

SIGNIFICANT CHANGES TO REVISED DI(G) PERS 35-3

1. Outlined below are the significant changes from the extant policy document. Several of the changes have been made to address recommendations from the following inquiries/reviews:

- The inquiry into the effectiveness of Australia's military justice system (MJI)
- The inquiry into the learning culture in ADF schools and training establishments (LCI)
- Defence Force Ombudsman Own Motion Investigation into the Management of Unacceptable Behaviour Complaints (DFO)
- Comcare Investigations into Duty of Care Obligations under the Occupational Health and Safety Act 1991: Bullying in the Workplace (COMCARE)
- Comments received from the Australian Public Service Commissioner (APSC)

Reference in DI(G) PERS 35-3	CHANGE
Overall structure of instruction	- The revised draft has three parts in the main body (9 pages), plus nine annexes. Current instruction has 17 pages in the body plus six annexes.
Part 1 – Roles, Rights and Responsibilities	
Supervisors	Responsibilities identified, including to take all practicable action to prevent and eliminate unacceptable behaviour, and to respond promptly, seriously with fairness and sensitivity to allegations.
Commanders and managers	Responsibilities of supervisors, but with added responsibility to manage and report all unacceptable behaviour complaints.
External service providers (ESP)	- Defence service contract must require the contractor to comply with DI(G) PERS 35-3. - ESP in the Defence workplace must complete annual training. Contract manager discretion for others.
Complainants and respondents	Inserted specific rights and responsibilities (recommendation of DFO and MJI)
Part 2 – Unacceptable Behaviour Complaints	
How to Make an Unacceptable Behaviour Complaint	- The definition of a complaint (Annex A) has changed from the previous version. Previously, unacceptable behaviour that was observed or detected was to be managed as a complaint. Observed and detected unacceptable behaviour is to be managed as it occurs, at the lowest appropriate level. The intent is to resolve the incident so that it does not become a complaint. - Complainants should try to resolve incidents at the lowest appropriate level – try self resolution, before making a complaint. - If the aggrieved person wishes to make a complaint, they are to say it is a complaint (written or verbal). Then the complaint process commences.

	<ul style="list-style-type: none"> - Inserted alternative complaint options, including the Whistleblower scheme and APS Review of Actions. (Recommendations of APSC, MJI and DFO)
Complaint management process (including Annex D)	<p>Annex D is the complaint management process. Generally management remains with the respondent's manager. Greater clarity has been provided on how to determine the respondent's manager and identify when exceptions apply.</p> <ul style="list-style-type: none"> - Provision to transfer management of a complaint. - Requirement to exchange information between commanders/ managers when more than one workplace is involved. - A Quick Assessment in accordance with DI(G) ADMIN 67-2 must be conducted. - Decisions are to be made and recorded. - Greater clarity on further inquiries depending on the employment of the respondent. - Emphasis on procedural fairness to complainant and respondent. - Closure does not occur until inquiries and actions have been finalised and parties informed.
Resolution (including Annex E)	Identifies informal and formal options, plus the review avenues.
Part 3 – Reporting	
Record-keeping	Inserted requirement to create a unit file and keep records.
Release of records	Greater clarity in relation to access/release of records.
Initial reporting	Initial report to be made after QA and within 7 days. (Recommendation of DFO)
OHSC & Comcare notification	New requirement to report actual or potential injury/death/incapacity to OHSC and Comcare (Requirement arising from COMCARE investigations).
Progress reporting	<ul style="list-style-type: none"> - Reports to be provided on occurrence when milestones are reached, or no later than three months. Previously required every month. - Transfer of management of complaint to be reported.
Annex B – Unacceptable Behaviour Definitions and Categories	
Legitimate action that is not workplace bullying	Incorporates the distinction between bullying and tough training for ADF. (Recommendation from LCI)
Conflict of interest and inappropriate workplace relationships	<ul style="list-style-type: none"> - Conflict of interest considerations in any work/personal relationship. - Prohibition on relationships between staff and trainees at ADF schools/trg institutions. - Prohibition on relationships between students on initial training (3 months). (Recommendation from LCI and the directives from COSC)