

## **I have received a complaint – What do I need to know?**

Defence's policy on the management and reporting of unacceptable behaviour is Defence Instruction (General) Personnel 35-3 (the instruction). [http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35\\_03.PDF](http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_03.PDF) Other information and guidance is available on the Fairness and Resolution (FR) website <http://intranet.defence.gov.au/fr>

This document provides background information and advice to commanders and managers who are responsible for the management and reporting of unacceptable behaviour. The subjects covered are:

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### **What is unacceptable behaviour?**

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.

Annex B of the instruction further categorises unacceptable behaviour as:

- harassment;
- workplace bullying;
- sexual harassment;
- discrimination;
- abuse of power; and
- inappropriate workplace relationships and conflict of interest.

Each of these categories is defined in the annex and examples provided.

Note that sexual offences and acts or threats of violence are not managed as unacceptable behaviour. Sexual offences are managed in accordance with DI(G) PERS 35-4 *Sexual Offences* and acts, or threats of violence are discipline related matters to be addressed under the *Defence Force Discipline Act 1982* or the APS Code of Conduct.

### **Why is unacceptable behaviour an issue for Defence?**

There are many reasons for Defence's strong commitment to managing and reporting unacceptable behaviour, and the zero tolerance of unacceptable behaviour and mismanagement or disregard of complaints. The most significant factors are:

- Everyone in Defence is required to be treated with respect, fairness and without harassment. All Defence personnel have a responsibility to foster an equitable, fair and safe workplace environment free from all forms of unacceptable behaviour.
- Defence can only achieve its mission of defending Australia and its national interests, and supporting our troops on the ground and in operations, if we are all working together in a productive and constructive way, consistent with the Defence, single service and APS values and APS code of conduct.
- Breakdown of team cohesion and workforce capability results in considerable direct and indirect costs, such as high levels of absenteeism, staff turnover and associated recruitment and training costs, counselling, compensation, and re-direction of staff effort away from core work priorities.
- Unacceptable behaviour in the workplace can be the result of a culture and environment that permits such behaviours to occur. It can be a product of poor people management skills and lack of leadership. All incidents of unacceptable behaviour must be acted on, and complaints managed in order to uncover and address poor cultural practices and poor leadership.
- Incidents of unacceptable behaviour, and poor management of unacceptable behaviour complaints, have the potential to lead to negative media attention which undermines Defence's reputation as an employer. Disaffected personnel may also discourage other people from pursuing jobs/ careers with the ADF or Defence APS.

### **What are my responsibilities?**

The instruction identifies the responsibilities of supervisors, and commanders and managers. In summary, **supervisors** must:

- monitor the workplace and the health and safety of all personnel under their control/command/supervision;
- take all practicable action to prevent and eliminate unacceptable behaviour in the workplace;
- respond promptly, seriously, with fairness and sensitivity to allegations of unacceptable behaviour;
- ensure 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 Personnel Management Key Solution (PMKeyS);

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

- manage and report all unacceptable behaviour complaints promptly and impartially in accordance with the Instruction;
- ensure that external service providers (as required at paragraph 17 of the Instruction) complete equity and diversity training;
- 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
- make reasonable efforts to ensure that complainants and respondents are treated fairly, without victimisation or disadvantage.

### **What is the difference between a complaint and an incident that is being managed in the workplace?**

An incident of unacceptable behaviour can and should be resolved in the workplace at the lowest appropriate level. Incidents of unacceptable behaviour should not be allowed to pass without the individual affected, a colleague or supervisor addressing the behaviour at the time.

All Defence personnel have a responsibility to promptly report incidents of unacceptable behaviour that are beyond their ability or authority to manage, to the appropriate management area for resolution.

An incident of unacceptable behaviour can be managed and resolved informally, unless the incident is of such seriousness that formal action may be warranted. If it is serious, yet the complainant (or subject of the unacceptable behaviour) has not made a complaint, the matter can be dealt with as a management initiated complaint.

An incident managed informally does not require a QA to be conducted, or the incident to be reported as is required for the complaint management process.

Any person may at any time make a complaint about unacceptable behaviour by a Defence person or contractor and this must be managed in accordance with the instruction. A complaint could be made immediately following an incident without any attempt at informal resolution, or a complaint could be made after the workplace has attempted to resolve the matter when the complainant is dissatisfied with the outcome.

A complaint can be verbal or written, and it can be made to either the complainant's commander or manager, or the respondent's commander or manager.

The complainant must make it clear that they are making a complaint, for example use the words, "I want to make a complaint about x", or 'consider this as a complaint'. Information required of the complainant will include the details of the incident(s), any steps taken to attempt resolution, and their desired outcome.

**Example:** The following example with scenarios illustrates the difference between an incident and a complaint.

Simmo has been observed giving a new comer, Fred a hard time. Fred is a mature age new ADF member and Simmo is constantly taunting him about his age and implies he's not up to the job because he's too old.

Scenario 1: The supervisor steps in, pulls Simmo aside and gives him counselling about why the behaviour is not acceptable. The supervisor consults Fred to make sure he understands the behaviour is not acceptable in Defence and provides a few tips about how to respond to the behaviour in future.

