



**Australian Government**  
**Department of Defence**

# DEFENCE INSTRUCTIONS (GENERAL)

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Department of Defence  
CANBERRA ACT 2600

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Defence Instruction (General) PERS 35-4 is issued pursuant to section 9A of the *Defence Act 1903*.

Handwritten signature of R.C. Smith in black ink.

R.C. SMITH, AO, PSM  
Secretary

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General  
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## LIST B—ISSUE NO PERS B/6/2004

### New instruction

PERS 35-4      [\*Management and Reporting of Sexual Offences\*](#)

### Single Service filing instructions

This instruction should be filed as:

1. NAVY PERS 16-19
2. ARMY PERS 92-7
3. AIR FORCE ADMIN 9-24



# 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. Sexual offences committed by Australian Defence Force (ADF) members may be dealt with under the *Defence Force Discipline Act 1982* (DFDA) in limited circumstances. Defence personnel are ADF members and Defence Australian Public Service (APS) employees. Circumstances involving Defence APS and Defence contracted staff (personnel employed under a specified contract with Defence) are to be dealt with under the civilian criminal jurisdiction.
3. Where offences are dealt with under the DFDA, they must be treated with at least the same degree of seriousness as they are in the civilian criminal jurisdiction.
4. 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

5. 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. This instruction is supported by the *Sexual Offence Management Guide (SOMG)*.
6. Instructions and publications relevant to this Instruction are detailed in the Defence Equity Organisation (DEO) Internet web site (see [www.defence.gov.au/equity](http://www.defence.gov.au/equity)) and Intranet web site (see <http://defweb2.cbr.defence.gov.au/dpeequity>).

## POLICY

7. 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 Acts and instructions themselves.
8. 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.
9. Commanders and managers are responsible and accountable for managing the 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.

10. 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.

11. 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 and resolved, but ultimately it is the commander's or manager's responsibility to determine the most appropriate way to proceed.

## PRINCIPLES

12. 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. the complainant's wishes are a significant factor in determining whether the investigation and prosecution of a sexual offence is conducted or continued;
- d. appropriate confidentiality must be maintained for the protection of privacy and the limiting of trauma for all involved parties;
- e. there may be occasions when commanders and managers may initiate an investigation and manage a sexual offence complaint contrary to the complainant's wishes;
- f. 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;
- g. 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;
- h. 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
- i. reporting of sexual offences to the DEO and authorities such as State/Territory police, as stipulated in DI(G) ADMIN 45-2—*Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*, is mandatory.

## STRUCTURE

13. 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 6) 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 11) 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 DEO and other agencies, the forms to be utilised and the DEO database.

## PART ONE—SEXUAL OFFENCES

### Definition of a complaint

14. 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.
15. 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

16. 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.
17. 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

18. **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.
19. Broadly speaking, sexual offences can be divided into two categories:
- a. acts of indecency, and
  - b. sexual assaults.
20. 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.

21. **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’.

22. **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

23. 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

24. 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.

25. While sexual offences are to be investigated by State/Territory or Service police, any sexual offence complaint involving an ADF member, Defence APS employee or Defence contracted staff member as the complainant, respondent or witness is to be managed as a workplace issue and in accordance with this Instruction.

### Jurisdiction

26. Upon receiving a sexual offence complaint, commanders and managers must initially determine whether there is jurisdiction to deal with the complaint. This determination involves considering whether the respondent is a member of the ADF, a Defence APS employee or a Defence contracted staff member. If the respondent is a member of the ADF, jurisdiction under the DFDA is limited depending on the nature of the offence and its circumstances. Further guidance on this is

provided below. If the respondent is a Defence APS employee or Defence contracted staff, then Defence has no jurisdiction and the matter must be referred to the State/Territory police unless the Defence APS employee is a Defence civilian as defined under the DFDA.

### **Jurisdiction under the Defence Force Discipline Act 1982**

27. DI(G) PERS 45–1—*Jurisdiction under Defence Force Discipline Act—Guidance for Military Commanders* provides guidance on the policy and procedures to be observed in relation to the exercise of jurisdiction under the DFDA. This instruction deals with offences committed in Australia in peacetime that have an equivalent under the ordinary criminal law of the states and territories. Where offences are committed outside of Australia, the jurisdiction issue is more complex and may involve host country laws and status-of-force arrangements. The DFDA jurisdiction may be wider, but legal and the Defence Investigative Authority (DIA) advice should be sought as to the jurisdiction to investigate sexual offences.

