

## NOTICE OF FILING

### Details of Filing

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## RESPONDENT'S OUTLINE OF SUBMISSIONS

**FEDERAL COURT OF AUSTRALIA**  
**DISTRICT REGISTRY: VICTORIA**  
**DIVISION: GENERAL**

**No VID 364 of 2023**

**JULIAN KNIGHT**

Applicant

**DEFENCE FORCE OMBUDSMAN**

Respondent

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Filed on behalf of the Respondent, Defence Force  
Ombudsman

File ref: 23004731

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## **PART I INTRODUCTION AND SUMMARY**

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1. In 2013, the applicant (**Mr Knight**) made a submission to the Defence Abuse Response Taskforce (**DART**) and applied for a reparation payment in relation to abuse which occurred in 1987 when he was a Defence cadet. In 2016, the DART advised that reparation would not be payable. It did not notify Mr Knight of a formal decision in respect of other potential DART outcomes, such as counselling.
2. On 16 March 2023, Mr Knight submitted to the respondent (**DFO**) a **renewed complaint** which was based on his original DART submission. On 21 March 2023 the DFO advised that the renewed complaint was an 'excluded complaint' under the *Ombudsman Regulations 2017* (Cth), because it was the same in substance as a complaint that had been 'dealt with' by the DART. As a result of this **Decision**, the DFO could not respond to the complaint by taking actions and making recommendations as set out in s 14(1)(a) of the Regulations.
3. By **application** filed on 24 May 2023, Mr Knight seeks mandamus and a declaration on the basis that his renewed complaint is not an 'excluded complaint'. In essence he argues that his original complaint was not 'dealt with' by the DART because it did not complete a process of finally determining all possible outcomes: see [29]-[38] of his Further Written Submissions dated 19 January 2024 (**AS**). Other arguments raised by Mr Knight, which go to questions of whether the DFO can or should take particular action in relation to his renewed complaint, are misconceived: the DFO has not considered, and refused to take, any particular action; the DFO has concluded that no such function is available under the Regulations.
4. To succeed in this application Mr Knight must demonstrate two things. *First*, he must make good his statutory construction argument that a complaint will only have been 'dealt with' if the DART had 'completed' its process by finally determining which of the various outcomes he should receive. *Second*, if he succeeds on that construction point, Mr Knight must also show, as a matter of fact, that the DART had not completed that process.
5. Neither argument can be made good. As to the first, a consideration of text, context and purpose denies Mr Knight's construction. 'Dealt with' does not point to a need for some form of prescriptive, specific, final treatment of a complaint; it requires no more than that the complaint was in fact received and handled by the DART. As to the second, even if 'dealt with' did require the DART to complete a process of deciding what outcome or outcomes Mr Knight should receive, it can be seen that this occurred.

## **PART II RELEVANT FRAMEWORK – THE DART AND THE DFO**

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6. Before turning to Mr Knight's substantive argument that the renewed complaint had not been 'dealt with' by the DART it is first necessary to outline the functions of the DART and the subsequent conferral of related functions on the DFO.

### **The DART**

7. The DART was a time-limited executive body established on 26 November 2012 as part of the Government's response to an independent review into allegations of abuse in Defence, alleged to have occurred prior to 11 April 2011: CB 574-575.
8. The DART was established to assess and respond to individual cases of alleged historical abuse in Defence. It was, by design, a highly discretionary and informal body. It did not make formal factual findings, did not make legally binding determinations, did not conduct investigations or inquiries and did not give directions to Defence or anyone else. However, it could assist with a range of outcomes for individuals who made complaints of abuse, which might not otherwise have been available through legal or administrative processes: CB 222-3. Significantly, it was able to make reparation payments under the Defence Abuse Response **Scheme**: CB 245
9. The DART was only able to act on complaints that fell within the scope of its Terms of Reference: CB 233. The evidentiary threshold for the assessment of complaints was that of 'plausibility': CB 233, CB 238. Where a complaint was in scope and found to be plausible, it was open to the DART to consider various possible outcomes including:
- a. a one-off reparation payment of up to \$50,000 under the Scheme;
  - b. a referral for free counselling under the Defence Abuse Counselling Program;
  - c. participation in the Defence Abuse Restorative Engagement Program;
  - d. referral of appropriate matters to civilian police for their assessment and possible investigation and prosecution; and
  - e. referral to the Chief of the Defence Force (**CDF**) for administrative and/or disciplinary sanction or management action: see CB 244-254.
10. The DART was not required to reach a decision on particular outcomes. Rather it was acknowledged that complainants 'may receive one or any combination of these outcomes, depending on their circumstances': CB 244.

