

MANAGEMENT AND REPORTING OF UNACCEPTABLE BEHAVIOUR

INTRODUCTION

1. All Defence personnel have a responsibility to foster an equitable, fair and safe workplace environment free from all forms of unacceptable behaviour. The *Occupational Health and Safety Act 1991* (OHS Act) has a preventative focus that operates to require Defence to take all reasonably practicable steps to protect the health and safety of employees and external service providers in the workplace. The Defence Values, single-Service Values, Australian Public Service (APS) Values and the APS Code of Conduct collectively set out the behaviour expected of all Defence personnel.

POLICY STATEMENT

2. Unacceptable behaviour in the workplace is not condoned, and neither is the mismanagement or disregard of complaints. Defence is committed to ensuring that incidents of unacceptable behaviour are dealt with appropriately.

SCOPE

3. This Instruction applies to:
- all Defence personnel;
 - to external service providers who, under the conditions of contract with Defence, are required to comply with this Instruction; and
 - foreign military members serving with the Australian Defence Force (ADF) (subject to [paragraph 10.](#)).
4. This Instruction does not apply to Australian Navy Cadets, Australian Army Cadets and Australian Air Force Cadets and non-ADF cadet staff and instructors.
5. This Instruction sets out:
- Defence's policy on unacceptable behaviour in the workplace; and
 - the required procedures and practices for the management, resolution and reporting of unacceptable behaviour complaints.

DEFINITIONS

6. The definitions which apply to this Instruction are in [annex A](#). The categories and definitions of unacceptable behaviour are in [annex B](#).

STRUCTURE

7. This Instruction is divided into three parts:
- Part one identifies the roles, responsibilities and rights of Defence personnel in relation to unacceptable behaviour incidents and complaints.
 - Part two identifies how to make a complaint, who manages a complaint, the process for complaint management, the resolution options and review avenues.
 - Part three details the requirements and frequency of reporting, and the requirements for information management.

LEGAL CONTEXT

8. Defence is obliged to comply with the *Racial Discrimination Act 1975*, *Defence Force Discipline Act 1982* (DFDA), *Sex Discrimination Act 1984*, *Human Rights and Equal Opportunity Commission Act 1986*, *Privacy Act 1988* (Privacy Act), *OHS Act*, *Disability Discrimination Act 1992*, *Public Service Act 1999* (PS Act), and the *Age Discrimination Act 2004*.

9. For members of the ADF (ADF members) this Instruction constitutes a lawful order from the Chief of the Defence Force. This Instruction also constitutes a lawful and reasonable direction from the Secretary for the purposes of [subsection 13\(5\)](#) of the PS Act to Defence APS employees. This Instruction applies to external service providers who, under the conditions of contract with Defence, are required to comply with this Instruction.

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

11. This Instruction does not apply to sexual offences or other criminal offences, for example, assault or threats of violence. Refer to either [Defence Instruction \(General\) \(DI\(G\)\) PERS 35-4—Management and Reporting of Sexual Offences](#) or [DI\(G\) ADMIN 45-2—Reporting and Investigation of Alleged Offences within the Australian Defence Organisation](#) as appropriate. In the event that a complaint is initially referred for management under the above mentioned references, and the appropriate authorities determine that no action will be taken, the matter may in appropriate circumstances be managed under this Instruction.

PART ONE—ROLES, RIGHTS AND RESPONSIBILITIES

Introduction

12. Everyone in Defence is required to be treated with respect, fairness and without harassment. Values underpin relationships and behaviour. Values-based behaviour in Defence requires everyone to accept personal responsibility and accountability for their actions and to think clearly about the consequences of their actions for Defence.

All Defence personnel

13. Defence personnel have a responsibility to take all reasonably practicable steps to protect the health and safety of themselves and others in the workplace. Consistent with this requirement, all Defence personnel must:

- a. behave in a way that upholds the Defence Values, and in addition ADF members must comply with the Navy, Army or Air Force Values (as appropriate) and the [DFDA](#), or for APS employees, the APS Values and Code of Conduct;
- b. question colleagues whose behaviour toward themselves or others they perceive, or they believe may be perceived to be unacceptable;
- c. promptly report to their supervisor, commander or manager (as appropriate), incidents of unacceptable behaviour that are beyond their ability or authority to manage;
- d. monitor their own behaviour and attitude to minimise causing offence; and
- e. be cognisant of equity and diversity principles and complete the mandatory equity and diversity training.

