

A complaint has been made against me - What do I need to know?

If a complaint has been made against you, or a colleague or supervisor has spoken to you about perceived unacceptable behaviour, you should review Defence's policy on the management and reporting of unacceptable behaviour. This will help you to understand what unacceptable behaviour is, how complaints are to be managed and the resolution options available. The reference is Defence Instruction (General) Personnel 35-3 *Management and Reporting of Unacceptable Behaviour* (the instruction).

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 advice to those who are the subject of an unacceptable behaviour complaint. 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.

What is not unacceptable behaviour?

Occasional differences of opinion, expressed without recourse to foul language, abuse, belittling or humiliation, are not usually regarded as unacceptable behaviour.

Workplace counselling and management of poor performance, conducted in a manner that is neither humiliating nor threatening, is not regarded as unacceptable behaviour.

Legitimate or reasonable management directions, decisions, or actions such as transfers, postings, work or task requirements and recruitment selections are not unacceptable behaviour. More information on what is not unacceptable behaviour is included in Annex B to the instruction.

What are my rights and responsibilities?

Firstly consider the responsibilities of all Defence personnel in relation to unacceptable behaviour to:

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

Part one of the instruction identifies the roles, responsibilities and rights of all Defence parties in the management of unacceptable behaviour. Both you (the respondent) and the complainant have rights and responsibilities.

During the management of an unacceptable behaviour complaint both the

complainant and respondent have a right to:

- access appropriate support services, as detailed in Annex C of the instruction;
- procedural fairness¹ in the management of a complaint;
- protection from victimisation, or other unfair disadvantage as a result of an unacceptable behaviour complaint;
- protection of their personal information in accordance with the Privacy Act; and
- be informed of the progress of the complaint, including the resolution and their rights to review.

As the respondent, you will not be assumed guilty because a complaint has been made against you.

Where can I get advice?

There are a number of avenues for you to seek advice. They include:

- Equity Adviser. Discussions with equity advisers are confidential with some exceptions. Some workplaces publish names and contact details of local equity advisers which are displayed in places such as break-out areas. Alternatively, you can phone the Defence Service Centre on 1800 00 677 and ask for the contact details of some equity advisers in your area. The Fairness and Resolution Centres (FRC) also maintain a contact list of equity advisers in the regions. Contact details for the FRCs are found on the FR website. <http://intranet.defence.gov.au/fr/ARE/FRCs.htm>. The Defence Equity Advice Line on 1800 803 831 also provides confidential equity advice.
- Your supervisor. A supervisor has a responsibility to take all practicable action to prevent and eliminate unacceptable behaviour in the workplace, and to respond promptly, seriously, with fairness and sensitivity to allegations of unacceptable behaviour. You can discuss the complaint with your supervisor. Your supervisor can provide you information about the process and the policy or refer you to other professionals including equity advisers. A discussion with a supervisor is not confidential.

¹ **Procedural fairness** is the legal principle that provides the right to a fair hearing. For an explanation of the principle and rules of procedural fairness refer to ADFP 06.1.3 Guide to Administrative Decision Making or the Decision-makers Handbook: Making personnel related decisions for ADF members and APS employees which is available on the Pay and Conditions website.

- Seek advice from a counsellor or professional. Professional and confidential support services are available to ADF members and APS personnel. ADF members can access the support of medical and psychology professionals using existing processes. Chaplains are also a valuable avenue for discussing personal matters. APS personnel can access the Employee Assistance Program. Refer to Annex C of the instruction for details of support options.
- Access information and advice on the FR website <http://intranet.defence.gov.au/fr/default.htm>

What is involved in the management of a complaint?

Annex D of the instruction details who is responsible for managing a complaint and the complaint management process. Generally it is your (the respondent's) commander or manager who will manage the complaint.

The first step for the commander or manager is to conduct a Quick Assessment (QA). The QA is to establish the known facts and recommend a course of action. A QA is **not** an inquiry or an investigation. The commander or manager will then make decisions based on the QA. The decisions may be:

- No further action. The commander or manager may 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. The commander or manager may determine that the matter may be resolved informally. Often the parties are satisfied with this. If the commander or manager is satisfied that the behaviour has been addressed and the informal resolution has been conducted and the behaviour addressed, the complaint will be closed. However, if the informal resolution has been conducted, but the commander or manager is not satisfied the behaviour has been addressed, they may pursue another form of resolution. The complaint is not closed until the commander or manager is satisfied the resolution has been achieved.
- Conduct further inquiries. As the QA is not an investigation, it cannot be used as the basis for adverse findings. If the commander or manager determines 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. Complaints against an APS employee will 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.

How will I know what decisions are made and what is happening?

Throughout the complaint management process, commanders and managers are required to keep the parties to the complaint informed. A case officer may be appointed to do this, particularly in large units/workplaces. There is no distinct timeline for providing you with progress reports or updates, though you could expect that as changes occur or milestones are reached (eg mediation completed, inquiry report provided to delegate) you should be informed.

If the commander or manager determines the behaviour is not unacceptable, or there is insufficient information or evidence to warrant further inquiry or informal resolution, you are to be informed of the reasons for this finding and advised of your review rights.

An unacceptable behaviour complaint is finalised either at the initial assessment stage after the QA, or otherwise when all inquiries are complete, and formal or informal resolutions have concluded. Both you and the complainant are to be informed the matter has been resolved and advised of any review rights.

In the past, both complainants and respondents have been concerned about the time it takes for a complaint to be managed. It will be useful for you to be aware of the current benchmarks on time taken for complaint management. When considering these timeframes, firstly appreciate that in the past about two thirds of all complaints reported to FR have been 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.

What can I do if I'm not satisfied with the outcome?

If you are not satisfied with the outcome, the first step is to communicate this with the commander or manager. If you remain dissatisfied after being informed of the reasons for the decision(s) you may consider your review rights. Refer to Annex E of the instruction.

- An ADF member may submit a Redress of Grievance. The Inspector General ADF also provides an avenue by which any failure of military justice may be

examined.

- A non-SES APS employee may apply for a Review of Actions.
- External Service Providers do not have a right to review. They should address their grievance to the contract manager or to their employer.

A complaint may be submitted to an external agency (such as the Commonwealth or Defence Force Ombudsman, or the Australian Human Rights Commission) 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.