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Department of Defence

DEFENCE INSTRUCTIONS (GENERAL)

Interim instruction

PERS 35-4 *Management and Reporting of Sexual Offences*
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Complete Revision

Department of Defence
CANBERRA ACT 2600

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Cancellation

DI(G) PERS 35-4 ISSUE NO PERS B/6/2004 of 11 FEB 2004 is cancelled. This amendment no longer includes single-Service filing numbers.

Note

This amendment incorporates revised reporting action of alleged sexual offences and the cancellation of [Form AC 875-4—Record of Complainant's wish not to officially report a sexual offence to the police](#); and cancellation of previous annex B—'Flowchart for Managing Complaints of Sexual Offences; and withdrawal of the Sexual Offence Management Guide'.

MANAGEMENT AND REPORTING OF SEXUAL OFFENCES

INTRODUCTION

1. Sexual offences are criminal offences in all Australian States and Territories. They have a traumatic effect on all involved people, affecting the job performance and productivity of the complainant, respondent and witnesses. Sexual offences also have the potential to attract intense media interest and seriously affect the operational effectiveness and morale of the workplace.
2. All alleged sexual offences involving Australian Public Service (APS) employees, Australian Defence Force (ADF) members, and/or external service providers which occur in the Defence workplace, or which have any association to the Defence workplace (eg conferences, work related social gatherings etc) must be immediately reported to the Australian Defence Force Investigative Service (ADFIS), who will coordinate and determine the appropriate jurisdiction for the handling of the matter. In those cases where the alleged sexual offences cannot be prosecuted under the *Defence Force Discipline Act 1982* (DFDA) the alleged offence must still be reported to ADFIS. Reporting to ADFIS must not be delayed as a consequence of any Unit administrative action such as a Quick Assessment. ADFIS must take into account the range of jurisdictional and operational considerations and, where appropriate, report the alleged offence to civilian police regardless of the wishes of the complainant.
3. This policy supersedes Defence Instruction (General) (DI(G)) PERS 35-3—*Discrimination, Harassment, Sexual Offences, Fraternisation and other Unacceptable Behaviour in the Australian Defence Force* and Departmental Personnel Instruction (DPI) 3/99—*Preventing, Managing and Eliminating Discrimination, Harassment and Unacceptable Behaviour in the Department of Defence*. The revised *DI(G) PERS 35-3—Management and Reporting of Unacceptable Behaviour* provides the policy and direction for managing unacceptable behaviour incidents that involve Defence personnel and Defence contracted staff.

AIM

4. This Instruction states Defence's policy on, and provides direction for, the management and reporting of sexual offence allegations that involve Defence personnel and Defence contracted staff.

POLICY

5. All Defence personnel and Defence contracted staff are covered by a number of provisions of Commonwealth human rights legislation that are relevant to unacceptable behaviour. An overview of each of the relevant Acts, as they relate to unacceptable behaviour and sexual offences, is contained in *DI(G) PERS 50-1—Equity and Diversity in the Australian Defence Force*, *DPI 1/2001—Equity and Diversity in the Department of Defence* and the *Public Service Act 1999*, APS Values and Code of Conduct. More detailed information can be obtained from the specific legislation and Instructions themselves.
6. In this Instruction, the terms commanders and managers refer to all personnel who are responsible for managing or supervising people. It includes ADF personnel, Defence APS employees and Defence contracted staff at any level who have command or management responsibilities in the Defence workplace.
7. Commanders and managers are responsible and accountable for managing Defence personnel and Defence contracted staff in their workplaces. Encompassed in this, and as a fundamental element of leadership, commanders and managers are to take an active approach in preventing sexual offences and assisting sexual offence complainants. Every complaint of a sexual offence is to be taken seriously and acted upon immediately with appropriate sensitivity.
8. The focus of case management is on securing the safety and long-term welfare of the complainant, maintaining operational effectiveness, keeping proper records of the complaint and action taken, and providing fairness for the respondent. It is not unusual for a complaint to be made a long-time after an incident. Conclusions should not be drawn about the truthfulness of a delayed complaint.

9. In order for a complainant to recover from a sexual offence complaint, they should be encouraged to participate in decision making. The complainant's wishes are an important factor in determining the manner in which a complaint is to be managed. However, commanders or managers must be mindful that all sexual offences must be reported, irrespective of the wishes of the complainant.

PRINCIPLES

10. The principles of this policy are:
- a. commanders and managers are to take reasonable steps to prevent sexual offences and have a responsibility to manage sexual offence complaints, including the appointment of a case manager;
 - b. the disclosure of an alleged sexual offence to a commander or manager by any person or through any other means constitutes a complaint for the purpose of this Instruction;
 - c. reporting of sexual offences to ADFIS is mandatory, irrespective of the complainant's wishes;
 - d. appropriate confidentiality must be maintained for the protection of privacy and the limiting of trauma for all involved parties;
 - e. commanders and managers are to initiate crisis intervention and the provision of a long-term support strategy in order to appropriately manage sexual offence complaints;
 - f. people are able to seek advice from counsellors. This does not constitute a complaint unless there are reasons for mandatory reporting to the commander or manager;
 - g. sexual offence complaints are to be investigated by the State/Territory or Defence Investigative Authorities, as appropriate—administrative inquiries are not to be used to investigate sexual offences; and
 - h. reporting of sexual offences to ADFIS as stipulated in [DI\(G\) ADMIN 45-2—The reporting and management of notifiable incidents](#), and to the Fairness and Resolution (FR) Branch via [Form 875-1—Initial Complaint Report—Unacceptable Behaviour or Sexual Offence](#) (see [annex C](#)), is mandatory.

STRUCTURE

11. This Instruction is divided into six parts, following a logical checklist of actions which must be taken by the commander or manager in dealing with a sexual offence complaint:
- a. *Part One—Sexual offences* (page 3) explains the definitions of a complaint, complainants and respondents, sexual offences and consent;
 - b. *Part Two—Jurisdiction for sexual offences* (page 4) explains the definitions of a workplace and the jurisdiction for managing and reporting a sexual offence complaint;
 - c. *Part Three—Management of sexual offence complaints* (page 5) details the management process for a sexual offence, confidentiality and privacy, appointment of a case manager and progress reporting;
 - d. *Part Four—Investigation of sexual offence complaints* (page 10) explains who should conduct investigations of sexual offence complaints and the investigation authorities;
 - e. *Part Five—Outcomes from investigation of a sexual offence complaint* (page 12) details how commanders and managers can take disciplinary and administrative action (if appropriate), and the review of the investigation outcomes by a higher command; and
 - f. *Part Six—Reporting of sexual offences* (page 15) details how and when to report to the FR Branch and other agencies, the forms to be utilised and the FR Branch database.

PART ONE—SEXUAL OFFENCES

Definition of a complaint

12. A complaint may be made by anyone, and should be made to a commander or manager. A complaint is broadly defined as:

- a. the disclosure by the complainant or any other person (anonymously or otherwise) to a commander or manager, in writing or verbally, of an alleged sexual offence incident; or
- b. a sexual offence incident that is observed or detected by a commander or manager through any other means.

13. There is no set format for a complaint, but it should contain the following:

- a. clearly state that this is a sexual offence complaint and mark as 'STAFF-IN-CONFIDENCE' (if written);
- b. brief description of the incident(s), including when, where and who was involved; and
- c. the outcome sought by the complainant (if one exists).