Incident resolved informally – no complaint.

Scenario 2: Fred goes to see his supervisor about Simmo's behaviour. He says 'I've told him to shut it, but he keeps going on. I've had a gutful can you do something'

The supervisor pulls in Simmo and asks him to explain himself, he admits to the 'joke'. There are stern words and Simmo is warned not to do it again. Simmo apologises. The supervisor tells Fred that he has counselled Simmo, but if it continues he'll take it further.

Incident resolved informally – no complaint.

Scenario 3: Fred goes to see his supervisor and says: 'I've told him to shut it, but he keeps going. He just doesn't get it. I don't have to put up with it, I want to make a complaint' (or words to that clear effect).

The supervisor advises the commander or manager (as appropriate), and it is managed as a complaint.

## **Who manages a complaint of unacceptable behaviour?**

Usually it will be the respondent's commander or manager who must manage the complaint. Most complaints arise from incidents where the complainant and respondent are in the same workplace and chain of command/reporting line. Annex D of the instruction details exceptions such as when a bias, or perception of bias exists, or when there are multiple respondents. The annex also identifies communication requirements between commanders and managers when a complaint involves personnel from different workplaces.

## **What must I do to manage a complaint?**

The complaint management process is detailed in Annex D of the instruction. A flow chart and checklist are also provided at Annexes G and H respectively.

The first step is to conduct a Quick Assessment (QA). The QA will establish the known facts and recommend a course of action. As the commander or manager you will then make decisions based on the QA. The decision options are:

- No further action. You might determine that no further action is warranted under the circumstances, eg there is insufficient information or evidence to warrant inquiry or informal resolution, the complaint is trivial, vexatious or withdrawn. This will result in the closure of the complaint.
- Informal resolution. You might determine that the matter may be resolved informally. Often the parties are satisfied with this. Sometimes the complainant is not satisfied, for example they may desire an apology but it is not forthcoming or it may be a reserved or qualified apology. However if you are satisfied that the behaviour has been addressed, and the informal resolution has been conducted, the complaint may be closed. Alternatively if the informal resolution has been conducted, but you are not satisfied the behaviour has been addressed, you may seek another form of resolution. The complaint is not closed until you are satisfied the resolution has been achieved.
- Conduct further inquiries. The QA is not an investigation and is not to be used as the basis for adverse findings. If you determine that further inquiries are required, the appropriate authority is advised and the relevant administrative process is commenced. For a complaint against an ADF respondent, it may be an inquiry under the Defence (Inquiry) Regulations. A complaint against an APS employee that is of such seriousness that it cannot be resolved informally is to be referred to the Code of Conduct delegate. An external service provider respondent will have their further involvement with Defence managed under the relevant contract arrangements. A complaint that results in further inquiries may take some time to conclude. The complaint will remain open until the inquiry is complete and decisions related to the inquiry are made.

## What are the lessons learned from previous complaint management?

- Be prepared and follow the process. Understand the complaint process, seek and consider professional advice as appropriate. Act on a complaint as soon as it is received.
- Provide support to complainants and respondents. Support is required both for personal wellbeing as well as support through the process. Consider appointing a case officer who will be responsible for advising the parties about the progress of a complaint and what can be expected.
- Manage process expectations. Sometimes a complainant will expect the complaint process to vindicate their complaint. There is often an expectation that the QA is an investigation that will make a finding to support their allegations. If the complaint is to be resolved informally, it is strongly advised that the parties are counselled about the importance of acknowledging what has occurred in the past, avoiding the attribution of blame and working toward a values based workplace where people are treated with respect, fairness and without harassment. Language such as the complaint has or has not been substantiated should not be used when an informal resolution is pursued.
- Manage outcome expectations. Dissatisfaction with complaint management can arise when complainants have an unrealistic expectation of the outcome of making a complaint. To this end, a complainant needs to be aware of the process involved, the time that it can take and the potential outcomes. Complainants are asked to identify the outcome they seek from a complaint. If it is not feasible, or highly unlikely, they should inform them at the earliest opportunity to avert unrealistic expectations.
- Communicate with complainants and respondents. In the past, both complainants and respondents have been concerned about the time it takes for a complaint to be managed. If the complaint is being managed over a period exceeding a month, make a point of providing feedback on progress. All parties need to be aware of the time it can take for a complaint to be resolved. Recent statistics on time taken for complaints to be closed are set out below. When considering these timeframes, firstly appreciate that about two-thirds of all complaints reported to FR are resolved informally.
  - 25% of all complaints were resolved within one month (these will have been resolved informally)
  - A further 52% of all complaints were resolved between 1-3 months (ie 77% resolved within 3 months)
  - 15% of all complaints were resolved within 3-6 months (these will have been formal resolutions)
  - The balance of 8% took more than 6 months.

## **Where can I get advice?**

- the Fairness and Resolution Centre in your region – refer to the contact list on the Fairness and Resolution website;
- 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 Defence Equity Adviser Network);
- a Senior Equity Adviser within a unit or establishment;
- Group HR manager; or
- references, tools, supporting information and contacts provided on the Fairness and Resolution (FR) website.