

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

CASE STUDY 40

AUSTRALIAN DEFENCE FORCE

SUPPLEMENTARY REPLY 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 reply submissions.
3. The Commonwealth continues to acknowledge 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. Again, 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 Those submissions set out the full apology made on behalf of Defence by Vice Admiral Raymond Griggs during the public hearing.

Structure of this submission

5. In this submission, responses are made to matters raised in the following submissions:
 - a. Response of Carroll Keith James dated 14 October 2016³ (**Mr James' first submissions**);
 - b. Supplementary submissions of Mr James dated 3 November 2016⁴ (**Mr James' second submissions**); and
 - c. Submissions on behalf of Susan Campbell undated⁵ (**Mrs Campbell's submissions**).

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

² SUBM.1040.005.0001.

³ SUBM.1040.012.0001.

⁴ SUBM.1040.013.0001.

⁵ SUBM.1040.011.0001.

(collectively, the **Supplementary Reply Submissions**).

6. The Supplementary Reply Submissions respond to matters raised in the Supplementary Submissions of Counsel Assisting dated 14 October 2016 (**Counsel Assisting's supplementary submissions**),⁶ and also raise other matters in relation to the Defence Case Study. This submission is set out in the following structure:
 - a. Reform updates; and
 - b. Specific responses to the Supplementary Reply Submissions.
7. Where matters raised in the Supplementary Reply Submissions are addressed in the Commonwealth's submissions, the Reply Submissions on behalf of the Commonwealth dated 4 November 2016 (**the Commonwealth's reply submissions**),⁷ or the Supplementary Submissions of the Commonwealth dated 11 November 2016 (**the Commonwealth's supplementary submissions**),⁸ references are made to the relevant parts or paragraphs of those submissions.

Reform updates

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.
9. In particular, at paragraphs [286] to [292] of the Commonwealth's submissions, it was noted that the 'One Cadet' reform model would soon be implemented. That reform project has now commenced [see **Attachment A**].
10. In paragraph [56] of the Commonwealth's reply submissions, it was noted that Level 1 Defence Youth Safety Awareness training was now available. All current ADF Cadets adult members, ADF Cadets volunteers and ADF Cadets over the age of 18, are now required to complete this training by 31 December 2016. New members, volunteers and cadets over the age of 18 are required to complete the training within 30 days of their acceptance as a member of ADF Cadets [see **Attachment B**].
11. Finally, in paragraph [6] of the Commonwealth's reply submissions, it was noted that Sexual Misconduct Prevention and Response Office (**SeMPRO**) support services are now available to ADF Cadets, ADF Cadets Officers and Instructors, registered volunteers and their families who have been impacted by sexual misconduct. Notification concerning the ADF Cadets access to these services continues [see **Attachment C**]. An extended advertising campaign, including posters and fact sheets, will be distributed to ADF Cadets units before the commencement of ADF Cadets activities in 2017.

Specific responses to the Supplementary Reply Submissions

Mrs Campbell's submissions

12. The Commonwealth agrees with and relies on the Stunden Report.

⁶ SUBM.0040.002.0001.

⁷ SUBM.1040.009.0001.

⁸ SUBM.1040.010.0001.

13. At paragraphs [12] and [14] of Mrs Campbell's submissions, submissions are made in relation to the content of a letter from the (then) Chief of Air Force to Mr James dated 27 November 2007.⁹
14. That letter was sent to Mr James pursuant to the terms of a Deed of Release¹⁰ between the Commonwealth and Mr James. The relevant claim made by Mr James centred on Defence's lack of compliance with various requirements under the *Freedom of Information Act 1982* (Cth) and/or its own internal procedures, prior to the release of the Stunden Report to Mrs Campbell.
15. At paragraph [18] of Mrs Campbell's submissions, reference is made to a date of '12 November 2012'. That date is incorrect and should refer to '12 November 2000'.

Mr James' submissions

16. In both Mr James' first submissions and Mr James' second submissions, Mr James makes various assertions and rhetorical statements as follows:
 - a. to the effect that describing Cadet Sergeant Eleanore Tibble (**CSGT Tibble**) as a 'child' is in error and too generalised;¹¹
 - b. Mr James' perception of the nature of the relationship between Mr Harper and CSGT Tibble;¹²
 - c. the appropriateness of reporting relationships between minors and adults to civilian police and/or taking other action;¹³ and
 - d. the necessity for parents or support persons to be present during interviews.¹⁴
17. The Commonwealth does not support these views, and notes that in accordance with current Defence and ADF Cadets policies:¹⁵
 - a. any person under the age of 18 is considered to be a minor.¹⁶ CSGT Tibble would therefore (and should) be considered a child;
 - b. allegations of sexual misconduct, including sexual offences, which involve Defence or ADF Cadets personnel under the age of 18 are to be reported to the relevant State or Territory police and child protection authorities by the quickest means available;¹⁷
 - c. no cadet can be held responsible, nor blamed, for a sexual relationship between a cadet and an instructor or officer of cadets. This has been unambiguously stated by the Vice Chief of the Defence Force;¹⁸
 - d. during the management of a complaint in the AAFC, both the complainant and respondent are afforded full support, including access to support services,

⁹ Exhibit 40-0049, Case Study 40, IND.0575.001.0001.

¹⁰ Exhibit 40-0050, Case Study 40, IND.0579.001.0001.

¹¹ Paragraphs [10] to [15] of Mr James' first submissions.

¹² Paragraph [18] of Mr James' first submissions.

¹³ Paragraph [36] of Mr James' first submissions; paragraph [62] of Mr James' second submissions,

¹⁴ Paragraph [112] of Mr James' second submissions.

