

# Introduction

## Chapter 1 Part 1 - About the Complaints and Alternative Resolutions Manual

### 1.1.0.1 Purpose

1. The Complaints and Alternative Resolutions Manual provides a single source document containing the various processes for managing and resolving employment and service related complaints, listed in 1.1.0.2, within Defence, and responding to complaints about Defence received by external complaint handling agencies.

### 1.1.0.2 Overview

1. The Complaints and Alternative Resolutions Manual provides information about employment or service complaint and alternative resolution processes in Defence for all Defence personnel, and where relevant, external service providers, as complainants, respondents and those responsible for the management of complaints.
2. The Complaints and Alternative Resolutions Manual does not provide an exhaustive reference to all complaint processes within Defence. This manual is intended to provide information on the following processes
  - a. resolution of workplace conflict and Alternative Dispute Resolution;
  - b. responding to incidents of unacceptable behaviour;
  - c. internal privacy complaints;
  - d. Review of Actions;
  - e. Redress of Grievance; and
  - f. complaints to the following external complaint agencies or other areas in Defence
    - i. the Inspector-General of the Australian Defence Force;
    - ii. the Commonwealth Ombudsman and the Defence Force Ombudsman;
    - iii. the Australian Human Rights Commission;
    - iv. the Privacy Commissioner;
    - v. the Merit Protection Commissioner; and
    - vi. Inspector-General of Intelligence and Security.
3. This Part provides authority for the creation and amendment of the Complaints and Alternative Resolutions Manual.
4. This Part provides authority for the addition of Complaints and Resolution processes not described above to the Complaints and Alternative Resolutions Manual that are consistent with the purpose of this Manual.

### 1.1.0.3 Content

1. This Part contains the following information

[1.1.0.4 Policy statement](#)

[1.1.0.5 Scope](#)

[1.1.0.6 Abbreviations and definitions](#)

[1.1.0.7 Sponsorship](#)

[1.1.0.8 Authorisation](#)

[1.1.0.9 Roles and Responsibilities](#)

[1.1.0.10 Structure](#)

[1.1.0.11 Release and review dates](#)

[1.1.0.12 Implementation](#)

[1.1.0.13 Monitoring and Reporting](#)


#### 1.1.0.4 Policy statement

1. Defence has a number of internal and external complaint mechanisms available to Defence personnel.
2. Many of these processes are underpinned by legislation; others are established by this manual in support of Defence meeting other legislative obligations (e.g. under the *Work Health & Safety Act 2011*).
3. Each Chapter/part of this manual contains its own policy statement in relation to the specific policy.

#### 1.1.0.5 Scope

1. This manual applies to all Defence personnel who
  - a. have made a complaint, or are contemplating making a complaint of the type listed in 1.1.0.2;
  - b. have a role in the complaint resolution process; and/or
  - c. are commanders, managers, or supervisors.
2. This manual applies to external service providers, subject to the requirements of their contract of engagement.

#### 1.1.0.6 Abbreviations and definitions

1. Abbreviations and definitions are contained in  [Chapter 1 Annex 1](#), Abbreviations and definitions.

#### 1.1.0.7 Sponsorship

1. Chapters 1 to 3; and Chapters 5, 7 and 10 of the Complaints and Alternative Resolutions Manual are sponsored by relevant areas within Defence People Group.
2. Each Part of Chapter 4 will identify the relevant sponsor for the content of that Part.
3. Chapter 6 and Chapter 8 Part 1 of the Complaints and Alternative Resolutions Manual are sponsored by the Inspector-General of the Australian Defence Force.
4. Chapter 8 Part 2 of the Complaints and Alternative Resolutions Manual has been intentionally left blank. Chapter 8 Part 3 will identify the relevant sponsor for the content of that Part.
5. Chapter 9 of the Complaints and Alternative Resolutions Manual is sponsored by the Sexual Misconduct Prevention and Response Office.

#### 1.1.0.8 Authorisation

1. The Deputy Secretary Defence People is authorised to issue Chapters 2, 3, 5, 7, 9 and 10 of the Complaints and Alternative Resolutions Manual and may amend the structure and content of the Complaints and Alternative Resolutions Manual as necessary (other than this Part).
2. The relevant SES Band 3 or 3-Star appointment is authorised to issue and amend Parts of Chapter 4 of the Complaints and Alternative Resolutions Manual for which he or she is responsible.
3. The Inspector-General of the Australian Defence Force is authorised to issue and amend Chapter 6 and Chapter 8 Part 1 of the Complaints and Alternative Resolutions Manual.
4. The Assistant Secretary HR Services is authorised to amend and issue Chapter 1.

#### 1.1.0.9 Roles and responsibilities

1. Assistant Secretary HR Services is responsible for publishing and maintaining the Complaints and Alternative Resolutions Manual.
2. The sponsor, as identified at 1.1.0.7, and the beginning of each Chapter or Part of the Complaints and Alternative Resolutions Manual, is responsible for authorising amendments to that Part.

3. Minor amendments that do not equate to process changes, such as spelling, grammar, hyperlink updates, formatting, will not require sponsor approval and will be managed solely by the Directorate of Privacy, Complaints and Resolution.

#### 1.1.0.10 Structure

1. This Defence manual is divided into nine chapters
  - a. Chapter 1 Introduction (required reading)
  - b. Chapter 2 Resolution of conflict
  - c. Chapter 3 Responding to unacceptable behaviour
  - d. Chapter 4 Miscellaneous complaint processes
  - e. Chapter 5 Review of Actions
  - f. Chapter 6 Redress of Grievance
  - g. Chapter 7 External complaint agencies
    - i. Part 1 The Ombudsman
    - ii. Part 2 The Australian Human Rights Commission
    - iii. Part 3 The Privacy Commissioner
    - iv. Part 4 The Merit Protection Commissioner
  - h. Chapter 8 Inspectors General
    - i. Part 1 Inspector-General of the Australian Defence Force
    - ii. Part 2 (intentionally left blank)
    - iii. Part 3 Inspector-General of Intelligence and Security
  - i. Chapter 9 Responding to Sexual Misconduct
  - j. Chapter 10 Stop Sexual Harassment Directions
2. Subject to 1.1.0.2, the structure of the Complaints and Alternative Resolutions Manual as outlined in this clause may be amended. **See:** 1.1.0.8, Authorisation.

#### 1.1.0.11 Release and review dates

1. Planned release and review dates of chapters within this Defence manual are as follows

Chapter	Release date	Last Update	Next Major Review
1 – Introduction	November 2013	April 2023	2023
2 – Resolution of Conflict	February 2014	October 2022	2023
3 – Responding to Unacceptable Behaviour	March 2014	October 2022	2023
4 – Miscellaneous Complaint Processes	TBA	TBA	2023
5 – Review of Actions	November 2013	October 2022	2023
6 – Redress of Grievance	November 2013	September 2021	2023
7 – External Complaints Agencies - Part 1	November 2013	September 2021	2023
7 – External Complaints Agencies - Part 2	November 2013	September 2021	2023
7 – External Complaints Agencies - Part 3	TBA	TBA	2023
7 – External Complaints Agencies - Part 4	November 2013	September 2021	2023
8 – Inspectors General - Part 1	November 2013	September 2021	2023
8 – Inspectors General - Part 2	TBA	TBA	2023
8 – Inspectors General - Part 3	February 2014	September 2021	2023
9 – Responding to Sexual Misconduct	March 2019	October 2022	2023
10 – Stop Sexual Harassment Directions	March 2023	April 2023	2023

**Note:** Minor table updates to reflect original release dates for relevant Chapters. Last update column reflects the most recent update per chapter.

**Note:** An amendment spreadsheet is available on the CARM webpage which details recent amendments.

#### 1.1.0.12 Implementation

1. The following policies will be either replaced or adjusted following the issue of the Complaints and Alternative Resolutions Manual
  - a. Chapter 2, Resolution of conflict replaces DI(G) PERS 34-4-Use and Management of Alternative Dispute Resolution in Defence.
  - b. Chapter 3, Responding to unacceptable behaviour will complement the Defence Instruction Administrative policy (DI Admin policy) PPL7 - Required behaviours in Defence.
  - c. Chapter 5, Review of Actions replaces Part 4, Chapter 15 of the Defence Workplace Relations Manual.
  - d. Chapter 6, Redress of Grievance replaces DI(G) PERS 34-1-Redress of Grievance-Tri-Service procedures.
  - e. Chapter 7, External complaint agencies replaces
    - i. DI(G) PERS 34-2-Complaints of discrimination and harassment through the Australian Human Rights Commission;
    - ii. DI(G) PERS 34-3-Inquiries and investigations by the Commonwealth Ombudsman and the Defence Force Ombudsman; and
    - iii. Part 4, Chapter 15 of the Defence Workplace Relations Manual.
  - f. Chapter 9, Responding to Sexual Misconduct replaces DI(G) PERS 35-4-Reporting and management of sexual misconduct including sexual offences.

#### 1.1.0.13 Monitoring and reporting

1. The Directorate of Privacy, Complaints and Resolution is responsible for the overall monitoring and reporting of the following complaint processes
  - a. Review of Actions;
  - b. management of incidents of unacceptable behaviour; and
  - c. complaints about Defence made to the following external complaint agencies
    - i. the Commonwealth Ombudsman and the Defence Force Ombudsman;
    - ii. the Australian Human Rights Commission;
    - iii. the Privacy Commissioner; and
    - iv. the Merit Protection Commissioner.
2. The Directorate of Privacy, Complaints and Resolution is responsible for the overall monitoring and reporting of Alternative Dispute Resolution processes across Defence.
3. The Inspector-General of the Australian Defence Force is responsible for monitoring, auditing and reporting on the Redress of Grievance process and on the military justice system independent of the ordinary chain of command; and failures of military justice which may be exposed and examined so that the cause of any injustice may be remedied. This will include Inspector-General of Intelligence and Security activities when necessary.
4. The Assistant Secretary Fraud Control is responsible for monitoring and reporting on fraud control activities in Defence and monitoring and reporting on the Defence public interest disclosure scheme.
5. The sponsor identified in a Part of Chapter 4 is responsible for the monitoring and reporting of the process contained in that Part.

## Chapter 1 Part 2 - Supplementary information

### 1.2.0.1 Purpose

1. The purpose of this Part is to provide supplementary information about the Complaints and Alternative Resolutions Manual.

### 1.2.0.2 Content

1. This Part contains the following information

[1.2.0.3 Examples and non-examples](#)

[1.2.0.4 The word 'includes'](#)

[1.2.0.5 Online access to this Defence manual](#)

[1.2.0.6 Feedback on the Complaints and Alternative Resolutions Manual](#)


### 1.2.0.3 Examples and non-examples

1. Many sections in the Complaints and Alternative Resolutions Manual contain examples. They are there to help the reader understand the rule in that section. Examples are for administrative uses.
2. **Example** shows a possible way the processes in the requirements of the relevant section may be applied. Examples will not show all the situations that meet the requirement. Other situations may satisfy the requirements of the relevant section. **Note:** Examples are not exhaustive.
3. A **non-example** shows situations in which the processes in the requirements of the relevant section do not apply. Non-examples do not show all the situations that fail to meet the requirement. Other situations may not satisfy the requirements of the relevant section.

### 1.2.0.4 The word 'includes'

1. The word 'includes' in any form is not a word of limitation, unless otherwise indicated.

### 1.2.0.5 Online access to this Defence manual

1. The online version of this Defence manual is available through the DPN at  <http://drnet/People/ComplaintResolution/Pages/Complaints.aspx>
2. Members can use the DPN search facility and the internet search facility to search for the keyword CARM and the search topic. **Example:** A search for 'CARM and resolution of conflict' will return all documents containing the word CARM and the topic resolution of conflict. This will include Chapter 2, Resolution of Conflict.

### 1.2.0.6 Feedback on the Complaints and Alternative Resolutions Manual

1. Feedback on the content of each Part of the Complaints and Alternative Resolutions Manual should be provided to the Sponsor's point of contact, as identified at the beginning of each Part. **Note:** Relevant sections should be identified when raising questions or making suggestions for improvement.
2. Feedback on this Defence manual can also be made by emailing the Assistant Director, Privacy, Complaints and Resolution at [Complaint.Resolution@defence.gov.au](mailto:Complaint.Resolution@defence.gov.au).

# Chapter 1 Part 3 - Complaint handling principles

## 1.3.0.1 Purpose

1. Complaints within Defence may take many forms, depending on the nature of the matter complained about, and the outcome the person is seeking. Various legislative and regulatory requirements have different processes for responding to particular complaint types, but there are fundamental principles that apply to the handling of all complaints. These principles apply regardless of whether the person submitting the complaint is a Defence member or a Defence employee regardless of classification, and whether the action sought is an informal intervention or a formal inquiry.
2. Any person may submit a youth protection complaint or allegation if they form a reasonable belief that a youth protection event/incident has occurred. A youth protection complaint or allegation can be made in writing or verbally.
3. Upon receipt, all youth protection complaints or allegations must be managed as a youth protection event/incident. [YOUTHPOLMAN Part 1 Section 3, Chapter 3](#) refers.

## 1.3.0.2 Content


1. This Part contains the following information

[1.3.0.3 This Part applies to](#)  
[1.3.0.4 This Part does not apply to](#)  
[1.3.0.5 Complaint Handling Principles](#)  
[1.3.0.6 Essential steps in complaint handling](#)  
[1.3.0.7 Further advice](#)

## 1.3.0.3 This Part applies to

1. All Defence personnel who
  - a. who have made a complaint, or are contemplating making a complaint of the types listed at 1.1.0.2;
  - b. who have a role in the complaint resolution process; and/or
  - c. are commanders, managers, or supervisors.

## 1.3.0.4 This Part does not apply to

1. These principles do not apply to commercial complaints (eg. complaints relating to a tender process or contractual dispute). There are separate mechanisms for dealing with these kinds of complaints. **Related information:** See  [CASG Commercial Policy and Practice Branch](#) DPN site for more information.

## 1.3.0.5 Complaint Handling Principles

1. The Complaint Handling Principles are
  - a. All complaints should be resolved in a timely manner and at the lowest appropriate level.
  - b. Appropriate support is to be provided to all parties.
  - c. Parties to a complaint must be aware of their rights and their responsibilities.
  - d. All parties to a complaint are to be accorded protection against unfair repercussions or victimisation.
  - e. Consideration is to be given to the appropriateness of pursuing informal Alternative Dispute Resolution processes early in the management of a complaint.
  - f. The obligation to provide procedural fairness requires that parties be given the right to be heard and that decisions will be made without bias.
  - g. Defence respects the rights of Defence members or a Defence APS or ASD employee regardless of classification to lodge complaints directly with external or other bodies such as the Inspector-General of the Australian Defence Force, the

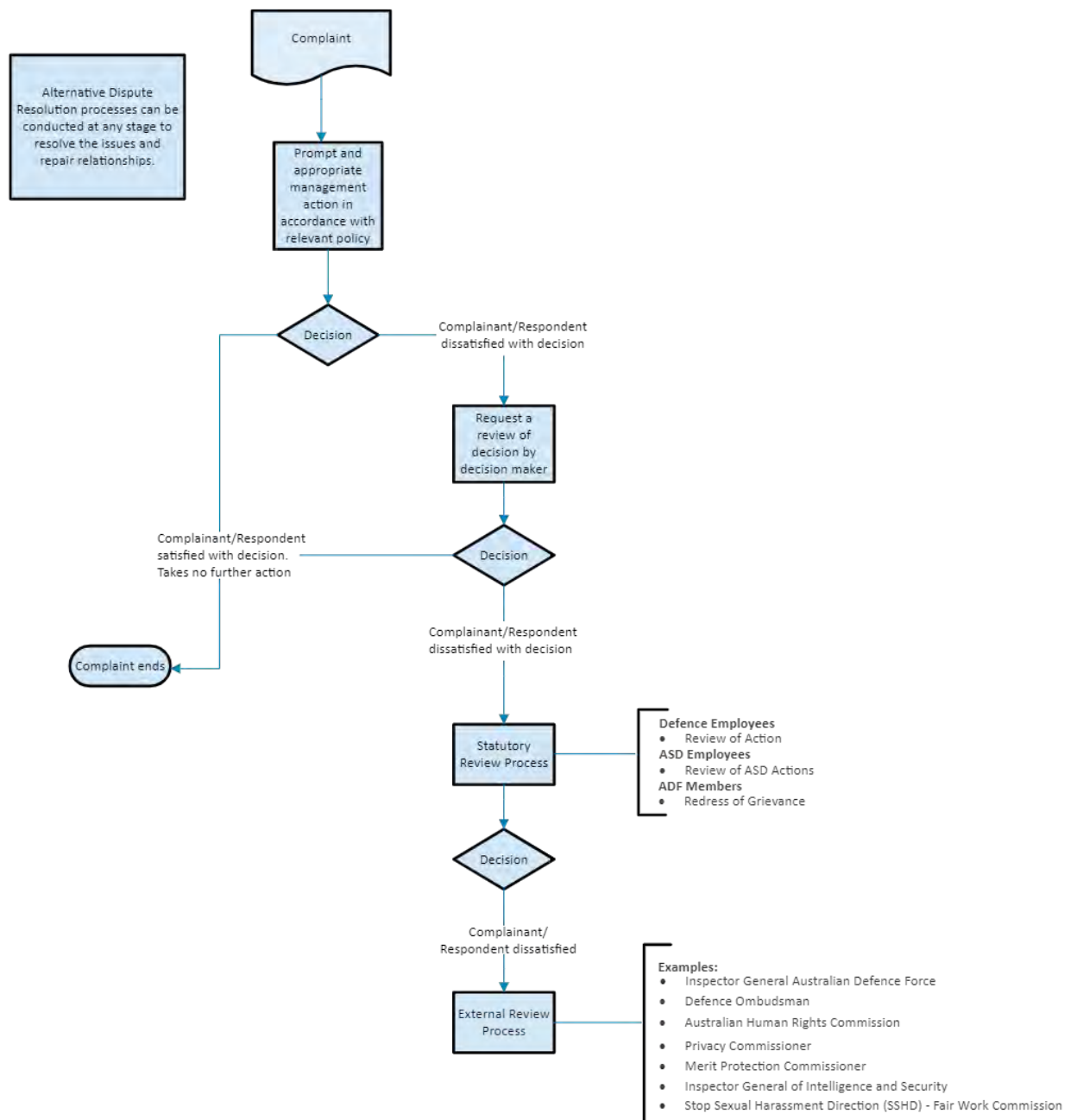
Australian Human Rights Commission, the Office of the Australian Information Commissioner, the Merit Protection Commissioner, the Inspector-General of Intelligence and Security and the Commonwealth and Defence Force Ombudsman.

- h. It is likely that personal information about parties to a complaint will be collected, stored, used and disclosed for the purposes of resolving a complaint. The Defence Privacy Policy will be adhered to in the management of personal information. This policy is available on the internet at: <https://www.defence.gov.au/privacy>

2. **See:** Chapter 4 Part 1, General principles.


**1.3.0.6 Essential steps in complaint handling**

1. Even an apparently simple matter requiring resolution can become complex if it is not handled early and well.
2. The diagram below outlines the process a complaint should take within Defence.



### 1.3.0.7 Further advice

1. If you are managing a complaint, you can seek advice from Privacy, Complaints and Resolution on what you need to do to ensure the fairest possible outcome for all parties.

**Related information:** The  [Directorate of Privacy, Complaints and Resolution](#) DPN site has contact details and can be accessed from the Defence PeopleConnect DPN site.



# Abbreviations and definitions

## Annex 1

### A1.1 Purpose

The purpose of this annex is to provide abbreviations and definitions of terms used in the Complaints and Alternative Resolutions Manual.

## Abbreviations

### A1.2 Abbreviations

1. The table below spells out the abbreviations used throughout the Complaints and Alternative Resolutions Manual

Abbreviations	Meaning
ADF	Australian Defence Force
APS	Australian Public Service
APSC	Australian Public Service Commission
ASD	Australian Signals Directorate
CDF	Chief of the Defence Force
IPP	Information Privacy Principle
SES	Senior Executive Service

## Definitions

### A1.3 Overview to definitions

1. The terms defined in this annex apply to the Complaints and Alternative Resolutions Manual unless a special definition is provided at the beginning of each Chapter. If a special definition is provided, it only applies to that Chapter.
2. The [Acts Interpretation Act 1901](#) and the [Defence Act 1903](#) contain definitions of other terms that may apply.
3. If a term is not defined anywhere in the Complaints and Alternative Resolutions Manual or other legislation, it has the same meaning as in the Macquarie Dictionary.
4. In the case of an inconsistency in definitions, any inconsistency should be resolved using the superior reference, as determined by the relevant Part. **Note:** These inconsistencies should be notified to the policy sponsor point of contact.

### A1.4 Alternative Dispute Resolution

1. Alternative dispute resolution refers to processes where an impartial third party assists an individual or group involved in a conflict, to resolve the dispute or issue.

### A1.5 Australian Signals Directorate (ASD) employee

1. ASD employee means a person employed in the Australian Signals Directorate under section 38A(1) of the [Intelligence Services Act 2001](#).

### A1.6 Commander

1. Commander is a Defence member who is an officer and, by virtue of a delegation or instrument of appointment, exercises authority and holds responsibility for other assigned Defence members.

### A1.7 Commanding Officer

1. The officer in command of a warship, other military unit or formation. Includes an Administrative Commanding Officer.

### A1.8 Contract manager

1. Contract manager means the Commonwealth representative named on the contract, or a person to whom the management of the contract has been delegated or authorised.

### A1.9 Days

1. The term 'days' in this manual refers to calendar days unless otherwise indicated.

### A1.10 Deed

1. Deed means an agreement made between Defence and an individual to settle a complaint.

### A1.11 Defence

1. Defence means the Department of Defence, Australian Defence Force, and Australian Signals Directorate.

### A1.12 Defence Australian Public Service (APS) employee

1. Defence APS employee means a person employed in the Department of Defence under section 22 of the [Public Service Act 1999](#).

### A1.13 Defence civilian

1. Defence civilian, as defined in section 3 of the [Defence Force Discipline Act 1982](#), means a person (other than a Defence Member) who
  - a. with the authority of an authorised officer as defined in the *Defence Force Discipline Act 1982*, accompanies a part of the ADF that is
    - i. outside Australia; or
    - ii. on operations against the enemy; and
  - b. has consented, in writing, to subject themselves to ADF discipline while so accompanying that part of the ADF.

### A1.14 Defence Locally engaged employee

1. Defence locally engaged employees are persons who are employed by the Department of Defence overseas in accordance with the labour laws of the country in which they are employed. **Note:** Defence locally engaged employees are not Defence employees.

### A1.15 Defence Investigative Authority

1. In accordance with [DI Admin policy](#) AG4 – Incident reporting and management, the Defence Investigative Authority includes
  - a. the Joint Military Police Unit

- b. the Directorate of Security Intelligence and Investigations within the Defence Security and Vetting Service; and
- c. the Directorate of Investigations and Recovery within the Fraud Control and Investigations Branch.

#### A1.16 Defence member

1. A Defence member is generally defined in section 4 of the *Defence Act 1903*, to include any
  - a. Officer;
  - b. Sailor;
  - c. Soldier; or
  - d. Airman or woman.

#### Notes:

1. No distinction is made between Defence members in the permanent or reserve forces.
2. Cadets and staff of the ADF Cadets organisation (including the Australian Navy Cadets, Australian Army Cadets and Australian Air Force Cadets) are not Defence members.

#### A1.17 Defence member

1. Defence member for the purposes of the [Defence Force Discipline Act 1982](#) is a Defence member who, further to section 3 and subsection 3(4) of the Defence Force Discipline Act 1982, is
  - a. a member of the Permanent Navy, the Regular Army or the Permanent Air Force, or
  - b. a member of the Reserves who
    - i. is rendering continuous full-time service; or
    - ii. is on duty or in uniform.
2. This definition may apply where the title is not used in full by virtue of the context in which it is used.

#### A1.18 Defence personnel

1. Defence personnel means all
  - a. Defence employees regardless of classification;
  - b. Defence locally engaged employees;
  - c. Defence civilians;
  - d. Defence members;
  - e. ASD employees regardless of classification;
  - f. the equivalents from other Defence organisations (including foreign Defence organisations) on exchange to Defence; and
  - g. where compliance is specified in the terms of contract, external service providers and outsourced service providers operating in Defence.

#### A1.19 External service provider

1. External service provider means an organisation or individual engaged by Defence that
  - a. represents a business resource and is subject to direct management by Defence; or
  - b. is an organisation or individual engaged by Defence to undertake a consultancy that meets the criteria for reporting consultancies on AusTender as defined by the Department of Finance and Deregulation
    - i. the services to be provided involve the development of an intellectual output that assists with Defence decision-making; and
    - ii. the output will reflect the independent views of the consultant; and
    - iii. the output is the sole or majority element of the contract, in terms of relative value and importance.
2. **Note:** Individuals engaged as APS, ASD or ADF employees are not included.

3. **Note:** An external service provider is a contracted service provider for the purpose of section 30(1) of the [Public Interest Disclosure Act 2013](#) and section 38C of the [Intelligence Services Act 2001](#).

#### A1.20 Foreign military member

1. Foreign military member means a member of a foreign defence force or armed service.

#### A1.21 Malicious

1. Malicious means a deliberate, mischievous and unjustified action characterised by a desire to inflict harm or suffering.

#### A1.22 Manager

1. Manager means Defence personnel or external service providers who direct a range of human and physical resources and their associated financial responsibilities to achieve corporate objectives. A manager may perform the role of a first-level supervisor where they have immediate subordinates, or of a second-level supervisor where they have Defence personnel supervised by those subordinates.

#### A1.23 Notifiable Incident

1. Notifiable Incident is defined in accordance with [DI Admin policy](#) AG4 - Incident reporting and management.

#### A1.24 Ombudsman

1. Ombudsman means the Commonwealth Ombudsman and the Defence Force Ombudsman and his or her staff unless indicated otherwise.

#### A1.25 Other legislation administered by the Australian Human Rights Commission

1. Other legislation administered by the Australian Human Rights Commission includes
  - a. [Racial Discrimination Act 1975](#);
  - b. [Sex Discrimination Act 1984](#);
  - c. [Australian Human Rights Commission Act 1986](#);
  - d. [Disability Discrimination Act 1992](#);
  - e. [Age Discrimination Act 2004](#).
2. **Note:** A description of this legislation is provided at 7.2.6.8, Overview of legislation administered by the Australian Human Rights Commission.

#### A1.26 Outsourced service provider

1. Outsourced service provider means an organisation or individual delivering specific services or supplies, usually against pre-defined milestones and deliverable requirements. The provider of the outsourced service is not subject to direct management by Defence.
2. **Note:** An outsourced service provider is a contracted service provider for the purpose of section 30(1) of the [Public Interest Disclosure Act 2013](#) and section 38C of the [Intelligence Services Act 2001](#).

### **A1.27 PID authorised officer**

1. PID authorised officer is a person appointed as a PID authorised officer for the purpose of the Public Interest Disclosure Act 2013.
2. **Related Information:** A list of persons appointed as a PID authorised officer for the purpose of the [Public Interest Disclosure Act 2013](#) is available on the [Defence Public Interest Disclosure Scheme website](#).

### **A1.28 President of the Australian Human Rights Commission**

1. President of the Australian Human Rights Commission includes the President of the Australian Human Rights Commission and his or her staff unless indicated otherwise.

### **A1.29 Procedural Fairness**

1. Procedural fairness is a legal term that applies to all administrative decisions affecting a person's rights, interests and legitimate expectations. The rules of procedural fairness include the rule against bias and the fair hearing rule.
2. **Note:** Procedural fairness is often also known as 'natural justice'.

### **A1.30 Review of Actions decision makers**

1. A Review of Actions decision maker is any person able to lawfully make a decision on a Review of Actions including the Secretary and his/her delegates.

### **A1.31 Supervisor**

1. Supervisor means any Defence personnel or external service provider who has direct or line supervisory responsibilities of Defence personnel.

### **A1.32 Unacceptable Behaviour**

1. Unacceptable behaviour is unreasonable conduct at work or in any situation that may be connected to Defence that is offensive, belittling, abusive or threatening to another person or adverse to morale, discipline or workplace cohesion. This includes unlawful discrimination and harassment.

### **A1.33 Vexatious**

1. Vexatious means without grounds and serving only to harass or cause annoyance. A complaint is considered to be vexatious if it is an abuse of the complaint process, if there are no reasonable grounds for the complaint or the purpose of the complaint is to harass, annoy, delay or cause detriment.

### **A1.34 Workplace**

1. A workplace is any place (including non-Defence establishments) where the behaviour or activity carried out at that place has a Defence nexus or affects the workplace and includes
  - a. Defence establishments;
  - b. HMA Ships (all vessels, including commissioned seagoing vessels and submarines);
  - c. Vehicles;
  - d. Aircraft;
  - e. Units;
  - f. Facilities;
  - g. training centres;

- h. social function venues attended in the course of Defence sponsored work or activity;
- i. Accommodation; and
- j. any other location which Defence personnel attend for the purpose of carrying out their work or duties.

#### **A1.35 Work-related activities**

- 1. Work-related activities may include, but are not limited to
  - a. training courses;
  - b. conferences;
  - c. field trips;
  - d. travel for business purposes;
  - e. sporting competitions;
  - f. team building activities;
  - g. work functions such as dining-in nights and Christmas parties; or
  - h. travel to and from such functions and activities.

#### **A1.36 Youth Programs**

- 1. A Defence supported program that offers a range of safe, challenging and high quality activities to young people across metropolitan and regional areas of Australia, including but not limited to: the Australian Defence Force Cadets; Defence Work Experience Program; Young Endeavour Youth Scheme and Indigenous Youth Programs.

# Resolution of Conflict

## Chapter 2

### 2.0.0.1 Purpose

1. The purpose of this Chapter is to describe workplace conflict and the conflict resolution options available to Defence personnel.

### 2.0.0.2 Content

1. This Chapter contains the following Parts:
  - a. [Part 1: Achieving resolution of workplace conflict](#)
  - b. [Part 2: Alternative Dispute Resolution processes](#)
  - c. [Part 3: Who can provide assistance with resolving workplace conflict in Defence](#)

### 2.0.0.3 This Chapter applies to



1. All Defence personnel;
2. External service providers and outsourced service providers to the extent that they are required to comply in accordance with their contracts with Defence.

### 2.0.0.4 Policy Directorates

1. The Directorate of Privacy, Complaints and Resolution is responsible for the following:
  - a. provision and management of the Workplace Behaviour Mandatory Awareness Program;
  - b. provision of policy advice and guidance of the Defence Alternative Dispute Resolution Program;
  - c. select, train and sustain the Defence Workplace Behaviour Adviser Network and Dispute Resolution practitioner panel members;
  - d. provision and maintenance of Alternative Dispute Resolution related policy and courseware;
  - e. service delivery of the Defence Alternative Dispute Resolution Program.
2. Contact information for the Directorate of Privacy, Complaints and Resolution is available at:
  - a. **Website:** [Directorate of Privacy, Complaints and Resolution](#); or
  - b. **Email:** [ADR@defence.gov.au](mailto:ADR@defence.gov.au) .

### 2.0.0.5 Disclosure of security classified information

1. Defence personnel must not provide/disclose security classified information, except as permitted in the Defence Security Principles Framework, when:
  - a. participating in a process provided for in this manual; or
  - b. submitting a complaint provided for in this manual.
2. Defence personnel acting contrary to 2.0.0.5.1 may be liable to criminal prosecution under the [Crimes Act 1914](#) and, in some circumstances, the [Intelligence Services Act 2001](#) .
3. Defence APS employees acting contrary to 2.0.0.5.1 may also be subject to code of conduct action. **Related Information:** [People Connect - Code of Conduct](#) .

4. Defence members acting contrary to 2.0.0.5.1 may also be subject to an administrative sanction or disciplinary action under the  [Defence Force Discipline Act 1982](#) . **Related Information:**  [MILPERSMAN Part 9 Chapter 2](#) - Formal Warnings and Censures in the Australian Defence Force.
5. Defence personnel in certain areas of the Department may, under very limited circumstances, submit an internal complaint that contains security classified information. **See:** Chapter 5 Part 2, 5.2.0.4, How to apply for a Review of Actions.
6. Defence personnel in certain areas of the Department or portfolio may, under very limited circumstances, submit an external complaint that contains security classified information. **See:** Chapter 8 Part 3, Inspector-General of Intelligence and Security.
7. External service providers acting contrary to subclause 1 may also be subjected to civil action for breach of contract.

#### 2.0.0.6 Sponsor

1. The sponsor of this Chapter is Defence People Group, Assistant Secretary HR Services.
2. The point of contact for this Chapter is Assistant Director, Privacy, Complaints and Resolution – **Email:** [Complaint.Resolution@defence.gov.au](mailto:Complaint.Resolution@defence.gov.au).

#### 2.0.0.7 Related policies

1.  [DI Admin policy](#) PPL7 - Required behaviours in Defence.



# Achieving resolution of workplace conflict

## Chapter 2 Part 1

### 2.1.0.1 Purpose

1. The purpose of this Part is to provide Defence personnel with information about workplace conflict responsibilities and expectations, and an introduction to conflict resolution support mechanisms.

### 2.1.0.2 Content

1. This Part contains the following Divisions:

[Division 1: General responsibilities and expectations](#)

[Division 2: Options available to resolve workplace conflict in Defence](#)

### 2.1.0.3 Useful information

1.  [Directorate of Privacy, Complaints and Resolution](#) intranet website.

# Part 1 Division 1 - General responsibilities and expectations

## 2.1.1.1 Purpose

1. The purpose of this Division is to outline the responsibilities and expectations of Defence personnel in relation to the resolution of workplace conflict.

## 2.1.1.2 Content

1. This Division contains the following information:

[2.1.1.3 Defence personnel responsibilities](#)

[2.1.1.4 Commander, manager and supervisor responsibilities](#)

[2.1.1.5 The relationship between workplace conflict resolution, complaints and unacceptable behaviour](#)

[2.1.1.6 Use of social media](#)

[2.1.1.7 Related policy](#)

## 2.1.1.3 Defence personnel responsibilities

1. It is the responsibility of Defence personnel to:
  - a. take reasonable steps to resolve workplace conflict at the earliest opportunity and at the lowest appropriate level; **See:** Division 2, Options available to resolve workplace conflict in Defence;
  - b. assist other Defence personnel who report an incident of workplace conflict or alleged unacceptable behaviour connected to their Defence employment;
  - c. seek appropriate support and/or advice including from the chain of command/line management, in order to resolve workplace conflict before considering complaint action. **See:** Chapter 2 Part 3, Who can provide assistance with resolving workplace conflict in Defence.

## 2.1.1.4 Commander, Manager and Supervisor responsibilities


1. In addition to Defence personnel responsibilities, Defence commanders, managers and supervisors must:
  - a. respond promptly, seriously, with fairness and sensitivity to any incident or allegation associated with conflict and unacceptable behaviour;
  - b. follow Defence policies and procedures for the reporting of all allegations and complaints of unacceptable behaviour; **See:** Chapter 3 Part 4, Responding to an allegation of unacceptable behaviour;
  - c. make reasonable efforts to ensure all staff involved in any conflict, allegation or complaint of unacceptable behaviour are treated fairly, without victimisation or disadvantage; and
  - d. maintain and promote a local [Workplace Behaviour Adviser Network](#).

## 2.1.1.5 The relationship between workplace conflict resolution, complaints and unacceptable behaviour


1. Submitting a complaint is not a prerequisite to seeking assistance with resolution. Resolution options should be engaged before an issue escalates to a matter that requires command or management intervention. In some cases, formal processes may be necessary from the outset, or in conjunction with resolution processes.
2. Alternative Dispute Resolution is not restricted to circumstances where allegations of unacceptable behaviour have been made; it also applies to situations where differences arise between Defence personnel in their work environment.

3. Workplace conflict may constitute unacceptable behaviour. **See:** Chapter 3, Responding to unacceptable behaviour.

#### 2.1.1.6 Use of social media

1. Inappropriate use of social media inside and outside of the workplace may constitute unacceptable behaviour. **Related Information:**  [Defence Media and Communication Policy and Resources.](#)

#### 2.1.1.7 Related policy

1.  [DI Admin policy](#) PPL7 - Required behaviours in Defence.

## Part 1 Division 2 - Options available to resolve workplace conflict in Defence

### 2.1.2.1 Purpose

1. The purpose of this Division is to outline the options available to Defence personnel to resolve workplace conflict.

### 2.1.2.2 Content

1. This Division contains the following information:

- [2.1.2.3 Options for achieving resolution of workplace conflict](#)
- [2.1.2.4 Ask for the behaviour to stop](#)
- [2.1.2.5 Ask for the behaviour to stop with a third party present](#)
- [2.1.2.6 Seek Alternative Dispute Resolution](#)
- [2.1.2.7 Make a complaint](#)
- [2.1.2.8 The benefits of achieving workplace conflict resolution](#)
- [2.1.2.9 Related information](#)

### 2.1.2.3 Options for achieving resolution of workplace conflict

1. Workplace conflict resolution options provide Defence with opportunities to effectively manage the challenges associated with workplace conflict and alleged unacceptable behaviour. This is achieved by using supportive processes that focus on resolving the issue(s) at the earliest opportunity and at the lowest appropriate level in the organisation.
2. Workplace conflict options include:
  - a. ask for the behaviour to stop. **See:** 2.1.2.4, Ask for the behaviour to stop.
  - b. ask for the behaviour to stop with a third party present. **See:** 2.1.2.5, Ask for the behaviour to stop with a third party present.
  - c. Alternative Dispute Resolution processes. **See:** Chapter 2 Part 2, Alternative Dispute Resolution processes.
3. If the workplace conflict is the result of unacceptable behaviour and/or is deemed inappropriate to be resolved using the above informal processes, then submitting a complaint may be appropriate. **See:** Chapter 3 Part 3, Notification of an allegation of unacceptable behaviour.

### 2.1.2.4 Ask for the behaviour to stop

1. A person who believes they have experienced workplace conflict or unacceptable behaviour with other Defence personnel may choose to speak directly to the person and/or people involved.
2. Dealing directly with the other person involved may result in the behaviour ceasing. However, for this to be successful, the conversation with the other person should occur as soon as possible after the incident occurs in a calm, respectful and constructive manner, with the aim to resolve the issue.
3. Advantages of asking for the behaviour to stop may include:
  - a. the individual can address the issue at the earliest opportunity;
  - b. the individual maintains control of the outcome;
  - c. it may create a better outcome for workplace relationships;
  - d. it may be less stressful for everyone by addressing the issue or behaviour early.

**Note:** To prepare for the conversation you can seek the assistance of a Workplace Behaviour Adviser, colleague, friend, or supervisor. **See:** Chapter 2 Part 3 Division 2, Workplace Behaviour Advisers.

#### **2.1.2.5 Ask for the behaviour to stop with a third party present**

1. This option is the same as outlined in 2.1.2.4 but with a third party present to support the complainant (individual who believes they are the subject of unacceptable behaviour) or the respondent (other party). Examples of where this may be useful is where the respondent is of a higher rank than the complainant, where the complainant may have a lack of confidence or where there is a fear of retribution to conduct the conversation without support.
2. The third party can be a friend, colleague, supervisor, or any other person with which both parties feel comfortable. The third party is present to support the person but does not contribute to the process in any other way, and is not an advocate (i.e. representative) for the person.
3. Advantages of asking for the behaviour to stop with a third party present may include:
  - a. the individual may be more confident in conveying how they feel;
  - b. it is faster than some of the other resolution options;
  - c. the individual maintains control of the outcome;
  - d. it may create better outcomes for ongoing workplace relationships.

#### **2.1.2.6 Seek Alternative Dispute Resolution**

1. Alternative Dispute Resolution refers to processes where a skilled practitioner assists an individual or group involved in workplace conflict to resolve the dispute or conflict. **See:** Chapter 2 Part 2, Alternative Dispute Resolution processes.

#### **2.1.2.7 Make a complaint**

1. **See:** Chapter 3 Part 3, Notification of an allegation of unacceptable behaviour.

#### **2.1.2.8 The benefits of achieving workplace conflict resolution**

1. Workplace conflict is best managed at the earliest opportunity and at the lowest appropriate level.
2. The benefits of achieving conflict resolution in the workplace include:
  - a. an increase in staff morale, productivity and Defence capability;
  - b. maintaining open communication in the workplace environment;
  - c. providing a safe environment for the resolution of disputes;
  - d. being future-focused allows parties to improve their workplace relationships and formulate a plan for the future;
  - e. saving Defence time and money;
  - f. improving the reputation of Defence.

#### **2.1.2.9 Related information**

1. Information on who can help Defence personnel with workplace conflict resolution is contained in Part 3 of this Chapter. **See:** Chapter 2 Part 3, Who can provide assistance with resolving workplace conflict in Defence.

# Alternative Dispute Resolution Processes

## Chapter 2 Part 2

### 2.2.0.1 Purpose

1. The purpose of this Part is to explain and detail Alternative Dispute Resolution services and processes available in Defence.

### 2.2.0.2 Content


1. This Part contains the following Divisions and information:

[Division 1: Interactive Problem Solving](#)  
[Division 2: Conflict Management Coaching](#)  
[Division 3: Facilitated Conversation](#)  
[Division 4: Mediation](#)  
[Division 5: Needs Analysis](#)  
[Division 6: Group Facilitation](#)

### 2.2.0.3 What is Alternative Dispute Resolution?

1. In this manual, Alternative Dispute Resolution refers to informal dispute resolution processes where an impartial third party assists an individual or group involved in a conflict, to resolve the dispute or issue, and to repair workplace relationships. Alternative Dispute Resolution processes should always be considered and engaged as early as possible to assist with resolution at the lowest appropriate level.
2. Alternative Dispute Resolution can be used by individuals, commanders, managers and supervisors. Alternative Dispute Resolution processes do not replace formal disciplinary processes and may be used in conjunction with disciplinary and/or administrative outcomes and complaint management practices.

### 2.2.0.4 Who delivers Alternative Dispute Resolution?




1. Alternative Dispute Resolution processes are managed by the  [Directorate of Privacy, Complaints and Resolution](#). Dispute Resolution Managers and accredited dispute resolution practitioner panel members, provide resolution services located around Australia. **See:** Chapter 2 Part 3 Division 4, Dispute Resolution Managers.

### 2.2.0.5 What are the Alternative Dispute Resolution processes used in Defence?

1. The Defence Alternative Dispute Resolution program incorporates informal and supportive processes (known as interventions) which promote self-determination by the participants, with a focus on resolution at the earliest opportunity and at the lowest appropriate level.
2. The interventions in the Defence Alternative Dispute Resolution program include:
  - a. Interactive Problem Solving. **See:** Chapter 2 Part 2 Division 1, Interactive Problem Solving
  - b. Conflict Management Coaching. **See:** Chapter 2 Part 2 Division 2, Conflict Management Coaching.
  - c. Facilitated Conversation. **See:** Chapter 2 Part 2 Division 3, Facilitated Conversation.

- d. Mediation. **See:** Chapter 2 Part 2 Division 4, Mediation.
- e. Needs Analysis. **See:** Chapter 2 Part 2 Division 5, Needs Analysis.
- f. Group Facilitation. **See:** Chapter 2 Part 2 Division 6, Group Facilitation.

### 2.2.0.6 The benefits of Alternative Dispute Resolution processes

1. Alternative Dispute Resolution processes have been developed to facilitate outcomes where solutions can be mutually beneficial. If used early, Alternative Dispute Resolution processes have the potential to resolve conflicts and disputes before they escalate to the point that a complaint is made.
2. Other benefits of using Alternative Dispute Resolution processes include:
  - a. the interventions are conducted by skilled Dispute Resolution practitioners; **See:** Chapter 2 Part 3 Division 4 Dispute Resolution Managers;
  - b. Alternative Dispute Resolution can be accessed without making a complaint;
  - c. Alternative Dispute Resolution provides a safe environment;
  - d. Alternative Dispute Resolution is voluntary (unless directed by command for a Facilitated Conversation, Group Facilitation or Needs Analysis), flexible, timely and cost-effective;
  - e. the outcome is determined by the people involved;
  - f. Alternative Dispute Resolution may assist to repair workplace relationships.
3. **Related information**
  - a.  [Chapter 9 – Responding to Sexual Misconduct;](#)
  - b.  [DI Admin policy AG4](#) - Incident reporting and management;
  - c.  [Privacy Act 1988](#)<sup>23</sup>.

### 2.2.0.7 Who can request Alternative Dispute Resolution?

1. Defence personnel regardless of ADF/APS rank/classification, or external contractor or outsourced service provider status, can request Alternative Dispute Resolution. **See:** Chapter 2 Part 3, Who can provide assistance in dealing with workplace conflict in Defence.

**Example 1:** Corporal Smith and Corporal Bloggs work in the same section but do not see eye-to-eye, causing conflict in the workplace. Corporal Smith speaks to a Workplace Behaviour Adviser who provides guidance on the options available to him to resolve the problem (do nothing, ask for the behaviour to stop, ask for the behaviour to stop with a third party present, Alternative Dispute Resolution processes, or make a complaint). Corporal Smith tried to resolve the problem by speaking with Corporal Bloggs, and the conversation did not go well. Corporal Smith decides to ask for advice from his regional Dispute Resolution Manager from the Directorate of Privacy, Complaints and Resolution. Corporal Smith receives Conflict Management Coaching to enhance his conflict management and communication skills to be able to resolve his workplace conflict. Conflict Management Coaching is free, confidential and available by self-referral.

**Example 2:** Party initiated Facilitated Conversation. Captain White supervises Ms James, an employee from an external service provider. Ms James has been finding it difficult to communicate with Captain White. Their breakdown in communication has led to some minor conflicts. Ms James contacted a Workplace Behaviour Adviser to understand her options. She decides to seek Conflict Management Coaching to assist her to improve her communication and conflict management skills. She contacted her regional Dispute Resolution Manager to organise the coaching. After several coaching sessions, Ms James approaches Captain White and requests Captain White participate in a Facilitated Conversation. He agrees to this approach. Ms James makes contact with regional Dispute Resolution Manager to arrange a Facilitated Conversation. Both parties are volunteers. The Facilitated Conversation is conducted and, as it was party initiated, all information relating to it is confidential.

2. Some Alternative Dispute Resolution processes are voluntary and available by self-referral whilst others require involvement of the chain of command/line management as listed below:

ADR Type	Self-Referral	Management Initiated	Voluntary
Interactive Problem Solving	Yes	-	Yes
Conflict Management Coaching	Yes	No (but can encourage participation in this process)	Yes
Party Initiated Facilitated Conversation	Yes	-	Yes (all parties must be volunteers)
Management Initiated Facilitated Conversation	-	Yes	No
Mediation	No	Yes	Yes
Needs Analysis	No	Yes	No
Group Facilitation	No	Yes	No

**Example:** Corporal Smith received Conflict Management Coaching and his work relationship with Corporal Bloggs improved. However, six months later, their supervisor, Sergeant Jones, noticed that the two Corporals' relationship deteriorated and their productivity had greatly reduced. Sergeant Jones decided to contact a Dispute Resolution Manager to seek advice about Alternative Dispute Resolution to improve the situation. After a preliminary assessment by the Dispute Resolution Manager, Sergeant Jones was advised that a Mediation might assist, however management approval was required for this to proceed. Sergeant Jones advised his manager, Captain Brown about the situation. Captain Brown agreed that the situation needed intervention, so he contacted the Dispute Resolution Manager and requested that a Mediation be conducted. **See:** Chapter 2 Part 2 Division 4, Mediation;

#### 2.2.0.8 How much does Alternative Dispute Resolution cost?

1. Alternative Dispute Resolution interventions may be conducted with costs being covered by the requesting unit. This is determined by the [Directorate of Privacy, Complaints and Resolution](#) on a case-by-case basis.

#### 2.2.0.9 Initial Assessment

1. When an enquiry is made to a Dispute Resolution Manager, a preliminary assessment is conducted to determine if an Alternative Dispute Resolution process is suitable. If it is assessed as suitable, the Dispute Resolution Manager will make the necessary arrangements for the process to occur. Preliminary discussions and other communication undertaken in the course of assessing and preparing for an Alternative Dispute Resolution process are confidential. **See:** 2.2.0.10 Confidentiality

#### 2.2.0.10 Confidentiality

1. All communication with Dispute Resolution Managers and practitioner panel members, Workplace Behaviour Advisers, and Workplace Behaviour Network Coordinators will be private and confidential as far as the law allows; however, there are some exceptions where information may not be kept confidential and which require mandatory reporting. Some examples include:
  - a. it is required by law (for example, via a subpoena issued by a court or imminent threat to life);
  - b. a party chooses to obtain professional advice (such as legal, or medical advice) about the matter in dispute;



- c. a notifiable incident is disclosed; **Related Information:** [DI Admin Policy](#) AG4- Incident reporting and management; and [Interim Incident Reporting and Management Policy](#);
  - d. management directed the intervention. In this case, the Dispute Resolution Manager is required to provide the Requesting Officer with details of the outcome (e.g. timeframes, work routines, expectations, etc.).
2. Keeping in mind the exceptions to confidentiality mentioned above, the confidentiality requirements of the individual Alternative Dispute Resolution processes are as follows:
- a. **Interactive Problem Solving** - Preliminary discussions and other communication undertaken in the course of this process are confidential.
  - b. **Conflict Management Coaching** - All communication between the client and their coach is confidential.
  - c. **Facilitated Conversations** – The confidentiality requirements may vary depending on the situation. When participation in a Facilitated Conversation is directed by the chain of command/line management, the Practitioner(s) who facilitates the intervention will provide the chain of command/line management with advice regarding the general topics discussed and the agreed outcome. However, in some instances confidentiality requirements may be as agreed to by management (or their representative) and the parties involved and discussed as part of the Alternative Dispute Resolution process. For a party requested Facilitated Conversation, the Practitioner(s) will not provide the chain of command/line management with any details about the discussions and outcomes unless otherwise agreed by the parties.
  - d. **Mediation** is a confidential process. On conclusion of mediation, the mediator(s) will provide to the referring officer notification that mediation was conducted and an agreement was or was not reached. No further information will be provided unless requested and agreed by the parties.
  - e. **Needs Analysis** - All preliminary interviews with concerned personnel are confidential. After assessment of the information gathered (issues, interests and concerns) a de-identified report is provided to the requesting commander/manager.
  - f. **Group Facilitation** is generally not confidential. On conclusion of a Group Facilitation, the Facilitator(s) will provide the referring officer with advice as to the general topics discussed and the agreed outcome. A copy of the agreement/action plan will be supplied to the referring officer.
3. Parties to an Alternative Dispute Resolution process undertake to preserve the confidentiality of that process, including views expressed, suggestions and admissions made, proposals for agreement put forward and written material referred to or created as part of the Alternative Dispute Resolution process. This means that what is said, agreed (or disagreed) and written is restricted to the parties involved unless the parties agree otherwise. Where it is apparent that there has been a breach of confidentiality, this breach will be brought to the attention of the appropriate authorities. This may result in disciplinary, administrative or performance management action being taken.

#### 2.2.0.11 Privacy

1. The [Privacy Act 1988](#) <sup>13</sup> imposes obligations on Defence personnel (including commanders, managers and supervisors, Workplace Behaviour Advisers and Workplace Behaviour Network Coordinators) in relation to the collection, storage, access, alteration, use and disclosure of personal information.
2. All operations of the [Directorate of Privacy, Complaints and Resolution](#) (which includes Dispute Resolution Managers and practitioner panel members) will be conducted consistent with Australian Privacy Principles contained in Schedule 1 of the [Privacy Act 1988](#) <sup>13</sup>.

#### 2.2.0.12 What happens if Alternative Dispute Resolution processes do not work?

1. It is acknowledged that despite using Alternative Dispute Resolution interventions, some conflicts in the workplace do not resolve.

**Example:** Martha and Isaac had worked together for over a year and do not get along. Their manager Gina had spoken to both Martha and Isaac about their behaviour, asked them to work out a way to work together, and outlined her expectations. The conflict escalated to the point that Martha refused to work with Isaac so Gina decided to try Alternative Dispute Resolution interventions and contacted the [Directorate of Privacy, Complaints and Resolution](#). Martha and Isaac received Conflict Management Coaching and eventually mediation was conducted to try to resolve the issue. After mediation, it was evident that neither party would see the other's point of view and their expectations were unrealistic to achieve resolution. Following the mediation, Gina provided further counselling to both Isaac and Martha. Despite best efforts, Martha requested to relocate to a different section, which Gina approved. Gina also contacted the Dispute Resolution Manager and a series of workshops relating to workplace behaviour were conducted with the entire team.

2. In some instances, Alternative Dispute Resolution is unsuccessful or inappropriate due to the conflict being difficult, complex or enduring. Any workplace conflict or issue (including unacceptable behaviour) may be deemed difficult, complex or enduring where:
  - a. all previous attempts to discuss and resolve the issue through various resolution processes have failed;
  - b. the issue in itself is very complex and difficult to manage or resolve;
  - c. the parties do not possess genuine interest to resolve the issue;
  - d. the issue has endured for such a long period of time that it has evolved to a more complex problem than the original issue.

#### 2.2.0.13 Further resolution options

1. In cases where the use of Alternative Dispute Resolution is not appropriate, has been tried without success, or where the issue is about an entitlement/condition of service the following options may be suitable:
  - a. Redress of Grievance - Defence members only; **See:** Chapter 6, Redress of Grievance.

**Note:** A Redress of Grievance is a complaint about a decision, act or omission that relates to a Defence member's service that they consider is adverse or detrimental to them. Contact [IGADF Directorate of Military Redress and Review](#) for further advice.

- b. Review of Actions - Defence APS employees only; **See:** Chapter 5, Review of Actions.
- c. A number of external agencies can receive complaints from Defence personnel, however this should usually occur only after all internal Defence mechanisms of complaint handling have been exhausted; **See:** Chapter 7, External complaint agencies.
- d. Public Interest Disclosure or Inspectors General; **See:** Chapter 8, Inspectors General.
- e. Australian Signals Directorate – Review of ASD actions.



#### 2.2.0.14 Independent legal advice

1. Defence personnel may seek independent legal advice if they wish to pursue matters through jurisdiction outside Defence.

