

**ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL  
ABUSE**

**CASE STUDY 40  
AUSTRALIAN DEFENCE FORCE**

**SUBMISSIONS ON BEHALF OF THE COMMONWEALTH**

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## Apology

The Department of Defence reiterates the apology made by Vice Admiral Raymond James Griggs AO CSC, Vice Chief of the Australian Defence Force to the survivors during the public hearing on 30 June 2016:

*Thank you for the opportunity for me to acknowledge the courage and the strength of the survivors who have come forward and told their story, not only those who have come forward to this Commission but those who have come forward to the Defence Abuse Response Taskforce and to Defence more generally.*

*Your stories are changing the ADF and they have strengthened the resolve of the senior leadership of the ADF to stamp out abuse in all its forms and, in particular, child sexual abuse.*

*People and systems have failed you and they have put others at risk and that is simply not good enough. I am deeply sorry for what has happened to you. No-one who pulls on the uniform of this country and no child who is under our care should ever have had happen to them what has happened to you. I would particularly like to acknowledge the partners, the families and the carers of survivors and those who carry the memory of survivors who have passed away. I know you are as impacted by the consequence of abuse as much as the survivor themselves. I know you carry this for many decades and in many cases for your life. I also know that there are many survivors who have told their stories who simply would not be here today without you, and I think your role is not recognised anywhere near enough.*

*We have made some significant changes to our culture. We needed to. We are trying to move away from the culture that excludes and allows what has happened in the past to a culture that includes. Strangely, the senior leadership has been very publicly criticised for this approach. I want to reassure you that, to a person, we will not be bowed by this criticism and we will continue vigorously to pursue a path where we have a culture that is diverse and inclusive. We will strive to make children's interactions in Defence safe. We will try and build on the thousands of volunteers and Defence members who are committed to that today and are working towards that reality. Your stories are tragic, but they are transformational, and I thank you again for your courage in bringing forward these stories.*

Vice Admiral Raymond James Griggs AO CSC on behalf of the Australian Defence Force (**ADF**).

## Assistance

The Department of Veterans' Affairs (**DVA**) and the Department of Defence (**Defence**) take this opportunity to encourage those who have been affected by Case Study 40, through the hearing or private sessions, to come forward and seek assistance.

### **DVA Services and contact details**

#### ***Veterans and Veterans Families Counselling Service (VVCS)***

VVCS is a specialist service that provides free, confidential counselling, case management and group programs to around 20,000 current and former ADF members and their families each year. It is available Australia-wide and accessible 24/7.

#### **Eligibility**

- See [www.vvcs.gov.au](http://www.vvcs.gov.au) or call 1800 011 046

#### **Contact details**

Helpline 24/7: 1800 011 046

Web: <http://www.vvcs.gov.au/>

#### **DVA**

DVA has a range of services and support available to assist survivors of abuse.

For more information, visit the website below or call 133 254 (or 1800 555 254 for regional callers).

<http://www.dva.gov.au/benefits-and-payments/sexual-physical-abuse-support>

### **Defence services and contact details**

The following provides details of services that provide 24/7 telephone and/or online support and counselling services for health and wellbeing issues.

**These are not emergency services. For emergencies please call 000 (triple zero).**

#### ***Sexual Misconduct Prevention and Response Office (SeMPRO) - 1800 SeMPRO***

SeMPRO provides support to victims of sexual misconduct, including sexual offences. The support service is available 24/7, and is staffed by mental health professionals (social workers and psychologists).

#### **Eligibility**

- Current and ex-serving members of the ADF, their families and support people.
- From 31 October 2016, a 12-month pilot will commence that provides SeMPRO services to Officers and Instructors of ADF Cadets, ADF Cadets,

registered volunteers and their families who have been impacted by sexual misconduct.

**Contact details:**

SeMPRO 24/7: 1800 SeMPRO (1800 736 776)

SeMPRO 24/7(if calling from outside Australia): +612 6127 1759

email: [sempro@defence.gov.au](mailto:sempro@defence.gov.au)

Web: <http://www.defence.gov.au/sempro/>

***Defence Employee Assistance Program - 1300 361 008***

EAP provides free, confidential and professional counselling.

**Eligibility**

- All Defence Australian Public Services (**APS**) employees, their immediate family members and their supervisors/managers.
- ADF Reserves and their immediate family members.
- Officers and Instructors of ADF Cadets, and ADF Cadets and their immediate families.

**Contact details**

Helpline 24/7: 1300 361 008

***Defence Family Helpline - 1800 624 608***

The Defence Family Helpline (**DFH**) is available 24/7, and is staffed by qualified human services professionals, including social workers and psychologists who provide professional assessment, advice and referral depending on the nature of the call. Brief interventions are also delivered when appropriate.

The DFH provides support, information and connection with the community. Helpline staff help during crisis and emergency situations, can provide advice about managing during deployment, posting and relocation; support for partners' employment and education, assistance with children's education and childcare options, support for families with special needs, transitioning to civilian life and support services in the local community.

**Eligibility**

- Current serving ADF members and their families.

**Contact details**

Helpline 24/7: 1800 624 608

Email: [DefenceFamilyHelpline@defence.gov.au](mailto:DefenceFamilyHelpline@defence.gov.au)

Web: [http://www.defence.gov.au/dco/Contact\\_us.htm](http://www.defence.gov.au/dco/Contact_us.htm)

***Defence All-hours Support Line (ASL) – 1800 628 036***

The ASL is a confidential telephone service that helps with access to ADF or civilian mental health services. Services that can be accessed include psychology, medical, social work, and chaplain services. The Helpline is available 24/7, and is staffed by qualified professionals, including social workers and psychologists.

**Eligibility**

- Current serving ADF members and their families.

**Contact details**

Defence All-hours Support Line: 1800 628 036

Web: <http://www.defence.gov.au/Health/DMH/AllHoursSupportLine.asp>

***Garrison Health Services and contact details***

All current serving ADF members can access mental health support and treatment through their local On-Base Health Centre and Mental Health and Psychology Services. This can occur by self-referral, commander or manager initiated referral, or through a referral from a medical or other health professional.

Details of the On-Base Health Centres can be found on the ADF Health & Wellbeing Portal.

**Eligibility**

- Current serving ADF members.

***1800 IM SICK (1800 467 425)***

1800 IM SICK is a national 24 hour call service providing nurse triage and health support for ADF members within Australia who become ill or injured after hours or are not in close proximity to an On-Base health facility.

**Eligibility**

- Current serving ADF members.

**Contact details**

1800 467 425

***ADF Health & Wellbeing Portal***

The ADF Health & Wellbeing Portal 'Fighting Fit' is an online health information resource tool. It provides direction to a wide range of Defence websites containing information on ADF Health and Mental Health services and supports, as well as referencing a number of reputable external resources.

**Eligibility**

- Current and ex-serving ADF Members and their families.

**Contact details**

[www.defence.gov.au/health/healthportal/](http://www.defence.gov.au/health/healthportal/)



## Introduction

### About this submission

1. These submissions are made on behalf of the Commonwealth of Australia (**Commonwealth**), and in particular Defence (which, for the purpose of these submissions, includes the **ADF**, the Australian Air Force Cadets (**AAFC**), the Australian Navy Cadets (**ANC**) and the Australian Army Cadets (**AAC**)) and DVA.
2. This response also includes submissions made on behalf of many of the institutional witnesses<sup>1</sup> who were called to appear before the Royal Commission from the institutions of Defence and DVA.
3. The Commonwealth acknowledges the importance of the work the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) is undertaking and its work on Case Study 40.
4. Defence relies on the statement of Vice Admiral Raymond James Griggs AO CSC (**Vice Admiral Griggs**)<sup>2</sup> in support of these submissions.
5. In this submission Defence will provide an update on its endeavours since the public hearing to ensure that it is a child safe organisation in accordance with the evidence given by Vice Admiral Griggs.<sup>3</sup> Similarly, DVA will provide an update on changes to its policies and procedures since the public hearing in accordance with the undertaking given by Mr Bayles during his evidence.<sup>4</sup>
6. Although Defence acknowledges that there have been institutional failures within Defence and the ADF Cadets, some of the submissions made in Counsel Assisting's Submissions are not based on accurate summations of the evidence before the Royal Commission. This, in turn, has led to proposed findings being suggested which do not fairly reflect the evidence heard by the Royal Commission.

### Structure of this submission

7. In these submissions:
  - a. Specific submissions are made in relation to matters raised in the written submissions of Senior Counsel Assisting dated 5 September 2016 (**Counsel Assisting's Submissions**), following the same structure and progression of those submissions and using the same paragraph numbers. This includes proposed alternative findings, where applicable;

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<sup>1</sup> These submissions include the responses of Vice Admiral Raymond James Griggs, Rear Admiral Peter Sinclair, Geoffrey Curran, Laurence Watson, Alan McDonald, Terence Delahunty, Dennis Green, Darren Banfield, Sharon O'Donnell, Joseph Wayne Laycock, John Devereux, Jacqueline Hatch, Sean Watson, Craig Orme, Neil Bayles, Michael Lysewycz and Dale Watson. These submissions do not include the responses of Peter Ball, Carroll James, Christopher Adams, Todd Oakley, Adair Donaldson, CJJ and CJF, who were separately represented.

<sup>2</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001.

<sup>3</sup> Transcript of R Griggs, Case Study 40, 30 June 2016, 20034:17-31; 20035:26 to 20036:28; 20038:10:20.

<sup>4</sup> Transcript of N Bayles, Case Study 40, 24 June 2016, 19681:23-42; 19683:16-22, 19691:3-7.

- b. General submissions, including general submissions in relation to the evidence of particular institutional witnesses and their individual responses to the evidence are also made;
- c. Further submissions are also made in relation to changes implemented by each of Defence and DVA since the completion of the Royal Commission hearings in Case Study 40;
- d. A number of attachments are also included:
  - i. VCDF Directive dated 7 July 2016, attachment '**A**';
  - ii. VCDF letter dated 7 July 2016, attachment '**B**';
  - iii. AAFC Standing Instructions (SI) (PERS) 8-1 *Behaviour* and (SI) (PERS) 1-7 *Child Protection*, attachment '**C**';
  - iv. Front page of OIP Portal as at 5 October 2016, attachment '**D**'.

# RESPONSE TO COUNSEL ASSISTING'S SUBMISSIONS

## Part 1 Overview of the Australian Defence Force

### 1.2 Previous inquiries into abuse in the ADF

8. Previous inquiries into abuse in the ADF have resulted in significant cultural change reforms in Defence, most notably the *Pathway to Change* strategy.<sup>5</sup>
9. It should be acknowledged that Defence is committed to continuing to improve its policies, procedures, training and culture to ensure it is a child safe organisation. Defence is committed to learning from this Case Study and implementing further change as identified by the work of this Royal Commission.
10. To that end, Defence has provided, in Part 6 of this submission, information regarding updates and reforms that have occurred in the ADF Cadets since the hearing of Case Study 40. Many of these reforms specifically address issues that were raised by the Royal Commission during the course of Case Study 40, and may therefore obviate the need for some of the proposed findings to be made. They are discussed further in Parts 5 and 6 of this submission.

### Defence cultural reforms

11. Vice Admiral Griggs gave evidence of the many cultural and other reforms that Defence has undertaken over the last 7 years in response to the incidents revealed by the 2011 DLA Piper review into allegations of sexual and other abuse in Defence, and the Defence Abuse Response Task Force (**DART**) commencing in 2012.<sup>6</sup>
12. The experiences of survivors, including at HMAS *Leeuwin* (**Leeuwin**) and the Army Apprentices School at Balcombe (**Balcombe**), prompted Defence to make these extensive cultural changes and improve policy, and review and improve recording and reporting processes.<sup>7</sup>
13. These reforms have been implemented to create conditions that reduce the likelihood of harm occurring to all Defence personnel, including children, create conditions that increase the likelihood of any harm being disclosed and to ensure that any disclosure, allegations or suspicions of harm are responded to appropriately.<sup>8</sup>

### Pathway to Change

14. Defence released *Pathway to Change: Improving Defence Culture*, its five-year cultural reform strategy, on 7 March 2012, centred on a statement of cultural intent: Defence is '*trusted to defend, proven to deliver, and respectful always*'.<sup>9</sup>

<sup>5</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0025 to 0026.

<sup>6</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0025-0031.

<sup>7</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0003.

<sup>8</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0025.

<sup>9</sup> Pathway to Change – Evolving Defence Culture, <[www.defence.gov.au/pathwaytochange](http://www.defence.gov.au/pathwaytochange)>.

15. *Pathway to Change* identified three channels for implementation of cultural change – leadership, culture programs and initiatives – and then provided recommendations and key actions.
16. A suite of reviews were undertaken into Defence culture, including:
  - a. *Review of the Use of Alcohol in the Australian Defence Force*;<sup>10</sup>
  - b. *Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms*;<sup>11</sup>
  - c. *Review of the Use of Social Media and Defence*;<sup>12</sup>
  - d. *Review of the Management of Incidents and Complaints in Defence, including Civil and Military Jurisdiction*;<sup>13</sup>
  - e. *Review into the Treatment of Women at the Australian Defence Force Academy (Phase 1) and Review into the Treatment of Women in the Australian Defence Force (Phase 2)*;<sup>14</sup> and
  - f. *Review of Employment Pathways for APS Women in the Department of Defence*.<sup>15</sup>
17. By the end of 2015, Defence had finalised 96 per cent of the *Pathway to Change* key actions and recommendations.<sup>16</sup> As at September 2016, 98 per cent of recommendations have been implemented.
18. Results indicate positive cultural change is occurring in the three *Pathway to Change* channels.
19. Defence has invested the most effort in communicating expected standards of behaviour. Demonstrable change has been seen in this area, particularly in Defence's training establishments.
20. Progress is also being made across a number of structural and policy areas, including flexible career models, military justice reform, enhanced career pathways and dedicated resources towards diversity and inclusion.
21. As part of *Pathway to Change*, Defence has implemented a number of changes that evidence its commitment to cultural reform. Some relevant key achievements include:

<sup>10</sup> Review of the Use of Alcohol in the Australian Defence Force, <<http://www.defence.gov.au/pathwaytochange/docs/useofalcohol/>>.

<sup>11</sup> Review of the Personal Conduct of ADF Personnel, <<http://www.defence.gov.au/pathwaytochange/docs/personalconductpersonnel/>>.

<sup>12</sup> Review of Social Media and Defence, <<http://www.defence.gov.au/pathwaytochange/docs/socialmedia/>>.

<sup>13</sup> Review of the Management of Incidents and Complaints in Defence, <<http://www.defence.gov.au/pathwaytochange/docs/incidentscomplaints/>>.

<sup>14</sup> Review into the Treatment of Women in the Australian Defence Force Academy, <<https://defencereview.humanrights.gov.au/report-review-treatment-women-australian-defence-force-academy>>; Review into the Treatment of Women in the Australian Defence Force, <<https://defencereview.humanrights.gov.au/report-review-treatment-women-australian-defence-force>>.

<sup>15</sup> Review of Employment Pathways for APS Women in the Department of Defence, <<http://www.defence.gov.au/pathwaytochange/docs/epapsw/>>.

<sup>16</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0026.

- a. integrating agreed values and behaviours as core foundations of Defence education and training programs;
- b. expediting corrective processes by simplifying responses to, and management of, unacceptable behaviour;
- c. establishing the SeMPRO, increasing awareness of SeMPRO through face-to-face briefings and communication materials, and expanding SeMPRO's services to include Officers and Instructors of Cadets and cadets and their immediate families (from 31 October 2016); and
- d. enabling full implementation of agreed recommendations from the suite of cultural reviews and associated Defence reform directions through supporting policies.<sup>17</sup>

### Reform in the Services

22. Navy and Air Force have their own cultural reform programs which support *Pathway to Change* while Army remains committed to ongoing cultural renewal through *Pathway to Change* initiatives.
23. Navy's cultural change program, New Generation Navy (**NGN**), was introduced in 2009 and later modified in 2012 to specifically include the *Pathway to Change* statement of cultural intent. NGN is now in its seventh year and Navy continues to realise positive effects within its cultural reform strategy.<sup>18</sup>
24. Air Force has had an enduring and ongoing cultural reform program since 2000 which ensures that Air Force values and behaviours, plus an inclusive and diverse culture, have been and remain a high priority within Air Force. These cultural reform activities were brought together in September 2013 under the *New Horizon* program, as part of Air Force's *Pathway to Change* strategy.<sup>19</sup>
25. Since 2013, Army's cultural reform has been developed around two key pillars: '*Our Contract with Australia*' and Army's core values of Courage, Initiative, Respect and Teamwork. Army's reform program is being implemented through effects-based initiatives, supported by structural and policy changes.<sup>20</sup>

### Evaluation of Pathway to Change

26. Defence has monitored the success of *Pathway to Change* through surveys and demographic results.
  - a. The YourSay survey captured data on cultural reform programs between January 2013 and March 2016. Survey results demonstrated that overall awareness and adoption of *Pathway to Change* has improved since 2013.

<sup>17</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0025-0026.

<sup>18</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0026-0027.

<sup>19</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0028.

<sup>20</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0027-0028.

