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CDF Directive No 08/2014

CHIEF OF DEFENCE FORCE DIRECTIVE

TO

VCDF, CN, CA, CAF, AND CJOPS

**AUTHORISING THE DISCLOSURE OF INQUIRY RECORDS AND REPORTS
UNDER REGULATION 63 DEFENCE (INQUIRY) REGULATIONS 1985**

INTRODUCTION

1. The Minister has recently signed an instrument delegating to the CDF, VCDF, CN, CA, CAF and CJOPS the power to authorise disclosure of inquiry records or reports under sub-regulation 63(6) Defence (Inquiry) Regulations 1985 ('the Regulations'). This delegation has the potential to greatly expedite the disclosure process relating to Defence Inquiry records but must be exercised judiciously and in accordance with the following directions and policy which have been endorsed by the Minister.

PURPOSE

2. The purpose of this Directive is to advise you of the Ministerial delegation and the directions and relevant policy to be applied in exercising your authority under this delegation. This Directive also advises on guidance to be taken into account when Defence Inquiry records are proposed to be disclosed in the performance of a person's duties.

BACKGROUND

3. Regulation 63 of the Regulations governs the disclosure of inquiry records and reports for inquiries conducted under the Regulations. It is an offence for an ADF member or Commonwealth employee to disclose inquiry records or reports unless the disclosure is in the performance of their duties (sub-regulation 63(4)) or the disclosure has been authorised by the Minister (sub-regulation 63(6)).

4. In many cases where disclosure of inquiry records and reports is required, it will fall within the performance of a discloser's duties, however in some cases it will be necessary to obtain specific authorisation from the Minister under sub-regulation 63(6), for example where an inquiry report is to be released to the public generally.

5. The Minister has by Instrument of Delegation dated 4 Apr 14 (Attachment 1) delegated to the persons for the time being holding, occupying or performing the duties of the CDF, VCDF, CN, CA, CAF and CJOPS his power to authorise disclosure of inquiry records and reports in sub-regulation 63(6).

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RESPONSIBILITIES

6. You are to ensure that members under your command proposing to disclose Defence Inquiry records or reports are aware of the limits of their authority to disclose such material in the performance of their duties. Further, where it is considered that a proposed disclosure involves sensitive material or is likely to fall outside the scope of the performance of a member's duties you are to consider exercising your authorisation to disclose such records or reports in accordance with the Instrument of delegation signed by the Minister for Defence on 4 April 14 (Attachment 1), this Directive and policy guidance at Attachments 2 and 3.

Disclosure in the performance of duties

7. Regulation 63(4) provides that inquiry documents may be disclosed in the performance of a person's duties. The scope of 'performance of duties' is broad and can generally be established by reference to the nature of the position and role of the individual seeking to disclose the information. You are to ensure that members under your command who may be in a position where disclosure of Defence Inquiry records or reports may be contemplated are aware of the limits of their authority to disclose such material in the performance of their duties. Guidance on disclosure in the performance of duties is contained at Annex B of this Directive.

8. Your attention is drawn to in particular to paragraphs 7-9 of Attachment 2. These paragraphs express limits on disclosure in the performance of duties: to the public or wide disclosure within Defence (likely to only be available to the most senior officers); to foreign militaries or foreign entities (must be authorised by CDF or CJOPS); and to ADF members conducting investigations under the *Defence Force Discipline Act 1982* (reserved for Appointing Officers or officers superior to Appointing Officers and subject to specific considerations).

Disclosure by the Minister or Minister's delegate

9. Regulation 63(6) provides the Minister (or Minister's delegate) the power to authorise a person to disclose inquiry documents to a particular person, class of persons or to the public generally. It is necessary to obtain this authorisation if the proposed disclosure is not in the performance of a person's duties. Authorisation is to be sought from the Minister or the Minister's delegate under regulation 63(6) where disclosure cannot be characterised as being in the performance of a person's duties, or where there is real doubt as to whether a person is permitted to disclose inquiry documents in the performance of their duties.

