



DEFENCE INSTRUCTIONS (GENERAL)

Department of Defence
CANBERRA ACT 2600

27 June 2003

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R.C. SMITH, AO
Secretary

P.J. COSGROVE, AC, MC
General
Chief of the Defence Force

LIST B—ISSUE NO PERS B/10/2003

New instruction

PERS 34-4 [*Use and Management of Alternative Dispute Resolution in Defence*](#)

Single Service filing instructions

This instruction should be filed as:

1. NAVY PERS 23-7
2. ARMY PERS 32-3
3. AIR FORCE ADMIN 9-31

USE AND MANAGEMENT OF ALTERNATIVE DISPUTE RESOLUTION IN DEFENCE

INTRODUCTION

1. Conflict is an inevitable part of interpersonal relations. Whether conflict becomes productive or destructive frequently depends upon the way in which it is managed and resolved. Focusing on keeping an organisation running smoothly sometimes leads to situations where conflict is ignored or avoided. This is generally not a successful long-term approach.
2. Traditional dispute resolution approaches to conflict between people have tended to take an adversarial, win or lose approach, and the solution to conflict tends to be externally imposed on the parties.
3. In recent years, alternative dispute resolution (ADR) processes have been developed to facilitate outcomes where solutions can meet everyone's needs. These approaches focus on giving people strategies to solve conflict themselves. Such approaches offer opportunities for Defence through creating better working climates and providing ways to deal more effectively with the challenges created by change.
4. Outside Defence, both public and private sector organisations in Australia and overseas have successfully employed alternative dispute resolution practices to resolve a wide variety of workplace and other disputes. These techniques are non-adversarial and focus on resolving conflict in the briefest possible time and at the lowest practical level in an organisation. The results have included savings in costs and time, an increase in employee morale and productivity and an improved reputation for the organisation.
5. Defence utilises ADR and conflict management practices that complement, rather than supplant, existing Command and management processes. These arrangements form the basis of the Directorate of Alternative Dispute Resolution and Conflict Management (DADRCM) program and the delivery of the program throughout Defence.

DEFENCE POLICY ON ALTERNATIVE DISPUTE RESOLUTION

6. This instruction outlines the policy on the management and use of ADR by Defence.
7. All ADR interventions are centrally administered for Defence through DADRCM. The functions of the section are to:
 - a. Develop and manage the ADR and conflict management program in consultation with stakeholders.
 - b. Develop and maintain Defence policy, guidance, standards and protocols on the use of ADR mechanisms.
 - c. Advise on and coordinate ADR awareness, conflict and dispute management training and education for Defence.
 - d. Coordinate administration and advice in support of all requests for ADR.
 - e. Provide advice and recommendations to Commanders and managers on the suitability of ADR to resolve disputes brought to their attention.
 - f. Provide the coordination point for ADR issues between Defence Groups, aggrieved parties, other Government departments and ADR practitioners.
 - g. Nominate suitable ADR providers and coordinate provision of ADR services in Defence.
 - h. Provide active management and support for ADR practitioners.
 - i. Provide quality assurance of internal ADR activities.
 - j. Provide statistical reporting on the use of ADR in Defence.
 - k. Liaise with and maintain a database of ADR service providers.

8. Where considered appropriate by DADRCM, the Complaints Resolution Agency will be consulted on redress of grievance and review of actions issues and the Defence Equity Organisation will be consulted in unacceptable behaviour, equity and diversity related cases to determine the suitability of an ADR process.

9. **Contacts.** The DADRCM Operations Manager on (02) 6265 1524 or alternatively the DADRCM on (02) 6265 3774 are the primary points of contact for all ADR issues. Advice can also be sought or comments provided via the ADR email address ADR@defence.gov.au or by minute to:

DADRCM
R8-2-011
Department of Defence
CANBERRA ACT 2600

TYPES OF ALTERNATIVE DISPUTE RESOLUTION

10. The term 'alternative dispute resolution' encompasses a range of dispute resolution techniques. Definitions of the facilitative techniques currently employed by Defence are outlined below:

- a. **Mediation.** Mediation is a process in which the parties to a dispute, with the assistance of an impartial third party (the mediator/s), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role concerning the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation used during the dispute resolution attempt.
- b. **Workplace conferencing.** A workplace conference is a meeting of people who have been affected by an incident or dispute. The conference brings together those most directly involved, together with management, colleagues, (and sometimes) family and friends. The conferencing forum provides an opportunity for participants to discuss their issues and focuses on resolving disputed issues and poor communication.
- c. **Facilitated negotiation.** Facilitated negotiation is a process in which the parties to a dispute, who have identified the issues to be negotiated, utilise the assistance of an impartial third party (the facilitator), to negotiate the outcome. The facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation.