- b. The Unacceptable Behaviour survey demonstrated that overall there was a decrease in unacceptable behaviour incidents between 2013 and 2014, and no significant increase in unacceptable behaviour from 2014 to 2015. Most recent survey results are currently being collated and will be available in December 2016.
- 27. In July 2014, Defence commenced a four-year collaboration with the Australian Human Rights Commission (**AHRC**) to meet the intent of cultural reform across Defence as described in *Pathway to Change*.<sup>21</sup>
- 28. The AHRC visits up to 10 Defence establishments each year to examine particular aspects of culture. The AHRC, Defence People Group and the three Services will work closely together to identify the sites that will be visited and the particular issues that the AHRC will assist with addressing at each location.
- 29. As at September 2016 the AHRC has examined particular aspects of culture at 15 Defence establishments.
- 30. In each case the AHRC reviews available incident, unacceptable behaviour, offence and other data, conducts meetings with command and staff members, conducts focus groups and interviews with personnel and, after the visit, provides feedback and suggestions to the Service or command regarding the progress of cultural reform at the establishment.

#### **Next stage of cultural reform**

- 31. Defence is in the final year of the initial five-year *Pathway to Change* cultural reform strategy.
- 32. Defence continues to review the impact of *Pathway to Change* in achieving Defence's cultural reform goals, including leveraging the *First Principles Review* recommendations to deepen engagement with the accountability and leadership aspects of *Pathway to Change*.
- 33. *Pathway to Change* will be an enduring cultural reform strategy. Defence-wide consultation is currently underway to develop the next stage of cultural reform for 2017 and beyond.
- 34. On 20 May 2016 approximately 260 Defence senior leaders participated in a workshop discussion that focussed on the progress of *Pathway to Change* to date and on what the next steps should be, including aligning with the *First Principles Review* implementation.
- 35. A number of activities will be held to inform the next stage, including:
  - a. Branch Head/command-led conversations with their workforce;
  - b. a cultural reform advisors' workshop; and

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<sup>21</sup> Collaboration for Cultural Reform in Defence, <<https://defencereview.humanrights.gov.au/>>.

- c. an ADF/APS forum to test and evaluate options and to propose a way forward.
- 36. Features of these broader Defence reforms that apply to children/youth including ADF Cadets, and reforms specifically aimed at improving ADF Cadets generally, is discussed further in Part 6 of this submission.

## Part 2 HMAS *Leeuwin*

37. Defence acknowledges the courage and strength of the survivors of child sexual abuse which occurred at *Leeuwin*, in telling their stories to the Royal Commission. Defence regrets that those survivors, and others, were placed in a position where they endured abhorrent abuses. That abuse should not have occurred.
38. The behaviour that allowed those abuses to occur does not reflect the values and standards of behaviour expected in Defence today. It is also apparent that some of those in positions of responsibility at *Leeuwin*, at the time, failed to appropriately intervene. Defence accepts that this failure resulted in unacceptable behaviour occurring at *Leeuwin*.
39. Although Defence acknowledges that there have been institutional failures at *Leeuwin*, some of the submissions made in Counsel Assisting's Submissions are not based on accurate summations of the evidence before the Royal Commission. This, in turn, has led to proposed findings being suggested which do not fairly reflect the evidence heard by the Royal Commission.

### 2.1 Overview of HMAS *Leeuwin*

#### Complaint handling procedures at *Leeuwin*

40. In addition to the reporting mechanisms described in paragraph [79] of Counsel Assisting's Submissions, other reporting mechanisms were also in place at *Leeuwin*. Reporting of offences, for example assault or theft, could also be made directly to any superior officer, Naval Police and Coxswains.<sup>22</sup>
41. Further, the process for Junior Recruits to report complaints referred to in paragraph [83] of Counsel Assisting's Submissions was only in relation to complaints about discipline (in effect a review of a punishment dealt with pursuant to the *Naval Discipline Act* or prescribed in accordance with the Manual of Naval Law) and not other complaints.<sup>23</sup> To say this 'review of discipline mechanism' was the 'only procedure' for making a complaint is incorrect.
42. In both Junior Recruits' handbooks there is an additional mechanism for Junior Recruits to make requests to see his Divisional Officer, Training Officer, Executive Officer or the Captain for any reason, including making a complaint.<sup>24</sup>

<sup>22</sup> Exhibit 40-0006, Case Study 40, DEF.02.009.001.0390\_E, DEF.02.0009.001.0496\_E and DEF.02.0009.001.0532\_E at Art 0901.3.

<sup>23</sup> Exhibit 40-0006, Case Study 40, DEF.02.0009.001.7272 at 7299-7300.

<sup>24</sup> Exhibit 40-0006, Case Study 40, DEF.02.0009.001.7272 at 7317.



## 2.2 Previous inquiries into HMAS *Leeuwin*

### The Rapke Report

43. Defence accepts proposed findings F1 and F2 in relation to the Rapke Report. It is apparent from the findings of the DART that the nature and extent of abuse, bullying and violence at *Leeuwin*, which occurred prior to the Rapke Report in 1971, was minimised in the Rapke Report. With regard to proposed finding F3, Counsel Assisting's Submissions at paragraph [99] do not accurately reflect the findings of the Rapke Report.
44. The Rapke Report disclosed the following:
- a. *Leeuwin* had been the scene for unorganised and repetitive acts of bullying, violence, degradation and petty crime during most of the years of its existence (i.e. 1960 to 1971);<sup>25</sup>
  - b. many experienced staff members at *Leeuwin* did not believe that bullying should be stamped out entirely but merely controlled so that it did not go too far;<sup>26</sup>
  - c. the supervision at *Leeuwin* was inadequate.<sup>27</sup>
45. Proposed finding F3 should therefore be amended as follows:

#### Proposed alternative finding F3:

*'After the Rapke Report was provided to the Minister in 1971, Defence was on notice that, for the period 1960 to 1971:*

- (a) unacceptable behaviour including bullying, physical violence and degradation had occurred amongst junior recruits at HMAS Leeuwin;*
- (b) some staff at HMAS Leeuwin had tolerated this unacceptable behaviour;*
- (c) offences had not been reported, and incidents of bullying and physical violence were therefore likely to be more widespread than reported by junior recruits, including to Judge Rapke; and*
- (d) the supervision of junior recruits at HMAS Leeuwin was inadequate.'*

<sup>25</sup> Exhibit 40-006, Case Study 40, DEF.02.0001.002.0036\_R at 0077\_R.

<sup>26</sup> Exhibit 40-006, Case Study 40, DEF.02.0001.002.0036\_R at 0078\_R.

<sup>27</sup> Exhibit 40-006, Case Study 40, DEF.02.0001.002.0036\_R at 0078\_R.

## Response to the Rapke Report at the time

46. In contrast to paragraph [100] of Counsel Assisting's Submissions, it should be noted that even before the Rapke Report was completed and/or provided to the Minister, immediate steps were taken by Defence to address the levels of supervision at *Leeuwin*, in direct response to the Connolly incident.<sup>28</sup>
47. As noted in paragraph [104] of Counsel Assisting's Submissions, a new Commanding Officer and Executive Officer (namely Commodore Doyle and then Commander (now Rear Admiral) Sinclair) were appointed to *Leeuwin* after the Rapke Report was provided to the Minister. Commodore Doyle and Rear Admiral Sinclair were specifically tasked with addressing the shortcomings identified in the Rapke Report at *Leeuwin*.<sup>29</sup>
48. Laurence Watson was also provided with a copy of the Rapke Report.<sup>30</sup> It is therefore apparent that those who were in positions of authority at *Leeuwin* (and specifically those who were tasked with implementing reforms) after the Rapke Report was provided to the Minister were provided with copies of it, and were otherwise aware of its contents.
49. Rear Admiral Sinclair's evidence was that he '*took steps to make sure it was clear to all staff and Junior Recruits that the type of behaviour described in Rapke's report was not acceptable and that it was not condoned. [He] also wanted to make clear that there would be consequences for anyone involved in such behaviour.*'<sup>31</sup> Accordingly, it can be inferred that the content of the Rapke Report was brought to the attention of other staff by Rear Admiral Sinclair by no later than about July 1972.
50. As also noted at paragraphs [105] to [106] of Counsel Assisting's Submissions, the changes that were made at *Leeuwin* from 1972 onwards, resulted in a reduction of incidents of physical and sexual abuse. However, this reduction was not just restricted to the period 1973 to 1974, as suggested. Rather, according to the evidence in the DART report, there was an overall decline in the number of complaints of abuse from 1972 onwards.<sup>32</sup> The overall effectiveness of the response to the Rapke Report is discussed further below.
51. The change in the environment of *Leeuwin* after 1972 is also reflected in the evidence of CJB, who said that when he returned to *Leeuwin* in January 1972 '*life was completely different. The Divisional Officers were much nicer and life for the last nine months at Leeuwin was much better than my first three months.*'<sup>33</sup>
52. Whilst Defence does not resile from the fact that incidents of child sexual abuse did continue at *Leeuwin* beyond 1971, the evidence before the DART reveals that it significantly reduced.

<sup>28</sup> Transcript of G Curran, Case Study 40, 22 June 2016, 19430:11-34.

<sup>29</sup> Exhibit 40-009, Statement of P Sinclair, Case Study 40, STAT.1014.001.0001\_R at 0003\_R.

<sup>30</sup> Transcript of L Watson, Case Study 40, 23 June 2016, 19509:36-42.

<sup>31</sup> Exhibit 40-009, Statement of P Sinclair, Case Study 40, STAT.1014.001.0001\_R at 0003\_R.

<sup>32</sup> Exhibit 40-0008, Case Study 40, DART.0006.001.0001 at 0128.

<sup>33</sup> Exhibit 40-0005, Statement of CJB, Case Study 40, STAT.0998.001.0001\_R at 0006\_R.

53. For example, graph 11 of Appendix F of the DART report on *Leeuwin*<sup>34</sup> reveals that the number of complainants per year after 1971 varied from as low as 2 to at most 10 (in 1978 and 1979 respectively, when the total number of junior recruits exceeded 300 each year). Notably, the DART recorded that in 1975 and 1976, there were 6 and 3 complainants respectively, from more than 800 junior recruits per year.<sup>35</sup>
54. Accordingly, it can reasonably be inferred from the reduction in complainants after 1971, that Defence's response to the Rapke Report was successful in reducing incidents. Defence accepts, however, that the response was not completely successful in eradicating all incidents of child sexual abuse.
55. Defence therefore proposes alternative wording to proposed finding F4, as follows:

Proposed alternative finding F4:

*'Defence's response to the findings of the Rapke Report was successful in reducing incidents of abuse at HMAS Leeuwin from 1972 onwards. However between 1972 and 1982 incidents of abuse continued to occur.'*

## **2.4 The historical response to incidents of child sexual abuse at HMAS *Leeuwin***

### **Awareness of sexual abuse at the time**

56. As set out above, it is apparent from the reduction of complainants after 1971 that there was improvement at *Leeuwin*.
57. Further, aside from the limited and positive evidence of CJB,<sup>36</sup> the Royal Commission heard no evidence from any survivors who attended *Leeuwin* after the Rapke Report reforms were implemented. Only two institutional witnesses gave evidence about the effectiveness of the post Rapke Report reforms, Rear Admiral Sinclair and Laurence Watson.
58. Rear Admiral Sinclair's evidence was that, in terms of responding to the Rapke Report:
- a. he increased the overall level of supervision of junior recruits at night, including increasing random rounds of accommodation blocks;<sup>37</sup>
  - b. he established a social club for junior recruits, and reinstated the Junior Recruits' Welfare Committee;<sup>38</sup> and
  - c. he interacted directly with junior recruits and informed them of his expectations about discipline and complaint avenues.<sup>39</sup>

<sup>34</sup> Exhibit 40-0008, Case Study 40, DART.0006.001.0001 at 0128.

<sup>35</sup> Exhibit 40-0008, Case Study 40, DART.0006.001.0001 at 0128.

<sup>36</sup> Exhibit 40-0005, Statement of CJB, Case Study 40, STAT.0998.001.0001\_R at 0006\_R; Transcript of CJB, Case Study 40, 21 June 2016 at 19348:37-42.

<sup>37</sup> Exhibit 40-009, Statement of P Sinclair, Case Study 40, STAT.1014.001.0001\_R at 0003\_R to 0004\_R.

<sup>38</sup> Exhibit 40-009, Statement of P Sinclair, Case Study 40, STAT.1014.001.0001\_R at 0004\_R.

<sup>39</sup> Exhibit 40-009, Statement of P Sinclair, Case Study 40, STAT.1014.001.0001\_R at 0004\_R.

59. Whilst Rear Admiral Sinclair's evidence was that he considered he was successful in achieving his aims of improving morale at *Leeuwin*, and lessening the opportunity for disciplinary problems,<sup>40</sup> as he explained in his evidence:<sup>41</sup>

*'When I say 'succeeded', you can't just turn the switch on and off in a place as complicated as Leeuwin. When you introduce reforms and new practices, it will take some time for those to take effect, but I was satisfied that the steps I had taken were going to achieve that aim.'*

60. During the course of his examination, Rear Admiral Sinclair had no specific cases put to him. It was not suggested that any particular incident of abuse occurred that might have been prevented by some additional precaution or that a complaint was concealed because of any identified inadequacy in the systems put in place.<sup>42</sup>
61. The limited nature of the inquiry made of Rear Admiral Sinclair and the small number of complaints made later in time do not support the submission proposed at paragraph [210] of Counsel Assisting's Submissions.
62. Similarly, Mr Watson's evidence was that Commodore Doyle had made significant changes to the supervision at *Leeuwin*, and had also implemented a system of assessing the suitability of staff members.<sup>43</sup>
63. Further, the evidence of Mr Watson was that a number of instances of child sexual abuse (as well as other forms of abuse) which occurred after the Rapke Report were in fact the subject of disciplinary proceedings.<sup>44</sup> This included a case involving the rape of a junior recruit by other junior recruits in the accommodation blocks at night, and resulted in the state police being informed and the perpetrator being discharged from the Navy.<sup>45</sup> Mr Watson's evidence was that, in his experience at least, junior recruits did complain.<sup>46</sup>
64. Again, this evidence suggests that the changes made after the Rapke Report were moderately successful in identifying and responding to instances of child sexual abuse after 1972.
65. Accordingly, there is an absence of any factual foundation and/or rationale to support the submission in paragraph [210] of Counsel Assisting's Submissions and proposed finding F8 a finding of 'a significant failure' in the management of *Leeuwin*, at least after 1972.
66. As set out above, from at least 1972 onwards, endeavours were made to prevent instances of abuse at *Leeuwin*. Defence acknowledges that, in light of the evidence before the DART, these endeavours were ultimately not completely successful in eradicating incidents of child sexual abuse, and that

<sup>40</sup> Exhibit 40-009, Statement of P Sinclair, Study 40, STAT.1014.001.0001\_R at 0003\_R to 0004\_R; Transcript of P Sinclair, Case Study 40, 22 June 2016 at 19454:34-37.

<sup>41</sup> Transcript of P Sinclair, Case Study 40, 22 June 2016, at 19454:47 to 19455:3.

<sup>42</sup> Transcript of P Sinclair, Case Study 40, 22 June 2016 at 19463:16, 45 and at 19467:5

<sup>43</sup> Transcript of L Watson, Case Study 40, 23 June 2016, 19509:44 to 19511:15.

<sup>44</sup> Exhibit 40-010, Statement of L Watson, Case Study 40, STAT.1020.001.0001\_R at 0006\_R to 0008\_R.

<sup>45</sup> Exhibit 40-010, Statement of L Watson, Case Study 40, STAT.1020.001.0001\_R at 0006\_R to 0007\_R; Transcript of L Watson, Case Study 40, 23 June 2016 at 19504:28-32.

<sup>46</sup> Transcript of L Watson, Case Study 40, 23 June 2016, 19508:40-47.

incidents of abuse still continued to occur, albeit at reduced numbers. Therefore, Defence proposes an alternative wording for proposed finding F8, as follows:

Proposed alternative finding F8:

*'Staff members at HMAS Leeuwin had a duty of care for junior recruits to protect them from sexual abuse. During the 1960s to 1971, the system of management was ineffective in preventing and responding to child sexual abuse. This management failure was a contributing factor to occurrences of sexual abuse. From 1972 to 1982, the system of management was improved, but was not completely successful in preventing or responding to child sexual abuse.'*

67. A careful analysis of the evidence of Mr Curran reveals that nuggeting was not seen as an accepted behaviour,<sup>47</sup> it was not widespread<sup>48</sup> and it had never been reported to him as occurring in his time at HMAS *Leeuwin*.<sup>49</sup> He did however note that he was aware of at least one incident of nuggeting occurring in another division in 1971, which was reported.<sup>50</sup>
68. Insofar as Mr Curran's evidence concerned his own experience of nuggeting, it should not be used as a basis to suggest that he was prepared to ignore the type of nuggeting experienced by the survivor witnesses. Rather, his evidence was that the type of nuggeting he personally experienced was vastly different to that which was described by the various survivor witnesses.<sup>51</sup> Mr Curran gave evidence that the type of nuggeting experienced by the survivor witnesses was *'inhuman and not to be tolerated'*.<sup>52</sup>
69. No other institutional witness gave evidence which suggested that nuggeting was in any way acceptable.<sup>53</sup>
70. Accordingly, proposed finding F9 should not be made.
71. Proposed finding F10 should also be amended so that it reads as follows:

Proposed alternative finding F10:

*'From the 1960s through to 1972, cases of physical and sexual abuse of junior recruits at HMAS Leeuwin occurred and was severe. Senior staff members knew enough of what was occurring to be put to further enquiry. However, they relied upon others beneath them in the hierarchy to bring matters up to them, but the system of hierarchy itself, although not the only cause of the abuse, contributed to the abuse and failed in preventing it.'*

<sup>47</sup> Transcript of G Curran, Case Study 40, 22 June 2016, 19358:24.

