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Australian Government

Department of Defence

DEFENCE INSTRUCTIONS (GENERAL)

Amendment

PERS 35–3 *Management and reporting of unacceptable behaviour*
AMDT NO 6
Complete Revision

Department of Defence
CANBERRA ACT 2600

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Issued with the authority of the Chief of the Defence Force and the Secretary of the Department of Defence pursuant to section 9A of the *Defence Act 1903* for members of the Australian Defence Force.

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NICK WARNER
Secretary

A.G. HOUSTON
Air Chief Marshal
Chief of the Defence Force

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(Complete Revision)

MANAGEMENT AND REPORTING OF UNACCEPTABLE BEHAVIOUR

INTRODUCTION

1. All Defence personnel have a responsibility to foster an equitable, fair and safe workplace environment free from all forms of unacceptable behaviour. The *Occupational Health and Safety Act 1991* (OHS Act) has a preventative focus that operates to require Defence to take all reasonably practicable steps to protect the health and safety of employees and external service providers in the workplace. The Defence Values, single-Service Values, Australian Public Service (APS) Values and the APS Code of Conduct collectively set out the behaviour expected of all Defence personnel.

POLICY STATEMENT

2. Unacceptable behaviour in the workplace is not condoned, and neither is the mismanagement or disregard of complaints. Defence is committed to ensuring that incidents of unacceptable behaviour are dealt with appropriately.

SCOPE

3. This Instruction applies to:

   a. all Defence personnel;

   b. to external service providers who, under the conditions of contract with Defence, are required to comply with this Instruction; and

   c. foreign military members serving with the Australian Defence Force (ADF) (subject to paragraph 10.).

4. This Instruction does not apply to Australian Navy Cadets, Australian Army Cadets and Australian Air Force Cadets and non-ADF cadet staff and instructors.

5. This Instruction sets out:

   a. Defence's policy on unacceptable behaviour in the workplace; and

   b. the required procedures and practices for the management, resolution and reporting of unacceptable behaviour complaints.

DEFINITIONS

6. The definitions which apply to this Instruction are in annex A. The categories and definitions of unacceptable behaviour are in annex B.

STRUCTURE

7. This Instruction is divided into three parts:

   a. Part one identifies the roles, responsibilities and rights of Defence personnel in relation to unacceptable behaviour incidents and complaints.

   b. Part two identifies how to make a complaint, who manages a complaint, the process for complaint management, the resolution options and review avenues.

   c. Part three details the requirements and frequency of reporting, and the requirements for information management.

LEGAL CONTEXT

8. Defence is obliged to comply with the *Racial Discrimination Act 1975*, *Defence Force Discipline Act 1982* (DFDA), *Sex Discrimination Act 1984, Human Rights and Equal Opportunity Commission Act 1986, Privacy Act 1988* (Privacy Act), OHS Act, *Disability Discrimination Act 1992*, *Public Service Act 1999* (PS Act), and the *Age Discrimination Act 2004*.

9. For members of the ADF (ADF members) this Instruction constitutes a lawful order from the Chief of the Defence Force. This Instruction also constitutes a lawful and reasonable direction from the Secretary for the purposes of subsection 13(5) of the PS Act to Defence APS employees. This Instruction applies to external service providers who, under the conditions of contract with Defence, are required to comply with this Instruction.

10. Foreign military members may serve with the ADF on attachment, exchange or as part of some other relationship between Australia and their own government. The manner in which matters of discipline and administration are dealt with, will change significantly depending upon which form of agreement is in place. This will require reference to the relevant authorising instrument relating to the foreign military member. Legal advice is strongly recommended in such situations.

11. This Instruction does not apply to sexual offences or other criminal offences, for example, assault or threats of violence. Refer to either Defence Instruction (General) (DI(G)) PERS 35–4—*Management and Reporting of Sexual Offences* or DI(G) ADMIN 45–2—*Reporting and Investigation of Alleged Offences within the Australian Defence Organisation* as appropriate. In the event that a complaint is initially referred for management under the above mentioned references, and the appropriate authorities determine that no action will be taken, the matter may in appropriate circumstances be managed under this Instruction.

PART ONE—ROLES, RIGHTS AND RESPONSIBILITIES

Introduction

12. Everyone in Defence is required to be treated with respect, fairness and without harassment. Values underpin relationships and behaviour. Values-based behaviour in Defence requires everyone to accept personal responsibility and accountability for their actions and to think clearly about the consequences of their actions for Defence.

All Defence personnel

13. Defence personnel have a responsibility to take all reasonably practicable steps to protect the health and safety of themselves and others in the workplace. Consistent with this requirement, all Defence personnel must:

a. behave in a way that upholds the Defence Values, and in addition ADF members must comply with the Navy, Army or Air Force Values (as appropriate) and the DFDA, or for APS employees, the APS Values and Code of Conduct;

b. question colleagues whose behaviour toward themselves or others they perceive, or they believe may be perceived to be unacceptable;

c. promptly report to their supervisor, commander or manager (as appropriate), incidents of unacceptable behaviour that are beyond their ability or authority to manage;

d. monitor their own behaviour and attitude to minimise causing offence; and

e. be cognisant of equity and diversity principles and complete the mandatory equity and diversity training.

Defence personnel found to have engaged in, contributed to, ignored, assisted, or personally encouraged unacceptable behaviour may be held personally responsible.

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Supervisors

14. Maintaining acceptable behaviour and effective relationships in the workplace is a primary leadership responsibility. Supervisors at all levels must act on all unacceptable behaviour in the workplace. In deciding how to proceed, supervisors are strongly encouraged to seek support and advice from their chain of command, line of management and the advice services in place (paragraph 32.). Supervisors will be accountable for:

a. monitoring the workplace and the health and safety of all personnel under their control/command/supervision (refer to *Defence Safety Manual* (SAFETYMAN), volume 1—'General';

b. taking all reasonably practicable action to prevent unacceptable behaviour in the workplace;

c. responding promptly, seriously, with fairness and sensitivity to allegations of unacceptable behaviour;

d. reporting any complaint of unacceptable behaviour to their commander or manager; and

e. ensuring that all Defence personnel within their supervisory line of responsibility, complete the mandatory equity and diversity awareness training annually and that the training is recorded in PMKeyS.

Commanders and managers

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

a. manage and report all unacceptable behaviour complaints promptly and impartially in accordance with this Instruction;

b. ensure that external service providers (as required at paragraph 17.) complete equity and diversity training;

c. maintain and promote their local Equity Adviser Network (including Equity Advisers and the Defence Equity Advice Line) as detailed in DI(G) PERS 35–7—*Defence Equity Adviser Network*; and

d. make reasonable efforts to ensure that both the complainant and the respondent are treated fairly, without victimisation or disadvantage.

External service providers

16. Defence service contracts as they are renewed or issued must require the contractor, its officers, employees, agents and subcontractors to comply with this Instruction. The standard of behaviour required of external service providers is as identified in paragraph 13. External service providers who have a supervisory role over Defence personnel must comply with the requirements of supervisors in paragraph 14. or if in a managerial role, must also comply with requirements of managers as detailed in paragraph 15.

17. **Training.** The requirement to complete annual equity and diversity training is dependent on the level of interaction with the Defence workforce. External service providers that provide their service in a Defence workplace must complete annual training. Those external service providers who do not provide their service in a Defence workplace, or infrequently visit the Defence workplace, are not required to complete the training. Contract managers must exercise professional judgement in assessing the training requirement for external service providers with a high level of interaction with Defence personnel, but who either do not perform their service in, or infrequently visit the Defence workplace. Contract managers are responsible for providing access to the training and for ensuring the external service provider has met this requirement.

18. A complaint of unacceptable behaviour against an external service provider that is not resolved informally must be managed in accordance with the Resolution of Disputes clause in the contract. Any subsequent action against the individual arising from the dispute resolution is the responsibility of the external service provider employer.

Complainants and respondents

19. During the management of an unacceptable behaviour complaint both the **complainant and respondent** will:

a. have reasonable access to appropriate support services, as detailed in annex C;

b. be afforded procedural fairness in the management of a complaint;

c. receive protection from victimisation, or other unfair disadvantage as a result of an unacceptable behaviour complaint;

d. receive protection of their personal information in accordance with the Privacy Act; and

e. be informed of the progress of the complaint, including the resolution and their rights to review.

20. The **complainant** can expect:

a. their complaint will be viewed seriously and dealt with as promptly as possible, and

b. their wishes will be considered in determining how a complaint is to be resolved.

21. The **complainant** has a responsibility to:

a. where practicable, attempt self-resolution at the lowest appropriate level in the circumstances (refer to annex E); and

b. if they make a complaint, to state clearly they have an unacceptable behaviour complaint, and provide a full, fair and honest account of the incident(s), include any supporting information and identify the outcome they seek to achieve.

22. The **respondent** will not be assumed guilty because a complaint has been made against them.

PART TWO—UNACCEPTABLE BEHAVIOUR COMPLAINTS

23. A complaint of unacceptable behaviour can be made either in writing or verbally. There is no distinction between a formal or informal complaint. A complaint that includes a complainant's wish that no action be taken, is a complaint. The complainant's desire for 'no action' should be given appropriate weight by the commander or manager when determining the optimal method for resolving the matter.

24. A complaint should be made in the first instance to the complainant's or the respondent's commander or manager. If that is not possible or appropriate in all the circumstances, for example there is a perceived conflict, the complaint is to be made to the next higher level in the chain of command or reporting line. Refer to annex D for detail on who manages a complaint of unacceptable behaviour. A complaint must:

a. clearly state it is an unacceptable behaviour complaint and, if in writing, contain a marking of 'STAFF–IN–CONFIDENCE';

b. provide a brief, clear description of the incident(s), including the details of what happened, when it happened, where it happened and who was involved in the incident, including witnesses;

c. identify any steps taken by the complainant to seek resolution, and the outcome of such steps; and

d. identify the complainant's desired outcome.

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25. **Management initiated complaint.** An incident of alleged unacceptable behaviour reported by a third party to a commander or manager may be managed as a complaint. Similarly, a commander or manager may determine that an incident, or series of incidents, should be addressed as a complaint of unacceptable behaviour even though an affected party has not made a complaint.

26. The Defence Whistleblower Scheme is an alternative and independent means to report alleged misconduct or unethical behaviour involving: a member of the ADF, a Defence APS employee, or a supplier of goods or services to Defence. Defence personnel who believe that they may require protection and anonymity in relation to their complaint should refer to DI(G) PERS 45–5—*Defence Whistleblower Scheme*.

Vexatious and malicious complaints

27. A vexatious or malicious complaint may be a form of harassment, itself requiring management in accordance with this Instruction. Such complaints can have a detrimental effect on personnel, morale, workplace relationships and the wellbeing of all people involved. Each complaint is to be assessed on its merits.

Management of unacceptable behaviour complaints

28. A commander or manager must act on all unacceptable behaviour complaints brought to their attention in a prompt, fair and impartial manner. Annex D identifies who must manage a complaint, and the process for managing unacceptable behaviour complaints.