**Note:** The Department of Defence does not normally cover any costs associated with a Defence member or Defence APS employee seeking independent legal advice. However, if required, the Office of the Defence General Counsel can request advice from the Office of Legal Services Coordination at the Attorney-General's Department, which administers the *Legal Services Directions 2005*, that, in certain circumstance, enables Commonwealth

assistance to its employees with respect to legal proceedings (including potential legal proceedings).

#### **2.2.0.15 How to access the Alternative Dispute Resolution processes**

1. All Defence personnel are able to access Alternative Dispute Resolution by:
  - a. contacting the  [Directorate of Privacy, Complaints and Resolution](#); **Email:** [ADR@defence.gov.au](mailto:ADR@defence.gov.au);
  - b. submitting an Alternative Dispute Resolution enquiry via  [PMKeyS ComTrack Self Service](#).

## Part 2 Division 1 - Interactive Problem Solving

### 2.2.1.1 Purpose

1. The purpose of this Division is to detail Interactive Problem Solving.

### 2.2.1.2 Content

1. This Division contains the following information:

- [2.2.1.3 What is Interactive Problem Solving?](#)
- [2.2.1.4 How Interactive Problem Solving can help](#)
- [2.2.1.5 How Interactive Problem Solving works](#)
- [2.2.1.6 How to access Interactive Problem Solving](#)

### 2.2.1.3 What is Interactive Problem Solving?

1. Interactive Problem Solving is a process where a Dispute Resolution Manager assists to:
  - a. examine all aspects of the conflict or dispute;
  - b. explore and consider all options for resolution (both formal and informal);
  - c. choose an appropriate course of action.
2. **Related Information:** Chapter 2 Part 3 Division 4, Dispute Resolution Managers.

### 2.2.1.4 How Interactive Problem Solving can help

1. Interactive Problem Solving can help individuals to:
  - a. describe the problem;
  - b. explore the problem from another perspective;
  - c. identify obstacles or barriers;
  - d. accept the responsibility to act and resolve the problem;
  - e. create a supportive environment.

**Example:** Sarah is managing a team of eight Defence APS employees. Over the course of a few weeks, Sarah has noticed that the team dynamics are not as they used to be. There appears to be infighting and bickering amongst three of the employees and it is starting to impact on the rest of the team. Their standard of work is dropping and people are making fundamental mistakes. Sarah has already intervened but she is not seeing any change. Sarah is wondering what else she might be able to do to resolve the issues. She decides to call a Dispute Resolution Manager to see how they might be able to assist. The Dispute Resolution Manager undertakes Interactive Problem Solving with Sarah by helping her explore the issues to identify the possible causes and explore what resolutions might be effective for her to implement.



### 2.2.1.5 How Interactive Problem Solving works

1. Interactive Problem Solving is applied in two parts:
  - a. problem analysis - involves identifying all the facts of the problem, as well as the factors that may either help or hinder the achievement of the person's objective;
  - b. decision-making - consists of choosing a course(s) of action to reach the objective.

**Note:** The assisting Dispute Resolution Manager has no advisory or determinative role on the resolution of the matters under discussion, but may suggest other Alternative Dispute Resolution processes that may further assist the matter **See:** 2.2.0.5 What are the Alternative Dispute Resolution processes used in Defence? The Dispute Resolution Manager may assist the person(s) to make choices on the appropriate course of action to

take, but will not make a decision for the person or resolve the conflict on behalf of the person.

#### 2.2.1.6 How to access Interactive Problem Solving

1. All Defence personnel are able to access Interactive Problem Solving, either by self-referral or on recommendation by management by:
  - a. contacting the  [Directorate of Privacy, Complaints and Resolution](#); **Email:** [ADR@defence.gov.au](mailto:ADR@defence.gov.au);
  - b. submitting an Alternative Dispute Resolution enquiry via  [PMKeyS ComTrack Self Service](#).

## Part 2 Division 2 - Conflict Management Coaching

### 2.2.2.1 Purpose

1. The purpose of this Division is to detail Conflict Management Coaching.

### 2.2.2.2 Content

1. This Division contains the following information:

[2.2.2.3 What is Conflict Management Coaching?](#)

[2.2.2.4 How Conflict Management Coaching can help](#)

[2.2.2.5 How Conflict Management Coaching works](#)

[2.2.2.6 How to access Conflict Management Coaching](#)

### 2.2.2.3 What is Conflict Management Coaching?

1. Conflict Management Coaching is a one-on-one process combining coaching and dispute resolution principles. An accredited Defence Conflict Management Coach assists the individual to gain insights into the way the individual responds to and manages workplace conflict.

### 2.2.2.4 How Conflict Management Coaching can help

1. The purpose of Conflict Management Coaching is to support an individual to develop the skills and confidence to resolve conflict.
2. Conflict Management Coaching should be sought to:
  - a. improve or enhance skills in conflict resolution and conflict management;
  - b. prepare for a difficult conversation or other resolution process;
  - c. resolve a specific conflict whether current or past.

**Example 1:** Jane is having trouble working effectively with her supervisor, and does not know how to address this problem. She decides to contact a Dispute Resolution Manager to request Conflict Management Coaching. Coaching may enable Jane to gain a better understanding of the issue(s) and develop ways in which she feels confident in addressing the problem with her supervisor.

**Example 2:** Mark has a great sense of humour and everyone likes him but sometimes his practical jokes just go too far. Although some of Mark's female workers are offended at his jokes, they do not say anything to him. Penny has decided that she will say something to Mark to let him know that his jokes do not always hit the mark and that sometimes what he says can be offensive. Penny and Mark get along very well so she is a little concerned about raising the issue with him, as she does not want to offend him or damage their work relationship. Penny contacts the regional Dispute Resolution Manager to organise a coach so she can work through some ideas about what she could say and how to say it effectively.



### 2.2.2.5 How Conflict Management Coaching works

1. Conflict Management Coaching is usually structured over one or more hourly sessions either face-to-face or over the telephone with an accredited Defence Conflict Management Coach. Most coaching sessions are conducted by telephone.
2. The Conflict Management Coach assists the individual to:
  - a. develop the best strategy to address the workplace conflict;
  - b. help them explore options when dealing with conflict;

- c. understand different perspectives;
- d. identify and evaluate options for resolution of the issue.

**Note:** The Conflict Management Coach does not provide counselling, professional opinions or advice, and does not replace legal or medical services.

#### **2.2.2.6 How to access Conflict Management Coaching**

1. Conflict Management Coaching is a voluntary process that is available by self-referral. Commanders, managers, and supervisors may encourage but not direct individuals to take part in Conflict Management Coaching. All Defence personnel are able to access Conflict Management Coaching by:
  - a. contacting the  [Directorate of Privacy, Complaints and Resolution](#); **Email:** [ADR@defence.gov.au](mailto:ADR@defence.gov.au);
  - b. submitting an Alternative Dispute Resolution enquiry via  [PMKeyS ComTrack Self Service](#).

## Part 2 Division 3 - Facilitated Conversation

### 2.2.3.1 Purpose

1. The purpose of this Division is to detail Facilitated Conversation.

### 2.2.3.2 Content

1. This Division contains the following information:

[2.2.3.3 What is a Facilitated Conversation?](#)

[2.2.3.4 How a Facilitated Conversation can help](#)

[2.2.3.5 How a Facilitated Conversation works](#)

[2.2.3.6 How to access Facilitated Conversation assistance](#)

### 2.2.3.3 What is a Facilitated Conversation?

1. A Facilitated Conversation is a less formal approach than other Alternative Dispute Resolution processes. It is a process where a Defence accredited Mediator facilitates a meeting between parties or a group of individuals to assist communication and/or repair working relationships.

**Note:** The Defence accredited Mediator does not provide counselling or advice, or have a determinative role in relation to content and outcome of the conversation.


2. A Facilitated Conversation can be initiated by an individual party or commander/manager. If initiated by a party, all participants must be volunteers and the process is confidential. If initiated by a commander/manager participants can be directed to attend and at the completion of the process, the Mediator is required to inform the commander/manager of the outcome of the conversation.

### 2.2.3.4 How a Facilitated Conversation can help

1. A Facilitated Conversation can be beneficial for a:
  - a. communication breakdown or difficulties with communication between a supervisor and subordinate or between peers;
  - b. follow up performance conversation;
  - c. return to work program discussion (for example, following an injury, illness or suspension);
  - d. performance improvement or action plan discussion.


**Note:** A Facilitated Conversation does not replace the need for the commander or manager to manage conflicts or disputes, return to work programs, performance conversations or the like, in the first instance.

**Note:** The conversation does not need to be about a conflict, dispute or unacceptable behaviour complaint in order to require assistance.

**Example 1:** Frank has conducted an annual assessment of Owen's performance. Throughout the reporting period, Frank has held a number of performance discussions with Owen and they were unable to reach an agreement. The situation appears to be escalating with a breakdown in their relationship. In preparation for the next discussion, Frank and Owen both agree to engage a Dispute Resolution Manager ( [Directorate of Privacy, Complaints and Resolution](#)) to facilitate their conversation.

**Example 2:** Kate has been out of the workplace for almost three months due to work-related stress leave and is about to start a return to work program. Kate's rehabilitation case manager has met with her commander/manager Marcus, to discuss her program




and how it will accommodate her recovery. Marcus needs to further discuss with Kate her modified duties in regards to her program. Due to previous communication breakdowns between Kate and Marcus, both parties would prefer that a neutral third party facilitate their meeting. Marcus has heard about a Facilitated Conversation through the  [Directorate of Privacy, Complaints and Resolution](#), he contacts them to request assistance.

### 2.2.3.5 How a Facilitated Conversation works

1. The Facilitated Conversation process involves:
  - a. **Pre-process preparation:** A Defence accredited Mediator conducts an interview with each party separately to explain the process and prepare the parties for the Facilitated Conversation. This is often conducted a day or so before the scheduled Facilitated Conversation.  
  
**Note:** For party initiated Facilitated Conversations, the Mediator will not advise command/management that the conversation is to be conducted. However, as a matter of good practice and mutual responsibilities, each party is encouraged to notify their commander/manager of their participation in the process.
  - b. **Facilitated Conversation:** The Facilitated Conversation commences when parties come together to discuss their issues. The Mediator asks questions and seeks clarification ensuring all participants have the opportunity to discuss their concerns and assists participants to negotiate agreed outcomes. A Facilitated Conversation often takes between 1 to 4 hours to complete.
  - c. **Post Facilitated Conversation:** For management initiated Facilitated Conversations, the agreed outcomes and actions will be reported back to the referring commander/manager to allow them to provide ongoing support and assistance to the participants. For party initiated Facilitated Conversations, the Practitioner(s) will not provide the commander/manager with any details regarding the agreed outcomes and actions unless agreed to by all parties.

### 2.2.3.6 How to access Facilitated Conversation assistance

1. A Facilitated Conversation can be initiated by an individual or referred by a commander, manager, or supervisor by:
  - a. contacting the [Directorate of Privacy, Complaints and Resolution](#); **Email:** [ADR@defence.gov.au](mailto:ADR@defence.gov.au);
  - b. submitting an Alternative Dispute Resolution enquiry via  [PMKeyS ComTrack Self Service](#).

## Part 2 Division 4 - Mediation

### 2.2.4.1 Purpose

1. The purpose of this Division is to detail Mediation.

### 2.2.4.2 Content

1. This Division contains the following information:

[2.2.4.3 What is Mediation?](#)

[2.2.4.4 How Mediation can help](#)

[2.2.4.5 How Mediation works](#)

[2.2.4.6 How to access Mediation](#)

### 2.2.4.3 What is Mediation?

1. Mediation is a structured process which allows the participants to come together to identify and discuss the disputed issues, develop options, consider alternatives and develop a mutually acceptable agreement. Mediation is conducted in a supportive environment where each individual can voice their views and be heard.
2. Defence personnel involved in an incident resulting in a workplace conflict or complaint are encouraged to participate. The Defence Alternative Dispute Resolution program utilises a co-mediation model, which means that where possible, two mediators are present.
3. Mediations are facilitated by Defence nationally accredited Mediator(s).

### 2.2.4.4 How Mediation can help

1. Mediation should be sought when:
  - a. communication between the parties has deteriorated;
  - b. workplace relationships are being affected;
  - c. the parties show intent to reconcile/resolve the issue;
  - d. other Alternative Dispute Resolution processes have not worked or are not appropriate.

**Example:** Peter and John have worked together successfully for two years. Last week they had a verbal clash and Peter is considering submitting a complaint of unacceptable behaviour against John. John apologised to Peter for his behaviour, and was genuinely sorry for some of the things he said to Peter; however, their relationship is strained and their communication has deteriorated, resulting in reduced productivity. To improve the communication and relationship, Peter and John attend mediation facilitated by two of Defence's nationally accredited Mediators to work through the issue and restore the working relationship.



### 2.2.4.5 How Mediation works

1. Mediation occurs in three stages:
  - a. **Pre-mediation assessment.** A Defence accredited Mediator conducts an interview with each party separately to explain the process and to assess if the dispute is suitable for mediation. This is generally a one-hour interview and occurs a day or more before the scheduled mediation. If mediation is not suitable, the parties are advised of other suitable Alternative Dispute Resolution options. If the dispute is deemed suitable for mediation, the Mediator will help the parties

prepare for the mediation. Parties are encouraged to access Conflict Management Coaching to assist them to prepare for the mediation.

- b. **Mediation process.** Mediation commences when parties come together to discuss their issues and explore options for resolution. The Mediator(s) manage the process while the parties manage the content. Mediators have no advisory or determinative role concerning the outcome of the dispute, but may advise on or determine the process of mediation whereby resolution is attempted. It is not unusual for a mediation to take 1-6 hours.
- c. **Post-mediation.** The Mediator/s advise the referring authority (e.g. the commander or manager who referred the parties to mediation) mediation has occurred and whether the parties did or did not reach agreement unless the parties determine otherwise.

#### 2.2.4.6 How to access Mediation

1. A request for Mediation must be made by a commander or manager. Individuals or parties cannot self-refer for mediation; they must go through their chain of command/line management in the first instance. Commanders or managers are able to request mediation by:
  - a. contacting the  [Directorate of Privacy, Complaints and Resolution](#); **Email:** [ADR@defence.gov.au](mailto:ADR@defence.gov.au);
  - b. submitting an Alternative Dispute Resolution enquiry via  [PMKeyS ComTrack Self Service](#).

## Part 2 Division 5 – Needs Analysis

### 2.2.5.1 Purpose

1. The purpose of this Division is to detail Needs Analysis.

### 2.2.5.2 Content

1. This Division contains the following information:

- [2.2.5.3 What is Needs Analysis?](#)
- [2.2.5.4 How Needs Analysis can help](#)
- [2.2.5.5 How Needs Analysis works](#)
- [2.2.5.6 How to access Needs Analysis](#)

### 2.2.5.3 What is Needs Analysis?

1. Needs Analysis is an Alternative Dispute Resolution process which assists command/management to gain a better understanding of the issues facing their teams.

### 2.2.5.4 How Needs Analysis can help

1. This process assists command/management to gain a better understanding of the issues facing their teams and is useful for teams that have been impacted by a drop in morale, or have poor team cohesion due to conflicts, organisational change, and/or communication breakdown.

**Note:** Individuals or parties cannot self-refer for Needs Analysis; they must go through their chain of command/line management in the first instance.

**Example:** Ali has recently posted in as the Commander of a Unit. In the first few weeks of his tenure, he notices that morale appears to be low and team cohesion does not appear to be as good as it should be. He is informed that there has been a number of conflicts, unacceptable behaviour complaints and resignations over the past 18 months. In an effort to determine how best to assist his team, Ali contacts his regional Dispute Resolution Manager to request a Needs Analysis be conducted.


### 2.2.5.5 How Needs Analysis works

1. To be most effective, all members of the affected workgroup including management should participate in the Needs Analysis. Attendance may be directed by command/line management. The process encompasses:
  - a. one-on-one, confidential interviews with all concerned personnel including management;
  - b. an assessment of the information gathered (issues, interests and concerns);
  - c. the provision of a de-identified report to the commander/manager. The Needs Analysis report provides an analysis of the situation and recommendations and options for future actions. Future actions may include the conduct of other Alternative Dispute Resolution processes such as group facilitation, mediation or workshops.

### 2.2.5.6 How to access Needs Analysis

1. Commanders or managers are able to request a Needs Analysis by:

CARM

- a. contacting the  [Directorate of Privacy, Complaints and Resolution](#); **Email:** [ADR@defence.gov.au](mailto:ADR@defence.gov.au);
- b. submitting an Alternative Dispute Resolution enquiry via  [PMKeyS ComTrack Self Service](#).

## Part 2 Division 6 - Group Facilitation

### 2.2.6.1 Purpose

1. The purpose of this Division is to detail Group Facilitation.

### 2.2.6.2 Content

1. This Division contains the following information:

[2.2.6.3 What is Group Facilitation?](#)

[2.2.6.4 How Group Facilitation can help](#)

[2.2.6.5 How Group Facilitation works](#)

[2.2.6.6 How to access Group Facilitation](#)

### 2.2.6.3 What is Group Facilitation?

1. Group Facilitation is a process where a Defence accredited Mediator assists a number of individuals in a workgroup or unit, who have common concerns or interests, to achieve a common goal or outcome. This is done through constructive communication and decision-making, group problem solving and conflict resolution. It is often used to prevent workplace conflict from developing or escalating.

### 2.2.6.4 How Group Facilitation can help

1. Group Facilitation supports the workgroup (e.g. Section, Directorate, Branch, Unit) to resolve their issues in the workplace. It helps participants to formulate a practical, achievable, detailed and comprehensive plan to work more effectively together and to improve future communication and interaction.

**Note:** A commander or manager must forward their request for Group Facilitation to their regional Dispute Resolution Manager. Individuals or parties cannot self-refer for Group Facilitation; they must go through their chain of command/line management in the first instance.



**Example:** Maxine has recently posted in as the Commander of a Unit. In the first few weeks of her tenure, she realises that the unit has a number of very strong personalities, all of whom have different ideas about unit priorities and how things should run. This has filtered down into their respective teams causing workplace disharmony. Maxine believes they have some great ideas but their positional stances are preventing them from listening to others and considering a different perspective. Maxine has heard about Group Facilitation, a process which brings together a group of people to assist them problem solve by using constructive communication. Group Facilitation allows individuals to participate in decision-making and in forming solutions to their issues. Maxine contacts her regional Dispute Resolution Manager to schedule a Group Facilitation.

### 2.2.6.5 How Group Facilitation works

1. To be most effective, all members of the affected workgroup including management should participate in the Group Facilitation. Attendance may be directed by command/line management. As a first step, a Needs Analysis will be conducted with all participants to gain an understanding of the issues and to prepare them for the group facilitation process.
2. Group Facilitation is a structured process involving five stages:
  - a. **Information exchange.** Each participant is invited to share their thoughts and feelings with the other participants by giving an opening statement.

- b. **Clarifying issues.** Participants are invited to present their points of view and bring clarity to the situation, allowing the 'bigger picture' to be realised.
- c. **Brainstorming.** Participants collectively discover methods of communicating with each other, which then fosters mutual trust and respect.
- d. **Problem solving.** This provides an opportunity for the participants to identify courses of action in order to progress and move forward.
- e. **Decision-making.** Each participant is given an opportunity to actively and positively contribute to the Group Facilitation process, which instils a sense of accomplishment, value and ownership of a co-created plan.

#### 2.2.6.6 How to access Group Facilitation

1. Commanders or managers are able to request a Group Facilitation by:
  - a. contacting the  [Directorate of Privacy, Complaints and Resolution](#); **Email:** [ADR@defence.gov.au](mailto:ADR@defence.gov.au);
  - b. submitting an Alternative Dispute Resolution enquiry via  [PMKeyS ComTrack Self Service](#).

# Who can provide assistance with resolving workplace conflict in Defence?

## Chapter 2 Part 3

### 2.3.0.1 Purpose

1. The purpose of this Part is to identify the different people who can assist with resolving workplace conflict, including providing general advice, policy direction, or Alternative Dispute Resolution.

### 2.3.0.2 Content

1. This Part contains the following Divisions:

[Division 1: Commanders, managers and supervisors](#)  
[Division 2: Workplace Behaviour Advisers](#)  
[Division 3: Workplace Behaviour Network Coordinators](#)  
[Division 4: Dispute Resolution Managers](#)

### 2.3.0.3 What assistance is provided within Defence?

1. The assistance provided within Defence depends on the nature of the conflict, i.e. how complex the issue is, the timeframe around the conflict and how many people involved.




### 2.3.0.4 Who can provide assistance with resolving conflict in Defence?

1. All Defence personnel have a responsibility to try to resolve conflict and issues of concern at the lowest appropriate level at the earliest opportunity, to support a positive and inclusive work environment and to establish and maintain productive working relationships.
2. Commanders, managers and supervisors have a responsibility to prevent and correct any workplace conflict and behavioural issues promptly, fairly and with sensitivity. Commanders, managers and supervisors should be consulted in the first instance whenever possible.

**See:** [2.3.1.4 Confidentiality](#) and [3.2.0.3.5](#) complaints of unacceptable behaviour.

3. The following areas in Defence can provide assistance with resolving workplace conflict:
  - a. commanders, managers and supervisors; **See:** Chapter 2 Part 3 Division 1;
  - b. Workplace Behaviour Advisers; **See:** Chapter 2 Part 3 Division 2;
  - c. Workplace Behaviour Network Coordinators; **See:** Chapter 2 Part 3 Division 3;
  - d. Dispute Resolution Managers; **See:** Chapter 2 Part 3 Division 4.

### 2.3.0.5 Related policy and resources

1. The following resources are also available to assist the individual to decide where to seek workplace conflict assistance from in Defence:
  - a.  [DI Admin Policy](#) PPL7 - Required behaviours in Defence;
  - b.  [Chapter 9 – Responding to Sexual Misconduct](#);
  - c.  [Directorate of Privacy, Complaints and Resolution](#) website.



## Part 3 Division 1 - Commanders, managers and supervisors

### 2.3.1.1 Purpose

1. The purpose of this Division is to explain how commanders, managers and supervisors can assist in managing workplace conflict.

### 2.3.1.2 Content

1. This Division contains the following information:

[2.3.1.3 Defence commander, manager and supervisor responsibilities](#)

[2.3.1.4 Confidentiality](#)

[2.3.1.5 Resources available to commanders, managers and supervisors](#)

### 2.3.1.3 Defence commander, manager and supervisor responsibilities

1. **See:** [2.1.1.4 Commander, manager and supervisor responsibilities](#).


### 2.3.1.4 Confidentiality

1. A discussion with a commander, manager or supervisor is not confidential because a commander, manager or supervisor is required to take action to resolve the workplace conflict issue.
2. If an individual wishes to discuss their workplace conflict with a party other than their commander, manager or supervisor, they must be aware that exceptions to confidentiality still apply.
3. **See:** 2.2.0.10 Confidentiality.

**Note:** Individuals, including commander, manager and supervisors, may discuss incidents of sexual misconduct with the Defence Sexual Misconduct Prevention and Response Office ([SeMPRO](#)) for advice and support.





### 2.3.1.5 Resources available to commanders, managers and supervisors

1. All commanders, managers and supervisors, regardless of rank or level of command and/or supervisory responsibilities, must have the required knowledge and skills to effectively manage:
  - a. workplace behaviour;
  - b. complaint management;
  - c. incident reporting;
  - d. conflict management.
2. All commanders, managers and supervisors are responsible for the implementation of workplace conflict management practices commensurate with their level of responsibility in accordance with this manual, Defence Instructions and the [Defence Enterprise Agreement \(DEA\)](#) or the [ASD Employment Conditions \(non-SES\) Determination](#), as applicable. For example, an APS6 Supervisor's responsibilities may be different to that of a Corporal; however, the need to act when workplace conflict is apparent remains the same.
3. In this context, commanders, managers and supervisors must also be familiar with the resources available to them and their staff in dealing with these issues, including (but not

limited to) utilising this manual, Defence Instructions, Workplace Behaviour Advisers and the  [Directorate of Privacy, Complaints and Resolution](#) :

- a. **See:** Chapter 3, Responding to unacceptable behaviour;
- b. **See:** Chapter 2 Part 3 Division 2, Workplace Behaviour Advisers;
- c. **See:** Chapter 2 Part 3 Division 4, Dispute Resolution Managers.

4. **Related Information:**

- a.  [DI Admin Policy](#) PPL7 - Required behaviours in Defence;
- b.  [Chapter 9 – Responding to Sexual Misconduct](#);
- c.  [Defence Enterprise Agreement \(DEA\)](#);
- d.  [ASD Employment Conditions \(non-SES\) Determination](#).

## Part 3 Division 2 – Workplace Behaviour Advisers

### 2.3.2.1 Purpose

1. The purpose of this Division is to provide an overview of the role of Defence Workplace Behaviour Advisers in the workplace conflict process.

### 2.3.2.2 Content

1. This Division contains the following information:

[2.3.2.3 What is a Workplace Behaviour Adviser?](#)

[2.3.2.4 What assistance can Workplace Behaviour Advisers provide?](#)

[2.3.2.5 How to access a Workplace Behaviour Adviser](#)

[2.3.2.6 Confidentiality and Privacy](#)

### 2.3.2.3 What is a Workplace Behaviour Adviser?

1. A Workplace Behaviour Adviser is a Defence member or Defence APS or ASD employee who has been trained to:
  - a. provide all personnel with support, information and options for the resolution of workplace behaviour issues and incidents;
  - b. support commanders, managers and supervisors in implementing workplace behaviour initiatives.
2. Workplace Behaviour Advisers undertake their role in a voluntary capacity in addition to their primary Defence employment role.
3. A Workplace Behaviour Adviser's role is to provide information to enable Defence personnel to manage their own issues as they choose.
4. Personnel often contact Workplace Behaviour Advisers outside of their unit, this may prevent a conflict of interest or perception of bias. Workplace Behaviour Advisers are a location resource rather than a unit specific need. The appropriate ratios for Workplace Behaviour Advisers to personnel is outlined in the following table:

Size of base	Ratio	Comments
<1000 personnel	Minimum of 4 WBA; standard ratio of 1:100	Minimum number to avoid conflicts of interest and to cover absences
>1001	1:150	Example: 2,000 personnel = 13 WBA
Training establishment	1:75	The reduced ratio provides additional support to staff and trainees experiencing training related stress Example: 1,000 personnel = 13 WBA
All seagoing platforms	In accordance with <a href="#">Australian Fleet General Order 305</a> (Chapter 305.10 – Fleet Executive Issues Management & Workplace Behaviour).	

### 2.3.2.4 What assistance can Workplace Behaviour Advisers provide?

1. Workplace Behaviour Advisers can:
  - a. provide Defence personnel with support, information and advice regarding options for the resolution of workplace behaviour issues;

**Note:** Individuals, including commanders, managers and supervisors, may discuss incidents of sexual misconduct with the Defence Sexual Misconduct

Prevention and Response Office (  [SeMPRO](#) ) for advice and support, rather than a Workplace Behaviour Adviser;

- b. refer Defence personnel to other support agencies, as appropriate;
  - c. provide support to commanders, managers and supervisors in implementing workplace behaviour initiatives;
  - d. deliver the face-to-face Workplace Behaviour Mandatory Awareness Program to Defence personnel in their unit/ship/branch as required.
2. Workplace Behaviour Advisers cannot:
- a. act as an advocate nor speak for their client at any meetings;
  - b. take any action to resolve an issue on a client's behalf or receive their complaint;
  - c. provide advice if they have advised other people involved in the same issue or if they have a conflict of interest;
  - d. mediate or become involved in any investigation or resolution of a complaint in which they have acted as a Workplace Behaviour Adviser;
  - e. initiate follow up on an individual's progress, or encourage, coerce or force a client to identify other individuals involved in the incident or conflict if they do not wish to divulge this information.

#### **2.3.2.5 How to access a Workplace Behaviour Adviser**

1. Search the Defence Corporate Directory under "Additional Searches" which includes "Secondary Appointments" and select the Workplace Behaviour Adviser drop down in "Other Roles".
2. View the local base electronic noticeboard.
3. Contact the Defence Service Centre
  - a. Phone: 1800 DEFENCE (1800 333 362)
  - b. Email: [Yourcustomer.service@defence.gov.au](mailto:Yourcustomer.service@defence.gov.au).
4. Search 'WBA' on ASD intranet site.

#### **2.3.2.6 Confidentiality and Privacy**

1. **See:** 2.2.0.10, Confidentiality;
2. **See:** 2.2.0.11, Privacy.

## Part 3 Division 3 - Workplace Behaviour Network Coordinators

### 2.3.3.1 Purpose

1. The purpose of this Division is to provide an overview of the role of Defence Workplace Behaviour Network Coordinators in the workplace conflict process.

### 2.3.3.2 Content

1. This Division contains the following information:


[2.3.3.3 What is a Workplace Behaviour Network Coordinator?](#)

[2.3.3.4 What assistance can Workplace Behaviour Network Coordinators provide?](#)



[2.3.3.5 How to access a Workplace Behaviour Network Coordinator](#)

[2.3.3.6 Confidentiality and privacy](#)

### 2.3.3.3 What is a Workplace Behaviour Network Coordinator?

1. A Workplace Behaviour Network Coordinator is a Defence member or Defence APS or ASD employee who is a practising Workplace Behaviour Adviser, has a good understanding of the Defence Workplace Behaviour Adviser network, and is appointed by command in liaison with the local Dispute Resolution Manager.
2. A Workplace Behaviour Network Coordinator has been trained to:
  - a. provide advice to commanders, managers and supervisors on Defence workplace behaviour policy, responding to allegations of unacceptable behaviour and mandatory reporting requirements;
  - b. advise senior management of the nature and extent of workplace behaviour issues;
  - c. undertake regular professional development with the  [Directorate of Privacy, Complaints and Resolution](#). **See:** Chapter 2 Part 3 Division 4, Dispute Resolution Managers.

### 2.3.3.4 What assistance can Workplace Behaviour Network Coordinators provide?

1. Workplace Behaviour Network Coordinators can:
  - a. provide commanders, managers and supervisors with advice on workplace behaviour and allegations of unacceptable behaviour;
  - b. mentor and coordinate Workplace Behaviour Advisers, including managing their professional development with the  [Directorate of Privacy, Complaints and Resolution](#) ;
  - c. allocate Workplace Behaviour Advisers to particular or sensitive cases of workplace conflict;
  - d. act as a point of contact for complaints about Workplace Behaviour Advisers. However, such complaints are to be handled by the  [Directorate of Privacy, Complaints and Resolution](#);
  - e. deliver the face-to-face Workplace Behaviour Mandatory Awareness Program to Defence personnel in their unit/ship/branch as required.
2. Workplace Behaviour Network Coordinators may seek advice from senior management when dealing with particularly sensitive and complex workplace behaviour issues.

### **2.3.3.5 How to access a Workplace Behaviour Network Coordinator**

1. Search the Defence Corporate Directory under "Additional Searches" which includes "Secondary Appointments" and select the Workplace Behaviour Network Coordinator drop down in "Other Roles".
2. View the local base electronic noticeboard.
3. Contact the Defence Service Centre:
  - a. Phone: 1800 DEFENCE (1800 333 362);
  - b. Email: [Yourcustomer.service@defence.gov.au](mailto:Yourcustomer.service@defence.gov.au).

### **2.3.3.6 Confidentiality and Privacy**

1. **See:** 2.2.0.10, Confidentiality;
2. **See:** 2.2.0.11, Privacy.

## Part 3 Division 4 - Dispute Resolution Managers

### 2.3.4.1 Purpose

1. The purpose of this Division is to describe the role of Dispute Resolution Managers and detail what services Dispute Resolution Managers can provide to Defence personnel.

### 2.3.4.2 Content

1. This Division contains the following information:

- [2.3.4.3 What is a Dispute Resolution Manager?](#)
- [2.3.4.4 What assistance can Dispute Resolution Managers provide?](#)
- [2.3.4.5 How to access a Dispute Resolution Manager](#)
- [2.3.4.6 Confidentiality and Privacy](#)

### 2.3.4.3 What is a Dispute Resolution Manager?

1. Dispute Resolution Managers are Defence personnel who are nationally accredited to:
  - a. manage and conduct Alternative Dispute Resolution processes **See:** 2.2.0.3 and 2.2.0.5.
  - b. deliver workshops as a supplement to Alternative Dispute Resolution interventions to Defence personnel (including commanders, managers and supervisors) to help prevent and manage incidents of workplace conflict, allegations of unacceptable behaviour and complaints. **See:** [Directorate of Privacy, Complaints and Resolution DPN](#)




**Note:** Individuals are encouraged to seek guidance and advice from a Workplace Behaviour Adviser in the first instance. Dispute Resolution Managers do not replace the role of Workplace Behaviour Advisers.

### 2.3.4.4 What assistance can Dispute Resolution Managers provide?

1. In addition to that listed in 2.3.4.3 Dispute Resolution Managers:
  - a. provide guidance and advice to Defence personnel to assist them to manage and resolve individual or group workplace incidents, conflict, complaints and alleged unacceptable behaviour at the earliest time and lowest appropriate level, by using the Alternative Dispute Resolution processes listed in 2.3.4.3(1a) **See:** Chapter 2 Part 2, Alternative Dispute resolution processes.
  - b. are responsible to train, coordinate, and manage the Defence Workplace Behaviour Adviser Network. This incorporates provision of initial training, ongoing guidance and professional development for Workplace Behaviour Advisers and Workplace Behaviour Network Coordinators within their region. Initial training and professional development involves understanding the workplace behaviour policy, interview techniques, and guidance on the delivery of the face to face Workplace Behaviour Mandatory Awareness Program; **See:** Chapter 2 Part 3 Division 2, Workplace Behaviour Advisers and Chapter 2 Part 3 Division 3, Workplace Behaviour Network Coordinators.
  - c. provide guidance, as required, to management about the selection and appointment of Workplace Behaviour Advisers and Workplace Behaviour Network Coordinators;
  - d. mentor and coordinate the Alternative Dispute Resolution practitioner panel of trained Mediators and Conflict Management Coaches in their region.
2. Dispute Resolution Managers usually provide assistance to Defence personnel in their region, however assistance to interstate and overseas personnel may be provided when circumstances allow, including the use of Alternative Dispute Resolution Practitioners in situ in the requesting region. Travel costs may be incurred by the requesting unit.

**Example:** Doug, a Commander located in Cairns, contacts the Dispute Resolution Manager for QLD. The Dispute Resolution Manager speaks with Doug and assesses the conflict as suitable for mediation. The Dispute Resolution Manager is based in Brisbane and is required to travel to Cairns for the mediation. Doug agrees to this arrangement in order to try to resolve the conflict. The Dispute Resolution Manager makes arrangements for the mediation to occur. **See:** 2.2.0.8, How much does Alternative Dispute Resolution cost?

#### 2.3.4.5 How to access a Dispute Resolution Manager

1. Contact the  [Directorate of Privacy, Complaints and Resolution](#); **Email:** [ADR@defence.gov.au](mailto:ADR@defence.gov.au)
2. Contact the Defence Service Centre:
  - a. Phone: 1800 DEFENCE (1800 333 362)
  - b. Email: [Yourcustomer.Service@defence.gov.au](mailto:Yourcustomer.Service@defence.gov.au).
3. Search 'DRM' on ASD intranet site.
4. **Related Information:**
  - a.  [DI Admin Policy](#) PPL7 - Required behaviours in Defence;
  - b.  [Chapter 9 – Responding to Sexual Misconduct](#).

#### 2.3.4.6 Confidentiality and Privacy

1. **See:** 2.2.0.10, Confidentiality;
2. **See:** 2.2.0.11, Privacy.



# Responding to unacceptable behaviour

## Chapter 3

### 3.0.0.1 Introduction

1. Defence personnel are respectful, trusted and proven to deliver. In doing so, Defence personnel have a responsibility to behave in a way that upholds our Values as an organisation, both at work and in any situation that may be connected to Defence. Values-based behaviour requires everyone to accept personal responsibility for their actions and the subsequent consequences for themselves, others and Defence.
2. In addition to Values-based behaviour, Defence personnel must not engage in behaviour that is proscribed in the unacceptable behaviour definitions.
3. Upholding the required behaviours contributes significantly to morale and promotes a cohesive, healthy, safe and effective workplace. It builds the capability of the Australian Defence Force and helps to protect and enhance the reputation of Defence.

### 3.0.0.2 Purpose

1. This Chapter provides Defence's policies and procedures for the responsibilities, notification, management of, and reporting of unacceptable behaviour by Defence personnel.

### 3.0.0.3 Contents of this Chapter

1. This Chapter contains the following Parts:

[Part 1: Rights and obligations](#)

[Part 2: Notification and complaints of unacceptable behaviour](#)

[Part 3: Responding to an incident of unacceptable behaviour](#)

[Part 4: Reporting and recording of incidents of unacceptable behaviour](#)

[Annex 3A: Defence Values](#)

[Annex 3B: Defence Behaviours](#)

[Annex 3C: No Longer Used. Navy Values and Signature Behaviours – Replaced by Defence Values and Behaviours](#)

[Annex 3D: No Longer Used. Army Values – Replaced by Defence Values and Behaviours](#)

[Annex 3E: No Longer used. Air Force Values – Replaced by Defence Values and Behaviours](#)

[Annex 3F: APS Values](#)

[Annex 3F.a: ASD Values](#)

[Annex 3G: Types of unacceptable behaviour](#)

[Annex 3H: Flowchart for managing unacceptable behaviour](#)

[Annex 3I: Checklist for responding to unacceptable behaviour incidents](#)

[Annex 3J: Support options](#)

#### 3.0.0.4 Contents of this part

1. This Part contains the following information:

- [3.0.0.5 This Chapter applies to](#)
- [3.0.0.6 This Chapter does not apply to](#)
- [3.0.0.7 Policy](#)
- [3.0.0.8 What is unacceptable behaviour](#)
- [3.0.0.9 Defence Values and Behaviours](#)
- [3.0.0.10 Foreign military members](#)
- [3.0.0.11 External service providers and outsourced service providers](#)
- [3.0.0.12 Privacy and unacceptable behaviour](#)
- [3.0.0.13 Disclosure of security classified information](#)
- [3.0.0.14 Applicable legislation](#)
- [3.0.0.15 Other applicable information](#)
- [3.0.0.16 Sponsor and point of contact](#)

#### 3.0.0.5 This Chapter applies to

1. This Chapter applies to:
  - a. Defence personnel;
  - b. External service providers and outsourced service providers who, under the conditions of their contract with Defence, are required to comply with this Chapter; and
  - c. Foreign military members serving with the ADF subject to their nature of service.

#### 3.0.0.6 This Chapter does not apply to

1. This Chapter does not apply to:
  - a. Persons who have volunteered and been accepted by the Chief of the Defence Force as officers, instructors or cadets in the Australian Navy Cadets, Australian Army Cadets and Australian Air Force Cadets;  
**Related Information:** Part 2 of [YOUTHPOLMAN - Australian Defence Force Cadets](#) contains Defence policy for Australian Navy Cadets, Australian Army Cadets and Australian Air Force Cadets. This chapter still applies to personnel who run Defence Youth programs and Defence personnel under 18.
  - b. Defence personnel, external service providers, and outsourced service providers working in or for the Australian Geospatial-Intelligence Organisation, the Defence Intelligence Organisation and the Australian Signals Directorate to the extent that the incident of unacceptable behaviour is 'disclosable conduct' under the [Public Interest Disclosure Act 2013](#).

#### 3.0.0.7 Policy

1. Defence personnel are expected to adhere to high standards of ethical and personal conduct in connection with their workplace. Behaviour at work or in any situation that is connected to Defence, that is proscribed in this Chapter is unacceptable behaviour and will not be tolerated.
2. In addition to causing harm to individuals and Defence's reputation, Defence may be held vicariously liable for the actions of Defence personnel engaging in unlawful discrimination or harassment. This is unacceptable. Unlawful discrimination and harassment includes:
  - a. racial discrimination and offensive behaviour based on racial hatred under the [Racial Discrimination Act 1975](#);
  - b. sex discrimination and sexual harassment under the [Sex Discrimination Act 1984](#);
  - c. disability discrimination under the [Disability Discrimination Act 1992](#);
  - d. age discrimination under the [Age Discrimination Act 2004](#); and
  - e. belief based discrimination under the [Australian Human Rights Commission Act 1986 \(Cth\)](#).

3. Defence personnel are expected to behave in a way that fosters a fair and safe workplace environment. A failure of Defence personnel to meet expected standards of behaviour may also be contrary to Defence's obligations under the [Work Health and Safety Act 2011](#).
4. All Defence personnel have a role in preventing and resolving unacceptable behaviour. Incidents of unacceptable behaviour must be responded to in an appropriate and timely manner. When an incident results in a complaint of unacceptable behaviour, the complaint must be managed promptly, seriously, and with fairness and sensitivity in accordance with this Chapter. Defence is committed to ensuring that incidents of unacceptable behaviour are dealt with appropriately.

**Note:** In this Chapter, the term 'incident of unacceptable behaviour' includes both alleged and substantiated incidents of unacceptable behaviour. An incident of unacceptable behaviour is considered an alleged incident until such time as the commander or manager determines the incident has been substantiated.

5. Defence personnel are accountable for their behaviour where it falls below the expected standard. Failure to meet expected standards of behaviour may result in management, administrative, or disciplinary action. **See:** [3.3.0.6 Responding to an incident of unacceptable behaviour](#)

#### 3.0.0.8 What is unacceptable behaviour

1. Unacceptable behaviour is unreasonable conduct at work or in any situation that may be connected to Defence that is offensive, belittling, abusive or threatening to another person or adverse to morale, discipline or workplace cohesion. This includes unlawful discrimination and harassment. Specific types of unacceptable behaviour are:
  - a. [Harassment](#);
  - b. [Workplace bullying](#);
  - c. [Any form of sexual misconduct](#) – refer to Chapter 9 – *Responding to Sexual misconduct* in the first instance;
  - d. [Discrimination](#);
  - e. [Abuse of power](#);
  - f. [Conflict of interest and inappropriate workplace relationships](#); and
  - g. [Violent behaviour](#).

**See:** [Annex 3G – Types of unacceptable behaviour](#).

#### 3.0.0.9 Defence Values and Behaviours

1. The [Defence Values and Behaviours](#) reflect the behaviours expected of Defence personnel and particularly how we treat each other at work and in connection with our work.

**See:** [Annex 3A - Defence Values](#)  
[Annex 3B – Defence Behaviours](#)

2. The APS Values and employment principles embedded in the [Public Service Act 1999](#) provide a similar standard for Defence APS employees. The ASD Values reflect the same standard of behaviour for ASD employees.

**See:** [Annex 3F – APS Values](#)  
[Annex 3F.a – ASD Values](#)

3. Defence personnel are expected to behave at work in accordance with Defence values statement and that of their respective Agency or Australian Public Service.

#### 3.0.0.10 Foreign military members

1. Foreign military members seconded, posted, assigned, attached to, or on exchange with, the ADF, are expected to adhere to:

- a. the Defence Values and Behaviours; and
- b. the values of the Agency to which they are connected in accordance with any agreement or arrangement between their country of origin and Australia.

#### 3.0.0.11 External service providers and outsourced service providers

1. If it is a term of their contract, external service providers and outsourced service providers must act in a manner that is consistent with the Defence Values and Behaviours when:

- a. representing Defence;

**Note:** Representing Defence includes undertaking work with Defence personnel outside of a Defence establishment or acting as a spokesperson or other representative of Defence.

- b. working on a Defence establishment; or
- c. in any other circumstance that could bring discredit to Defence.

#### 3.0.0.12 Privacy and unacceptable behaviour

1. The protection of personal information collected and used in the course of responding to an incident of unacceptable behaviour is to be taken seriously.
2. The Unacceptable Behaviour Privacy Notice can be found on the Privacy, [Complaints and Resolution website](#).
3. For information on the protection of personal information on personnel under 18 years of age, refer to [YOUTH POLMAN Part 1 Section 1 Chapter 2](#).

**Related Information:** [Unacceptable Behaviour and ComTrack Privacy Notice](#) (APP5)

#### 3.0.0.13 Disclosure of security classified information

1. Defence personnel must not provide/disclose security classified information when:
  - a. participating in a process provided for in this manual; or
  - b. submitting a complaint provided for in this manual
2. Defence personnel acting contrary to paragraph [3.0.0.13.1](#) may be liable to criminal prosecution under section 70 of the [Crimes Act 1914](#).
3. Defence APS employees acting contrary to paragraph [3.0.0.13.1](#) may also be subject to Code of Conduct action.

**Related Information:** [APS People Policy](#)

4. ASD employees acting contrary to paragraph [3.0.0.13.1](#) may also be subject to ASD Code of Conduct action.

**Related Information:** [ASD People Policy](#)

5. Defence members acting contrary to paragraph [3.0.0.13.1](#) may also be subject to an administrative sanction under MILPERSMAN or action under the [Defence Force Discipline Act 1982](#).

**Related Information:** [Military Personnel Policy Manual \(MILPERSMAN\) Part 9 Chapter 2—Formal Warnings and Censures in the Australian Defence Force](#).

ASD employees and certain Defence APS employees acting contrary to paragraph [3.0.0.13.1](#), may be liable to criminal prosecution under the [Intelligence Services Act 2001](#).

#### 3.0.0.14 Applicable legislation

1. Defence personnel must comply with the following as applicable:
  - a. [Racial Discrimination Act 1975](#);
  - b. [Defence Force Discipline Act 1982](#);
  - c. [Sex Discrimination Act 1984](#);
  - d. [Australian Human Rights Commission Act 1986](#);
  - e. [Privacy Act 1988](#);
  - f. [Disability Discrimination Act 1992](#);
  - g. [Public Service Act 1999](#);
  - h. [Age Discrimination Act 2004](#);
  - i. [Fair Work Act 2009](#);
  - j. [Work Health and Safety Act 2011](#);
  - k. [Public Interest Disclosure Act 2013](#); and
  - l. Subordinate legislation made under the Acts above.

### 3.0.0.15 Other applicable information

1. **Defence legislation**
  - a. [Defence Act 1903](#);
  - b. [Defence \(Inquiry\) Regulations 2018](#);
  - c. [Defence Regulation 2016](#); and
  - d. [Inspector-General of the Australian Defence Force Regulation 2016](#).
2. **Defence Instructions**
  - a. [DI Admin policy](#)  
AG4 — Incident Reporting and Management (Annex C)  
AG5 — Conflicts of interest and declarations of interest (Annex C);  
PPL7 — Required behaviours in Defence (Annex J);
  - b. [DI\(G\) ADMIN 65-1](#) — Administrative Inquiry Tracking;
  - c. [MILPERSMAN Part 4 Chapter 1](#) – Alcohol Management in the Australian Defence Force.
3. **Legal Services Directions**
  - a. [Legal Services Directions 2017](#).
4. **Other Defence Policy and Publications**
  - a. [Chapter 9 – Responding to Sexual Misconduct](#);
  - b. [APS People Policy](#);
  - c. [ASD Determination Terms and Conditions of Employment \(non-SES\)](#);
  - d. [ASD People Policy](#);
  - e. [Decision-Maker's Handbook for Personnel-related Decisions](#);
  - f. [Defence Enterprise Agreement \(DEA\)](#);
  - g. [Defence Indigenous Handbook](#);

- h. [Record Management - Defence Policy and Strategy](#)
- i. [Safetyman](#);
- j. Fact finding in Incident Management [CAMPUS](#) course;
- k. [Good Administrative Decision-Making Manual \(GADMMAN\)](#);
- l. [Interim Incident Reporting and Management Policy](#);
- m. [Military Personnel Policy Manual \(MILPERSMAN Part 9, Chapter 8\)](#);
- n. [Youth Policy Manual \(YOUTHPOLMAN\)](#);
- o. Workplace Behaviour Mandatory Awareness [CAMPUS](#) course; and
- p. [Defence Media and Communication Policy](#);
- q. [Australian Defence Force Chaplaincy Policy](#).

5. **Defence organisational websites**

- a. [Complaints and Resolution](#);
- b. [SeMPRO](#);
- c. [Diversity](#);
- d. [Privacy](#);
- e. [ADF Investigative Service](#);
- f. [Defence Legal Division](#);
- g. [Fraud Control and Investigations Branch](#);
- h. [Inspector General of the ADF](#);
- i. [Work Health and Safety Branch](#);
- j. [Pay and Conditions](#); and
- k. [Pathway to Change](#)

6. **External resources**

- a. [Comcare Psychosocial hazards website](#);
- b. [Comcare Bullying In the Workplace Resources](#); and
- c. [Defence Force Ombudsman](#).

**3.0.0.16 Sponsor and point of contact**

- 1. The sponsor for this Chapter is the Assistant Secretary HR Services Branch.
- 2. The point of contact is Assistant Director, Policy, Learning and Development, [Directorate of Privacy, Complaints and Resolution](#) - **Email:** [Complaint.Resolution@defence.gov.au](mailto:Complaint.Resolution@defence.gov.au) .

## Part 1: Rights and obligations

### 3.1.0.1 Purpose

1. This Part lists the rights and obligations of all Defence personnel in relation to unacceptable behaviour.

**Note:** In this Chapter the term 'incident of unacceptable behaviour' includes both alleged and substantiated incidents of unacceptable behaviour. An incident of unacceptable behaviour is considered an alleged incident until such time as the commander or manager determines the incident has been substantiated.

An incident is when the behaviour occurred. A complaint occurs when a person involved in an incident notifies their commander, manager or supervisor.

### 3.1.0.2 Content

1. This Part contains the following information:

[3.1.0.3 Obligations of Defence personnel](#)

[3.1.0.4 A person who believes they have been subject of unacceptable behaviour](#)

[3.1.0.5 A person involved in an incident of unacceptable behaviour](#)

[3.1.0.6 Supervisors](#)

[3.1.0.7 Commanders and managers](#)

### 3.1.0.3 Obligations of Defence personnel

1. Defence personnel have a responsibility to take all reasonable and practical steps to protect the health and safety of themselves and others in the workplace. Consistent with this requirement, all Defence personnel:
  - a. are to monitor their own behaviour and attitude to minimise causing offence;
  - b. are expected to behave in a way that upholds the Defence Values and Behaviours, APS or ASD Values, and APS and ASD employment principles (as appropriate). This expectation applies in any situation connected to Defence in all domestic and overseas operational and exercise environments;
  - c. must not engage in or participate in unacceptable behaviour, including unlawful discrimination or harassment at work and in any situation connected to Defence in all domestic and overseas operational and exercise environments;
  - d. have a responsibility to question the behaviour of colleagues in the workplace that could reasonably be interpreted as unacceptable behaviour;
  - e. should notify their supervisor, commander or manager (as appropriate), incidents of unacceptable behaviour in the workplace or connected to the workplace that are beyond their ability or authority to manage;
  - f. are to take steps to resolve workplace conflict at the lowest level, where appropriate; **See:** [Chapter 2, Resolution of conflict](#)
  - g. must be cognisant of expected workplace behaviour and complete the Workplace Behaviour Mandatory Awareness training annually; and for some incidents involving youth under 18, the Head of Joint Support Services Division must be informed. For further information, refer to [YOUTHPOLMAN Part 1 Section 3 Chapter 3 Annex A.](#)
2. Defence personnel found to have engaged in, contributed to, ignored, assisted, or encouraged unacceptable behaviour may be held personally responsible.

### 3.1.0.4 A person who believes they have been the subject of unacceptable behaviour

1. A person who believes they have been the subject of unacceptable behaviour has a responsibility to attempt self-resolution at the lowest appropriate level in the circumstances. Self resolution may not always be appropriate. **Example:** some incidents of sexual misconduct. **See:** [Chapter 9 Responding to Sexual Misconduct](#) or [Chapter 2 Resolution of conflict.](#)
2. In accordance with [3.1.0.3.1.e](#), a person who believes they have been the subject of any form of unacceptable behaviour is encouraged to discuss the incident with their commander, manager or supervisor, or the most appropriate person as listed at [3.2.0.3.3](#). The incident may be considered resolved if the parties have resolved it without needing to engage their chain of command.

**Note:** Commanders, managers and supervisors must respond to incidents of unacceptable behaviour once they become aware of it. Accordingly, subject to the [Public Interest Disclosure Act 2013](#), any discussion with the chain of command that reveals unacceptable behaviour will not be treated as confidential, but may attract protections of the disclosers' identity.

3. If the person chooses to make a complaint they are to do so in accordance with [3.2.0.3](#).
4. A person who believes they have been the subject of sexual misconduct is encouraged to seek advice and support from the Sexual Misconduct Prevention and Response Office (SeMPRO). Sexual misconduct includes a sexual offence.

**Note:** SeMPRO client services are available to current and ex-serving ADF members, APS personnel, Defence contractors, ADF Cadets and their families, and Officers and Instructors of Cadets.

SeMPRO treats a report of sexual misconduct as a restricted (confidential) disclosure.

A disclosure of sexual misconduct to your commander, manager or supervisor will give rise to specific statutory obligations under the [Interim Incident and Reporting Management Policy](#). SeMPRO support, advice and client response services are confidential and available to all personnel without triggering reporting obligations. Accessing SeMPRO services without making a report about an incident to Defence is referred to as a Restricted Disclosure.

**Related Information:**

[SeMPRO DPN site](#)

[Chapter 9 - Responding to Sexual Misconduct.](#)

**3.1.0.5 A person involved in an incident of unacceptable behaviour**

1. A person involved in an incident of unacceptable behaviour includes:
  - a. a person who believes they have been the subject of any form of unacceptable behaviour;
  - b. a person alleged to have behaved unacceptably (respondent); and/or
  - c. any other person that has a connection with the incident of unacceptable behaviour. This may include witnesses.
2. A person involved in an incident of unacceptable behaviour can expect:
  - a. the incident be responded to in accordance with [Part 3](#) of this Chapter;
  - b. to remain informed, where appropriate, by their commander, manager or supervisor about the progress and completion of the required actions;
  - c. information collected in the notification/complaint of unacceptable behaviour and any response to that incident to be handled as **Sensitive: Personal** in accordance with the requirements of the [Defence Security Principles Framework](#); and
  - d. any personal information collected during the notification of and in the course of responding to an incident to be used in accordance with the [Privacy Act 1988](#), including the [Australian Privacy Principles](#) for the purpose of:
    - i. responding to the incident; **See:** [Chapter 3 Part 3 Responding to unacceptable behaviour](#).
    - ii. reporting the incident; **See:** [Chapter 3 Part 4 Reporting and recording of incidents of unacceptable behaviour](#).
    - iii. taking any consequential action.