11. DADRCM will determine the suitability and feasibility of ADR to resolve the dispute and the particular ADR process to be used in each case. Any combination of internal and external ADR practitioners may be used as determined to be appropriate by DADRCM.

USE OF ALTERNATIVE DISPUTE RESOLUTION PROCESSES BY DEFENCE

12. ADR is used to complement existing Command and management processes. The intention in the first instance is that participation in ADR will be a voluntary process; however, management involvement may be required in some circumstances.

13. The following general guidelines will apply within Defence:

- a. In cases where it is assessed that ADR is appropriate, ADR should be used at the earliest possible opportunity and at the lowest practical level in the organisation to prevent escalation and protraction of disputes.
- b. Wherever appropriate, ADR is to be employed before the implementation of formal methods of dispute resolution.
- c. ADR may be considered for use in certain circumstances before recourse to disciplinary action under the *Defence Force Discipline Act 1982* (in accordance with Defence Instruction (General) (DI(G)) 45-4—*Australian Defence Force Prosecution Policy*) or Australian Public Service disciplinary procedures.

- d. ADR will only be employed after approval by command/management and after DADRCM has conducted an assessment and deemed the dispute appropriate for ADR intervention.
 - e. Requests for ADR will normally be initiated by Command or management, however, on occasion individuals may request assistance with the resolution of a workplace conflict or dispute. Requests will be managed in consultation with the individuals, Command and management.
14. Currently, the focus for ADR intervention includes:
- a. conflicts or disputes impacting the workplace; and
 - b. claims or potential claims against Defence and the Commonwealth by personnel or former personnel or their dependants.

PROTOCOLS

15. **Assessment.** Once the Commander/manager determines that an issue may be potentially suitable for ADR, the matter is to be referred to DADRCM. At this point, a preliminary assessment will be conducted to determine whether ADR is potentially suitable. If it is assessed as suitable, an ADR practitioner is appointed to conduct an intake process.

16. **Intake process.** The appointed ADR practitioner interviews parties and provides advice on the feasibility of ADR to resolve the dispute. Factors such as the impact on command and control and discipline arrangements and the goodwill of the parties will be included in the formal intake process.

17. **Managing the ADR intervention.** Once a decision to proceed has been made, the designated ADR practitioner, in consultation with the parties and DADRCM, will arrange the time and confirm the venue for the ADR process. Further guidance on the sequence of events in an ADR intervention and the role of the various participants will be provided at the outset of the process.

18. **Reporting.** After the ADR process has concluded, unless otherwise agreed by the parties, the ADR practitioner will provide a brief report on the process to the DADRCM Operations Manager who will distribute it to the party's Commander/manager. This will include whether a process took place, and whether agreement was reached/not reached. Any other information will be subject to the agreement of the parties. A statistical report detailing the general demographics of the parties will also be provided to DADRCM for use in evaluating the program.

CONFIDENTIALITY AND PRIVACY

19. Confidentiality is a significant part of the ADR process. Parties must agree on the limits of confidentiality and then sign a Confidentiality Agreement to this effect. It is the responsibility of the ADR practitioner to inform parties of the confidentiality issues that exist in the particular situation and any reporting obligations that exist, including Privacy and Freedom of Information issues. Further information on confidentiality and privacy is in [annex A](#).

20. An internal or external ADR practitioner in Defence cannot be required to testify or produce any document created in the course of the ADR process in any future proceedings unless required to do so by law. The parties agree to this when signing a Confidentiality Agreement and ADR Consent Form prior to the commencement of an ADR process.

FUNDING

21. ADR interventions are conducted on a user pays basis. The establishment of general DADRCM education and training initiatives will be funded by DADRCM where possible, with specialised, tailored training conducted on a user pays basis.

DEFENCE ALTERNATIVE DISPUTE RESOLUTION PRACTITIONERS

22. DADRCM maintains a list of internal and external Defence ADR practitioners. A person, internal or external, may not act as an ADR practitioner within Defence unless registered by DADRCM as a Defence ADR practitioner. To be registered as a Defence ADR practitioner, a person must be acknowledged as having met the standards set by DADRCM, which may include having satisfactorily completed an approved course, demonstrating appropriate experience and meeting the prescribed competency standards. More detail on accreditation and training and the standards required for registration as an internal Defence ADR practitioner are in [annex B](#).