Complainant and respondent

14. A **complainant** is a person who may have been subjected to some form of sexual offence, even if a written or verbal complaint has not been made. The term 'victim' is not used to avoid stereotyping.

15. A **respondent**, in relation to a complaint, means the person or persons against whom the complaint is made. The respondent is to be considered innocent and treated accordingly until proven guilty. The term 'perpetrator' is not used to avoid issues of stereotyping. The respondent may have been mistakenly identified or the complaint may be vexatious or not upheld.

Definitions of sexual offences

16. **Sexual offences.** The term 'sexual offence' is used to cover a range of criminal offences against the person that involve a physical act of a sexual nature, sometimes accompanied by violence, that is committed against a person without their consent. Terminology in this area is often unclear and definitions of different types of sexual offences frequently overlap. This is because slightly different terminology for sexual offences is utilised in each of the Australian States and Territories. The position under the [DFDA](#) follows the law in the Australian Capital Territory (ACT). Accordingly, the definitions used in the ACT are the basis for the definitions provided in this Instruction.

17. Broadly speaking, sexual offences can be divided into two categories:

- a. acts of indecency, and
- b. sexual assaults.

18. There are a range of other specific sexual offences; for example, act of indecency with a young person, sexual intercourse with a young person, incest, possession of child pornography, but these will not be referred to in any detail here. Refer to [annex A](#) for the definitions of all sexual offences that can be prosecuted under the [DFDA](#).

19. **Acts of indecency.** This category of sexual offence includes acts that have an 'indecent' nature and are committed on, or in the presence of, a person. An act of indecency will almost always relate to any unwanted sexual behaviour or touching, committed against a person without their consent. Examples may include touching a person's breast or genitalia, exposing genitalia whilst making lewd or suggestive comments, or masturbating in the presence of another person. As these examples illustrate, the act of indecency need not be committed on a person and can be committed in the person's presence. In some jurisdictions of Australia, there is a separate offence of 'indecent assault'. This is not the situation in the ACT and in this Instruction the offence of 'indecent assault' is included in the category of offences referred to as 'acts of indecency'.

20. **Sexual assaults.** Terminology concerning sexual assaults is confusing as the term covers a range of different forms of abuse used to force sexual acts against a person. This category includes the offence of 'sexual intercourse without consent', which is commonly known as rape. The offence of sexual intercourse without consent (ie rape) occurs when a person does not consent or agree to penetration (to any extent) of the vagina or anus by a penis, or by another part of the body such as a finger, tongue, or other object. This category also includes fellatio or cunnilingus without consent. Failure to withdraw upon becoming aware that a person is not consenting can also amount to sexual intercourse without consent. This category also includes offences involving violence or threatened violence against a person with intent to engage or attempt to engage in sexual intercourse without the consent of that person. There are a number of graduations of this latter type of offence to take into account different degrees of violence. Refer to [annex A](#) for definitions of these graduated forms of sexual assault.

Consent

21. Sexual offences such as sexual intercourse without consent involve the question of whether the complainant consented. The fact that a complainant did not consent to the activity does not have to be verbally expressed; it may be apparent from their actions. Where the complainant did not consent to the activity but the respondent believed consent was given, an offence may still have occurred and the incident should be fully investigated. The respondent will be guilty of an offence if it is proven that he or she engaged in the activity:

- a. knowing that the complainant did not consent; or
- b. not caring or being reckless as to whether or not the complainant consented; or
- c. continues the actions in the sub paragraphs above after consent has been withdrawn or non-consent made clear.

PART TWO—JURISDICTION FOR SEXUAL OFFENCES

Definition of a workplace

22. The **workplace** includes HMA Ships (all vessels, including commissioned seagoing vessels and submarines), vehicles, aircraft and Defence establishments, business workplaces, units, facilities, accommodation and any other location which an ADF member, Defence APS employee or Defence contracted staff attends for the purpose of carrying out their work. This definition includes deployments, military exercises and operational environments. This Instruction also applies to sexual offences that occur outside the workplace where the behaviour has a Defence nexus or affects the workplace.

23. Sexual offences must be reported to ADFIS who must then act in accordance with [DI\(G\) ADMIN 45–2](#). Irrespective of the decisions made by ADFIS, any sexual offence complaint involving an ADF member, Defence APS employee or Defence contracted staff member as the complainant, respondent or witness must be managed as a workplace issue and in accordance with this Instruction.

Jurisdiction

24. All alleged sexual offences involving APS employees, ADF members, and/or external service providers which occur in the Defence workplace, or which have any association to the Defence workplace (eg conferences, work related social gatherings etc) must be immediately reported to ADFIS, who will coordinate and determine the appropriate jurisdiction for the handling of the matter. In those cases where the alleged sexual offences cannot be prosecuted under the [DFDA](#) the alleged offence must still be reported to ADFIS. Reporting to ADFIS must not be delayed as a consequence of any Unit administrative action such as a Quick Assessment. ADFIS must take into account the range of jurisdictional and operational considerations and, where appropriate, report the alleged offence to civilian police. The ADFIS contact telephone number is 1300 233 471 or via the ADFIS website on the Defence Restricted Network (DRN) <http://intranet.defence.gov.au/vcdf/sites/ADFIS/ComWeb.asp?page=36923>.

Complaints involving Defence Force Cadets

25. Defence Force Cadets are not covered under this Instruction. If a sexual offence complaint involves a member of the Defence Force Cadets it must be immediately referred to ADFIS who must manage referral of the matter to the State/Territory police as Defence has no jurisdiction. The FR Branch and the appropriate parent Service must be notified of the complaint. Advice can be sought from the FR Branch, the Defence Equity Advice Line and The Defence Legal Service.

PART THREE—MANAGEMENT OF SEXUAL OFFENCE COMPLAINTS

Management plan

26. Commanders and managers are responsible for the management of sexual offence complaints in the workplace involving people under their supervision. Investigations of sexual offences must only to be conducted by individuals specifically trained to do so, such as a Defence Investigative Authority (DIA) or State or Territory police. Dealing with sexual offences is legally complex and commanders and managers are advised to seek early legal advice in every case.

27. The management of sexual offences requires an effective action plan involving the following seven steps.

Step One—Quick Assessment of situation

28. The immediate actions taken by commanders and managers are the same irrespective of whether the incident occurred inside or outside Australia. Whoever is notified of the incident must:

- a. Contact ADFIS on 1300 233 471 or <http://intranet.defence.gov.au/vcdf/sites/ADFIS/ComWeb.asp?page=36923>.
- b. If on-site, note the time of arrival on the scene, the persons and vehicles present.
- c. Contact the commander or manager of the respondent's workplace who will be responsible for the management of the complaint.
- d. Determine what type of sexual offence is involved (see [paragraphs 16. to 21.](#)).
- e. If the complainant requires medical attention for injuries sustained during the incident, arrange for this to occur. Anyone providing medical assistance must be made aware of the sexual offence complaint and be cognisant of the possible impact of medical assistance on the preservation of evidence.
- f. Not touch the complainant—they may have had their body violated and any sensation of touch may close-down their ability to deal with the alleged offence.
- g. Report the incident to the FR Branch using [Form 875-1](#) (see [annex C](#)).

29. Where a sexual offence complaint is made in an isolated or remote area, action must be taken to convey the complainant to a location that will enable the appropriate support services to be accessed.

