accumulation of hundreds of other cases of abuse and unacceptable behaviour which, unerringly, have met with the same refusal of due process.

Over the six stages of the narrative, a matter of a falsification of a document by a commanding officer has been tenaciously protected from acknowledgement, with a generation of commanders to the top of the Defence organisational tree prepared to cheat and otherwise deprive the subject officer of due process. This unerring defence of an untenable position by the Chiefs of the uniformed Defence Force has subjugated the integrity of the ADF Command, as well as their own personal integrity, to the defeat of a middle manager transgression.

Such is the strength of the command culture that causes it to behave in this unacceptable way.

Such is the size of the challenge that the Senate or the Government face in bringing the command culture to alignment with the expectations of the community as to how its people will be treated when they join the military.

Watchdogs and Justice Units

The Case Study also tested the principal watchdog authorities and justice support units created since 1980, to improve the system of military justice.

The performance of the following agencies, relevant to the Falsification, Illegal Punishment and Reprisal complaints, are described below:

1. The **Defence Force Ombudsman**, established about 1976
2. The Conflict Resolution Agency established in 1998, incorporated into the **Fairness & Resolution Branch** in 2006
3. The **Inspector General Australian Defence Force**, established subsequent to the Burchett Inquiry into 'rough justice' within the Defence Force, in 2003, and
4. The **Australian Defence Force Investigation Service**, established in 2006 following a critical review of its predecessor

The Defence Force Ombudsman [DFO]

The DFO was effective in the First Stage of the Case Study, in requiring the Major General commanding the 1st Division to provide a second document that did provide detailed reasons for his determinations. The DFO was unable to convince the Major General to provide a determination of the Falsification complaint, but the insistence of the DFO in other matters did seem to cause a resolution of matters with the subject officer to be proposed and accepted.

Like the fellow officer who was responsible for informing the subject officer of the rough justice that was being imposed upon the subject officer without the subject officer's knowledge, but who abandoned the subject officer when the fellow officer became the Chief of the Army, **the DFO also decided to abandon the subject officer by the Fifth Stage**. In the **Sixth Stage, the DFO became actively engaged in a cover-up of the reprisals** allegedly being imposed upon the subject officer.

Fifth Stage. The subject officer went to the DFO in an effort to get the Chief of Army to give a determination on the two 'rough justice' matters, namely the Falsification and the Illegal Punishment complaints.

The DFO was able to get the Chief of Army to release to the subject officer the legal opinion used in support of the Chief of the Army determinations. The DI(G) PERS 34-1 requires that such legal opinion be released to the subject officer, but the Conflict Resolution Agency had been stubbornly refusing to provide it.

When the legal opinion was received, it was found not to have detailed reasons including findings on the facts of the rough justice complaints. When this was explained by the subject officer to the DFO, the DFO expressed sympathy for the difficulties that the Military Justice staff had been through with the 2005 Senate Inquiry and its aftermath, and stated that the legal opinion would have to be enough for the subject officer.

The DFO was refusing to require the Chief of Army to give determinations with detailed reasons about the Falsification and Illegal Punishment complaints, in direct breach of DI(G) PERS 34-1, out of some sympathy for the hard time given to the Military Justice system by the Senate Inquiry.

This abandonment of the subject officer and of the subject officer's entitlements by the DFO placed the DFO in a difficult position when the subject officer then suffered alleged reprisals. The decision by the DFO to require the subject officer to go forward without the determinations and detailed reasons was also used by military authorities against the subject officer. The primary example was to assert that the subject officer was irrational and obsessed when the subject officer decided instead to insist on being given the determinations with detailed reasons.

Fifth Stage. The subject officer went to the DFO for assistance when the subject officer's Formation Commander decided to expel the subject officer from the Formation.

The formation commander suspended the subject officer until further notice, without any process or procedure, for a period that ultimately became 16 months. This new illegal punishment became the subject of a further complaint, which was investigated. At interview with the Inquiry Officer, the subject officer was questioned about the Falsification and first Illegal Punishment matters.

