FEDERAL COURT OF AUSTRALIA

Knight v Defence Force Ombudsman [2025] FCA 1098

File number:	VID 1299 of 2024
Judgment of:	**MOSHINSKY J**
Date of judgment:	11 September 2025
Catchwords:	**ADMINISTRATIVE LAW** – judicial review – where the applicant made a complaint to the Defence Force Ombudsman (**DFO**) regarding the handling of an earlier complaint made by the applicant to the Defence Abuse Response Taskforce – where the DFO decided not to take any steps in response to the fresh complaint – whether the DFO failed to perform his statutory function of "dealing with" the applicant's complaint and thereby fell into jurisdictional error – application dismissed
Legislation:	*Administrative Decisions (Judicial Review) Act 1977* (Cth), s 5 *Judiciary Act 1903* (Cth), s 39B *Ombudsman Act 1976* (Cth), s 19C *Ombudsman Regulations 2017* (Cth), ss 5, 14
Cases cited:	*Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405 *Forster v Jododex Australia Pty Ltd* [1972] HCA 61; 127 CLR 421 *Knight v Defence Force Ombudsman* [2024] FCA 474; 182 ALD 397
Division:	General Division
Registry:	Victoria
National Practice Area:	Administrative and Constitutional Law and Human Rights
Number of paragraphs:	73
Date of last submissions:	1 August 2025
Date of hearing:	18 June 2025
Counsel for the Applicant:	The applicant appeared for himself

Counsel for the Respondent:	Ms K McInnes
Solicitor for the Respondent:	Australian Government Solicitor

ORDERS

VID 1299 of 2024

BETWEEN:	**JULIAN KNIGHT** Applicant
AND:	**DEFENCE FORCE OMBUDSMAN** Respondent

ORDER MADE BY:	**MOSHINSKY J**
DATE OF ORDER:	**11 SEPTEMBER 2025**

THE COURT ORDERS THAT:

1. The application be dismissed.

2. There be no order as to costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

MOSHINSKY J:

Introduction

1 The applicant, who served in the Australian Regular Army from 12 January 1987 to 24 July 1987, seeks judicial review of a decision of the respondent, the Defence Force Ombudsman (the **DFO**).

2 By letter dated 23 May 2024, the applicant wrote to the DFO (the **2024 Complaint**) complaining about the way an earlier complaint to the Defence Abuse Response Taskforce (**DART**) had been dealt with. The 2024 Complaint was expressed to be made pursuant to the *Ombudsman Act 1976* (Cth) and s 14(1)(d) of the *Ombudsman Regulations 2017* (Cth) (the **Regulations**).

3 Section 19C(1)(a) of the *Ombudsman Act* relevantly provides that the functions of the DFO are to investigate complaints made to him or her under the Act and "to perform such other functions as are conferred on him or her by … the regulations".

4 Section 14(1) of the Regulations relevantly provides that, for the purposes of s 19C(1)(a) of the Act, the DFO has:

> (d) the function of dealing with any matter relating to complaints previously made to, and dealt with by, the Defence Abuse Response Taskforce.

5 By letter dated 1 October 2024 (the **October 2024 DFO Letter**), the DFO (by a delegate) notified the applicant that he had decided not to take any steps in response to the 2024 Complaint (the **Decision**).

6 By originating application dated 14 October 2024, the applicant applies for the following relief under s 39B of the *Judiciary Act 1903* (Cth):

(a) a writ of mandamus ordering the DFO to re-assess the 2024 Complaint, on the ground that the Decision constituted an error of law on the face of the record; and

(b) in the alternative, a declaration that in assessing a complaint pursuant to s 14(1)(d) of the Regulations, the DFO is not limited to recommending outcomes that were originally offered by the DART.

7 As developed in written and oral submissions, the essence of the applicant's contentions is that the DFO failed to perform his statutory function of "dealing with" the 2024 Complaint and thereby fell into jurisdictional error.

8 In my view, for the reasons that follow, the applicant's contentions are not made out. Although the DFO declined to take any action, the DFO did "deal with" the 2024 Complaint. It follows that the application is to be dismissed.

The hearing and the evidence

9 The applicant represented himself at the hearing.

10 At the hearing, the applicant relied on his affidavit dated 14 October 2024 and the documents in a Court Book. In addition, the applicant tendered a number of documents.

