28th January 2022

Response to AGS statement on Human Rights complaints

1. I first want to acknowledge the response from the Australian Government Solicitor (**AGS**) and comment that I am aware of the sensitive nature of this course and that the release of certain information pertaining to this course could jeopardise the lives of Australian Defence Force (**ADF**) personnel. It was for this reason that I made recourse to the Australian Human Rights Commission (**AHRC**), so that this information could remain within the purview of the Australian Government, and not be made public.

Alleged sexual harassment – s 28A of the SDA

2. The criteria for someone to sexually harass another according to s 28A are:

    a. the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

    b. engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

    c. in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

3. Importantly for the third element the circumstances to be taken into account include, but are not limited to, the following:

    a. the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;

    b. the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;

    c. any disability of the person harassed;

    d. any other relevant circumstance.

4. The AGS in response to this complaint has given no reason for why a reasonable individual wouldn't find the treatment I received as being offensive, humiliating or intimidating. Instead, they have drawn out the context in which this sexual harassment happened as to imply that the context of the course mitigates the behaviour I received. However, the other circumstances seem to be absent from the AGS's response.

5. As the AGS pointed out in the Full Court in Hughes, Justice Perram comments:

    a. *…the reasonable person is assumed by the provision to have some knowledge of the personal qualities of the person harassed. The extent of the knowledge imputed to the reasonable person is a function of the 'circumstances' which the provision requires be taken into account. Mention has already been made of the nature of the relationship between the harasser and the harassed. It is convenient also to note that the circumstances will include any disability the harassed person is suffering from*

(subs (1A)(c)) as well as matters such as sex, age, religious belief or sexual orientation (subs (1A)(a)). But the list in subs (1A) is merely inclusive so that other unspecified but relevant circumstances may also be taken into account. The canvas is broad.

6. The circumstances the AGS has failed to acknowledge are the knowledge the trainer knew about me, the relationship between the trainer and myself, and the harassment targeting my religious beliefs.

    a. As part of the course, trainers do a detailed investigation into each participant to find their vulnerabilities. They will then exploit these vulnerabilities during interrogations. This is made clear on my Volunteer Declaration Form which states, "*All information, both written and digital found on my person, equipment and/or baggage, and open-source social media information may be utilised during the activity for the purpose of demonstrating my vulnerabilities and/or exploitable points.*" It was clear that the trainer had a good knowledge of my vulnerabilities and intentionally used this knowledge to sexually harass me.

    b. In the context of the course, and outside of the course, trainers were in a position of authority over participants. As the harassment was done by the trainer as an individual (acting on behalf of Defence), the circumstances of the relationship between the trainer and myself, are more immediate than the broader relationship between Defence and myself. As such, it would be more pertinent to consider the more immediate context (relationship with trainer) over a broader context (relationship with Defence) for the circumstances a reasonable person would have to consider.

    c. Finally, the nature of the harassment exploited my deeply held religious beliefs. As the trainer knew that I held these beliefs, and was in a position of authority over me, it seems that the circumstances a reasonable person would have to consider would anticipate that I would be offended, humiliated, or intimidated. The Neutral Observer notes, "*Your religion was attacked because it forms part of your belief and support system and identity. The adverse media attention the Catholic Church is currently getting was also used to attack your belief systems as it's a current, well publicised and easy target.*"

    d. In addition, another relevant circumstance is the mental, physical, and emotional fatigue produced by this course. As the harassment I received was at the very end of this course, it was during the period when I was most vulnerable due to the compounding effects of all of the previous activities.

7. In relation to the circumstances the AGS mentions in para. 36, I have several responses to their comments:

    a. In para. 36.1, the AGS mentions that the techniques used are employed by a non-Geneva Convention compliant adversary. However, there was no mention that the course would use these techniques in any of the information we received prior to starting the course. Enclosure 3 in the AGS response makes no mention of whether the adversaries we were about to face would comply with the Geneva Conventions. Likewise, there is no mention in Enclosure 4 either.

    b. In para. 36.3.3, the AGS mentions that the training is voluntary and that participants can withdraw at any time.

