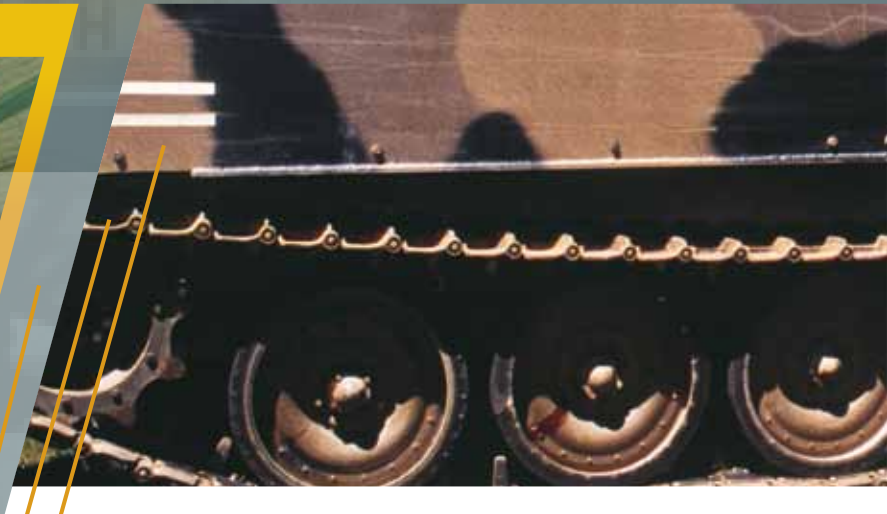




Australian Government  
Department of Defence

# Defence and the Private Sector

*An Ethical Relationship*



## The mission of Defence is to defend Australia and its national interests.

To fulfil this mission, Defence needs the support of a vigorous, productive and profitable private sector. For the purposes of this Ethical Statement, the private sector encompasses all businesses that deal with Defence including suppliers, service providers and contractors. Maintaining sound and ethical business relationships between Defence and the private sector is essential in sustaining the operational effectiveness of the Australian Defence Force.

This relationship must be built on a common understanding of ethical values and conduct, a constant desire to put this into practice, and the confidence that all parties will uphold shared values. Equally important is the ability of Defence to demonstrate that the Defence budget has delivered value for money and that taxpayers' money has been spent in accordance with the law, i.e. efficiently, effectively, economically and ethically. The integrity of the relationship will affect both the performance of Defence and the continued level of trust and confidence afforded Defence and the private sector by the public and the Australian government. Failure to maintain individual, departmental and corporate integrity and to identify and properly address unethical conduct will damage the reputation and effectiveness of those relationships.

This *Defence and the Private Sector* statement provides:

- a set of behavioural standards and ethical principles;
- advice on areas where Defence and the Private Sector must exercise care; and
- guidelines for raising concerns regarding unethical conduct.

As part of the continual process of strengthening the business relationship between Defence and the private sector, this statement provides a practical recognition of the aims of both parties, the constraints under which each operates, and their mutual obligations. The ethics of any decision or action must be able to withstand the full light of external scrutiny and be acceptable to peers, government and the public.

Please read the statement, become familiar with it, and act in accordance with the shared values and mutual obligations that underpin the Defence sector for the benefit of Australia.



Duncan Lewis AO, DSC, CSC  
Secretary of Defence



General David Hurley, AC, DSC  
Chief of the Defence Force

## Ethical and Behavioural Standards

Defence personnel are required to behave in a way that upholds the Defence Values (Professionalism, Loyalty, Integrity, Courage, Innovation and Teamwork) and the integrity and good reputation of the Australian Defence Force, the Australian Public Service and the Commonwealth of Australia.

The behavioural standards set out below provide a framework for relationships between Defence and the private sector. Defence expects that its personnel will behave ethically, especially those involved in procurement and contract management, and that they will abide by these behavioural standards. Defence also expects that its tenderers, contractors, suppliers and their employees and sub-contractors will all be guided by these behavioural standards.

### For its part, Defence requires its personnel and representatives to:

- behave honestly and with integrity;
- act with care and diligence;
- treat everyone with respect and courtesy, and without harassment;
- protect and use Commonwealth resources in a proper (i.e. efficient, effective, economical and ethical) manner;
- seek value for money for the tax-payer;
- be accountable for their official decisions and actions and be open in business dealings, subject to commercial-in-confidence, security, and privacy considerations;
- respond promptly to reasonable requests for advice and information;
- not provide false or misleading information in response to a request for information that is made for official purposes;
- be equitable and unbiased in their treatment of all tenderers;
- be timely in paying valid accounts from suppliers;
- avoid, declare and manage situations where private interests conflict, or could be perceived to conflict, with official duty;
- not solicit, for themselves or any other person, remuneration or other benefit from organisations seeking or having an official relationship with Defence;
- comply with all applicable directions, instructions and Australian laws; and
- report unethical conduct to an appropriate authority in Defence.

