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Australian Government
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2 September 2008

Dr Anna Dacre
Committee Secretary
The House of Representatives
Standing Committee on Legal
and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

RECEIVED
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BY: LACA

Dear Dr Dacre

Please find attached the Defence submission relating to the Inquiry into Whistleblowing Protections within Australian Government Public Sector.

If you have any questions please do not hesitate to contact me.

Yours sincerely

Tony Corcoran
Assistant Secretary
Ministerial and Executive Support
Coordination and Public Affairs Division

**Standing Committee on Legal and Constitutional Affairs
Standing Committee**

Inquiry

into

**Whistleblowing protections within
the Australian Government Sector**

**Submission
by the
Department of Defence**

**Department of Defence
August 2008**

In making this submission, Defence notes that the appropriate scope of any whistleblowing regime will always involve a balance between the public interest in relation to open government and the need to protect confidential or sensitive government information. In this context, Defence acknowledges Government policy on this and related issues and the comments made by the Attorney General on 5 August 2008 to the Australian Law Reform Commission concerning the Government's commitment to open and accountable government.

This submission is confined to commenting on those issues of particular interest to Defence in connection with Defence activities and draws on Defence's experience in successfully operating since 2002 its own internal whistleblower scheme referred to as the *'Defence Whistleblower Scheme'*.

The Defence intelligence agencies have been consulted in the development of this submission. These agencies are developing combined input to be included in a separate submission being developed and coordinated by the Australian Intelligence Community.

A copy of the Defence Instruction detailing the nature and operation of the scheme is at Attachment A. Comments are provided under the heading of the relevant Term of Reference.

The categories of people who could make protected disclosures (ToR 1)

Defence considers it essential that members and former members of the Australian Defence Force (ADF) are included among the persons that can be afforded the same statutory protections as those being considered for other Commonwealth personnel, such as public servants.

In relation to the inclusion of persons outside Australia, Defence personnel, including contractors, and sometimes their accompanying spouses and families, are regularly posted overseas for both long and short term duty. It seems appropriate that the proposed statutory protection should be extended to these persons. The experience of Defence with the *Defence Whistleblower Scheme* is that often reports are made by family members. Indeed, the scheme has also received vital information from the general public. This raises the issue of whether 'any person' such as a family member, contractor, service provider or member of the public, might be afforded the same statutory protections as those considered for Government personnel, so long as the disclosure is in the public interest.

The types of disclosure that should be protected (ToR 2)

Defence supports the approach of comprehensively defining the types of disclosures that might be covered by a proposed statutory protection regime. This would provide certainty to whistleblowers and clarity to Agencies. Such definitional clarity might also minimise or remove the need to develop minimum threshold requirements alluded to in the next ToR.

The conditions that should apply to a person making a disclosure (ToR 3)

Defence considers that setting a 'threshold of seriousness' for a whistleblower to receive protection is problematic. It is acknowledged that some whistleblowers may misuse the system or report issues that might be regarded as trivial. An Integrity Agency would want to avoid being overwhelmed by reports of this nature. Nevertheless, it is unclear what

criteria would be used to set thresholds. Defence considers that a threshold of seriousness might have unintended consequences and would be unnecessary if the categories for a disclosure that could attract protection are clearly and comprehensively defined in any proposed legislation.

A threshold of seriousness requirement on a disclosure could also have the effect of inhibiting or excluding a range of potentially useful and valuable reports to an Integrity Agency. What might initially be seen as a low-level issue might lead to identifying more serious, systemic or criminal conduct that might otherwise be missed.

Defence supports the proposition that penalties and sanctions might apply to a whistleblower who deliberately and knowingly makes a false or misleading report. However, where a whistleblower materially fails to comply with procedures under which disclosures can be made, Defence advocates flexible arrangements to allow for discretion to take account of issues such as mitigating circumstances.

The scope of statutory protection that should be available (ToR 4)

Following on from earlier comments on the categories of people who could make protected disclosures, consideration might also be given to providing protection to 'any person' that makes a disclosure in the public interest. In addition to prosecution and the types of behaviours that a whistleblower might be afforded protection from, it may be worth considering other possible negative consequences such as discrimination in relation to obtaining Commonwealth employment, or receiving Commonwealth benefits or services or support such as grants, as a result of making a disclosure.

