

DEFINITIONS AND CATEGORIES OF UNACCEPTABLE BEHAVIOUR

INTRODUCTION

1. Unacceptable behaviour is behaviour that, having regard to all of the circumstances, would be offensive, belittling, abusive or threatening to another person or adverse to morale, discipline or workplace cohesion, or otherwise not in the interests of Defence.
2. Unacceptable behaviour can occur at any place or any time, regardless of whether the location is a Defence establishment, in the workplace, or the Defence personnel are on or off duty.
3. The Defence, single-Service and Australian Public Service (APS) Values and Code of Conduct form the basis of the behaviour that is expected of all Defence people. Carrying out legitimate or reasonable management decisions or actions, such as performance counselling and management, in a respectful manner consistent with prescribed policy and processes, is not unacceptable behaviour.
4. This annex provides definitions of unacceptable behaviour which are influenced by the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* (Sex Discrimination Act), the *Human Rights and Equal Opportunity Commission Act 1986* (HREOC Act), the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004* (Age Discrimination Act).
5. There are six categories of unacceptable behaviour which are detailed in this annex. The categories at paragraphs b.-e. are forms of **harassment**. The categories are:
 - a. harassment,
 - b. workplace bullying,
 - c. sexual harassment,
 - d. discrimination,
 - e. abuse of power, and
 - f. inappropriate workplace relationships and conflict of interest.
6. An action that is explicitly sexual in nature, which is carried out without the consent of the complainant, may constitute a sexual offence. *Defence Instruction (General) (DI(G)) PERS 35-4—Management and Reporting of Sexual Offences* provides the policy, definitions and direction for managing sexual offence incidents.

HARASSMENT

7. For the purpose of this Instruction, 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, and one-off incidents can still constitute harassment.
8. Harassment may be a result of a person's attitude to some real or perceived attribute or difference, 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.
9. Harassment can take many other 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. the spreading of 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. exclusions 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. making a vexatious or malicious complaint against a person; or
 - i. causing detriment to a person because they have made a complaint in good faith.

WORKPLACE BULLYING

10. For the purpose of this Instruction, workplace bullying is defined as ***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 can be affected.

11. Bullying may comprise a combination of behaviours including unwarranted criticism, insults, spreading malicious rumours, deliberately withholding information or resources and influencing others to exclude or isolate the targeted person or persons. In many instances bullying may begin as discreet and indirect behaviour escalating over time into more open and direct behaviour.

12. Bullying behaviour can range from obvious verbal or physical assault to very subtle psychological abuse. It includes overt and covert types of behaviour such as:

- a. Physical behaviour—aggressive, intimidating body language.
- b. Verbal abuse, for example:
 - (1) abusive, insulting or offensive language;
 - (2) humiliation through sarcasm, criticism and insults, often in front of other personnel;
 - (3) persistent teasing or taunting;

- (4) belittling someone's opinions or unjustified criticism; or
- (5) criticism delivered by yelling or screaming.
- c. Inappropriate or unfair work practices, such as:
 - (1) giving a person a much greater proportion of menial work than given to others;
 - (2) constantly making a person the brunt of practical jokes; or
 - (3) 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:
 - (1) not passing on information, hiding tools and equipment, damaging completed work etc, usually with the aim of creating the appearance of the person's incompetence in front of management or peers;
 - (2) deliberately intruding on a person's workspace by pestering, spying or tampering with their work equipment or personal effects;
 - (3) spreading misinformation or malicious rumours about a person;
 - (4) making disparaging comments about a person suffering from illness or injury;
 - (5) assigning menial tasks unrelated to the job;
 - (6) giving a person unrealistic tasks that are not within their capability, or that are required within an unrealistic timeframe;
 - (7) regularly changing work rosters, especially at short notice, to inconvenience particular personnel; or
 - (8) 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.

13. Bullying can be related to an interpersonal dispute or organisational practice that subjugates people and rewards and encourages predatory and bullying behaviour.

14. 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 can 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).