Resolution of unacceptable behaviour complaints

29. Decisions about whether a person has engaged in unacceptable behaviour are decisions which may adversely affect a person's interests, rights or reputation. Any such decision must only be made after persons affected have been afforded procedural fairness. Good decision-making, which both promotes fairness and which is capable of withstanding later scrutiny, is best shown by the decision-maker documenting in detail what steps have been followed through the complaint management process. Instruction on procedural fairness and administrative decision making is set out in Australian Defence Force Publication (ADFP) 06.1.3—*Guide to Administrative Decision-Making* and the *Decision-makers Handbook: Making personnel-related decisions for ADF members and APS employees* which is available on the Pay and Conditions website.

30. Any measures aimed at resolution must include reasonable steps to ensure there is no repetition of the behaviour or victimisation of either party. This may require consideration of administrative and/or disciplinary action. Regular follow-up action may be necessary to ensure that the behaviour has not been repeated and/or victimisation has not resulted. If the commander or manager becomes aware of recurrence or victimisation, prompt preventative action is required.

31. Resolution of the complaint means that decisions have been made, appropriate action has been taken and the complaint has been dealt with effectively and with all due sensitivity to the needs of the parties. Resolution of complaints does not necessarily mean that either the complainant or respondent is satisfied with the result. There are a number of ways in which resolution can be achieved, including informal and formal options. When considering the most appropriate resolution process, regard must be given to the policy to resolve complaints at the lowest appropriate level. Annex E details the informal and formal resolution options, and identifies the review avenues both within Defence and external to Defence, that may be available to complainants and respondents.

Unacceptable behaviour complaint advice

32. At any time in the complaint management process, commanders or managers may seek advice or guidance from:

a. the Fairness and Resolution Centre in the region—refer to the contact list on the Alternative Resolutions and Equity website;

b. an equity adviser, but not an equity adviser who has, or is providing advice to either the complainant or respondent, (refer to DI(G) PERS 35–7);

c. a Senior Equity Adviser within a unit or establishment;

d. Group human resource manager; or

e. references, tools, supporting information and contacts provided on the Fairness and Resolution (FR) website.

PART THREE—REPORTING AND INFORMATION MANAGEMENT

Reporting

33. Complaints involving unacceptable behaviour may require reporting to several Defence agencies depending on the nature of the complaint. All complaints of unacceptable behaviour that involve Defence personnel or external service providers must be reported to FR irrespective of the outcome. Annex F details reporting requirements to FR, reports to Occupational Health and Safety Branch and notification to Comcare, and other Defence reporting requirements.

Incidents of interest to the media

34. Unacceptable behaviour incidents that are likely to attract press comment or cause adverse publicity towards Defence must be reported in accordance with current Defence requirements. For guidance on Ministerial Briefs and Hot Issues Briefs, refer to Ministerial Support and Public Affairs Division website. Personnel must also be cognisant of the requirements in DI(G) ADMIN 08–1—*Public comment and dissemination of official information by Defence personnel* and DI(G) ADMIN 45–2.

Confidentiality

35. Complainants and respondents may need advice and support before they feel that they are able to report or deal with an unacceptable behaviour incident. Complainants and other parties may confidentially discuss their complaint or matters related to the complaint with a support person, such as a colleague. Complaints are not to be discussed openly in the workplace. A discussion with a commander or manager is not confidential. Defence personnel in a supervisory capacity to the complainant or the respondent are obliged to act on the incident. Additionally there may be an obligation to report notifiable incidents under DI(G) ADMIN 45–2.

36. Communications with equity advisers will be regarded as confidential except where the communication reveals a criminal or DFDA offence, a threat to life, health or national security. Confidential discussions will not constitute making a complaint. Refer to DI(G) PERS 35–7.

37. Confidentiality is also provided by Defence personnel acting in their professional capacity as a medical practitioner, allied health professional, psychologist, social worker, legal officer, counsellor or chaplain. Communications made in these contexts will not constitute making a complaint. All records of such communications are to be marked ‘XXX–IN–CONFIDENCE’ as appropriate and treated accordingly.

Privacy—protection of personal information

38. Defence has an obligation to collect information in relation to management and reporting of unacceptable behaviour incidents and report it to the chain of command or line management and to FR. Defence personnel responsible for handling unacceptable behaviour complaints must comply with the Privacy Principles contained in the Privacy Act.

39. **Security of records.** As a minimum, complaints of unacceptable behaviour must be marked and handled as STAFF–IN–CONFIDENCE. Reasonable steps must be taken to safeguard the information against loss, unauthorised access or use, modification, disclosure and other misuse. This may include assigning access privileges to documents on the Defence Records Management System, storage in locked cabinets, de-identifying information conveyed by email, strictly limiting access and distribution of information to those with a role in the complaint process, and then only that information which is relevant to their role. For current guidance on privacy, refer to the Defence privacy website.

Release of records

40. The respondent and complainant must be informed of the commander or manager's determination in relation to the complaint and the reasons for that decision. At this point, a commander or manager may release the report, or part of it, containing only those aspects of the report that relate to the individual concerned with appropriate privacy deletions (names and other information that could identify an individual deleted). For advice on privacy deletions, commanders and managers should contact Defence Legal Division, a base/command legal officer or FR. Additional considerations are:

a. Inquiries under the Defence (Inquiry) Regulations. If an inquiry has been conducted under the Defence (Inquiry) Regulations 1985, particular rules apply to the use of personal information contained in the records of an inquiry. Further information on the use of inquiry records is contained in ADFP 06.1.4—*Administrative Inquiries Manual*. Advice should be sought before providing records of any such inquiry to another person.

b. Release of records may be made subject to an undertaking that the information will only be used for a specified limited purpose and that it not be passed to third parties.

c. Are there LEGAL–IN–CONFIDENCE records or do any records reflect legal advice provided under privilege? If so, the author of the advice should be consulted to determine whether the record should not be released or material deleted in order to avoid inadvertently waiving the Commonwealth's legal professional privilege in the advice.

d. An applicant may seek access to the records under Freedom of Information provisions. Refer to DI(G) ADMIN 27–1—*Freedom of Information Act—Implementation in the Department of Defence*.

41. Records of Code of Conduct inquiries are the responsibility of the appropriate delegate who must assess requests and determine any privacy or security deletions.

42. If the unacceptable behaviour complaint relates to a criminal offence under investigation by the civilian or the service police, the relevant police agency must be consulted prior to releasing the information.

Record-keeping

43. *Defence Records Management Policy Manual (*POLMAN 3) is to apply to all record-keeping. A unit case file must be created for each unacceptable behaviour complaint managed in a business unit. Case files as described in POLMAN 3 use the file type 'Corporate file'. For example: File Type—Corporate File, Function: Personnel: Military Personnel, Case Type: Complaints. Files must be classified STAFF–IN–CONFIDENCE as a minimum. The file name must contain the case file number. The registry of case file numbers and corresponding names should be managed by the business unit. The file is to hold the complaint, the Quick Assessment (QA), the reports created in accordance with annex F, and all other records created or received by the work unit in the management of the complaint. The file is to be retained by the workplace or business unit in accordance with POLMAN 3.

44. DI(G) ADMIN 10–8—*Conduct Reporting and Tracking System* and DI(G) ADMIN 65–1—*Administrative Inquiry Tracking* reporting requirements apply where applicable.

45. When management of a complaint is transferred, copies of relevant documents on the file are to be provided to the gaining commander or manager. As a minimum this should include the complaint, the QA, decisions by the commander or manager and all reports produced in accordance with annex F.

Fairness Resolution unacceptable behaviour records

46. FR records the information from complaints reported by commanders and managers on a database that records all reported unacceptable behaviour complaints and the outcomes. The name and personal details of Defence respondents who have had formal action taken against them as a result of unacceptable behaviour, as detailed on part two of Form AC 875–3—*Final Outcome Report—Unacceptable Behaviour or Sexual Offence* (available on the Defence Web Forms System) are recorded in this database. The database also records all sexual offence complaints and, if formal action has been taken, the details of the respondents in these cases. The database assists in the identification of repeat behaviour. Access to this database is restricted and controlled by FR.

47. The collection of unacceptable behaviour records is a government requirement following the Report of the Senate Standing Committee on Foreign Affairs, Defence and Trade on Sexual Harassment in the Australian Defence Force (1994). The information stored on the database is protected as required by the Privacy Act. The information may be taken into account by the relevant Service for career management and posting decisions. The information is also used for compiling ministerial briefings and in aggregate form for analysing statistical trends.

CONCLUSION

48. All Defence personnel have a role in preventing or resolving unacceptable behaviour. Incidents of unacceptable behaviour must be resolved in an appropriate and timely manner. When an incident results in a complaint of unacceptable behaviour, the complaint must be managed promptly, seriously, with fairness and sensitivity in accordance with this Instruction. A flow chart to the management and reporting of unacceptable behaviour complaints is provided in annex G whilst annex H provides a checklist for the management and reporting of unacceptable behaviour complaints.

49. Related legislation, instructions, policy, publications and websites that have been referenced in this Instruction are listed with appropriate links in annex I.

Annexes:
A. Definitions
B. Definitions and categories of unacceptable behaviour
C. Defence funded support options for unacceptable behaviour management
D. Management of unacceptable behaviour complaints
E. Resolution of unacceptable behaviour
F. Unacceptable Behaviour Reports
G. Flow chart to management and reporting of unacceptable behaviour complaints
H. Checklist for management and reporting of unacceptable behaviour complaints
I. Related legislation, instructions, policy, publications and websites

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DEFINITIONS

1. The following definitions apply to this Instruction:

a. **Australian Defence Force (ADF)** member as defined in section 3 of the *Defence Force Discipline Act 1982*, means:

(1) a member of the Permanent Navy, the Regular Army, or the Permanent Air Force; or

(2) a member of the Reserves who:

(a) is rendering continuous full-time service; or

(b) is on duty or in uniform.

b. **Case office**r is a person appointed by a commander or manager to inform of progress in the management of a complaint, to assist and advise on applicable support services, and to assist communication between the parties.

c. **Commander** is an ADF officer, who by virtue of a delegation or instrument of appointment exercises authority and holds responsibility for assigned ADF personnel.

d. **Complaint of unacceptable behaviour** is a statement of grievance of an incident or incidents of unacceptable behaviour, which has been made either verbally or in writing in accordance with this Instruction.

e. **Complainant** is a person who perceives they have been subjected to unacceptable behaviour.

f. **Contract manager** means the Commonwealth representative named on the contract, or a person to whom the management of the contract has been delegated.

g. **Defence employee** means a person employed in the Department of Defence under section 22 of the *Public Service Act 1999*.

h. **Defence Investigative Authorities** are the Australian Defence Force Investigative Service, the Service Police organisations that report to the Provosts Marshal of the Navy, Army and Air Force, the investigative arm within the Inspector-General Division, the Fraud Investigation and Recovery Directorate and the Defence Security Authority.

i. **Defence personnel** means all Defence employees, Defence Locally Engaged Employees overseas, external service providers, Defence civilians, ADF members and the equivalents from other Defence organisations on exchange to Defence.

j. **External service provider** means contractors, consultants, and professional service providers employed by Defence.

k. **Foreign military member** means a member of a foreign defence force or armed service.

l. **Institution precincts** means the wider base establishment, including training areas, accommodation, messes, recreational facilities and other support services.

m. **Malicious** means deliberate, mischievous and unjustified action characterised by desire to inflict harm or suffering.

n. **Manager** means a Defence employee or ADF member who directs a range of human and physical resources and their associated financial responsibilities to achieve corporate objectives. A manager performs the role of a first-level supervisor where they have immediate subordinates, as well as the role of a second-level supervisor where they have Defence personnel supervised by those subordinates.

