

Our ref: 2021-09505 & 2021-09643

24 August 2022

Mr Damien de Pyle

Sent by email: [REDACTED]

Dear Mr de Pyle

Closure of your complaints

I refer to your complaints to the Australian Human Rights Commission (**the Commission**) against the Commonwealth of Australia (as represented by the Department of Defence) (**Defence**):

- Alleging a breach of human rights under the *International Covenant on Civil and Political Rights*, scheduled to the *Australian Human Rights Commission Act 1986* (Cth) (**AHRCA**) (**ICCPR complaint**) (our ref: 2021-09505); and
- Alleging sexual harassment under the *Sex Discrimination Act 1984* (Cth) (**SDA complaint**) (our ref: 2021-09643).

The complaints

Documents

The Commission sent you a copy of the complaint documents (12 pages) on 18 October 2021. Another copy is provided with this letter, marked as 'Attachment B'.

Contact with Defence

The Commission sent a copy of the complaints to Defence on 18 October 2021. Defence filed a written response on 14 January 2022 and the Commission sent you a copy of the response on 17 January 2022.

The respondent entity

Your complaint form refers to the respondent as the Australian Defence Force (**ADF**). In the response dated 14 January 2022, the Commission was advised that the relevant legal entity in relation to the ADF is the Commonwealth of Australia (as represented by the Department of Defence). The complaints have been finalised accordingly.

My decisions

Section 20(2)(c)(iib) of the AHRCA provides that the Commission may decide not to continue to inquire into a complaint alleging a breach of human rights, if satisfied that there is no reasonable prospect of the matter being settled by conciliation.

Section 46PH(1B)(b) of the AHRCA provides that the President must terminate a complaint alleging unlawful discrimination, if satisfied that there is no reasonable prospect of the matter being settled by conciliation.

The Commission held a conciliation conference for the complaints on 4 July 2022 and facilitated further resolution discussions between the parties up to 3 August 2022. I understand the complaints could not be resolved through these processes because the parties could not agree on how to resolve the complaints.

Therefore, I have decided not to continue to inquire into the ICCPR complaint under section 20(2)(c)(iib) of the AHRCA, as I am satisfied that there is no reasonable prospect of the matter being settled by conciliation.

Additionally, I have decided to terminate the SDA complaint under section 46PH(1B)(b) of the AHRCA, as I am satisfied that there is no reasonable prospect of the matter being settled by conciliation.

Possible further action for the ICCPR complaint

If you think that my decision to finalise the ICCPR complaint under section 20(2)(c)(iib) of the AHRCA is not legally correct, you can apply to the Federal Circuit and Family Court of Australia (**FCFCOA**) or the Federal Court of Australia

(FCA) for the decision to be reviewed under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

The court would not look at whether I made the correct decision. Rather, if the court thinks I made a legal error or did not exercise my powers correctly, it may refer the matter back to the Commission for further consideration. Any application to the court must be made within 28 days of my decision.

Possible further action for the SDA complaint

The AHRCA says that after a complaint alleging unlawful discrimination is terminated, the person affected by the alleged discrimination may be able to apply to the FCFCOA or the FCA to have the allegations of unlawful discrimination decided by the court.

If you apply to the FCFCOA or the FCA, you will need to attach the following documents to the application:

- the enclosed Notice of Termination;
- this letter; (Attachment A); and
- the enclosed copy of the complaint (Attachment B).

Any application to the court must be made within 60 days of the date on the Notice of Termination.

If a matter proceeds to court, the FCFCOA and FCA can award costs against either party. Information about the court or the court process is available from a court registry or from its websites at www.fcfcOA.gov.au and www.fedcourt.gov.au.

Please note the AHRCA does not provide the FCFCOA or the FCA with jurisdiction to decide the allegations of human rights breaches contained in the ICCPR complaint.

Yours sincerely



Jodie Ball

Delegate of the President