### **Sexual offences over which the Australian Defence Force has jurisdiction in Australia**

28. The ADF does not have jurisdiction over all sexual offences that are alleged to have occurred in Australia. [Annex A](#) details the sexual offences that may be dealt with by the ADF without the consent of the Commonwealth Director Public Prosecutions (DPP). Acts of indecency are within the jurisdiction of the DFDA.

29. In Australia, the ADF can only deal with the offence of sexual intercourse without consent or offences involving some form of violence or threatened violence with intent to engage in sexual intercourse under the DFDA where the DPP has consented to the ADF exercising jurisdiction. Due to the seriousness of these offences, it is unlikely the DPP would give the ADF consent to deal with these offences. As a matter of policy, a number of sexual offences should be referred to civilian authorities in the first instance. These are listed in [annex A](#).

### **Sexual offences over which the Australian Defence Force has jurisdiction outside Australia**

30. The DFDA applies to ADF members both within and outside Australia. As there are often complex jurisdictional issues associated with offences that are committed outside Australia, in all cases legal advice is to be sought immediately from the relevant command to ascertain whether the ADF may properly exercise jurisdiction under the DFDA.

31. The limitation of having to obtain the consent of the DPP before proceedings are instituted for certain categories of sexual offences does not apply in relation to offences that are committed outside Australia. However, where jurisdiction is assessed as belonging to the civilian authorities or where jurisdiction is assessed as unclear, commanders and managers are to liaise with the Commonwealth DPP under the guidelines contained in DI(G) PERS 45–1. Liaison should also occur where the alleged offence is committed:

- a. On an ADF aircraft (*Crimes (Aviation) Act 1991*);
- b. By an ADF member serving with a United Nations force (*Crimes (Overseas) Act 1964*); and
- c. Against a person under the age of 16 years in a foreign country (Part III A of the *Crimes Act 1914*).

### **Legal considerations in relation to whether the Australian Defence Force will exercise jurisdiction in Australia**

32. The status of the complainant is an important consideration in determining whether Defence has jurisdiction to deal with the sexual offence complaint. If the complainant is not a member of the ADF, specific consideration should be given to referring the matter to the state/territory police. Commanders and managers should consult DI(G) PERS 45–1 for detailed guidance on this issue as the serious nature of many of these offences means that it will be appropriate to immediately refer an allegation of a sexual offence to the civilian police even though the ADF could deal with the matter. Legal advice should always be obtained.

### Complaints involving Defence Force Cadets

33. Defence Force Cadets are not covered under this instruction. If a sexual offence complaint involves a member of the Defence Force Cadets it is to be immediately referred to the State/Territory police as Defence has no jurisdiction. DEO and the appropriate parent Service are to be notified of the complaint. Advice can be sought from the DEO, the Defence Equity Advice Lines and The Defence Legal Service.

## PART THREE—MANAGEMENT OF SEXUAL OFFENCE COMPLAINTS

### Management plan

34. Commanders and managers are responsible for the management of sexual offence complaints in the workplace involving people under their supervision. Investigations of sexual offences are only to be conducted by individuals specifically trained to do so, such as 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. The flow chart in [annex B](#) provides commanders and managers with guidance on the management of a sexual offence complaint.

35. The SOMG provides additional information and guidance to commanders and managers in the form of an Immediate Management Check list and a Counselling Check list.

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

### Step One—Quick Assessment of situation

37. 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 is to;

- a. Contact the Service or State/Territory police.
- 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 and the jurisdiction of the sexual offence category (see [paragraphs 18. to 23](#) and Part Two of this instruction).
- e. Determine if the incident occurred inside or outside of Australia and whether the respondent is:
  - (1) an ADF member, or
  - (2) a Defence civilian. This term does not refer to a Defence APS employee. A Defence civilian, in accordance with s3 of the DFDA, is a person who is attached to the Defence Force outside of Australia or on operations against the enemy and has consented in writing to being subject to the DFDA whilst on operations.
- f. If the complainant requires medical attention for injuries sustained during the incident, arrange for this to occur. Anyone providing medical assistance is to be made aware of the sexual offence complaint and be cognisant of the possible impact of medical assistance on the preservation of evidence.
- g. Do 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.

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

### Securing the crime scene

39. Whenever a complaint of a recent incident is received, the scene of the incident is to be immediately secured so that it is not disturbed. This is particularly important in sexual assault and sexual intercourse without consent cases. In such cases where the DFDA has jurisdiction, the scene should be secured. Gathering of evidence is not to occur until permission for the investigation is received.

40. 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 be 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; and
- 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—*Defence Sexual and Indecent 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

41. 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.