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

p. **Respondent** in relation to a complaint means the person or persons against whom the complaint is made.

q. **Staff** (at ADF training establishments) means Defence personnel, other than trainees, employed at an ADF school or training establishment.

r. **Supervisor** means any Defence personnel or contractor who has direct or line supervisory responsibilities of Defence personnel.

s. **Trainee** means any ADF member undergoing training at an ADF school or training establishment.

t. **Unacceptable behaviour** is behaviour that, having regard to all of the circumstances, would be offensive, belittling, abusive or threatening to another person or adverse to morale, discipline or workplace cohesion, or otherwise not in the interests of Defence. Refer to annex B for detailed descriptions and categorisation of forms of unacceptable behaviour.

u. **Vexatious** means without grounds and serving only to harass or cause annoyance.

v. **Workplace** includes Defence establishments, business workplaces, units, facilities, accommodation and any other location which Defence personnel attend for the purpose of carrying out their work. This definition includes deployments, military exercises and operational environments. It also applies to non-Defence establishments such as training centres, accommodation, and social function venues attended in the course of Defence sponsored work or activity. This Instruction also applies to unacceptable behaviour that occurs outside the workplace where the behaviour has a Defence nexus or affects the workplace.

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DEFINITIONS AND CATEGORIES OF UNACCEPTABLE BEHAVIOUR

INTRODUCTION

1. Unacceptable behaviour is behaviour that, having regard to all of the circumstances, would be offensive, belittling, abusive or threatening to another person or adverse to morale, discipline or workplace cohesion, or otherwise not in the interests of Defence.

2. Unacceptable behaviour can occur at any place or any time, regardless of whether the location is a Defence establishment, in the workplace, or the Defence personnel are on or off duty.

3. The Defence, single-Service and Australian Public Service (APS) Values and Code of Conduct form the basis of the behaviour that is expected of all Defence people. Carrying out legitimate or reasonable management decisions or actions, such as performance counselling and management, in a respectful manner consistent with prescribed policy and processes, is not unacceptable behaviour.

4. This annex provides definitions of unacceptable behaviour which are influenced by the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* (Sex Discrimination Act), the *Human Rights and Equal Opportunity Commission Act 1986* (HREOC Act), the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004* (Age Discrimination Act).

5. There are six categories of unacceptable behaviour which are detailed in this annex. The categories at paragraphs b.–e. are forms of ***harassment***. The categories are:

a. harassment,

b. workplace bullying,

c. sexual harassment,

d. discrimination,

e. abuse of power, and

f. inappropriate workplace relationships and conflict of interest.

6. An action that is explicitly sexual in nature, which is carried out without the consent of the complainant, may constitute a sexual offence. Defence Instruction (General) (DI(G)) PERS 35–4—*Management and Reporting of Sexual Offences* provides the policy, definitions and direction for managing sexual offence incidents.

HARASSMENT

7. For the purpose of this Instruction, harassment is unwanted or unwelcome behaviour that a reasonable person, having regard to all the circumstances, would consider offensive, insulting, humiliating, or intimidating. There does not have to be an intention to offend or harass for harassment to occur. Harassing behaviour can range from serious to less significant, and one-off incidents can still constitute harassment.

8. Harassment may be a result of a person's attitude to some real or perceived attribute or difference, such as:

a. race, colour, ethnicity or national extraction;

b. sexual orientation or gender;

c. age;

d. religion;

e. political opinion;

f. socio-economic origin;

g. medical condition;

h. disability or impairment;

i. criminal record;

j. trade union activity; and

k. family status or caring responsibilities.

9. Harassment can take many other forms, such as:

a. insulting comments or teasing about the physical characteristics, abilities or mannerisms of a person;

b. disparaging or unnecessary comments about a person's work or capacity for work;

c. the spreading of malicious rumours or public statements of a derogatory nature about a person;

d. interference with a person's workplace, work materials, equipment or property;

e. exclusions of a person from normal conversation, workplace activities or work-related social activities without good reason;

f. teasing;

g. offensive pictures, screen savers, posters, emails, SMS text messages, graffiti or written electronic material;

h. making a vexatious or malicious complaint against a person; or

i. causing detriment to a person because they have made a complaint in good faith.

WORKPLACE BULLYING

10. For the purpose of this Instruction, workplace bullying is defined as ***an aggressive form of harassment***. Bullying is a ***persistent, unreasonable*** pattern of behaviour directed towards a person or group of persons, which may create a risk to health and safety, including a risk to the emotional, mental or physical health of the person(s) in the workplace. Personnel at all levels can be affected.

11. Bullying may comprise a combination of behaviours including unwarranted criticism, insults, spreading malicious rumours, deliberately withholding information or resources and influencing others to exclude or isolate the targeted person or persons. In many instances bullying may begin as discreet and indirect behaviour escalating over time into more open and direct behaviour.

12. Bullying behaviour can range from obvious verbal or physical assault to very subtle psychological abuse. It includes overt and covert types of behaviour such as:

a. Physical behaviour—aggressive, intimidating body language.

b. Verbal abuse, for example:

(1) abusive, insulting or offensive language;

(2) humiliation through sarcasm, criticism and insults, often in front of other personnel;

(3) persistent teasing or taunting;

(4) belittling someone's opinions or unjustified criticism; or

(5) criticism delivered by yelling or screaming.

c. Inappropriate or unfair work practices, such as:

(1) giving a person a much greater proportion of menial work than given to others;

(2) constantly making a person the brunt of practical jokes; or

(3) checking of a person(s) work or whereabouts to a much greater extent than others without reasonable cause.

d. Undermining or sabotaging another person's work or reputation by such means as:

(1) not passing on information, hiding tools and equipment, damaging completed work etc, usually with the aim of creating the appearance of the person's incompetence in front of management or peers;

(2) deliberately intruding on a person's workspace by pestering, spying or tampering with their work equipment or personal effects;

(3) spreading misinformation or malicious rumours about a person;

(4) making disparaging comments about a person suffering from illness or injury;

(5) assigning menial tasks unrelated to the job;

(6) giving a person unrealistic tasks that are not within their capability, or that are required within an unrealistic timeframe;

(7) regularly changing work rosters, especially at short notice, to inconvenience particular personnel; or

(8) undermining work performance by deliberately withholding information vital for work performance.

e. Excluding, isolating or marginalising others, deliberately or otherwise;

f. participating in 'collective bullying' or mobbing; and

g. threats of dismissal or disciplinary action for trivial mistakes or shortcomings.

13. Bullying can be related to an interpersonal dispute or organisational practice that subjugates people and rewards and encourages predatory and bullying behaviour.

14. A person who bullies may use strength, power or position to coerce others by fear and intimidation to do something that they want done; they can be a commander, manager, a supervisor, a subordinate, a co-worker or an external service provider. Workplace bullying can be upwards (directed towards a commander, manager or supervisor), parallel (directed towards a colleague) or downwards (directed towards a subordinate).

15. Workplace harassment and bullying, whether a single incident or repeated occurrences, is a breach of the APS Code of Conduct, Commonwealth anti-discrimination legislation and the *Workplace Relations Act 1996*

Legitimate action that is not harassment or workplace bullying

16. It is important to distinguish between a person reasonably exercising their legitimate authority at work and an instance of bullying or harassment. Commanders and managers are required to direct and control how work is performed and are responsible for monitoring workflow and providing feedback to personnel on their work performance. Examples of behaviours in any Defence workplace that are not harassment or workplace bullying include:

a. objective and constructive feedback, counselling or advice about work-related behaviour and performance, given in a manner that is neither humiliating nor threatening;

b. expressing differences of opinion in a respectful manner;

c. legitimate or reasonable management directions, decisions or actions, such as transfers, postings, work or task requirements, and recruitment selections; and

d. making a complaint about another person's conduct in a proper and reasonable way.

17. Defence personnel who have a complaint about the performance management process, or the merits of their assessment should pursue their complaint through the processes associated with the respective policies.

Tough training and the relationship to harassment or workplace bullying

18. **Tough training.** The ultimate purpose of Australian Defence Force (ADF) military training is to prepare individuals and groups to undertake military operations. An essential element of military training is to replicate or simulate contemporary operating environments in order to expose individuals and groups to the physical and mental stresses those environments generate.

19. **Principles for the conduct of tough training.** ADF training is ultimately focused on the achievement and maintenance of operational capability. To achieve this outcome safely, legitimate tough training involves:

a. Realistic outcomes in line with operational requirements.

b. The application of training methods that extend the mental, physical and emotional capacity of trainees to achieve a defined level of competence. This implies that the required competence, including the standard and the conditions under which it is to be demonstrated, be properly documented and understood by both trainer and trainee.

c. Graduated increases in training intensity so as to induce growth in individual and group capacity without mental and/or physical injury. Tough training may be difficult, but it should never disregard applicable safety requirements.

d. The provision of appropriately qualified personnel for the supervision and delivery of training.

e. The development of training management plans that document how training is to be conducted, including:

(1) The authorised activities for each training outcome.

(2) An assessment of the risks associated with each tough activity, including risk indicators and contingency strategies. For activities that rely on close bonding and teamwork, this analysis is to include the risks associated with dysfunctional group behaviour.

(3) Strategies to be adopted in the event of poor performance or learning outcome failure to assist the member to meet training requirements.

f. Sufficient rest to allow the mind and body to both recover and build increased strength and endurance.

g. The provision of counselling and guidance for trainees who are unable to meet tough operational training outcomes. Acknowledging that participation in the toughest of tough training may be beyond the ability of some trainees, encouragement and support to assist trainees overcome any negative feelings associated with not achieving the required outcomes is necessary for member retention and transition to alternative employment, where that is appropriate.

20. **The difference between tough training and bullying or harassment.** A key measure for differentiating tough training from bullying or harassment is whether the activity may be linked to an operational training outcome and has been conducted within the boundary of workplace health and safety. Given the fluid nature of the training environment, some of the tougher forms of training may result in a trainee feeling temporarily miserable or demoralised, which is, and should remain, distinctly different to the persistent and harmful behaviour known as bullying. Additional factors to enhance the guidance for maintaining the distinction between tough training and bullying or harassment are as follows:

a. **Reasonableness.** While a trainee may, quite appropriately, be subjected to difficult situations, this is not to form a repeated pattern of behaviour or create pressures that are greater than what would reasonably be expected of the trainee's abilities to meet the training objective.

b. **Aim.** Instances where a trainer deliberately subjects a trainee to activities aimed at making the trainee feel demoralised, miserable or undermining self-confidence or self-esteem, should be regarded as bullying or harassment as opposed to the temporary incidental feelings associated with tough training.