Securing the crime scene

30. Whenever a complaint of a recent incident is received, the scene of the incident must be immediately secured so that it is not disturbed. This is particularly important in sexual assault and sexual intercourse without consent cases. The crime scene must be handed over to the first Police Service that responds.

31. Where appropriate, evidence is to be secured to ensure that it is not disturbed prior to the arrival of State/Territory or Service police. If possible, complainants should be discouraged from showering until forensic evidence can be collected. Complainants are not, however, to be ordered not to shower or wash. At a remote locality, the collection of forensic medical evidence can only be undertaken, prior to transporting the member to support services, under the following conditions:

- a. the resident medical officer is appropriately trained in dealing with sexual offences;
- b. there will be a time lapse of more than two hours before the complainant can access support facilities; and
- c. if a Sexual Assault Investigation Kit, refer Defence Health Service, [Health Policy Directive 227—Sexual Assault in the Australian Defence Force—Medical Management](#), is carried by the workplace or ship's medical officer.

Complaints made by Defence personnel and Defence contracted staff under 18 years of age

32. If a complaint is made to a commander or manager by a complainant who is under the age of 18 years, there is no requirement to notify a parent or guardian of that person unless the person consents to that notification. Commanders and managers should ascertain whether the complainant wishes to have his or her parent or guardian notified and, if so, the complainant should be given the opportunity to contact the parent or guardian and speak personally.

33. The ADF member may consent to or refuse a medical examination and there is no requirement for consultation with the ADF member's parent or guardian. There is no requirement to obtain the consent of a parent or guardian for the medical examination of an ADF member who is under the age of 18 years.

Complaints involving Defence Force Cadets

34. Where a complaint of a sexual offence involves a member of the Defence Force Cadets, the procedure in [paragraph 25](#). is to be followed.

Step Two—The wishes of the complainant (in relation to management of a complaint)

35. All sexual offences must be reported to ADFIS irrespective of the complainant's wishes.

36. Once a commander or manager receives a complaint, it is their responsibility, in accordance with this Instruction and with the advice of ADFIS, to determine the most appropriate way to manage it. In making this determination, however, the wishes of the complainant are an extremely important factor. A commander or manager, whilst making it clear that it is ultimately the commander's or manager's responsibility to determine the most appropriate way to manage a complaint, must therefore ensure that:

- a. the complainant is fully informed that reporting the incident is a mandatory step, and offer full Defence support during the subsequent investigation; and
- b. the complainant's wishes in relation to the management of a complaint is sought, given of their own free will and properly considered.

37. A commander or manager, once they have determined the most appropriate way to manage a complaint, must ensure that the complainant is informed of the determination and, to the extent that it is appropriate to do so, that the complainant is provided with reasons.

38. There may be occasions when, in accordance with this Instruction, a commander or manager determines that a complaint should be or actioned in a manner contrary to the complainants wishes. If, at any time, a commander or manager becomes aware that this is the case, they are to ensure that the complainant is aware of the proposed action.

39. Regardless of how a commander or manager ultimately decides to deal with a complaint, they must ensure that:

- a. detailed records are kept addressing the above matters as relevant; and
- b. report the incident to ADFIS and FR Branch via [Form 875-1](#) (see [annex C](#)).

40. **Requirement to report to ADFIS.** Notwithstanding that the complainant does not wish to proceed with a complaint or an investigation, commanders and managers have a responsibility to ensure that a sexual offence complaint is notified to ADFIS. Time should not be wasted in making this report. The complainant should also be informed that this notification has occurred.

Step Three—Crisis intervention

41. As soon as the commander or manager becomes aware of a complaint, the commander or manager is to provide support to the parties as necessary. This is called crisis intervention. Crisis intervention can operate prior to, or parallel with, the investigation of a complaint, or even if an investigation is not initiated. Sexual offences can have dramatic effects on individual well being and operational effectiveness. The sooner the complaint is managed, the less likely it is to have a long-term negative impact. The most important task that commanders and managers will undertake in the management of the complaint is ensuring that the people affected by the incident receive appropriate support.

42. Information that will assist commanders and managers in determining what support services should be offered to a complainant is provided in [annex B](#). The support strategy may need to include one or more of the support services listed. Respondents may need a support strategy similar to that for complainants, taking into account their special needs, particularly if the complaint is found to be unsubstantiated or the respondent is found not guilty in a criminal matter. Witnesses to incidents may also require support services, at the discretion of commanders and managers.

43. Commanders and managers are to be aware that support may be required for a lengthy period of time. For example, if a respondent is prosecuted for the sexual offence, the criminal proceedings may take some time to conclude.

Step Four—Immediate reporting

44. Part Six of this Instruction provides direction for the immediate reporting of a sexual offence by a commander or manager to the FR Branch.

Step Five—Investigation

45. Part Four of this Instruction provides the direction for investigation of sexual offence complaints and managing false and malicious allegations. Investigation of sexual offence complaints is a matter for State/Territory or Service police. Reporting of alleged sexual offence incidents to the relevant authorities is made through ADFIS.

Step Six—Disciplinary or administrative action

46. Part Five of this Instruction provides the direction for determining appropriate disciplinary or administrative action.

Step Seven—Progress reports

47. Part Six of this Instruction provides direction on progress reports and the frequency with which they are to be provided to the FR Branch.

CONFIDENTIALITY AND PRIVACY

48. It is important that the complaint be kept as confidential as reasonably possible to protect the right to privacy of the complainant, respondent and any other person involved in the complaint. Maintaining confidentiality may reduce potential trauma and harm to all parties involved in the complaint.

49. The commander or manager is to take all reasonable steps to prevent and discourage improper discussion of the complaint in order to prevent information about the complaint being relayed to other members of the workplace. The complainant, respondent and witnesses can be harmed by gossip about the complaint. Gossip can also cause division in the workplace if other workplace members learn of the complaint and then side with either the complainant or respondent.

Confidentiality

50. Complainants and respondents often need advice and support before they feel that they are able to report or deal with a sexual offence incident. A complainant may discuss a sexual offence incident with another person other than their commander or manager for the purpose of gaining advice. This includes a discussion with a colleague or friend. This discussion does not constitute a complaint.

51. A Commanding Officer, unit commander, Navy Divisional Officer, manager or any other person senior to a complainant or respondent, while they may counsel personnel, is not a counsellor for the purpose of this Instruction.

52. A person acting in a professional capacity may include a medical practitioner, health professional, therapist, social worker, counsellor or chaplain, and counselling sessions with them will be regarded as confidential. Communications with Equity Advisers and Defence Equity Advice Line operators will also be regarded as confidential. Communications made in these contexts will not constitute making a complaint. All records of such communications are to be marked 'STAFF-IN-CONFIDENCE' and treated accordingly. When a complainant discloses a sexual offence to a counsellor, in addition to providing the normal counselling assistance they have the following responsibilities:

- a. counsellors not experienced in sexual offence counselling are to exercise caution and refer the complainant to specialist sexual offence counselling services;
- b. counsellors are to strongly encourage complainants to seek medical assistance, even if there has been a significant time lapse since the incident; and
- c. the complainant is to be encouraged and assisted in reporting the matter to their commander or manager and/or to civilian or Service police. There is a mandatory reporting requirement for disclosures relating to criminal offences in [DI\(G\) ADMIN 45-2](#), and the complainant should be reminded of this fact.

