



Department of Defence

# DEFENCE and INDUSTRY

*An Ethical Relationship*



**DEFAC**

DEFENCE ETHICS AND  
FRAUD AWARENESS



*Campaign*

# *DEFENCE and INDUSTRY*

**An ethical  
relationship**

The Defence Mission is to prevent or defeat the use of armed aggression against Australia and its interests. This mission demands interaction between Defence, industry and the Australian people. The probity of this interaction affects the performance of the Defence mission and the Australian people's continuing trust in Defence.

An effective relationship between Defence and industry is essential. Vigorous, productive and profitable industry is important in sustaining the operational effectiveness of the Australian Defence Force. Equally important, is the ability of Defence to get the best value for money from allocated public funds. These objectives require an open and ethical business relationship.

This Defence statement provides clear guidelines for ethical behaviour appropriate to these business dealings.

It is built on personal and professional values, recognising that individuals will use this combination to help make the informed judgements integral to meeting the Defence mission. If there is any doubt about the ethics of a proposed action, the test is whether the proposal would give rise to either the reality or the perception of a conflict of interest.

The statement provides industry with guidelines on what to expect from Defence when doing business, and will serve to enhance Defence staff awareness of the issues involved. It also recognises that industry has made a significant contribution to the business ethics field over the past decade.

Defence is not seeking to over-regulate by prescribing a detailed code of behaviour. Rather, as part of the process of further strengthening the business relationship between Defence and industry, this statement provides a practical recognition of the aims of both industry and Defence, the constraints on each, and their mutual obligations.




  
P. H. BARRATT

SECRETARY

CANBERRA  
DECEMBER 1998



  
C. A. BARRIE AO  
ADMIRAL  
CHIEF OF THE  
DEFENCE FORCE

CANBERRA  
DECEMBER 1998

# Code of Conduct

Ethics comprise a set of values and principles which conventionally include such broad qualities as honesty, integrity, accountability and fairness. Codes of conduct adopted by individual organisations usually include standards of behaviour relevant to the specific activities of the organisation. In the case of commercial relationships between Defence and industry, ethical behaviour includes standards specific to Government procurement.

The code of conduct set out below provides a framework for relationships between Defence and industry. Defence expects that all its employees will behave ethically, and those involved in the procurement process will abide by the relevant written codes of behaviour.

## **Defence members and representatives will:**

- behave honestly and with integrity;
- act with care and diligence;
- treat everyone with respect and courtesy, and without coercion or harassment of any kind;
- comply with all applicable Australian laws;
- not provide false or misleading information in response to a request for information that is made for official purposes;
- comply with any lawful and reasonable direction given by someone who has authority to give the direction;
- maintain appropriate confidentiality about dealings that they have with any Minister or Minister's member of staff;
- disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their employment with Defence;
- use Commonwealth and Defence resources in a proper manner;
- not make improper use of inside information, or their duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for themselves or any other person;
- at all times behave in a way that upholds the values and the integrity and good reputation of the Australian Public Service or the Australian Defence Force;
- while on duty overseas behave at all times in a way that upholds the good reputation of Australia;
- respect the environment;
- account for their decisions and actions;
- respect privacy and confidentiality;
- act equitably and promptly; and
- comply with any other conduct requirement that is prescribed by regulations and directions.

Defence expects that its tenderers, contractors, suppliers and their employees and subcontractors will all be guided by this Code of Conduct.

Industry has also been active in developing codes of ethical behaviour for its employees and the thrust of these codes is consistent with those applying to Defence employees. This complementary situation has the potential to improve the mutually productive relationship between Defence and industry. It will also contribute to the Government's commitment for Defence to have an effective, streamlined and transparent relationship with industry which will reduce costs to industry while vigorously protecting the interests of the tax-payer.

Defence expects that those conducting, or wishing to conduct, business with it will maintain relationships with Defence personnel that are based on mutual trust, and which will stand up to public scrutiny and preserve public trust. Industry can expect relationships with Defence to be friendly, and conducive to the prompt and proper handling of any business issues that may arise.