23. ADR practitioners will be required to perform their role in accordance with the ADR Practitioner's Code of Ethics in [annex C](#).

FEEDBACK, EVALUATION AND COMPLAINTS

24. DADRCM welcomes constructive criticism and feedback at any stage. The standard of ADR will be maintained through continual monitoring and assessment of the ADR process and its outcomes as well as Defence ADR practitioners' skills and performance. Parties will be told what information may be kept and the purpose for which it is provided. External contractors have been engaged to conduct an evaluation of the program. Information will only be obtained from parties who have indicated their consent by signing an Evaluation Consent Form. This information will be used to report on the performance and outcomes of the program. More information is provided in [annex D](#).

Related publications

DI(G) ADMIN 45-2—*Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*

DI(G) PERS 34-1—*Redress of Grievance—Tri-Service Procedures*

DI(G) PERS 35-3—*Discrimination, Harassment, Sexual Offences, Fraternalisation and Other Unacceptable Behaviours in the Australian Defence Force*

DI(G) PERS 45-4—*Australian Defence Force Prosecution Policy*

DI(G) PERS 45-5—*Defence Whistleblower Scheme*

Defence Personnel Instruction 3/99—*Preventing, Managing and Eliminating Discrimination, Harassment and Unacceptable Behaviour in the Department of Defence*

Public Service Act 1999

Australian Defence Force Publication 202—*Administrative Inquiries Manual*

Defence Employees Certified Agreement 2002-2003

Defence Reference Book 19—*Defence Workplace Relations Manual*

Civilian Performance Framework Guidelines (paragraphs 82 to 84)

Defence Protective Security Manual (SECMAN 4) (provides instructions on management and reporting of incidents that have security implications and may include incidents that are notifiable incidents)

Annexes:

- A. [Confidentiality and privacy](#)
- B. [Training and registration for internal mediators](#)
- C. [Ethics](#)
- D. [Feedback, evaluation and complaints](#)

Sponsor: DADRCM

CONFIDENTIALITY AND PRIVACY

Confidentiality

1. **Confidentiality is a significant part of the ADR process.** Confidentiality requirements vary depending on the process employed, the circumstances of the case, and the requirements of the parties. All information will remain confidential to DADRCM, subject to the exceptions below. Confidentiality Agreements specifying the degree of confidentiality will be drawn up between the parties and the practitioner, and these must be signed prior to commencing an ADR process. It is the responsibility of the ADR practitioner to inform parties of the confidentiality issues that exist in the particular situation and any reporting obligations that exist, including Privacy and Freedom of Information issues.
2. **Parties to agree what is confidential.** Parties must reach agreement on the level of confidentiality, and sign a Confidentiality Agreement to this effect. In the course of this discussion, the ADR practitioner will ensure parties are aware of the confidentiality policy for the type of ADR process to be used and the confidentiality issues that exist.
3. **Confidentiality of an ADR practitioner.** Confidential information disclosed to an ADR practitioner by the parties at any stage in the ADR process (including intake) shall not be disclosed by the practitioner for any reason unless specifically agreed by all the parties. All records, reports, or other documents received by an ADR practitioner while serving in that capacity will be confidential. The ADR practitioner will return any such documents to the parties at the conclusion of the ADR process. Any notes taken during the ADR process will be destroyed at the conclusion of the ADR process.
4. **Confidentiality and the parties.** The parties will uphold the confidentiality of the process, in accordance with the Confidentiality Agreement reached between the parties. Confidential information disclosed by the parties in the course of the ADR process shall not be disclosed by the parties for any reason unless specifically agreed by all the parties. Parties shall not disclose or rely on any admissions, proposals, views expressed or documents presented (unless those documents are otherwise discoverable) within the process unless specifically agreed by all the parties. Any documents brought into existence for, or documents discussing the events within the course of the ADR process, and any oral exchanges during any part of the ADR process cannot be introduced as evidence or relied on in any other proceedings, or otherwise used in any way, for or against any party in the ADR process unless required by law.
5. **Statistical data to be anonymous.** Data will be kept by DADRCM to fulfil organisational reporting requirements. The data will be of a general nature and not disclose the identity of the participants. Data will be limited to general information such as the category of conflict/dispute, the stage of the conflict/dispute, the type of intervention, number of participants, the area/service of participants and whether or not agreement was reached. This data will be used to provide statistics on the services provided by DADRCM and may be used in reports, presentations and briefings to internal and external bodies.