Defence personnel found to have engaged in, contributed to, ignored, assisted, or personally encouraged unacceptable behaviour may be held personally responsible.

Supervisors

14. Maintaining acceptable behaviour and effective relationships in the workplace is a primary leadership responsibility. Supervisors at all levels must act on all unacceptable behaviour in the workplace. In deciding how to proceed, supervisors are strongly encouraged to seek support and advice from their chain of command, line of management and the advice services in place ([paragraph 32.](#)). Supervisors will be accountable for:

- a. monitoring the workplace and the health and safety of all personnel under their control/command/supervision (refer to *Defence Safety Manual (SAFETYMAN)*, [volume 1](#)—‘General’;
- b. taking all reasonably practicable action to prevent unacceptable behaviour in the workplace;
- c. responding promptly, seriously, with fairness and sensitivity to allegations of unacceptable behaviour;
- d. reporting any complaint of unacceptable behaviour to their commander or manager; and
- e. ensuring that all Defence personnel within their supervisory line of responsibility, complete the mandatory equity and diversity awareness training annually and that the training is recorded in PMKeyS.

Commanders and managers

15. Commanders and managers have additional responsibilities to the supervisory responsibilities above. Commanders and managers must also:

- a. manage and report all unacceptable behaviour complaints promptly and impartially in accordance with this Instruction;
- b. ensure that external service providers (as required at [paragraph 17.](#)) complete equity and diversity training;
- c. maintain and promote their local Equity Adviser Network (including Equity Advisers and the Defence Equity Advice Line) as detailed in [DI\(G\) PERS 35–7—Defence Equity Adviser Network](#); and
- d. make reasonable efforts to ensure that both the complainant and the respondent are treated fairly, without victimisation or disadvantage.

External service providers

16. Defence service contracts as they are renewed or issued must require the contractor, its officers, employees, agents and subcontractors to comply with this Instruction. The standard of behaviour required of external service providers is as identified in [paragraph 13](#). External service providers who have a supervisory role over Defence personnel must comply with the requirements of supervisors in [paragraph 14](#). or if in a managerial role, must also comply with requirements of managers as detailed in [paragraph 15](#).

17. **Training.** The requirement to complete annual equity and diversity training is dependent on the level of interaction with the Defence workforce. External service providers that provide their service in a Defence workplace must complete annual training. Those external service providers who do not provide their service in a Defence workplace, or infrequently visit the Defence workplace, are not required to complete the training. Contract managers must exercise professional judgement in assessing the training requirement for external service providers with a high level of interaction with Defence personnel, but who either do not perform their service in, or infrequently visit the Defence workplace. Contract managers are responsible for providing access to the training and for ensuring the external service provider has met this requirement.

18. A complaint of unacceptable behaviour against an external service provider that is not resolved informally must be managed in accordance with the Resolution of Disputes clause in the contract. Any subsequent action against the individual arising from the dispute resolution is the responsibility of the external service provider employer.

Complainants and respondents

19. During the management of an unacceptable behaviour complaint both the **complainant and respondent** will:

- a. have reasonable access to appropriate support services, as detailed in [annex C](#);
- b. be afforded procedural fairness in the management of a complaint;
- c. receive protection from victimisation, or other unfair disadvantage as a result of an unacceptable behaviour complaint;
- d. receive protection of their personal information in accordance with the [Privacy Act](#); and
- e. be informed of the progress of the complaint, including the resolution and their rights to review.

20. The **complainant** can expect:

- a. their complaint will be viewed seriously and dealt with as promptly as possible, and
- b. their wishes will be considered in determining how a complaint is to be resolved.

21. The **complainant** has a responsibility to:

- a. where practicable, attempt self-resolution at the lowest appropriate level in the circumstances (refer to [annex E](#)); and
- b. if they make a complaint, to state clearly they have an unacceptable behaviour complaint, and provide a full, fair and honest account of the incident(s), include any supporting information and identify the outcome they seek to achieve.