An ethical relationship which pursues this commitment will enable suppliers to promote their interests profitably, and avoid unproductive and potentially questionable activity. Contractors and suppliers will also benefit from the assurance that their competitors and sub-contractors are behaving ethically, according to a known set of rules and agreed guidelines.

**For its part Defence requires its employees to:**

- seek value for money for the tax-payer;
- be open in business dealings, subject to commercial-in confidence, security, and privacy considerations;
- respond promptly to reasonable requests for advice and information;
- be equitable in their treatment of all tenderers;
- deal honestly with suppliers and be timely in paying accounts;
- avoid and declare situations where private interests conflict with public duty;
- not solicit or accept remuneration or other benefit from organisations seeking or having an official relationship with Defence; and
- protect Commercial-in-Confidence and National Security classified information.

**We expect that suppliers to Defence will:**

- deliver value for money;
- avoid collusive practices;
- disclose beneficial interests in contracts wherever appropriate;
- prevent the unauthorised release of privileged information including Commercial-in-Confidence and National Security classified information;
- respond promptly to reasonable requests for advice and information;
- not accept solicitations from or make offers to Defence employees of financial or other benefits; and
- cooperate with Defence's post separation employment guidelines.

## Establish an ethical culture

A code of ethics will not be effective unless the organisation and its employees are committed to it. That will demand: explicit commitment by the senior management; clear commitment by line management; allocation of resources to educating employees; and adoption of internal measures for ensuring compliance.

**Particular situations in which Defence and industry should exercise care include:**

### Gifts

There will be no expectation of any gift giving. Gifts will not be provided to Defence personnel or Defence agencies in the expectation of reciprocation or the granting of favours. If a supplier wishes to provide a personal gift, it should be of nominal value only (such as a calendar), and should be offered only on occasions (such as Christmas) which have no connection with evaluation of tenders or negotiation of contracts. If a supplier wishes to provide a gift such as a model or sample of more than nominal value, this will be to the Defence agency concerned rather than an individual; gifts of this kind are recorded in registers in accordance with Defence procedures.

### Hospitality and entertainment

Extension of modest hospitality by Defence or industry can be appropriate as a means of facilitating business. Cost sharing can also be appropriate. Typically, such hospitality would take the form of presentations, demonstrations, briefings and discussions, accompanied by breakfast, lunch or dinner. The hospitality should not be lavish, nor should it generally include travel and accommodation.

It is not appropriate for Defence personnel to accept any offer of free entertainment from industry where it could be regarded as substantial or could give rise to either the reality or the perception of a conflict of interest.

Defence personnel are usually not entitled to use Government funds for hospitality. Approval is handled on a case-by-case basis and must be obtained in advance. There will be no expectation that industry pay for the hospitality or entertainment of Defence personnel. Ambiguity about the arrangements is to be avoided.

During the tender evaluation process, social contact should be avoided. During contract negotiation there shall not be any acceptance of hospitality.

## Conflicts of interest

At times processes will need to be established between Defence and industry to identify and quickly resolve real or perceived conflicts of interest, and to handle privileged information. For example, where a supplier's dealings with other suppliers and with Defence could lead to conflicts of interest, the supplier may have to make arrangements to segregate activities so that possible conflicts of interest will not arise.

Defence employees should ensure that in all dealings with industry, their actions are capable of withstanding critical public scrutiny without the need for elaborate justification. In dealings with industry, a real or perceived conflict of interest may arise between an employee's private interests and that employee's duty to Defence. Examples of such conflicts include the ownership of shares or stock in a company competing for Defence business, the unauthorised disclosure or personal use of any information which would result in insider trading, or either setting-up or providing anti-competitive advantage to a company owned by a family member and involved in Defence business.

In such circumstances, if the conflict cannot be avoided, the employee should declare it promptly in writing to an appropriate superior officer. This situation will normally be dealt with by the employee concerned being excluded from any duty that could be perceived to give rise to a conflict of interest.