Information provided to command/management

6. **Mediation.** After the mediation, the ADR practitioner will inform command/management whether the parties either:
 - a. reached agreement, or
 - b. did not reach agreement.
7. In some situations, command/management as the referring body may stipulate that they wish to receive a copy of the agreement or a report on the outcome. The ADR practitioner will discuss this with the parties during intake and ensure that all parties are agreeable to this condition. If the parties agree, the ADR practitioner will provide these details to command/management.

8. **Workplace conferencing.** Workplace conferencing is a process which may include a wide range of parties. Agreements that come from the conference are not confidential. After the conference, the ADR practitioner will inform command/management whether the parties either:

- a. reached agreement, and supply them with a copy of the agreement; or
- b. did not reach agreement.

9. For all other ADR processes, the level of information provided to management will depend on the circumstances, the process used and consent of the parties involved.

Privacy

10. The *Privacy Act 1988* prevents the use of personal information in any manner other than the purpose for which it was provided. Personal information means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

11. Defence Reference Book 19—*Defence Workplace Relations Manual*, part 13 contains information on the *Privacy Act 1988*, based upon its various requirements and advice provided by the Office of the Privacy Commissioner. The chapter also outlines the obligations imposed on all Defence employees, particularly those responsible for the collection, security/protection and use/disclosure of personal records held by the Australian Defence Organisation (ADO).

12. All operations of DADRCM will be conducted in accordance with the requirements set out in these documents, subject to the exceptions detailed below.

Exceptions to confidentiality and privacy

13. **Notifiable incidents.** DI(G) ADMIN 45-2—*Reporting and Investigation of Alleged Offences within the Australian Defence Organisation* binds both ADF and APS members of the ADO to report 'Notifiable Incidents' through the chain of command to a Defence Investigative Authority (DIA). DIA are the Service Police organisations. An incident is a Notifiable Incident if it raises a reasonable suspicion that an offence may have been committed against the *Defence Force Discipline Act* (DFDA), the criminal law of the Commonwealth, States or Territories, or the criminal law of another country and involves a Defence member, Defence civilian, Defence contractor, Defence consultant, other ADO personnel or ADO premises.

14. Notifiable Incidents that are to be reported by ADO personnel (through the chain of command as applicable) to a DIA are listed below:

- a. all alleged dishonesty offences including theft, fraud, misappropriation, false statements, falsification of documents and records, unlawful possession, burglary, corrupt practices and behaviour, bribery, collusive tendering, conflict of interest issues involving ADO personnel, ADO business, ADO property including service property, or which occur on ADO premises;
- b. all alleged offences against the person involving Defence members, Defence civilians or on ADO premises including all assaults and sexual offences;
- c. all drug related incidents involving Defence members, Defence civilians or which occur on ADO premises including use and possession of illegal drugs;
- d. deaths, serious injuries or disappearances of Defence members, Defence civilians, or which occur on ADO premises (even where there may be no reasonable suspicion of an offence having been committed);
- e. investigation or other action by civil police when it involves Defence members or Defence civilians, who are on duty or in uniform or which occurs on ADO premises, in relation to offences against the criminal law of the States, Territories or the Commonwealth or the criminal law of another country;

- f. damage to private property by Defence members or Defence civilians who are on duty or in uniform or on ADO premises;
- g. damaging Commonwealth or Service property;
- h. all computer related crime involving ADO personnel or which occur on ADO premises including destroying or damaging data, entering false or misleading data, unlawful access and accessing or distributing pornography; or
- i. matters involving breaches of security as defined under *Defence Protective Security Manual* (SECMAN 4).

15. **Exceptions to Privacy.** Where there is a situation that gives rise to an exception to the *Privacy Act 1988* the information may be used for a different purpose. The exceptions are:

- a. the individual concerned has consented to use of the information for that other purpose;
- b. the person receiving the information believes, on reasonable grounds, that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
- c. use of the information for that other purpose is required or authorised by or under law;
- d. use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for protection of the public revenue; or
- e. the purpose for which the information is used is directly related to the purpose for which the information was obtained.

BREACH OF CONFIDENTIALITY

16. 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, including action for a breach of the APS Code of Conduct or military equivalent.

TRAINING AND REGISTRATION FOR INTERNAL MEDIATORS

1. The role of a mediator is one that requires a high-level of personal commitment. It is a position of trust that requires personal skills and integrity of the highest order. The preference for DADRCM is to have a diverse panel of internally registered Defence mediators who understand the Defence culture and the formal and informal processes that may impact on a mediation.