<sup>48</sup> Transcript of G Curran, Case Study 40, 22 June 2016, 19357:45

<sup>49</sup> Transcript of G Curran, Case Study 40, 22 June 2016, 19414:8.

<sup>50</sup> Exhibit 40-0007, Statement of G Curran, Case Study 40, STAT.1023.001.0001\_R at 0007\_R.

<sup>51</sup> Transcript of G Curran, Case Study 40, 22 June 2016, 19393:8 to 19394:3.

<sup>52</sup> Transcript of G Curran, Case Study 40, 22 June 2016, 19393:20-21.

<sup>53</sup> Transcript of L Watson, Case Study 40, 23 June 2016, 19504:34 -42.

72. Similarly, in light of the evidence that staff did take steps to prevent abuse at *Leeuwin* (see above at [46] to [55] and [62] to [63]), proposed finding F11 should also be amended as follows:

Proposed alternative finding F11:

*'The hierarchical reporting system contributed to the failure by the senior staff at HMAS Leeuwin in their duty to those in their care and was a factor that allowed the abuse to continue.'*

**The 'drop-out' rates at HMAS Leeuwin**

73. The 'drop-out' rates from 1970 onwards varied from 3.3% to 25.8% at *Leeuwin*.
74. Defence's analysis of the discharges of junior recruits at *Leeuwin* during its entire operation reveals a variety of reasons for discharges.<sup>54</sup> The main reason for discharge of junior recruits was recorded as 'Unsuitable' or 'Unfit for Training in the rating of', which included cases of academic underperformance, poor disciplinary record and temperamentally unsuitable. The second major reason for discharge was recorded as 'Optional', which was an option available to all junior recruits after 1 July 1970 to seek discharge for any reason whatsoever.
75. Rear Admiral Sinclair explained in his evidence the inherent difficulties in using the raw numbers styled as 'drop-out rates'. This is because the numbers included transfers to officer training, other bases, and fleet air arm and so forth. He also gave evidence of the fact that the drop-out rates during his time were not substantial.<sup>55</sup>
76. There is no evidence before the Royal Commission to suggest that the drop-out rates at *Leeuwin* were either significant, or a cause for concern. In the absence of such evidence, proposed findings F12 and F13 are based upon speculation, are unsafe, and should not be made.

**The existence of 'rites of initiation' in the Navy and at HMAS Leeuwin**

77. Counsel Assisting's Submissions in relation to the existence of 'rites of initiation', either in the Navy or at *Leeuwin*, demonstrate a misunderstanding about the term 'rites of initiation' or 'rites of passage', as understood and used by the Defence witnesses.
78. This section of Counsel Assisting's Submissions precedes upon assumptions that firstly, celebratory rituals are the same as severe abuse, and secondly, that celebratory rituals inevitably lead to severe abuse. Neither proposition was established with respect to *Leeuwin* or the Navy. This does not detract from the facts of abuse that are admitted and acknowledged to have occurred at *Leeuwin*.
79. Contrary to the submissions at paragraphs [255] and [262]-[266] of Counsel Assisting's Submissions there was no evidence of any formalised traditions or

<sup>54</sup> Exhibit 40-044, Case Study 40, INT.0012.001.0001.

<sup>55</sup> Transcript of P Sinclair, Case Study 40, 22 June 2016, 19444:26-35.

practices involving the abuse of junior recruits. There was evidence that junior recruits were subjected to abuse by other recruits (for example, 'running the gauntlet'), but there was no evidence before the Royal Commission that those practices were tolerated.

80. The questioning of Mr Curran assumed that he had accepted that harmful 'rites of initiation' did in fact occur at *Leeuwin*, but his response was equivocal<sup>56</sup> and does not support the submission in paragraph [261] of Counsel Assisting's Submission.
81. To the extent that Rear Admiral Sinclair's evidence indicated that some form of 'rites of initiation' existed in the Navy in 1948, the experiences he described<sup>57</sup> were different to the unacceptable behaviour experienced by the survivor witnesses. Further, Rear Admiral Sinclair's evidence was that 'rites of initiation' were not accepted in the Navy.<sup>58</sup>
82. Both Mr Curran and Rear Admiral Sinclair gave evidence that 'rites of initiation' were not an established part of the culture of *Leeuwin*.<sup>59</sup> Both also gave evidence that the types of behaviour described by the survivor witnesses (which were not identified as 'rites of initiation') were not tolerated at *Leeuwin* and would have been reported.<sup>60</sup>
83. Given the above, proposed findings F14 to F18 should not be made.

### **The under-reporting of abuse at HMAS *Leeuwin***

84. The evidence of the survivor witnesses who did not report child sexual abuse at the time, disclosed that whilst reporting avenues were available,<sup>61</sup> the primary reason for non-reporting was a fear of retribution from other junior recruits or being labelled a 'dobber'.<sup>62</sup> Other reasons for non-disclosure included that they felt humiliated or ashamed.<sup>63</sup> Therefore, proposed finding F26<sup>64</sup> should be amended as follows:

#### Proposed alternative finding F26:

*'During the 1960s to 1980s, most junior recruits who experienced child sexual abuse at HMAS Leeuwin did not report the abuse to anyone because:*

- (a) they feared retribution from other junior recruits and being labelled as 'dobbers';*  
*(b) they felt ashamed or humiliated;*

<sup>56</sup> Transcript of G Curran, Case Study 40, 22 June 2016, 19362:37 to 19362:12.

<sup>57</sup> Transcript of P Sinclair, Case Study 40, 22 June 2016, 19461:15-31.

<sup>58</sup> Transcript P Sinclair, Case Study 40, 22 June 2016, 19461:42 to 19462:3.

<sup>59</sup> Transcript of G Curran, Case Study 40, 22 June 2016, 19371:9-19; Transcript of P Sinclair, Case Study 40, 22 June 2016, 19460:24-26, 19489:16-23.

<sup>60</sup> Transcript G Curran, Case Study 40, 22 June 2016, 194233:44 – 19424:6.

<sup>61</sup> Exhibit 40-0003, Statement of CJT, Case Study 40, STAT.0988.001.0001\_R at 0003\_R.

<sup>62</sup> Exhibit 40-0001, Statement of CJA, Case Study 40, STAT.0993.001.0001\_R at 0004\_R to 0005\_R; Exhibit 40-002, Statement of G Frazer, Case Study 40, STAT.0995.001.0001 at 0003; Exhibit 40-0005, Statement of CJB, Case Study 40, STAT.0998.001.0001\_R at 0003\_R.

<sup>63</sup> Exhibit 40-0001, Statement of CJA, Case Study 40, STAT.0093.001.0001\_R at 0005\_R, 0006\_R.

<sup>64</sup> It should be noted that proposed finding 26(c) in Counsel Assisting's Submissions, incorrectly uses the term 'apprentices' rather than 'junior recruits'.

- (c) *they did not think they would be believed; and/or*  
 (d) *they feared being punished or discharged from the Navy.'*

85. The existence of a 'non-dobbing culture' and/or the reluctance of junior recruits to report abuse at the time was contrary to the instructions given to the junior recruits to report such behaviours.<sup>65</sup>
86. Further, there is insufficient evidence to make generalised comments about the action or inaction of staff during the entire period of *Leeuwin's* operations. Without any specific evidence from period(s) not examined it is impossible to determine whether a culture continued or did not continue to exist.
87. For example at paragraphs [312]-[314] of Counsel Assisting's Submissions, the culture of 'non-dobbing' is addressed, and the evidence of Mr Curran and Rear Admiral Sinclair is contrasted. The fact that Mr Curran left *Leeuwin* in April 1972, before Rear Admiral Sinclair joined *Leeuwin* is overlooked. The conclusion that '*other than Mr Sinclair, staff did nothing to break or undermine this culture*'<sup>66</sup> understates the efforts made by all staff retained by Commodore Doyle to change the culture.<sup>67</sup>
88. Therefore proposed finding F29 that '*for the most part, staff did nothing to break or undermine this culture and, as a result, the culture continued to exist at HMAS Leeuwin*', at least with respect to events after July 1972 is unsupported, and unsupportable.
89. Defence therefore proposes alternative wording for proposed findings F28 and F29 as follows:

Proposed alternative finding F28:

*'Staff at HMAS Leeuwin were aware of an existence of a non-dobbing culture prior to 1972, that prevented junior recruits from reporting abuse at that time.'*

Proposed alternative finding F29:

*'For the most part, prior to 1972, staff did nothing to break or undermine this culture.'*

<sup>65</sup> Exhibit 40-0006, Case Study 40, DEF.02.0009.001.7272 at 7298.

<sup>66</sup> Counsel Assisting's Submissions paragraph [314].

<sup>67</sup> Transcript of L Watson, Case Study 40, 23 June 2016, 19509:44 to 19511:15.



## Part 3 The Army Apprentices School, Balcombe

### 3.1 Overview of the Army Apprentices School, Balcombe

90. Although Defence acknowledges that there have been institutional failures at the Army Apprentices School, Balcombe (note the correct name) (**Balcombe**), which have resulted in survivors being subjected to various forms of serious abuse, some of the submissions made in Counsel Assisting's Submissions are not based on an accurate summation of the evidence before the Royal Commission. This, in turn, has led to proposed findings being suggested which do not fairly reflect the evidence heard by the Royal Commission. These matters are addressed below.
91. Defence otherwise agrees with the content of Counsel Assisting's Submissions in relation to Balcombe.

### 3.2 The experiences of former apprentices at Balcombe

92. Defence proposes some minor amendments to proposed findings F30 and F31, to more accurately reflect the evidence heard by the Royal Commission.
93. The evidence of the three survivor witnesses who did not report child sexual abuse at the time, disclosed that whilst reporting avenues were available,<sup>68</sup> the primary reason for non-reporting was a fear of retribution from other apprentices or being labelled a 'dobber'.<sup>69</sup> Other reasons for non-disclosure included a fear that they would not be believed,<sup>70</sup> they felt humiliated,<sup>71</sup> and they feared discharge.<sup>72</sup> Therefore, proposed finding F30 should be amended as follows:

Proposed alternative finding F30:

*'During the 1970s to 1980s, most apprentices at the Army Apprentices School, Balcombe, who experienced child sexual abuse did not report the abuse to anyone because:*

- (a) They feared retribution from other apprentices and being labelled as 'dobbers';*
- (b) They did not think they would be believed;*
- (c) They were ashamed; and/or*
- (d) They feared being punished or discharged from the Army'.*

94. Similarly, the evidence of the two survivor witnesses who did make reports around the time of their abuse, indicated that some staff members (but not all) did not respond in an appropriate manner. Importantly, Mr McDonald gave

<sup>68</sup> Exhibit 40-0014, Statement of CJC, Case Study 40, STAT.0990.001.001\_R at 0005\_R to 0006\_R.

<sup>69</sup> Exhibit 40-0014, Statement of CJC, Case Study 40, STAT.0990.001.001\_R at 0005\_R to 0006\_R; Exhibit 40-0015, Statement of D James, Case Study 40, STAT.1001.001.0001 at 0003 to 0006; Exhibit 40-0016, Statement of CJV, Case Study 40, STAT.0986.001.0001\_R at 0004\_R to 0005\_R.

<sup>70</sup> Exhibit 40-0014 Statement of CJC, Case Study 40, STAT.0990.001.001\_R at 0006\_R.

<sup>71</sup> Exhibit 40-0016, Statement of CJV, Case Study 40, STAT.0986.001.0001\_R at 0005\_R.

<sup>72</sup> Exhibit 40-0015, Statement of D James, Case Study 40, STAT.1001.001.0001 at 0006.

evidence that a number of apprentices were discharged from the Army as a consequence of committing various serious physical assaults.<sup>73</sup>

95. Therefore, Defence proposes a minor amendment to proposed finding F31, to reflect that whilst appropriate responses were often made, some staff members did not respond appropriately (particularly to the complaints of the survivor witnesses), as follows:

Proposed alternative finding F31:

*'During the 1970s to 1980s, some apprentices at the Army Apprentices School, Balcombe who did report sexual or physical abuse to staff members were not believed, were punished for reporting the physical or sexual abuse, or were told that 'pranks will happen'. Some staff members failed to accept and adequately respond to complaints from apprentices regarding incidents of sexual and physical abuse.'*

### **3.3 Previous inquiries into the Army Apprentices School, Balcombe**

#### **Proposed finding F32**

96. Proposed finding F32 states *'Child sexual abuse at the Army Apprentice[s] School, Balcombe was widespread'*.
97. However, the evidence does not support this conclusion. The evidence before the Royal Commission was that approximately 5,000 apprentices graduated from Balcombe<sup>74</sup> and 29 cases of child sexual abuse were reported to DART.<sup>75</sup>
98. Whilst Defence accepts that the reports made to the DART may not include all cases of child sexual abuse that ever occurred at Balcombe, the numbers reported to the DART support that child sexual abuse was not widespread, affecting only a small part of the apprentice population. Nevertheless, Defence accepts that even such a small amount of child sexual abuse is unacceptable.
99. Although it is not disputed that child sexual abuse occurred at Balcombe, and Defence does not in any way dismiss the experiences of those who experienced this abuse at Balcombe, proposed finding F32 should be altered to accurately reflect the evidence.
100. Therefore, proposed finding F32 should be altered to read as follows:

Proposed alternative finding F32:

*'Child sexual abuse occurred at the Army Apprentices School, Balcombe.'*

<sup>73</sup> See for example, exhibit 40-0024, Case Study 40, DEF.002.001.0001\_R and 0002\_R; Transcript of A McDonald, Case Study 40, 24 June 2016 at 19603:6-10, 19623:4 to 19625:30.

<sup>74</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40 STAT.1005.001.0001 at 0005.

<sup>75</sup> Exhibit 40-0019, Case Study 40, DART.0006.001.0149 at 0370.

### Proposed finding F33

101. Similarly, proposed finding F33, insofar as it refers to *'civilian staff'*, is also not supported by the evidence before the Royal Commission.
102. The evidence before the Royal Commission was that child sexual abuse was perpetrated by only one civilian staff member: a civilian laundry manager known as 'Bert', or 'Uncle Albert'. This person was referred to in both the evidence of Darryl James and CJU.<sup>76</sup>
103. Therefore, proposed finding F33 should be amended to read as follows:

Proposed alternative finding F33:

*'Child sexual abuse was perpetrated principally by other more senior apprentices, but also on occasion by Army staff and at least one civilian staff member.'*

## 3.4 The historical response to incidents of child sexual abuse at Balcombe

### Complaints handling

#### *Documents unable to be located by Defence*

104. In paragraphs 462, 463 and 474, Counsel Assisting notes that Defence did not provide the Royal Commission with copies of certain requested documents in relation to Balcombe. These documents include the Manual of Personnel Administration, the unit Standing Orders and Duty Log books.
105. By way of explanation, Defence was unable to produce these documents to the Royal Commission as it was unable to locate copies of these documents at the time of the Notice to Produce, despite the numerous and lengthy searches its personnel undertook to do so.<sup>77</sup>

#### *Manual of Personnel Administration*

106. An entire copy of the Manual of Personnel Administration was unable to be located. However copies of relevant chapters of the Manual were located on 20 June 2016, and were provided to the Royal Commission on 24 June 2016.<sup>78</sup>

<sup>76</sup> Exhibit 40-0014, Statement of D James, Case Study 40, STAT.1001.001.0001 at 0007 to 0008 and Exhibit 40-0017, Statement of CJU, Case Study 40, STAT.0987.001.0001 at 0005.

<sup>77</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40 STAT.1005.001.0001 at 0007.

<sup>78</sup> In compliance with C-NP-1605, relevantly being DEF.02.0009.004.0001 (Chapter 36 – Army Apprentices General); DEF.02.0009.004.0011 (Chapter 83 – Personnel Incident Reporting and Investigation Policies and Procedures); DEF.02.0009.004.0035 (Chapter 103 – Civil Convictions) and DEF.02.0009.004.0038 (Chapter 95 – Alcohol).

### *Unit Standing Orders and Duty Log Books*

107. The Army Apprentices School Balcombe Standing Orders and Duty Log books were not able to be located despite extensive searches.
108. There was no legislative requirement to retain the Standing Orders or Duty Log Books and if they were maintained for historical reasons they did not survive the multiple changes of formation command, the physical change of locations or the closure of the scheme.
109. Physical checks and electronic searches of the National Archives of Australia and the Australian War Memorial files were conducted, as well as searches of the internet including Army Apprentice Association websites. Defence also conducted physical searches of the Bonegilla area library, the Royal Australian Electrical and Mechanical Engineers' history cell in Bonegilla and the Army History Unit.

