



Australian Government
Department of Defence

DEFENCE INSTRUCTIONS (GENERAL)

Amendment

ADMIN 35-1
AMDT NO 1
Complete Revision

Procedures for the use of Defence Estate assets by non-Defence organisations or individuals including commercial contractors

Department of Defence
CANBERRA ACT 2600

3 March 2003

Issued with the authority of the Chief of the Defence Force and the Secretary of the Department of Defence pursuant to section 9A of the *Defence Act 1903* for members of the Australian Defence Force.

Issued with the authority of the Secretary pursuant to section 20 of the *Public Service Act 1999* for Department of Defence Australian Public Service employees.

R.C. SMITH, AO
Secretary

J. COSGROVE, AC, MC
General
Chief of the Defence Force

LIST B—ISSUE NO ADMIN B/2/2003

Single Service filing instructions

This instruction should be filed as:

1. NAVY ADMIN 22-1
2. ARMY ADMIN 51-1
3. AIR FORCE LOG 14-2

Sponsor:

Deputy Secretary Defence Support

Sponsor contact:

Director Property Leasing and Acquisitions

Review Date: 3 March 2006

Cancellation

DI(G) ADMIN 35-1 ISSUE NO ADMIN B/5/86 of 5 MAY 86 is cancelled.

Note

This amendment incorporates a title change.

PROCEDURES FOR THE USE OF DEFENCE ESTATE ASSETS BY NON-DEFENCE ORGANISATIONS OR INDIVIDUALS INCLUDING COMMERCIAL CONTRACTORS

INTRODUCTION

1. The Defence Estate comprises land, buildings and infrastructure (assets) and is managed by the National Operations Division (NOD) with the strategic management of the Defence Estate the responsibility of Infrastructure Division (ID), both of the Corporate Services and Infrastructure Group (CSIG), of the Department of Defence (DoD). The Defence Estate is owned by Government (Commonwealth) and is managed by the DoD. CSIG's management has to reflect the stewardship involved in supporting the Government as owner. This instruction seeks to maintain a strong customer orientation whilst remaining faithful to the ultimate owner responsibilities which CSIG supports. In essence, Defence Estate assets may be made available for non-Defence purposes provided that:
 - a. Defence training or operational requirements and activities are not unduly affected; and
 - b. non-Defence use demonstrates a net benefit to Defence or, more broadly, the Commonwealth.
2. Related Defence policy is listed in annex A to this instruction.

AIM

3. The aim of this instruction is to outline the policy, procedures and authorisation for the use of Defence Estate assets by contractors and commercial support providers, non-Defence organisations, entities, personnel or individuals.

PRINCIPLES

Estate management

4. To encourage the efficient, effective, transparent decision making and accountability for the use of the Defence Estate so as to retain the maximum long-term strategic and economic advantage to the Government.

Authority to approve licences/leases

5. The *Lands Acquisition Act 1989* (LAA) defines the Commonwealth approving authorities for licence/leasing, acquisition and disposal of an interest in land. The Minister for Finance and Administration is the authority in each case; however, the Minister has delegated LAA approval for expenditure licences/leases (Defence as the lessee) to NOD when the licences/leases are commercial transactions as defined in the LAA. LAA approval for revenue licences/leases (Defence as the lessor) remains with the Minister for Finance and Administration and NOD is required to seek approval under the LAA in these situations. Licence/leases are only to be executed by NOD after having first obtained LAA approval.

Charging policy

6. Approval of all requests is to be based on the principle that Defence Estate assets are not to be treated as a 'free good'. A net benefit to Defence (or the Commonwealth) must be demonstrated in all cases of non-Defence usage. Benefits may be monetary, non-monetary or a combination of both. Defence costing arrangements are based on the principle of full cost recovery and full charging as far as full costs can be determined in accordance with *Chief Executive Instructions* (CEIs), Instruction 1, part 5. Where full costs cannot be determined the market price equivalent should be charged.

7. The underlying intention of charging non-Defence organisations for the use of Defence Estate assets is to ensure competitive neutrality between those with and those without access to Defence Estate assets and to provide an incentive for non-Defence organisations to be economical in their demand for Defence goods and services.

8. Notwithstanding paragraph 6. of this instruction, variations to the charging principle on cost recovery in CEIs, Instruction 1, part 5 may be waived in certain circumstances. Waiving cost recovery requires exercising a financial delegation by Head National Operations Division or Assistant Secretary General Service Delivery (ASGSD) under CEIs, Instruction 1, part 5.

Duty of care

9. The nature of the risk to the Commonwealth with the use of Defence Estate assets is the same regardless of who uses the assets. Therefore, the Commonwealth remains responsible to manage risk and ensure that its Defence Estate assets are managed to a level that avoids the Commonwealth being exposed to liability. This applies for Australian Defence Force (ADF) (including Army, Navy and Air Force) personnel, civilian employees of the Commonwealth, non-Defence organisations, private individuals and commercial contractors.

10. In order to limit legal liability, Defence requires that licences/leases etc, for the use of Defence Estate assets include the provision of indemnities as part of the formal documentation, recognising that an indemnity does not absolve the Commonwealth from liability in the case of negligence. Indemnity clauses have been included in the standard licence/lease agreements.

Insurances

11. It is a requirement for insurance coverage to be obtained for all use of Defence Estate assets by non-Defence organisations subject to the nature and intention of the request. Some latitude can be applied to the insurance requirements for community and non-profit organisations given the nature and intention of the request. The decision to insist on insurance coverage to support the indemnity associated with the use of Defence Estate assets is a decision to be made in the context of the particular circumstance of each request. While the desirability of reducing the exposure of the Commonwealth to financial risk must be borne in mind, the criteria to be applied in assessments of whether to insist that the party requesting assistance obtain insurance are:

- a. the level of financial risk to the Commonwealth in allowing access and use of the Defence Estate asset,
- b. the ability of the party to pay for or obtain cover, and
- c. the reasonableness of applying the insurance requirement.

