



Australian Government
Department of Defence

DEFENCE INSTRUCTIONS (GENERAL)

PERS 35–4 [Reporting and management of sexual misconduct including sexual offences](#)

Full review
AMDT 6

Department of Defence
CANBERRA ACT 2600

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

Issued with the authority of the Secretary pursuant to section 20 of the *Public Service Act 1999* for Australian Public Service employees in the Department of Defence.

Handwritten signature of Dennis Richardson in black ink.

Dennis Richardson
Secretary

Handwritten signature of M.D. Binskin, ACM in black ink.

M.D. Binskin, ACM
Air Chief Marshal
Chief of the Defence Force

Sponsor:

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Sexual Misconduct Prevention and Response Office

Effective Date: 29 August 2014

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Cancellation

DI(G) PERS 35–4 of 28 FEB 2014 (Interim Instruction) (AL4) is cancelled.

REPORTING AND MANAGEMENT OF SEXUAL MISCONDUCT INCLUDING SEXUAL OFFENCES

INTRODUCTION

1. This Instruction outlines Defence's approach to the prevention, reporting and management of sexual misconduct where it occurs in Defence workplaces, or in connection with Defence workplaces or activities. Defence is committed to providing all Defence personnel with a safe, secure and healthy working environment that is free from sexual misconduct.
2. This Instruction must be read in conjunction with other related Defence policies and guidance materials, including [Defence Instruction \(General\) \(DI\(G\)\) ADMIN 45-2—The reporting and management of notifiable incidents](#) (http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF) and the [Defence Public Interest Disclosure Scheme](#) (DPIDS) (<http://intranet.defence.gov.au/ig/sites/fcib/comweb.asp?page=43772&title=dws>) which outlines mandatory reporting obligations with respect to public interest disclosures. The [Australian Defence Force Investigative Service](#) (ADFIS) (<http://intranet.defence.gov.au/vcdf/sites/ADFIS/ComWeb.asp?page=36923>) is the primary Defence Investigative Agency for serious Service or criminal sexual misconduct matters involving Defence members.

POLICY STATEMENT

3. Defence does not tolerate sexual misconduct in any form. All Defence personnel must behave in accordance with Defence policies that deal with workplace behaviour, including this Instruction, and in a way that upholds the Defence and Service values.
4. Managers and commanders are central to the effective management of sexual misconduct. Managers and commanders must set an appropriate and respectful tone towards all Defence personnel in their units, take appropriate steps to prevent sexual misconduct and properly manage reports of sexual misconduct in accordance with this Instruction. Defence, through the [Sexual Misconduct Prevention and Reporting Office](#) (SeMPRO) (<http://intranet.defence.gov.au/people/sites/sempro/ComWeb.asp?page=55022>) will ensure that sufficient support and assistance is available to managers and commanders to enable them to meet this responsibility.
5. Defence members who are victims of sexual misconduct will have access to support and guidance through their chain of command, authorised health professionals, chaplaincy services and SeMPRO. Defence Australian Public Service employees (Defence APS employees) may also access SeMPRO services should they wish to do so in addition to the services provided by the Defence [Employee Assistance Program](#) (EAP) (<http://intranet.defence.gov.au/People/sites/EAP/comweb.asp?page=121537>) and [support services within the local community](#) (<http://intranet.defence.gov.au/people/sites/sempro/ComWeb.asp?Page=112901>). Specific support arrangements for victims of sexual misconduct are detailed in [Annex A](#).

SEXUAL MISCONDUCT

6. Defence uses the term sexual misconduct to describe a range of behaviours of a sexual nature that are committed by force or intimidation, or that are otherwise unwelcome. Sexual misconduct includes, but is not limited to sexual discrimination, sexual harassment, sexual offences and the recording, photographing or transmitting of incidents of a sexual nature without the knowledge and consent of all parties. The definition of sexual discrimination, sexual harassment and sexual offences are in [Annex B](#). Sexual misconduct can occur in any sex or gender configuration regardless of sex or gender identity.

7. Sexual offences are a particular category of sexual misconduct and are subject to criminal penalties in accordance with the applicable legislation in the relevant jurisdiction. Sexual offences include sexual intercourse without consent, acts of indecency, possession of child pornography and use of the internet to deprave young people, among other crimes.

8. Allegations of unacceptable behaviour which do not involve sexual misconduct, including harassment, discrimination or bullying continue to be managed in accordance with [DI\(G\) PERS 35-3—Management and reporting of unacceptable behaviour](#) (http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_03.PDF).

POLICY PRINCIPLES

9. The following core principles underpin the effective management of sexual misconduct in Defence:

- a. **Prevention.** Defence is committed to delivering targeted education programs to promote and support positive and appropriate workplace cultures.
- b. **Action.** Defence takes action on all reported sexual misconduct and refers incidents that may amount to serious Service or criminal offences for investigation by an appropriate authority, in accordance with its legal obligations.
- c. **Support.** Defence ensures a wide range of support services, assistance and advice are available for victims of sexual misconduct and everyone else affected by an incident of sexual misconduct.
- d. **Outcomes.** Defence ensures that allegations of sexual misconduct are actioned and that all victims of sexual misconduct are supported.
- e. **Monitoring and reporting.** Defence maintains accurate records of reported incidents of sexual misconduct. Defence monitors the effectiveness of its prevention strategies and is accountable for their progress through internal and external reporting.

