

MANAGEMENT AND ADMINISTRATION OF DEFENCE MEMBERS UNDER 18 YEARS OF AGE

INTRODUCTION

5.1 Defence complies with Commonwealth and, where appropriate, State and Territory legislation pertaining to the management, control or protection of people under the age of 18 years. Australia is also party to the [United Nations Convention on the Rights of the Child \(1990\)](#) and the [Optional Protocol on the Involvement of Children in Armed Conflict \(2002\)](#).

5.2 Defence has additional management requirements and administrative processes for Defence members under the age of 18. Defence personnel who are in contact with or are responsible for Defence members under 18 are to be aware of their responsibilities.

SCOPE

5.3 This Chapter applies to Defence members who are under 18 years of age from the time they are appointed or enlisted and to Defence personnel who interact with and manage Defence members who are under 18. This Chapter provides guidance and direction on the responsibilities and prescriptive measures for the management and administration of Defence members under 18. This document is to be read in conjunction with the [Youth Policy Manual \(YOUTHPOLMAN\)](#).

5.4 Policy and procedural guidance on issues relating to personnel of the Australian Defence Force Cadets are in Part 1 and Part 3 of YOUTHPOLMAN.

5.5 Policy and guidance for Defence personnel engaged in Defence youth programs or working with members of the public under 18 years of age are in YOUTHPOLMAN, Part 1.

POLICY STATEMENT

5.6 Defence is committed to being a youth safe organisation and the Defence Youth Safety Framework enables a consistent approach across the breadth of Defence engagement with young people. Within the framework, Defence ensures that its management and administration of Defence members under 18 years of age protects the interests and safety of those members. Furthermore, the effective management of Defence members under 18 is essential for Defence to meet its international and national legal obligations and community expectations.

DEFINITIONS

5.7 [Military Personnel Policy Manual \(MILPERSMAN\)](#), Part 1, Chapter 3—‘Military Personnel Policy Manual Glossary’ contains common terms and definitions used throughout this Chapter.

DEFENCE YOUTH SAFETY FRAMEWORK

5.8 The Defence commitment to the safety and wellbeing of young people is realised through the [Defence Youth Safety Framework](#). The framework provides a consistent approach that can be flexibly applied to Defence activities that engage Defence members under 18, young people through Defence youth programs or ADF Cadets, or children on domestic and international operations.

5.9 The Defence Youth Safety Framework includes the following Defence Youth Safety policies:

- a. Defence Youth Safety Commitment Statement
- b. Youth Safety Governance
- c. Youth Safety Risk Management
- d. Youth Safety Responding and Reporting.

5.10 The Defence Youth Safety Framework also incorporates the following youth safety implementation tools and resources:

- a. Youth safety Information Portal – Cadet, Reserve and Employer Support Division (CRESD) website
- b. Youth Safety Code of Conduct Guide
- c. Youth Safety Self Declaration and Disclosure Form
- d. Youth Safety Level 1 Training package (Awareness)
- e. Youth Safety Risk Management Guide
- f. Youth Safety Suitability Screening Tool
- g. Youth Safety Incident Response Guide.

LEGAL RESPONSIBILITY FOR DEFENCE MEMBERS UNDER 18

Duty of care

5.11 Defence has a legal duty to ensure reasonable steps are taken for the protection, safety and wellbeing of Defence members. Defence members under 18 are vulnerable people and Defence has a higher standard of duty of care for them. If a breach of duty of care is established and there is injury, loss or damage as a result of that breach, then negligence on the part of the Commonwealth can be established. Additionally, under the [Work Health and Safety Act 2011](#) there is a statutory obligation on the part of Defence, and all Defence personnel and external service providers, to take all reasonably practicable steps to protect the health and safety of workers.

The United Nations Convention on the Rights of the Child (1990) and the Optional Protocol on the Involvement of Children in Armed Conflicts (2002)

5.12 **The United Nations Convention on the Rights of the Child (The Convention)**. The Convention, which entered into force in 1990 and has been ratified by Australia sets out the civil, political, economic, social and cultural rights of children.