DEFENCE PANEL OF INTERNAL MEDIATORS

2. DADRCM will maintain a register of internal Defence mediators comprising a mix of gender, occupation, military, civilian and reserves to reflect the diversity of the Defence environment.

REGISTRATION PROCESS

3. The registration process consists of four stages:

- a. training,
- b. selection,
- c. assessment, and
- d. ongoing registration requirements.

TRAINING

4. **Funding.** Training will be on a user-pays basis, with programs sponsoring nominees.

5. **Suitable training.** DADRCM can provide a selection of preferred service providers who offer suitable training courses.

SELECTION

6. Potential mediators must be nominated and highly recommended at Commanding Officer (CO)/Director-General (DG) level through an application to DADRCM.

7. Applicants should possess the following personal qualities:

- a. hold the minimum rank of Leading Seaman equivalent/APS 3 (as a rule);
- b. have respect for, adhere to and be visibly committed to equity and diversity principles;
- c. have the respect and trust of peers;
- d. have a well developed sense of empathy;
- e. have respect for and the ability to adhere to confidentiality arrangements;
- f. have patience;
- g. have the ability to be an 'ambassador' of interest based processes and assist in the education of personnel in the workplace;
- h. have respect for the chain of command;

- i. hold the confidence of command; and
 - j. have management approval in principle to be released from normal employment to mediate.
8. Nominations from CO/DG level should address the following criteria:
- a. demonstrated high standard of oral and written communications skills, including excellent listening skills;
 - b. demonstrated levels of appropriate assertiveness;
 - c. demonstrated well developed problem solving skills;
 - d. demonstrated ability to be impartial and non-judgemental; and
 - e. no upheld disciplinary or unacceptable behaviour charges, or civil convictions in the last two years.
9. Applicants should also be able to provide one other referee to address these criteria if requested.
10. DADRCM, potential practitioners and their CO/manager will be required to enter into a 'Memorandum of Agreement' to ensure agreement as to their employment as a mediator.
11. Applicants will be advised of the outcome of their application in writing.
12. Where applicants are deemed suitable they will be invited to participate in a competency assessment.

ASSESSMENT

13. The assessment process allows applicants to demonstrate their competence and to be assessed against standard performance criteria. The assessment will review an applicant's knowledge, skills, and performance, and assess training and development needs.
14. The process consists of defined stages to be implemented as follows:
- a. completion of an application form for assessment; and
 - b. an assessment by a panel of at least two assessors, one of whom is a qualified Workplace Assessor during which the following will be reviewed:
 - (1) competency as demonstrated in a simulated mediation which may be videotaped;
 - (2) suitability to be a mediator as demonstrated through performance in an interview to determine the applicant's experience, performance and knowledge, objectives, training and development needs.
15. It is important to note that registration with external ADR organisations will not guarantee registration with Defence.
16. Upon completion of the assessment process an applicant for registration will be assessed as either:
- a. not yet competent,
 - b. provisionally competent, or
 - c. competent.

17. Where an applicant is assessed as being not yet competent, the assessment panel shall advise the applicant of the grounds on which they base the finding. The panel will also advise on further training or practice required before the applicant may be reassessed.
18. Where applicants are assessed as provisionally competent, additional requirements to be met prior to being deemed competent will be advised during the assessment debrief.
19. Where applicants are assessed as competent they will be placed on the panel as a registered Defence mediator.
20. Applicants will be notified in writing of the outcome of the assessment process.

MANDATORY ONGOING REGISTRATION REQUIREMENTS

21. To ensure ongoing registration is maintained, registered Defence mediators must meet the following requirements:
- a. compliance with the Internal ADR Practitioner's Code of Ethics;
 - b. minimum of ten hours of mediation every 12 months (can be simulated and/or real mediations);
 - c. ongoing training and development sessions minimum eight hours required annually; and
 - d. maintenance of log book and associated reports to DADRCM.

OPTIONAL REGISTRATION REQUIREMENTS

22. Registered Defence mediators are encouraged to attend industry conferences and networking opportunities for their continued professional development.

RE-REGISTRATION REQUIREMENTS

23. Registered Defence mediators must reapply every two years to renew their registration. Registration will be renewed if they have met the mandatory requirements for registration within the preceding two years including maintenance of a log book as evidence of their participation. Re-registration may not be granted where the mediator has committed a breach of confidentiality, has had a complaint upheld against them, or where their conduct has not met the prescribed minimum standards.