SCOPE

10. This Instruction applies to all Defence personnel who are over 18 years of age.

DEFINITIONS

11. A list of definitions that apply to this Instruction is in [Annex B](#).

MANAGEMENT OF SEXUAL MISCONDUCT

12. Defence requires all reports of sexual misconduct to be responded to without undue delay and with sensitivity for all concerned. Responding to allegations of sexual misconduct can be complex. A comprehensive response to incidents of sexual misconduct may involve multiple levels of action, which may differ depending on the nature of the misconduct and the services that the victim is able to access given their type of employment. Defence manages incidents of sexual misconduct differently depending on whether a Defence member, a Defence APS employee or an external service provider is involved. The responses include:

- a. **Management/command response.** Managers and commanders have particular responsibilities in relation to the prevention, reporting and management of sexual misconduct. This includes limiting the disclosure of personally identifiable information of the victim and alleged offender(s) through the chain of command, and the preservation of incident scene and potential evidence. Managers and commanders of Defence members may be required to carry out Review, Evaluate, Assist, Control and Take notes processes as per [DI\(G\) OPS 13-15](#)—*Incident scene initial action and preservation* (http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GO13_15.PDF), prior to ADFIS or other police attendance.
- b. **Service policing response** for incidents involving Defence members. An immediate response to the incident scene, evidence preservation and recording, victim and witness welfare, investigation and liaison with civilian police jurisdictions including forensic medical examination specialists.
- c. **Support mechanisms.** Providing support to victims, support for managers and commanders, and support for others affected by sexual misconduct including witnesses, colleagues, family members and alleged offenders.
- d. **Organisational response.** Providing cultural change activities, education and awareness presentations and annual mandatory training for Defence members and Defence APS employees.

REPORTING OF SEXUAL MISCONDUCT

13. Defence personnel may report incidents of sexual misconduct through a number of avenues. Defence personnel who are victims of a sexual offence may report the incident to the relevant Federal, State or Territory police at any time. This Instruction does not restrict the ability of Defence personnel to access the civilian police or civilian support agencies and organisations, such as rape crisis centres, sexual health clinics or hospital emergency departments.

14. Defence members who are victims of sexual misconduct are strongly encouraged to report that incident to:
- a. ADFIS
 - b. the Federal/State/Territory police
 - c. the chain of command (which will involve mandatory reporting obligations under [DI\(G\) ADMIN 45-2](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF)—*The reporting and management of notifiable incidents* (http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF) and the [DPIDS](http://intranet.defence.gov.au/ig/sites/fcib/comweb.asp?page=43772&title=dws) (<http://intranet.defence.gov.au/ig/sites/fcib/comweb.asp?page=43772&title=dws>))
 - d. an [authorised officer](http://intranet.defence.gov.au/ig/sites/FCIB/docs/R17651397.pdf) (<http://intranet.defence.gov.au/ig/sites/FCIB/docs/R17651397.pdf>) appointed under the [Public Interest Disclosure Act 2013](http://www.comlaw.gov.au/Series/C2013A00133) (PID Act) (<http://www.comlaw.gov.au/Series/C2013A00133>) which provides statutory protections to those disclosing under the PID Act; and/or
 - e. **SeMPRO**. SeMPRO does not investigate allegations of sexual misconduct, however, it will ensure that victims of sexual misconduct have access to appropriate support services.

Restricted disclosure—Defence members only

15. Defence members may make a restricted disclosure to SeMPRO in limited circumstances. This form of confidential disclosure provides Defence members, who do not wish to make a report to their chain of command or other mechanisms, with an avenue to access support, health and counselling services, if they have not already accessed these services. Defence personnel who are authorised by Head SeMPRO to receive restricted disclosures of sexual misconduct are exempt from the mandatory reporting requirements detailed in [DI\(G\) ADMIN 45-2](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF) (http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF). This exemption is provided by Inspector General Defence and is in relation to receiving restricted disclosures and providing advice and guidance on sexual misconduct matters only. Notification of any other matter which falls within the scope of DI(G) ADMIN 45-2 must be reported accordingly. Further information on restricted disclosure and when they may be accepted by SeMPRO is in [Annex A](#).

Public Interest Disclosure—all Defence personnel

16. All Defence personnel have the option to disclose incidents of sexual misconduct to an [authorised officer](http://intranet.defence.gov.au/ig/sites/FCIB/docs/R17651397.pdf) (<http://intranet.defence.gov.au/ig/sites/FCIB/docs/R17651397.pdf>) appointed under the [PID Act](http://www.comlaw.gov.au/Series/C2013A00133) (<http://www.comlaw.gov.au/Series/C2013A00133>). Authorised officers must respond to such a disclosure in accordance with the requirements of the PID Act.

