DEFENCE INSTRUCTIONS (GENERAL)

Department of Defence
CANBERRA ACT 2600

30 October 2001

Defence Instruction (General) ADMIN 45–2 is issued pursuant to section 9A of the *Defence Act 1903*.

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LIST B—ISSUE NO ADMIN B/10/2001

New instruction

ADMIN 45–2 *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*

Single Service filing instructions

This instruction should be filed as:

1. NAVY ADMIN 35–26
2. ARMY ADMIN 23–3
3. AIR FORCE ADMIN 9–29

REPORTING AND INVESTIGATION OF ALLEGED OFFENCES WITHIN THE AUSTRALIAN DEFENCE ORGANISATION

Introduction

1. This instruction authorises a transparent, independent, cooperative regime for the reporting and investigation of offences allegedly committed by members of the Australian Defence Organisation (ADO) or contractors under the *Defence Force Discipline Act 1982* (DFDA) or the ordinary criminal law of the Commonwealth, States and Territories.

Definitions

2. In this instruction the following definitions apply:

a. **ADO personnel**—means personnel employed by the ADO and includes member of the Australian Public Service (APS), Defence members or Defence civilians.

b. **ADO premises**—means all land, buildings or other structures owned, occupied or used by the ADO and includes service land, ships, aircraft and vehicles as defined in section 3 of the DFDA.

c. **Defence civilian**—is defined in section 3 of the DFDA and means a person (other than a Defence member) who:

(1) with the authority of an authorised officer, accompanies a part of the Defence Force that is:

(a) outside Australia; or

(b) on operations against the enemy; and

(2) has consented, in writing, to subject themselves to Defence Force discipline while so accompanying that part of the Defence Force.

d. **Defence contractor or Defence consultant**—is a person or company that is contracted to or otherwise employed by the ADO to perform work or provide services to the ADO and includes a person or company involved in a tender process to perform work or provide services to the ADO.

e. **Defence member**—means:

(1) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or

(2) a member of the Reserves who:

(a) is rendering continuous full-time service; or

(b) is on duty or in uniform.

f. **Defence investigator**—includes trained investigators that hold a Certificate IV in investigations and perform the duties of an investigator for the Director Fraud Investigation and Recovery, the Provosts-Marshal or Defence Security Authority (DSA).

g. **Defence Investigative Authorities (DIA)**—are the Service Police organisations that report to the Provosts-Marshal of the Navy, Army and Air Force, the investigative arm within Inspector-General Division, the Fraud Investigation and Recovery (FIR) Directorate and the DSA. The roles and responsibilities of the DIA are more fully defined in paragraph 21. of this instruction.

h. **Illegal drugs**—are those drugs whose possession or use is prohibited or restricted by either the DFDA, any other Commonwealth, State or Territory laws which are applicable to a member, the law of any other country to which a member is deployed and is bound to observe or as prohibited by order of a Commander of a force deployed overseas;

i. **Managers**—have overall responsibility for managing work, attendance and performance of subordinate staff both military and civilian.

j. **Sensitive matters**—includes politically sensitive matters. They are matters that may attract undesirable attention by the public, media or other agencies that may have an adverse or significant impact on the organisation or government.

k. **Serious or urgent matters**—should be given its ordinary meaning and are matters that may have an adverse or significant impact on the organisation, its resources, government or ADO personnel.

l. **Service property**—is defined in section 3 of the DFDA and means property used by, or in the possession or control of the Defence Force, an allied force, or an institution of the Defence Force or of an allied force.

Aim

3. The aim of this instruction is to set out the primary requirements of the ADO for the reporting and investigation of alleged offences and describes the roles of DIA.

Application and compliance

4. This instruction provides common procedures for both Service and non-Service groups within the ADO in relation to the reporting, recording and investigation of alleged offences within the ADO.

5. This instruction announces the Defence Policing and Security Management System (DPSMS) as the primary computerised management system for recording all reports and investigation of Notifiable Incidents within the ADO.