## The Defence Force Ombudsman's functions

11. The DFO was established in 1986, with general investigation functions for Defence-related complaints: see Part IIA of the *Ombudsman Act 1976* (Cth). Those general functions did not include making reparation and were not expressed by reference to the kind of outcomes which were available through the DART.
12. The DART concluded on 30 June 2016. Thereafter, the DFO was given similar functions, but on a statutory basis. This was initially by amendments to the Regulations, which commenced on 1 December 2016.<sup>1</sup> Those functions were brought into their current form by amendments which commenced on 16 December 2017.<sup>2</sup>
13. As a result of these amendments, the DFO functions under the Regulations now include reviewing certain categories of abuse complaints, and taking actions to address such complaints where the DFO is satisfied that the abuse is reasonably likely to have occurred. In particular, s 14 of the Regulations now provides relevantly as follows in relation to 'new complaints':

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

- (1) For the purposes of paragraph 19C(1)(a) of the Act, the Defence Force Ombudsman has:
  - (a) the function of taking appropriate action to respond to a new complaint of abuse made by a complainant if the Defence Force Ombudsman is satisfied that the abuse is reasonably likely to have occurred, including any of the following actions:
    - (i) facilitating counselling for the complainant;
    - (ii) using a process to address or resolve the complaint, facilitated by the Defence Force Ombudsman or another person, such as an alternative dispute resolution process or a restorative engagement conference;
    - (iii) making a recommendation to the Defence Department in respect of the complaint;
    - (iiia) if the complaint is covered by subsection (1B)—making recommendations under section 14A in respect of the complaint;
    - (iv) deciding not to take, or to continue to take, action in response to the complaint; and
  - ...
- (1A) A complaint is a ***new complaint*** if:
  - (a) the complaint is about abuse engaged in by a member of Defence; and
  - (b) either:
    - (i) the complaint is made to the Defence Force Ombudsman on or after the amendment day; or
    - (ii) the complaint was made to the Defence Force Ombudsman on or after 1 December 2016 but before the amendment day and, immediately before the amendment day, the complaint had not been finally dealt with; and
  - (c) the complaint is not an excluded complaint.
  - ...

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<sup>1</sup> *Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulations 2016.*

<sup>2</sup> *Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulations 2017.*

14. Whether a complaint to the DFO is a 'new complaint' turns on the following definition of 'excluded complaint' in s 5:

*excluded complaint* means a complaint that:

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

15. In this way, the statutory provisions preclude the DFO from taking any of the actions under s 14(1)(a) – including recommending that a reparation payment be made – to address an abuse complaint which has previously been 'dealt with' by the DART.<sup>3</sup>

### **PART III MR KNIGHT'S COMPLAINT WAS 'DEALT WITH' BY THE DART**

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16. It would appear uncontroversial that Mr Knight's renewed complaint is the same in substance as his complaint to the DART. There is additional material which expands on his complaint to the DART but does not raise new complaints. It also discusses events which post-date DART's involvement, such as associated court proceedings, but these are not complaints about abuse suffered by Mr Knight when he was a member of Defence. As such, Mr Knight's characterisation of his complaint as being a 'renewed complaint' is accurate, and properly reflects that it is the same in substance as his complaint to the DART.
17. The live issue is whether that renewed complaint had been 'dealt with' by the DART. As already noted, this raises *first* a statutory construction question as to the meaning of 'dealt with' and, *second* a factual question as to whether the DART's handling of Mr Knight's complaint can be seen to fall within that statutory meaning.