5.13 **The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (the Protocol)**. The Protocol strengthens the protections contained in the Convention. Most importantly, it obliges signatories to the Convention to take all reasonable measures to ensure members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities. Australia's ratification of the Convention and Protocol places a responsibility on Defence to ensure that its policies comply with the requirements of the two treaties.

5.14 Consistent with Article 3 of the Protocol which allows for the recruitment of persons less than 18 years of age, the minimum age for recruitment into the ADF is 17 years of age. In addition, the recruitment of people under 18 into the ADF must take into account the following obligations:

- a. the recruitment of the person under 18 must be genuinely voluntary—people under 18 must not be compulsorily recruited into the ADF
- b. the person under 18 must have the written consent of their parents to join the ADF prior to their enlistment or appointment
- c. the person under 18 must provide reliable proof of age prior to their enlistment or appointment in the ADF
- d. the person under 18 is fully informed of the duties involved in military service.

5.15 If a Defence member under 18 has been recruited contrary to the requirements of the Protocol, the ADF will take all reasonable measures to ensure that the member's service in the ADF is terminated as soon as practicable.

State and Territory legislation

5.16 Each Australian State and Territory has legislation requiring clearances, known as Working with Children Checks, for those adults who work with children. In order to fulfil Defence's duty to the community and to comply with State or Territory legislation, Defence personnel who are in contact with Defence members under the age of 18 years may, in some circumstances, be required to obtain a Working with Children Check (see paragraph 5.23). The [Defence Youth Safety Framework](#) provides further guidance on who may require these checks. Links to State and Territory Child Protection Authorities, applications for Working with Children Checks and legislation are listed on the [CRESD](#) website.

RESPONSIBILITIES OF DEFENCE MEMBERS UNDER 18

5.17 Defence members under 18 are subject to the requirements of the [Defence Force Discipline Act 1982](#) (DFDA) and administrative sanctions from their time of enlistment or appointment. Defence members under 18 are briefed on the DFDA and administrative sanctions by trained Defence Force Recruiting (DFR) personnel during the recruiting process.

5.18 Defence members under 18 must comply with relevant Commonwealth and State or Territory legislation, including legislation on the following issues:

- a. the purchase and consumption of alcohol
- b. entry to licensed premises such as public bars
- c. gambling
- d. the purchase of adult classified products
- e. the purchase of cigarettes
- f. obtaining tattoos and body piercing.

RESPONSIBILITIES FOR MANAGING DEFENCE MEMBERS UNDER 18

Youth safety risk management

5.19 Commanding Officers (CO) and managers of Defence members under 18 should use the [Defence Youth Safety Framework](#) to assess youth safety risks in their workplaces and implement management actions to control those risks.

5.20 As a minimum, when identifying and assessing risks, the following factors are to be considered:

- a. how the conduct and achievement of unit tasks and activities may contribute to youth safety risks
- b. the physical and emotional vulnerability of younger people who are new to Defence
- c. how personal information about young people is collected and managed
- d. the scope of personal and professional interaction between adult Defence personnel and Defence members under 18
- e. unintended consequences of exposure to 'tough training' and graphic training materials
- f. social media-based risks
- g. legal obligations.

5.21 COs and managers are to develop and promulgate a plan for the risk management of Defence members under 18 under their responsibility. The risk management plan contributes to the overall development of the unit risk management plan and standing orders, and is to be reviewed annually. COs and managers may use extant ADF risk management tools in conjunction with [YOUTHPOLMAN](#), Part 1, Chapter 4—‘Defence youth safety risk management’.

5.22 Identified risks are to be controlled in a manner that is targeted, workplace specific, measurable and regularly evaluated. Therefore, the risk management plan should specify youth safety risks and detail any control actions relevant to the unit or establishment, including tailored actions outlined in the [Defence Youth Safety Framework](#).

Working with children checks and child protection legislation

5.23 In some circumstances, working with children checks may be required for people involved in ‘child-related work’. Each State and Territory defines ‘child-related work’ differently and the Defence Youth Safety Framework should be referred to for further guidance on assessing the requirement, if any, to obtain a check. Some specific Defence duties may fall under the relevant [State or Territory legislation](#). There may also be different obligations on employers or their representatives under the legislation applicable in each State or Territory.