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 confidence. The private sector 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, 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.

### Defence expects that its private sector suppliers will:

- deliver value for money;
- not engage in collusion, restraint of trade or other restrictive or anti-competitive practices;
- protect privileged information including in-confidence, security classified and intellectual property provided by Defence;
- respond promptly to reasonable requests for advice and information;
- not make offers of financial benefits to Defence personnel;
- reject solicitations from Defence personnel seeking financial or other benefits;
- have due regard to Defence's policies on conflict of interest, gifts, hospitality and sponsorship and post-separation employment; and
- report to the Inspector General of Defence any instances of unethical behaviour by Defence personnel or inappropriate approaches by companies or individuals (e.g. proposed collusion, market sharing, price fixing or other anti-competitive practices).

## ■ Promoting an Ethical Culture

The application of these behavioural standards will not be effective unless participating organisations and their people understand the benefits and are committed to them. It is particularly important that the need to maintain an ethical culture as part of normal business practice is communicated effectively at all levels within an organisation. This will require a firm commitment from senior managers to take ownership of these behavioural standards and related ethical principles, to promote and maintain awareness of them and to adopt mechanisms for ensuring compliance.

## ■ Avoiding Conflicts of Interest

Conflicts of interest are conflicts between a person's official (or business) duties and their private interests. These can be actual, potential or perceived. An **actual** conflict of interest is one where there is real conflict between a person's official duties and responsibilities, and their private interests. A **potential** conflict of interest arises where a person has private interests that could conflict with their official duties. A **perceived** conflict of interest can exist where a third party could form the view that a person's private interests could improperly influence the performance of their duties or the outcome of a matter within their span of control or responsibility.

The term 'private interest' includes not only a person's own personal, professional or business interests, but also the personal, professional or business interests of individuals or groups with whom they are closely associated. This can include relatives, friends or even rivals or enemies. Interests can be either pecuniary (i.e. financial) or non-pecuniary.

In dealings between Defence and the private sector, actual, potential or perceived conflicts of interest will inevitably arise. The management of risk associated with any conflict of interest situation is fundamental to ensuring the highest levels of integrity and public trust are achieved and maintained. Problems can arise where these risks are not properly managed.

For Defence personnel, if a conflict of interest (whether actual, potential or perceived) arises, they should declare it promptly in writing to an appropriate senior officer. Where the conflict cannot be otherwise avoided, it will be managed as circumstances require but will normally be dealt with by the person concerned being excluded from any duty that could be perceived to give rise to a conflict of interest.



Where a suppliers dealings with other suppliers and/or with Defence could lead to a conflict of interest, the supplier may have to make arrangements to segregate activities so that possible conflicts of interest will not arise.

Defence policy: Defence Instruction (General) Personnel 25-6 *Conflicts of Interest and Declarations of Interests*.

## ■ Accepting Gifts and Hospitality

Defence must deal with offers of gifts and hospitality in a transparent manner, taking care to avoid any actual or perceived bias or conflict of interest. Defence personnel must be able to demonstrate that they are not improperly influenced in the performance of their duties by such offers or any other inducements.

**Gifts** are not to be solicited by Defence personnel and must not be provided to Defence personnel in the expectation of reciprocation or the granting of favours. If a supplier wishes to provide an individual or a team in Defence with a low value gift, it should be given openly and should not be offered at a time that could raise general concerns about conflict of interest (such as during a tender or contract negotiation period).

Gifts of higher value (including a model or sample) are regarded as Commonwealth property and must be recorded in a gift and hospitality register in accordance with Defence procedures. Such gifts can only be retained for the personal benefit of the recipient in limited circumstances and with the appropriate approval.

**Hospitality** of a modest nature by Defence or the private sector can, if prudently managed, be an appropriate means of facilitating business relationships. There is no expectation that the private sector will pay for the hospitality of Defence personnel and Defence personnel are restricted in the use of public funds to provide hospitality. Cost sharing can be appropriate, depending on the circumstances.

Defence personnel can accept incidental hospitality but must exercise care to avoid perceived conflicts of interest or supplier preferential treatment. Incidental hospitality could include hospitality provided to an official as a speaker/presenter, or during an activity where the hospitality is incidental to an activity, which contributes to achieving Defence Portfolio outcomes.

Typically, hospitality is associated with presentations, demonstrations, briefings or discussions, accompanied by catering and venue hire where appropriate. The hospitality must be reasonable and defensible in the circumstances; must not be extravagant or lavish; and must not generally include the provision of entertainment, travel or accommodation.

