

25 January 2017

Committee Secretary  
Foreign Affairs, Defence and Trade Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Secretary

**Senate Inquiry into Matters raised by NSW Police Strike Force CIVET**

Please find attached my office's submission to the Senate Inquiry into Matters raised by NSW Police Strike Force CIVET, which is currently being conducted by the Foreign Affairs, Defence and Trade References Committee.

I trust this submission will be of assistance to the Committee's Inquiry into this important topic.

If you would like to speak to my office about this submission, please contact Mr Rodney Lee Walsh on (02) 6276 0107. If the Committee would like to speak to me directly, I can be contacted on (02) 6276 3707.

Yours sincerely



Richard Glenn  
Acting Commonwealth Ombudsman



**Submission by the  
Commonwealth Ombudsman**

**INQUIRY INTO THE MATTERS RAISED BY THE  
NSW POLICE STRIKE FORCE CIVET**

Submission by the Acting Commonwealth Ombudsman, Mr Richard Glenn

**January 2017**

The Commonwealth Ombudsman welcomes the opportunity to respond to the Senate Standing Committee on Foreign Affairs, Defence and Trade Inquiry into the matters raised by the NSW Police Strike Force CIVET

## **BACKGROUND**

The office of the Commonwealth Ombudsman seeks to ensure that administrative action by Australian Government agencies is fair and accountable. It does this by handling complaints, conducting investigations, performing audits and inspections, encouraging good administration, and discharging other specialist oversight tasks. The Commonwealth Ombudsman is guided by the values of independence, integrity, accessibility and professionalism.

### **The Defence Force Ombudsman**

The Commonwealth Ombudsman is also the Defence Force Ombudsman (DFO), a function conferred on the Ombudsman in 1983 to provide assurance of independence and integrity in the management of complaints about matters of administration within the Australian Defence Force (ADF). The DFO provides an external and independent complaints mechanism for serving and former members of the ADF for administrative and employment matters that have not been resolved by Defence.

Defence agencies within the DFO's jurisdiction include (but are not limited to) the Department of Defence (Defence), the ADF, the Department of Veterans' Affairs (DVA) and Defence Housing Australia.

Complaints made to the DFO about the ADF include decisions about promotion, demotion, discharge, postings, leave, housing, allowances and handling of Redress of Grievance processes. We can assess the handling of allegations of misconduct, harassment and abuse. We can also refer matters to the Inspector General ADF, where it is found to be a more appropriate investigation avenue.

From 1 July 2016 to 31 December 2016 the DFO received 263 approaches about matters of administration in Defence agencies. We investigated 65 (25%) of these matters.

From 1 December 2016 the DFO's functions were expanded to provide an independent mechanism to accept reports of abuse in the ADF. We accept reports of serious abuse, defined as sexual abuse, serious physical abuse and/or serious bullying and harassment.

The DFO provides support for people who report incidents of serious abuse, taking a trauma-informed care model to support those making a report of abuse, based on the principle of 'do no further harm'. We assess available options, which include a referral to counselling or assessment for participation in a Restorative Engagement conference, a facilitated meeting where the person making the report can meet with a member of Defence to have their report of abuse heard and acknowledged. We can also advise on whether the reported matter should be referred to the police, Defence or another agency for further consideration.

Since the commencement of this function the DFO has received 29<sup>1</sup> reports of abuse in the ADF.

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<sup>1</sup> Reporting period 1 December 2016 - 23 January 2017

## **RESPONSE TO TERMS OF REFERENCE**

### Allegations of fabrication, the withholding of evidence and inappropriate conduct by ADFIS and other sections of the ADF in relation to the Jedi Council Sex Scandal

The Ombudsman has not received any complaints alleging the fabrication, withholding of evidence and inappropriate conduct by ADFIS and other sections of the ADF in relation to the Jedi Council Sex Scandal.

As a general principle, the Ombudsman considers that all members who are facing adverse administrative action should be afforded procedural fairness, in line with both statutory and common law requirements of natural justice.

In accordance with the principles of administrative law, decision makers are required to act impartially, honestly and without prejudice.

A decision maker must also consider all evidence provided and weigh the evidence in a logical and unbiased manner.

Failure to observe the above principles would be inconsistent with the requirements of administrative law and Australian military justice.

### The investigation of serious misconduct without providing affected members an opportunity to respond

Under administrative law, the hearing rule provides that an individual who is adversely affected by a decision must be given a reasonable opportunity to respond to the proposed decision or any adverse comment. This includes being aware of evidence relied upon to make the decision.

Any failure to apply these rules would result in a breach of procedural fairness to the affected member.

### Scope of the DFO to investigate complaints by former and serving members affected by the ADFIS investigation

The DFO is unable to investigate action taken in connection with proceedings against an ADF member for an offence under the *Defence Force Discipline Act 1982*.

However, our jurisdiction does allow the investigation of events leading up to the disciplinary proceedings and any subsequent matters of administration, such as the provision of clearly articulated reasons for an adverse decision.

We will generally decline to investigate a matter where the member still has an internal review or complaint mechanism available, such as the Redress of Grievance process.



### Data on complaints relating to the Jedi Council Sex Scandal

Our office was unable to identify any complaints from former and serving ADF members or their family and representatives that specifically identified the Jedi Sex Scandal or Operation Civet. As such, we are unable to provide the Inquiry with any individual or systemic analysis.

### Scope of the DFO to assist former and serving members affected by the Jedi Council Sex Scandal

From 1 December 2016 the DFO functions were expanded to provide an independent mechanism to report serious abuse in the ADF.

Reports of abuse can be made by serving and former members of the ADF, in relation to serious abuse which occurred between two (or more) people who were in Defence at the time. This includes ADF members and Australian Public Service employees/contractors deployed overseas in connection with Defence activities. There are many mechanisms within the ADF that can deal with reports of abuse. The DFO is available for members who may, for whatever reason, feel unable to report abuse within Defence channels.

Any members who have suffered abuse in relation to the Jedi Council Sex Scandal or are not satisfied with ADF actions or responses are welcome to make a confidential report to the DFO.