21. The following would not constitute tough training and may indicate possible bullying, harassment and/or abuse of power:

a. **Unauthorised training.** Any activity conducted that is not laid down in an approved curriculum or cannot be linked to operational capability outcomes.

b. **Unauthorised administrative consequences.** Application of sanctions for unauthorised consequences, either individual or collective, for failure to achieve a training outcome.

SEXUAL HARASSMENT

22. The Sex Discrimination Act states that a person sexually harasses another person (the target of harassment) if:

a. the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

b. engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated, that the person harassed would be offended, humiliated or intimidated.

23. The Sex Discrimination Act also defines conduct of a sexual nature to include making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

24. Sexual harassment includes discrimination and harassment on the grounds of sexual orientation or identity. Denial of promotions, termination of employment, breaches of confidentiality and refusal of overtime and higher duties on the grounds of sexual orientation or identity are also prohibited. Inappropriate advocacy of a particular sexual orientation is also unacceptable. Behaviour that may be acceptable in other contexts, such as between friends in a social setting, can be inappropriate in the workplace. Sexual harassment as defined above, includes but is not limited to:

a. staring or leering;

b. intrusive questions about a person's private life or body;

c. unwelcome touching or unnecessary familiarity, such as deliberately brushing against a person;

d. direct offensive verbal comments or innuendo of a sexual nature;

e. sexually offensive jokes;

f. comments about a person's sexual activities or private life;

g. offensive gestures;

h. comments regarding a person's sexual orientation;

i. comments regarding a person's sexual appeal;

j. the display or electronic transmission of printed material such as calendars, posters, email, SMS text messages, screen savers or wall papers that are sexually explicit or depict naked or semi-naked bodies, or are displayed for the purpose of evoking sexual arousal or gratification;

k. condoning and encouraging the conduct of open sexual activities in accommodation areas used as a normal part of communal living;

l. course badges, clothing, in-house publications (informal and formal) and training materials with a sexual connotation.

25. Sexual harassment is prohibited. Action can be taken by Defence in instances of sexual harassment at all Defence workplaces and in work-related activities which may include, but is not limited to training courses, conferences, field trips, work functions such as dining-in nights and Christmas parties. Refer to workplace definition in annex A.

DISCRIMINATION

26. The HREOC Act defines, in part, discrimination as being any distinction, exclusion or preference that had the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Unlawful discrimination does not include any distinction, exclusion or preference in respect of a particular job based on the inherent requirements of the job. The Sex Discrimination Act provides an exemption for the ADF to discriminate on the employment of women in combat roles. The Age Discrimination Act provides exemption for the ADF to determine compulsory retirement on the basis of age.

27. **Direct discrimination** can occur when there is a specifically directed policy or action that treats a person less fairly than another person based on some real or perceived attribute or difference. It does not allow people to be judged purely upon their individual merit, but judges them on stereotypes or perceptions.

28. **Indirect discrimination** can occur when a policy or practice, which appears to be neutral or non-discriminatory, has an unfair impact on a person or a particular group of people.

ABUSE OF POWER

29. Abuse of power and authority attributed to rank or position to harass, discriminate or bully a subordinate is unacceptable, unethical, and in some situations can constitute criminal behaviour. Commanders and managers must at all times be aware of their actions in relation to their subordinates to ensure they do not abuse their power and authority. Some actions may inadvertently place a subordinate in a difficult position and the action thereby may be perceived as an abuse of power. Examples of such behaviour are:

a. using subordinates to conduct personal tasks, such as running errands or collecting dry-cleaning;

b. ordering subordinates to participate in unacceptable behaviour; and

c. encouraging personnel to provide sexual favours in order to gain superior performance reports, desired postings or career advantage.

CONFLICT OF INTEREST AND INAPPROPRIATE WORKPLACE RELATIONSHIPS

30. Any relationship that involves, or gives the appearance of involving partiality, preferential treatment or improper use of rank or position is inappropriate in the workplace, irrespective of the employment type of people involved, including external service providers. A conflict of interest in itself is not necessarily wrong, however disclosing or identifying, and then managing the situation is essential. DI(G) PERS 25–5—*Employment of immediate family members in the same chain of command and/or working environment* provides ADF policy on the employment of members of the same family.

31. An inappropriate relationship can constitute a close and exclusive friendship between members of the same or opposite gender, and may or may not include a sexual relationship. Siblings, parent/child relationships, and even extended relationships such as by marriage eg brothers-in-law, or former husband/wife may be deemed as inappropriate in the workplace where there is potential for, or there is an appearance of partiality or preferential treatment.

32. A relationship which involves sexual relations or private intimacy, such as between husband and wife, life partners, boyfriend/girlfriend etc, where a superior and subordinate command or management relationship exists, is considered to be inappropriate in the workplace.

33. The existence of relationships within the workplace does not excuse any form of unacceptable behaviour. In some cases, there will remain some areas open to interpretation due to the context in which the behaviour occurs. For instance, displays of affection, like holding hands, hugging or a kiss on the cheek, may be unacceptable in the workplace. However, there will exist occasions when this behaviour is acceptable, such as deploying or returning to workplaces. Touching another person (no matter who they are), using any part of the body or any object, for the purpose of displaying private intimacy for either the person initiating the touching or the person touched, with the purpose of sexual arousal or gratification is prohibited. Sexual behaviour or sexual acts are never appropriate in the workplace. It is the responsibility of the commander or manager to maintain and model the standard of behaviour consistent with the Defence, single service and APS Values and Code of Conduct.

Inappropriate workplace relationships at Australian Defence Force schools and training establishments

34. Relationships between trainees, or between trainees and staff at training establishments potentially impact on the effectiveness, ability and morale of individuals and teams. The following prohibitions and directions at ADF schools and training establishments have been prescribed to enable training to be conducted in an environment where staff and trainees can apply themselves to their duties free from any real or perceived conflict of interest. The prohibition on trainee relationships is to provide sufficient time to inculcate service values. The prescribed periods of prohibition provide a consistent application of policy between service training establishments of enlisted trainees and officer trainees:

a. Any staff member from any training establishment is prohibited from forming relationships involving sexual relations or private intimacy with any trainee. This prohibition applies at all times, whether on or off duty, and irrespective of the level of direct contact between the staff member and the trainee.

b. Any existing or pre-existing relationship, involving sexual relations or private intimacy between a staff member and a trainee, is to be declared by the staff member to the commanding officer prior to the commencement of training, for appropriate steps to be taken to manage the potential conflict, bias or appearance of partiality.

c. Enlisted trainees are prohibited from forming relationships involving sexual relations or private intimacy with any other trainee employed in the same institutional precinct whilst either member is undergoing initial entry (recruit) training. After both members have completed recruit training, the standard requirements of this Instruction apply.

d. Officer trainees, including Officer Cadets and Midshipmen, are prohibited from forming relationships involving sexual relations or private intimacy with any other trainee employed in the same institutional precinct whilst either member is within the first three months of initial training. After both members have completed the three-month period, the standard requirements of this Instruction apply.

35. Commanders of ADF schools and training establishments should give consideration to the inclusion of the above prohibitions and requirements in standing orders. Commanders must ensure staff and trainees are provided with briefs that include the:

a. prohibitions and requirements detailed in paragraph 34. of this annex, and in staff and trainee codes of conduct;

b. rationale behind these prohibitions and requirements; and

c. support services available and how to contact them (refer to annex C).

Management of conflict of interest and inappropriate workplace relationships

36. Relationships are a natural result of human interaction and as such may not be inappropriate or constitute a reason for sanction. However, they may have a direct impact on the effectiveness and morale of a team and need to be carefully managed.

37. Defence personnel must declare a relationship that may be considered a conflict of interest or inappropriate in the workplace, to their commander or manager. Upon being made aware of such a relationship, commanders and managers must take all reasonable steps to avoid the undermining of discipline whilst maintaining operational efficiency and morale in the workplace. Management actions may include, but are not limited to:

a. transfer of one person to another unit, or to a position outside the chain of command/ reporting line of the other party;

b. temporary/permanent transfer of work assignment to a separate supervisor and/or, if appropriate to a separate commander or manager;

c. ensuring that one party is not directly supervising the other (that there are one or more people in the chain of command/reporting line between them);

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d. ensuring those in the chain of command/reporting line between the parties do not feel compromised in the performance of their supervisory duties; and

e. temporary/permanent transfer of performance appraisal to a separate supervisor.

38. If the parties remain in the same workplace, perceptions in the workplace need to be managed. This can be done by making it clear that there is a definitive separation between the concerned parties whilst they are carrying out their roles and responsibilities. Despite the sensitivities involved, it is important the other personnel in the workplace feel able to raise any concerns with commanders and managers about their perceptions of conflict of interest.

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ANNEX C TO
DI(G) PERS 35–3
File as: (NAVY PERS 16–5
(ARMY PERS 96–3
(AIR FORCE ADMIN 9–23
(Complete Revision)

DEFENCE FUNDED SUPPORT OPTIONS FOR UNACCEPTABLE BEHAVIOUR MANAGEMENT

1. Commanders and managers must maintain an environment where complainants, respondents and witnesses are confident that they can access a range of support services. The support strategy can include one or several of the support services available. Defence is not responsible for the level of support or advice provided by outside agencies such as the Merit Protection commissioner or Life Line.

2. This annex defines the scope of Defence funded support options that can be offered to complainants, respondents and witnesses.

Key: Yes (Y) (N)	**At Commander/Manager's discretion (A)**		**Not available**
Service Available	**Australian Defence Force (ADF) Members**	**Defence Australian Public Service (APS) Employees**	**External Service Providers**
EQUITY ADVISER NETWORK The complainant and respondent should each be encouraged to seek advice and support from an Equity Adviser. However, an Equity Adviser may only advise one party in a dispute, and cannot provide advice to management when they are providing advice to one of the parties. The role of an Equity Adviser is not that of a case officer or support person. Equity Advisers are available to provide all Defence personnel and external service providers with information, options and support for the resolution of workplace equity and diversity issues. They are not able to mediate, or become involved in an inquiry or resolution of a complaint that concerns employees who they have advised. 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 35–7—*Defence Equity Adviser Network*.	**Y**	**Y**	**Y**

Key: Yes (Y) (N)	At Commander/Manager's discretion (A)	Not available

Service Available	Australian Defence Force (ADF) Members	Defence Australian Public Service (APS) Employees	External Service Providers
DEFENCE EQUITY ADVICE LINE (DEAL) The DEAL is a confidential, toll-free telephone line that has been established for Defence APS employees, ADF members and external service providers who consider that they have been subjected to, accused of, or witnessed any form of unacceptable behaviour. The DEAL is also available to commanders, managers, supervisors and Equity Advisers. The DEAL telephone number is: 1800 803 831, and 0011 61 2 6127 2900 (International access). The DEAL is available between 0900–2000 hours (Eastern Standard Time) Monday to Friday except for national public holidays. Alternatively, advice can be sought by sending an email to equityadvice@defence.gov.au.	**Y**	Y	**Y**
CASE OFFICER A case officer or officers may be appointed at the discretion of the commander or manager to assist the complainant and the respondent during the complaint management process. The selection and appointment process may be formal or informal, and relies upon the discretion and judgement of the commander or manager. Appointment of a case officer to a complainant is advisable when the complainant and respondent have different commanders or managers. The role of a case officer is to inform of progress in the management of the complaint; to assist and advise on applicable support services; and to assist communication between the parties.	**A (or as directed by Service Policy)**	**A**	A