The DFO showed its understanding that the Subject officer was making a complaint of reprisal by reason of using the complaints system when the DFO wrote to the subject officer using the words:

> ***You claim that this has had the result of penalising, prejudicing or victimising you for lodging your ROG complaint, and that this is unlawful under Regulation 80(2) of the Regulations***

During the period of the expulsion, the DFO with a party of DFO staff that included the DFO officer handling the expulsion, went before the Senate Defence, Foreign Affairs and Trade Standing Committee. The DFO was asked about the treatment of complainants under the administrative system of military justice. The DFO replied:

> ***…, we do not have any complaints that a person has suffered reprisal or victimisation by reason of using the complaints system.***

The subject officer has a document dated three months before the DFO statement to the Senate DFAT Standing Committee, which described the DFO's investigation into the complaint of reprisal. The subject officer has a letter dated eight months after the DFO statement to the Standing Committee, stating:

> ***I apologise that I had not acknowledged your complaint sooner. Your complaint is currently being considered at a senior level within the office***

The DFO subsequently sent a letter claiming that the DFO had advised the subject officer of the outcome of its investigation twelve months earlier, in a letter of which the subject officer has no copy or record. The DFO directed the subject officer to one of the DFO party who had allegedly misled the Senate DFAT Standing Committee about

> ***any complaints that a person has suffered reprisal or victimisation by reason of using the complaints system***

If the DFO had investigated these claims of reprisals and made whatever findings, the DFO was obliged, when giving evidence to the Standing Committee, to state that such allegations had been received (and whatever findings had been made), rather than to say that the DFO had not received any such complaints.

To the Senate Committee, the DFO spoke of personal meetings with the leadership of the Defence Force and of the leadership's ***strong personal commitment … in ensuring that the problems exposed … have been accepted and recommendations implemented***, and of being ***impressed by the positive response*** that was received

The DFO involved its Office in presentations to other public and private organizations advocating the Australian Defence Forces 'reformed' administrative justice system as best practice. (Street & Fisher 2008, para 90).

Given the public endorsement by the DFO of the Defence Force's administrative justice system, the DFO would be in a conflict of interest situation when any military member presented the DFO with evidence of a continuation of illegal punishments being imposed by military managers. This conflict would be greater where the complaint was from a responsible professional defending their subordinates against any bullying, harassment, victimization or other form of mistreatment.

The question should be posed, whether any other persons, from the hundreds of persons on DLA Piper's list of the abused, also had complaints of reprisal by reason of using the complaints system before the DFO, when the DFO appeared that day before the Senate DFAT Standing Committee and claimed no such complaints had been made.

Fairness & Resolution Branch

The Fairness & Resolution Branch now includes the Conflict Resolution Agency [hence CRA] that was the first agency that corresponded with the subject officer and that officer's commanders during the stages of this case study. The CRA first became involved to the knowledge of the subject officer during the Third Stage.

In the Third Stage, where the subject officer was making a redress of wrongs application to the Chief of Army, the CRA demanded from the subject officer evidence in support of the subject officer's claims of mistreatment since the subject officer had lodged the redress application. The subject officer, under legal advice, sought to make the redress application about the continuing mistreatment to his current commanding officer, and not to the Chief of the Army. The subject officer sought to follow the proper process – lodge the redress first with the commanding officer - because of the concern that, if the subject officer did not first make the complaint to the current commanding officer, the subject officer may not be acting in accordance with the redress of wrongs procedure, and may thus lose important rights under the Defence Instruction on Redress of Wrongs. These rights included the right to a decision, and a right to detailed reasons for any decision including a finding upon the facts.

The CRA, however, informed the subject officer that' if the subject officer did not provide the evidence to the CRA directly, the CRA would terminate the redress application against all the other matters.

The subject officer provided the evidence, and the Chief of Army then failed to provide any decision upon this continuing mistreatment matter. It appeared that there was interest by the CRA and the Chief of Army as to whether the subject officer had such evidence, but no interest visible to the subject officer in what the evidence proved. The subject officer became concerned that the visible interest of the CRA may have been in whether or not the subject officer was open to being disciplined for having made allegations without any evidence. If this was the case, that behavior by the CRA may be **adversarial** behavior, against the subject officer and for the commanders, rather than administrative in nature in support of the military justice processes.

A suspicion also arose that the subject officer may have been **tricked** out of rights under the Redress of Wrongs vehicle insisted upon by the community to allow soldiers some form of proper redress should soldiers be abused or suffer another form of wrongdoing.

In the fourth stage, the Defence Legal Officer and the CRA maintained stubborn resistance to providing decisions and detailed reasons. This was in the face of specific directions in the Defence Instruction on Redress of Wrongs that the subject officer (and all soldiers who apply for a redress of wrongs) are to be given a determination on each wrong with detailed reasons.

