

OFFICIAL**Australian Government****Defence**

**JOINT DIRECTIVE 17/2023
BY THE SECRETARY AND THE CHIEF OF THE DEFENCE FORCE
MORATORIUM ON CONTRACTING RECENTLY TRANSITIONED
OR SEPARATED PERSONNEL**

REFERENCE

- A. Defence Financial Delegations, specifically Secretary's delegation of *Public Governance, Performance and Accountability Act 2013* section 23 power

INTRODUCTION

1. Defence is committed to retaining and maximising critical skill sets within its Australian Public Service (APS) and Australian Defence Force (ADF) workforce. This Directive ensures that all Defence personnel who make decisions about 'Above the Line' contracts have close regard to the value for money represented by proposed contracts, specifically in relation to roles that could otherwise be filled by APS employees or ADF members.
2. This Directive also supports Defence's approach to effectively managing improper disclosure of information and preventing conflicts of interest arising in relation to its business.

PURPOSE

3. The purpose of this Directive is to ensure that a decision to contract a recently separated APS employee or transitioned ADF member into an 'Above the Line' contractor role is only made in circumstances of special measure or commercial necessity.
4. This Directive supersedes and replaces Joint Directive 14/2023.

BACKGROUND

5. This Directive supports the direction the Secretary has placed on the exercise of the section 23 power to contract under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

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6. For the purpose of this Directive, an 'Above the Line' contractor is a resource that supports Defence in roles that are day-to-day duties and work is specified by Defence and performed under the direct supervision of an APS employee or an ADF member. They are generally contracted due to a lack of resource capacity or skillset. They undertake roles on behalf of the Commonwealth assigned by Defence. Information disclosed to the contractor and intellectual property developed in the performance of the role must be dealt with in accordance with the terms of the contract.

7. 'Above the Line' arrangements are best managed via outcomes-based contracts. 'Above the Line' work however includes both outcomes-based contracts and contracts where the work effort is calculated and paid at an hourly or daily rate.

8. 'Above the Line' contractors roles are roles generally undertaken in most government agencies including, but not limited to, ICT project management, governance, corporate, strategic planning, management oversight roles, or roles in which employees influence or make decisions for the Commonwealth.

9. This Directive does not apply to any decision to engage personnel who return to work for Defence as 'Below the Line' contractors, generally referred to as outsourced service providers. Nor does it apply to consultants or technical specialists who are employed by an industry partner to deliver discrete specialised services to Defence.

DIRECTIVE

10. Defence personnel are not to engage former continuous full-time ADF (SERCAT 6 or 7) members, or APS employees seeking to return to Defence as 'Above the Line' contractors, within a 12 month period of their transition/separation from Defence into roles that should be undertaken by ADF members or APS employees.

11. This Directive may be departed from only in special or specific circumstances, if the person to be engaged was:

- a. previously an ADF member (SERCAT 6 or 7) who transitioned as the result of a Command Initiated Transfer to the Reserves (CITR), reaching Retirement Age (ADF only), or redundancy;
- b. previously an ADF member (SERCAT 6 or 7) who was medically transitioned;
- c. previously an ADF member (SERCAT 6 or 7) who formally initiated the process of transition prior to 7 August 2023, with the voluntary application signed or involuntary transition commenced prior to 7 August 2023;
- d. previously an APS employee who retired on medical grounds and is engaged as part of a rehabilitation or return-to-work plan; or
- e. previously an APS employee who separated or resigned from Defence prior to 7 August 2023.

12. Additionally, if commitments were made regarding engagement in an 'Above the Line' contractor role on the day of, or prior to, 7 August 2023, those commitments are not impacted by this Directive.

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13. In addition to satisfying specific circumstances which warrant a departure from this Directive as mentioned in paragraph 10, senior decision-makers at the 3 Star Service Chief / Band 3 Group Head level may exercise the section 23 PGPA Act power delegated to them to fill an 'Above the Line' contract role with a former continuous full-time ADF (SERCAT 6 or 7) member or APS employee who transitioned/separated from Defence within the previous 12 months. The 3 Star Service Chief / Band 3 Group Head must be satisfied, document and evidence in the section 23 PGPA approval, that an engagement is required to meet Defence capability needs. The section 23 PGPA approval, and any supporting material and documentation, must be reported to the Defence Contractor Taskforce in a timely manner. This information will then be reported regularly to relevant committees.

IMPLEMENTATION

14. This Directive is effective on and from 7 August 2023 and will remain extant until amended or withdrawn by us.

15. This Directive complements:

- a. the Secretary's directions related to section 23 of the PGPA Act;
- b. the Defence 'Above the Line' Contractor Strategy; and
- c. restrictions on re-engagement of APS employees within 12 months of redundancy, under the Australian Public Service Commissioner's Directions 2022.

16. This Directive is sponsored by First Assistant Secretary Budgets and Financial Services, and is to be reviewed by 1 July 2025 or if arrangements significantly change.

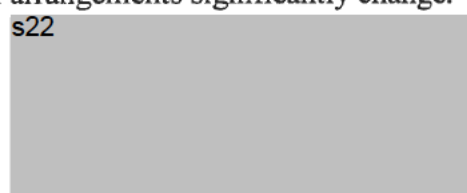
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Greg Moriarty
Secretary

25 August 2023

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Angus J Campbell, AO, DSC
General
Chief of the Defence Force

25 August 2023

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