10. As the Minister's delegates, our power to authorise disclosure of inquiry documents under the delegation is supplementary to the existing power to disclose inquiry documents in the performance of duties under sub-regulation 63(4). The existence of the delegation does not mandate its use. As a delegate, you may judge that the nature of a particular matter is such that the specific authorisation of the Minister for disclosure of the material should be obtained.

11. The Minister's delegation is to be exercised in the context of the following constraints:

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- a. CDF is the sole delegate for considering and authorising disclosure of inquiry documents relating to CDF Commissions of Inquiry, other inquiries concerning 'whole of ADF' strategic issues, and inquiries concerning the death of service members and to foreign counterparts (other than inquiry documents CJOPS is authorised to disclose);
- b. Service Chiefs are authorised to act as delegates for the disclosure of inquiry record and reports relating to inquiries appointed within their respective Services and which principally affect the reputation and members of their service;
- c. VCDF and CJOPS are authorised to act as delegates for the disclosure of inquiry documents relating to matters for which they or their subordinates have been the appointing authority; and
- d. CJOPS is authorised to act as a delegate for the disclosure of inquiry records and reports to coalition partners or allies and which relate to combined operations or exercises.

12. Where there is overlap in the responsibilities described at paragraph 11 above, delegates should consult with each other to identify issues that may influence a decision on disclosure and to establish the appropriate delegate to act as a decision maker for a particular proposal to release inquiry documents. In cases where agreement cannot be established as to an appropriate delegate, the matter is to be referred to the CDF for decision.

13. The Minister has directed that the CDF is responsible for ensuring that the Minister is appropriately briefed on all sensitive issues arising from each of the delegates' offices. In order to comply with this requirement you are to ensure that Ministerial Advice is prepared and provided to the Minister through the CDF on any sensitive matters where you intend to exercise the delegation from the Minister. In particular, this would extend to proposals to disclose inquiry records to a member of the public or the public generally, and other proposed disclosures which are likely to have adverse reputational implications. In appropriate cases Public Affairs guidance must be developed prior to disclosure of inquiry documents to a member of the public or the public generally.

Application of the *Privacy Act 1988*

14. If inquiry documents are disclosed in the performance of duties or as authorised by a Minister or Minister's delegate, the disclosure is 'authorised by law' for the purposes of Australian Privacy Principle 6 (Schedule 1 of *Privacy Act 1988*). Accordingly, use or disclosure of personal information in inquiry documents, as authorised in regulation 63, may not be contrary to provisions in the *Privacy Act 1988*. However, Defence should endeavour to protect the legitimate privacy interests of individuals. Particular care should be taken to avoid the unnecessary distribution, including within Defence, of personal information, particularly 'sensitive information' as defined in section 6 of the *Privacy act 1988*. Attachment 3 provides guidance on how inquiry documents should be redacted to protect sensitive information, including personal information.

Redaction guidelines

15. Before inquiry documents are disclosed, either in the performance of duties or as authorised by the Minister or Minister's delegate, it is necessary to consider whether the

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inquiry documents contain any sensitive information that should be redacted before disclosure. Sensitive information includes personal information, national security information, commercially sensitive information and information the subject of legal professional privilege. Attachment 3 provides guidance on redacting information from inquiry documents.

Application of the *Freedom of Information Act 1982*

16. The *Freedom of Information Act 1982* (FOI Act) creates a general right for individuals to access government information. An application for access to inquiry documents under FOI is different from an application for access under regulation 63 of the Regulations. Applicants under FOI are only entitled to their own personal information contained in inquiry reports or records. FOI applications are coordinated through the Directorate of FOI.

FURTHER ADVICE

17. The Directorate of Military Administrative Law, Defence Legal Division, is the point of contact should you require any assistance with the interpretation of the attached policy guidance.