Security

12. The protection of Defence assets is paramount. At a time of a heightened state of security, it may be necessary to limit or deny access to Defence facilities. Commanders are responsible for the security within their base/establishment, and are to be consulted regarding base security requirements to ensure that adequate measures are incorporated in any licence/lease documents; including the implementation of any heightened security measures.

Environmental approval

13. Defence and non-Defence users of Defence land have an obligation under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* to obtain approval from the Commonwealth Environment Minister for an action that has, will have or is likely to have a significant impact on the environment on Defence land. Any environmentally significant action undertaken on Defence land without approval is potentially a civil offence. Compliance clauses have been included in the standard licence/lease agreements.

TYPES OF USE

14. Some examples of where Defence Estate assets can be provided include:
- a. other Commonwealth Government, State and local government departments;
 - b. commercial contractors and organisations;
 - c. community groups;
 - d. schools and sporting clubs;
 - e. commercial organisations or individual businesses providing on-base services;
 - f. civilians, including dependents of Defence employees; and
 - g. professional service providers and consultants.

Commercial contractors

15. The use of Defence assets by commercial contractors providing support to Defence under the Commercial Support Program (CSP) or similar outsourcing proposals in support of major weapons platforms are to be separated into mandated and optional assets. Proponents are to consult with ASGSD to determine which assets can be offered as mandated and which are optional. Detailed policy guidelines and procedures are in annex B to this instruction.

Other commercial non-Defence use

16. Other commercial non-Defence use is not limited to that described in this instruction and may include a commercial activity which takes advantage of surplus capacity to generate revenue and/or offset operating costs arranged on a full cost recovery basis. Detailed policy guidelines and procedures are in annex C to this instruction.

Consultants and professional service providers

17. A consultant is a person engaged to conduct investigation, review or evaluation (but not implementation) of policies, proposals or activities, with a requirement:

- a. to provide information and advice on the development or refinement of Defence processes, or
- b. to assist Defence management in decision making.

18. Accommodation for consultants is provided at no cost on a space availability basis and is not expected to be a permanent or ongoing requirement.

19. A professional service provider is an external specialist engaged to exercise professional/technical skills in the provision of a service. The contract:

- a. generally does not require a significant contribution to management decision making processes, and
- b. requires the contractor to perform a prescribed task as a result of management decisions.

20. Accommodation for professional service providers will be made available at no cost on the basis that the services are deemed to be integral to the departmental activities for which they are employed. However, there is no obligation on the Department to meet individual requests for such accommodation.

21. The arrangements covered by this instruction are not intended to limit visits to a base or establishment. Access under these circumstances is the responsibility of base commanders (or nominated authority) and should be considered as part of the normal day-to-day business of the base, subject to any specific requirements or restrictions determined by the base commander. No formal arrangements are necessary, but judgment should be exercised to ensure the appropriate safeguards are put into effect to limit the likelihood of claims against the Commonwealth (Defence). Moreover, this instruction addresses the requirements associated with the use of Defence Estate assets by a third party, in keeping with the extant legislation and Defence instructions regarding the use of Defence facilities.

APPROVAL PROCESS

Approval

22. Approval for the use of Defence Estate assets is best described as a two-staged process. The initial stage deals with the internal Defence approval process regarding the use of Defence Estate assets by non-Defence organisations, whereas the second stage addresses the requirements under the LAA.

Submission of proposal

23. **Long-term use.** Long-term use is defined as permanent or continued use of a Defence Estate asset. Endorsement for the long-term use of assets by commercial contractors, or similar proposals in support of major weapons platforms is to be obtained from the respective Service authorities (Navy Systems Command, Army Headquarters or Air Force Headquarters) having also sought the base/establishment commander's approval. Endorsement by the respective Service authorities is to be obtained before seeking ASGSD approval to have Defence Estate assets classified as mandated or optional, in accordance with the principles outlined in annex B to this instruction.

24. Approval for long-term use of surplus Defence Estate assets by commercial organisations is to be cleared through Service authorities after consultation with base/establishment commanders. Principles associated with the use of Defence Estate assets by commercial organisations are detailed in annex C to this instruction.

25. **Short-term use.** Short-term use is defined as temporary, transitory, non-continuous use of a Defence Estate asset. Approval for the short-term use of Defence Estate assets is to be obtained in consultation with base/establishment commanders as the representative of the respective Services, Technical Services Manager (TSM) and Resource Manager for NOD in accordance with the principles outlined in annex D to this instruction. ASGSD or Director Property Services (DPS) approval is only to be sought where the continued use exceeds 28 days or where the risk assessment associated with the use of Defence Estate assets is determined as high to extreme.

Initiation of proposal

26. Proposals for the use of Defence Estate assets may be initiated by:
- a. a base/establishment identifying Estate assets available for non-Defence use, eg short-term surplus capacity;
 - b. a base/establishment proposing non-Defence personnel to use Defence Estate assets, eg sporting activities;
 - c. Corporate Support Program project, similar outsourcing proposal or major weapons platforms;
 - d. a materiel acquisition project; or
 - e. an individual/organisation/company asking to use Defence Estate assets.

27. The source and nature of the request will determine how the proposal is to be processed. Depending on where the proposal is received, the TSM, base/unit commander and the relevant Corporate Services and Infrastructure Centre (CSIC) Resource Managers are to consult on the proposal. If the proposal is externally generated and passed to the base/establishment, the application is to be referred to the TSM for processing, together with a recommendation.

Approved Defence aid to the civil community Category 4 and 5

28. Principles outlined in Defence Instruction (General) (DI(G)) OPS 05-1—*Defence assistance to the Civil Community policy and procedures* Defence Assistance to Civil Community (DACC) are consistent with the principles outlined in this instruction. Notwithstanding the approval process under the DACC Category 4 and 5, consultation between local commanders and CSIG is paramount for:

- a. the efficient, effective and ethical management of Defence Estate assets;
- b. ensuring the most appropriate means of recording the terms and conditions for the short-term use of Defence Estate assets by non-Defence organisations is achieved;
- c. full cost recovery; and
- d. ensuring compliance with the LAA.