## **Part 4 The contemporary response to historical incidents of child sexual abuse at HMAS *Leeuwin* and Army Apprentices School Balcombe**

### **4.1 The response of the Department of Veterans' Affairs**

110. DVA's response is limited to addressing those issues outlined in paragraph 479 of Counsel Assisting's Submissions, namely:
  - a. the requirement that contemporaneous or corroborative evidence be produced to support claims;
  - b. 'compensation offsetting' or 'claw back', which requires the repayment of DVA benefits or pensions awarded for an injury when compensation is awarded for another claim in respect of the same injury; and
  - c. general issues in dealing with the DVA in responding to, and assessing, claims.<sup>79</sup>

#### **Evidentiary requirements**

111. DVA acknowledges that corroborative evidence of incidents of child abuse can be difficult to acquire.
112. Mr Bayles undertook to consult with the relevant policymakers – the Repatriation Commission, the Military Rehabilitation and Compensation Commission and the Government – and revisit DVA's policies in light of the evidence presented at the Royal Commission.<sup>80</sup>
113. In accordance with that undertaking, DVA notes that on 29 September 2016, the Repatriation Commission and the Military Rehabilitation and Compensation Commission agreed to new policies for determining claims for child sexual and

<sup>79</sup> Defence's current approach towards resolving claims is discussed at paragraph 265 to 269 below.

<sup>80</sup> Transcript of N Bayles, Case Study 40, 24 June 2016, 19681:23-42; 19683:16-22, 19691:3-7.

physical abuse under the *Veterans' Entitlements Act 1986 (VEA)*, the *Safety, Rehabilitation and Compensation Act 1988 (SRCA)* and the *Military Rehabilitation and Compensation Act 2004 (MRCA)*. This policy is presently in effect, and will shortly be made available on DVA's website via the Consolidated Library of Information and Knowledge (**CLIK**). The substance of the policy is set out below.

114. In essence, the new policy provides that for survivors of sexual and physical abuse, which occurred before 11 April 2011, and who were under 18 at the time of the abuse, DVA will now accept a claimant's contention, in the form of a statutory declaration, as sufficient evidence that an incident of sexual and physical abuse occurred under the 'balance of probabilities' standard of proof.
115. This change is designed to address the fact that children were particularly vulnerable to abuse and incidents were unlikely to be reported, therefore corroborating evidence is unlikely to be available.
116. As noted, the policy applies to incidents of abuse which occurred prior to 11 April 2011, aligning with the DART assessment of incidents before this date only. Since the DLA Piper Review and DART's investigation into allegations of abuse in Defence, the issue of child sexual abuse in Defence has been given greater prominence and consequently, there are better support and reporting systems in place to assist contemporary survivors.
117. For all other survivors of sexual and physical abuse occurring after 11 April 2011, whether adults or children, DVA will accept a statutory declaration if it is supported by other corroborative evidence such as DART cluster information, or records relating to abuse held by the Department of Defence.
118. DVA will monitor the implementation of this policy over a 6 to 12 month period, to ensure that survivors of abuse are able to access appropriate and adequate levels of support.
119. The adoption of the new policy does not change the fact that for a claim to be successful, DVA must be satisfied on the balance of probabilities that a diagnosed medical condition exists, that the condition is related to a person's Defence service, and the alleged event/s occurred during the person's Defence service.
120. Further, under subsection 53(1) of the SRCA, an employee is required to provide written notice of an injury to the relevant authority as soon as practicable after the employee becomes aware of the injury. This is referred to as the 'notice to inform requirement'.
121. Exceptions to the 'notice to inform requirement' exist where the relevant authority would not be prejudiced if the notice was treated as sufficient notice or where the employee fails to notify the relevant authority in a timely manner due to 'ignorance', 'mistake' or 'any other reasonable cause'.

122. DVA acknowledges that the application of the 'notice to inform requirement' has resulted in some survivors' claims of sexual and physical abuse being rejected by DVA.
123. Noting however, that many survivors do not report abuse for years or decades after the events due to a range of factors, DVA has determined that it will not claim prejudice under section 53(1) of the SRCA for all claims relating to sexual and/or physical abuse.
124. Implementation activities for the above policies have commenced. From late October 2016, DVA will begin to apply the new policies to claims relating to sexual and physical abuse which are pending or held in abeyance. DVA will also attempt to contact those survivors of abuse it is aware of who have had claims rejected because of insufficient evidence or 'notice to inform requirements' in order for those claimants to be given an opportunity to revisit their claims. A communication strategy to encourage survivors of abuse to access support and lodge claims will be developed and implemented.
125. This will be difficult for DVA with respect to survivors who lodged claims prior to 2012 because of limitations in the information recorded. However, DVA proposes to engage in a variety of communication with the veteran and defence community in order to encourage any survivors to contact DVA to discuss their entitlements.

### **Compensation offsetting**

126. DVA acknowledges the need to provide accurate offsetting figures to claimants and their legal representatives where offsetting provisions may be triggered by third-party action. It therefore agrees with proposed finding 44.
127. It should be noted that DVA is currently reviewing its policies and procedures relating to offsetting in order to improve and update its information, as well as the services provided to clients. Measures underway include:
- a. working towards a centralised, coordinated offsetting team to provide consistent advice, information and calculations;
  - b. developing a template requesting information from parties seeking offsetting calculations to ensure DVA has all the information to perform offsetting calculations; and
  - c. undertaking offsetting advice/education for law firms commonly involved in offsetting requests so that there is a clearer understanding of DVA requirements and when in the settlement process DVA should be contacted.
128. It is important to note that DVA's ability to provide accurate and timely offsetting estimates is dependent on information from third parties on the nature of the incapacity and the quantum of other compensation.
129. In relation to the evidence of Mr Donaldson, DVA notes that Mr Donaldson gave evidence to the effect that he *'couldn't get figures from DVA in advance of a*

*settlement as to what the claw-back would be*<sup>81</sup> in relation to Mr Greaves. This is incorrect. Defence Legal provided indicative calculations to Shine Lawyers.<sup>82</sup>

130. On 3 November 2015, Defence Legal asked whether DVA could make staff available to perform offsetting calculations during Mr Greaves' mediation, which was scheduled to occur on 24 November 2015. On 16 November 2015, DVA indicated to Defence Legal that the complexity of the calculations meant that it would not be possible to have staff available to provide 'on the spot' calculations while Mr Greaves' mediation was underway. However, it was made clear that calculations could be performed following any settlement agreement between Defence and Mr Greaves.

### **General issues in interactions with DVA**

131. DVA acknowledges that its interactions with survivors could be improved and apologises for those instances where survivors found their dealings with DVA to be difficult.
132. DVA is implementing the following procedural changes to improve interactions with child sexual and physical abuse survivors:
- a. claimants will be offered the opportunity to meet face-to-face or via videoconferencing with a DVA social worker/clinical psychologist to discuss the claimant's contentions and the claims process. The claimants can choose to have an advocate or representative present; and
  - b. DVA will not call claimants to discuss issues of significance, such as a potential rejection, without advance warning. This will give the claimants the opportunity to have an advocate or representative present if they choose.
133. DVA has also identified that it can do more to provide better access to support and services to survivors of abuse throughout their ongoing engagement with DVA. DVA is investigating the involvement of Coordinated Client Support (CCS) in assisting survivors of abuse. CCS is a DVA support service that provides identified clients who require additional support with a single or primary point of contact, a DVA Client Support Officer or Case Coordinator. This point of contact provides clients with the right support at the right time to ensure benefits, tailored services and appropriate linkages are in place.
134. DVA notes that the evidence of a number of ADF Cadets survivors was that they have had minimal engagement with DVA. ADF Cadets have legislative coverage under the SRCA (post September 1971) and the MRCA. DVA will therefore work with Defence to improve communication about DVA entitlements to past and present ADF Cadets who may have suffered abuse.

### **General comments**

135. DVA states that Gold Cards are only issued as part of the liability pathway.

<sup>81</sup> Transcript of A Donaldson, Case Study 40, 24 June 2016 at 19645:24-26.

<sup>82</sup> Exhibit 40-0023, Statement of M Lysewycz, Case Study 40, STAT.1028.001.0001 at 0004.

136. DVA states that claimants are not given the option of having their claim held in abeyance if there is insufficient evidence of a diagnosis, causal event and/or nexus. DVA only offers the in abeyance option if there is insufficient evidence of a causal event.
137. Under the VEA, the 'offsetting' provisions are set out in sections 74, 78 and 93 but also section 30D which deals with situations where a periodic payment by way of compensation or damages is being made to a claimant and that claimant is in receipt of, or is subsequently granted, a pension in respect of the same incapacity.
138. DVA notes that since the commencement of Case Study 40 into Defence, the 2016-17 Budget measure to expand eligibility for Non Liability Health Care (NLHC) has been implemented. This measure allows all current and former permanent members of Defence, irrespective of how long or when they served, to access treatment for post-traumatic stress disorder, depressive disorder, anxiety disorder, alcohol use disorder and substance use disorder. Available treatment includes care through general practitioners, hospitals and specialists such as psychologists and psychiatrists as well as counselling through the Veterans and Veterans Families Counselling Service.

#### **Response to proposed findings F41 to F44**

139. As a result of the evidence tendered at the Royal Commission, DVA acknowledges that requiring claims involving incidents of child abuse to be supported by corroborative evidence is difficult to achieve and agrees that changes should be made to the relevant policies. As set out above, policy changes have already been agreed to.
140. DVA also acknowledges the limited value of the current policy relating to the use of cluster information. The new policy outlined above will allow a claimant's contention to satisfy the balance of probabilities standard of proof and in instances where further corroborative evidence is required, DART cluster information can be used to corroborate the claimant's contention.
141. DVA is also implementing a number of measures to improve its ability to provide accurate offsetting information and figures to claimants and their representatives.

## **4.2 The approach of the Department of Defence to claims of abuse**

### **Previous approach of Defence to historical abuse claims**

142. Defence's current approach towards resolving claims is set out in paragraphs 265 to 269 below.
143. Defence submits that the evidence before the Royal Commission does not support the proposition that, prior to the meeting with Shine Lawyers in November 2014, Defence adopted an '*adversarial approach*' in responding to historical sexual abuse claims.



144. The evidence of Mr Lysewycz regarding the adoption of an alternative model of resolving claims in order to avoid further harm to survivors, did not suggest that prior to the meeting in November 2014, Defence adopted an approach to historical abuse claims that had the potential to cause further harm to survivors.
145. The intention of avoiding further harm, as discussed in the evidence of Mr Lysewycz,<sup>83</sup> was to avoid harm additional to the incident(s) of sexual abuse suffered by the survivor rather than any harm caused by Defence's previous approach to historical abuse claims.
146. No evidence was led in relation to Defence's previous approach to historical abuse claims. In any event, it is submitted that Defence's approach to litigation prior to November 2014 could not be considered '*adversarial*'. This is because Defence operates in accordance with the Attorney-General's *Legal Service Directions 2005 (Cth) (Legal Services Directions)* and relevant State and Territory legislation which includes an obligation to engage in genuine steps to resolve matters prior to engaging in litigation.
147. In reaching the conclusion that Defence's previous approach was adversarial, the evidence of Mr Donaldson has been misconstrued.
148. Mr Donaldson's evidence was that during the meeting between Defence and Shine Lawyers in November 2014, '*We discussed alternative dispute resolution models, where the aim was to resolve the claims without having to re-traumatise the survivors*'.<sup>84</sup>
149. The context of the meeting between Defence and Shine Lawyers in November 2014 was to work out how best to deal with a series of claims that Shine proposed to bring. There had only been a handful of common law claims for sexual abuse brought before November 2014 and these had been handled according to the requirements of the Legal Services Directions.
150. Mr Donaldson said that after putting Defence on notice of intended civil proceedings in relation to historical sexual abuse claims he '*was aware that if we did file the claim, the Commonwealth would be required to plead the statute of limitations, in accordance with government policy*'.<sup>85</sup>
151. The Legal Services Directions require agencies to plead limitation defences to claims that are statute barred, except in exceptional circumstances, in which case the approval of the Attorney-General is required before a limitation defence may be abandoned. Defence followed this requirement until 4 May 2016, when the Attorney-General issued a direction that limitation defences were not to be pleaded in time-barred child abuse claims. This includes claims that are:
- a. damages claim brought against a Commonwealth agency by way of originating process in a proceeding in an Australian court;

<sup>83</sup> Transcript of M Lysewycz, Case Study 40, 27 June 2016, 19705:30-31.

<sup>84</sup> Exhibit 40-0020, Statement of A Donaldson, Case Study 40, STAT.1011.001.0001\_R at 0005\_R.

<sup>85</sup> Exhibit 40-0020, Statement of A Donaldson, Case Study 40, STAT.1011.001.0001\_R at 0005\_R.

- b. the damages are claimed to compensate for personal injuries allegedly suffered as a result of sexual abuse of the claimant in an institutional context while they were a minor; and
  - c. in relation to that damages claim for child abuse it is open to the Commonwealth agency to either (i) plead a defence based on the expiry of a limitation period which applies to the originating process or (ii) oppose an application for an extension of a limitation period which applies to the originating process.
152. Requiring agencies to plead limitation defences in litigated matters does not prevent an agency from settling a claim under the Legal Services Directions if there is a meaningful prospect of success of the claim. The existence of a potential limitation defence is one matter to be weighed in the balance. It is submitted that this is what Mr Donaldson was referring to when he said Defence agreed not to rely on the statute of limitations<sup>86</sup>, although the potential availability of a limitation defence was a proper matter to take into account when the parties were negotiating a quantum.
153. Defence therefore submits that proposed finding F45 should not be made as there is no evidence about the approach taken by Defence in respect of historical sexual abuse claims prior to November 2014.

### **The deed of release**

154. At paragraph [624] of Counsel Assisting's Submissions and in proposed finding F49, it is submitted that Defence had no justification in requiring Mr Greaves to sign a Deed that released Defence from any claims, in circumstances where that Deed did not include the payment of a monetary benefit to Mr Greaves.
155. That submission ignores however that:
- a. Defence did not require Mr Greaves to sign the Deed<sup>87</sup>. He did so voluntarily on the advice of his own legal team at the time which consisted of Counsel and two solicitors; and
  - b. Mr Greaves did receive a formal apology<sup>88</sup> as a tangible benefit from Defence as a consequence of the mediation process, and continued to retain his statutory compensation entitlements, which he would not have, had a monetary settlement been reached.<sup>89</sup>
156. Therefore, proposed finding F49 should not be made.

<sup>86</sup> Transcript of A Donaldson, Case Study 40, 24 June 2016 at 19630:46.

<sup>87</sup> Transcript of M Lysewycz, Case Study 40, 27 June 2016, 19713:17-20.

<sup>88</sup> Transcript of M Lysewycz, Case Study 40, 27 June 2016, 19717:11-14.

<sup>89</sup> Transcript of M Lysewycz, Case Study 40, 27 June 2016, 19711:37 to 19712:12; 19716:42-44.

## Part 5 The Australian Defence Force Cadets

### 5.2 The Australian Air Force Cadets

157. Counsel Assisting at paragraph [896] of his submissions identified that four survivor witnesses who gave evidence were from ADF Cadets. Defence highlights for clarity that the expression 'ADF Cadets', includes all three Services. The more accurate description would be to ascribe the particular service which that survivor was engaging with. This is because not all three services had survivors who gave evidence.
158. Relevantly, the cadet services each of the survivors were from were as follows:
- a. CJD was a member of the ANC
  - b. Aaron Symonds was a member of the AAFC,
  - c. CJG was a member of the AAFC and
  - d. CJE was a member of the AAFC.
159. Similarly, Eleanore Tibble was a member of the Air Training Corps, which was subsequently re-named as the AAFC, within the ADF Cadets.

### 5.3 ADF Cadets Policies and Procedures

#### Screening of ADF Cadets and AAFC Adult Staff Members

160. The AAFC Manual of Management provides that it is the Service Chief, being the Chief of Air Force (**CAF**), not the Commanding Officer of an AAFC Squadron who is to ascertain the suitability of a person for appointment as an Officer or Instructor of Cadets in the AAFC.<sup>90</sup>
161. This is consistent with section 7 of the *Cadet Forces Regulation 2013* (Cth), which provides that a Service Chief may appoint a person as an Officer or Instructor of Cadets if satisfied of that person's suitability to supervise, control or support the training programme for and activities of cadets in a unit.
162. The Commanding Officer of an AAFC Squadron, Officer Commanding of a Wing and the Commander (**CDR**) or Deputy Commander (**DCCDR**) of the AAFC play a vital role in initial assessment, document checks and recommendations but ultimately, it is the Director General of Cadets (**DGCADETS**) or specified members of Cadet Branch-Air Force (**CB-AF**) not below the rank of Wing Commander, who exercise a delegation on behalf of the CAF to be satisfied with the suitability of an applicant prior to appointment.
163. In addition, the AAFC Manual of Management provides that it is the Officer Commanding of an AAFC Wing, rather than the Commanding Officer of an

<sup>90</sup> Exhibit 40-0027, Case Study 40, DEF.02.0006.001.1612 at 1614-1615.