11 The DFO did not tender any additional material.

12 During the hearing, the applicant made submissions to the effect that, as a prisoner in a Victorian jail, he is unable to access the internet and his ability to make telephone calls is restricted. Therefore, he submitted, as a practical matter, he is unable to access counselling services through Open Arms (a counselling service for veterans and families) as assumed by the DFO in the October 2024 DFO Letter. In order to provide a proper evidentiary foundation for these submissions, at the conclusion of the hearing I made orders for the filing and service of additional material. Pursuant to those orders, the applicant prepared and filed a further affidavit dated 4 July 2025, together with a further submission, and the DFO filed a supplementary submission on 1 August 2025 (but dated 2 August 2025). The applicant indicated on 5 August 2025 that he did not wish to file a reply submission.

13 In the DFO's supplementary submission, the DFO contended that the applicant's 4 July 2025 affidavit was inadmissible on the basis that the evidence was not before the DFO at the time of the Decision, and the grounds of review are not such as to make the evidence relevant. In my view, in circumstances where the applicant contends that the DFO did not "deal" with his 2024 Complaint, and one of the aspects of his contention is that the DFO made a factual error in assuming that he was "able to seek to access counselling services without charge through Open Arms", the evidence in the applicant's affidavit is relevant to a matter in issue. Accordingly, I will admit the applicant's 4 July 2025 affidavit into evidence.

Background facts

14 Between 12 January 1987 and 24 July 1987, the applicant served in the Australian Regular Army. For most of that period, he served as a junior staff cadet at the Royal Military College, Duntroon. The applicant alleges that, during his service at Duntroon, he was subjected to various and constant acts of "bastardisation" by senior staff cadets. He also alleges that he was physically injured on three occasions as a result of actions by senior staff cadets.

15 On 9 August 1987, the applicant was arrested in Melbourne following his commission of a mass shooting that became known as the "Hoddle Street shootings". The applicant subsequently pleaded guilty to seven counts of murder and 46 counts of attempted murder. He was sentenced in 1988 to a term of life imprisonment with a minimum non-parole period of 27 years. The applicant's submissions state that his entitlement to parole was removed in 2014 by way of *ad hominem* legislation and that he remains in prison.

16 On 26 November 2012, the DART was established. The terms of reference of the DART were to investigate alleged abuse in the Australian Defence Force occurring prior to April 2011.

17 On 26 November 2013, the applicant submitted a Personal Account regarding his experiences at Duntroon to the DART (the **2013 Complaint**). This was 94 pages in length (plus 13 attachments) and included an account of his experiences of "bastardisation" and physical injuries. The applicant also submitted an Application for Reparation Payment form to the Defence Abuse Reparation Scheme (**DARS**).

18 On 13 January 2015, a DART Assessor drafted an Assessment Note in relation to the applicant's Personal Account. The DART Assessor found that the applicant's complaint contained an account of abuse that was plausible and raised plausible mismanagement by Defence of a plausible report of abuse.

19 On 26 June 2015, the Chair of the DART informed the applicant of the following in relation to his application for a reparation payment:

> The Taskforce has been awaiting directions from the Minister for Defence and the Minister for Justice in relation to applications from complainants who are incarcerated or on parole following their incarceration.
>
> The Taskforce has recently received advice from the Ministers that the Taskforce should not make reparation payments to incarcerated complainants or persons currently on parole. As a result of that decision, you are not eligible to receive a reparation payment from the Taskforce.

20 During 2015 and 2016, there was further correspondence between the applicant and the DART in relation to the 2013 Complaint.

21 On 8 June 2016, following a Ministerial direction, the Executive Director of the DART wrote to the applicant and informed him that, as he was a person who had been convicted of a serious crime, he was not eligible for a reparation payment under the DARS.

22 On 1 December 2016, responsibility for administering the DARS was conferred on the DFO and was put on a statutory footing under the Regulations.

23 On 16 March 2023, the applicant submitted a complaint of historical abuse to the DFO (the **2023 Complaint**). This complaint was based on his earlier complaint to the DART, but contained additional complaints, additional material and new facts.

24 On 21 March 2023, the DFO notified the applicant that the 2023 Complaint would not be investigated because it was considered to be an "excluded complaint" as defined in s 5 of the Regulations. That section contains the following definition of "excluded complaint":

> ***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.