15. Workplace harassment and bullying, whether a single incident or repeated occurrences, is a breach of the APS Code of Conduct, Commonwealth anti-discrimination legislation and the [Workplace Relations Act 1996](#)

Legitimate action that is not harassment or workplace bullying

16. It is important to distinguish between a person reasonably exercising their legitimate authority at work and an instance of bullying or harassment. Commanders and managers are required to direct and control how work is performed and are responsible for monitoring workflow and providing feedback to personnel on their work performance. Examples of behaviours in any Defence workplace that are not harassment or workplace bullying include:

- a. 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. 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.

17. Defence personnel who have a complaint about the performance management process, or the merits of their assessment should pursue their complaint through the processes associated with the respective policies.

Tough training and the relationship to harassment or workplace bullying

18. **Tough training.** 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.

19. **Principles for the conduct of tough training.** ADF training is ultimately focused on the achievement and maintenance of operational capability. To achieve this outcome safely, legitimate tough training involves:

- a. Realistic outcomes in line with operational requirements.
- b. The application of training methods that extend the mental, physical and emotional capacity of trainees to achieve a defined level of competence. This implies that the required competence, including the standard and the conditions under which it is to be demonstrated, be properly documented and understood by both trainer and trainee.
- c. Graduated increases in training intensity so as to induce growth in individual and group capacity without mental and/or physical injury. Tough training may be difficult, but it should never disregard applicable safety requirements.
- d. The provision of appropriately qualified personnel for the supervision and delivery of training.
- e. The development of training management plans that document how training is to be conducted, including:
 - (1) The authorised activities for each training outcome.
 - (2) An assessment of the risks associated with each tough activity, including risk indicators and contingency strategies. For activities that rely on close bonding and teamwork, this analysis is to include the risks associated with dysfunctional group behaviour.
 - (3) Strategies to be adopted in the event of poor performance or learning outcome failure to assist the member to meet training requirements.
- f. Sufficient rest to allow the mind and body to both recover and build increased strength and endurance.

- g. The provision of counselling and guidance for trainees who are unable to meet tough operational training outcomes. Acknowledging that participation in the toughest of tough training may be beyond the ability of some trainees, encouragement and support to assist trainees overcome any negative feelings associated with not achieving the required outcomes is necessary for member retention and transition to alternative employment, where that is appropriate.

20. **The difference between tough training and bullying or harassment.** 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 enhance the guidance for maintaining the distinction between tough training and bullying or harassment are as follows:

- a. **Reasonableness.** While a trainee may, quite appropriately, be subjected to difficult 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 undermining self-confidence or self-esteem, should be regarded as bullying or harassment as opposed to the temporary incidental feelings associated with tough training.

21. The following would not constitute tough training and may indicate possible bullying, harassment and/or abuse of power:

- a. **Unauthorised training.** Any activity conducted that is not laid down in an approved curriculum or cannot be linked to operational capability outcomes.
- b. **Unauthorised administrative consequences.** Application of sanctions for unauthorised consequences, either individual or collective, for failure to achieve a training outcome.

SEXUAL HARASSMENT

22. The [Sex Discrimination Act](#) states that a person sexually harasses another person (the target of harassment) 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;

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.

23. The [Sex Discrimination Act](#) also defines conduct of a sexual nature to include 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.

24. Sexual harassment includes discrimination and harassment on the grounds of sexual orientation or identity. Denial of promotions, termination of employment, breaches of confidentiality and refusal of overtime and higher duties on the grounds of sexual orientation or identity are also prohibited. Inappropriate advocacy of a particular sexual orientation is also unacceptable. Behaviour that may be acceptable in other contexts, such as between friends in a social setting, can be inappropriate in the workplace. Sexual harassment as defined above, includes but is 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.

25. Sexual harassment is prohibited. Action can be taken by Defence in instances of sexual harassment at all Defence workplaces and in work-related activities which may include, but is not limited to training courses, conferences, field trips, work functions such as dining-in nights and Christmas parties. Refer to workplace definition in [annex A](#).

