

---

## *Part 8*

### **MST 211.8 UNACCEPTABLE BEHAVIOUR**

#### **UNACCEPTABLE BEHAVIOUR**

8.1. If equity and diversity are about improving relationships and productivity in the workplace, then unacceptable behaviour is a significant barrier. It is the right of an individual to work in an environment free from harassment and discrimination. It is important to understand that treating each other fairly will serve to create an equitable environment. It is particularly important to understand that all personnel are responsible, just as they are for OH&S matters. Not acting to address unacceptable behaviour issues can attract financial, disciplinary or administrative liability.

8.2 Unacceptable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would consider to offend, humiliate or intimidate other personnel.

We now need to apply this definition of unacceptable behaviour to the workplace. In the Defence Organisation, the workplace is defined as a ship, vehicle or aircraft, any Defence establishment or any other location or situation, in which a member is required to attend for the purpose of carrying out their military or official employment.

8.3 This includes integrated work environments involving APS employees and contractors, and work related sporting or social functions that extend from the normal work environment and have been approved as an official workplace activity by the CO or delegate.

8.4 Unacceptable behaviour includes:

- a. Sexual offences;
- b. Sexual harassment;
- c. Discrimination;
- d. Harassment;
- e. Fraternisation and 'no touching' (ADF); and
- f. Other unacceptable behaviour.

#### **Sexual Offences**

8.5 A sexual offence is defined as an action that is sexual in nature and is carried out without the consent of the complainant. Please note that all sexual offences are classified as criminal offences. There are three categories of sexual offence:

- a. indecent behaviour is behaviour that offends customary standards of morality (eg. exposing genitalia);
- b. indecent assault is an assault that consists of or is accompanied by an act of indecency. (eg. touching another's genitalia, breasts, buttocks). An assault is committed by touching another person without their consent or making another person fear that force is going to be used against them. Indecent assault and indecent behaviour MAY be dealt with by either civilian or Service police depending on a number of factors; and
- c. sexual assault is defined for ADF personnel as attempted or actual sexual intercourse without consent. All cases of sexual assault are to be referred to the civilian police for offences alleged to have occurred within Australia. Service police are not empowered within Australia to investigate allegations of sexual assault.

## **DISCRIMINATION**

8.6 Discrimination occurs when people are treated less or more favourably because of a physical attribute, their background or just because they are different to others.

8.7 Some examples of discrimination are:

- a. Race,
- b. Religion,
- c. Disability,
- d. Gender,
- e. Sexual preference, and
- f. Marital status.

8.8 Unlawful discrimination may occur on these grounds. However, the ADF has two exemptions under the following acts. Section 43 of the Sex Discrimination Act 1984 provides an exemption for the employment of women in combat roles. Section 53 of the Disability Discrimination Act 1992 provides an exemption for the employment of people with disabilities.

8.9 Discrimination involves actions or words that may segregate, exclude, or restrict people from exercising or enjoying their human rights in the area of employment. The Human Rights and Equal Opportunity Commission can investigate complaints of discrimination across 19 different grounds. Where an employer imposes a policy that discriminates, the policy may well be justified and not unlawful if it is proven to be an inherent requirement of the job.

8.10 However, some employment actions may not be based on job requirements. For example, an APS employee, aged 55, was not sent on a long training course overseas, despite being the person who undertook the work, because he 'would probably retire in a few years', and

that it was not worth the cost. This may constitute discrimination on the grounds of age under the Human Rights and Equal Opportunity Commission Act.

## **SEXUAL HARASSMENT**

8.11 Sexual harassment is any form of unwelcome sexual attention and is unlawful in accordance with the Federal Sex Discrimination Act of 1984.

8.12 Sexual harassment includes:

- a. Offensive verbal comments or innuendo of a sexual nature;
- b. Sexually offensive jokes;
- c. Comments about a person's sexual activities or sexual orientation;
- d. Offensive gestures;
- e. Comments about a person's sex appeal;
- f. Touching, pinching or patting (may also constitute indecent assault); and
- g. 'non-directed' acts, which include: Posters, calendars, E-mails, or screen savers with a sexual connotation. In fact, sexual harassment has now become more prevalent through misuse of Defence e-mail and internet facilities.

## **Harassment**

8.13 Harassment is a form of discrimination and consists of offensive, abusive, belittling or threatening behaviour directed at an individual or group that may be the result of some real or perceived attribute or difference.

8.14 Workplace harassment can involve:

- a. excluding a person from workplace activities,
- b. undermining a person's reputation, and
- c. interfering with a person's workplace.

8.15 Examples of personal harassment include:

- a. insulting comments based on physical characteristics,
- b. comments about a person's work or capacity for work,

- c. spreading of malicious rumours,
- d. persistent teasing, or
- e. openly discussing views which portray another gender as inferior.

8.16 Harassment in many circumstances is generally termed bullying.

### **FRATERNISATION**

8.17 Fraternisation or inappropriate workplace relationships is prohibited in ADF workplaces when it involves ADF personnel. It includes relationships that involve or give the appearance of involving, partiality, preferential treatment or improper use of rank.

