



DEFENCE INSTRUCTIONS (GENERAL)

Department of Defence
CANBERRA ACT 2600

1 February 2000

Defence Instruction (General) PERS 25-4 is issued pursuant to section 9A of the *Defence Act 1903*.

ALLAN HAWKE
Secretary

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

LIST B—ISSUE NO PERS B/2/2000

New instruction

PERS 25-4 *Notification of Post Separation Employment*

Single Service filing instructions

This instruction should be filed as:

1. NAVY PERS 16-11
2. ARMY PERS 49-3
3. AIR FORCE PERS 29-3

NOTIFICATION OF POST SEPARATION EMPLOYMENT

INTRODUCTION

1. There is no provision within the *Defence Act 1903*, the regulations or any other legislation which restricts the type of employment that may be undertaken by Australian Defence Force (ADF) members after they leave the ADF. Where members intend taking up employment with private or public sector organisations involved in the provision of, or anticipating or intending to provide material and services to the ADF or the Department of Defence (DoD), there is the potential for public disquiet because of perceived, or actual, conflicts of interest. To reduce the potential for embarrassment to the ADF, the member and the prospective employer, notification of post separation employment procedures have been instituted which aim to protect the reputations of those involved.

AIM

2. The aim of this instruction is to state the notification of post separation employment procedures to be followed by members, taking up employment with organisations which have, or have the potential for, business associations with the ADF or the DoD.

NOTIFICATION PROCEDURES

Application of notification procedures

3. While notification of post separation employment procedures apply to all members of the ADF whose post separation employment could give rise to a conflict of interest, they are most pertinent to members in relatively senior positions where actual or perceived conflict between their Service and proposed private duties could arise.

Proposed post separation employment—conflict potential

4. ADF members intending to take up post separation employment should be aware that conflicts of interest are most likely to arise as a result of their involvement with:

- a. ADF purchasing functions;
- b. preliminary stages of procurement involving identification and definition of an ADF requirement;
- c. contractual relationships between the ADF, or the Commonwealth, and business organisations;
- d. the exercise of discretionary power in conferring business advantage eg the issue of a licence or concession;
- e. confidential procedures and criteria used to adjudicate decisions; and
- f. forecasts of intentions which could confer direct pecuniary advantage on intending participants.

5. Post separation employment should not be detrimental to the interests of the ADF, or the Commonwealth, nor give the proposed employer an unfair competitive advantage. Any ADF member taking up an appointment with any business or body falling into any of the following categories should be aware that conflicts of interest could immediately arise as a result of their employment:

- a. those in, or anticipating, contractual relationships with the ADF/DoD;
- b. those in which the Commonwealth is a shareholder;
- c. those in receipt of ADF/DoD loans, guarantees or other forms of capital assistance;

- d. those with which the ADF/DoD is otherwise in a special relationship;
- e. those associations whose primary purpose is to lobby Ministers, Members of Parliament and Government Departments and Authorities on defence related matters; and
- f. those who wish to establish themselves in a consultancy service which derives its income, at least in part, from its dealings with the ADF/DoD.

Legal restrictions

6. Commanding Officer's/Officer's Commanding or equivalent are to ensure that ADF members who wish to take up post separation employment are made aware of their obligations regarding disclosure of official, commercially valuable or in-confidence information gained in the course of employment in the ADF. Under sub-section 70(2) of the *Crimes Act 1914*:

A person who, having been a Commonwealth officer, publishes or communicates, without lawful authority or excuse (proof whereof shall lie upon him), any fact or document which came to his knowledge, or into his possession, by virtue of his office, and which, at the time when he ceased to be a Commonwealth officer, it was his duty not to disclose, shall be guilty of an offence.'

Penalty: Imprisonment for two years.

7. 'Commonwealth officer' is defined under section 3 of the Crimes Act as including a person permanently or temporarily employed in the ADF.

8. In common law there is a general rule that a person is not to be restrained from using skill, knowledge or experience gained in the course of employment. An exception to this rule is the doctrine of breach of confidence which protects information of a confidential nature imparted to an employee in circumstances where an obligation of confidence is imposed.

9. Under common law, any work performed by an employee for an employer is the property of the employer. Because the Commonwealth is the employer of ADF members, any work performed by the member for the ADF is, and remains, the intellectual property of the Commonwealth.

Notification procedure

10. When a member receives an offer of employment from a business or body described in [paragraph 5](#), the member is encouraged to submit a letter of notification, through the chain of command, to the appropriate Service Deputy Chief. Letters of notification should be handled promptly to avoid any undue delay which could be perceived by the member separating from the Service, or the prospective employer, as a barrier to employment. The notification should state any relationship that exists between any of the member's official duties, over the preceding two years, and the nature of the proposed employment. In some cases, the member's Commanding Officer may consider some preliminary action to limit the potential for conflict such as a rearrangement of the member's duties.

11. Upon receipt of the letter of notification, the appropriate Service Deputy Chief will seek comment as to the possibility of the proposed employment giving rise to a conflict of interest situation from the:

- a. Head of Industry and Procurement Infrastructure;
- b. relevant functional areas in that Service; and
- c. appropriate Service Career Management Agency within the Defence Personnel Executive,

12. In considering notifications, the following factors need to be taken into account:

- a. the importance and sensitivity of the position most recently held and, if appropriate, other positions held during the preceding two years;
- b. the nature of the business appointment and its relationship to the member's former positions and areas of work;

- c. the relationship of the proposed employer with the Commonwealth, or ADF, for example if it is a regular supplier of services or equipment; and
- d. the period during which information gained or contacts made within the Service would continue to be of value to the ex-member and the new employer.

13. Where the Deputy Service Chief considers that no actual or potential conflict of interest is involved, the member is to be advised accordingly. In the case of an ADF member holding a rank of Colonel (E) or lower, and where an actual or potential conflict of interest is identified, the Commanding Officer/Officer Commanding or equivalent is to discuss with the member steps that may be taken to avoid any immediate conflicts of interest, such as re-allocating the members duties, arranging an attachment or posting, or arranging the taking of leave before the member resigns or retires.

14. Where an actual or potential conflict of interest is identified in the case of an ADF member holding a rank of Brigadier (E) or Major General (E), the Deputy Service Chief is to discuss with the member steps that may be taken to avoid any conflicts of interest. The Deputy Service Chief is to make recommendations to the Service Chief regarding appropriate courses of action to resolve the issue. The Service Chief is to advise the responsible Minister, Chief of the Defence Force (CDF) and the Secretary of the course of action taken to resolve the issue.

15. Where an actual or potential conflict of interest is identified in the case of an ADF member holding a rank of Lieutenant General (E) or higher, the Deputy Service Chief is to forward the letter of notification together with staff comments to the Vice Chief of the Defence Force (VCDF). VCDF will discuss with the member steps that may be taken to avoid any conflict of interest and make recommendations to CDF and the Secretary regarding appropriate courses of action to resolve the issue. Following their determination of an appropriate course of action, CDF and the Secretary are to advise the responsible Minister of action taken to resolve the issue.

Advising outcome

16. Members submitting letters of notification are to be advised in writing of the outcome of deliberations on their notifications.

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