25 On 24 May 2023, the applicant commenced a proceeding in this Court (VID 364 of 2023) (the **2023 Proceeding**) in which he sought judicial review of the decision not to investigate the 2023 Complaint.

26 During the course of the 2023 Proceeding, it was revealed to the applicant that on 28 May 2014, the Chair of the DART had written a letter to the Minister for Defence and the Attorney-General for the Commonwealth about the question of payments to incarcerated claimants. A copy of this letter was tendered in the current proceeding (as Exhibit A3).

27 Further, during the course of the 2023 Proceeding, it was revealed to the applicant that on 5 March 2015, the Chair of the DART had written a letter to the Minister for Justice recommending that a reparation payment not be made to the applicant. A copy of this letter was tendered in the current proceeding (as Exhibit A6).

28 On 9 May 2024, Button J delivered judgment in the 2023 Proceeding: *Knight v Defence Force Ombudsman* [2024] FCA 474; 182 ALD 397 (the **2024 Judgment**). Her Honour dismissed

the application. As set out later in these reasons, her Honour made observations at [107] rejecting a position that had been adopted by the DFO in correspondence with the applicant that he (the DFO) had "no authority to consider" the handling of the 2013 Complaint. Her Honour said that *considering* the handling of the 2013 Complaint fell within the function conferred on the DFO by s 14(1)(d) of the Regulations.

The 2024 Complaint

29 On 23 May 2024, the applicant made the 2024 Complaint. The 2024 Complaint takes the form of a letter dated 23 May 2024 from the applicant to the DFO. The letter commences:

> In light of the judgment of the Honourable Button J in *Knight v Defence Force Ombudsman* [2024] FCA 474, I wish to lodge a fresh complaint pursuant to the *Ombudsman Act 1976* (Cth) and s.14(l)(d) of the *Ombudsman Regulations 2017* (Cth), regarding the way my complaint to the Defence Abuse Response Taskforce (DART) was dealt with by the DART.
>
> It is my understanding from reading paragraph 107 of Her Honour's judgment (see below) that, contrary to the advice previously given to me, **the DFO *does* have the authority to consider a complaint relating to how the DART dealt with a complaint**. I would appreciate it if you would advise me, first, whether you agree with this reading of Her Honour's judgment and, second, if you do agree, what action you are able to take in response to such a complaint.
>
> I made a complaint to the DART in 2013, which included an application for a reparation payment. My complaint concerned bastardization I was subjected to as a junior staff cadet at the Royal Military College (RMC), Duntroon, in 1987 (including physical assaults). My complaints were found to be within scope, plausible and accompanied by mismanagement by Defence. In spite of this assessment, I was denied a reparation payment and I did not receive any other outcome.
>
> During the prosecution of the proceeding *Knight v Defence Force Ombudsman* in the Federal Court of Australia (Case No VID 364 of 2023) it was revealed that (a) the relevant Ministers' direction that I not receive a reparation payment was instigated by the DART, and (b) the DART considered other outcomes but dismissed all of them without any consultation with me.
>
> (Emphasis added.)

30 The balance of the applicant's letter provides details of how (he contended) the DART dealt with the 2013 Complaint. The balance of the letter is arranged under three headings:

(a) "I was denied a reparation payment";

(b) "I was denied any other outcome"; and

(c) "I was not consulted by the DART".

31 I will now outline each section of the complaint.

32 In the first section, the applicant notes that when the DARS was established in 2012, its guidelines contained a section dealing with reparation payments made to "a person who is a prisoner". The applicant states that, on 28 May 2014, after he submitted his application for a reparation payment, the Chair of the DART wrote an unsolicited letter to the Minister for Defence and the Attorney-General regarding the applicant and two other incarcerated claimants. (This is the letter referred to at [26] above.) The applicant writes that, at the time when the Chair wrote the letter, there was no public outcry about reparation payments being made to prisoners. The applicant's letter then states:

> The relevant Ministers subsequently issued a directive that no reparation payments should be made to anyone convicted of a serious crime. By the time this directive was issued in 2016 the cohort of affected claimants was only myself and the only other still incarcerated claimant. My belief is that no attempt was made to determine how many of the claimants who had already received a reparation payment had been convicted of a serious crime. Myself and the other incarcerated claimant were amongst the last, if not the last, of claimants to have our applications determined. Neither application was referred to the independent Reparation Payments Assessor.
>
> I am not concerned with the legality of the Ministers' directive. Aside from finding that an action or inaction was contrary to law, I understand that you may alternatively find that it was unjust, oppressive or improperly discriminatory, unreasonable (including unreasonable delay, procedural deficiencies, flawed processes), based wholly or partly on a mistake of law or fact, or otherwise, in all the circumstances, wrong. I suggest that it is open to you to find that all of these complaints applied to the manner in which my complaint was dealt with by the DART.

33 In the section of the letter headed "I was denied any other outcome", the applicant refers to the letter from the Chair of the DART to the Minister for Justice dated 5 March 2015 (referred to at [27] above). The applicant's letter sets out a quotation from the 5 March 2015 letter in which the Chair expressed the following views:

> Even if his complaint establishes a plausible case of abuse in Defence, I am of the view that the other outcomes are likely to be inappropriate for the following reasons:
>
> - As a long-term prisoner, prison authorities are responsible for Mr Knight's required medical treatment (including counselling)
> - Allegations of bastardisation perpetrated 17 years ago by an unknown number of senior cadets would not give rise to consideration of a criminal investigation or referral to the Chief of the Defence Force for consideration of disciplinary or administrative sanction, and
> - In all the circumstances, I doubt Defence would be prepared to engage in a restorative engagement conference.

34 After setting out that quotation from the Chair's letter, the applicant writes that, contrary to its own terms of reference, the DART never consulted him about any of those possible outcomes. The applicant writes that, in relation to counselling, the prison authorities are *not* responsible

for counselling in relation to historical abuse. The applicant provides further reasons why counselling provided by prison authorities would not be suitable. He writes that counselling is still an outcome he would like to access. The applicant writes that he would be prepared to engage in a restorative engagement conference.

35 In the section of the applicant's letter headed "I was not consulted by the DART", the applicant reiterates that, except in relation to the reparation payment, the DART never consulted him about possible outcomes; this is said to have been contrary to the express provision for "close consultation" in the DART's terms of reference. The applicant's letter then states:

> In conclusion, I seek the following currently available responses:
>
> (1) A referral for counselling through Open Arms – Veterans and Families Counselling;
>
> (2) Participation in the DFO Restorative Engagement Program; &
>
> (3) A recommendation for an *ex-gratia* payment in lieu of a reparation payment.
>
> Please note that my original complaint to the DART was found to be within scope, plausible and accompanied by mismanagement by Defence. Mine is not a case of a complainant whose complaints were found to be implausible and who repeatedly asks that his complaint be reassessed. My complaints *were* substantiated and, in spite of this, I was denied *any* outcome.
>
> During the prosecution of the proceeding *Knight v Defence Force Ombudsman*, it also came to light that the decision taken by the RMC Board of Studies that I be asked to "Show cause" (why my appointment as a staff cadet should not be terminated) was based on two false premises. Please advise me whether you are able to consider a complaint regarding unfair dismissal (or am I required to pursue such a claim in the Federal Court?)
>
> If you believe that I have not provided sufficient information to substantiate my complaint, please let me know so that I may provide any necessary additional information.
>
> If you do not have access to any of the documents that were submitted as evidence in my Federal Court proceeding, and which I refer to in this letter, please let me know and I will furnish you with copies.

36 The applicant offered to provide any necessary additional information, and offered to provide copies of any documents if they could not be accessed by the DFO.

The October 2024 DFO Letter

37 By the October 2024 DFO Letter, the DFO notified the applicant of the Decision, namely that the DFO declined to take any steps in relation to the 2024 Complaint. The letter is on the letterhead of the Commonwealth Ombudsman. The author of the letter (the **Delegate**) states on page 2 that he is a delegate of the DFO for the purposes of s 14(1)(d) of the Regulations.

38 The letter commences by stating that it is written in response to the applicant's letter dated 23 May 2024. On the first page of the letter, the Delegate summarises the applicant's complaints. On page 2, the Delegate outlines the three outcomes that he understood the applicant to be seeking.