ASSESSMENT REVIEW PROCEDURES

24. If an applicant is assessed as not yet competent, that person may apply to DADRCM in writing within 14 days of receipt of notification for a review of the assessment. If a review is granted, applicants may be asked to participate in another competency assessment.

ETHICS

1. Ethics refers to the attitudes and conduct of individual ADR practitioners.
2. Registered Defence ADR practitioners are required to comply with the code of ethics as stated below at all times in their conduct of ADR processes.

INTERNAL DEFENCE ALTERNATIVE DISPUTE RESOLUTION PRACTITIONER'S CODE OF ETHICS

3. Ensuring effective participation by parties. Depending upon the ADR process used, the practitioner may need to ensure that the parties are given the opportunity to have their say, make decisions about time frames and venues, and understand the issues and the implications of choosing one outcome over another. In facilitative ADR, it is important that the practitioner be aware of the criteria which suggest that it would not be appropriate for the parties to participate in an ADR process, or to do so only with special adaptations to the process. The ADR practitioner should ensure that the parties are fully informed of the possible legal implications of ADR and where necessary refer the parties to DADRCM to coordinate the provision of independent legal advice to the parties.
4. A practitioner may need to consider whether any action is required by them in the following situations:
 - a. the parties lack an adequate level of understanding of the issues and implications of the possible outcomes;
 - b. the parties lack sufficient time to assess any proposed outcome;
 - c. there is the possibility of undue practitioner influence;
 - d. the process is inappropriate to resolve the parties' dispute;
 - e. the physical safety of the parties, practitioner or third parties has been or may be at risk;
 - f. strategies that are inconsistent with the ADR process are being pursued by one or other of the parties;
 - g. a party has undertaken the ADR process in order to gather information to be used in furtherance of the dispute;
 - h. one or more parties is unable to participate and negotiate effectively in the process;
 - i. the appropriate parties are not present to explore the issues effectively or to ensure effective negotiation;
 - j. a significant power imbalance between the parties is likely to prejudice the outcome for one of the parties; and
 - k. the parties are not willing to participate in good faith.
5. If the practitioner considers that action is warranted, they may then consider implementing one or more of the following:
 - a. when it is appropriate, include a support person and/or an adviser;
 - b. enable the provision of technical assistance, information or expert advice;
 - c. adjourn the process; and/or
 - d. terminate the ADR process and refer the parties to a grievance process.

6. **Eliciting information.** Most ADR processes rely on developing a clear understanding of the reasons for the dispute. To achieve this the parties must be encouraged to describe their own perceptions and needs clearly and as completely as possible. ADR practitioners must be aware of the scope of their duties to elicit relevant information, and encourage the parties to obtain, check and share information.

7. Where facilitative ADR processes are being used (mediation, workplace conferencing, facilitated negotiation), the ADR practitioner may need to consider issues such as:

- a. whether the ADR practitioner should contradict a party (eg by physical evidence or prior inconsistent statement);
- b. whether there is scope for discrediting a party in front of his or her colleagues (on the same side of the dispute) in order to verify the relevant facts;
- c. the kinds of information that may only be raised for discussion in private sessions;
- d. whether recommendations or decisions may be restricted to agreed issues in dispute, or may be open to other related issues as well; and
- e. managing continuation or termination of the process.

8. Some ADR processes end with an expert recommendation and not a final decision. In others, the parties or the ADR practitioner make decisions with a view to facilitating an end to the dispute or the process. In all cases the ADR practitioner is expected to perform their duties diligently and within a reasonable time frame. Terminating an ADR process is a responsibility the ADR practitioner has to both parties. Depending on the ADR process involved, the ADR practitioner may need to consider whether to:

- a. discourage the parties from abandoning the process when the practitioner believes settlement is possible;
- b. abandon (or threaten to abandon) the process in order to induce agreement; and
- c. try to restrict the number or scope of settlement options by reference to similar case experience, expert intellectual knowledge or legal principles.

9. **Exhibiting lack of bias (neutrality and impartiality).** ADR practitioners need to demonstrate independence and lack of personal interest in the outcome, and approach the subject matter of the dispute with an open mind, free of preconceptions or predisposition towards either of the parties. The importance of exhibiting lack of bias is that the parties can be satisfied that they can trust the ADR practitioner to conduct the process fairly. This has usually been referred to as a requirement of neutrality.