42. 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. 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.

### Complaints involving Defence Force Cadets

43. Where a complaint of a sexual offence involves a member of the Defence Force Cadets, the procedure in [paragraph 33](#). is to be followed.

### Step Two—The wishes of the complainant

44. Once a commander or manager receives a complaint, it is their responsibility, in accordance with this instruction, to determine the most appropriate way to deal with 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 deal with a complaint, must therefore ensure that:

- a. the complainant is fully informed as to the various options available and what these options are likely to involve, particularly in so far as any likely investigatory and prosecutorial action is concerned; and
- b. the complainant's wishes are sought, given of their own free will and properly considered.

45. A commander or manager, once they have determined the most appropriate way to deal with 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.

46. There may be occasions when, in accordance with this Instruction, a commander or manager determines that a complaint should be proceeded with contrary to, or actioned in a manner contrary to, the complainant's 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.

47. 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. a Form AC 875-4—*Record of Complainant's Wish Not to Officially Report a Sexual Offence to the Police*, is completed where appropriate (see [annex C](#) of this instruction).

48. **Requirement to report to State/Territory police or DIA.** 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 the State/Territory police or relevant DIA (depending on which jurisdiction is determined to apply). Time should not be wasted in making this report. The complainant should also be informed that this notification has occurred.

### **Step Three—Crisis intervention**

49. As soon as the commander or manager becomes aware of a complaint, and after consultation with the complainant to determine their wishes, 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.

50. Information that will assist commanders and managers in determining what support services should be offered to a complainant is provided in [annex D](#). 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.

51. 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**

52. Part Six of this instruction provides direction for the immediate reporting of a sexual offence by a commander or manager to the DEO.

### **Step Five—Investigation**

53. 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. This instruction provides initial direction for determining the appropriate investigation authority/ jurisdiction (see Part Two of this instruction).

### **Step Six—Disciplinary or administrative action**

54. Part Five of this instruction provides the direction for determining appropriate disciplinary or administrative action where a commander or manager has the jurisdiction to investigate and prosecute a sexual offence under the DFDA through the appropriate DIA or State/Territory police.

### **Step Seven—Progress reports**

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

## CONFIDENTIALITY AND PRIVACY

56. 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.

57. 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

58. 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.

59. 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.

60. 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

61. 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.

62. 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 the DEO and to other authorities as stipulated in DI(G) ADMIN 45-2.

63. 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**

64. 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 the respondent's commander or manager and subsequently to State/Territory or Service police.

#### **Keeping records and privacy**

65. 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—*Implementation of the Access Provisions of the Archive Act 1983 in the Department of Defence*;
- c. *Privacy Act 1988*; and
- d. Defence Reference Book (DRB) 19—*Defence Workplace Relations Manual*.

66. 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.

67. 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**

68. 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.

69. 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**

70. 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.

71. 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

72. Investigation of sexual offence complaints is a matter for State/Territory or Service police. This instruction provides a framework for determining the appropriate investigation authority as explained in Part Two and [annex A](#).

73. 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.

74. DI(G) ADMIN 45-2 explains the procedures to be used when reporting or investigating alleged offences committed by Defence personnel and Defence contracted staff under the DFDA or the ordinary criminal law of the Commonwealth, States and Territories.

75. Investigation of a sexual offence complaint may place both the complainant and respondent under considerable stress. It is important that the investigation is quick and that progress is regularly reported. Investigators are not required to reveal details of the investigation if that may compromise the investigation; however, within that limitation, they are to report to the commander or manager on the status of the investigation at least once a month. 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.

### Consulting the complainant

76. 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 reassure the respondent and/or complainant.

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

### Consulting the respondent

78. As a matter of fairness it is appropriate that the respondent is informed that a complaint has been submitted against them. The DIA or State/Territory police will decide the timing and nature of this explanation. However, before informing the respondent, 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 before consulting the State/Territory police or relevant DIA in order to determine whether to inform the respondent of the complaint against them.

79. 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.

80. 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

81. 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.

82. 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**

83. 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**

84. Individuals who knowingly give false or malicious information during an investigation are liable to disciplinary action. Normally, the matter would be referred to the relevant Service police for a separate DFDA investigation. State/Territory police may also take action against anyone suspected of making false or malicious allegations.

### **INVESTIGATION AUTHORITIES**

85. After it has been determined that a sexual offence complaint has been made, commanders and managers must inform the appropriate investigation authority in order for an investigation to begin. In most cases, when a Defence APS employee or Defence contracted staff makes a sexual offence complaint, the appropriate investigation authority will be the State/Territory police. In the case of ADF personnel, how sexual offence complaints are investigated is determined by jurisdiction.