ACKNOWLEDGEMENT

18. This Directive is effective upon receipt. You are to acknowledge receipt of the directive by returning Annex A to my Staff Officer (Administration).

s22

D.J. HURLEY, AC, DSC
General
Chief of the Defence Force

June 2014

Annex:

A. Acknowledgement Receipt

Attachments:

1. Instrument of Delegation under sub-regulation 63(9) of the Defence (Inquiry) Regulations 1985 signed by the Minister for Defence on 4 April 2014
2. Guidance on Disclosure of Inquiry Documents in the Performance of Duties
3. Redaction Guidelines for Release of Inquiry Documents under Regulation 63 of the Defence (Inquiry) Regulations 1985

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**ANNEX A TO
CDF DIRECTIVE 08/2014
DATED 6 June 2014**

Acknowledgement

I acknowledge receipt of CDF directive – Authorising the Disclosure of Inquiry Records and Reports under Regulation 63 Defence (Inquiry) Regulations 1985 dated June 2014, and will comply with the directions contained within.

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**INSTRUMENT OF DELEGATION UNDER SUB-REGULATION 63(9) OF THE
DEFENCE (INQUIRY) REGULATIONS 1985**

I, David Johnston, Minister for Defence, hereby make this instrument under sub-regulation 63(9) of the *Defence (Inquiry) Regulations 1985*.

I delegate my power to authorise disclosure of inquiry records and reports in sub-regulation 63(6) of the *Defence (Inquiry) Regulations 1985* to the persons for the time being holding, occupying or performing the duties of the following positions:

- (a) Chief of the Defence Force;
- (b) Vice Chief of the Defence Force;
- (c) Chief of Navy;
- (d) Chief of Army;
- (e) Chief of Air Force; and
- (f) Chief of Joint Operations.

Dated this the 4th of April, 2014.

s22

David Johnston
Minister for Defence

GUIDANCE ON DISCLOSURE OF INQUIRY DOCUMENTS IN THE PERFORMANCE OF DUTIES

Introduction

1. Sub-regulation 63(1) of the *Defence (Inquiry) Regulations 1985* ('the Regulations') makes it an offence to disclose or copy a document, part of a document, or information contained in the records or reports or an inquiry ('inquiry documents') conducted under the Regulations. The offence applies to Commonwealth employees, including members of the Australian Defence Force (ADF), who came to the knowledge, or into the possession, of the information or document in the course of their employment or duties. The offence does not apply with respect to oral evidence given in public in the course of an inquiry.
2. It is a defence to a prosecution for an offence under sub-regulation 63(1) if the action taken was authorised under sub-regulation 63(4) (in the performance of duties) or sub-regulation 63(6) (specific authorisation by the Minister or his or her delegate).
3. This document provides guidance on when disclosure of inquiry documents will be within a person's performance of duties for the purposes of sub-regulation 63(4).

Performance of duties – general principle

4. The performance of a person's duties in the context of sub-regulation 63(4) includes all matters incidental to carrying out the functions of that person's service in the ADF or employment by the Commonwealth.
5. A person's duties and functions will depend on the nature of their position, namely what the person is expected to do to undertake their job. For example, a commanding officer in the ADF has functions associated with the welfare of his or her subordinates, so the performance of duties under sub-regulation 63(4) includes any matter incidental to maintaining the welfare of his or her subordinates. A legal officer in the ADF has functions associated with giving legal advice to command, so the performance of duties under sub-regulation 63(4) includes any matter incidental to giving that legal advice. The Inspector-General ADF (IGADF) has functions defined in the *Defence Act 1903*, and the performance of the IGADF's duties under sub-regulation 63(4) includes any matter incidental to fulfilling those functions. Disclosure of inquiry documents will, in many cases, be incidental to the functions of an appointing officer with respect to that inquiry, or the functions of a member to which inquiry material has been disclosed.
6. Where a proposed disclosure does not fall within the scope of a person's duties, or there is real doubt as to whether it falls within a person's duties, written authorisation from the Minister or a delegate under sub-regulation 63(6) will be required for it to be lawfully released.