#### **a. Statutory construction: the meaning of 'dealt with'**

18. Mr Knight's proposed declaration indicates that 'dealt with' requires that 'the complaint process was completed by DART': see application at order 2. This meaning is developed further in his submissions as being 'the completion of the process whereby the DART determined which of the various outcomes the complainant should receive': AS [36]. For the reasons developed below, 'dealt with' does not have so prescriptive a meaning. It does not look to, or depend upon, an analysis of the DART's processes or the particular outcomes afforded. Rather, it is concerned with the more basic question of whether a particular complaint that was made to the DART can be seen to have

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<sup>3</sup> As to reparation, see s (1)(a)(iia), (1B) and 14A. Note that the power in s 14B to recommend reparation payments for 'old complaints' has no application to the present case because it only relates to complaints made to the DFO on or after 1 December 2016 but before the 'amendment day' of 16 December 2017: see s 14B(2)(a).

been considered or handled by the DART. In other words, 'dealt with' is used in an ordinary and general way, not in a technical or prescriptive way.

19. The well-established principles of statutory construction also govern the construction of regulations. In *ENT19 v Minister for Home Affairs* (2023) 410 ALR 1, Gordon, Edelman, Stewart and Gleeson JJ summarised those principles as follows at [86]:

... The starting point for the ascertainment of the meaning of a provision is its text, while at the same time regard is to be had to its context and purpose. Of course, the statutory context of regulations includes the Act under which the regulations were made and are sustained. Context should be regarded at the first stage and not at some later stage and it should be regarded in its widest sense, including by reference to the legislative history and extrinsic material. (footnotes omitted)

20. Applying those principles, Mr Knight's construction is denied by the text, context and purpose of s 14 of the Regulations.

21. **Statutory text:** Beginning with the words used, the term 'dealt with' is telling. In the absence of a statutory definition the ordinary and natural meaning of a term will generally be preferred 'unless it is plain that Parliament intended it to have some different meaning'.<sup>4</sup> Here the ordinary and natural meanings do not suggest that any particular level of finality or thoroughness is required in order to say that something has been 'dealt with'. On the contrary, they indicate that a thing will be 'dealt with' if it has been in some way handled or engaged with. Dictionaries give the following definitions:

- a. Deal/dealt means: – '*To conduct oneself towards persons*';<sup>5</sup> '*To take part in, have to do with, occupy oneself, do business, act*'; '*To have to do with (a thing) in any way; to busy or occupy oneself, to concern oneself with*'; '*(a) to deal with: to act in regard to, administer, handle, dispose in any way of (a thing). (b) to handle effectively; to grapple with; to take successful action in regard to*'.<sup>6</sup>
- b. Deal with/dealt with means: – '*to occupy oneself or itself with*'; '*to take action with respect to; handle*'; '*to take effective action with respect to; handle successfully*'; '*to deal with: to act towards (a person), to treat (in some specified way)*'.<sup>8</sup>

22. It is noteworthy that the provision uses 'dealt with' rather than some other more obviously directive and fixed expression, such as 'decided by' or 'determined by' or

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<sup>4</sup> *Masson v Parsons* (2019) 266 CLR 554 at [26] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ).

<sup>5</sup> Macquarie Dictionary (online at 8 February 2024), 'deal' (def 1).

<sup>6</sup> Oxford English Dictionary (online 8 February 2024), 'deal' (def II, II.14 and II.16 respectively).

<sup>7</sup> Macquarie Dictionary (online at 8 February 2024), 'deal with' (def b, c and d respectively).

<sup>8</sup> Oxford English Dictionary (online 8 February 2024), 'deal' (def II.17a).

'resolved by' or 'finalised by' the DART, or 'addressed by the DART in accordance with its Terms of Reference'. A number of such expressions are found in the Act, so can be expected to have been used had that been the intended effect.<sup>9</sup>