39 Next, the letter has a heading which reads: "Our consideration of your fresh complaint about the DART". This is a reference to the 2024 Complaint. The Delegate acknowledges that the fresh complaint is a "matter relating to complaints previously made to, and dealt with, by the [DART]" for the purposes of s 14(1)(d) of the Regulations; in particular, it is a matter relating to the applicant's 2013 Complaint. The letter then states:

> In considering the most appropriate way to deal with your matter, I have considered the outcomes you are seeking, as described in your letter of 23 May 2024.
>
> I acknowledge that you continue to seek 'outcomes' in relation to your 2013 complaint to the DART. However, the DART has 'dealt with' your 2013 complaint for the purposes of the DFO's functions with respect to s 14 of the Regulations, including s 14(1)(d).
>
> In the context of your fresh complaint about the way the DART handled your 2013 complaint:
>
> - **you are able to seek to access counselling services without charge through Open Arms**, and do not require a referral from us, though it would be at the discretion of Open Arms to determine if it is able to provide such services to a person in detention
> - any concerns about the way the DART handled your 2013 complaint are not matters which are appropriate for a restorative engagement conference, the purpose of which is to acknowledge abuse rather than address grievances about the way the DART 'dealt with' a complaint of abuse, and
> - a recommendation for a payment of the type requested is not appropriate in response to the matters you have raised concerning the DART's handling of your 2013 complaint.
>
> In reaching the conclusion that it would not be appropriate to recommend a payment, I have taken into account that the DFO has no specific power to recommend a reparation payment other than s 14(1)(a) of the Regulations, which, in any event, relates to complaints of abuse and not complaints about the way the DART 'dealt with' a complaint of abuse. Further, I do not consider it appropriate to recommend an ex-gratia payment given the DART has already 'dealt with' your 2013 complaint, and in doing so, it was determined that a reparation recommendation was not appropriate in all the circumstances.
>
> (Emphasis added.)

40 The letter then contains a heading which reads: "Finalisation of your fresh complaint about the DART". The Delegate writes that, after careful consideration of the applicant's fresh complaint about the DART, and noting the matters set out above in relation to the outcomes sought by

the applicant, the Delegate had decided that no further action would be taken in relation to the complaint, and the complaint would now be finalised and closed.

41 The Delegate writes that, in reaching that conclusion, he had also taken into account that the DART no longer exists, and that it is therefore impractical to consider action the DART could take to address the outcomes sought by the applicant.

Further findings

42 In his 4 July 2025 affidavit, the applicant states that: prisoners in Victoria are not permitted to access the internet; prisoner access to telephone is strictly controlled and limited to 10 pre-approved personal or legal telephone numbers; prisoners also have access to a range of Common Auto Dial List (or CALD) numbers; prisoners are not permitted to call a range of telephone numbers (including 1300 and 1800 numbers); the only way to contact Open Arms is through a 1800 telephone number; the services provided by Open Arms are provided only via the 1800 telephone number, online or face-to-face. In the absence of any contrary evidence, I accept the evidence in the applicant's 4 July 2025 affidavit.

43 However, it does not necessarily follow that the applicant is unable to obtain counselling from Open Arms. As submitted by the DFO in his supplementary submission, the applicant's evidence does not establish that he is unable to seek access to counselling from Open Arms by other means, for example, by requesting assistance from prison staff (including prison medical staff) or a friend in the community who could contact Open Arms on his behalf.

The applicant's submissions

44 In his written submissions, the applicant submits that the threshold question in the proceeding is whether the DFO's findings with respect to the 2024 Complaint amounted to a failure to exercise jurisdiction and whether any such failure is evident on the face of the record. The applicant submits that the power in s 14(1)(d) of the Regulations should be interpreted liberally. He submits that, pursuant to that power, the DFO is not limited to making recommendations about outcomes that were able to be provided by the DART.

45 The applicant submits that the question that arises in this proceeding is whether the DFO has "dealt with" the 2024 Complaint within the true construction of that expression. The applicant refers in his written submissions to certain dictionary definitions of the word "deal" which appear in the *Macquarie Dictionary*. In the *Macquarie Dictionary* (online edition, accessed

September 2025), the definitions of "deal" that correspond most closely with those relied on by the applicant in his written submissions are:

> **30. deal with**,
>
> a. …
>
> b. to occupy oneself or itself with: *deal with the first question; botany deals with the study of plants*.
>
> c. to take action with respect to; handle: *to have many problems to deal with.*
>
> …
>
> e. to take disciplinary or punitive action with respect to: *the role of law courts is to deal with law-breakers; the principal will deal with you later*.