6. This instruction binds both Defence and APS members of the ADO, including DIA. In particular, all commanding officers (CO), managers and ADO personnel who conduct, or are otherwise associated with investigations into alleged offences, are to comply with this instruction. DIA are to also take into account current Australian Defence Force (ADF) command and control arrangements when conducting investigations.

Notifiable Incidents

7. An incident is a 'Notifiable Incident' if it raises a reasonable suspicion that an offence may have been committed against the DFDA, the criminal law of the Commonwealth, States or Territories, or the criminal law of another country and involves a Defence member, Defence civilian, Defence contractor, Defence consultant, other ADO personnel or ADO premises.

8. Notifiable Incidents that are to be reported by ADO personnel (through the chain of command as applicable) to a DIA are listed below:

a. all alleged dishonesty offences including theft, fraud, misappropriation, false statements, falsification of documents and records, unlawful possession, burglary, corrupt practices and behaviour, bribery, collusive tendering, conflict of interest issues involving ADO personnel, ADO business, ADO property including service property, or which occur on ADO premises;

b. all alleged offences against the person involving Defence members, Defence civilians or on ADO premises including all assaults and sexual offences;

c. all drug related incidents involving Defence members, Defence civilians or which occur on ADO premises including use and possession of illegal drugs;

d. deaths, serious injuries or disappearances of Defence members, Defence civilians, or which occur on ADO premises (even where there may be no reasonable suspicion of an offence having been committed);

e. investigation or other action by civil police when it involves Defence members or Defence civilians, who are on duty or in uniform or which occurs on ADO premises, in relation to offences against the criminal law of the States, Territories or the Commonwealth or the criminal law of another country;

f. damage to private property by Defence members or Defence civilians who are on duty or in uniform or on ADO premises;

g. damaging Commonwealth or Service property;

h. all computer related crime involving ADO personnel or which occur on ADO premises including destroying or damaging data, entering false or misleading data, unlawful access and accessing or distributing pornography; or

i. matters involving breaches of security as defined under *Defence Protective Security Manual* (SECMAN 4).

9. The mandatory reporting of Notifiable Incidents described in this instruction applies at all times including whilst on operations.

Other factors in determining an Incident as Notifiable

10. In addition, a matter may be a Notifiable Incident if it is regarded as sensitive, serious or urgent. Factors to consider to determine whether an incident is sensitive, serious or urgent include the following:

a. the likelihood that an incident will bring the ADO into disrepute,

b. the likelihood that an incident will attract media or Parliamentary attention, and

c. the likelihood that an incident may adversely affect the efficiency of the ADO.

Duties of commanding officers and managers

11. The mandatory reporting of Notifiable Incidents applies at all times including whilst on operations. The CO or manager is to determine whether an incident is a Notifiable Incident as soon as practicable after becoming aware of the incident. A CO or manager may conduct an assessment or have other authorised ADO personnel do so on behalf of the CO or manager.

12. Once a CO or manager determines that a Notifiable Incident has occurred, the CO or manager is to report, or make arrangements for the reporting of the Notifiable Incident to a DIA as soon as practicable. Operational requirements will not affect the obligation to report Notifiable Incidents to DIA. All facts and likely assumptions relevant to a Notifiable Incident and known to the CO or manager are to be reported.

13. CO and managers may take advice from Defence Legal Officers and DIA as required. CO and managers are to ensure that where circumstances require arrest of a Defence member or Defence Civilian (as defined in the DFDA), Service Police have prompt access to those detained to ensure due process.

14. CO or managers who consider that an investigation may compromise mission-critical tasks or operations are to raise these concerns with the Head of the relevant DIA immediately. The Head DIA only, has the authority to suspend or cease investigations, if appropriate. The DIA must record the reasons for this decision to cease, suspend or continue an investigation in DPSMS, together with the factors affecting the decision and the identity of the decision-maker. Original documentation of such decisions are to be filed and maintained appropriately.

