

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

CASE STUDY 40

AUSTRALIAN DEFENCE FORCE

SUPPLEMENTARY SUBMISSIONS ON BEHALF OF THE COMMONWEALTH

INTRODUCTION

About this submission

1. These submissions are made on behalf of the Commonwealth of Australia (**Commonwealth**), and in particular the Department of Defence (**Defence**) (which, for the purpose of these submissions, includes the Australian Defence Force (**ADF**) and the Australian Air Force Cadets (**AAFC**)) and the Department of Veterans' Affairs (**DVA**).
2. This response also includes submissions made on behalf of the institutional witnesses¹ who were called to appear before the Royal Commission from Defence relevant to these supplementary submissions.
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 (**Defence Case Study**).
4. Defence specifically acknowledges the failure in policies and procedures at the time relevant to Cadet Sergeant Eleanore Tibble (**CSGT Tibble**) and that those policies and procedures let CSGT Tibble down.
5. Should any person require assistance arising from this Royal Commission, Defence and DVA have highlighted available assistance in the Commonwealth's Submissions dated 17 October 2016 (**the Commonwealth's submissions**).² In this submission the full apology made on behalf of Defence by Vice Admiral Raymond Griggs during the public hearing is also set out.

Structure of this submission

6. In these submissions, responses are made to the matters raised in the Supplementary Submissions of Counsel Assisting dated 14 October 2016 (**Counsel Assisting's supplementary submissions**). These submissions as set out in the following structure:
 - a. Reform;
 - b. Submissions in response; and

¹ These submissions include the responses of Vice Admiral Raymond James Griggs, Terence Delahunty, Dennis Green and Dale Watson.

² SUBM.1040.005.0001.

c. Correction of errors in ranks and roles (**Attachment A**).

7. Where matters raised in Counsel Assisting's supplementary submissions are addressed in the Commonwealth's submissions, references are made to the relevant parts or paragraphs of those submissions.

Reform

8. As noted in Part 6 of the Commonwealth's submissions there has been substantial reform in the policy area of the ADF Cadets. The Commonwealth refers to and repeats Part 6 of the Commonwealth's submissions in response.
9. Specifically, the following significant developments to AAFC policies and procedures should be noted:
- a. where an Officer or Instructor of Cadets hands in a request to have their membership in the AAFC cancelled, unit commanders are now to ensure that the resignation is not a result of unacceptable behaviour on the part of any person;³
 - b. Officers and Instructors of Cadets may have their appointments suspended or cancelled as a sanction for contravention of the Code of Conduct;⁴
 - c. AAFC policy now provides an appropriate definition and explanation of inappropriate fraternisation;⁵
 - d. during the management of a complaint, both the complainant and respondent are afforded full support, including access to support services, procedural fairness, protection from victimisation or other unfair disadvantage, protection of their personal information and are kept informed of the progress of investigation of the complaint;⁶
 - e. in relation to cadets under the age of 18, AAFC policy now provides that:
 - i. a support person must be present during interviews;⁷
 - ii. where a complaint is made by or against the cadet, the cadet should have the assistance of a parent, legal guardian or adult friend throughout the entire process,⁸ and early contact with the cadet's parents or guardians should be made;⁹
 - iii. where the cadet is involved in a substantiated complaint, early contact with the cadet's parents or guardians must be made. If the complaint

³ AAFC Manual of Management, Volume 2, Part 1, Chapter 1 *Conditions of Service – Officers and Instructors of Cadets* at paragraph 61 (**Attachment B** is an update to DEF.02.0006.001.1612) We note **Attachment B** uses the terminology relied on before the *Defence Legislation Amendment (First Principles) Act 2015*. This policy is currently being updated to reflect the correct terminology.

⁴ AAFC Manual of Management, Volume 2, Part 1, Chapter 1 *Conditions of Service – Officers and Instructors of Cadets* at paragraph 65 to 67 (**Attachment B**) and Chapter 13 *Adverse Administrative Action* at paragraphs 15 to 23 (DEF.02.0021.003.0157 at DEF.02.0021.003.0158).

⁵ AAFC Manual of Management, Volume 2, Part 1, Chapter 10 *Behaviour* at paragraphs 23 to 26 (DEF.02.0021.003.0152 at DEF.02.0021.003.0153 to DEF.02.0021.003.0154).

⁶ AAFC SI(PERS) 8-4 *Managing a Complaint* at paragraph 43 (DEF.02.006.001.1645 at DEF.02.006.001.1651 to DEF.02.006.001.1652).

⁷ AAFC SI(PERS) 8-4 *Managing a Complaint* at paragraph 38 (DEF.02.006.001.1645 at DEF.02.006.001.1651).

⁸ AAFC SI(PERS) 8-4 *Managing a Complaint* at paragraph 44 (DEF.02.006.001.1645 at DEF.02.006.001.1652).

⁹ AAFC Manual of Management, Volume 2, Part 1, Chapter 12 *Complaint Management* at paragraph 17 (**Attachment C** is an update to DEF.02.0006.001.1601).

is of sexual abuse, parents must be advised immediately before police are called;¹⁰

- iv. action to cancel a cadet's membership must not be taken until after the cadet's parent(s) have been advised;¹¹ and
- f. policies and procedures specifically articulate that no blame is to be placed on the child where an unacceptable relationship is suspected between an adult and a child.