46 The applicant further submits that the DFO placed artificial constraints on what recommendations he could make and that, by doing so, he did not effectively "deal with" the 2024 Complaint. In oral submissions, the applicant submitted that the DFO could have considered other outcomes (beyond those sought by the applicant) but did not do so.

47 In oral submissions, the applicant relied on [107] of the 2024 Judgment. He submitted that, in light of the principles stated by Button J in that paragraph, the position adopted by the DFO in the October 2024 DFO Letter was erroneous.

48 In response to a submission by the DFO (in paragraph 22 of the DFO's written submissions) that the DFO's function under s 14(1)(d) does not extend to dealing with the 2013 Complaint itself (in the sense of a reconsideration or internal review of the 2013 Complaint), the applicant submitted orally that this was not an argument that he was putting.

49 The applicant submitted that, as a prisoner, he is unable to access the internet and is subject to restrictions on telephone numbers he can call. He submitted that he is therefore unable to seek or obtain counselling services through Open Arms, and that the first bullet point at the bottom of page 2 of the October 2024 DFO Letter is factually incorrect.

Consideration

50 In essence, the applicant contends that the DFO failed to perform his statutory function of "dealing with" the 2024 Complaint (being a matter relating to a complaint previously made to, and dealt with by, the DART, namely the 2013 Complaint) and thereby fell into jurisdictional error.

51 In order to evaluate this contention, it is necessary first to construe the words "dealing with" in s 14(1)(d) of the Regulations.

52 In the 2024 Judgment, Button J set out the relevant principles of statutory construction (at [57]) and then considered the construction of both the expression "dealt with" (in s 5 of the Regulations) and the expression "dealing with" (in s 14(1)(d) of the Regulations). In the present case, neither party took issue with her Honour's construction of those expressions. I will now outline the construction adopted by her Honour.

53 One of the issues raised in the proceeding before Button J was whether the DART had "dealt with" the applicant's 2013 Complaint (within the meaning of the definition of "excluded complaint" in the Regulations). The applicant contended in that proceeding that the DART had not done so because the words "dealt with" required the DART to have made a specific determination about each of a range of outcomes. Button J rejected that construction at [55]. Her Honour considered that that conclusion arose from the ordinary and natural meaning of the expression "dealt with" and the relevant historical and legislative context: at [56]. Her Honour stated at [59]:

> As a matter of ordinary language, when the expression "dealt with" is used in respect of an item, it means that item has been addressed or handled by the body charged with dealing with it.

54 Her Honour then considered (at [60]-[70]) a number of contextual factors that tended against the construction advanced by the applicant in that proceeding.

55 Her Honour then considered whether, in any event, based on the documents in evidence, the applicant's 2013 Complaint had been "dealt with" by the DART (on the basis that all outcomes had been considered by the DART): see [71]-[72]. Her Honour concluded, at the end of [73], that if (contrary to what she considered to be the proper construction of "dealt with") it was necessary that the DART address all possible outcomes in relation to the applicant's complaint in order for it to have "dealt with" that complaint, the DART had done so. Her Honour therefore concluded (at [74]) that, on either view, the applicant's 2013 Complaint had been "dealt with" by the DART. It followed that the 2013 Complaint was an "excluded complaint".

56 Button J then went on to consider an issue concerning s 14(1)(d) of the Regulations. In the 2023 Proceeding, the applicant sought a declaration to the effect that the DFO had a statutory function under s 14(1)(d) of "investigating" the applicant's 2013 Complaint: see at [76]. At [80] of the 2024 Judgment, Button J set out a letter from the DFO in which he stated that he

had "no authority to consider" the management of the applicant's 2013 Complaint by the DART.

57 Her Honour concluded that s 14(1)(d) of the Regulations did not confer a function of "investigating" (in the sense in which that expression is used in the *Ombudsman Act*) matters relating to complaints previously made to, and dealt with by, the DART: at [100], [104]. Accordingly, her Honour declined to make the declaration sought by the applicant: at [106].