Procedures in relation to protected disclosures (ToR 5)

Defence accepts that all three options proffered for how information should be disclosed are viable. However, since Defence has a comprehensive whistleblower scheme that has been successfully operating for six years, our preference is to have schemes such as the *Defence Whistleblower Scheme* included as being able to receive and investigate protected disclosures. Such schemes could be an alternative to, or adjunct to, a higher level Integrity Agency. It would be possible to recognise the credentials of relevant agencies, such as Defence, by measuring their whistleblower scheme against identified minimum standards set or recognised at a whole-of-government level. This could include a formal accreditation process based on meeting specified criteria.

The downside of only having a limited number of Integrity Agencies capable of receiving protected disclosures would see whistleblowers seeking such protection not having access to internal agency schemes, such as the *Defence Whistleblower Scheme*. This might see the lead Integrity Agencies being inundated with reports of irrelevant and extraneous issues. The impact for schemes such as the *Defence Whistleblower Scheme* is that they would cease to operate, to the potential detriment of the agency and the Commonwealth as a whole.

The benefit of accredited internal agency schemes is that they could act as a filter and deal with lower level matters, thereby freeing up higher level Integrity Agencies to deal with only the more serious matters. This approach would further erode the need for thresholds of seriousness mooted in ToR 3. Similar arrangements exist for Commonwealth fraud investigation for which the Australian Federal Police (AFP) is the lead agency. Commonwealth policy provides for Commonwealth agencies with appropriately qualified

investigators to conduct criminal investigations into routine and minor matters to allow the AFP to focus on its higher level commitments.

Defence accepts that it may be advantageous in developing whole-of-government procedures and guidance describing an agency's obligations for handling disclosures. However, consideration should be given to the *Public Service Act 1999* (PSA) and the *Public Service Commissioner's Directions*, and other Public Service Commission publications in relation to this issue. Any proposed legislation must also take into account Commonwealth personnel not employed under the provisions of the Public Service Act, such as the ADF.

In relation to the type of procedures and guidance that might be provided, Defence draws the committee's attention to the written procedures articulated in the binding Defence Instruction governing the operation of the *Defence Whistleblower Scheme* at Attachment A. The scheme was reviewed by Defence in 2006, with positive results. The committee may wish to consider the successfully operating model offered by the *Defence Whistleblower Scheme*, in developing a whole-of-government approach to the handling of whistleblowers and protected public interest disclosures.

In relation to protected third-party disclosures, Defence urges the need for caution in any contemplation of protecting disclosures to third parties such as journalists or the media. Any Commonwealth system established to protect public interest disclosures should provide adequate avenues for reporting and for review of action in relation to such reports. If a whistleblower exhausts all legitimate and lawful avenues relating to the making of a report and is not satisfied with the outcome – which may be because the case is not supported, or is unfounded, incorrect, or appropriate action has already been taken – there should be no protection for the whistleblower should the whistleblower choose to make a disclosure to a third party such as the media.

The committee may wish to consider whether extending statutory protection to disclosures made to the media could result in an increase in sensitive or confidential government information being made available improperly to the media. This could have serious consequences for governmental activities and national security. Unwarranted and unnecessary damage could be caused to national interests or to personal and organisational reputations, particularly in circumstances where allegations contained in disclosures are unfounded.

In closing, Defence supports the concept of providing protection for whistleblowers as is demonstrated by its ongoing commitment to the *Defence Whistleblower Scheme*. Defence would welcome an opportunity to provide the committee with more detailed information about the scheme.

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ATTACHMENT 'A'

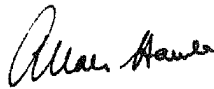


DEFENCE INSTRUCTIONS (GENERAL)

Department of Defence
CANBERRA ACT 2600

1 July 2002

Defence Instruction (General) PERS 45-5 is issued pursuant to section 9A of the *Defence Act 1903*.



