

ANNEXURE MAS-1

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL**


VID 364/2023

JULIAN KNIGHT
Applicant

DEFENCE FORCE OMBUDSMAN

Respondent

The following 1 page is the annexure marked MAS-1 referred to in the affidavit of Madisen Anne Scott made 16 February 2024 before me:



.....

Arran Gerrard
AGS Lawyer within the meaning of
s 551 of the *Judiciary Act 1903* (Cth)

MAS-1

Ms Madisen Scott
Senior Lawyer
Australian Government Solicitor
Locked Bag 35
KINGSTON ACT 2604

Mr Julian Knight
Port Phillip Prison
PO Box 376
LAVERTON VIC 3028

VIA EMAIL: madisen.scott@ags.gov.au

9 January 2024

RE: *Knight -v- Defence Force Ombudsman* (Federal Court Case No VID 364 of 2023)

Dear Ms Scott,

On 12 December 2023, I received an email from AGS Legal Assistant Cheryl Bonnefin informing me that a hard copy of the consolidated Court Book together with a copy on an encrypted USB had been posted to me that day. Please be advised that I have only received the USB yesterday morning and I am yet to receive the bound copy. Are you able to confirm when and how the bound copy was posted? I am mindful of the fact that I am required to file and serve any further evidence by 19 January 2024.

I also note that whilst the final recommendation of the ministers is included in the consolidated Court Book (at pages 657-659), the relevant documents concerning the initial referral by the DART to the ministers in 2015 'in relation to applications from complainants who are incarcerated or on parole following their incarceration' (see page 600), and the ministers' response, are not included. Do you intend to produce these documents prior to or at the hearing of this matter on 4 March 2024?

I also ask that you note the third question I posed in my facsimile to the DART on 14 July 2015 (page 601) – 'Am I also precluded from receiving other outcomes?' – and the exact wording of the ministers' direction being limited only to reparation payments (page 657). In spite of the specific direction of the ministers, does your client consider himself bound to exclude *all* possible outcomes for a complainant convicted of a serious crime?

Yours faithfully,



JULIAN KNIGHT

Email: PPPGovernmentFunctions@au.g4s.com

ANNEXURE MAS-2

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL**

VID 364/2023

JULIAN KNIGHT
Applicant

DEFENCE FORCE OMBUDSMAN

Respondent

The following 4 pages is the annexure marked MAS-2 referred to in the affidavit of Madisen Anne Scott made 16 February 2024 before me:


.....

Arran Gerrard
AGS Lawyer within the meaning of
s 55I of the *Judiciary Act 1903* (Cth)

MAS-2

For Official Use Only



DEFENCE ABUSE RESPONSE TASKFORCE

28 May 2014

Senator the Hon David Johnston
Minister for Defence
PO Box 6100
Senate
Parliament House
CANBERRA ACT 2600

Senator the Hon George Brandis QC MP
Attorney-General
PO Box 6100
Senate
Parliament House
CANBERRA ACT 2600

Incarcerated Complainants to the Taskforce

Dear Attorney-General and Minister

I am writing to you both as the Defence Abuse Response Taskforce (Taskforce) has become aware of particular complaints that raise unusual issues which may not previously have been contemplated by Government.

In light of the exceptional nature of these cases I consider it appropriate to draw them to your attention so that you have the opportunity (should you wish to take it) to give a direction about whether the Taskforce should deal with these complaints in the ordinary way, or refuse to consider or act upon them, on grounds of public interest.

The Taskforce has thus far received complaints from three people who were incarcerated at the time of lodging their complaint: Julian Knight, [REDACTED]
[REDACTED]

[REDACTED] have been assessed as having complaints that are plausible and within scope of the Taskforce Terms of Reference. Mr Knight's complaint has not yet been assessed but on the face of it also appears to be plausible and within scope. Therefore, all three are potentially eligible for a reparation payment and other Taskforce outcomes.

[REDACTED] who has now been released from prison, received a \$50,000 reparation payment following his release. However, Mr Knight and [REDACTED] remain in prison and are unlikely to be released in the near future. It is in respect of these people that your advice is sought as to whether you wish to consider making an 'in-principle' direction whether the

Taskforce should make a reparation payment or provide any further outcomes requested or not, to complainants who are serving prison sentences. To assist further with your decision making regarding this matter I provide the below information.