RESPONDING TO ALLEGATIONS OF SEXUAL MISCONDUCT— MANAGERS AND COMMANDERS

Allegations of sexual misconduct—risk of harm

17. Where there is an immediate risk of harm to the victim or others, the incident must immediately be referred to the relevant police authorities. Where such referrals occur, the referrers must also inform ADFIS.

18. Defence has obligations under the [Work Health and Safety Act 2011](http://www.comlaw.gov.au/Series/C2011A00137) (<http://www.comlaw.gov.au/Series/C2011A00137>) to take all reasonably practicable steps to protect Defence personnel in danger and will disclose personal information necessary to prevent harm. This may include the individual's name, age, address, date and time of the incident and the nature of the sexual misconduct.

Allegations of sexual misconduct involving minors

19. Allegations of sexual misconduct involving Defence personnel under the age of 18 must be referred to the relevant police and child protection authorities by the quickest means available. [Vice Chief of the Defence Force Directive 03/14—Child Protection—Australian Defence Force Cadets](http://intranet.defence.gov.au/DRMS/uR3452%5CR18117531.pdf) dated 02 May 2014 (<http://intranet.defence.gov.au/DRMS/uR3452%5CR18117531.pdf>) provides direction on child protection concerning Australian Defence Force (ADF) Cadets and includes direction on the reporting of sexual offences. Any report of a sexual offence involving a member of the ADF Cadets must be reported to the relevant Federal, State or Territory police. ADFIS must also be informed.

Allegations of sexual misconduct involving a Defence member

20. Where a manager or commander becomes aware of an incident of sexual misconduct where a Defence member is or has been the victim of the alleged incident, the manager or commander must:

- a. treat the member and their allegations sensitively and seriously
- b. take into account the member's wishes as to what he or she wishes to occur, although noting that it is only one of the factors for consideration
- c. inform the member of their ability to seek medical, counselling and other support services
- d. immediately inform ADFIS in accordance with a manager's or a commander's reporting obligations as specified by [DI\(G\) ADMIN 45-2](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF) (http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF) and the [PID Act](http://www.comlaw.gov.au/Series/C2013A00133) (<http://www.comlaw.gov.au/Series/C2013A00133>)
- e. report the matter to SeMPRO if the member consents to this (if no consent is given, local support and other resources should still be made available to the member)

- f. ensure that he or she does not take adverse action against the member as a result of the member making the disclosure
- g. advise the member of the processes that are likely to follow
- h. manage the incident in accordance with the procedure set out in [DI\(G\) PERS 35-3](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_03.PDF) (http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_03.PDF), if referred back to the manager or commander by ADFIS for action
- i. continue to manage workplace health and safety appropriately, including work health and safety reporting obligations and ensure that affected individuals, including any identified alleged offender, are aware of available support mechanisms.

Allegations of sexual misconduct involving a Defence Australian Public Service employee and external service providers

21. Where a manager or commander becomes aware of an incident of sexual misconduct where a Defence APS employee, or an external service provider is the victim of the alleged incident, the manager or commander must notify that incident in accordance with their obligations under the [PID Act](http://www.comlaw.gov.au/Series/C2013A00133) (<http://www.comlaw.gov.au/Series/C2013A00133>). The manager or commander is responsible for overseeing the continuing support required by these personnel including advising of the support available through the EAP and that additional guidance and advice may be available to them through SeMPRO.

Administrative action

22. A manager or commander may consider initiating formal administrative action in respect of Defence personnel while an incident of sexual misconduct is under investigation, while criminal or disciplinary proceedings are pending or after such proceedings have concluded. The fact that an individual is convicted or acquitted of an offence does not, of itself, preclude administrative action being taken in respect of sexual misconduct that is the subject of such disciplinary or criminal proceedings. A decision as to whether or not to initiate administrative action may be reconsidered at any time.

23. Legal advice should be sought in close consultation with ADFIS where an administrative sanction is being contemplated in conjunction with criminal or disciplinary proceedings, and care must be taken to avoid a real danger of injustice or compromising criminal or disciplinary proceedings.

24. Appropriate support to all parties should continue notwithstanding that criminal, disciplinary or other action is occurring.

ROLES AND RESPONSIBILITIES

Defence personnel

25. Defence personnel must not engage in, participate in, or encourage any form of sexual misconduct, nor should they engage or participate in any act that could be taken as victimising an individual who reports an incident of sexual misconduct. Victimising the individual could be considered a criminal offence under the protections afforded under the [PID Act](#) (<http://www.comlaw.gov.au/Series/C2013A00133>).

26. Defence members who witness an incident of sexual misconduct, or who have reason to believe that an incident of sexual misconduct has occurred must immediately report that incident to their manager or commander, ADFIS or Service police to enable appropriate action to be undertaken in accordance with this Instruction. There are exceptions to this mandated reporting requirement. They relate to confidential communications between an individual seeking care and guidance and the medical or mental health professional, religious or legal officers providing these services as outlined in [Paragraphs 32.–34.](#), and/or a friend of the victim to whom the victim has confided.

27. Defence members and Defence APS employees must undertake annual mandatory awareness training on the reporting and management of sexual misconduct. This training may be achieved via instructor-led delivery at formal unit annual training or via the mandatory 'Workplace Behaviour Mandatory Awareness' online [Campus](#) training course (<http://campus.defence.gov.au/>). Defence personnel may be required to participate in targeted education sessions as required by their manager or commander.