Exceptions to confidentiality

53. The confidentiality of all communications is protected, unless subject to certain legal exceptions as follows:

- a. the person consents to the communication being disclosed,
- b. the confidant believes on reasonable grounds that the communication must be disclosed in order to prevent or lessen a serious and imminent threat to the life or health of the person concerned or of another person,
- c. disclosure of the communication is required or authorised by law, or
- d. disclosure of the communication is reasonably necessary for the enforcement of the law.

54. In these circumstances, the incident is to be reported by the counsellor to the complainant's commander or manager. However, the incident is not to be reported to any other member in the chain of command, unless the commander or manager determines that another person has a reasonable need to know. The commander or manager has the responsibility to report the matter to ADFIS and the FR Branch.

55. The report from the counsellor, which may be verbal or written, may include the names of the complainant, respondent and any witnesses, if known, and the facts of the incident as reported to the counsellor. The report should be made to the commander or manager of the person being counselled. A counsellor is not required to disclose to a commander or manager their notes or the content of their discussions with either a complainant or respondent. The counsellor should keep a record of the report and the reason the report was made.

Admissions by respondents

56. Confidentiality cannot be maintained when a respondent admits to an offence. If a respondent admits to an offence before another Defence person, that person is to immediately make a note of the admission and inform the respondent of the requirement to report the matter. The admission is to be reported promptly to ADFIS and subsequently the respondent's commander or manager.

Keeping records and privacy

57. It is essential that adequate records be maintained of the initial complaint, any investigation and consequential action taken. Defence records are kept in accordance with:

- a. [DI\(G\) ADMIN 27-1](#)—*Freedom of Information Act 1982—Implementation in the Department of Defence*;
- b. [DI\(G\) ADMIN 27-2](#)—*Access to Defence and Defence-related archival records under the Archives Act 1983*;
- c. [Privacy Act 1988](#); and
- d. *Defence Workplace Relations Manual*, [chapter 15](#)—‘Rights of Individuals’.

58. The complainant and respondent may be provided with copies of documentation that directly relate to them following the conduct of any investigation, subject to the requirements of the references above. Maintenance of accurate records of conversations and interviews by command and management is imperative. In addition to the obligations of Defence to maintain records, there may be additional obligations to external agencies should Defence personnel and Defence contracted staff choose to lodge a complaint with an external agency, or if a person develops a history of unacceptable behaviour.

59. The [Privacy Act 1988](#) prevents the use of personal information in any manner other than the purpose for which it was provided. Personal information means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whose identity is apparent, or can reasonably be ascertained, from the information or opinion. If uncertain, obtain legal advice.

APPOINTMENT OF A CASE MANAGER

60. A case manager is to be appointed at the discretion of the commander or manager to assist the complainant, respondent and witnesses during the complaint management process. In particular, the case manager is required to explain the support services available to the parties to the complaint, and facilitate access to these services.

61. The case manager is to be a compassionate but impartial person, and the role is not to be linked to a specific workplace position. The case manager is not to be, or likely to be, a person involved in the inquiry or disciplinary aspects of the complaint.

PROGRESS REPORTS

62. The commander or manager is to report progress to all parties involved in the complaint. Ordinarily, a commander or manager should provide progress reports to the complainant and respondent on a monthly basis.

63. Where the complainant or respondent has been moved or posted from the original unit, it is the responsibility of the commander or manager in the location where the incident occurred or the DIA to inform the new command of the status of the inquiry at least once a month. This is explained fully in [DI\(G\) ADMIN 45-2](#).

PART FOUR—INVESTIGATION OF SEXUAL OFFENCE COMPLAINTS

64. All alleged sexual offences involving APS employees, ADF members, and/or external service providers which occur in the Defence workplace, or which have any association to the Defence workplace (eg conferences, work related social gatherings etc) must be immediately reported to ADFIS, who will coordinate with and determine the appropriate jurisdiction for the handling of the matter. In those cases where the alleged sexual offences cannot be prosecuted under the [DFDA](#) the alleged offence must still be reported to ADFIS. Reporting to ADFIS must not be delayed as a consequence of any Unit administrative action such as a Quick Assessment. ADFIS is to take into account the range of jurisdictional and operational considerations and, where appropriate, report the alleged offence to civilian police. The ADFIS contact telephone number is 1300 233 471 or via the ADFIS website on the DRN <http://intranet.defence.gov.au/vcdf/sites/ADFIS/ComWeb.asp?page=36923>.

65. General/administrative inquiries under the Defence (Inquiry) Regulations 1985, or Defence Inquiry Regulations **are not** to be used to investigate sexual offences. The Defence Force Ombudsman has found that administrative inquiries do not provide adequate protection to respondents and have the potential to undermine later criminal or disciplinary proceedings. If, during the course of an administrative inquiry into another issue, a sexual offence is discovered or suspected, further investigation of the offence should be suspended immediately and the provisions of this Instruction applied.

66. It is important that the investigation's progress is regularly reported. Investigators are not required to reveal details of the investigation if that may compromise the investigation; however, within that limitation, commanders and managers should request an update on the status of the investigation at least once a month and complete the [Form 875-2—Progress Report—Unacceptable Behaviour or Sexual Offence](#) (see [annex D](#)). The outcome of the investigation and decision in relation to any legal action is to be clearly communicated to all involved as soon as possible. Commanders and managers are required to complete the [Form 875-3—Final Outcome Report—Unacceptable Behaviour or Sexual Offence](#) (see [annex E](#)).

Consulting the complainant

67. It is critical that the attitude of the complainant to pursuing the complaint is obtained as soon as possible and is constantly monitored. The complainant is to be advised by their commander or manager that if they are afraid of the respondent, reasonable action should be taken to reassign the respondent and/or complainant.

68. Respondents, complainants and witnesses are not to be unfairly disadvantaged during the course of an investigation.

Consulting the respondent

69. Where an allegation has been reported to ADFIS, the commander or manager cannot act in a way that would possibly obstruct evidence. Commanders and managers are to specifically consider whether there will be any prejudice to the investigation of the complaint if the respondent is informed of the existence of the complaint and the substance of the allegations. Commanders and managers should first discuss any proposed consultation involving the respondent with a legal officer in order to determine whether to inform the respondent of the complaint against them.

70. Where a commander or manager is considering any form of administrative action involving the respondent, including transfer or posting, the respondent must be informed of the complaint and also provided with an indication of the substance of the allegations.

71. Commanders and managers must ensure that respondents are treated fairly and given access to the same resources and information as to their rights and entitlements as complainants during the investigative process.

Parties from more than one workplace

72. Should an incident occur involving parties from more than one workplace, the commanders or managers of both the complainant and respondent are to be informed of the incident when the complaint is made, in monthly updates and when the outcome has been determined.

73. Normally, the respondent's workplace is responsible for the management of the complaint, except when the incident occurs where the parties are under the command of another area, for example, whilst on course at a training facility or on overseas deployment. In that case, the workplace responsible for managing the complaint is that which was responsible for the parties at the time of the incident.

Posting or movement of an involved party

74. Where the complainant or respondent has been moved or posted from the unit where the incident occurred, the responsibility for managing the complaint remains with the workplace where the complaint was made.

False or malicious allegations

75. Individuals who knowingly give false or malicious information during an investigation are liable to disciplinary action. State/Territory police may also take action against anyone suspected of making false or malicious allegations.