5.24 Given the variability of legislative requirements, COs and managers should:

- a. refer to the Defence Youth Safety Framework to determine if a Working With Children Check may be required for adult Defence members working with members under 18
- b. confirm whether they have any other responsibilities associated with compliance with applicable State or Territory child protection legislation
- c. contact CRESD or the relevant State or Territory child protection authority for further child protection guidance as it relates to the safeguarding and management of Defence members under 18
- d. be responsive to the requirements of the relevant State or Territory child protection authority.

Local orders, instructions and training

5.25 **Standing Orders.** COs who have Defence members under 18 under their command are to ensure that Standing Orders covering the management of Defence members under 18 are promulgated. In doing so, COs are to ensure that all reasonable measures are taken to proactively manage specific risks relating to Defence members under 18. These orders are to include the following elements:

- a. compliance with State and Territory laws covering under 18 year olds including those regarding child protection, alcohol, entry to licensed premises, gambling, adult classified products, cigarettes, tattoos and body piercing
- b. measures to ensure the safety of Defence members under 18 in terms of:
 - (1) inappropriate relationships
 - (2) training regimes
 - (3) accommodation
 - (4) prohibited areas
 - (5) parental permission requirements
 - (6) leave off-base

- (7) health, medical and welfare issues
- (8) staff commitment to the Defence Youth Safety Framework.

5.26 Joining instructions. Training establishments are to provide applicants under 18 (via DFR Centres) with pre-course information prior to their enlistment or appointment date. In addition to normal recruiting information to assist transition to military life, this information is to include topics such as planned place of training, details for family members to contact the establishment and support mechanisms and services provided to all ADF trainees and members.

5.27 Training of unit personnel. COs are to ensure that all Defence personnel within their unit who have, or are likely to have, dealings with Defence members under 18, complete the Youth Safety Training packages in accordance with the [Defence Youth Safety Framework](#). Defence personnel should understand their obligations and responsibilities when working with Defence members under 18. Training should include information about youth safety risks and management actions specific to the workplace and highlight governance and reporting requirements. COs of establishments that have Defence members under 18 posted to them are to ensure this training is included as part of formal induction training for unit personnel as well as subsequent annual training requirements.

Support arrangements

5.28 Welfare support. COs and managers are to ensure that access to welfare support mechanisms is provided. As soon as possible after arriving at an establishment, Defence members under 18 are to be made aware of the welfare support mechanisms, including names, locations and contact details for key welfare personnel and out of hours contact personnel. Such support includes but is not limited to:

- a. chaplains
- b. psychology services
- c. the Defence Community Organisation
- d. the range of dedicated Defence telephone and online support and advice lines.

5.29 Welfare support personnel must be appropriately trained or qualified. COs and managers are to take all reasonable steps to make support services available on a 24 hour, seven days a week basis. In addition, COs and managers should implement an internal mentoring system to assist Defence members under 18 in adapting to the ADF environment.

5.30 In order to monitor and evaluate the suitability and operation of welfare and support arrangements, COs and managers are to establish review processes which are to be conducted during the member's stay at the unit or establishment. These reviews should also consider the application of single Service policies on issues such as inappropriate relationships and suicide awareness. In-course feedback is to be sought, where possible, from Defence members under 18 on welfare issues during any course longer than one week. This feedback should be obtained, where possible, by an individual independent of the chain of command (for example a psychologist or a chaplain). Such surveys could, where practical, be incorporated into existing survey mechanisms. Feedback is to be documented and reported to the Service Training Force Element Group (or equivalent), subject to any issues of confidentiality. For

extended training courses, the maximum period between reviews is not to exceed three months. Exit interviews are also to be conducted and documented and reported to the Service Training Force Element Group (or equivalent).

Responding and recording

5.31 Any Defence personnel who become aware of, or suspect that a Defence member under 18 is being, or has been, abused or harmed are to respond in the first instance by providing support and assistance in protecting them from actual or perceived harm.