Managers and commanders

28. In addition to the responsibilities outline in [Paragraphs 17.–24.](#), managers and commanders must demonstrate and promote behaviours that are consistent with the expected behaviours of Defence personnel within their Group or Service and take a proactive approach to the prevention of sexual misconduct. SeMPRO will support managers and commanders in this regard through the provision of prevention and education activities.

29. Managers and commanders must respond as soon as practicable in a sensitive manner to an allegation of sexual misconduct which has occurred in the Defence workplace, or which has an association to the Defence workplace.

30. Managers and commanders must ensure that Defence personnel whom they supervise or manage are made aware of the avenues of support available to them, should they require assistance in relation to incidents of sexual misconduct.

31. Managers and commanders must ensure Defence personnel undertake annual mandatory awareness training on the reporting and management of sexual misconduct. This training may be achieved via instructor-led delivery at formal unit annual training or via the mandatory 'Workplace Behaviour Mandatory Awareness' online Campus training course.

Authorised health professionals, chaplains and legal officers

32. Defence recognises and protects the confidential nature of communications between an individual seeking assistance and people providing certain professional services protected by confidentiality and professional privilege. In instances where sexual misconduct is disclosed, Defence will not expect the confidential relationship to be breached, except in accordance with recognised exceptions to confidentiality and professional privilege. Where there is an immediate risk of harm, the authorised health professional, chaplain or legal officer must refer the disclosure immediately to the Federal/State/Territory police. Where such referrals occur ADFIS must also be informed.

33. It is important that Defence is able to capture general information regarding any incident of sexual misconduct, as this is crucial to Defence's ability to identify safety risks and trends, and therefore provide an environment which is safe and contributes to the wellbeing of all Defence personnel. Therefore, authorised health professionals, chaplains and legal officers who receive information indicating that an incident of sexual misconduct may have occurred, must provide SeMPRO with information relating to that incident which does not identify the individual concerned (de-identified data). This can be done by the completion of a [SeMPRO de-identified data collection form](http://intranet.defence.gov.au/DRMS/uAF78%5CAF17961301.pdf) (<http://intranet.defence.gov.au/DRMS/uAF78%5CAF17961301.pdf>), where this information has not previously been provided to command, ADFIS or SeMPRO. SeMPRO encourages those completing the form to do so in consultation with the individual disclosing and to inform that individual of the rationale and importance of the collection of the data.

34. The scope and nature of the de-identified data that can be reported may vary in each case. For example, where there is only one female of a certain rank in a unit, reporting rank and gender may inadvertently identify that member. Therefore, there is no requirement for a professional to report certain factual information that would, in combination, identify a member, or that he or she would consider a breach of professional obligations.

Offices of the Secretary and Chief of the Defence Force Group—Australian Defence Force Investigative Service

35. ADFIS is responsible for the coordination of the appropriate jurisdiction for the handling of reported incidents of alleged sexual misconduct involving Defence members which occur in the Defence workplace, or which may have a connection with the Defence workplace in conjunction with relevant stakeholders. Where appropriate, ADFIS will notify and/or refer the incident to the relevant civil police authority.

36. ADFIS will engage the chain of command as appropriate throughout the conduct of any sexual offence investigation undertaken by them or by a civilian authority. Where the alleged offender is identified as a Defence APS employee the investigation of this matter will reside in the appropriate civilian jurisdiction, or, in relation to minor sexual misconduct matters through the APS Code of Conduct. ADFIS is the primary liaison point between Defence and the Federal/State/Territory police.

37. Within Australia, ADFIS will notify and/or refer most allegations of sexual offences to the civilian police for investigation where appropriate. There are some situations where it would be more appropriate for ADFIS to investigate allegations with a Service nexus occurring in Australia. Where a sexual offence occurs offshore, overseas or in a deployed environment, a number of parallel jurisdictions may exist. ADFIS has the authority to investigate matters under the [Defence Force Discipline Act 1982](#) (DFDA) (<http://www.comlaw.gov.au/Series/C2004A02711>), whether the matter occurs within Australia or overseas. Where appropriate, ADFIS will liaise with relevant authorities including coalition partners and local investigative authorities to determine any jurisdictional limitations and where necessary, obtain standing or ad hoc approvals to conduct investigations.

38. ADFIS must advise SeMPRO, on a case-by-case basis, of any reports of sexual misconduct and provide sufficient personal details to enable SeMPRO to contact the Defence member for support purposes, where the member has consented to such contact. Disclosure of further information to SeMPRO is not required, where it may prejudice an investigation or subsequent prosecution.

39. The Service Police Central Records Office must provide de-identified information on reported incidents of sexual misconduct offences regularly to SeMPRO for statistical purposes.

Sexual Misconduct Prevention and Response Office

40. Head SeMPRO is responsible for the provision of appropriate guidance and the coordination of support services to Defence members who are victims of sexual misconduct. SeMPRO will assist victims of sexual misconduct to access appropriate health care and support services. SeMPRO does not have any investigative function.