INVESTIGATION AUTHORITIES

76. All alleged sexual offences involving APS employees, ADF members, and/or external service providers which occur in the Defence workplace, or which have any association to the Defence workplace (eg conferences, work related social gatherings etc) must be immediately reported to ADFIS, who will coordinate with and determine the appropriate jurisdiction for the handling of the matter. In those cases where the alleged sexual offences cannot be prosecuted under the DFDA the alleged offence must still be reported to ADFIS. Reporting to ADFIS must not be delayed as a consequence of any Unit administrative action such as a Quick Assessment. ADFIS is to take into account the range of jurisdictional and operational considerations and, where appropriate, report the alleged offence to civilian police. The ADFIS contact telephone number is 1300 233 471 or via the ADFIS website on the DRN <http://intranet.defence.gov.au/vcdf/sites/ADFIS/ComWeb.asp?page=36923>.

77. [Annex A](#) of this Instruction provides information for deciding which jurisdiction an alleged sexual offence may fall under. This is for information only. The decision as to which jurisdiction an alleged sexual offence falls under and which authority needs to be informed in order for an investigation to begin will be made by ADFIS.

PART FIVE—OUTCOMES FROM INVESTIGATION OF A SEXUAL OFFENCE COMPLAINT

78. Mediation and other forms of alternative dispute resolution are not to be used as a means of resolving sexual offence complaints. Any measures aimed at resolution must include steps to ensure there is no repeat of the behaviour or victimisation of either party. This may require consideration of disciplinary or formal administrative action. Commanders and managers must also undertake regular follow-up action to prevent recurrence and to ensure that victimisation does not occur.

DISCIPLINARY AND CRIMINAL PROCEEDINGS

Australian Defence Force members

79. Where the ADF has jurisdiction and determines that it would be appropriate to deal with a sexual offence complaint (see [annex A](#)), the commander or manager should seek legal advice from the Director of Military Prosecutions (DMP). All the offences described in [annex A](#) are 'prescribed offences' which means that they have a maximum punishment of more than two years imprisonment and must be mandatorily referred to DMP for legal advice. The DMP will provide advice as to whether it is appropriate to pursue disciplinary action in accordance with [DI\(G\) PERS 45-4—Australian Defence Force Prosecution Policy](#).

80. Where the ADF does not have jurisdiction to deal with a sexual offence complaint, the complaint should be referred to ADFIS in accordance with Part Two of this Instruction. The State/Territory prosecution authorities will determine whether criminal proceedings will be initiated against the respondent.

81. The evidence may show that the respondent has committed a separate Service offence in the course of, or very close in time to, the sexual offence. Additional offences should be dealt with in accordance with normal disciplinary procedures, however no action should be taken in relation to such offences until criminal or disciplinary action is completed. If the alleged sexual offence has been referred to ADFIS (and the State/Territory police), it is essential that they are consulted prior to proceeding with the prosecution of other offences.

82. Suspension of ADF members. Pursuant to the [DFDA](#), a member of the ADF can be suspended from duty where the member is suspected of committing an offence. This can occur whilst an offence is being investigated, after an ADF member has been charged with a civilian or Service offence, or after conviction, pending the decision of a reviewing authority. The consequences to the member can be severe and legal advice should be obtained if suspension is being considered.

Defence Australian Public Service employees and Defence contracted staff

83. Where a complaint of a sexual offence has been made against a Defence APS employee or a Defence contracted staff member, the matter should be referred to ADFIS. ADFIS will then refer the matter to the relevant State/Territory prosecution authorities who will determine whether criminal proceedings will be initiated against the respondent.

ADMINISTRATIVE ACTION

Behaviour that does not constitute a sexual offence

84. When a respondent's behaviour falls short of a sexual offence, and criminal or disciplinary proceedings are not pursued, the behaviour complained of may still be below the standard of behaviour expected of Defence personnel and Defence contracted staff (for example, it may constitute unacceptable behaviour). In this situation, consideration may be given to initiating formal adverse administrative action. Administrative action may vary in nature, significance and impact according to the nature of the behaviour, and the respondent's appointment and/or duties. Legal advice should be sought on the appropriate forms of administrative action that can be taken. For further guidance on unacceptable behaviour that does not constitute a sexual offence (see [DI\(G\) PERS 35-3](#)).

Pending criminal or disciplinary proceedings

85. There may be situations where it is unclear from the evidence that an act of indecency or other serious sexual offence has been committed. In these situations, criminal or disciplinary proceedings may not be appropriate or legally sustainable, however, the behaviour complained of may still amount to unacceptable behaviour as defined in [DI\(G\) PERS 35-3](#). In this situation, appropriate support to all parties should continue. No formal administrative action should be taken against Defence personnel or Defence contracted staff while criminal or disciplinary proceedings are pending.

Respondent is acquitted

86. If an ADF member, Defence APS employee or Defence contracted staff member is acquitted of a sexual offence following disciplinary or criminal proceedings, no adverse administrative action should be taken against that person in relation to the sexual offence. An acquittal may not prevent administrative action being taken in relation to the behaviour that was the subject of the complaint or in relation to some other kind of unacceptable behaviour distinct from the sexual offence. If this is being contemplated, legal advice should be sought.

87. If a false complaint is suspected, separate investigation and action is to be pursued.

Respondent is convicted

88. ADF member. Adverse administrative action may be taken after a respondent is convicted of a sexual offence. Action may be taken in accordance with single Service Instructions that deal with administrative consequences of convictions. Consideration may also need to be given as to whether the respondent's service is terminated or alternatively, whether a formal warning or censure is imposed.

89. Single-Service Instructions should be consulted for procedures on termination of service. The policy and procedures for imposing a formal warning or censure on a member of the ADF are detailed in [DI\(G\) PERS 35-6—Formal Warnings and Censures in the Australian Defence Force](#). Legal advice should be sought if adverse administrative action is being contemplated and the FR Branch is to be notified of any action taken using [Form 875-3](#) (see [annex E](#)).

90. **Defence APS employees.** When a Defence APS employee is convicted of a sexual offence, the issue is not the offence as such, but rather whether the facts and circumstances that gave rise to the offence might also raise an issue as to whether the APS Code of Conduct has been breached. In some cases (for example, where the criminal offence is work-related) the linkage will be obvious, but in other cases there will need to be a careful and objective evaluation of the particular facts and circumstances. Only the Misconduct Delegate can determine a breach of the Code of Conduct and impose sanctions. If there is evidence that demonstrates a breach of the Code of Conduct, consideration should be given to the range of sanctions that may be imposed. The available sanctions are:

- a. termination of employment;
- b. reduction in classification;
- c. re-assignment of duties;
- d. reduction in salary;
- e. deductions from salary, by way of fine (which must not be more than 2 per cent of annual salary); and
- f. reprimand.

91. Further guidance on the imposition of sanctions in these circumstances should be obtained from *Defence Workplace Relations Manual* ([chapter 11—‘Values and Conduct’](#)) and the *Australian Public Service Commission Handbook 2—Managing Breaches of the APS Code of Conduct*.

92. **Defence contracted staff.** If a Defence contracted staff member is convicted of a sexual offence, consideration should be given to terminating the staff member's contract or employment under contract. Defence contracts should contain a contract default clause that stipulates Defence contracted staff who are found to have committed a sexual offence as described in this Instruction or unacceptable behaviour as defined in [DI\(G\) PERS 35-3](#) should have the contract terminated or their employment under contract terminated.