ALLAN HAWKE
Secretary



C.A. BARRIE
Admiral, RAN
Chief of the Defence Force

LIST B—ISSUE NO PERS B/16/2002

New Instruction

PERS 45-5 *Defence Whistleblower Scheme*

Single Service filing instructions

This instruction should be filed as:

1. NAVY PERS 16-16
2. ARMY PERS 15-1
3. AIR FORCE PERS 29-31

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DI(G) PERS 45-5
File as: (NAVY PERS 16-16
(ARMY PERS 15-1
(AIR FORCE PERS 29-31

DEFENCE WHISTLEBLOWER SCHEME

INTRODUCTION

1. It is critical that Defence should maintain an ethical and professional environment that supports Defence's core values: *professionalism, loyalty, innovation, courage, integrity and teamwork*. Integrity is a fundamental element of employment in Defence. Failure to maintain individual and corporate integrity and to identify and properly address misconduct at all levels will damage the reputation and effectiveness of Defence.
2. Defence is therefore committed to creating an organisational climate in which any person feels able to report alleged misconduct. The Inspector-General's (IG's) organisation is responsible for the management and operation of the Defence Whistleblower Scheme (DWS). Any conduct suspected of directly or indirectly affecting the health or effectiveness of Defence or a person's professional behaviour could be the subject of a report under this scheme.
3. A whistleblower is to be managed in accordance with the principles enunciated in this instruction from the moment it is reasonably apparent that a whistleblower report is being made.

AIM

4. The aim of this instruction is to promulgate the policy, principles and procedures for the management of whistleblowers. In addition, it authorises the operation and management of the DWS.

DEFINITION

5. For the purposes of this instruction a whistleblower is any person who alleges misconduct, including criminal activity or unethical behaviour, by:
 - a. a public servant employed by Defence;
 - b. a member of the Australian Defence Force (ADF);
 - c. a contractor or other person supplying goods or services to Defence; or
 - d. a Defence civilian as defined in section 3 of the *Defence Force Discipline Act 1982* (DFDA).and elects to have this alleged misconduct dealt with under the DWS.

POLICY OBJECTIVES

6. This policy establishes the framework for whistleblowing that will:
 - a. create a professional organisation where people recognise their duty to report alleged misconduct and feel confident to do so,
 - b. heighten awareness within Defence that individuals have whistleblowing responsibilities, and
 - c. support whistleblowers and protect them from adverse effects resulting from the making of a report.

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REPORTING

7. Any person may be confronted by circumstances that warrant making a report. In making the report, however, the person may be concerned that they will be vulnerable to threats to their wellbeing, family or career. In acknowledging these concerns, Defence is committed to ensuring confidentiality of information and to providing support and, if necessary, protection to safeguard the wellbeing of the reporter irrespective of the reporting route used. To achieve this, it is Defence policy to:

- a. formally support personnel who report suspected misconduct,
- b. protect personnel from victimisation and unlawful discrimination in the workplace, and
- c. appropriately deal with all breaches of the military justice system and the Australian Public Service Code of Conduct.

Reporting to chain of command and line management

8. Persons who wish to report suspected misconduct should normally raise these concerns through their chain of command or line management. Commanders and managers in Defence have a responsibility to develop and support a working environment in which staff have the confidence to make such reports. On receipt of a report of suspected misconduct, a commander or manager must assess whether it is within their power to address, whether it should be referred up the chain of command or line management or referred to the appropriate Defence investigative authority in accordance with Defence Instruction (General) (DI(G)) ADMIN 45-2—*Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*.

9. Factors that should be considered, include:

- a. What does the person making the report want done with the information? If the expectation is that action is to be taken to address the concern, the person receiving the information will be required (subject to paragraphs 10. and 11. below) to report the matter in accordance with DI(G) ADMIN 45-2.
- b. Does the person making the report expect or need any additional forms of support or protection?
- c. The urgency of the matter: for example where there are urgent security or safety matters demanding immediate corrective action.
- d. Is the person making the report aware of the various alternate avenues to deal with the issue including the DWS?

