

RESOLUTION OF UNACCEPTABLE BEHAVIOUR

1. Incidents and complaints of unacceptable behaviour are to be resolved at the lowest appropriate level. This annex identifies the informal and formal resolution options available in the management of unacceptable behaviour. It also details the review avenues, both within Defence and external to Defence that may be available to complainants and respondents.

INFORMAL RESOLUTION OPTIONS

2. The objective of an informal approach is to resolve the matter with a minimum of conflict or distress for individuals. Informal resolution should be attempted, where practicable prior to making a complaint. Where informal resolution has not been possible or appropriate, or the complainant had a previous unsuccessful attempt at informal resolution prior to making a complaint, other avenues for resolution are to be pursued.

3. **Self-resolution.** Any person who believes they are being treated unacceptably may choose to speak directly with the person(s) demonstrating the unacceptable behaviour. Dealing directly with the person responsible, may result in the behaviour ceasing. For this approach to be successful, the information must be delivered to the respondent in a confidential, non-confrontational way with a view to resolving the issue in an informal low-key manner. A good technique to use is to focus on the behaviour being exhibited by the other party. The aim is to communicate exactly what behaviour is unacceptable and distressing. This lessens the likelihood that the other party will take the comments as a personal attack.

4. **Supported self-resolution.** Barriers may exist which interfere with the complainant's ability to communicate with the respondent. The complainant may fear retribution or lack confidence needed to have the conversation. The respondent may be of significantly different rank or position, or they may simply not have the organisational experience to carry it through. It can sometimes be helpful for the individuals to request the presence of a third party for support. The third party can be an Equity Adviser, colleague, supervisor, chaplain, friend or any other person with whom the individual feels comfortable. The third party attends to support the complainant or respondent but does not contribute to the process in any other way. The third party is not an advocate for the complainant.

5. **Apology.** The complainant may be satisfied if the respondent acknowledges the alleged unacceptable behaviour and apologises voluntarily (a respondent cannot be directed to apologise). If the complainant is satisfied with the apology and the commander or manager considers that the respondent is fully aware of the inappropriateness of the behaviour and will not continue the behaviour, then the matter can be finalised. However, the commander or manager may take further informal or formal action, regardless of the apology, depending on the seriousness of the alleged behaviour.

6. **Alternative Dispute Resolution (ADR).** Consistent with the Defence complaint handling principles, consideration is to be given to informal alternative dispute resolution processes. Refer to [Defence Instruction \(General\) \(DI\(G\)\) PERS 34-4—Use and Management of Alternative Dispute Resolution in Defence and the Alternative Resolutions](#) and Equity website. Commanders and managers are required to report that ADR has been considered in the initial report (refer to [annex F](#)). Where appropriate, the commander or manager may utilise mediation as a resolution option when self-resolution has not been possible. Different forms of ADR are available, including:

- a. **Mediation.** Mediation is a voluntary process where all parties have agreed to attend and cooperate in good faith to resolve the dispute. The mediation process is generally confidential unless otherwise agreed by the parties. A mediator who is external to the dispute assists the parties to discuss, negotiate and achieve a solution for themselves. All Defence registered mediators are trained by accredited organisations, qualified and registered under state or Commonwealth legislation, or by Defence. It is important that an accredited mediator is engaged in ADR processes as mediation by untrained personnel may do more damage and escalate the dispute.
- b. **Group facilitation.** A group facilitation conference provides a forum in which those in the workplace affected by a dispute can consider the conflict and its effects, and the best way forward to settle the dispute. Only qualified facilitators are able to conduct group facilitation in Defence.

7. **Counselling.** The commander or manager may determine that the complaint is best resolved by counselling the respondent on the reason the behaviour was unacceptable, and directing the respondent not to exhibit that behaviour again. This option may be appropriate, if after completing the inquiry and substantiating the complaint, the commander or manager determines that whilst the behaviour was unacceptable, it was not serious enough to merit formal administrative action or Australian Public Service (APS) Code of Conduct action.

8. **Individual and group development needs.** The complaint may best be resolved by a focused behavioural development program put in place for the respondent, complainant or the workplace. A development program may be instituted as the sole means of resolving the complaint, or in addition to other means. The program may involve:

- a. Individual training for the respondent to increase their awareness of what constitutes unacceptable behaviour, the ramifications of such behaviour, and the need to change behavioural patterns. Individuals should not be instructed to attend Equity Adviser training for this purpose.
- b. Interpersonal communication and skills-development training for complainants and respondents.
- c. Additional formal equity and diversity training for the whole workplace as part of the resolution of an unacceptable behaviour complaint.
- d. Conflict coaching is a voluntary, confidential, forward-focused process in which a trained conflict coach supports and assists the client to understand and improve the way they manage conflict or disputes. (This program is not limited to management of unacceptable behaviour.) The coach helps the client to identify their goals, explore different ways for reaching their goals, and develop practical methods for preventing unnecessary conflict, resolving disputes and generally enhancing their conflict management skills. Conflict coaching is not counselling or therapy and does not replace legal or medical services. Refer to the [Alternative Resolution and Equity website](#).