22. The **respondent** will not be assumed guilty because a complaint has been made against them.

PART TWO—UNACCEPTABLE BEHAVIOUR COMPLAINTS

23. A complaint of unacceptable behaviour can be made either in writing or verbally. There is no distinction between a formal or informal complaint. A complaint that includes a complainant's wish that no action be taken, is a complaint. The complainant's desire for 'no action' should be given appropriate weight by the commander or manager when determining the optimal method for resolving the matter.

24. A complaint should be made in the first instance to the complainant's or the respondent's commander or manager. If that is not possible or appropriate in all the circumstances, for example there is a perceived conflict, the complaint is to be made to the next higher level in the chain of command or reporting line. Refer to [annex D](#) for detail on who manages a complaint of unacceptable behaviour. A complaint must:

- a. clearly state it is an unacceptable behaviour complaint and, if in writing, contain a marking of 'STAFF-IN-CONFIDENCE';
- b. provide a brief, clear description of the incident(s), including the details of what happened, when it happened, where it happened and who was involved in the incident, including witnesses;
- c. identify any steps taken by the complainant to seek resolution, and the outcome of such steps; and
- d. identify the complainant's desired outcome.

25. **Management initiated complaint.** An incident of alleged unacceptable behaviour reported by a third party to a commander or manager may be managed as a complaint. Similarly, a commander or manager may determine that an incident, or series of incidents, should be addressed as a complaint of unacceptable behaviour even though an affected party has not made a complaint.

26. The Defence Whistleblower Scheme is an alternative and independent means to report alleged misconduct or unethical behaviour involving: a member of the ADF, a Defence APS employee, or a supplier of goods or services to Defence. Defence personnel who believe that they may require protection and anonymity in relation to their complaint should refer to [DI\(G\) PERS 45–5—Defence Whistleblower Scheme](#).

Vexatious and malicious complaints

27. A vexatious or malicious complaint may be a form of harassment, itself requiring management in accordance with this Instruction. Such complaints can have a detrimental effect on personnel, morale, workplace relationships and the wellbeing of all people involved. Each complaint is to be assessed on its merits.

Management of unacceptable behaviour complaints

28. A commander or manager must act on all unacceptable behaviour complaints brought to their attention in a prompt, fair and impartial manner. [Annex D](#) identifies who must manage a complaint, and the process for managing unacceptable behaviour complaints.

Resolution of unacceptable behaviour complaints

29. Decisions about whether a person has engaged in unacceptable behaviour are decisions which may adversely affect a person's interests, rights or reputation. Any such decision must only be made after persons affected have been afforded procedural fairness. Good decision-making, which both promotes fairness and which is capable of withstanding later scrutiny, is best shown by the decision-maker documenting in detail what steps have been followed through the complaint management process. Instruction on procedural fairness and administrative decision making is set out in [Australian Defence Force Publication \(ADFP\) 06.1.3—Guide to Administrative Decision-Making](#) and the *Decision-makers Handbook: Making personnel-related decisions for ADF members and APS employees* which is available on the [Pay and Conditions website](#).

30. Any measures aimed at resolution must include reasonable steps to ensure there is no repetition of the behaviour or victimisation of either party. This may require consideration of administrative and/or disciplinary action. Regular follow-up action may be necessary to ensure that the behaviour has not been repeated and/or victimisation has not resulted. If the commander or manager becomes aware of recurrence or victimisation, prompt preventative action is required.

31. Resolution of the complaint means that decisions have been made, appropriate action has been taken and the complaint has been dealt with effectively and with all due sensitivity to the needs of the parties. Resolution of complaints does not necessarily mean that either the complainant or respondent is satisfied with the result. There are a number of ways in which resolution can be achieved, including informal and formal options. When considering the most appropriate resolution process, regard must be given to the policy to resolve complaints at the lowest appropriate level. [Annex E](#) details the informal and formal resolution options, and identifies the review avenues both within Defence and external to Defence, that may be available to complainants and respondents.