10. If the person making the report indicates that they wish to be included in the DWS, the person or authority receiving the report is directed under this instruction to take no further investigatory or other administrative action to deal with that individual or information, but is to refer the person making the report to the IG Division without delay. This is to avoid duplication of investigative effort and afford the best protection, anonymity and confidentiality.

11. If a matter is referred to the IG in the context of the DWS, the referring authority is relieved of the reporting obligations of DI(G) ADMIN 45-2 and DI(G) PERS 35-3—*Discrimination, Harassment, Sexual Offences, Fraternisation and other Unacceptable Sexual Behaviour in the Australian Defence Force* as the IG is to assume that responsibility and also the responsibility for managing and reporting on the whistleblower complaint.

Reporting to specialist areas

12. There are already a number of specialist areas in Defence that deal with particular complaints in their area of expertise. Existing complaint mechanisms include redress of grievance procedures and policy with respect to unacceptable behaviour and discrimination. Detailed policy guidance on these mechanisms is provided in other Defence Instructions relevant to the subject matter. It is not the objective of the DWS to replace these areas or to provide an avenue of appeal against decisions made outside the whistleblower scheme. The DWS is an alternative process for the reporting and investigation of misconduct when the whistleblower lacks confidence in the normal reporting processes.

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Whistleblower reporting

13. It is expected that the majority of reporting will be made through the chain of command or line management. However, there may be occasions when individuals feel unable to report concerns, or have lost confidence in, their chain of command or line management. Therefore, this instruction authorises an alternative means of reporting suspected misconduct where:

- a. the established complaint mechanisms for specific issues or the chain of command or line management have been tried and failed; or
- b. the individual believes that they may be victimised, discriminated against or disadvantaged in some way if they make a report through the normal means.

14. This policy is therefore designed to complement normal communication and support channels between line management/chain of command/specialist areas and Defence personnel. All persons making a report, however reported, retain their statutory rights to refer a complaint to the Commonwealth (and Defence Force) Ombudsman or to the Public Service and Merit Protection Commission.

15. The types of suspected misconduct that may be the subject of a whistleblower report, include but are not limited to:

- a. fraud or any other activity that may breach Commonwealth legislation, including the DFDA;
- b. misconduct under the *Public Service Act 1999*;
- c. unethical behaviour;
- d. misuse or mismanagement of departmental resources;
- e. harassment or unlawful discrimination;
- f. breaches of security;
- g. behaviour that could jeopardise the good reputation of Defence and that of its members; and
- h. practices that compromise occupational health and safety.

16. A logic flow diagram describing reporting processes, designed to assist the potential whistleblower, is in annex A, appendix 1.

UNDERPINNING LEGISLATION

17. This policy is underpinned by the following legislation:

- a. *Public Service Act 1999*;
- b. *Crimes Act 1914* and *Criminal Code Act 1995*;
- c. DFDA; and
- d. *Privacy Act 1988*.

18. Other supporting Defence policies are listed in annex A.

PRINCIPLES

19. The management of whistleblowers is to be governed by the following principles:

- a. sensitivity and compassion;
- b. anonymity and confidentiality;

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- c. avoidance of detriment;
- d. respect for the rights, obligations and sensitivities of all concerned;
- e. support and protection; and
- f. restrictions on public disclosures.

Commanders and managers are responsible for ensuring that these principles are followed and applied when dealing with potential or initial whistleblower reports. To access the full support and protection procedures of this policy, the person lodging a report must do so through the DWS.

Sensitivity and compassion

20. In order to guarantee the health of Defence and the trust of the public, all persons reporting alleged misconduct should be encouraged and supported. It can take enormous moral courage to step forward as a whistleblower and therefore, any person who does so should be respected and managed with sensitivity and compassion.

Anonymity and confidentiality

21. A whistleblower may report information anonymously or request that their identity be protected. However, anonymous whistleblowers need to understand that further investigation of their reports by the IG Division may be limited if:

- a. insufficient evidence is provided;
- b. the matter has already been properly investigated, or in the opinion of the IG has already been adequately dealt with elsewhere;
- c. the matter proves to be frivolous, mischievous, vexatious or without substance; or
- d. if the IG considers that there is a more appropriate administrative process to deal with the matter, for example a redress of grievance.

