



# DEFENCE INSTRUCTIONS (GENERAL)

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Department of Defence  
CANBERRA ACT 2600

31 August 2000

Amendments to Defence Instruction (General) PERS 25–3 are issued pursuant to section 9A of the *Defence Act 1903*.

ALLAN HAWKE  
Secretary

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

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## LIST B—ISSUE NO PERS B/23/2000

### Amendment

PERS 25–3  
AMDT NO 1

*Disclosure of Interests of Members of the Australian Defence Force*

### Single Service filing instructions

This instruction should be filed as:

1. NAVY PERS 16–10
2. ARMY PERS 49–2
3. AIR FORCE ADMIN 9–27

### Amendment

DI(G) PERS 25–3 is to be amended as follows:

- a. Page amendments:
  - (1) Replace pages 3 and 4 ISSUE NO PERS B/11/99 of 13 SEP 99 with attached pages 3 and 4 (AL1).

**Note**

The attached pages have been repromulgated without amendment to the content, due to a change of sponsor.

# DISCLOSURE OF INTERESTS OF MEMBERS OF THE AUSTRALIAN DEFENCE FORCE

## INTRODUCTION

1. Despite the best intentions of a member of the Australian Defence Force (ADF), conflicts of interest and duty may unconsciously influence the manner in which members perform their duties. In particular, the conflict may influence the member's input into decision making processes. Consequently, to ensure that the integrity of the ADF is maintained, members are to disclose any private interest, pecuniary or otherwise, which may conflict with their ADF duty. Additionally, any member who considers that a conflict of interest may occur because of another member's position or duties is to report these concerns to the appropriate authority in accordance with this instruction. The policy promulgated in this instruction is designed to protect, amongst other things, the Commonwealth's:

- a. financial interests,
- b. security of classified information,
- c. confidentiality of commercial information, and
- d. impartiality in decision making.

## AIM

2. The aim of this instruction is to state the responsibilities of ADF members in relation to their disclosure of private interests, the procedure by which this is done and the administrative procedures and action to be taken in the event of disclosure.

## DEFINITIONS

3. **Member.** The term 'member' refers to any permanent member of the Royal Australian Navy, Australian Army, the Royal Australian Air Force or the Reserve employed on continuous full-time duty.

4. **Conflict of interest.** A conflict of interest occurs when an interest of a member conflicts with the performance of their duties.

5. **Potential conflict of interest.** A potential conflict of interest occurs when an interest of a member could potentially conflict with the performance of the member's duties.

6. **Perceived conflict of interest.** A perceived conflict of interest occurs when a person other than the member perceives that an interest of the member conflicts with the performance of the member's duties.

7. **Member's financial interests.** Financial interests covers such matters as directorships, share holdings, real estate or trusts which have the potential to conflict with official duties.

8. **Member's personal and other interests.** Personal and other interests may include personal relationships based on sporting, social or cultural activity as well as family or other relationships.

9. **Member's family interests.** The financial and other interests referred to in this instruction include the interests of not only the ADF member involved, but also the interests of immediate family members (spouse, including de facto spouse and children), to the extent that these are known.

10. **Reviewing Authority.** The Reviewing Authority is that appointment within each Service responsible for determining:

- a. whether or not a conflict of interest exists, and
- b. consequential action when a conflict of interest is deemed to exist.

## REVIEWING AUTHORITIES

11. The Reviewing Authorities in relation to the disclosure of financial or other interests are:
- a. Deputy Chief of Navy,
  - b. Deputy Chief of Army, and
  - c. Deputy Chief of Air Force

## DEALING WITH CONFLICT OF INTEREST

12. The requirement to consider whether a conflict of interest and duty exists may arise because of:
- a. Advice, from members, that they believe that conflicts, or potential conflicts exist between their private interests and their duties as members of the ADF.
  - b. Members questioning an assessment that a conflict, or potential conflict, exists between their private interests and their duties as members of the ADF.
  - c. Assertions from third parties who perceive that conflicts or potential conflicts exist between the private interests of members and the latter's duties as members of the ADF.

13. In the situations outlined in subparagraphs 12.a. and 12.b., members are to submit their case in writing to their Commanding Officer or Branch Head. The Commanding Officer or Branch Head is to refer the matter to the appropriate Reviewing Authority. Commanding Officers or Branch Heads are to comment on matters such as the nature of the conflict or potential conflict and action that can be taken to resolve the conflict or potential conflict. Assertions by third parties are considered in [paragraph 18](#).

14. **Conflict of interest and duty.** After considering the submissions and supporting information provided in accordance with [paragraph 13](#)., the Reviewing Authority is to determine whether a conflict of interest and duty exists or could potentially exist. Depending on the outcome of this assessment, the action outlined in the remainder of this paragraph should be taken.

- a. **No actual or potential conflict of interest and duty.** The Reviewing Authority may determine that a conflict of interest and duty does not exist or that there is no potential for such a conflict to exist. If so, the Reviewing Authority should advise, in writing, the member who is the subject of the submissions. If a third party is involved, then this person is also to be advised, in writing, by the Reviewing Authority of the latter's decision.
- b. **Actual or potential conflict of interest and duty.** The Reviewing Authority may determine that a conflict of interest and duty exists or that there is a potential for such a conflict to exist. If so, then the Reviewing Authority must decide whether the conflict or potential conflict is, or could be, of some substance or merely inconsequential.
- c. **Substantive conflict of interest and duty.** The Reviewing Authority may determine that a substantive conflict of interest and duty exists or that there is potential for such a conflict to exist. If so, then the Reviewing Authority is to advise the member, in writing, that a major conflict of interest exists, or could exist, which requires resolution. A decision is not to be made about the action to be taken until the following additional matters are finalised:
  - (1) Members are to be offered the opportunity to divest themselves of the relevant interest. Members are to be advised of the action that will be taken if they decide not to proceed with divestment. Such action may involve a reallocation of duties, posting or transfer. Members should also be advised that if they do not agree to divestment, then they will be required to show cause why divestment of interest, or reallocation of duties, posting or transfer action is unnecessary.