Examples of disclosure that are unlikely to be part of or incidental to a person's duties

7. **Disclosure to the public or wide disclosure within Defence.** It is unlikely that a decision to disclose inquiry documents to a journalist, a member of the public (unless the individual has a direct interest in the inquiry), or to the public generally, will fall directly or incidentally within the duties of most ADF members or Commonwealth employees. It is also unlikely that wide disclosure of inquiry documents within Defence (for example, placing an inquiry report on the DRN Intranet so it is generally available to all Defence personnel) will

fall directly or incidentally within the duties of ADF members or Commonwealth employees, except those at the most senior levels of the organisation.

Examples of disclosure that will not be part of or incidental to a person's duties

8. **Disclosure to foreign militaries or other foreign entities.** Disclosure of inquiry documents to foreign militaries or other foreign entities will not fall directly or incidentally within the duties of most ADF members or Commonwealth employees. The exceptions to this will include Defence Attaches, Commanders in operational theatres, or where ADF members are operating in conjunction with foreign forces. However, before disclosure of inquiry material to foreign militaries or to other foreign entities is contemplated by these appointments, authorisation of the CDF or CJOPS is required.

9. **Disclosure of inquiry documents to ADF members conducting investigations under the *Defence Force Discipline Act 1982* (the DFDA).** Discipline proceedings under the DFDA are subject to specific rules of evidence, and statements made by witnesses in *Defence (Inquiry) Regulations 1982* inquiries are generally not admissible in evidence against that witness (*Defence Act 1904* s124(2C)). Therefore, any disclosure of inquiry documents for the purposes of DFDA investigations must be the subject of careful consideration. Disclosure of inquiry documents to service police will only fall within the duties of the particular Appointing Authority for the inquiry, or superior officer to that Appointing Authority. Where Service Police specifically request copies of inquiry records, an Appointing Authority must be satisfied that there is a nexus between the inquiry and the discipline investigation, either on the basis that a valid search warrant has been issued for the material, or to the standard required for issue of a search warrant for the material.

Examples of disclosure that may be part of or incidental to a person's duties

10. **Disclosure within Defence for administrative purposes.** Common examples of internal disclosure that may fall within the duties of an ADF member or Commonwealth employee include disclosure of inquiry records and reports to other Defence staff (including Complaint Resolution) for the purpose of:

- a. implementing or otherwise actioning inquiry outcomes;
- b. informing military or other Defence decision-making;¹
- c. designing training, policy, procedures, instructions or orders;
- d. dealing with complaints (including complaints to other agencies);
- e. obtaining legal advice;
- f. responding to an IGADF request for information; and
- g. provision of relevant information to a person or organisation in order to afford them procedural fairness in relation to a proposed adverse decision or action.

11. **Disclosure outside Defence for administrative purposes.** Common examples of external disclosure that may fall within the duties of an ADF member or Commonwealth employee include disclosure to:

- a. a Minister in the Defence portfolio for any reason;

¹ This includes disclosure to commanding officers and others in Defence with a welfare responsibility to affected persons.

- b. the Department of Veterans' Affairs, external regulatory agencies (such as the Defence Force Ombudsman, Comcare), civilian police or other investigative agencies, and State / Territory coroners;² and
- c. another Commonwealth, State or Territory Department or agency for the purpose of implementing or otherwise actioning inquiry outcomes.

12. Disclosure in accordance with the law. The duties of all ADF members and Commonwealth employees include disclosure of inquiry documents in order to comply with a law of the Commonwealth or a relevant State or Territory, or to meet general legal obligations. Compliance with the law includes:

- a. compliance with a subpoena, summons, warrant or other order issued by a Commonwealth, State or Territory court or tribunal;³
- b. provision of any information to a statutory office-holder or other person exercising legislative power to obtain information from Defence;
- c. provision of relevant information to a person or organisation in order to provide them with procedural fairness in relation to a proposed adverse decision or action.