Unacceptable behaviour complaint advice

32. At any time in the complaint management process, commanders or managers may seek advice or guidance from:

- a. the Fairness and Resolution Centre in the region—refer to the contact list on the [Alternative Resolutions and Equity website](#);
- b. an equity adviser, but not an equity adviser who has, or is providing advice to either the complainant or respondent, (refer to [DI\(G\) PERS 35–7](#));
- c. a Senior Equity Adviser within a unit or establishment;

- d. Group human resource manager; or
- e. references, tools, supporting information and contacts provided on the [Fairness and Resolution \(FR\) website](#).

PART THREE—REPORTING AND INFORMATION MANAGEMENT

Reporting

33. Complaints involving unacceptable behaviour may require reporting to several Defence agencies depending on the nature of the complaint. All complaints of unacceptable behaviour that involve Defence personnel or external service providers must be reported to FR irrespective of the outcome. [Annex F](#) details reporting requirements to FR, reports to Occupational Health and Safety Branch and notification to Comcare, and other Defence reporting requirements.

Incidents of interest to the media

34. Unacceptable behaviour incidents that are likely to attract press comment or cause adverse publicity towards Defence must be reported in accordance with current Defence requirements. For guidance on Ministerial Briefs and Hot Issues Briefs, refer to [Ministerial Support and Public Affairs Division website](#). Personnel must also be cognisant of the requirements in [DI\(G\) ADMIN 08-1—Public comment and dissemination of official information by Defence personnel](#) and [DI\(G\) ADMIN 45-2](#).

Confidentiality

35. Complainants and respondents may need advice and support before they feel that they are able to report or deal with an unacceptable behaviour incident. Complainants and other parties may confidentially discuss their complaint or matters related to the complaint with a support person, such as a colleague. Complaints are not to be discussed openly in the workplace. A discussion with a commander or manager is not confidential. Defence personnel in a supervisory capacity to the complainant or the respondent are obliged to act on the incident. Additionally there may be an obligation to report notifiable incidents under [DI\(G\) ADMIN 45-2](#).

36. Communications with equity advisers will be regarded as confidential except where the communication reveals a criminal or [DFDA](#) offence, a threat to life, health or national security. Confidential discussions will not constitute making a complaint. Refer to [DI\(G\) PERS 35-7](#).

37. Confidentiality is also provided by Defence personnel acting in their professional capacity as a medical practitioner, allied health professional, psychologist, social worker, legal officer, counsellor or chaplain. Communications made in these contexts will not constitute making a complaint. All records of such communications are to be marked 'XXX-IN-CONFIDENCE' as appropriate and treated accordingly.

Privacy—protection of personal information

38. Defence has an obligation to collect information in relation to management and reporting of unacceptable behaviour incidents and report it to the chain of command or line management and to FR. Defence personnel responsible for handling unacceptable behaviour complaints must comply with the Privacy Principles contained in the [Privacy Act](#).

39. **Security of records.** As a minimum, complaints of unacceptable behaviour must be marked and handled as STAFF-IN-CONFIDENCE. Reasonable steps must be taken to safeguard the information against loss, unauthorised access or use, modification, disclosure and other misuse. This may include assigning access privileges to documents on the Defence Records Management System, storage in locked cabinets, de-identifying information conveyed by email, strictly limiting access and distribution of information to those with a role in the complaint process, and then only that information which is relevant to their role. For current guidance on privacy, refer to the [Defence privacy website](#).

Release of records

40. The respondent and complainant must be informed of the commander or manager's determination in relation to the complaint and the reasons for that decision. At this point, a commander or manager may release the report, or part of it, containing only those aspects of the report that relate to the individual concerned with appropriate privacy deletions (names and other information that could identify an individual deleted). For advice on privacy deletions, commanders and managers should contact Defence Legal Division, a base/command legal officer or FR. Additional considerations are:

- a. Inquiries under the Defence (Inquiry) Regulations. If an inquiry has been conducted under the Defence (Inquiry) Regulations 1985, particular rules apply to the use of personal information contained in the records of an inquiry. Further information on the use of inquiry records is contained in [ADFP 06.1.4—Administrative Inquiries Manual](#). Advice should be sought before providing records of any such inquiry to another person.
- b. Release of records may be made subject to an undertaking that the information will only be used for a specified limited purpose and that it not be passed to third parties.
- c. Are there LEGAL–IN–CONFIDENCE records or do any records reflect legal advice provided under privilege? If so, the author of the advice should be consulted to determine whether the record should not be released or material deleted in order to avoid inadvertently waiving the Commonwealth's legal professional privilege in the advice.
- d. An applicant may seek access to the records under Freedom of Information provisions. Refer to [DI\(G\) ADMIN 27–1—Freedom of Information Act—Implementation in the Department of Defence](#).