## Sponsorships and trade displays

Industry regularly sponsors trade displays and meetings of employee categories and professional bodies.

Where such meetings or displays are conducted on Defence property, Defence may, on a commercial basis, seek to recover from industry the costs to it of providing that venue. These costs may include, for displays of a short duration, meals and refreshments provided through mess facilities for formal occasions such as the opening function. Care needs to be taken by Defence employees to ensure that this recovery action is transparent by recording it through appropriate Defence accounting processes.

Under no circumstances are Defence employees to exert pressure on companies to hold trade displays in order to raise revenue or obtain personal benefits. Similarly, Defence employees should not assist a company to lobby for Defence to select that company's particular product.

Attendance by Defence employees at sponsored meetings is acceptable and has become a normal process within Defence. Defence employees attending such meetings should be aware of the sponsorship and ensure that it does not interfere with or influence their normal decision making responsibilities. It is inappropriate for Defence employees to have other than an "arm's length" relationship with companies during periods of tendering or contract negotiation. There must be no perception of favouritism to any particular company.

## Overseas Marketing

Defence employees can assist a company in its overseas marketing activities, subject to agreement on cost recovery and other issues. During such trips, situations could arise in following foreign business practices which would not meet the fair and open standards normally practised in Australia. If such instances arise, the company is expected to avoid placing Defence staff in actual or potential situations which might conflict with the standards of probity, integrity, conduct and accountability which they are required to maintain in Australia.

## Travel and Accommodation

Defence provides for the business travel and accommodation requirements of its personnel. Travel and accommodation for Defence employees may be provided by a supplier only in exceptional circumstances, such as travel to a remote locality not serviced by commercial airlines and where a company aircraft might be used, or where Defence personnel are assisting efforts to market overseas a product which has already been purchased by Defence or is under consideration. Any offer that a supplier might wish to make for Defence employees to visit and view its products should be made to the Defence agency concerned, and not to an individual. In every case, prior approval by Defence, at appropriately senior level, is required.

## Commercial-in-confidence

Information supplied by companies and Defence on Defence businesses is frequently given 'in confidence' and on the strict understanding that it will not be revealed to other than those with a genuine need to know.

Under no circumstances are Defence and industry employees to allow commercial-in-confidence information to be made known to unauthorised persons. Unauthorised in this setting means any person without a bonafide right to know such information. Competing companies are never to be given another company's information in regard to performance specifications nor any aspects of pricing, quotation, tender, bid, advance details of future product releases, nor any other commercial or proprietary information.

## Post Separation Employment

Defence has guidelines to facilitate the post separation employment of its current and past employees. These include the Commercial Support Program Probity Handy Hints for Defence employees working in areas in the process of being outsourced.

A supplier contemplating an offer of employment to a current or former Defence employee, whether or not the supplier has had business dealings with the employee, should be prepared to cooperate with Defence in applying the Post Separation Employment guidelines. The guidelines are intended to protect all three parties - Defence, the individual, and the prospective employer - from any potential charge of impropriety or conflict of interest.

In each of these situations, there is no absolute definition of "ethical behaviour". If there is any doubt about the ethics of a proposed action, the test is whether the proposal would give rise to either the reality or the perception of a conflict of interest.

## Inspector-General

Personnel in Defence or industry who are concerned that a breach of the law, or of ethical behaviour, has taken place should have a point of recourse. In Defence this would be the Office of the Inspector-General. Personnel identifying potential breaches should have their concerns investigated in confidence and dealt with. They should be given counselling and support when necessary, and should be protected against any discrimination or retaliation. Reasonable action against those making mischievous claims should not be ruled out.

**All Defence employees and those seeking to do business with Defence are expected to be aware of, and to follow the above guidelines.**

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**Difficulties encountered by Defence employees or industries in complying with the guidelines should be referred to:**

Director Fraud Control Policy and Ethics,  
Inspector-General Division,  
Department of Defence,  
Canberra, ACT, 2600  
(tel: (02) 6266 4162 or fax (02) 6266 4592).