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## Defence Industry Security Program (DISP) Privacy Notice

1. The Defence Security Industry Office (**DISO**) respects your company's confidential information and the personal information of individuals who are associated with your company.
2. DISO complies with the Australian Privacy Principles (**APPs**) in Schedule 1 to the *Privacy Act 1988*, which govern the handling of personal information (including sensitive information) for the efficient and effective administration of the DISP. DISO also operates in line with the Department of Defence's APP privacy policy under APP 1.3.
3. Defence undertakes checks to assess an entity's suitability to hold and maintain DISP membership in accordance with Control 16.1 in the Defence Security Principles Framework (**DSPF**). This involves collecting, using and disclosing personal information to Defence capability managers, contract managers, project leads and other Australian Commonwealth departments and agencies.
4. "Personal information" in this regard is defined in the *Privacy Act 1988*. For convenience, the definition is in **Enclosure A** to this Privacy Notice.
5. DISO will collect personal information from your company's Chief Security Officer (CSO) and Security Officer(s) within the meaning of the AE-250 – *Defence Industry Security Program Application* accompanying this Privacy Notice, and from Controllers. A "Controller" in this regard is defined in **Enclosure B** to this Privacy Notice.
6. Your company must declare who are its Controllers as a pre-condition to the AE 250 being a valid application.
7. DISO will collect personal information about the CSO, Security Officer(s) and Controllers who are individuals for the following purposes:
  - (a) In the event an application has been made by your company to become a member of DISP in relation to membership level described in the accompanying AE 250 - to assess the company's credentials to be a DISP member in accordance with the suitability and eligibility criteria for that level, and for DISO to make a decision either to grant or to refuse the application for membership;
  - (b) In the event an application has been made by your company to renew its DISP membership - to assess the company's credentials to be a DISP member at the level described in the renewal application, in accordance with the suitability and eligibility criteria for that level, and for DISO to make a decision either to grant or refuse the renewal application;
  - (c) In the event your company is a DISP member, and DISO reasonably suspects that the company no longer satisfies the suitability or eligibility criteria for the company's membership level - to assess whether or not adverse administrative action should be taken against the company, including a decision by DISO to limit or downgrade the company's membership, or to suspend or cancel its membership;

- (d) In the event your company is a DISP member – to conduct the ongoing membership suitability and eligibility checks, including security audits of the company from time to time and other checks.
8. The Controllers might be limited to a director or senior manager of your company but might also include individuals who are contractors down the contracting chain from the company who satisfy the definition of “Controller” and who DISO determine are relevant to the company’s DISP membership or prospective membership.
9. DISO will only collect personal information from the CSO and Security Officer(s), and Controllers (other than sensitive information, which is a subset of personal information) if the collection is reasonably necessary for, or directly related to, one or more of DISO’s functions or activities, including the purposes described above in this Privacy Notice.
10. DISO will only collect sensitive information from the Chief Security Officer and Security Officer(s) and Controllers if the individual consents to the collection of the information, and the information is reasonably necessary for, or directly related to, one or more of DISO’s functions or activities, including the purposes described above in this Privacy Notice.
11. “Sensitive information” in this regard is defined in the *Privacy Act 1988*. For convenience, the definition is also in Enclosure A to this Privacy Notice. DISO might not collect all these categories of sensitive information, or even most of the categories.
12. If your company does not supply the confidential information requested by DISO, or if the Chief Security Officer, Security Officer(s), or Controllers do not supply the personal information requested by DISO, the main consequences for the company, and indirectly for those individuals would be:
- (a) in the event an application has been made by the company to become a member of DISP in relation to the membership levels described in the accompanying AE 250 – the application might be refused;
- (b) in the event an application has been made by the company to renew its DISP membership - the application might be refused;
- (c) in the event the company is a DISP member, and DISO reasonably suspects that the company no longer satisfies the suitability criteria for the company’s membership level – a negative inference may be drawn against the company and might be made by DISO to limit or downgrade the company’s membership, or to suspend or cancel its membership.
13. The other APP entities, bodies or persons, or the types of other APP entities, bodies or persons, to which DISO usually discloses personal information collected by DISO, are “enforcement bodies” and “intelligence agencies” as defined from time to time in the *Privacy Act 1988*, to enable DISO to achieve its purposes described above in this Privacy Notice.
14. For convenience, some “enforcement bodies” and “intelligence agencies” are listed in **Enclosure C** to this Privacy Notice.