15. In an operational area or during the conduct of operations a CO who controls an ‘Area of Operations’ may, if necessary for mission accomplishment or for the safety of personnel, restrict access by Defence investigator(s) within such an area. Such a restriction should only be for the minimum period necessary and must be documented with reasons by the CO and reported to the DIA as soon as possible thereafter.

16. CO and managers are to consult with and assist Defence investigators, who must not be directed or obstructed, in carrying out their work. Interference with an investigation may constitute an offence.

17. CO or managers may report Notifiable Incidents in parallel to their chain of command. CO or managers may report a Notifiable Incident to a DIA through an appropriate person in their command, for example, a Naval Police Coxswain on board a ship.

18. The civilian police may be asked to attend, particularly in circumstances where the alleged offence is also an offence against Commonwealth, State or Territory law. As DIA are responsible for liaising with Federal, State and Territory police agencies, CO and managers must consult with a relevant DIA and local area Defence Legal Officers to assist in determining initial jurisdiction. *See* Defence Instruction (General) (DI(G)) PERS 45–1—*Jurisdiction Under Defence Force Discipline Act—Guidance for Military Commanders* and DI(G) PERS 35–3—*Fraternisation and Incidents of Unacceptable Behaviour in the Australian Defence Force*.

Other persons who can report a Notifiable Incident to a Defence Investigative Authority

19. ADO personnel have a responsibility and are to report Notifiable Incidents that they become aware of. ADO personnel that suspect that a Notifiable Incident has occurred are to report the Notifiable Incident direct to a DIA or through their chain of command as applicable.

20. Any person, not being a member of the ADO that suspects that a Notifiable Incident has occurred may report the Notifiable Incident direct to a DIA.

Defence Investigative Authorities and their roles and responsibilities

21. DIA are the Service Police organisations that report to the Provosts-Marshal of the Navy, Army and Air Force, the investigative arm within Inspector-General Division the FIR Directorate and the DSA. DIA investigators hold recognised qualifications including Certificate IV in investigations as a minimum standard.

22. DIA are responsible for making decisions about whether or not to investigate the Notifiable Incident. A DIA may determine that a Notifiable Incident is of a minor nature and does not require an investigation by a DIA. The DIA is responsible for referring the matter back to the CO or manager. In such circumstances, the CO or manager is to deal with the matter. DIA will record such decisions in DPSMS.

23. DIA may receive reports from CO or managers who consider that an investigation into a Notifiable Incident could compromise mission-critical tasks or operations. CO and managers are to raise such concerns with the Head of the relevant DIA immediately. Only the Head DIA or their delegates, have the authority to suspend or cease investigations, if appropriate. The DIA must record the reasons for this decision to cease, suspend or continue an investigation in DPSMS, together with the factors affecting the decision and the identity of the decision-maker. Original documentation of such decisions will be filed and maintained appropriately.

24. DIA have a responsibility for analysing and reporting on systemic weaknesses in Defence that may be revealed through assessments and investigation of Notifiable Incidents, the patterns of offences reported and any patterns that suggest failure to report offences. They will provide to the Director Fraud Investigation and Recovery (DFIR) with statistical data in relation to fraud matters.

25. Each DIA and their respective responsibilities are listed below:

a. the three Service Police organisations are responsible for the prevention, detection, and investigation of DFDA offences, including fraud, by Defence members or Defence civilians;

b. the three Service Police organisations may be responsible for the prevention, detection, and investigation of all offences by Defence members or Defence civilians during overseas deployment;

c. the Service Police organisations are responsible for the prevention, detection, and investigation of significant security matters, excluding Army, in accordance with SECMAN 4;