**Example:** Alternative dispute resolution, disciplinary or administrative action.

3. A person involved in an incident of unacceptable behaviour may access relevant support services available to them through their relevant Service, APS or ASD employment conditions. A person who has accessed a support service can expect that the information provided in the course of obtaining that assistance will be handled in accordance with the service provider's professional conduct obligations.

**Example:** A medical practitioner, allied health professional, psychologist, social worker, legal officer.



**See:** [Annex 3J – Support options](#)

4. A person involved in an incident of unacceptable behaviour is expected to cooperate with any reasonable action taken in response to the incident of unacceptable behaviour.
5. A person involved in an incident of unacceptable behaviour shall be aware that if they are found to have participated in, contributed to, or ignored the unacceptable behaviour they may have their behaviour reviewed.

#### 3.1.0.6 Supervisors

1. Maintaining acceptable behaviour and effective relationships in the workplace is a primary leadership responsibility. Supervisors at all levels must act on all allegations of unacceptable behaviour in the workplace. In deciding how to proceed, supervisors are strongly encouraged to seek support and advice from their chain of command or line management and the advice services available to them. Supervisors are responsible for:
  - a. monitoring the workplace and the health and safety of all personnel under their supervision;
  - b. taking all reasonably practicable action to prevent unacceptable behaviour in the workplace;
  - c. responding promptly, seriously, with fairness and sensitivity to incidents of unacceptable behaviour;
  - d. reporting incidents of unacceptable behaviour to their commander or manager; and
  - e. ensuring that all Defence personnel within their supervisory line of responsibility complete the Workplace Behaviour Mandatory Awareness training annually and that the training is recorded in [PMKeys](#).
2. In response to an incident of unacceptable behaviour, supervisors must take action in accordance with Part 3 of this Chapter.

#### 3.1.0.7 Commanders and managers

1. Commanders and managers have additional responsibilities to the supervisory responsibilities above. Commanders and managers must promote a workplace environment where Defence personnel:
  - a. feel respected and comfortable to approach managers to discuss behavioural and other concerns;
  - b. are empowered to resolve unacceptable behaviour at the appropriate level; and
  - c. have faith in Command to support them and manage unacceptable behaviour in a timely fashion.
2. Commanders are to ensure unit standing orders include, in language capable of constituting a lawful order/command, all obligations and prohibitions within this Chapter.
3. In response to a complaint of unacceptable behaviour, commanders and managers must manage the complaint by:
  - a. taking reasonable steps to ensure that all involved in the incident of unacceptable behaviour are treated fairly and without victimisation or disadvantage;
  - b. responding to the incident of unacceptable behaviour in accordance with [Part 3](#) of this Chapter;
  - c. reporting and recording the incident of unacceptable behaviour in accordance with [Part 4](#) of this Chapter;
  - d. taking reasonable steps to advise people involved of their options to access support services in accordance with [Annex 3J – Support options](#);
  - e. ensuring that all personal information regarding the incident is handled with appropriate privacy and security considerations; and

**Example:** Information relating to the incident of unacceptable behaviour stored electronically must have appropriate access privileges in place.

**Related Information:** The [Defence Security Principles Framework](#).

- f. taking reasonable steps to advise the parties involved of the progress of the response in accordance with [3.3.0.5.7 Keeping parties informed](#).

**Note:** Commanders, managers and supervisors must not disclose the identity of a person who is entitled to have their identity protected under the [Public Interest Disclosure Act 2013](#).

**Related Information:** [Fraud Control and Investigations Branch](#) website.

**Related Information:** For complaints involving youth under 18, refer to [YOUTHPOLMAN Part 1, Section 3, Chapter 3](#).

**Note:** Commanders, managers, and supervisors have access to sexual misconduct incident management advice via SeMPRO, including policy application and strategies for supporting personnel.

## Part 2: Notification and complaints of unacceptable behaviour

### 3.2.0.1 Purpose

1. This Part provides information on the process for notifications and complaints of incidents of unacceptable behaviour. A commander or manager may become aware of an incident without a complaint being submitted.

**Note:** In this Chapter the term 'incident of unacceptable behaviour' includes both alleged and substantiated incidents of unacceptable behaviour. An incident of unacceptable behaviour is considered an alleged incident until such time as the commander or manager determines the incident has been substantiated.

### 3.2.0.2 Content

1. This Part contains the following information:

[3.2.0.3 Complaints of unacceptable behaviour](#)

[3.2.0.4 Alternative notification processes](#)

[3.2.0.5 Vexatious or malicious complaints](#)

[3.2.0.6 What happens after a notification or complaint of unacceptable behaviour is made](#)

[3.2.0.7 Seeking review of a response to an incident of unacceptable behaviour](#)

### 3.2.0.3 Complaints of unacceptable behaviour

1. Any person may submit a complaint of unacceptable behaviour if they form a reasonable belief that Defence personnel, an external service provider or an outsourced service provider has behaved unacceptably in accordance with [Annex G](#). A complaint may be submitted by a person who believes they have experienced or were the target of unacceptable behaviour, or a person who has witnessed, or who becomes aware of, behaviour that they believe to be unacceptable behaviour.

**Note:** [3.1.0.3. Obligations of Defence personnel](#).

2. A complaint of unacceptable behaviour can be made in writing or verbally. Whether written or verbal, a complaint is neither formal nor informal; it is simply referred to as a complaint. When making a complaint of unacceptable behaviour, a person is to:
  - a. clearly state they have an unacceptable behaviour complaint;
  - b. provide a brief and clear description of the incident(s), including details of what happened, when it happened, where it happened and who was involved in the incident, including witnesses;
  - c. identify any steps taken by the complainant and/or third party to seek resolution, and the outcome of such steps;

**See:** [Chapter 2 Resolution of Conflict](#)
  - d. identify the outcome they seek to achieve; and
  - e. use the appropriate dissemination limiting markers.

**Note:** A person who submits a complaint of unacceptable behaviour may be entitled to protections under the [Public Interest Disclosure Act 2013](#).

**Related Information:** [Defence Public Interest Disclosure Scheme](#) website.

3. In most instances, a complaint of unacceptable behaviour will be made to the person identified in the table below:

If the complaint is about a person who is:	the complaint is to be made to:
in the same chain of command or line management as the person making the complaint	the complainants' commander, manager or supervisor.
in a different chain of command or line management as the person making the complaint	to the commander, manager or supervisor of the person making the complaint.  <b>Note:</b> the commander or manager will then pass the complaint to the respondents' commander to manage in accordance with <a href="#">3.3.0.3.1</a> .
the commander or manager of the person making the complaint	the person who supervises the commander or manager whom the complaint is about.
unknown	either:  a. the commander, manager or supervisor responsible for the area in which the unacceptable behaviour is alleged to have occurred; or  b. the commander, manager or supervisor of the person who is notifying their commander or manager of the alleged unacceptable behaviour.

**Note:** If a complainant is not comfortable notifying the commander or manager stated in the table above, they may notify an alternative commander or manager in the same chain of command.

4. A complaint of unacceptable behaviour to a commander or manager may also be a Public Interest Disclosure under the [Public Interest Disclosure Act 2013](#).

**See:** [3.2.0.4](#) Alternative notification processes.

5. A commander, manager or supervisor who identifies, or is notified of, an incident of unacceptable behaviour must take action even if there is no complaint from another person. This is considered a 'management initiated complaint'.

#### 3.2.0.4 Alternative notification processes

1. Defence personnel who believe on reasonable grounds that an incident of unacceptable behaviour may be 'disclosable conduct' under the [Public Interest Disclosure Act 2013](#) may notify their commander or manager or an Authorised Officer.

**See:** [3.4.0.5 Reporting to a Public Interest Disclosure Authorised Officer](#)

2. A person who believes they have been the subject of sexual misconduct is encouraged to seek advice and support from the Sexual Misconduct Prevention and Response Office (SeMPRO). Sexual misconduct includes a sexual offence.

**Note:** SeMPRO client services are available to current and ex-serving ADF members, APS personnel, Defence contractors, ADF Cadets and their families, and Officers and Instructors of Cadets.

SeMPRO treats a report of sexual misconduct as a restricted (confidential) disclosure.

A disclosure of sexual misconduct to your commander, manager or supervisor may give rise to specific statutory obligations under the [Interim Incident Reporting and Management Policy](#) SeMPRO support, advice and client response services are confidential and available to all personnel without triggering reporting obligations. Accessing SeMPRO services without making a report about an incident to Defence

is referred to as a Restricted Disclosure.

**Related Information:**

[SeMPRO DPN site](#)

[Chapter 9 - Responding to Sexual Misconduct.](#)

**3.2.0.5 Vexatious or malicious complaints**

1. Making a vexatious or malicious complaint of unacceptable behaviour is inconsistent with the values and expected workplace behaviours and may require a response in accordance with this Chapter.
2. A person who makes a vexatious or malicious complaint of unacceptable behaviour, and is a:
  - a. Defence member, may be subject to:
    - i. disciplinary action; or
    - ii. an administrative sanction;
  - b. Defence APS or ASD employee, may be subject to Code of Conduct action;
  - c. external service provider or outsourced service provider, may have their contract reviewed.

**Note:** Care is to be taken before characterising a complaint as vexatious or malicious. Advice should be sought from the [Directorate of Privacy, Complaints and Resolution](#) in this regard before such a decision is made.

**See:** Definitions of 'vexatious' and 'malicious' in [Chapter 1 Annex 1](#), Abbreviations and Definitions.

[Part 3 Responding to an incident of unacceptable behaviour.](#)

**3.2.0.6 What happens after a notification or complaint of unacceptable behaviour is made**

1. When a commander, manager or supervisor becomes aware of an incident of unacceptable behaviour, the commander, manager or supervisor responsible for responding to the incident is to follow the procedures in this Chapter.
2. The response of the commander, manager or supervisor will vary depending if the incident is substantiated, if it was minor or significant, and who was involved.

**See:** [Part 3 Responding to an incident of unacceptable behaviour.](#)
3. If a person notifies their commander, manager or supervisor of an alleged incident of unacceptable behaviour they must note that the commander, manager or supervisor has an obligation to respond in accordance with this Chapter. This obligation remains when the person advises that they do not want to submit a complaint, or they seek to withdraw their complaint.

**3.2.0.7 Seeking review of a response to an incident of unacceptable behaviour**

1. If a person is not satisfied with the response to an incident of unacceptable behaviour the person, in the first instance, is to request the commander, manager or supervisor who responded to the incident to reconsider the response.
2. A request for reconsideration is to be made in writing and include:
  - a. the reason why the request is being made; and
  - b. any additional information.
3. If a person has sought review in accordance with [3.2.0.7](#) and is not satisfied with the response, they may request further review. The options available are dependent on the

relationship the person requesting the review has with Defence:

- a. A Defence member may submit a Redress of Grievance;

**See:** [Chapter 6 Redress of Grievance.](#)

- b. A Defence APS employee, who is not a member of the SES, may request a Review of Actions;

**See:** [Chapter 5 Review of Actions.](#)

- c. Complaints to IGADF can be made by a Defence member, or by others where the conduct involved a Defence member, and there is a failure of military justice in the management of that matter;

**See:** [Chapter 8 Inspectors General](#)

- d. A Defence APS employee who is a member of the SES may request a review of a decision in accordance with their contract of employment;
- e. An external service provider or outsourced service provider may raise the issue with their employer;
- f. An ASD employee may utilise the internal formal review process.

## Part 3: Responding to an incident of unacceptable behaviour

### 3.3.0.1 Purpose

1. This Part provides information for commanders, managers and supervisors on the processes for responding to an incident of unacceptable behaviour.
2. The purpose of responding to an incident of unacceptable behaviour is to ensure, to the greatest extent possible, that Defence personnel work in a cohesive, healthy, safe and effective environment, and to address behaviour that is inconsistent with the expected workplace behaviours. It will also ensure that Defence responds to alleged incidents of unacceptable behaviour in an appropriate, transparent and timely manner, ensuring confidence in the system and its processes.

**Note:** In this Chapter, the term 'incident of unacceptable behaviour' includes both alleged and substantiated incidents of unacceptable behaviour. An incident of unacceptable behaviour is considered an alleged incident until such time as the commander or manager determines the incident has been substantiated.

### 3.3.0.2 Content

1. This Part contains the following information:

[3.3.0.3 Who is responsible for responding to and reporting an incident or complaint of unacceptable behaviour?](#)

[3.3.0.4 Incidents that are not to be responded to under this Part](#)

[3.3.0.5 Response process - general](#)

[3.3.0.6 Responding to an incident of unacceptable behaviour](#)

[3.3.0.7 Outcomes to incidents of unacceptable behaviour](#)

### 3.3.0.3 Who is responsible for responding to and reporting an incident or complaint of unacceptable behaviour

1. The person who must respond to an incident of unacceptable behaviour is determined by who the respondent is and the location at which the alleged unacceptable behaviour occurred. This is detailed in the table immediately below:

If the <b>respondent</b> is:	the person to <b>respond</b> to the incident is:
a Defence member or Defence APS or ASD employee from the same unit or lines of management where the alleged incident occurred	the respondent's commander, manager or supervisor  <b>Exception:</b> If Defence personnel are temporarily transferred to another workplace, the commander, manager or supervisor of the workplace where the unacceptable behaviour is alleged to have occurred is to respond to the incident.

<p>a Defence member or Defence APS or ASD employee from different units or lines of management from where the alleged incident occurred</p>	<p>The respondent's commander, manager or supervisor.</p> <p>In accordance with <a href="#">Part 2</a>, the complainant will usually make a complaint to their own commander, manager or supervisor. In this instance, the complaint is to be passed to the respondent's commander or manager for action.</p> <p><b>Note:</b> the commander or manager responsible for responding must take reasonable steps to ensure that the commander or manager of those persons not under their chain of command or line management are advised of the incident of unacceptable behaviour.</p>
<p>an external service provider or outsourced service provider</p>	<p>the external service provider's or outsourced service provider's employer, through the Defence contract manager.</p>
<p>unknown</p>	<p>either:</p> <p>a. the commander or manager responsible for the area at which the unacceptable behaviour is alleged to have occurred; or</p> <p>b. the commander or manager of the person who originally notified their commander, manager or supervisor of the alleged unacceptable behaviour.</p>
<p>Youth aged under 18 in Defence or Defence supported youth programs</p>	<p>Refer to <a href="#">YOUTHPOLMAN Section 3 Chapters 3 and 4</a>.</p>
<p>an ADF Chaplain</p>	<p>The respondent's commander, manager or supervisor.</p> <p><b>Note:</b> For significant issues of misconduct and serious unacceptable behaviour, the Chaplain or Maritime Spiritual Wellbeing Officer's Chain of Command is to inform the appropriate member of the Chaplaincy technical chain immediately following a substantiated fact find.</p> <p>Refer to <a href="#">Australian Defence Force Chaplaincy Policy (CHAPPOL)</a></p>

2. In some cases, it may be more appropriate for the incident of unacceptable behaviour to be managed by the next person higher in the chain of command or reporting line.
 

**Example:** If the person responding to the incident of unacceptable behaviour has a conflict of interest due to having a close personal relationship with a party involved in the incident.
3. If a person is unsure about who is responsible for responding to an incident of unacceptable behaviour, advice can be sought from the [Directorate of Privacy, Complaints and Resolution](#).



4. Despite the above, commanders, managers or supervisors remain responsible for ensuring that Defence personnel in their chain of command or line management are aware of support options available to them.

**See:** [Annex 3J Support options](#)

5. Legal officers, Medical officers, Psychologists, social workers, SeMPRO client response personnel, Workplace Behaviour Advisers/Network Coordinators, Dispute Resolution Managers and members of the Clergy (padres) are sometimes made aware of unacceptable behaviour incidents. Each of these have professional confidentiality obligations that may apply depending upon the circumstances of the incident. The most appropriate person to whom a **complaint is made** is detailed in [3.2.0.3](#). The most appropriate person to **respond to** (or manage) an incident of unacceptable behaviour is in the table at [3.3.0.3.1](#).

**Transfer of responsibility**

6. The person responsible for responding to an incident may change prior to action being finalised.

**Example:**

<b>If the commander or manager responsible for responding to the incident:</b>	<b>responsibility is transferred to:</b>
changes position	the person who fills the vacated position provided they are not the respondent and do not have a conflict of interest.
changes position and the position ceases to exist	the person in the next position higher in the chain of command or line management of that position, had it continued to exist.
determines the incident would be more appropriately managed in another area and the commander or manager of that area agrees	the commander or manager of that other area.
determines the incident requires complex case management and there is an area within the Service or Group responsible for complex case management	the area within the Service or Group responsible for complex case management. <b>Example:</b> Personnel Operations – Army.
determines the incident requires complex case management and there is no area within the Service or Group responsible for complex case management	the person in the next position higher in the chain of command or line management.

7. A transfer of responsibility must be reported to the [Directorate of Privacy, Complaints and Resolution](#) via ComTrack, [PMKeyS Self Service](#).

**See:** [3.4.0.7 ComTrack reporting of incidents](#).

8. All parties involved in the incident must be advised of the transfer in writing by the originating commander or manager.

**3.3.0.4 Incidents that are not to be responded to under this Part**

1. An incident of unacceptable behaviour that is covered by another Defence manual or other process must be managed in accordance with that manual or process, such as:
  - a. Some incidents may need to be handled in accordance with multiple policy and statutory requirements.

**Example:** If a Defence member were to misuse alcohol and as a consequence behave unacceptably, this would be managed in accordance with [MILPERSMAN Part 4 Chapter 1 – Alcohol Management in the Australian Defence Force](#),

and this Chapter.

**Related Information:** A comprehensive, although not exhaustive, list of other Defence Instructions can be found on the [Directorate of Privacy, Complaints and Resolution website](#).

- b. a disclosure under the [Public Interest Disclosure Act 2013](#), unless directed by the Public Interest Disclosure authorised officer; and

**See:** [3.4.0.5 Reporting to a Public Interest Disclosure Authorised Officer](#)

- c. if the commander, manager or supervisor forms a reasonable suspicion or is provide with information that the incident involves a notifiable incident it must be reported to a Defence Investigative Authority in accordance with [Interim Incident Reporting and Management Policy](#). Examples may include violent behaviour and sexual offences.

**Note:** This does not prevent administrative action or appropriate management action occurring concurrently with disciplinary action. However, care is to be taken and advice sought to avoid compromising any concurrent criminal or disciplinary investigations.

Depending on the severity and nature of the alleged incident of unacceptable behaviour, a Defence Investigative Authority may refer an incident back to the commander or manager for administrative action in accordance with:

- i: for incidents of Sexual Misconduct – CARM Chapter 9 – Responding to Sexual Misconduct, and
- ii other forms of unacceptable behaviour are managed in accordance with this Chapter.

All sexual offences are Notifiable Incidents. Military Police follow a person-centric approach to sexual offence investigations. This compliments the 'restricted disclosure' approach for sexual offences adopted by SeMPRO, and is similarly focused on supporting the impacted person, minimising harm, and mitigating additional secondary trauma during the investigation process.

- d. suspected cases of sexual misconduct must be managed in the first instance in accordance with Chapter 9 – Responding to Sexual Misconduct.

**Note:** The wellbeing and the wishes of personnel subjected to any form of sexual misconduct must remain paramount in all processes including management initiated complaints. A Defence Investigative Authority, commanders and managers must comply with the complainant's wishes regarding any future action and must cease workplace level investigation or administrative action if the complainant does not wish the matter to be taken further.

In circumstances where the complainant does not wish a formal process to commence/continue, the options available to commanders and managers for addressing the unacceptable behaviour could include:

- i speaking with the respondent about the expected behaviours that are in line with Defence values, or
- ii directing the respondent to complete training on Defence's expected behaviours.

If an incident is subsequently determined not to involve sexual misconduct it may still constitute unacceptable behaviour and may therefore be dealt with under this chapter.

**Example:** Mary and Tim are work colleagues. Tim made some jokes and comments in the workplace that Mary felt were insulting and directed at her. Mary submitted a complaint alleging sexual harassment by Tim. The manager sought advice from a DIA who advised that the complaint should be managed as alleged harassment and be dealt with by the manager in accordance with CARM Chapter 3 – Responding to Unacceptable Behaviour.

**Related Information:**

[Interim Incident Reporting and Management Policy.](#)

[Military Personnel Policy Manual \(MILPERSMAN\) Part 9 Chapter 2—Formal Warnings and Censures in the Australian Defence Force.](#)

- c. Youth incidents are to be managed under YOUTHPOLMAN.

**3.3.0.5 Response process - general**

1. Commanders, managers and supervisors must, as soon as practicable, within 24 hours of the commencement of duty act on all incidents of unacceptable behaviour that they have become aware of and that are not excluded by [3.3.0.4](#).
2. When responding to an incident of unacceptable behaviour commanders, managers and supervisor are to act in a prompt, fair and in an impartial manner.
3. Commanders, managers and supervisors remain responsible for ensuring that Defence personnel in their chain of command or line management are aware of support options available to them. This may include complainants, respondents, witnesses and any other relevant persons.

**See:** [Annex 3J Support options.](#)

4. If an incident of unacceptable behaviour is likely to attract media comment or cause adverse publicity to Defence it must be reported in accordance with current Defence requirements.

**Related Information:**

[Interim Incident Reporting and Management Policy\)](#)

[Media and Communication Policy and Resources webpage](#)

**Timeliness**

5. In most circumstances, a response to an incident of unacceptable behaviour is to be finalised as soon as possible ideally within two to three weeks of the commander, manager or supervisor becoming aware of the incident. Incidents of unacceptable behaviour that are complex or involve formal inquiries or multiple parties may take longer to resolve. Best practice suggests that complex incidents of unacceptable behaviour are to be finalised within three months.

**Note:** If the incident is responded to under an alternate manual or process, the timeframes for that manual or process should be followed.

6. If finalising a response to an incident of unacceptable behaviour is likely to take more than three months, the commander, manager or supervisor must report through ComTrack via [PMKeyS Self Service](#):
  - a. how long it is likely to take to finalise the response; and
  - b. the reason for not being able to finalise the incident of unacceptable behaviour earlier.

**Note:** There are separate reporting timelines for incidents involving youth; refer to [YOUTHPOLMAN Part 1 Section 3 Chapters 3 and 4.](#)

**Keeping parties informed**

7. In the course of responding to an incident of unacceptable behaviour, the commander or manager is to inform all parties involved of the existence of the response and keep the parties informed of the progress.

**Note:** The identity of a person who is entitled to have their identity protected under the [Public Interest Disclosure Act 2013](#), must not be disclosed in the course of responding.

**Related Information:** [Fraud Control and Investigations Branch](#) website.

8. The respondent must be provided with as much information that is necessary to afford procedural fairness. This will normally include disclosure of the identity of the complainant. Should the commander or manager consider that this disclosure may impede any other inquiry or investigation, for example through the risk of destruction of evidence, advice must be sought from the relevant Defence Investigative Authority or inquiry authority. The respondent is to be given the opportunity to reply, receive regular progress updates, be given appropriate support, and be advised of the outcome.
9. At the end of the response process, commanders and managers must communicate the final outcome to all affected parties, noting privacy requirements. Parties are also to be advised of the right to seek a review of the outcome if they are not satisfied with the response.

**See:** [Unacceptable Behaviour and ComTrack Privacy Notice](#) (APP5)

[3.2.0.7. Seeking review of a response to an incident of unacceptable behaviour](#)

### **Managing workplace relationships**

10. If an incident of unacceptable behaviour gives rise to issues that negatively affect the working relationships between two or more people, commanders and managers are to take action to restore that relationship, where appropriate. This is in addition to dealing with the unacceptable behaviour.

**Note:** Discretion is to be used based on the type of unacceptable behaviour that has allegedly occurred, for example sexual offences or violent behaviour.

**Example:** Ms Smith and PO Zhang work in the same work area and had an argument which resulted in Ms Smith using offensive language towards PO Zhang. The manager responds to Ms Smith's behaviour as an incident of unacceptable behaviour. The relationship between Ms Smith and PO Zhang remains fractured and they have trouble working together. The manager talks to Ms Smith and PO Zhang together in an attempt to restore the relationship, but the meeting did not go well. The manager then talked to them separately about the relationship breakdown, in a further attempt to restore the relationship. Neither party wanted to work with the other. The manager decided to contact the [Directorate of Privacy, Complaints and Resolution](#) to seek advice on what to do next to restore the relationship. Complaints and Resolution offered a variety of tools and Alternative Dispute Resolution interventions to help restore the relationship.

**See:** [Chapter 2 Resolution of conflict](#)

### **Tools and advice**

11. Commanders, managers or supervisors may seek advice or guidance from:
  - a. the [Directorate of Privacy, Complaints and Resolution](#);
  - b. a Workplace Behaviour Adviser, but not a Workplace Behaviour Adviser who has, or is, providing advice to another party involved in the incident of unacceptable behaviour;
 

**See:** [Chapter 2 Part 3 Division 2 Workplace Behaviour Advisers](#).
  - c. a Workplace Behaviour Network Coordinator;
 

**See:** [Chapter 2 Part 3 Division 3 Workplace Behaviour Network Coordinators](#).
  - d. a Dispute Resolution Manager; or
 

**See:** [Chapter 2 Part 3 Division 4 Dispute Resolution Managers](#).
  - e. [HR Services Teams](#); and
  - f. [SeMPRO](#) (for incidents involving sexual misconduct).

12. Additional tools and references are provided on the [Directorate of Privacy, Complaints and Resolutions](#) and as annexes to this Chapter:

- a. Flowchart for managing unacceptable behaviour;  
**See:** [Annex 3H Flowchart for managing unacceptable behaviour](#)
- b. Checklist for responding to unacceptable behaviour;  
**See:** [Annex 3I Checklist for responding to unacceptable behaviour incidents](#)
- c. Workplace Bullying Risk Assessment Tool; and  
**See:** [Complaints and Resolution unacceptable behaviour DPN page](#)
- d. Guidance for Complainants, respondents and commanders/managers.  
**See:** [Complaints and Resolution unacceptable behaviour DPN page](#)

### 3.3.0.6 Responding to an incident of unacceptable behaviour

1. When a commander, manager or supervisor becomes aware of an incident of unacceptable behaviour, they are to:
  - a. Consider if the incident of unacceptable behaviour meets the definition of 'disclosable conduct' under the [Public Interest Disclosure Act 2013](#). If the commander, manager or supervisor believes on reasonable grounds that the incident meets this definition they must as soon as reasonably practicable report the incident to a Public Interest Disclosure Authorised Officer;  
**See:** [3.4.0.5. Reporting to a Public Interest Disclosure Authorised Officer](#)
  - b. Conduct an initial assessment by considering the information available and the nature of the incident in order to determine:
    - i. nature of the behaviour;
    - ii. if the behaviour occurred, whether the behaviour is unacceptable; and  
**See:** [Annex 3G Types of unacceptable behaviour](#)
    - iii. if the behaviour occurred and is unacceptable, whether the incident is minor or significant.  
**See:** [3.3.0.6.8 - 3.3.0.6.11.](#)
  - c. Assess if the incident of unacceptable behaviour must be responded to in accordance with this Chapter or in accordance with an alternative process.  
**See:** [3.3.0.4 Incidents that are not to be responded to under this Part](#)
  - d. Complete a Defence Incident Record in the [Defence Policing and Security Management System](#) or by completing [webform AE530 – Defence Incident Record](#) in relation to the incident in accordance with the [Interim Incident Reporting and Management Policy](#);
  - e. Complete a ComTrack Initial Incident Report via [PMKeyS Self Service](#);
  - f. Army should continue to report through the Army Incident Management System (AIMS) as well as ComTrack as the Defence mandated system for reporting unacceptable behaviour;
  - g. Complete a [Sentinel Event Report – Non-DPN \(DPN\) Users](#) (AE527), if appropriate; and  
**See:** [3.4.0.9. Work Health and Safety Branch reporting and Comcare notification](#)

**See:** [Annex 3H Flowchart for managing unacceptable behaviour](#).

- h. If the incident of unacceptable behaviour involves a youth under 18, refer to [YOUTHPOLMAN Part 1 Section 3 Chapters 3 and 4](#).

#### **Insufficient information available to make a decision**

- 2. Sufficient information is that which allows a commander, manager or supervisor to decide if the incident meets the conditions at [3.3.0.6.1.b](#).
- 3. A commander, manager or supervisor may believe there is insufficient information on which to make a decision about the incident of unacceptable behaviour. Processes that are available to assist a commander, manager or supervisor to obtain additional information include (not necessarily in this order):
  - a. undertake a fact finding exercise;

#### **Related Information:**

Fact Finding in Incident Management [CAMPUS](#) course (Campus course code 00009631).

#### [Good Administrative Decision-Making Manual \(GADMMAN\)](#)

DPG provides a [Fact Finding panel](#) to assist commanders, managers or supervisors with this process. The Panel should only be accessed when a sufficiently independent person is not available locally **and** an independent impartial person is required to undertake the activity due to the potential seriousness of the allegation/s, issues with seniority or the activity is of a complex nature.

When the incident is a sexual offence, contact a Defence Investigative Authority before conducting fact finding.

- b. initiating an Inquiry Officer's Inquiry (an option if the behaviour complained of is by a Defence member); and

**Related Information:** [Administrative Inquiries Manual](#).

**Note:** The level of formality required for obtaining information will depend on the nature and complexity of each incident.

In more complex or serious incidents of unacceptable behaviour, it may be appropriate for an incident of unacceptable behaviour to be referred to a higher headquarters.

- c. Pass the matter to the [Directorate of Conduct and Performance](#) for a review under the APS Code of Conduct, where appropriate.

**Note:** The commander, manager or supervisor must take all reasonable action prior to passing to the [Directorate of Conduct and Performance](#).

- 4. If an incident of unacceptable behaviour has been referred to a Defence Investigative Authority (DIA) and the DIA refers the incident back to the commander, manager or supervisor for action, the commander, manager or supervisor is to make a decision on the incident of unacceptable behaviour in accordance with this Part.

#### **Sufficient information available to make a decision**

- 5. If a commander, manager or supervisor believes that there is sufficient information to make a decision, they must take action. The action will be guided by whether the evidence was sufficient to conclude that:
  - a. unacceptable behaviour did not occur or could not be substantiated; or
  - b. unacceptable behaviour occurred.

**Unacceptable behaviour did not occur**

6. If the commander, manager or supervisor determines:
  - a. the behaviour did not occur; or
  - b. the behaviour occurred but was not unacceptable behaviour; or
  - c. that despite reasonable efforts, nothing can be gained from further inquiry into the incident, the manager must:
    - i. advise the parties involved in the incident of the decision; and
    - ii. if appropriate, refer the incident of unacceptable behaviour for action under an alternative process.

**Example:** A dispute between Defence APS employees over the availability and use of a shared resource (such as a Directorate laptop) may be better handled under an Alternative Dispute Resolution process.

**Unacceptable behaviour occurred**

7. Action must be taken to address the behaviour of persons involved in unacceptable behaviour that has been substantiated. If a commander, manager or supervisor has determined that all the following elements have been met:
  - a. the alleged behaviour occurred; and
  - b. the behaviour is unacceptable behaviour.

**See:** [Annex 3G – Types of unacceptable behaviour](#)

the commander, manager or supervisor must determine what action is to be taken to address the unacceptable behaviour. If unacceptable behaviour is determined to have occurred, possible outcomes could be guided by:

- a. the nature and seriousness of the behaviour;
- b. the service or employment **relationship** between Defence and the person alleged to have behaved unacceptably;
- c. the service or employment **history** of the person alleged to have behaved unacceptably.

**Action to address minor incidents of unacceptable behaviour**

8. Minor incidents of unacceptable behaviour may include the following:
  - a. using offensive language in a workplace;
  - b. having offensive material in a workplace;
  - c. treating co-workers with disrespect; and
  - d. Interpersonal conflict that is escalating to unacceptable behaviour.
9. Commanders, managers and supervisors are able to take reasonable action to address minor incidents of unacceptable behaviour. Reasonable action may include asking the person to stop the behaviour, explaining why the behaviour is unacceptable, and setting expectations for future behaviour. The commander, manager or supervisor is to also consider options to manage the interpersonal relationships.

**See:** [Chapter 2 Resolution of conflict](#)

**Note:** A series of minor incidents of unacceptable behaviour may require a more formal response in accordance with [3.3.0.6.10](#).

### Action to address significant incidents of unacceptable behaviour

10. Significant incidents of unacceptable behaviour may include the following:
  - a. ongoing bullying or harassment;
  - b. any form of sexual misconduct;
  - c. an abuse of power;
  - d. criminal activity or service offences; and/or

**Note:** Criminal activity/offences must be reported to a Defence Investigative Authority.

  - e. misconduct that requires [APS Code of Conduct](#) or [ASD Code of Conduct](#) action to be taken.
11. Commanders, managers and supervisor are able to take reasonable action to address significant incidents of unacceptable behaviour. The action will depend upon the person's relationship to Defence.

**See:** [3.3.0.7 Outcomes to incidents of unacceptable behaviour](#)

### 3.3.0.7 Outcomes to incidents of unacceptable behaviour

#### Outcomes for Defence members

1. If a Defence member is assessed to have behaved unacceptably, the Defence member may be subject to:
  - a. management action to stop and correct the behaviour.

**Example:**

  - i. If the Defence member is using offensive language in the workplace the commander, manager or supervisor is to correct the behaviour, explain to the person why such behaviour is unacceptable, and order the expected behaviours;
  - ii. If a Defence member is thought to be excluding other people from important meetings the commander, manager or supervisor will correct the behaviour, explain why the behaviour is unacceptable behaviour, and order the expected behaviours.
  - b. initiating and imposing an administrative sanction which may include:
    - i. counselling;
    - ii. formal warnings;
    - iii. censure;
    - iv. reduction in rank; or
    - v. termination.

**Related Information:** [Military Personnel Policy Manual \(MILPERSMAN\) Part 9 Chapter 2—Formal Warnings and Censures in the Australian Defence Force.](#)

**Note:** If the commander, manager or supervisor proposes to make an adverse decision about a Defence member, the commander, manager or supervisor must ensure that the Defence member is afforded procedural fairness in relation to that adverse decision.

A Defence Incident Record ([webform AE530](#)) cannot be used as a basis for the imposition of an administrative sanction.



A Defence APS employee who is the manager of a Defence member cannot impose an administrative sanction. The manager may be required to refer the incident of unacceptable behaviour to the Defence member's administrative Commanding Officer or higher headquarters.

- c. taking disciplinary action under the [Defence Force Discipline Act 1982](#)
2. Nothing in this Chapter prevents any other administrative action being taken to ensure the safety and wellbeing of Defence personnel or external service providers.

**Example:** Removal from an appointment, posting or locality.

**Note:** When the actions outlined above are finalised reporting requirements may continue under [Part 4](#) and the requirement to support members involved remains.

### Outcomes for Defence APS and ASD employees

3. If a Defence APS or ASD employee is assessed to have behaved unacceptably, the Defence APS or ASD employee may be subject to the following, depending on the circumstances:
  - a. reasonable management action;
 

**Example:** If a Defence APS or ASD employee is using offensive language in the workplace, the manager is to correct the behaviour, explain to the person why such behaviour is unacceptable and order the expected behaviours.
  - b. Refer the incident to the [Directorate of Conduct and Performance](#) for Code of Conduct action if the incident:
    - i. involves a potential breach of the APS or ASD Code of Conduct; and
    - ii. would warrant a sanction, which may include: termination of employment; reduction in classification; re-assignment of duties; reduction in salary; deductions from salary, by way of fine; Performance progression payments may be denied, due to the criteria of G6.3(b) of the proposed DEA not being met; or a reprimand.
 

**Note:** Behaving contrary to the expected workplace behaviours may affect performance assessments and progression.
4. If the manager determines that a Defence APS or ASD employee involved in unacceptable behaviour is to be referred for investigation for a suspected breach of the respective Code of Conduct, the manager must:
  - a. refer the unacceptable behaviour, including all the relevant information related to the behaviour of the Defence APS or ASD employee, to the [Directorate of Conduct and Performance](#) for consideration; and

### Related Information: [Dealing with Misconduct \(PeopleConnect\)](#)

- b. advise the Defence APS or ASD employee of the referral to the [Directorate of Conduct and Performance](#); and
- c. inform the Defence APS or ASD employee of their rights and responsibilities in relation to the referral to the [Directorate of Conduct and Performance](#).

**Note:** While actions for responding to the incident of unacceptable behaviour may have been finalised, reporting requirements may continue under [Part 4](#) and the requirement to support members involved also remains.

If an incident of unacceptable behaviour gives rise to issues that negatively affect the working relationships between two or more people, managers may take action in an attempt to restore that relationship. This may occur at the same time as above actions.

**See:** [Chapter 2 Resolution of conflict](#)

The [Directorate of Conduct and Performance](#) may refer the incident of unacceptable behaviour back to the area for management action. If this is the case the manager is to take action under this Chapter.

**Related Information:** The [APS People Policy](#) and [ASD People Policy](#).

A manager **cannot** determine that there has been a breach of the Code of Conduct or impose a sanction under the Code of Conduct.

#### **Outcomes for foreign military members**

5. Foreign military members may serve with the ADF on attachment, exchange or as part of some other relationship between Australia and their own government. The manner in which matters of discipline and administration are dealt with will change significantly depending upon which form of agreement is in place. This will require reference to the relevant authorising instrument relating to the foreign military member. Legal advice is strongly recommended in such situations.

#### **Outcomes for foreign public servant**

6. Foreign public servants may work in the Department of Defence on exchange or as part of some other relationship between Australia and their own government. The manner in which matters of discipline and administration are dealt with will change significantly depending upon which form of agreement is in place. This will require reference to the relevant authorising instrument relating to the foreign public servant. Legal advice is strongly recommended in such situations.

#### **Outcomes for external service providers and outsourced service providers**

7. If it has been determined that an external service provider or outsourced service provider has behaved unacceptably, Defence (through the relevant contract manager) may take action in accordance with the contract between Defence and the employer of the external service provider or outsourced service provider.
8. The contract manager may take action in accordance with the provisions of the relevant contract, or by subsequent agreement with the employer to respond to an incident of unacceptable behaviour.

**Example:** The contract manager may negotiate the outcome in relation to the external service provider's further involvement with Defence under the relevant contract arrangements.

9. This clause does not limit the options that are available to an employer of the external service provider or outsourced service provider.

**Note:** Employers have a responsibility to respond to the behaviour of their employees.

## Part 4: Reporting and recording of incidents of unacceptable behaviour

### 3.4.0.1 Purpose

1. This Part provides information on the reporting and recording processes for incidents of unacceptable behaviour.

**Note:** In this Chapter, the term 'incident of unacceptable behaviour' includes alleged and substantiated incidents of unacceptable behaviour. An incident of unacceptable behaviour is considered an alleged incident until such time as the commander, manager or supervisor determines the incident has been substantiated.

### 3.4.0.2 Content

1. This Part contains the following information:

- [3.4.0.3 Who is responsible for reporting incidents of unacceptable behaviour](#)
- [3.4.0.4 Reporting and recording of unacceptable behaviour - general](#)
- [3.4.0.5 Reporting to a Public Interest Disclosure Authorised Officer](#)
- [3.4.0.6 Defence Incident Record](#)
- [3.4.0.7 ComTrack reporting of incidents](#)
- [3.4.0.8 Career/Personnel Management Agency reporting](#)
- [3.4.0.9 Work Health and Safety Branch reporting and Comcare notification](#)
- [3.4.0.10 Reporting as a notifiable incident](#)
- [3.4.0.11 Reporting concerns about an individual's suitability for access to security classified resources](#)

### 3.4.0.3 Who is responsible for reporting incidents of unacceptable behaviour

1. If it is alleged that:
  - a. Defence personnel;
  - b. External service providers and outsourced service providers who, under the conditions of their contract with Defence, are required to comply with this Chapter; or
  - c. Foreign military members serving with the ADF, subject to their nature of servicehave participated in unacceptable behaviour, the commander, manager or supervisor is responsible for responding to an incident of unacceptable behaviour must report the incident of unacceptable behaviour in accordance with this Part.

**See:** [3.3.0.3 Who is responsible for responding to and reporting an incident or complaint of unacceptable behaviour](#)

2. If the respondent to the incident of unacceptable behaviour is an external service provider, the contract manager together with the respondent's employer must report the incident in accordance with this Part.

### 3.4.0.4 Reporting and recording of unacceptable behaviour - general

1. When responding to an incident of unacceptable behaviour commanders, managers and supervisors are to:
  - a. create and keep records of the incident of unacceptable behaviour, any actions taken, and decisions made in response to the incident;
  - b. ensure that all information collected in the course of responding, reporting and recording of unacceptable behaviour incidents is treated as **Sensitive: Personal** at a minimum; and

**Related Information:** The [Defence Security Principles Framework](#).

- c. put in place reasonable safeguards to protect the information against loss, unauthorised access or use, modification, disclosure and other misuse.

**Note:** This may include assigning access privileges to documents on Objective, storage in locked cabinets, de-identifying information conveyed by email, strictly limiting access and distribution of information to those with a role in the complaint process, and then only that information which is relevant to their role.

2. Personal information collected in accordance with this Chapter is only to be used and disclosed for the purpose of:
  - a. responding to the incident;
  - b. reporting the incident of unacceptable behaviour; and
  - c. taking any consequential action.

**Example:**

- i. Recommending that the parties to an incident take part in an [Alternative Dispute Resolution process](#).

**See:** [Chapter 2 Resolution of conflict](#)

- ii. Referring the matter for a formal disciplinary process.
- iii. Consideration of future management decisions.

3. For specific requirements for reporting incidents involving youth under 18, refer to [YOUTHPOLMAN Part 1 Section 3 Chapters 3 and 4](#).

#### **3.4.0.5 Reporting to a Public Interest Disclosure Authorised Officer**

1. A commander, manager or supervisor who receives a complaint of unacceptable behaviour that they believe are reasonable grounds to meet the definition of 'disclosable conduct', as defined in the [Public Interest Disclosure Act 2013](#), must report the incident to a Public Interest Disclosure authorised officer as soon as reasonably practicable.
2. Disclosable conduct under the [Public Interest Disclosure Act 2013](#) includes behaviour that:
  - a. contravenes a law;
  - b. is corrupt;
  - c. perverts the course of justice;
  - d. results in wastage of public funds;
  - e. is an abuse of public trust;
  - f. unreasonably endangers health and safety or endangers the environment;
  - g. is misconduct relating to scientific research, analysis or advice; and
  - h. is maladministration, including conduct that is unjust, oppressive or negligent.
3. The commander, manager or supervisor **must** discuss further actions with the authorised officer to appropriately manage and respond to the incident of unacceptable behaviour. The Public Interest Disclosure authorised officer will assess and advise:
  - a. if the incident of unacceptable behaviour meets the threshold to be considered a disclosure under the [Public Interest Disclosure Act 2013](#), and
  - b. how the incident of unacceptable behaviour is to be managed. This may include referring the incident back to the commander, manager or supervisor for fact finding or investigation in accordance with extant Defence processes.

**Related Information:**

The Public Interest Disclosure authorised officer will provide advice on appropriate measures to provide protection to the discloser. Information about the protections owed to a person who makes a disclosure under the [Public Interest Disclosure Act 2013](#) can be found on the [Fraud Control and Investigations Branch](#) website.

The reporting requirements in this Part are to be undertaken having regard to the requirements to protect the identity of the person submitting the notification under the [Public Interest Disclosure Act 2013](#).

The Public Interest Disclosure authorised officer will complete a Defence Incident Record on receipt of the disclosure. The commander, manager or supervisor must still report the incident in ComTrack via [PMKeyS Self Service](#).

Commanders and managers must continue to take action to minimise or prevent a threat to safety or security from being realised if the alleged behaviour continues.

4. Until a Public Interest Disclosure authorised officer determines that an incident of unacceptable behaviour is not a disclosure under the [Public Interest Disclosure Act 2013](#), the commander, manager or supervisor must not disclose the identity of the person submitting the notification of the incident of unacceptable behaviour to another person other than the Public Interest Disclosure authorised officer, unless:
  - a. advised by a Public Interest Disclosure authorised officer that the identity of the person submitting the notification may be disclosed;
  - b. the person submitting the notification consents to their identity being disclosed; or
  - c. there is a requirement to disclose the identity of the person submitting the notification for the purposes of a law of the Commonwealth. A law of the Commonwealth includes, but is not limited to the:
    - i. [Defence Act 1903](#);
    - ii. [Defence Force Discipline Act 1982](#);
    - iii. [Public Service Act 1999](#); and
    - iv. [Work Health and Safety Act 2011](#).

**Related information:**

In addition to this Chapter, for information on how to report an incident of unacceptable behaviour, including a list of Public Interest Disclosure authorised officers, see the [Fraud Control and Investigations Branch](#) website.

[Interim Incident Reporting and Management Policy](#)

Disclosures under the [Public Interest Disclosure Act 2013](#) are administered by the Assistant Secretary Fraud Control. To report or receive advice, telephone the hotline on 1800 673 502 or send email to: [Defence.PID@defence.gov.au](mailto:Defence.PID@defence.gov.au).

### 3.4.0.6 Defence Incident Record

1. A Defence Incident Record must be completed for every incident of unacceptable behaviour unless the incident involves security incidents, disclosable conduct under the PID Act, or a notifiable incident; these exceptions are detailed in Chapter 2 of the [Interim Incident Reporting and Management Policy](#). A Defence Incident Record is submitted via the [Defence Policing and Security Management System](#) or by completing [webform AE530 – Defence Incident Record](#). The Defence Incident Record must be completed within 24 hours of commencement of duty even if not all the information is known at the time.

**See:** [Interim Incident Reporting and Management Policy](#)

**Note:** This recording requirement is in addition to the requirement to report incidents of unacceptable behaviour via ComTrack. A Defence Incident Record does not replace ComTrack notification.

### 3.4.0.7 ComTrack reporting of incidents

1. **All incidents** of unacceptable behaviour are to be recorded in the ComTrack unacceptable behaviour database, via [PMKeyS Self Service](#), for statistical purposes and the identification and monitoring of repeat behaviours.

**Note:** Sexual offences are not reportable in ComTrack (see Chapter 9).

#### Initial Reporting

2. An initial report must be submitted:
  - a. after an assessment of the incident has been completed; and
  - b. no later than **seven days** after receiving notification of the incident.

**Note:** A single incident involving a number of aggrieved parties or a single incident with a number of respondents is to be recorded on one report. If an incident involves a series of incidents that form a pattern of behaviour, report all incidents reflecting the behaviour exhibited.

**Example:** Person Y has accused person X of bullying citing a number of incidents that have occurred over a period of time, this is to be noted in one initial report.

3. An initial ComTrack report for an incident of unacceptable behaviour will include the names of all parties to the incident and a brief description of the incident. Advice must be obtained from a Public Interest Disclosure authorised officer to determine whether the identity of a disclosure is to be included in the report.

**See:** [3.4.0.5 Reporting to a Public Interest Disclosure Authorised Officer](#)

#### Progress reports

4. A progress report must be submitted at the following times:
  - a. when there is a significant development in management of the incident, such as;
    - i. the initiation or completion of an inquiry, or
    - ii. new information is provided, or
    - iii. the matter has been referred for disciplinary action (Defence member's only) or to the [Directorate of Conduct and Performance](#) (Defence APS and ASD employees only).

**Note:** This may finalise action required to respond to the incident of unacceptable behaviour under [Part 3](#), however reporting requirements continue under this Part.

- b. there has been a change in the personnel responsible for responding to the incident; or

**See:** [3.3.0.3 Who is responsible for responding to and reporting an incident or complaint of unacceptable behaviour](#)

- c. three months from the initial report being submitted, if no other progress report has been submitted;

#### **Final outcome report**

- 5. A final outcome report must be submitted when an incident has been finalised. The incident is considered finalised when:

- a. it has been determined that no unacceptable behaviour has occurred; or
- b. it has been decided further inquiry into the incident is unlikely to enable a definitive finding on the incident of unacceptable behaviour; or
- c. it has been decided there was unacceptable behaviour and appropriate management action has been taken; or
- d. the decisions in relation to the disciplinary action (Defence members) or to a breach of the APS or ASD Code of Conduct (Defence APS and ASD employees) have been finalised.

**Exception:** If the matter has been referred back to the commander or manager for management action.

- 6. Final outcome reports must be submitted within 7 days of the action relating to the incident being finalised.

- 7. Final outcome reports are to advise of the outcome and all actions taken.

- 8. If a Defence member is found to have participated in unacceptable behaviour and formal action has been taken, the final outcome report must identify if:

- a. the Defence member was convicted under the [Defence Force Discipline Act 1982](#); or
- b. an administrative sanction was imposed in accordance with Part 9 Chapter 2 of [Military Personnel Policy Manual \(MILPERSMAN\)](#) against the Defence member.

- 9. If a Defence APS or ASD employee is found to have participated in unacceptable behaviour, the final outcome report must advise whether a breach of the Code of Conduct was determined against the Defence APS or ASD employee.

- 10. The personal information collected in ComTrack will be used for the following purposes:

- a. Making ADF career management decisions, including the decision to post a Defence member to a sensitive position; or
- b. To determine whether a person who is applying for a position in Defence has previously been the subject of an unacceptable behaviour complaint in another capacity;

**Example:** A former Defence member applying for a position as a Defence APS employee.

- c. Identifying persons who:

- i. misuse the unacceptable behaviour system;

**Example:** A Defence APS employee submitting a complaint purely because they do not like their supervisor.

- ii. have been named in a number of incidents of unacceptable behaviour involving similar circumstances, but have had no adverse finding against them; or
- iii. have been named in a number of incidents of unacceptable behaviour involving similar circumstances and have had adverse findings made against them.

11. The purpose of initial and final reporting of incidents of unacceptable behaviour is to assist the CDF and Secretary to meet their obligations under the [Work Health and Safety Act 2011](#).

#### 3.4.0.8 Career/Personnel Management Agency reporting

1. If a Defence member participated in unacceptable behaviour and:

- a. the member was convicted under the [Defence Force Discipline Act 1982](#); or
- b. the member was convicted of a criminal offence; or
- c. an administrative sanction was imposed; then

the commander or manager responsible for responding to the incident of unacceptable behaviour must advise the Career/Personnel Management Agency of the Defence member who has been convicted or sanctioned of:

- a. the identity of the Defence member who has been convicted or sanctioned;
- b. the nature of the incident; and
- c. either the charge and penalty relating to the conviction of the Defence member;

**Related Information:** [Summary Discipline Manual](#).

- d. the administrative sanction imposed on the Defence member; and
- e. any other relevant information.

**Note:** There may be other circumstances where a commander may consider advising the relevant Career/Personnel Management Agency.

#### 3.4.0.9 Work Health and Safety Branch reporting and Comcare notification

1. An incident of unacceptable behaviour may need to be notified to the [Work Health and Safety Branch](#) and to [Comcare](#).
2. The incident of unacceptable behaviour must be notified to [Comcare](#) and be reported to Defence if a commander or manager determines that the incident:
  - a. is work related; and
  - b. resulted in:
    - i. a fatality;
    - ii. serious injuries or illnesses; or
    - iii. a dangerous incident.



3. The incident of unacceptable behaviour is reportable to Defence only, via [Sentinel](#), only if the commander or manager determines the incident is a minor injury. A minor injury is one which did not result in action under [3.4.0.9.2](#). Minor injuries may include cases relating to bullying and harassment.
4. [Work Health and Safety Branch](#) reporting and [Comcare](#) notification is to be made using:
  - a. [Sentinel](#); or
  - b. [Form AE527](#) – Sentinel Event Report - Non-DPN (DPN) Users if there is no access to [Sentinel](#).

**Related Information:**

For assistance, contact the Sentinel Business Support (SBS) team on 1800 333 362 or email [whs.sentinel@defence.gov.au](mailto:whs.sentinel@defence.gov.au).

Categories of incidents above are defined on the [Work Health and Safety Branch](#) DPN site.

For further guidance on Work Health and Safety incident reporting and notification, refer to the [Defence Safety Manual](#) and the [Work Health and Safety Branch internet site](#).

**Note:**

Bullying or harassment reported on [Sentinel](#) is considered a 'sensitive event' meaning that the record will only be made visible to nominated roles for that record.

Sexual misconduct incidents can be Work, Health and Safety incidents where there is a link to Defence work. See [Chapter 9 – Responding to Sexual Misconduct](#).

**3.4.0.10 Reporting as a notifiable incident**

1. An incident of unacceptable behaviour that is not a disclosure under the [Public Interest Disclosure Act 2013](#), may also contain actions or behaviours that are a notifiable incident.
2. Unwanted sexualised behaviours that are, or may be, criminal offences are notifiable incidents. See: Chapter 9 – *Responding to Sexual Misconduct*.
3. Notifiable incidents must be reported in accordance with the [Interim Incident Reporting and Management Policy](#).

**Note:**

This does not prevent administrative action or appropriate management action occurring concurrently with disciplinary action.

Care is to be taken and advice sought to avoid compromising any concurrent criminal or disciplinary investigations. Liaison with the appropriate Defence Investigative Authority to prevent compromising an investigation is advisable.

If a Defence Investigative Authority refers an incident of unacceptable behaviour back to the commander or manager for administrative action, the commander or manager must take action under this Chapter as appropriate.

**3.4.0.11 Reporting concerns about an individual's suitability for access to security classified resources**

1. An incident of unacceptable behaviour, or an event or concern about unacceptable behaviour relating to an individual's ongoing suitability to access official or security protected resources must be reported in accordance with the [Defence Security Principles Framework](#) - Security Incidents and Investigations.
2. An incident of unacceptable behaviour that constitutes a security incident must be reported to the area Security Officer, who will report the incident to the Security Incident Centre ([Security.incidentcentre@defence.gov.au](mailto:Security.incidentcentre@defence.gov.au)).
3. Supervisors and managers are to report any changes in circumstances relating to their staff if they become aware of these changes and are unsure whether the changes have been

notified by the clearance holder to their agency security section.

4. All employees are to also report to their agency security section significant changes in circumstances in other individuals where they feel it may impact on agency security.
5. The agency's security section must notify the [Australian Government Security Vetting Agency](#) of any reported changes in circumstances about third parties who may hold a security clearance (i.e. all relevant information relating to third party clearance holders that has not been advised by the clearance holder directly to the [\(Australian Government Security Vetting Agency.\)](#))

**Related information:**

The [Defence Security Principles Framework](#) provides direction on reporting for security incidents.

