VICE CHIEF OF THE DEFENCE FORCE

DIRECTIVE 06/2016

VCDF/OUT/2016/267

See distribution

VICE CHIEF OF THE DEFENCE FORCE

TO

CHIEF OF NAVY

CHIEF OF ARMY

CHIEF OF AIR FORCE

RELATIONSHIPS BETWEEN DEFENCE AND CADET ADULTS,
AND CADETS AND OTHER MINORS

PURPOSE

1. Sexual interactions between an adult and a person under the age of consent, and in some contexts above the age of consent but under the age of 18, are considered abusive and are prohibited under state and territory legislation. Defence does not tolerate any sexual interaction between adults and certain persons under the age of 18 in Defence contexts.

2. This Directive sets out the rules and responsibilities that apply to ADF members, APS Employees, Officers of Cadets, Instructors of Cadets and ADF Cadets adult volunteers (collectively known as ‘Defence and Cadet Adults’) who have contact with cadets and other non-ADF members and non-APS employees who are under the age of 18 (collectively known as ‘Cadets and Other Minors’) in Defence contexts.

3. This Directive is consistent with the National Framework for Protecting Australia’s Children 2009-2020 key supporting outcome that ‘child sexual abuse and exploitation is prevented and survivors receive adequate support’ (Department of Social Services, 2013, paragraph 6).

BACKGROUND

4. The Royal Commission into Institutional Responses to Child Sexual Abuse conducted a case study into Defence. The hearing in June 2016 revealed a number of deficiencies in the way Defence has managed and provided information on the interaction between Defence and Cadet Adults, and Cadets and Other Minors.

5. Defence is currently in an advanced stage of implementing the Defence Youth Safety Framework. Although the Framework will enable a best practice approach based on a ‘child safe’ culture into Defence, it is not yet complete. Due to the seriousness of these issues and Defence’s commitment to ensuring a child safe environment, three issues highlighted in the Royal Commission Defence case study require immediate attention. These are:

   a. Better awareness of Australian age of consent legislation;
b. Understanding of legal liabilities due to the ‘Special Care’ provisions; and

c. Ensuring blame is not attributed to ADF Cadets in an intimate relationship with an adult.

AIM

6. The aim of this Directive is to provide clear guidance and interim direction on relationships between Defence and Cadet Adults, and Cadets and Other Minors until the completion of the relevant Defence Youth Safety policy in YOUTHPOLMAN.

Australian age of consent legislation

7. Age of consent laws are essential measures for protecting children and young people from sexual exploitation and abuse. Such laws effectively determine that children and young people below the age of consent do not have the emotional maturity to consent to sexual activities. A young person may express their willingness to engage in sexual behaviour, but because they are not considered to have the psychological capacity to give consent according to law, all sexual interactions between an adult and a person under the age of consent are regarded as a criminal offence.

8. The legal age for consensual sex varies across Australian state and territory jurisdictions. In some jurisdictions it is 16 years of age while in others it is 17 years of age (see Annex A).

‘Special care’ provisions and Defence’s policy position

9. In addition to the age of consent laws, several states and territories have ‘special care’ provisions which impose additional restrictions on adults in certain contexts (see Annex A). These laws prohibit any person in a supervisory role from engaging sexually with a person who is under 18, whether or not they are above the age of consent. For example, in some states and territories a teacher is prohibited by law from engaging sexually with a student under the age of 18 due to their supervisory or ‘special care’ role. In some states and territories, relevant laws include ‘special care’ provisions, while in others they do not.

10. As an Australia-wide policy position Defence considers that Defence and Cadet Adults have a responsibility for providing ‘special care’ to all Cadets and Other Minors in Defence contexts. Regardless of what state or territory the individuals are in, Defence’s policy is that ADF and Cadet Adults must not engage sexually with any Cadets or other Minors.

11. This special care responsibility is reflected more broadly in the Defence Youth Safety Framework Code of Conduct Guide which articulates the requirement for all Defence Codes of Conduct Guides to include:

a. a statement in the adult expectations of behaviour that requires the individual to ‘take all reasonable steps to ensure, that youth are protected from any form of, sexual, physical or psychological harm, or indecent and inappropriate conduct. This includes sexual abuse or grooming for the intent of adult sexual gratification’; and

b. a statement in the adult declaration that the adult understands any failure to comply with the Code of Conduct may result in, where applicable:
(1) Administrative or disciplinary action under the *Defence Force Discipline Act 1982* for Defence members;
(2) Administrative or disciplinary action under the *Public Service Act 1999* for Defence APS employees;
(3) Cancellation or sanctions as a volunteer; and/or
(4) Criminal or civil actions against the individual.

