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DEFENCE FORCE BATTLING ASSAULTS WITHIN

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Australian Defence Force receiving three reports of abuse each week, but taskforce to address cultural crisis fails to impose penalties

EXCLUSIVE, The Advertiser

June 27, 2017 10:23pm

Refer Supplementary Budget Estimates hearing 20 November 2013
QoN 49 - DART (Senator Nick Xenophon) - see reference below

Australian Defence Force receiving three reports of abuse each week, but taskforce to address cultural crisis fails to impose penalties

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AT least three reports of serious abuse in the Defence Force are being made each week to the independent complaints body for serving and former members.

However, none of 26 earlier sexual abuse complaints the [Defence Force Abuse Taskforce](#) referred to Defence for possible discipline has resulted in an alleged perpetrator facing action, *The Advertiser* can reveal.

After the taskforce wrapped up, the Defence Ombudsman's powers were broadened to provide an ongoing independent complaints process for allegations of sexual and physical abuse and bullying.

The office received 51 reports in its first four months following its expansion — about three a week on average. Thirteen of the complaints were lodged by serving members.

Defence Minister Marise Payne said these allegations related to both historical and contemporary abuse, but none had been referred to Defence for further action.

“Defence has taken significant steps in implementing a cultural change strategy,” Senator Payne said.





Defence Minister Marise Payne
Moore

NXT Senator Skye Kakoschke-

“I am confident that Defence is continuing to learn from past mistakes and that it takes allegations of inappropriate or potentially criminal behaviour by Defence personnel seriously.”

The taskforce was set up following the “Skype affair”, in which a female cadet accused a colleague at the Australian Defence Force Academy of filming them having sex and broadcasting the images to other cadets without her consent.

Its final report was released last September. The taskforce referred a range of allegations to state and territory police and others to Defence for possible disciplinary action as well as handing out compensation.

Nick Xenophon Team Senator Skye Kakoschke-Moore said: “The fact more abuse victims have come forward since the DART closed demonstrates how necessary the new reparation (compensation) scheme is.

“The Government must act quickly but carefully to ensure the new reparation scheme is in operation as a matter of urgency.”

A Defence spokeswoman said of 157 complaints the taskforce referred to Defence, 26 related to sexual assault — 16 were closed with no action and 10 remain under investigation, some for more than 18 months.

“Although Defence is deeply committed to addressing taskforce referrals, it is important to recognise Defence’s obligations under Australian law and the different evidentiary standards of the taskforce and Defence,” she said.

“A key guiding principle ... is to ensure no further harm to the complainant.

“In almost half the cases referred to date, Defence has not received any response from efforts to contact the complainant. It is difficult for Defence to progress a referral without the complainant’s involvement.”

Reference:

Supplementary Budget Estimates hearing – 20 November 2013

Question on Notice No. 49 – DART Abuse

Senator Xenophon provided in writing:

1. Can the CDF, or one of the Service Chiefs fully explain and elaborate on the term “suspend” with regard to service personnel when applied under the implemented Cultural Reforms Program?
2. Can the CDF, or one of the Service Chiefs fully explain and elaborate on the term “terminate” with regard to service personnel when applied under the implemented Cultural Reforms Program?
3. Does the Australian Defence Force have the ability/option to dismiss using the

term “dishonourable discharge” for the egregious misrepresentation of defence values as expressed to the parliament and the Australian public?

a. If not, why not? When was it removed from the military justice options?

4. Once a payment has been approved by the DART, why, as has been reported by the Australian Defence Force Abuse Association, is it taking four-six weeks to process reparation payments?
5. Why has the DART seen fit to outsource the reparation payment process?

Response:

(1) The term ‘suspend’ in relation to Australian Defence Force (ADF) personnel normally refers to the exercise of legal powers granted to authorised officers under

the *Defence Force Discipline Act 1982* (DFDA) to suspend members from duty.

An ADF member who has been convicted of an offence, whether that is a service offence, a civil court offence or an offence against foreign law, can be suspended from duty ‘*pending a decision as to the termination of the member’s service*’. An ADF member who has been charged with such a Service or civil law offence, or who is under investigation on suspicion that they have committed a Service offence, may also be suspended from duty. A member who is suspended from duty in both these circumstances is not entitled to pay, unless the relevant authority appointed by CDF or a Service Chief determines that the suspension should be with pay. This is authorised in subsection 98(1) and (2), subsection 99(2) and subsection 100(2) of the DFDA. The operation of this power to

suspend

with respect to the ADF cultural reform program is therefore limited to persons accused of, charged with, or convicted of offences, such as sexual offences or contravention of existing orders regarding behaviour.