REVENUE

29. In accordance with CEIs, Instruction 1, part 5, all use of Defence Estate assets for non-Defence purposes is to be charged for by way of rent or hire fee. The resulting revenue is to be collected and accounted for within relevant Group budgets by either:

- a. Defence's property agent for the long-term use of Defence Estate assets where use is by commercial contractors or organisations; or
- b. Defence's property agent or individual Groups for the short-term use of Defence Estate assets by other organisations, entities, personnel or individuals.

30. Such revenue raised by a Group essentially translates to an increase in its budget and, for that reason, consideration needs to be given to which Group is to receive this benefit. Where revenues are abnormally high, Groups should identify this to the Chief Finance Officer (CFO) for consideration of the level that should be returned to the Portfolio. Assistant Secretary People, Planning and Finance—Corporate Services (ASPPF-CS) is to be provided with the appropriate information to facilitate agreed transfers to Groups from revenue collected by Property Services Section.

CATEGORISATION OF USE OF DEFENCE ASSETS

31. The categorisation for the use of Defence Estate assets does not constitute a definite list, with DPS guidance to be sought if doubt exists. Requests for DPS assistance are to be supported by all information necessary so that an informed decision can be reached.

- | | |
|------------|--|
| Category 1 | These are commercial contractors engaged to provide services to Defence under a CSP, similar outsourcing or major weapons platforms. Assets are to be classified as either mandated or optional, subject to the conditions outlined in annex B to this instruction. |
| Category 2 | These groups include non-Defence non-profit organisations such as charity groups and, depending on their use, may be subject to a reduction of the full cost recovery. This category more often than not relates to the short-term use of Defence Estate assets detailed in annex C to this instruction. |
| Category 3 | These are other non-Defence commercial organisations, entities, personnel or individuals using Defence Estate assets for commercial undertakings, requiring full cost recovery. This category also includes Category 1 commercial contractors who undertake commercial activities (non-Defence work) using Defence Estate assets. This category relates to the short and long-term use of Defence Estate assets detailed in annexes C and D to this instruction. |
| Category 4 | These are Defence-related affiliated entities or other elements of Government, eg Department Immigration and Multicultural and Indigenous Affairs, welfare/amenities organisations. Charging to these organisations is to be determined on a case by case basis and may include both short and long-term use of Defence Estate assets as detailed in annexes C and D to this instruction. |

CONSTRUCTION OF ASSETS BY NON-DEFENCE LESSEES

32. Under certain circumstances, and subject to NOD approval, a lessee may construct assets on Defence land or modify Defence Estate assets, eg associated with commercial support or materiel acquisition contracts. Proposals are to be assessed against the principles outlined in annex B to this instruction with the lessee required to remove, make good, or reinstate buildings and/or infrastructure at the end of the contract.

FORMS OF AGREEMENT

33. All non-Defence use of Defence assets is to be formally documented in an appropriate legal document in the form of a lease, licence, short-term hire agreement or, in the case of DACC Category 4 and 5, compliant with DI(G) OPS 05-1.

34. In the case of Commonwealth departments and in-house CSP arrangements, a Memorandum of Understanding is to be entered into in accordance with the principles detailed in annex B to this instruction.

35. Licences/leases are to be developed to meet the specific needs of each situation and include the principles specified in annex E to this instruction.

CONCLUSION

36. The use of Defence Estate assets may be made available to non-Defence organisations or individuals depending on Defence's requirements and the provision of a net benefit to Defence or the Commonwealth. The use of Defence Estate assets by non-Defence users exposes the Commonwealth to a higher risk associated with duty of care. It is therefore important that each proposal be properly considered in terms of risks and benefits.

37. NOD is responsible for seeking and granting LAA approval and signing licence/lease agreements, noting that only delegates under the LAA may execute these documents.

38. Notwithstanding the legal issues, it is important that all property transactions are transparent, consistent with Defence policy and represent an appropriate use of Commonwealth assets. Whilst the decision to approve licence/lease proposals rests with NOD, consultation and endorsement of the respective Service/Group authorities and base/establishment commanders is an integral part of this process.

Annexes:

- A. Related Defence policy
- B. Long-term use of Defence Estate assets by commercial contractors providing support to Defence
- C. Long-term use of Defence Estate assets by other commercial organisations, entities, personnel or individuals
- D. Short-term use of Defence Estate assets by non-Defence organisations, entities, personnel or individuals
- E. Licence/lease principles
- F. Acronyms
- G. Definitions

Sponsor: ASGSD

RELATED DEFENCE POLICY

1. Related Defence policy is found in the following instructions:
 - a. DI(G) ADMIN 17-3—*Policy and Procedures for use of Defence Resources in support of Public Information Activities*
 - b. DI(G) ADMIN 21-1—*Policy for the Provision and Maintenance of Chapels at Service Establishments*
 - c. DI(G) ADMIN 45-2—*Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*
 - d. DI(G) ADMIN 59-1—*Management of Defence Training Areas*
 - e. DI(G) LOG 10-2—*Management of Land Affected by Unexploded Ordnance*
 - f. DI(G) LOG 7-13—*Hire and Loan of Defence Stores and Equipment*
 - g. DI(G) LOG 07-17—*Access to and ownership of salvageable military relics*
 - h. DI(G) OPS 05-1—*Defence Assistance to the Civil Community Policy and Procedures*
 - i. DI(G) OPS 18-1—*Procedures for Seeking Approval for Combined Exercises*
 - j. DI(G) PERS 19-18—*Defence Safety Manual*
 - k. Departmental Environment Instruction 16/2002—*Referral of a Defence action that has, will have or is likely to have a significant impact on the Environment*
 - l. *Financial Management and Accountability Act 1997, section 44*
 - m. *Occupational Health and Safety (Commonwealth Employment) Act 1991*
 - n. *Chief Executive Instructions (CEIs), Instruction 1, part 5—'Charging and Cost Recovery'*
 - o. *SECMAN 4—Defence Protective Security Manual*
 - p. *Australian Defence Force Publication 44—Civil-Military Cooperation*

LONG-TERM USE OF DEFENCE ESTATE ASSETS BY COMMERCIAL CONTRACTORS PROVIDING SUPPORT TO DEFENCE

INTRODUCTION

1. National Operations Division (NOD) is required to manage the Estate as close to commercial practice as possible, consistent with Defence's strategic and functional requirements.