41. Defence, through SeMPRO, has introduced the restricted disclosure reporting option. The restricted disclosure option is available to Defence members who have been victims of sexual misconduct. Restricted disclosure enables a member to seek immediate support, including medical treatment and care, in a safe, confidential and trauma-informed environment.

42. As part of its role in prevention of sexual misconduct, SeMPRO is responsible for the development and delivery of sexual ethics education packages to the Services for implementation. SeMPRO is also responsible for delivering awareness briefings and to raise awareness of SeMPRO's roles and responsibilities across Defence.

Group Heads and Service Chiefs

43. The Group Heads and Service Chiefs are responsible for implementing this Instruction within their Group or Service and for demonstrating and promoting behaviours that are consistent with the expected behaviours of Defence personnel.

44. The Group Heads and Service Chiefs are responsible for initiating appropriate action when specific issues are identified by Head People Capability, Director-General Cultural Reviews Response and Head SeMPRO.

SUPPORT SERVICES

45. SeMPRO's primary role is to provide guidance and the coordination of support services to Defence members who are victims of sexual misconduct. SeMPRO will coordinate local support services for Defence APS employees affected by sexual misconduct, should such support be required.

46. In addition to providing support to victims of sexual misconduct, SeMPRO also provides advice and guidance to managers, commanders, support personnel, witnesses to incidents of sexual misconduct and to colleagues and family members of a victim impacted by an incident of sexual misconduct. Where a police investigation is ongoing, ADFIS and SeMPRO are to liaise in respect of interaction with potential witnesses.

47. Other personnel, including an alleged offender, may access support services via mechanisms set out in the document [Unacceptable behaviour support options for Defence personnel](http://intranet.defence.gov.au/People/sites/ComplaintResolution/comweb.asp?page=51000&Title=Unacceptable%20Behaviour) (<http://intranet.defence.gov.au/People/sites/ComplaintResolution/comweb.asp?page=51000&Title=Unacceptable%20Behaviour>) on the [Complaint Resolution](http://intranet.defence.gov.au/People/sites/ComplaintResolution/ComWeb.asp?page=50985) website (<http://intranet.defence.gov.au/People/sites/ComplaintResolution/ComWeb.asp?page=50985>).

48. Additional resources to assist managers and commanders in managing incidents of sexual misconduct are available from the [SeMPRO](http://intranet.defence.gov.au/people/sites/sempro/ComWeb.asp?page=55022) website (<http://intranet.defence.gov.au/people/sites/sempro/ComWeb.asp?page=55022>). Managers and commanders should seek advice from ADFIS and/or Defence Legal Division on a case-by-case basis, if they are unsure about how to proceed with a particular incident. Other useful resources include the [Values, Behaviours and Resolutions Branch](http://intranet.defence.gov.au/People/sites/VBR/ComWeb.asp?page=49468) (VBR) website (<http://intranet.defence.gov.au/People/sites/VBR/ComWeb.asp?page=49468>), which should be referred to when managing incidents of unacceptable behaviour in accordance with [DI\(G\) PERS 35-3](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_03.PDF) (http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_03.PDF).

COMPLIANCE

49. This Defence Instruction (General) is issued by the Secretary and the Chief of the Defence Force section 9A of the [Defence Act 1903](http://www.comlaw.gov.au/Series/C2004A07381) (<http://www.comlaw.gov.au/Series/C2004A07381>).

50. The mandatory requirements of this Instruction constitute a general order to Defence members for the purposes of the [DFDA](http://www.comlaw.gov.au/Series/C2004A02711) (<http://www.comlaw.gov.au/Series/C2004A02711>). Non-compliance with any mandatory requirement may result in disciplinary action being taken in accordance with the DFDA.

51. The mandatory requirements of this Instruction are intended to have effect also as a direction to APS employees in the Department of Defence (Defence APS employees) by the Secretary for the purpose of subsection 13(5) of the [Public Service Act 1999](http://www.comlaw.gov.au/Series/C2004A00538) (<http://www.comlaw.gov.au/Series/C2004A00538>) (subsection 13(5) forms part of the APS Code of Conduct). Accordingly, non-compliance by Defence APS employees with any mandatory requirement may be referred for investigation and possible sanction in accordance with the *Public Service Act 1999*.

52. Defence personnel who award or manage contracts must include the requirement that:
- a. external service providers must comply with the mandatory requirements of this Instruction in the terms of the contract, where this Instruction is directly relevant to the work the external service provider is performing for Defence; and
 - b. outsourced service providers must comply with the mandatory requirements of this Instruction in the terms of the contract only when there is a specific and documented reason for doing so.
53. Where it is a term of the contract, failure by an external service provider or an outsourced service provider to comply with the mandatory requirements of this Instruction may result in a breach of contract.
54. All Defence personnel and external service providers, where compliance is a term of their engagement, must comply with the mandatory requirements of this Instruction. Outsourced service providers are not required to comply with the requirements of this Instruction unless there is a specific and documented reason for doing so and compliance has been included as a term of their contract.
55. A mandatory requirement of this Instruction is identified through the use of the word *must*.