(2) The ‘termination’ of a member’s service is a process described in the *Defence (Personnel) Regulations 2002* (the Regulations). It may refer to voluntary or compulsory termination of a member’s service in the ADF for the reasons identified in the Regulations at Chapter Nine. A member’s service in the ADF may be terminated compulsorily if the member becomes a permanent resident of another country, is redundant, is continuously absent without leave for three months or more, or for other reasons. Relevant other reasons are set out in Regulation 85 for officers and Regulation 87 for enlisted members.

In the case of ADF members who have behaved contrary to the standards set out in the cultural reform initiatives, extant Defence policy and Defence values, the most relevant ground on which their service may be terminated is that their Service Chief is satisfied that their “retention is not in the interests” of either the ADF or their Service, because of their performance, behaviour or their

conviction

for an offence. This provision confers a broad discretion on the Service Chiefs

and

the Governor General (or delegates), in particular to decide what kind of behaviour is not compatible with continued service.

Further reasons to terminate the service of an enlisted member or an officer include mental or physical incapacity, failure to become an Australian citizen, failure to render required service and the request of a minor member's parent or guardian. In addition, officers' service may be terminated if they are inefficient

or

incompetent for a reason that is within their control, and enlisted members' service may be terminated for unsuitability for service or for further training.

The Regulations require that the decision-maker on termination of service for any

of these reasons also take into account a range of organisational matters and '*whether, having regard to the individual's past and present conduct, the individual is of good character*' (Regulation 7). This is an important factor with regard to individuals who have behaved contrary to Defence values, standards of behaviour and cultural reform initiatives. The mandatory consideration of good character is a recent addition to the Regulations and commenced operation on 5 March 2013.

The termination of a member's service must follow the procedure prescribed in the Regulations, which generally includes the issue of a notice setting out the reason for the proposed termination and the provision of a minimum of 28 days for the member to respond. For terminations under Regulations 85 and 87 of the Regulations, a decision to terminate the member's service cannot be made until the 28 day notice period, or longer if extended, has elapsed. From a practical perspective, this limits the speed with which the service of ADF members can

be

terminated. Additional time may also be required after a decision is made to complete administration associated with the termination of service, including medical clearances, return of Defence equipment and the departure of the

member

and their family from Service housing.

The 'termination' of an ADF member's service is also authorised by Part VIIIA of

the *Defence Act 1903*, in respect only of members who test positive to prohibited substances. The procedures for testing and for the termination of members' service on the basis of a positive test result are prescribed in that Act.

In addition to the termination of a member's service under the Regulations and the

Defence Act, the *Defence Force Discipline Act 1982* (DFDA) also retains the punishment of ‘*dismissal from the Defence Force*’ which may be imposed on both officers and enlisted personnel who commit service offences of a serious nature. This ignominious form of termination of service is listed by the DFDA as the third most severe sanction on the scale of punishments (after imprisonment for life or imprisonment for specified period). Given the severity of this punishment, it may only be imposed by a higher level Service tribunal—that is, a Court Martial and Defence Force magistrate.

(3) Pejorative adjectives such as ‘dishonourable’ are not used in the *Defence (Personnel) Regulations 2002* to describe the legal grounds or reasons for administrative termination of service. Personnel who commit offences or whose behaviour is otherwise unacceptable can still have their service terminated under those Regulations on the basis that their retention is not in the interests of either the Defence Force or one of the three Services. When making a decision whether or not to terminate a member’s service on this basis, misconduct by the member cannot be ignored. Indeed, the Regulations were amended in March 2013 to explicitly require authorised decision-makers to consider whether, ‘*having regard to the individual’s past and present conduct, the individual is of good character*’ when making such termination decisions.

(a) Not applicable, noting that individuals convicted of service offences by Court Martial or Defence Force magistrate may be dismissed from the Defence Force and that, under the *Defence (Personnel) Regulations 2002*, an individual’s good or bad character is a mandatory consideration in respect of decisions to terminate a member’s service in the Defence Force.

(4) To date, the average time to process reparation payments, between receipt of a complainant’s Electronic Funds Transfer (EFT) form and payment, is nine days. In order for a payment to be processed, the Reparations Assessor must have made a final decision and the Taskforce must have received an EFT form from the complainant. Once this has occurred, a payment is made within 28 days. The longest amount of time between receipt of an EFT form and payment to date has been 23 days.

(5) The engagement of an external service provider to deliver the Defence Abuse Reparation Scheme payments ensures the confidential details of complainants are protected.

Utilising a service provider is less resource intensive than Commonwealth personnel providing the service, and enables the Taskforce to effectively and

efficiently use Commonwealth funding.

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