d. in certain circumstances, Service Police organisations can investigate APS personnel, Defence contractors or Defence consultants in relation to allegations of fraud and other dishonesty type offences. Such investigations will only occur at the direction of the relevant Head DIA or Service Chief. The evidence obtained as a result of investigations of APS personnel, Defence contractors or Defence contractors can be presented to civilian authorities including the Commonwealth Director of Public Prosecutions (DPP) for adjudication for prosecution;

e. FIR Directorate is responsible for conducting investigations into allegations of fraud committed by APS personnel, members of the public involved in fraud against Defence and in certain circumstances, fraud by Defence members or Defence civilians (*see* DI(G) PERS 45–1 for guidance);

f. FIR Directorate conducts investigations into matters involving allegations of corrupt practices and behaviour, collusive tendering and conflict of interest issues by ADO personnel when dealing with any Defence business;

g. FIR Directorate may also conduct investigations on special references from Ministers and senior Defence officials involving serious or sensitive matters; and

h. the DSA conducts investigations into significant security matters in accordance with SECMAN 4.

26. DIA are to:

a. receive reports of Notifiable Incidents and assume carriage of such matters when they are reported;

b. decide whether to initiate investigations in accordance with their standard operating procedures;

c. may determine the nature of a Notifiable Incident as minor and decide whether an investigation by a DIA is required.

d. ensure that all data is recorded in the DPSMS and ensure the integrity of that data;

e. liaise with civilian police authorities and Defence Legal Officers about matters referred to those agencies under DI(G) PERS 45–1 and DI(G) PERS 35–3 or otherwise;

f. conduct investigations;

g. provide briefs of evidence and other professional support to CO, managers, external prosecution agencies, Defence Legal Officers, particularly prosecutors;

h. without delay, report details of all serious, sensitive or urgent matters direct to the office of the relevant Deputy Service Chief or the Inspector-General and in any case, to the DIAs' professional chain of command;

i. provide the Director-General, The Defence Legal Service (DGTDLS) with reports required by paragraph 20 of DI(G) PERS 45–1; and

j. conduct related policy and process improvement tasks including provision of feedback and exception reports.

27. If a DIA determines that a Notifiable Incident is of a minor nature and does not require an investigation by a DIA, the DIA can refer the matter back to the CO or manager. In such circumstances, the CO or manager will deal with the matter. Such decisions will be recorded on DPSMS by the DIA.

Head Defence Investigative Authorities

28. The Head DIA of the Service Police organisations is the Provost-Marshal of the Navy, Army or Air Force. DFIR is the Head DIA of the investigative arm within Inspector-General Division and the Head DSA is the Head DIA of the DSA.

29. Head DIA can delegate their responsibility to make decisions in relation to the assessment and investigation of Notifiable Incidents.

Provosts-Marshal

30. The Provosts-Marshal are responsible for the prevention, detection and investigation of crime throughout the ADF. Service Police will investigate all serious offences committed by ADF personnel of their Service where they have jurisdiction under the DFDA. DI(G) PERS 45–1 sets out types of offences that should be referred to civilian police. DI(G) PERS 35–3 should also be taken into account when assessing Notifiable Incidents. Defence Legal Officers are to advise Defence investigators on jurisdictional issues.

Inspector-General and Director Fraud Investigation and Recovery

31. The Inspector-General Division has particular responsibility for analysing and reporting on systemic weakness in Defence resource management revealed through investigations. Information derived from this process is used in the development of the Defence Fraud Control Plan. In its areas of responsibility, the Inspector-General Division is responsible for appropriate, professional communications with the stakeholders of particular investigations.

32. DFIR is responsible for the investigation of allegations of fraud and commercial impropriety including conflict of interest and breaches of probity. DFIR's investigative authority covers possible offences by both ADF and APS personnel of the ADO and by external parties whose actions may unlawfully or improperly compromise Defence business processes or resources. The scope of this responsibility is detailed in DI(G) FIN 12–1—*The Control of Fraud in Defence and the Recovery of Public Moneys*.