AIM

2. The aim of this annex is to detail the policy and procedures related to the use of Defence Estate assets by commercial contractors providing support to Defence.

PRINCIPLES

3. The following principles apply:
 - a. Proponents are required to consult with NOD on the use of Defence Estate assets early in the Commercial Support Program (CSP) or contracting process (preparation of the Statement of Work (SOW)) to ensure plans integrate with the Strategic Plan for the Defence Estate, master planning, maintenance, environmental and heritage requirements and occupational health and safety (OHS) planning.
 - b. Costing arrangements are to be included in the tender documentation and assessed during tender evaluation to ensure that a commercial contractor using a non-Defence facility is not disadvantaged if competing against a commercial contractor using an optional facility.
 - c. Proponents should ensure the availability of adequate transition funds to pay all costs associated with the outsourcing or market testing of their functions. Activities to be funded include rent, building surveys for OHS, condition appraisals for defining the condition of the facility at the time of handover to the contractor, rectification of building defects that prevent Defence from offering the facilities, increased operating costs, legal fees and property consultant fees. Funding of the above items is to be identified when seeking CFO funding approval.
 - d. Use of Defence Estate assets is to be based on commercial practice, including full cost recovery, consistent with strategic and functional requirements.
 - e. The use of Defence Estate assets is not a 'free good' and the cost of delivering the service needs to include the real costs of any Defence Estate assets used.
 - f. NOD will seek the necessary approvals under the LAA from the Minister for Finance and Administration.
 - g. Pragmatism dictates that the use of Defence Estate assets by commercial contractors is managed by a simple process. NOD will determine, in conjunction with stakeholders, whether the use of an asset is mandated or optional. In general terms, an Estate asset should be deemed 'optional' where it is a generic asset and/or readily available in the market, eg hangars, warehouses, workshops.
 - h. Reasons for a 'mandated' classification may include the following:
 - (1) The asset is an integral component of the provision of the service.
 - (2) The asset is purpose-built or strategically important to Defence.

- (3) Defence has considerable sunk costs in the asset investment.
 - (4) The service provided relates to conditions of employment or prescribed policies in relation to Defence personnel and their families, eg mess catering, childcare centres.
 - (5) For business efficiency and cost effectiveness, the commercial contractor needs to be collocated with Defence staff.
- i. Organisations are to consult ASGSD to determine classifications of Defence Estate assets in the first instance.
 - j. All building and infrastructure maintenance, other than tenant and fitout maintenance, will remain the responsibility of Defence unless otherwise agreed by NOD. In some circumstances, mission-critical maintenance may be included in the contract.
 - k. It is a requirement for insurance coverage to be obtained for all use of Defence Estate assets by commercial contractors.

POLICY

4. The use of Defence Estate assets by commercial contractors is to be separated into mandated or optional assets.
- a. **Mandated assets:**
 - (1) Defence may mandate that the commercial contractor use a Defence Estate asset for strategic, economic and/or business efficiency reasons. Where an asset is mandated, a rental charge of \$1 per year, when demanded, will be established. Building maintenance will continue to be the responsibility of NOD and maintenance costs will not be recoverable from the lessee.
 - (2) Mandated use of Defence Estate assets will be approved by ASGSD on the recommendations of Proponents.
 - (3) The commercial contractor is responsible for any increase to the usual tenant outgoings (utility charges, cleaning, etc). Where separate metering for utilities is not provided, an estimated charge is to be agreed by NOD which is to be reflected in the contract.
 - (4) Commercial rent will be charged, on a pro rata basis, where a contractor seeks and obtains approval to perform non-Defence work from a mandated asset. Where available, a readily determinable or comparable market rent is to be used, otherwise this rental will be based on an annual charge of 11 percent (current Capital Usage Charge) of the depreciated value of the land and improvements. This figure includes an element for maintenance.
 - (5) Existing fitout, including furniture and fittings, is to be made available to the commercial contractor who will then be responsible for repair/replacement/refurbishment over the life of the contract. At the end of the contract, Defence is to be offered the option to procure any enhancements to furniture and other fitout at its depreciated or agreed value.
 - (6) During the contracting (CSP or other) transition phase, any upgrade, rectification or remediation works required to comply with the outsourcing contract, including OHS or building legislation, will be undertaken by Defence. The project will be required to fund the work from transition costs.

ANNEX B TO
 DI(G) ADMIN 35-1
 File as: (NAVY ADMIN 22-1
 (ARMY ADMIN 51-1
 (AIR FORCE LOG 14-2
 (Complete Revision)

- (7) A standard licence/lease agreement has been prepared specifically to meet the needs of commercial support service provision contracts and is to be included in the main commercial support contract either as an annexure or a collateral document. It is to be prepared by Defence's property services provider, and signed by the NOD delegate.
- b. **Optional assets:**
- (1) In general, an asset should be deemed 'optional' where there is no requirement to mandate the asset. Optional assets would generally be available in the marketplace. Rental will be deemed payable where a contractor elects to use an optional asset.
 - (2) The commercial contractor is responsible for the usual tenant outgoings (utility charges, cleaning etc.). Where separate metering for utilities is not provided, an estimated charge is to be agreed by NOD, which is to be reflected in the contract.
 - (3) Existing fitout including furniture and fittings is to be made available to the service provider who will then be responsible for repair/replacement/refurbishment over the life of the contract. At the end of the contract, Defence is to be offered the option to procure any enhancements to furniture and fitout at its depreciated or agreed value.
 - (4) During the contracting (CSP or other) transition phase, any upgrade, rectification or remediation works required to comply with the outsourcing contract, including OHS or building legislation, will be undertaken by Defence. The project will be required to fund the work from transition costs.
 - (5) Any capital investment that a commercial contractor wishes to provide would need to be agreed by NOD.
 - (6) A standard licence/lease agreement has been prepared specifically to meet the needs of commercial support service provision contracts and is to be included in the main commercial support contract either as an annexure or a collateral document. It is to be prepared by Defence's property services provider and signed by the NOD delegate.