13. Disclosure to individuals and organisations with a direct interest in the inquiry. Common examples of disclosure to affected persons that may fall within the duties of an ADF member or Commonwealth employee include disclosure of inquiry documents to:

- a. complainants, so that they can understand how their complaint has been dealt with;
- b. respondents, so that they can understand both positive and negative outcomes relevant to them;
- c. other individuals or organisations who may be the subject of adverse findings; and
- d. witnesses and other individuals (such as family members) who have a significant interest in the outcomes of the inquiry.

Protection of special classes of information

14. Inquiry documents may include sensitive information, such as personal information, national security information, legally privileged information and commercially sensitive information. Attachment 3 to CDF Directive 08/2014 outlines how inquiry documents should be redacted to protect sensitive information. The degree to which this information may need to be redacted will depend on to whom the inquiry documents are being disclosed and the purpose for which they are being disclosed.

Protecting disclosed inquiry documents from further disclosure

15. In some cases, particularly where inquiry documents contain sensitive information, there may be concern that a person who receives them will disclose that information further.

16. Where inquiry documents are disclosed within Defence for administrative purposes, the ADF member or Commonwealth employee receiving them will be subject to the operation of regulation 63, as well as section 70 of the *Crimes Act 1914*. Despite this, sensitive information

² Disclosure of this kind would usually be within the duties of a dedicated liaison officer or similar.

³ If any ADF member or Commonwealth employee receives a summons or subpoena from a Court or Tribunal in relation to inquiry documents, they should contact the Directorate of Litigation in Defence Legal for advice before accepting service of the document and providing any information in satisfaction of the order.

Attachment 2 to
CDF Directive 08/2014

should not be unreasonably distributed within Defence and the 'need to know' principle applies.

17. Where inquiry documents are to be disclosed to other Commonwealth, State or Territory agencies, any potential for further disclosure of sensitive information should be discussed with that agency, and appropriate measures taken to mitigate those risks. Appropriate action will depend on the nature of the information disclosed and the functions of the receiving agency.

18. Where inquiry documents are to be provided to individuals or organisations with an interest in the inquiry outcomes, there are a number of actions that can be taken to mitigate the risk of further disclosure of sensitive information:

- a. If the person receiving the inquiry documents is a serving ADF member or Commonwealth employee, they can be given an order or direction not to disclose the inquiry records and reports. A breach of the order or direction may result in a disciplinary response, although this will only be available while the person remains in the ADF or Commonwealth. By way of example, such an order / direction could read:

You are not to disclose a copy of the records or report, or contents of the report, to any individual(s) EXCEPT to your legal adviser (for the purpose of obtaining legal advice) or to your medical practitioner, psychologist or other treating medical professional (for the purpose of facilitating the provision of medical treatment or support). If you disclose the report (or its contents) to your legal adviser, a medical practitioner, a psychologist or other medical professional, you are to explain to them that the information is disclosed on a confidential basis and instruct them not to further disclose it to any other person.

- b. Depending on the terms of a particular contract, a contractor who receives inquiry documents from Defence may be subject to confidentiality obligations with respect to that information.
- c. If the person receiving the inquiry documents is not an ADF member, Commonwealth employee or contractor, there is very little action that can be taken by Defence to prevent further disclosure of the inquiry documents by that person. This should be considered when determining what information should be redacted, as outlined in Attachment 3 to CDF Directive 08/2014.