23. It is also noteworthy that the drafters did not use adjectives which would have demanded a particular type or degree of 'dealing with'. This is especially so given that in s 14, and related provisions, the Regulations refer to complaints to the DFO which have or have not been 'finally dealt with': see ss 14(1A)(ii) above, and 14B(2)(b). Had the definition of 'excluded complaint' been intended to only exclude those complaints where (to use Mr Knight's words) DART had 'completed' the complaint process, it might be expected that the drafters would have used the same expression 'finally dealt with'.
24. The more general sense in which 'dealt with' is used is also reinforced by the way in which that same unqualified expression is used elsewhere. Section 14(1)(d) gives the DFO a broad function of 'dealing with any matter relating to complaints previously made to, and *dealt with* by, the Defence Abuse Response Taskforce' (emphases added). Were Mr Knight's construction to be preferred, the italicised words would limit this obviously broad investigative function to only those matters which related to complaints that had been fully and completely dealt with by the DART: in order for this DFO function to be enlivened it would not be enough for the DART to have received and in some way processed or handled the complaint. And equally, the underlined words would impose some unspecified limit of completion or finality on how the DFO dealt with that complaint. Neither limit would seem a sensible one, whereas using 'deal with' in its ordinary and natural sense affords the broad and flexible function which would appear to have been intended.
25. A similar picture emerges from the use of 'dealt with' in the Act itself (which, as explained, is part of the context for the construction of the Regulations). In particular, various provisions address the discretion or opinion of the Ombudsman about not addressing complaints where they could be 'more conveniently or effectively dealt with by' another body, authority or part of an Act.<sup>10</sup> Likewise, a non-prescriptive and general use of that term can be seen in s 8D where it is used to describe an arrangement whereby investigations are to be 'dealt with jointly by the Ombudsman and the Australian Federal Police'. 'Dealt with' here sensibly carries its general meaning of

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<sup>9</sup> See eg ss 24(1) and 25 ('determined by' a tribunal); 19X(6)(e); 19ZS(7)(a); 20ZX(8)(a) ('decided' under a particular section); 20P(a) ('resolved to the complainant's satisfaction').

<sup>10</sup> See, ss 6(4D)(b), 6(6)(b), 6(9)(b), 6(11A)(b), 6(13)(b), 6(20)(b), 6(21)(b), 6A(1)(a)(ii), 6B(1)(a)(ii), 6C(1)(a)(ii), 6D(4)(b), 6E(1)(a)(ii), 6F(1)(b), s 19P(b)(ii), 19ZK(3), 20K(1), 20L(1), 20ZQ(1).



being considered/handled by another body, rather than a technical meaning of being exhaustively considered and addressed under all available processes of that body.

26. Finally, and for completeness, it might be noted that 'dealt with' does not have some settled legal or technical meaning. While its meaning will always depend upon its particular context, it is an expression that has been seen to be used in a broad and general way, not a technical and particular one.<sup>11</sup>
27. **Context and purpose:** It is important to consider the context and purpose for the 'excluded complaint' limitation on the DFO's abuse response functions. Those functions involve, broadly speaking, ensuring that complaints that were not able to be put before the DART are still able to be addressed in some way, now by the DFO, notwithstanding that the DART has ended. This transfer of the DART's functions to the DFO through an amendment to the Regulations was first recommended by the DART itself in Chapter 14 ('Legacy Issues') of its 'Report on abuse in Defence' provided to Government on 26 November 2014: see CB 277-280. That recommendation was accepted, and the extrinsic materials accompanying the amendments to the Regulations reflect that intention, as well as the intention that DFO would *not* be authorised to take appropriate action to respond to a complaint that was previously made to, and dealt with by, the DART.<sup>12</sup>
28. That context provides the obvious explanation for why the Regulations have a broad exclusion for complaints that were handled by the DART. Plainly enough, it was *not* the intention of Government to give complainants a second opportunity to agitate the same complaint again, or to obtain further or different outcomes in respect of such a complaint. The tight statutory categories of 'new complaint', 'excluded complaint' and 'old complaint' stand against any such understanding of the DART's functions. And no such purpose can be found in the relevant extrinsic materials. Indeed, the only example there given of complaints that had not been 'dealt with' by the DART was matters which 'did not meet the registration date under the DART';<sup>13</sup> in other words, complaints which were not considered or handled by the DART at all.
29. Moreover, it is important to recall the nature and context of how the DART handled complaints. As an executive body operating under broad terms of reference, it did not have some prescriptive or defined standard against which to assess whether it had 'completed' its handling of a complaint. By design it was a flexible and informal body,

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<sup>11</sup> See eg *R v Luscombe* (1999) NSWCA 365 at [20] and [37] (Spigelman CJ, Dunford and Adams JJ).