Advice on security incidents can be obtained from the Security Incident Centre ([Security.incidentcentre@defence.gov.au](mailto:Security.incidentcentre@defence.gov.au)).

The [Australian Government Security Vetting Agency](#) for direction on reporting for personnel security assessments.

The [Protective Security Policy Framework](#) internet site provides direction on the reporting of changes of circumstances potentially impacting upon personnel security assessments.

## **Defence Values**

1. The Defence Values are:
  - a. **Service.** The selflessness of character to place the security and interests of our nation and its people ahead of my own.
  - b. **Courage.** The strength of character to say and do the right thing, always, especially in the face of adversity.
  - c. **Respect.** The humanity of character to value others and treat them with dignity.
  - d. **Integrity.** The consistency of character to align my thoughts, words and actions to do what is right.
  - e. **Excellence.** The willingness of character to strive each day to be the best I can be, both professionally and personally.

## **Defence Behaviours**

1. The Defence Behaviours are:
  - a. Act with purpose for Defence and the nation.
  - b. Be adaptable, innovative and agile.
  - c. Collaborate and be team focused.
  - d. Be accountable and trustworthy.
  - e. Reflect, learn and improve.
  - f. Be inclusive and value others.

## **No Longer Used. Navy Values and Signature Behaviours**

1. The Navy Values and Signature behaviours were replaced on 01 October 2020 by the Defence Values and Behaviours.

## **No Longer Used. Army Values**

1. The Army Values were replaced on 01 October 2020 by the Defence Values and Behaviours.

## **No Longer Used. Air Force Values**

1. The Air Force Values were replaced on 01 October 2020 by the Defence Values and Behaviours.

## APS Values

1. The APS Values, found in Part 3, Subsection 10 of the [Public Service Act 1999](#), are:
  - a. **Impartial**—the APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.
  - b. **Committed to Service**—the APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.
  - c. **Accountable**—the APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.
  - d. **Respectful**—the APS respects all people, including their rights and their heritage.
  - e. **Ethical**—the APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.



## ASD Values and ASD Employment Principles

1. The ASD Values and the ASD employment principles are set out in the ASD Directive 003 – ASD Employment Directive. Each value is of equal importance and should be applied to a range of functions undertaken across ASD. The Values articulate the culture, leadership and operating ethos of the ASD and reflect those of the APS.
2. The **ASD Values** are as follows:

**Impartial** - ASD is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

**Committed to Service** - ASD is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

**Accountable** - ASD is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

**Respectful** - ASD respects all people, including their rights and their heritage.

**Ethical** - ASD demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.
3. The acronym I-CARE provides an easy way to remember the ASD Values.
4. **The ASD Employment Principles** complement the ASD Values and primarily deal with employment and workplace relationships. The Employment Principles set out that ASD is a career-based agency that:
  - a. makes fair employment decisions with a fair system of review;
  - b. recognises that the usual basis for engagement is as an ongoing employee;
  - c. makes decisions relating to engagement and promotion that are based on merit;
  - d. requires effective performance from each employee;
  - e. provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued;
  - f. provides workplaces that are free from discrimination, patronage and favouritism; and
  - g. recognises the diversity of the Australian community and fosters diversity in the workplace.
5. ASD employees exercise authority on behalf of the government and the parliament, and act for the public. The public expects high levels and standards of performance, ethics and personal behaviour from ASD employees.
6. The ASD Values and ASD Employment Principles have been designed to communicate these requirements, to encapsulate the expectations of the public and also to support and accommodate the specific business needs of ASD. They set a framework of enduring principles of good public administration.

## Types of unacceptable behaviour

### 3.0.0.G.1 Purpose

1. This annex identifies and explains specific types of unacceptable behaviour that applies to those listed at [3.0.0.5](#).

### 3.0.0.G.2 Content

2. This annex contains the following information:

- [3.0.0.G.3 What is unacceptable behaviour](#)
- [3.0.0.G.4 Specific types of unacceptable behaviour](#)
- [3.0.0.G.5 Harassment](#)
- [3.0.0.G.6 Workplace bullying](#)
- [3.0.0.G.7 Any form of sexual misconduct](#)
- [3.0.0.G.8 Discrimination](#)
- [3.0.0.G.9 Abuse of power](#)
- [3.0.0.G.10 Conflict of interest and inappropriate workplace relationships](#)
- [3.0.0.G.11 Violent behaviour](#)

### 3.0.0.G.3 What is unacceptable behaviour

1. Unacceptable behaviour is unreasonable conduct at work or in any situation that may be connected to Defence that is offensive, belittling, abusive or threatening to another person or adverse to morale, discipline or workplace cohesion. This includes unlawful discrimination and harassment.

#### When can unacceptable behaviour occur

2. Unacceptable behaviour can occur at any time, regardless of whether Defence personnel are on or off duty, where the behaviour may be connected to Defence.

#### Where can unacceptable behaviour occur

3. Unacceptable behaviour can occur at any place, whether in Australia or overseas, where the behaviour may be connected to Defence. This could include public places including bars and hotels, private venues and accommodation.

### 3.0.0.G.4 Specific types of unacceptable behaviour

1. There are seven types of unacceptable behaviour detailed in this annex. They are:
  - a. [Harassment](#);
  - b. [Workplace bullying](#);
  - c. [Any form of sexual misconduct](#);
  - d. [Discrimination](#) (in all its forms);
  - e. [Abuse of power](#);
  - f. [Conflict of interest and inappropriate workplace relationships](#); and
  - g. [Violent behaviour](#).

**Note:** For types of unacceptable behaviour involving youth, refer to [YOUTHPOLMAN Part 1 Section 2 Chapter 2 Annex C](#).

2. These types of unacceptable behaviour do not limit other behaviours that may be considered unacceptable behaviour.

### 3.0.0.G.5 Harassment

3. Harassment is unwanted or unwelcome behaviour that a reasonable person, having regard to all the circumstances, would consider offensive, insulting, humiliating or intimidating. There does not have to be an intention to offend or harass for harassment to occur. Harassing behaviour can range from serious to less significant; one-off incidents may still constitute harassment.

#### Behaviours of harassment

4. Harassment can take many forms, such as:
  - a. insulting comments or teasing about the physical characteristics, abilities or mannerisms of a person;
  - b. disparaging or unnecessary comments about a person's work or capacity for work;
  - c. spreading malicious rumours or public statements of a derogatory nature about a person;
  - d. interference with a person's workplace, work materials, equipment or property;
  - e. exclusion of a person from normal conversation, workplace activities or work-related social activities without good reason;
  - f. teasing;
  - g. offensive pictures, screen savers, posters, emails, SMS text messages, graffiti or written electronic material;
  - h. vexatious or malicious complaint(s) against a person; or
  - i. causing detriment to a person because they have made a complaint in good faith.

**Note:** This is not an exhaustive list.

For sexual harassment, see: [3.0.0.G.7 Any form of sexual misconduct](#).

5. Harassment may be a result of a person's attitude to some real or perceived attribute or difference of another person, such as:
  - a. race, colour, ethnicity or national extraction;
  - b. sexual orientation or gender;
  - c. age;
  - d. religion;
  - e. political opinion;
  - f. socio-economic origin;
  - g. medical condition;
  - h. disability or impairment;
  - i. criminal record;
  - j. trade union activity; and
  - k. family status or caring responsibilities.

**Note:** This is not an exhaustive list.

**3.0.0.G.6 Workplace bullying**

1. Workplace bullying is **an aggressive form of harassment**. Bullying is a **persistent, unreasonable** pattern of behaviour directed towards a person or group of persons, which may create a risk to health and safety, including a risk to the emotional, mental or physical health of the person(s) in the workplace. Personnel at all levels may be affected, not only those to whom the harassment is directed, for example, colleagues.

**Behaviours of workplace bullying**

2. In many instances bullying may begin as discreet and indirect behaviour escalating over time into more open and direct behaviour. Workplace bullying may comprise a combination of behaviours, ranging from obvious verbal abuse or physical assault to very subtle or covert psychological abuse. Typical behaviours include:
  - a. physical behaviour—aggressive, intimidating physical ‘intrusion’ or body language.
  - b. verbal abuse, such as:
    - i. abusive, insulting or offensive language;
    - ii. humiliation through sarcasm, criticism and insults, often in front of other personnel;
    - iii. persistent teasing or taunting;
    - iv. belittling someone's opinions or unjustified criticism;
    - v. criticism delivered by yelling or screaming.
  - c. inappropriate or unfair work practices, such as:
    - i. giving a person a much greater proportion of menial work than given to others;
    - ii. constantly making a person the brunt of practical jokes; or
    - iii. checking of a person(s) work or whereabouts to a much greater extent than others without reasonable cause.
  - d. undermining or sabotaging another person's work or reputation by such means as:
    - i. hiding tools and equipment or damaging completed work for example usually with the aim of creating the appearance of the person's incompetence in front of management or peers;
    - ii. deliberately intruding on a person's workspace by pestering, spying or tampering with their work equipment or personal effects;
    - iii. spreading misinformation or malicious rumours about a person;
    - iv. making disparaging comments about a person suffering from illness or injury;
    - v. assigning menial tasks unrelated to the job;
    - vi. giving a person unrealistic tasks that are not within their capability or capacity, or that are required within an unrealistic timeframe;
    - vii. regularly changing work rosters, especially at short notice, to inconvenience particular personnel; or
    - viii. undermining work performance by deliberately withholding information vital for work performance.
  - e. excluding, isolating or marginalising others, deliberately or otherwise.
  - f. participating in ‘collective bullying’ or mobbing; and

- g. Threats of dismissal or disciplinary action for trivial mistakes or shortcomings.

**Note:** This is not an exhaustive list.

3. Bullying can be related to an inter-personal dispute or organisational practice that subjugates people and rewards and encourages predatory and bullying behaviour.
4. A person who bullies may use strength, power or position to coerce others by fear and intimidation to do something that they want done; they may be a commander, manager, a supervisor, a subordinate, a co-worker or an external service provider. Workplace bullying can be upwards (directed towards a commander, manager or supervisor), parallel (directed towards a colleague) or downwards (directed towards a subordinate).
5. Workplace bullying, whether a single incident or repeated occurrences, is a breach of the APS and ASD Code of Conduct, Commonwealth anti-discrimination legislation and the [Fair Work Act 2009](#).

**Related Information:** DPG document - [Hazard identification, risk assessment and control for the identification and prevention of workplace bullying](#)

### **The difference between legitimate management action and bullying and harassment**

6. Commanders, managers and supervisors have the right and obligation to direct and correct the work performance and behaviours of their subordinates. Legitimate management action is reasonable management action or the exercise of legitimate authority undertaken in a reasonable manner, such as:
- a. providing objective and constructive feedback, counselling or advice about work-related behaviour and performance, given in a manner that is neither humiliating nor threatening;
  - b. expressing differences of opinion in a respectful manner;
  - c. making and implementing legitimate or reasonable management directions, decisions or actions, such as transfers, postings, work or task requirements and recruitment selections; and
  - d. making a complaint about another person's conduct in a proper and reasonable way.

**Note:** Defence personnel who have a complaint about the performance management process, or the merits of their assessment are to follow the procedures provided in the relevant policies.

### **The difference between tough training and bullying and harassment**

7. The ultimate purpose of Australian Defence Force (ADF) military training is to prepare individuals and groups to undertake military operations. An essential element of military training is to replicate or simulate contemporary operating environments in order to expose individuals and groups to the physical and mental stresses those environments generate.
8. A key measure for differentiating tough training from bullying or harassment is whether the activity may be linked to an operational training outcome and has been conducted within the boundary of workplace health and safety. Given the fluid nature of the training environment, some of the tougher forms of training may result in a trainee feeling temporarily miserable or demoralised, which is, and should remain, distinctly different to the persistent and harmful behaviour known as bullying. Additional factors to guide the distinction between tough training and bullying or harassment are:
- a. **Reasonableness.** While a trainee may, quite appropriately, be subjected to difficult training situations, this is not to form a repeated pattern of behaviour or create pressures that are greater than what would reasonably be expected of the trainee's abilities to meet the training objective.

- b. **Aim.** Instances where a trainer deliberately subjects a trainee to activities aimed at making the trainee feel demoralised, miserable or undermines self-confidence or self-esteem, is to be regarded as bullying or harassment as opposed to the temporary incidental feelings associated with tough training.
9. Each Service is responsible for determining what tough training is within the context of that Service.

### 3.0.0.G.7 Any form of sexual misconduct

1. Sexual misconduct is the term used to encompass the spectrum of unwanted and unwelcome sexualised behaviours and sexual offences.
2. Sexual misconduct includes, but is not limited to:
  - a. sex discrimination;
  - b. sexual harassment;
  - c. sexual offences;
  - d. intimate image abuse such as when a person takes, views, or distributes intimate images of another person without their consent; and
  - e. stalking
3. Sexual misconduct can occur in any sex or gender configuration regardless of sex or gender identity.

**See:**

[Sexual Misconduct Prevention and Response Office.](#)

[Chapter 9 – Responding to Sexual Misconduct.](#)

#### **Sex discrimination**

4. For the purposes of this Chapter, sex discrimination occurs when a person is treated less favourably than another person in the same or similar circumstances because of that person's sex, characteristics of that person's sex, or assumed characteristics of that person's sex. The [Sex Discrimination Act 1984](#) contains a detailed definition. The Act relates to discrimination on the grounds of:
  - a. sexual orientation;
  - b. gender identity or intersex status;
  - c. marital or relationship status;
  - d. pregnancy, or potential pregnancy or breastfeeding; and
  - e. family responsibilities.

#### **Sexual harassment**

5. For the purposes of this Chapter, sexual harassment is any unwelcome sexual behaviour that is likely to offend, humiliate or intimidate. The [Sex Discrimination Act 1984](#) contains a detailed definition. A person sexually harasses another person if:
  - 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 that the person harassed could be offended, humiliated or intimidated by the actions which are of a sexual nature.

6. Behaviour that may be acceptable in other contexts, such as between friends in a social setting, may be inappropriate in the workplace. Behaviours that may amount to sexual harassment include, but are not limited to:
  - a. staring or leering;
  - b. intrusive questions about a person's private life or body;
  - c. unwelcome touching or unnecessary familiarity, such as deliberately brushing against a person;
  - d. direct offensive verbal comments or innuendo of a sexual nature;
  - e. sexually offensive jokes;
  - f. comments about a person's sexual activities or private life;
  - g. offensive gestures;
  - h. comments regarding a person's sexual orientation;
  - i. comments regarding a person's sexual appeal;
  - j. the display or electronic transmission of printed material such as calendars, posters, email, SMS text messages, screen savers or wall papers that are sexually explicit or depict naked or semi-naked bodies or are displayed for the purpose of evoking sexual arousal or gratification;
  - k. condoning and encouraging the conduct of open sexual activities in accommodation areas used as a normal part of communal living;
  - l. course badges, clothing, in-house publications (informal and formal) and training materials with a sexual connotation; or
  - m. making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

7. Sexual harassment may also manifest itself in official decisions and actions.

**Example:** The denial of promotions, termination of employment, breaches of confidentiality and refusal of overtime and higher duties.

8. Sexual harassment may be unlawful behaviour.

**Related Information:**

[Sex Discrimination Act 1984](#)

[Sexual Misconduct Prevention and Response Office](#)

[Interim Incident Reporting and Management Policy.](#)

**Sexual Offences**

9. Sexual offences are criminal actions that are also unacceptable behaviour which may warrant action under the [Defence Force Discipline Act 1982](#) or other Commonwealth legislation. There are a number of different types of sexual offences, which can often be described using different terms. Although sexual offences are unacceptable behaviour, they are to be managed in accordance with [Chapter 9 – Responding to Sexual Misconduct](#).

**See:** [3.3.0.4 Incidents that are not to be responded to under this Part](#)

10. Sexual offences are also notifiable incidents and must be reported to a Defence Investigative Authority without delay.

**Related Information:** [Interim Incident Reporting and Management Policy](#).

Defence personnel who have been impacted by sexual misconduct including a sexual offence are encouraged to contact, and be referred to the [Sexual Misconduct Prevention and Response Office](#) (SeMPRO).

**Related Information:**

**Note:** SeMPRO client services are available to current and ex-serving ADF members, APS personnel, Defence contractors, ADF Cadets and their families, and Officers and Instructors of Cadets.

SeMPRO treats a report of sexual misconduct as a restricted (confidential) disclosure.

A disclosure of sexual misconduct to your Commander, Manager or Supervisor may give rise to specific statutory obligations under the [Interim Incident and Reporting Management Policy](#). SeMPRO support, advice and client response services are confidential and available to all personnel without triggering reporting obligations. Accessing SeMPRO services without making a report about an incident to Defence is referred to as a Restricted Disclosure.

11. If the incident of sexual misconduct involves a Protection Order it is to be managed in accordance with [Military – Personnel Policy Manual \(MILPERSMAN\) Part 9 Chapter 4 Protection Orders](#)

**Note:** A Protection Order may also be called a Domestic Violence Order, Apprehended Violence Order, Restraining Order, Prohibition Order or other similar term.

### 3.0.0.G.8 Discrimination

1. Discrimination is any distinction, exclusion or preference that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Unlawful discrimination does not include any distinction, exclusion or preference in respect of a particular job based on the inherent requirements of the job.

**Example:** The [Age Discrimination Act 2004](#) provides exemption for the ADF to determine compulsory retirement on the basis of age.

#### Direct discrimination

2. Direct discrimination can occur when there is a policy or action that specifically treats a person less fairly than another person based on some real or perceived attribute or difference. It does not allow people to be judged purely on their individual merit, but judges them on stereotypes or perceptions.

#### Indirect discrimination

3. Indirect discrimination can occur when a policy or practice, which appears to be neutral or non-discriminatory, has an unfair effect on a person or a particular group of people.

#### Unlawful discrimination

4. Not all behaviour that discriminates between people is unlawful or amounts to unacceptable behaviour. The following describes types of unlawful discrimination.

##### a. Racial discrimination

It is unlawful to behave in any way that involves a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.



Offensive behaviour based on race, colour or national or ethnic origins is also unlawful.

**Related Information:** [Racial Discrimination Act 1975](#).

b. **Sex discrimination**

It is unlawful to treat a person less favourably in the same or similar circumstances because of a person's:

- i. sexual orientation;
- ii. gender identity or intersex status;
- iii. marital or relationship status;
- iv. pregnancy, or potential pregnancy or breastfeeding;
- v. family responsibilities.

**Related Information:** [Sex Discrimination Act 1984](#).

c. **Disability Discrimination**

It is unlawful to discriminate or harass a person in relation to their employment (including ADF service) based on:

- i. physical, mental, intellectual or psychiatric disability;
- ii. disease;
- iii. disorder; or
- iv. illness.

**Related Information:** [Disability Discrimination Act 1992](#)

d. **Age discrimination**

It is unlawful to treat, or propose to treat, a person less favourably, in circumstances which are the same or are not materially different than a person of a different age because of:

- i. the age of the aggrieved person;
- ii. a characteristic that pertains generally to persons of the age of the aggrieved person; or
- iii. a characteristic that is generally imputed to persons of the age of the aggrieved person.

**Related Information:** [Age Discrimination Act 2004](#)

**3.0.0.G.9 Abuse of power**

1. Abuse of power and authority attributed to rank or position to harass, discriminate or bully a subordinate is unacceptable, unethical and in some situations can constitute criminal behaviour.
2. Commanders, managers and supervisors must at all times be aware of their actions in relation to their subordinates to ensure they do not abuse their power and authority. Some actions may inadvertently place a subordinate in a difficult position and the action thereby may be perceived as an abuse of power, such as:
  - a. using subordinates to conduct personal tasks, such as running errands or collecting dry-cleaning;

- b. ordering subordinates to participate in unacceptable behaviour; or
- c. encouraging personnel to provide sexual favours in order to gain superior performance reports, desired postings or career advantage.

### 3.0.0.G.10 Conflict of interest and inappropriate workplace relationships

1. A conflict of interest may occur when there is a relationship that involves, or gives the appearance of involving, partiality, preferential treatment or improper use of rank or position; that is inappropriate in the workplace, irrespective of the employment type of the people involved. Disclosing or identifying and then managing the situation is essential.
2. A conflict of interest may occur between official duties and private interests and may be actual, potential or perceived. Defence personnel have a primary responsibility to act in the public interest and avoid or effectively manage actual, potential or perceived conflicts of interest between their private interests and official duties, and within their official duties. Defence personnel must avoid and/or manage conflicts of interest in a manner consistent with their legal obligations, Commonwealth policy and Defence Instructions, and policies.

**See:** [DI Admin policy AG5 - Conflict of interest and declarations of interest \(Annex C\)](#)

3. A conflict of interest may be pecuniary or non-pecuniary. A pecuniary conflict of interest involves an actual, potential or perceived financial gain or loss. Non-pecuniary interests do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural or political activities. They include any tendency toward favour or prejudice arising from friendship, animosity or other personal involvement with another person or group.

**See:** [DI Admin policy AG5 - Conflict of interest and declarations of interest \(Annex C\)](#)

4. The existence of personal relationships within the workplace does not excuse any form of unacceptable behaviour. In some cases, there will be actions or situations open to interpretation due to the context in which the behaviour occurs. For instance, displays of affection, like holding hands, hugging or a kiss on the cheek, may be unacceptable in the workplace. However, there will be occasions when this behaviour is acceptable, such as deploying or returning to workplaces. Touching another person (no matter who they are), using any part of the body or any object, for the purpose of displaying private intimacy for either the person initiating the touching or the person touched, with the purpose of sexual arousal or gratification is prohibited. Sexual behaviour or sexual acts are never appropriate in the workplace. It is the responsibility of the commander or manager to maintain and model the standard of behaviour consistent with the Defence Values and Behaviours, APS Values and Code of Conduct and ASD Values and Code of Conduct.

#### **Inappropriate workplace relationships at Australian Defence Force schools and training establishments**

5. Relationships between trainees or between trainees and staff at training establishments potentially impact the effectiveness, ability and morale of individuals and teams. The following prohibitions and directions at ADF schools and training establishments have been prescribed to enable training to be conducted in an environment where staff and trainees can apply themselves to their duties free from any real or perceived conflict of interest. The prohibition on trainee relationships is to provide sufficient time to reinforce Defence Values and Behaviours. The prescribed periods of prohibition provide a consistent application of policy between service training establishments of enlisted trainees and officer trainees:
  - a. subject to paragraph (b), any staff member from any training establishment is prohibited from forming relationships involving sexual relations or private intimacy with any trainee. This prohibition applies at all times, whether on or off duty, and irrespective of the level of direct contact between the staff member and the trainee.
  - b. any existing or pre-existing relationship, involving sexual relations or private intimacy between a staff member and a trainee, is to be declared by the staff member to the commanding officer prior to the commencement of training, for

appropriate steps to be taken to manage the potential conflict, bias or appearance of partiality.

- c. enlisted trainees are prohibited from forming relationships involving sexual relations or private intimacy with any other trainee employed in the same institutional precinct whilst either member is undergoing initial entry (recruit) training. After both members have completed recruit training, the standard requirements of this manual apply.
  - d. officer trainees, including Officer Cadets and Midshipmen, are prohibited from forming relationships involving sexual relations or private intimacy with any other trainee employed in the same institutional precinct whilst either member is within the first three months of initial training. After both members have completed the three-month period, the standard requirements of this manual apply.
6. Commanders of ADF schools and training establishments must include the above prohibitions and requirements in standing orders. Commanders are to ensure staff and trainees are provided with briefs that include the:
- a. prohibitions and requirements detailed in [3.0.0.G.10](#) and in staff and trainee codes of conduct;
  - b. rationale behind these prohibitions and requirements; and
  - c. support services available and how to contact them.

**See:** [Annex 3J Support options](#)

### **Management of conflict of interest and inappropriate workplace relationships**

7. Relationships are a natural result of human interaction and as such may not be inappropriate. However, they may have a direct impact on the effectiveness and morale of a team and need to be carefully managed.
8. Defence personnel have a responsibility to report conflicts of interest and inappropriate workplace relationships.

**See:** [DI Admin policy AG5 - Conflict of interest and declarations of interest](#) (Annex C)

#### **3.0.0.G.11 Violent behaviour**

1. Violent behaviour is the intentional use of physical force, threatened or actual, against oneself, another person, or against a group or community or property which either results in or has a high likelihood of resulting in injury, death, or psychological harm.
2. Violent behaviour can have far reaching effects on Defence personnel, their family, the workplace and the capability of Defence. Violent behaviour, inside or outside the workplace, is unacceptable, unless it is required as part of an individual's duties on Operations.
3. Violent behaviour may be unlawful and can attract civil criminal penalties. Defence personnel who engage in violent behaviour may be held personally liable for paying compensation.
4. Although violent behaviour is unacceptable behaviour it may also be a notifiable incident. If the violent behaviour is also a notifiable incident it is to be managed in accordance with [Interim Incident Reporting and Management Policy](#).
5. If the violent behaviour involves a Protection Order it is to be managed in accordance with [Military Personnel Policy Manual \(MLPERSMAN\) Part 9 Chapter 4 Protection Orders](#).

**Note:** A Protection Order may also be called a Domestic Violence Order, Apprehended Violence Order, Restraining Order, Prohibition Order or other similar term.

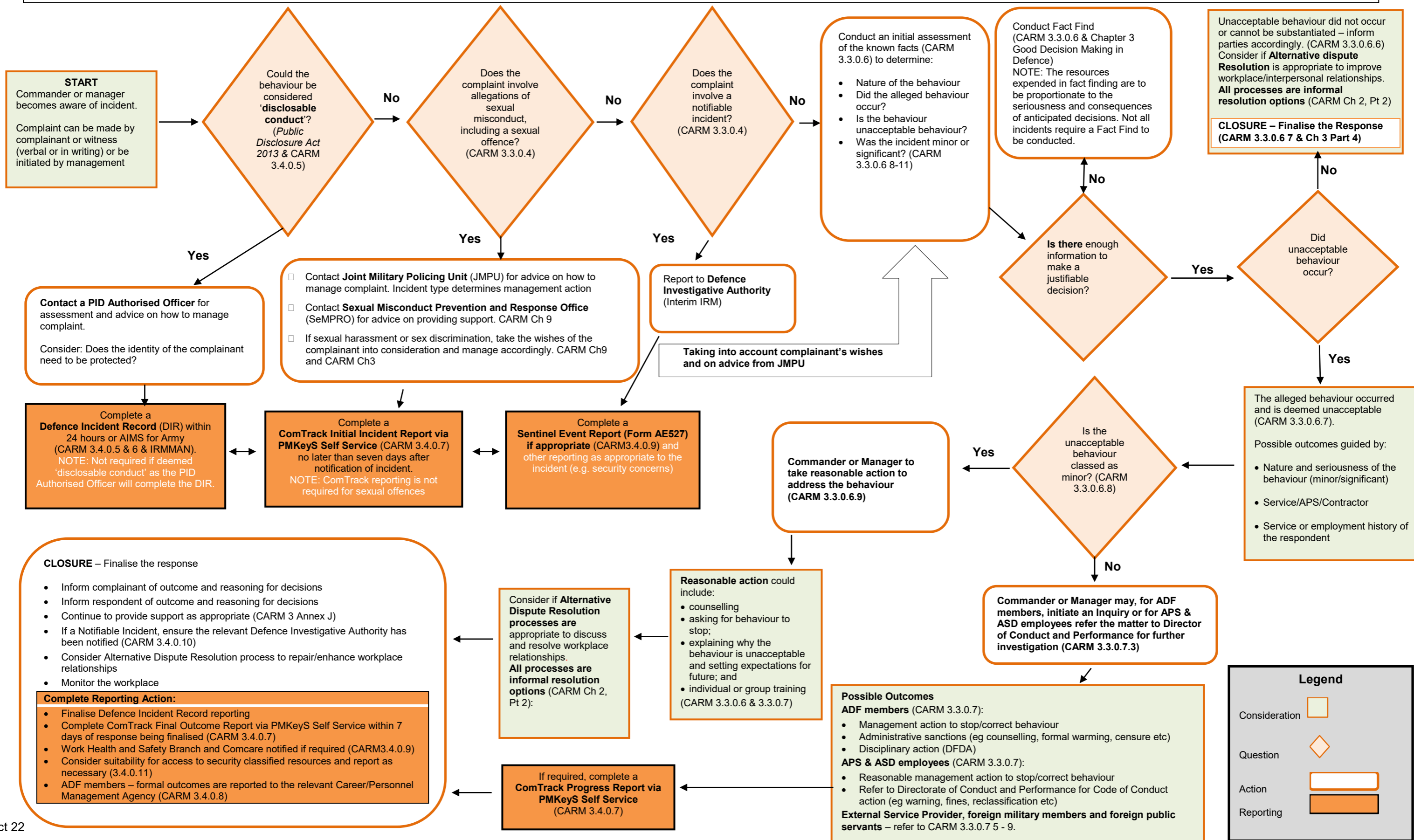
6. As required, commanders, managers and supervisors are to follow the procedures for responding to and reporting incidents of violent behaviour.

**See:** [Part 3 Responding to an incident of unacceptable behaviour](#)

[Part 4 Reporting and recording of incidents of unacceptable behaviour.](#)

**FLOWCHART FOR RESPONDING TO INCIDENTS OF UNACCEPTABLE BEHAVIOUR**

**Guiding Principles:** ★ Consult the complainant ★ Keep all parties informed throughout the complaint management process ★ Provide support to all people involved (complainants, respondents, witnesses and others)  
★ Resolve at the lowest appropriate level ★ Consider Alternative dispute Resolution options ★ Comply with privacy requirements (Privacy Act 1988) ★ Ensure accurate record keeping ★ Ensure reporting requirements are completed



## Checklist for responding to unacceptable behaviour incident

Time frame	Management	Assessment/Inquiry	Reporting
<p><b>SHORT TERM</b> 1-7 days</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Is the allegation 'disclosable conduct' in accordance with the Defence Public Interest Disclosure Scheme? If so, see Reporting column.</li> <li><input type="checkbox"/> Conduct an initial assessment: See <a href="#">3.3.0.6.1</a>.               <ol style="list-style-type: none"> <li>1. Did the alleged behaviour occur?</li> <li>2. Is the behaviour unacceptable behaviour?</li> <li>3. Was the incident minor or significant?</li> </ol> </li> <li><input type="checkbox"/> Is there enough information to make a justifiable decision? If no, conduct fact finding. See next column.</li> <li><input type="checkbox"/> If the incident is minor can it be managed by the parties involved or counselling by management? See <a href="#">3.3.0.6.8</a> for responding and <a href="#">Chapter 2</a> for resolution options.</li> <li><input type="checkbox"/> If the incident is significant what is the best course of action? See <a href="#">3.3.0.6.10</a> for responding and <a href="#">Chapter 2</a> for resolution options.</li> <li><input type="checkbox"/> Ensure the people involved in the incident are aware of their support options. See <a href="#">Annex 3J</a>.</li> <li><input type="checkbox"/> Ensure the respondent is provided with sufficient information about the complaint to afford procedural fairness. See <a href="#">3.3.0.5.8</a></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Commanders and managers can initiate fact finding if they do not have sufficient information to make a justifiable decision. See <a href="#">3.3.0.6.3</a></li> <li><input type="checkbox"/> Commanders and managers of <i>ADF members</i> may initiate an Inquiry for more complex incidents. See <a href="#">3.3.0.6.3</a>.</li> <li><input type="checkbox"/> Commanders and managers of <i>APS and ASD members</i> may refer potential breaches of the APS or ASD Code of Conduct to the Directorate of Conduct and Performance (DCP). Only DCP can make determinations on APS Code of Conduct inquiries. See <a href="#">3.3.0.7.3-4</a>.</li> <li><input type="checkbox"/> <b>External service providers:</b> the incident is assessed and managed by the contract manager within the parameters of the contract. See <a href="#">3.3.0.7.7</a></li> </ul> <p><b>Notes:</b> The resources expended in fact finding/Inquiry/Code of Conduct are to be proportionate to the seriousness and possible consequences of anticipated decisions.</p> <p><b>See:</b> <a href="#">Chapter 3</a> of '<a href="#">Good Administrative Decision-Making Manual (GADMMAN)</a>'.</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> If the behaviour could be 'disclosable conduct' in accordance with the <i>Public Interest Disclosure Act 2013</i>, contact a Public Interest Disclosure Authorised Officer for advice on how to proceed. See <a href="#">3.4.0.5</a>.</li> <li><input type="checkbox"/> Complete a Defence Incident Record. Must be completed no later than 24 hours after the incident, even if not all information is known at the time. See <a href="#">3.4.0.6</a>.</li> <li><input type="checkbox"/> If the matter constitutes a 'notifiable incident', report the matter to a Defence Investigative Authority in accordance <a href="#">Interim Incident Reporting and Management Policy</a>. See <a href="#">3.4.0.10</a>.</li> <li><input type="checkbox"/> Does the incident need to be referred to an alternative body? See <a href="#">3.3.0.4</a>.</li> <li><input type="checkbox"/> Record all action and decisions throughout the process. See <a href="#">3.4.0.4</a></li> <li><input type="checkbox"/> Within 7 days complete a ComTrack <i>Initial Complaint Report – Unacceptable Behaviour</i>. ComTrack is accessed via <a href="#">PMKeyS Self Service</a>, if applicable. See <a href="#">3.4.0.7</a></li> </ul>
<p><b>MEDIUM TERM</b> Up to four weeks</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Consider appointing a case officer to keep the parties informed and provide them with support options. See <a href="#">Annex 3J</a>.</li> <li><input type="checkbox"/> Consider the work duties and working proximity of the complainant and respondent. Are arrangements satisfactory, do they require review? See <a href="#">3.3.0.5.10</a> and <a href="#">3.3.0.7</a> and <a href="#">Annex 3J</a>.</li> <li><input type="checkbox"/> Is Alternative Dispute Resolution suitable at this stage in an attempt to resolve interpersonal conflict? Options include, but are not limited to, mediation and conflict management coaching. See <a href="#">Chapter 2 Part 2</a>.</li> <li><input type="checkbox"/> If the incident has been resolved, communicate closure to the parties involved, including advice of review options. See <a href="#">3.2.0.7</a> and <a href="#">3.3.0.5.7-9</a></li> <li><input type="checkbox"/> Provide on-going support to the complainant, respondent and other parties (as appropriate). See <a href="#">3.3.0.5.3</a> and <a href="#">Annex 3J</a>.</li> <li><input type="checkbox"/> Monitor the workplace and encourage positive relationships and culture</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Where required, continue with fact finding/Inquiry and reporting requirements. See <a href="#">3.3.0.6</a> and <a href="#">Part 4</a>.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Complete a ComTrack <i>Progress Report – Unacceptable Behaviour</i> if the situation meets the requirements at <a href="#">3.4.0.7.4</a> ComTrack is accessed via <a href="#">PMKeyS Self Service</a>.</li> <li><input type="checkbox"/> Should the incident be reported to Defence <a href="#">Work Health and Safety Branch/Comcare</a>? If yes, report via <a href="#">Sentinel</a>. If reporting to WHS/Comcare you must still report via Defence Incident Record and ComTrack. See <a href="#">Part 4</a></li> <li><input type="checkbox"/> If the incident may attract media attention or adverse publicity towards Defence it must be reported. See <a href="#">Interim Incident Reporting and Management Policy</a>.</li> <li><input type="checkbox"/> Should the matter be reported to the members' Career Management Agency? See <a href="#">3.4.0.8</a>.</li> <li><input type="checkbox"/> If there are concerns about the incident relating to a person's ongoing suitability to access official or security</li> </ul>

Time frame	Management	Assessment/Inquiry	Reporting
<p><b>LONG TERM</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Monitor the workplace to ensure return to normal workplace behaviour.</li> <li><input type="checkbox"/> Address any relationship difficulties. See <a href="#">Chapter 2 Part 2</a>.</li> <li><input type="checkbox"/> Provide on-going support to the complainant, respondent and other parties (as appropriate). See <a href="#">3.3.0.5 3</a> and <a href="#">Annex 3J</a>.</li> <li><input type="checkbox"/> Implement reasonable measures to prevent the recurrence of a similar incident in the workplace.</li> <li><input type="checkbox"/> If the incident has been resolved, communicate closure to the parties involved, including advice of review options. See <a href="#">3.2.0.7</a> and <a href="#">3.3.0.5 7-9</a></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Where required, continue with fact finding/Inquiry and reporting requirements. See <a href="#">3.3.0.6</a> and <a href="#">Part 4</a>.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> When the incident is resolved and all required actions have been taken a ComTrack <i>Final Outcome Report – Unacceptable Behaviour</i> must be completed. ComTrack is accessed via <a href="#">PMKeyS Self Service</a>, if applicable.</li> </ul> <p>Note: Unacceptable behaviour complaints are to be finalised within three months.</p>

**ANNEX 3J to Ch 3**

**Support options**

1. Commanders and managers must maintain an environment where complainants, respondents and witnesses are confident that they can access a range of support services. The support strategy can include one or several of the Defence support services available. Defence is not financially responsible for support or advice provided by outside agencies.
2. This document defines the scope of Defence funded support options that can be offered to complainants, respondents and witnesses.

<b>Key: Yes (Y); At Commander/Manager's discretion (A); Not available (N)</b>				
<b>Service Available</b>	<b>ADF Members</b>	<b>Defence APS Employees</b>	<b>ASD Employees</b>	<b>External Service Providers</b>
<p><b>Workplace Behaviour Adviser (WBA) Network</b></p> <p>WBA's are available to provide information, options and support for the resolution of workplace behaviour issues.</p> <p><b>See: <a href="#">CARM Chapter 2</a></b></p>	Y	Y	Y	Y
<p><b>Sexual Misconduct Prevention and Response Office (SeMPRO)</b></p> <p><a href="#">SeMPRO</a> offers advice, guidance and support to all Defence personnel, former members and to ADF Cadets and their families, who have been impacted by sexual misconduct, whether the incident is current or historical.</p> <p><b>Within Australia:</b> 1800 SEMPRO (736776)  <b>Text:</b> 0429 600 800  <b>Overseas:</b> +61 429 600 800  <b>Hours:</b> 24/7/365</p>	Y	Y	Y	Y
<p><b>1800 Defence Service Centre</b></p> <p>The Defence Service Centre can direct customers to current workplace behaviour policies and relevant points of contact.</p> <p><b>Within Australia:</b> 1800 333 362  <b>Overseas:</b> 0011 61 2 6453 1440  <b>Hours:</b> 0730-1900hrs Mon, Wed-Fri  0730 – 2200 - Tues</p>	Y	Y	Y	Y



<p style="text-align: center;"><b>Case Officer</b></p> <p>A case officer/s may be appointed at the discretion of the Commander or manager to assist the complainant and the respondent during the complaint management process. The role of a case officer is to inform of progress in the management of the complaint; to assist and advise on applicable support services; and to assist communication between the parties.</p> <p>Appointment of a case officer is advisable when the complainant and respondent have different commanders or managers.</p> <p>The selection and appointment process may be formal or informal, and relies upon the discretion and judgement of the Commander or manager.</p>	<p><b>A</b>          (or as directed by Service Policy)</p>	<p><b>A</b></p>	<p><b>A</b></p>	<p><b>A</b></p>
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<b>Key:</b> Yes (Y); At Commander/Manager's discretion (A); Not available (N)				
<b>Service Available</b>	<b>ADF Members</b>	<b>Defence APS Employees</b>	<b>ASD Employees</b>	<b>External Service Providers</b>
<p><b>Psychological counselling/support</b></p> <p>Where appropriate, the complainant, respondent and witnesses can be provided with counselling by appropriately qualified professionals. The type of counselling is to match the severity of the incident and impact on the person. The services below also accept self-referrals.</p> <p><b>For ADF members:</b></p> <p><b>Defence medical support at local medical centres.</b> The local medical officer can provide assistance and referrals as required.</p> <p><b>Psychology Support Section.</b> Available during office hours. Psychology Support Sections can offer after-hours, critical incident support through the local Duty Officer/Officer of the Day.</p> <p><b>Defence Member and Family Support (DMFS)</b> provides a comprehensive range of services that enhance the wellbeing of ADF members and their families. DMFS also provide 24-hour assistance in crisis situations in all military locations and will help with appropriate referrals if required during office hours. The after-hours service can be accessed through the local Duty Officer/Officer of the Day.</p> <p><b>Internet:</b>  <a href="https://www.defence.gov.au/members-families/default.asp">https://www.defence.gov.au/members-families/default.asp</a></p> <p><b>ADF Mental Health Strategy All-hours Support Line (ASL).</b> The ASL is a confidential telephone triage support service for ADF members and their families that is available 24 hours a day, seven days a week. Toll-free number within Australia is 1800 628 036 and +61 2 9425 3878 outside Australia.</p> <p><b>Intranet:</b>  <a href="http://drnet/People/WHS/Health-and-Wellbeing/Pages/Health-and-Wellbeing.aspx">http://drnet/People/WHS/Health-and-Wellbeing/Pages/Health-and-Wellbeing.aspx</a>;  <b>and Internet:</b>  <a href="http://www.defence.gov.au/health/healthportal/">http://www.defence.gov.au/health/healthportal/</a> .</p> <p><b>Chaplains.</b> Chaplains can provide support and appropriate referrals as required. Chaplains are found at most bases and Units.</p>	Y	N	Y	N

<b>Key: Yes (Y); At Commander/Manager's discretion (A); Not available (N)</b>				
<p><b>Diversity Directorate</b></p> <p>The <a href="#">Diversity Directorate</a> provides additional support options in the areas of:</p> <ul style="list-style-type: none"> <li>• Indigenous</li> <li>• Gender</li> <li>• Disability</li> <li>• cultural and linguistic</li> <li>• sexual orientation</li> <li>• religion and beliefs</li> <li>• age and youth, and</li> <li>• general diversity.</li> </ul> <ul style="list-style-type: none"> <li>• <b>Intranet:</b></li> <li>• <a href="http://drnet.defence.gov.au/People/Diversity/Pages/Diversity.aspx">http://drnet.defence.gov.au/People/Diversity/Pages/Diversity.aspx</a></li> </ul>	Y	Y	Y	N
<p><b>For Defence APS and ASD Employees:</b></p> <p><b>The Employee Assistance Program (EAP).</b> EAP is a free, confidential and professional counselling service for all APS and ASD employees and their immediate families. Provides practical assistance to help resolve work-related problems, or personal problems that may impact their working life.</p> <p>ADF supervisors of APS and ASD employees can access the Manager Hotline for assistance.</p> <p><b>Within Australia:</b> 1300 361 008  <b>Overseas:</b> +61 2 9232 7249  <b>After hours crisis counselling:</b> 1800 451 138</p>	N	Y	Y	Y
<p><b>Defence Legal Support</b></p> <p>The complainant and respondent may seek legal advice from separate legal officers. The respondent is not to consult the legal officer responsible for providing advice to the commander or manager managing the complaint.</p> <p>Generally, Defence APS and ASD employees are not provided with the same level of legal assistance as ADF members. APS and ASD employees should refer to <a href="#">Legal Services Directions 2017</a>, Appendix E—'Assistance to Commonwealth Employees for Legal Proceedings' for further information on legal support that may be available at <a href="http://www.comlaw.gov.au/">http://www.comlaw.gov.au/</a>.</p>	Y	Under limited circumstances	Under limited circumstances	N

<b>Key: Yes (Y); At Commander/Manager's discretion (A); Not available (N)</b>				
<p style="text-align: center;"><b>Temporary transfer</b></p> <p>A commander <i>may</i> decide that a temporary transfer will assist a person during workplace behaviour issues. A commander or manager is to consider:</p> <ul style="list-style-type: none"> <li>• the person's ability to cope if they remain where the incident occurred</li> <li>• family and personal circumstances</li> <li>• possible local posting alternatives</li> <li>• the availability of counselling and support services and networks</li> <li>• the effect on any current or future resolution options or investigations</li> <li>• any bail conditions and court orders</li> <li>• the effect on the career of the person transferred</li> <li>• the operational efficiency of the workplace</li> </ul> <p>For Defence APS employees refer to the <a href="#">APS People Policy</a></p>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>
<p>If a commander or manager decides that a transfer is appropriate, the person to be transferred is to be notified and provided with an opportunity to discuss the transfer, in particular any objections and the proposed management of the transfer.</p> <p>If the person(s) involved is not relocated the commander or manager is to take reasonable steps to ensure all parties are treated fairly and no victimisation or further unacceptable behaviour occurs.</p>				
<p style="text-align: center;"><b>Peer support</b></p> <p>The complainant, respondent and witnesses may receive moral and social support from their peers during the course of any workplace behaviour issues.</p>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

<b>Key: Yes (Y); At Commander/Manager's discretion (A); Not available (N)</b>				
<p style="text-align: center;"><b>Leave</b></p> <p>It <i>may</i> be appropriate for the complainant and/or respondent to rehabilitate prior to returning to the workplace. Leave regulations contained <a href="#">ADF Pay and Conditions Manual</a>, the <a href="#">APS People Policy</a> or <a href="#">ASD People Policy</a> for Defence APS and ASD employees should be consulted.</p> <p>Prior to approving leave, commanders and managers are to consider the impact on the conduct of any fact finding, inquiry, investigation or return to work plan.</p>	<b>A</b>	<b>A</b>	<b>A</b>	<b>N</b>
<p style="text-align: center;"><b>External support</b></p> <p>Defence personnel may access other services outside of Defence at their own expense.</p>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>

# **Miscellaneous Complaint Processes**

## **Chapter 4**

**This content has not yet been developed.**

# Review of Actions

## Chapter 5

### 5.0.0.1 Introduction

1. The Review of Actions process enables all Defence APS employees, who are not members of the SES, to seek redress when they believe that an action taken, or not taken, in relation to their employment by the Agency Head of an APS Agency, or another Defence APS employee, was unfair or unreasonable.
2. The Review of Actions process, established by the [Public Service Act 1999](#), supports the policy of the Australian Government that APS agencies should achieve and maintain workplaces that encourage productive and harmonious working relationships - Defence APS employees' concerns are intended to be dealt with quickly, impartially and fairly. An application for review may be resolved by conciliation or mediation at any time before the review process is complete.

### 5.0.0.2 Purpose

1. This Chapter provides information and instructions on the Review of Actions process for Defence APS employees; units, functional areas and Service headquarters; and Review of Actions decision makers.

### 5.0.0.3 Contents

1. This Chapter contains the following Parts
  - a. [Part 1 Overview](#)
  - b. [Part 2 Instructions for Defence APS employees submitting an application for a Review of Actions](#)
  - c. [Part 3 Instructions for units, functional areas and Service headquarters](#)
  - d. [Part 4 Instructions for Review of Actions decision makers](#)

### 5.0.0.4 This Chapter applies to

1. This Chapter applies to
  - a. Defence APS employees; and
  - b. Managers and supervisors of Defence APS employees who request a Review of Actions.

### 5.0.0.5 This Chapter does not apply to

1. Subject to 5.0.0.4 this Chapter does not apply to
  - a. Defence members;
  - b. external service providers;
  - c. Defence locally engaged employees (formerly locally engaged staff);
  - d. staff and instructors of the Australian Defence Force Cadets who are not members of the ADF; and
  - e. SES employees.

### 5.0.0.6 Policy

1. In managing Review of Actions Defence must comply with
  - a. the [Public Service Act 1999](#); and
  - b. the [Public Service Regulations 1999](#).

2. The APS Values contained in the *Public Service Act 1999* require that Defence provides a fair system of review of decisions taken in respect of Defence APS employees.

#### 5.0.0.7 Relevant websites

1. Further information on the Review of Actions process can be obtained from
  - a. the [Directorate of Privacy, Complaints and Resolution](#) DPN site; and
  - b. the Australian Public Service Commission at [www.apsc.gov.au](http://www.apsc.gov.au).

#### 5.0.0.8 Applicable legislation

1. The following legislation is applicable to this Chapter
  - a. [Public Service Act 1999](#); and
  - b. [Public Service Regulations 1999](#).

#### 5.0.0.9 Disclosure of security classified information

1. Unless otherwise permitted by subclauses 5 and 6 below, Defence personnel must not provide or otherwise disclose security classified information when
  - a. participating in a process described in this Manual; or
  - b. submitting a complaint described in this Manual.
2. Defence personnel acting contrary to subclause 1 may be liable to criminal prosecution under section 70 of the [Crimes Act 1914](#) and, in certain circumstances, sections 39A and 40 of the [Intelligence Services Act 2001](#).
3. Defence APS employees acting contrary to subclause 1 may also be subject to Code of Conduct action. **Related Information:** [APS Code of Conduct Procedures](#).
4. Defence members acting contrary to subclause 1 may also be subject to an administrative sanction or disciplinary action under the [Defence Force Discipline Act 1982](#). **Related Information:** [Military Personnel Policy Manual \(MILPERSMAN\) Part 9 Chapter 2—Formal Warnings and Censures in the Australian Defence Force](#).
5. Defence personnel in certain areas of the Department may, under very limited circumstances, submit an internal complaint which contains security classified information. Information on these circumstances can be found in the following Chapter of this manual
  - a. Chapter 5, Review of Actions. **See:** 5.2.4 How to apply for a Review of Actions.
6. Defence personnel may, under very limited circumstances, submit an external complaint which contains security classified information to the Inspector-General of Intelligence and Security. Information on these circumstances can be found in the following Chapter of this manual.
  - a. Chapter 8 Part 3, Inspector General of Intelligence and Security. **See:** 8.3.1.3, What the IGIS can investigate and who can make a complaint.
7. External service providers acting contrary to subclause 1 may also be subjected to civil action for breach of contract.

#### 5.0.0.10 Sponsor and point of contact

1. The sponsor for this Chapter is Defence People Group, Director Privacy, Complaints and Resolution.
2. The point of contact is Deputy Director Administrative Review – **Email:** [Complaint.Resolution@defence.gov.au](mailto:Complaint.Resolution@defence.gov.au).



# Overview

## Chapter 5 Part 1

### 5.1.0.1 Purpose

1. This Part provides an overview of the Review of Actions process.

### 5.1.0.2 Content

1. This Part contains the following information

[5.1.0.3 Roles and responsibilities](#)

[5.1.0.4 About Review of Actions](#)

[5.1.0.5 Review of Actions decision makers](#)

[5.1.0.6 Who can apply for a Review of Actions?](#)

[5.1.0.7 Types of Review of Actions](#)

[5.1.0.8 Time limit](#)

[5.1.0.9 Actions excluded from the Review of Actions process](#)

[5.1.0.10 Actions that may not be reviewed](#)

[5.1.0.11 The Review of Actions process](#)

[5.1.0.12 Outcomes of a Review of Actions](#)

[5.1.0.13 Further review rights](#)

### 5.1.0.3 Roles and responsibilities

1. The roles and responsibilities of Defence personnel connected to an application for a Review of Actions are outlined in the following Parts
  - a. Part 2: Instructions for Defence APS employees submitting an application for a Review of Actions
  - b. Part 3: Instructions for units, functional areas and service headquarters
  - c. Part 4: Instructions for Review of Actions decision makers



### 5.1.0.4 About Review of Actions

1. The Review of Actions process enables Defence APS employees who are not members of the SES to seek redress if they believe that an action taken, or not taken, in relation to their employment, by the Secretary or another Defence APS employee, was unfair or unreasonable.
2. Employees' concerns are intended to be dealt with quickly, impartially and fairly. An application for a Review of Actions may be resolved by conciliation or mediation at any time during the review process.
3. The Review of Actions process is a primary review process.

### 5.1.0.5 Review of Actions decision makers

1. The Secretary is the principal decision maker for Review of Actions applications. The Secretary may delegate his or her Review of Actions powers. **See:** The [HR Delegations](#) (Public Service Framework Delegations) web site for a complete list of Review of Actions decision makers appointed by the Secretary.
2. The Secretary and his or her Review of Actions delegates are called 'Review of Actions decision makers'. **See:** [Annex 1](#), Abbreviations and definitions.

### 5.1.0.6 Who can apply for a Review of Actions?

1. Defence APS employees are entitled to seek a review of any action relating to their employment in accordance with the  [Public Service Regulations 1999](#)  (Exclusion: SES employees).
2. Defence APS employees cease to be entitled to review if, after the application is made, they cease to be an APS employee or are promoted to an SES position.
3. Applications from former APS employees may be dealt with by the Directorate of Privacy, Complaints and Resolutions on a case-by-case basis in a manner appropriate to the circumstances outside the Review of Actions process.

### 5.1.0.7 Types of Review of Actions

1. The Public Service Regulations 1999 define two types of Review of Actions
  - a. **A review of APS actions.** This includes any action, refusal or failure to act, which relates to an applicant's APS employment. **Note:**
    1. 'Action' includes an action, refusal or failure to act by a person in the capacity of the Agency Head or as a Defence APS employee. This definition includes Defence members who supervise Defence APS employees in the overall Defence context. **Related Information:** Regulation 5.23 of the Public Service Regulations 1999 for information on APS actions that are not considered reviewable actions.
    2. Reviews of termination of employment are covered by the Fair Work Act 2009 and are dealt with by Fair Work Australia.
  - b. **Promotion decisions.** Applications for a review of certain promotion decisions to the Office of the Merit Protection Commissioner, for review by a Promotion Review Committee. **Note:**
    1. This type of Review of Actions is NOT dealt with in this Manual. Applicants are advised to apply directly to the Office of the Merit Protection Commissioner for a Review of Actions relating to this type of promotion decision. **Related information:** Division 5.2 of the Public Service Regulations 1999 contains more information regarding this type of Review of Actions.



### 5.1.0.8 Time limit






1. Applications for a primary Review of Actions must be made to the Defence APS employee's Agency within 120 days from the date of the action to be reviewed.