        i. Participants are given a very limited understanding of what stressors the trainers are allowed to use. The only stressors mentioned are nudity, searches, and simulated punishments. However, these are so broad and vague that a reasonable person wouldn't think that sexual harassment, torture, coercion to recant one's religion, and cruel and inhumane treatment would be included. This diminishes the amount that participants were truly

volunteering for what was included in the course as their expectations weren't properly set.

ii. There are several factors that hinder the Participant's ability to freely withdraw from the course. The first is sleep deprivation. The symptoms of sleep deprivation include: poorer judgement, reduced awareness of the environment and situation, reduced decision-making skills, poorer memory, reduced concentration, increased likelihood of mentally 'stalling' or fixating on one thought, and errors of omission.[1] After 48hrs symptoms include: depersonalisation, hallucinations, illusions, delusions, disordered thinking, dissociation, paranoia, and distortions in the sense of time. These symptoms continue to get worse as the length of sleeplessness increases.[2] Considering that the course began at 1700 on the 4th of March after receiving the Level B brief that morning, participants had already been awake for approximately 9 hours before the course had begun, and were further sleep deprived for the entirety of the 72 hour course. This meant that the total amount of sleep deprivation was about 81 hours. It seems clear that after such a large amount of sleep deprivation that a participant's perception of reality is severely distorted. Any participant in such a disordered state would find it extremely difficult to freely withdraw from the course due to these severe symptoms.

Another factor is immersion. The CAC Level C brief states that participants are required to '*Immerse yourself (pretend it's real…)*'. While the AGS state that, "*trainees are reminded that 'what they see and experience is all based on acting – no real malice is held by anyone dealing with them'*", participants are required to ignore this and pretend that what's happening is real. This requirement can make the symptoms of the sleep deprivation even worse as the distortion of reality can make participants forget that they are in a course and become deluded about whether they can withdraw.

The final factor I will mention is the culture within the Army. As an infantryman there is a culture that considers 'withdrawing' as quitting, being a sack, or not being up to a challenge. These reflect a perception of a deficient resolve within an individual which, in lieu of the role of an infantryman, could lead to others being killed within the platoon during potential deployments. This obviously reflects poorly on the character of anyone who quits and makes them seen as untrustworthy by others. On the other hand, a person who perseveres through a particularly difficult situation is seen as trustworthy and having a good character. These cultural factors create a large incentive to avoid withdrawing from the course for the sake of an individual's reputation. The Foreign Affairs, Defence and Trade References Committee report on Operation of the ADF's resistance to interrogation training (**Senate Report**) gives this submission from a former participant, "*Particularly in the context of SAS selection, you have got a bunch of people who are trying to prove that they can handle whatever is thrown at them. Certainly I was just trying to prove I could handle whatever was thrown at me, and it would have been shameful amongst my peers to put my hand up and say, 'I can't handle this' or, 'I think this is wrong' or, 'I'm not prepared to go on'.*"

Alleged breach of Art 7 of the ICCPR – prohibition against torture

8. The AGS commits a fallacy of composition by implying that because no service offences were identified under DFDA, which only applies to very specific interpretations of 'torture' within the context of the Australian Defence Force, that there must also be no breaches of the ICCPR, which encompass the whole concept of what breaches the prohibition against torture. This fallacy is further seen when we acknowledge that the ICCPR is not legally dependent upon

[1] https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/sleep-deprivation
[2] https://doi.org/10.3389/fpsyt.2018.00303

interpretations made under the DFDA, but the DFDA is legally dependent upon interpretations made under the ICCPR. Therefore, whether or not ADFIS has identified any service offences is irrelevant to whether there was a breach of Art 7 of the ICCPR.

9. AGS argues that the purpose required for an act to amount to torture is missing from the CAC Level C Training. However, the ICCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) (**Comment 20**) makes the following observations (4, 5):

> 4. The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.
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> 5. The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.

10. While Art 1(1) of the CAT may provide a definition of torture, Comment 20 states that Art 7 of the ICCPR deliberately doesn't provide a definition of torture. Moreover, para. 5 states that torture can be considered as an educative measure. The purpose of the course is to educate the participants about the rigors of captivity and exploitation while enabling them to survive the capture situation with dignity. Comment 20 can justify calling the treatment I received on this course as amounting to torture, or at the very least breaching Art 7, regardless of what the CAT defines it as.

