

DISCLOSURE OF CERTAIN PERSONAL INFORMATION IN RELATION TO YOUTH SAFETY INCIDENTS

INTRODUCTION

1.1 While conducting its activities and programs, including youth programs, Defence gathers and retains personal information about its members and program participants. This personal information is regulated by a number of laws, with personal information held by the Commonwealth generally regulated by the *Privacy Act 1988*

1.2 Defence therefore has a legal duty to manage personal information properly. It also has a moral duty to do so – privacy is a human right. This is articulated within a number of international conventions; the specific right of privacy for children and young people is set out in Article 16 of the United Nations Convention on the Rights of the Child 1989.

1.3 Defence holds personal information about young people 12 to 18 year olds who participate in its youth engagement and development programs including those aged under 18 who have been appointed or enlisted in the Australian Defence Force (ADF). Information about the administration and management of ADF members under the age of 18 is provided in the Military Personnel Policy Manual (MILPERSMAN).

1.4 It is important to note that although under the age of 18, a young person's personal information relates to them in their own right. Whatever their family situation, this information is separate from other information relating to, or held by, the young person's parents or family unit.

POLICY STATEMENT

1.5 Defence is committed to being a youth safe organisation and to ensuring that its management and administration of young people protects the interests and safety of those individuals. In certain circumstances relating to the management of youth safety incidents it may be appropriate for Defence to disclose personal information of a young person or other individuals to protect the interests and safety of young people. The personal information may be disclosed to parents, responsible third parties or government oversight bodies who have a child protection role.

1.6 Defence Instruction – Administrative policy is Australian law for the purposes of the Privacy Act 1988. The provisions under Annex C on the disclosure of certain personal information in relation to youth safety incidents authorises Defence personnel to undertake the disclosure action described in this policy.

POLICY INTENT

1.7 This policy provides direction on the disclosure of certain personal information in relation to Youth Safety Incidents. In the Defence youth context, the terms child, young person, youth and minor are equivalent and interchangeable and mean a person under the age of 18.

POLICY PRINCIPLE

1.8 Principle 1 – All Defence and ADF Cadets Adults must adhere to the Privacy Act when handling personal information.

1.9 Principle 2 – The personal information of a young person or any other person may be disclosed by Defence personnel in circumstances in which it would protect the interest or safety of a young person.

POLICY MEASURES AND PRACTICES

Principle 1 – All Defence and ADF Cadets adults must adhere to the Privacy Act when handling the personal information.

The *Privacy Act 1988*, the Defence Privacy Policy and the Defence Security Manual set out the requirements for the how Defence collects, stores, uses and discloses personal information.

1.10 In relation to the management of Youth Safety Incidents, 'personal information' has the same meaning as in section 6 of the *Privacy Act 1988*. Personal information is information about an identified individual or that enables a person to be identified.

1.11 Where Defence holds personal information about an individual that was collected for a particular purpose, Defence must not use or disclose that information for another purpose.

1.12 The Privacy Statement at Annex A is to be used on all documentation, information technology systems and at any other occasion where Defence collects information.

1.13 Prior to considering disclosing personal information about a young person or another individual, all other courses of action must be considered. This includes encouraging the young person or other individual to self-disclose the relevant personal information to the parents, a responsible third party or government oversight body.

Principle 2 -The personal information of a young person or any other person may be disclosed by Defence personnel in circumstances in which it would protect the interest or safety of a young person.

1.14 Despite the moral and legal requirements to maintain privacy and manage personal information properly, in some cases the need to protect the safety or interests of a young person overrides this. Defence Instruction – Administrative policy and its provisions under Annex C - Disclosure of certain personal information in relation to youth safety incidents is the authority for Defence personnel to authorise or make the disclosures of personal information outlined in this policy.

DISCLOSURE OF INFORMATION

1.15 In certain circumstances Defence personnel may disclose or authorise disclosure of personal information held by Defence about a young person to parents, guardians, specified next of kin or a responsible third party if:

- a. the young person has been involved in a Youth Safety Incident;
- b. the information relates specifically to the safety, welfare or wellbeing of a young person; and
- c. they are reasonably satisfied in the circumstances that it is necessary and appropriate for the personal information to be disclosed to protect the interests and safety of the young person.

1.16 Defence personnel can disclose or authorise disclosure of personal information held by Defence about a young person or any other person to a Government oversight body if:

- a. there is a legislative requirement for certain information to be reported to the Government oversight body such as a mandatory reporting requirement, and
- b. all of the conditions or criteria that trigger the reporting requirement are satisfied.

1.17 Only Defence personnel are able make the decision to disclose the personal information of a young person or any other person. Information for decision makers is provided in the Supplement to the Defence Decision Makers Guide for the Disclosure of Certain Personal Information in relation to Youth Safety Incidents.

1.18 A Youth Safety Incident is any event or occurrence involving a disclosure, allegation, or suspicion of abuse or neglect perpetrated on either an individual young person or a group of young people. It could be a disclosure from a young person, an allegation from an adult and/or observed behaviour that may have breached the Defence Youth Safety Framework or the relevant code of conduct under existing Defence and/or ADF Cadets policies.

1.19 Personal information may also be sensitive information. 'Sensitive information' has the same meaning as given in the *Privacy Act 1988* and includes such things as health or genetic information or information about a person's beliefs or their racial or ethnic origins (a full list is in the Act). Sensitive information has an additional layer of protection.

1.20 This policy does not permit Defence personnel to disclose or authorise disclosure of sensitive information to parents, guardians, specified next of kin, a responsible third party or Government oversight body. Disclosure of personal information is limited to identifying information only.