Acceptance of limited hospitality, with appropriate approval, may be appropriate in situations where senior Defence personnel occupying high profile positions with demonstrable representational responsibilities are required to attend events hosted by the private sector, provided that doing so does not give rise to a conflict of interest. Acceptance of approved hospitality must be recorded in a gift and hospitality register.

There are times, such as during tender evaluations or contract negotiations, when social contact or hospitality between Defence personnel and the private sector would be clearly inappropriate.

Defence policy: Defence Instruction (General) Personnel 25-7 *Gifts, hospitality and sponsorship* and Defence Instruction (General) Personnel 25-6 *Conflicts of Interest and Declarations of Interests*.

## ■ Soliciting and Accepting Sponsorship

Sponsorship means a commercial arrangement in which a sponsor provides a contribution in money or in kind to support an activity in return for certain specified benefits. Sponsorships can be provided by the private sector (or individuals) in support of a Defence activity or by Defence in support of related and worthwhile private or public sector activities.

A key element in managing sponsorship arrangements in Defence is the management of any conflicts of interest, particularly perceptions of conflicts of interest that may arise as a result of giving and/or receiving benefits such as gifts or hospitality. Defence personnel must not seek or receive any personal benefit from a Sponsorship.

Benefits that may be received by Defence as a result of a sponsorship arrangement are to be managed in accordance with relevant government and Defence policies. Defence officials managing a sponsorship arrangement must be alert to the risk of actual or claimed personal benefit if benefits that are given to Defence as apart of such an arrangement are used by one or a small number of personnel.

Where it is decided that it is appropriate for Defence to use a benefit provided by a sponsor, and it is possible to do so, the individual(s) selected to use the benefit should not be directly involved in managing the Defence-sponsor relationship. Defence personnel are not to endorse the sponsor(s) or the sponsor's products, services or activities before, during or after the sponsored event(s).

Defence policy: Defence Instruction (General) Personnel 25-7 *Gifts, hospitality and sponsorship* and Defence Instruction (General) Personnel 25-6 *Conflicts of Interest and Declarations of Interests*.

## ■ Sponsoring Trade Displays

The private sector 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 associated with 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 personnel or its representatives to exert pressure on companies to hold trade displays in order to raise revenue or obtain personal benefits. Similarly, Defence personnel and representatives should not assist a company to lobby for Defence to select that company's particular product.

Attendance at trade displays and other sponsored meetings by relevant Defence personnel is acceptable and has become a normal process within Defence. Defence personnel attending such functions should be aware of the sponsorship and ensure that it does not interfere with or influence their normal decision making responsibilities or raise any perception of favouritism to any particular company.

## ■ Engaging in Overseas Marketing

Defence personnel 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 personnel 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.

## ■ Accepting 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 a product overseas which has already been purchased by Defence or is under consideration. Any offer that a supplier might wish to make for Defence personnel 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 an appropriately senior level is required.

## ■ Managing Post Separation and Secondary Employment

In accordance with common law principles, Defence personnel must not be unreasonably restrained from using skills, knowledge or experience gained in the course of their employment when changing employers. Defence encourages those separating to consider a career in another area of the wider Defence workforce, including Defence industry, where their skills and experience will continue to contribute to the achievement of Defence objectives. In turn, Defence is active in recruiting from Defence industry and encourages Defence industry employers to support their employees in joining the ADF Reserves.

The post separation employment of former Defence personnel or the secondary employment of current Defence personnel must be managed in a way that avoids detriment or embarrassment to Defence, the individual and the prospective employer. Such employment must not create a conflict of interest or provide an unfair advantage, either actual or perceived, to a potential employer.

When an employment offer could result in a real or apparent conflict of interest, Defence personnel should notify their prospective employer of their obligations to Defence at the earliest opportunity.

Where former Defence personnel take up employment with a company or organisation that deals with Defence, there is potential for public disquiet and the perception of impropriety, particularly if they held a relatively senior or influential position. Similar concerns may arise when Defence personnel seek temporary work (secondary employment) with a Defence supplier while on leave from their normal position.

In certain circumstances, Defence suppliers are required to seek approval from Defence before allowing former Defence personnel or Defence service providers to contribute to a tender response or to a Defence contract. Defence suppliers must ensure that they comply with the applicable provisions of standard Defence conditions of tender and conditions of contract.

Every post separation employment or secondary employment situation will be different and no single definition of 'ethical behaviour' will suit all the circumstances. If there is doubt about the ethics of a proposed action, one test is whether the proposal would give rise to either an actual or perceived conflict of interest.

Defence policy: Defence Instruction (General) Personnel 25-4 *Notification of Post Separation Employment*, Defence Instruction (General) Personnel 25-2 *Employment and Voluntary Activities of Australian Defence Force Members in Off-Duty Hours* and the Defence Workplace Relations Manual, Chapter 7, Part 5 – Outside Work.