10. 'Neutrality' refers to interest, while 'impartiality' refers to behaviour. DADRCM recognises that absolute neutrality is impossible, since any practitioner has a degree of interest in the outcome of the dispute. However, what is important is that the process is conducted in an impartial manner that ensures that it is fair for the all of the parties.

11. Impartiality requires the ADR practitioner to:

- a. conduct the process in a fair and even-handed way;
- b. generally treat the parties equally;
- c. give advice and allow representation, support or assistance equally to the parties;
- d. act in a manner that does not communicate noticeably different degrees of warmth, friendliness or acceptance when dealing with individual parties;
- e. be independent to the process of command/management;
- f. organise the venue, times and seating in a way that suits all parties; and
- g. not accept advances, offers or gifts from parties.

12. Exhibiting lack of bias requires that the ADR practitioner disclose to all parties:
- a. any existing or prior relationship or contact between the ADR practitioner and any party;
 - b. any interest in the outcome of the particular dispute;
 - c. any likelihood of present or future conflicts of interest; and
 - d. personal values, experiences or knowledge that might substantially affect their capacity to act impartially, given the nature of the subject matter and the characteristics of the parties.
13. Having made the disclosure, the practitioner must also decide whether he or she should withdraw, or, with the express permission of all the parties, continue with the ADR process.
14. **Maintaining confidentiality.** It is important that the practitioner and parties in any ADR process have, as far as possible, a clear and common understanding of the extent and limits of confidentiality in accordance with [annex A](#). Confidentiality may require an ADR practitioner to:
- a. not disclose information provided by one of the parties to the other party (in mediation, information may be conveyed to the practitioner during a separate private session); and
 - b. not disclose information about the dispute to third parties, subject to any Defence regulations, common law, contractual or statutory requirements.
15. However, in all cases the ADR practitioner should make clear to the parties the limits on disclosing information that apply to the parties and the practitioner.
16. **Compliance with legislative requirements.** Depending on the context, the outcome of an ADR process may need to comply with certain requirements, including legislation (for example the *Public Service Act 1999*, *Financial Management and Accountability Act 1997* and *Defence Act 1903*) and natural justice. In particular, an ADR practitioner may need to consider or obtain advice on whether:
- a. the interests of third parties are appropriately protected, or at least not unnecessarily or unjustifiably threatened;
 - b. the outcome is fair for both of the parties;
 - c. an agreement condones an illegal activity;
 - d. an agreement is legally void or voidable;
 - e. an agreement should be referred to a delegate for a final decision; and
 - f. any advice, agreement or decision involves unlawful or unjustifiable discrimination.

FEEDBACK, EVALUATION AND COMPLAINTS

1. The DADRCM welcomes constructive criticism and feedback at any stage to enable the Directorate to:

- a. improve communication with the Defence community;
- b. learn from mistakes;
- c. improve the standard of service offered;
- d. improve processes;
- e. increase the Defence community's understanding of DADRCM's role;
- f. increase DADRCM's understanding of the Defence community's needs;
- g. help gain greater cooperation from the people and organisations that DADRCM deals with; and
- h. enhance the reputation and credibility of the DADRCM.

2. DADRCM is committed to providing a high quality of service to the Defence community. Competent handling of complaints and ensuring compliance to this policy will assist DADRCM in providing fair and impartial conduct of ADR processes in Defence.

3. On completion of each ADR intervention, the parties will have the opportunity to provide feedback in a written survey. These surveys will be forwarded to external evaluators for collation and interpretation. Prior to, immediately following and at two intervals after the completion of an ADR intervention, the parties will be provided with evaluation forms to assess their satisfaction with the process. DADRCM will use this information to evaluate and adapt its policy and operations to try and provide the highest quality service.

4. All complaints should be resolved where possible at the lowest possible level appropriate to the circumstances. The optimum outcome is for the parties to be satisfied with the ADR process, and be able to return to harmonious workplace relations.

5. Complainants and respondents may also seek resolution of complaints by external agencies, if applicable. Methods of external resolution are discussed below. Different management strategies will apply depending on whether the complainant, respondent and witness are either Australian Defence Force (ADF) members, APS employees, contractors, dependants of ADF members or members of the public.

TYPES OF COMPLAINTS SPECIFIC TO DIRECTORATE OF ALTERNATIVE DISPUTE RESOLUTION AND CONFLICT MANAGEMENT

6. Complaints may be made regarding:

- a. DADRCM processes;
- b. DADRCM accredited practitioners; and
- c. DADRCM policy.