86. [Annex A](#) of this instruction provides an initial framework for deciding which jurisdiction an alleged sexual offence may fall under. This decision should be made by the appropriate DIA in consultation with the commander or manager and legal officer.

87. Any investigation of an alleged sexual offence by a DIA must be conducted in accordance with the relevant Service instructions and manuals; the primary instruction is Australian Defence Force Publication 201—*Discipline Law Manual*, volume 1, chapter 3. Investigators are to be particularly vigilant that:

- a. all relevant evidence is secured and properly recorded; and
- b. the complainant, respondent and all witnesses are taken seriously and treated with courtesy and respect.

### **PART FIVE—OUTCOMES FROM INVESTIGATION OF A SEXUAL OFFENCE COMPLAINT**

88. 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

89. 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) in accordance with DI(G) PERS 45–6—*Director of Military Prosecutions—interim implementation arrangements*. 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*.

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

91. 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 State/Territory police, it is essential that they are consulted prior to proceeding with the prosecution of other offences.

92. **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

93. 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 the State/Territory police. The State/Territory prosecution authorities will determine whether criminal proceedings will be initiated against the respondent.

## ADMINISTRATIVE ACTION

### Behaviour that does not constitute a sexual offence

94. 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

95. 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

96. 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.

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

### Respondent is convicted

98. **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.

99. 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 DEO is to be notified of any action taken using Form AC 875–3—*Final Outcome and Formal Action Report—Unacceptable Behaviour or Sexual Offence*, page three (see [annex E](#) of this instruction).

100. **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.

101. Further guidance on the imposition of sanctions in these circumstances should be obtained from *Defence Workplace Relations Manual* (DRB 19) and the Australian Public Service Commission Handbook 2—*Managing Breaches of the APS Code of Conduct*.

102. **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

103. The commander or manager should ensure that the complainant is advised of all outcomes including whether disciplinary or criminal proceedings were conducted, and whether any adverse administrative action is to be taken against the respondent.

104. 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.

105. 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 D](#) for support obligations.

### Monitoring the respondent's needs

106. 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

107. 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

108. It is a Defence requirement to report any complaint of sexual offences immediately to the DEO 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 DEO, as the DEO 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 to the DEO.

109. 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.

### Defence Equity Organisation Database

110. The unacceptable behaviour database maintained by the DEO 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 AC 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.

111. 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 DEO 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.

112. 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**

113. 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 DEO 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**

114. 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 DEO and when the outcome has been determined. The respondent's workplace is responsible for reporting the incident to the DEO, 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**

115. The immediate reporting to the DEO of all sexual offence allegations is mandatory, irrespective of whether the complainant submits a complaint. Form AC 875-1—*Initial Complaint Report—Unacceptable Behaviour or Sexual Offence* ([annex F](#)) 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 AC 875-1 or 875-2—*Monthly Update Report—Unacceptable Behaviour or Sexual Offence*.

116. Commanders and managers are to report such allegations immediately 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 workplace involved.

117. Preserving confidentiality does not negate the requirement to report the incident to the DEO. 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**

118. 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 DEO, until a final resolution is reached. Update reports are to be provided to the DEO using Form AC 875-2 (see [annex G](#) of this Instruction). 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.

119. 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

120. When a complaint has been finalised, page two of the Form AC 875-3 (see [annex E](#) of this instruction) is to be completed and forwarded to the DEO. The complainant should be informed of the final outcome of the complaint inquiry by their commander or manager.

121. If a complaint is substantiated, any formal action taken against Defence personnel and Defence contracted staff is to be reported to the DEO on page three of the Form AC 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 [paragraph 110.](#) and [111.](#) of this instruction).

### CIVIL CONVICTION, ADMINISTRATIVE AND DISCIPLINARY ACTION

122. 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* (DRB 19) (for Defence APS employee) and the individual contract (for Defence contracted staff).

### INCIDENTS LIABLE TO MEDIA COMMENT

123. 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 DEO.