1.21 Factors that may be relevant when deciding whether to release personal information include, but are not limited to, the young person's age, any wishes expressed by the young person, the nature of the personal information, and the nature of the Youth Safety Incident (further guidance is available in the Supplement to the Defence Decision Makers Guide for the Disclosure of Certain Personal Information in relation to Youth Safety Incidents¹, Youth Policy Manual (YOUTHPOLMAN) and Military Personnel Manual (MILPERSMAN)).

1.22 Consistent with the *Privacy Act 1988* and where practicable, disclosure of personal information should be constrained to that which is pertinent to the circumstance.

1.23 The young person or any other person, who is the subject of the information, is to be advised of any decision to disclose their information by a decision maker, prior to the disclosure occurring. This is to allow the young person or any other person the opportunity to self-disclose or to request a review of the decision.

¹ <http://www.defenceyouth.gov.au/media/1301/supplement-and-annex-to-defence-decision-makers-guide-for-the-disclosure-of-certain-personal-information-of-young-people-under-18-in-template.pdf>

APPLICATION AND COMPLIANCE

1.24 This policy applies to all Defence personnel and ADF Cadets Members.

1.25 All information and records in relation to any disclosure of personal information are to be kept in accordance with the Defence Records Management Policy Manual.

UNINTENDED CONSEQUENCES FROM APPLICATION OF THIS POLICY

1.26 In the event that this policy duplicates or is in conflict with material contained in another document intended for the internal administration of Defence, the mandatory provisions in this policy will prevail.

REVIEW OF DISCLOSURE ACTION

1.27 Where the decision to disclose personal information of an ADF member has been made, this decision can be reviewed in accordance with procedural fairness requirements as detailed in the Complaints and Alternative Resolutions Manual Chapter 6.

1.28 Where the decision to disclose the personal information of a Defence Youth Program participant under the age of 18 or an ADF Cadets Adult has been recommended by the decision maker, the young person or ADF Cadets Adult can request a review and [natural justice](#) is to apply. The review is to be conducted by a Defence member other than the decision maker. Each ADF Cadet Organisation is to ensure that young people and ADF Cadets Adults are aware of the review process when a decision has been made to disclose personal information.

1.29 Where the decision to disclose the personal information in accordance with this policy is time sensitive, the opportunity for review may be limited. In these circumstances, members of the ADF Cadets will not be able to seek a review of that decision. ADF members may be able to seek redress in accordance with the Complaints and Alternative Resolutions Manual. However, the redress of grievance system is unlikely to be able to revoke a disclosure which has already taken place. Any person affected by a decision under this policy is also able to make a complaint in accordance with the [Defence Privacy Policy](#).

ADF CADETS DISCLOSURE OF A YOUNG PERSON'S PERSONAL INFORMATION

1.30 The authority to disclose personal information, Defence Instruction – Administrative policy and its provisions under Annex C - Disclosure of certain personal information in relation to youth safety incidents applies only to Defence personnel. No ADF Cadets Officer of Cadets, Instructor of Cadets or Defence Approved Helper, is routinely permitted to disclose the personal information of young people (or of any other person).

1.31 If an ADF Cadets Officer of Cadets, Instructor of Cadets or Defence Approved Helper becomes aware of a Youth Safety Incident, or other circumstances where Defence may need to protect a young person's safety or interests by disclosing their personal information to their parents or a responsible third party, they are to immediately:

- a. notify their relevant ADF Cadet Organisation of the matter, and
- b. refer all relevant information to the decision maker.

1.32 In exceptional circumstances a member of Defence who is the decision maker can authorise an ADF Cadets Officer of Cadets, Instructor of Cadets or

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Defence Approved Helper to disclose the personal information of a young person or any other person to a parent, guardian, specified next of kin, responsible third party or Government oversight body. The Supplement to the Defence Decision Makers Guide for the Disclosure of Certain Personal Information in relation to Youth Safety Incidents contains explanations and examples of these exceptional circumstances.

1.33 Each ADF Cadets Organisation is to ensure that a process for the notification process is promulgated to all Officers of Cadets, Instructor of Cadets and Defence Approved Helpers.

USE OF THE PRIVACY STATEMENT

1.34 The following Privacy Statement is to be used on all documentation, information technology systems and at any other occasion where Defence collects information.

1.35 The Defence Privacy Policy is designed to inform individuals about the way Defence (including the Australian Defence Force Cadets) collects, stores, uses and discloses personal information. This policy is supplemented by privacy provisions contained in the Youth Policy Manual. I understand that the information I provided to Defence and any other information Defence collects about me may be used and/or disclosed by Defence to parents, responsible third parties or any law enforcement body, child protection agency or any other organisation where this considered necessary to safeguard young people. The Defence Privacy Policy and contact details regarding privacy in Defence are available at <http://www.defence.gov.au/ComplaintResolution/privacy.asp>. The Youth Policy Manual is available at YouthHQ.

ROLES AND RESPONSIBILITIES

1.36 Service Chiefs and Group Heads must ensure that guidance provided in this chapter is promulgated and monitored for compliance.

RELATED POLICY

DEFENCE

Annex C to Defence Instruction – Administrative Policy, - Disclosure of certain personal information in relation to youth safety incidents

Good Decision-Making in Defence: A guide for Decision-Makers and those who brief them

Supplement to the Good Decision-Making in Defence: A guide for Decision-Makers and those who brief them, for the disclosure of certain personal information of young people under 18.

Defence Privacy Policy

Defence Youth Safety Privacy Fact Sheet

Military Personnel Policy Manual Part 7 Chapter 5

Defence Records Management Policy Manual

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Policy Officer: Head Reserve and Youth Division

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