41. Records of Code of Conduct inquiries are the responsibility of the appropriate delegate who must assess requests and determine any privacy or security deletions.

42. If the unacceptable behaviour complaint relates to a criminal offence under investigation by the civilian or the service police, the relevant police agency must be consulted prior to releasing the information.

Record-keeping

43. [Defence Records Management Policy Manual](#) (POLMAN 3) is to apply to all record-keeping. A unit case file must be created for each unacceptable behaviour complaint managed in a business unit. Case files as described in [POLMAN 3](#) use the file type 'Corporate file'. For example: File Type—Corporate File, Function: Personnel: Military Personnel, Case Type: Complaints. Files must be classified STAFF–IN–CONFIDENCE as a minimum. The file name must contain the case file number. The registry of case file numbers and corresponding names should be managed by the business unit. The file is to hold the complaint, the Quick Assessment (QA), the reports created in accordance with [annex F](#), and all other records created or received by the work unit in the management of the complaint. The file is to be retained by the workplace or business unit in accordance with [POLMAN 3](#).

44. [DI\(G\) ADMIN 10–8—Conduct Reporting and Tracking System](#) and [DI\(G\) ADMIN 65–1—Administrative Inquiry Tracking](#) reporting requirements apply where applicable.

45. When management of a complaint is transferred, copies of relevant documents on the file are to be provided to the gaining commander or manager. As a minimum this should include the complaint, the QA, decisions by the commander or manager and all reports produced in accordance with [annex F](#).

Fairness Resolution unacceptable behaviour records

46. FR records the information from complaints reported by commanders and managers on a database that records all reported unacceptable behaviour complaints and the outcomes. The name and personal details of Defence respondents who have had formal action taken against them as a result of unacceptable behaviour, as detailed on part two of [Form AC 875–3—Final Outcome Report—Unacceptable Behaviour or Sexual Offence](#) (available on the Defence Web Forms System) are recorded in this database. The database also records all sexual offence complaints and, if formal action has been taken, the details of the respondents in these cases. The database assists in the identification of repeat behaviour. Access to this database is restricted and controlled by FR.

47. The collection of unacceptable behaviour records is a government requirement following the Report of the Senate Standing Committee on Foreign Affairs, Defence and Trade on Sexual Harassment in the Australian Defence Force (1994). The information stored on the database is protected as required by the [Privacy Act](#). The information may be taken into account by the relevant Service for career management and posting decisions. The information is also used for compiling ministerial briefings and in aggregate form for analysing statistical trends.

CONCLUSION

48. All Defence personnel have a role in preventing or resolving unacceptable behaviour. Incidents of unacceptable behaviour must be resolved in an appropriate and timely manner. When an incident results in a complaint of unacceptable behaviour, the complaint must be managed promptly, seriously, with fairness and sensitivity in accordance with this Instruction. A flow chart to the management and reporting of unacceptable behaviour complaints is provided in [annex G](#) whilst [annex H](#) provides a checklist for the management and reporting of unacceptable behaviour complaints.

49. Related legislation, instructions, policy, publications and websites that have been referenced in this Instruction are listed with appropriate links in [annex I](#).

Annexes:

- A. [Definitions](#)
- B. [Definitions and categories of unacceptable behaviour](#)
- C. [Defence funded support options for unacceptable behaviour management](#)
- D. [Management of unacceptable behaviour complaints](#)
- E. [Resolution of unacceptable behaviour](#)
- F. [Unacceptable Behaviour Reports](#)
- G. [Flow chart to management and reporting of unacceptable behaviour complaints](#)
- H. [Checklist for management and reporting of unacceptable behaviour complaints](#)
- I. [Related legislation, instructions, policy, publications and websites](#)

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