58 Having reached that conclusion, Button J went on to make the following observations at [107]:

> I have referred, deliberately, to the concept of "investigate" and "investigation" as those words are used in the Act. That is because these reasons should not be construed as endorsing the position taken by the Respondent in his letter … dated 21 March 2023 that he had "no authority to consider" Mr Knight's complaint about the handling of his 2013 complaint. In my view, considering the handling of that complaint, in some way (and on the assumption that it had been "dealt with" by the DART) falls within the "function of dealing with any matter relating to complaints previously made to, and dealt with by, the [DART]" under s 14(1)(d) of the Regulations. Section 14(1)(d) does not limit how the Respondent may "deal with" such a matter. In his letter of 21 March 2023, the Respondent did not say that he had no function to "investigate" a complaint about the handling of Mr Knight's 2013 complaint. Rather, as noted, his response was that he had "no authority to consider" that matter at all. I do not consider that he had no authority, as stated.

59 As can be seen, in the above passage her Honour rejected the position that had been taken by the DFO that he had "no authority to consider" the applicant's complaint about the handling of his 2013 Complaint. Her Honour said that, in her view, *considering* the handling of the 2013 Complaint fell within the "function of dealing with any matter relating to complaints previously made to, and dealt with by, the [DART]" under s 14(1)(d) of the Regulations. Further, her Honour said that s 14(1)(d) does not limit how the Respondent may "deal with" such a matter.

60 In summary, Button J concluded that the words "dealt with" (in s 5 of the Regulations) and "dealing with" (in s 14(1)(d) of the Regulations) should be construed as follows:

(a) The words "dealt with" in the definition of "excluded complaint" have their ordinary meaning, which in this context means that the complaint has been *addressed* or *handled* by the body charged with dealing with it: at [59].

(b) Section 14(1)(d) of the Regulations does not confer a function of "investigating" (in the sense in which that expression is used in the *Ombudsman Act*) matters relating to complaints previously made to, and dealt with by, the DART: at [100], [104].

(c) However, *considering* the handling of a previous complaint falls within the "function of dealing with any matter relating to complaints previously made to, and dealt with by, the [DART]" under s 14(1)(d) of the Regulations: at [107].

61 As I have said, in the present proceeding, neither party contended for any different construction of those expressions. In my respectful opinion, her Honour's construction of the above expressions was correct for the reasons her Honour gave. Further, I consider that her Honour's construction of the words "dealt with" in s 5 of the Regulations is equally applicable to the cognate expression "dealing with" in s 14(1)(d). That is to say, the expression "dealing with" has its ordinary meaning, which in this context means *addressing* or *handling* the matter referred to in s 14(1)(d). No reason has been suggested for adopting a different meaning.

62 The issue, then, is whether the DFO failed to perform his statutory function under s 14(1)(d) of "dealing with" (in the sense of addressing or handling) the 2024 Complaint (being a matter relating to a complaint previously made to, and dealt with by, the DART, namely the 2013 Complaint). In my opinion, for the reasons that follow, the DFO did perform his statutory function of "dealing with" the 2024 Complaint.

63 First, the Delegate acknowledged, on page 2 of the October 2024 DFO Letter, that the applicant's 2024 Complaint constituted a "matter relating to [a] complaint[] previously made to, and dealt with by, the [DART]" within the meaning of s 14(1)(d). Accordingly, the Delegate proceeded on the basis that the function in s 14(1)(d) was engaged. Unlike the letter referred to in the 2024 Judgment, the DFO did not say that he could not consider the complaint.

64 Secondly, the October 2024 DFO Letter demonstrates that the Delegate read and appreciated (and thereby considered) the matters raised in the 2024 Complaint. On the first page of the letter, the Delegate accurately summarised the 2024 Complaint. At the top of the second page, the Delegate accurately identified the outcomes that the applicant was seeking. In the next section of the letter, under the heading "Our consideration of your fresh complaint about the DART", the Delegate said that, in "considering" the most appropriate way to deal with the matter, he had "considered" the outcomes that the applicant was seeking. The balance of the letter shows some engagement (albeit brief) with the outcomes sought by the applicant, which indicates that they were considered.