22. Where a whistleblower requests that their identity be protected, every effort will be made to achieve this. However, in some circumstances there may be a legal obligation for Defence to reveal the identity of a person who has requested or has been afforded such protection. (See annex A for details).

23. Notwithstanding the above, confidentiality is a fundamental principle to be applied by all involved in whistleblower case management and investigation. This is necessary, not only to maintain the integrity of the whistleblower policy and to protect the identity of the whistleblower, but also to protect the rights of those who are the subject of the complaint.

24. Statutory sanctions may be implemented against any person who unlawfully uses or discloses information about the whistleblower that was made available to them by reason of their official duties. Further, the Privacy Commissioner, as a result of a complaint that there has been a breach of the *Privacy Act 1988*, could investigate such behaviour.

Avoidance of detriment

25. For the purposes of this policy, detriment is considered to consist of any form of personal injury, damage or loss of property, intimidation or harassment, discrimination, disadvantage or adverse treatment in relation to employment or threats of reprisal or impairment of reputation. By direction of Chief of the Defence Force and the Secretary, and in accordance with section 16 of the *Public Service Act 1999* and DI(G) PERS 35-3, ADF members and civilian employees are prohibited from causing detriment to any person as a consequence of a whistleblower report. Where evidence exists that ADF members or civilian employees have caused detriment, action may be taken pursuant to the DFDA, the *Public Service Act 1999*, or the *Crimes Act 1914*.

26. Equally, any person who is the subject of a whistleblower report must also be afforded their rights in law and appropriate protection against detriment during the investigative phase. False allegations made in the context of the DWS, will be taken seriously. In appropriate circumstances disciplinary or other legal action may be taken against a person making false allegations.

Restriction on public disclosures

36. Public disclosure to the media by a whistleblower in relation to the matter reported is considered inappropriate because the media is not in a position to do anything constructive with that information apart from publicising it. Public disclosure may jeopardise Defence's ability to protect the identity of those involved and may hinder the conduct of the investigation. Furthermore, improper public disclosure of information may also breach section 70 of the *Crimes Act 1914* and could expose the whistleblower to possible defamation action.

37. Case managers, investigators, counsellors and anyone else involved in a whistleblowing matter are prohibited from making public disclosures in relation to the matter, unless specifically authorised to do so. In appropriate circumstances, sanctions could be implemented against persons who make unauthorised disclosures; for example, pursuant to the *Crimes Act 1914*, the *Public Service Act 1999* or the DFDA.

INVESTIGATIVE RESPONSIBILITY

38. The IG's organisation has responsibility for investigating reports made by whistleblowers. On receipt of a report made through this program, an initial assessment will be made by the IG's organisation in consultation with the whistleblower.

39. Following the preliminary assessment and classification, a decision will be made in consultation with the whistleblower as to the most appropriate way to case manage and investigate the matter. Whilst the IG's organisation has responsibility for the management of this scheme and for the management of persons who make a report through this scheme (including identity protection if necessary), the actual investigation may be conducted by another agency. The IG will determine the most appropriate investigative or other relevant authority in consultation with the whistleblower. These authorities include the IG, the relevant chain of command and line management, Service Police, Defence Security Authority and Defence Safety Management Agency, with appropriate guidance on the management of the matter provided by the IG Division. In exceptional circumstances, the IG may consider it necessary to refer the matter to an agency or authority external to Defence.

PROCEDURES

40. An overview of the relevant procedures used by IG in whistleblower case management is in annex A.

CONTACT DETAILS

41. The Defence 'Whistleblower' hotline is maintained on a 24-hour basis by the IG's organisation. The contact number for this service is 1800 673 502.

42. Alternatively, whistleblowers may send correspondence to the following address:

Director Investigation and Recovery
CP3-2-015
Department of Defence
CANBERRA ACT 2600

43. Contact numbers for further advice on the whistleblower scheme and ways of lodging other forms of complaint, are given in annex B.