- (2) If members decide to divest themselves of a relevant interest, then they are to advise the Reviewing Authority to that effect, in writing, within 20 days of the date of receipt of the Reviewing Authority's preliminary determination. This notification is to advise the Reviewing Authority of the type of divestment that the member intends to take and how much time the member will require to finalise divestment. Transfer of a financial interest to a trustee or to a non-family professional nominee is sufficient divestment provided that the member or their immediate family does not exercise control over the trust or nominee. The time required for divestment may be the subject of negotiation between a member and the Reviewing Authority. A member is to advise the Reviewing Authority, in writing, when the divestment is complete.
  - (3) If members choose not to divest themselves of a relevant interest, then they are to advise the Reviewing Authority to that effect, in writing, within 20 days from the date of receipt of the Reviewing Authority's preliminary determination. The Reviewing Authority should issue a notice to show cause why divestment, reallocation of duties, posting or transfer action is unnecessary. If a member submits a response to the notice to show cause, then the Reviewing Authority is to take this statement into account when determining what action will be taken regarding the member and the member's duties.
  - (4) The statement of any third party should be acknowledged and the third party should be advised, subject to privacy considerations, that appropriate action has been taken.
- d. **Inconsequential conflict of interest and duty.** If the Reviewing Authority determines that the conflict is, or could be, inconsequential, then the Reviewing Authority is to advise the member, in writing, that:
- (1) a conflict of interest and duty exists or could potentially exist: and
  - (2) the ADF will not take any action at the current time with regard to the conflict or potential conflict of interest and duty.

The Reviewing Authority is to authorise the member to continue with their current duties. The statement of any third party should be acknowledged and the third party should be advised in writing, subject to privacy considerations, that appropriate action has been taken.

15. **Guidelines for determining conflicts of interest and consequential action.** The guidelines contained in this paragraph are not an exhaustive list. Other considerations may arise from individual cases which may influence Reviewing Authorities determinations. When determining whether a conflict, or potential conflict, exists, the Reviewing Authority will take into account the following considerations:

- a. the member's position and duties including decision making responsibilities;
- b. the member's autonomy with regard to decision making;
- c. the levels of review to which the member's decisions are subject;
- d. the nature of the member's interest eg share ownership and if so, proportion of shares owned, directorship of a company, personal or family relationship; and
- e. the 'proximity' of the interest, for example, whether the member owns shares or is a beneficiary under the will of a shareholder.

When the Reviewing Authority determines that a conflict exists, any decision taken to remove a member from current duties should take into account the effect that such action may have on the member's family; for example, a posting out of geographic locality may cause education problems for the member's children.

16. **Shortening of deadlines.** If the member occupies a sensitive position, or if a replacement must otherwise be selected rapidly, the time period for the member to respond to the Reviewing Authority's preliminary determination may be shortened to less than 20 working days at the instigation

of the Reviewing Authority. When making the initial submission to the Reviewing Authority, Commanding Officers and Branch Heads are to comment on any matter that may result in a shortening of the deadline for responses by the member. The member is to be advised of these comments and is to be given an opportunity to respond. The member's statement on this point is to be included in the documents provided to the Reviewing Authority.

17. **Withdrawal of authorisation to continue in current duties.** A member who is authorised to continue in current duties, in accordance with subparagraph 14.d. of this instruction, is to be aware that changed circumstances could require a reassessment of either or both the determination made or authorisation issued by the Reviewing Authority. The member is to report any such changes to their Commanding Officer or Branch Head. The member may comment on the effect of this change in circumstances on the member's capacity to undertake their duties and on whether it is necessary to withdraw the authorisation to undertake such duties. The Commanding Officer or Branch Head is to advise the Reviewing Authority of these changes and is to provide the Reviewing Authority with appropriate comment. On receipt of this information, the Reviewing Authority is to consider the matter afresh in accordance with [paragraphs 13. to 16](#) and is to decide whether to withdraw the authorisation.

### **Third party assertions**

18. Third party assertions must be submitted to the Reviewing Authority, in writing, through the third party's Commanding Officer or Branch Head. All referrals to the Reviewing Authority are to include:

- a. a statement detailing the assertion,
- b. primary supporting information, and
- c. comments by the Commanding Officer or Branch Head.

The member subject to the assertions is to be advised, in writing, of the assertions and given the opportunity for rebuttal, which must be submitted to the Reviewing Authority within 20 working days of receipt of the notification of the assertions. Upon receipt of a rebuttal statement, the Reviewing Authority will make a determination on the issue in accordance with [paragraphs 14. to 17](#). Submission of a member's rebuttal to 'third party' assertions does not remove the requirement for the member to be permitted to submit a rebuttal to the Reviewing Authority's written notification of the determination made.

### **Compensation for divestment of interest**

19. The Commonwealth will oppose any litigation by members seeking compensation for losses suffered as a result of divestment.

| **Sponsor:** DGCMP (DMPP)