Julian Knight

Julian Knight was in the Australian Army Cadet Corps (1982-85), the Australian Army Reserve (85-87) and the Australian Regular Army attending the Royal Military College (RMC) (January to July 1987). He alleges that, during his time at RMC, he suffered ongoing low level abuse at the hands of his peers, senior cadets and staff. As a result of this ongoing abuse and the feelings of powerlessness that it engendered, he alleges that he "decided to go on the offensive", which resulted in him at approximately 0300hrs on 31 May 1987 stabbing Staff Cadet Reed twice in the head in the Private Bin nightclub. Following this incident Mr Knight immediately turned himself in to the police and was formally charged on the same day.

On 12 June 1987 Mr Knight appeared in the ACT Magistrates Court and was bailed to reappear on 10 November 1987. Following the court hearing Mr Knight returned to Duntroon to discuss options in relation to his military service. The Army offered him three options: to 'Show Cause' why he should not be discharged on 18 June 1987; to receive a 'Show Cause' why he should not be discharged following his court case in November 1987; or, to resign his appointment immediately and take six weeks convalescent leave on full pay and be honourably discharged from the Army. Mr Knight chose to resign and his service was terminated on 24 July 1987. He was subsequently arrested in Melbourne on 9 August 1987 for the Hoddle Street shootings which resulted in the death of seven people and injury of 19 other individuals.

Mr Knight was sentenced on 10 November 1988 in the Supreme Court of Victoria to life imprisonment with a minimum non-parole term of 27 years for seven counts of murder and 46 counts of attempted murder. As part of his plea agreement with the Crown in 1988, the Crown undertook not to contest the setting of a minimum non-parole term provided that Mr Knight did not raise the issue of bastardisation he was subjected to at RMC. However, given recent actions by the Adult Parole Board of Victoria together with the Victorian Government, Mr Knight no longer considers himself bound by the undertaking he gave in 1988. Mr Knight submitted a lengthy submission to the Taskforce on 20 November 2013 (Attachment A). Part of this submission and letters sent by Mr Knight in Jan 2014 to a number of recipients, including the Attorney-General, are available on a public website <http://www.julianknight-hoddlestreet.ca/julians-submission-to-dart.html> (Attachment B).

Mr Knight's earliest eligibility date for release on parole was 8 May 2014. The Adult Parole Board of Victoria had apparently already advised Mr Knight that he would not be released on that date and is unlikely to be released at any point in the foreseeable future. The Victorian Government has recently proposed legislation specifically to ensure that Mr Knight remains behind bars indefinitely and will only be released if he is in imminent danger of dying or is seriously incapacitated.

It appears as a result of these actions, Mr Knight is seeking an interstate transfer from Victoria to the Australian Capital Territory and wishes to have the charges of malicious wounding, assault and assault occasioning actual bodily harm re-instated in the ACT Magistrates Court for his actions against Staff Cadet Reed on 31 May 1987.

The Taskforce received a Personal Account Form (PAF) and an application for reparation payment from Mr Knight on 5 December 2013.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Other Incarcerated Individuals

The Taskforce is aware of one other currently incarcerated complainant. He is [REDACTED] who was a 13 year old RAAF cadet who suffered abuse at RAAF Base East Sale in 1987. The abuse included physical assaults, bastardisation, bullying, intimidation and degradation. The Taskforce has conducted an open-source search but has no information on the reason for or length of his incarceration. A Reparation Payment Brief has been prepared but it has not yet been cleared for the forwarding to the Reparation Payments Assessor. [REDACTED] is represented by solicitors Slater and Gordon.

The Taskforce is aware of one other complainant who has previously been incarcerated (but about which we have no details). This complainant has been awarded a reparation payment of \$35, 000, for abuse (workplace bullying and harassment) and Defence mismanagement at RMC Duntroon in 1968.

The Taskforce is unaware of any other individuals who have registered a complaint and are currently incarcerated. You may wish to consider whether you wish to give a general direction in relation to currently incarcerated individuals who may have registered a complaint with the Taskforce.