SUPPORT TO THE PARTIES

Monitoring the complainant's needs

93. The complainant may require assistance in returning to normal workplace activity after a complaint has been resolved. The formal processes of investigation and action can cause significant stress to the complainant. Sometimes the complainant may feel that they are the one on trial. The complainant may also feel that there is a stigma attached to people who make complaints and that workplace colleagues may think less of them or act cautiously around them.

94. Commanders and managers must observe the complainant in the workplace and if necessary provide further support in terms of counselling, etc. The behaviour of other workplace participants towards the complainant must also be monitored. The commander or manager must make every effort to ensure that the complainant is treated as a normal workplace participant. The support to the complainant may include a long-term support strategy. The commander or manager is responsible for implementing and monitoring any long-term support. Refer to [annex B](#) for support obligations.

Monitoring the respondent's needs

95. The investigation and resolution of a sexual offence complaint can also be extremely stressful for the respondent. Regardless of whether it is determined that the respondent has committed a sexual offence, the respondent may require a similar level of support to the complainant.

PART SIX—REPORTING OF SEXUAL OFFENCES

96. Paragraphs on confidentiality in Part Three of this Instruction provide guidance on what must be reported when a sexual offence incident is reported to a counsellor.

Purpose of reporting

97. It is a Defence requirement to report any complaint of sexual offences immediately to ADFIS and the FR Branch when it involves Defence personnel and/or Defence contracted staff, irrespective of the outcome. Threats of common assault or non-sexual assault do not have to be reported to the FR Branch, as the FR Branch does not have the mandate or authority to record, report or manage these behaviours. However, a sexual offence complaint that occurs in association with the common assault is to be reported.

98. An ADF member who is proven to have committed a sexual offence or behaved unacceptably on three separate occasions will be required to respond to a termination notice as to why their service in the ADF should be retained. This does not preclude a termination notice being issued following one or two incidents of unacceptable behaviour if the incident is considered serious enough.

Fairness and Resolution Branch Database

99. The unacceptable behaviour database maintained by the FR Branch records reported complaints and formal outcomes of all unacceptable behaviour and sexual offence complaints. The name and personal details of all ADF and Defence APS respondents proven to have committed an act of unacceptable behaviour, as detailed on [Form 875-3](#), are recorded on the database. The complainant's details are similarly recorded. The forms are distributed to an ADF member's career management agency, a copy is to be retained within the workplace, a copy on the respondent's personal file and copies given to both the complainant and respondent.

100. A separate area within this database is maintained for sexual offence incidents that, after investigation, have been substantiated and formal action has been taken against a respondent. This information enables the FR Branch to identify repeat offenders. Access to this database is restricted, and the recording of personal information on this database occurs only after the individual is informed of this action in writing.

101. The gathering and storage of this information is a government requirement following the *Report of the Review into Policies and Practices to Deal with Sexual Harassment and Sexual Offences at the Australian Defence Force Academy (1998)*. The information may be taken into account by the relevant Services for career management and/or posting decisions.

Repeat offenders

102. All supervisors must be alert to the possibility that a member may be a repeat offender. A person who is proven to have committed more than one sexual offence or unacceptable behaviour act is deemed to be a repeat offender. Reporting of incidents to the FR Branch will ensure that repeat offenders are not concealed through postings or movement. An ADF member who is proven to have committed three separate incidents of sexual offences and/or unacceptable behaviour will be required to respond to a termination notice. An ADF member who has committed one or two offences may also be required to respond to a termination notice.

REPORTING PROCEDURES

Members from more than one workplace

103. Should an incident occur involving members from more than one workplace location, the commander or manager of both the complainant(s) and respondent(s) are to be informed of the incident when the complaint is made, in monthly updates or periodically as agreed with the FR Branch and when the outcome has been determined. The respondent's Commander or Manager is responsible for reporting the incident to ADFIS and the FR Branch, except when the incident occurs where the parties are under the command or management of another area, for example, whilst on course at a training facility or on overseas deployment.

Initial report procedure

104. The immediate reporting to ADFIS and the FR Branch of all sexual offence allegations is mandatory, irrespective of whether the complainant submits a complaint. [Form 875-1 \(annex C\)](#) is to be completed by the respondent's Commander or Manager for the initial report of each complaint of a sexual offence. A single incident involving a number of complaints or a single incident with a number of respondents is to be recorded as a single incident. When an incident, or series of incidents, involves a number of complaints, and there is doubt as to how to report the incident(s), one report for each incident based on the incident date is to be submitted. Names of people involved other than the point of contact are not to be provided in [Form 875-1](#) or [Form 875-2](#).

105. Commanders and managers are to report such allegations immediately to ADFIS as they are disclosed to them as detailed in [DI\(G\) ADMIN 45-2](#). The responsibility for reporting rests with the commander or manager of the respondent or the workplace where the parties are under the command or management of another area, for example, whilst on course at a training facility or on overseas deployment.

106. Preserving confidentiality does not negate the requirement to report the incident to the FR Branch. Initial reports and updates of alleged sexual offences are to contain details of the incident but the names of complainant(s) and respondent(s) are not to be provided, in accordance with the [Privacy Act 1988](#).

Update reports

107. The commander or manager responsible for managing the complaint is to report the progress of the inquiry to all parties involved in the complaint at an interval considered appropriate, but not less than monthly or periodically as agreed with the FR Branch, until a final resolution is reached. Update reports are to be provided to the FR Branch using [Form 875-2](#) (see [annex D](#)). The serial number used in an update report is to be the same as that which was used in the initial report. A new serial number will indicate a new incident.

108. Where the complainant or respondent has been moved or posted from the workplace where the complaint was made, it is the responsibility of the commander or manager initiating the investigation to inform the new command/management chain of the status of the inquiry. In doing so, commanders and managers should be cognisant of the provisions of the [Privacy Act 1988](#). This updating should occur at least once each month. The reporting and investigation of the complaint remains the responsibility of the workplace where the complaint was made.

Final outcome and formal action report

109. When a complaint has been finalised, [Form 875-3](#) (see [annex E](#)) is to be completed and forwarded to the FR Branch. The complainant should be informed that an outcome has been reached by their commander or manager.

110. If a complaint is substantiated, any formal action taken against Defence personnel and Defence contracted staff is to be reported to the FR Branch using [Form 875-3](#). Information received from complaints is placed on a 'Restricted Access' database and is used for compiling ministerial briefings and analysing statistical trends (refer to [paragraphs 100](#) and [101](#)).

CIVIL CONVICTION, ADMINISTRATIVE AND DISCIPLINARY ACTION

111. Records of civil conviction, administrative and/or disciplinary action resulting from a sexual offence incident must also be recorded and managed in accordance with individual Service requirements (for ADF members), the requirements detailed in Defence Workplace Relations Manual (for Defence APS employee) and the individual contract (for Defence contracted staff).

INCIDENTS LIABLE TO MEDIA COMMENT

112. Sexual offence incidents that are likely to attract media comment or create adverse publicity must be reported in accordance with current Service requirements. An information copy of this report is also to be forwarded to the FR Branch.

COMPLIANCE

113. All Defence Personnel must comply with this Instruction.

114. Defence Instructions (General) are issued jointly by the Secretary and the Chief of the Defence Force (CDF) under section 9A of the *Defence Act 1903*.

