

CHAPTER 1

AGE OF CONSENT AND SPECIAL CARE PROVISION

INTRODUCTION

6.1.1. All youth have a right to a safe physical and emotional environment when engaged with Defence. Defence does not tolerate any sexual interaction between adults and youth in Defence contexts.

BACKGROUND

6.1.2. All Defence adults must maintain the highest ethical standards when interacting with youth. All interactions and relationships between adults and youth should be based on mutual respect, trust and an understanding of the boundaries for appropriate relationships.

6.1.3. Equality needs to exist for consent to be given freely. Defence acknowledges there is a power imbalance in a relationship between a youth and an adult in the Defence context. Within Defence no sexual relationship with a person under 18 years old is permitted, even if the youth consents and is above the legal age of consent for the relevant state or territory. Units may raise additional policies to deal with matters specific to their context.

6.1.4. Australian Defence Force (ADF) members under 18 are also subject to conditions of service and employment policies, including the Defence Force Discipline Act 1982 (DFDA) and Administrative Sanctions.

6.1.5. For the purposes of this policy, participants over the age of 18 (for example 18 year old cadets participating in the ADF Cadets) are subject to the same policy as youth in so far as Defence has a special duty of care towards them. Relationships between these participants and other adults in Defence are not appropriate. As a result adults are prohibited from sexual relationships with participants over 18 described within this provision.

POLICY INTENT

6.1.6. The intent of this policy is to ensure adults understand their responsibilities to provide special care provisions to protect youth engaging with Defence and participating in Defence Youth Programs and to ensure youth are aware of their rights.

POLICY PRINCIPLES

6.1.7. Principle 1. Commanders, managers, supervisors and the adult peers of youth engaging with Defence understand their responsibilities to provide youth special care provisions within Defence.

6.1.8. Principle 2. In the event that a sexual interaction between a youth and an adult becomes known, the youth must not be attributed any blame.

POLICY PRACTICES AND MEASURES

Principle 1

6.1.9. The legal age of consent varies across Australian state and territory jurisdictions. A young person may express their willingness to engage in sexual behaviours but are not considered to have the psychological capacity to give consent according to the law. All sexual interactions between an adult and a person under the age of consent are regarded as a criminal offence.

6.1.10. In addition to the age of consent laws for the applicable state or territory, Defence requires all adults in the Defence context to have special care for youth, known as the [special care provision](#).

6.1.11. The special care provision prohibits any person in a supervisory role from engaging sexually with a person who is considered a youth, irrespective of the legal age of consent.

6.1.12. Defence considers any person in a supervisory role as having special care for youth and, as such, sexual activities are prohibited.

6.1.13. The special care provision is included in the Youth Safe Code of Conduct (Adult) (refer Section 2, Chapter 2).

Principle 2

6.1.14. Defence considers any form of intimate relationship with a youth in the Defence context to be abuse. Grooming is considered abuse (and a criminal offence) in any context. As a result, in the Defence context, the adult participant in any form of intimate relationship carries the blame entirely.

6.1.15. Individuals in Defence responding to and managing allegations of a sexual relationship or child abuse between an adult and a youth are to ensure the youth is made aware they are entirely without blame.

REPORTING

6.1.16. To ensure appropriate management in the Defence context, any pre-existing personal relationships, such as a family relationship, close friendship, sexual relationship (where a youth is over the age of consent for the state or territory but is not in a Defence context) must be declared to the relevant supervisor.

6.1.17. Reporting physical and sexual abuse, including inappropriate relationships to the relevant authority is a moral and, in some cases, legal responsibility. Mandatory reporting refers to the legal requirement of certain groups of people to report a reasonable belief of child physical or sexual abuse to child protection authorities. Each state and territory has their own definitions of a mandatory reporter. The groups of people/occupations mandated to notify cases of suspected child abuse and neglect are defined by each jurisdiction. Occupations most commonly cited as

6-1-3

mandated reporters are those individual who have frequent contact with children in the course of their work.

6.1.18. Reporting child abuse and neglect is a Defence-wide responsibility. An adult who suspects, on reasonable grounds, that a child or young person is at risk of being abused and/or neglected, should report their suspicion to the appropriate reporting authority in their state or territory.

6.1.19. All reporting must be managed in accordance with the Youth Protection Complaint and Event/Incident Management policy (refer Section 3, Chapter 3).

Accountable Officer: Chief of Joint Capabilities (CJC)

Policy Officer: Head Joint Support Services Division (HJSSD)