



Headquarters
New Zealand Defence Force
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OIA-2025-5392

 June 2025



Dear 

I refer to your email of 14 May 2025, requesting *a copy of the practice direction being a practice direction from DGDLS that individuals are no longer required to report offending that they become aware of*. Your request has been considered under the Official Information Act 1982 (OIA).

Enclosed is a copy of the requested information. Where indicated, legal advice is withheld to protect legal professional privilege in accordance with section 9(2)(h) of the OIA. The public interest in release of this advice does not outweigh the reason to withhold it in this instance.

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review this response to your request. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that responses to official information requests are proactively released where possible. This response to your request will be published shortly on the NZDF website, with your personal information removed.

Yours sincerely

GA Motley
Brigadier
Chief of Staff HQNZDF



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18 November 2024

All RF Legal Officers

For information:

Armed Forces Discipline Committee
Provost Marshal

PRACTICE DIRECTION NO. 9

The legal position on reporting alleged offending to commanding officers and superiors

References:

- A. AFDA section 102
- B. DM 69 (vol 1), chapter 1, section 2, paragraph 2
- C. Defence Legal Services' Operating Framework, 2021

Background

1. A view persists within parts of the NZDF that officers and non-commissioned officers are subject to a mandatory and blanket obligation to report all allegations of offending they become aware of to the commanding officer of the accused or a superior. This view is based on, to varying degrees, interpretations of Refs A and B.


2. s. 9(2)(h)

Commentary

3. The view described at paragraph 1 has been demonstrated to be incongruent with a trauma-focused and victim-informed approach to investigating and prosecuting offences involving a victim. A mandatory reporting requirement can lead to detrimental outcomes for the victim, aggravate a victim's already traumatic experience, and create barriers to reporting.

4. s. 9(2)(h)

5. s. 9(2)(h)




6. s. 9(2)(h)



7. This practice direction must not be construed as enabling the circumvention of Ref A or in any way undermining the ability of commanding officers or superior commanders to make decisions or issue orders designed to uphold discipline under their command.

Practice Direction

8. s. 9(2)(h)



9. The decision to report alleged offending to the commanding officer or superior will be informed by applicable orders,¹ the nature of the alleged offending, the victim's circumstances (including the privacy interests of the individual)², and the interests of the service and/or unit in having the matter reported and investigated. The decision whether to report will also be informed, where applicable, by the need to maintain good order and discipline, or where a 'just culture' response model is more suitable.

10. Before a decision to report is made, advice may be required from subject matter experts, including but not limited to, SAPRAs, other NZDF healthcare professionals, command elements (other than the commanding officer), the Provost Marshal, military police, and legal advisers.

11. When advising on whether to report allegations of offending to the commanding officer or superior, legal advisers are to:

- a. Deem advice as Tier 2 legal advice in accordance with Ref C;
- b. Deem advice as Tier 1 legal advice in accordance with Ref C for allegations of offending involving sexual harm, assault, or similarly serious allegations involving a victim; and

¹ For example, at the time of writing of this practice direction, orders are being drafted about the reporting of allegations of harmful sexual behaviour. A commanding officer or superior commander could also issue orders requiring the reporting of allegations of certain types of offence, for example dishonesty offences.

² For example, Privacy Act 2020, section 22, privacy principle 11 restricts the circumstances in which personal information may be disclosed.

- c. Monitor for material factual changes in the matter advised upon, and be prepared to revisit legal advice.³

12. s. 9(2)(h)



JE Kennedy-Good
Colonel
Director of Military Prosecutions

³ For example, where a victim changes their view for how they wish to have their allegation dealt with.