<sup>12</sup> Explanatory Statement to the *Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulation 2016*, p 1; Explanatory Statement to the *Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulations 2017*.

<sup>13</sup> Explanatory Statement to the *Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulation 2016*, p 1.

and the (non-exhaustive) outcomes available to it were, themselves, generally informal and flexible. In some cases, it may be expected to have considered and progressed, or partially progressed, a range of options, but in ways that were adapted to the complaint and the complainant. There was also an established internal reconsideration process in respect of most decisions to allow the opportunity for a complainant to provide DART with additional information that could lead to reconsideration of a decision: CB 238. Accordingly, it was inherently a body that might 'deal with' complaints in a wide variety of ways, and to a wide variety of end points. It is unsurprising that the Regulations did not adopt a prescriptive conception of a process that had been completed or finally dealt with.

30. Significant difficulties would arise were Mr Knight's construction to be adopted. If the DFO were required to consider whether the processing of a complaint had been 'completed' by the DART, in the sense for which Mr Knight argues, it would need to conduct a close review of the DART's handling of that complaint in order to assess whether the DFO could, or could not, progress it in accordance with the DFO's statutory functions. A detailed and evaluative assessment of this kind, which necessarily falls to be made in the absence of any fixed or certain standard, is an implausible condition for the exercise of the DFO's statutory functions. Indeed, noting the historical and informal nature of the DART it may not be possible for the DFO to make such an assessment. For example, the DFO might be called on to make evaluative decisions about the extent to which counselling had been 'completed' where that possibility had been left on the basis that the complainant had said that they would 'think about it'.
31. To resolve questions of these kinds may in some cases make the DFO's examination of the DART's handling of a complaint a detailed and onerous exercise. This is distinctly at odds with the less burdensome standard that the DFO is required to apply to the assessment of the complaint itself – whether it is 'reasonably likely to have occurred': s 14(1)(a).
32. For all of the above reasons, the statutory intention is plain – 'dealt with' is to be given its ordinary and natural meaning and requires no more than that the DART considered and processed the complaint.

**b. Facts: the DART's handling of Mr Knight's complaint**

33. Turning to the facts, it is abundantly clear that Mr Knight's original complaint was considered and processed by the DART. It is enough to give the following brief summary of how the DART dealt with that complaint.

- a. By facsimile of 26 November 2013 Mr Knight lodged an Application for a Reparation Payment Form, together with a statutory declaration and his personal account: CB 15-160. Mr Knight sent follow up correspondence about that application for reparation: CB 174, 175, 599.
- b. In September and October 2014, the DART engaged with ACT Policing, consistent with its function of referring potential criminal matters to civilian police, to provide information in relation to Mr Knight's complaint: CB 192-197.
- c. On 14 January 2015 an assessment of Mr Knight's complaint was finalised. Consistent with the DART's Terms of Reference, that assessment determined which of his complaints were within scope and plausible: CB 592.
- d. On 5 March 2015, the Chair of DART, Mr Robert Cornall AO, wrote to the former Minister for Justice recommending that no reparation payment be made to Mr Knight and recording why, in his view, certain other outcomes were likely to be inappropriate: see affidavit of Madisen Anne Scott dated 16 February 2024, Annexure MAS-3, p 16.
- e. On 15 June 2015, the DART advised Mr Knight that Ministers had directed that it could not make reparation payments to incarcerated complainants and that, as a result, he was not eligible for reparation: CB 600.
- f. On 21 July 2015 the DART finalised an Administrative and/or Disciplinary Sanction Recommendation Report in which the Chair of the DART concluded that Mr Knight's complaint did not warrant referral to CDF, in accordance with DART's criteria for non-referral: CB 602.
- g. On 4 September 2015 Mr Knight commenced proceedings in the Federal Court in relation to that decision that he was not eligible for reparation: CB 9 at [19]; CB 607. The Commonwealth subsequently offered to reconsider that decision and engaged extensively with Mr Knight about that reconsideration: CB 607-656.
- h. On 5 May 2016 a new ministerial direction was given that applicants convicted of a serious crime were not entitled to a reparation payment: CB 657. Mr Knight's application was reconsidered in line with this direction: CB 660. On 20 May 2016 he was advised by the DART of a preliminary determination that he was not eligible for reparation: CB 661. Mr Knight corresponded with the DART about that preliminary determination: CB 663-667.
- i. On 8 June 2016 the DART advised Mr Knight that it had made a **final decision** that he was not eligible for a reparation payment: CB 669.