Annexes:

- A. Guidance on the reporting of suspected misconduct
- B. Contact telephone numbers and further advice

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ANNEX A TO
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GUIDANCE ON THE REPORTING OF SUSPECTED MISCONDUCT

1. The following information provides guidance on the reporting of alleged misconduct through the Defence Whistleblower Scheme (DWS).

Why is there a need for a Defence Whistleblower Scheme?

2. A whistleblower scheme can contribute to the health of Defence by:
 - a. preventing misconduct,
 - b. making people responsible for their misconduct,
 - c. ensuring that others are not disadvantaged by misconduct,
 - d. improving work practices and management, and
 - e. promoting an ethical organisation.

Considerations of whistleblowing

3. There are a number of Defence publications that recommend or compel Defence personnel to report incidents through various bodies. These include, but are not limited, to the following:
 - a. Australian Public Service (APS) Code of Conduct: (*Public Service Act 1999*);
 - b. Defence Instruction (General) (DI(G)) ADMIN 45-2—*Reporting and Investigating of Alleged Offences within the Australian Defence Organisation*;
 - c. DI(G) PERS 35-3—*Discrimination, Harassment, Sexual Offences, Fraternisation and other Unacceptable Sexual Behaviour in the Australian Defence Force*;
 - d. Defence Personnel Instruction 3/99—*Preventing, Managing and Eliminating Discrimination, Harassment and Unacceptable Behaviour in the Department of Defence*;
 - e. *Defence Protective Security Manual (SECMAN 4)*, section 10, chapter 1—'Reporting and Investigation of Breaches of Security'; and
 - f. *Commonwealth Protective Security Manual*, part G, section 3, Security Incidents and Investigations.
4. Persons need to consider carefully, how and to whom they should report a matter. Advice in this regard can be provided on an anonymous, confidential, no commitment basis by using the Whistleblower Hotline (see annex B).

What type of concerns may be reported?

5. The scheme is for the reporting of any suspected misconduct that directly or indirectly affects the health or effectiveness of Defence or that relates to a person's professional behaviour. The types of matters that might be investigated under the DWS are detailed in paragraph 15. of this instruction.

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When should the scheme be used?

6. The normal method of reporting suspected misconduct is through the chain of command or line management. It is expected that the majority of reporting will be made in this manner. There may be occasions, however, where:

- a. the chain of command, line management, or established complaint mechanisms for specific issues is perceived by the whistleblower to be tainted or ineffective; or
- b. the whistleblower believes that they may be victimised, discriminated against or disadvantaged in some way if they make a report through the chain of command, line management, or established complaint mechanisms.

7. Defence already has in place a number of specialist areas that deal with administrative complaints. It is not the objective of the DWS to replace these areas or to form an avenue of appeal against decisions made by these areas. The scheme is an alternative process for the reporting and investigation of suspected misconduct when the whistleblower lacks confidence in reporting the matter through their chain of command or line management.

Decision to make a disclosure through the Defence Whistleblower Scheme

8. The decision to contact the DWS can be a difficult one to make. If a person is contemplating making a disclosure and has concerns about it, they should contact the Directorate of Investigation and Recovery, Inspector-General (IG) Division or the Whistleblower Hotline, to discuss the matter with the Director or one of the trained investigators. The discussion can be on an anonymous, confidential and no commitment basis. The individual will be informed of the procedure for making a report to the scheme and the possible implications of doing so.

9. Ultimately, the decision on whether or not to make a report through the DWS is the individual's decision based on the particular circumstances at the time. Regardless of whether this scheme is used, Defence is committed to maintaining a climate that supports its employees reporting suspicions of misconduct. A flow chart that may assist in making the decision as to whether or not to lodge a whistleblower report is located in appendix 1.

How can I make a whistleblower report?

10. A whistleblower report may be made in the following manner:

- a. by telephone (a dedicated hotline is available and will operate 24 hours a day—1800 673 502); or
- b. in person to the Director Investigation and Recovery or an investigator assigned by the Director Investigation and Recovery. Arrangements for such a meeting (in some instances outside of the workplace at a mutually agreed time and place) may be made by the potential whistleblower or someone acting on their behalf; or
- c. in writing (a letter, minute or email may be forwarded to the Director Investigation and Recovery).