12. Any Defence and Cadet Adult who breach the prohibition against sexual interaction with Cadets and Other Minors will be subject to administrative or disciplinary action. They may also be subject to criminal action, depending on the state or territory jurisdiction.

**Attribution of blame**

13. Under law, grooming or any form of intimate relationship between adults and minors constitutes child abuse. Given this, the adult participant in such a relationship carries the blame entirely – none whatsoever applies to the child.

14. In Defence contexts, it is therefore very important that individuals responding to and managing any allegations of a sexual relationship or child abuse between Defence and Cadet Adults, and Cadet and Other Minors, ensure that Cadets and Other Minors are made aware they are entirely without blame, the cadet and their parents/guardian are to be treated and supported accordingly.

**ROLES AND RESPONSIBILITIES**

**Service Chiefs**

15. Service Chiefs must ensure that guidance provided in paragraphs 6-14 of this directive is promulgated within their respective cadet organisations and that the guidance is complied with.

**REVIEW**

16. This Directive will remain in force until it is revoked

17. The point of contact for this matter is Director, Cadets, Youth Engagement and Work Experience on REDACTED

**CONCLUSION**

18. Defence has a moral and legal duty to protect all youth under the age of 18 with which it comes into contact. It is therefore important that Defence and Cadet Adults are aware of:

a. the age of consent and ‘special care’ provisions in their jurisdiction;

b. that Defence prohibits any sexual interaction between Defence and Cadet Adults, and Cadets and Other Minors; and

c. in the event that such a sexual interaction becomes known, Cadets and Other Minors must not be attributed any blame.
ACKNOWLEDGEMENT

19. This Direction takes effect on receipt. Addressees are to acknowledge receipt of this Directive by returning Annex B to Chief of Staff, VCDF.

R.J. GRIGGS, AO, CSC
Vice Admiral, RAN
Vice Chief of the Defence Force

R1-5-B025
Tel: [REDACTED]
07 Jul 16

Annexes:
A. Age of Consent and ‘Special Care’ Provisions
B. Acknowledgement

Distribution

CN
CA
CAF

For Information:
CDF
HCRESD
AGE OF CONSENT AND ‘SPECIAL CARE’ PROVISIONS

The age of consent and special care provisions vary between states and territories. The summary information is correct as at July 2016 and is drawn from: https://aifs.gov.au/cfca/publications/age-consent-laws

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Legislation</th>
<th>Age of Consent for sexual interactions</th>
</tr>
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<tbody>
<tr>
<td>ACT</td>
<td>Crimes Act 1900 (Section 55)</td>
<td>16</td>
</tr>
<tr>
<td>NSW</td>
<td>Crimes Act 1900 (Section 66c)</td>
<td>16</td>
</tr>
<tr>
<td>NT</td>
<td>Criminal Code Act 1983 (Section 127)</td>
<td>16</td>
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<tr>
<td>QLD</td>
<td>Criminal Code Act 1899 (Sections 208 and 215)</td>
<td>16 (18 for anal sex)</td>
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<tr>
<td>SA</td>
<td>Criminal Law Consolidation Act 1935 (Section 49)</td>
<td>17</td>
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<tr>
<td>TAS</td>
<td>Criminal Code Act 1924 (Section 124)</td>
<td>17</td>
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<tr>
<td>VIC</td>
<td>Crimes Act 1958 (Section 45)</td>
<td>16</td>
</tr>
<tr>
<td>WA</td>
<td>Criminal Code Act Compilations Act 1913 (Section 321)</td>
<td>16</td>
</tr>
</tbody>
</table>

Sexual interactions with 16 and 17 year olds under special care

Although the legal age of consent throughout Australia is either 16 or 17 years of age, legislation in New South Wales, Victoria, Western Australia, South Australia and the Northern Territory makes it an offence for a person in a supervisory role to sexually engage with a person under their special care who is aged 16 or 17 years. A person in a supervisory role providing ‘special care’ may include: a teacher, foster parent, religious official or spiritual leader, a medical practitioner, an employer of the child or a custodial official. For further information regarding sexual interaction with 16 and 17 years old under special care please see the relevant state or territory legislation.
ACKNOWLEDGEMENT

I acknowledge receipt of VCDF Directive 06/2016 – Relationships between ADF and Cadet Adults, and Cadets and Other Minors, and will comply with the directions therein.

July 2016