Key: Yes (Y) (N)	**At Commander/Manager's discretion (A)**	**Not available**

Service Available	**Australian Defence Force (ADF) Members**	**Defence Australian Public Service (APS) Employees**	**External Service Providers**
PSYCHOLOGICAL COUNSELLING/SUPPORT			
Where appropriate, the complainant, respondent and witnesses can be provided with counselling by appropriately qualified professionals. The type of counselling is to match the severity of the incident and impact on the person. All services below also accept self-referrals. **For ADF members:** • **Defence medical support at local medical centres.** The local medical officer can provide assistance and referrals as required. • **Psychology Support Section.** Available during office hours. Psychology Support Sections can offer after-hours, critical incident support through the local Duty Officer/Officer of the Day. • **Defence Community Organisation (DCO).** It provides a comprehensive range of services that enhance the wellbeing of ADF members and their families. Local contact details are available on the DCO website www.defence.gov.au/dco/. DCO also provide 24-hour assistance in crisis situations in all military locations and will help with appropriate referrals if required during office hours. The after hours service can be accessed through the local Duty Officer/Officer of the day. • **ADF Mental Health Strategy All-hours Support Line (ASL).** The ASL is a confidential telephone triage support service for ADF members and their families that is available 24 hours a day, seven days a week. Toll-free number within Australia is 1800 628 036 and +61 2 9425 3878 outside Australia. **Intranet:** http://intranet.defence.gov.au/dsg/sites/MHSF/; and **Internet:** http://www.defence.gov.au/health/DMH/i-dmh.htm. • **Chaplains.** There are Chaplains connected to all units in Australia who can provide support and appropriate referrals.	**Y**	**N**	**N**

Key: Yes (Y) (N)	At Commander/Manager's discretion (A)	Not available	
Service Available	**Australian Defence Force (ADF) Members**	**Defence Australian Public Service (APS) Employees**	**External Service Providers**
For Defence APS Employees: The Employee Assistance Program (EAP). To make an appointment from anywhere in Australia call 1300 366 789. For traumatic incidents or crisis counselling call 1800 451 138 (24 hours, seven days a week). From outside Australia +61 2 9214 4411. The EAP Manager's Helpline is available to managers of civilian staff, regardless of whether the manager is civilian or ADF. The service is available 24 hours a day, seven days a week by phoning a toll	**N**	**Y**	**N**
DEFENCE LEGAL SUPPORT The complainant and respondent may seek legal advice, though 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. For further information on the provision of legal support to ADF members refer to DI(G) PERS 12–1—*General Scope of Legal Assistance Provided to Service Personnel and Legal Aid to Australian Defence force Members Overseas*. Generally, Defence APS employees are not provided with the same level of legal assistance as ADF members. APS employees should refer to *Legal Services Direction 2005*, appendix E—'Assistance to Commonwealth Employees for Legal Proceedings' for further information on legal support that may be available at http://www.comlaw.gov.au/.	**Y**	**Under limited circumstances**	**N**

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Key: Yes (Y)	**At Commander/Manager's discretion (A)**	**Not available**
(N)		

Service Available	Australian Defence Force (ADF) Members	Defence Australian Public Service (APS) Employees	External Service Providers
TEMPORARY TRANSFER When contemplating the transfer of personnel the commander of manager is to consider: • the person's ability to cope while remaining where the incident occurred; • family and personal circumstances; • possible local posting alternatives; • the availability of counselling and support services and networks; • the effect of any reassignment on the investigation; • any bail conditions and court orders; • the effect on the career of the person reassigned; and • the operational efficiency of the workplace. For Defence APS employees refer to the chapter on Changing Jobs in the *Defence Workplace Relations Manual*. If the commander or manager decided that a transfer 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. If the person(s) involved is not moved, the workplace is to be monitored to ensure that the complainant, respondent and witnesses are treated fairly and no victimisation or further unacceptable behaviour occurs. The commander or manager is to take reasonable steps to ensure that there is no vicitmisation during the course of any investigation or prosecution and beyond.	**A**	**A**	**N**
PEER SUPPORT The complainant, respondent and witnesses may be provided with moral and social support from their peers during the course of any inquiry and judicial proceedings, and after the incident has been resolved.	**Y**	**Y**	**Y**

Key: Yes (Y) (N)	At Commander/Manager's discretion (A)	Not available

Service Available	Australian Defence Force (ADF) Members	Defence Australian Public Service (APS) Employees	External Service Providers
LEAVE It may be appropriate for the complainant and respondent to rehabilitate prior to returning to the workplace. Leave regulations contained in *ADF Pay and Conditions Manual* and the *Defence Workplace Relations Manual* for Defence APS employees should be consulted to ascertain eligibility. Prior to approving leave, commanders and managers are to consider the impact on the conduct of any Quick Assessment, inquiry, investigation or return to work plan. Commanders and managers should contact Defence Support Group Case Management and Rehabilitation Services for guidance on whether an APS member may require a Rehabilitation Case Manager. This will vary depending on the severity of the case and time away from the workplace.	**A**	**A**	**N**

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MANAGEMENT OF UNACCEPTABLE BEHAVIOUR COMPLAINTS

1. This annex details:

   a. who must manage a complaint of unacceptable behaviour, and

   b. the complaint management process.

WHO MANAGES THE COMPLAINT?

2. The respondent's commander or manager is normally the individual best placed to assess a complaint, manage the inquiry process, ensure reporting obligations are met and monitor ongoing behaviour. They must manage the complaint, except in the following circumstances:

   a. Where a conflict of interest or bias exists (or may be perceived to exist), such as when a commander or manager has been personally involved in the provision of advice associated with, but prior to the submission of a complaint. The complaint must be managed by the next higher level in the chain of command or reporting line.

   b. When the incident occurs where parties to the complaint are temporarily transferred to another workplace, for example, whilst on course at an Australian Defence Force (ADF) training facility or on overseas deployment/appointment, the commander or manager of the workplace in which the incident is alleged to have occurred must manage the complaint.

   c. If the respondent to a complaint is an external service provider, the Defence (Commonwealth) contract manager must manage the complaint. For example, a complaint against a garrison support service provider should be directed to the relevant Base Support Manager in the region. A complaint against an external service provider employed under contract to the Defence Materiel Organisation in a sustainment project, would be directed to the director of the relevant System Project Office.

   d. Where the identity of the respondent is unknown or cannot be determined, the complainant's commander or manager must manage the complaint.

   e. When a complaint involves multiple respondents from different units, the complaint must be managed by the complainant's commander or manager, except if the respondents are all within the same higher chain of command or reporting line eg Brigade, Branch or Division. The higher headquarters must determine which commander or manager is to manage the complaint.

3. There may be occasions where the commander or manager who has initial responsibility for the complaint is no longer able to adequately manage or finalise the complaint, for example, on posting or movement of the respondent. In this case a complaint can be transferred by mutual agreement between workplaces, or by direction within a chain of command or reporting line. The transfer of responsibility for managing the complaint must be communicated in writing to all parties to the complaint and reported in accordance with annex F of this Instruction.

4. **Communication.** Where practicable, both the complainant's and respondent's commanders or managers are to be informed of an unacceptable behaviour complaint:

   a. If the complainant's commander or manager first receives the complaint, they must forward the complaint to the respondent's commander or manager, request action in accordance with this Instruction and provide appropriate support to the complainant.

   b. If the respondent's commander or manager first receives the complaint, they must advise the complainant's commander or manager that a complaint has been received from the complainant and request cooperation as required in accordance with this Instruction.

c. If a complaint involves multiple respondents from different units, the commanders or managers of the complainant and all respondents must be informed of the complaint.

d. If the respondent to a complaint is the complainant's commander or manager, refer to paragraphs 2.a. and 8.c.

e. A formal resolution to a complaint managed in accordance with paragraph 2.b., must be advised to the commander or manager of the respondent's usual workplace or parent unit.

COMPLAINT MANAGEMENT PROCESS

5. A commander or manager must act on all unacceptable behaviour complaints brought to their attention in a prompt, fair and impartial manner. A flow chart on the management and reporting of unacceptable behaviour complaints is provided in annex G and a checklist is provided in annex H.

6. Following receipt of a complaint, the commander or manager must undertake the following actions:

a. Determine whether the complaint is to be managed under this Instruction (eg a complaint alleging unfair process or outcome in performance management should be directed to the appropriate complaint process). If the matter constitutes a notifiable incident in accordance with Defence Instruction (General) (DI(G)) ADMIN 45–2—*Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*, it must be reported to a Defence Investigative Authority (DIA) without delay.

b. **Quick Assessment (QA).** Conduct a QA in accordance with DI(G) ADMIN 67–2—*Quick Assessment*. The QA should make recommendations for the decisions required of the commander or manager below. The purpose of a QA is to assess the known facts about an occurrence to inform a decision about the most appropriate course of action. A QA is not an investigation and is not to be used as the basis for adverse findings. A QA must not interfere with any other inquiries or investigative processes (eg investigations by a DIA). In accordance with the reference, the QA must be completed in a timely manner within 24 hours. The QA initiating officer may extend this period if necessary, but this should not exceed three working days.

c. **Decisions.** With the QA report and recommendations, make and record decisions as to whether:

(1) the alleged behaviour falls within the scope of this Instruction, and if so determine the category of unacceptable behaviour as detailed in annex B;

(2) there is any basis to the complaint to warrant further action; if so:

(a) can the complaint be resolved informally, or should it be resolved formally (refer to annex E); and

(b) are further inquiries necessary or does the complaint need to be referred to an alternative body (*see* paragraph 7.c.);

(3) the incident is required to be reported to Occupational Health and Safety and Branch and notified to Comcare in accordance with annex F of this Instruction; and

(4) the alleged behaviour suggests Defence personnel, assets or classified information may be at risk and require notification to the Defence Security Authority.

d. Report the complaint in accordance with annex F of this Instruction.

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7. Subsequent to the decisions made above, the commander or manager must take one of the following actions:

a. **No further inquiry.** After the QA, if the commander or manager determines that no further inquiry action is warranted under the circumstances, eg there is insufficient evidence concerning the complaint, or the complaint is deemed to be unsubstantiated, the commander or manager must create a record of the complaint and monitor the workplace. Report the closure of the complaint in accordance with the reporting requirements detailed in annex F.

b. **Informal resolution.** After the QA, if the commander or manager determines that the matter may be resolved informally, the complaint is considered to remain open until the form of resolution has been concluded and determined to have resolved the complaint. If in the view of the commander or manager, the informal resolution has not succeeded, the matter is to be redirected to an alternative informal resolution process or referred for formal resolution. (Refer to annex E.)

c. **Conduct further inquiries.** The purpose of a QA is to assess the known facts about an occurrence to inform a decision about the most appropriate course of action. A QA is not an investigation and is not to be used as the basis for adverse findings. If further inquiries are required, the appropriate authority and administrative process is:

(1) **ADF respondents.** ADF commanders can initiate Routine Inquiries or other inquiries under the Defence (Inquiry) Regulations 1985, into the actions of ADF members only. If the manager of the complaint is an Australian Public Service (APS) employee, or an ADF officer who does not hold command power, the inquiry action is to be referred to the ADF commander within the chain of command. Refer to Australian Defence Force Publication 06.1.04—*Administrative Inquiries Manual*.