REDACTION GUIDELINES FOR RELEASE OF INQUIRY DOCUMENTS UNDER REGULATION 63 OF THE *DEFENCE (INQUIRY) REGULATIONS 1985*

Introduction

1. Sub-regulation 63(1) of the *Defence (Inquiry) Regulations 1985* ('the Regulations') makes it an offence to disclose or copy a document, part of a document, or information contained in the records or reports or an inquiry ('inquiry documents') conducted under the Regulations. The offence applies to Commonwealth employees, including members of the Australian Defence Force (ADF), who came to the knowledge, or into the possession, of the information or document in the course of their employment or duties. The offence does not apply with respect to oral evidence given in public in the course of an inquiry.
2. It is a defence to a prosecution for an offence under sub-regulation 63(1) if the action taken was authorised under sub-regulation 63(4) (in the performance of duties) or sub-regulation 63(6) (specific authorisation by the Minister or his or her delegate).
3. This document provides guidance on making redactions to inquiry documents to protect sensitive information. It applies in relation to disclosure in the performance of duties, and disclosure authorised by the Minister or the Minister's delegate.
4. The redaction guidelines below vary depending on the identity of the recipient of the inquiry documents. Attachment 2 to CDF Directive 08/2014 outlines the action that can be taken to mitigate the risk of further disclosure by a recipient of inquiry documents. The redaction guidelines address:
 - a. Part 1 – principles for disclosure to individuals who are not Commonwealth employees or ADF members; and
 - b. Part 2 – principles for disclosure to individuals who are Commonwealth employees or ADF members.
5. The guidelines are intended to assist decision-makers who are involved in disclosing inquiry documents to determine what information, if any, should be redacted from inquiry documents before the proposed disclosure. Notwithstanding anything in these guidelines, decision-makers should exercise judgment when redacting documents, and have regard to the particular circumstances of the disclosure, including the identity of the recipient and their interest in the inquiry, the risk that the recipient will further disclose the information (including to the public), the relative sensitivity of the information in question, and the purpose of the disclosure. Moreover, unless specifically required by law, decision-makers are not required to disclose information if the work involved in processing a request would substantially and unreasonably divert Defence resources from its other operations.
6. If the disclosure is required by law, there may be limited (if any) capacity to make redactions to inquiry documents before disclosure. If there are concerns about disclosing sensitive information in this context, legal advice should be sought.

PART 1—GENERAL REDACTION PRINCIPLES FOR DISCLOSURE TO INDIVIDUALS WHO ARE NOT COMMONWEALTH EMPLOYEES OR ADF MEMBERS

7. **Scope.** Part 1 redaction principles apply to release of inquiry documents to individuals who are **not** Commonwealth employees or ADF members. Release of inquiry documents to these individuals should, in effect, be regarded as public release. This is because Defence has

very limited legal capacity to restrict further disclosure of inquiry documents by such recipients.⁴

8. **General redaction principles.** Decision-makers may consider the principles and exemptions in the *Freedom of Information Act 1982* (FOI Act) when making decisions about disclosing or redacting inquiry documents. Information which falls into the following FOI categories may be appropriately deleted from inquiry documents:

- a. National security, defence or international relations;
- b. Law and protection of public safety;
- c. Legal professional privilege;
- d. Material obtained in confidence;
- e. Commonwealth-State relations;
- f. Deliberative processes;
- g. Certain operations of agencies; and
- h. Personal privacy.

In addition, decision-makers are expected to apply their professional judgement and experience when determining whether material should be redacted from inquiry documents that are proposed to be disclosed.

9. **Unreasonable disclosure of personal information.** Information in inquiry documents should be redacted by a decision-maker if release would involve the **unreasonable** disclosure of personal information of any person (other than the proposed recipient). The following matters should be considered in determining whether disclosure of the contents of inquiry documents would involve an unreasonable disclosure of personal information:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- c. the availability of the information from publicly accessible sources; and
- d. whether the person to whom the information relates has been notified of the potential for this information to be released (whether in the form of a Privacy Notice or otherwise).

If the disclosure of personal information is associated with the specific exercise of a Commonwealth employee's (or an ADF member's) usual duties or responsibilities e.g. a name in a signature block, or identification of a particular office holder, it would not be unreasonable to disclose this information, unless special circumstances exist (for example, if the member has a protected identity).