AAFC Squadron, who has the responsibility to ascertain the suitability of a person for selection as a Civilian Instructor Volunteer in the AAFC.<sup>91</sup>

## Training

164. Defence states that the requirement for Adult Staff Members in the AAFC to complete the Societal and Legal Course was overtaken in 2013 by the introduction of the AAFC Staff Induction Program.<sup>92</sup>
165. Module One of the Staff Induction Program includes a unit focussed on the Staff Code of Conduct, identifying unacceptable behaviour in the workplace, preventing unacceptable behaviour, legislative compliance and procedures, responding to unacceptable behaviour, Fair Go procedure, good practices for dealing with young people, Cadet Code of Ethical Behaviour, identifying children at risk and reporting an incident.<sup>93</sup>

## Proposed findings F51 to F53

166. Since the hearing of Case Study 40 there have been significant reforms within Defence, and the ADF Cadets. Those reforms are set out in Parts 1 and 6 of this submission. This includes changes to the Defence Youth Policy Manual (**YOUTHPOLMAN**), and amendments to existing policies relating to issues such as age of consent and special care provisions. Whilst Defence accepts that there were deficiencies in the ADF Cadets policies at the time of the hearing of Case Study 40 (as discussed in paragraph 168 below), Defence has amended, and continues to do so, a number of its policies in relation to ADF Cadets. This includes the policies of the AAFC, in order to ensure that they are not duplicative, and also to ensure that they are 'user-friendly' and effective in ensuring that AAFC staff are properly informed.<sup>94</sup>
167. Defence otherwise agrees that it is essential that a uniform approach to State and Territory child protection legislation (in particular around age of consent and special care provisions) is adopted in Australia.

## 5.4 Deficiencies in ADF Cadets policies since 2000

168. Defence acknowledges the shortcomings of ADF Cadets and AAFC policies, training manuals and training courses as raised by the Royal Commission in relation to the age of consent and special care provisions. Defence has been reviewing and amending its policies and training in line with the suggestions of the Royal Commission. These reforms are discussed in Part 6.

## Summary of child sexual abuse within the ADF Cadets since 2000

169. During the course of the evidence in this matter, a document was tendered by Counsel Assisting which was entitled 'Summary of Outcomes'.<sup>95</sup> This is a

<sup>91</sup> Exhibit 40-0027, Case Study 40, DEF.02.0006.001.1608 at 1609.

<sup>92</sup> Transcript of D Green, Case Study 40, 29 June 2016 at 19940:39-47:1-3. See also paragraphs 750-751 of Counsel Assisting's Submissions.

<sup>93</sup> Exhibit 40-0037, Statement of D Green, Case Study 40, STAT.1026.001.0001\_R at 0004.

<sup>94</sup> Refer to Part 6 of these submissions.

<sup>95</sup> Exhibit 40-0044, Case Study 40, INT.0012.001.0001 at 0002.

document summarising the Royal Commission's analysis of documents produced by Defence.

170. The documents upon which the Royal Commission relied to create the original 'Summary of Outcomes' were produced by Defence under Notice to Produce C-NP-1738 which asked for:

*All documents evidencing, referring or relating to any allegations, charges, complaints or incidents of child sexual abuse known to the Department of Defence that occurred at the Australian Army Cadets, Australian Naval Cadets and the Australian Air Force Cadets from the period 1 January 2001 to present.*

171. In light of this request and clarifications with the Royal Commission at the time of receiving the Notice, ADF Cadets was asked to locate documents evidencing, referring or relating to any breaches of the ADF Cadets Code of Conduct.
172. Due to the time sensitive nature of the Notice to Produce, and in the interests of openness and transparency, Defence did not filter the documents located by ADF Cadets to restrict those documents to incidents of child sexual abuse occurring in the cadet organisations.
173. As a result, Defence produced a number of documents to the Royal Commission that recorded incidents and allegations of incidents that were not restricted to incidents of child sexual abuse. In the documents produced by Defence, for example, there were incidents that involved only individuals over 18 and incidents recorded that did not occur in the cadet environment, but were reported to cadets because cadets or cadet staff were involved and were subsequently reported through the cadet chain.
174. However, this document is not a summary of 'outcomes', as the use of the word 'outcomes' incorrectly describes the nature of the document. Rather, the document is intended to be a summary of allegations and incidents and the actions taken by Defence in response to those allegations.
175. In this document, the Royal Commission has calculated that from 1 January 2001 Defence recorded a total of 154 incidents or allegations of child sexual abuse. This figure includes incidents and allegations other than child sexual abuse, but which were incidents in breach of the ADF Cadets Code of Conduct.
176. In the document provided by Defence entitled 'Amended Summary',<sup>96</sup> Defence noted that there were 150 separate incidents or allegations. Again, this amended figure included incidents and allegations other than child sexual abuse.
177. By way of explanation, in its reconsideration of the Summary of Outcomes, Defence noted there were a number of incidents that were duplicated and a number involved the same respondent where incidents were identified at the

<sup>96</sup> Exhibit 40-0046, Case Study 40, DEF.0004.001.0001.

same time and therefore were dealt with as one incident. This reduced the total number of separate incidents or allegations to 150.

178. The Amended Summary produced by Defence provides the outcomes of the allegations and incidents in specific categories, and notes that the following actions were taken by Defence in response to the total figure of 150 separate incidents and allegations:
- a. 78 cases (of which 60 involved incidents between a cadet and another cadet, and 18 incidents between an adult and a minor) were referred to civil authorities (including the Police, Community Services/Child Protection, the Ombudsman and the Victorian Department of Education) for investigation and resolution (in many cases Defence has not been informed of an outcome and a few matters remain active);
  - b. 37 cases concerning incidents between a cadet and another cadet were not reported to civil authorities, but were investigated by the ADF Cadets:
    - i. in 15 cases the cadet(s) involved were discharged or terminated from the ADF Cadets;
    - ii. in 14 cases formal counselling was conducted; and
    - iii. in eight cases the allegations could not be substantiated.
  - c. Of the remaining 35 cases:
    - i. in five cases the ADF Cadets member was discharged before any investigation could be completed or action could be taken against the member;
    - ii. in 13 cases the ADF Cadets member had their service terminated as a consequence of their behaviour;
    - iii. in two cases involving volunteers (i.e. people who have volunteered their service to assist but have not been appointed as Officers/Instructors), the volunteers were informed that their services were no longer required;
    - iv. in three cases the ADF Cadets member received formal counselling on their conduct and instruction on what constitutes acceptable behaviour in the ADF Cadets;
    - v. in six cases no action was taken as the allegations could not be substantiated; and
    - vi. in two cases the allegations did not involve minors.
  - d. In four cases the actions of ADF Cadets members occurred outside the ADF Cadets environment:
    - i. three of these cases involved civil authorities; and

- ii. in two of these cases the member's service with the ADF Cadets was terminated.<sup>97</sup>

179. Therefore, if proposed findings F63 and F64 are to be made, a further finding should be made, as follows:

Proposed new finding F64A:

*'Since 2001, ADF Cadets have taken action to respond to allegations of child sexual abuse.'*

## **5.6 The experiences of former cadets of the Australian Defence Force Cadets**

### **The experience of Aaron Symonds**

#### *The AAFC Investigation*

180. Defence acknowledges that the AAFC should not have solely relied upon on the outcome of the police investigations in determining the allegations against Mr Oakley. It is acknowledged that Defence should have undertaken further follow up actions within the AAFC once the outcome of the police investigation was known. Defence's approach is to ensure that all matters are investigated internally, once police or other civilian services have ceased investigation. Further, it should be noted that many parts of the investigation conducted by the AAFC were positive.

181. Elements of the investigation which demonstrated appropriate, timely and sensitive responses include:

- a. the timeliness of dealing with the complaint;
- b. the decision to immediately suspend the Adult Staff Member without prejudice;
- c. the timely referral of the matter to police, and the referral to Defence (via the Hot Issues Brief);
- d. immediately starting an investigation, and not ceasing that investigation until it was clear that the police had carriage of the matter; and
- e. offering support to Mr Symonds.

### **The matter of Christopher Adams**

#### *The awareness within AAFC of Mr Adams' inappropriate behaviour*

182. At paragraph [1012] of Counsel Assisting's Submissions it has been submitted that CJJ's evidence regarding her report to Ms O'Donnell should be preferred

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<sup>97</sup> Exhibit 40-0046, Case Study 40, DEF.0004.001.0001.

over Ms O'Donnell's. This is said to be based on CJG's 'corroborating' evidence.

183. However, there is no basis to accept CJJ's evidence in preference to Ms O'Donnell's. This is because:
- a. the evidence given by CJG is not corroborative of the evidence given by CJJ; and
  - b. Ms O'Donnell's evidence was that whilst she could not recall CJJ bringing Adams' texting to her attention, if CJJ had done so, she would have written it down and reported it orally to the detachment commander.<sup>98</sup> There was no evidence to suggest that she had not done that.

*CJG's evidence is not corroborative*

184. CJG gave evidence that CJJ had *'told her she had witnessed Adams alone with female cadets on the [June 2012] course. She raised her concerns about what she thought was an inappropriate relationship between CJE and Adams. She told me she had reported her concerns to her superior, Sharon O'Donnell'*.<sup>99</sup>
185. However, neither CJJ nor Ms O'Donnell were in attendance at the June 2012 course.<sup>100</sup> As such, CJG's recollection, at least about the date on which CJJ allegedly reported her concerns to Ms O'Donnell, is incorrect.
186. Furthermore, the chronology of events, as indicated in CJJ and CJG's evidence is not reconcilable.
187. CJJ gave the following evidence:
- a. CJJ and a number of other cadets and Mr Adams were sitting at the bottom of a staircase well, when CJJ saw over Mr Adams' shoulder that he was texting one of the Warrant Officers. CJJ could not recall the content of the text messages except to say *'it was of a sexual context and it made me very cranky'*,<sup>101</sup>
  - b. CJJ then sent all of the cadets to bed and had an *'intensive fight'* with Mr Adams for around half an hour, where Mr Adams *'absolutely just refused against it to say that it ever happened'*,<sup>102</sup>
  - c. CJJ then *'went ahead and spoke to Sharon O'Donnell'* and allegedly told Ms O'Donnell *'what I had seen on the text message, that he had been too close to the cadets and that he – someone needs to talk to him because he wasn't listening to anything that I had said'*.<sup>103</sup> CJJ gave evidence that at that time she told Ms O'Donnell *'what I had read in the*

<sup>98</sup> Transcript of S O'Donnell, Case Study 40, 28 June 2016 at 19857:38–19858:21 and 19860:37.

<sup>99</sup> Exhibit 40-0030, Statement of CJG, Case Study 40, STAT.1009.001.0001\_R at 0005\_R.

<sup>100</sup> Transcript of S O'Donnell, Case Study 40, 28 June 2016 at 19859:24–28.

<sup>101</sup> Exhibit 40-0032, Statement of CJJ, Case Study 40, STAT.0996.001.0001\_R at 0003\_R; Transcript of CJJ, Case Study 40, 27 June 2016 at 19797:28–19798:4.

<sup>102</sup> Transcript of CJJ, Case Study 40, 27 June 2016 at 19798:13–17.

<sup>103</sup> Exhibit 40-0032, Statement of CJJ, Case Study 40, STAT.0996.001.0001\_R at 0003\_R; Transcript of CJJ, Case Study 40, 27 June 2016 at 19798:41–44.



*text messages and I told her some of them that were in it' but that she could not recall what exactly she had said to Ms O'Donnell;*<sup>104</sup>

- d. on that night, being the night CJJ allegedly made the report, Ms O'Donnell told CJJ that she would inform her next supervisor of *'what I have told her'*,<sup>105</sup> and
  - e. CJJ left the GST the following day as the course had finished.<sup>106</sup>
188. CJJ's evidence was, therefore, that the incident occurred on the final day of the GST and her alleged report was made to Ms O'Donnell on that night.
189. Conversely, CJG gave the following evidence:
- a. at a Senior Promotion Course in *'late June 2012'*, CJJ told CJG that she had witnessed Mr Adams alone with female cadets on the course and *'raised her concerns about what she thought was an inappropriate relationship between CJE and Adams. She told me she had reported her concerns to her superior, Sharon O'Donnell'*,<sup>107</sup> and
  - b. on one occasion during the September 2012 GST, CJJ, CJE, Mr Adams and CJG were *'sitting in the staircase in the cadet barracks. CJJ suddenly sent CJE and me to bed. The following day she asked me to keep an eye on CJE as she was concerned that the relationship between CJE and Adams was inappropriate'*.<sup>108</sup>
190. In contrast to CJG's evidence, CJJ did not give evidence that she told CJG that she had made a report about Mr Adams to Ms O'Donnell. Furthermore, CJJ did not give evidence that she made any report to Ms O'Donnell of Adams being alone with female cadets, nor that there was an 'inappropriate relationship', which was CJG's recollection.
191. If the incident described by CJG at paragraph 189(b) above refers to the same incident described by CJJ at paragraph 187 above, then for CJG's evidence to be properly corroborative of CJJ's, the conversation between CJJ and CJG must have either occurred on the day that CJG left the GST after it had ended or, alternatively, earlier in the GST.
192. However, neither proposition is likely.
193. Firstly, it is unlikely that CJJ would have requested CJG to keep an eye on CJE after the completion of the course, considering that CJG and CJE were members of different AAFC Squadrons in different locations and Mr Adams was also located in a separate location. Furthermore, CJJ did not give evidence that she requested CJG to keep an eye on CJE.

<sup>104</sup> Transcript of CJJ, Case Study 40, 27 June 2016 at 19799:9-11.

<sup>105</sup> Transcript of CJJ, Case Study 40, 27 June 2016 at 19799:24-25.

<sup>106</sup> Transcript of CJJ, Case Study 40, 27 June 2016 at 19799:25-26.

<sup>107</sup> Exhibit 40-0030, Statement of CJG, Case Study 40, STAT.1009.001.0001\_R at 0005\_R.

<sup>108</sup> Exhibit 40-0030, Statement of CJG, Case Study 40, STAT.1009.001.0001\_R at 0006\_R.

194. Secondly, if the report had been made earlier in the GST, then CJJ's recollection, at least about the date on which the incident occurred and her timing of the report to Ms O'Donnell, is incorrect.
195. In light of the above, CJG's evidence cannot be viewed as corroborative of CJJ's evidence.
196. Whilst Ms O'Donnell was unable to deny that a conversation between herself and CJJ took place,<sup>109</sup> there remain a number of inconsistencies within CJJ's own evidence which tends against her version of events being preferred over that of Ms O'Donnell's.
197. For example, CJJ gave evidence that she had observed, overheard or was told of other behaviour relating to Mr Adams that occurred on a number of occasions prior to the texting incident, including what appears to be more serious behaviour such as:
- a. observing Mr Adams on three occasions taking groups of two or three female cadets to the shops in his car, and seeing Mr Adams and a female cadet who may have been CJE walking to his car in about January 2012;<sup>110</sup>
  - b. overhearing a female cadet on the train on the way to the GST in about September 2012 stating something along the lines that she had *'tied Adams down to a bed at the last GST'*;<sup>111</sup>
  - c. being told by a female cadet during the September 2012 GST that she did not feel comfortable with Mr Adams being in their dorm at night;<sup>112</sup> and
  - d. observing Mr Adams openly flirting with female cadets during the GST, including frequently touching female cadets on the arm.<sup>113</sup>
198. However, CJJ did not report these incidents or that behaviour to anyone. Similarly, CJJ gave no evidence as to why she considered that the texting incident, but not the other incidents, required reporting.<sup>114</sup>
199. CJJ was also unable to give clear evidence about what she did report to Ms O'Donnell. She could recall that the messages were of a *'sexual content'* and that she told Ms O'Donnell some of the content, but told the Royal Commission *'I can't tell you now what I had said to her then'*.<sup>115</sup> In contrast, CJJ had a more precise recall of the earlier overheard conversation on the train on the way to the GST in about September 2012.
200. Further, CJE's own evidence about the text messages she received from Mr Adams during the September 2012 GST did not indicate that they were of an

<sup>109</sup> Transcript of S O'Donnell, Case Study 40, 28 June 2016 at 19857:38–39.

<sup>110</sup> Exhibit 40-0032, Statement of CJJ, Case Study 40, STAT.0996.001.0001\_R at 0002\_R.

<sup>111</sup> Exhibit 40-0032, Statement of CJJ, Case Study 40, STAT.0996.001.0001\_R at 0003\_R.

<sup>112</sup> Exhibit 40-0032, Statement of CJJ, Case Study 40, STAT.0996.001.0001\_R at 0003\_R.

<sup>113</sup> Exhibit 40-0032, Statement of CJJ, Case Study 40, STAT.0996.001.0001\_R at 0003\_R.

<sup>114</sup> Exhibit 40-0032, Statement of CJJ, Case Study 40, STAT.0996.001.0001\_R at 0002\_R-0003\_R; Transcript of CJJ, Case Study 40, 27 June 2016 at 19796:6-40 and 19797:20-22.

<sup>115</sup> Transcript of CJJ, Case Study 40, 27 June 2016 at 19799:4-5, 9-11.

explicitly sexual nature.<sup>116</sup> This directly contradicts CJJ's evidence. Finally, CJE did not give any evidence about the incident on the stairs.