(2) **APS respondents.** The result of the QA is to determine whether the incident can be resolved informally and whether there has been a suspected breach of the APS Code of Conduct. Depending on the seriousness of the alleged behaviour, the commander or manager may determine that the matter can be managed at the unit/workplace level. Should the commander or manager determine that the matter cannot be resolved informally, the allegations against the respondent must be referred to the Code of Conduct delegate for determination. *See* the *Defence Workplace Relations Manual* (DWRM). The DWRM Code of Conduct chapter also identifies contact details for Code of Conduct delegates.

(3) **External service provider respondents.** Should the contract manager determine that the matter cannot be resolved informally, the contract manager must use the provisions in the contract to inform the employer of the respondent of the finding. The contract manager is to negotiate the outcome in relation to the respondent's further involvement with Defence under the relevant contract arrangements.

Keeping personnel informed

8. Throughout the complaint management process, commanders and managers must keep the parties to the complaint informed. Specific requirements are:

a. **Consult complainant.** As soon as possible after the complaint is made, and if the commander or manager finds the behaviour to be unacceptable (informed by the QA) in accordance with this Instruction, discuss with the complainant the resolution options for the complaint. The complainant must not be coerced or pressured into seeking an informal resolution. If the complainant has identified a desired outcome(s) that is not possible, or when concluded it may not be possible to disclose to the complainant (eg complainant may seek a specific disciplinary action against the respondent), the commander or manager must inform the complainant why the desired outcome cannot be met and seek to moderate the complainant's expectation of the process. If the complainant does not wish the matter to be taken further, the commander or manager should take this into account, but is to make a decision based on the full range of considerations. The commander or manager is responsible for determining the means of resolution.

b. **Inform complainant**:

(1) If the commander or manager determines the behaviour is not unacceptable, or there is insufficient evidence to substantiate the allegation, the complainant must be informed of the reasons for this finding and advised of their review rights (refer to annex E).

(2) If the behaviour is found to be unacceptable, the complainant is to be advised that their wishes for the outcome of the complaint will be taken into account, though this will be balanced by the commander or manager's other responsibilities and considerations in managing the complaint. The complainant must be advised that the respondent will be informed of the complaint, which will include as much information as is necessary to afford procedural fairness. This normally will include disclosure of the identity of the complainant. Commanders and managers are to assess any risk of victimisation or harm to the complainant and take appropriate action.

c. **Inform respondent.** As soon as possible after a complaint is made, usually in the QA process, subject to any advice from a DIA, the respondent must be informed of the complaint. The respondent must be provided with as much information as is necessary to afford procedural fairness. This normally will include disclosure of the identity of the complainant. Should the manager consider that this disclosure may impede any other inquiry or investigation, for example through the risk of destruction of evidence, advice must be sought from the relevant DIA or inquiry authority. The respondent must be given the opportunity to reply to the complaint, receive regular progress updates and be advised of the outcome of the inquiry.

Provide support

9. Commanders and managers must ensure that people affected by a complaint receive appropriate support. This can include complainants, respondents and witnesses to the alleged incident. The commander or manager must ensure that support is provided once they become aware of the complaint, and throughout the inquiry and resolution processes. A case officer may be appointed at the discretion of the commander or manager (or as directed by single-Service instruction) to assist the complainant and the respondent during the complaint management process. Refer to annex C.

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Finalisation

10. An unacceptable behaviour complaint is finalised either at the initial assessment stage when it has been deemed unsubstantiated, or otherwise when all inquiries are complete, formal or informal resolutions have concluded, and the final outcome report has been submitted (refer to annex F). Parties to the complaint must be informed the matter has been resolved and be informed of any review rights (refer to annex E). In the event that a review agency, either internal or external to Defence, requires access to the documents or requires a response to their inquiries, a complete record of the management of the complaint is to be maintained at the unit/work place and be available when required.

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RESOLUTION OF UNACCEPTABLE BEHAVIOUR

1. Incidents and complaints of unacceptable behaviour are to be resolved at the lowest appropriate level. This annex identifies the informal and formal resolution options available in the management of unacceptable behaviour. It also details the review avenues, both within Defence and external to Defence that may be available to complainants and respondents.

INFORMAL RESOLUTION OPTIONS

2. The objective of an informal approach is to resolve the matter with a minimum of conflict or distress for individuals. Informal resolution should be attempted, where practicable prior to making a complaint. Where informal resolution has not been possible or appropriate, or the complainant had a previous unsuccessful attempt at informal resolution prior to making a complaint, other avenues for resolution are to be pursued.

3. **Self-resolution.** Any person who believes they are being treated unacceptably may choose to speak directly with the person(s) demonstrating the unacceptable behaviour. Dealing directly with the person responsible, may result in the behaviour ceasing. For this approach to be successful, the information must be delivered to the respondent in a confidential, non-confrontational way with a view to resolving the issue in an informal low-key manner. A good technique to use is to focus on the behaviour being exhibited by the other party. The aim is to communicate exactly what behaviour is unacceptable and distressing. This lessens the likelihood that the other party will take the comments as a personal attack.

4. **Supported self-resolution.** Barriers may exist which interfere with the complainant's ability to communicate with the respondent. The complainant may fear retribution or lack confidence needed to have the conversation. The respondent may be of significantly different rank or position, or they may simply not have the organisational experience to carry it through. It can sometimes be helpful for the individuals to request the presence of a third party for support. The third party can be an Equity Adviser, colleague, supervisor, chaplain, friend or any other person with whom the individual feels comfortable. The third party attends to support the complainant or respondent but does not contribute to the process in any other way. The third party is not an advocate for the complainant.

5. **Apology.** The complainant may be satisfied if the respondent acknowledges the alleged unacceptable behaviour and apologises voluntarily (a respondent cannot be directed to apologise). If the complainant is satisfied with the apology and the commander or manager considers that the respondent is fully aware of the inappropriateness of the behaviour and will not continue the behaviour, then the matter can be finalised. However, the commander or manager may take further informal or formal action, regardless of the apology, depending on the seriousness of the alleged behaviour.

6. **Alternative Dispute Resolution (ADR).** Consistent with the Defence complaint handling principles, consideration is to be given to informal alternative dispute resolution processes. Refer to Defence Instruction (General) (DI(G)) PERS 34–4—*Use and Management of Alternative Dispute Resolution in Defence and the Alternative Resolutions* and Equity website. Commanders and managers are required to report that ADR has been considered in the initial report (refer to annex F). Where appropriate, the commander or manager may utilise mediation as a resolution option when self-resolution has not been possible. Different forms of ADR are available, including:

a. **Mediation.** Mediation is a voluntary process where all parties have agreed to attend and cooperate in good faith to resolve the dispute. The mediation process is generally confidential unless otherwise agreed by the parties. A mediator who is external to the dispute assists the parties to discuss, negotiate and achieve a solution for themselves. All Defence registered mediators are trained by accredited organisations, qualified and registered under state or Commonwealth legislation, or by Defence. It is important that an accredited mediator is engaged in ADR processes as mediation by untrained personnel may do more damage and escalate the dispute.

b. **Group facilitation.** A group facilitation conference provides a forum in which those in the workplace affected by a dispute can consider the conflict and its effects, and the best way forward to settle the dispute. Only qualified facilitators are able to conduct group facilitation in Defence.

7. **Counselling.** The commander or manager may determine that the complaint is best resolved by counselling the respondent on the reason the behaviour was unacceptable, and directing the respondent not to exhibit that behaviour again. This option may be appropriate, if after completing the inquiry and substantiating the complaint, the commander or manager determines that whilst the behaviour was unacceptable, it was not serious enough to merit formal administrative action or Australian Public Service (APS) Code of Conduct action.

8. **Individual and group development needs.** The complaint may best be resolved by a focused behavioural development program put in place for the respondent, complainant or the workplace. A development program may be instituted as the sole means of resolving the complaint, or in addition to other means. The program may involve:

a. Individual training for the respondent to increase their awareness of what constitutes unacceptable behaviour, the ramifications of such behaviour, and the need to change behavioural patterns. Individuals should not be instructed to attend Equity Adviser training for this purpose.

b. Interpersonal communication and skills-development training for complainants and respondents.

c. Additional formal equity and diversity training for the whole workplace as part of the resolution of an unacceptable behaviour complaint.

d. Conflict coaching is a voluntary, confidential, forward-focused process in which a trained conflict coach supports and assists the client to understand and improve the way they manage conflict or disputes. (This program is not limited to management of unacceptable behaviour.) The coach helps the client to identify their goals, explore different ways for reaching their goals, and develop practical methods for preventing unnecessary conflict, resolving disputes and generally enhancing their conflict management skills. Conflict coaching is not counselling or therapy and does not replace legal or medical services. Refer to the Alternative Resolution and Equity website.

9. At the conclusion of the informal resolution, the commander or manager must determine whether this approach option has successfully resolved the complaint. If the complaint has not been resolved to the satisfaction of the commander or manager, other resolution options, either informal or formal must be pursued. For example, a complainant may have attempted supported self-resolution and an apology may have been forthcoming. However the commander or manager may deem that the apology is insincere and the unacceptable behaviour has not been remedied.

FORMAL RESOLUTION

10. **Australian Defence Force (ADF) disciplinary action.** Where a commander or manager becomes aware that an alleged act of unacceptable behaviour may also constitute a Service offence they should refer to DI(G) ADMIN 45–2—*Reporting and Investigation of Alleged Offences in the Australian Defence Organisation*. If the matter constitutes a ‘notifiable incident’ in accordance with the reference, it must be reported to a Defence Investigative Authority (DIA) without delay.

11. **Administrative sanction.** Following an inquiry by the appropriate authority (refer to annex D) where the respondent’s behaviour is considered to constitute unacceptable behaviour, consideration is to be given to imposing an administrative sanction. If administrative action is taken after disciplinary action has been taken for the same incident, the purpose of the administrative action must not be to punish. The purpose of administrative action is to reinforce high standards of behaviour and performance. Administrative sanctions may vary in significance and impact depending on the nature of the unacceptable behaviour, and the respondent’s appointment and/or duties. It must be appropriate and proportional to the form of unacceptable behaviour. Administrative sanction is usually imposed when the conduct or performance of a person is below the standard expected and is not in the interest of Defence.