5.32 A CO or manager who becomes aware of an incident involving a Defence member under 18 is to record the incident in accordance with [Interim Defence Instruction ADMIN 45-2—Incident reporting and management](#).

5.33 If a Defence member under 18 is a respondent to an incident, their CO or manager is to provide support independent of the chain of command or decision maker. This support is to ensure the member is fully informed of potential actions arising from, and consequences of, the incident. The member should be offered counselling and legal assistance. If the member is being dealt with under the DFDA, refer to paragraphs 5.60–5.65.

Members at risk of harm to self or others

5.34 If the Defence member under 18 is considered to be at immediate risk of harm to self or others, COs and managers must actively cooperate in their support and management in accordance with [DI\(G\) PERS 16-26—Management of a Defence member at risk of suicide](#).

Incident management and reporting

5.35 COs and managers are to comply with the [Defence Youth Safety Framework](#) policy on Youth Safety Responding and Reporting, noting that some incidents may involve a response by, or reporting to, State or Territory authorities.

5.36 COs and managers are to ensure Defence members under 18 receive information concerning the Service and civilian complaint processes and mechanisms available to them. Base personnel who provide briefings are to include contact details and information on the rights of members to access the various organisations and processes.

5.37 Management and reporting of complaints relating to unacceptable behaviour is to be in accordance with [DI\(G\) PERS 35-3—Management and reporting of Unacceptable Behaviour](#), [DI\(G\) PERS 35-4—Reporting management of sexual misconduct including sexual offences](#), and [Interim Defence Instruction ADMIN 45-2](#).

5.38 **Casualty notification.** In the event of an injury to, or hospitalisation of, a Defence member under 18, the procedures contained within *Defence Casualty and Bereavement Support Manual* (DCBSM), [Chapter 1](#)—‘Casualty notification of Australian Defence Force members’ are to be followed. In addition, personnel are to comply with Defence Work Health and Safety requirements, including reporting through Sentinel.

Accommodation

5.39 COs and managers are to promulgate guidance on accommodation of Defence members under 18 with a view to control the risk of exposure to alcohol, drugs, unacceptable behaviour and/or inappropriate relationships. Actual accommodation arrangements are to be reviewed after an initial period of one week, and remain subject to ongoing routine review.

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MILPERSMAN, Part 7

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Disclosure of personal information

5.40 MILPERSMAN, Part 1, Chapter 4—‘Military Personnel Policy Manual Privacy Statement’ addresses the collection, use, storage and disclosure of personal information in accordance with the *Privacy Act 1988*. Personal information about a Defence member under 18 should only be used or disclosed in accordance with MILPERSMAN, Part 1, Chapter 4. COs and managers who are not sure about when they can use or disclose personal information should seek legal advice.

Access to alcohol and adult classified products

5.41 COs and managers are to be satisfied that procedures are in place to prevent the purchase and consumption of alcohol and prohibited substances by Defence members under 18 when on duty or on Defence property. In addition Defence members under 18 are not permitted to be in the possession of, or to purchase, youth inappropriate materials, particularly adult classified products. Defence personnel are to be instructed that they are not to facilitate access to alcohol, youth inappropriate materials, or other adult classified products for Defence members under 18.

After hours and off-duty activities

5.42 COs and managers are to ensure that their unit or establishment promulgates guidance in Standing Orders about approved leave activities or off duty activities. This guidance is to include, but is not limited to:

- a. recording requirements on information for the proposed leave activities
- b. identification of locations and people Defence members under 18 are permitted to stay at or with
- c. travel arrangements
- d. emergency contact numbers
- e. log in and log out procedures, including procedures if the Defence member under 18 does not return at the allocated time.

RESPONSIBILITIES FOR MANAGING DEFENCE MEMBERS UNDER 18 DURING TRANSITION PERIOD

Transition to initial training

5.43 Defence commences its responsibility for Defence members under 18 from the point in time at which the member officially joins the ADF. This includes the transition stage where the member is travelling from their place of enlistment or appointment to the relevant training unit or establishment.