DISCRIMINATION

26. The [HREOC Act](#) defines, in part, discrimination as being any distinction, exclusion or preference that had 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. The [Sex Discrimination Act](#) provides an exemption for the ADF to discriminate on the employment of women in combat roles. The [Age Discrimination Act](#) provides exemption for the ADF to determine compulsory retirement on the basis of age.

27. **Direct discrimination** can occur when there is a specifically directed policy or action that 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 upon their individual merit, but judges them on stereotypes or perceptions.

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

ABUSE OF POWER

29. 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. Commanders and managers 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. Examples of such behaviour are:

- a. using subordinates to conduct personal tasks, such as running errands or collecting dry-cleaning;
- b. ordering subordinates to participate in unacceptable behaviour; and
- c. encouraging personnel to provide sexual favours in order to gain superior performance reports, desired postings or career advantage.

CONFLICT OF INTEREST AND INAPPROPRIATE WORKPLACE RELATIONSHIPS

30. Any relationship that involves, or gives the appearance of involving partiality, preferential treatment or improper use of rank or position is inappropriate in the workplace, irrespective of the employment type of people involved, including external service providers. A conflict of interest in itself is not necessarily wrong, however disclosing or identifying, and then managing the situation is essential. [DI\(G\) PERS 25-5](#)—*Employment of immediate family members in the same chain of command and/or working environment* provides ADF policy on the employment of members of the same family.

31. An inappropriate relationship can constitute a close and exclusive friendship between members of the same or opposite gender, and may or may not include a sexual relationship. Siblings, parent/child relationships, and even extended relationships such as by marriage eg brothers-in-law, or former husband/wife may be deemed as inappropriate in the workplace where there is potential for, or there is an appearance of partiality or preferential treatment.

32. A relationship which involves sexual relations or private intimacy, such as between husband and wife, life partners, boyfriend/girlfriend etc, where a superior and subordinate command or management relationship exists, is considered to be inappropriate in the workplace.

33. The existence of relationships within the workplace does not excuse any form of unacceptable behaviour. In some cases, there will remain some areas 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 exist 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, single service and APS Values and Code of Conduct.

Inappropriate workplace relationships at Australian Defence Force schools and training establishments

34. Relationships between trainees, or between trainees and staff at training establishments potentially impact on 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 inculcate service values. The prescribed periods of prohibition provide a consistent application of policy between service training establishments of enlisted trainees and officer trainees:

- a. 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 Instruction 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 Instruction apply.

35. Commanders of ADF schools and training establishments should give consideration to the inclusion of the above prohibitions and requirements in standing orders. Commanders must ensure staff and trainees are provided with briefs that include the:

- a. prohibitions and requirements detailed in [paragraph 34.](#) of this annex, 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 (refer to [annex C](#)).

Management of conflict of interest and inappropriate workplace relationships

36. Relationships are a natural result of human interaction and as such may not be inappropriate or constitute a reason for sanction. However, they may have a direct impact on the effectiveness and morale of a team and need to be carefully managed.

37. Defence personnel must declare a relationship that may be considered a conflict of interest or inappropriate in the workplace, to their commander or manager. Upon being made aware of such a relationship, commanders and managers must take all reasonable steps to avoid the undermining of discipline whilst maintaining operational efficiency and morale in the workplace. Management actions may include, but are not limited to:

- a. transfer of one person to another unit, or to a position outside the chain of command/reporting line of the other party;
- b. temporary/permanent transfer of work assignment to a separate supervisor and/or, if appropriate to a separate commander or manager;
- c. ensuring that one party is not directly supervising the other (that there are one or more people in the chain of command/reporting line between them);

- d. ensuring those in the chain of command/reporting line between the parties do not feel compromised in the performance of their supervisory duties; and
- e. temporary/permanent transfer of performance appraisal to a separate supervisor.

38. If the parties remain in the same workplace, perceptions in the workplace need to be managed. This can be done by making it clear that there is a definitive separation between the concerned parties whilst they are carrying out their roles and responsibilities. Despite the sensitivities involved, it is important the other personnel in the workplace feel able to raise any concerns with commanders and managers about their perceptions of conflict of interest.