115. **Australian Defence Force (ADF)**. This Instruction from the CDF constitutes a general order to Defence Members for the purposes of the *DFDA*. Non-compliance may result in disciplinary action being taken in accordance with the *DFDA*.

116. **Australian Public Service (APS)**. This Instruction is a lawful and reasonable direction to Defence Employees by the Secretary under subsection 13(5) of the *Public Service Act 1999*. Non-compliance may be referred to a delegate for investigation and possible sanction in accordance with the APS Code of Conduct.

117. Defence contract managers must include, in the terms of the relevant contract, the requirement that External Service Providers comply with this Instruction where the External Service Providers are involved in administration of the policy covered by this Instruction. Failure by an External Service Provider to comply with this Instruction may result in a breach of contract.

Annexes:

- A. [Legal definitions and jurisdiction of sexual offences](#)
- B. [Defence funded support options for sexual offence management](#)
- C. [Form AC 875-1—Initial Complaint Report—Unacceptable Behaviour or Sexual Offence](#)
- D. [Form AC 875-2—Progress Report—Unacceptable Behaviour or Sexual Offence](#)
- E. [Form AC 875-3—Final Outcome Report—Unacceptable Behaviour or Sexual Offence](#)

LEGAL DEFINITIONS AND JURISDICTION OF SEXUAL OFFENCES

1. Part III A of the *Crimes Act 1900* (Australian Capital Territory) in its application to the Jervis Bay Territory sets out a number of sexual offences that, subject to the limitations detailed below, may be charged under the *Defence Force Discipline Act 1982* (DFDA) and tried by Service Tribunals pursuant to section 61 of the DFDA. These offences are detailed in the following paragraphs.

Offences requiring prior Commonwealth Director of Public Prosecutions approval

2. Section 63 of the DFDA provides that proceedings under the DFDA will not be commenced in respect of the following sexual offences under the *Crimes Act 1900* (which occur in Australia) without the consent of the Commonwealth Director of Public Prosecutions (DPP). However, due to the serious nature of the following offences, it is unlikely the DPP would give consent for the Australian Defence Force to deal with them.

Sexual assault in the first degree (section 51)	Inflicting grievous bodily harm upon another person, or acting in company with any other person who inflicts grievous bodily harm upon another person, with intent to engage in sexual intercourse ^(a) with that other person, or with a third person who is present or nearby.
Sexual assault in the second degree (section 52)	Inflicting actual bodily harm upon another person, or acting in company with any other person who inflicts actual bodily harm upon another person, with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby.
Sexual assault in the third degree (section 53)	Unlawfully assaulting, or threatening to inflict grievous or actual bodily harm upon, or acting in company with any other person who unlawfully assaults or threatens to inflict grievous or actual bodily harm, on another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby.
Sexual intercourse without consent (section 54)	Engaging in sexual intercourse, or acting in company with any other person who engages in sexual intercourse, with another person without the consent of that other person and knowing that other person does not consent, or is reckless as to whether that other person consents, to the sexual intercourse.
Sexual intercourse with young person (section 55)	Engaging in sexual intercourse with another person who is under the age of 10 years; or over 10 but under the age of 16 years.
Maintaining a sexual relationship with a young person (section 56)	Being an adult and maintaining a sexual relationship with a person who is under the age of 16 years.

Offences not requiring prior Commonwealth Director of Public Prosecutions approval

3. The following sexual offences under the *Crimes Act 1900* do not require the prior approval of the Commonwealth DPP before a Service Tribunal under the DFDA may try them. Legal advice should be obtained before any of these offences are charged under the DFDA.

Act of indecency in the second degree (section 58)	Inflicting actual bodily harm upon another person with the intent to commit an act of indecency ^(b) on, or in the presence of, that other person, or a third person who is present or nearby.
Act of indecency in the third degree (section 59)	Unlawfully assaulting, or threatening to inflict grievous or actual bodily harm on another person with the intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby.
Act of indecency without consent (section 60)	Committing an act of indecency alone, or acting in company with any other person, upon, or in the presence of, another person without the consent of that person and knowing that that other person does not consent, or being reckless as to whether that other person consents, to the committing of the act of indecency.

Consent of the Director of Public Prosecutions not required, however, offences should be referred to civilian authorities in the first instance

4. The serious nature of these offences means that, if they are committed in Australia, a Service Tribunal should not normally try them. In most cases it will be appropriate to immediately refer allegations of these offences to civilian investigation and prosecution agencies. [Defence Instruction \(General\) \(DI\(G\)\) PERS 45-1—Jurisdiction under Defence Force Discipline Act—Guidance for Military Commanders](#) should be consulted and legal advice obtained before any of these offences are charged under the DFDA.

Act of indecency in the first degree (section 57)	Inflicting grievous bodily harm upon another person with the intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby.
Acts of indecency with young persons (section 61)	Committing an act of indecency upon, or in the presence of, another person who is under the age of 10 years; or is over 10 but under the age of 16 years.
Incest and similar offences (section 62)	Engaging in sexual intercourse with another person where that other person is under the age of 10 years; over 10 but under the age of 16 years; or over 16 and is to known to be a lineal ancestor, lineal descendant, sister, half-sister, brother, half-brother or stepchild.
Abduction (section 63)	Abducting another person by force or by any other means or unlawfully detaining another person with the intent that the other person should engage in sexual intercourse with that person or with a third person.
Employment of young persons for pornographic purposes (section 64)	Employing, or permitting to be employed, a person under the age of 16 years to engage in an act of a sexual nature ^(c) , or be in the presence of another person who is engaged in an act of a sexual nature, that would offend a reasonable adult person. Employing or permitting to be employed a person under the age of 16 years for specified pornographic purposes.
Possession of child pornography (section 65)	Knowingly possessing material that represents a person under the age of 16 years in an act of a sexual nature that would offend a reasonable adult person.

Using the Internet etc to deprave young people (section 66) Suggesting, through electronic means, to a person under the age of 16 that they commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature or sending pornographic material to a person under 16 years.

Notes

- (a) 'Sexual intercourse' means:
- the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or
 - the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or
 - the introduction of any part of the penis of a person into the mouth of another person; or
 - cunnilingus; or
 - the continuation of sexual intercourse as defined in the above subparagraphs.
- (b) An 'act of indecency' means an act that involves a sexual overtone or offends ordinary standards of morality. Allegations that involve touching on or in the genital region (pants, crutch, thighs, buttocks) or breasts if female, may be regarded as amounting to an act of indecency within the meaning of the offence. Where allegations do not involve touching, it is usually the exposure of genitalia that will amount to act of indecency within the meaning of the offence.
- (c) An 'act of a sexual nature' means sexual intercourse or an act of indecency.

DEFENCE FUNDED SUPPORT OPTIONS FOR SEXUAL OFFENCE MANAGEMENT

1. Commanders and managers must maintain an environment where complainants, respondents and witnesses to sexual offences are confident that they can access a range of support services. Complainants, respondents and witnesses to incidents of sexual offences must be provided with all practicable and reasonable support.
2. There are several elements of Defence-funded support that can be offered to the complainant, respondents and witnesses; some support strategies may be long-term.