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5.44 Travel arrangements. The ADF (through DFR) is responsible for the management of all travel arrangements for Defence members under 18 from the enlistment or appointment venue to the initial training establishment. Defence members under 18 are to travel using Defence-organised transportation and are not permitted to travel with family and friends to the relevant training establishment.

5.45 Supervision of Defence members under 18 during transition period. DFR is responsible for ensuring that Defence members under 18 are escorted by appropriate personnel to the departure point at which their travel to the training establishment commences (for example, the airport). DFR is also to ensure that Defence members under 18 are chaperoned by appropriate personnel on any travel during the transition period that requires overnight accommodation. Appropriate personnel means a person assigned by DFR who satisfies the requirements of the relevant State or Territory child protection legislation. COs of training units must ensure that appropriate arrangements are made to escort Defence members under 18 from the arrival point (for example, the airport or train station) to the relevant training establishment.

5.46 Behaviour standards. Defence members under 18 are expected to meet the same behavioural standards as adult members and are subject to the same conditions of service and Defence legislation and policies, including DFDA and administrative sanctions. These requirements apply from the start of transition from their place of enlistment or appointment to their training establishment. DFR personnel are responsible for briefing Defence members under 18 on the DFDA and administrative sanctions during the recruiting process.

Transition on attachment or posting

5.47 To make Defence personnel aware of the arrival of a Defence member under 18 and to facilitate the tracking of Defence members under 18 during transition between establishments, the losing unit is to advise the gaining unit that a Defence member under 18 is being transferred into their care. Such notification is to occur for all attachments and postings and is to be formally acknowledged by the gaining unit. Unless specifically agreed beforehand, the losing unit retains overall responsibility for the member until they report to the gaining unit. The losing unit is to make transport arrangements for the member to travel to the gaining unit, including accompanying them to the point of departure. Travel should be arranged by the most direct means available. COs of the gaining unit must ensure that appropriate arrangements are made to escort Defence members under 18 from the arrival point to the unit or establishment.

DEPLOYMENT OF DEFENCE MEMBERS UNDER 18 INTO HOSTILITIES

5.48 In accordance with Defence's obligations under the Protocol, Services must take all feasible measures to ensure that Defence members under 18 do not participate in hostilities. That is, to the maximum extent possible and where it will not adversely impact on the conduct of operations, Defence members under 18 must not be deployed into areas of operations where there is a likelihood of hostile action. This does not prevent the deployment of Defence members under 18 on operations that do not involve hostilities but such deployments should be considered on a case by case basis.

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5.49 Where a Defence member under 18 is part of a unit that is required to deploy to an area of hostility, that member is not to deploy with the unit. In the case of a unit that is in transit or on exercise and is required to deploy at short notice, Defence members under 18 in that unit must be returned to a safe area without undue delay.

5.50 A CO is not obliged to remove a Defence member under 18 from direct participation in hostilities where:

- a. circumstances beyond the control of the CO do not permit removal
- b. it would be more dangerous to the member to attempt to do so
- c. it would prejudice the effectiveness of the mission.

5.51 However, nothing in paragraph 5.50 relieves a CO of the obligation to take all feasible measures to ensure Defence members under 18 do not take a direct part in hostilities.

5.52 There should be very few circumstances in which the above requirement could not be met. The most obvious exception relates to Navy. Where a Defence member under 18 is serving in a ship that is diverted at short notice to an area of hostility and it is not practicable for that member to be landed at the nearest safe port prior to the vessel continuing to the area of operations, that member is to remain with their ship and wherever possible, not participate in any hostile activities.

5.53 **Member responsibilities.** Despite the requirement that Defence members under 18 not be deployed to an area of hostility, they are not exempted from their responsibility to engage in military exercises, normal military duty, weapons training and other military training in accordance with normal Service requirements.

5.54 **Compliance.** COs are to immediately advise J1 Joint Operations Command and Deputy Chief Joint Operations of any instance where the Defence member under 18 cannot be returned to a safe place and must remain deployed with their unit.

