



## **Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulation 2016**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 01 September 2016

Peter Cosgrove  
Governor-General

By His Excellency's Command

James McGrath  
Assistant Minister to the Prime Minister  
Parliamentary Secretary to the Prime Minister

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## 1 Name

This is the *Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulation 2016*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information   |  |                  |
|--|--|------------------|
| Column 1   | Column 2                                     | Column 3         |
| Provisions   | Commencement                                 | Date/Details     |
| 1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table | The day after this instrument is registered. | 3 September 2016 |
| 2. Schedule 1, item 1  | 1 December 2016.                             | 1 December 2016  |
| 3. Schedule 1, item 2  | The day after this instrument is registered. | 3 September 2016 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Ombudsman Act 1976*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Ombudsman Regulations 1977*

#### 1 After regulation 6A

Insert:

#### 6B Conferral of functions on Defence Force Ombudsman

- (1) For paragraph 19C(1)(a) of the Act, the Defence Force Ombudsman has:
- (a) the function of taking appropriate action to respond to a complaint of abuse made by a complainant about abuse engaged in by a member of Defence (excluding any complaint previously made to, and dealt with by, the Defence Abuse Response Taskforce), including in any of the following ways:
    - (i) facilitating counselling for the complainant;
    - (ii) using a process to address or resolve the complaint, facilitated by the Defence Force Ombudsman or another person, such as an alternative dispute resolution process or a restorative engagement conference;
    - (iii) making a recommendation to the Defence Department in respect of the complaint;
    - (iv) deciding not to take, or to continue to take, action in response to the complaint; and
  - (b) functions that are ancillary or incidental to the function mentioned in paragraph (a); and
  - (c) the function of inquiring into matters relating to complaints of abuse, including, for example:
    - (i) the Defence Department's and the Defence Force's procedures relating to making and responding to such complaints; and
    - (ii) the effectiveness and appropriateness of those procedures; and
  - (d) the function of dealing with any matter relating to complaints previously made to, and dealt with by, the Defence Abuse Response Taskforce.

Note: Paragraph (a)—provisions of the Act could also be used to respond to a complaint of abuse. For example, section 35A of the Act could be used to refer evidence relating to a complaint of abuse to the Australian Federal Police, the police force or police service of a State or Territory, or a military justice authority, for investigation and possible prosecution of an offence.

- (2) To avoid doubt, a complainant may make a complaint about abuse engaged in by a member of Defence even if the complainant has not approached the Defence Department in relation to the complaint.
- (3) For the purposes of paragraph (1)(a), a complaint is taken to be previously made to, and dealt with by, the Defence Abuse Response Taskforce, if the complaint is the same in substance as a complaint that was in fact previously made to, and dealt with by, the Defence Abuse Response Taskforce.
- (4) The Chief of the Defence Force and the Secretary of the Defence Department must both use their best endeavours to assist the Defence Force Ombudsman in his or her performance of the functions set out in subsection (1).

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(5) In this regulation:

**abuse**, in relation to a complainant, includes:

- (a) sexual abuse of a complainant; and
- (b) serious physical abuse of a complainant; and
- (c) serious bullying or harassment of a complainant.

**complainant** includes:

- (a) a person who is or was a member of the Defence Force; and
- (b) a person who is or was an APS employee deployed outside Australia:
  - (i) in connection with an operation of the Defence Force; or
  - (ii) for the purpose of capacity-building or peacekeeping functions by the Defence Force; and
- (c) a person who is or was contracted to provide services outside Australia:
  - (i) in connection with an operation of the Defence Force; or
  - (ii) for the purpose of capacity-building or peacekeeping functions by the Defence Force.

**Defence Abuse Response Taskforce** means the Taskforce established by the then Attorney-General and Minister for Defence to respond to complaints of sexual and other forms of abuse by Defence personnel alleged to have occurred before 11 April 2011.

**Defence Department** means the Department of State that is administered by the Minister administering section 1 of the *Defence Act 1903*.

**Defence Force** has the same meaning as in subsection 4(1) of the *Defence Act 1903*.

**member of Defence**, in relation to a complaint of abuse, includes a person who, at the time the abuse is alleged to have occurred:

- (a) was a member of the Defence Force; and
- (b) was an APS employee deployed outside Australia:
  - (i) in connection with an operation of the Defence Force; or
  - (ii) for the purpose of capacity-building or peacekeeping functions by the Defence Force; and
- (c) was contracted to provide services outside Australia:
  - (i) in connection with an operation of the Defence Force; or
  - (ii) for the purpose of capacity-building or peacekeeping functions by the Defence Force.

**restorative engagement conference** means a process facilitated by the Defence Force Ombudsman or another person in which a complainant engages with a member of Defence to have their complaint of abuse acknowledged.

## 2 After regulation 10

Insert:

## 11 Transitional—conferral of functions on Defence Force Ombudsman

### *Disclosure, collection and use of information and documents relating to the Defence Abuse Response Taskforce*

- (1) The Defence Abuse Response Taskforce must disclose information and documents obtained by the Taskforce in the performance of its functions to the Defence Force Ombudsman for the purposes of the Ombudsman performing his or her functions under the Act or these Regulations.
- (2) The Attorney-General's Department must disclose information and documents relating to the Defence Abuse Response Taskforce to the Defence Force Ombudsman for the purposes of the Ombudsman performing his or her functions under the Act or these Regulations.
- (3) The Defence Force Ombudsman may collect and use such information or documents, or disclose information or documents, for the purposes of performing his or her functions under the Act or these Regulations.

### *Disclosure, collection and use of information and documents relating to complaints of abuse*

- (4) A Department or prescribed authority may disclose information and documents relating to a complaint of abuse to the Defence Force Ombudsman for the purposes of the Ombudsman performing his or her function under paragraph 6B(1)(a) of these Regulations.
- (5) The Defence Force Ombudsman may collect and use such information or documents, or disclose information or documents, for the purposes of performing his or her functions under the Act or these Regulations.

### *Interaction with the Privacy Act 1988*

- (6) For the purposes of the *Privacy Act 1988*, disclosing information or documents to the Ombudsman, as mentioned in subregulations (1), (2) and (4), is taken to be authorised by these Regulations.