In particular, the Defence Instruction on Redress of Wrongs directly states that the subject officer was to receive a copy of any legal advice considered in making the determination. In the case study, the DLO provided legal advice that itself did not address each of the wrongs for which the subject officer applied for redress.

The course adopted by the CRA on behalf of the Chief of Army was to state that, if the subject officer wanted the legal advice, the subject officer should apply for the legal advice under the Freedom of Information Act. This FOI course was unnecessary given the direct provisions of the Defence Instruction on Redress of Wrongs. The FOI course also directed the subject officer towards a FOI process that allowed the CRA to refuse the legal advice which the CRA and the Chief of Army could not do under the Defence Instruction on Redress

of Wrongs, thereby forcing delays (as the subject officer went for review of any refusal) in any referral the redress to the Chief of the Defence Force. Thirdly, the FOI course allowed the Chief of Army and the CRA to claim the document was exempt under any of the exemption provisions of the FOI legislation (eg, legal privilege). The FOI pathway was a pathway with obstacles for the subject officer that were directly overcome by making a decision to release the legal advice under the specific provision of the Defence Instruction on Redress of Wrongs.

And if the subject officer refused to the use the FOI pathway, the Chief of Army could delay and possibly deny the subject officer ever getting the legal advice.

This action by the CRA and the Defence Legal Officer appeared again to be **adversarial** and **tactical,** devising courses of action whose main effort appeared to be to circumvent important provisions of the Defence Instruction on Redress of Wrongs.

In the Fifth Stage, this apparent drive by the CRA to force or urge the subject officer to move the subject officer's allegations of wrongdoing out of the ambit of the Defence Instruction on Redress of Wrongs, and into a process that was more disadvantageous to the subject officer was in evidence again.

In this case, a disclosure by the subject officer of unacceptable behavior and of further mistreatment of the subject officer was made the subject of a new application for Redress of Wrongs. The subject officer was requested by his commanding officer to allow his complaint to be dealt with as a representation under the performance appraisal process. The commanding officer stated that this procedure had been suggested to him by CRA. The subject officer repeatedly refused to switch from the Redress of Wrongs to the representation process, and this led to a major dispute with the commanding officer, and later with the Formation Commander.

The disadvantage with the representation process is that, under the representation process, the officer making the representation is not entitled to reasons for any decision made about that representation.

The subject officer responded to this pattern of behavior by the CRA by requesting that the CRA play no part in the Redress of Wrongs process that was necessary to respond to the subject officers Redress application.

In the last investigation during this stage, the subject officer was successful in obtaining an investigation officer from another service who was not part of CRA. That officer stated in general terms that the previous investigation should have looked into all matters in the Redress of Wrongs application, but that officer did not himself inquire into the Falsification, the Illegal Punishment or the Expulsion matters.

In the sixth stage, the Chief of Army personally took action to refer the new investigation to a watchdog authority, the Inspector General Australian Defence Force, the watchdog which did not investigate the **Falsification** and the **Illegal Punishment** matters when they were presented nine years earlier, and gave no findings or detailed reasons. The IGADF in 2011 has determined not to investigate these matters again, in immediate subsequence to an investigation officer from outside of the Chief of Army and the CRA (now Fairness&Resolution) who stipulated that investigations should have looked into all matters in the Redress of Wrongs application.

The Chief of the Defence Force referred the **Expulsion** matter to the Australian Defence Force Investigation Service, ADFIS. ADFIS simply stated that they would not investigate the matter, but again gave no reasons of findings of fact or detailed reasons. ADFIS appears to be a watchdog which does not have to provide reasons under its own legislation. When a Redress of Wrongs is sent to them, they appear to be able to investigate the matter under their own legislation and not comply with the Defence Instruction of Redress of Wrongs.

Again the outcome from the Chief of Army process and the Chief of the Defence Force process achieves a state for these commanders, their actions decree, of no longer having to give decisions with detailed reasons including findings of fact, whereas they are so required under the Defence Instructions on Redress of Wrongs.