15. Defence's APP privacy policy at <https://www1.defence.gov.au/privacy> contains information about how an individual mentioned in this Privacy Notice may access the personal information about the individual that is held by DISO on behalf of Defence, and seek the correction of such information.
16. Defence's APP privacy policy also contains information about how the individual may complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds Defence, and how DISO will deal with such a complaint.
17. DISO is likely to disclose the personal information to overseas recipients. The countries in which such recipients are likely to be located are countries with which DISO must deal for the efficient and effective administration of the DISP and for the purposes for which DISO collects personal information as outlined in this Privacy Notice.

### **What information we collect**

Defence collects the following information to assess applications for DISP membership:

*1. About the Entity*

- An Entity's business name, trading name and Australian Business Number (ABN)
- An Entity's ownership, control and supply chain arrangements
- Public records and public source information

*2. About the Entity's Chief Security Officer and Security Officer(s)*

- Personnel identifiable information
- Details of personnel security clearances
- Security training records

*3. Information about assessing an Entity's suitability and compliance with DISP standards*

- Security governance
- Personnel security
- Physical security
- Information and cyber security
- Any government contracting panels or Defence contracts the entity may be engaged in

### **What information may be disclosed**

Defence may disclose information to other parties for the following reasons:

- For the purposes of assessing DISP membership, including validating information about the company

- The administration of DISP, including disclosing information about an entity's DISP membership levels, and the results of audit and assurance activities
- To support Australian Government engagement with DISP
- To assist other countries where a Security of Information Agreement or Arrangement (SIA) is in place with Australia and where there is a need to disclose information on an entity's DISP membership status.

#### **Disclosure for non-DISP assessment purposes**

Where appropriate, Defence may disclose an entity's information for the purpose(s):

- Identifying, assessing, investigating and managing security risks, threats and incidents
- Investigating suspected breaches of law or Australian Government policy

Defence will only use or disclose an entity's information if:

- Disclosure is required or authorised by Australian law or a court/tribunal order
- A 'permitted general situation' exists for the use and disclosure of the information (as defined in the *Privacy Act 1988*)
- The use or disclosure of the information is reasonably necessary for one or more enforcement related activity conducted by, or on behalf of, an enforcement body

#### **Further information**

More information about the DISP can be found in the Defence Security Principles Framework (DSPF) Control 16.1 – Defence Industry Security Program.

More information about Defence's APP privacy Policy published in accordance with APP 1.3 can be found at <https://www1.defence.gov.au/privacy>.

**“Personal information”** for the purpose of this Privacy Notice means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

**“Sensitive information”** for the purpose of this Privacy Notice means:

- (a) information or an opinion about an individual's:
    - (i) racial or ethnic origin; or
    - (ii) political opinions; or
    - (iii) membership of a political association; or
    - (iv) religious beliefs or affiliations; or
    - (v) philosophical beliefs; or
    - (vi) membership of a professional or trade association; or
    - (vii) membership of a trade union; or
    - (viii) sexual orientation or practices; or
    - (ix) criminal record;that is also personal information; or
  - (b) information about an individual; or
  - (c) genetic information about an individual that is not otherwise health information; or
  - (d) biometric information that is to be used for the purpose of automated biometric verification or biometric identification; or
  - (e) biometric templates.
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**“Controller”** for the purpose of this Privacy Notice has the following meaning.

- (1) An entity that is an individual, a body corporate, a business partnership, or the trustee of a trust, is a Controller of a company if the entity controls the company within the meaning of section 50AA of the *Corporations Act 2001* (Cth) (**Corporations Act**).
- (2) For convenience, an entity controls a company under section 50AA of the Corporations Act if the entity has the capacity to determine the outcome of decisions about the company’s financial and operating policies.
- (3) In determining whether the entity has this capacity:
  - (a) the practical influence the entity can exert (rather than the rights it can enforce) is the issue to be considered; and
  - (b) any practice or pattern of behaviour affecting the company’s financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
- (4) The entity does not control the company under section 50AA of the Corporations Act merely because the entity and a third party (an individual, a body corporate, a partnership or a trustee) jointly have the capacity to determine the outcome of decisions about the company’s financial and operating policies.
- (5) If the entity:
  - (a) has the capacity to influence decisions about the company’s financial and operating policies; and
  - (b) is under a legal obligation to exercise that capacity for the benefit of someone other than the company’s members;the entity is taken not to control the company.
- (6) If an entity does not control a company under section 50AA of the Corporations Act, an “Entity” as defined below in this Privacy Notice is nevertheless a Controller of the company if:
  - (a) the Entity passes the **control test** set out in subparagraph (7); or
  - (b) the Entity passes the **source test** set out in subparagraph (8).