### 5.1.0.9 Actions excluded from the Review of Actions process

1. The following are specifically excluded from the Review of Actions process

#### General:

- a. Action about policy, strategy, nature, scope, resources or direction of the APS or an Agency.
- b. Action taken, or not taken, in accordance with a direction or reference given by a Minister under the  [Public Service Act 1999](#)  or another Act. **Note:** Under section 19 of the *Public Service Act 1999*, an Agency Head is not subject to direction by any Minister in relation to the exercise of powers by the Agency Head under section 15 or 16 or Division 1 or 2 of Part 4 of the *Public Service Act 1999* in relation to particular individuals.
- c. The giving of a direction by the Australian Public Service Commissioner under section 11, 11A or 15 of the *Public Service Act 1999*.
- d. Action taken, or not taken, for a special inquiry under section 43 or an inquiry under section 50 of the *Public Service Act 1999*.
- e. A determination by the Merit Protection Commissioner under section 50A of the *Public Service Act 1999*.
- f. Action taken, or not taken, under section 72 of the *Public Service Act 1999*.

- g. Action arising under any of the following Acts:
- i. [Australian Security Intelligence Organisation Act 1979](#) ;
  - ii. [Safety, Rehabilitation and Compensation Act 1988](#) ;
  - iii. [Superannuation Act 1976](#) ;
  - iv. [Superannuation Act 1990](#) ;
  - v. [Superannuation Act 2005](#) .

#### Employment and Conditions:

- h. Action relating to the engagement of a Defence APS employee.
- i. Action of a Promotion Review Committee.
- j. Action relating to the promotion of an ongoing employee as an SES employee (whether or not the employee is already an SES employee).
- k. Action relating to the determination of the duties of an APS employee, unless the action involves:
  - i. a reduction in classification; or
  - ii. a relocation to another place; or
  - iii. a promotion that meets the following criteria: the affected employee was an applicant for the promotion; the promotion was for employment at a classification mentioned in Group 7 or 8 (EL1, EL2 or equivalent levels) in Schedule 1 to the Classification Rules (Public Service Regulations 1999); there were serious defects in the selection process; or
  - iv. the assignment to an employee of duties that the employee could not reasonably be expected to perform.
- l. Action relating to a decision by an Agency Head under Chapter 2 of the Commissioner's Directions, not to include the name of an employee in the Public Service Gazette.
- m. Action that the affected person has applied to have reviewed by a Court or Tribunal where the action may be reviewed by that Court or Tribunal. **Related information:** Schedule 1 of the Public Service Regulations 1999.

#### 5.1.0.10 Actions that may not be reviewed

1. A Review of Actions decision maker may decide that some reviewable actions should not be reviewed for any of the following reasons
  - a. the application for a Review of Actions relates to an action which occurred more than 120 days after the action occurred, and there are no exceptional circumstances explaining why the application was not made within the 120 days;
  - b. the application by the affected employee for review of the action is misconceived or lacking in substance;
  - c. the application for a Review of Actions is frivolous or vexatious;
  - d. the affected employee has previously applied for a Review of Actions, about the same or similar facts or circumstances as the current application and there are no new facts or circumstances which merit reconsideration under the Review of Actions provisions of the Public Service Act 1999;
  - e. the affected employee has applied to have the action reviewed by a Promotion Review Committee;
  - f. the affected employee has applied, or could apply, to have the action reviewed by an external review body and review by that body would be more appropriate than through a Review of Actions. **Example:** a complaint in relation to a possible breach of privacy may be better dealt with by the Office of the Australian Information Commissioner;
  - g. the employee does not have a sufficient direct personal interest in the Review of Actions; or **Example:** An employee not affected by the action attempts to lodge an application on behalf of an affected employee.
  - h. review, or further review, of the action is not otherwise justified in all the circumstances. **Example 1:** The Review of Actions process will not provide the

affected employee with the outcome they are seeking; **Example 2:** The matter is or has been considered by another agency, such as Fair Work Australia.

#### 5.1.0.11 The Review of Actions process

1. When an application for a Review of Actions is received, the Review of Actions decision maker will assess the application to determine whether the action complained of
  - a. is reviewable;
  - b. is not reviewable;
  - c. should be referred to the Merit Protection Commissioner for review; or
  - d. should not be reviewed, having regard to the criteria specified in the Public Service Regulations 1999.
2. If the application concerns a reviewable action, then the Review of Actions decision maker must review the action and make a decision. The Review of Actions decision maker may conduct the review in any manner they think fit, which may include the use of mediation or conciliation.
3. The review must, as a minimum
  - a. have due regard to procedural fairness;
  - b. be conducted in private; and
  - c. be completed as quickly, and with as little formality, as a proper consideration of the matter allows.
4. The Review of Actions process will vary from case to case depending on the circumstances and may be completed solely by an examination of the relevant documents. In some cases the review may involve engaging an external investigator to conduct interviews and to take statements on behalf of the Review of Actions decision maker.
5. Further information about the Review of Actions process is provided at 5.2.0.5.3.

#### 5.1.0.12 Outcomes of a Review of Actions

1. Having conducted a review, the Review of Actions decision maker may
  - a. confirm the action;
  - b. vary the action;
  - c. set the action aside and substitute a new action; or
  - d. take some other appropriate action.
2. Applicants will be advised of the Review of Actions decision maker's decision in writing, including the reasons for that decision.

#### 5.1.0.13 Further review rights

1. An applicant may apply for a secondary review of the original action from the Merit Protection Commissioner. **See:** Chapter 7 Part 4, The Merit Protection Commissioner.

# Instructions for Defence Employees Submitting an Application for a Review of Actions

## Chapter 5 Part 2

### 5.2.0.1 Purpose

1. The purpose of this Part is to explain the process for submitting an application for a Review of Actions.

### 5.2.0.2 Content

1. This Part contains the following information

[5.2.0.3 Before applying for a Review of Actions](#)

[5.2.0.4 How to apply for a Review of Actions](#)

[5.2.0.5 What happens after an application for a Review of Actions is lodged?](#)

[5.2.0.6 Outcomes of a Review of Actions](#)

[5.2.0.7 Further review](#)

### 5.2.0.3 Before applying for a Review of Actions


1. Before lodging an application for a Review of Actions, a Defence APS employee should consider informally raising their concerns with their supervisor, manager, or with the relevant action area. Supervisors or managers may be able to help resolve the matter quickly without the need to submit a Review of Actions.
2. Defence APS employees should always seek a reconsideration of a decision from the decision maker before submitting a Review of Actions.
3. Informal resolution of the problem will be more likely if the applicant is clear and positive about what they would like to change and focus on the problem rather than on personalities.
4. An applicant should also consider the outcome they would like to achieve. An application for a Review of Actions may not necessarily result in a change to, or reversal of a decision or action. **Example:** Where the outcome sought is an apology or an undertaking that a similar matter would be handled differently in the future then a Defence APS employee should consider using an Alternative Dispute Resolution process. **See:** Chapter 2, Resolution of conflict.
5. A Defence APS employee should give consideration to what evidence exists to support their claims, particularly when allegations against another person might be made. While it is important that unfair or improper actions do not go undetected or unchallenged, or the matter remain unresolved, the reputation of another person should not be put in jeopardy lightly or without any real evidence.

### 5.2.0.4 How to apply for a Review of Actions


1. A Review of Actions application must be made in writing and must state briefly
  - a. why the review is sought; and
  - b. what particular outcome the applicant is seeking.
2. A Defence APS employee may submit a written application for a Review of Actions via
  - a. post to the Director Privacy, Complaints and Resolution (BP35-1-082, PO Box 7929, Canberra BC ACT 2610); or
  - b. email to the Director, Privacy, Complaints and Resolution ([complaint.resolution@defence.gov.au](mailto:complaint.resolution@defence.gov.au)); or

- c. Defence intranet using ComTrack Self Service (available on PMKeyS Self Service).

**Exceptions:**

- d. The following exceptions apply for Defence APS employees working in the Intelligence and Security Group:
  - i. Where the reviewable action is a decision to grant, deny, vary or withdraw a security clearance, the application must be referred to Deputy Secretary Intelligence and Security or Head Defence Security Authority for decision.
  - ii. Where the reviewable action refers to any other decision in Defence, employees in the Australian Signals Directorate, formally the Defence Signals Directorate, may refer the application to the Deputy Secretary Intelligence and Security or Director Australian Signals Directorate for a decision.
  - iii. Where the reviewable action refers to any other decision in Defence, employees in the Defence Intelligence Organisation and the Australian Geospatial-intelligence Organisation, formally the Defence Imagery and Geospatial Organisation, may refer the application to the Deputy Secretary Intelligence and Security for a decision.
3. **Note:** Applying for a Review of Actions will not necessarily cease or suspend the action complained about while the review is being progressed. **Example:** If an application relates to a direction from the Defence APS employee's supervisor or manager, the Defence APS employee must still carry out that direction while their application is being considered by the Review of Actions decision maker, unless directed otherwise. **Related Information:** Applicants should review the information available from the  [Directorate of Privacy, Complaints and Resolution](#) to assist in completing an application for a review.
4. If an application is for a Review of Actions that relates to a determination that the applicant has breached the APS Code of Conduct; or a sanction imposed for breaching the Code of Conduct; the application must be submitted directly to the Merit Protection Commissioner. **See:** Chapter 7 Part 4, The Merit Protection Commissioner.
5. A Defence APS employee may also apply in writing directly to the Merit Protection Commissioner for review of the action if
  - a. the Secretary was directly involved in the action; or
  - b. it is not appropriate, because of the seriousness or sensitivity of the action, for the Secretary to deal with the application; or
  - c. the action is claimed to be victimisation or harassment of the Defence APS employee for having made a previous application for a Review of Actions.

**5.2.0.5 What happens after an application for a Review of Actions is lodged?**

1. After an application for a Review of Actions is lodged a receipt of the application will be provided in writing.
2. The Review of Actions decision maker will assess the application in order to determine
  - a. if the actions are reviewable actions under the  [Public Service Regulations 1999](#); **See:** 5.1.0.8, Actions that are excluded from the Review of Actions process; and **See:** 5.1.0.9, Actions that need not be reviewed; and
  - b. the most effective means of conducting the review. **See:** 5.1.0.10, The Review of Actions process.
3. While the Review of Actions decision maker may conduct a review in any manner he or she considers appropriate, the review must, as a minimum
  - a. have due regard to procedural fairness;
  - b. be conducted in private; and
  - c. be completed as quickly, and with as little formality, as a proper consideration of the matter allows.
4. A person or committee conducting a review may provide written notice to a Defence APS employee requiring them to provide specific information to the review. In such circumstances the Defence APS employee must give the information or documents in the way, and at or within the time, stated in the written notice.
5. It is an offence to obstruct a person or committee conducting a review in carrying out its functions. **Related Information:** Public Service Regulations 1999, Regulation 5.37(1).

#### 5.2.0.6 Outcomes of a Review of Actions

1. Following the completion of a review, the Review of Actions decision maker must inform the Defence APS employee in writing of
  - a. the decision made on the application;
  - b. the reasons for the decision; and
  - c. any action to be taken as a result of the review.
2. The Review of Actions decision maker's decision may
  - a. confirm the action;
  - b. vary the action;
  - c. set the action aside and substitute a new action; or
  - d. take some other appropriate action.

#### 5.2.0.7 Further review

1. A Defence APS employee may seek a further review from the Merit Protection Commissioner. **Note:** Time limits apply for referring Reviews of Action to the Merit Protection Commissioner. **See:** Chapter 7 Part 4, The Merit Protection Commissioner.

# Instructions for work areas

## Chapter 5 Part 3

### 5.3.0.1 Purpose

1. This Part provides instructions for units, functional areas and Service headquarters when providing information in response to an application for a Review of Actions.

### 5.3.0.2 Contents

1. This Part contains the following information

[5.3.0.3 Who conducts a Review of Actions?](#)

[5.3.0.4 Units, functional areas and Service headquarters responsibilities](#)

[5.3.0.5 Further release of information](#)


[5.3.0.6 Timeliness and delay](#)

[5.3.0.7 Suspension of action subject to review](#)

[5.3.0.8 Preliminary view](#)

[5.3.0.9 Outcomes of a Review of Actions](#)

### 5.3.0.3 Who conducts a Review of Actions?

1. The Secretary is the principal decision maker for Review of Actions applications and the Secretary may delegate his or her powers. **Related Information:** A full list of Review of Actions decision makers is provided on the  [HR Delegations](#) (Public Service Framework Delegations) website.
2. For the purpose of this Chapter, the Secretary and his or her Review of Actions delegates are referred to as the 'Review of Actions decision maker'.

### 5.3.0.4 Units, functional areas and service headquarters responsibilities

1. Units, functional areas or Service headquarters will be informed that a Review of Actions application has been submitted by Defence APS employees under their command or management when information is required by a Review of Actions decision maker for the purpose of conducting a review.
2. Units, functional areas or Service headquarters may keep a record of Review of Actions responses in accordance with unit record keeping practices.
3. If a Review of Actions decision maker has requested information or comment from units, functional areas or Service headquarters, responses must be provided with
  - a. comments on the matters surrounding the complaint;
  - b. appropriate supporting documentation; and
  - c. if requested, all relevant files. **Note:**
    - i. Unless specifically requested, original documents are not required.
    - ii. It is an offence to obstruct a person or committee conducting a review in carrying out its functions.
4. An area which has provided information for a Review of Actions will be advised when the review has been finalised.

### 5.3.0.5 Further release of information

1. Any information provided to the Review of Actions decision maker for the purpose of a Review of Actions may be released in part or entirely to the Defence APS employee, or to any other party deemed reasonably necessary to further the review. **Related**



**Information:**  [Defence Security Principles Framework](#), Assessing and Protecting Official Information.

2. Any information provided to the Review of Actions decision maker may also be passed in part or in its entirety to the Merit Protection Commissioner in accordance with Public Service Regulation 5.30.

#### **5.3.0.6 Timeliness and delay**

1. Requests for information from the Review of Actions decision maker relating to an application for a Review of Actions must be given high priority.
2. A response should be provided to the Review of Actions decision maker as soon as reasonably practicable.
3. Where units, functional areas or Service headquarters anticipate unavoidable delays, they must advise the Review of Actions decision maker of
  - a. the nature of the delay;
  - b. the reasons for the delay; and
  - c. an anticipated date on which a response will be provided.
4. If possible an interim response should be provided to the Review of Actions decision maker and a further response should be provided as soon as any significant information is available.

#### **5.3.0.7 Suspension of action subject to review**

1. Applications for a Review of Actions will not cease (or suspend) the action complained about.

#### **5.3.0.8 Preliminary view**

1. If the Review of Actions decision maker forms a preliminary view that is critical of Defence or of an individual's actions, the Review of Actions decision maker will write to the relevant area and/or the individual concerned to offer the relevant area or individual an opportunity to respond to the preliminary view.
2. If the relevant area or individual responds to the preliminary view, the Review of Actions decision maker will consider the response prior to making a decision on the Review of Actions.

#### **5.3.0.9 Outcomes of a Review of Actions**

1. At the conclusion of a Review of Actions process, the Review of Actions decision maker will provide the Defence APS employee with a written decision.
2. A unit, functional area or Service headquarters which has provided information for a Review of Actions will be advised in writing when the Review of Actions process has been finalised.
3. The Review of Actions decision maker may also make recommendations for changes in policy, procedures or processes as an outcome of the Reviews of Actions process.

# Instructions for Review of Actions Decision Makers

## Chapter 5 Part 4

### 5.4.0.1 Purpose

1. This Part provides information for Review of Actions decision makers on the Review of Actions process.

### 5.4.0.2 Content

1. This Part contains the following information

- [5.4.0.3 Review of Actions decision makers](#)
- [5.4.0.4 Powers of Review of Actions decision makers](#)
- [5.4.0.5 Initial action on receipt of a Review of Actions application](#)
- [5.4.0.6 Review of Actions process](#)
- [5.4.0.7 Preliminary view](#)
- [5.4.0.8 Outcomes of a Review of Actions](#)
- [5.4.0.9 Further review](#)

### 5.4.0.3 Review of Actions decision makers

1. The Secretary is the principal decision maker for Review of Actions applications and the Secretary may delegate his or her powers. **Related Information:** A full list of Review of Actions decision makers is provided on the [HR Delegations](#) (Public Service Framework Delegations) website.
2. The Secretary and his or her Review of Actions delegates are referred to as the 'Review of Actions decision maker'.

### 5.4.0.4 Powers of Review of Actions decision makers

1. Review of Actions decision makers are authorised to
  - a. receive applications for a primary review of a reviewable action;
  - b. refer a primary review of a reviewable action to the Merit Protection Commissioner with their agreement;
  - c. inform a Defence APS employee in writing that an action is not reviewable under Public Service Regulation 5.23 (2), (3) and (4) that includes reasons and information about the Defence APS employee's rights to apply to the Merit Protection Commissioner under Public Service Regulation 5.29 for further review of the action;
  - d. review a reviewable action, to attempt to resolve a Defence APS employee's concerns, and to advise the Defence APS employee of the outcome;
  - e. receive applications for a further review to be conducted by the Merit Protection Commissioner;
  - f. provide the Merit Protection Commissioner with an application for secondary review and documents relating to the primary review;
  - g. consider recommendations received from the Merit Protection Commissioner about a Review of Actions under Public Service Regulations 5.28 or 5.31 as soon as possible;
  - h. make a decision on the recommendations of the Merit Protection Commissioner and inform the Defence APS employee and the Merit Protection Commissioner in writing of this decision and the reason for it; and
  - i. on receipt of a written notice from a person or committee, carry out a review under Division 5.3 of the [Public Service Regulations 1999](#), providing to the

person or committee information or documents relevant to that review as stated in the written notice of request. **Related information:** 5.1.0.7(b) and [The legislative framework for the APS](#) for more information.

#### 5.4.0.5 Initial actions on receipt of an application for a Review of Actions

1. On receipt of an application for a Review of Actions, the Review of Actions decision maker will provide an acknowledgement of the Review of Actions in writing to the Defence APS employee who lodged the application.
2. The Review of Actions decision maker will assess the application for a Review of Actions to determine whether the action complained of
  - a. is reviewable;
  - b. is not reviewable;
  - c. should be referred to the Merit Protection Commissioner for review (in special circumstances);
  - d. should not be reviewed, having regard to the criteria specified in Regulation 5.23 of the Public Service Regulations 1999. **See:** 5.1.0.6, Who can apply for a Review of Actions; 5.1.0.8, Actions excluded from the Review of Actions process; and 5.1.0.9, Actions that may not be reviewed.
3. The Review of Actions decision maker may request the Defence APS employee to provide additional or clarifying information for consideration at any stage in the review process.

#### 5.4.0.6 Review of Actions process

1. If an action that is the subject of a Review of Actions is to be reviewed, the Review of Actions decision maker must make a decision on the action. However, the Review of Actions decision maker may suggest mediation or conciliation. **Note:** Advice in relation to mediation and conciliation can be obtained from the Directorate of Privacy, Complaints and Resolution website.
2. If the matter cannot be resolved via mediation or conciliation, the Review of Actions decision maker may arrange for the matter to be formally reviewed on the basis of the application alone or, if more information is required, for further enquiries to be made.
3. The manner in which reviews are conducted may vary from case to case depending on the circumstances. In most cases the review will be conducted solely by examination of the documents provided by the applicant and the management of the unit, functional area or Service headquarters.
4. In some complex cases the Review of Actions decision maker may engage an external investigator to conduct interviews and to take statements on behalf of the Review of Actions decision maker. **Note:** The Review of Actions decision maker, not the external investigator, will make a decision on the Review of Actions.
5. In conducting a review, the Review of Actions decision maker must
  - a. have regard to procedural fairness;
  - b. conduct the review in private; and
  - c. undertake the review quickly, and with as little formality, as proper consideration of the matter allows.
6. The Review of Actions decision maker may seek information from units, functional areas or Service headquarters. The Review of Actions decision maker must then advise these areas of the reasons why information is being sought and to whom the information is being provided.

#### 5.4.0.7 Preliminary view

1. The Review of Actions decision maker may form a preliminary view during a Review of Actions process that is critical of Defence or of an individual's actions.
2. If the Review of Actions decision maker forms a preliminary view that is critical of Defence or an individual, the Review of Actions decision maker must write to the relevant area and/or the individual concerned to
  - a. advise of the preliminary view; and
  - b. invite the relevant area or individual to respond to the preliminary view.

3. The Review of Actions decision maker will then consider these submissions prior to making a decision.
4. If the relevant area or individual responds to the preliminary view, the Review of Actions decision maker must consider the relevant area's or individual's response to the preliminary view before making a decision on the Review of Actions.
5. If the relevant area or individual does not respond to the preliminary view, the Review of Actions decision maker may make a decision on the reviewable action based on the information available.

#### 5.4.0.8 Outcomes of a Review of Actions

1. If a Review of Actions decision maker reviews an action, the Review of Actions decision maker may decide to
  - a. confirm the action;
  - b. vary the action;
  - c. set aside the action and substitute a new action; or
  - d. take other appropriate action.
2. The Review of Actions decision maker must advise in writing
  - a. the Defence APS employee who lodged the Review of Actions of the Review of Actions decision, including detailed reasons for that decision; and
  - b. any area which has provided information for a Review of Actions that the Review of Actions has been finalised.
3. The Review of Actions decision maker may recommend changes in policy, procedures or processes.

#### 5.4.0.9 Further review

1. The Review of Actions decision maker must include advice to a Defence APS employee regarding their right to apply for a further review to the Merit Protection Commissioner. **See:** Chapter 7 Part 4, The Merit Protection Commissioner.
2. **Example:** 'Under Public Service Regulation 5.29, you may apply to the Merit Protection Commissioner for a further review of this decision. Should you choose to exercise this entitlement, your application must state briefly why the secondary review is sought and be forwarded to [insert Review of Actions decision maker's address]. Your application will be forwarded to the Merit Protection Commissioner, together with relevant documents, within 14 days of receipt.'
3. An application for secondary review is to be lodged with the Defence Review of Actions decision maker no later than 60 days from the date the Defence APS employee was informed of the outcome of the primary review.

# Redress of Grievance

## Chapter 6

### 6.1 Introduction

1. Redress of Grievance (complaint) is a formal complaint process under Part 7 of the *Defence Regulation 2016* ('the Regulation') by which Defence members may complain about a decision, act or omission relating to their service in the ADF. The complaint process should only be used after reasonable attempts to resolve the issue have been made using informal processes, usually involving the chain of command.
2. The complaint process provides for initial consideration by a Commanding Officer or an Authorised Complaint Recipient (CO/ACR) and, if necessary, further independent consideration by the Inspector-General of the Australian Defence Force (IGADF).
3. The IGADF's role in dealing with complaints is separate to that of the chain of command. CO/ACRs should exercise their command and leadership functions to deal with the complaint's submitted by personnel under their command/supervision. This reflects the responsibilities of each Defence member, their CO/ACR and their Service, in resolving complaints at the lowest appropriate level.

### 6.2 Purpose

1. This chapter provides information and instruction on the complaint process.

### 6.3 Application to personnel working in Defence

1. This chapter applies to:
  - a. Defence members, as defined in Chapter 1 of the CARM;
  - b. Defence personnel who supervise Defence members;
  - c. Defence personnel who are responsible for the administration of the complaint process under the Regulation;
  - d. by exception, to Defence Australian Public Service (APS) employees and external service providers involved in the subject matter of a complaint, or its administration; and
  - e. Defence contractors who have contractual obligations to comply with Defence policy.

### 6.4 Offences in relation to Redress of Grievances

1. It is an offence to engage in conduct to cause detriment, or threaten to cause detriment, to another person because that member has submitted or proposes to submit a complaint.
2. Good faith advice, including not to submit a complaint (e.g. recommending an appropriate alternate process to consider the complaint) is not an offence.

## 6.5 Compliance

1. All Defence personnel, including Defence members (as defined in Chapter 1 of the CARM) and Defence APS employees must provide appropriate assistance to CO/ACRs, and the IGADF in relation to any complaint.
2. All Defence contractors who are contractually obliged to comply with Defence policy must provide appropriate assistance to CO/ACRs and the IGADF in relation to any complaint in accordance with their contractual obligations.

## 6.6 What is a complaint?

1. A complaint is:
  - a. a complaint about decision, act omission that relates to the member's service which the member considers is adverse or detrimental to them, and
  - b. the adverse or detrimental effect is capable of being redressed by:
    - i. the Chief of the Defence Force (CDF), or another ADF member;
    - ii. the Secretary or an employee of the Department, or
    - iii. a delegate of, or person authorised by, the CDF or Secretary.

## 6.7 Exclusions to the complaint process

1. The following matters are explicitly excluded from being subject of a complaint.
  - a. a decision or act under the complaint provisions in the Regulation, or an omission to make a decision or do an act under the complaint provisions in the Regulation;
  - b. a decision, act or omission of the IGADF;
  - c. a decision, report, finding or recommendation of an inquiry under the *Defence (Inquiry) Regulations 2018*;
  - d. a decision to give, or not to give, a particular assessment, grade or rating as the result of a performance appraisal including assessments on courses and training (for example, flying training);
  - e. a decision, judgment or order made by a civil or criminal court, a service tribunal or the Defence Force Discipline Appeal Tribunal;
  - f. a liability arising from section 68 or 69 of the *Public Governance, Performance and Accountability Act 2013*;
  - g. an act that is part of the administrative process for making a decision other than as part of a complaint about the decision (in particular, procedural fairness notices such as a Notice to Show Cause for a warning or censure, or a termination notice or reduction notice under the Regulation).
2. The following are matters that do not meet the requirements of a complaint.

- a. complaints about the merits of Defence legislation or policy. These do not meet the requirements of a complaint (para. 6.6.1a). A decision made pursuant to the legislation or policy may be subject of a complaint.
3. Where the only outcome sought or available is an apology from an individual, the complaint most likely does not meet the requirements to be considered as a complaint. An apology from an individual cannot be directed. In those circumstances, advice should be sought from IGADF whether the complaint constitutes a valid complaint.

## 6.8 The complaint process

1. The complaint process under the Regulation comprises a single layer of formal internal review, involving the IGADF and the member's chain of command. The process is outlined as follows:
  - a. The Defence member submits a complaint application to their CO/ACR using form AD841. The complaint must be submitted electronically using the form.
  - b. The CO/ACR considers the complaint (See Fact Finding – 6.10.1 below).
  - c. If the CO/ACR finds that the complaint was made within the regulated time frames (see paragraphs 6.9.4 and 6.9.5) is not an excluded complaint and has merit, the CO/ACR should take action within their authority to provide appropriate redress, where applicable. Where no merit is found, redress need not be considered.
  - d. If the Defence member is satisfied with the outcome achieved by the CO/ACR, they should withdraw their complaint application. If the complaint is withdrawn before the CO/ACR has referred the complaint to IGADF, the CO/ACR is not required to refer the complaint to IGADF, but must advise the IGADF that the complaint was made and withdrawn.
  - e. The CO/ACR must refer the complaint application to IGADF within 14 days of receiving the application. This referral provides the CO/ACR with an opportunity to advise their course of action to deal with the complaint.
  - f. The IGADF decides whether to consider the complaint and the appropriate avenue by which to consider the complaint. IGADF assesses the complaint and provides advice to the CO/ACR about their intended course of action to deal with the complaint. IGADF may decide to assume responsibility for the complaint at this point.
  - g. The CO/ACR determines merit and whether redress should be provided, writes to the member with their decision on the complaint and has the member acknowledge the decision. Where the IGADF considers the detail of the complaint, any necessary additional inquiries may require appropriate assistance of the CO/ACR.
  - h. The IGADF must then consider the complaint, make a decision whether further consideration is warranted and may make findings and/or recommendations with respect to the complaint application.
2. Most complaints should be dealt with as an ordinary function of command by CO/ACRs exercising their inherent command responsibilities.

3. The IGADF will decide how and to what extent further consideration of the complaint will occur.

## 6.9 Submission of a complaint

### General

1. An application is to be submitted by the member to their CO/ACR in writing on Webform AD 841—*Application for Redress of Grievance* (available on the Defence Web Forms System).
2. The member must specifically identify the decision/s, act/s or omission/s being complained of (their grievance e.g. decision on housing) and provide appropriate evidence (e.g. a decision document or a statement of reasons for the decision).
3. The member must also specify the redress they seek.

**Note:** For more information on complaints regarding youth, refer to [YOUTHPOLMAN Part 1 Section 3 Chapters 3 and 4](#).

### Time limits—termination or discharge decisions

4. A grievance relating to a termination of service decision must be submitted **within 14 days** after the member was notified of the decision. No scope exists to vary or extend this timeframe.

### Time limits—decisions other than for termination or discharge

5. If a grievance does not relate to a termination of service decision, the complaint must be submitted within six months after the member:
  - a. was notified of the decision, act, or omission concerned; or
  - b. could reasonably be expected to have known about the decision, act or omission.
6. The IGADF may allow a further time period if the IGADF is satisfied that exceptional circumstances exist.

**Note:** Exceptional circumstances may include:

- a. A Defence member being absent on operational service or for extended medical reasons;
  - b. delays caused as a result of the Defence member taking reasonable steps to use administrative processes outside the complaint process, in an attempt to resolve the grievance; or
  - c. a substantial benefit or value to the Defence member or Defence.
7. The CO/ACR is to forward the complaint with the member's exceptional circumstances to IGADF where a decision will be made whether to accept the complaint is '*out of time*'. Where the Defence member has not provided exceptional circumstances, the CO/ACR is to seek whether any exist from the member and forward the complaint to IGADF. The CO is NOT to reject the complaint as '*out of time*' without advice from IGADF.



### **Withdrawal of the complaint**

8. A member may withdraw a complaint at any time by giving notice in writing to the CO or to the IGADF if it has been referred to the IGADF. If it has not been referred to the IGADF, the CO must inform the IGADF that the complaint was made and withdrawn.

## **6.10 Actions of a Commanding Officer or Authorised Complaint Recipient on receipt of a complaint**

### **Fact finding**

1. Fact finding is an administrative exercise to determine the facts relating to an incident; in this case the submission of a complaint to a CO/ACR. It should not be a detailed or lengthy inquiry.
2. As a valuable aide to the consideration of a complaint, a properly conducted fact finding exercise can materially assist in dealing with the complaint by determining key issues of jurisdiction and timeliness (as detailed below) and may help to clarify facts, the substantive issues raised by the member and the redress sought.
3. Fact finding should also identify any relevant documents, policy or legislation and provide a recommendation to the CO/ACR how to best consider and then deal with the complaint. Fact finding should also clarify what, if any, further information is required to assist the CO/ACR to make a fully informed decision on the merit of the grievance.
4. Fact finding reports should not make a recommendation on the merit of the grievance, but should merely describe what facts and information relates to the matter and to propose a way forward for the CO/ACR.

### **Consider jurisdiction**

5. A CO/ACR may consider the grievance and relevant fact finding and decide whether or not the complaint is excluded from the complaint process because:
  - a. the grievance is about an excluded subject, or
  - b. the grievance has been submitted out of time.
6. If the CO/ACR believes the grievance is excluded from the complaint process by subject or time or if the CO/ACR cannot reach a concluded view on whether the complaint is excluded, the CO/ACR must seek advice from IGADF. The fact finding conducted at the unit can assist the IGADF in this assessment and should be provided to the IGADF when advice is sought by the CO/ACR. If the IGADF agrees that the grievance is excluded, the CO/ACR or the IGADF may decline to accept it by notifying the member in writing.

### **Consider time**

7. If a grievance not relating to a termination of service decision is submitted '*out of time*' and is not an excluded complaint, the CO/ACR must refer the complaint to IGADF for consideration. Again, the CO/ACR should provide a copy of the fact finding conducted at the unit to IGADF (if not previously provided).

8. **The CO/ACR is not permitted to grant an extension to the time limitation.** If the IGADF is satisfied that there are exceptional circumstances for the member's delay in submitting the complaint, the IGADF may require the CO/ACR undertake further consideration of the complaint.

#### **Take action**

9. If the grievance is accepted by the CO/ACR (that is, it is not excluded by subject or time) the CO/ACR may do one or more of the following:
  - a. consider the complaint (having regard to the results of the fact finding, additional inquiries by the CO/ACR, relevant legislation and/or policy and any advice provided by the IGADF);
  - b. where the complaint is considered to have merit, take action to provide appropriate redress;
  - c. with the agreement of the other person, refer the complaint to another person for consideration;
  - d. with the agreement of the other person, refer the complaint to another person who is capable of redressing the member's grievance (the CO/ACR must include their views on the merits of the complaint);
  - e. refer the complaint to be dealt with under another complaint handling procedure. IGADF will assume responsibility for complaints relating to decisions by the Australian Government Security Vetting Agency (AGSVA) to revoke, remove or downgrade a person's security clearance. Those complaints will ordinarily be referred by IGADF to the AGSVA appeal mechanism and the complaint closed by IGADF.

#### **Inform the member**

10. The CO/ACR must provide written notification to the member of what action the CO/ACR has taken. Where the CO/ACR has reached a decision on the member's grievance, the member is to be informed of the decision in writing.

#### **Monitor progress through alternate person/procedure.**

11. Where the CO has referred the complaint to another person (including for another complaint procedure), the CO/ACR must monitor the progress of the complaint.

#### **Inform the IGADF of outcome**

12. The CO must inform the IGADF of any complaint decision, including the outcome of any alternate consideration person or procedure.

#### **Referral to IGADF**

13. Concurrent with CO/ACR actions (which should continue), the CO/ACR must, within 14 days of receiving a complaint:
  - a. refer the complaint to the IGADF, and
  - b. notify the member that the complaint has been referred to the IGADF.
14. The CO/ACR is expected to provide any other information or material to the IGADF that the CO/ACR considers relevant. This may include:
  - a. information, including any document, derived from fact finding or other administrative inquiry;

- b. views about the merits of the grievance and any appropriate redress; and
  - c. actions the CO/ACR has taken or proposes to take in respect of the grievance in accordance with the CO/ACR's function of command.
15. The CO/ACR is to provide advice on any new actions or decisions concerning the grievance, as they occur, to the IGADF.

### 6.11 Suspension of action pending the complaint decision at each stage

1. Action which is adverse to the member may be suspended pending consideration of the member's grievance.

**Note:** Termination decisions following confirmed positive prohibited substance testing cannot be delayed more than three months from the date that the member received the termination decision.

2. Where a grievance relates to a decision to cancel a Defence member's entitlement, generally the entitlement should not continue to be paid or reinstated because a grievance has been submitted, except in cases of exceptional hardship. This is to avoid the Defence member accruing a debt.

**Note:** If the grievance is upheld, the Defence member would normally be retrospectively paid the entitlement.

3. On request from the member for suspension of executive action, the CO/ACR is to pursue a decision by the relevant authority. The CO/ACR should, where appropriate, make a recommendation taking into account the impact such a suspension would have on the member and the unit.
4. There is no right in policy or legislation to suspension of executive action.

### 6.12 Actions by IGADF

1. On receipt of a grievance the IGADF must consider the complaint. This consideration may be limited to providing advice to the chain of command or may be a deeper assessment. Accordingly, information gathered by the CO/ACR, such as fact finding or requests for additional information or statements of reasons is required to be provided to the IGADF.
2. The IGADF may consider the complaint in any manner that the IGADF considers appropriate in the circumstances.
3. The IGADF may decide not to consider the complaint further if the IGADF is satisfied that:
  - a. the CO/ACR, or another person, has satisfactorily resolved the complaint or will be able to satisfactorily resolve the complaint;  
**Note:** In some cases decisions made for this reason may be made prior to the CO/ACR making a decision on the complaint. This is known as an 'early decision'. If an 'early decision' is made the CO/ACR must continue to deal with the complaint and make a decision.
  - b. the grievance has already been considered under the complaint provisions or another complaint handling procedure;

- c. it would be more appropriate for the member's grievance to be considered under another complaint handling procedure;
  - d. the member has not made reasonable efforts to resolve their complaint before submitting their grievance under the Regulation;
  - e. the grievance does not contain sufficient information about a decision, act or omission to enable the complaint to be considered;
  - f. the grievance is frivolous or vexatious;
  - g. consideration of the grievance is not warranted having regard to all the circumstances.
4. When a grievance has been finalised by the IGADF, a copy of the IGADF decision in respect of the complaint and any findings, if made, will be provided to the member, the member's CO or a more senior officer in the chain of command.
  5. The IGADF may provide a copy of the findings and recommendations to any other persons mentioned in the Regulation.
  6. The IGADF will inform the member:
    - a. who the IGADF has informed of any findings, and
    - b. who the IGADF has given a report about the complaint.

### **6.13 Relevant websites**

1. Further information on the complaint process can be found on the IGADF Intranet site.

### **6.14 Defence Force Ombudsman review of IGADF action**

1. If a Defence member believes their grievance has not been satisfactorily dealt with or that the consideration of the complaint has taken too long, the member may make a complaint to the Defence Force Ombudsman. **See:** Chapter 7 Part 1, The Ombudsman, for more information.

# External Complaint Agencies

## Chapter 7

### 7.0.0.1 Introduction

1. Five external complaint agencies have the authority to investigate complaints about Defence. These agencies are
  - a. the Commonwealth and Defence Force Ombudsman;
  - b. the Australian Human Rights Commission;
  - c. the Office of the Australian Information Commissioner (through the Privacy Commissioner);
  - d. the Merit Protection Commissioner; and
  - e. The Inspector General of Intelligence and Security. **Note:** Information on submitting a complaint to the Inspector General of Intelligence and Security is contained in Chapter 8 Part 3, Inspector General of Intelligence and Security.
2. A Defence member, Defence APS or ASD employee, external service provider or member of the public may make a complaint about Defence to an external complaint agency.
3. Defence is required by law to respond to enquiries from the external complaint agencies listed in 7.0.0.1.1, above.

### 7.0.0.2 Purpose

1. This Chapter provides information and instructions for Defence personnel; external service providers; units, functional areas and Service headquarters; and Complaints and Resolution staff involved in making, responding to, or administering a complaint to the four external complaint agencies listed at 7.0.0.1.1.a-d, above.

### 7.0.0.3 Content


1. This Chapter contains the following Parts
  - a. [Part 1: The Ombudsman](#)
  - b. [Part 2: The Australian Human Rights Commission](#)
  - c. [Part 3: The Privacy Commissioner](#)
  - d. [Part 4: The Merit Protection Commissioner](#)

**Note:** Information on submitting a complaint to the Inspector General of Intelligence and Security is contained in Chapter 8 Part 3, Inspector General of Intelligence and Security.

### 7.0.0.4 Disclosure of security classified information

1. Defence personnel must not provide/disclose security classified information when:
  - a. participating in a process provided for in this Manual; or
  - b. submitting a complaint provided for in this Manual.
2. Defence personnel acting contrary to 7.0.0.4.1 may be liable to criminal prosecution under section 70 of the [Crimes Act 1914](#).
3. Defence APS or ASD employees acting contrary to 7.0.0.4.1 may also be subject to code of conduct action. **Related Information:** [APS Code of Conduct](#).
4. ASD employees acting contrary to paragraph 7.0.0.4.1 may also be subject to ASD Code of Conduct action. **Related Information:** [ASD People Policy](#).
5. Defence members acting contrary to 7.0.0.4.1 may also be subject to an administrative sanction or action under the [Defence Force Discipline Act 1982](#). **Related Information:**

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 [Military Personnel Policy Manual Part 9 Chapter 2](#) - Formal Warnings and Censures in the Australian Defence Force.

**Note:** ASD employees and certain Defence APS employees acting contrary to paragraph 7.0.0.4.1 may be liable to criminal prosecution under the [Intelligence Services Act 2001](#).

# The Ombudsman

## Chapter 7 Part 1

### 7.1.0.1 Introduction

1. The Commonwealth Ombudsman can investigate complaints about the administrative actions of Australian Government departments and agencies. The Ombudsman has special responsibilities for complaints relating to the ADF.
2. The Ombudsman can investigate complaints about the actions and decisions of Defence to see if they are wrong, unjust, unlawful, discriminatory or unfair.
3. *Under the [Ombudsman Act 1976](#)* the Commonwealth Ombudsman is also the Defence Force Ombudsman. The Defence Force Ombudsman investigates complaints about the ADF relating to or arising from present or past service.
4. The Defence Force Ombudsman investigates complaints from serving Defence members only after they have exhausted internal grievance mechanisms, unless there are exceptional circumstances.

### 7.1.0.2 Purpose

1. This Part outlines the functions of the Ombudsman, describes the procedure that must be followed in response to an approach by the Ombudsman, and provides guidance to units, functional areas and Service headquarters on contact procedures with the Ombudsman's office.
2. From time to time Defence may be approached by state or territory Ombudsmen, or industry/service specific Ombudsmen. If an approach is made to Defence by state or territory Ombudsmen, advice must be sought from [Complaints and Resolution](#) to determine whether this Part should apply. **Example:** New South Wales Ombudsman or the Telecommunications Industry Ombudsman.

### 7.1.0.3 Content

1. This Part contains the following Divisions

[Division 1: Overview](#)

[Division 2: Instructions for Defence Personnel making a complaint to the Ombudsman](#)

[Division 3: Instructions for units, functional Areas, and Service headquarters](#)

[Division 4: Instructions for Complaints and Resolution](#)

[Division 5: Functions of the Commonwealth and Defence Force Ombudsman](#)




### 7.1.0.4 This Part applies to

1. This Part applies to
  - a. all Defence personnel; and
  - b. external service providers to the extent that they are required to comply in accordance with their contracts with Defence.

### 7.1.0.5 Policy

1. Defence must comply with the [Ombudsman Act 1976](#).

#### 7.1.0.6 Relevant websites

1. The Complaints and Resolution  [Ombudsman](#) page contains information for Defence personnel on submitting a complaint to the Ombudsman.
2. Information about how to contact the Commonwealth Ombudsman or the Defence Force Ombudsman can be found on their website -  <https://www.ombudsman.gov.au>

#### 7.1.0.7 Applicable legislation

1.  [Ombudsman Act 1976](#)

#### 7.1.0.8 Accountability

1. Complaints and Resolution, on behalf of the Secretary and the CDF, is responsible for the management and coordination of responses to the Ombudsman.
2. The effectiveness of Defence's responses to the Ombudsman are monitored by the Ombudsman.

#### 7.1.0.9 Sponsor and point of contact

1. The sponsor of this Part is the Assistant Secretary HR Services.
2. The point of contact for this Part is the Director Complaints and Resolution - **Email:** [complaint.resolution@defence.gov.au](mailto:complaint.resolution@defence.gov.au)



## Part 1 Division 1 - Overview

### 7.1.1.1 Purpose

1. This Division provides an overview of the Defence process for managing and responding to approaches from the Ombudsman in relation to complaints about Defence.

### 7.1.1.2 Content

1. This Division contains the following information

- [7.1.1.3 Roles and responsibilities](#)
- [7.1.1.4 Investigations by the Ombudsman](#)
- [7.1.1.5 Conduct of investigations by the Ombudsman](#)
- [7.1.1.6 Suspension of actions](#)
- [7.1.1.7 Responding to the Ombudsman](#)
- [7.1.1.8 Outcomes of investigations](#)
- [7.1.1.9 Adverse findings against Defence](#)
- [7.1.1.10 Offences](#)

### 7.1.1.3 Roles and responsibilities

1. The roles and responsibilities of Defence personnel connected with an approach from the Ombudsman are outlined in the following Divisions

- [Division 2: Instructions for Defence personnel making a complaint to the Ombudsman](#)
- [Division 3: Instructions for units, functional areas and Service headquarters](#)
- [Division 4: Instructions for Complaints and Resolution](#)

### 7.1.1.4 Investigations by the Ombudsman

1. In relation to complaints about Defence, the Ombudsman investigates either as the Commonwealth Ombudsman or the Defence Force Ombudsman.
2. When a complaint is made to the Ombudsman, the Ombudsman may choose to investigate the complaint, or part of it, as either the Commonwealth or the Defence Force Ombudsman.  
**Note:** The Ombudsman also has a number of other roles and may investigate a complaint under any of those roles if it is more appropriate to do so.
3. **What the Commonwealth Ombudsman investigates**
  - a. The Commonwealth Ombudsman investigates administrative actions taken by a department or prescribed authority
    - i. about which a complaint has been made; or
    - ii. under the 'own motion' powers provided in the *Ombudsman Act 1976*. **See:** 7.1.5.3.1, Functions of the Commonwealth Ombudsman.
4. **What the Defence Force Ombudsman investigates**
  - a. The Defence Force Ombudsman investigates matters of administration related to the service of Defence members or matters that arise as a consequence of a person serving or having served in the ADF.
  - b. The Defence Force Ombudsman is not part of the chain of command and is independent from Defence. **See:** 7.1.5.3.2, Functions of the Defence Force Ombudsman.

### 7.1.1.5 Conduct of investigations by the Ombudsman

1. Investigations by the Ombudsman are
  - a. conducted in private; and
  - b. undertaken in accordance with the Ombudsman's own processes.

2. The Ombudsman has wide investigative powers and may investigate complaints against Defence using a combination of methods, including
  - a. oral inquiry;
  - b. written request (email or letter) for comment;
  - c. examination of files; and
  - d. formal interview of relevant Defence personnel, sometimes under oath.
3. In relation to Defence, the Ombudsman usually investigates by seeking information through Complaints and Resolution from the relevant unit, functional area or Service headquarters.

#### 7.1.1.6 Suspension of actions

1. In the course of an investigation, the Ombudsman may request Defence to suspend an administrative action until the completion of the Ombudsman's investigation. The purpose of the request is to prevent irrevocable action that would prejudice an appropriate remedy to a complaint or an administrative deficiency.
2. The request will be made through Complaints and Resolution. Complaints and Resolution must forward the request to the appropriate action area within Defence for a decision.
3. A decision not to suspend the requested action may constitute an administrative defect and be considered unjust or oppressive and require remedy. A decision not to comply with a request from the Ombudsman to suspend action should only be made where it would be unlawful to do so or where safety, security, discipline or the effective operation of a unit dictates.
4. Where action has been suspended, the Ombudsman will conduct their investigation as a matter of urgency.

#### 7.1.1.7 Responding to the Ombudsman

1. Complaints and Resolution, on behalf of the Secretary and the CDF, and Director-General ASD, is responsible for the management and coordination of responses to the Ombudsman.
2. The Ombudsman may directly contact units, functional areas or Service headquarters or individual Defence personnel. However, consultation with Complaints and Resolution is usually undertaken in the first instance to provide advance notice of the Ombudsman's intention. **Note:** Units, functional areas and Service headquarters must refer any direct contact from the Ombudsman to Complaints and Resolution.
3. Normally, documents are provided to the Ombudsman's office through Complaints and Resolution. In the case that a unit, functional area or Service headquarters has had direct contact with the Ombudsman's office and agrees to provide documentation directly, copies of the documents must also be provided to Complaints and Resolution. **See:** 7.1.3.7, Providing documentation to the Ombudsman; **Related Information:** Defence Privacy Policy.

#### 7.1.1.8 Outcomes of investigations

1. The Ombudsman does not have the power to order Defence to change a decision.
2. On completion of an investigation the Ombudsman will
  - a. decide that the action complained about was not unreasonable in all the circumstances, discontinue the investigation and inform the complainant and Defence; or
  - b. make a report to Defence, with a copy to the Minister, with a recommendation for an appropriate remedy.

#### 7.1.1.9 Adverse findings against Defence

1. Where, during the course of an investigation, the Ombudsman forms opinions which are critical of Defence's or an individual's actions, the Ombudsman is required to give the CDF, Secretary, Director-General ASD, and persons concerned in the taking of the action, or the person criticised, the opportunity to make such submissions as they wish, before the investigation is completed. **Note:** This is usually achieved by the Ombudsman providing a copy of a draft report of the formal investigation to the CDF and Secretary for comment, with

- the request that the report be passed on to the individual concerned or criticised in the report, to afford them the opportunity to make their own submissions.
2. Where the Ombudsman forms an opinion that there is evidence of misconduct or breach of duty, the Ombudsman may disclose the evidence to the CDF or Secretary, or Director-General ASD, or, if the evidence relates to the CDF or Secretary, or Director-General ASD, to the Minister for Defence.
  3. On completion of an investigation the Ombudsman forms an opinion as to whether the action
    - a. appears to have been contrary to law;
    - b. was unreasonable, unjust, oppressive or improperly discriminatory;
    - c. was based either wholly or partly on a mistake of law or fact;
    - d. was otherwise in all the circumstances wrong;
    - e. was taken on the basis of irrelevant considerations or without taking all the relevant considerations into account;
    - f. was defective because the complainant was not given reasons for the action; or
    - g. was based on unreasonable law or policy (section 15(1)(a)(iii) of the *Ombudsman Act 1976*).
  4. If the Ombudsman considers that the action was defective for any of the foregoing reasons, the Ombudsman will report to Defence accordingly, with a copy to the Minister, with a recommendation for an appropriate remedy.
  5. If adequate and appropriate action is not taken within a reasonable time, the Ombudsman may then report the matter to the Prime Minister and to Parliament. Very few investigations reach this point; in almost all cases, either
    - a. the Ombudsman decides that the action was not unreasonable in all the circumstances, discontinues the investigation and informs the complainant and Defence; or
    - b. Defence will recognise that it could have done better and provide a remedy that satisfies the Ombudsman, who may decide to
      - i. take no further action;
      - ii. record a finding of administrative deficiency against Defence; or
      - iii. produce a formal report under section 15 of the *Ombudsman Act 1976*.

#### 7.1.1.10 Offences

1. It is an offence, punishable by fine or imprisonment, to refuse or fail to
  - a. attend before the Ombudsman;
  - b. to be sworn or make an affirmation;
  - c. to furnish information; or
  - d. to answer a question or produce a document or record;
  - e. when required to do so, unless there is a reasonable excuse.

## Part 1 Division 2 - Instructions for Defence personnel making a complaint to the Ombudsman

### 7.1.2.1 Purpose

1. This Division outlines who can make a complaint to the Ombudsman and how, including considerations for Defence personnel prior to making a complaint.

### 7.1.2.2 Content

1. This Division contains the following information

[7.1.2.3 Who can make a complaint to the Ombudsman](#)

[7.1.2.4 Before making a complaint to the Ombudsman](#)

[7.1.2.5 Making a complaint to the Ombudsman](#)

[7.1.2.6 Ombudsman investigations](#)



### 7.1.2.3 Who can make a complaint to the Ombudsman

1. Any person, including a Defence member, Defence APS or ASD employee or a member of their family, may submit a complaint to the Ombudsman.
2. When contemplating making a complaint, regard should be given to the role and functions of the Ombudsman and the outcome sought. **See:** Chapter 7 Part 1 Division 5, Functions of the Commonwealth and Defence Force Ombudsman.

### 7.1.2.4 Before making a complaint to the Ombudsman

1. While Defence cannot prevent a person from making a complaint to the Ombudsman, prior to making a complaint the following should be considered
  - a. Is there an alternative complaint resolution process within Defence that may be able to resolve the issue? **Examples:**
    - i. Raising the complaint with your commander, manager or supervisor;
    - ii. Making an unacceptable behaviour complaint;
    - iii. Redress of Grievance process. **Note:** The Redress of Grievance process is only available to Defence members.
  - b. Does the matter fall within the scope of the Ombudsman's power? If there is any uncertainty, contact the Ombudsman's office. **Note:** Defence APS employees should note that the Ombudsman has limited jurisdiction relating to APS employment. There are further limitations regarding ASD employment.

### 7.1.2.5 Making a complaint to the Ombudsman

1. Complaints can be made to the Ombudsman over the telephone, or in writing (including via email).
2. When making a complaint to the Ombudsman, Defence personnel must **not** provide
  - a. classified information; or
  - b. information that would amount to a misuse of Defence property or an interference with other people's personal information.
3. Further information about the Ombudsman and how to submit a complaint can be found on the Ombudsman's website (  <https://www.ombudsman.gov.au>  ).

### 7.1.2.6 Ombudsman investigations

1. The Ombudsman may choose to investigate a complaint, or part of it. Actions taken to investigate a complaint are determined by the Ombudsman.

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2. Defence personnel are reminded that the Ombudsman, including the Defence Force Ombudsman, is independent from Defence and is not a part of Defence or the chain of command.
3. Any concerns about the investigation of a complaint should be raised with the Ombudsman.

## Part 1 Division 3 - Instructions for units, functional areas and Service headquarters

### 7.1.3.1 Purpose

1. This Division describes the Ombudsman's investigation process as it relates to units, functional areas and Service headquarters and the responsibilities of units, functional areas and Service headquarters in relation to complaints from the Ombudsman.

### 7.1.3.2 Content

1. This Division contains the following information

[7.1.3.3 Conduct of investigations by the Ombudsman](#)

[7.1.3.4 Units, functional areas and Service headquarters responsibilities](#)

[7.1.3.5 Timeliness and delay](#)

[7.1.3.6 Direct contact with the Ombudsman](#)

[7.1.3.7 Providing documentation to the Ombudsman](#)

[7.1.3.8 Suspension of Action](#)

[7.1.3.9 Outcomes of investigations](#)

[7.1.3.10 Adverse findings against Defence](#)

### 7.1.3.3 Conduct of investigations by the Ombudsman

1. The Ombudsman conducts investigations in private and investigates as he or she sees fit.
2. The Ombudsman's point of contact in Defence is Complaints and Resolution, however from time to time units, functional areas or Service headquarters may be contacted by the Ombudsman. **See:** 7.1.3.6, Direct contact with the Ombudsman.
3. Units, functional areas or Service headquarters will not normally be informed that a complaint has been submitted by Defence personnel under their command or management unless information is required from the units, functional areas or Service headquarters for the purpose of responding to the Ombudsman.

### 7.1.3.4 Units, functional areas and Service headquarters responsibilities

1. If Complaints and Resolution has requested information or comment from units, functional areas or Service headquarters, responses must include
  - a. comments on the matters surrounding the complaint;
  - b. appropriate supporting documentation; and
  - c. if requested, all relevant files. **Note:** Unless specifically requested, original documents are not required.

**Note:** Responses to Complaints and Resolution must be cleared by:  
The relevant One Star/Senior Executive Service Band 1 or their delegate.

### 7.1.3.5 Timeliness and delay

1. Action areas must give requests for information from Complaints and Resolution relating to an approach from the Ombudsman a high priority.
2. A response should be provided to Complaints and Resolution as soon as reasonably practicable but, at the latest, within **10 working days**.
3. Where units, functional areas or Service headquarters anticipate unavoidable delays, they must advise Complaints and Resolution of:
  - a. the nature of the delay;
  - b. the reasons for the delay; and
  - c. an anticipated date on which a response will be provided.

4. If possible, an interim response should be provided to Complaints and Resolution and a further response should be provided as soon as any significant information is available.