#### Annexes:

- A. [Legal definitions and jurisdiction of sexual offences](#)
- B. [Flow chart for managing complaints of sexual offences](#)
- C. [Form AC 875-4—Record of Complainant's Wish Not to Officially Report a Sexual Offence to the Police](#)
- D. [Defence funded support options for sexual offence management](#)
- E. [Form AC 875-3—Final Outcome and Formal Action Report—Unacceptable Behaviour or Sexual Offence](#)
- F. [Form AC 875-1—Initial Complaint Report—Unacceptable Behaviour or Sexual Offence](#)
- G. [Form AC 875-2—Monthly Update Report—Unacceptable Behaviour or Sexual Offence](#)

**Sponsor:** DEO (DDEO)



## **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 <sup>(a)</sup> 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 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 <sup>(b)</sup> 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 <sup>(c)</sup> , 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:

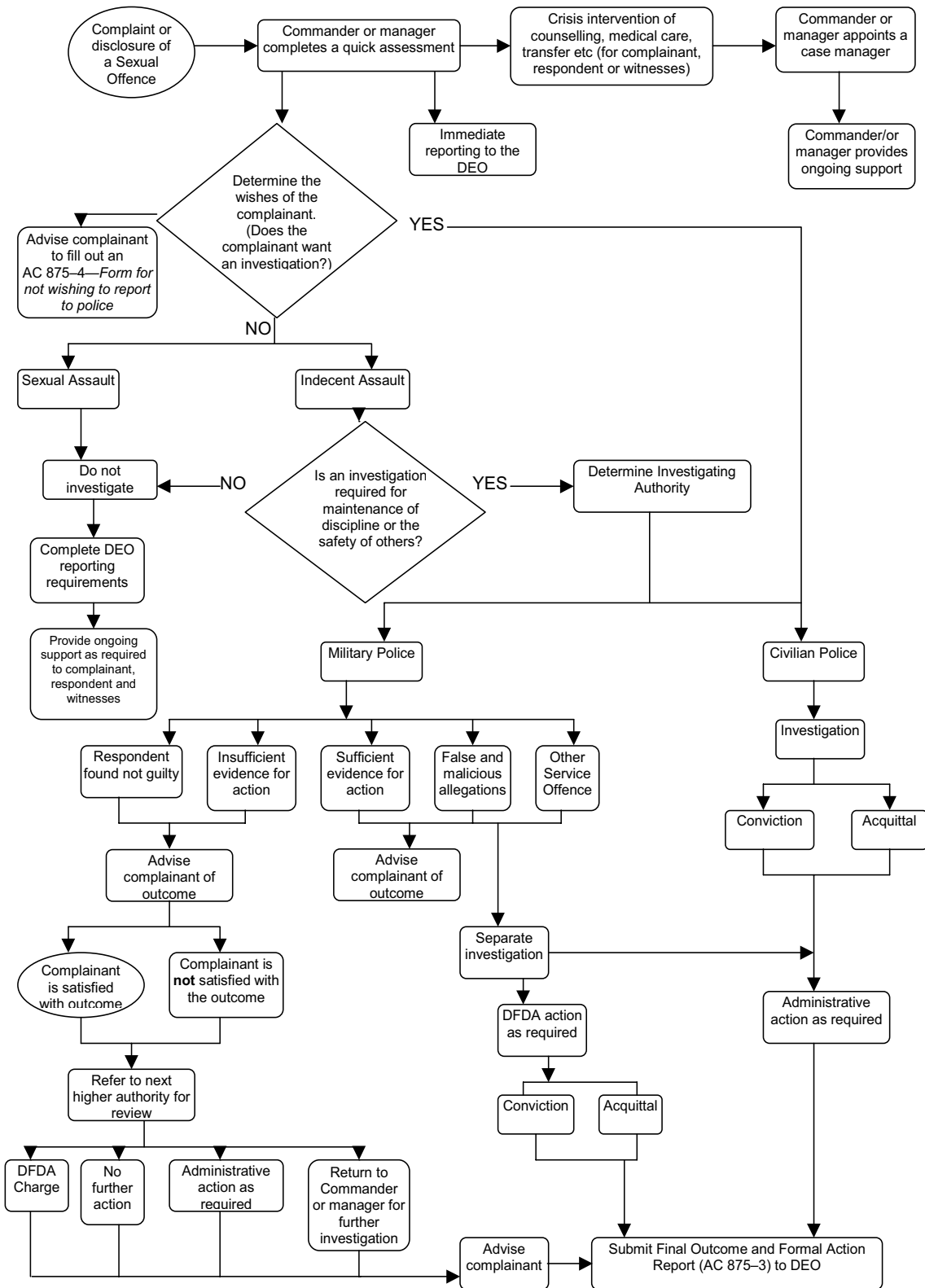
- the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or
- the penetration, to any extent, of the vagina or anus of a person by an object, 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.