*Control test*

- (7) An Entity **passes the control test** in relation to a company if:
  - (a) the aggregate of:

- (i) the direct voting interests in the company that the Entity holds; and
  - (ii) the direct voting interests in the company held by associates of the Entity;
- is 50% or more; or
- (b) the aggregate of:
    - (i) the direct control interests in the company that the Entity holds; and
    - (ii) the direct control interests in the company held by associates of the Entity;

is 15% or more; or
  - (c) the company is sufficiently influenced by:
    - (i) the Entity; or
    - (ii) an associate of the Entity; or
    - (iii) two or more entities covered by the preceding subparagraphs; or
  - (d) the Entity (either alone or together with associates) is in a position to exercise control over the company.

*Source test*

- (8) An Entity **passes the source test** in relation to a company if:
  - (a) the Entity has transferred property or services to the company on or after 1 January 2000; and
  - (b) the underlying transfer was made for no consideration or for a consideration less than the arm's length amount in relation to the underlying transfer.

*No double counting*

- (4) In calculating the aggregate referred to in paragraph (7)(a), a direct voting interest held is not to be counted under subparagraph (7)(a)(i) to the extent to which it is calculated by reference to a direct voting interest in the company that is taken into account under subparagraph (7)(a)(ii).
- (5) In calculating the aggregate referred to in paragraph (7)(b), a direct control interest held is not to be counted under subparagraph (7)(b)(i) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under subparagraph (7)(b)(ii).

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“Entity” for the purposes of this Privacy Notice means:

- (a) an individual;
- (b) a [body](#) corporate;
- (c) a [trust](#);
- (d) a business [partnership](#);
- (e) a corporation sole;
- (f) a body politic;
- (g) an incorporated association
- (h) an incorporated association

anywhere in the world.

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“Direct voting interest in a company” for the purpose of the control test in this Privacy Notice has the following meaning.

- (1) An Entity holds a **direct voting interest** in a company at a particular time equal to the percentage of the voting power in the company that the Entity is in a position to control at that time.
- (2) If:
  - (a) an Entity holds a direct voting interest (including a direct voting interest that is taken to be held because of one or more previous applications of this subsection) in a company (the **first level company**); and
  - (b) the first level company holds a direct voting interest in another company (the **second level company**);

the Entity is taken to hold a direct voting interest in the second level company equal to the percentage worked out using the formula:

First level percentage × Second level percentage

where:

**“first level percentage”** means the percentage of the direct voting interest held by the Entity in the first level company.

**“second level percentage”** means the percentage of the direct voting interest held by the first level company in the second level company.

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**“Voting power”** for the purpose of the control test in this Privacy Notice has the following meaning.

- (1) A reference to the **voting power** in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
  - (a) the making of distributions of capital or profits of the company to its shareholders;
  - (b) the constituent document of the company;
  - (c) any variation of the share capital of the company;
  - (d) any appointment of a director of the company.
- (2) A reference to **control of the voting power** in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
  - (a) whether or not having legal or equitable force; and
  - (b) whether or not based on legal or equitable rights.
- (3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this section.
- (4) If a company:
  - (a) is limited both by shares and by guarantee; or
  - (b) does not have a share capital;

this section has effect as if the members or policy holders of the company were shareholders in the company.

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**“Direct control interest in a company”** for the purpose of the control test in this Privacy Notice has the following meaning.

- (1) An Entity holds a **direct control interest** in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the Entity holds an interest at that time.
- (2) An Entity also holds a **direct control interest** in a company at a particular time equal to the percentage that the Entity holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.
- (3) An Entity also holds a **direct control interest** in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.

- (4) If:
- (a) an Entity holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this paragraph) in a company (the **first level company**); and
  - (b) the first level company holds the same type of direct control interest in another company (the **second level company**);

the Entity is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:

$$\text{First level percentage} \times \text{Second level percentage}$$

where:

**first level percentage** means the percentage of the direct control interest held by the Entity in the first level company.

**second level percentage** means the percentage of the direct control interest held by the first level company in the second level company.