Construction of assets by commercial contractors

5. Under certain circumstances, and subject to NOD and ID approval, a lessee may construct assets on Defence land or modify Defence assets, eg associated with commercial support or materiel acquisition contracts. Proposals are to be assessed against the following principles:

- a. **Siting.** The proposed site shall be surveyed by the lessee and any proposed non-Defence assets (including easements) are to be sited in accordance with the Master Plan and shown on that Master Plan.
- b. **Standard of construction.** Non-Defence funded assets are to be built in accordance with the Building Code of Australia (BCA), relevant Commonwealth, State and local Government ordinances, regulations, by-laws, codes of practice and Defence requirements. The lessee is to certify that construction complies with the relevant regulations and provide certificates of compliance to NOD and ID as appropriate.
- c. **Repairs and maintenance.** Repairs and maintenance are the responsibility of the non-Defence organisation and are to be undertaken to the standard required by NOD.
- d. **Services.** The non-Defence organisation will be responsible for the provision of services and is to meet full installation and usage charges. Separate metering is to be used where appropriate. Where this is not possible, pro rata charging is to be used.

- e. **Defence instructions.** Proposals for the site are not to conflict with Defence instructions, including but not limited to base Standing Orders, Environmental Management Plans and Heritage Management Plans.
- f. **Commonwealth Rights Paramount.** The Commonwealth may wish to retain the right, subject to negotiation, to demolish or otherwise use any non-Commonwealth funded asset on Defence property if the asset is at any time required for Defence purposes.
- g. **Termination/site restoration.** At the end of the licence/lease, or at any time, the non-Defence user has the options of:
 - (1) transferring the facility to Defence, subject to Defence agreement. Defence may accept the transfer at nil cost or consider purchase at market or depreciated value; or
 - (2) removing the facility, disconnecting services and make good the site at no cost to Defence.

APPROVAL PROCESS

6. Approval for long-term use of surplus Defence Estate assets by commercial contractors providing support to Defence is to be cleared through Service authorities after consultation with base/establishment commanders.
7. Early in the development of the SOW phase, Proponents are to identify any Defence Estate assets proposed to be offered to commercial contractors. A brief user requirement/business case is to be submitted to ASGSD including:
 - a. a list of the assets the project proposes to use (NOD assistance is available to compile this list);
 - b. which assets the project would seek to designate as 'mandated' or 'optional' with justification for each classification; and
 - c. proposed project timeframes ie SOW preparation, Invitation to Register Interest/Request for Tender release dates.
8. NOD will consider and assess the proposals taking into account:
 - a. the best outcome for the Defence Portfolio;
 - b. current and future use of the Defence Estate assets;
 - c. master planning issues;
 - d. fitness for proposed purpose;
 - e. condition appraisal (including OHS and environmental considerations);
 - f. commitment to provide adequate resources to meet Defence's obligations in the provision of facilities; and
 - g. if necessary, other Defence Estate asset options.
9. Once ASGSD agreement is obtained, Property Services Section will provide input to the project tender and contract documentation to refine the Estate asset scope, baseline costing and 'Information to be provided to Tenderers' package
10. Defence's property agent will be responsible for preparing the necessary licence/lease agreements, regardless of whether rent is charged, for inclusion in the 'Information to Tenderers' package. As far as possible, all costs associated with the licence agreement will be known to the project prior to tender release. Rental charges will be advised in the Information to Tenderers.

**ANNEX B TO
DI(G) ADMIN 35-1**
File as: (NAVY ADMIN 22-1
(ARMY ADMIN 51-1
(AIR FORCE LOG 14-2
(Complete Revision)

OCCUPATIONAL HEALTH AND SAFETY

11. **Duty of care.** NOD is responsible for the OHS issues associated with the fabric of facilities. Under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, Defence, as a Commonwealth employer, owes a duty of care, inter alia, to persons who are contractors to the Commonwealth and to third parties over which Defence has control or would be expected to have control. The use of Defence Estate assets which require major remediation needs to be balanced against the cost to Defence of the contractor providing its own assets or the use of alternative options.
12. **OHS surveys.** It is important that Defence is not seen to provide the OHS solutions to tenderers as Defence does not dictate how the commercial contractor is to provide the service. However, Defence should provide OHS surveys for mandated facilities, as part of the tender documentation. Defence organisations may undertake such surveys as part of project development activities or to support in-house bids. Tenderers should be advised that such documentation is available for information and assistance.
13. Tenderers are required to make their own assessments regarding the upgrade work required to meet their business plans and to ensure that the facilities comply with OHS requirements. Tender documentation should require tenderers to identify the modification work required, and to ensure building compliance for their intended work processes. Prior to occupancy, any necessary rectification work is to include an independent certificate of compliance in respect of BCA and OHS requirements.
14. **Funding OHS requirements.** If Defence organisations seek an OHS survey, they will be required to fund the activity. Where work is required in mandated assets and these works have not been programmed by NOD, CSP or project transition costs will be expected to fund the requirement. Where work is required in optional assets, tenderers will be required to cost the repairs as part of their bid.

CONCLUSION

15. The provision of Defence Estate assets to commercial contractors is to be based on the principle that such assets are not a 'free good' and their real cost should be reflected in the cost of the service delivery. There will be instances where Defence, for strategic and/or functional reasons, requires commercial contractors to use Defence Estate assets. A process to accommodate these requirements has been developed and is defined elsewhere in this annex. The process is aimed at ensuring transparency, consistency and the best overall use of Defence Estate assets.