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12. In most circumstances, administrative sanctions against respondents should not be taken until all disciplinary action is finalised. However, circumstances may be such as to require action of an administrative nature to be initiated, for example relocation from the workplace, reassignment of duties, or in significant cases administrative action leading to termination or suspension of employment. If there is an ongoing prosecution or DIA/civilian police investigation, termination or suspension of employment should not be finalised until the relevant authorities have been consulted:

a. **Sanctions for ADF members.** The policy and procedures for imposing a formal warning or censure on an ADF member are detailed in DI(G) PERS 35–6—*Formal Warnings and Censures in the Australian Defence Force*. The reference also identifies other forms of administrative sanction available to ADF authorities. In accordance with relevant single-Service instructions, an ADF member may be required to show cause as to why their service in the ADF should not be terminated. An administrative sanction imposed in respect to an unacceptable behaviour complaint is to be reported in accordance with annex F.

b. **Sanctions for APS employees.** Sanctions are only imposed when the APS Code of Conduct Delegate has determined that an employee's behaviour has breached the APS Code of Conduct. Previous findings of a code of conduct breach may be considered, where relevant, in determining a sanction for a subsequent breach. This outcome is to be reported in accordance with annex F.

REVIEW PROCESSES

Australian Defence Force members

13. Should an ADF member be dissatisfied with the outcome or handling of a complaint, they may request, through their commander or manager, a reconsideration of the decision(s), or the provision of a Statement of Reasons for their decision. The Redress of Grievance (ROG) process is also available to seek review. Time limits apply to the period under which a review may be sought. Further information about ROGs is contained in DI(G) PERS 34–1—*Redress of Grievance—Tri-Service procedures* and the Complaint Resolution website.

14. **Inspector-General ADF (IGADF).** The role of IGADF is to provide internal audit and review of the military justice system independent of the ordinary chain of command. IGADF provides an avenue by which any failure of military justice may be examined and uncovered. This avenue does not displace the complaint or review processes detailed in this Instruction. Refer to the IGADF website.

Defence employees

15. Should a non-Senior Executive Service (SES) Defence APS employee be dissatisfied with the outcome or handling of a complaint of unacceptable behaviour, they may seek review through the established APS complaint process, Review of Actions. Notwithstanding the complaint management process outlined in this Instruction, a Review of Actions may be sought at any time. Time limits apply to the period under which a review may be conducted. Refer to the Review of Actions chapter in the *Defence Workplace Relations Manual* and the Complaint Resolution website.

Complaint to an external agency

16. A complaint may be submitted to an external agency in addition to, in lieu of, or subsequent to a complaint submitted within Defence. It is usual practice for external agencies to require Defence personnel to have pursued the complaint with Defence in the first instance. If a complaint is lodged with an external agency, commanders and managers are to provide support mechanisms as appropriate to the complainant and/or respondent. Commanders and managers might not be informed of the outcome of an external review. Individuals have the right to access such agencies as:

a. **Defence Force Ombudsman (DFO).** The DFO may accept complaints from ADF members for investigation if satisfied that special circumstances exist. Guidance for lodging a complaint can be found in DI(G) PERS 34–3—*Inquiries and investigations by the Commonwealth Ombudsman and the Defence Force Ombudsman*.

b. **Merit Protection Commissioner.** A non-SES employee who is dissatisfied with the outcome of the Review of Actions (refer to paragraph 15.), may apply to the Merit Protection Commissioner for a secondary review.

c. **Australian Human Rights Commission (AHRC).** In some circumstances, individuals may refer their complaint to AHRC (formerly the Human Rights and Equal Opportunity Commission). Directions on managing a complaint with AHRC can be found in DI(G) PERS 34–2—*Complaints of discrimination and harassment through the Australian Human Rights Commission*.

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UNACCEPTABLE BEHAVIOUR REPORTS

1. Complaints involving unacceptable behaviour may require reporting to several Defence agencies depending on the nature of the complaint.

Reports to Fairness and Resolution

2. All complaints of unacceptable behaviour that involve Defence personnel or external service providers must be reported to Fairness and Resolution (FR) irrespective of the outcome.

3. **Initial report.** Reports of unacceptable behaviour are to be submitted to FR using Form AC 875–1—*Initial Complaint Report—Unacceptable Behaviour or Sexual Offence*, (available on the Defence Web Forms System), after completion of the Quick Assessment (QA) and within seven days of receipt of the complaint. The commander or manager managing the complaint is to ensure this reporting is completed.

4. A single incident involving a number of complainants 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 are not to be provided when reporting a complaint.

5. **Progress report.** Progress reports are to be submitted to FR using Form AC 875–2—*Progress Report—Unacceptable Behaviour or Sexual Offence*. Progress reports must be submitted when significant changes occur or milestones are reached, such as the completion of an inquiry or referral to a Code of Conduct delegate. Where no previous progress reports have been provided, a progress report must be submitted no later than three months after the date of initial complaint.

6. If the responsibility for the management of a complaint is transferred a progress report must be submitted. Once there is agreement between the losing and gaining commanders or managers, the gaining commander or manager is to raise the Form AC 875–2. The existing unit reference number is to be quoted and the new unit reference number advised in the ‘Current Status’ box. Subsequent reports are to use the new unit reference number.

7. **Final outcome and formal action report.** Unacceptable behaviour complaints should be resolved within three months unless exceptional circumstances apply. The final outcome is to be reported to FR within seven days of resolving the complaint.

8. A formal outcome of an unacceptable behaviour complaint against an Australian Defence Force member is to be reported to FR and the member’s Career Management Agency. The member’s name and personal details are to be advised. This information may be taken into account by the relevant Service for career management and posting decisions.

9. The name and personal details of an Australian Public Service employee who has been found to have breached the Code of Conduct as a result of an unacceptable behaviour complaint are to be reported to FR. The report is Form AC 875–3—*Final Outcome Report—Unacceptable Behaviour or Sexual Offence*.

Occupational Health and Safety Branch reporting and Comcare notification

10. An incident of unacceptable behaviour, as defined in annex B, has the potential to cause serious personal injury (physical or psychological), incapacity (time off work), or death (for example suicide). An incident is reportable to Occupational Health and Safety Branch (OHSB) and notifiable to Comcare, if after conducting a QA, it is determined that it:

a. is work related, and

b. resulted in:

(1) a death,

(2) serious personal injury,

(3) incapacity, or

(4) dangerous occurrence.

The categories of OHS incidents above, are defined on Form AC 563—*Defence OHS Incident Report*.

11. An incident should not be categorised as a ***dangerous occurrence*** until the QA and any subsequent investigation has been completed, or the situations in paragraph 12. apply. Where an incident has the potential to cause death, serious personal injury or incapacity, but these outcomes have not eventuated, the QA is to consider the known facts and recommend whether the incident should be categorised as a dangerous occurrence. Reporting and notification is not required if a QA or other subsequent inquiries determined there was no incident of unacceptable behaviour.

12. An incident is to be categorised as a ***dangerous occurrence***, regardless of whether the alleged incident(s) is substantiated or not, if:

a. a complainant notifies the commander or manager that they are receiving health treatment or intervention (eg psychological counselling or medical treatment) for an injury arising from an alleged unacceptable behaviour incident; or

b. if an employee is absent from the workplace for 10 or more days, where such absence is due to alleged unacceptable behaviour in the workplace, or

c. there have been a series of reported incidents or allegations of unacceptable behaviour, which could reasonably lead to the injury or illness of the employee.

13. The commander or manager must determine whether the incident requires notification and act accordingly. If required, OHSB reporting and Comcare notification is to be made using AC 563. For further guidance on OHS incident reporting and notification, refer to the *Defence Safety Manual* (SAFETYMAN), volume 1—'General' and the OHSB website.

Other reporting within Defence

14. Defence is responsible for ensuring that people to whom security classified resources are entrusted are suitable and fully understand their responsibilities and obligations. The personnel security clearance system ensures that security classified resources are placed only in the care of people who are honest, trustworthy, mature, tolerant, loyal and willing to safeguard those resources against misuse. An incident of unacceptable behaviour may raise concerns about an individual employee's suitability for access to security classified resources. The *Defence Security Manual* provides direction on reporting for security incidents and personnel security assessments.

15. Records of criminal conviction, administrative and/or disciplinary action resulting from the unacceptable behaviour incident must also be recorded in accordance with the individual Service and *Defence Workplace Relations Manual* requirements.

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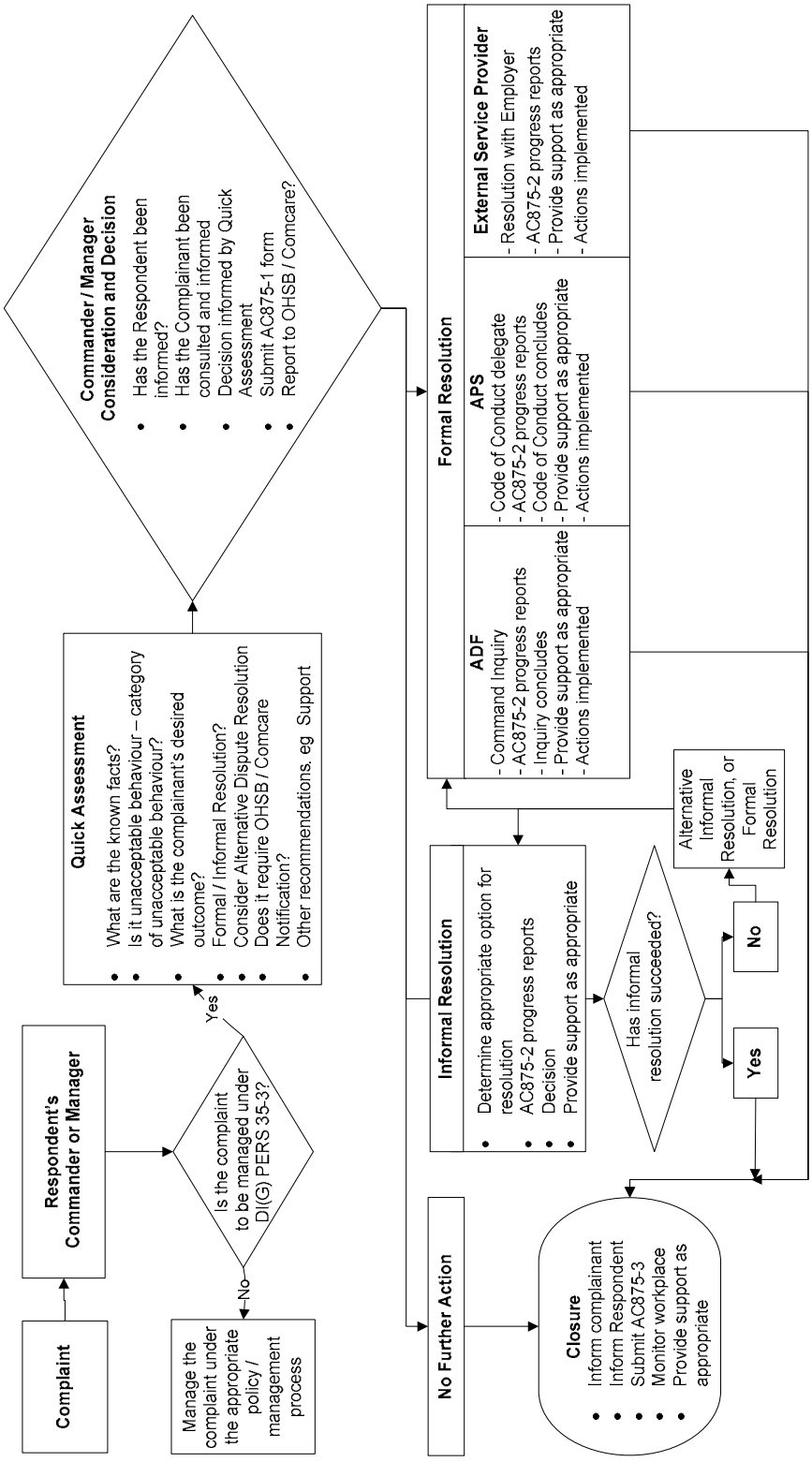
FLOW CHART TO MANAGEMENT AND REPORTING OF UNACCEPTABLE BEHAVIOUR COMPLAINTS



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CHECKLIST FOR MANAGEMENT AND REPORTING OF UNACCEPTABLE BEHAVIOUR COMPLAINTS

The purpose of this checklist is to assist Commanders and Managers in the management and reporting of unacceptable behaviour complaints.