33. DFIR may also conduct investigations on special references from Ministers and senior Defence officials. DFIR will assess Notifiable Incidents as soon as practicable after the incident is reported.

Defence Security Authority

34. DSA is responsible for investigating significant security issues involving the ADO. The standard operating procedures for security investigations are set out in SECMAN 4 and related single Service instructions.

Which Defence Investigative Authorities should be notified?

35. The DIA to be notified depends on the nature of the Notifiable Incident:

a. offences allegedly committed by Defence members, Defence civilians, or occurring on ADO premises are to be reported to the DIA supporting the unit, or DIA of the Service of the alleged perpetrator;

b. fraud involving Defence members or Defence civilians are to be reported to the DIA supporting the unit, or DIA of the Service of the member suspected. DI(G) PERS 45–1 also provides guidance in relation to the reporting of significant fraud over $5000 by Defence members or Defence civilians;

c. all offences allegedly committed by Defence members, Defence civilians or occurring on ADO premises while on overseas deployment are to be reported to the DIA of the alleged perpetrator or the DIA supporting the deployed force;

d. allegations of fraud and dishonesty involving APS personnel, Defence contractors or consultants are to be reported to DFIR to comply with the requirements of the Inspector-General in accordance with DI(G) FIN 12–1.

e. alleged offences involving significant security matters are to be reported in accordance with SECMAN 4 or notify DSA;

f. offences allegedly committed by APS personnel, Defence contractors or consultants that do not occur on ADO premises or do not involve allegations of fraud, collusive tendering, conflict of interest issues, corrupt practices and behaviour or security may be reported to a DIA supporting the unit, but should also be reported to the civilian police; and

g. if a reporting officer is not the suspect's CO, manager or supervisor, the member's CO or manager is to be notified by the relevant DIA.

36. With respect to offences committed by Defence members or Defence civilians, consideration must be given to whether the ADF will prosecute the offences utilising the provisions of DI(G) PERS 45–1. Irrespective of the ultimate decision, it does not and should not affect the initial characterisation of a matter as a Notifiable Incident and therefore does not affect the obligation to report such Notifiable Incidents to DIA. CO and managers should also have regard to the provisions of DI(G) PERS 35–3.

Initial response with respect to Notifiable Incidents

37. Defence Investigators are required to record certain information in DPSMS in accordance with the DPSMS on-line help guide. In particular, DIA must record all decisions with respect to Notifiable Incidents including issues raised by CO and managers in DPSMS so as to withstand public scrutiny. DIA must ensure that DPSMS clearly records the decision that the matter is a Notifiable Incident, the reasons for the decision and the factors taken into account when the decision was made.

38. Information relating to Notifiable Incidents that is classified at higher than 'RESTRICTED' or 'IN–CONFIDENCE' level is not to be entered into DPSMS but is to be held off-line. However, an entry must be made on DPSMS in order to create a record and an incident number.

Principles of assessment for the investigation of a Notifiable Incident

39. The goal of an assessment is to determine what offence is likely to have occurred and whether the elements of the offence are likely to be established by an investigation. DIA are to ensure that this assessment takes into account:

a. the nature of the alleged offence;

b. the seriousness of the alleged offence;

c. the level of criminality;

d. the matter involves senior personnel;

e. the threat posed to Defence information systems and finances;

f. effects of the alleged offence on Defence Groups;

g. resource availability, taking into account the demands of other investigations already commenced;

h. legislative requirements;

i. political or public sensitivity;

j. scope and size of the investigation;

k. any prevailing operational situation; and

l. Defence investigative priorities.

Suspending or ceasing investigations

40. Investigations may only be suspended, resumed or ceased by the Heads of the DIA who initiated the investigation. The Service Chief, Deputy Service Chief, Assistant Secretary General Investigation and Review (ASGIR), Head Defence Security Authority or the Inspector-General may also suspend, resume or cease an investigation being conducted by their respective organisations. When a decision is made to suspend, cease or resume an investigation, the reason for doing so is to be recorded in DPSMS by the relevant DIA. If workload statistics and analysis of current case priorities are material to the decision, these should be attached to the file and also recorded in DPSMS.