Submissions in Response

The experience of CSGT Tibble

- 10. The following submissions are made in order to ensure a correct summation of the evidence available to the Royal Commission.
- 11. In making these submissions, the Commonwealth agrees with and relies on the timeline of events in relation to the CSGT Tibble matter as set out in the Stunden Report.¹² The Commonwealth also agrees with and relies on the recommendations made in the Stunden Report in relation to Mr Watson, which found that there were no identifiable shortfalls in his performance.¹³

Contact with Mrs Campbell

- 12. At paragraph [69] of Counsel Assisting's supplementary submissions, a criticism is made that Mr Watson made no attempt to contact Mrs Campbell to verify that she had consented to the relationship as he had been told. However, the fact that Mr Watson did not contact Mrs Campbell must be considered in light of the following facts:
 - a. Mr Watson only became aware of the identity of CSGT Tibble on the evening of 10 November 2000. Similarly, that was the first time he became aware of the discharge action taken against her;¹⁴
 - b. Upon reading the relevant documents on 10 November 2000, Mr Watson formed the view that there was no evidence of any sexual relationship between CSGT Tibble and Mr Harper, and that there were insufficient grounds for any discharge;¹⁵
 - c. Although Mr Watson could provide advice to Mr James in his role as Regional Liaison Officer, Mr Watson was not in Mr James' chain of command¹⁶ and, as

¹⁰ AAFC Manual of Management, Volume 2, Part 1, Chapter 12 *Complaint Management* at paragraph 29 (**Attachment C**).

¹¹ AAFC Manual of Management, Volume 2, Part 1, Chapter 2 *Conditions of Service – Cadets* at paragraph 34 (DEF.02.0021.003.0144 at DEF.02.0021.003.0146). We note this policy uses the terminology relied on before the *Defence Legislation Amendment (First Principles) Act 2015*. This policy is currently being updated to reflect the correct terminology.

¹² Exhibit 40-0027, Case Study 40, DEF.02.0015.001.0001_R at DEF.02.0015.001.0005_R to DEF.02.0015.001.0012_R and DEF.02.0015.001.0026_R to DEF.02.0015.001.0029_R.

¹³ Exhibit 40-0027, Case Study 40, DEF.02.0015.001.0001_R at DEF.02.0015.001.0021_R.

¹⁴ Exhibit 40-0038, Case Study 40, DEF.02.0015.001.0049 at DEF.02.0015.001.0050 to DEF.02.0015.001.0051; Transcript of D Watson, Case Study 40, 29 June 2016 at 19969:43 to 19970:4.

¹⁵ Transcript of D Watson, Case Study 40, 29 June 2016 at 19986:39 to 19987:2.

¹⁶ Transcript of D Watson, Case Study 40, 29 June 2016 at 19963:33-44; Exhibit 40-0027, Case Study 40, DEF.02.0015.001.0001_R at DEF.02.0015.001.00013_R.

such, Mr James did not report to Mr Watson or take instructions from him.¹⁷ Rather, Mr James reported to and took instructions from Ms Stevens;¹⁸ and

- d. On 12 November 2000, Ms Stevens, with Mr Watson's support, instructed Mr James to reinstate CSGT Tibble, an action that Mr Watson expected would occur within days of Mr James returning to Hobart.¹⁹
13. Therefore, there was no opportunity for Mr Watson to contact Mrs Campbell prior to 10 November 2000 as he was not aware of the cadet's identity before that date. Further, there was no requirement for Mr Watson to contact Mrs Campbell after 10 November 2000 as he was aware that there was no evidence of a sexual relationship, there were insufficient grounds for discharge action, and he expected that this information would be promptly communicated to CSGT Tibble, as Mr James had been directed to do by Ms Stevens.

Compensation in relation to CSGT Tibble's death

14. At paragraph [101] of Counsel Assisting's supplementary submissions, it is noted that Mrs Campbell received compensation from DVA in respect of CSGT Tibble's death. In addition, Mrs Campbell gave evidence about receiving further compensation from Defence, which was in addition to the amounts paid by DVA, in about 2006.²⁰

Correction of errors in ranks and roles

15. There are a number of errors in Counsel Assisting's supplementary submissions in relation to the ranks and roles of Defence and ADF Cadets personnel involved in the CSGT Tibble matter. Those errors are identified, and corrected, in **Attachment A**. The Commonwealth refers to and relies upon the corrected roles and ranks in relation to its submissions.
16. Finally, it should be noted that Chapter 1 *Service Conditions – Officers and Instructors of Cadets* and Chapter 12 *Complaint Management* in Volume 2, Part 1 of the AAFC Manual of Management have both been updated since they were produced to the Royal Commission.²¹ The current versions of these Chapters have been referred to in these submissions. Current versions of each of these chapters are included at **Attachments B** and **C**.²²

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11 November 2016

¹⁷ Transcript of C James, Case Study 40, 26 August 2016 at 20755:34-38.

¹⁸ Transcript of D Watson, Case Study 40, 29 June 2016 at 19964:32-19965:3; Transcript of C James, Case Study 40, 26 August 2016 at 20755:40-43.

¹⁹ Transcript of D Watson, Case Study 40, 29 June 2016 at 19987:41-42.

²⁰ Transcript of S Campbell, Case Study 40, 27 June 2016 at 19746:17-38

²¹ DEF.02.0006.001.1612 and DEF.02.0006.001.1601.

²² We note **Attachment B** uses the terminology relied on before the *Defence Legislation Amendment (First Principles) Act 2015*. This policy is currently being updated to reflect the correct terminology.