Inspector General Australian Defence Force

Fourth Stage. During the Fourth Stage described above, the subject officer also made a submission about the two rough justice matters to the Burchett Inquiry that was specifically established to inquire into 'rough justice'. The submission passed from the Inquiry to the **Inspector General Australian Defence Force,** a permanent organisation established to continue the work of the Burchett Inquiry. Neither the Burchett Inquiry nor the IGADF investigate the matters which was within its power, nor did either of these organisations refer the matter to the Australian Defence Force, which was also within its power.

Because of the inaction by Burchett / IGADF and the refusals by the Chief of Army to provide detailed reasons, and acting on legal advice, the subject officer initiated the complaints about the two rough justice issues again with the subject officer's current commanding officer

Subsequently, the subject officer made inquiry as to what was happening with the newly initiated grievances about the Falsification and the Illegal Punishment matters.

Correspondence held from both the Army and from the IGADF sets out that:

1. The Chief of Army was now stating that the matter was up to the IGADF to investigate, and,
2. The IGADF stated nothing at the time but is now claiming that the responsibility for investigating the matters lay with the Chief of Army

That mutually supported position, that the other organisation had to do the investigation, such that neither organisation did the investigation, and so no investigation was undertaken, has the characteristics of a system that can defeat any requirement or obligation to investigate. This may be information tending to show a corruption of the Defence Instruction and complaint system, these being neutered by an unauthorised system that avoids all requirement to investigate.

The avoidance appears to be achieved by both investigatory authorities, the Conflict Resolution Authority supporting the Chief of the Army, and the Inspector General of the Defence Force, cooperating via a system of mutually supporting referrals, by each to the

other, of the responsibility for investigating the complaint, such that neither does the investigation.

This outcome is termed herein as the ‘Catch 22’.

Sixth Stage. When the new Chief of the Army ordered that a new investigation be conducted, the Chief of Army referred the matter for reinvestigation to the Inspector General.

This was despite the repeated objections, upheld on previous occasions that Army authorities sought to involve the IGADF, that the IGADF not investigate the grievance on abuse and unacceptable behaviour lodged by the subject officer.

Recall that the new Chief, another Lieutenant General, had refused to include in the terms of reference for the re-investigation the Falsification and the Illegal Punishment matters that had been disclosed to the subject officer years earlier by a fellow officer who later had become the Chief of the Army.

The Inspector General also refused to include the Falsification matter in his Inquiry.

The Inspector General did decide to investigate the offence component of the Illegal Punishment matter, but limited the investigation to what was on the documented record. The Inspector General was limiting inquiry into a complaint about ‘off the record’ punishment to what was on the record. This would seem to be a nonsense - an inquiry doomed to failure. The Inspector General also refused to include, in the investigation, any interview of the just retired Chief of Army and of any other officer involved in the illegal punishment.

The Inspector General refused the complaints by the subject officer that the Inspector General was in a conflict of interests situation on the complaint. The basis for this concern about the Inspector General was the involvement of the Inspector General, during the Fourth Stage of the ‘rough justice’ narrative, in particular, the Catch 22 situation that occurred with the Chief of Army resulting in no investigation of the Falsification and Illegal Punishment matters.

The Inspector General refused to give the subject officer a Statement of Impartiality and Independence as is the normal procedure of the Inspector General.

Consider the claims that the subject officer is mentally unbalanced and a serial complainant. The Inspector General and the Chief of Army are together again, this time in refusing the subject officer the ability to refute these claims about the subject officer's rationality by inspecting the falsified documents. Statements of fact that the documents were falsified regarding information on the subject officer would demonstrate that a complaint on this matter was reasonable and rational. The suspicion would be turned from the rationality of the subject officer to the integrity of the dozen generals who have refused to provide this finding on these facts.

The Inspector General confirmed the continuation of these restrictions two days after 'Zero Tolerance Day' for Military Justice, announced by the Minister of Defence, Stephen Smith, and the military chief executive, on 7 March 2012

The Inspector General advised that the only way that the subject officer was going to stop the investigation being carried out by the Inspector General was if the subject officer withdrew his complaints.

An inspection only of the documents with respect to presence of evidence of an offence by the subject officer is selective. There is no basis ever given for the alleged offence. There are, by comparison, two witnesses, including a former Chief of Army, to the Falsification matter, another allegation for which the documentary evidence and its location are known perfectly. The interest of the IGADF in the first (the allegation against the subject officer) and not the second (the allegation against the subject officer's commanding officer) may raise a concern about the independence of the IGADF from the interests of the Chief of Army.