201. Therefore, proposed findings F69 to F73 should not be made because:

- a. it is not clear what, if anything, CJJ disclosed to Ms O'Donnell about the actual content of the text messages and, absent that detail, it is difficult to say whether or not a '*reasonable suspicion*' was raised;
- b. the evidence was that Adams had already engaged in inappropriate behaviour and committed sexual offences against both CJG and CJE prior to any report being made by CJJ, including:
  - i. requesting CJG visit him in Newcastle sometime after September 2011;<sup>117</sup>
  - ii. making comments about CJG's appearance, and sending her text messages that were flirty and sexually suggestive in September 2012;<sup>118</sup>
  - iii. grabbing CJG on the '*arse and then wrap[ping] his arms around me*' during a tour of the fire station in September 2012;<sup>119</sup>
  - iv. hugging CJE during the June 2012 course;<sup>120</sup> and
  - v. kissing CJE and touching her on the breast and groin over her clothing during the September 2012 GST;<sup>121</sup>
- c. it appears unlikely that Adams would have admitted any wrongdoing, as he denied any wrongdoing when ultimately confronted in January 2013;
- d. it is not clear whether CJE would have assisted in any investigation at that stage, given her evidence that she continued to text Mr Adams despite her mother warning him to stay away,<sup>122</sup> and her evidence that she initially refused to respond when the January 2013 incident was first raised with her;<sup>123</sup> and
- e. lastly, CJJ's own evidence was that even if reported, and steps were taken, Adams may still have continued to offend in any event because he was '*very good at his game*'.<sup>124</sup>

202. Defence accepts, however, that regardless of whether or not CJJ reported Mr Adams' behaviour to Ms O'Donnell, CJJ herself (then an adult AAFC instructor), knew enough about his behaviour to have a '*reasonable suspicion*' that he was engaging in inappropriate behaviour with cadets.

<sup>116</sup> Exhibit 40-0031, Statement of CJE, Case Study 40, STAT.1006.001.0001\_R at 0004\_R-0005\_R.

<sup>117</sup> Exhibit 40-0030, Statement of CJG, Case Study 40, STAT.1009.001.0001\_R at 0004\_R.

<sup>118</sup> Exhibit 40-0030, Statement of CJG, Case Study 40, STAT.1009.001.0001\_R at 0005\_R.

<sup>119</sup> Exhibit 40-0030, Statement of CJG, Case Study 40, STAT.1009.001.0001\_R at 0006\_R.

<sup>120</sup> Exhibit 40-0031, Statement of CJE, Case Study 40, STAT.1006.001.0001\_R at 0004\_R.

<sup>121</sup> Exhibit 40-0031, Statement of CJE, Case Study 40, STAT.1006.001.0001\_R at 0005\_R.

<sup>122</sup> Exhibit 40-0031, Statement of CJE, Case Study 40, STAT.1006.001.0001\_R at 0005\_R.

<sup>123</sup> Exhibit 40-0031, Statement of CJE, Case Study 40, STAT.1006.001.0001\_R at 0007\_R – 0008\_R.

<sup>124</sup> Transcript of CJJ, Case Study 40, 27 June 2016 at 19800:35-36.

203. Defence therefore submits that, although proposed findings F69 to F73 should not be made, Defence accepts that the following proposed findings are available to be made:

Proposed new finding F69:

*'AAFC knew enough about Mr Adams' behaviour to raise a 'reasonable suspicion' that he was engaging in inappropriate behaviour with cadets.'*

Proposed new finding F70:

*'AAFC however, failed to take any action in response to that 'reasonable suspicion', which allowed Mr Adams to continue engaging in inappropriate behaviour.'*

*The Initial Assessment Report conducted by the AAFC*

204. Defence accepts that the manner in which the AAFC conducted the Initial Assessment Report (**IAR**) was deficient. It is apparent that the IAR was conducted by a person with no previous experience or training in dealing with victims of child sexual abuse.
205. However, the responsibility for the deficiency in the conduct of the IAR (and by implication, the lack of experience and training of the person who conducted the IAR) lies with the AAFC. Ms O'Donnell should bear no responsibility for her lack of experience and training in relation to dealing with victims of child sexual abuse.
206. Therefore, proposed finding F74 should be amended as follows:

Proposed alternative finding F74:

*'The manner in which the AAFC conducted the Initial Assessment Report was deficient.'*

*Support provided by the AAFC during the investigations*

207. Defence notes that the provision of support in these types of circumstances, has now been changed so that personal support is immediately provided<sup>125</sup>.

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<sup>125</sup> See paragraphs 252 to 259 below in relation to access to SeMPRO services, and paragraphs 321 to 322 below in relation to access to the Employee Assistance Program.

## Part 6 Reforms to the ADF Cadets

### 6.1 Reforms to the ADF Cadets

208. Counsel Assisting the Royal Commission has submitted that the following finding (proposed finding F77) is open to the Royal Commission on the evidence in relation to the ADF Cadets:

*Defence has a responsibility to develop and implement an appropriate organisational structure that provides a safe environment for children participating in ADF Cadets. Based on the evidence before the Royal Commission, such a structure does not currently exist within the ADF Cadets.*

209. Defence acknowledges that the evidence before the Royal Commission has identified that, at particular points in time, and at particular locations, Defence has failed to meet best practice in ensuring a child safe organisation.
210. Defence accepts that it has a responsibility to develop and implement an appropriate organisational structure that provides a safe environment for children participating in ADF Cadets.
211. Defence is committed to reforming its policies and procedures in relation to children in the ADF Cadets and in the wider Defence community by developing and implementing an organisational structure that provides a child safe environment.
212. In doing so, Defence has had regard to the Royal Commission's published policy and research papers, in particular the ten proposed child safe elements as set out in the Royal Commission's report *Creating Child Safe Institutions* (July 2016).
213. Defence submits that it has implemented and continues to implement reforms that are enabling it to meet the key goal of being a child safe organisation. These reforms and in particular progress since the Royal Commission hearing are detailed below.
214. In light of these reforms, it is apparent that ADF Cadets now has an appropriate organisational structure which provides the foundations for a safe environment for children participating in ADF Cadets. Therefore, an alternative wording of proposed finding F77 is as follows:

Proposed alternative finding F77:

*'Defence has a responsibility to develop and implement an appropriate organisational structure that provides a safe environment for children participating in ADF Cadets. Based on the evidence before the Royal Commission, such a structure did not previously exist in certain parts of the ADF Cadets.'*

## Legislative changes

215. Under the *Defence Legislation Amendment (First Principles) Act 2015 (First Principles Act)*, cadets are no longer appointed or terminated, but rather are 'accepted' or their membership 'cancelled'.
216. The First Principles Act also amended Part V of the *Defence Act 1903* with effect from 1 July 2016.
217. A key change is that the Chief of the Defence Force is now responsible for the administration and direction of the ADF Cadets, rather than the three Service Chiefs. It also provides a process whereby members are no longer appointed, but instead volunteer and may be accepted as members by the Chief of the Defence Force. Their membership or volunteer status can be cancelled at any time.
218. The amendments have resulted in the provisions of the *Cadet Forces Regulation 2013* which deal with appointment and termination of members becoming invalid due to inconsistency with the Act.
219. Defence intends to seek to have these inconsistent provisions changed in due course. In the meantime, Defence is reviewing other provisions to determine which, if any, are still required from a legal perspective (for example, those relating to firearms) and which can be dealt with through policy.
220. In terms of the practical coordination of the ADF Cadets, through *Chief of the Defence Force Directions (Australian Defence Force Cadets) 2016*, the Chief of the Defence Force directed the Vice Chief of the Defence Force to establish policy requirements that apply to the ADF Cadets. This includes requirements relating to the acceptance and cancellation of membership, standards of behaviour required of members and suitability screening of volunteers. This will ensure that a clear and consistent approach is taken in relation to these matters across the ADF Cadets.

## Policies and procedures

221. Defence continuously improves its policy and procedures as events, organisational learning, legislative changes and demands of the situation dictate. Recent revisions of the following policies and procedures demonstrate Defence's commitment to continuous improvement.

### *Defence Instructions*

222. Four Defence Instructions (DI) provide instruction on how to implement policy in relation to the management, reporting and recording of unacceptable behaviour, sexual misconduct and other notifiable incidents, and are intended to provide information to cover any 'gaps' in applicable policy.
223. The DIs in relation to the management, reporting and recording of unacceptable behaviour, sexual misconduct and other notifiable incidents are available

online.<sup>126</sup> These whole of Defence DIs support the implementation of youth policy in Defence. They are:

- a. DI(G) ADMIN 45-2 - *The reporting and management of notifiable incidents;*
- b. DI(G) PERS 35-4 - *Reporting and management of sexual misconduct including sexual offences;*
- c. DI(G) PERS 35-3 - *Management and reporting of unacceptable behaviour, and*
- d. DI(G) ADMIN 67-2 - *Incident Recording.*

224. Within the hierarchy of documents, DI(G) ADMIN 45-2 is the authority and first reference for incident reporting and management. Due to the need to manage certain incidents with particular care, additional details are addressed by other DIs.

#### *Defence Youth Safety Framework*

225. The Defence Youth Safety Framework (**DYSF**) is the collective title for all resources that contain authoritative information on child safety in Defence.
226. Work on the DYSF commenced in mid-2015 with publication of the overview and initial policy statement in late 2015.
227. On completion, the DYSF will incorporate a full suite of policy and procedural guidance, risk management strategies and a range of supporting tools and resources designed to minimise the risk of child abuse and neglect in each of the forums in which Defence interacts with children and young people under the age of 18.<sup>127</sup>

#### *Defence Youth Policy Manual*

228. The Defence Youth Policy Manual, known as YOUTHPOLMAN, is the primary source of youth policy guidance for Defence and ADF Cadets. It is a high level policy manual that provides guidance on youth policy consistent with the DYSF, and draws together legislation, organisational learning and issues raised during the Royal Commission public hearing.
229. YOUTHPOLMAN was first published in 2013. As part of reforms in Defence policy in relation to children, YOUTHPOLMAN has been redesigned and reduced to two parts.
230. Part One of YOUTHPOLMAN contains whole of Defence policy on child safety, and incorporates the following policies:

- a. Defence Youth Safety Commitment Statement;

<sup>126</sup> Defence Youth, *Youth Policy Manual*, <<http://www.defenceyouth.gov.au/resources/youth-policy-manual/>>.

<sup>127</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0022-0024.

- b. Defence Youth Safety Governance;
  - c. Defence Youth Safety Risk Management; and
  - d. Defence Youth Safety Responding and Reporting.
231. The Part One policies on child safety were completed on 16 June 2016 and were made available to Defence and ADF Cadets personnel on the Defence intranet. It is now also available to the public on the internet on the Defence Youth website.<sup>128</sup>
232. During the public hearing in June 2016, Part One was supplemented with five implementation resources, known as the Defence Youth Safety Framework Tools:
- a. Defence Youth Safety Suitability Screening Guide;
  - b. Defence Youth Safety Code of Conduct Guide;
  - c. Defence Youth Safety Training Guide;
  - d. Defence Youth Safety Incident Management Guide; and
  - e. Defence Youth Safety Risk Management Guide.
233. The Defence Youth Safety Framework Tools are intended to provide user-friendly guidance on the practical application of YOUTHPOLMAN Part One, and are also available on the Defence intranet and on the Defence Youth website.<sup>129</sup>
234. Part Two of YOUTHPOLMAN contains information specific to the ADF Cadets, including but not limited to child safety policy and procedure.
235. Policies in Part Two are being developed over time and will include a range of ADF Cadets governance and administrative policies covering topics such as:
- a. ADF Cadets Youth Safety;
  - b. ADF Cadets Information and Communication Technology;
  - c. ADF Cadets Management of Volunteers;
  - d. ADF Cadets Expectations of Behaviour;
  - e. Management of ADF Cadets Local Funds;
  - f. ADF Cadets Issues Resolution; and
  - g. ADF Cadets Access to SeMPRO Services.

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<sup>128</sup> Defence Youth, *Youth Policy Manual*, <<http://www.defenceyouth.gov.au/resources/youth-policy-manual/>>.

<sup>129</sup> Defence Youth, *Resources*, <<http://www.defenceyouth.gov.au/resources/>>.



236. Of note the ADF Cadets Youth Safety policy (in Part 2) was completed on 14 October 2016.
237. Part Two is published internally on the Defence intranet and externally on the Defence Youth website from 17 October 2016.
238. All relevant chapters in YOUTHPOLMAN Parts One and Two include a direction to act in the best interests of the child.
239. Guidance on what is considered to be acting in the best interest of the child is provided in the Defence Youth Safety Incident Management Guide implementation tool under Section 1 - Youth Safety Incident Initial Response.
240. This includes the following direction: *'Don't place any blame on the young person'*. This clarifies that no cadet can be held responsible for a sexual relationship between a cadet and an Adult Instructor or Officer of Cadets.

#### *Promulgation of YOUTHPOLMAN*

241. Changes to Defence policy, such as YOUTHPOLMAN, are promulgated to Defence personnel via Defence Info-Grams (**DEFGRAMS**) on Defence ICT networks. Further promulgation action is at the discretion of the individual Service Chiefs and Group Heads.
242. The published youth safety chapters of YOUTHPOLMAN Part One were promulgated on 16 June 2016 via DEFGRAM 252/2016. As mentioned above, YOUTHPOLMAN Part One is available online as of 22 September 2016.<sup>130</sup>

#### *Military Personnel Policy Manual*

243. The Military Personnel Policy Manual, known as MILPERSMAN, provides guidance and advice to all Defence personnel on the personnel management of Defence members. MILPERSMAN does not apply to ADF Cadets.
244. However, to ensure whole of Defence understanding and application of YOUTHPOLMAN, Part 7 Chapter 5, *Management and administration of Defence members under the age of 18*, was revised on 20 June 2016 to align and link directly with the DYSF, including YOUTHPOLMAN policies and tools, training requirements, and procedures on responding, recording and reporting incidents.

#### *Interim Defence Instruction*

245. An Interim Defence Instruction (**IDI**), *Disclosure of certain personal information of young people to parents, responsible third parties and Government oversight bodies*, is currently being developed to provide authorisation to Defence personnel for the purposes of the *Privacy Act 1988* to disclose the personal information of young people in certain limited circumstances. The IDI aims to address legal risks that arise due to jurisdictional issues and privacy restrictions which in some instances may hinder the ability of Defence personnel to disclose

<sup>130</sup> Defence Youth, *Youth Policy Manual*, <<http://www.defenceyouth.gov.au/resources/youth-policy-manual/>>.

incidents to certain individuals and bodies responsible for the welfare of young people.

246. It is proposed that the IDI will authorise Defence personnel to disclose personal information about a young person to a parent/guardian, a State/Territory government oversight authority and/or other responsible third parties (such as charitable organisations or school headmasters) where the young person has been involved in a youth safety incident and it is necessary and appropriate to disclose the personal information to protect the interests and safety of the young person.
247. When the IDI has been finalised, MILPERSMAN Part 7 Chapter 5 and YOUTHPOLMAN will be updated to provide clear guidance to decision makers on how this IDI is to be implemented, including factors that they must take into account before making a disclosure.

*Other procedures in place for interaction with children*

248. Defence has policies and procedures in place for all other circumstances in which ADF personnel and other Defence employees interact with children.
249. The other circumstances in which Defence interacts with children are outlined in Attachment B of the Statement of Vice Admiral Griggs, and include for example the ADF Gap Year and ADF recruiting.

**Initiatives in relation to reporting child sexual abuse and support for survivors**

250. Defence policy<sup>131</sup> requires that allegations of sexual misconduct, including sexual offences, involving Defence personnel under the age of 18 be reported to the State or Territory police and child protection authorities by the quickest means available. A report to the ADF Investigative Service (**ADFIS**) is also required.
251. ADF members who are victims of sexual misconduct can access support and guidance through their chain of command, authorised health professionals, chaplaincy services and services through SeMPRO. Defence APS employees may also access SeMPRO services in addition to the services provided by the Defence Employee Assistance Program (**EAP**) and support services within the local community.

*Sexual Misconduct Prevention and Response Office*

252. One of the major reforms implemented by Defence under its *Pathway to Change* cultural reform has been the establishment of SeMPRO.
253. SeMPRO provides 24 hour, seven days a week support to victims of sexual misconduct, including sexual offences to current and ex-serving members of the ADF, their families and support people.

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<sup>131</sup> DI(G) ADMIN 45-2 - *The reporting and management of notifiable incidents*; DI(G) PERS 35-4 - *Reporting and management of sexual misconduct including sexual offences*.

254. SeMPRO has adopted a 'restricted disclosure' approach, giving victims the ability to disclose information confidentially if they are not yet ready to speak with investigative authorities and do not wish to make a report to their chain of command, and providing victims with an avenue to access support, health and counselling services. This approach is focused on the victim and their recovery.
255. SeMPRO also provides advice on the management of incidents of sexual misconduct, and guidance and advice to professionals who are providing support and counselling to victims of sexual misconduct.
256. All SeMPRO Support Coordinators are trained mental health professionals, either psychologists or social workers, who provide a specialised response from a trauma informed, victim focused perspective.
257. SeMPRO already provides services to ADF members who are under 18 in accordance with our business as usual approach to responding to contact regarding sexual misconduct.<sup>132</sup>
258. SeMPRO's website contains publicly accessible information about options for individuals who wish to make a report concerning sexual misconduct.<sup>133</sup>
259. The expansion of SeMPRO services to Officers and Instructors of Cadets and cadets and their immediate families as of 31 October 2016 is discussed in further detail below under 'Specific Reforms in ADF Cadets'.