41. If reasons advanced by a CO or manager are material to the decision of a Head DIA to suspend or cease an investigation, the CO or manager is to provide reasons in writing to the relevant DIA. These reasons are to be filed and recorded in DPSMS by the relevant DIA. It will only be in exceptional circumstances that an investigation would be suspended as a result of concerns of a CO or manager.

Civilian authority declines to investigate

42. If a Notifiable Incident is referred to civil police and they decline to act, the DIA will review its preliminary assessment. The DIA will consider whether to initiate an investigation itself in accordance with DI(G) PERS 45–1. If civilian police return a Notifiable Incident directly to a CO or manager, the CO or manager is to advise the DIA of this response.

Managing the Notifiable Incident after it is reported

43. Notwithstanding transfer of the investigation to a DIA, CO and managers are to exercise their command responsibilities after reporting a Notifiable Incident. In particular, they should consult with Service Police and ensure that:

a. appropriate measures are undertaken to prevent continuance of an offence, unlawful violence, self-harm or damage to property;

b. suspects are not provided with opportunities to abscond, destroy evidence, interfere with witnesses, construct false defences or derive any other advantage from being unnecessarily forewarned;

c. where circumstances require arrest of a Defence member or Defence civilian, Service Police are to be provided with prompt access to those detained to ensure due process;

d. crime scenes are not disturbed;

e. victims receive appropriate support; and

f. they consult with Defence investigators about any arrangements that may create difficulties in gaining access to victims, witnesses or evidence. In this regard, CO, managers and DIA are to give a victim's need or perceived need for protection careful consideration.

Jurisdiction

44. This instruction is subject to DI(G) PERS 45–1, which deals with offences committed in Australia during peacetime.

45. Defence members or Defence civilians, who commit service offences outside Australia, are subject to the extra-territorial application of the DFDA. The jurisdiction of Service Tribunals under the DFDA may also be subject to any 'Status of Forces Agreements' (SOFA) that may be in place. Where doubt exists, advice is to be obtained from the appropriate Defence Legal Officer.

Related publications

DI(G) PERS 45–1—*Jurisdiction under Defence Force Discipline Act—Guidance for Military Commanders* specifies the offences that must be referred to civilian authorities. Serious crimes against the person including sexual offences are often referred to the civilian police. DI(G) PERS 45–1 also provides guidance about cases where, although a Service Tribunal could try a charge, it might be inappropriate to exercise that jurisdiction.

Australian Defence Force Publication (ADFP) 202—*Administrative Inquiries Manual* deals with administrative incidents, which are investigated under the Defence Inquiry Regulations.

The Discipline Law Manuals (ADFP 201, volumes 1 and 2) contain the DFDA and all necessary legislative provisions, and provide substantial guidance to CO on dealing with disciplinary matters.

DI(G) PERS 35–3—*Discrimination, Harassment, Sexual Offences, Fraternisation and other Unacceptable Behaviour in the Australian Defence Force (ADF)* contains guidance on the management of a wide range of unacceptable behaviours. Many of these matters fall beneath the threshold for notifiable incidents, but CO and managers should take care not to initiate mediation processes when undiscovered facts may require investigation of a crime.

DI(G) FIN 12–1—*The Control of Fraud in Defence and the Recovery of Public Moneys* specifies matters to be referred to the FIR Directorate within the Inspector-General Division. The Directorate's role in investigating fraud extends to commercial impropriety and probity issues.

DI(G) PERS 25–1—*Public Duty and Private Interest—Guidelines for Members of the Defence Force* sets out instructions on conflict of interest and other issues of a probity nature.

SECMAN 4 provides instructions on management and reporting of incidents that have security implications and may include incidents that are notifiable incidents.

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