11. The AGS argues in para. 43 that, "*a course for which participants have volunteered, after first completing computer based and instructor led training on conduct after capture, and from which they may withdraw at any time (including if they are finding the physical and psychological stressors too great) does not amount to cruel, inhuman or degrading treatment*." I have a number of responses to this claim.

    a. Comment 20 in para. 3 states clearly that, "*The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.*" This observation makes it clear that the context in which actions that breach Art 7 occur, cannot justify those actions. This includes the context of the CAC Level C course.

    b. The argument that a participant can withdraw at anytime if they are finding the physical and psychological stressors too great is flipping the responsibility of Art 7 onto the victim. It shouldn't be the responsibility of the victim to withdraw if the trainer is breaching the prohibition against torture, as the responsibility of that breach in not on the victim but on the perpetrator. As I previously discussed (7.b.ii), there are good reasons for arguing that participants cannot 'freely' withdraw from the course. This vulnerability only puts a greater emphasis on the trainers to not abuse their position to breach the prohibition against torture.

12. The Case of Ireland vs The United Kingdom (5310/71) (1976) European Court of Human Rights concluded: "*The Commission is of the opinion, by unanimous vote, that the combined use of the five techniques in the cases before it constituted a practice of inhuman treatment and torture in breach of Art. 3 of the Convention (cf. p. 402)*"

13. The Case of Ireland vs The United Kingdom (5310/71) (1978) European Court of Human Rights concluded: "*The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3 (art. 3). The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance."* And that "*The Court concludes that recourse to the five techniques amounted to a practice of inhuman and degrading treatment, which practice was in breach of Article 3 (art. 3).*"

14. The Report of the Committee against Torture: 10/09/97 (A/52/44) concluded: "
256. It is Israel's position that interrogations pursuant to the "Landau rules" do not breach prohibitions against cruel, inhuman or degrading treatment as contained in article 16 of the Convention against Torture and do not amount to torture as defined in article 1 of the Convention.

257. However, the methods of interrogation, which were described by non-governmental organizations on the basis of accounts given to them by interrogatees and appear to be applied systematically, were neither confirmed nor denied by Israel. The Committee must therefore assume them to be accurate. Those methods include: (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill, and are, in the Committee's view, breaches of article 16 and also constitute torture as defined in article 1 of the Convention. This conclusion is particularly evident where such methods of interrogation are used in combination, which appears to be the standard case." It is important to note here that the report does not say that all of these interrogation techniques in conjunction amount to torture, but that their use in combination only makes the torture more evident.

15. The Commission on Human Rights (E/CN.4/1995/34, 12 January 1995) states quite clearly that, "*The practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers. Thus, blindfolding or hooding should be forbidden;*"

16. These historical cases create a precedent that these techniques applied in combination amount to inhuman and degrading treatment, or even amounting to torture. The Convention for the Protection of Human Rights and Fundamental Freedoms (**Convention**) states, "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*" This is the same wording of Art 7 of the ICCPR.

Alleged breach of Art 10(1) of the ICCPR – requirement to treat persons deprived of their liberty with humanity and respect

17. The two parts of this allegation include whether I was deprived of liberty, and the second is whether I was treated with humanity and respect. These two elements are both necessary and sufficient to consider the behaviour I received as a breach of Art 10 of the ICCPR.

18. The second element has clearly been met due to the treatment I received as being a breach of Art 7 of the ICCPR, Art 1 of the CAT, Art 3 of the Convention, and several UN reports.

19. The first element is much more ambiguous as the ICCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty) (**Comment 21**) says, "*Article 10, paragraph 1, of the International Covenant on Civil and Political Rights applies to any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals - particularly psychiatric hospitals - detention camps or correctional institutions or elsewhere. States parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held*." Here the term 'elsewhere' is vague and may or may not apply to personnel held in a simulated detention. In addition, the next sentence describes a broader context of persons being held within

institutions and establishments under the jurisdiction of a State party. The course can come under this second description. However, whether this element has been met is unclear and I would argue that some form of declaratory relief be made on what is included in the term 'elsewhere', and whether the second sentence would also constitute as someone deprived of their liberty.