¹⁵ See Part 6 of the Commonwealth's submissions, and paragraph [9] of the Commonwealth's supplementary submissions.

¹⁶ Youth Policy Manual Part One, *Glossary* <<http://www.defenceyouth.gov.au/resources/youth-policy-manual>>.

¹⁷ Youth Policy Manual Part 1, Chapter 5, *Defence Youth Safety Responding and Reporting* and Youth Policy Manual Part 2, Chapter 10, *Australian Defence Force Cadets: Youth Safety* <<http://www.defenceyouth.gov.au/resources/youth-policy-manual>>; Defence Youth Safety Framework: Youth Safety Incident Management Guide <http://www.defenceyouth.gov.au/resources>; DI(G) PERS 35-4 – *Reporting and management of sexual misconduct including sexual offences* (DEF.02.0006.001.0470).

¹⁸ Attachments A [SUBM.1040.005.007_R] and B [SUBM.1040.005.0074_R] of the Commonwealth's submissions. See also paragraphs [299] and [305] of the Commonwealth's submissions.

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;¹⁹

- e. in relation to cadets in the AAFC under the age of 18:
 - i. a support person must be present during interviews conducted in relation to complaints;²⁰
 - 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,²¹ and early contact with the cadet's parents or guardians should be made;²²
 - 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 is of sexual abuse, parents must be advised immediately before police are called;²³ and
 - iv. action to cancel a cadet's membership must not be taken until after the cadet's parent(s) have been advised.²⁴

18. Further, in both Mr James' first submissions and Mr James' second submissions, Mr James continues to make additional assertions and rhetorical comments as follows:

- a. Mr James' perception that if Mr Watson '*did not perceive the need to tell police, [on 16 August 2000] why should [he]?*'²⁵ These comments however ignore the fact that, at that time, the cadet's identity was unknown.²⁶ Mr Watson's evidence was that he intended to report the matter to police upon the cadet being identified;²⁷
- b. Mr James' alleged reliance upon the advice of others, including Commander McClymont (who was not a part of the AAFC or Defence, but was, apparently, a civilian police member) and Mr Watson,²⁸ in relation to the manner in which interviews with a child should be conducted. It should be noted however, that firstly, there is no evidence in Mr James' redacted diary of any contact with Commander McClymont at all,²⁹ and secondly, the advice obtained from Mr Watson concerned the interview of another cadet in respect of an unidentified 'disciplinary matter' and was completely unrelated to CSGT Tibble.³⁰ Mr Watson's evidence was that he was not aware of the

¹⁹ 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).

²⁰ AAFC SI(PERS) 8-4 *Managing a Complaint* at paragraph 38 (DEF.02.006.001.1645 at DEF.02.006.001.1651).

²¹ AAFC SI(PERS) 8-4 *Managing a Complaint* at paragraph 44 (DEF.02.006.001.1645 at DEF.02.006.001.1652).

²² Attachment C of the Commonwealth's supplementary submissions (SUBM.1040.010.0013) .

²³ Attachment C of the Commonwealth's supplementary submissions (SUBM.1040.010.0013).

²⁴ 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.

²⁵ Paragraph [30] of Mr James' first submissions. See also paragraph [51] of Mr James' second submissions where a similar criticism is made.

²⁶ Noting that in the absence of an identified complainant, it is unlikely that the Tasmanian police would have taken any action.

²⁷ Transcript of D Watson, Case Study 40, 29 June 2016 at 19969:9-14; 19970:14-21; 19975:16-29.

²⁸ Paragraphs [38] to [39] of Mr James' first submissions.

²⁹ See Exhibit 40-0047, Case Study 40, IND.00537.001.0001_R at IND.00537.001.0044_R.

³⁰ Exhibit 40-0047, Case Study 40, IND.00537.001.0001_R at IND.00537.001.0044_R and 40-0045, Case Study 40, IND.0520.001.0001_R at IND.0520.001.0002_R.

interview with CSGT Tibble on 5 October 2000, nor was he advised of it until 10 November 2000;³¹

- c. Mr James' assertion of the knowledge of Mr Watson as to the nature of the relationship (and in particular whether it was sexual) prior to 10 November 2000 and the availability of Mr Kowalik's report and Mr Harper's resignation note.³² These assertions are not supported by evidence. As noted in the Commonwealth's supplementary submissions, Mr Watson was not aware of the identity of CSGT Tibble, the nature of the relationship with Mr Harper or of the discharge action proposed to be taken against CSGT Tibble until 10 November 2000;³³ and
- d. Mr James' assertions of the knowledge of Ms Stevens as to the nature of the relationship (and in particular whether it was sexual) prior to 12 November 2000, and what documents were available to her at various points in time.³⁴ As noted in paragraph [18] of Mrs Campbell's submissions, these assertions should be rejected, for the reasons set out in those submissions.³⁵

Fiona McLeod SC

Lindy Barrett

28 November 2016

³¹ Transcript of D Watson, Case Study 40, 29 June 2016 at 19986:39 to 19987:2; Exhibit 40-0027, Case Study 40, DEF.02.0015.001.0001_R at DEF.02.0015.001.0049_R to DEF.02.0015.001.0050_R.

³² Paragraph [57] of Mr James' second submission.

³³ Paragraph [12](a) and (b) of the Commonwealth's supplementary submissions.

³⁴ Paragraph [48] – [49] of Mr James' first submissions; paragraphs [57], [75] and [77] of Mr James' second submissions.

³⁵ Ms Stevens is deceased and was therefore not available to attend the Case Study. In an e-mail dated 22 October 2001, Ms Stevens stated that she had only been advised of the non-sexual nature of the relationship on about 12 November 2000. A copy of the e-mail is attached [Attachment D].