I would appreciate direction from you before I make a decision on how the Taskforce will action the complaints mentioned above, and or any other similar complaints that may arise in the future.

I advise that in the absence of any formal direction from you the Taskforce will, of course, act in accordance with its Terms of Reference (ToR). They impose no restriction on any individual or category of complainant whose complaints of abuse in Defence are assessed as

within scope of the ToR and are plausible, being unable to receive an appropriate reparation payment, or any other outcome from the Taskforce.

Please let me know if you require any further information, or if you wish to discuss this matter further. I look forward to receiving your response.

Yours sincerely

A handwritten signature in black ink that reads "Len Robert-Smith". The signature is written in a cursive style with a large initial 'L' and 'R'.

The Honourable Len Robert-Smith RFD, QC
Chair
Defence Abuse Response Taskforce

ANNEXURE MAS-3

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL**

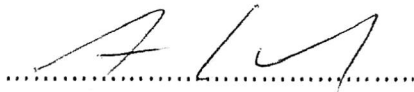
VID 364/2023

JULIAN KNIGHT
Applicant

DEFENCE FORCE OMBUDSMAN

Respondent

The following 5 pages is the annexure marked MAS-3 referred to in the affidavit of Madisen Anne Scott made 16 February 2024 before me:

A handwritten signature in black ink, appearing to read 'A. Gerrard', is written over a horizontal dotted line.

Arran Gerrard
AGS Lawyer within the meaning of
s 55I of the *Judiciary Act 1903* (Cth)



DEFENCE ABUSE RESPONSE TASKFORCE

5 March 2015

The Hon Michael Keenan MP
Minister for Justice
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Minister

Incarcerated complainants

Last year, the former Chair asked the then Minister for Defence and the Attorney-General for a direction as to whether the Taskforce should make a reparation payment to incarcerated complainants.

Background

In his letter dated 28 May 2014 addressed to the Minister and the Attorney-General, the Hon Len Roberts-Smith RFD QC noted that:

... the Terms of Reference do not restrict the Taskforce from approving a reparation payment to any individual or category of complaint whose complaints of abuse in Defence are assessed as within scope and plausible.

In his subsequent letter dated 4 September 2014, the Chair advised that, in the absence of a formal direction by 12 September 2014, the Taskforce would proceed with processing applications in accordance with existing policy.

The Attorney-General responded on 24 October 2014:

I understand the Minister for Defence has informally advised you that, at this stage, he does not want reparation payments made to DART complainants who are incarcerated. I agree with that decision.

The Minister for Defence added to the Attorney's response in his letter to the Chair dated 17 November 2014:

After further discussion with you and Matt Hall, Executive Director of the Taskforce, I understand this decision will require further Taskforce policy. As indicated to you during our meeting I will await this information to be provided to me for my consideration.

This matter was not resolved before Mr Roberts-Smith's appointment ended on 30 November 2014.

Issues

I have given careful consideration to this issue and consulted with the Leadership Group and Taskforce colleagues.

There are some complex issues to be taken into account in developing a general policy in regard to incarcerated complainants. Some of them are:

- Would the policy include complainants on remand? If the person is subsequently tried and found not guilty, it would be unfair to apply the policy but it could take months, or even years, for the final result to be known, particularly if there are appeals.
- Would the nature of the criminal offence have a bearing on the outcome? For example, if a complainant was seriously sexually abused in Defence in the 1970s or at ADFA in the 1990s but imprisoned for a serious driving offence in 2013, would that person be caught by the policy?
- If the offence involved, say, driving under the influence, would the policy apply if the evidence established that the complainant's alcoholism was a consequence of the abuse in Defence?
- Would the policy apply to complainants on parole? Although a parolee is released into the community, the release is subject to conditions and a breach of those conditions could result in the person being returned to prison.

It is also important to note that the Taskforce may not be aware that a complainant is in prison and may have difficulty finding out details of his or her offence and current situation and status due to privacy and other concerns. In some cases, complainants deal with the Taskforce through a nominated representative (usually a firm of solicitors) and, as a result, the Taskforce may have no information about the complainant's circumstances.

The Taskforce notes that it has previously made a small number of reparation payments to complainants who were or had recently been incarcerated (as advised in the letter dated 28 May 2014) before the issue of incarceration attracted attention.