20. Again, the information provided to participants before they volunteered was inadequate. There was no mention that the adversaries wouldn't be complying with the Geneva Conventions; that sexual harassment would be involved; that torture or inhuman, humiliating, and degrading treatment would be used; and that I may be forced to recant my religion. In the Senate Report it specifically states," *Defence does not use the term 'informed consent' in relation to its RTI or CAC training activities. As previously noted, Defence refers to participants in Level C training as 'volunteers' if they have signed a volunteer declaration form prior to commencing training.*" To further illustrate this point the Senate Report received this statement from the Australian Psychological Society, "*I think the problem with what we are talking about—the resistance-to-interrogation training—is that it is described to people, but the demands that it places on individuals really only become apparent to them as they are undergoing the training. So under the present set of circumstances they are not consenting in a way where they fully understand the risks and the dangers to them. That is not informed consent*." If this course purposefully avoids giving participants informed consent, then should they be held responsible for accepting what happens to them on this course? Clearly not. So the argument that participants "volunteered" for this course is irrelevant to the whether they may be considered as persons deprived of their liberty.

Alleged breach of Art 18 of the ICCPR – freedom of religion

21. The AGS argues, "To the extent that any coercion to renounce religion is imposed on participants during the conduct of the training, they are aware when it is occurring that it is simulated (no real renouncement of religion is required) and that any threats made will not have real-world consequences at the conclusion of the training. That is participants remain free to hold and practice their religion."

22. However, there are several problems with this reasoning which address the three main points of this argument. First that no real renouncement of religion is required as the course is just a simulation. Second that threats have no real-world consequences after the conclusion of training. Finally, that participants are free to hold and practice their religion.

    a. I have already mentioned the problem of considering the course as simulated when the requirements and conditions of the course force you to think the course is real. As I have previously stated, the CAC Level C Activity Brief states that a requirement of the course is to immerse yourself (pretend that it's real). I have also mentioned that due to the severe sleep deprivation, that the psychological symptoms can create significant distortions of reality to participants - even to the degree that the course becomes real. Another argument I wish to make is that the course did require that I recant my religion. As the Neutral Observer noted in his feedback, "*Your performance was unfortunately average. At one point you let your emotions and logic get the better of you, stating that you'd rather be killed or have others killed than compromise yourself… This is a poor decision.*" This implies that the good decision was to 'compromise myself', or to recant my religion. Within the interrogation I was severely reprimanded for my 'poor choice' and was forced to choose 'correctly this time'. Clearly, I was required to recant my religion as part of this interrogation.

    b. The argument that threats have no real-world consequences after the conclusion of training fails to mention the consequences within training that can endure well after the conclusion of the training. An example of this that happened during training was that we were all made to line up hooded and hear about how a particular participant acted during their interrogation. The interrogator made a special point to mention that this participant as a leader failed to consider the welfare of his subordinates and acted selfishly during interrogation. Since he was called out by name, we knew who he was and what he had done. That knowledge doesn't just disappear at the

conclusion of the course, and it hurt his reputation well after the course concluded. There was also no guarantee that event couldn't happen again with any other interrogation. This is something that has real-world consequences.

The second real-life consequence from threats that came from this course, are the psychological effects these threats have that can persist well after the course. In my case, it was a diagnosis of post-traumatic stress disorder and major depressive disorder. Both psychiatrists and psychologists in their reporting of my mental health make it absolutely clear that these diagnoses are due to what happened to me on the course.

A/Associate Prof Dr Mrigendra Das in his Confidential Psychiatric Assessment states, "*His mental difficulties began immediately after attendance at the course when he began to have nightmares which centered around the theme of being captured by enemy forces, elaborate dreams where he would see horrible things happening such as soldiers being tortured, made to eat insects or having their hearts ripped out. He also began to have chest pain, often associated with anxiety symptoms. He would get upset whenever he would think of the mock interrogation and have panic attack like symptoms characterised by hyperventilation, flashback of the interrogation exercise. These would happen about a few times a week lasting about 5-10 minutes. This is also been associated with other symptoms such as lack of enjoyment of life, emotional numbness, irritability, feeling detached from the world, sleep disturbances, and reduced hours of sleep. He also describes his mood to be low and 'melancholic'. Because of his panic attacks and palpitations, he has been investigated extensively for cardiac causes, and none have been found. He describes the memories of the interrogation exercise as very anxiety provoking and something that he does not want to think about, and that some of the memories and dreams at times feel real. He feels extremely shamed by the interrogation exercise and particularly about ejaculating on the bible, as he feels this has shaken his faith. He does not report any ideas of self-harm… He presents with a history of a significantly traumatic event during training, which has personal significance for him. This is let to development of a Post Traumatic Stress Disorder. In addition, he has depressive symptoms severe enough to diagnose a Major Depressive Disorder.*"

