



Defence Amendment (Stop Sexual Harassment Directions) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 16 March 2023

David Hurley
Governor-General

By His Excellency's Command

Matthew James Keogh
Minister for Defence Personnel

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1 Name

This instrument is the *Defence Amendment (Stop Sexual Harassment Directions) Regulations 2023*.

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.	21 March 2023

Note: This table relates only to the provisions of this instrument as originally made.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 *Defence Act 1903*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Defence Regulation 2016

1 Subsection 6(1)

Insert:

authorised application officer: see subsection 37B(2).

respondent, in relation to an alleged contravention of Division 2 of Part 3-5A of the *Fair Work Act 2009*: see section 37C of this instrument.

sexually harass has the meaning given by section 28A of the *Sex Discrimination Act 1984*.

Note: Other parts of speech and grammatical forms of “sexually harass” (for example, “sexual harassment”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

stop sexual harassment direction means a direction under section 37F.

2 After Part 6

Insert:

Part 6A—Stop sexual harassment directions

37A Object of this Part

The object of this Part is to provide a process for directions to stop sexual harassment against certain members and other people.

37B Authorised application officers

- (1) The Chief of the Defence Force or the Secretary may, by written instrument, authorise one or more of the following to receive and deal with applications made under section 37C:
 - (a) an officer of the Navy who holds a rank not below the rank of Commander;
 - (b) an officer of the Army who holds a rank not below the rank of Lieutenant-Colonel;
 - (c) an officer of the Air Force who holds a rank not below the rank of Wing Commander;
 - (d) an APS employee in the Department who is:
 - (i) classified as Executive Level 1 or higher; or
 - (ii) acting in a position usually occupied by an APS employee who is so classified.
- (2) A person so authorised is an *authorised application officer*.

37C Application for authorised application officer to deal with a sexual harassment dispute

- (1) In this section:

eligible defence member means a defence member within the meaning of the *Defence Force Discipline Act 1982*.

- (2) If:
- (a) an eligible defence member (the **aggrieved person**) alleges they have been sexually harassed in contravention of Division 2 of Part 3-5A of the *Fair Work Act 2009* by one or more other persons (a **respondent**); and
 - (b) the aggrieved person was an eligible defence member at the time the sexual harassment allegedly occurred; and
 - (c) each of the respondents is an eligible defence member, and was an eligible defence member at the time the sexual harassment allegedly occurred;
- the aggrieved person may apply to an authorised application officer for a stop sexual harassment direction to be made.
- (3) If:
- (a) an eligible defence member (the **aggrieved person**) alleges they have been sexually harassed in contravention of Division 2 of Part 3-5A of the *Fair Work Act 2009* by one or more other persons (a **respondent**); and
 - (b) the aggrieved person was an eligible defence member at the time the sexual harassment allegedly occurred; and
 - (c) the sexual harassment is alleged to have occurred at a Defence workplace;
- the aggrieved person may apply to an authorised application officer for a stop sexual harassment direction to be made.
- (4) If:
- (a) a person (the **aggrieved person**) alleges they have been sexually harassed in contravention of Division 2 of Part 3-5A of the *Fair Work Act 2009* by one or more other persons (a **respondent**); and
 - (b) the Fair Work Commission would be prevented, by a declaration under section 527N of the *Fair Work Act 2009*, from making an order under section 527J of that Act in relation to the alleged harassment; and
 - (c) the activity to which the declaration applies is a naval, military or air force operation or practice (whether warlike or not warlike);
- the aggrieved person may apply to an authorised application officer for a stop sexual harassment direction to be made.

37D Dealing with an application

- (1) This section applies if a person (the **applicant**) makes an application under section 37C to an authorised application officer.
- (2) The authorised application officer must either:
- (a) deal with the application by:
 - (i) considering the application; and
 - (ii) deciding whether to issue a stop sexual harassment direction; or
 - (b) refer the application to another authorised application officer to deal with under paragraph (a).

Note: An authorised application officer may make an interim direction while the application is being considered (see section 37E).