LONG-TERM USE OF DEFENCE ESTATE ASSETS BY OTHER COMMERCIAL ORGANISATIONS, ENTITIES, PERSONNEL OR INDIVIDUALS

INTRODUCTION

1. National Operations Division (NOD) is required to manage the Defence Estate as close to commercial practice as possible, consistent with Defence's strategic and functional requirements.

AIM

2. The aim of this annex is to detail the policy and procedures related to the use of Defence Estate assets by other commercial organisations, entities, personnel or individuals.

PRINCIPLES

3. The following principles apply:
 - a. Requests by other commercial organisations, entities, personnel or individuals to use Defence Estate assets are to be considered for the purposes of integration with the Strategic Plan for the Defence Estate, master planning, maintenance, environmental and heritage requirements and occupational health and safety (OHS) planning.
 - b. Use of Defence Estate assets is to be based on commercial practice, including full cost recovery, consistent with strategic and functional requirements.
 - c. The use of Defence Estate assets is not a 'free good' and the cost of delivering the service needs to include the true costs of any Defence Estate assets used.
 - d. NOD will seek the necessary approvals under the LAA from the Minister for Finance and Administration.
 - e. All building and infrastructure maintenance, other than tenant and fitout maintenance, will remain the responsibility of Defence unless otherwise agreed by NOD.
 - f. Occupation will be formalised by entering into a licence/lease.
 - g. It is a requirement for insurance coverage to be obtained for all use of Defence Estate assets by non-Defence organisations, entities, personnel or individuals subject to the nature and intention of the request.

APPROVAL PROCESS

Approval

4. Approval for the use of Defence Estate assets is best described as a two-staged process. The initial stage deals with the internal Defence approval process regarding the use of Defence Estate assets by non-Defence organisations, whereas the second stage addresses the requirements under the LAA.
5. Approval for long-term use of surplus Defence Estate assets by commercial organisations is to be cleared through Service authorities after consultation with base/establishment commanders in accordance with this instruction.

Guidelines for approval

6. The following guidelines are to be applied when considering, recommending or approving proposals for non-Defence use of Defence Estate assets:

- a. The proposal does not unduly interfere with Defence training, operations and activities.
- b. The proposal has a net benefit to Defence.
- c. The proposal does not expose Defence to unacceptable risk, including environmental risks.
- d. Full cost recovery is charged or, where full cost recovery cannot be determined, the market price equivalent should be charged.
- e. The proposal will enhance Defence's public standing or will not detract from it.
- f. The proposal is treated in a fair and open manner.

7. Notwithstanding subparagraph 6.b., cost recovery may be waived in certain circumstances. Waiving cost recovery requires exercising a financial delegation by Head National Operations Division or Assistant Secretary General Services Delivery under *Chief Executive Instructions*, volume 2, part 9.

Initiation of proposal

8. Proposals may be initiated by:

- a. a base/establishment identifying Defence Estate assets available for non-Defence use, eg short-term surplus capacity;
- b. a base/establishment proposing non-Defence personnel to use Defence Estate assets, eg sporting activities, welfare or amenities; or
- c. an individual/organisation/company asking to use Defence Estate assets.

Assessment process

9. NOD will consider and assess the proposals taking into account:

- a. current and future use of the Defence Estate assets;
- b. master planning issues;
- c. fitness for proposed purpose;
- d. condition appraisal (including OHS and environmental considerations);
- e. commitment to provide adequate resources to meet Defence's obligations in the provision of facilities;
- f. consultation with stakeholders to achieve best outcome for the Defence Portfolio; and
- g. if necessary, other Defence Estate asset options.

10. The source and nature of the request will determine how the proposal is to be processed. Depending on where the proposal is received, the Technical Services Manager (TSM), base/unit commander and the relevant Corporate Support and Infrastructure Centre Resource Managers are to consult on the proposal. If the proposal is externally generated and passed to the base/establishment, the application is to be referred to the TSM for processing, together with a recommendation to Defence Property Service.

FORMS OF AGREEMENT

11. All non-Defence use of Defence assets is to be formally documented in an appropriate legal document in the form of a licence or lease after first having obtained LAA approval.
12. A standard licence/lease agreement has been prepared specifically to meet the needs of other commercial organisations, entities, personnel or individuals using Defence Estate assets, and will be prepared by Defence's property services provider, and signed by the NOD delegate.

REVENUE

13. The licensee/lessee is responsible for the usual tenant outgoings (utility charges, cleaning etc). Where separate metering for utilities is not provided, an estimated charge is to be agreed by NOD, which is to be reflected in the agreement.
14. Any capital investment that a licensee/lessee wishes to provide would need to be agreed to by NOD and Infrastructure Division of the Corporate Services and Infrastructure Group, Department of Defence.

OCCUPATIONAL HEALTH AND SAFETY

15. **Duty of care.** NOD is responsible for the OHS issues associated with the fabric of facilities. Under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, Defence, as a Commonwealth employer, owes a duty of care, inter alia, to persons who are contractors to the Commonwealth and to third parties over which Defence has control or would be expected to have control.
16. **OHS.** The licensee/lessee are required to make their own assessments regarding the upgrade work required to meet their use of the facility and to ensure that the facilities comply with OHS requirements. Prior to occupancy, any necessary rectification works are to include an independent certificate of compliance in respect of BCA and OHS requirements.

CONCLUSION

17. The provision of Defence Estate assets to commercial organisations, entities, personnel or individuals is to be based on the principle that such assets are not a 'free good' and charged at full cost recovery. A process to accommodate these requirements has been developed and is defined in this annex. The process is aimed at ensuring transparency, consistency and the best overall use of Defence Estate assets.

SHORT-TERM USE OF DEFENCE ESTATE ASSETS BY NON-DEFENCE ORGANISATIONS, ENTITIES, PERSONNEL OR INDIVIDUALS

INTRODUCTION

1. National Operations Division (NOD) is required to manage the Defence Estate as close to commercial practice as possible, consistent with Defence's strategic and functional requirements.

AIM

2. The aim of this annex is to detail the policy and procedures related to the short-term use of Defence Estate assets by non-Defence organisations, entities, personnel or individuals.

