

MANAGEMENT OF UNACCEPTABLE BEHAVIOUR COMPLAINTS

1. This annex details:
 - a. who must manage a complaint of unacceptable behaviour, and
 - b. the complaint management process.

WHO MANAGES THE COMPLAINT?

2. The respondent's commander or manager is normally the individual best placed to assess a complaint, manage the inquiry process, ensure reporting obligations are met and monitor ongoing behaviour. They must manage the complaint, except in the following circumstances:

- a. Where a conflict of interest or bias exists (or may be perceived to exist), such as when a commander or manager has been personally involved in the provision of advice associated with, but prior to the submission of a complaint. The complaint must be managed by the next higher level in the chain of command or reporting line.
- b. When the incident occurs where parties to the complaint are temporarily transferred to another workplace, for example, whilst on course at an Australian Defence Force (ADF) training facility or on overseas deployment/appointment, the commander or manager of the workplace in which the incident is alleged to have occurred must manage the complaint.
- c. If the respondent to a complaint is an external service provider, the Defence (Commonwealth) contract manager must manage the complaint. For example, a complaint against a garrison support service provider should be directed to the relevant Base Support Manager in the region. A complaint against an external service provider employed under contract to the Defence Materiel Organisation in a sustainment project, would be directed to the director of the relevant System Project Office.
- d. Where the identity of the respondent is unknown or cannot be determined, the complainant's commander or manager must manage the complaint.
- e. When a complaint involves multiple respondents from different units, the complaint must be managed by the complainant's commander or manager, except if the respondents are all within the same higher chain of command or reporting line eg Brigade, Branch or Division. The higher headquarters must determine which commander or manager is to manage the complaint.

3. There may be occasions where the commander or manager who has initial responsibility for the complaint is no longer able to adequately manage or finalise the complaint, for example, on posting or movement of the respondent. In this case a complaint can be transferred by mutual agreement between workplaces, or by direction within a chain of command or reporting line. The transfer of responsibility for managing the complaint must be communicated in writing to all parties to the complaint and reported in accordance with [annex F](#) of this Instruction.

4. **Communication.** Where practicable, both the complainant's and respondent's commanders or managers are to be informed of an unacceptable behaviour complaint:

- a. If the complainant's commander or manager first receives the complaint, they must forward the complaint to the respondent's commander or manager, request action in accordance with this Instruction and provide appropriate support to the complainant.
- b. If the respondent's commander or manager first receives the complaint, they must advise the complainant's commander or manager that a complaint has been received from the complainant and request cooperation as required in accordance with this Instruction.

- c. If a complaint involves multiple respondents from different units, the commanders or managers of the complainant and all respondents must be informed of the complaint.
- d. If the respondent to a complaint is the complainant's commander or manager, refer to paragraphs 2.a. and 8.c.
- e. A formal resolution to a complaint managed in accordance with paragraph 2.b., must be advised to the commander or manager of the respondent's usual workplace or parent unit.

COMPLAINT MANAGEMENT PROCESS

5. A commander or manager must act on all unacceptable behaviour complaints brought to their attention in a prompt, fair and impartial manner. A flow chart on the management and reporting of unacceptable behaviour complaints is provided in [annex G](#) and a checklist is provided in [annex H](#).

6. Following receipt of a complaint, the commander or manager must undertake the following actions:

- a. Determine whether the complaint is to be managed under this Instruction (eg a complaint alleging unfair process or outcome in performance management should be directed to the appropriate complaint process). If the matter constitutes a notifiable incident in accordance with [Defence Instruction \(General\) \(DI\(G\)\) ADMIN 45-2—Reporting and Investigation of Alleged Offences within the Australian Defence Organisation](#), it must be reported to a Defence Investigative Authority (DIA) without delay.
- b. **Quick Assessment (QA).** Conduct a QA in accordance with [DI\(G\) ADMIN 67-2—Quick Assessment](#). The QA should make recommendations for the decisions required of the commander or manager below. The purpose of a QA is to assess the known facts about an occurrence to inform a decision about the most appropriate course of action. A QA is not an investigation and is not to be used as the basis for adverse findings. A QA must not interfere with any other inquiries or investigative processes (eg investigations by a DIA). In accordance with the reference, the QA must be completed in a timely manner within 24 hours. The QA initiating officer may extend this period if necessary, but this should not exceed three working days.
- c. **Decisions.** With the QA report and recommendations, make and record decisions as to whether:
 - (1) the alleged behaviour falls within the scope of this Instruction, and if so determine the category of unacceptable behaviour as detailed in [annex B](#);
 - (2) there is any basis to the complaint to warrant further action; if so:
 - (a) can the complaint be resolved informally, or should it be resolved formally (refer to [annex E](#)); and
 - (b) are further inquiries necessary or does the complaint need to be referred to an alternative body (see paragraph 7.c.);
 - (3) the incident is required to be reported to Occupational Health and Safety and Branch and notified to Comcare in accordance with [annex F](#) of this Instruction; and
 - (4) the alleged behaviour suggests Defence personnel, assets or classified information may be at risk and require notification to the Defence Security Authority.
- d. Report the complaint in accordance with [annex F](#) of this Instruction.