- j. Mr Knight subsequently pressed his Federal Court proceedings on the limited basis that he challenged the final decision as being contrary to the Constitution; this was dismissed: see *Knight v Commonwealth of Australia* [2016] FCA 1160.
34. In those circumstances, there is no substance at all to Mr Knight's contention that the DART had not 'dealt with' his complaint because it had not completed its consideration of all available outcomes: see AS [36]. The only apparent basis for that submission is Mr Knight's correspondence to the DART on 14 July 2015 in which he asked whether he was 'also precluded from receiving other outcomes': see AS [20] and CB 601. While that specific question does not appear to have received a direct reply from the DART, this provides no basis for suggesting that the DART's handling of his complaint remained incomplete. So much can be seen from the following.
35. *First*, Mr Knight's one-line query did not call for a direct response. The query was made in the context of the original decision that he was not entitled to reparation. That decision was reconsidered, and in terms which were clearly only referable to the question of reparation, not other outcomes. As such, the query was clearly answered by the terms of the new decision. *Second*, it is quite clear from Mr Knight's application, correspondence and court proceedings that his central concern throughout was as to reparation rather than other outcomes. It is unsurprising therefore that the DART's communications and records were primarily directed to this. *Third*, in any event it is clear from the above summary that DART *did* actively consider other outcomes, actioning some (in its communications with ACT Policing) and not others. *Finally*, given Mr Knight's history of dealing with the DART and his related litigation, it is noteworthy that he did not correspond with the DART in terms which suggested a concern about lack of finality, that he did not seek to utilise the DART's internal reconsideration processes, and that he did not litigate to seek, for example, mandamus.
36. As a result, there can be no doubt that the DFO was correct to conclude that Mr Knight's complaint had been 'dealt with' by the DART. That conclusion is correct when 'dealt with' is given its intended ordinary meaning of being considered and processed. And it would equally be correct even if Mr Knight's technical and prescriptive construction were to be adopted.

## **PART IV OTHER MATTERS**

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### **Mr Knight's other arguments**

37. Ground 1 of the application, and Mr Knight's submissions at AS [39]-[45], are misconceived insofar as they go to questions of whether the DFO can or should take particular action in relation to his renewed complaint. The DFO has not assessed his complaint or refused to take any particular action under s 14(1)(a). Rather, as

Mr Knight's Ground 2 recognises, the DFO has concluded that the renewed complaint is an 'excluded complaint'. That being so, the DFO has no statutory basis to take actions in relation to that complaint.

### **Jurisdiction – s 78B notice and notice of objection to competency**

38. On 8 December 2023 the DFO gave notice under s 78B of the *Judiciary Act 1903*. The constitutional issue is whether s 33 of the Act is a privative clause which purports to oust the Federal Court's jurisdiction under s 39B of the *Judiciary Act 1903*. The DFO does not contend that s 33 purports to operate in that way, and accepts that judicial review of the Decision is available under s 39B. No Attorney-General has, to date, indicated an intention to intervene.
39. For completeness, and to ensure no error as to jurisdiction, the DFO says that in so far as the application is brought under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**) it is not amenable to review. As set out in the DFO's notice of objection to competency filed on 22 September 2023, the Decision is not a decision to which the ADJR Act applies. This is because even if the renewed complaint was not an 'excluded complaint', the action available to the DFO under s 14(1)(a) of the Regulations is not action which would confer, alter or otherwise affect legal rights or obligations: such action only involves non-binding and non-enforceable recommendations: see *Griffith University v Tang* (2005) 221 CLR 99 at [80], [89]; *Fitzwarryne v Commonwealth Ombudsman* [2023] FCA 175 at [39]-[40].

### **PART V ORDERS**

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40. For the reasons explained in these submissions, the application should be dismissed. In view of Mr Knight's ongoing incarceration, the DFO does not seek costs.