#### 7.1.3.6 Direct contact with the Ombudsman

1. The Ombudsman may make direct contact with units, functional areas or Service headquarters, or with individual Defence personnel.
2. Normally, direct contact by the Ombudsman will not occur without prior consultation with Complaints and Resolution. In these circumstances, Complaints and Resolution will provide notice of the Ombudsman's intention to contact the unit, functional area or Service headquarters.
3. If the Ombudsman's office contacts a unit, functional area or Service headquarters without the unit, functional area or Service headquarters being given prior notice by Complaints and Resolution, the action area must advise
  - a. the Ombudsman to raise the matter with Complaints and Resolution in the first instance; and
  - b. Complaints and Resolution of the approach from the Ombudsman.

#### 7.1.3.7 Providing documentation to the Ombudsman

1. Normally, documents are provided to the Ombudsman's office through Complaints and Resolution. **Exception:** In the case that a unit, functional area or Service headquarters has had direct contact with the Ombudsman and agrees to provide the Ombudsman documentation directly, copies of the documents must also be provided to Complaints and Resolution.
2. The provision of documents containing personal information to the Ombudsman must comply with the Information Privacy Principles contained in the [Privacy Act 1988](#). **See:** Defence Privacy Policy.
3. The provision of documents containing security classified information to the Ombudsman must be in accordance with the Defence Security Principles Framework. **Related Information:** Classification and Protection of Official Information, of the [Defence Security Principles Framework](#).

#### 7.1.3.8 Suspension of Action

1. The Ombudsman may request that Defence suspend specific administrative action pending the outcome of their investigation. Typically these requests concern termination action.
2. Requests for the suspension of action are made to Complaints and Resolution, who will forward the request to the relevant unit, functional area or Service headquarters for a decision.
3. A decision not to comply with the Ombudsman's request to suspend action should only be made where
  - a. it is unlawful to do so; **Example:** Suspension of discharge or termination action under Part VIIIA of the Defence Act 1903 beyond 3 months from the date the member received the Termination of Service Decision; or
  - b. safety, security, discipline or the effective operation of a unit dictates. **Note:** Where the suspension of actions is not preferred, consideration should also be given to other options for managing the circumstances. **Example:** A Defence member is subject to termination action and their presence is causing low morale in the unit. Suspension of the termination action is not preferred. Use of leave provisions may be an alternative to the suspension of the termination action.
4. If the action is not to be suspended, reasons for the decision must be provided to Complaints and Resolution.
5. Where action has been suspended, the Ombudsman will conduct their investigation as a matter of urgency and will advise Complaints and Resolution of the outcome as soon as possible.

### 7.1.3.9 Outcomes of investigations

1. The Ombudsman does not have the power to order Defence to change a decision.
2. On completion of an investigation the Ombudsman will
  - a. decide that the action was not unreasonable in all the circumstances, discontinue the investigation and inform the complainant and Defence; or
  - b. make a report to Defence, with a copy to the Minister, with a recommendation for an appropriate remedy.

### 7.1.3.10 Adverse findings against Defence

1. If the Ombudsman forms opinions which are critical of Defence's or an individual's actions, the Ombudsman is required to give the CDF, Secretary, Director-General ASD, and individuals concerned the opportunity to make submissions before the investigation is completed.
2. In practice, this is usually achieved by the Ombudsman providing a copy of a draft report of the formal investigation to the CDF and Secretary for comment, with the request that the report be passed to persons concerned or criticised in the report, to afford them the opportunity to make their own submissions.
3. If a unit's, functional area's or Service headquarters' actions have been criticised by the Ombudsman in their draft report, the unit, functional area or Service Headquarters will be given the opportunity to comment. **Note:** Comment must be provided to Complaints and Resolution within the requested time.



## Part 1 Division 4 - Instructions for Complaints and Resolution

### 7.1.4.1 Purpose

1. This Division outlines the authority, responsibilities and processes of the Assistant Secretary HR Services through Complaints and Resolution in relation to inquiries and complaints from the Ombudsman.

### 7.1.4.2 Content

1. This Division contains the following information

[7.1.4.3 Primary points of contact](#)

[7.1.4.4 Responsibility](#)

[7.1.4.5 Process](#)

[7.1.4.6 Direct contact with the Ombudsman by units, functional areas or Service headquarters or individual Defence personnel](#)


[7.1.4.7 Suspension of Action](#)

[7.1.4.8 Ombudsman complaints and the Redress of Grievance process](#)

### 7.1.4.3 Primary points of contact

1. The Ombudsman's primary points of contact in Defence are
  - a. for all matters other than defective administration, fraud and probity issues - Director Complaints and Resolution, through Assistant Secretary HR Services;
  - b. for all matters of defective administration, fraud and probity issues - both the Secretary and CDF, or.
  - c. For ASD, Assistant Director-General People, Learning & Development.

### 7.1.4.4 Responsibility

1. On behalf of the Secretary and CDF, and Director-General ASD, Complaints and Resolution is responsible for
  - a. responding to inquiries from the Ombudsman;
  - b. collecting and analysing information in relation to a complaint; and
  - c. providing an accurate and detailed response to the Ombudsman.
2. In regards to approaches from the Ombudsman that are more serious or for matters relating to defective administration, Complaints and Resolution prepares responses for the Secretary, CDF, or the Service Chiefs, as appropriate. **Note:** In matters relating to fraud or probity issues the Ombudsman will liaise directly with Inspector General Defence.
3. Where a complaint has become the subject of a formal report under section 15-Reports by Ombudsman or section 16-Reports where appropriate action not taken on Ombudsman's report, of the  [Ombudsman Act 1976](#), the Secretary or CDF, as appropriate, will respond to the Ombudsman.

### 7.1.4.5 Process

1. Complaints and Resolution will seek advice and information from the relevant units, functional areas or Service headquarters in Defence.
2. Complaints and Resolution attempts to provide a substantive response to the Ombudsman within 20 working days of receiving the inquiry or complaint. **Note:** When unavoidable delays are anticipated, Complaints and Resolution must advise the Ombudsman of the anticipated delay and the reasons for it. Where appropriate, an interim response will be provided to the Ombudsman.

3. At any time during the Ombudsman's investigation, if flaws in Defence's organisation, policies, or procedures are revealed and Complaints and Resolution considers a review should be undertaken, Complaints and Resolution must refer the matter to the appropriate unit, functional area or Service headquarters for comment or action.
4. Complaints and Resolution must notify the Ombudsman of any proposed actions and, upon completion of the action, that remedial action has been taken.
5. Upon completion of an investigation by the Ombudsman, Complaints and Resolution must notify the appropriate unit, functional area or Service headquarters within Defence of the outcome.

#### **7.1.4.6 Direct contact with the Ombudsman by units, functional areas or Service headquarters, or individual Defence personnel**

1. The Ombudsman may make direct contact with units, functional areas or Service headquarters, or with individual Defence personnel if considered necessary, but consultation with Complaints and Resolution is usually undertaken before contact.
2. Where Complaints and Resolution is aware of the Ombudsman's intention to contact units, functional areas or Service headquarters, or with individual Defence personnel, Complaints and Resolution will provide notice of the Ombudsman's intention to the relevant Service headquarters.

#### **7.1.4.7 Suspension of Action**

1. Where Complaints and Resolution receives a request from the Ombudsman for the suspension of action pending the outcome of their investigation, Complaints and Resolution must
  - a. forward the request to the appropriate action area within Defence for a decision; and
  - b. upon receipt of the decision, respond to the Ombudsman.

#### **7.1.4.8 Ombudsman complaints and the Redress of Grievance process**

1. Where an inquiry from the Ombudsman relates to a matter that is capable of being investigated in accordance with the Redress of Grievance process (as provided in Part 7 of the [Defence Force Regulations 2016](#) <sup>(FR)</sup>), Complaints and Resolution must notify the Ombudsman if a Redress of Grievance has been submitted in relation to that inquiry and, if so, the status of that Redress of Grievance.

## Part 1 Division 5 - Functions of the Commonwealth and Defence Force Ombudsman

### 7.1.5.1 Purpose

1. This Division provides general information about the functions and investigative powers of the Ombudsman. More detailed information can be obtained from the Ombudsman's website. **Related information:** [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

### 7.1.5.2 Content

1. This Division contains the following information

[7.1.5.3 Functions of the Ombudsman](#)

[7.1.5.4 Matters outside the Ombudsman's jurisdiction](#)

[7.1.5.5 Discretion to investigate](#)

[7.1.5.6 Powers of the Ombudsman](#)

### 7.1.5.3 Functions of the Ombudsman

1. In relation to Defence the Commonwealth Ombudsman investigates complaints about
  - a. the administrative actions of Defence;
  - b. the actions of Defence contractors providing services to the public or Defence personnel; and
  - c. the actions of other people exercising Commonwealth powers or performing Commonwealth functions, as if the exercise of those powers or performance of those functions were taken by Defence personnel.
2. In relation to Defence the Defence Force Ombudsman investigates complaints
  - a. regarding the service of a member of the ADF; and
  - b. arising as a consequence of a person serving in the ADF; or
  - c. arising as a consequence of a person having served in the ADF. **Example:** Actions taken in relation to the payment of service related allowances, pensions or other benefits to former members of the ADF or to dependents of members or former members of the ADF. **Note:** The Defence Force Ombudsman sometimes receives complaints from a parent or spouse of a Defence member about a service matter. The Defence Force Ombudsman's practice is to adhere to the requirement that the Defence member should seek redress, and as such, usually prefers to deal directly with the Defence member so as not to infringe on the Defence member's rights to privacy.
3. In addition to investigations arising from complaints, the Ombudsman may investigate an action on their own motion. **Note:** These investigations typically relate to systemic issues (such as the quality of an internal review or complaint process) or the way similar functions are handled by different agencies.

### 7.1.5.4 Matters outside the Ombudsman's jurisdiction

1. The Ombudsman cannot investigate
  - a. action taken by a Minister; **Exception:** The Ombudsman can investigate action taken by a delegate of the Minister, and advice given to a Minister can be investigated. The Ombudsman can also form the opinion that an action taken in accordance with a law or practice (including a Ministerial determination) was not defective, but that the law or practice was itself defective.
  - b. actions of courts and judges; and **Exception:** The Ombudsman may investigate a court's administrative processes.
  - c. actions taken in relation to civilian Commonwealth employment, including action taken in relation to promotion, pay, discipline or termination of employment.

**Exception:** the Ombudsman can investigate complaints by Commonwealth employees about some superannuation, compensation, recruitment and post-employment matters.

2. **Exclusions specific to the Defence Force Ombudsman**

- a. action under the [Defence Force Discipline Act 1982](#); **Note:** The Defence Force Ombudsman cannot investigate action taken in connection with proceedings against a Defence member for an offence arising under any law relating to the discipline of the Defence Force or of an arm or part of the Defence Force. This includes, but is not limited to proceedings under the *Defence Force Discipline Act 1982*, the [Defence Act 1903](#), the [Defence Regulations 2016](#), and [Defence \(Inquiry\) Regulations 2018](#). The Ombudsman generally interprets this as meaning that the Defence Force Ombudsman can investigate actions taken before charges (or similar) are laid, actions that follow a decision on a charge (or similar) and administrative actions that are based on grounds similar to those which have given or could give rise to a disciplinary process; and
- b. honours and awards.

**Note:** The Defence Force Ombudsman cannot investigate the granting or refusal of an individual honour or award to a Defence member or the criteria for granting awards to Defence members generally or to a particular arm of a Service, such as campaign medals and awards for long service. However, the Defence Force Ombudsman can investigate actions in relation to the processing of granting awards to Defence members generally.

**7.1.5.5 Discretion to investigate**

1. The Ombudsman may decide not to investigate a complaint for any of the following reasons
  - a. an investigation is not warranted;
  - b. the complainant has been aware of the action complained about for more than 12 months;
  - c. the complainant has not tried to resolve the matter directly with the agency concerned at an appropriate level;
  - d. the complainant's representations to the agency concerned are still being considered; or
  - e. the complaint is better handled by a court, tribunal or other review body.
2. **Matters specific to the Defence Force Ombudsman**
  - a. The Defence Force Ombudsman will not normally investigate complaints where a Defence member is entitled to submit a Redress of Grievance under Part 7 of the Defence Regulation 2016 and has not done so. **Exception:** The Defence Force Ombudsman is of the opinion that there were special circumstances justifying the Defence member refraining from seeking redress.
  - b. Where the complaint is being considered as a part of the Redress of Grievance process, the Defence Force Ombudsman may not investigate
    - i. until 29 days after the submission of the Redress of Grievance unless the Redress of Grievance has been finalised prior to the 29th day; or
    - ii. there are special reasons for doing so.
  - c. In practice, the Defence Force Ombudsman will not normally investigate a complaint until the Redress of Grievance has been determined by
    - i. the Defence member's Service Chief or their delegate; or
    - ii. in the case of officers, chief petty officers, warrant officers or flight sergeants, by the CDF.
  - d. The Defence Force Ombudsman may investigate complaints of delay in the resolution of complaints currently subject to the Redress of Grievance process.
3. The Defence Force Ombudsman sometimes receives complaints from a parent or spouse of a Defence member about a service matter. The Defence Force Ombudsman's practice is to adhere to the requirement that the Defence member should seek redress, and as such, usually prefers to deal directly with the Defence member so as not to infringe on their rights to privacy.

4. In some cases, parents or spouses may have their own complaint about the actions of Defence towards them personally, in connection with a Defence member's service; this would normally be dealt with under the jurisdiction of the Commonwealth Ombudsman.

#### **7.1.5.6 Powers of the Ombudsman**

1. The Ombudsman usually works with Defence on an informal cooperative basis, however, the Ombudsman also has extensive formal powers including the ability to
  - a. require information to be furnished or documents produced;
  - b. inspect, take possession of, make copies of, take extracts from, documents or other records;
  - c. examine witnesses under oath; and
  - d. enter premises occupied by a department or authority (with some exceptions).

# The Australian Human Rights Commission

## Chapter 7 Part 2

### 7.2.0.1 Introduction

1. The Australian Human Rights Commission is an independent statutory organisation that works to protect and promote the human rights of all people in Australia.
2. The Australian Human Rights Commission investigates complaints about allegations of unlawful discrimination, sexual harassment and breaches of human rights.
3. Unlawful discrimination that can be investigated by the Australian Human Rights Commission includes age, sex, racial and disability discrimination. **See:** Chapter 7 Part 2 Division 6, About the Australian Human Rights Commission.

### 7.2.0.2 Purpose

1. This Part outlines the functions of the Australian Human Rights Commission, describes the procedure that must be followed in response to an approach to Defence by the Australian Human Rights Commission, and provides guidance to units, functional areas and Service headquarters in relation to enquiries by the Australian Human Rights Commission.
2. From time to time Defence may be approached by State or Territory anti-discrimination agencies. If an approach is made to Defence by State or Territory anti-discrimination agencies, advice must be sought from Complaints and Resolution to determine whether this Part should apply. **Example:** Victorian Equal Opportunity and Human Rights Commission.

### 7.2.0.3 Content

1. This Part contains the following Divisions

[Division 1: Overview](#)

[Division 2: Instructions for Defence personnel making a complaint to the Australian Human Rights Commission](#)

[Division 3: Instructions for Defence personnel who are respondents to a complaint to the Australian Human Rights Commission](#)

[Division 4: Instructions for units, functional areas and Service headquarters](#)





[Division 5: Instructions for Complaints and Resolution](#)

[Division 6: About the Australian Human Rights Commission](#)

### 7.2.0.4 This Part applies to

1. This Part applies to
  - a. all Defence personnel; and
  - b. external service providers to the extent that they are required to comply in accordance with their contracts with Defence.

### 7.2.0.5 Policy

1. Defence must comply with
  - a. [Racial Discrimination Act 1975](#) ;
  - b. [Sex Discrimination Act 1984](#) ;
  - c. [Australian Human Rights Commission Act 1986](#) ;
  - d. [Disability Discrimination Act 1992](#) ; and

- e. [Age Discrimination Act 2004](#).
2. **See:** Chapter 7 Part 2 Division 6, About the Australian Human Rights Commission.

#### 7.2.0.6 Relevant websites

1. The Complaints and Resolution [Australian Human Rights Commission](#) page contains information for Defence personnel on submitting a complaint to the Australian Human Rights Commission.
2. Information about the Australian Human Rights Commission and how to contact it can be found at the Australian Human Rights Commission website - <https://humanrights.gov.au>.

#### 7.2.0.7 Applicable legislation

1. The following legislation is applicable to this Part
  - a. [Racial Discrimination Act 1975](#);
  - b. [Sex Discrimination Act 1984](#);
  - c. [Australian Human Rights Commission Act 1986](#);
  - d. [Disability Discrimination Act 1992](#); and
  - e. [Age Discrimination Act 2004](#).
2. **See:** Chapter 7 Part 2 Division 6, About the Australian Human Rights Commission.

#### 7.2.0.8 Sponsor

1. The sponsor of this Part is the Assistant Secretary HR Services.
2. The point of contact for this Part is the Director Complaints and Resolution - **Email:** [complaint.resolution@defence.gov.au](mailto:complaint.resolution@defence.gov.au)

## Part 2 Division 1 - Overview

### 7.2.1.1 Purpose

1. This Division provides an overview of the Defence process for managing and responding to approaches from the Australian Human Rights Commission in relation to complaints about Defence.

### 7.2.1.2 Content

1. This Division contains the following information

[7.2.1.3 Roles and responsibilities](#)

[7.2.1.4 Complaints process](#)

[7.2.1.5 Responding to the Australian Human Rights Commission](#)

[7.2.1.6 Conciliation conferences](#)

[7.2.1.7 Settlement of complaints](#)

[7.2.1.8 Breach of human rights](#)

[7.2.1.9 Breaches of other legislation administered by the Australian Human Rights Commission](#)

[7.2.1.10 Offences](#)

### 7.2.1.3 Roles and responsibilities

1. The roles and responsibilities of Defence personnel connected with an approach from the Australian Human Rights Commission in relation to a complaint about Defence are outlined in the following Divisions

Division 2: Instructions for Defence personnel making a complaint to the Australian Human Rights Commission

Division 3: Instructions for Defence personnel who are respondents to a complaint to the Australian Human Rights Commission

Division 4: Instructions for units, functional areas and Service headquarters

Division 5: Instructions for Complaints and Resolution

**Note:** Comcover is the Australian Government's general insurance fund and is responsible for the engagement of legal representation for Defence in preparation for and attendance at conciliation conferences.

### 7.2.1.4 Complaints process

1. When the Australian Human Rights Commission receives a complaint, an initial assessment of the complaint is undertaken to ensure it concerns a matter the Australian Human Rights Commission has the authority to deal with (to determine whether the complaint is within jurisdiction).
2. If a complaint is within jurisdiction, the Australian Human Rights Commission may, in certain circumstances, decline to accept that complaint if
  - a. more than 12 months have passed since the event with no explanation for the delay;
  - b. a better alternative remedy is available; or
  - c. the matter has already been dealt with by another authority.
3. If the Australian Human Rights Commission decides to investigate a complaint, it will provide Defence and other respondents with a copy of the complaint and will usually seek a response to questions that will assist the investigation.
4. On receipt of a respondent's response, the Australian Human Rights Commission will refer it to the complainant and ask if that response satisfies the complainant.
5. During the investigation process, the Australian Human Rights Commission may seek to interview any person in connection with the complaint, or require the production of documents related to the complaint.



6. If a complaint cannot be settled at this stage, the Australian Human Rights Commission reviews all the relevant information to decide if the complaint is suitable for conciliation or if it should be terminated.

### 7.2.1.5 Responding to the Australian Human Rights Commission

1. The Directorate of Complaints and Resolution, through the Assistant Secretary HR Services, is responsible for the management and coordination of responses to the Australian Human Rights Commission.
2. The Defence point of contact for the Australian Human Rights Commission is the Director Complaints and Resolution. **Note:** Units, functional areas and Service headquarters must refer any direct contact from the Australian Human Rights Commission to Complaints and Resolution.
3. Individuals who are contacted by the Australian Human Rights Commission in their personal capacity (ie: not because they are Defence personnel) should have regard to Division 3, Instructions for Defence personnel who are respondents to a complaint to the Australian Human Rights Commission.


### 7.2.1.6 Conciliation conferences

1. Unless the complaint is terminated, or the complainant withdraws the complaint, the Australian Human Rights Commission will usually arrange a conciliation conference in an attempt to resolve the matter.
2. A conciliation conference provides an applicant and Defence (and other respondents) an opportunity to talk about the issues raised in the complaint and look for solutions.
3. The Australian Human Rights Commission may compel attendance at a conciliation conference. **Note:** The conciliation process is flexible and complaints may be settled by an exchange of letters, telephone negotiation through the Conciliation Officer, by a face to face meeting, or by a telephone conciliation conference.
4. The following people usually attend a conciliation conference
  - a. A conciliator from the Australian Human Rights Commission, who conducts the conciliation conference.
  - b. The complainant, who may be accompanied by a legal representative, family member or a union representative, friend or other support person.
  - c. Director Complaints and Resolution or Assistant Secretary HR Services, on behalf of Defence, assisted by legal counsel.
  - d. Other respondents, who may be accompanied by a legal representative, friend, family member or a union representative.

### 7.2.1.7 Settlement of complaints

1. During conciliation conferences, the parties may agree to settle the complaint. This will not occur in all cases that go to conciliation.
2. The nature of any settlement will vary depending on the complaint, but may include
  - a. an apology;
  - b. monetary compensation;
  - c. the introduction of anti-discrimination training; or
  - d. practical changes to policies, facilities or services.
3. If a complaint is settled at a conciliation conference, a deed of settlement or settlement agreement is usually made and will normally provide
  - a. a release and discharge Defence and any other respondents from all claims and rights connected with the complaint;
  - b. an indemnity for Defence against any loss or damage if the terms of the agreement are breached;
  - c. a limitation clause preventing any further proceedings being taken in respect of or as a consequence of the matters in the dispute; and
  - d. a requirement for the parties to the agreement or deed to maintain the confidentiality of the content of the agreement or deed.

### 7.2.1.8 Breach of human rights

1. If a complaint is made under the  [Australian Human Rights Commission Act 1986](#) and it is not resolved following a conciliation conference, the Australian Human Rights Commission may make a finding that a person's human rights have been breached. **Note:** In these circumstances, the President of the Australian Human Rights Commission must report on their findings to the Attorney-General who will present the report to Parliament. **See:** 7.2.6.7, Complaints of breaches of human rights made to the Australian Human Rights Commission.
2. The Australian Human Rights Commission does not have the power to settle monetarily, or to refer to the Federal Court or the Federal Magistrates Court, a breach of human rights under the *Australian Human Rights Commission Act 1986*.

### 7.2.1.9 Breaches of other legislation administered by the Australian Human Rights Commission

1. Where a complaint under other legislation administered by the Australian Human Rights Commission is not resolved through the conciliation process, the Australian Human Rights Commission will terminate that complaint.
2. The complainant then has the option to initiate separate legal action against Defence (and/or other respondents) through the Federal Court or Federal Magistrates Court on the same issues if initiated by the complainant.

### 7.2.1.10 Offences

1. There are several offences relating to the complaint handling functions of the Australian Human Rights Commission provided for in the legislation it administers. The following is a brief and general summary of those offences. For further information refer to the applicable legislation. **See:** Chapter 7 Part 2 Division 6, About the Australian Human Rights Commission.
2. It is an offence to
  - a. refuse or fail to be sworn or make an affirmation; or give information or produce a document, including statistical or actuarial information, when required to do so;
  - b. refuse or fail to comply with statutory notices;
  - c. refuse or fail to answer a question that is required by the member to be answered when attending before a member of the Australian Human Rights Commission in compliance with a statutory notice;
  - d. knowingly give false or misleading information to a member of the Australian Human Rights Commission;
  - e. hinder, obstruct, molest or interfere with an inquiry or investigation of the Australian Human Rights Commission;
  - f. victimise a person for
    - i. making, or proposing to make, a complaint to the Australian Human Rights Commission;
    - ii. alleging, or proposing to allege, that a person has done an act or engaged in a practice that is inconsistent with or contrary to any human right;
    - iii. providing or proposing to provide information or documents to the Australian Human Rights Commission or to a person acting on behalf of the Australian Human Rights Commission; or
    - iv. giving or proposing to give evidence before the Australian Human Rights Commission or to a person acting on behalf of the Australian Human Rights Commission.

## Part 2 Division 2 - Instructions for Defence Personnel making a complaint to the Australian Human Rights Commission

### 7.2.2.1 Purpose

1. This Division outlines who can, and how to, make a complaint to the Australian Human Rights Commission, including considerations for Defence personnel prior to making a complaint to the Australian Human Rights Commission.

### 7.2.2.2 Content

1. This Division contains the following information

[7.2.2.3 Who can make a complaint to the Australian Human Rights Commission](#)

[7.2.2.4 Before making a complaint to the Australian Human Rights Commission](#)

[7.2.2.5 Making a complaint to the Australian Human Rights Commission](#)

[7.2.2.6 Australian Human Rights Commission investigations](#)

[7.2.2.7 Conciliation conferences](#)

[7.2.2.8 Settlement](#)





### 7.2.2.3 Who can make a complaint to the Australian Human Rights Commission

1. Any person, including a Defence member, Defence APS or ASD employee or a member of their family, may submit a complaint to the Australian Human Rights Commission.
2. When contemplating making a complaint, regard should be given to the role and functions of the Australian Human Rights Commission. **See:** 7.2.6.4, The Australian Human Rights Commission's responsibilities.

### 7.2.2.4 Before making a complaint to the Australian Human Rights Commission

1. While Defence cannot prevent a person from making a complaint to the Australian Human Rights Commission, prior to making a complaint the following should be considered
  - a. Is there an alternative complaint resolution process within Defence that may be able to resolve the issue? **Examples:**
    - i. raising the complaint with a commander, manager or supervisor;
    - ii. making an unacceptable behaviour complaint; **See:** Chapter 3 Part 1, Unacceptable behaviour.
    - iii. submitting a Redress of Grievance (Defence members only); or **See:** Chapter 6, Redress of Grievance.
    - iv. submitting a Review of Actions (Defence APS employees only). **See:** Chapter 5, Review of Actions.
    - v. Following the ASD internal review processes (ASD employees only).
  - b. Does the matter fall within the scope of the Australian Human Rights Commission's power? If there is any uncertainty, contact the Australian Human Rights Commission.
  - c. A person making a complaint to the Australian Human Rights Commission may seek independent legal advice at their own expense.

### 7.2.2.5 Making a complaint to the Australian Human Rights Commission

1. Complaints must be made in writing, which includes by email or through the Australian Human Rights Commission  [online complaint form](#) . A complaint can be made in any language. **Related information:**  <https://humanrights.gov.au> .

2. When making a complaint to the Australian Human Rights Commission, Defence personnel must **not**
  - a. disclose classified information; or
  - b. provide information that would amount to a misuse of Defence property or an interference with other people's personal information.

#### **7.2.2.6 Australian Human Rights Commission investigations**

1. The Australian Human Rights Commission may choose to investigate a complaint, or part of a complaint. **Note:** The Australian Human Rights Commission does not investigate every complaint it receives.
2. Actions taken to investigate a complaint are determined by the Australian Human Rights Commission and may include a conciliation conference.
3. Defence personnel are reminded that the Australian Human Rights Commission is independent from Defence and is not a part of Defence or the chain of command.
4. Any concerns about the investigation of a complaint should be raised with the Australian Human Rights Commission.

#### **7.2.2.7 Conciliation conferences**

1. As a part of the Australian Human Rights Commission's investigation process, persons who make a complaint may be required to attend a conciliation conference in attempt to resolve the complaint.
2. A person attending a conciliation conference may chose to be represented by a lawyer at their own expense.
3. For further information about conciliation conferences **See:** 7.2.1.6, Conciliation conferences.

#### **7.2.2.8 Settlement**

1. The aim of a conciliation conference is to settle a complaint. For information about settlement **See:** 7.2.1.7, Settlement of complaints.
2. If a complaint is settled at a conciliation conference, a settlement agreement is made by way of a Deed to formalise the outcome.
3. If a complaint does not settle at a conciliation conference, the person making the complaint may wish to seek further legal advice.

## Part 2 Division 3 - Instructions for Defence personnel who are respondents to a complaint to the Australian Human Rights Commission

### 7.2.3.1 Purpose

1. This Division provides general advice to Defence personnel who are named as respondents in a complaint made to the Australian Human Rights Commission.

### 7.2.3.2 Content

1. This Division contains the following information

[7.2.3.3 Background](#)

[7.2.3.4 How will I know if I am a respondent?](#)

[7.2.3.5 What will I have to do if I am named as a respondent?](#)

[7.2.3.6 Will Defence be responsible for my actions? \(Vicarious liability\)](#)

[7.2.3.7 Legal assistance for respondents](#)

[7.2.3.8 Conciliation conferences](#)

[7.2.3.9 Settlement](#)


### 7.2.3.3 Background

1. Complaints made to the Australian Human Rights Commission often identify individuals who have allegedly participated in unlawful acts of discrimination or harassment. The Australian Human Rights Commission may name these people, along with Defence, as being respondents to a complaint. **Note:** This means that an individual may be found to have acted unlawfully and could be individually responsible for their actions and the settlement of complaints, including financial settlements.

### 7.2.3.4 How will I know if I am a respondent?

1. If the Australian Human Rights Commission has named an individual as a respondent, they will notify the individual named of the complaint, either directly or through Complaints and Resolution.

### 7.2.3.5 What will I have to do if I am named as a respondent?

1. If the Australian Human Rights Commission has named an individual as a respondent, the Australian Human Rights Commission may ask that an individual to respond to the complaint or to provide them with information or documents. **Related information:**  [Australian Human Rights Commission Act 1986](#) <sup>21</sup>Section 21.
2. An individual named as a respondent may wish to seek independent legal advice before taking any action. **See:** 7.2.3.7, Legal assistance for respondents.

### 7.2.3.6 Will Defence be responsible for my actions? (Vicarious liability)

1. Vicarious liability means the liability of an employer (eg Defence) for the acts and omissions of its employees.
2. Under legislation administered by the Australian Human Rights Commission, Defence, like all employers, may be held responsible for a breach of the Acts by Defence personnel unless
  - a. Defence can establish that it has taken all reasonable steps to prevent the breach;or

- b. the person was acting outside the course of their duty.
3. Where individuals have been named as respondents and Defence is of the view that it will not be vicariously liable, respondents may wish to seek independent legal advice, as a claim for financial compensation may be made against them personally. **Note:** In some cases, both Defence and individual respondents may be found liable and, therefore, either or both may be responsible for paying financial compensation.

#### 7.2.3.7 Legal assistance for respondents

1. The availability of legal representation is different for Defence members and Defence APS employees.
  - a. **For Defence members** – Defence Counsel Services manages the provision of legal support to ADF members to ensure they receive legal assistance and legal representation independent of the ordinary chain of command. Members seeking legal assistance should make requests to an ADF Legal Officer or <mailto:DefenceCounsel.Services@defence.gov.au>
  - b. **For Defence APS employees** - Related information: [Legal Services Directions 2017](#) (appendix E-Assistance to Commonwealth employees for legal proceedings).
  - c. **Note:** Access to Defence or Commonwealth funded legal representation is not an automatic right. The granting of assistance is discretionary; each case will be decided on its merits. **No assumption should be made that an application for legal assistance will be approved.**

#### 7.2.3.8 Conciliation conferences

1. As a part of the Australian Human Rights Commission's complaints process, individual respondents, along with Defence, may be required to attend a conciliation conference in an attempt to resolve a complaint.
2. Where a respondent is required to attend a conciliation conference, if they are not being legally represented by Defence, they may choose to be represented by legal counsel.
3. The aim of a conciliation conference is to settle a complaint.
4. For further information about conciliation conferences **See:** 7.2.1.6, Conciliation conferences.

#### 7.2.3.9 Settlement

1. An individual respondent may be personally required to pay a complainant money or take some other action in order to settle a complaint.
2. If a complaint does not settle at a conciliation conference, and the complaint falls within the scope of legislation administered by the Australian Human Rights Commission other than the Australian Human Rights Commission Act 1986, the complainant may initiate further action through the Federal Court or the Federal Magistrates Court.
3. For information about settlement **See:** 7.2.1.7, Settlement of complaints.

## Part 2 Division 4 - Instructions for units, functional areas and Service headquarters

### 7.2.4.1 Purpose

1. This Division describes the Australian Human Rights Commission's investigation process as it relates to units, functional areas and Service headquarters, and the responsibilities of units, functional areas and Service headquarters in relation to complaints from the Australian Human Rights Commission.

### 7.2.4.2 Content

1. This Division contains the following information

- [7.2.4.3 Conduct of investigations by the Australian Human Rights Commission](#)
- [7.2.4.4 Units, functional areas and Service headquarters responsibilities](#)
- [7.2.4.5 Timeliness and delay](#)
- [7.2.4.6 Direct contact with the Australian Human Rights Commission](#)
- [7.2.4.7 Outcomes of investigations](#)
- [7.2.4.8 Defence Legal](#)

### 7.2.4.3 Conduct of investigations by the Australian Human Rights Commission

1. The Australian Human Rights Commission conducts investigations in private and investigates as it sees fit.
2. The Australian Human Rights Commission's point of contact in Defence is Complaints and Resolution.
3. Units, functional areas or Service headquarters will not normally be informed that a complaint has been submitted by Defence personnel under their command or management to the Australian Human Rights Commission, unless information is required from them.
4. Units, functional areas or Service headquarters will be informed of a complaint where the unit, functional area, Service headquarters, or a person in the chain of command or line management is required to provide information to Complaints and Resolution for the purpose of responding to the Australian Human Rights Commission in accordance with Service or group protocols.

### 7.2.4.4 Units, functional areas and Service headquarters responsibilities

1. If Complaints and Resolution has requested information or comment from units, functional areas or Service headquarters about a complaint from the Australian Human Rights Commission responses must be provided with
  - a. comments on the matters surrounding the complaint;
  - b. appropriate supporting documentation; and
  - c. if requested, all relevant files. **Note:** Unless specifically requested, original documents are not required.

**Responses to Complaints and Resolution must be cleared by:  
The relevant One Star/Senior Executive Service Band 1 or their delegate.**

### 7.2.4.5 Timeliness and delay

1. Requests from Complaints and Resolution relating to the investigations of the Australian Human Rights Commission must be given high priority.
2. A response should be provided to Complaints and Resolution as soon as reasonably practicable but, at the latest, within **10 working days**.

3. Where units, functional areas or Service headquarters anticipate unavoidable delays, they must advise Complaints and Resolution of
  - a. the nature of the delay;
  - b. the reasons for the delay; and
  - c. an anticipated date on which a response will be provided.
4. If possible an interim response should be provided to Complaints and Resolution and a further response should be provided as soon as any significant information is available.

#### **7.2.4.6 Direct contact with the Australian Human Rights Commission**

1. Units, functional areas or Service headquarters must refer any direct contact from the Australian Human Rights Commission to Complaints and Resolution.

#### **7.2.4.7 Outcomes of investigations**

1. After the Australian Human Rights Commission has issued a termination notice in relation to a complaint, Complaints and Resolution will advise the relevant parties, including the relevant units, functional areas or Service headquarters, that the complaint has been finalised.
2. Individual respondents will be advised directly by the Australian Human Rights Commission of the outcome to a complaint.
3. Where the subject matter of a complaint, or of several complaints, reveals flaws or shortcomings in Defence personnel policy with regard to requirements of legislation, and Complaints and Resolution considers a review should be undertaken, the matter will be referred to the appropriate functional area within Defence with a recommendation for consideration.
4. Where a complaint raises more serious flaws, the Director Complaints and Resolution, through the Assistant Secretary HR Services, will raise the issue at a more senior level, as appropriate in the circumstances.
5. If Defence is required to review its policies or seek legislative amendment in order to settle a complaint, or to address a potential breach of human rights, Complaints and Resolution will notify the Australian Human Rights Commission of action taken.

#### **7.2.4.8 Defence Legal**

1. In the management of complaints made to the Australian Human Rights Commission and, where referred by Complaints and Resolution, Defence Legal will
  - a. provide advice to Complaints and Resolution to assist with the preparation of Defence's response;
  - b. provide or arrange for legal representation for Defence at conciliation conferences where such representation has not already been arranged by Comcover; and
  - c. assist in the settlement of complaints.
2. Where a complaint is terminated by the Australian Human Rights Commission and proceedings are instigated in the Federal Court or the Federal Magistrates Court, the matter is to be referred to Defence Legal. Defence Legal will liaise with Comcover with respect to the further conduct of the matter.



## Part 2 Division 5 - Instructions for Complaints and Resolution

### 7.2.5.1 Purpose






1. This Division outlines the authority, responsibilities and processes of Complaints and Resolution in relation to inquiries and complaints from the Australian Human Rights Commission.

### 7.2.5.2 Content


1. This Division contains the following information

- [7.2.5.3 Primary point of contact](#)
- [7.2.5.4 Responsibility](#)
- [7.2.5.5 Process](#)
- [7.2.5.6 Conciliation conferences](#)
- [7.2.5.7 Comcover](#)
- [7.2.5.8 Settlement](#)
- [7.2.5.9 Finalisation of complaints](#)
- [7.2.5.10 Record keeping](#)
- [7.2.5.11 Accountability](#)

### 7.2.5.3 Primary point of contact

1. On behalf of the Secretary, CDF, and Director General ASD, Director Complaints and Resolution is the primary point of contact for all complaints to the Australian Human Rights Commission under
  - a. [Racial Discrimination Act 1975](#) 
  - b. [Sex Discrimination Act 1984](#) 
  - c. [Australian Human Rights Commission Act 1986](#) 
  - d. [Disability Discrimination Act 1992](#) 
and
- e. [Age Discrimination Act 2004](#) 

### 7.2.5.4 Responsibility

1. Complaints and Resolution is responsible for
  - a. responding to inquiries from the Australian Human Rights Commission;
  - b. collecting and analysing information in relation to a complaint;
  - c. providing an accurate and detailed response to the Australian Human Rights Commission;
  - d. representing Defence at conciliation conferences; and
  - e. settlement of Australian Human Rights Commission complaints. **Authority:**  [Financial Delegations](#) - To Settle Claims Against the Commonwealth; [and AA9 Legal and compensation](#).

People authorised to make decisions in relation to c and e of this clause on behalf of the CDF and the Secretary:

Assistant Secretary HR Services  
Director Complaints and Resolution

People authorised to make decisions in relation to c and e of this clause on behalf of Director-General ASD:

Assistant Director-General People, Learning and Development, ASD

### 7.2.5.5 Process

1. When a complaint is received from the Australian Human Rights Commission, Complaints and Resolution will
  - a. provide formal notification of the complaint to Comcover, the Australian Government's general insurance fund;
  - b. seek advice and information from the units, functional areas or Service headquarters appropriate to the complaint and the Australian Human Rights Commission's inquiries through the relevant Service headquarters;
  - c. based on the responses received, Complaints and Resolution will draft a response to the Australian Human Rights Commission;
  - d. seek clearance of the response to the Australian Human Rights Commission from Defence Legal;
  - e. provide Defence's response to the Australian Human Rights Commission; and
  - f. follow-up on the complaint as required.
2. The Australian Human Rights Commission sets due dates for Defence to respond to inquiries. Complaints and Resolution attempts to provide a substantive response within that time frame. When unavoidable delays are anticipated, Complaints and Resolution must
  - a. advise the Australian Human Rights Commission of the anticipated delay and the reasons for it;
  - b. request an extension of the due date; and
  - c. where appropriate, provide an interim response.

### 7.2.5.6 Conciliation conferences

1. The Director Complaints and Resolution, assisted by legal counsel, will attend conciliation conferences on behalf of Defence as the respondent to the complaint. Complaints and Resolution will request assistance or further information if required from the relevant unit, functional area or Service headquarters.
2. The aim of a conciliation conference is to settle the complaint. For information about settlement **See:** 7.2.1.6, Conciliation conferences.
3. Individuals named as respondents may be represented by Defence, however, where individuals have been named as respondents and Defence is of the view that it will not be vicariously liable, Defence or the Australian Human Rights Commission may require individual respondents to attend a conciliation conference. **See:** 7.2.3.6, Will I be responsible for my actions? (Vicarious liability).

### 7.2.5.7 Comcover

1. Comcover may arrange legal assistance for the Director Complaints and Resolution at any time in relation to a complaint and will arrange for legal representation at conciliation conferences.

### 7.2.5.8 Settlement

1. While not all complaints are settled during a conciliation conference, from time to time, having received legal advice, the Director Complaints and Resolution may agree to pay money to the person who made the complaint, or take some other action to settle a complaint.
2. **Related Information:** 1. [Legal Services Directions 2017](#). 2. [Financial Delegations](#).

### 7.2.5.9 Finalisation of complaints

1. Upon completion of an investigation by the Australian Human Rights Commission, Complaints and Resolution must notify the appropriate units, functional areas or Service headquarters within Defence of the outcome.
2. The Director Complaints and Resolution must notify Comcover of the outcome to all complaints.

3. Where the subject matter of a complaint, or of several complaints, reveals flaws or shortcomings in Defence personnel policy with regard to requirements of legislation, and Complaints and Resolution considers a review should be undertaken, the matter will be referred to the appropriate functional area within Defence with a recommendation for consideration.
4. Where a complaint raises more serious flaws, the Director Complaints and Resolution, through the Assistant Secretary HR Services, will raise the issue at a more senior level, as appropriate in the circumstances.
5. If Defence is required to review its policies or seek legislative amendment in order to settle a complaint, or to address a potential breach of human rights, Complaints and Resolution will notify the Australian Human Rights Commission of action taken.

#### **7.2.5.10 Record keeping**

1. Complaints and Resolution is responsible for keeping Defence records relating to a complaint to the Australian Human Rights Commission.

#### **7.2.5.11 Accountability**

1. The Director Complaints and Resolution is accountable to the Assistant Secretary HR Services.
2. The Assistant Secretary HR Services is accountable to the Secretary and CDF.
3. The effectiveness of Defence's actions is monitored by the Australian Human Rights Commission.

## Part 2 Division 6 - About the Australian Human Rights Commission

### 7.2.6.1 Purpose

1. This Division provides an overview of how the Australian Human Rights Commission manages complaints, and the legislation it administers.

### 7.2.6.2 Contents

1. This Division contains the following information

[7.2.6.3 About the Australian Human Rights Commission](#)

[7.2.6.4 The Australian Human Rights Commission's responsibilities](#)

[7.2.6.5 What the Australian Human Rights Commission does](#)

[7.2.6.6 Complaints of discrimination made to the Australian Human Rights Commission](#)

[7.2.6.7 Complaints of breaches of human rights made to the Australian human Rights Commission](#)








[7.2.6.8 Overview of legislation administered by the Australian Human Rights Commission](#)

[7.2.6.9 Further Information](#)

### 7.2.6.3 About the Australian Human Rights Commission

1. The Australian Human Rights Commission is an independent statutory body that works to protect and promote the human rights of all people in Australia.
2. The Australian Human Rights Commission receives complaints from members of the public against government and non-government bodies.
3. Defence members, Defence APS and ASD employees, External Service Providers, and the general public may make a complaint to the Australian Human Rights Commission about Defence.

### 7.2.6.4 The Australian Human Rights Commission's responsibilities

1. The Australian Human Rights Commission is responsible for administering the following federal laws
  - a. [Age Discrimination Act 2004](#) 
  - b. [Disability Discrimination Act 1992](#) 
  - c. [Australian Human Rights Commission Act 1986](#) 
  - d. [Sex Discrimination Act 1984](#) 
  - e. [Racial Discrimination Act 1975](#)  **See:** 7.2.6.8, Overview of legislation administered by the Australian Human Rights Commission.
2. The Australian Human Rights Commission also has specific responsibilities under the [Native Title Act 1993](#)  (performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner) and the [Fair Work Act 2009](#)  (performed by the Sex Discrimination Commissioner).

### 7.2.6.5 What the Australian Human Rights Commission does

1. The Australian Human Rights Commission's work covers four key areas
  - a. providing education and raising public awareness about human rights;
  - b. handling complaints of discrimination and breaches of human rights;
  - c. researching human rights issues and contributing to policy developments; and
  - d. legal advocacy on human rights issues.





### 7.2.6.6 Complaints of discrimination made to the Australian Human Rights Commission













1. A person who believes they have been discriminated against can lodge a complaint with the Australian Human Rights Commission. It is a free service. The Australian Human Rights Commission aims to deal with complaints quickly and with a minimum of fuss.
2. The Australian Human Rights Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved try to resolve a complaint.
3. The Australian Human Rights Commission can give advice on what may be considered discrimination.
4. The Australian Human Rights Commission handles complaints by talking to the people involved and helping to resolve the complaint through a process called 'conciliation'.
5. Conciliation is not like going to court, in that
  - a. Individuals do not have to have legal representation (but Defence will).
  - b. An officer from the Australian Human Rights Commission will help both sides talk about the complaint and try to find an outcome they can agree on.
  - c. Outcomes of conciliation will vary depending on the complaint, but they may include
    - i. an apology;
    - ii. monetary compensation;
    - iii. the introduction of anti-discrimination training; or
    - iv. practical changes to facilities and services.

### 7.2.6.7 Complaints of breaches of human rights made to the Australian Human Rights Commission





1. Complaints alleging breaches of human rights can be made to the Australian Human Rights Commission in the same way as complaints alleging discrimination. **Related Information:** Human Rights Commission website.
2. The Australian Human Rights Commission responds to complaints alleging breaches of human rights in the same way as complaints of discrimination.
3. If a complaint alleging a breach of human rights is not settled at conciliation, unlike complaints alleging discrimination, the complaint will be inquired into and a report may be prepared by the President of the Commission indicating whether the agency has breached a person's human rights.

### 7.2.6.8 Overview of legislation administered by the Australian Human Rights Commission

1.  [Racial Discrimination Act 1975](#) 
  - a. The *Racial Discrimination Act 1975* makes it unlawful to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life, including employment and service in the ADF.
  - b. The *Racial Discrimination Act 1975* also prohibits the victimisation of a person in relation to a potential complaint or a complaint made under this Act.
2.  [Sex Discrimination Act 1984](#) 
  - a. The *Sex Discrimination Act 1984* makes it unlawful to treat a person of the opposite sex less favourably than a person of the same sex in circumstances that are the same or are not materially different on the basis of
    - i. the person's sex;
    - ii. a characteristic that pertains generally to persons of the person's sex; or
    - iii. a characteristic that is generally imputed to persons of the sex of the aggrieved person.
  - b. In addition, the *Sex Discrimination Act 1984* prohibits discrimination on the basis of marital status, pregnancy or potential pregnancy and family responsibility.

- c. The *Sex Discrimination Act 1984* provides an exemption to Defence in relation to women holding a position involving the performance of combat duties; or in prescribed circumstances in relation to combat duties. **Note:** In June 2012 the Government endorsed the implementation plan for the integration of women into combat roles that features a phased approach toward full implementation within five years. The initial phases will include the option for currently serving women who wish to undertake any of these roles, to transfer should they meet all the requirements. Direct entry recruitment will occur later in the plan.
      - d. The *Sex Discrimination Act 1984* also prohibits a person from sexually harassing another person by making an unwelcome sexual advance, or an unwelcome request for sexual favours, or engaging in other unwelcome conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.
      - e. The *Sex Discrimination Act 1984* also prohibits the victimisation of a person in relation to a complaint made or potential complaint made under this Act.
3.  [Australian Human Rights Commission Act 1986](#) 
  - a. The *Australian Human Rights Commission Act 1986* details the structure of the Australian Human Rights Commission and provides the Australian Human Rights Commission with the authority to investigate any complaint of unlawful discrimination.
  - b. The *Australian Human Rights Commission Act 1986* permits the Australian Human Rights Commission to inquire into, and attempt to conciliate, complaints of unlawful discrimination and any act or practice that may be inconsistent with or contrary to any human right, as defined in the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child, the Declaration on the Rights of Mentally Retarded Persons, and the Declaration on the Rights of Disabled Persons.
  - c. The *Australian Human Rights Commission Act 1986* also prohibits victimisation in relation to a potential complaint or a complaint made to the Australian Human Rights Commission, including complaints made pursuant to other legislation administered by the Australian Human Rights Commission.
4.  [Disability Discrimination Act 1992](#) 
  - a. The *Disability Discrimination Act 1992* prohibits discrimination or harassment based on physical, mental, intellectual or psychiatric disability, disease, disorder or illness in relation to employment (including service in the ADF).
  - b. The *Disability Discrimination Act 1992* also prohibits the victimisation of a person in relation to a potential complaint or a complaint made under the Act.
  - c. The *Disability Discrimination Act 1992* contains specific exemptions for the ADF in relation to performance of combat duties, combat-related duties or peacekeeping service.
5.  [Age Discrimination Act 2004](#) 
  - a. The *Age Discrimination Act 2004* prohibits less favourable treatment, either directly or indirectly because of age, characteristics generally pertaining to age, or characteristics generally imputed to people of that age.
  - b. The *Age Discrimination Act 2004* also prohibits the victimisation of a person in relation to a potential complaint or a complaint made under the Act.
  - c. The *Age Discrimination Act 2004* exempts a number of laws that relate to Defence from its application, including
    - i.  [Defence Act 1903](#) ;
    - ii. Determinations made under section 58B of the [Defence Act 1903](#);
    - iii.  [Defence Force Discipline Appeals Act 1955](#) ;
    - iv.  [Defence Regulation 2016](#) ;
    - v. Defence Instructions (General);
    - vi. Defence Instructions (Navy);
    - vii. Defence Instructions (Army); and
    - viii. Defence Instructions (Air Force).

### 7.2.6.9 Further Information

1. For general information about the Australian Human Rights Commission -  <https://humanrights.gov.au> .
2. To find out more information about how the Australian Human Rights Commission deals with complaints read their  [complaints information](#)  page.

# The Privacy Commissioner

## Chapter 7 Part 3

This Part has not yet been published.



# The Merit Protection Commissioner

## Chapter 7 Part 4

### 7.4.0.1 Introduction

1. The Merit Protection Commissioner is an independent statutory office holder established under section 49 of the [Public Service Act 1999](#). Among other functions, the Merit Protection Commissioner
  - a. generally conducts secondary reviews of employment-related decisions (following a primary Review of Actions); **See:** Chapter 5, Review of Actions;
  - b. is the first review option for Code of Conduct determinations or sanctions imposed for a breach of the [APS Code of Conduct](#); and
  - c. in limited circumstances, will conduct a primary review of other employment-related actions. **See:** 7.4.1.4, Can a Defence APS employee apply to the Merit Protection Commissioner for a review? **Related information:** The [Merit Protection Commissioner](#) page on the Australian Public Service Commission website.
2. The Merit Protection Commissioner only deals with matters relating to APS employment.

### 7.4.0.2 Purpose

1. This Part outlines the functions of the Merit Protection Commissioner; provides information for complainants to the Merit Protection Commissioner; describes the procedure that must be followed in response to an approach to Defence by the Merit Protection Commissioner; and provides guidance to units, functional areas and Service headquarters in relation to an approach from the Merit Protection Commissioner in relation to
  - a. a primary review of a Code of Conduct related decision, other than a decision to terminate a Defence APS employee's APS employment;
  - b. a secondary review of an employment action which has already been the subject of a Review of Actions (primary review); and
  - c. a primary review of employment-related actions if
    - i. the Secretary was directly involved in the action; or
    - ii. it is not appropriate, because of the seriousness or sensitivity of the action, for the Secretary to deal with the application; or
    - iii. the action is claimed to be victimisation or harassment of the Defence APS employee for having made a previous application for a Review of Actions.
2. **Excludes:** Review by the Merit Protection Commissioner of certain APS promotion decisions. For more details see the [Australian Public Service Commission](#) web site.
3. **Note:** Decisions terminating a Defence APS employee's APS employment are appealed through Fair Work Australia.

### 7.4.0.3 Content

1. This Part contains the following Divisions

[Division 1: Overview](#)

[Division 2: Instructions for Defence APS employees submitting a Review of Actions application to the Merit Protection Commissioner](#)

[Division 3: Instructions for units, functional areas and Service headquarters](#)

[Division 4: Instructions for Complaints and Resolution](#)

[Division 5: About the Merit Protection Commissioner](#)

### 7.4.0.4 This Part applies to

1. This Part applies to

- a. Defence APS employees;
- b. Review of Actions delegates;
- c. Code of Conduct delegates; and
- d. managers and supervisors of Defence APS employees who have submitted an application for a (primary or secondary) Review of Actions to the Merit Protection Commissioner.

#### 7.4.0.5 This Part does not apply to

1. Subject to 7.4.0.4, this Part does not apply to
  - a. Defence members;
  - b. ASD employees;
  - c. external service providers;
  - d. locally engaged employees (locally engaged staff) overseas;
  - e. staff and instructors of the Australian Defence Force Cadets who are not Defence members; and
  - f. SES employees.

#### 7.4.0.6 Policy

1. Defence must comply with the [Public Service Act 1999](#) and the [Public Service Regulations 1999](#).

#### 7.4.0.7 Relevant websites

1. The Complaints and Resolution [Review of Actions](#) page contains information on primary and secondary review processes.
2. Information about how to contact the Merit Protection Commissioner can be found on the Australian Public Service Commission website - <https://www.apsc.gov.au>.

#### 7.4.0.8 Applicable legislation

1. [Public Service Act 1999](#); and [Public Service Regulations 1999](#).

#### 7.4.0.9 Sponsor and Defence point of contact

1. The sponsor for this Part is the Assistant Secretary HR Services.
2. The point of contact is the Director Complaints and Resolution - **Email:** [complaint.resolution@defence.gov.au](mailto:complaint.resolution@defence.gov.au)

## Part 4 Division 1 - Overview

### 7.4.1.1 Purpose

1. This Division provides an overview of the Defence process for managing and responding to approaches from the Merit Protection Commissioner in relation to complaints about Defence.
2. Complaints to the Merit Protection Commissioner covered in this Division are
  - a. primary review of a code of conduct related determination or sanction;
  - b. application for secondary review of a reviewable action; and
  - c. primary reviews of certain decisions under Regulation 5.24 of the [Public Service Regulations 1999](#).