- (3) However, an authorised application officer may decide not to deal with or refer the application under subsection (2) if the authorised application officer considers that:
- (a) doing so would be, or could reasonably be expected to be, prejudicial to:
 - (i) Australia's defence; or
 - (ii) Australia's national security; or
 - (b) a declaration under section 527P (declarations by the Director-General of Security) or 527Q (declarations by the Director-General of ASIS) of the *Fair Work Act 2009* would prevent the Fair Work Commission making an order under section 527J of that Act in respect of the allegation of sexual harassment made in the application.

Time limits for dealing with and making a decision on an application

- (4) Subject to subsection (3), the authorised application officer to whom an application is made, or an authorised application officer to whom an application is referred under paragraph (2)(b), must start dealing with the application within 14 days of the making of the application.
- (5) The authorised application officer who deals with the application must make a decision under subparagraph (2)(a)(ii) within 60 days of the making of the application.
- (6) If the authorised application officer does not make the decision within the period mentioned in subsection (5), the authorised application officer is taken to have made, at the end of that period, a decision not to issue a stop sexual harassment direction in relation to the application.

Notice of decision not to issue a stop sexual harassment direction

- (7) If an authorised application officer decides under subparagraph (2)(a)(ii) not to issue a stop sexual harassment direction in relation to the application, or decides under subsection (3) not to deal with or refer the application, the authorised application officer:
- (a) must give written notice of the decision to the applicant; and
 - (b) may give written notice of the decision to any other person who is responsible for dealing with the allegation of sexual harassment made in the application.

37E Interim directions

- (1) This section applies if:
- (a) a person (the **applicant**) makes an application under section 37C; and
 - (b) an authorised application officer is considering the application.
- (2) An authorised application officer may issue one or more interim directions under this section if the authorised application officer is satisfied that:
- (a) there is a plausible allegation that the applicant has been sexually harassed in contravention of Division 2 of Part 3-5A of the *Fair Work Act 2009*; and
 - (b) the applicant has a reasonable apprehension that the applicant will continue to be subject to sexual harassment in contravention of that Division.
- (3) An interim direction:
- (a) must be in writing; and

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- (b) may apply to one or more people (who may be respondents or other people); and
 - (c) must set out the actions that the person, or each of the people, to whom it applies is required to do, or not to do, in order to comply with the interim direction.
- (4) A copy of an interim direction:
- (a) must be given to the applicant; and
 - (b) must be given to the person, or each person, to whom it applies; and
 - (c) may be given to the commanding officer or supervisor of the person, or each person, to whom it applies; and
 - (d) may be given to any other person who is responsible for dealing with the allegation of sexual harassment made in the application.
- (5) The requirements set out in an interim direction under paragraph (3)(c) must be:
- (a) reasonable; and
 - (b) necessary or desirable for the purpose of protecting the applicant from the risk of sexual harassment while the application is being considered.
- (6) An interim direction continues in force until:
- (a) an authorised application officer issues a stop sexual harassment direction in response to the application; or
 - (b) an authorised application officer decides not to issue a stop sexual harassment direction in response to the application; or
 - (c) the applicant withdraws the application; or
 - (d) the interim direction is revoked.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