c. The argument that I remain free to hold and practice my religion does not excuse the coercion I faced to recant my religion. The General Comment 22: Article 18 (Freedom of Thought, Conscience or Religion) (1993) (**Comment 22**) states: " *The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert*."

Comment 22 makes clear distinctions between the different acts that breach Art 18(2). While denying my freedom to hold and practice my religion would breach my right to retain my religion, the allegation is not directly about this comment. The allegation is focusing on whether I was coerced into recanting my religion with threats of physical force. There is no dispute that I was forced to recant my religion. The threats of physical force were when the interrogator threatened my life and the lives of my friends. As I was sleep deprived for over 72 hours and knew that the course contained moments where other participants were used as leverage and were "killed" in front of participants, my psychological state led me to believe these threats were genuine.

23. I also want to reiterate that these actions were premeditated. The Neutral Observer notes, "*Your religion was attacked because it forms part of your belief and support system and identity. The adverse media attention the Catholic Church is currently getting was also used to attack your belief systems as it's a current, well publicised and easy target.*"

Efforts at a Conciliation

24. The AGS have stated that my complaints will not be discussed during any conciliation done with the AHRC. They have, however, stated that they are, "*open to hearing from Mr de Pyle about his experience and the concerns that he has raised about the CAC training.*" This is an extremely disrespectful response to my very serious complaints. It is clear they aren't taking my complaints seriously. Having the AGS become a passive listener at a conciliation meeting would make conciliation impossible. Conciliation is a bilateral arrangement, and if one side is unwilling to properly engage with the complaints then it has finished well before it even started.

25. The Human Rights Committee Communication No. 2234/2013 (**Communication**) makes the following observation (7.4): "*In that regard, the Committee recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially. The Committee further recalls that the State party is responsible for the security of all persons held in detention and that, when there are allegations of torture and mistreatment, it is incumbent on the State party to produce evidence refuting the author's allegations. In the absence of any thorough explanation from the State party, the Committee has to give due weight to the author's allegations…*"

26. In light of this Communication, I believe the AGS, working on behalf of the Australian Government, has failed to investigate this complaint impartially, and has produced no evidence refuting my allegations.

    a. I believe the AGS has not investigated this complaint impartially due to the Government's disposition of avoiding transparency over allegations of abuses of human rights within the CAC Level C Course. In the Government's response to the Senate Report, they agreed to all recommendations bar one. The recommendation they disagreed with was, "*1.7 That the thousands of hours of Department of Defence CCTV video recordings made of Resistance to Interrogation and/or Conduct After Capture be made available to the Commonwealth Ombudsman for an independent assessment as to whether any United Nations or Geneva Convention principles on human rights were violated in order to ensure that Australia has upheld, and continues to uphold, its international obligations with respect to any treaties it has entered into.*"

       The Government gave four main reasons for their disagreement. The first was that Defence had already provided a selection of the training footage for the committee to view, and so there was no need for the Commonwealth Ombudsman to obtain this footage. The second was that it would be impractical to release this footage as consent would have to obtained from all participants and trainers. Third, that there are security implications that would accompany this release. Finally, that a Defence legal officer has made a review of the training which has then been reviewed by the AGS.

       i. The first reason the Government provides is, "*In order to aid the Committee's understanding of Conduct after Capture training, Defence provided a selection of Conduct After Capture training footage to demonstrate various stages of the training. This was accompanied by a narrative from a subject matter expert… While the Commonwealth Ombudsman may legally be able to obtain these recordings, this recommendation does not… provide any basis as to why the Commonwealth Ombudsman should do so, noting the Senate Committee accepted the recordings provided by Defence during the inquiry process*." This reasoning neglects the main point of the recommendation, which is an independent review. Defence hand-picking which footage to show to members of the Committee is not an independent review. The recommendation also does provide a basis for this independent review being, "…*as to whether any United Nations or Geneva Convention principles on human rights were violated in order to ensure that Australia has upheld, and continues to uphold, its international obligations with respect to*

any treaties it has entered into." It's disappointing to see the Government doesn't believe this is a sufficient basis for an independent review.