## FLOW CHART FOR MANAGING COMPLAINTS OF SEXUAL OFFENCES





## FORM AC 875-4—RECORD OF COMPLAINANT'S WISH NOT TO OFFICIALLY REPORT A SEXUAL OFFENCE TO THE POLICE

**LEGAL-IN-CONFIDENCE** *(After first entry)*

AC 875-4  
Formerly AC 878  
Introduced Dec 2003

Department of Defence

### Record of Complainant's Wish Not to Officially Report a Sexual Offence to the Police

Refer DI(G) PERS 35-4

**Distribution**  
Original – Defence Equity Organisation  
Attn: SO Incident Reporting  
R1-1-C039  
Department of Defence  
Canberra ACT 2600  
  
Copy 2 – Complainant  
  
Copy 3 – Retained permanently on  
unit or branch file  
(Do not destroy)

- Any handwritten amendments are to be initialled by the complainant and the witness.

Unit or ship reference serial number <i>(Mandatory)</i>	This reference number must be the same number as allocated on form AC 875-1, Initial Incident Report - Unacceptable Behaviour or Sexual Offence.	Date of complaint <i>(Mandatory)</i>
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I	Complainant's full name	Rank or title	Service number	PMKeyS employee ID	acknowledge that:
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On	Date	I reported the following complaint to	Full name of person to whom the complaint was reported to
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Brief description of complaint *(Include what, where, when, etc.)*


- I have been offered counselling and medical care.
- I have been advised that it is mandatory for the chain of command to report a sexual offence as per DI(G) ADMIN 45-2, Reporting and Investigation of Alleged Offences within the Australian Defence Organisation.
- I have been advised to report the complaint to:
- Command     Service police     Civilian police
- I have been provided with other assistance.
- I **do not** wish to formally report the complaint to civilian police at this time.
- I understand that this may mean the ADF cannot take any action in relation to the complaint.
- I understand that I may make an informal report to the civilian police, and
- I **do**     I **do not**    wish to make an informal report of the complaint.
- I understand that I can make a formal report of the complaint to service or civilian police at any time in the future, but the delay in reporting may make the offence difficult to prove.
- I have been advised to undergo a forensic medical examination so that forensic evidence is available if I decide to formally report the complaint in the future.
- I **do**     I **do not**    wish to undergo a forensic medical examination at this time.

Signature of complainant	Date
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Signature of witness	Printed name	Date
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**LEGAL-IN-CONFIDENCE** *(After first entry)*



## 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
<b>Service Available</b>						
		<b>SEXUAL OFFENCE MANAGEMENT GUIDE</b>		Y	Y	Y
		<p><i>Sexual Offence Management Guide (SOMG)</i> provides information for all parties involved in a sexual offence complaint. Specifically, the SOMG details the effects of sexual offences, emotional reactions, coping mechanisms, incident management and support services available in the community. It also provides an immediate management checklist and a counselling check list to assist commanders and managers in determining the counselling requirements of the complainant.</p>				
		<b>EQUITY ADVISER</b>				
		<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. Detailed information regarding the operation of, and selection of members for, the Defence Equity Adviser Network is outlined in Defence Instruction (General) (DI(G)) PERS 32-2—<i>Defence Equity Adviser Network</i>.</p>		Y	Y	Y

Key: Yes (y)	At commander/manager's discretion (A)	Not available (N)		
	Service Available	ADF Personnel		
	Defence APS Employee	Defence Contracted Staff		
	<p align="center"><b>DEFENCE EQUITY ADVICE LINE (DEAL)</b></p> <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 numbers are: 1800 644 247, 1800 803 831, 1800 626 254, and + 800 3333 6231 (International Access).</p> <p>Defence Equity Advice Lines are available seven days a week (including public holidays, except Christmas Day) between 0830 and 2100 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 within 12 hours.</p>	Y	Y	Y
	<p align="center"><b>DEFENCE LEGAL SUPPORT</b></p> <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
	<p align="center"><b>LEAVE</b></p> <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				
		<b>DEFENCE MEDICAL SUPPORT</b>		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>				
		<b>ASSESSMENT OF THE WORKPLACE</b>		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)		
	Service Available	ADF Personnel		
		Defence APS Employee		
		Defence Contracted Staff		
	<p align="center"><b>TEMPORARY TRANSFER</b></p> <p>When contemplating reassignment, the commander or manager is to consider:</p> <ol style="list-style-type: none"> <li>1. a. the person's ability to cope whilst remaining in the locality where the incident occurred;</li> <li>2. b. family and personal circumstances;</li> <li>3. c. possible local posting alternatives;</li> <li>4. d. the availability of counselling and support networks;</li> <li>5. e. the effect of any reassignment on the investigation;</li> <li>6. f. any bail conditions;</li> <li>7. g. the effect on the career of the person reassigned; and</li> <li>8. h. the operational efficiency of the unit.</li> </ol> <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
	<p align="center"><b>REVIEW OF ACTION</b></p> <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> (DRB 19), Part 19—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)	ADF Personnel	Defence APS Employee	Defence Contracted Staff
		Service Available				
		<b>REDRESS OF GRIEVANCE</b>		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 or from the CRA web site (see <a href="http://defweb.cbr.defence.gov.au/dpecra/">http://defweb.cbr.defence.gov.au/dpecra/</a>).</p>				