Key:	Yes (Y)	At commander/manager's discretion (A)	Not available (N)		
			ADF Personnel	Defence APS Employee	Defence Contracted Staff
Service Available					
EQUITY ADVISER					
<p>The complainant and respondent should each be encouraged to seek advice and support from an Equity Adviser, but not the same Equity Adviser. Equity Advisers are available to provide all employees with support, information and options for the resolution of workplace equity and diversity issues; however, they are unable to advise more than one party in a dispute. They are not able to mediate, or become involved in an investigation or resolution of a complaint that concerns employees that they have advised. Commanders and managers at every level are responsible for ensuring that areas under their control are free from harassment and discrimination; the Defence Equity Adviser Network complements that process.</p>					
			Y	Y	Y

Key:	Yes (Y)	At commander/manager's discretion (A)	Not available (N)	ADF Personnel	Defence APS Employee	Defence Contracted Staff
		Service Available				
		DEFENCE EQUITY ADVICE LINE (DEAL)				
		<p>The Defence Equity Advice Lines are confidential, toll-free telephone lines that have been established for Defence APS employees, ADF members and Defence contracted staff who consider that they have been subjected to, accused of, or witness to any form of unacceptable behaviour or sexual offences. The Lines are also available to commanders, managers and Equity Advisers requiring assistance in the resolution of a complaint. Callers are given information about their rights and avenues available for further action, if desired.</p> <p>The DEAL telephone number is: 1800 803 831 (International Access).</p> <p>Defence Equity Advice Line is available five days a week (excluding national public holidays) between 0900 and 2000 hours (Eastern Standard Time). All after hours calls are diverted to a message bank where confidential messages can be left. If a contact telephone number is left, an operator will respond on the next working day.</p>		Y	Y	Y
		DEFENCE LEGAL SUPPORT				
		<p>The complainant and respondent should be advised that they may seek legal advice, from separate legal officers. The respondent is not to consult the legal officer responsible for providing advice to the commander or manager managing the complaint.</p>		Y	N	N
		LEAVE				
		<p>It may be appropriate that the complainant and respondent be offered leave to rehabilitate prior to returning to the workplace. Leave regulations contained in <i>ADF Pay and Conditions Manual</i> Volume 2 for ADF and the Defence Employee Certified Agreement (DECA) for Defence APS employees, should be consulted to ascertain eligibility.</p>		A	A	A

Key:	Yes (Y)	At commander/manager's discretion (A)	Not available (N)	ADF Personnel	Defence APS Employee	Defence Contracted Staff
		Service Available				
		DEFENCE MEDICAL SUPPORT		Y	N	N
		Where appropriate, the complainant should be referred to the medical centre for consultation as soon as possible (transport may need to be provided). Refer to DI(G) PERS 16-2— <i>Provision of emergency health treatment to civilians for non-ADF personnel.</i>				
		ASSESSMENT OF THE WORKPLACE		A	A	A
		A complainant may feel unsafe as a result of the sexual offence complaint. Where practicable, the complainant's working and, for ADF members, living environments (accommodation blocks, mess decks, dining and recreational areas on Commonwealth property) are to be examined to ensure that no reminders of the incident remain, and that they are not left in a situation where they feel unsafe.				

Key:	Yes (Y)	At commander/manager's discretion (A)	Not available (N)	ADF Personnel	Defence APS Employee	Defence Contracted Staff
		Service Available				
		TEMPORARY TRANSFER				
		<p>When contemplating reassignment, the commander or manager is to consider:</p> <ol style="list-style-type: none"> 1. a. the person's ability to cope whilst remaining in the locality where the incident occurred; 2. b. family and personal circumstances; 3. c. possible local posting alternatives; 4. d. the availability of counselling and support networks; 5. e. the effect of any reassignment on the investigation; 6. f. any bail conditions; 7. g. the effect on the career of the person reassigned; and 8. h. the operational efficiency of the unit. <p>If the commander or manager decides that reassignment is appropriate, the person to be transferred is to be notified and provided with an opportunity to discuss the transfer, in particular any objections, and the proposed management of the transfer. The more serious the consequences of the transfer are to the person, the greater should be their opportunity to be heard.</p> <p>If the person(s) involved are not moved, the workplace is to be monitored to ensure that the complainant, respondent and any witnesses are treated fairly and are made comfortable in the workplace. It is the commander or manager's responsibility to ensure that there is no victimisation or retribution during the course of any investigation or prosecution and beyond.</p>	A	A	N	
		REVIEW OF ACTION				
		<p>Should a Defence APS employee be dissatisfied with the outcome/handling of a complaint, they are entitled to seek a review of actions. The review of actions is to be conducted in accordance with the <i>Defence Workplace Relations Manual</i> (Chapter 15), Part 4—Review of Employment Actions in the Department of Defence. Review of actions concerning allegations of discrimination and harassment, including sexual harassment, should be first lodged with the department.</p>	N	Y	N	

Key:	Yes (Y)	At commander/manager's discretion (A)	Not available (N)		
		Service Available	ADF Personnel	Defence APS Employee	Defence Contracted Staff
		REDRESS OF GRIEVANCE	Y	N	N
		<p>The Complaint Resolution Agency (CRA) is tasked with ensuring independence in the investigation, review and handling of complaints. In addition to providing advice on complaint handling, the CRA conducts an administrative review of redresses of grievance (ROG) referred by ADF members for consideration by CDF and the Service Chiefs, or their delegates. The CRA also monitors the progress of ROGs at unit level. Further information on the CRA and ROG matters can be obtained from DI(G) PERS 34-1—<i>Redress of Grievance—Tri Service procedures</i>.</p>			

FORM AC 875-1—INITIAL COMPLAINT REPORT—UNACCEPTABLE BEHAVIOUR OR SEXUAL OFFENCE

The preferred method for Commanders or managers to report a complaint of unacceptable behaviour is via ComTrack Self Service (CSS).

CSS is accessed via the PMKeyS Self Service Portal (look for the 'scales of justice' icon).

This form is only to be used by Commanders or managers in the following instances:

- You do not have DRN access; or
- You cannot access the PMKeyS portal.

If you do not have DRN access, you can access [Form AC 875-1—Initial Complaint Report—Unacceptable Behaviour or Sexual Offence](#) on the Web Forms System.

FORM AC 875-2—PROGRESS REPORT—UNACCEPTABLE BEHAVIOUR OR SEXUAL OFFENCE

The preferred method for Commanders or managers to report a complaint of unacceptable behaviour is via ComTrack Self Service (CSS).

CSS is accessed via the PMKeyS Self Service Portal (look for the 'scales of justice' icon).

This form is only to be used by Commanders or managers in the following instances:

- You do not have DRN access; or
- You cannot access the PMKeyS portal.

If you do not have DRN access, you can access [Form AC 875-2—Progress Report—Unacceptable Behaviour or Sexual Offence](#) on the Web Forms System.

FORM AC 875-3—FINAL OUTCOME REPORT—UNACCEPTABLE BEHAVIOUR OR SEXUAL OFFENCE

The preferred method for Commanders or managers to report a complaint of unacceptable behaviour is via ComTrack Self Service (CSS).

CSS is accessed via the PMKeyS Self Service Portal (look for the 'scales of justice' icon).

This form is only to be used by Commanders or managers in the following instances:

- You do not have DRN access; or
- You cannot access the PMKeyS portal.

If you do not have DRN access, you can access [Form AC 875-3—Final Outcome Report—Unacceptable Behaviour or Sexual Offence](#) on the Web Forms System.