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Via email **REDACTED**

Defence Legal
 Department of Defence
 CP2-4-061
 Campbell Park Offices
 CANBERRA ACT 2600

"Without Prejudice Save as to Costs"

28 October 2014

Dear Michael

OUR DEFENCE ABUSE CLIENTS – COMPENSATION OPTIONS

We refer to previous discussions. As you are aware we represent a significant group of individuals who were employed by Defence, and who were subjected to abuse of varying degrees at differing times.

Our Defence abuse client-base to date:

The bulk of our clients were employed by the Navy and subjected to abuse at HMAS Leeuwin and HMAS Nirimba, and we note that by letter dated 27 August 2014 we provided you with copies of statements of some of our clients in that category.

In addition, we represent a further group of individual former Defence employees who were abused in the course of their employment by you, but not at the two Naval bases. You will note that some of these matters are relatively recent. We enclose for your information:

1. List of our current Defence abuse clients, categorised by their employment at the time they were abused.

We do note that our client base is expanding as we continue to receive new inquiries in both categories (HMAS Leeuwin abuse survivors and other Defence abuse survivors).

Other compensation options:

Many, but not all, of our clients have already received a payment through the Defence Abuse Response Taskforce. Our clients are grateful for those reparation payments, but as has been acknowledged the reparation amount was not intended to compensate them for the abuse

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they've suffered, or its consequences on their lives. They have engaged us to pursue other avenues of compensation for them.

Until now we have been in the information-gathering process in relation predominantly to the facts of the abuse suffered by our clients, and to a slightly lesser extent to date, the potential quantum of their claims.

The obvious next step is for us to commence common law proceedings for each of our Defence clients individually. We understand from without prejudice discussions that we have held with Defence representatives that the limitation issue is not likely to be pressed in relation to these potential claims. If proceedings were instituted, we would envisage that at some stage the parties would be inclined to participate in relation to alternative dispute resolution.

That being the case, we consider it would be in the best interests of our clients and yours to enter discussions regarding the possibility of identifying an agreed protocol for an expeditious and cost effective alternative method of negotiation which meets the needs of all parties, and avoids the expense, delay and publicity associated with commencing and running common law proceedings. The purpose of this letter is to open that discussion with you.

Negotiation protocol:

As discussed we currently represent 71 clients, and that number is steadily increasing. We envisage developing in consultation between us a private agreed protocol in respect of our clients which would culminate in a without prejudice bulk mediation process, at which each claim could be considered and negotiated individually.

We consider that the protocol might include agreement concerning:

- Confirmation of individuals to be included;
- Medico-legal assessment;
- Parameters and timing of disclosure;
- Particulars of claim;
- Mediation.

Inclusion in the group:

We have already provided you with copies of many of our client's statements and/or statutory declaration outlining their individual circumstances of abuse. We would undertake to provide similar documents in respect of each client to be included in the group protocol at the earliest opportunity.

There can be little doubt about the veracity of our clients' claims, however if you have any particular concerns regarding the inclusion of particular individuals in the group negotiation protocol, we invite you to discuss those concerns with us.

Until such time as the protocol is agreed, and effected, we reserve the right to include any future potential claimants in the group.

Medico-legal assessment:



We believe it would be appropriate for each client to be assessed by a psychiatrist for the purpose of providing a medico-legal report, to assist each of us in relation to the assessment of quantum of the claims. Our clients are unlikely to agree to any such assessment being carried out by a Defence employee, however we consider that it may be possible for us to reach agreement with you in relation to developing a small panel of independent psychiatrists (possibly in different States, to accommodate the geographical challenges of having our clients attend).

To avoid our clients having to discuss their experiences more often than necessary, we propose that the assessment be conducted on a joint basis ie an agreed joint letter of instruction be provided to the appropriate expert. We propose that Defence fund the cost of obtaining this evidence, and our clients' reasonable travel expenses associated with attending for the assessment.

Disclosure:

As you'd be aware, often the abuse occurred to our clients in the very early stages of their careers, many years ago. Accordingly, there is a lifetime of history (employment, medical and personal) that has transpired since that time. In our view we need to strike a balance between providing sufficient disclosure of our client's histories, and supporting documentation where it is available, for the parties to appropriately assess the quantum of the claim, without the administrative difficulties, costs and delay associated with obtaining, perusing and disclosing extensive documentary histories (taxation records, voluminous medical histories, etc)

We propose obtaining the following documents to assist in that regard:

- Our client's Defence service and medical records (and perhaps you would be in a position to expedite these processes where they have not occurred);
- Our client's Medicare history, and details of any refund applicable;
- Where applicable, our client's taxation records for the past three years;
- Our client's relevant treatment records for the past three years.