# FORM AC 875-3—FINAL OUTCOME AND FORMAL ACTION REPORT—UNACCEPTABLE BEHAVIOUR OR SEXUAL OFFENCE

STAFF-IN-CONFIDENCE (*After first entry*)

AC 875-3  
Formerly AC 874 and AC 876  
Introduced Dec 2003

Department of Defence

## Final Outcome and Formal Action Report - Unacceptable Behaviour or Sexual Offence

### Instructions

#### 1. Responsibilities

It is a Defence requirement to report any complaint of unacceptable behaviour to the Defence Equity Organisation (DEO) when it involves Defence personnel and/or Defence contracted staff, irrespective of the outcome. For complaints of unacceptable behaviour refer to DI(G) PERS 35-3, and for sexual offence complaints DI(G) PERS 35-4. When two personnel from a different unit, ship, establishment or branch are involved in a complaint, the respondent's unit is to take responsibility for the procedures involved in managing the complaint.

#### 2. Reporting procedures

Reports are to be forwarded to:

Defence Equity Organisation  
Attention: SO Incident Reporting  
R1-1-C038  
Department of Defence  
Canberra ACT 2600

Enquiries: (02) 6265 4605

#### 3. Initial reports

Initial reports are to be forwarded to DEO on form AC 875-1, Initial Complaint Report - Unacceptable Behaviour or Sexual Offence.

Reports on sexual offences are to be forwarded direct to DEO **immediately** it becomes known to the commander or manager that the incident has occurred. All other unacceptable behaviour reports are to be forwarded to DEO on the **first** working day of the month for complaints reported to units in the preceding month. **A complaint involving a number of complainants is recorded as a single complaint.**

#### 3. Initial reports (*Continued*)

When a complaint or series of complaints involves the same complainant and respondent, and there is doubt as to how to report the complaint(s), one report collectively based on the complaint date(s) should be submitted.

#### 4. Update reports

**Monthly update reports are to be forwarded to DEO for all reported complaints until such time as the complaint has been finalised.** Update reports are to be reported on form AC 875-2, Monthly Update Report - Unacceptable Behaviour or Sexual Offence.

The unit or ship Reference Serial Number used in an update report is to be the same reference number as shown in the initial report.

#### 5. Final outcome and formal action report

When a complaint has been finalised, the final outcome is to be reported on form AC 875-3, Final Outcome and Formal Action Report - Unacceptable Behaviour or Sexual Offence.

If formal action is taken against a member for unacceptable behaviour, then page three of form AC 875-3 must be completed and forwarded to DEO.

Units, ships, establishments and branches are to place a unit or ship Reference Serial Number on form AC 875-1. This reference number must be referred to on all subsequent correspondence relating to that complaint.

The unit or ship Reference Serial Number used is to be the same reference number as used on the initial report for this complaint.

STAFF-IN-CONFIDENCE (*After first entry*)

Page 1 of 3

**STAFF-IN-CONFIDENCE (After first entry)**

Department of Defence

AC 875-3  
Formerly AC 874 and AC 876  
Introduced Dec 2003

<b>Distribution</b>		
Original – Defence Equity Organisation Attn: SO Incident Reporting R1-1-C038 Department of Defence CANBERRA ACT 2600	Copy 2 – Retained permanently on unit or branch file (Do not destroy)	Copy 3 – Respondent's Career Management Agency (Page 3 only)  Copy 4 – Respondent Copy 5 – Complainant

**Final Outcome Report -  
Unacceptable Behaviour or Sexual Offence**

Refer DI(G) PERS 35-3 and DI(G) PERS 35-4

- This form is to be completed and attached to each form AC 875-1 - Initial Complaint Report - Unacceptable Behaviour or Sexual Offence that has been finalised.
- Tick appropriate boxes.