MONITORING AND REPORTING

56. Defence monitors the effectiveness of its prevention strategies and is accountable for their progress by meeting internal and external reporting requirements to Defence senior committees, and the Commonwealth Ombudsman. Defence also reports on these matters to the Australian public through the Defence Annual Report.

IMPLEMENTATION

57. Group Heads and Service Chiefs are responsible for implementing this Instruction within their Group or Service.

RELATED DOCUMENTS AND LEGISLATION

[DI\(G\) ADMIN 45-2](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF)—*The reporting and management of notifiable incidents*
(http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF)

[DI\(G\) CIS 6-1-001](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GCIS6_1_001.PDF)—*Appropriate and inappropriate use of Information and Communication Technology Resources*
(http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GCIS6_1_001.PDF)

[DI\(G\) PERS 33-4](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/gp33_04.pdf)—*Management and administration of Australian Defence Force members under 18 years of age*
(http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/gp33_04.pdf)

[DI\(G\) PERS 35–3](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_03.PDF)—*Management and reporting of unacceptable behaviour*
(http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GP35_03.PDF)

[DI\(G\) OPS 13–15](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GO13_15.PDF)—*Incident scene initial action and preservation*
(http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GO13_15.PDF)

[Vice Chief of the Defence Force Directive 03/14](http://intranet.defence.gov.au/DRMS/uR3452%5CR18117531.pdf)—*Child Protection—Australian Defence Force Cadets*
(<http://intranet.defence.gov.au/DRMS/uR3452%5CR18117531.pdf>)

[Complaints and Alternative Resolutions Manual](http://intranet.defence.gov.au/People/sites/CARM/ComWeb.asp?Page=52640) (CARM)
(<http://intranet.defence.gov.au/People/sites/CARM/ComWeb.asp?Page=52640>)

[Defence Public Interest Disclosure Scheme Administrative Guide](http://intranet.defence.gov.au/ig/sites/FCIB/docs/R17652075.pdf)
(<http://intranet.defence.gov.au/ig/sites/FCIB/docs/R17652075.pdf>)

[Defence Act 1903](http://www.comlaw.gov.au/Series/C2004A07381) (<http://www.comlaw.gov.au/Series/C2004A07381>)

[Defence Force Discipline Act 1982](http://www.comlaw.gov.au/Series/C2004A02711) (<http://www.comlaw.gov.au/Series/C2004A02711>)

[Public Service Act 1999](http://www.comlaw.gov.au/Series/C2004A00538) (<http://www.comlaw.gov.au/Series/C2004A00538>)

[Public Interest Disclosure Act 2013](http://www.comlaw.gov.au/Series/C2013A00133)
(<http://www.comlaw.gov.au/Series/C2013A00133>)

[Sex Discrimination Act 1984](http://www.comlaw.gov.au/Series/C2004A02868) (<http://www.comlaw.gov.au/Series/C2004A02868>)

[Work Health Safety Act 2011](http://www.comlaw.gov.au/Series/C2004A03712) (<http://www.comlaw.gov.au/Series/C2004A03712>)

Annexes:

- A. [Information for victims of sexual misconduct](#)
- B. [Definitions](#)

INFORMATION FOR VICTIMS OF SEXUAL MISCONDUCT

1. As a victim of an incident of sexual misconduct, you may be experiencing a range of impacts, including to your health, your ability to work, your family and relationships.
2. It is normal to feel a range of emotions including anger, frustration, depression, guilt and fear. You may feel embarrassed and ashamed. You may not feel able to confront your attacker and you may not wish to inform your chain of command for a number of reasons.
3. If you have been affected by an incident of sexual misconduct, either recently or in your past service or employment with Defence, you are encouraged to report the incident.

UNRESTRICTED REPORT

4. An unrestricted report is one that may lead to an investigation and possible criminal, disciplinary or other action against the alleged offender and can be made directly to:
 - a. the [Australian Defence Force Investigative Service](http://intranet.defence.gov.au/vcdf/sites/ADFIS/ComWeb.asp?page=36923) (ADFIS) (<http://intranet.defence.gov.au/vcdf/sites/ADFIS/ComWeb.asp?page=36923>) by telephoning **1300 ADFIS 1 (1300 233 471)**
 - b. the Federal/State/Territory police
 - c. your chain of command (which involves mandatory reporting obligations under [Defence Instruction \(General\) \(DI\(G\)\) ADMIN 45-2—The reporting and management of notifiable incidents](http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF) (http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA45_02.PDF) and the [Public Interest Disclosure Act 2013](http://www.comlaw.gov.au/Series/C2013A00133) (PID Act) (<http://www.comlaw.gov.au/Series/C2013A00133>))
 - d. an [authorised officer](http://intranet.defence.gov.au/ig/sites/FCIB/docs/R17651397.pdf) (<http://intranet.defence.gov.au/ig/sites/FCIB/docs/R17651397.pdf>) appointed under the [Public Interest Disclosure Act 2013](http://www.comlaw.gov.au/details/c2013a00133) (PID Act) (<http://www.comlaw.gov.au/details/c2013a00133>) which provides statutory protections to those disclosing under the PID Act; and/or
 - e. the [Sexual Misconduct Prevention and Response Office](http://intranet.defence.gov.au/People/sites/SeMPRO/ComWeb.asp?page=55022) (SeMPRO) (<http://intranet.defence.gov.au/People/sites/SeMPRO/ComWeb.asp?page=55022>). SeMPRO does not investigate allegations of sexual misconduct. SeMPRO will ensure that you have access to appropriate support services. Telephone SeMPRO on **1800 SeMPRO (1800 736 776)** or email sempro@defence.gov.au.