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For the purposes of the control test in this Privacy Notice, a company is **sufficiently influenced** by an Entity or Entities if the company, or its directors:

- (a) are accustomed or under an obligation (whether formal or informal); or
- (b) might reasonably be expected;

to act in accordance with the directions, instructions or wishes of the Entity or Entities.

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### **Associates**

(1) For the purposes of the control test in this Privacy Notice, when determining whether a company is a controlled company in relation to an Entity, the following are **associates** of an Entity:

- (a) a relative of the Entity who is an individual;
- (b) an Entity who, in matters relating to the company:
  - (i) acts, or is accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal), is intended or expected to act;

in accordance with the directions, instructions or wishes of:

- (iii) the Entity; or
  - (iv) the Entity and another entity who is an associate of the Entity because of another provision of this paragraph;
- (c) a business partner of the Entity or a business partnership in which the Entity is a business partner;
- (d) if a business partner of the Entity is an individual—the spouse or a child of that business partner;
- (e) a trustee of a trust, where:
- (i) the Entity; or
  - (ii) another entity that is an associate of the Entity because of another provision of this paragraph;
- benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, business partnerships or trusts;
- (f) a body corporate, where the body corporate is sufficiently influenced by:
- (i) the Entity; or
  - (ii) another entity that is an associate of the Entity because of another provision of this paragraph; or
  - (iii) another body corporate that is an associate of the Entity because of another application of this paragraph; or
  - (iv) two or more Entities covered by the preceding subparagraphs;
- (l) a body corporate, where a majority voting interest in the body corporate is held by:
- (i) the Entity; or
  - (ii) the Entities that are associates of the Entity because of any of the preceding provisions of this paragraph; or
  - (iii) the Entity and the entities that are associates of the Entity because of any of the preceding provisions of this paragraph.

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## Relatives

- (1) For the purposes of the control test in this Privacy Notice, a **relative**, in relation to a person (the **first person**), means any of the following:
- (a) the spouse of the first person;

- (b) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the first person;
- (c) the spouse of a person covered by paragraph (b);
- (d) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the spouse of the first person;
- (e) the spouse of a person covered by subparagraph (d);
- (f) a child of a person covered by any of the preceding subparagraphs.

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### **Extra-territorial operation**

For the purposes of determining whether or not an Entity is a Controller, DISO may take into account acts, omissions, matters and things outside of Australia.

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For the purposes of this Privacy Notice "**enforcement body**" includes but is not limited to:

- (a) the Australian Federal Police; or
- (aa) the [Integrity Commissioner](#); or
- (b) the ACC; or
- (c) Sport Integrity Australia; or
- (ca) the [Immigration Department](#); or
- (d) the Australian Prudential Regulation Authority; or
- (e) the Australian Securities and Investments Commission; or
- (ea) the Office of the Director of Public Prosecutions, or a similar body established under a law of a [State](#) or Territory; or
- (f) another [agency](#), to the extent that it is responsible for administering, or performing a function under, a law that imposes a [penalty](#) or sanction or a prescribed law; or
- (g) another [agency](#), to the extent that it is responsible for administering a law relating to the protection of the public revenue; or
- (h) a police force or service of a [State](#) or a Territory; or
- (i) the New South Wales Crime Commission; or
- (j) the Independent Commission Against Corruption of New South Wales; or
- (k) the Law Enforcement Conduct Commission of New South Wales; or
- (ka) the Independent Broad-based Anti-corruption Commission of Victoria; or
- (l) the Crime and Corruption Commission of Queensland; or
- (la) the Corruption and Crime Commission of Western Australia; or
- (lb) the Independent [Commissioner](#) Against Corruption of South Australia; or
- (m) another prescribed authority or body that is established under a law of a [State](#) or Territory to conduct criminal investigations or inquiries; or
- (n) a [State or Territory authority](#), to the extent that it is responsible for administering, or performing a function under, a law that imposes a [penalty](#) or sanction or a prescribed law; or

- (o) a [State or Territory authority](#), to the extent that it is responsible for administering a law relating to the protection of the public revenue.

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For the purposes of this Privacy Notice "*intelligence agency*" includes but is not limited to::

- (a) the Australian Security Intelligence [Organisation](#);
- (b) the Australian Secret Intelligence Service; or
- (ba) the Australian Signals Directorate; or
- (c) the Office of National Intelligence.