Particulars of claim:

Once disclosure is complete, including provision of the medico-legal report, we propose providing individual Particulars of our clients' claims. We have prepared a draft of a Particulars of Claim document for your consideration in relation to one of our clients, Mr Glenn Greaves, and we **enclose** that document for your perusal.

This document would then form the "overview" which could be relied upon for the basis for negotiations to commence at the subsequent mediation.

We consider it appropriate that our clients' damages be assessed in accordance with common law principles, and accordingly our clients would be subject to statutory refunds including Medicare and Centrelink where applicable.

We would be advising our clients that any negotiations would be on a without prejudice basis, and also advising them that the assessments of damages would need to involve considerable discounting to allow for costs savings associated with the agreed negotiation protocol, and for liability risks if they were to take their claims to Court.



We require confirmation that our clients would not be required to repay any expenses paid to them or on their behalf by Defence or the Department of Veterans Affairs in relation to pensions, part-pensions or medical treatment, nor would they forego any current or future DVA entitlements as a result of their involvement in this process.

Mediation:

We propose scheduling bulk Mediations to be conducted as a group. We propose engaging a mutually acceptable Mediator to be involved in the process. It occurred to us that high profile lawyers such as former High Court Justices Michael Kirby or Ian Callinan might be interested in becoming involved in a process such as this. In accordance with custom, we would expect Defence would fund the cost of the Mediator, including his/her travel costs if appropriate.

It would be important to our clients that they be involved in the process ie physically attend the Mediation, and we propose that you fund the costs associated with that attendance by them. We are prepared to make the travel arrangements, however neither we nor our clients are in a position to fund them.

We suggest hiring a suitable venue, with sufficient breakout rooms. With cooperation, forward-planning, and mutual adherence to a timetable, it may be possible to convene up to three Mediations per day. It may be that we agree to hold the bulk Mediations at a number of different locations/States, to be agreed between us depending upon the logistics such as the location of the clients in the group and the availability of the Mediator/legal representatives. If agreement is able to be reached, we would recommend to our clients to sign an appropriately worded Discharge, indemnifying Defence against any further claims for common law compensation in relation to the matters included in the claim, and including confidentiality clauses.

Other matters:

You would appreciate that our clients feel strongly about what has happened to them. In many cases they feel that they have not been "looked after" by Defence, and that they have borne the burden of their abuse for many years without acknowledgement or adequate support.

In addition to a payment of common law compensation, on an individual basis other matters may assist our clients in the future to feel that their suffering has been appropriately recognised, including such things as:

- Agreement to assist in the obtaining of suitable pensions for the future;
- Agreement to fund future medical treatment;
- Amendment of their Discharges from service;
- For those matters where the client has not had the benefit of the DART process genuine acknowledgement of harm done and provision of a meaningful personal apology.

Costs:

In the ordinary course, the defendant would pay legal costs individually on a standard basis in accordance with an appropriate Court Scale if a matter is negotiated to a successful resolution, and we consider that would be appropriate for these claims also. We have

Defence Personnel / Refr 99 / change reason for discharge as the reason was available to be at the time

Can also mean people eligible for Defence Mediation

Might help with DVA - BUT NOT necessarily. BUT wanting when don't health communit do see if DVA

Can also flow on effect to Superannuation

will have this info etc.



proposed that Defence fund certain of those standard costs (clients' travel to medico-legal assessment, clients' travel to mediation, medico-legal assessment) on an upfront basis, at the time of incurring the expense rather than at the conclusion of the matter.

We propose that an agreement in relation to costs be negotiated individually as part of the Mediation negotiations in the bulk mediation process.

Your views?

We invite you to consider the proposal we have put forward, and provide us with your comments in relation to whether you are prepared to enter discussions in relation to developing a protocol to resolve the claims of our Defence clients for common law compensation. We are anxious to build on the initial meeting we had and would propose that another meeting be convened to discuss the proposed protocols for dealing with our client's claims.

Yours faithfully,
SHINE LAWYERS

A handwritten signature in black ink, appearing to read "Rebecca Whittle", is written over the printed name.

CC Rebecca Whittle
Partner

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