

RELATIONSHIPS BETWEEN DEFENCE AND NON-DEFENCE PERSONNEL AND YOUNG PEOPLE UNDER THE AGE OF 18

INTRODUCTION

1.1 Defence is committed to fostering an environment that promotes the safety and wellbeing of all young people.

Defence does not tolerate any sexual interaction between adults and young people (under the age of 18) in any Defence youth context, irrespective of differences in individual state and territory legislation on age of consent ¹and 'special care'² provisions.

1.2 As an Australia-wide policy position Defence defines the age of consent for all sexual interactions as 18 years old, irrespective of the state or territory legislation in which the interaction occurs, and will take disciplinary and/or administrative action accordingly.

1.3 The contexts in which Defence interacts with youth are:

- a. service of ADF members and employment of APS under the age of 18
- b. Defence Youth Programs
- c. Australian Defence Force Cadets (ADF Cadets)
- d. domestic and international operations

1.4 The Youth Policy Manual (YOUTHPOLMAN) Glossary includes definitions applicable to this policy.

POLICY INTENT

1.5 This policy applies to all Defence personnel, non-Defence-personnel³ to maintain appropriate relationships with all young people with whom they come into contact in Defence contexts.

1.6 This policy provides guidance and direction on interactions and relationships between Defence personnel and non-Defence personnel and young people in the Defence youth context. The terms: child; young person; young people; youth; and minor, are equivalent and interchangeable and mean a person under the age of 18.

PRINCIPLES

¹ **Age of Consent.** The legal age for consensual sex, according to the applicable state and territory legislation. In some jurisdictions it is 16 years of age, and it in others it is 17 years of age (subject to the Special Care Provisions). See <https://aifs.gov.au/cfca/publications/age-consent-laws> for further information on Age of consent in each state and territory.

² **Special Care Provisions.** Legislation which imposes additional restrictions on adults in certain contexts. 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. These laws exist only in some states. See <https://aifs.gov.au/cfca/publications/age-consent-laws> for further information on Special Care provisions in each state.

³ **Non-Defence personnel:** all persons, paid or unpaid, who are not Defence personnel. which include:

- a. locally engaged employees, contractors, consultants and outsourced service providers operating in Defence where compliance is **NOT** specified in the terms of contract –
- c. ADF Cadets adults.

1.7 The principles below detail the behaviours and conduct required of all Defence personnel and non-Defence personnel who have contact with young people in Defence contexts.

1.8 **Principle 1** – All sexual interactions between an adult and a person under the legal age of consent are a criminal offence under state and territory legislation.

1.9 **Principle 2** – All adults share a responsibility for providing ‘special care’ to all young people with whom they come into contact in Defence contexts.

1.10 **Principle 3** – The adult in any sexual relationship with a young person will be held entirely responsible for that relationship– no blame applies to the young person.

1.11 **Principle 4** – Supporting the young person and the parents and/or responsible third parties of any young person involved in a sexual interaction with an adult in Defence contexts is given the highest priority.

1.12 **Principle 5** – All adults, including Defence members under the age of 18, cadets and civilian young people participating in Defence youth program activities receive appropriate youth safety guidance and training.

POLICY MEASURES AND PRACTICE

1.13 **Principle 1 – All sexual interactions between an adult and a person under the age of consent are a criminal offence under state and territory legislation.**

1.14 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 simply do not have the emotional maturity or psychological capacity to consent to sexual activities.

1.15 Even if a young person expresses their willingness to engage in sexual behaviour, this is not consent because of this lack of capacity to give consent. All state and territory jurisdictions therefore consider sexual interactions between an adult and a person under the age of consent to be abusive and illegal.

1.16 However, the legal age for consensual sex varies across Australia. It is 16 years in some states and territories while in others it is 17 years. In addition, in some jurisdictions, ‘special care’ provisions make sexual interactions between an adult and a person who is above the age of consent but under the age of 18 illegal. 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.

1.17 Defence has a moral and legal duty to protect all young people with whom it comes into contact. Because of this, Defence defines the age of consent in the Defence context as 18 years irrespective of the state or territory location, and strictly prohibits any sexual interaction between an adult and a young person under the age of 18.

1.18 It is therefore imperative that Defence Personnel and non-Defence personnel understand that while a sexual interaction with someone above the age of consent but under 18 may be legal in their state or territory, it is completely prohibited in the Defence context. To protect young people and avoid legal sanctions and/or Defence disciplinary or administrative measures, Defence personnel and non-Defence personnel must be aware both:

- a. of the age of consent and special care provisions as defined in their local jurisdiction; and
- b. that Defence does not tolerate any sexual interaction between adults and young people in any Defence context regardless of individual state and territory ages of consent.

1.19 All Defence and non-Defence personnel, must maintain the highest ethical standards when interacting with young people. All interactions and relationships between adults and young people should be based on mutual respect, trust and an understanding of the boundaries for appropriate relationships.

1.20 Principle 2 – All adults share a responsibility for providing ‘special care’ to all young people with whom they come into contact in Defence contexts.

In addition to age of consent laws, several states and territories have ‘special care’ provisions which impose additional restrictions on adults in certain contexts. 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 but above the age of consent 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.

1.21 As an Australia-wide policy position Defence considers that all adults and Defence contracted personnel have a responsibility for providing ‘special care’ to all young people in Defence contexts regardless of state or territory special care provisions.

1.22 The special care responsibility in the Defence context must be reinforced in relevant Defence organisations youth safety codes of conduct.

1.23 Principle 3 – The adult in any sexual relationship with a young person is entirely to blame – no blame applies to the young person.

1.24 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 responsibility entirely – no blame applies to the young person.

1.25 It is therefore critical that individuals responding to and managing any disclosures or allegations of a sexual relationship or abuse that involve an adult ensure that the young person is made aware that he/she is entirely blameless.

1.26 Principle 4 – Supporting the young person and the parents and/or responsible third parties of any young person involved in a sexual interaction with an adult in Defence contexts is given the highest priority.

1.27 In addition to ensuring the young person is made aware that he/she is entirely blameless it is imperative that the young person and the parents and/or responsible third parties, Commander, managers and support personnel are treated and supported accordingly.

1.28 All Defence personnel and non-Defence personnel may use the services of the Sexual Misconduct Prevention and Response Office (SeMPRO) to maximise timely and appropriate support 24 hours a day, 7 days a week, 365 days a year.

1.29 Principle 5 – All adults and young people, participating in Defence youth program activities receive appropriate youth safety training.

1.30 Adults who interact with young people in the Defence context must have the appropriate knowledge, skills and competencies to apply the principles in this policy through completion of training appropriate to their role and responsibility within 30 days of commencement in the role.

ROLES AND RESPONSIBILITIES

SERVICE CHIEFS AND GROUP HEADS

1.31 Service Chiefs and Group Heads must ensure that guidance provided in this chapter is promulgated within their respective Defence youth program/s and that the guidance is complied with.

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.

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>

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

Accountable Officer: Chief Joint Capability

Policy Officer: Head Reserve and Youth Division