In this circumstance, especially, the independence of the investigation needs to be beyond question. The ADF and their watchdog authorities including the Inspector General presently face a national call for a Royal Commission into the conduct of seven hundred (700) investigations into sexual and other forms of abuse, from a 60 year period since 1952. A finding by the watchdog authority, that the subject officer actually committed the offence, might be too great a temptation, because the finding might allow the system to dismiss another allegation of serious misconduct that might otherwise bring added weight to the pressure for that Royal Commission.

The *raison d'etre* of the generals for disentitling the subject officer, from the entitlements to an investigation and determination of the complaints, with detailed reasons, is unlikely to be that the subject officer is mentally unbalanced. This is because at least one of them knows that the claim about the Falsification (as well as the Illegal Punishment matter) is real. That general also knows what his expectations were, during the First Stage, as to what the subject officer would do when the subject officer was shown the falsified document. The expectation that the subject officer might lodge a complaint may probably be why that general did not risk giving the subject officer a copy of the falsified document.

Australian Defence Force Investigation Service

This complaint of Expulsion was based upon the commander's letter to the subject officer which read:

> ***The concerns you have espoused to*** [Higher Command] ***towards the decisions I have made regarding your employment within*** [the Formation] ***have been noted. Based on information provided by the CLO relating to these concerns, I have determined that to maintain an appropriate level of distance between you and the formation that I command, you are not required to parade at this unit or at any*** [formation] ***unit until I direct otherwise***

Based on the commander's written word, the questions and answers to the elements of the charge of a reprisal appear to be:

1. **Was there a detriment?** – yes, expulsion from the whole formation until the commander directs otherwise caused loss of income, loss of documents and other detriments set out subsequently in the HMAS Success Inquiry into the expulsion without process of defence members in a different service;
2. **Why was the detriment imposed?** – to establish an 'appropriate distance' between the subject officer and the formation commanded by the commander;
3. **Why was the distance of an expulsion from the formation 'appropriate'?** – because the subject officer had taken concerns about commander's decisions to higher command;

or more directly,

4. **Did the expulsion by the commander have anything to do with a complaint being made about the commander?** – yes, it was the only issue raised by the commander in giving his reasons for the expulsion.

Note the apparent complicity in the expulsion for these reasons by the Command Legal Officer 'CLO'.

In response to this, the ADFIS decided not to conduct any form of investigation. Requests for reasons were met with silence.

The allegation of the Expulsion was then referred to the IGADF.

The reputedly independent Inspector General of the Australian Defence Force, however, decided to make inquiry into an action by that Commander described as (words similar to) a direction that the subject officer was no longer required to parade at the unit pending the outcome of the Routine Inquiry into the officers complaints.

This was made into a Term of Reference for the IGADF Inquiry.

The wording, ***direction not to parade***, was consistent across both sets of words, but other changes to the wording of the complaint changed the nature of the complaint substantively:

- the original complaint alleged that the reason for the direction was a complaint made by the subject officer about the commander, but the reason in the new TOR drafted by the Inspector General, is an Inquiry into that complaint and complaints against three other senior officers – the direction not to parade is no longer personal between the commander and the officer with the new words, it is procedural between the Routine Inquiry and the officer. This has occurred in circumstances where there is no reference to the complaints against the three other officers in the actual ***direction not to parade*** given to the subject officer;
- the original complaint was about an expulsion from parading at any unit in the formation, but the limits to the expulsion in the TOR has been reduced considerably to just the current unit in that formation – the element of the unreasonableness of such

a wide range of expulsions has been reduced to the unreasonableness of an expulsion from one unit only

- the original complaint was about a direction that was to be maintained until the commander directed otherwise, but the new wording in the IGADF's TOR has reduced this to the end of the conduct of an Inquiry – again the personal element is removed and a time frame based on an administrative process has been installed in its place. This installation has been made in circumstances where there is no mention of the 'Routine Inquiry' in any part of the commander's letter.

The nature of the complaint, through these new wordings, has been transformed from the nature of a reprisal personally given and imposed by a commander upon the officer who has complained about the commander, into a procedural issue as to whether a commander can suspend a complainant during the conduct of an Inquiry into those complaints.