DEFENCE FORCE DISCIPLINE ACT INTERVIEW PROCEDURES INVOLVING DEFENCE MEMBERS UNDER 18

5.55 Article 12 of [the Convention](#) states that:

'the child shall ... be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'

5.56 A Defence member under 18 must only be interviewed under the DFDA in the presence of an 'interview representative'. An 'interview representative' in relation to a Defence member under 18 means:

- a. a parent of the member or a legal practitioner (as defined under section 3 of the DFDA) acting for the member

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- b. if a parent or legal practitioner is unavailable—an adult relative or colleague of the member who is acceptable to the member
- c. if no person covered by subparagraph a or subparagraph b is available—an independent adult who is acceptable to the member.

5.57 The 'interview representative' is to be in the geographic locality of the interview location and be reasonably available. Unless special circumstances exist, a delay of more than two hours may be unreasonable.

The role of the ‘interview representative’

5.58 The role of the ‘interview representative’ is to provide a physical presence in support of the Defence member under 18 during the DFDA interview. Except in the case where the ‘interview representative’ is a legal practitioner, the ‘interview representative’ is not to provide legal advice to the member. The ‘interview representative’ is not to interfere with lawful interview questioning, but is to be an independent witness to the interview process on behalf of the member. If a statement is produced as a result of the interview, the ‘interview representative’ must also sign the statement. The interview representative is not to act as a corroborator for the interview. This is because the corroborator could potentially be called to give evidence at a subsequent trial in relation to the conduct of the interview. This has the potential to confuse the role of the interview representative, particularly if they are called by the prosecution at trial. The requirement to sign a statement, if produced, is to confirm the interview representative’s presence during the conduct of the interview.

5.59 The Defence member under 18 and the ‘interview representative’ must be allowed to communicate, if so desired by the member, prior to the interview and in private. If, during the interview, the DFDA investigating officer considers that the ‘interview representative’ is unreasonably interfering with the questioning of the member, the investigating officer may exclude the ‘interview representative’ from being present during the interview. However, if this occurs, then proceedings must be suspended until another acceptable representative is available.

5.60 All reasonable costs, determined by the CO, are to be met by the member’s unit. Reasonable costs may include, but are not limited to, the travel and legal fees for the member’s legal practitioner, parent or both. The requirement to identify and appoint an interview representative is not to act as an obstacle to the effective and expeditious conduct of an investigation. If the member is, in the view of the member’s CO, unreasonably refusing to choose or accept a suitable interview representative, or the member’s choice of interview representative could be used to, for example, conceal, destroy or fabricate evidence, the CO is to appoint a suitable interview representative on the member’s behalf.

RELATED LEGISLATION AND PUBLICATIONS

[Defence Force Discipline Act 1982](#)

[Privacy Act 1988](#)

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[Work Health and Safety Act 2011](#)

[Defence Regulation 2016](#)

[United Nations Convention on the Rights of the Child \(1990\)](#)

[Optional Protocol on the Involvement of Children in Armed Conflict \(2002\)](#)

[DI\(G\) PERS 16–26—Management of a Defence member at risk of suicide](#)

[DI\(G\) PERS 35–3—Management and reporting of Unacceptable Behaviour](#)

[DI\(G\) PERS 35–4—Reporting management of sexual misconduct including sexual offences](#)

[Interim Defence Instruction 45–2—Incident reporting and management](#)

[Interim Defence Instruction Disclosure of certain personal information of young people to parents and Government oversight bodies](#)

[Defence Casualty and Bereavement Support Manual \(DCBSM\), Chapter 1—‘Casualty notification of Australian Defence Force members’](#)

[MILPERSMAN, Part 1, Chapter 4](#)—‘Military Personnel Policy Manual Privacy Statement’

[Youth Policy Manual, Part 1, Chapter 2](#)—‘Defence Youth Safety Commitment Statement’

[Youth Policy Manual, Part 1, Chapter 3](#)—‘Defence Youth Safety Governance’

[Youth Policy Manual, Part 1, Chapter 4](#)—‘Defence Youth Safety Risk Management’

[Youth Policy Manual, Part 1, Chapter 5](#)—‘Defence Youth Safety Responding and Reporting’

[Defence Youth Safety Framework](#)

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