Time Frame	Management	Inquiry	Reporting
SHORT TERM	☐ Conduct a Quick Assessment (QA) within 24 hours. This may be extended to three days with the approval of initiating officer. ☐ If the matter constitutes a notifiable incident, report the matter to a Defence Investigative Authority in accordance with Defence Instruction (General) ADMIN 45–2— *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*. ☐ Make and **record** decisions: 1. Does the alleged behaviour that is the subject of the complaint fall within the scope of this instruction? If so categorise the alleged behaviour as per annex B. 2. Is there sufficient evidence to take further action? 3. If yes to 1 and 2 above, should the complaint be resolved formally or informally (refer to annex E). 4. Are further inquiries necessary and does the complaint need to be referred to an alternative body; and 5. Is the incident required to be reported to Defence OHSB/Comcare ☐ Provide the respondent with sufficient information about the complaint to afford procedural fairness. ☐ Encourage the parties to the complaint to seek counselling or other support. ☐ Consider whether the work duties of the complainant and respondent require interaction, or they work in close proximity—how is this to be managed? Is a temporary	☐ Australian Defence Force (ADF) commanders can instigate or conduct inquiries on ADF members. ☐ Commanders and managers are to refer potential breaches of the Australian Public Service (APS) Code of Conduct to the Code of Conduct Delegate. Only the Code of Conduct delegate can make determinations on APS Code of Conduct inquiries. ☐ External service providers: the complaint is assessed and managed by the contract manager within the parameters of the contract.	☐ Complete Form AC 875–1— *Initial Complaint Report - Unacceptable Behaviour or Sexual Offence* and forward to Fairness and Resolution (FR) within seven days of receipt of the complaint (QA). ☐ If reporting to Occupational Health and Safety Branch (OHSB)/ notification to Comcare is required, complete Form AC 563—*Defence OHS Incident Report*. ☐ If complaint is resolved, complete Form AC 875–3— *Final Outcome Report - Unacceptable Behaviour or Sexual Offence* and send to FR.

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Time Frame	Management	Inquiry	Reporting
	transfer appropriate? ☐ If appropriate resolve the complaint at the lowest level at this early stage. Consider alternative dispute resolution options such as mediation or conflict coaching to help parties to the complaint achieve a resolution. ☐ If the complaint has been resolved, communicate closure of the complaint to the parties, including advice of review avenues. ☐ Ensure return to normal workplace activity. Provide on-going support to the complainant and other parties (as appropriate).		
MEDIUM TERM	☐ Consider appointing a case officer to keep the parties informed and provide them with support options. (Note single-Service may mandate this requirement.) ☐ Monitor the workplace to prevent victimisation and gossiping. ☐ If the complainant or respondent fears victimisation, take reasonable action to support them in the workplace. This may include consideration of reassignment or transfer of either party. ☐ Reconsider the work duties and working proximity of the complainant and respondent. Are arrangements satisfactory, do they require review?	☐ Deal with any Defence Force Discipline Act offence or breach of the APS Code of Conduct under established procedures.	☐ Complete Form AC 875–2—*Progress Report—Unacceptable Behaviour or Sexual Offence* when: o significant changes occur or milestones are reached, eg inquiry completed or transfer of complaint management; o or no later than three months after the initial complaint if no progress report has been submitted.
LONG TERM	☐ Ensure return to normal workplace activity. ☐ Provide on-going support to the complainant and other parties (as appropriate). ☐ Implement reasonable measures to prevent the recurrence of a similar incident in the workplace. ☐ Communicate closure of the complaint to the parties, including advice of review avenues.	**ADF formal outcome:** ☐ Seek legal advice if considering administrative sanction. **APS formal outcome:** ☐ The code of conduct delegate may make an adverse finding and impose a sanction(s).	☐ Complete Form AC 875–3 and forward to FR when complaint is resolved. If a formal action is taken against the respondent send a copy of Form AC 875–3 page 2 to the respondent's career management agency (ADF only). ☐ Unacceptable behaviour complaints should be resolved within three months.

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RELATED LEGISLATION, INSTRUCTIONS, POLICY, PUBLICATIONS AND WEBSITES

Commonwealth Legislation

Occupational Health and Safety Act 1991
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401538?OpenDocument

Human Rights and Equal Opportunity Commission Act 1986
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401635?OpenDocument

Sex Discrimination Act 1984
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401301?OpenDocument

Disability Discrimination Act 1992
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401406?OpenDocument

Racial Discrimination Act 1975
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401654?OpenDocument

Age Discrimination Act 2004
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200402750?OpenDocument

Privacy Act 1988
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401860?OpenDocument

Public Service Act 1999
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401809?OpenDocument

Public Service Regulations 1999
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200400976?OpenDocument

Workplace Relations Act 1996
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200403482?OpenDocument

Legal Services Directions
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200612813?OpenDocument

Defence Legislation

Defence Force Discipline Act 1982
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401462?OpenDocument

Defence Act 1903
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401433?OpenDocument

Defence (Inquiry) Regulations 1985
http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200400398?OpenDocument

Defence Instructions

Defence Instruction (General) (DI(G)) ADMIN 08–1—*Public comment and dissemination of official information by Defence personnel*
http://defweb.cbr.defence.gov.au/home/documents/data/ADFPUBS/DIG/ga08_01.pdf

DI(G) ADMIN 10–8—*Conduct Reporting and Tracking System*
http://defweb.cbr.defence.gov.au/home/documents/data/ADFPUBS/DIG/GA10_8.pdf

DI(G) ADMIN 27–1—*Freedom of Information Act—Implementation in the Department of Defence*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/DIA27_1.PDF

DI(G) ADMIN 27–2—*Access to Defence and Defence-related archival records under the Archives Act 1983*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA27_02.PDF

DI(G) ADMIN 45–2—*Reporting and investigation of alleged offences within the Australian Defence Organisation*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF

DI(G) ADMIN 65–1—*Administrative Inquiry Tracking*
http://defweb.cbr.defence.gov.au/home/documents/data/ADFPUBS/DIG/ga65_01.pdf

DI(G) ADMIN 67–2—*Quick Assessments*
http://defweb.cbr.defence.gov.au/home/documents/data/ADFPUBS/DIG/ga67_02.pdf

DI(G) PERS 25–5—*Employment of immediate family members in the same chain of command and/or working environment*
http://defweb.cbr.defence.gov.au/home/documents/data/ADFPUBS/DIG/gp25_5.pdf

DI(G) PERS 34–1—*Redress of Grievance—Tri-Service procedures*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP34_01.PDF

DI(G) PERS 34–2—*Complaints of discrimination and harassment through the Australian Human Rights Commission*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/DIP34_2.PDF

DI(G) PERS 34–3—*Inquiries and investigations by the Commonwealth Ombudsman and the Defence Force Ombudsman*
http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP34_3.PDF

DI(G) PERS 34–4—*Use and Management of Alternative Dispute Resolution in Defence*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP34_04.PDF

DI(G) PERS 35–2—*Application of the Sex Discrimination Act to the Australian Defence Force*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/DIP35_2.PDF

DI(G) PERS 35–4—*Management and Reporting of Sexual Offences*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_04.PDF

DI(G) PERS 35–6—*Formal Warnings and Censures in the Australian Defence Force*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_6.PDF

DI(G) PERS 35–7—*Defence Equity Adviser Network*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_07.PDF

DI(G) PERS 45–1—*Jurisdiction under the Defence Force Discipline Act—Guidance for Military Commanders*
http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/gp45_1.pdf

DI(G) PERS 45–5—*Defence Whistleblower Scheme*
http://defweb.cbr.defence.gov.au/home/documents/data/ADFPUBS/DIG/gp45_05.pdf

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Other Defence Policy and Publications

Australian Defence Force Publication (ADFP) 06.1.3—*Guide to Administrative Decision-Making*
http://defweb.cbr.defence.gov.au/home/documents/adfdocs/ADFP/adfp06_1_3.htm

ADFP 06.1.4—*Administrative Inquiries Manual*
http://defweb.cbr.defence.gov.au/home/documents/adfdocs/ADFP/adfp06_1_4.htm

The Decision Maker's Handbook: *Making personnel related decision for ADF members and APS employees* (Publication is on the Pay and Conditions website)
http://intranet.defence.gov.au/pac/

Defence Records Management Policy Manual (POLMAN 3)
http://defweb.cbr.defence.gov.au/home/documents/departmental/manuals/polman3.htm

Defence Collective Agreement (or its replacement industrial instrument is available on the Pay and Conditions website)
http://intranet.defence.gov.au/pac/

Defence Workplace Relations Manual (The publication is regularly updated and is available on the Pay and Conditions website)
http://intranet.defence.gov.au/pac/

Defence Workplace Equity and Diversity Plan (The publication is bi-annual and is available on the Fairness and Resolution website—publications page)
Fairness and Resolution: http://intranet.defence.gov.au/fr/

*Defence Security Manua*l
http://intranet.defence.gov.au/dsa/DSM/

Defence Safety Manual (SAFETYMAN), volume 1—'General'
http://defweb.cbr.defence.gov.au/home/documents/departmental/manuals/safetymanv1.htm

Defence Organisational websites

Fairness and Resolution: http://intranet.defence.gov.au/fr/
Alternative Resolutions and Equity: http://intranet.defence.gov.au/fr/ARE/arehome.htm
Complaint Resolution: http://intranet.defence.gov.au/fr/CR/crhome.htm
Rights and Responsibilities: http://intranet.defence.gov.au/fr/RR/rrhome.htm
Privacy: http://intranet.defence.gov.au/fr/Privacy/privacyhome.htm

ADF Investigative Service http://intranet.defence.gov.au/militaryjustice/adfis/default.htm

Defence Legal Directorates http://intranet.defence.gov.au/dsg/sites/DLD/

Inspector-General http://intranet.defence.gov.au/ig/

Inspector-General ADF http://intranet.defence.gov.au/igadf/

Ministerial Support and Public Affairs Division
http://intranet.defence.gov.au/oscdfweb/sites/DMPLS/comweb.asp?page=28069

Occupational Health and Safety Branch
http://ohsc.defence.gov.au/

Pay and Conditions
http://intranet.defence.gov.au/pac/