10. **Consultation regarding the release of personal information.** Where inquiry documents include personal information relating to a person who is not the intended recipient, that individual should, if reasonably practicable, be given a reasonable opportunity to make a submission that the document should not be disclosed. This should occur if it appears that the third party might reasonably wish to make a submission that the information should not be released. This is most likely to occur in relation to criticisms of an individual's conduct or if it includes some sensitive personal information. If the third party is deceased, their next of kin

⁴ It may be possible to mitigate the risk of further disclosure of inquiry documents provided to some other recipients, such as Defence contractors. The particular risks of further disclosure and any action available to mitigate those risks should be considered when determining how to apply this guidance.

or legal representative should be given this opportunity, if it is reasonably practicable to do so. There is no need to engage in consultation if it is intended to redact the relevant third party information from inquiry documents.

PART 2—REDACTION PRINCIPLES FOR DISCLOSURE TO COMMONWEALTH EMPLOYEES AND ADF MEMBERS

11. Part 2 redaction principles apply to the proposed release of inquiry documents to ADF members or Commonwealth employees, in circumstances where further disclosure by the recipient can be lawfully restricted. Because Defence has legal authority to restrict further disclosure of inquiry documents by these individuals, the decision-makers on disclosure may adopt a more open approach to the disclosure of information than is described in Part 1.

Disclosure within Defence for administrative purposes

12. Where inquiry documents are disclosed to ADF members or Commonwealth employees in the ordinary course of their employment, the operation of regulation 63 and section 70 of the *Crimes Act 1903* makes it an offence to disclose the documents otherwise than in the performance of duties. Notwithstanding the clear prohibition on further disclosure of inquiry documents, internal distribution of sensitive classes of information should be undertaken with care. For example:

- a. Care should be taken to avoid unnecessary or gratuitous distribution within Defence of personal information or commercially sensitive information, having regard to the purposes of internal disclosure and the administrative practicalities. Particular care should be taken to avoid unnecessary distribution of health information and other information defined as 'sensitive information' in section 6 of the *Privacy Act 1988*.
- b. Classified information should only be distributed within Defence consistently with the requirements of the Defence Security Manual.

Disclosure to ADF members or Commonwealth employees with a personal interest in inquiry outcomes

13. When inquiry documents are to be disclosed to ADF member or Commonwealth employee who is an affected person, further distribution can be limited by issuing an order or direction not to further disclose the documents (see [Attachment 2 to CDF Directive 08/2014](#)).

14. **Personal information and commercially sensitive information.** Personal and commercially sensitive information of third parties should be redacted where:

- a. the information **is not materially relevant** to the contents of inquiry documents that relate to the recipient;
- b. its disclosure would constitute an **unreasonable disclosure of personal information** about another person (for example, sensitive medical information, home addresses and telephone numbers, personal financial affairs, and other like matters); and
- c. its disclosure would constitute a breach of a confidentiality obligation owed to a third party.

15. **Security redactions.** Classified information contained in inquiry documents is to be redacted if the ADF member or Commonwealth employee does not have the necessary security or compartment clearance to access such material. Where the classified information is

not materially relevant to contents of the inquiry documents that relate to the recipient, it may be redacted simply on the basis of the 'need-to-know' principle.

Legally Privileged information

16. Information in inquiry documents that is subject to Legal Professional Privilege (LPP) should be redacted unless the owner of the privilege consents to the waiver of that privilege.

Methods of disclosure

17. In all cases where inquiry documents are released to an ADF member or Commonwealth employee, the recipient is responsible for ensuring that the report is handled and stored in accordance with extant security requirements. A decision-maker may decide to provide a physical copy of inquiry documents to an ADF member or Commonwealth employee. Alternatively, they may choose to provide an electronic copy to the recipient via the DRN or DSN, as relevant. Where classified or other sensitive information is proposed to be disclosed, decision-makers may provide an ADF member or Commonwealth employee with access to inquiry reports in an appropriate Defence location, as opposed to providing them with a copy of the document for them to store separately.