Three cases requiring consideration

We have now assessed virtually all of the 2,400 complaints lodged with the Taskforce and we are presently only aware of three complainants who are in prison. They are:

- [REDACTED]

[REDACTED]

Proposed handling

Given the small number of cases to be considered, the complexity of the issues involved and the different circumstances of each case, the Taskforce proposes that each of the three cases be considered individually.

[REDACTED]

Knight

In view of the severity of his criminal offences and the lower level of his alleged abuse in Defence, Mr Knight is in a different category. In any event, the Taskforce understands he is not likely to be released from prison in the near future.

In these circumstances, my recommendation is that no reparation payment be made to Mr Knight.

The remaining question is how the Taskforce should deal with the balance of Mr Knight's complaint.

Even if his complaint establishes a plausible case of abuse in Defence, I am of the view that the other outcomes are likely to be inappropriate for the following reasons:

- As a long term prisoner, prison authorities are responsible for Mr Knight's required medical treatment (including counselling)
- Allegations of bastardisation perpetrated 17 years ago by an unknown number of senior cadets would not give rise to consideration of a criminal investigation or referral to the Chief of the Defence Force for consideration of disciplinary or administrative sanction, and
- In all the circumstances, I doubt Defence would be prepared to engage in a restorative engagement conference.

I would be pleased to discuss these issues with you in more detail if that would be of assistance. Otherwise, I look forward to your response at your convenience.

In the interim, the Taskforce has advised [REDACTED] that their applications for a reparation payment are on hold pending your decision on the issues raised in this letter.

At this stage, the Taskforce has not had any communication with Mr Knight.

I have forwarded a letter in similar terms to the Minister for Defence.

Yours sincerely



Robert Cornall AO
Chair
Defence Abuse Response Taskforce

ANNEXURE MAS-4

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL**

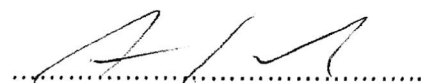
VID 364/2023

JULIAN KNIGHT
Applicant

DEFENCE FORCE OMBUDSMAN

Respondent

The following 1 page is the annexure marked MAS-4 referred to in the affidavit of Madisen Anne Scott made 16 February 2024 before me:



Arran Gerrard
AGS Lawyer within the meaning of
s 551 of the *Judiciary Act 1903* (Cth)




The Hon Kevin Andrews MP
Minister for Defence

The Hon Michael Keenan MP
Minister for Justice

MC15/000658

Mr Robert Cornall AO
Chair, Defence Abuse Response Taskforce
PO Box 6010
KINGSTON ACT 2604

24 JUN 2015

Dear Mr Cornall, 

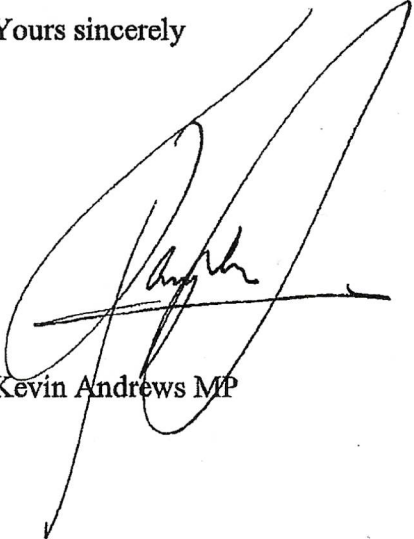
Thank you for your correspondence dated 5 March 2015 regarding incarcerated complainants. We regret the delay in responding to you.

We note the Attorney-General's letter to the Taskforce of 24 October 2014 stating: "*I understand the Minister for Defence has informally advised you that, at this stage, he does not want reparation payments made to DART complainants who are incarcerated. I agree with that decision.*"

We remain of the view that the Taskforce should not make repatriation payments to any incarcerated complainants. We are also of the view that payments should not be made to persons currently on parole following their incarceration.

If you require any additional information, please contact Mr Nick Demiris, Senior Adviser to the Minister for Defence on (02) 6277 7800 or Miss Stephanie Elliott, Adviser to the Minister for Justice on (02) 6277 7290.

Yours sincerely


Kevin Andrews MP


Michael Keenan MP