This set of words by the Inspector General follows a previously unsuccessful attempt to rephrase the subject officer's original complaint, on that occasion into a complaint about the commander:

> ***taking action to remove you from an environment that you found hostile, for both your benefit and that of the unit***

again without any mention of 'hostility' or 'benefit' in the commander's letter giving the ***direction not to parade***.

These changes are being introduced into the TORs before any investigation is begun, and thus constitute findings made by the Inspector General in advance of any investigation. Thus is the investigation of complaints that have not been made turned into the nature of a 'trick'.

We do not have vision, however, as to whether these restatements of the ***direction not to parade*** have come from ADFIS who originally had the matter to investigate. Ifit is the case that ADFIS came up with findings that the commander gave the ***direction not to parade*** for the reasons now included in the TOR, the criticism herein of the IGADF would properly be pointed at the ADFIS.

In that circumstance, should the TOR by the IGADF ever draw criticism from your inquiry or other inquiry, IGADF could simply state that the TOR came from ADFIS.

The actions by the ADFIS not to give decisions with detailed reasons including findings of fact disarms the subject officer from being as effective in argument as the subject officer might be if the subject officer had those entitlements under the Defence Instructions on Redress of Wrongs.

The Public Service Act Qld is a piece of legislation that specifically directs, as a matter of law, that the public service commissioner can only investigate complaints that have been made, and thus is not allowed, under the Act, to investigate complaints that have not been made.

Gathering such specific provisions, used piecemeal by different jurisdictions to diminish particular tricks used by particular authorities to gatekeep against the entitlements of persons in the workplace, would considerably strengthen the practicability of legislation and policies determined to assist persons abused and mistreated in the workplace.

It is the contention of this submission that the culture of the commanders will not be shifted from their belief or way of thinking that the military is a 'special situation' for which there cannot be a zero tolerance to all forms of unacceptable behavior.

CONCLUSION

The activities that frustrate the intentions of the military justice system, it is herein proposed, are systemic. The mechanisms of frustration can be systematically applied to defeat each of the justice mechanisms established for a just outcome.

The driver for these systemic frustration mechanisms is a command culture that has been acted out personally by the Chiefs and senior commanders of the Defence Force.

The actions by the Chiefs have provided an example to subordinate commanders, and to Defence members in general, that has a tendency to further that culture into the responses taken by subordinate commanders to instances of unacceptable behaviour, including abuse.

The responses by the watchdog authorities, both internal and external to the Defence Force, has also been complicit in the mechanisms of frustration, or have baulked at the prospect of making findings that the Chiefs of the Defence Force have, or may have, acted in breach of military justice provisions.

A leading example of the protections that have been systemically frustrated, and can continue to be frustrated in the future by the command culture, is the need to provide detailed reasons including findings of facts for complaints and all complaints made by Defence members who lodge Redress of Wrongs applications against the treatment that they receive from military superiors.

The criticality of this protection has been emphasized by Sir Laurence Street in his 2008 audit of the military justice system.

With respect to the terms of reference:

A. the accessibility and adequacy of current mechanisms to provide support to victims of sexual and other abuse in Defence

Regarding the support to victims provided by a thorough and impartial investigation of the victims disclosures, the mechanisms are not the issue. There already are mechanisms that could yield fair outcomes if the existing mechanisms were followed.

The problem is that the existing mechanisms are being frustrated, not by faults in those mechanisms, but by actions taken by the Chiefs and commanders to ignore the requirements. Until the Defence Force Ombudsman is prepared to report to all appropriate authorities when the Chiefs of the Defence Force are acting in breach of the Redress of Wrongs Defence Instruction (or other of the ADF's own requirements), changing the mechanisms only changes the mechanisms that the Chiefs are ignoring.

B. *whether an* ***alternative expedited and streamlined system for the resolution of disputes*** *relating to the support, rehabilitation, treatment and compensation of victims in Defence be considered and established, and the constitutionality of such an alternative system*;

The current system only has external inspection (from the DFO) at the end of the Redress of Wrongs procedures operated by the ADF. This can be 5 to 10 years after the initial wrong has been suffered where the system is systemically frustrated.

External inspection needs to be available from the beginning of the mistreatment or event of wrongdoing.

Essentially, the administrative justice system, like the disciplinary justice system, needs to be taken from out of the control of the commanders and the command culture that has undermined the efficacy of the military system for administrative justice.

