



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