9. At the conclusion of the informal resolution, the commander or manager must determine whether this approach option has successfully resolved the complaint. If the complaint has not been resolved to the satisfaction of the commander or manager, other resolution options, either informal or formal must be pursued. For example, a complainant may have attempted supported self-resolution and an apology may have been forthcoming. However the commander or manager may deem that the apology is insincere and the unacceptable behaviour has not been remedied.

FORMAL RESOLUTION

10. **Australian Defence Force (ADF) disciplinary action.** Where a commander or manager becomes aware that an alleged act of unacceptable behaviour may also constitute a Service offence they should refer to [DI\(G\) ADMIN 45-2—Reporting and Investigation of Alleged Offences in the Australian Defence Organisation](#). If the matter constitutes a 'notifiable incident' in accordance with the reference, it must be reported to a Defence Investigative Authority (DIA) without delay.

11. **Administrative sanction.** Following an inquiry by the appropriate authority (refer to [annex D](#)) where the respondent's behaviour is considered to constitute unacceptable behaviour, consideration is to be given to imposing an administrative sanction. If administrative action is taken after disciplinary action has been taken for the same incident, the purpose of the administrative action must not be to punish. The purpose of administrative action is to reinforce high standards of behaviour and performance. Administrative sanctions may vary in significance and impact depending on the nature of the unacceptable behaviour, and the respondent's appointment and/or duties. It must be appropriate and proportional to the form of unacceptable behaviour. Administrative sanction is usually imposed when the conduct or performance of a person is below the standard expected and is not in the interest of Defence.

12. In most circumstances, administrative sanctions against respondents should not be taken until all disciplinary action is finalised. However, circumstances may be such as to require action of an administrative nature to be initiated, for example relocation from the workplace, reassignment of duties, or in significant cases administrative action leading to termination or suspension of employment. If there is an ongoing prosecution or DIA/civilian police investigation, termination or suspension of employment should not be finalised until the relevant authorities have been consulted:

- a. **Sanctions for ADF members.** The policy and procedures for imposing a formal warning or censure on an ADF member are detailed in [DI\(G\) PERS 35-6—Formal Warnings and Censures in the Australian Defence Force](#). The reference also identifies other forms of administrative sanction available to ADF authorities. In accordance with relevant single-Service instructions, an ADF member may be required to show cause as to why their service in the ADF should not be terminated. An administrative sanction imposed in respect to an unacceptable behaviour complaint is to be reported in accordance with [annex F](#).
- b. **Sanctions for APS employees.** Sanctions are only imposed when the APS Code of Conduct Delegate has determined that an employee's behaviour has breached the APS Code of Conduct. Previous findings of a code of conduct breach may be considered, where relevant, in determining a sanction for a subsequent breach. This outcome is to be reported in accordance with [annex F](#).

REVIEW PROCESSES

Australian Defence Force members

13. Should an ADF member be dissatisfied with the outcome or handling of a complaint, they may request, through their commander or manager, a reconsideration of the decision(s), or the provision of a Statement of Reasons for their decision. The Redress of Grievance (ROG) process is also available to seek review. Time limits apply to the period under which a review may be sought. Further information about ROGs is contained in [DI\(G\) PERS 34-1—Redress of Grievance—Tri-Service procedures](#) and the [Complaint Resolution website](#).

14. **Inspector-General ADF (IGADF).** The role of IGADF is to provide internal audit and review of the military justice system independent of the ordinary chain of command. IGADF provides an avenue by which any failure of military justice may be examined and uncovered. This avenue does not displace the complaint or review processes detailed in this Instruction. Refer to the [IGADF website](#).

Defence employees

15. Should a non-Senior Executive Service (SES) Defence APS employee be dissatisfied with the outcome or handling of a complaint of unacceptable behaviour, they may seek review through the established APS complaint process, Review of Actions. Notwithstanding the complaint management process outlined in this Instruction, a Review of Actions may be sought at any time. Time limits apply to the period under which a review may be conducted. Refer to the Review of Actions chapter in the [Defence Workplace Relations Manual](#) and the [Complaint Resolution website](#).

Complaint to an external agency

16. A complaint may be submitted to an external agency in addition to, in lieu of, or subsequent to a complaint submitted within Defence. It is usual practice for external agencies to require Defence personnel to have pursued the complaint with Defence in the first instance. If a complaint is lodged with an external agency, commanders and managers are to provide support mechanisms as appropriate to the complainant and/or respondent. Commanders and managers might not be informed of the outcome of an external review. Individuals have the right to access such agencies as:

- a. **Defence Force Ombudsman (DFO).** The DFO may accept complaints from ADF members for investigation if satisfied that special circumstances exist. Guidance for lodging a complaint can be found in [DI\(G\) PERS 34-3—Inquiries and investigations by the Commonwealth Ombudsman and the Defence Force Ombudsman](#).
- b. **Merit Protection Commissioner.** A non-SES employee who is dissatisfied with the outcome of the Review of Actions (refer to [paragraph 15.](#)), may apply to the Merit Protection Commissioner for a secondary review.
- c. **Australian Human Rights Commission (AHRC).** In some circumstances, individuals may refer their complaint to AHRC (formerly the Human Rights and Equal Opportunity Commission). Directions on managing a complaint with AHRC can be found in [DI\(G\) PERS 34-2—Complaints of discrimination and harassment through the Australian Human Rights Commission](#).