TYPES OF USE

3. Some examples of where Defence Estate assets can be provided include:
- a. other Federal Government, State and local government departments;
 - b. community groups;
 - c. schools and sporting clubs;
 - d. commercial organisations or individual businesses;
 - e. civilians, including dependents of Defence employees; and
 - f. professional service providers and consultants.

4. The types of use are not limited to those described above and generally relate to a temporary, transitory, non-continuous use of a Defence Estate asset and may include commercial activity, which takes advantage of surplus capacity to generate revenue and/or offset operating costs, and charged at full cost recovery.

APPROVAL PROCESS

Approval

5. Approval for the short-term use of Defence Estate assets is to be obtained in consultation with base/unit commanders as the representative of the respective Service authorities, Technical Services Manager (TSM) and Corporate Services Infrastructure Centre (CSIC) Resource Manager for NOD.
6. Assistant Secretary General Services Delivery (ASGSD) or Defence Property Service (DPS) approval is only to be sought where the continued use exceeds 28 days or where the risk assessment associated with the use of Defence Estate assets is determined as high to extreme, and will require the *Commonwealth Lands Acquisition Act 1989* (LAA) approval.
7. Pragmatism dictates that the use of Defence Estate assets by non-Defence organisations, entities, personnel or individuals is managed by a simple process.

Guidelines for approval

8. The following guidelines are to be applied when considering, recommending or approving proposals for non-Defence use of Defence Estate assets:

- a. The proposal does not unduly interfere with Defence training, operations and activities.
- b. The proposal has a net benefit to Defence.
- c. The proposal does not expose Defence to unacceptable risk, including environmental risks.
- d. Full cost recovery is charged or, where full cost recovery cannot be determined, the market price equivalent should be charged.
- e. The proposal will enhance Defence's public standing or will not detract from it.
- f. The proposal is treated in a fair and open manner.

9. Notwithstanding subparagraph 8.d., cost recovery may be waived in certain circumstances. Waiving cost recovery requires exercising a financial delegation by Head National Operations Division or ASGSD under CEIs, volume 2, part 9.

Risk assessment and management

10. TSMs are to assess the risks associated with the use of Defence Estate assets, balance the likelihood of occurrence with the impact if the event occurs then categorise the risk as low, moderate, high or extreme. Uses of Defence Estate assets assessed between high/extreme are to be approved by ASGSD or DPS, and will also require LAA approval.

11. The qualitative risk analysis in the *Defence Estate Management Guide Book 5*, part 21, chapter 3 is to be used by TSMs in determining the risk associated with the use of Defence Estate assets.

Initiation of proposal

12. Proposals may be initiated by:

- a. a base/establishment identifying Defence Estate assets available for non-Defence use, eg short term surplus capacity;
- b. a base/establishment proposing non-Defence personnel to use Defence Estate assets, eg sporting activities, welfare or amenities; or
- c. an individual/organisation/company asking to use Defence Estate assets.

13. The source and nature of the request will determine how the proposal is to be processed. Depending on where the proposal is received, TSM, base/unit commander and the relevant Corporate Services Infrastructure Centre (CSIC) Resource Managers are to consult on the proposal. If the proposal is externally generated and passed to the base/establishment, the application is to be referred to the TSM for processing, together with a recommendation.

FORMS OF AGREEMENT

14. All non-Defence use of Defence Estate assets is to be formally documented in an appropriate legal document in the form of a licence or short-term hire agreement or, in the case of DACC Category 4 and 5, compliant with Defence Instruction (General) OPS 05-1—*Defence assistance to the Civil Community policy and procedures*.

- a. A formal licence agreement is not required. However, the standard Short-Term Hire Agreement is to be prepared by the respective CSIC and is to cover:

- b. the proposed Defence Estate asset and its intended use;
- c. a statement indemnifying the Commonwealth with the appropriate insurances;
- d. a hiring fee for community or non-profit organisations based on recovery of direct costs or at least sufficient to cover costs such as utilities, security and cleaning. Where a requesting organisation is a commercial entity, full cost recovery is to be charged for commercial use. Advice can be obtained from Estate Management Branch or Defence's property agent.

Insurances

15. It is a requirement for insurance coverage to be obtained for all use of Defence Estate assets by non-Defence organisations subject to the nature and intention of the request. Some latitude can be applied to the insurance requirements for community and non-profit organisations given the nature and intention of the request. The decision to insist on insurance coverage to support the indemnity associated with the use of Defence Estate assets is a decision to be made in the context of the particular circumstance of each request. Whilst being mindful of the desirability of reducing the exposure of the Commonwealth to financial risk, the TSM should, when assessing whether to insist that the party requesting assistance obtain insurance, consider:

- a. the level of financial risk to the Commonwealth in allowing access and use of the Defence Estate asset,
- b. the ability of the party to pay for or obtain cover, and
- c. the reasonableness of applying the insurance requirement.

16. Where it has been decided not to insist on insurance in accordance with paragraph 16 of this Instruction, the Schedule to the Short-Term Hire Agreement, 'Special Conditions' is to state that insurances under the agreement are not required.

CONCLUSION

17. The use of Defence Estate assets may be made available to non-Defence organisations or individuals depending on Defence's requirements and the provision of a net benefit to Defence or the Commonwealth. The use of Defence Estate assets by non-Defence users exposes the Commonwealth to a higher risk associated with duty of care. It is therefore important that each proposal be properly considered in terms of risks and benefits.

18. Notwithstanding the legal issues, it is important that all property transactions are transparent, consistent with Defence policy and represent an appropriate use of Commonwealth assets. Whilst the decision to approve proposals is the responsibility of NOD, consultation with the base/establishment is an integral part of this process.