11. The hotline will normally be manned during Canberra business hours (0830–1700), Monday to Friday and an answering service will be available at all other times. Persons using the hotline answering service are encouraged to leave contact details to enable personal contact to be made. The hotline telephone system is a discrete and confidential system and personal information left in this way, is protected.

If you decide to use the Whistleblower Hotline, the contact number is

1800 673 502

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ANNEX A TO
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Who will I speak to when I contact the Defence Whistleblower Scheme?

12. The Director Investigation and Recovery or an assigned investigator will discuss the matter with you.

13. If you use the Whistleblower Hotline you may speak personally to the Director Investigation and Recovery or to an investigator, or alternatively leave contact details on the answering service. In this instance, arrangements will be made for an investigator to contact you at a suitable time and location.

Protection available under the Defence Whistleblower Scheme

14. Specific measures will be taken to protect the identity of members who make disclosures under the scheme. Individuals making a report will fall into one of the following categories:

- a. **Anonymous whistleblower**—A report of misconduct may be made anonymously, by way of the Whistleblower Hotline or in writing to the Director Investigation and Recovery (CP3-2-015, Department of Defence, CANBERRA ACT 2600). It should be remembered that insufficient detail might prevent an initial assessment being made. A disadvantage of this approach is that it will not be possible to provide feedback to the whistleblower on the outcome of the initial assessment.
- b. **Whistleblower whose identity may be known or guessed**—A person may seek to report suspicions of misconduct and in doing so, accept that their identity may become known or their identity is unable to be protected. In these circumstances, specific measures to protect the whistleblower against reprisals and discrimination will be taken, if necessary.
- c. **Whistleblower whose identity may be protected**—A person may seek to provide information to the Director Investigation and Recovery and have their identity protected. Specific measures will be undertaken to protect their identity.

Will my identity be protected?

15. Maintaining confidentiality is crucial in ensuring that people are confident to make a report and that adverse consequences do not occur in respect of persons who make reports to the DWS. The Director Investigation and Recovery will protect a whistleblower's identity, where possible and will advise the person concerned when there is a chance that it may not be possible.

16. There may be occasions when the disclosure of your identity is required by law. These include:

- a. pursuant to a subpoena or other court order,
- b. pursuant to a search warrant,
- c. in respect to a notice to produce,
- d. other compulsive means required or authorised by law,
- e. by direction by a Parliamentary Committee, and
- f. court proceedings.

The likelihood of such situations can be discussed between the person making the report, Director Investigation and Recovery or an investigator.

Effectiveness of identity protection

17. The effectiveness of the protection of the identity of a person who makes a report is dependent on a number of factors, for example:

- a. the number of people who know or might reasonably guess that a particular individual may be making the report,
- b. whether the matter has previously been reported outside the DWS, or
- c. where the source of the report can easily be deduced due to the nature of the report or the small number of people who know about it.

18. It is also the responsibility of the person making the disclosure to maintain confidentiality. They should not divulge any details of the report to any person other than to the investigators assigned to the case.

19. Protection for whistleblowers will continue after the completion of the investigation.

20. The scheme does not, however, protect Defence members from criminal or disciplinary action should they have been involved in any action that constitutes a criminal act or breaches codes of conduct.

Will all reports be investigated?

21. An initial assessment will be made of all allegations that are disclosed to the Director Investigation and Recovery. Following this assessment a decision will be made as to whether there is sufficient information available for a full investigation.

22. A report may not be investigated if it is found to be:

- a. frivolous, malicious or vexatious;
- b. without substance; or
- c. a matter that has previously been investigated by another organisation or agency, unless the report is made regarding the actual conduct of the investigation.

Who will investigate the suspected misconduct?