#### *Service Police*

260. Provost Marshal of the ADF in partnership with Dr Amber McKinley, an Applied Victimologist from Charles Sturt University, has designed and implemented a victim-centric approach to sexual offence investigations within the ADF. This new approach complements the introduction of the 'restricted disclosure' approach for sexual offences and is similarly focused on supporting the victim, minimising harm and mitigating additional secondary trauma during the investigative process for victims of sexual crimes. This accords with civilian police best practice and the notion of 'victim empowerment'.
261. All relevant Service Police policy and procedures have been updated to accord with this new method. Specialist sexual offence investigation training, sourced from State and Federal policing agencies, is being provided to ADF Investigators.<sup>134</sup>

#### *Recording allegations or complaints of child sexual abuse*

262. ADFIS records and monitors allegations of child sexual abuse in the Defence Policing and Security Management System which is a centralised recording and reporting system that captures all incidents reported to a Defence Investigative Authority.

<sup>132</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0035 and 0037-0038.

<sup>133</sup> Sexual Misconduct Prevention & Response Office, <<http://www.defence.gov.au/sempro>>.

<sup>134</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0035.

263. In March 2014, following the *Re-thinking Systems Review* into investigation arrangements in Defence, policy changes were made to recording and reporting complaints and incidents, fact finding, decision-making and the ADF redress of grievance process.
264. The 2014 review led to the introduction of a new Defence guide for decision-makers on 1 July 2015. Since 1 August 2015, action continues on implementing a centralised incident recording system to accurately record all incidents and associated follow-on actions to support the chain of command decision-making and provide necessary strategic oversight.

### **Resolving claims**

265. Defence has received and continues to receive claims for civil damages, or appropriate remedies, arising from alleged physical and sexual abuse, breach of privacy, or harassment occurring at various Defence establishments or otherwise connected with Defence.
266. In adopting the organisational learning from the DART experience, Defence has developed a collaborative approach to historical claims of child sexual abuse brought by survivors.
267. Defence engages with survivors or their legal representatives at the earliest opportunity for the purpose of resolving claims through alternative dispute resolution methods including mediation and, where appropriate, aspects of restorative engagement.
268. This approach also includes informal discovery and exchange of information, making early factual admissions, and agreement on processes to secure single medical and forensic expert reports.
269. Each approach is shaped on an informed understanding of the survivor's condition and preferences, usually through consultation with the survivor's legal representatives.<sup>135</sup>

### **Consultation**

270. All Youth Safety policy and training development activities include consultation appropriate to the activity. Target audiences will be parents, families, teachers, school principals, responsible third parties and general community who have young people involved with Defence.
271. YOUTHPOLMAN development includes participation by Defence personnel appropriate to the topic. For example, development of the youth safety chapters included representatives from each of the personnel policy areas and appropriate functional commands.
272. Development of each of the five YOUTHPOLMAN Part One implementation resources and the Level 1 Awareness training package included consultation

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<sup>135</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0039-0043.

with representatives from programs across Defence that involve interaction with young people under the age of 18.

273. Development of each of the remaining Defence Youth Safety Training continuum packages will continue to include consultation with representatives from programs cross Defence that involve interaction with young people under the age of 18 and, for the Level 6 Youth training, members of Defence and cadets under the age of 18.
274. In addition to changes made in response to the formal review cycle, policies, procedures and training materials can and are adjusted in response to feedback gathered during activities, for example during the Youth Forum held on 30 August 2016.
275. The YOUTHPOLMAN Part One youth safety policies published in June 2016 will undergo their first formal review in December 2016.

### **Training**

276. Whole of Defence broad cultural reform, including programs and initiatives to identify and address unacceptable behaviour, have been incorporated into education and training programs.
277. These programs aim to instil the *Pathway to Change* statement of cultural intent, reduce prevalence of unacceptable behaviour, assert Defence's position that unacceptable behaviour, including sexual misconduct, is not tolerated, and improve confidence in the prevention of unacceptable behaviour.
278. These packages and related policy educate Defence personnel on what constitutes, and how to identify, all forms of unacceptable behaviour including sexual misconduct.
279. Defence conducts annual mandatory online or face-to-face training on unacceptable behaviour for all Defence personnel, with the Services delivering this through their leadership training packages at career progression points such as promotion courses. Defence also conducts a number of more specific training and education programs and initiatives, including some targeted towards particular audiences, for example, trainees.
280. In addition, SeMPRO conducts a range of training and educational activities specific to sexual misconduct.<sup>136</sup>

### *Defence Youth Safety Training*

281. As part of the DYSF, Defence is currently developing Defence Youth Safety Training continuum packages.
282. The completion of each of the packages in the Defence Youth Safety Training continuum has been given priority and the full continuum is scheduled for completion by no later than 30 September 2017.

<sup>136</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0029-0030.

283. The development of this training package will include involvement of a range of young adults within Defence and the ADF Cadets.
284. The packages are outlined in the Defence Youth Safety Training Guide, one of the five YOUTHPOLMAN implementation tools, and includes:
- a. Level 1 Defence Youth Safety Awareness training, which covers training on sexual assault, how to recognise young people at risk of harm, Defence expectations for acceptable and unacceptable behaviour and for responding and reporting youth safety incidents. This package includes training in relation to age of consent legislation, special care provisions and fraternisation;
  - b. Level 2 Defence Youth Safety Practitioner training, aimed towards all adults whose roles and responsibilities include interaction with young people under the age of 18;
  - c. Level 3 Defence Youth Safety Leader training, a tailored package aimed towards those who have particular responsibilities under the DYSF including Commanders, Managers and Supervisors of personnel in youth-facing roles and ADF Cadets volunteers in roles that provide administrative support;
  - d. Level 4 Defence Youth Safety Executive training, a tailored package aimed towards those who have accountability under the DYSF including the Vice Chief of the Defence Force, Service Chiefs, the Directors General of the AAFC and ANC and Commander of the AAC and the Head of the Cadet, Reserve and Employer Support Division (**CRES**D);
  - e. Level 5 Defence Youth Safety Investigator training, a series of training packages that would certify an individual in specialist investigative skills in a youth safety and protection context, with specialist training to be provided by an external training provider; and
  - f. Level 6 Defence Youth Safety for Youth training, a foundation package aimed towards Defence personnel and ADF Cadets under the age of 18 to ensure they are aware of their rights, responsibilities and behavioural expectations.
285. Defence notes that the Queensland government passed a law in September this year to amend the age of consent. CRES D is currently working with Bravehearts to adjust training packages to reflect these changes.

## **Specific Reforms in ADF Cadets**

### **Organisational reform – ‘One Cadet’ model**

286. On 7 July 2016 the Vice Chief of the Defence Force commissioned a review of ADF Cadets reform and directed that outcomes and interim solutions were to be presented to Defence decision-makers, the Chief of the Defence Force and Service Chiefs in early October 2016.

287. The initial outcomes of the review have supported implementing the broader Defence approach of the 'One Defence' philosophy toward organisational reform of ADF Cadets.
288. 'One Cadet' is the name for Defence's new approach to organisational reform of the ADF Cadets. It is akin to the 'One Defence' philosophy which is based on providing an organisation that is fit for purpose, has clear accountabilities and well articulated lines of responsibility.
289. ADF Cadets will be reformed in the following three aspects:
- a. implementation of a 'One Cadet' model, which is anchored on consolidation, centralisation and accountability in standard program elements, including, for example, the completion and implementation of the DYSF across the ADF Cadets organisations;
  - b. restructure of the current governance model to support tri-Service governance and service delivery, while streamlining accountability and assurance systems to support the consistent implementation of 'One Cadet' policies and procedures; and
  - c. collocation of all ADF Cadets Headquarters and CRESD into one joint ADF Cadets Headquarters to enhance collaboration.
290. Under the new governance structure, the Head of CRESD will be accountable directly to the Vice Chief of the Defence Force for the development, implementation and governance of the ADF Cadets child safety system.
291. Director General of Australian Navy Cadets and Reserves, Commander of Australian Army Cadets and the Director General of Cadets - Air Force will be accountable to the Head of CRESD for core common functions within the ADF Cadets 'enterprise', including child safety training; importantly, they will also be subject to a new ADF Cadets assurance regime, which will ensure their consistent implementation of child safety policy and governance within the respective services' Cadet organisations.
292. The new 'One Cadet' model will be implemented in a phased approach with the new organisational structure to be established by 1 February 2017.

## **Revised policies and procedures**

### *YOUTHPOLMAN*

293. VCDF Directive 03/2014 *Child Protection – Australian Defence Force Cadets* will be cancelled on the finalisation of YOUTHPOLMAN.

### *'One Cadet' – reform of policies and procedures*

294. YOUTHPOLMAN is a high level Defence policy manual that informs local ADF Cadets policies, procedures and protocols in relation to child safety:

- a. in the AAFC, the AAFC Manual of Management and AAFC Standing Instructions;
  - b. in the ANC, the ANC Cadet Protection Manual and Australian Book of Reference (**ABR**) 5128 - *Policy and Operating Instructions Manual for the ANC*; and
  - c. in the AAC, the AAC Child Protection and Wellbeing Framework and Standing Orders.<sup>137</sup>
295. Defence is currently moving towards a single set of child safety procedures and protocols for ADF Cadets as part of its implementation of the 'One Cadet' model.
296. The 'One Cadet' child safety procedures and protocols will be developed over the next 12 months and will replace the current AAFC, ANC and AAC local policy documents listed above where they are duplicated.
297. The 'One Cadet' child safety procedures and protocols will interpret policy and define implementation requirements focused on clear, strong and concise messages, and will:
- a. place boundaries on how much individual discretion is acceptable;
  - b. contain explicit direction regarding personal accountabilities;
  - c. place emphasis on the need to act in the best interests of the child; and
  - d. include direction regarding recording and documentation.
298. An examination of the ANC Model of Fairness and Resolution Branch will form the basis for the proposed 'One Cadet' issues resolution policy and protocols.

*Vice Chief of the Defence Force Directive 06/2016*

299. Following the Royal Commission's Defence public hearing, on 7 July 2016 Vice Admiral Griggs issued Directive 06/2016 entitled *Relationships between Defence and Cadet Adults, and Cadets and Other Minors (VCDF Directive 06/2016)*.
300. VCDF Directive 06/2016 sets out rules and responsibilities that apply to ADF members, APS employees, Officers of Cadets, Instructors of Cadets and ADF Cadet adult volunteers who have contact with cadets and other non-ADF members and non-APS employees who are under the age of 18.
301. VCDF Directive 06/2016 notes that the Royal Commission highlighted three issues requiring immediate attention:
- a. better awareness of Australian age of consent legislation;

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<sup>137</sup> Exhibit 40-0043, Statement of R Griggs, Case Study 40, STAT.1005.001.0001 at 0025.



- b. understanding of legal liabilities due to 'Special Care' provisions; and
  - c. ensuring blame is not attributed to ADF Cadets in situations where there is an intimate relationship with an adult.
302. VCDF Directive 06/2016 provides clear guidance and interim direction on relationships between Defence and ADF Cadets, adults and cadets and other minors until the completion of YOUTHPOLMAN, including in relation to age of consent legislation and 'special care' provisions.
303. VCDF Directive 06/2016 also makes it clear that individuals responding to and managing any allegations of a sexual relationship or child abuse between Defence and ADF Cadet adults and cadets and other minors are to ensure that cadets and other minors are made aware they are entirely without blame and are to be treated and supported accordingly.
304. VCDF Directive 06/2016 is attached and marked 'A'.

*Letter from Vice Admiral Griggs to all Officers and Instructors of Cadets*

305. On 7 July 2016 Vice Admiral Griggs also issued a letter to all Officers of Cadets and Instructors of Cadets which addressed the three issues highlighted by the Royal Commission during the public hearing (**VCDF Letter**).
306. The purpose of the VCDF Letter was to bring issues raised during the Royal Commission Case Study to the attention of all Officers and Instructors of Cadets to be acted upon immediately.
307. The VCDF Letter provides interim guidance on age of consent legislation and 'special care' provisions, and notes that training material on those topics was deficient at the date of the letter.
308. The VCDF Letter reiterates that no blame is to be apportioned to a cadet in any form of sexual relationship with an Officer or Instructor of Cadets or an ADF Cadets adult volunteer. The VCDF Letter also notes that there is no place for anyone in Defence or the ADF Cadets who thinks that the child carries any level of blame or should be disciplined or punished in any way when such conduct takes place.
309. The VCDF Letter also communicates that policies and training would be updated to ensure that they are accurate.
310. A copy of this letter is attached and marked 'B'.

*Promulgation of YOUTHPOLMAN and other policies*

311. A new 'bulletin' page is to go live on the CadetNet CRESD homepage during October 2016 to assist in the promulgation of new policies and procedures and general information dissemination.
312. YOUTHPOLMAN has been promulgated to the separate cadet organisations in various ways. This is discussed in further detail below.

## Improved training

### *Safeguarding Children Awareness Program*

313. Defence notes that the Safeguarding Children Program (**SCAP**) is a commercial package that was provided to Defence under licence from the Australian Childhood Foundation. As such, SCAP cannot be amended by Defence to include more integrated information in relation to age of consent legislation or 'special care' provisions.
314. In mid-2017, SCAP will be replaced by the first two modules of the Defence Youth Safety Training Continuum: Youth Safety Level 1 Awareness training and Youth Safety Level 2 Practitioner training.

### *Level 1 Awareness and Level 2 Practitioner training*

315. Level 1 Awareness training for Defence personnel commenced on 20 June 2016.
316. Level 1 Awareness training content was amended on 1 August 2016 to include more information in relation to age of consent legislation and special care provisions.
317. Work is also being undertaken to enhance the definition of 'fraternisation', including breaking it into two categories: intra-cadet relationships and adult-child relationships. The Age of Consent section of the Level 1 Awareness training module includes the following statement: *'Defence Policy prohibits fraternisation between personnel and furthermore, Defence has no tolerance for any sexual interaction between adults and young people under the age of 18 in Defence contexts'*.
318. Level 1 Awareness training is due to come online on the CadetNet Portal for AAFC, ANC and AAC access in mid-November 2016.
319. Until SCAP is replaced, Officers and Instructors of Cadets, ADF Cadets adult volunteers and cadets will continue to complete SCAP along with the Level 1 Awareness training.

## Improved support services

### *Sexual Misconduct Prevention and Response Office (SeMPRO)*

320. From 31 October 2016 SeMPRO will commence a twelve month pilot of an expansion of its support services to include support to cadets. This pilot will:
- a. provide support, advice and referrals for Officers and Instructors of Cadets, cadets, registered volunteers and their families who have been impacted by sexual misconduct, and undertake mandatory reporting as required;
  - b. provide advice and support to ADF Cadets leaders on responding to disclosures of sexual misconduct, provide debriefing following

disclosures, and provide information about mandatory reporting obligations, legal requirements, and support services available to all affected parties;

- c. provide advice and support to ADF Cadets Headquarters personnel in the ongoing management of incidents of sexual misconduct;
- d. assist CRESD in the refinement of the recently published Defence Youth Safety Incident Management Guide and associated resources as they pertain to managing incidents of sexual misconduct involving cadets under the age of 18;
- e. develop baseline information on the number of formally reported incidents of sexual misconduct; and
- f. provide an analysis of the types of incidents, ages and genders of victims and persons of interest, location of incident, and any other known information.

#### *Employee Assistance Program*

- 321. Defence's Employee Assistance Program (**EAP**) provides free, confidential and professional counselling.
- 322. EAP services are now available to:
  - a. Officers and Instructors of ADF Cadets; and
  - b. cadets and their immediate families.

#### **Ongoing cultural reform**

- 323. Each of the new Youth Safety Chapters in YOUTHPOLMAN Part One make reference to the need for an environment that supports reporting. This is highlighted in Chapter Three under Values and Principles and Chapter Four under Key Elements of Youth Safety Risk Management.
- 324. The ADF Cadets Status Assessment, an audit on the ADF Cadets that will focus on assessing the 'lived experience' of ADF Cadets compared to the work that has been completed to date, will include verification of ADF Cadets culture, environment and people practices.
- 325. YOUTHPOLMAN Part Two will include an issues resolution policy that seeks to ensure that cadets have a complaint process that is child focussed, clear and detailed.
- 326. In addition, the development of the 'One Cadet' procedures and protocols will include issues resolution procedures and protocols.

## Reforms in separate ADF Cadets organisations

### Reforms in AAFC

#### AAFC policies and procedures

##### *Age of Consent*

327. The definitions of 'age of consent' identified by the Royal Commission as incorrect or not completely accurate were immediately corrected in the AAFC Standing Instructions (SI) (PERS) 8-1 *Behaviour* and (SI) (PERS) 1-7 *Child Protection* documents.
328. Copies of these AAFC Standing Instructions are attached at 'C'.
329. The age of consent information in these Standing Instructions has since been amended to reflect new laws passed in Queensland in September 2016.
330. AAFC are in the process of reviewing all remaining AAFC authorised documents to ensure that all inconsistencies (including missing information, language, references and links) are identified and corrected.
331. This review is occurring in two parts. The first part is a review of all personnel policies within the AAFC Manual of Management which is due to be completed by October 2016. The second part is a review of all Personnel Standing Instructions which are the documents relied on for day-to-day conduct of activities and operations for which a completion date cannot be provided but is considered highest priority by the Commander AAFC.