RESTRICTED DISCLOSURE

5. Defence has introduced a confidential reporting option for Defence members of sexual misconduct, this is known as a 'restricted disclosure'. Defence has introduced restricted disclosure for Defence members who do not wish to involve their chain of command or to report the incident to the police.

6. You can make a restricted disclosure directly to SeMPRO by telephoning **1800 SeMPRO (1800 736 776)** from within Australia, or **+612 6127 1759** if you are outside of Australia. Professional personnel experienced in responding to trauma answer these lines. Members may also contact SeMPRO via text on **0429 600 800** (inside Australia) or **+61 429 600 800** (outside Australia).

7. A restricted disclosure made to SeMPRO will not trigger an investigation. You can change your restricted disclosure to an unrestricted report at any time, at which time the matter may then involve ADFIS, Federal/State/Territory police and/or chain of command action. Where this occurs, SeMPRO will work in accordance with your wishes to engage with these investigative agencies.

8. SeMPRO will encourage a member making a restricted disclosure to undertake a health assessment as soon as practicable (within 24 hours) following their disclosure. This is to ensure that they are not in trauma as a result of either the incident of sexual misconduct, or as a result of making the disclosure.

Non-acceptance of restricted disclosure

9. In some situations, SeMPRO may not be able to accept a restricted disclosure due to the circumstances of the incident and Defence's obligations. Generally, it is not appropriate for SeMPRO to accept a restricted disclosure if:

- a. you are younger than 18 years of age
- b. there is evidence of serious or imminent threat to the life or health of you or others
- c. the incident is already known, eg to the commander/managers/ADFIS, civilian police, or the incident is otherwise in the public domain, including social media
- d. it is required to be disclosed by law such as a court order.

10. SeMPRO will advise you if they cannot accept your disclosure of sexual misconduct as restricted and their obligation to report the incident. SeMPRO will encourage and assist you with reporting the incident through your chain of command/ADFIS and/or civilian police, and will continue to work with you to provide appropriate advice and support coordination.

Reporting incidents of sexual misconduct—Defence Australian Public Service employees, external service providers and outsourced service providers

11. If you are a Defence Australian Public Service (APS) employee, an external service provider or an outsourced service provider to Defence, and you are the victim

of sexual misconduct, or have knowledge of such an offence, you are strongly encouraged to report that information directly to the relevant Federal/State/Territory police or to an authorised officer appointed under the PID Act as soon as possible. A report or disclosure to your manager/supervisor will give rise to specific statutory obligations on your manager/supervisor under the PID Act.

12. Victim support services for Defence APS employees, external service providers and outsourced service providers are available from State/Territory [crisis support centres](http://www.aifs.gov.au/acssa/crisis.html) (<http://www.aifs.gov.au/acssa/crisis.html>). Defence APS employees may also access the services of the Defence [Employee Assistance Program](http://www.aifs.gov.au/acssa/crisis.html) (EAP) (<http://www.aifs.gov.au/acssa/crisis.html>) provider. You may also contact SeMPRO for assistance with coordinating local support services should you wish to do so.

Further information

13. You can speak with SeMPRO by telephoning **1800 SeMPRO (1800 736 776)** or by sending an email to sempro@defence.gov.au if you would like any further information on restricted disclosure or other support services provided by SeMPRO.

DEFINITIONS

Alleged offender is the person who is alleged to have committed sexual misconduct. The alleged offender is to be considered innocent and treated accordingly until proven otherwise.

Australian Defence Force Cadet is a term collectively describing a cadet member of one of the three service cadet organisations: the Australian Navy Cadets, the Australian Army Cadets and the Australian Air Force Cadets.

Australian Defence Force Investigative Service (ADFIS) is the Defence Investigative Authority responsible for all sensitive, complex and major investigations involving persons subject to the [Defence Force Discipline Act 1982](#) (DFDA) (<http://www.comlaw.gov.au/Series/C2004A02711>) jurisdiction.

Authorised health professional refers to a competent, credentialed and authorised health professional appropriately accredited and authorised as competent by Commander Joint Health or delegate to perform specific extended roles. This applies to authorised health professionals who are Defence members, Defence Australian Public Service employees or are recognised by any agreement which may be in place between Defence and other parties.

Cadet is a person enrolled as a cadet in a cadet force under *Cadet Forces Regulations 2013*, subsection 6(6).

Managers, supervisors, commanders and the chain of command means the civilian Defence line management and the Australian Defence Force (ADF) chain of command.

Defence means the Department of Defence, ADF and the Defence Materiel Organisation.

Defence activities may include, but are not limited to, training courses, conferences, field trips, travel for work purposes, sporting competitions, team-building activities, work functions, or travel to and from such functions and activities.