**Unit, ship, establishment or branch details**

**Note:** Reference Serial Number (RSN) is to be the same RSN as allocated on form AC 875-1, Initial Complaint Report - Unacceptable Behaviour or Sexual Offence by the unit, ship, establishment or branch.

**Type of complaint**  
(Tick appropriate box)

**Informal resolution**  
(Tick appropriate boxes)

**Formal resolution**  
(Tick appropriate boxes)

**Note:** Formal sanctions cannot be imposed until a breach of the APS Code of Conduct has been

**Ongoing support**

**Commanding officer or manager's details**

Unit or ship reference serial number (Mandatory)	Unit, ship, establishment or branch	Date of complaint (Mandatory)
Date of resolution		

<b>Reporting officer's details</b>		
Printed name	Rank or title	Appointment
Unit, ship, establishment or branch	Address	Phone number

Sexual offence  Sexual harassment  Harassment  Workplace bullying   
Abuse of power  Inappropriate workplace relationships (Fratemisation)  Discrimination

Self resolution  Supported self resolution  Apology  Counselling   
Conciliation  Mediation  Training - individual (Equity awareness or interpersonal communication skills)   
Training - unit or branch  Complaint withdrawn  Complaint unsubstantiated   
Complaint not resolved prior to respondent's discharge or termination

Page three of this form must be completed for the following resolutions (Mandatory):

**Administrative or disciplinary action (ADF only)**

Formal warning or censure issued

Administrative action  Specify \_\_\_\_\_

Disciplinary action  Specify \_\_\_\_\_

Other ADF formal action, eg suspension  Specify \_\_\_\_\_

**Sanctions (APS only)**

Termination of employment  Reduction in classification  Reduction in salary  Fine or deduction from salary   
Re-assignment of duties  Written reprimand  No formal sanction imposed   
Conviction of criminal offence (ADF and APS respondents)  Specify \_\_\_\_\_

Details of ongoing support to be provided to complainant(s), respondent(s) and witnesses

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Signature	Printed name	
Rank or title	Appointment	Date





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

STAFF-IN-CONFIDENCE (*After first entry*)

AC 875-1  
Formerly AC 875  
Introduced Dec 2003

Department of Defence

## Initial Complaint Report - Unacceptable Behaviour or Sexual Offence

### Instructions

#### 1. Responsibilities

It is a Defence requirement to report any complaint of unacceptable behaviour to the Defence Equity Organisation (DEO) when it involves Defence personnel and/or Defence contracted staff, irrespective of the outcome. For complaints of unacceptable behaviour refer to DI(G) PERS 35-3, and for sexual offence complaints DI(G) PERS 35-4. When two personnel from a different unit, ship, establishment or branch are involved in a complaint, the respondent's unit is to take responsibility for the procedures involved in managing the complaint.

#### 2. Reporting procedures

Reports are to be forwarded to:

Defence Equity Organisation  
Attention: SO Incident Reporting  
R1-1-C038  
Department of Defence  
Canberra ACT 2600

Enquiries: (02) 6265 4605

#### 3. Initial reports

Reports on sexual offences are to be forwarded direct to DEO **immediately** it becomes known to the commander or manager that the complaint has occurred. All other unacceptable behaviour reports are to be forwarded to DEO on the **first** working day of the month for complaints reported to units in the preceding month. **A complaint involving a number of complainants is recorded as a single report.**

#### 3. Initial reports (*Continued*)

When a complaint or series of complaints involves the same complainant and respondent, and there is doubt as to how to report the complaint(s), one report collectively based on the incident date(s) should be submitted.

Units, ships, establishments and branches are to place a unit or ship Reference Serial Number on form AC 875-1. This reference number must be referred to on all subsequent correspondence relating to that complaint.

#### 4. Update reports

**Monthly update reports are to be forwarded to DEO for all reported complaints until such time as the complaint has been finalised.** Update reports are to be reported on form AC 875-2, Update Incident Report - Unacceptable Behaviour.

The unit or ship Reference Serial Number used in an update report is to be the same reference number as shown in the initial report.

#### 5. Final outcome and formal action report

When a complaint has been finalised, the final outcome is to be reported on form AC 875-3, Final Outcome and Formal Action Incident Report - Unacceptable Behaviour.

If formal action is taken against a member for unacceptable behaviour, then page three of form AC 875-3 must be completed and forwarded to DEO.

The unit or ship Reference Serial Number used is to be the same reference number as used on the initial report for this complaint.

**Complainant and/or respondent names are not to be included in any initial (AC 875-1) or update (AC 875-2) reports**

STAFF-IN-CONFIDENCE (*After first entry*)

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