37F Stop sexual harassment directions

- (1) An authorised application officer may issue one or more stop sexual harassment directions if:
- (a) a person (the **applicant**) makes an application under section 37C; and
 - (b) the authorised application officer is satisfied that:
 - (i) the applicant has been sexually harassed in contravention of Division 2 of Part 3-5A of the *Fair Work Act 2009* by one or more people; and
 - (ii) there is a risk that the applicant will continue to be sexually harassed in contravention of that Division by the person or people.
- (2) A stop sexual harassment direction:
- (a) must be in writing; and
 - (b) may apply to one or more people (who may be respondents or other people); and
 - (c) must set out the actions that the person, or each of the people, to whom it applies is required to do, or not to do, in order to comply with the direction; and
 - (d) may include recommendations to one or more people; and
 - (e) may specify a day on which the direction ceases to have effect, unless earlier revoked.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) A copy of a stop sexual harassment direction:
 - (a) must be given to the applicant; and
 - (b) must be given to the person, or each person, to whom the direction applies; and
 - (c) may be given to the commanding officer or supervisor of the person, or each person, to whom the direction applies; and
 - (d) may be given to any person who is responsible for dealing with the allegation of sexual harassment made in the application; and
 - (e) if the direction includes recommendations to one or more people under paragraph (2)(d)—must be given to that person, or to each such person.
- (4) Without limiting the requirements that may be set out in a stop sexual harassment direction under paragraph (2)(c), a stop sexual harassment direction may require any of the following:
 - (a) a respondent to cease engaging in specified behaviour;
 - (b) regular monitoring of behaviour;
 - (c) the provision of information, support and training to workers;
 - (d) a safety risk assessment of a workplace;
 - (e) a review of workplace policies or culture.
- (5) Without limiting the recommendations that may be included in a stop sexual harassment direction under paragraph (2)(d), a stop sexual harassment direction may recommend management, administrative or disciplinary action.
- (6) If a stop sexual harassment direction specifies a day on which the direction ceases to have effect, the direction ceases to have effect on that day.

37G Review by Chief of the Defence Force or Secretary

- (1) This section applies if:
 - (a) a person (the **applicant**) makes an application under section 37C; and
 - (b) an authorised application officer makes any of the following decisions (a **reviewable decision**):
 - (i) a decision not to issue a stop sexual harassment direction in relation to the application;
 - (ii) a decision to issue a stop sexual harassment direction in relation to the application, if the applicant is dissatisfied with the direction;
 - (iii) a decision not to deal with the application, or not to refer the application to another authorised application officer, under subsection 37D(3).
- (2) The applicant may, within 14 days after the reviewable decision was made, ask either the Chief of the Defence Force or the Secretary (the **reviewer**) to review the reviewable decision.
- (3) A request under subsection (2) must be in writing.
- (4) If the applicant makes a request under subsection (2), the reviewer:
 - (a) must start dealing with the request within 14 days of the applicant making the request; and
 - (b) must reconsider the reviewable decision; and

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- (c) may, while reconsidering the reviewable decision, exercise any powers of an authorised application officer under section 37E (interim directions); and
 - (d) must make a decision on the review within 60 days of the applicant making the request; and
 - (e) must affirm, vary or set aside the reviewable decision; and
 - (f) if the reviewable decision is set aside—may make such other decision as the reviewer thinks appropriate; and
 - (g) may exercise any of the powers of an authorised application officer under this Part for the purposes of giving effect to the reviewer’s decision on the review.
- (5) If the reviewer does not make a decision on the review within the period mentioned in paragraph (4)(d), the reviewer is taken to have made, at the end of that period, a decision to affirm the reviewable decision.

37H Withdrawing application or request

- (1) A person who has made an application under section 37C may withdraw the application at any time by giving written notice to an authorised application officer.
- (2) A person who has made a request under subsection 37G(2) may withdraw the request at any time by giving written notice to the person to whom the request was made.

3 Before subsection 83(1)

Insert:

- (1A) The Secretary may, by instrument in writing, delegate the powers of the Secretary under section 37G (review of decisions relating to applications for stop sexual harassment directions) to the following:
 - (a) an officer of the Navy who holds a rank not below the rank of Rear Admiral;
 - (b) an officer of the Army who holds a rank not below the rank of Major General;
 - (c) an officer of the Air Force who holds a rank not below the rank of Air Vice-Marshal;
 - (d) an SES employee who holds an SES Band 2 position, or an equivalent or higher position, in the Department.

4 After subsection 84(1A)

Insert:

- (1B) The Chief of the Defence Force may, by instrument in writing, delegate the powers of the Chief of the Defence Force under section 37G (review of decisions relating to applications for stop sexual harassment directions) to the following:
 - (a) an officer of the Navy who holds a rank not below the rank of Rear Admiral;
 - (b) an officer of the Army who holds a rank not below the rank of Major General;

- (c) an officer of the Air Force who holds a rank not below the rank of Air Vice-Marshal;
- (d) an SES employee who holds an SES Band 2 position, or an equivalent or higher position, in the Department.