8.18 Special requirements apply at all ADF training establishments regarding student/staff relationships. Within the AAFC there is a no-fraternisation policy; that is, no fraternisation between staff and students, staff and cadets or between cadets whilst on duty.

8.19 Also, relationships between a superior and a subordinate that may compromise unit cohesion and undermine authority are prohibited. Note also the 'no touching' rule. This touching is any physical contact with another person using a part of the body or an object for the purpose of sexual arousal or gratification or private intimacy.

8.20 However, misuse of authority and abuse of power can take the form of offensive, abusive, belittling, threatening or bullying words or behaviour and this is unacceptable.

8.21 The “no touching” rule. This touching is any physical contact with another person using a part of the body or an object for the purpose of sexual arousal or gratification or private intimacy (see para 26).

8.22. The ADFC Behavior Policy will provide guidance and training resources for staff and cadets



Handout: Ch 19 POLMAN  
and OC3WG Letter

**Part 8 Summary**

- Unacceptable behavior will not be tolerated.
- Harassment can include a number of things
- The ADFC behavior policy can provide guidance

---

**Part 9****MST 211.9 UNACCEPTABLE BEHAVIOUR MANAGEMENT****REPORTING**

9.1 Any complaint can have several options for resolution. Complainants may choose an informal approach. This could start with a conversation directly with the respondent, or involve having a third party present for support only. Any person skilled at facilitating discussion between parties with the aim of resolving a complaint can undertake conciliation. Informal counselling may be appropriate to correct a respondent's behaviour, if it was not serious enough to merit formal action. Mediation and workplace conferencing are two forms of alternate dispute resolution (known as ADR) that have now become widely used in Defence. Mediation is a voluntary and confidential meeting where all parties have agreed to attend and cooperate in good faith to resolve the dispute. A workplace conference is a meeting of people affected by conflict in the workplace. It is a structured forum where all participants have an opportunity to air feelings and seek a way ahead. These two forms of ADR are only to be undertaken by trained and accredited mediators or conferencing facilitators. *(If asked: a new Directorate of Alternative Dispute Resolution and Conflict Management has been set up within The Defence Legal Service in Canberra. Contact 02-62651524 for more information.)*

Also complaints may be dealt with formally.

9.2 This could start with a formal complaint to management. Additionally, a redress of grievance or review of actions could be utilised. Management, in dealing with a formal complaint can initiate formal administrative or disciplinary action. In some circumstances the intervention of external agencies may be appropriate, such as sexual offences where civil police investigation is necessary. Some complaints may be referred to the Human Rights and Equal Opportunity Commission and the Defence Force Ombudsman.

9.3 Where to Get Advice

9.4 The Defence Equity Advice Lines are confidential telephone lines open from 0830 to 2100 hours EST seven days a week (except 25 December). The numbers are:

1800 644 247  
1800 803 831  
1800 626 254

9.5 The lines are available to provide advice and options for resolution to:

- a. Commanders,
- b. Managers,
- c. Supervisors,

- 
- d. Equity advisers,
  - e. Complainants,
  - f. Respondents,
  - g. Witnesses, and
  - h. Family members of ADF and APS staff.

9.6 Callers may remain anonymous. Operators will only take action in special cases, for instance, if the caller appeared to be suicidal and can be identified, the operator would take action.

#### 9.7 Defence Equity Adviser Network

9.8 The Defence Equity Adviser Network consists of trained Equity Advisers and Senior Equity Advisors, managed by Defence Equity Coordinators. There are Equity Advisers within all Defence establishments or workplaces to assist with the prevention and resolution of harassment, discrimination and other unacceptable behaviour.

#### 9.9 What Equity Advisers Do

9.10 Equity advisers can provide you with support, information and options for the resolution of workplace equity and diversity issues. They support you in any decisions or choices you may make. They also support commanders and managers in implementing equity and diversity initiatives.

9.11 Equity Advisers cannot be an advocate for you. They do not advise more than one party to a dispute. They do not mediate or become involved in any investigation or resolution of a complaint.

9.12 Confidentiality. Everything you say to an Equity Adviser is held in the strictest confidence. An Equity Adviser does not divulge any information you give to them. However, there is an exception to this policy. If the Equity Adviser believes that your safety or the safety of another person is at risk, or a criminal offence is disclosed, they are required to inform command or management. In addition, if you disclose a sexual offence and you are an ADF member, the Equity Adviser must inform the Commanding Officer.

9.13 Your rights. You have the right to expect Equity Advisers to treat you with respect and fairness, and that they behave with professionalism and integrity. If an Equity Adviser needs to seek information from anyone else in the Network, they will only do so with your permission.

9.14 You may also report the matter to your next line commander.

#### **RECORD KEEPING**

9.15 Records should be maintained of all complaints and incidents so that if the problems persist they can be referred to. Records should be kept in confidence.

**Part 9 Summary**

- ADR is one avenue for resolving complaints
- Complaints should be dealt with at the lowest possible level