7. Subsequent to the decisions made above, the commander or manager must take one of the following actions:

- a. **No further inquiry.** After the QA, if the commander or manager determines that no further inquiry action is warranted under the circumstances, eg there is insufficient evidence concerning the complaint, or the complaint is deemed to be unsubstantiated, the commander or manager must create a record of the complaint and monitor the workplace. Report the closure of the complaint in accordance with the reporting requirements detailed in [annex F](#).
- b. **Informal resolution.** After the QA, if the commander or manager determines that the matter may be resolved informally, the complaint is considered to remain open until the form of resolution has been concluded and determined to have resolved the complaint. If in the view of the commander or manager, the informal resolution has not succeeded, the matter is to be redirected to an alternative informal resolution process or referred for formal resolution. (Refer to [annex E](#).)
- c. **Conduct further inquiries.** The purpose of a QA is to assess the known facts about an occurrence to inform a decision about the most appropriate course of action. A QA is not an investigation and is not to be used as the basis for adverse findings. If further inquiries are required, the appropriate authority and administrative process is:
 - (1) **ADF respondents.** ADF commanders can initiate Routine Inquiries or other inquiries under the Defence (Inquiry) Regulations 1985, into the actions of ADF members only. If the manager of the complaint is an Australian Public Service (APS) employee, or an ADF officer who does not hold command power, the inquiry action is to be referred to the ADF commander within the chain of command. Refer to [Australian Defence Force Publication 06.1.04—Administrative Inquiries Manual](#).
 - (2) **APS respondents.** The result of the QA is to determine whether the incident can be resolved informally and whether there has been a suspected breach of the APS Code of Conduct. Depending on the seriousness of the alleged behaviour, the commander or manager may determine that the matter can be managed at the unit/workplace level. Should the commander or manager determine that the matter cannot be resolved informally, the allegations against the respondent must be referred to the Code of Conduct delegate for determination. See the [Defence Workplace Relations Manual](#) (DWRM). The DWRM Code of Conduct chapter also identifies contact details for Code of Conduct delegates.
 - (3) **External service provider respondents.** Should the contract manager determine that the matter cannot be resolved informally, the contract manager must use the provisions in the contract to inform the employer of the respondent of the finding. The contract manager is to negotiate the outcome in relation to the respondent's further involvement with Defence under the relevant contract arrangements.

Keeping personnel informed

8. Throughout the complaint management process, commanders and managers must keep the parties to the complaint informed. Specific requirements are:

- a. **Consult complainant.** As soon as possible after the complaint is made, and if the commander or manager finds the behaviour to be unacceptable (informed by the QA) in accordance with this Instruction, discuss with the complainant the resolution options for the complaint. The complainant must not be coerced or pressured into seeking an informal resolution. If the complainant has identified a desired outcome(s) that is not possible, or when concluded it may not be possible to disclose to the complainant (eg complainant may seek a specific disciplinary action against the respondent), the commander or manager must inform the complainant why the desired outcome cannot be met and seek to moderate the complainant's expectation of the process. If the complainant does not wish the matter to be taken further, the commander or manager should take this into account, but is to make a decision based on the full range of considerations. The commander or manager is responsible for determining the means of resolution.
- b. **Inform complainant:**
 - (1) If the commander or manager determines the behaviour is not unacceptable, or there is insufficient evidence to substantiate the allegation, the complainant must be informed of the reasons for this finding and advised of their review rights (refer to [annex E](#)).
 - (2) If the behaviour is found to be unacceptable, the complainant is to be advised that their wishes for the outcome of the complaint will be taken into account, though this will be balanced by the commander or manager's other responsibilities and considerations in managing the complaint. The complainant must be advised that the respondent will be informed of the complaint, which will include as much information as is necessary to afford procedural fairness. This normally will include disclosure of the identity of the complainant. Commanders and managers are to assess any risk of victimisation or harm to the complainant and take appropriate action.
- c. **Inform respondent.** As soon as possible after a complaint is made, usually in the QA process, subject to any advice from a DIA, the respondent must be informed of the complaint. The respondent must be provided with as much information as is necessary to afford procedural fairness. This normally will include disclosure of the identity of the complainant. Should the 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 DIA or inquiry authority. The respondent must be given the opportunity to reply to the complaint, receive regular progress updates and be advised of the outcome of the inquiry.

Provide support

9. Commanders and managers must ensure that people affected by a complaint receive appropriate support. This can include complainants, respondents and witnesses to the alleged incident. The commander or manager must ensure that support is provided once they become aware of the complaint, and throughout the inquiry and resolution processes. A case officer may be appointed at the discretion of the commander or manager (or as directed by single-Service instruction) to assist the complainant and the respondent during the complaint management process. Refer to [annex C](#).

Finalisation

10. An unacceptable behaviour complaint is finalised either at the initial assessment stage when it has been deemed unsubstantiated, or otherwise when all inquiries are complete, formal or informal resolutions have concluded, and the final outcome report has been submitted (refer to [annex F](#)). Parties to the complaint must be informed the matter has been resolved and be informed of any review rights (refer to [annex E](#)). In the event that a review agency, either internal or external to Defence, requires access to the documents or requires a response to their inquiries, a complete record of the management of the complaint is to be maintained at the unit/work place and be available when required.