DLA Piper earned credit for their criticism of the performance of the ADFIS, and the failure of ADFIS to respond to the criticisms made of ADFIS by the Whiddet/Adams Report seven years ago. DLA Piper's recommendation to find a solution to ADFIS problems in the skills of ADFIS is misplaced if ADFIS is not able to act independently from the culture of the Chiefs and senior commanders who direct their careers.

This inquiry has just made the issue of abuse more political than it has ever been. This will give it higher priority, within any continuation of the command culture, to suppress any future cases of abuse. ADSFIS should have no part to play in complaints of unacceptable behaviour including abuse and reprisals.

DLA Piper too have foreseen a role for the DFO in the future management of the problem. DLA Piper appear to have lost sight of the contradiction that DLA Piper are recommending a far reaching inquiry into the adequacy of the military justice system which the DFO in recent years have been promoting to other agencies. The DFO have stated their admiration for the system in evidence to DFAT Committees.

This submission contends that any role for DFO must be preceded by an inquiry into the performance of the DFO in responding to the hundreds of complaints that DLA Piper have accumulated

C. *the **effectiveness and timeliness** of the Government's processes for assessing, investigating and responding to allegations of sexual or other forms of abuse, including:*

   a. *whether a **dedicated victims advocacy service** ought to be established,*
   b. ***systemic and cultural issues** in reporting and investigating sexual and other forms of abuse, and*
   c. *whether **data and information** collection and dissemination of data and information in relation to sexual and other forms of abuse in Defence is adequately maintained and appropriately acted upon and, if not, any alternative mechanisms that could be established*

Any **dedicated victims advocacy service** can not be made a part of the ADF, but should be funded from the ADF budget. This is what amendments to US Federal whistleblower legislation implemented on a bipartisan basis in November 2012. That jurisdiction has a separate Special Counsel Office dedicated to the protection of whistleblowers, and has seen the impetus that might be given to agencies to fix problems properly if the agencies have to pay the costs of the advocacy service as well as the agency's own costs

The advocacy service should also serve whistleblowers, so as to encourage a culture amongst junior commanders that reports disclosures of abuse and unacceptable behaviour rather than suppresses these disclosures.

Systemic and cultural issues do not just apply to complaints of abuse, but apply to all types of complaint – it is just the horror of sexual abuse as against, say, the misuse of funds that has generated such a strong public response

The issue here for the Senate and its DFAT Committee, which has been at the forefront of efforts to reform the ADF under all governments, stems from the statistic that there have now been 21 Inquiries and Reviews of the ADF justice systems in the last 21 years.

What has to happen, in the ADF, before the authorities, including the Senate, will inquire into the performances of the Chiefs and the DFO in managing the administrative justice system.

The concerns about the continuing unsatisfactory performance with respect to the leadership and management of the military justice system over the reign of several officers in the roles of Chief and Service Chiefs are that:

1. There has been 21 years of repeated failures in the system despite the concerted efforts of inquiry after inquiry to encourage improvement – a level of attention not in evidence for any other organization, private or public, in Australia or the world;
2. There are specific allegations against individuals for actions and inactions during the time that the individuals were in those roles of Chiefs; and,
3. The continuing nature of the problem may mean that its cause may lie within each particular individual but also outside of each particular individual, that is, the cause may be organizational of which the culture of the Chiefs and senior commanders appears to be a leading candidate.

This submission requests that the DFAT Committee tests whether it can obtain access to one document, the Falsification document. If the falsification is demonstrated, this submission requests that the DFAT inquire into how, in general terms, a falsification such as this has evaded being report in any of the investigations held by so many commanders including the Chiefs of the ADF.

Regarding **data and information collection and dissemination**, this submission and its case study have provided an example of where a direct face to face questioning of the DFO has been unsuccessful in obtaining a true statistic on the basic statistic of the number of complaints of reprisal received.

The victims and whistleblowers advocacy service could perform this role, independent of the systems under the control and influence of the command culture. Again, the data available from the US Special Counsel Office on whistleblowing incidents exemplifies the categorisations and telling statistics that can become available if they are collected for a proper purpose.

Any Related Matter. Whistleblowers Action Group Qld recommends that only a Royal Commission may have the standing, and only an appropriate Royal Commissioner may have the courage to inquire thoroughly and impartially into the performance of the leadership of the Australian Defence Force with respect to the military justice system over the last 21 years of the Inquiries, Reviews and Audits into the military justice system.