ii. The second reason the Government provides is, "*Consent was sought from the Trainees and Resistance Trainers who appeared in this footage before it was shown to the Committee. Unless legally compelled, the bulk release of Conduct After Capture and Resistance to Interrogation recordings held by the Defence Force School of Intelligence would require consent to be obtained from all participants who were recorded in this training. It would not be practical, given the number of individuals who have been exposed to this training and the quantity of footage obtained, to obtain this consent*." While obtaining consent from all participants and trainers is certainly impractical, if there are international legal obligations Australia has to comply with, and there are significant doubts that a certain course complies with these legal obligations, then for the purpose of an independent review DFSI should be legally compelled to hand over this footage. As the Communication states, "*it is incumbent on the State party to produce evidence refuting the author's allegations.*"

iii. The third reason the Government provides is, "*While the Commonwealth Ombudsman may legally be able to obtain these recordings, this recommendation does not take into account the security implications of such a release, the possible impact on Defence capability and the safety of Australian Defence Force members…*" This argument is evasive as it's clearly been stated that Defence has made accommodations for members of the Committee to view this footage securely. There seems to be no indication that the same sort of accommodations couldn't also be given to the Commonwealth Ombudsman.

iv. The final reason the Government provides is, "*The Australian Defence Force's methods for its Conduct After Capture Training have been legally reviewed by a Senior Reserve Legal Officer. His advice has been reviewed by the Australian Government Solicitor. These legal advices are subject to Legal Professional Privilege. Defence believes that the training complies with Australian domestic law and applicable international legal obligations.*" However, this again neglects the need for independence in a proper legal review. The AGS has not directly reviewed the course, but only reviewed the advice from a Legal Officer in the ADF. This again highlights the evasive reasoning of the Government to be transparent about potential breaches of Human Rights.

b. While these reasons may seem compelling on a prima facie basis, when reviewed closely it is clear that these reasons are only provided to avoid both an independent review, and transparency over whether the Government is breaching the Human Rights of their own citizens.

27. The response made by the AGS has given no evidence to refute my allegations, but instead has only provided conjecture, speculation, and general information about the course and my participation without addressing my specific allegations. This contravenes their obligations (stated in the Communication) to the United Nations to produce evidence refuting my allegations of torture.

28. The AGS argues that my claim for post-traumatic stress disorder is outside of the scope of this complaint and the jurisdiction of Defence. However, there are several arguments to suggest that this claim is within the scope of this complaint.

a. The first being that claims made under DVA specifically relate to injuries sustained during military service. This means that if Defence was to provide evidence to DVA stating they admit liability for an injury, then DVA would be compelled to accept that

claim.

b. The second being that Defence has already made recourse outside of their jurisdiction to receive representation under another government body, being the AGS. As is common knowledge, the ADF is under the authority of the Minister for Defence, while the AGS is a part of the Attorney General's Department. This was not a necessary action for them, as they have previously used their own Defence Legal Service in: JA v Commonwealth (Department of Defence) (2014), Mr William Mayne v Commonwealth of Australia (Australian Defence Force) (2005), and Mr Kenneth Douglas V Commonwealth of Australia (Australian Defence Force) (2004). Thus, if Defence is willing to seek help from an external government body for legal representation, then there seems to be no obstacle for them to seek help from another government body (Department of Veterans Affairs) for assistance with resolving this complaint.

c. Finally, my complaint according to the Australian Human Rights Commission Act (1986), is alleging that one of more acts have been done (46P,1a) with the definition of an act being, "*an act done, by or on behalf of the Commonwealth or an authority of the Commonwealth*" 3(1). Therefore, my complaint is against the Commonwealth, and as both the ADF and DVA are under the jurisdiction of the Commonwealth then it is perfectly within the scope of this complaint.

29. Despite the above I am open to hearing from Defence or the AGS about what evidence they are willing to produce to refute my claims, and whether they, now, want to discuss the alleged acts.

Yours sincerely,

Damien de Pyle.