Defence Australian Public Service employee (Defence APS employee) is a person employed under the [Public Service Act 1999](#) (<http://www.comlaw.gov.au/Series/C2004A00538>) in the Department of Defence.

Defence civilian, as defined in section 3 of the DFDA, means a person (other than a Defence member) who:

- a. with the authority of an authorised officer as defined in the DFDA, accompanies a part of the ADF that is outside Australia, or on operations against the enemy
- b. has consented, in writing, to subject themselves to ADF discipline while so accompanying that part of the ADF.

Defence locally engaged employee is any person engaged by Defence overseas by contract or under section 74 of the *Public Service Act 1999*.

Defence member, as defined in section 3 of the [DFDA](#) (<http://www.comlaw.gov.au/Series/C2004A02711>), means:

- a. a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
- b. a member of the Reserves who: is rendering continuous full-time service; or is on duty or in uniform.

Defence personnel means all APS employees in the Department of Defence (Defence APS employees), Defence locally engaged employees, Defence civilians, Defence members and the equivalents from other Defence organisations on exchange to Defence, and—where compliance is specified in the terms of contract—external service providers and outsourced service providers operating in Defence.

External service provider means an organisation or individual engaged by Defence that:

- a. represents a business resource and is subject to direct management by Defence; or
- b. an organisation or individual engaged by Defence to undertake a consultancy that meets the criteria for reporting consultancies on AusTender as defined by the Department of Finance and Deregulation:
 - (1) the services to be provided involve the development of an intellectual output that assists with Defence decision-making
 - (2) the output will reflect the independent views of the consultant
 - (3) the output is the sole or majority element of the contract, in terms of relative value and importance.

Defence members and Defence APS employees are not included in this definition.

Minor is a person under 18 years of age. Note: In Australia, child protection is generally a matter of State/Territory, not Commonwealth jurisdiction. Defence adopts the requirements of the New South Wales (NSW) legislation as the model minimum standard. Where a relevant jurisdiction has a more stringent requirement than NSW, the requirement of the relevant jurisdiction should be complied with. (Refer to [VCDF Directive 03/14—Child Protection—Australian Defence Force Cadets](#) (<http://intranet.defence.gov.au/DRMS/uR3452%5CR18117531.pdf>) Annex C for list of State and Territory Child Protection Acts).

Outsourced service provider means an organisation or individual delivering specific services or supplies, usually against pre-defined milestones and deliverable requirements. The provider of the outsourced service is not subject to direct management by Defence.

Personal information, as defined by the [Privacy Act 1988](#) (<http://www.comlaw.gov.au/Series/C2004A03712>), means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not.

Restricted disclosure provides Defence members who are victims of sexual misconduct with the option, where available, to confidentially disclose information to SeMPRO. Only SeMPRO can accept a restricted disclosure and, if accepted, a restricted disclosure will not trigger an investigation or administrative inquiry. Certain exceptions to restricted disclosure are required under Defence's legal obligations with respect to the [Work Health and Safety Act 2011](http://www.comlaw.gov.au/Series/C2004A03712) (<http://www.comlaw.gov.au/Series/C2004A03712>).

SeMPRO is the Sexual Misconduct Prevention and Response Office.

Sexual discrimination for the purposes of this Instruction, sexual discrimination occurs when a person is treated less favourably than a person of the opposite sex would be treated in the same or similar circumstances. The [Sex Discrimination Act 1984](http://www.comlaw.gov.au/Series/C2004A02868) (<http://www.comlaw.gov.au/Series/C2004A02868>) contains a detailed definition. The Act relates to discrimination on the ground of sex, marital status, pregnancy, potential pregnancy, breastfeeding or family responsibilities or involving sexual harassment.

Sexual harassment for the purposes of this Instruction is any unwelcome sexual behaviour that is likely to offend, humiliate or intimidate. The *Sex Discrimination Act 1984* contains a detailed definition.

Sexual offences are criminal acts as defined in the relevant Commonwealth, State and Territory legislation.

Trauma-informed approach is adopted by Defence when engaging with victims so those who report an incident of sexual misconduct are given appropriate, sensitive, timely and ongoing support to assist with their immediate safety and wellbeing, and their recovery. It involves the principles of safety, trustworthiness, choice, collaboration, and empowerment for the victim of sexual misconduct.

Unrestricted report is a process for Defence personnel to disclose that he or she is a victim of sexual misconduct. It may trigger investigation by ADFIS or Federal/State/Territory police, an administrative inquiry, or any other appropriate actions.

Victim is a person who was harmed as a result of sexual misconduct.

Witness is a person who has knowledge of an incident of sexual misconduct.

Workplace is any place (including non-Defence establishments) where the behaviour or activity carried out at that place has a Defence connection or affects the workplace. This includes, but is not limited to: Defence establishments; HMA ships (all vessels, include commissioned seagoing vessels and submarines); vehicles; aircraft; units; facilities; training centres; social function venues attended in the course of Defence-sponsored work or activity; accommodation; operational deployment; and any other location which Defence personnel attend for the purpose of carrying out their work duties.