23. A determination will be made by the IG, in consultation with the whistleblower, concerning the most appropriate way to manage and investigate the suspected misconduct. An investigation may be conducted by the appropriate Defence investigative or other authority including IG, the relevant chain of command, Service Police, Defence Security Authority and Defence Safety Management Agency. In exceptional circumstances, the matter may be referred to an agency or authority external to Defence.

Progress and outcome of an investigation

24. The investigator assigned to a person who makes a report will discuss with them the practical implications of how the investigation will progress. Whenever possible the whistleblower will be briefed as to the findings of the investigation and any subsequent action taken to address the matter reported. They will also be informed if a decision is taken not to commence an investigation or to discontinue an investigation and the reason for such decisions.

Managing the welfare of the person making the disclosure

25. It is appreciated by those responsible for the DWS that the experience of reporting can be difficult and disturbing for the individual concerned. The Directorate of Fraud and Investigation Recovery is committed to the protection and wellbeing of persons who disclose such information. All reasonable steps will be taken to foster a supportive environment and for the immediate welfare of the person making the disclosure.

26. Additional professional services, such as counselling, may be provided.

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Occurrence of detrimental action

27. Any detrimental action taken in respect of a person making, or suspected of making, a whistleblower report under the DWS, will not be tolerated. Where such action is detected, the matter may be referred to:

- a. Civilian Field Case Management if the incident involves a breach against the APS Code of Conduct under the *Public Service Act 1999*;
- b. Service Police, if the incident involves a disciplinary offence under the *Defence Force Discipline Act 1982*; or
- c. appropriate civilian police authorities if there is evidence that a criminal offence may have been committed.

What are the rights and obligations of whistleblowers?

28. These are outlined in appendix 2.

Appendixes:

1. Case management flow diagram
2. Rights and obligations of a whistleblower

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APPENDIX 2 TO
ANNEX A TO
DI(G) PERS 45-5
File as: (NAVY PERS 16-16
(ARMY PERS 15-1
(AIR FORCE PERS 29-31

RIGHTS AND OBLIGATIONS OF A WHISTLEBLOWER

Your rights

1. As a consequence of making a whistleblower report, you will be afforded:
 - a. protection from victimisation or unlawful discrimination;
 - b. protection of personal information that is provided by you, in accordance with the *Privacy Act 1988*;
 - c. subject to requirements of law, protection of identity where this has been requested by the whistleblower;
 - d. consultation as to the carriage of the investigation and advice on the outcome of the investigation;
 - e. the provision of whistleblower support as determined to be appropriate by the Inspector-General; and
 - f. prior notice if there is a necessity to reveal your identity, to inform you of the reason for such disclosure and to whom the disclosure is made.

Your obligations

2. As a whistleblower you are obliged to:
 - a. maintain confidentiality in respect of the details of your report, including the identity of person(s) identified in your report as being suspect of misconduct;
 - b. ensure and cooperate in maintaining confidentiality of the investigation;
 - c. keep the investigator informed of information that may affect the investigation;
 - d. report to the investigator assigned to your case any instances of detriment as described in paragraph 26. of this instruction;
 - e. conduct yourself in an ethical manner; and
 - f. not report the matter to any other organisation or person while the matter is the topic of investigation.

In accordance with Australian legal principle and practice, a person identified in a report as allegedly involved in misconduct is presumed innocent until proven guilty.

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ANNEX B TO
DI(G) PERS 48-5
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(AIR FORCE PERS 29-31

CONTACT TELEPHONE NUMBERS AND FURTHER ADVICE

WHISTLEBLOWER HOTLINE

Defence Whistleblower Scheme Hotline 1800 673 502

Other helpful Defence contacts

Defence Security Authority Hotline (02) 6266 2599

Army (Fair Go Hot Line) 1800 100 064

Complaints Resolution Agency (02) 6266 4364

Defence Equity Advice Lines 1800 644 247

1800 803 831

1800 626 254

International Callers +61 800 3333 6311

FIND (Defence Community Organisation) 1800 020 031

External agencies

Public Service and Merit Protection Commission (02) 9286 2400

Commonwealth and Defence Force Ombudsman (02) 6276 0111

Human Rights and Equal Opportunity Commission (02) 9229 7600

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