### 7.4.1.2 Content

1. This Division contains the following information

[7.4.1.3 Roles and responsibilities](#)

[7.4.1.4 Can a Defence APS employee apply to the Merit Protection Commissioner for a review?](#)

[7.4.1.5 Time limits when submitting an application for review](#)

[7.4.1.6 Submitting an application for review](#)

[7.4.1.7 How the Merit Protection Commissioner conducts a review](#)

[7.4.1.8 The role of Complaints and Resolution](#)

[7.4.1.9 Outcomes of a review](#)

[7.4.1.10 Subsequent actions by the Secretary \(or a Review of Actions decision maker\)](#)

[7.4.1.11 What if the Defence APS employee is still dissatisfied?](#)

### 7.4.1.3 Roles and responsibilities

1. The roles and responsibilities of personnel involved in a referral of a Review of Actions application to the Merit Protection Commissioner are outlined in the following Divisions

Division 2: Instructions for Defence APS employees submitting a Review of Actions application to the Merit Protection Commissioner

Division 3: Instructions for units, functional areas and Service headquarters

Division 4: Instructions for Complaints and Resolution

### 7.4.1.4 Can a Defence APS employee apply to the Merit Protection Commissioner for a review?

1. A Defence APS employee may apply in writing to the Merit Protection Commissioner for a review in the following circumstances.
2. **Primary review of a determination that an employee has breached the Code of Conduct**
  - a. If it has been determined that the Defence APS employee has breached the Code of Conduct; or
  - b. for a sanction imposed for a breach of the Code of Conduct. **Exclusion:** A determination to terminate a Defence APS employee's APS employment. **Related information:** [APS Code of Conduct Procedures](#).
3. **Secondary review of a reviewable action**
  - a. If the Secretary or a Review of Actions decision maker has told the Defence APS employee that the action is not a reviewable action; or
  - b. if the Defence APS employee is dissatisfied with the outcome of a primary review of the action conducted by a Review of Actions delegate. **See:** Chapter 5, Review of Actions.
4. **Primary Review of a reviewable action**

- a. If the Secretary was directly involved in the action; or
- b. it is not appropriate, because of the seriousness or sensitivity of the action, for the Secretary to deal with the application; or
- c. the action is claimed to be victimisation or harassment of the Defence APS employee for having made a previous application for a Review of Actions. **Related information:** The [Merit Protection Commissioner](#).

#### 7.4.1.5 Time limits when submitting an application for review

1. The following time limits apply when submitting an application to the Merit Protection Commissioner for review.
2. **Primary review of a determination that an employee has breached the Code of Conduct**
  - a. 60 days from the determination that the affected employee has breached the Code of Conduct.
3. **Primary review of a sanction resulting from a determination that an employee has breached the Code of Conduct**
  - a. 60 days from the imposition of the sanction.
4. **Primary review of a reviewable action**
  - a. 60 days from the date of the APS action.
5. **Secondary review of a reviewable action**
  - a. 60 days from the date the employee was informed of either the outcome of the primary review, or that the action was not considered reviewable.
6. **Related Information:** Regulation 5.23(4) of the [Public Service Regulations 1999](#). **See:** 5.1.0.9, Time limit, for information on the time limit related to a primary Review of Actions submitted to an employee's agency.

#### 7.4.1.6 Submitting an application for review

1. **Primary review of a determination that an employee has breached the Code of Conduct**
  - a. An application for review of a determination for a breach of the Code of Conduct or a sanction imposed for a breach of the Code of Conduct (other than termination of employment) is to be made in writing directly to the Merit Protection Commissioner. **Note:** The application should indicate the aspects of the finding and/or sanction disputed by the employee. **Related Information:** The [Merit Protection Commissioner's](#) website.
2. **Secondary review of a reviewable action**
  - a. An application for a secondary review must be submitted in writing to the Merit Protection Commissioner through the original delegate who conducted the primary review. **Note:** The application must state briefly why the secondary review is sought, and should indicate the aspects of the primary review decision of which the applicant seeks review.
  - b. The original Defence delegate who conducted the primary review must give the Merit Protection Commissioner the application and any relevant documents relating to the primary review of the action within 14 days of receiving an application for secondary review. **Related Information:** Regulation 5.30 of the Public Service Regulations 1999.
  - c. The delegate will also provide the applicant with a copy of the documents provided to the Merit Protection Commissioner.

#### 7.4.1.7 How the Merit Protection Commissioner conducts a review

1. Reviews (both primary and secondary) conducted by the Merit Protection Commissioner are
  - a. required to have regard to procedural fairness;
  - b. conducted in private; and
  - c. undertaken in accordance with the Merit Protection Commissioner's own processes.

2. The Merit Protection Commissioner will acknowledge receipt of an application and advise the applicant whether the application has been accepted.
3. The Merit Protection Commissioner may conduct the review solely by an examination of the relevant documents.
4. Where necessary, the Merit Protection Commissioner may investigate further by seeking additional information from Defence and by interviewing the applicant and/or other relevant persons.

#### 7.4.1.8 The role of Complaints and Resolution

1. The role of Complaints and Resolution, on behalf of the Secretary, is to manage and coordinate Defence responses to the Merit Protection Commissioner. **Related Information:** [Complaints and Resolution](#) DPN site.
2. Complaints and Resolution is authorised to have unrestricted access to personnel and documents necessary for the management and coordination of responses to the Merit Protection Commissioner.
3. In cases where the Merit Protection Commissioner has made direct contact with a Defence APS employee's manager/supervisor, the manager/supervisor must direct the Merit Protection Commissioner to Complaints and Resolution.

#### 7.4.1.9 Outcomes of a review

1. When a review is finished, the Merit Protection Commissioner must
  - a. advise the Secretary (or a Review of Actions decision maker) in writing of the Merit Protection Commissioner's recommendations and the reasons for those recommendations; and
  - b. give the Defence APS employee a copy of the report and any recommendations made by the Merit Protection Commissioner.
2. The Merit Protection Commissioner cannot impose an outcome on Defence or substitute a different decision for that made by the Secretary (or a Review of Actions decision maker). The Merit Protection Commissioner cannot force Defence to do what is recommended, only the Secretary may change or set aside a decision. **Note:** In most cases the Secretary will implement the Merit Protection Commissioner's recommendations.

#### 7.4.1.10 Subsequent actions by the Secretary (or a Review of Actions decision maker)

1. On receipt of any recommendation from the Merit Protection Commissioner, the Secretary (or a Review of Actions decision maker) must, as soon as possible, consider the recommendation and make a decision about the action under review. The Secretary (or a Review of Actions decision maker) may
  - a. confirm the relevant action;
  - b. vary the action;
  - c. set the action aside and substitute a new action; or
  - d. take other appropriate action.
2. The Secretary (or a Review of Actions decision maker) must notify the Defence APS employee and the Merit Protection Commissioner in writing of their decision on the review recommendations and the reasons for the decision.
3. If the Merit Protection Commissioner is not satisfied with the Secretary's (or a Review of Actions decision maker's) response to the recommendations, the Merit Protection Commissioner may, after consulting the Australian Public Service Minister, report the matter to the Minister for Defence, Prime Minister or Parliament.

#### 7.4.1.11 What if the Defence APS employee is still dissatisfied?

1. Following the Secretary's (or a Review of Actions decision maker's) decision on recommendations from the Merit Protection Commissioner, there is no further right of review under the *Public Service Act 1999* or the *Public Service Regulations 1999*.

2. To take the matter further, a Defence APS employee would need to apply to a court for judicial review, under the general law or the [Administrative Decisions \(Judicial Review\) Act 1977](#). In such cases, it would be prudent to seek independent legal advice.

## Part 4 Division 2 - Instructions for Defence APS employees submitting a Review of Actions application to the Merit Protection Commissioner

### 7.4.2.1 Purpose

1. This Division provides information for Defence APS employees intending to lodge an application for
  - a. a primary review of a determination that a Defence APS employee has breached the Code of Conduct;
  - b. a primary review of a sanction imposed for a breach of the Code of Conduct; and
  - c. a secondary review of a reviewable action.

### 7.4.2.2 Content

1. This Division contains the following information

[7.4.2.3 Who can apply to the Merit Protection Commissioner for a review?](#)

[7.4.2.4 How to apply for a primary review of a determination that a Defence APS employee has breached the Code of Conduct](#)

[7.4.2.5 How to apply for a secondary review](#)


[7.4.2.6 How the Merit Protection Commissioner conducts its review](#)

[7.4.2.7 Outcomes of a review by the Merit Protection Commissioner](#)

### 7.4.2.3 Who can apply to the Merit Protection Commissioner for a review?

1. All Defence APS employees may seek a review of an employment decision (**Exception:** Defence APS employees in the SES). This includes
  - a. Ongoing Defence APS employees; and
  - b. Non-ongoing Defence APS employees engaged for
    - i. a specified term;
    - ii. the duration of a specified task; or
    - iii. duties that are irregular or intermittent.

### 7.4.2.4 How to apply for a primary review of a determination that a Defence APS employee has breached the Code of Conduct

1. A Defence APS employee may apply to the Merit Protection Commissioner for a primary review of
  - a. a determination that the Defence APS employee has breached the Code of Conduct; or
  - b. a sanction imposed for a determination of a breach of the Code of Conduct. **Related Information:** Regulation 5.24 of the Public Service Regulations 1999. **Note:** A determination terminating a Defence APS employee's APS employment are appealed through Fair Work Australia.
2. Applications are to be made in writing directly to the Merit Protection Commissioner. **Note:** Applications should indicate the aspects of the determination and/or sanction which the Defence APS employee disputes.
3. An employee must submit an application for primary review of a Code of Conduct related determination or sanction no later than 60 days from either the determination of the breach, or from the imposition of the sanction. **See:** 7.4.1.5, Time limits when submitting an application for review.
4. Contact details for the Merit Protection Commissioner can be obtained by accessing the Merit Protection Commissioner's website. **Related Information:**  <http://www.mpc.gov.au>

#### 7.4.2.5 How to apply for a secondary review

1. A Defence APS employee may apply in writing to the Merit Protection Commissioner for a secondary review of a reviewable action if
  - a. the Secretary (or a Review of Actions decision maker) has informed the Defence APS employee that an action about which they have applied for review is not a reviewable action under the provisions of section 33 of the *Public Service Act 1999* and Divisions 5.1 and 5.3 of the Public Service Regulations 1999; or
  - b. the Defence APS employee is dissatisfied with the outcome of a Review of Actions (primary review) process.
2. A Defence APS employee **must** submit their application for secondary review through the original delegate who decided the primary review. **Note:** In their application, the Defence APS employee must state briefly why they are seeking a secondary review. The Defence APS employee should also explain why they are dissatisfied with the primary review outcome and where possible, include the aspects of the primary review which they believe have not been resolved.
3. An application for secondary review must be lodged with the Merit Protection Commissioner no later than 60 days from
  - a. the date the Defence APS employee was advised of the outcome of the primary review decision; or
  - b. the date the Defence APS employee was advised that the action about which they submitted an application for review was not considered to be a reviewable action.  
**See:** 7.4.1.5, Time limits when submitting an application for review.
4. **Note:** The original delegate who decided the primary review must give
  - a. the Merit Protection Commissioner the application for secondary review, and any relevant documents relating to the primary review, **within 14 days** of receiving the secondary review application; and
  - b. the Defence APS employee copies of the documents provided to the Merit Protection Commissioner.

#### 7.4.2.6 How the Merit Protection Commissioner conducts its review

1. Reviews (both primary and secondary) conducted by the Merit Protection Commissioner are
  - a. required to have regard to procedural fairness;
  - b. conducted in private; and
  - c. undertaken in accordance with the Merit Protection Commissioner's own processes.  
**See:** 7.4.5.4, How the Merit Protection Commissioner conducts reviews.

#### 7.4.2.7 Outcomes of a review by the Merit Protection Commissioner

1. The Merit Protection Commissioner cannot change or set aside a review of Actions decision, only the Secretary (or a Review of Actions decision maker) may change or set aside a decision.
2. Upon completion of a review (primary or secondary), the Merit Protection Commissioner will give the Defence APS employee a copy of the Merit Protection Commissioner's report and any recommendations made to the Secretary (or a Review of Actions decision maker).
3. The Secretary (or a Review of Actions decision maker) must, as soon as possible, consider the recommendations and make a decision regarding them.
4. The Secretary (or a Review of Actions decision maker) may
  - a. confirm the relevant action;
  - b. vary the action;
  - c. set the action aside and substitute a new action; or
  - d. take other appropriate action.
5. The Secretary (or a Review of Actions decision maker) must inform the Defence APS employee and the Merit Protection Commissioner in writing of their decision and the reasons for the decision.
6. A Defence APS employee has no further right of review under the *Public Service Act 1999* or the Public Service Regulations 1999 following the Secretary's (or a Review of Actions decision maker's) decision on recommendations from the Merit Protection Commissioner.



7. To take the matter further, a Defence APS employee would need to apply to a court for judicial review, under the general law or the *Administrative Decisions (Judicial Review) Act 1977*. In such cases, it would be prudent to seek independent legal advice.

## Part 4 Division 3 - Instructions for units, functional areas and Service headquarters

### 7.4.3.1 Purpose

1. This Division provides information for units, functional areas and Service headquarters in relation to applications made by Defence APS employees to the Merit Protection Commissioner for
  - a. a primary review of a Code of Conduct related determination or sanction; and
  - b. a secondary review of an employment action which has already been the subject of a Review of Actions (primary review).

### 7.4.3.2 Content

1. This Division contains the following information

[7.4.3.3 Conduct of investigations by the Merit Protection Commissioner](#)  
[7.4.3.4 The Merit Protection Commissioner's point of contact in Defence](#)  
[7.4.3.5 Units, functional areas and Service headquarters responsibilities](#)  
[7.4.3.6 Timeliness and delay](#)  
[7.4.3.7 Direct contact with the Merit Protection Commissioner](#)  
[7.4.3.8 Powers of the Merit Protection Commissioner](#)

### 7.4.3.3 Conduct of investigations by the Merit Protection Commissioner

1. In most cases, it may be possible for the Merit Protection Commissioner to conduct the review solely by examination of the relevant documents. Where necessary, the Merit Protection Commissioner may investigate further by seeking additional information from Defence and/or interviewing other relevant persons.

### 7.4.3.4 The Merit Protection Commissioner's point of contact in Defence

1. The Merit Protection Commissioner's point of contact in Defence is Complaints and Resolution. From time to time units, functional areas or Service headquarters may be contacted by the Merit Protection Commissioner. **See:** 7.4.3.7, Direct contact with the Merit Protection Commissioner.
2. Units, functional areas or Service headquarters will not normally be informed that an application for Review of Actions has been submitted by Defence personnel under their command or management unless information is required from the unit, functional area or Service headquarters for the purpose of responding to the Merit Protection Commissioner.

### 7.4.3.5 Units, functional areas and Service headquarters responsibilities

1. If Complaints and Resolution has requested information or comment from a unit, functional area or Service headquarters responses must be provided with
  - a. comments on the matters surrounding the action to be reviewed;
  - b. appropriate supporting documentation; and
  - c. if requested, all relevant files. **Note:** Unless specifically requested, original documents are not required.
2. **Responses to Complaints and Resolution must be cleared by the relevant One Star/Senior Executive Service Band 1 or their delegate.**
3. If the Merit Protection Commissioner has directed that a Defence APS employee attend an interview or compulsory conference, the appropriate unit, functional area or Service headquarters must make that person available to attend the interview or conference.

#### **7.4.3.6 Timeliness and delay**

1. Inquiries from Complaints and Resolution relating to an investigation by the Merit Protection Commissioner must be given high priority.
2. A response should be provided to Complaints and Resolution as soon as reasonably practicable but, at the latest, **within 10 working days**.
3. Where units, functional areas or Service headquarters anticipate unavoidable delays, they must advise Complaints and Resolution of
  - a. the nature of the delay;
  - b. the reasons for the delay; and
  - c. an anticipated date on which a response will be provided.
4. If possible an interim response should be provided to Complaints and Resolution and a further response should be provided as soon as any significant information is available.

#### **7.4.3.7 Direct contact with the Merit Protection Commissioner**

1. The Merit Protection Commissioner may make direct contact with units, functional areas or Service headquarters or with individual Defence personnel. In such cases units, functional areas or Service headquarters must direct the Merit Protection Commissioner to Complaints and Resolution.

#### **7.4.3.8 Powers of the Merit Protection Commissioner**

1. When a review is finished, the Merit Protection Commissioner will advise the applicant and the Secretary (or a Review of Actions decision maker) of the result of the review and the recommendations, if any, the Commissioner has made to Defence.
2. The Merit Protection Commissioner cannot impose an outcome on Defence or substitute a different decision for that made by the Secretary (or a Review of Actions decision maker).
3. The Merit Protection Commissioner cannot force Defence to do what is recommended. However, the Secretary (or a Review of Actions decision maker) will usually act on the Merit Protection Commissioner's recommendations and is required to give reasons for their decision.
4. If the Merit Protection Commissioner is not satisfied with Defence's response to the recommendations, the Merit Protection Commissioner may, after consulting the Public Service Minister, report the matter to the Minister, the Prime Minister or the Parliament.

## Part 4 Division 4 - Instructions for Complaints and Resolution

### 7.4.4.1 Purpose

1. This Division outlines the authority, responsibilities and processes of Complaints and Resolution in relation to reviews conducted by the Merit Protection Commissioner.

### 7.4.4.2 Content

1. This Division contains the following information

[7.4.4.3 Primary points of contact](#)

[7.4.4.4 Responsibility](#)

[7.4.4.5 Initial actions](#)

[7.4.4.6 Further inquiries](#)

[7.4.4.7 Responding to recommendations by the Merit Protection Commissioner](#)

### 7.4.4.3 Primary points of contact

1. The Director Complaints and Resolution is the Merit Protection Commissioner's primary point of contact in Defence.

### 7.4.4.4 Responsibility

1. On behalf of the Secretary, Complaints and Resolution is responsible for
  - a. Providing information requested by the Merit Protection Commissioner for the conduct of
    - i. a primary review of a Code of Conduct related determination;
    - ii. a primary review of a Code of Conduct related sanction; and
    - iii. a secondary review of an employment action which has already been the subject of a Review of Actions (primary review).
  - b. Providing reports and comments on reports to the Secretary.

### 7.4.4.5 Initial actions

1. **Primary review of a determination relating to a breach, or a sanction imposed because of a breach, of the Code of Conduct**
  - a. When advice regarding a Code of Conduct primary review process is received, Complaints and Resolution will contact the Code of Conduct delegate to co-ordinate the provision of the requested documents to the Merit Protection Commissioner.
2. **Secondary review of a Reviewable Action**
  - a. When an application for secondary review is received at Complaints and Resolution, the application together with all documents considered by the delegate, must be forwarded to the Merit Protection Commissioner within 14 days of receipt of the application at Complaints and Resolution.
  - b. A copy of the information provided to the Merit Protection Commissioner must also be provided to the applicant.
3. **Primary review under Regulation 5.24(3)**
  - a. When an application for primary review under Regulation 5.24(3) of the Public Service Regulations 1999 is received at Complaints and Resolution, the application together with all relevant documents, must be forwarded to the Merit Protection Commissioner within 14 days of receipt of the application at Complaints and Resolution.

#### 7.4.4.6 Further inquiries

1. The Merit Protection Commissioner may
  - a. seek to view or have direct liaison with units, functional areas, and Service headquarters and in such a case Complaints and Resolution will co-ordinate this; or
  - b. conduct the review solely by an examination of the relevant documents.
2. Where necessary, the Merit Protection Commissioner may review further by seeking additional information from Defence and by interviewing the applicant and/or other relevant persons.
3. Complaints and Resolution will obtain any additional information requested by the Merit Protection Commissioner from units, functional areas and Service headquarters; and will forward this information to the Merit Protection Commissioner.

#### 7.4.4.7 Responding to recommendations by the Merit Protection Commissioner

1. Upon completion of a review (primary or secondary), the Merit Protection Commissioner will advise the Review of Actions decision maker in writing about any recommendations made and the reasons for the recommendations.
2. The Review of Actions decision maker has the power to make decisions, regarding recommendations by the Merit Protection Commissioner. **Related Information:** Section 78 of the [Public Service Act 1999](#) and regulation 5.32 of the [Public Service Regulations 1999](#).
3. On receipt of any recommendations from the Merit Protection Commissioner for either a primary review of a code of conduct related determination or sanction; or a secondary review of a reviewable action, the Review of Actions decision maker must, as soon as possible, consider the recommendations and make a decision regarding them.
4. The Review of Actions decision maker may
  - a. confirm the relevant action;
  - b. vary the action;
  - c. set the action aside and substitute a new action; or
  - d. take other appropriate action.
5. The Review of Actions decision maker must tell the employee and the Merit Protection Commissioner in writing of their decision and the reasons for the decision.

## Part 4 Division 5 - About the Merit Protection Commissioner

### 7.4.5.1 Purpose

1. This Division provides information about the Merit Protection Commissioner and how they conduct
  - a. a primary review of a Code of Conduct determination and/or the sanctions imposed; and
  - b. a secondary review of a reviewable action.

### 7.4.5.2 Content

1. This Division contains the following information




[7.4.5.3 Functions of the Merit Protection Commissioner](#)

[7.4.5.4 How the Merit Protection Commissioner conducts reviews](#)

[7.4.5.5 Primary reviews of breaches of the Code of Conduct](#)

[7.4.5.6 Outcomes of the Merit Protection Commissioner's primary review process](#)

### 7.4.5.3 Functions of the Merit Protection Commissioner


1. The Office of the Merit Protection Commissioner is established under Section 49 of the [Public Service Act 1999](#) .
2. The Merit Protection Commissioner's functions are detailed in Section 50 of the *Public Service Act 1999* and Part 7 of the [Public Service Regulations 1999](#) . The two key functions are
  - a. to conduct independent reviews of employment actions, including promotion decisions, under Section 33 of the *Public Service Act 1999*; **Exception:** Certain APS promotion decisions are reviewed by the Promotion Review Committee. **See:** The [Merit Protection Commissioner](#)  web site for more details; and
  - b. to receive and inquire into whistleblower reports made under Section 16 of the [Public Service Act 1999](#).

### 7.4.5.4 How the Merit Protection Commissioner conducts reviews

1. When conducting reviews, the Merit Protection Commissioner considers evidence provided by both the agency and employee and forms a view on whether the actions of the agency, with respect to that employee, were
  - a. consistent with agency policy and procedures;
  - b. fair and reasonable in the circumstances; and
  - c. where relevant, consistent with the requirements of procedural fairness.
2. Reviews (both primary and secondary) conducted by the Merit Protection Commissioner are
  - a. required to have regard to procedural fairness;
  - b. conducted in private; and
  - c. undertaken in accordance with the Merit Protection Commissioner's own processes.
3. The Merit Protection Commissioner will acknowledge receipt of an application and advise the applicant whether the application is reviewable.
4. The Merit Protection Commissioner will ask Defence for copies of all relevant documents.
5. The Merit Protection Commissioner may conduct the review solely by an examination of the relevant documents.
6. Where necessary, the Merit Protection Commissioner may investigate further by seeking additional information from Defence and by interviewing the applicant and/or other relevant persons.

7. Applicants may have a person to support them during an interview, but this support person cannot represent (speak for) the applicant. **Note:** If an applicant wishes to have someone represent them, they must make a formal request to the Merit Protection Commissioner.
8. If a Defence APS employee has any concerns about the Merit Protection Commissioner's review process, this should be raised with the Merit Protection Commissioner.

#### **7.4.5.5 Primary reviews of breaches of the Code of Conduct**

1. When conducting primary reviews of a finding that a Defence APS employee has breached the Code of Conduct, the sanctions imposed as a result of that finding, the Merit Protection Commissioner examines
  - a. whether the Agency's procedures comply with Chapter 6 of the [Australian Public Service Commissioner's Directions 2016](#) ;
  - b. whether those procedures were substantially complied with;
  - c. whether there is evidence that an employee committed the act/s found to have breached the Code of Conduct;
  - d. if there is evidence, whether the act/s amount to a breach of the Code of Conduct; and
  - e. if the actions amounted to a breach, whether the sanction imposed was appropriate.

#### **7.4.5.6 Outcomes of the Merit Protection Commissioner's primary review process**

1. The Merit Protection Commissioner has recommendatory powers only and cannot impose an outcome on an Agency.
2. If the Merit Protection Commissioner review considers that the decision under review was unreasonable, the Merit Protection Commissioner may recommend that an Agency
  - a. set aside the decision;
  - b. vary the decision;
  - c. change its procedures; or
  - d. take some other appropriate action.
3. The Merit Protection Commissioner cannot force an Agency to do what is recommended, however, Agencies usually act on the Merit Protection Commissioner's recommendations.

# Inspectors General

## Chapter 8

### 8.0.0.1 Introduction



1. The Inspector-General of the Australian Defence Force is concerned with the proper administration of military justice and the military justice system.
2. The Inspector-General of Intelligence and Security provides independent assurance for the Prime Minister, senior ministers and Parliament as to whether Australia's intelligence and security agencies act legally and within propriety by inspecting, inquiring into and reporting on their activities.

### 8.0.0.2 Purpose




1. This Chapter provides information for Defence personnel on the roles, functions and responsibilities of the Inspector-General of the Australian Defence Force; and the Inspector-General of Intelligence and Security. **Note:** This Chapter provides general information only and any further information required should be sought from the office of the relevant Inspector-General.

### 8.0.0.3 Content

This Chapter contains the following Parts:

1.  [Part 1: Inspector-General of the Australian Defence Force](#)
2. Part 2: Vacant
3.  [Part 3: Inspector-General of Intelligence and Security](#)

### 8.0.0.4 Disclosure of security classified information

1. Defence personnel must not provide/disclose security classified information when
  - a. participating in a process provided for in this manual; or
  - b. submitting a complaint provided for in this manual.
2. Defence personnel acting contrary to 8.0.0.4.1 may be liable to criminal prosecution under section 70 of the  [Crimes Act 1914](#).
3. Defence APS employees acting contrary to 8.0.0.4.1 may also be subject to Code of Conduct action. **Related Information:** [People Policy – Behaviours](#).
4. Defence members acting contrary to subclause 1 may also be subject to an administrative sanction or action under the  [Defence Force Discipline Act 1982](#). **Related Information:**  [MILPERSMAN Part 9, Chapter 2 - Formal Warnings and Censures in the Australian Defence Force](#).





# Inspector-General of the Australian Defence Force

## Chapter 8 Part 1

### 8.1.0.1 Introduction

1. The role of the Inspector-General of the Australian Defence Force is to provide the CDF with internal audit and review of the military justice system independent of the ordinary chain of command and to provide an avenue by which alleged failures of the system, systemic or otherwise, may be examined and brought to the attention of command as necessary.

### 8.1.0.2 Purpose

1. This Part provides an overview of the functions of the Inspector-General of the Australian Defence Force and describes how complaints can be made to the Inspector-General of the Australian Defence Force.
2. **Note:** This Part provides general information only. Any further information required should be sought from the office of the Inspector-General of the Australian Defence Force.
3. **Related Information:**  [Inspector-General of the Australian Defence Force Regulation 2016.](#)
4. **Intranet site:**  [Inspector-General of the Australian Defence Force \(IGADF\).](#)

### 8.1.0.3 Content

1. This Part contains the following Divisions

[Division 1: Overview](#)

[Division 2: Instructions for people wishing to make a complaint to the Inspector-General of the Australian Defence Force](#)

### 8.1.0.4 This Part applies to

1. This Part applies to persons wishing to make a complaint to the Inspector-General of the Australian Defence Force.
2. **See:** Chapter 8 Part 1 Division 2, Instructions for people wishing to make a complaint to the Inspector-General of the Australian Defence Force.

### 8.1.0.5 Policy

1. Military justice is about achieving an appropriate balance between the need to effectively maintain good order and discipline in the ADF and the need to have due regard for the rights of the individual.
2. A fair and open military justice system promotes good order and discipline, is an essential element of operational effectiveness and integral to a successful ADF.


### 8.1.0.6 Definitions

1. For the purpose of this Part the following definitions apply
  - a. **Key Characteristics.** Key Characteristics are defined as: access, timeliness, equality, fairness, integrity, impartiality, accountability, trust and confidence.
  - b. **Military Justice.** The term 'military justice' is used in its broadest sense. It encompasses matters associated with disciplinary action under the Defence

Force Discipline Act 1982 including the investigation of such matters, the conduct of administrative inquiries, adverse administrative action and the right to complain about such action.

- c. **Military Justice System.** The framework by which military justice is administered. The Military Justice System includes
  - i. the ADF's discipline system;
  - ii. the administrative sanctions system;
  - iii. the administrative inquiries system; and
  - iv. the complaints system.
- d. **Rough Justice.** The use of violence, victimisation, harassment, threats, intimidation, bullying and other unlawful means to maintain order and discipline or correct performance.

#### 8.1.0.7 Relevant website

1. The DPN site of the Inspector-General of the Australian Defence Force contains more information.
2. **Related Information:**  [Inspector-General of the Australian Defence Force.](#)

#### 8.1.0.8 Applicable legislation



1. Part VIII B  [Defence Act 1903](#) .

#### 8.1.0.9 Sponsor and Defence point of contact

1. The sponsor for this Part is Inspector-General of the Australian Defence Force.
2. The point of contact is the Deputy Inspector-General of the Australian Defence Force:  
**Phone:** 1800 688 042.

## Part 1 Division 1 - Overview

### 8.1.1.1 Purpose

1. This Division provides an overview of the Inspector-General of the Australian Defence Force process for managing submissions concerning the military justice system.
2. **Note:** This Division provides general information only. Any further information required should be sought from the office of the Inspector-General of the Australian Defence Force.
3. **Related Information:**  [Inspector-General of the Australian Defence Force Regulation 2016](#).
4. **Intranet site:**  [Inspector-General of the Australian Defence Force \(IGADF\)](#).

### 8.1.1.2 Content

1. This Division contains the following information

[8.1.1.3 Roles and responsibilities](#)

[8.1.1.4 Functions of the Inspector-General of the Australian Defence Force](#)

[8.1.1.5 Inquiries and investigations](#)

[8.1.1.6 Suspension of executive action](#)


[8.1.1.7 Implementing outcomes](#)

[8.1.1.8 Confidentiality and privacy](#)

[8.1.1.9 Interference with persons who wish to make a submission](#)

[8.1.1.10 Rights and obligations of witnesses](#)

### 8.1.1.3 Roles and responsibilities

1. The role of the Office of Inspector-General of the Australian Defence Force is exercised independently of the chain of command and has two purposes
  - a. to enable a constant scrutiny and monitoring of the military justice system to ensure its health and effectiveness; and
  - b. to provide an avenue by which failures of military justice can be examined, exposed and remedied. **Related Information:**  [Inspector-General of the Australian Defence Force Regulation 2016](#).
2. The roles and responsibilities of persons wishing to make a complaint to the Inspector-General of the Australian Defence Force are outlined in Chapter 8 Part 1 Division 2, Instructions for people wishing to make a complaint to the Inspector-General of the Australian Defence Force.

1. 8.1.1.4 Functions of the Inspector-General of the Australian Defence Force The functions of the Inspector-General of the Australian Defence Force are to
  - a. inquire into or investigate matters concerning the military justice system;
  - b. conduct performance reviews of the military justice system, including internal audits, at the times and in the manner the Inspector-General of the Australian Defence Force considers appropriate;
  - c. advise on matters concerning the military justice system, including making recommendations for improvements; and
  - d. promote military justice values across the ADF.

### 8.1.1.5 Inquiries and investigations

1. An Inspector-General of the Australian Defence Force inquiry and investigation may investigate or inquire into matters relating to the military justice system
  - a. as directed by CDF;
  - b. requested by a Service Chief or other person; or
  - c. on the Inspector-General of the Australian Defence Force's own initiative.
2. The Inspector-General of the Australian Defence Force must

- a. provide an avenue for submissions or complaints about the military justice system to be made, including victimisation, abuse of authority, and avoidance of due process where chain of command considerations discourage recourse to normal avenues of complaint;
- b. take action as may be necessary to inquire into or investigate such submissions or complaints;
- c. refer them to an appropriate authority for inquiry or investigation, including the military police, civil police, Service or departmental commanders or authorities; and
- d. maintain a Register of persons who would be suitable to act as members of inquiries or as investigating officers.

#### **8.1.1.6 Suspension of executive action**

1. Where a matter becomes the subject of an Inspector-General of the Australian Defence Force inquiry or investigation the suspension of executive action is not routinely required.
2. If, in the opinion of Inspector-General of the Australian Defence Force, compelling reasons exist to suspend executive action, the Inspector-General of the Australian Defence Force may request the appropriate authority take such action.
3. Defence personnel are to comply with a request from the Inspector-General of the Australian Defence Force to suspend executive action.
4. If a person is unable to comply with a request from the Inspector-General of the Australian Defence Force, the person to whom the request was made is to advise the Inspector-General of the Australian Defence Force of this fact as soon as possible, with supporting reasons why executive action cannot be suspended.

#### **8.1.1.7 Implementing outcomes**

1. The Inspector-General of the Australian Defence Force may make recommendations to Defence personnel to take action to implement measures designed to improve and enhance military justice in individual cases or the military justice system as a whole.


#### **8.1.1.8 Confidentiality and privacy**

1. The Inspector-General of the Australian Defence Force cannot give guarantees of confidentiality. Every effort will be made to maintain confidentiality, consistent with the need for the Inspector-General of the Australian Defence Force to perform their functions and responsibilities.
2. Personal information will be managed in accordance with the Information Privacy Principles contained in the [Privacy Act 1988](#). These principles will be applied to all submissions made to the Inspector-General of the Australian Defence Force.
3. The Inspector-General of the Australian Defence Force will normally inform the person who made the confidential submission of a legal disclosure requirement. Persons concerned about privacy and confidentiality may wish to seek legal advice prior to making a submission to the Inspector-General of the Australian Defence Force.

#### **8.1.1.9 Interference with persons who wish to make a submission**



1. Defence personnel are not to dissuade or prevent, or attempt to dissuade or prevent, a person from making a submission to the Inspector-General of the Australian Defence Force about a matter relevant to military justice or the military justice system.
2. Notwithstanding this, reasonable attempts to satisfy a complaint through normal administrative processes prior to a submission to the Inspector-General of the Australian Defence Force, or the giving of bona fide advice about the existence of alternative options for bringing a matter to attention, will not be viewed as dissuading or preventing or attempting to dissuade or prevent the making of a complaint.

#### **8.1.1.10 Rights and obligations of witnesses**

1. An FAQ document outlining the inquiry process, rights and obligations of witnesses in an Inspector-General of the Australian Defence Force inquiry will be made available prior to a witness giving evidence to the inquiry. **Related Information:**  [IGADF Witness Frequently Asked Questions.](#)

## Part 1 Division 2 - Instructions for people wishing to make a complaint to the Inspector-General of the Australian Defence Force

### 8.1.2.1 Purpose

1. This Division provides information for people wishing to make a complaint to the Inspector-General of the Australian Defence Force.
2. **Note:** This Part provides general information only. Any further information required should be sought from the office of the Inspector-General of the Australian Defence Force.
3. **Related Information:**  [Inspector-General of the Australian Defence Force Regulation 2016.](#)
4. **Intranet site:**  [Inspector-General of the Australian Defence Force \(IGADF\).](#)

### 8.1.2.2 Content

1. This Division contains the following information

[8.1.2.3 Who can make a submission to the Inspector-General of the Australian Defence Force](#)

[8.1.2.4 Before making a submission to the Inspector-General of the Australian Defence Force](#)

[8.1.2.5 What can people make a submission about?](#)

[8.1.2.6 How to make a submission to the Inspector-General of the Australian Defence Force?](#)

[8.1.2.7 When the Inspector-General of the Australian Defence Force may not investigate or inquire into a submission](#)

[8.1.2.8 How submissions may be used or disclosed](#)

[8.1.2.9 Support and protection available to people wishing to make a submission](#)

[8.1.2.10 Responses to the person making the submission](#)

### 8.1.2.3 Who can make a submission to the Inspector-General of the Australian Defence Force?

1. Any person can make a submission concerning military justice to the Inspector-General of the Australian Defence Force, including
  - a. current and former Defence personnel;
  - b. family members and friends of Defence personnel; or
  - c. members of the public.
2. **Anonymous submission**
  - a. A person may make an anonymous submission to Inspector-General of the Australian Defence Force.
  - b. **Note:** The scope of action that can be taken on an anonymous submission may be limited. An anonymous submission will therefore normally be regarded as informative, rather than evidential, when an inquiry or investigation is undertaken.
  - c. **Note:** Where allegations of an adverse nature are made against specific individuals, the rules of procedural fairness generally require that the individual be made aware of their accuser and the nature of the allegations, and be given the opportunity to respond.
  - d. Subsequent action by the Inspector-General of the Australian Defence Force will be assisted by the provision, in an anonymous submission, of as much information as possible about the subject of the complaint.


### 8.1.2.4 Before making a submission to the Inspector-General of the Australian Defence Force

1. Persons wishing to make a military justice related complaint should first consider doing so through their chain of command or other appropriate Defence agency or authority, utilising other appropriate Defence complaint processes (e.g. Redress of Grievance, unacceptable behaviour complaint). This approach will ensure matters are resolved at the earliest possible opportunity and at the lowest possible level.



#### 8.1.2.5 What can people make a submission about?

1. The subject matter of submissions to the Inspector-General of the Australian Defence Force, whether of a systemic or personal nature, should fall within, or be incidental to, military justice or the military justice system.
2. Submissions could be about
  - a. failure to maintain and enforce good order and discipline according to military law;
  - b. use of rough justice to maintain and enforce good order and discipline within the Australian Defence Force;
  - c. taking of adverse action against persons who make complaints about military justice or the military justice system; and
  - d. the military justice system and suggestions to improve and/or enhance it.
3. Where a person believes it would be inappropriate for the chain of command or other Defence agency or authority to deal with the complaint, consideration should be given to making a submission to the Inspector-General of the Australian Defence Force.

#### 8.1.2.6 How to make a submission to the Inspector-General of the Australian Defence Force

1. There is no particular form in which submissions can be made to the Inspector-General of the Australian Defence Force.
2. Submissions
  - a. may be written (e.g. letter, minute, facsimile, or email) or oral (e.g. telephone or in person); **Note:** It is preferable that any oral submission is followed by one in written form as soon as convenient;
  - b. should be clear and concisely explain the facts on which the submission is based and the outcomes sought, if any; and
  - c. be supported by evidence and should include relevant supporting documentation, and identification of relevant witnesses, wherever possible.
3. **Note:** People considering making a submission can contact the Director of Inquiries and Investigations, at the  [Inspector-General of the Australian Defence Force \(IGADF\)](#), who is available to provide further guidance on the preparation of a submission.
4. Persons who wish to make submissions are encouraged to do so as soon as possible. Unnecessary delay will make it more difficult for a matter to be resolved as individual recollections of events and facts fade over time.
5. Adverse administrative or disciplinary action may be taken against persons who intentionally make submissions which are false. **Note:** This is different to making a submission which is factually incorrect as a result of an honest mistake of fact or a misinterpretation of events.

#### 8.1.2.7 When the Inspector-General of the Australian Defence Force may not investigate or inquire into a submission

1. Unless exceptional circumstances exist, the Inspector-General of the Australian Defence Force will not normally inquire into matters that occurred before the introduction of the  [Defence Force Discipline Act 1982](#) .
2. **More appropriate for the chain of command to deal with the submission**
  - a. The Inspector-General of the Australian Defence Force will not normally inquire into or investigate a submission where it would be more appropriate for the chain of command or other Defence agency or authority to deal with the matter at first instance.
  - b. The Inspector-General of the Australian Defence Force may refer the submission to the chain of command or other Defence agency or authority for action, advising the person making the submission that the matter has been referred.
3. **Concurrent investigations or inquiries**

- a. If a person makes a submission to the Inspector-General of the Australian Defence Force on a matter that is already being inquired into, investigated or addressed through another administrative process, the Inspector-General of the Australian Defence Force will normally decide not to deal with the matter until the chain of command or other Defence agency or authority has had an opportunity to complete their action into the matter. **Exception:** Where the Inspector-General of the Australian Defence Force determines it is not appropriate for the chain of command or other Defence agency or authority to continue to deal with the matter.
- b. Before making a decision to run a concurrent inquiry or investigation, the Inspector-General of the Australian Defence Force will normally consult with the chain of command or other Defence agency or authority and inform them of his/her concerns regarding that organisation's continued involvement in the matter, and may direct they refer the matter, partially or in its entirety, to the Inspector-General of the Australian Defence Force for further action.
- c. If the Inspector-General of the Australian Defence Force gives a direction for the matter to be referred to them, the chain of command or other Defence agency or authority is to cease all action into the matter.

#### **8.1.2.8 How submissions may be used or disclosed**

1. The Inspector-General of the Australian Defence Force has a broad discretion in dealing with submissions and complaints. Persons making a submission to the Inspector-General of the Australian Defence Force should be aware that the submission may be used in a subsequent investigation by the Inspector-General of the Australian Defence Force. This includes if allegations of an adverse nature are made against specific individuals, providing the individual with details of
  - a. the identity of the person who made the submission; and
  - b. the nature of the allegations.

#### **8.1.2.9 Support and protection available to people wishing to make a submission**

1. Support and protection measures are available to assist where persons making submissions to the Inspector-General of the Australian Defence Force may fear for their safety, security, career or general wellbeing.
2. Persons who believe they need access to such measures should make this clear in their submission to the Inspector-General of the Australian Defence Force, whose staff will liaise directly with the person to best determine the nature and level of support and protection required in each case.

#### **8.1.2.10 Responses to the person making the submission**

1. Persons making submissions to the Inspector-General of the Australian Defence Force will receive written notification of receipt of the submission.
2. Persons making submissions will be kept informed of progress and the final outcome of their submission when inquiries, investigations and actions concerning it are complete. **Note:** Feedback about the progress and outcome and any inquiry cannot be provided to persons making anonymous submissions to the Inspector-General of the Australian Defence Force.



## **Chapter 8 Part 2**

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# Inspector-General of Intelligence and Security

## Chapter 8 Part 3

### 8.3.0.1 Introduction

1. The Inspector-General of Intelligence and Security (IGIS) is an independent statutory office holder who reviews the activities of the six intelligence agencies, referred to as the Australian Intelligence Community, namely
  - a. Australian Security Intelligence Organisation;
  - b. Australian Secret Intelligence Service;
  - c. Australian Signals Directorate;
  - d. Australian Geospatial-Intelligence Organisation;
  - e. Defence Intelligence Organisation; and
  - f. the Office of National Intelligence.
2. The role of the IGIS is to ensure that the agencies mentioned above act legally and with propriety, comply with ministerial guidelines and directives and respect human rights.
3. The IGIS conducts regular inspections of the Australian Intelligence Community agencies and inquiries as the need arises.
4. The IGIS has the powers of a standing royal commission.

### 8.3.0.2 Purpose

1. This Part outlines the functions of the IGIS, describes the process for lodging a complaint and provides guidance to complainants and respondents on the investigation of complaints. **Note:** This Part provides general information only. Any further information required should be sought from the office of the IGIS. **Related Information:**  [IGIS website](#) .

### 8.3.0.3 Content









1. This Part contains the following Divisions

[Division 1: Instructions for Defence personnel, external service providers and outsourced service providers making a complaint to the Inspector-General of Intelligence and Security](#)  
[Division 2: Instructions for the Defence Intelligence Agencies receiving complaints from the Inspector-General of Intelligence and Security](#)

### 8.3.0.4 Application

1. This Part applies to all Defence personnel, external service providers and outsourced service providers with Australian citizenship or permanent residency.
2. Staff of the Defence Intelligence Agencies, other Defence APS employees, Defence members, external service providers and outsourced service providers have special obligations under this Part.

### 8.3.0.5 Policy

1. In managing complaints to and from the IGIS, Defence must comply with
  - a.  [Intelligence Services Act 2001](#) .
  - b.  [Crimes Act 1914](#) .
  - c.  [Public Service Regulations 1999](#) ; and
  - d.  [Inspector-General of Intelligence and Security Act 1986](#) .

### 8.3.0.6 Abbreviations

1. For the purpose of this Part, the following abbreviations apply
  - a. IGIS refers to the Inspector-General of Intelligence and Security;
  - b. AIC refers to the Australian Intelligence Community;
  - c. ASIO refers to the Australian Security Intelligence Organisation;
  - d. ASIS refers to the Australian Secret Intelligence Service;
  - e. ASD refers to the Australian Signals Directorate;
  - f. AGO refers to the Australian Geospatial-Intelligence Organisation;
  - g. DIO refers to the Defence Intelligence Organisation;
  - h. DIA refers to the Defence Intelligence Agencies (including ASD, AGO and DIO);  
and
  - i. ONI refers to the Office of National Intelligence.

### 8.3.0.7 Relevant website

1. Information about the IGIS and details of complaints processes can be found at [www.igis.gov.au](http://www.igis.gov.au).

### 8.3.0.8 Applicable legislation

1. The following legislation is applicable to this Part
  - a. [Defence Act 1903](#) 
  - b. [Public Service Act 1999](#) 
  - c. [Intelligence Services Act 2001](#) 
  - d. [Crimes Act 1914](#) 
  - e. [Public Service Regulations 1999](#) 
  - f. [Inspector-General of Intelligence and Security Act 1986](#) 
  - g. [Public Interest Disclosure Act 2013](#) 
  - h. [Criminal Code Act 1995](#) 

### 8.3.0.9 Accountability

1. AGO and DIO operate in the Defence Intelligence Group. The Defence Intelligence Group is responsible to the Secretary for Defence and the Chief of the Defence Force.
2. The Defence Intelligence Group, on behalf of the Secretary for Defence and the Chief of the Defence Force, is responsible for the management and coordination of responses to the IGIS.

### 8.3.0.10 Sponsor and point of contact

1. The sponsor for this Part is the Defence Intelligence Group.
2. The point of contact for this Part is the Directorate of Complaints and Resolution, **Email:** [complaints.resolution@defence.gov.au](mailto:complaints.resolution@defence.gov.au) .

### 8.3.0.11 Roles and responsibilities

1. The roles and responsibilities of Defence personnel connected with making a complaint to the IGIS and advice to areas required to respond to an investigation by the IGIS are outlined in the following divisions
  - a. Division 1: Instructions for Defence personnel, external service providers and outsourced service providers making a complaint to the Inspector-General of Intelligence and Security; and
  - b. Division 2: Instructions for the Defence Intelligence Agencies receiving complaints from the Inspector-General of Intelligence and Security.

## Part 3 Division 1 - Instructions for Defence personnel, external service providers and outsourced service providers making a complaint to the Inspector-General of Intelligence and Security

### 8.3.1.1 Purpose

1. This Division provides an overview of the role of the IGIS and guidance on lodging a complaint.

### 8.3.1.2 Content

1. This Division contains the following information

- [8.3.1.3 What the IGIS can investigate and who can make a complaint](#)
- [8.3.1.4 What the IGIS does not investigate](#)
- [8.3.1.5 Lodging a complaint with the IGIS](#)
- [8.3.1.6 Conduct of investigations by the IGIS](#)
- [8.3.1.7 Public interest disclosures and the IGIS](#)
- [8.3.1.8 Outcomes of a complaint](#)

### 8.3.1.3 What the IGIS can investigate and who can make a complaint

1. **Activities of the DIA**
  - a. The IGIS reviews the activities of the AIC, including the DIA, to ensure that the agencies act legally and with propriety, comply with ministerial guidelines and directives and respect human rights.
  - b. Defence personnel have the same rights as any Australian citizen or permanent resident to lodge a complaint to the IGIS about the activities of ASD or AGO.
  - c. There is no similar right to complain to the IGIS about the activities of DIO. However, as the IGIS has the capacity to instigate its own motion enquiries, the IGIS will also consider any submission that provides substantial evidence of improper behaviour by DIO.
2. **Complaints by staff of the DIA that involve classified information**
  - a. As described elsewhere in this manual there are several complaint mechanisms available to all Defence personnel. However, staff of the DIA are subject to legislation that can restrict their ability to access the complaints mechanisms available to other Defence personnel where classified information may be divulged in the investigation of the complaint.
  - b. These restrictions are
    - i. Employees of ASD and AGO must not make a complaint that involves information or material that was prepared by or on behalf of ASD or AGO in connection with the functions of these agencies, or that relates to the performance of the functions of these agencies. To do so may breach the [Intelligence Services Act 2001](#), the [Crimes Act 1914](#) and the [Public Service Regulations 1999](#).
    - ii. Employees of DIO must not make a complaint that involves the communication of security classified information that may breach the [Crimes Act 1914](#) and the [Public Service Regulations 1999](#).
  - c. Complaints covered by these restrictions should be referred to the IGIS for investigation.

### 8.3.1.4 What the IGIS does not investigate

1. Although employees of ASD, AGO and DIO can make complaints to the IGIS about issues that involve classified information, they should be mindful that there are legislative limits

on the types of cases that the IGIS can take on. Generally, if there is an internal or other independent review process that the staff member can pursue, the IGIS will not have jurisdiction.

2. The IGIS does not deal with complaints about the promotion, termination of appointment, discipline or remuneration of Defence personnel or any other matter relating to the employment of Defence personnel. These complaints should be made through other complaints mechanisms available in Defence described elsewhere in this manual. **See:** [Chapter 5, Review of Actions](#) ; [Chapter 6, Redress of Grievance](#) and [Chapter 7 Part 4, The Merit Protection Commissioner](#) . **Note:** Decisions to terminate Defence APS employees' APS employment may be appealed through Fair Work Australia.

### 8.3.1.5 Lodging a complaint with the IGIS

1. Defence personnel are able to lodge complaints to the IGIS
  - a. via an online complaints form located at <http://www.igis.gov.au/form/complaints> ;
  - b. by sending an email describing the complaint, or with a letter attached, to: [complaints@igis.gov.au](mailto:complaints@igis.gov.au) ;
  - c. in writing to: 3-5 national Circuit Barton ACT 2600; or
  - d. via telephone on: (02) 6141 4555.

### 8.3.1.6 Conduct of investigations by the IGIS

1. The IGIS has established performance standards it is expected to meet and careful processes that are to be adhered to. When lodging a complaint the IGIS will
  - a. provide a complainant with an acknowledgment in writing as soon as possible;
  - b. give every complaint careful and prompt attention;
  - c. determine whether to investigate a complaint taking into account the following
    - i. whether the matter complained of actually involves an intelligence or security agency;
    - ii. how long ago the events happened;
    - iii. whether the agency concerned has or is already doing a review of its own;
    - iv. whether there is someone else who would be better able to review the matter; and
    - v. whether the matter is serious enough to investigate.
  - d. determine what action is required to investigate the complaint. In investigating a complaint the IGIS has extensive powers to obtain information and can
    - i. require a person to answer questions and produce relevant documents;
    - ii. take sworn evidence; and
    - iii. enter DIA premises.
  - e. conduct investigations and inquiries in private, as they usually touch on sensitive national security issues;
  - f. not name complainants in any public reporting. **Example:** The annual report to Parliament does not name complainants.
  - g. inform the agency concerned that a complaint has been made and allow the opportunity for the agency to comment on the allegations, unless there are special reasons not to do so;
  - h. keep the complainant informed of progress with the investigation of the complaint. If a preliminary inquiry shows little or nothing of concern, the IGIS will usually inform the complainant within a few weeks. **Note:** Most complaints are finalised quickly, however, complex or formal investigations may take longer. The length of the investigation will be influenced by factors including what needs to be investigated and how many people need to be interviewed.
  - i. advise the complainant if an investigation will not take place regarding their complaint and the reasons why; and
  - j. provide the complainant with a written response on completion of their investigation.

### 8.3.1.7 Public interest disclosures and the IGIS

1. There are circumstances in which current and former Defence personnel may make a public interest disclosure to the IGIS. These circumstances will arise where
  - a. the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of 'disclosable conduct', as defined in section 29 of the [Public Interest Disclosure Act 2013](#); and
  - b. the information contains 'intelligence information', as defined in section 41 of the [Public Interest Disclosure Act 2013](#); and
  - c. the discloser believes, on reasonable grounds, that it would be appropriate for the disclosure to be investigated by the IGIS. Defence public interest disclosure scheme; **Related Information:** via [IGIS website](#).

#### 8.3.1.8 Outcomes of a complaint

1. Where the IGIS finds a complaint is justified or if a report of a full agency inquiry is critical, the IGIS must consult the relevant agency head and responsible Minister.
2. An investigation by the IGIS can have a number of possible outcomes as the IGIS can recommend that an agency
  - a. reconsider or change a decision;
  - b. change its rules or procedures; or
  - c. pay compensation for any loss that has been suffered because of its decisions or actions.
3. It is important to note that Ministers and agencies are not bound to do what the IGIS recommends. If the IGIS is not satisfied with the Minister's or agency's response to their report, the IGIS can report to the Prime Minister and the Parliament highlighting their concerns.

## **Part 3 Division 2 - Instructions for the DIA receiving complaints from the Inspector-General of Intelligence and Security**

### **8.3.2.1 Purpose**

1. This Division provides advice to Defence personnel in addressing complaints under investigation by the IGIS relating to the DIA.

### **8.3.2.2 Content**

1. This Division contains the following information

[8.3.2.3 Conduct of inquiries](#)

[8.3.2.4 Power of the IGIS to require a person to answer questions](#)

[8.3.2.5 Power of the IGIS to require agencies to produce information or documents](#)

[8.3.2.6 Conditions under which a person answers questions and provides information or documents to the IGIS](#)

[8.3.2.7 Power of the IGIS to enter premises](#)

[8.3.2.8 Right of an agency or individual to respond to the IGIS](#)

[8.3.2.9 Timeliness of agency responses to the IGIS](#)

[8.3.2.10 Outcomes of an IGIS inquiry](#)

### **8.3.2.3 Conduct of inquiries**

1. The IGIS
  - a. determines how a complaint will be investigated;
  - b. conducts its enquiries in private due to the sensitive nature of much of the material examined; and
  - c. has extensive powers to obtain information and can
    - i. require a person to answer questions and produce relevant documents;
    - ii. take sworn evidence; and
    - iii. enter DIA premises.

### **8.3.2.4 Power of the IGIS to require a person to answer questions**

1. The IGIS
  - a. has the right to compel a person to attend before the IGIS to answer questions relevant to the inquiry;
  - b. will advise the person in writing of the time and place for this to occur;
  - c. has the right to administer an oath or affirmation that the evidence the person will give will be true, and may examine the person under oath or affirmation; and
  - d. can agree to allow an agency head or person to be represented by another person.

