



Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulations 2017

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 14 December 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

James McGrath
Assistant Minister to the Prime Minister

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1 Name

This instrument is the *Ombudsman Amendment (Functions of the Defence Force 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.	16 December 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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Ombudsman Regulations 2017

1 Section 5

Insert:

amendment day means the day on which the *Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulations 2017* commenced.

Defence Secretary means the Secretary of the Defence Department.

excluded complaint means a complaint that:

- (a) was previously made to, and dealt with by, the Defence Abuse Response Taskforce; or
- (b) is the same in substance as a complaint that was previously made to, and dealt with by, the Defence Abuse Response Taskforce.

new complaint has the meaning given by subsection 14(1A).

old complaint has the meaning given by subsection 14B(2).

2 Section 14 (heading)

Repeal the heading, substitute:

14 Conferral of functions on Defence Force Ombudsman—new complaints etc.

3 Paragraph 14(1)(a)

Omit all the words from and including “the function” to and including “the following ways”, substitute “the function of taking appropriate action to respond to a new complaint of abuse made by a complainant if the Defence Force Ombudsman is satisfied that the abuse is reasonably likely to have occurred, including any of the following actions”.

4 After subparagraph 14(1)(a)(iii)

Insert:

- (iiia) if the new complaint is made before 1 July 2021 and relates to abuse that allegedly occurred on or before 30 June 2014—making recommendations under section 14A in relation to the complaint;

5 After subsection 14(1)

Insert:

- (1A) A complaint is a *new complaint* if:
 - (a) the complaint is about abuse engaged in by a member of Defence; and
 - (b) either:
 - (i) the complaint is made to the Defence Force Ombudsman on or after the amendment day; or
 - (ii) the complaint was made to the Defence Force Ombudsman on or after 1 December 2016 but before the amendment day and, immediately

before the amendment day, the complaint had not been finally dealt with; and

- (c) the complaint is not an excluded complaint.

6 Subsection 14(3)

Repeal the subsection.

7 Subsection 14(4)

Omit “Secretary of the Defence Department”, substitute “Defence Secretary”.

8 After section 14

Insert:

14A Payments to complainants—new complaints

(1) If:

- (a) a complainant makes a new complaint of abuse of a kind referred to in subparagraph 14(1)(a)(iiiia); and
- (b) the Defence Force Ombudsman is satisfied that the abuse involved the most serious forms of abuse;

the Defence Force Ombudsman may recommend that the Defence Secretary make a reparation payment of up to \$45,000 to the complainant.

(2) If:

- (a) a complainant makes a new complaint of abuse of a kind referred to in subparagraph 14(1)(a)(iiiia); and
- (b) the Defence Force Ombudsman is satisfied that the abuse involved unlawful interference with the complainant accompanied by some element of indecency;

the Defence Force Ombudsman may recommend that the Defence Secretary make a reparation payment of up to \$20,000 to the complainant.

(3) If:

- (a) the Defence Force Ombudsman makes a recommendation under subsection (1) or (2) in relation to a new complaint of abuse made by a complainant; and
- (b) the Defence Force Ombudsman is reasonably satisfied that the Defence Department did not respond appropriately to the abuse;

the Defence Force Ombudsman may recommend that the Defence Secretary make an additional payment of up to \$5,000 to the complainant.

14B Conferral of functions on Defence Force Ombudsman—old complaints

(1) For the purposes of paragraph 19C(1)(a) of the Act, the Defence Force Ombudsman has:

- (a) the function of making recommendations under subsections (3) to (5) in relation to an old complaint if the Defence Force Ombudsman is satisfied that the abuse to which the old complaint relates is reasonably likely to have occurred; and
- (b) functions that are ancillary or incidental to the function mentioned in paragraph (a).

- (2) A complaint is an *old complaint* if:
- (a) the complaint was made to the Defence Force Ombudsman on or after 1 December 2016 but before the amendment day; and
 - (b) immediately before the amendment day, the Defence Force Ombudsman had finally dealt with the complaint; and
 - (c) the complaint was about abuse allegedly engaged in by a member of Defence on or before 30 June 2014; and
 - (d) the complaint is not an excluded complaint.
- (3) If the Defence Force Ombudsman is satisfied that the abuse to which an old complaint relates involved the most serious forms of abuse, the Defence Force Ombudsman may recommend that the Defence Secretary make a reparation payment of up to \$45,000 to the complainant.
- (4) If the Defence Force Ombudsman is satisfied that the abuse to which an old complaint relates involved unlawful interference with the complainant accompanied by some element of indecency, the Defence Force Ombudsman may recommend that the Defence Secretary make a reparation payment of up to \$20,000 to the complainant.
- (5) If:
- (a) the Defence Force Ombudsman makes a recommendation under subsection (3) or (4) in relation to an old complaint of abuse made by a complainant; and
 - (b) the Defence Force Ombudsman is reasonably satisfied that the Defence Department did not respond appropriately to the abuse;
- the Defence Force Ombudsman may recommend that the Defence Secretary make an additional payment of up to \$5,000 to the complainant.

9 Subsection 15(4) (heading)

Repeal the heading, substitute:

Disclosure etc. of information and documents relating to new complaints or old complaints

10 Subsection 15(4)

Omit “complaint”, substitute “new complaint, or an old complaint”.

11 Subsection 15(4)

After “paragraph 14(1)(a)”, insert “or 14B(1)(a)”.