Date: 16 February 2024

**T M Begbie**  
**J A Lucas**  
Counsel for the Respondent

  
Emily Nance  
For and on behalf of the  
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Solicitor for the Respondent

## NOTICE OF FILING

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
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Registrar

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Form 59  
Rule 29.02(1)

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: VICTORIA  
DIVISION: GENERAL**

**VID 364/2023**

**JULIAN KNIGHT**  
Applicant

**DEFENCE FORCE OMBUDSMAN**  
Respondent

**AFFIDAVIT**

Affidavit of: Madisen Anne Scott  
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Occupation: Lawyer  
Date affirmed: 16 February 2024

Document Number	Details	Paragraph of affidavit referring to annexure	Page
1.	Affidavit of Madisen Anne Scott affirmed 16 February 2024		1-3
2.	Annexure MAS-1 is a copy of the letter dated 9 January 2024 from the applicant to the Australian Government Solicitor (AGS)	[4]	4-5
3.	Annexure MAS-2 is a copy of the letter dated 28 May 2014 from the Honourable Len Robert Smith RFD QC, then Chair of the Defence Abuse Response Taskforce (DART) to the then Minister for Defence and Attorney-General	[6.1]	6-10
4.	Annexure MAS-3 is a copy of the letter dated 5 March 2015 from Robert Cornall AO, then Chair of the DART, to the then Minister for Justice	[6.2]	11-16
5.	Annexure MAS-4 is a copy of a letter dated 24 June 2015 from the then Minister for Defence	[6.3]	17-18

AM

M.A. Scott

Filed on behalf of the Respondent, Defence Force Ombudsman  
Prepared by: Madisen Scott  
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Document Number	Details	Paragraph of affidavit referring to annexure	Page
	and Attorney-General to Robert Cornall AO, then Chair of the DART		

I, Madisen Anne Scott of Level 21, 2 The Esplanade, Perth, Western Australia, Lawyer, affirm:

1. I am an AGS lawyer within the meaning of s 55I of the *Judiciary Act 1903* (Cth) and I have carriage of this matter on behalf of the Respondent.
2. The matters deposed in this affidavit are true and correct to the best of my knowledge, information and belief and, unless stated otherwise, are based on my own personal knowledge and records and information held by AGS.
3. On 8 December 2023, I arranged for a Consolidated Court Book of relevant documents to be filed in this proceeding.
4. On 9 January 2023, I received a letter from the Applicant (**Letter**), via email, stating that documents which were referred to in a document in the Consolidated Court Book were not included in the Consolidated Court Book, and asking whether the Respondent would produce these documents.  
Annexed hereto and marked **MAS-1** is a copy of the Letter.
5. Upon receipt of the Letter, I sought instructions on whether the Office of the Respondent held any documents of the kind referred to.
6. Following my inquiry, I received the following 3 documents:
  - 6.1. a letter dated 28 May 2014 from the Honourable Len Robert Smith RFD QC, then Chair of the DART, to the then Minister for Defence and Attorney General;
  - 6.2. a letter dated 5 March 2015 from Robert Cornall AO, then Chair of the DART, to the then Minister for Justice;
  - 6.3. a letter dated 24 June 2015 from the then Minister for Defence and Attorney-General to Robert Cornall AO, then Chair of the DART.

Annexed hereto and marked **MAS-2** is a copy of the letter dated 28 May 2014.

Annexed hereto and marked **MAS-3** is a copy of the letter dated 5 March 2015.

Annexed hereto and marked **MAS-4** is a copy of the letter dated 24 June 2015.

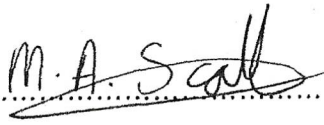
*AMA*

*M.A. Scott*



7. Redactions have been made to MAS-2 and MAS-3 to remove identifying details of unrelated third parties.

Affirmed by the deponent at Perth in the  
State of Western Australia on 16  
February 2024



M.A. Scall

Before me:

Signature of witness:



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Arran Gerrard  
AGS Lawyer within the meaning of s55I  
of the *Judiciary Act 1903* (Cth)