### **8.3.2.5 Power of the IGIS to require agencies to produce information or documents**

1. The IGIS
  - a. has the right to compel a person or DIA to provide information or produce documents relevant to an enquiry by the IGIS;
  - b. will advise the person or DIA of the requirement and timeframe to provide the documents or information; and
  - c. will ensure that classified documents provided by agencies are appropriately stored and handled.

### **8.3.2.6 Conditions under which a person answers questions and provides information or documents to the IGIS**

1. A person is not excused from giving any information, producing a document or answering a question on the grounds that this action
  - a. would contravene the provisions of any other Act; or
  - b. would be contrary to the public interest; or
  - c. might tend to incriminate the person or make the person liable to a penalty; or
  - d. would disclose legal advice given to a Minister or a Commonwealth agency.
2. Information, production of a document or the answer to a question is not admissible in evidence against the person except in a prosecution for
  - a. an offence under the [Inspector-General of Intelligence and Security Act 1986](#); or
  - b. an offence under certain sections of the [Criminal Code Act 1995](#); or
  - c. an offence under certain sections of the [Crimes Act 1914](#).
3. A person may be guilty of a punishable offence if
  - a. they fail to be sworn in or to make an affirmation, or to give information or produce a document when required to do so by the IGIS; or
  - b. after being given a notice they fail to comply with the notice or to answer a question that the IGIS requires the person to answer.
4. If in the course of an inquiry the IGIS forms the opinion that there is sufficient evidence that a person has been guilty of a breach of duty or of misconduct, the IGIS can bring the evidence to the notice of
  - a. the responsible Minister in a case where the person is the head of the agency; or
  - b. the head of the agency in any other case.

#### 8.3.2.7 Power of the IGIS to enter premises

1. The IGIS has the right to enter any place occupied by the DIA for the purposes of an inquiry. The IGIS is required to notify the head of the agency of their intention to enter the premises.

#### 8.3.2.8 Right of an agency or individual to respond to the IGIS

1. Before the IGIS issues a report on an inquiry involving a Commonwealth agency or an individual, the head of the agency or the individual must be given an opportunity to appear before the IGIS to make, either orally or in writing, submissions in relation to the inquiry.

#### 8.3.2.9 Timeliness of agency responses to the IGIS

1. Agencies must allocate a high priority to investigations by the IGIS including a response to the IGIS, endorsed by the agency head, within the timeframe requested by the IGIS.
2. Where an agency anticipates unavoidable delays, they must advise the IGIS of
  - a. the nature of the delay;
  - b. the reasons for the delay; and
  - c. an anticipated date for the response to be provided. **Note:** If possible, an interim response should be provided to the IGIS and a further response provided as soon as information is available.

#### 8.3.2.10 Outcomes of an IGIS inquiry

1. Where the IGIS has issued a report on an inquiry into the conduct of an agency, the head of the agency should provide details of the action taken or proposed action to the IGIS.
2. If the IGIS believes that the agency head has not taken, within a reasonable period, action that is adequate and appropriate in the circumstances, the IGIS may discuss the matter with the responsible Minister and prepare a report (with a copy sent to the Prime Minister). The IGIS can report to the Prime Minister and the Parliament if they are not satisfied with the Minister's or agency's response to their report.



# Responding to Sexual Misconduct

## Chapter 9

### 9.0.0.1 Introduction

1. Sexual misconduct incidents are unwelcome and unwanted sexualised behaviours and sexual offences. Sexual misconduct is unacceptable in Defence. All personnel are responsible for upholding and personally exhibiting behaviours which are aligned with the values of Defence and the Australian community. Defence personnel are required to respond promptly and sensitively to reported sexual misconduct incidents to ensure a safe working environment and to uphold expected behaviour standards.
2. This chapter provides guidance for responding to sexual misconduct incidents. It outlines how to undertake Defence's mandatory management and reporting obligations in a way that preserves the wellbeing of those impacted, and follows trauma-informed and person-centred approaches. Defence applies these approaches when responding to anyone subjected to sexual misconduct, and in its reporting and incident management procedures, in order to minimise the impacts that trauma can have.
3. A [factsheet summary for commanders and managers](#) on how to meet this chapter's policy guidance is available on the [SeMPRO intranet page](#). A visual representation of the Defence-wide framework for managing the risk of sexual misconduct, including disclosing, reporting, and incident management mechanisms, is available [here](#). This includes process maps, process step flowcharts and linked policies and accountabilities.
4. This chapter is sponsored by the Sexual Misconduct Prevention and Response Office (SeMPRO). Any questions in relation to its content can be directed to 1800 SEMPRO (1800 736 776) or [sempro@defence.gov.au](mailto:sempro@defence.gov.au).
5. Advice on managing incidents that involve Australian Defence Force (ADF) members can be sought through respective chains of command. The [National HR Services Team](#) is available through 1800DEFENCE (1800 333 362) to provide advice on incidents that involve Australian Public Service (APS) employees. Matters that involve Defence contractors should include engagement with the respective contract manager, noting each individual contract will vary.

## 9.0.0.2 Policy sections

- [Part 1](#): Terminology (expanded upon in [annex A](#))
- [Part 2](#): Compliance
- [Part 3](#): Sexual misconduct incidents involving young people
- [Part 4](#): The wellbeing of Defence personnel is paramount
- [Part 5](#): Defence personnel reporting obligations
- [Part 6](#): Prompt and sensitive incident management
- [Part 7](#): Defence and external support for personnel
- [Part 8](#): Resources for assisting personnel to apply this policy

## Chapter 9 Part 1

### 9.1.0.1 Terminology

1. Defence uses the term '**sexual misconduct**' to encompass the spectrum of unwanted and unwelcome sexualised behaviours. Applying the term 'sexual misconduct' to describe all unwanted sexualised behaviours is common but not universal. Terms used by other agencies to cover the full range of behaviours include 'sexual harassment' and 'sexual assault'. Defence uses those terms to exclusively reflect specific behaviours as they are defined in legislation. The definitions used by Defence in relation to sexual misconduct, including consent, disclosing and reporting are detailed in annex A.
2. As detailed in annex A, depending on the context Defence uses different terms to refer to individuals involved in incidents of unacceptable behaviour. The terms 'complainant' and 'respondent' are used in this chapter for consistency with other chapters in the *Complaints and Alternative Resolutions Manual*.

## Chapter 9 Part 2

### 9.2.0.1 Compliance

1. This chapter is subject to the requirements of Australian law and does not override potential legal privileges, including privilege against self-incrimination, protected confidences with other professionals, or the protections provided to disclosures made under the [Public Interest Disclosure Act 2013](#).
2. In accordance with their roles as the accountable officers for the Administrative and Governance Domain and the Military Command Support Domain, this Chapter is issued jointly by the Associate Secretary and Vice Chief of the Defence Force on behalf of, respectively, the Secretary and Chief of the Defence Force.
3. The mandatory requirements of this Chapter constitute a general order to Defence members for the purposes of the [Defence Force Discipline Act 1982](#). Non-compliance with any mandatory requirement may result in disciplinary or administrative action being taken.

**OFFICIAL**

CARM

Chapter 9

4. The mandatory requirements of this Chapter are a direction to Defence Australian Public Service (APS) employees by the Secretary for the purpose of subsection 13(5) of the [Public Service Act 1999](#). Non-compliance by Defence APS employees with any mandatory requirement of this Chapter may be investigated in accordance with the *Public Service Act 1999*.
5. In addition, external and outsourced service providers must comply with the mandatory requirements of this Chapter where the terms of the contract require compliance with Defence policies. Failure of an external or outsourced service provider to comply with the mandatory requirements of this Chapter may result in a breach of contract.
6. Subject to the nature of their service, foreign military members are required to comply with the mandatory requirements of this Chapter.

**All Defence personnel**

7. All Defence personnel are required to behave in accordance with their statutory obligations, and Defence policies that deal with workplace behaviour, including this chapter. Defence personnel must not engage in, participate in, or encourage any form of sexual misconduct. Defence personnel must not engage in or participate in any act that could be taken as victimising an individual who reports a sexual misconduct incident.
8. A notifiable incident is defined in para 5.10. Defence personnel who witness a sexual misconduct incident that might constitute a notifiable incident, or who have reason to believe that one has occurred, must immediately report that incident to their commander or manager, or the Joint Military Police Unit (JMPU). There are exceptions to this mandated reporting requirement and these are detailed in Part 5.
9. Defence personnel who witness sexual misconduct that does not constitute a notifiable incident, such as sexual harassment, should report the incident to their commander or manager as appropriate.

**Commanders and managers**

10. Commanders and managers are to respond promptly to all reported sexual misconduct incidents. The primary role of commanders and managers in managing incidents of sexual misconduct is to ensure the safety of Defence personnel, promote their wellbeing, and facilitate access to appropriate services. Commanders and managers are also required to ensure the welfare of respondents and other witnesses under their command. A [factsheet summary for commanders and managers](#) on how to meet this chapter's policy guidance is available on the [SeMPRO intranet page](#).

**Service Chiefs and Group Heads**

11. The Service Chiefs and Group Heads are responsible for implementing this chapter within their Service or Group and for demonstrating and promoting behaviours that are consistent with the expected behaviours of Defence personnel. The Service Chiefs and Group Heads are responsible for initiating action if specific issues are identified by Head People Capability.

## Chapter 9 Part 3

### 9.3.0.1 Sexual misconduct incidents involving young people

1. The *Youth Policy Manual* ([YOUTHPOLMAN](#)) provides direction to all Defence personnel, ADF Cadets, Defence Approved Helpers, Officers and Instructors of Cadets, and other volunteers on the responsibilities for engaging with people under the age of 18 including ensuring their safety and wellbeing. *YOUTHPOLMAN* gives specific guidance for responding to sexual misconduct incidents involving young people and outlines the mandatory reporting requirements. The requirements in *YOUTHPOLMAN* are applicable to young people within the Defence workforce as well as participants in youth programs. *YOUTHPOLMAN* should be consulted when managing any sexual misconduct incidents involving a person under 18 years of age.

## Chapter 9 Part 4

### 9.4.0.1 The wellbeing of Defence personnel is paramount

#### Recognising trauma

1. Defence holds the welfare of any person subjected to, or impacted by, a sexual misconduct incident to be of paramount importance. Commanders and managers who become aware of a sexual misconduct incident are to act to preserve the welfare of affected personnel and to reduce the likelihood of further harm.
2. Implementing trauma-informed and person-centred approaches is critical to Defence's harm minimisation efforts. Trauma can have physical and psychological impacts on daily life and in the workplace. The trauma-informed approach used in Defence employs the principles of safety, trust, choice, collaboration, and empowerment. A person-centred approach means to focus on the needs and wishes of the complainant. Person-centred approaches create opportunities for people subjected to sexual misconduct to direct their own recovery, rebuild their sense of control and empowerment, and promotes capability in Defence.

#### Duty of care

3. Defence requires commanders and managers to treat the complainant and their allegations sensitively and seriously. Showing disbelief or judgement threatens the wellbeing of personnel being subjected to sexual misconduct from disclosing. People subjected to sexual misconduct may display signs of shock, fear, confusion, anger, and high levels of distress; and be unable to present a linear account. Reactions to trauma vary between individuals and can include no visible outward indications. This should not be viewed as a sign of untruthfulness, fabrication, or that the impact on the individual is not significant.
4. People subjected to sexual misconduct are at risk of further harm each time they detail traumatic events. A complainant is not required to inform their commander about an incident ahead of providing details of the event to an investigator. It may not be appropriate or necessary for the complainant to recount what happened to them in full to their commander or manager.

**OFFICIAL**

CARM

Chapter 9

5. Commanders and managers should enquire about the complainant's wellbeing and discuss the freedom to access medical, counselling, and other services as appropriate. Additional information about these options is also available [here](#). Providing options to the complainant, and allowing them to decide how to proceed with health and support services, assists that person to regain a sense of control. Medical officers, the SeMPRO Client Response Team, civilian medical practitioners, and Joint Health Command Mental Health and Psychology Sections (MHPS), among others, can assist complainants to explore their medical and counselling options fully. Defence does not restrict the ability for personnel to access civilian services for sexual assault medical care, or counselling and ongoing support, if that is the person's preference. SeMPRO can assist commanders and managers to understand the options available.
6. Commanders and managers should advise the complainant, where possible, before reporting the incident further, including following notifiable incident requirements. Complainants should be advised of the processes that are likely to follow their report. Outlining the processes that will take place indicate to the complainant that their disclosure will be treated seriously by Defence. Being transparent about those processes and required actions assists complainants to have realistic expectations for what will happen next and works to establish trust. Involving the complainant in decision making processes assists that person to regain some control over the process. JMPU can assist commanders and managers with advice about investigation and legal processes.

**Respecting confidentiality**

7. Commanders and managers are to ensure the confidentiality of the incident details, including the people involved. Limiting the information shared about an incident can protect the complainant's physical safety and reduce risks of further trauma. Commanders and managers should only disclose information to those with a legitimate need to know and after informing the complainant where that is possible. Discussing with the complainant how much of their information is shared, and with whom, promotes psychological safety and feelings of self-determination.

**Do not disadvantage people subjected to sexual misconduct incidents**

8. The complainant should not be directly disadvantaged or punished because they reported a sexual misconduct incident to Defence. Decisions intended to keep members safe can bring unintended disadvantages or consequences. Speaking with, and advising, the complainant before taking action in areas such as postings, courses, accommodation, and deployments applies a trauma-informed approach.
9. Commanders and managers should not take administrative or disciplinary action against the complainant for other alleged behaviours that are specifically connected to a sexual misconduct incident while that incident is under investigation or management. JMPU is able to provide advice as needed on pursuing any subsequent sanctions to commanders, managers, and others in roles directly advising on personnel matters.

**Respondent wellbeing**

10. It is important for commanders and managers to consider the wellbeing of all personnel affected by or involved in a sexual misconduct incident including the respondent. Being the subject of sexual misconduct allegations is highly stressful, and commanders and managers need to maintain visibility of a respondent's mental health. Respondents should be

## OFFICIAL

CARM

Chapter 9

encouraged to access MHPS, ADF chaplains, the Employee Assistance Program (EAP), Defence Member and Family Support (DMFS), or external services as appropriate. Commanders and managers may offer access to a support person as an additional option. Army commanders are to allocate a support person to the respondent in accordance with [CA Directive 13/21](#). Air Force personnel who are involved in administrative, disciplinary, or criminal processes, are to be offered a support officer in accordance with [Air Force Standing Instruction \(ADMIN\) 11-01](#). The chain of command and Divisional staff are able to support Navy personnel directly or provide advice on or referrals to available services.

11. Commanders and managers should promote the welfare of respondents by providing transparent information about any management actions and, where it is not going to jeopardise an investigation, the investigation processes including timeframes.

**Witnesses, support persons, and commanders and managers**

12. Personnel managing, witnessing, or assisting a friend through an incident may also be traumatised by the events. Commanders and managers should monitor those individuals, provide support, and facilitate access to services as appropriate. EAP, MHPS, ADF chaplains, Open Arms, and DMFS are available to assist personnel who are impacted by, but not directly involved in, a sexual misconduct incident. SeMPRO provides debriefing services to Defence personnel, and their families, who are affected by an incident committed against another person, and to those managing incidents.

**Chapter 9 Part 5****9.5.0.1 Defence personnel reporting obligations****Impacted person is not obliged to report**

1. Defence encourages people subjected to sexual misconduct, including sexual offences, to report the incident to Defence but respects their choice not to do so. Victims of physical violence, or those suffering from emotional trauma arising from a criminal offence, are not required to report the alleged offence to Defence or to an external authority.
2. Personnel subjected to sexual misconduct incidents may choose to report the incident directly to JMPU, to their chain of command, to civilian police, or to an authorised officer under the [Public Interest Disclosure Act 2013](#).
3. People subjected to sexual misconduct may disclose what happened to them without reporting it to Defence. Disclosures made to health professionals, ADF chaplains, legal officers, and the SeMPRO Client Response Team are protected confidences and are not subject to mandatory reporting obligations for notifiable incidents. Specific advice for health professionals for responding to sexual misconduct disclosures is available in the [Defence Health Manual](#). Guidance on chaplaincy support services is available on the [ADF Chaplaincy](#) page.
4. Defence personnel are also able to disclose to a person with whom they have a close personal relationship, beyond regular workplace interactions, without triggering reporting obligations. Defence personnel in that person's chain of command, engaged in instructor-student relationships, or subject to another type of duty of care relationship will always have notifiable

OFFICIAL

CARM

Chapter 9

incident reporting obligations. Any person who receives a report or disclosure about a sexual misconduct incident has access to the SeMPRO Client Response Team on 1800 SEMPRO (1800 736 776 or [sempro@defence.gov.au](mailto:sempro@defence.gov.au)) for advice if needed. Additional information about reporting and disclosure options is also available [here](#).

### Incident type determines actions

5. Commanders and managers who receive a report about sexual misconduct will need to assess whether an incident is possibly a criminal offence, a sexual harassment incident, or sex discrimination, based on the complainant's description or by contacting JMPU for advice if there is uncertainty. The type of incident will determine any subsequent actions to be undertaken which may include criminal or disciplinary actions for offences. People subjected to sexual misconduct may not initially provide comprehensive details of the incident which can make it difficult to assess the nature of events. Any fact finding must cease as soon as an incident is identified as a possible criminal offence.
6. In most cases it is inappropriate to commence a fact finding process to determine the nature of a sexual misconduct allegation without discussing that step with JMPU first. Asking the complainant to provide a single account to a trained investigator if the matter is a sexual offence, rather describing it multiple times in multiple processes, avoids risks of further psychological harm to the individual and potentially undermining an investigation.

### Reporting requirements

7. Commanders and managers must complete a Defence Incident Record (DIR) as close as possible to the time of the sexual misconduct incident but within 24 hours of commencing duty. The DIR should contain the details of the incident as they are understood at the time. The DIR can be completed in the Defence Policing and Security Management System (DPSMS) accessible [here](#) or with form AE530. Navy personnel are to submit the DIR using the AE530 through their chain of command for entry into DPSMS by Navy Headquarters. Air Force personnel are to submit the AE530 to RAAF Incident Management.
8. Commanders and managers in Army Group are to record incidents in the Army Incident Management System (AIMS). Incidents recorded in AIMS do not require a DIR. Army personnel posted to the Army Joint Staff are to complete a DIR in accordance with their respective chain of command's reporting requirements and / or where an incident involves another Service member, but are also encouraged to use AIMS for incidents involving Army members.
9. Sexual harassment and sex discrimination incidents are to be reported in the Defence Complaints Management, Tracking and Reporting System (ComTrack). ComTrack reporting can be initiated through the PMKeyS portal. Sexual offences are not reportable in ComTrack.

### Notifiable incidents

10. Unwanted sexualised behaviours that are, or may be, criminal offences are notifiable incidents. Sexual offences, intimate image abuse, and stalking are notifiable incidents in accordance with [Defence Instruction – Administrative Policy](#) AG4 – *Incident reporting and management*. Personnel who become aware of notifiable incidents arising from sexual offences, intimate image abuse, and stalking, with a Defence nexus, are required to report the incident to their commander or manager or directly to JMPU. The reporting obligation exists for Defence personnel even where there is some doubt the matter is a notifiable incident. JMPU is the appropriate Defence Investigative Authority for sexual offences, intimate image abuse, and

OFFICIAL

CARM

Chapter 9

stalking, with a Defence nexus, including where those involved are APS employees or contractors. AG4 does not require victims of physical violence, or emotional trauma arising from a criminal act, to report the incident although they are encouraged to do so.

11. [Defence Instruction – Administrative policy](#) AG4 – *Incident reporting and management* requires commanders and managers to report notifiable incidents to JMPU as soon as possible but within 24 hours of commencing duty. Commanders and managers' obligation to report notifiable incidents is separate to JMPU's obligation to respect the complainant's wishes about whether or not an investigation commences. Commanders and managers need to take all reasonable steps to protect the integrity and confidentiality of any investigation that arises from reporting sexual offences.
12. The requirement to report sexual offences to JMPU is separate to the DIR requirement. JMPU can be notified by sending a copy of the DIR to [hqjimpf.policingoperations@defence.gov.au](mailto:hqjimpf.policingoperations@defence.gov.au) or contacting 1311MP. Reports made to JMPU are to contain the details known at the time the report is made.
13. JMPU is responsible for determining and coordinating the appropriate jurisdiction for handling sexual misconduct incident reports that involve Defence members, those that occur in the Defence workplace, and those that may have a connection with the Defence workplace, in conjunction with relevant stakeholders. JMPU will engage the chain of command as appropriate throughout any sexual offence investigation undertaken by them or by a civilian authority. Where the respondent to a sexual misconduct report is identified as a Defence APS employee, any investigation will reside in the appropriate civilian police jurisdiction or through the Directorate of Conduct and Performance.
14. Reported sexual harassment and sex discrimination incidents do not carry notifiable incident obligations unless there is a possibility that the incident is an offence.

#### **Work health and safety reporting**

15. Sexual misconduct incidents can be work health and safety (WHS) incidents where there is a link to Defence work. Defence work includes normal duties, working from home, Voluntary Unpaid Duty or Voluntary Unpaid Attendance, approved work related travel, approved study leave, and associated travel. A WHS incident is any unforeseen occurrence that results in, or could have resulted in, an injury or illness that is linked to employment in Defence, or as a result of a Defence undertaking. This includes WHS incidents for all Defence workers, ADF Cadets, and third parties including contractors and other persons including the general public. The work health and safety reporting requirements are established by the [Work Health and Safety Act 2011](#) (WHS Act).
16. All WHS incidents arising from conducting Defence business must be recorded in the Defence Work Health and Safety Management Information System (Sentinel). A Defence worker can report an allegation of sexual misconduct in Sentinel as a WHS incident before it has been investigated. The Workplace Supervisor can reject or cancel the incident report should the incident be found not to be reportable in Sentinel. All WHS incidents reported in Sentinel have been configured to protect the privacy of involved parties. Users should not enter identifying details in the free text fields. Please refer to [Defence Safety Manual \(SafetyMan\)](#) which sets the requirements for reporting WHS incidents that occur during Defence activities through Sentinel.



OFFICIAL

CARM

Chapter 9

17. The WHS Act indicates an incident resulting in a fatality, serious injury or illness, or meets the definition of a dangerous incident, that is linked to employment in Defence, or occurs as a result of a Defence undertaking, is a notifiable WHS incident. All notifiable WHS incidents are to be reported to Comcare immediately by phone on 1300 366 979 (or +612 6276 0333 if overseas) or via the fastest possible means, once the commander or manager, local WHS representative, or contract manager becomes aware and confirms that a notifiable incident has occurred. Reportable WHS incidents are to be recorded in Sentinel within 24 hours.
18. Defence personnel are encouraged to contact their work health and safety representative for guidance.

**Public Interest Disclosure (PID) notification requirements**

19. The Defence [Public Interest Disclosure \(PID\) Administrative Guide](#) (May 2021) details the additional avenue available to Defence personnel to disclose information about suspected 'disclosable conduct'. Disclosers can expect protection from detrimental treatment or reprisal action. PID Authorised Officers are appointed officials with specific authorities and responsibilities under the *Public Interest Disclosure Act 2013*. The PID Authorised Officer will review the information provided to assess whether it meets the requirements under the Act and should be allocated for further action including an investigation outside of the Act. Defence will report all PID disclosures allocated to Defence to the Commonwealth Ombudsman. Additional information can be provided by contacting the Defence PID Scheme at [defence.pid@defence.gov.au](mailto:defence.pid@defence.gov.au) or 1800 673 502.

**Casualty notification of Defence members**

20. Some sexual misconduct incidents involving ADF members will meet the threshold for Notification of Casualty (NOTICAS) and Medical Casualty (MEDICAS) reporting. Incidents where an ADF member is hospitalised with a serious illness, very serious illness or injury, including those involving mental health, would meet the threshold. A member's parent unit is responsible for raising the NOTICAS and the supporting Defence health facility is responsible for raising the MEDICAS. This may also trigger the Australians Dangerously Ill Scheme (AUSDILS) where support can be given by arranging for an approved visitor(s) to visit an eligible Defence member, cadet, or civilian at Commonwealth expense, including to some overseas destinations.

## Chapter 9 Part 6

### 9.6.0.1 Prompt and sensitive incident management

#### Impacted person can elect not to have a matter investigated further

1. Commanders and managers must consider the wishes of the complainant, which includes the option to not have a report investigated further. Commanders and managers must continue to monitor the welfare of all personnel involved in any alleged incident including complainants who do not want further action to take place. The reporting obligations outlined in Part 5 remain when the complainant does not want a matter pursued. Additional information about how to manage an incident of sexual misconduct is also detailed [here](#).
2. It can be difficult to reconcile maintaining the welfare of the complainant and reducing risks to the broader workplace by not pursuing an allegation when the complainant does not want the matter investigated. Commanders and managers must not pressure or compel the complainant to consent to an investigation. There are actions available that allow complainants to freely make a different decision at a later date if that is what they wish. Ensure the complainant is aware that changing their mind is okay and that you remain available to speak with them about this or other matters. Make a Record of Conversation from the initial report that can be used later if needed. Provide clarity to the complainant on what the fact finding and other processes would involve including the timelines.
3. Commanders and managers can take actions to address behaviour issues across their team beyond unwanted sexualised behaviours. Less direct actions may include reiterating the behaviour expectations in all areas and inviting personnel to report their concerns directly. More direct actions may involve examining visible patterns of unwanted behaviour, outside of the reported incident, demonstrated by the respondent or other team members.

#### Sexual offences

4. Reported sexual offences will be actioned by JMPU in accordance with the *Military Police Manual (MPMAN)*. JMPU will advise complainants of the range of support options available and encourage use of those services. JMPU is focused on supporting the complainant, minimising harm, and mitigating additional secondary trauma during an investigation. Military policing processes ensure that all parties to the incident are appropriately assisted.
5. JMPU operates in a person-centred environment where the wishes and interests of the complainant are paramount. JMPU will provide complainants with options for further actions. Those options include investigating the matter, providing information for a future investigation should the complainant wish it, or taking no further action. JMPU is the primary liaison point between Defence and civilian police. JMPU, on the request of the complainant, will facilitate notifying and referring an incident to the relevant civilian police service where they also have jurisdiction within Australia. JMPU will obtain evidence and information in investigations where the complainant wishes to proceed with an investigation. All military police actions will cease where complainants do not wish for any further action to take place.
6. The JMPU Sexual Offence Response Team (SORT) can engage with complainants to provide information on the sexual offence investigation and prosecution system to enable the complainant to make an informed decision on the path they wish to pursue. The SORT

OFFICIAL

CARM

Chapter 9

encourages complainants to formalise their complaint to enable a detailed investigation to occur.

7. JMPU has the jurisdiction to investigate matters under the DFDA where the respondent is an ADF member or Defence civilian for matters within Australia and overseas. JMPU and civilian police have dual jurisdiction for incidents that take place within Australia. A number of parallel jurisdictions may exist where a sexual offence occurs offshore, overseas, or in a deployed environment. JMPU will liaise with relevant authorities, including coalition partners and local investigative authorities, to determine any jurisdictional limitations where appropriate.
8. JMPU do not have jurisdiction to investigate incidents where the respondent is an APS employee or contractor. JMPU will liaise with civilian police, [National HR Services Team](#), and Code of Conduct where an APS employee or contractor is alleged to have committed a sexual offence. Commanders and managers are recommended to contact the [National HR Services Team](#) directly, as well as reporting the incident to JMPU, where the respondent is an APS employee. The respective contract manager should be engaged where the respondent is a Defence contractor.
9. JMPU may revisit past complaints where the same person has previously been identified as the alleged suspect in reported sexual offences, and the safety of Defence personnel is directly threatened by their continued presence in the workplace or Service. JMPU will consult SeMPRO, or other relevant providers such as Joint Health Command, to aid assessing all potential impacts on complainants in these cases. This will occur before JMPU makes contact with complainants in past reports for the purposes of gaining their consent for releasing information to the respective Service Chief or their delegate.
10. The Provost Marshal - Australian Defence Force may authorise releasing de-identified information to the relevant Service Chief or Group Head, or their delegate, for the purposes of initiating administrative action against the respondent. JMPU will not include any information about a suspect's partner or ex-partner in information released about reported incidents where that person is one of the complainants without that person's explicit permission. JMPU should not proceed with the release of any information, including de-identified information, where doing so would be to the complainant's detriment, including to their physical and psychological safety. JMPU must advise all involved complainants, prior to releasing any information, to whom and where those details will be provided.
11. The Office of the Director of Military Prosecutions will consider the wishes of the complainant to not proceed, or for civilian authorities to take carriage, before making a final decision on whether to prosecute.

**Administrative outcomes alongside criminal and disciplinary proceedings**

12. A commander or manager may consider initiating administrative action against an ADF respondent while an incident of sexual misconduct is under investigation, while criminal or disciplinary proceedings are pending, or after those proceedings have concluded. A conviction or acquittal for an offence does not prevent administrative action being taken in connection to a sexual misconduct matter that is the subject of those disciplinary or criminal proceedings. A decision whether or not to initiate administrative action may be reconsidered as required.

OFFICIAL

CARM

Chapter 9

13. Defence Legal and JMPU should be consulted where an administrative action is contemplated in conjunction with criminal or disciplinary proceedings. Care is to be taken to avoid any potential injustice or compromise to disciplinary or criminal proceedings.

**Sexual harassment and sex discrimination**

14. Sexual harassment incidents that are not sexual offences, and sex discrimination, are managed as unacceptable behaviours in Defence. Sexual harassment and sex discrimination incidents may be managed in the workplace or become the subject of formal action. Sexual harassment and sex discrimination incidents can be the subject of a management initiated complaint.
15. Complaints may be made verbally or in writing. All complaints are to be addressed promptly irrespective of how they are made. Commanders and managers are required to act on all incidents of sexual harassment and sex discrimination within 24 hours of becoming aware of an incident or as soon as practicable. Commanders and managers who are responding to sexual harassment or sex discrimination must complete a DIR or AIMS report. A ComTrack Initial Incident Report must also be made via PMKeyS Self Service.
16. The first recommended action after receiving a complaint for sexual harassment or sex discrimination is to consult JMPU to ensure that the alleged incident is not an offence.
17. Commanders and managers managing sexual harassment or sex discrimination incidents in the workplace are to establish the known facts and undertake a fact finding where further action is required. Information on how to conduct a fact finding is available on Campus and in the [Good Administrative Decision-Making Manual](#).
18. The wellbeing and the wishes of personnel subjected to sexual misconduct should remain paramount in all processes including in management initiated complaints. Commanders and managers are to cease workplace level investigation or administrative action for sexual harassment and sex discrimination if the complainant does not wish the matter to be taken further. The options available to commanders and managers for addressing the unacceptable behaviour, in circumstances where the complainant does not wish a formal process to commence, could include speaking with the respondent about the expected behaviours that are in line with Defence values; or directing the respondent to complete training on Defence's expected behaviours.
19. Sexual harassment and sex discrimination complaints made against Defence APS employees can be referred to the Directorate of Conduct and Performance. Commanders and managers should seek assistance from the [National HR Services Team](#) prior to referring a complaint to the Directorate of Conduct and Performance.
20. Sexual harassment and sex discrimination complaints against ADF members can be investigated by an inquiry conducted under [Defence \(Inquiry\) Regulations 2018](#). The [Administrative Inquiries Manual](#) provides detailed guidance for undertaking administrative inquiries. Sexual harassment and sex discrimination complaints against ADF members can be subject to administrative actions. [Military Personnel Policy Manual](#) provides detailed guidance for applying administrative sanctions. Sexual harassment and sex discrimination complaints against ADF members can be investigated under the summary discipline system. Detailed information on the summary discipline system is available in the [Summary Discipline Manual 2020](#).

**OFFICIAL**

CARM

Chapter 9

**Outcomes for sexual harassment and sex discrimination**

21. Complaints about sexual harassment or sex discrimination are to be finalised as soon as possible. In most circumstances commanders and managers should have made a determination on a team level investigation, recorded the outcome in ComTrack, and notified the personnel involved, within two or three weeks of becoming aware of the incident. Incidents that are complex, involve formal inquiries, or have multiple parties may take longer to resolve but should still be finalised within three months.
22. Commanders and managers responding to sexual harassment or sex discrimination complaints are to inform all parties involved about the response to the complaint and keep the parties informed on progress. All parties need to be informed if a complaint is going to take longer than three months to finalise and be provided with the reasons for the extended time frame. If the commander or manager determines that the sexual harassment or sex discrimination complaint is unsubstantiated then they are required to advise all parties involved in the incident of the decision.
23. Sexual harassment and sex discrimination incidents can give rise to issues that negatively affect the working relationships between those involved and within the team more generally. Commanders and managers should ensure that personnel in their chain of command or line management are aware of the support options available to them. Those options include services such as those provided by SeMPRO client services, chaplains, MHPS, and external providers.
24. Commanders and managers are to ensure all personnel are afforded procedural fairness in any adverse decisions.

**Informal resolutions**

25. Few sexual misconduct incidents are likely to be suitable for informal resolution mechanisms. Please refer to [Chapter 2](#) of this manual where the specific behaviours may be appropriate for an informal resolution.

**Formal resolutions for sexual harassment or sex discrimination: outcomes for ADF members**

26. ADF members who have sexually harassed or discriminated against other personnel may be subject to a range of management actions, disciplinary, or administrative sanctions.
  - a) In cases of sex discrimination, a management action to stop and correct the behaviour may be taken.
  - b) In cases of sexual harassment or repeated sex discrimination, initiating and imposing administrative sanctions may be undertaken. These sanctions may include: counselling, formal warnings, censure, reduction in rank, or termination.
  - c) Disciplinary action under the DFDA for ADF members may also be considered.
27. A Defence APS employee who is the manager of an ADF member cannot impose an administrative sanction or undertake disciplinary action under the DFDA. The manager may be required to refer the incident of unacceptable behaviour to the ADF member's administrative Commanding Officer or higher headquarters.

OFFICIAL

CARM

Chapter 9

### Formal resolutions for sexual harassment or sex discrimination: outcomes for APS employees

28. APS employees who are assessed to have sexually harassed or discriminated against other personnel may be subject to a range of actions.
- a) Management action to stop and correct the behaviour may be taken in cases of sex discrimination.
  - b) Performance progression payments may be denied as the criteria of G6.3(b) of the [Defence Enterprise Agreement 2017-2020](#) (DEA) were not met.
  - c) If an APS employee is found to have breached the APS Code of Conduct under s13 of the *Public Service Act 1999* (the Act), with respect to sexual harassment or sex discrimination, an authorised Delegate can impose sanctions in accordance with s15(1) of the Act. The possible sanctions include a reprimand; re-assignment of duties; reduction in salary; deductions from salary by way of a fine; reduction in classification; and termination of employment.

## Chapter 9 Part 7

### 9.7.0.1 Defence and external support for personnel

#### Available services

1. Personnel subjected to sexual misconduct in Defence are not compelled to report the incident to access health and support services. Defence directly provides several support options for personnel subjected to sexual misconduct, recognises that individuals might prefer to use external services, and aids access to internal and external options. All of the services listed are self-referred meaning they can be attended without an external referral, and without specifically advising the commander or manager of the nature of an appointment, to diminish barriers to accessing support and health services. Commanders and managers should offer access to a support person for the complainant. The support person can be chosen by the complainant or a volunteer appointed by the commander or manager. Army personnel are to appoint a support person in accordance with [CA Directive 13/21](#). Air Force personnel who are involved in administrative, disciplinary, or criminal processes, are to be offered a support officer in accordance with [Air Force Standing Instruction \(ADMIN\) 11-01](#). The chain of command and Divisional staff are able to support Navy personnel directly or provide advice on or referrals to available services.
2. SeMPRO provides confidential support services to Defence personnel who are subjected to sexual misconduct. The service works to ensure the physical and emotional safety of the client, assists personnel to navigate Defence's complex systems, coordinates services, and provides resources and education material. SeMPRO provides advice to all personnel on managing and responding to sexual misconduct incidents. The service offers assistance for meeting Defence's policy and legal requirements using a person-centred and trauma-informed approach. Communications with the SeMPRO Client Response Team are protected confidences. The Client Response Team's social workers and psychologists are legally bound to protect confidences and must operate in accordance with their respective professional practice standards. SeMPRO client services are available to current and ex-serving ADF members, APS personnel, Defence contractors, ADF Cadets and their families, and Officers and Instructors of Cadets.

**OFFICIAL**

CARM

Chapter 9

3. Joint Health Command's MHPS provides ADF members with confidential mental health assessment and treatment services. Members are able to access MHPS services through self-referral. Communications with MHPS psychologists are protected confidences.
4. ADF chaplaincy services offer members access to religious, spiritual, and pastoral care. The confidentiality of pastoral counselling is protected.
5. Defence APS employees are able to access services through EAP. EAP provides short term counselling services which is accessed through self-referral.
6. Defence contractors may have access to support services connected to their contract in addition to civilian health services.
7. Defence recognises that personnel subjected to sexual misconduct may prefer to access external support services. Services such as [Open Arms - Veterans and Families Counselling](#) and community based services are available through self-referral. The SeMPRO client response team can provide advice and contact details for services locally available.

**Confidentiality**

8. Confidentiality across SeMPRO client services, MHPS, ADF chaplaincy, EAP, DMFS social workers, and others, are subject to both professional privileges and standards. The boundaries of client confidentiality establish what information is collected from clients. Those boundaries also guide the information obtained from others about clients, determine who that information will be shared with, in how much detail, under what circumstances, for what purpose, and for how long. Confidentiality is limited by subpoena, statutory requirements such as mandatory reporting for young people in some circumstances, or where there is an imminent risk of harm to the client or to others.

**Restricted disclosure**

9. Restricted disclosure is a mechanism that was formalised with the establishment of SeMPRO. It articulates the ability for current serving ADF members who are subjected to sexual offences to access support, medical assistance, and other services without automatically triggering notifiable incident reporting obligations by the service provider. SeMPRO clients are described as making a restricted disclosure when they contact SeMPRO for support without disclosing or reporting the incident to any other Defence personnel with notifiable incident reporting obligations. All SeMPRO clients receive a confidential service within the same boundaries regardless of their choice to report an incident or not.
10. Current serving ADF members who would like assistance after a sexual misconduct incident are able to access confidential services from psychologists, mental health nurses, medical officers in Defence health centres, and chaplains without reporting the incident to Defence. Psychologists, mental health nurses, medical officers, and chaplains who provide professional services or pastoral care to ADF members are also exempt from notifiable incident reporting obligations that would otherwise stem from providing those services.
11. Confidentiality in restricted disclosures is limited by subpoena, statutory requirements, or where there is a risk of harm to the client or to others.

## Chapter 9 Part 8

### 9.8.0.1 Resources for assisting personnel to apply this policy

1. A [factsheet summary for commanders and managers](#) on how to meet this chapter's policy guidance is available on the [SeMPRO intranet page](#). A visual representation of the Defence-wide framework for managing the risk of sexual misconduct, including disclosing, managing, and reporting mechanisms, is available [here](#). This includes process maps, process step flowcharts and linked policies and accountabilities. SeMPRO can provide direct assistance to apply this chapter, and general information for commanders, managers, and other Defence personnel. Defence personnel who are unsure on how to proceed with a reported incident are encouraged to seek advice from JMPU or Defence Legal. The [Interim Incident Reporting and Management Policy](#) can provide initial guidance on reporting obligations for notifiable incidents.
2. Additional advice on managing incidents that involve ADF members can be sought through respective chains of command. The [National HR Services Team](#) is available through 1800DEFENCE (1800 333 3623) to provide advice on incidents that involve APS employees. Matters that involve Defence contractors should include engagement with the respective contract manager, noting each individual contract will vary.
3. Defence has other resources which commanders and managers may find useful. The following resources provide assistance for managing sexual misconduct incidents that are not notifiable incidents at the workplace level.

[Complaints and Alternative Resolutions Manual](#) (Chapters [2](#) and [3](#))

[Interim Incident Reporting and Management Policy](#)

[Administrative Inquiries Manual](#)

[Public Interest Disclosure Act 2013](#)

[Good Administrative Decision-Making Manual](#)

4. [The Directorate of Privacy, Complaints and Resolution](#) website also contains useful resources for incident management.
5. [The Family and Domestic Violence website](#) also contains advice on how to respond to these types of incidents.
6. For youth protection events and incidents, including complaints, refer to [YOUTHPOLMAN Part 1](#).
7. Defence recognises that receiving, reviewing, managing, or investigating sexual misconduct reports can personally affect people. SeMPRO's Client Response Team is also available to commanders, managers, and all other Defence personnel for confidential debriefing during and after managing incidents.



OFFICIAL

ANNEX A TO  
CARM CHAPTER 9

## TERMINOLOGY USED IN SEXUAL MISCONDUCT

A.1. Terminology varies across the Defence unacceptable behaviour spectrum when referring to individuals involved. This aligns to common practice within each area of expertise:

<b>Complaints and Resolutions</b>	Complainant	Respondent
<b>Defence Response Unit</b>	Survivor	Alleged Perpetrator
<b>Joint Military Police Unit</b>	Victim	Named Person (if the victim does not wish to proceed with formal action) Person of Interest (if the victim wishes to formalise the allegation, but evidence is yet to be collected) Suspect (formalised allegation with evidence to now identify the Person of Interest)
<b>SeMPRO</b>	Impacted Person	Alleged Perpetrator

A.2. The terms ‘complainant’ and ‘respondent’ are used in this chapter for consistency with other chapters in the *Complaints and Alternative Resolutions Manual*. The term ‘**complainant**’ refers to the person subjected to a sexual misconduct incident when they have reported the incident to Defence, and the phrase ‘person subjected to a sexual misconduct incident’ is used when that person has not made a complaint. The term ‘**respondent**’ refers to the person accused of perpetrating an incident reported to Defence.

A.3. Defence uses the term ‘**sexual misconduct**’ to encompass the spectrum of unwanted and unwelcome sexualised behaviours. Applying the term ‘sexual misconduct’ to describe all unwanted sexualised behaviours is common but not universal. Terms used by other agencies to cover the full range of behaviours include ‘sexual harassment’ and ‘sexual assault’. Defence uses those terms to exclusively reflect specific behaviours as they are defined in legislation. The definitions used by Defence are detailed below.

A.4. Sexual misconduct specifically spans sex discrimination, sexual harassment, and sexual offences. Offences categorised as intimate image abuse in some jurisdictions, including distributing intimate images without consent, are managed as sexual misconduct incidents by Defence. This chapter is applicable to these offences. Stalking offences are broader than unwanted sexualised behaviours and sexual offences. Reported stalking behaviours committed where the harassment has potentially sexualised elements, or is committed within the context of a current or previous intimate relationship, are managed as sexual misconduct incidents by Defence. This chapter is applicable to these offences.

A.5. **Sex discrimination** occurs when a person is treated less favourably than another person in the same or similar circumstances because of that person’s sex, characteristics of that person’s sex, or assumed characteristics of that person’s sex. The *Sex Discrimination Act 1984* contains a detailed definition. The *Sex Discrimination Act 1984* additionally makes it unlawful to discriminate on the grounds of sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, and breastfeeding or family responsibilities.

A.6. **Sexual harassment** occurs when a person makes unwelcome sexual advances, requests sexual favours, or engages in other unwelcome sexualised conduct, in circumstances reasonably anticipated to offend, humiliate, or intimidate. Sexual harassment is unlawful under the *Sex Discrimination Act 1984*.

A.7. **Sexual offences** are acts, or intent of acts, of a sexual nature against another person, which are non-consensual. Sexual offences are defined in various Commonwealth, state, and territory legislation.

OFFICIAL

A-2

Specific offences differ across the various jurisdictions but are broadly categorised as sexual assaults and non-assaultive sexual offences.

A.8. **Consent** is agreement to participate in sexual activities that is freely given, informed, specific, and reversible. Consent cannot be given when a person is legally unable to consent to a sexual activity because of their age, incapacitation, or a duty of care relationship. Incapacitation can be the result of a temporary or permanent cognitive incapacity including being substantially intoxicated, unconscious, or asleep. Consent is negated when it was obtained through coercion, intimidation, or deception.

A.9. Laws defining consent in Australia are evolving and are not the same in each state and territory. Some Australian states and territories have incorporated 'affirmative' consent, including the ACT which is the law that will apply to sexual offence proceedings under the *Defence Force Discipline Act*.

A.10. Affirmative consent does not presume consent has been given. Agreement to participate in sexual activities, in affirmative consent definitions, is actively indicated verbally, or with actions, rather than presumed where there is no indication that the person does not want to participate. A belief that consent has been given is dependent on taking reasonable steps to determine if the other person is consenting. Consent is also negated in some jurisdictions when the use of a condom is intentionally misrepresented. This is known as stealthing. Those with questions on the specific legal boundaries on sexual offences are recommended to consult the relevant legislation in their jurisdiction or seek advice from JMPU.

A.11. **Intimate image abuse** occurs when a person takes, views, or distributes intimate images of another person without their consent. Intimate images span still or moving images of a person's genital or anal areas, and breasts for female and female-identifying people; depicting a person engaging in a private act; depicting a person in a sexual manner or context; and includes any images altered to appear to show any of these things. Some intimate image offences are grouped within sexual offences in state and territory legislation. Others are contained within separate offence categories in state and territory legislation and in the *Criminal Code Act 1995*.

A.12. **Stalking** offences, including actions undertaken using electronic communication methods, are categorised as a separate offence category in state and territory legislation. Stalking actions are those amounting to intimidation, harassment, or molestation, undertaken more than once, that are reasonably expected to cause apprehension or fear of harm. Stalking spans actions such as following, watching, loitering near, keeping under surveillance, sending offensive material, interfering with property, sending electronic messages to or about the stalked person, or acting covertly in another way reasonably anticipated to cause apprehension or fear.

A.13. The specific boundaries for sexual offences, intimate image abuse, stalking, and consent in different types of offences, are different in each Australian jurisdiction. The relevant legislation in each state and territory is the appropriate avenue to access the current Australian laws in this area.

A.14. Sexual offences, stalking, and intimate image abuse are criminal offences. This chapter does not seek to prevent Defence personnel from reporting those offences to civilian police.

A.15. **Family and domestic violence** (FDV) is an abuse of power by a person over a partner, ex-partner, household, or family member. FDV can involve sexual misconduct but is not limited to it. The [Commanders and managers guide to responding to family and domestic violence](#) outlines good practise responses to reported and suspected FDV including the available leave provisions in Defence for personnel subjected to FDV, protection orders, and mandatory reporting requirements.

A.16. **Disclosing** is when an impacted person recounts their experience and seeks services, support, or advice. **Reporting** is a formal account that triggers further actions, inquiry, or investigation.

## Chapter 10 – Stop Sexual Harassment Directions

### **10.0.0.1 Introduction**

1. A Stop Sexual Harassment Direction (SSHD) is a mechanism under the Defence Amendment (Stop Sexual Harassment Directions) Regulations 2023 that enables Defence members to seek intervention where they have experienced sexual harassment, and there is a risk of ongoing sexual harassment. A person who feels that their immediate safety is at risk can seek Personal Protection Orders (or equivalent) through civilian authorities in addition to command support.
2. The SSHD enables measures to be taken to address the risk of continuing sexual harassment to an applicant. Actions that can be directed under an SSHD may include restricting or ceasing contact between the applicant and the respondent via an interim order (pending the outcome of an investigation) or a final direction, requiring a supervisor to monitor behaviour or requiring a workplace to review culture. Failure to comply with an SSHD may result in [administrative or disciplinary action](#).
3. SSHDs are not intended to replace existing processes used to report and respond to [unacceptable behaviour, including sexual harassment](#), in the Defence workplace. Instead, it should complement existing processes and empower immediate action where there is a risk of ongoing sexual harassment without limiting other processes being undertaken.
4. An APS member or Defence contractor who has experienced sexual harassment and feels there is a continuing risk can apply for a [Stop Sexual Harassment Order via the Fair Work Commission](#).

### **10.0.0.2 Authorised Application Officer**

1. While existing processes empower commanders and managers to take action to resolve an incident or complaint, the role of the Authorised Application Officer (AAO) provides a separate pathway, independent of the immediate chain of command and provides an important safeguard to the applicant.
2. The Chief of the Defence Force and the Secretary authorise the persons occupying, acting in or performing the duties of the following positions to be Authorised Application Officers;
  - a) Deputy Chief of Staff, Australian Defence Force Headquarters.
  - b) Deputy Director Strategic Issues Management – Air Force, Air Force Headquarters.
  - c) Director Navy Past Workforce and Incident Management, Navy Headquarters.
  - d) Deputy Chief of Staff, Army Headquarters.
  - e) Director Privacy, Complaints and Resolution in Defence People Group.
  - f) Assistant Director Complaints in Defence People Group.

The Assistant Secretary Human Resource Services will provide the role of Special Adviser to AAOs when considering SSHD applications.

### **10.0.0.3 Applying for a Stop Sexual Harassment Direction**

1. An eligible member can apply to an AAO for an interim or final SSHD. An eligible person is defined in the Defence Regulation. It includes where:
  - a. the applicant and respondent/s are Defence members

- b. the applicant is a Defence member and the sexual harassment occurred in a defence workplace. This could include a situation where the respondent/s are APS employees or Defence contractors
  - c. the applicant is not a Defence member but they are:
    - i. subject to a CDF direction so that they cannot apply for a FWC SSHO and
    - ii they are participating in a naval, military or air force operation or practice (whether warlike or not warlike);
2. An eligible member can request a SSHD to the AAO by completing the SSHD form. A member seeking an SSHD can also apply by [sshd.office@defence.gov.au](mailto:sshd.office@defence.gov.au).
3. The AAO must begin dealing with the application within 14 days of receiving the application. This can include:
- a. referring the application to another AAO if appropriate
  - b. considering whether an interim SSHD is necessary and appropriate
4. If an application to an AAO indicates that the sexual harassment may include potential sexual offences, the AAO will refer that aspect in accordance with normal reporting requirements in Defence. Applicants can contact the [Sexual Misconduct Prevention and Response Office](#) (SEMPRO) or [Joint Military Police](#) Unit for further assistance reporting any offences.
5. An SSHD can be requested at any time during the Unacceptable Behaviours complaints process. On receiving an application, the AAO will usually confirm whether the matter has been previously reported and any steps that have been taken to address the complaint. If the matter has not been previously reported, the AAO will continue to address the SSHD application to deal with the risk of ongoing sexual harassment. The AAO will also usually refer the allegation of previous sexual harassment to the appropriate commander or manager for action. The chain of command must then complete the Unacceptable Behaviour complaints processes concurrently with the determination of the application for a SSHD.
6. Once an SSHD application has been received, the AAO has 60 days to issue a final decision.

#### **10.0.0.4 Interim Stop Sexual Harassment Direction**

1. To enable quick and protective action to be taken, the AAO can consider if an interim direction is needed, without requiring an adversarial process, formal inquiry or final determination of the facts being made. An Interim SSHD implies no adverse finding against a respondent and that must be considered before any final direction is issued. An interim SSHD could be issued while a unit is conducting fact finding to support the SSHD process, or into a parallel unacceptable behaviour complaint.
2. An Interim SSHD may be granted when an AAO is satisfied that:
  - a. there is a plausible allegation that the applicant has been sexually harassed in contravention of Division 2 of Part 3-5A of the *Fair Work Act 2009*; and
  - b. the applicant has a reasonable apprehension that they will be subject to sexual harassment in future, in contravention of Division 2 of Part 3-5A of the *Fair Work Act 2009*; and
  - c. the requirement is reasonable and necessary or desirable for the purpose of protecting the applicant from the risk of sexual harassment while the application is being considered.
3. When issuing an interim SSHD, the AAO must provide copies to the applicant, respondent/s and their respective manager/ supervisor. Where an Interim SSHD has been issued in conjunction with an

[Unacceptable Behaviour](#) Complaints process, the respondent's commander/manager must report the outcome of that process to the AAO. The AAO must then determine whether to issue a final SSHD.

#### **10.0.0.5 Stop Sexual Harassment Direction**

1. A final SSHD may be issued where the AAO is satisfied that:
  - a. the applicant has been sexually harassed in contravention of Division 2 of Part 3 5A of Chapter 3 of the *Fair Work Act 2009* by one or more persons; and
  - b. there is a risk that the applicant will continue to be sexually harassed in contravention of that Division by the person or persons.
2. A final direction may be more extensive than an interim direction, and may include contextual measures such as
  - regular monitoring of behaviours
  - the provision of information and additional support and training to workers
  - conduct a safety risk assessment for the workplace,
  - a review of the unit's workplace policies and/or culture
3. The AAO may follow up with participants to gather information from all parties involved in the reported incident. Alternately, where it is appropriate to do so, the AAO may request unit assistance or may use the information gathered by a supervisor / manager during a parallel Unacceptable Behaviour Complaints process to help inform their decision. Procedural fairness to a respondent may be required.
4. If the AAO does not make a decision within 60 days, they are taken to have decided not to issue an SSHD.
5. A SSHD must be provided to the respondent in writing and must be given to the person, or each of the persons to who it applies. The AAO may also give written notice of the decision to any other person who is responsible for dealing with the allegation of sexual harassment made in the application. The SSHD must set out clear actions that the respondent is required to do, or not do, to comply with the direction.
6. A SSHD issued by an AAO is final and must be adhered to by the applicant, respondent/s and managers/supervisors involved in the reported incident.

#### **10.0.0.6 Internal Review**

1. An applicant who is not satisfied with the final decision made by an AAO may refer the matter to the Chief of Defence Force or the Secretary of Defence, or their delegate, for internal review.
2. An application for internal review must be made within 14 days of receiving the final decision (or, if no decision has been made after 60 days, then after that period).
3. To request an internal review, an applicant should submit their request to [sshd.office@defence.gov.au](mailto:sshd.office@defence.gov.au). An internal review will consider the matter as if it were the initial application, and can exercise all the powers of the AAO including to make interim or final directions.
4. An applicant who is not satisfied with the final decision made after internal review may apply to the Fair Work Commission.

CARM

5. Respondents may also have the decision made by an AAO reviewed by making an application for redress of grievance (ADF) or seek a review of action (APS). Other general review options such as the IGADF and the Ombudsman may also be available.