65 Thirdly, although the Delegate focussed on the *outcomes* sought by the applicant, rather than (for example) the *merits* of the applicant's complaints about the way in which the 2013

Complaint was dealt with, this was an available (in the sense of open or permissible) approach. The words "dealing with" are quite broad and encompass a range of different ways of addressing or handling a matter. While one can understand the applicant's sense of frustration that the Delegate did not delve into the merits of his complaints (which were broadly concerned with alleged denials of procedural fairness in the handling of the 2013 Complaint), I do not consider that it was incumbent on the DFO to examine the merits of the applicant's complaints. The way in which the Delegate chose to approach the matter (namely, by focussing on the outcomes sought) constituted one way of addressing or handling the 2024 Complaint.

66 Fourthly, although the DFO declined to take any action in relation to the 2024 Complaint, this does not mean that he failed to perform his statutory function of "dealing with" that complaint. One can address or handle a matter without necessarily deciding to take action.

67 Insofar as the applicant submits that the DFO erred by placing artificial constraints on what recommendations he could make, I do not accept that submission. It is true that the Delegate addressed only the outcomes sought by the applicant and did not consider any other outcomes. However, reading the October 2024 DFO Letter as a whole, I am not satisfied that the Delegate adopted the position that he could not recommend other outcomes; he simply chose not to do so.

68 Insofar as the applicant submits that the Delegate made a factual error in assuming that the applicant could access counselling services from Open Arms, for the reasons given above, the applicant's evidence does not establish that he cannot access such services by indirect means. I am therefore not satisfied that the DFO made a factual error. Further and in any event, even if the DFO made a factual error in this regard, it does not necessarily follow that he failed to perform his statutory function of "dealing with" the 2024 Complaint or otherwise fell into jurisdictional error. The making of an incorrect finding of fact is not necessarily (or even usually) jurisdictional in nature. A factual error may be challenged in circumstances where the fact is jurisdictional, but that is not the case here. A factual error may be challenged on the basis of legal unreasonableness, but there is nothing to suggest that in the present case. There does not appear to be any other basis upon which to contend that the factual error (if there be one) is jurisdictional in nature.

69 For these reasons, I consider that the DFO did perform his statutory function of "dealing with" the 2024 Complaint under s 14(1)(d). It follows that I am not satisfied that the DFO fell into jurisdictional error.

Conclusion

70 In his originating application, the applicant relies on both s 39B of the *Judiciary Act* and s 5(1)(f) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (the **ADJR Act**). Insofar as the applicant relies on s 39B of the *Judiciary Act*, the DFO accepts that the Court has jurisdiction to deal with the proceeding and the issues raised by the applicant. Insofar as the applicant relies on the ADJR Act, the DFO submits that the Decision is not a decision to which the ADJR Act applies. It is unnecessary to resolve this issue because it is common ground that the Court has jurisdiction under s 39B of the *Judiciary Act* and the applicant does not gain any additional assistance in this case by relying on the ADJR Act.

71 It follows from the conclusions set out above that the relief sought in paragraph 1 of the originating application, being an order for mandamus compelling the DFO to reassess the 2024 Complaint, should be refused.

72 By paragraph 2 of the originating application, the applicant seeks, in the alternative, a declaration that in assessing a matter under s 14(1)(d) of the Regulations the DFO is not limited to recommending outcomes that were originally offered by the DART. It is well established that a declaration should not be made unless three requirements are satisfied: (a) the question must be a real and not a hypothetical or theoretical one; (b) the applicant must have a real interest in raising it; and (c) there must be a proper contradictor: *Forster v Jododex Australia Pty Ltd* [1972] HCA 61; 127 CLR 421 at 437-438; *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405 at [76] per Gordon J. Here, I am not satisfied that there is a real question about the issue raised by paragraph 2. The DFO has not asserted that, in dealing with a matter under s 14(1)(d) of the Regulations, he is limited to recommending outcomes that were originally offered by the DART. Accordingly, the question is theoretical or hypothetical. It would therefore be inappropriate to make a declaration as sought in paragraph 2.

73 For the reasons set out above, the application is to be dismissed. The DFO did not seek an order for costs. I will therefore also make an order that there be no order as to costs.

I certify that the preceding seventy-three (73) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Moshinsky.

Associate:

Dated: 11 September 2025

[Source: Knight v Defence Force Ombudsman [2025] FCA 1098 , ^https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2025/2025fca 1098]