7. As the parties determine the outcome of facilitative processes (mediation, workplace conferencing, facilitated negotiation), complaints about the outcome in these processes will not be considered. This includes whether an agreement was reached or not reached or the contents of any agreement.

DEFINITION OF COMPLAINT

8. A complaint as referred to in this section is any written or verbal notification or expression of dissatisfaction in relation to DADRCM processes, DADRCM accredited practitioners or DADRCM policy, for the purpose of formal action.
9. Formal action is any action that leads to an administrative outcome.

FEEDBACK

10. General feedback on the process may be brought to the attention of DADRCM at any time, either verbally or in writing to the DADRCM Operations Manager, or the DADRCM.

COMPLAINTS REGARDING AN ALTERNATIVE DISPUTE RESOLUTION PRACTITIONER

11. Where a complaint is made relating to the conduct of a DADRCM accredited practitioner every endeavour is to be made to attempt to resolve the complaint at the lowest possible level.
12. DADRCM will consider all relevant information, and will decide on the manner through which the matter will be resolved. This may include no action, further training or supervision for the practitioner, or de-registration of the practitioner.

BREACHES OF THE DEFENCE FORCE DISCIPLINE ACT 1982 OR AUSTRALIAN PUBLIC SERVICE CODE OF CONDUCT

13. Should there be a question as to whether a *Defence Force Discipline Act 1982* offence has been committed this should be referred to the Military Police. Where a breach of the APS Code of Conduct is alleged to have occurred, it will be investigated in accordance with *Public Service Act 1999* and Defence Reference Book (DRB) 19—*Defence Workplace Relations Manual*, part 2—‘Conduct and Values’.

UNACCEPTABLE BEHAVIOUR

14. Any allegation of unacceptable behaviour by a Defence registered ADR practitioner in the conduct of an ADR process should be reported in accordance with Defence Instruction (General) (DI(G)) PERS 35-3—*Discrimination, Harassment, Sexual Offences, Fraternalisation and other Unacceptable Behaviour in the Australian Defence Force*. Complaints made pursuant to DI(G) PERS 35-3 should be made to the complainant’s supervisor/manager.

COMPLAINTS AGAINST CONTRACTORS

15. Where a complaint is made against a contractor, the complaint should be referred to DADRCM to determine the appropriate action to be taken. Any formal action will be taken by the person in Defence who manages the contract in accordance with its terms and the principles of contract law.

COMPLAINT FOR THE PURPOSE OF FORMAL ACTION

16. If a complainant wishes to pursue a complaint for the purpose of formal action, this can be made pursuant to the Defence complaints mechanisms contained in:

- a. DI(G) PERS 34-1—*Redress of Grievance—Tri-Service Procedures*;
- b. DI(G) PERS 35-3;
- c. DI(G) PERS 45-5—*Defence Whistleblower Scheme*;
- d. Departmental Personnel Instruction 3/99—*Preventing, Managing and Eliminating Discrimination, Harassment and Unacceptable Behaviour in the Department of Defence*;
- e. Australian Defence Force Publication 202—*Administrative Inquiries Manual*;
- f. DRB 19, part 19, chapter 1; and
- g. *Civilian Performance Framework Guidelines* paragraphs 82 to 84.

LIABILITY OF ALTERNATIVE DISPUTE RESOLUTION PRACTITIONERS

17. Parties agree to limit the liability of ADR practitioners by signing an ADR consent form prior to commencement of the ADR process.

18. This agreement states that ADR practitioners are released, discharged and indemnified in respect of all liability of any kind whatsoever (excluding criminal or unethical behaviour) which may be alleged to arise in connection with, result from, or relate to the ADR process in any way.

19. This release has no impact on the ability of a party to make a complaint pursuant to this instruction or whether cautionary action may be taken by DADRCM. It in no way acts to prevent or dissuade a person from making a complaint or from requesting the referral of a complaint. However, any complaint is subject to the constraints of confidentiality as stipulated in [annex A](#).

ACTION BY DIRECTORATE OF ALTERNATIVE DISPUTE RESOLUTION AND CONFLICT MANAGEMENT WHERE COMPLAINTS ARE UPHeld

20. Where a complaint is upheld, DADRCM will take whatever action is necessary in the circumstances of the particular case. If the complaint is about a practitioner, this action may include further training or supervision of the practitioner, or de-registration of the practitioner for a period of time. If the complaint is about DADRCM policy or processes the complaint will be assessed, and the policy or process will be reviewed if it is deemed necessary to do so. Any action will be at the discretion of the Director DADRCM.