



## Ombudsman Regulations 2017

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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 regulations.

Dated 18 September 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

James McGrath  
Assistant Minister to the Prime Minister

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## Part 1—Preliminary

### 1 Name

This instrument is the *Ombudsman Regulations 2017*.

### 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. The whole of this instrument | The day after this instrument is registered. | 27 September 2017 |

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### 5 Definitions

In this instrument:

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

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

**Act** means the *Ombudsman Act 1976*.

**administrative head** of a court has the meaning given by the *Court Security Act 2013*.

**complainant** includes:

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- (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.

*court* has the meaning given by the *Court Security Act 2013*.

***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 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*.

***Determination 2017/06*** means the instrument made by the Remuneration Tribunal under Division 4 of Part II of the *Remuneration Tribunal Act 1973* that is known as Determination 2017/06: Departmental Secretaries - Classification Structure and Terms and Conditions, as in force when this instrument commenced.

***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.

## Part 2—General matters

### 6 Bodies not to be taken to be prescribed authorities for the purposes of the Act

For the purposes of subparagraph (a)(iii) of the definition of *prescribed authority* in subsection 3(1) of the Act, each of the following bodies is not to be taken to be a prescribed authority for the purposes of the Act:

- (a) the Australian Security Intelligence Organisation;
- (b) the Commonwealth Grants Commission;
- (c) the Defence Force Remuneration Tribunal;
- (d) the Pharmaceutical Benefits Remuneration Tribunal;
- (e) the Remuneration Tribunal;
- (f) the Shire of the Cocos (Keeling) Islands.

### 7 Persons not to be taken to be prescribed authorities for the purposes of the Act

For the purposes of subparagraph (c)(ii) of the definition of *prescribed authority* in subsection 3(1) of the Act, a person is not to be taken to be a prescribed authority for the purposes of the Act if the person holds or performs the duties of:

- (a) an office established by a provision of an enactment of the Northern Territory, being a provision relating to a matter in respect of which the Ministers of that Territory have executive authority; or
- (b) any of the following offices:
  - (i) Auditor-General;
  - (ii) Australian Government Solicitor;
  - (iii) President of the Defence Force Remuneration Tribunal;
  - (iv) President of the Remuneration Tribunal;
  - (v) Director-General of Security;
  - (vi) Inspector-General of Intelligence and Security.

### 8 Principal offices

For the purposes of subparagraph (c)(i) of the definition of *principal officer* in subsection 3(1) of the Act, each office specified in column 1 of an item in the following table is declared to be the principal office in respect of the prescribed authority specified in column 2 of the table for the item.

| Principal offices |                         |  |
|-------------------|-------------------------|--|
| Item              | Column 1                | Column 2                               |
| 1                 | Chief Executive Officer | Australian Crime Commission            |
| 2                 | Electoral Commissioner  | Australian Electoral Commission        |
| 3                 | Commissioner of Police  | Australian Federal Police              |
| 4                 | Chief Executive Officer | Australian Institute of Marine Science |
| 5                 | Vice-Chancellor         | Australian National University         |
| 6                 | Managing Director       | Australian Postal Corporation          |

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### Principal offices

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| Item | Column 1                | Column 2                                   |
|------|-------------------------|--|
| 7    | Chief Executive Officer | Australian Trade and Investment Commission |
| 8    | Director                | Australian War Memorial                    |
| 9    | Managing Director       | Export Finance and Insurance Corporation   |
| 10   | Director-General        | National Library of Australia              |
| 11   | Managing Director       | Special Broadcasting Service Corporation   |
| 12   | Managing Director       | Tourism Australia                          |

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### 9 Actions deemed not to be taken by Attorney-General's Department

- (1) For the purposes of subsection 3(5A) of the Act, action taken by the Australian Government Solicitor or any other officer of the Attorney-General's Department in furtherance of the duties of the Australian Government Solicitor is deemed not to be action taken by the Attorney-General's Department.
- (2) Subsection (1) does not apply to action that is disclosable conduct to which subsection 5A(1) of the Act applies.

### 10 Members of court staff

For the purposes of paragraph 3(14)(d) of the Act, if the administrative head of a court appoints a person as a security officer, that person is declared to be a member of the staff of the court for the purposes of the Act.

### 11 Commonwealth-controlled companies to be taken to be prescribed authorities

For the purposes of subsection 3A(3) of the Act, each of the following Commonwealth-controlled companies is to be taken to be a prescribed authority:

- (a) Aboriginal Hostels Limited;
- (b) ANU Enterprise Pty Limited.

### 12 Prescribed terms and conditions

For the purposes of subsection 21(2) of the Act, the terms and conditions set out in Part 7 of Determination 2017/06 that apply to a Departmental Secretary (within the meaning of the *Remuneration Tribunal Act 1973*) are prescribed.

### 13 Witness expenses

If:

- (a) a person (the *witness*) attends before another person to answer questions relevant to an investigation in accordance with a notice served under subsection 9(1AA) or (2) of the Act; and
- (b) the witness incurs expenses or suffers losses in so attending;

the witness may be paid an amount equal to so much of those expenses or losses as the Ombudsman considers reasonable.



## Part 3—Defence Force Ombudsman

### 14 Conferral of functions on Defence Force Ombudsman

- (1) For the purposes of 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: In addition to the ways mentioned in paragraph (a), certain 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 have been 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 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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**15 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 Defence Force Ombudsman performing his or her functions under the Act or this instrument.
- (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 Defence Force Ombudsman performing his or her functions under the Act or this instrument.
- (3) The Defence Force Ombudsman may collect and use information or documents disclosed under subsection (1) or (2), or disclose information or documents, for the purposes of performing his or her functions under the Act or this instrument.

*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 Defence Force Ombudsman performing his or her function under paragraph 14(1)(a) of this instrument.
- (5) The Defence Force Ombudsman may collect and use information or documents disclosed under subsection (4), or disclose information or documents, for the purposes of performing his or her functions under the Act or this instrument.

*Interaction with the Privacy Act 1988*

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

## **Schedule 1—Repeals**

### *Ombudsman Regulations 1977*

#### **1 The whole of the instrument**

Repeal the instrument.