LICENCE/LEASE PRINCIPLES

1. Licences/leases are developed to meet the specific needs of each situation. They are to be developed in accordance with the following principles:
 - a. **Compliance with Laws.** The lessee is required to comply with all environmental, heritage and property laws and/or any environmental management plans pertaining to the property ie commercial organisations cannot seek to obtain immunity from State legislation on Commonwealth land.
 - b. **Condition Reports.** Defence Estate assets are to be inspected by both parties prior to execution of the licence/lease and the condition of the Defence Estate asset agreed to as part of the deed.
 - c. **Fitout.** Fitout and general outgoings are a lessee responsibility.
 - d. **Indemnities.** Lessee is to sign any indemnity protecting the Commonwealth against liabilities (for any loss or damage including personal injury) caused or contributed to by neglect of lessee, breach of covenant, misuse, escape of harmful substance, contamination, etc.
 - e. **Insurances.** Lessee is to obtain insurance coverage for the use of Defence Estate assets. Some latitude can be applied to the insurance requirements for community and non-profit organisations given the nature and intention of the request.
 - f. **Lessee Insurance.** Lessee is to insure for public liability, workers' compensation and property risk.
 - g. **Lessor Inspection.** Defence is to be allowed to inspect Estate assets with reasonable notice, in the presence of a lessee representative, and issue notices for repair within specified reasonable times as appropriate.
 - h. **Make Good Obligations.** The obligations in regard to 'make good' are specified in the licence/lease.
 - i. **Permitted Usage.** Permitted usage is to be specified in the documentation.
 - j. **Rates and Taxes.** Lessee is to be responsible for any rates and taxes.
 - k. **Rent Variation.** Rent is to be reviewed annually or biennially and generally increased in accordance with Consumer Price Index, market or as otherwise specified.
 - l. **Rent.** Annual rent is to be specified, as well as payment frequency eg monthly, payable to Defence's property agent based on full cost recovery.
 - m. **Repairs and Maintenance.** The Lessee is responsible for the normal tenant responsibilities for repairs and maintenance (ie generally related to fitout).
 - n. **Right of Purchase of Lessee's fixtures.** Defence is to be given the option to purchase lessee fixtures at depreciated value at end of lease period.
 - o. **Security.** The protection of Defence assets is paramount. At a time of a heightened state of security, it may be necessary to limit or deny access to Defence facilities. Adequate measures are to be incorporated in licence/lease documents, including the implementation of any heightened security measures.

- p. **Sub-leasing.** Any proposal to sub-lease a Defence Estate asset must have National Operations Division approval.
- q. **Termination.** Defence reserves the right to terminate the licence/lease for Defence purposes provided reasonable notice is given.
- r. **Terms and Options.** Terms should generally not exceed five years, with options on the merits of each case. Terms for Commercial Support Program projects, or other similar market testing activities should not exceed the minimum terms under the contract.

ACRONYMS

ADF	Australian Defence Force (including Army, Navy and Air Force)
ASGSD	Assistant Secretary General Service Delivery
ASPPF-CS	Assistant Secretary People, Planning and Finance—Corporate Services
BCA	Building Code of Australia
CFO	Chief Finance Officer
CSIC	Corporate Services Infrastructure Centre
CSIG	Corporate Services and Infrastructure Group
CSP	Commercial Support Program
DACC	Defence Assistance to Civil Community
DPS	Defence Property Services
EM	Estate Management
HI	Head Infrastructure
HNOD	Head National Operations Division
ID	Infrastructure Division of the Corporate Services and Infrastructure Group, Department of Defence
LAA	<i>Lands Acquisition Act 1989</i>
NOD	National Operations Division of the Corporate Services and Infrastructure Group
OHS	Occupational Health and Safety
SOW	Statement of Work
TSM	Technical Services Manager

DEFINITIONS

Approval	Two staged process dealing with the internal Defence approval process and the requirements under the <i>Lands Acquisition Act 1989</i> .
Consultant	Person engaged to conduct investigation, review or evaluation (but not implementation) of policies, proposals or activities.
Charging Policy	Approval of all requests is to be based on the principle that Defence Estate assets are not to be treated as a 'free good' and a net benefit to Defence must be demonstrated in all cases of non-Defence usage. Benefits may be monetary, non-monetary or a combination of both.
Commercial Activity	Any work undertaken by the Contractor that is not related to the provision of the service. It may take advantage of some surplus capacity to generate revenue and/or offset operating costs. Arranged on a full cost recovery basis.
Defence Estate	The land, buildings and infrastructure (assets) managed by the Infrastructure Division of the Corporate Services and Infrastructure Group, Department of Defence.
Estate Management	The efficient, effective and transparent decision making and accountability for the use of the Defence Estate so as to retain the maximum long-term strategic and economic advantage to the Government.
Free Good	A good provided free of charge.
Full Cost Recovery	Full costs are to be charged for the use of non-mandatory Defence assets as determined in accordance with <i>Chief Executive Instructions</i> , part 9, chapter 2. Where full costs cannot be determined the market price equivalent should be charged.
Government	The Commonwealth of Australia.
Insurance	It is a requirement for insurance coverage to be obtained for all use of Defence Estate assets by non-Defence organisations, subject to the nature and intention of the request. Some latitude can be applied to the insurance requirements for community and non-profit organisations.
<i>Lands Acquisition Act 1989</i>	The Commonwealth Act defining the approving authorities for leasing, acquisition and disposal of an interest in land.
Long-Term Use	Permanent or continued use of a Defence Estate asset.
Mandated Assets	Assets that Defence state a commercial contractor must use, based on strategic, economic and/or business efficiency reasons. Where an asset is mandated, a rental charge of \$1 per year, when demanded, will apply. Building maintenance will continue to be the responsibility of National Operations Division.
Optional Assets	An asset is deemed optional where there is no requirement to mandate the asset. Optional assets are generally available in the marketplace. Rental is payable where a contractor elects to use an optional asset.
Professional Service Provider	An external specialist engaged to exercise professional/technical skills in the delivery of a service.
Short-Term Use	The temporary, transitory, non-continuous use of a Defence Estate asset.
Transition Funds	Funds to pay all costs associated with the outsourcing or market testing. Activities to be funded include rent, building surveys for OHS, condition appraisals, rectification costs, increased operating costs, legal fees and property consultant fees.