## ■ Protecting Privileged Information

Information exchanged between Defence and the private sector is frequently provided *in confidence* and on the strict understanding that it will not be discussed, revealed or passed to any person or entity without a genuine need to know. In this context, privileged information includes, but is not limited to: commercial or proprietary information, Defence classified or caveat information, intellectual property and private information.

Defence and private sector personnel will safeguard all privileged information and will not permit its unauthorised disclosure. In this context, the term 'unauthorised' means disclosure to a person without a genuine need to know or, where applicable, without the necessary security and other clearances

## ■ Promoting Confidence in Defence procurement processes

It is in the interests of Defence, Government and the private sector that Defence procurement processes are decided in an environment that ensures public confidence that the process is fair and defensible. This requires Defence and the private sector work together to achieve adequate standards of probity, ensuring that all communications between the private sector and government as well as the private sector and media, during a tender process do not prejudice the conduct or outcome of that process.

Defence recognises that there may be communications with government and the media during which private sector bidders may legitimately seek to communicate their offerings as part of the normal course of their business. However, it is essential that these communications do not (and are not seen to) improperly influence the outcome of a Defence procurement process. This is necessary to ensure that all parties avoid the cost and schedule impacts that can result from a failure to adhere to adequate standards of probity.



**Accordingly, without unduly constraining the interaction between the private sector and Defence in the normal course of business activities, Defence expects that its private sector bidders will:**

- (lobbying) not ask a Minister to improperly intervene in a tender process in order to have their tender selected over other tenders. However, bidders may draw the attention of Ministers or Government to issues associated with a procurement and relevant elements of their offering – such issues are considered by government when considering Defence recommendations. Bidders may also make contact with and attend meetings with Ministers in the course of their ordinary business activities, including providing general information about the products and capabilities offered by the bidder for a particular procurement process. However, Ministers may decline to meet with bidders during a procurement process or meet on the condition that a Defence official is present for the discussions or may decide not to discuss the procurement process during a meeting;
- (Defence contact officer) adhere to the nominated Defence point of contact for all communications between Defence and private sector bidders in relation to a procurement process. However, this does not prevent officials and company officers from being in contact on a range of other issues, including in relation to procurement processes. For example, the CEO of DMO and CEOs of bidders may engage in regular dialogue on a range of issues;
- (advertising, marketing and sales) not release information through the media or otherwise that denigrates, criticises or portrays in a negative light, another bidder's goods, services, solution or performance on previous Defence contracts. However, this does not prevent a bidder from undertaking advertising, promotion, marketing or sales activities that are part of its ordinary business activities in support of their products during a procurement process. This can include advertising the bidder's solution at airports, inviting journalists to a tour of the bidder's facilities and discussing the bidder's commitment to and record in Defence work, or advertising in defence industry journals in a manner that objectively promotes the bidder's products or solution;
- (media issues and public statements) advise the Defence nominated point of contact for a tender process if a bidder is contacted by the media in relation to the process, or if the bidder intends to make a statement to the media about the process. Wherever practicable, the bidder and Defence will coordinate announcements and discuss implications for the procurement process (The Commonwealth will accord high priority to responding to bidders regarding media issues and will ensure that competing bidders are treated even-handedly); and
- (sensitivity of capability requirements) not make any public announcements, whether to the media or otherwise, about Defence's technical or operational requirements set out in procurement documentation, unless authorised to do so by the contact officer for the procurement or the requirements in question are already public knowledge.

## ■ Raising Concerns about Unethical Conduct with the Inspector General

Private sector companies (or individuals) and Defence personnel have a responsibility to report concerns regarding unethical conduct. There are a number of avenues available for reporting unethical or unlawful conduct, including fraud, theft, corruption or bribery involving Defence resources, personnel, property or premises.

The Inspector General of Defence is the appropriate agent for receiving such reports. Reports can be made directly to the Inspector General's Office or through the Defence Whistleblower Scheme (a protected disclosure scheme), which is managed by the Inspector General of Defence.

Contact information for the Inspector General's Office is as follows:

The Inspector General of Defence  
CP3-2-100  
Department of Defence  
Canberra ACT 2600  
Tel: 02 6266 4094 Fax: 02 6266 4588  
Email: IG.Investigations@defence.gov.au

Alternatively, you can contact the Defence Whistleblower Scheme via a confidential 24 hour hotline on 1800 673 502.

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For advice about the information in this document please contact:

Director Fraud Control Policy and Ethics  
Fraud Control and Investigations Branch  
Department of Defence  
Canberra ACT 2600  
Tel: (02) 6266 4162 Fax: (02) 6266 4592  
Email: ethics.training@defence.gov.au

Further information on the topics discussed in this Ethics Statement (including current Defence policies) can be found at <http://www.defence.gov.au/ig/policy.htm>.

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