##### *Chapter 7 AAFC Behaviour Policy*

332. A document entitled 'Chapter 7 AAFC Behaviour Policy' dated May 2008 was provided to the Royal Commission and identified by Counsel Assisting in his submissions at paragraphs 822 to 829.
333. Defence advises that while a draft version of a proposed manual *Australian Air Publication 5110.001(AAP5110.001) – AAFC Policy manual (ALO, May 08)* contained the incorrect information in relation to the age of consent, this draft document was never authorised or approved by the Chief of Air Force.
334. Defence notes that a copy of Chapter 7 AAFC Behaviour Policy was located on an individual AAFC Squadron's website. It is currently in the process of being deleted.
335. Defence confirms that this document is not used within the AAFC and was replaced by the AAFC Manual of Management. However, as a precaution a request has been made to the Commander AAFC to send out a message to all AAFC Squadrons to ensure that no paper or electronic copies of this document exist or are being relied upon.

### *Blame*

336. On 28 July 2016 the Commander AAFC issued a Commander's Intent which talks about the Royal Commission. It reinforced the key lessons from the Royal Commission in relation to screening of staff, training requirements and provided the direction that no cadet can be held responsible for a sexual relationship between a cadet and an Instructor or Officer of Cadets.

### *Transition policy*

337. The following clarification of the history and current AAFC policy on cadets transitioning to becoming adult instructors is provided below.
338. Cadets in the AAFC wishing to transition to either an Officer or Instructor of Cadets undergo the same suitability screening and processes for acceptance as other volunteers.
339. It is open to a cadet turning 18 years of age or upon reaching the age limit of a cadet of 20 years of age to apply to become an Officer or Instructor of Cadets.
340. Prior to 22 June 2009, the AAFC Policy Manual Part 2 Chapter 2 paragraph 32 mandated a separation time of three months for ex-cadets to be appointed as staff.
341. On 22 June 2009, the AAFC Executive Committee approved the amendment of the mandated minimum time that must elapse following the termination of a cadet before they could be enrolled as a staff member to 12 months.
342. The amended separation time of 12 months was clarified to all AAFC staff in AAFC Routine Instruction 16/2009 on 1 December 2009 and gave discretion to a unit commander to support an ex-cadet applicant with less than 12 months separation in special circumstances, for example demonstrated maturity.
343. On 13 December 2013 the AAFC Manual of Management Volume 2 Part 1 Conditions of Service – Civilian Instructor Volunteers, the current applicable policy, was introduced to provide that all applicants, including ex-cadets who wish to transition, must be registered as a Civilian Instructor Volunteer for a minimum period of six months before being considered eligible for acceptance as an Officer or Instructor of Cadets.
344. The acceptance of an ex-cadet requires the endorsement of the unit commander, the Officer Commanding of the Wing and the respective Air Force Liaison Officer prior to approval by the delegate. In the case of an Officer of Cadets, endorsement from an officer Selection Board is also required.

### *Chief of Air Force Directive*

345. On 17 June 2016 the Chief of Air Force (CAF) released CAF Directive 06/2016 titled *Expectations and Responsibilities of Officers and Instructors of Air Force Cadets*. This CAF Directive touched on the topic of state and territory legislation in connection with the protection of children and made it very clear

what his expectations were of both Officers and Instructors of Cadets and what the consequences of infringement were.

*Promulgation of YOUTHPOLMAN and other policies*

346. AAFC Standing Instructions provide guidance to cadets in how to enact YOUTHPOLMAN. The AAFC takes this approach as it considers that its Standing Instructions interpret applicable youth policy into accessible and plain language for cadet leadership, cadets and their families.
347. On 14 June 2016 the Commander AAFC sent an email to all AAFC staff to re-promulgate VCDF Directive 06/2016. The Commander AAFC also sent an email on 9 July 2016 to all AAFC staff to re-promulgate the VCDF Letter of 7 July 2016.
348. On 4 October 2016 an Information Circular was circulated among all AAFC staff to inform all members of the AAFC of the updated AAFC Standing Instructions on *Child Protection* and *Behaviour*.
349. YOUTHPOLMAN, the VCDF Letter and CDF Directives 03/2014 and VCDF Directive 06/2016 are accessible to all AAFC personnel, including staff and cadets, on the AAFC intranet Orders Instructions and Publications Portal (**OIP Portal**).
350. Parents of cadets can also access YOUTHPOLMAN and other applicable policies on the internet or through the AAFC website.
351. A copy of the front page of the OIP Portal as at 5 October 2016 is attached at 'D'.

**AAFC visits and inspections**

352. The ADF chain of command routinely visit cadet activities and conduct inspections. Recently, the CAF visited No 322 Squadron (AAFC) at Timor Barracks on 24 August 2016 to reinforce his interest in cadet wellbeing, staff expectations and to meet new members of the Squadron. The Deputy Chief of Air Force will also visit a number of AAFC Squadrons in the near future.
353. Air Force Liaison Officers (**AFLOs**), permanent Air Force personnel, spend time with AAFC staff at the various Headquarters around the country as well as the Squadrons within the Wings they support, while branch staff visit various Wing Headquarters and Squadrons throughout the year, normally on parade nights.

*Training camps*

354. The AFLOs who organise Defence support for activities will visit the planned major training activities in the near and long term. This is a vital part of their role and one which has been strongly re-enforced after the public hearing.
355. Officers Commanding of AAFC Wings will also visit these camps. Officers Commanding normally visit toward the end of training courses and their visits

normally coincide with course graduations. Lessons learnt, meetings and discussions and post-activity reports are standard for all activities.

## **AAFC training**

### *Annual Behaviour Training*

356. The AAFC wrote to all AAFC staff on 13 September 2016 instructing all supervisory staff to ensure that all members receive Behaviour Policy Training annually and that CadetOne records are updated to reflect this training.
357. The correspondence directed that the Behaviour Policy Training is not an option but mandatory and that any member enrolled during the course of the training year must receive Behaviour Policy Training as soon as possible following enrolment.
358. A new Behaviour Policy Training package with the recently amended AAFC Standing Instruction (SI) (PERS) 8-1 *Behaviour* is under development. This package will incorporate the age of consent and special care provisions that were deficient in the AAFC's policy in existence at the time of the public hearings.

### *AAFC Staff Induction Program*

359. The AAFC Staff Induction Program, which replaced the Societal and Legal Course, has been amended to reflect the errors identified by the Royal Commission.

### *Adult Transition Program*

360. There is ongoing work to review the Adult Transition Program (**ATP**) which is undertaken by 17 year old AAFC cadets about to turn 18. This training package is currently being updated to incorporate outcomes raised by the Royal Commission during the public hearing.

### *Review of training programmes*

361. All other staff and cadet training programmes are currently under review.
362. A Project Manager in Training Systems Transformation, an Air Force Reserve 1-Star Officer, has been appointed to the AAFC and is working closely with Cadet Branch – AF Staff and the AAFC Director of Training to analyse and improve AAFC staff and cadet training programmes.

## **Review of AAFC process on implementation of Royal Commission findings**

### *Enterprise Connect Committee*

363. In 2015 the current Director General of Cadets Air Force and the Commander AAFC developed the 2020 Enterprise Development Plan (**EDP**) to ensure that the aspiration to grow the AAFC from 7,500 to 10,000 cadets was properly mapped out and resourced.

364. The most recent meeting of the Enterprise Connect Committee, which oversees the progress of the EDP, was on 18 August 2016.
365. A new task to implement all of the recommendations falling out of the Royal Commission has been added to the EDP. All progress on tasks related to the Royal Commission's findings and recommendations as they come to hand will be discussed at these bi-annual meetings in order to ensure that progression is properly coordinated between AAFC and Air Force and completed in a timely manner.
366. The next meeting will be held on 17 November 2016.

## **Reforms in ANC**

### **ANC policies and procedures**

#### *VCDF Letter and Chief of Navy Directive*

367. The VCDF Letter and Chief of Navy Directive have been promulgated to all ANC Officers and Instructors of Cadets. These documents reiterate special care provisions, age of consent differences between jurisdictions and the 'no attribution of blame' policy for children involved in intimate relationships with adult staff members.

#### *Incident reports*

368. The ANC Directorate now obtains access to all ANC Incident Reports via a monthly summary document. Reports of serious or sensitive incidents are submitted to the Directorate expeditiously, to enable the Directorate to liaise with senior ANC staff on their course of action, and to report those matters up through the Navy chain of command via a Defence Incident Record.

#### *Amendment of policies and procedures*

369. The ANC are currently amending the ANC Induction Manual and Cadet Protection Manual.
370. The ANC Directorate is more closely governing the ANC's compliance with existing policies and protocols for enhancing child safety, including Annual Mandatory Awareness training, maintenance of required Working With Children Checks, and Incident Reporting requirements.

#### *Transition policy*

371. All cadets transitioning to Officers or Instructors of Cadets are required to undertake the same process and meet the same selection criteria as other volunteers seeking to become Officers or Instructors of Cadets. This includes a six month probation period.
372. Cadets are not required to have a period of 'separation' from the ANC before transitioning.



373. Prior to July 2016, all new personnel and cadets over the age of 18 wishing to be Officers or Instructors of Cadets were required to serve as Unit Support Volunteers throughout the probation period.
374. However, since July 2016 personnel seeking to be Officers or Instructors of Cadets are accepted as 'Probationary Instructors' and serve as such for the six month probation period. It is Defence's intent to standardise this example of a probation period within ADF Cadets.

*Promulgation of YOUTHPOLMAN and other policies*

375. ANC Directorate staff has participated in CRESD-led forums to develop and refine the DYSF policy.
376. In the ANC, the Director General of Australian Navy Cadets and Reserve has directed all Officers and Instructors of Cadets and adult cadets to access and understand the updated guidance and direction on YOUTHPOLMAN and the DYSF on the Defence Youth website. He has advised that where any discrepancy exists between the ANC's child safety policies and directions in the new DYSF policies, the DYSF policies are to have precedence.
377. The Director General has also informed ANC Flotilla Commanders and Commanding Officers that the Headquarters' Navy staff have been tasked with ensuring compliance with this requirement.

**ANC training**

378. Staff training slides have been amended to highlight different ages of consent in different jurisdictions, special care provisions and other criminal sanctions. These will be in place until the Defence Youth Safety Training continuum packages are completed.

**Reforms in AAC**

**Previous reforms of the AAC**

379. The AAC has progressively reformed over the last couple of years.
380. In early 2014 the Chief of Army appointed a full time Brigadier to command the AAC in recognition that the AAC is an important component of Army that requires real investment in staff, governance and resources.
381. Further reforms in the AAC, referred to as the AAC Transformation Project, have been progressively implemented since early 2015. These reforms resulted in significantly increased ADF personnel and resource commitment to the AAC in January 2016.

## **AAC policies and procedures**

### *Commander AAC Directive 06/2016*

382. The Commander of AAC released his Directive 06/2016 – *Training on Age of Consent and Special Care Provisions* on 29 September 2016, which directed that commencing immediately the key aspects of the VCDF Directive 06/2016 were to be included in all Army Cadet Staff (ACS) training courses and Annual Mandatory Training for all adult members.
383. All relevant AAC policies and procedures are to be updated prior to the next ACS courses being conducted in mid-November 2016.

### *Transition policy*

384. Currently, AAC procedures for cadets transitioning to become Officers or Instructors of Cadets follow normal acceptance requirements. There is no exception that applies for former cadets.
385. AAC policy on cadets transitioning to become an Officer or Instructor of Cadets will follow joint policy development as appropriate.

### *Promulgation of YOUTHPOLMAN and other policies*

386. The AAC has been and will continue to be a key stakeholder with CRESD in the development of youth safety policies.
387. AAC Standing Orders and Standing Operating Procedures provide guidance to cadets in how to enact YOUTHPOLMAN. The AAC approach is that its Standing Orders and Standard Operating Procedures interpret applicable youth policy into accessible and plain language for cadet leadership, cadets and their families.
388. The Commander AAC received and promulgated the VCDF Letter to all Officers and Instructors of Cadets.
389. The AAC publishes its policies on the CadetNet Portal.

## **AAC training**

390. Commencing immediately after the issue of the Commander of AAC's Directive 06/2016, all future Induction Training and Force Preservation Training for ADF and APS personnel in the AAC are to incorporate the key aspects of the VCDF Directive 06/2016.
391. The Commander of AAC also directed that all further AAC staff courses are to include the VCDF-directed training requirements and that all relevant AAC policies and procedures are to be updated to include these issues.

**AAC visits and inspections**

392. Senior Army members routinely visit AAC activities, including parade, camps, competitions and courses.
393. As a result of the Chief of Army's increased emphasis on the value of the AAC program, the AAC has recently increased the number of invited senior Army members to key events.
394. This year (2016), in line with Chief of Army's stated diversity objectives, a number of prominent senior female officers and warrant officers were invited to Annual Camps as an opportunity to introduce all cadets to some female Army role models.

## Part 7 Summary of proposed alternative findings

### HMAS *Leeuwin*

#### Alternative findings available on previous inquiries into HMAS *Leeuwin*

- F3 After the Rapke Report was provided to the Minister in 1971, Defence was on notice that, for the period 1960 to 1971:
- (a) unacceptable behaviour including bullying, physical violence and degradation had occurred amongst junior recruits at HMAS *Leeuwin*;
  - (b) some staff at HMAS *Leeuwin* had tolerated this unacceptable behaviour;
  - (c) offences had not been reported, and incidents of bullying and physical violence were therefore likely to be more widespread than reported by junior recruits, including to Judge Rapke; and
  - (d) the supervision of junior recruits at HMAS *Leeuwin* was inadequate.
- F4 Defence's response to the findings of the Rapke Report was successful in reducing incidents of abuse at HMAS *Leeuwin* from 1972 onwards, however between 1972 and 1982 incidents of abuse continued to occur.

#### Alternative findings available on awareness of sexual abuse at the time

- F8 Staff members at HMAS *Leeuwin* had a duty of care for junior recruits to protect them from sexual abuse. During the 1960s to 1971, the system of management was ineffective in preventing and responding to child sexual abuse. This management failure was a contributing factor to occurrences of sexual abuse. From 1972 to 1982, the system of management was improved, but was not completely successful in preventing or responding to child sexual abuse.
- F10 From the 1960s through to 1972, cases of physical and sexual abuse of junior recruits at HMAS *Leeuwin* occurred and was severe. Senior staff members knew enough of what was occurring to be put to further enquiry. However, they relied upon others beneath them in the hierarchy to bring matters up to them, but the system of hierarchy itself, although not the only cause of the abuse, contributed to the abuse and failed in preventing it.
- F11 The hierarchical reporting system contributed to the failure by the senior staff at HMAS *Leeuwin* in their duty to those in their care and was a factor that allowed the abuse to continue.

#### Alternative findings available on under-reporting of abuse at HMAS *Leeuwin*

- F26 During the 1960s to 1980s, most junior recruits who experienced child sexual abuse at HMAS *Leeuwin* did not report the abuse to anyone because:
- (a) they feared retribution from other junior recruits and being labelled as 'dobbers';

- (b) they felt ashamed or humiliated;
- (c) they did not think they would be believed; and/or
- (d) they feared being punished or discharged from the Navy.

F28 Staff at HMAS *Leeuwin* were aware of an existence of a non-dobbing culture prior to 1972, that prevented junior recruits from reporting abuse at that time.

F29 For the most part, prior to 1972, staff did nothing to break or undermine this culture.

## **Army Apprentices School, Balcombe**

### **Alternative findings available on the experiences of former apprentices of the Army Apprentices School, Balcombe**

F30 During the 1970s to 1980s, most apprentices at the Army Apprentices School, Balcombe, who experienced child sexual abuse did not report the abuse to anyone because:

- (a) they feared retribution from other apprentices and being labelled as 'dobbers';
- (b) they did not think they would be believed;
- (c) they were ashamed; and/or
- (d) they feared being punished or discharged from the Army.

F31 During the 1970s to 1980s, some apprentices at the Army Apprentices School, Balcombe who did report sexual or physical abuse to staff members were not believed, were punished for reporting the physical or sexual abuse, or were told that 'pranks will happen. Some staff members failed to accept and adequately respond to complaints from apprentices regarding incidents of sexual and physical abuse.

### **Alternative findings available on the incidence of child sexual abuse at the Army Apprentices School, Balcombe**

F32 Child sexual abuse occurred at the Army Apprentices School, Balcombe.

F33 Child sexual abuse was perpetrated principally by other more senior apprentices, but also on occasion by Army staff and at least one civilian staff member.

## **ADF Cadets**

### **Proposed new finding available on reported incidents of child sexual abuse in ADF Cadets**

F64A Since 2001, ADF Cadets have taken action to respond to allegations of child sexual abuse.

### **Alternative findings available on awareness within the AAFC of Mr Adams' inappropriate behaviour**

- F69 AAFC knew enough about Mr Adams' behaviour to raise a 'reasonable suspicion' that he was engaging in inappropriate behaviour with cadets'.
- F70 AAFC however, failed to take any action in response to that 'reasonable suspicion', which allowed Mr Adams to continue engaging in inappropriate behaviour.

**Alternative findings available on the IAR conducted by the AAFC**

- F74 The manner in which the AAFC conducted the Initial Assessment Report was deficient.

**Alternative findings available on reform to the ADF Cadets**

- F77 Defence has a responsibility to develop and implement an appropriate organisational structure that provides a safe environment for children participating in ADF Cadets. Based on the evidence before the Royal Commission, such a structure did not previously exist in certain parts of the ADF Cadets.

Fiona McLeod SC

Lindy Barrett

17 October 2016