



Australian Government
Department of Defence

DEFENCE INSTRUCTIONS (GENERAL)

Amendment

PERS 33-4
AMDT NO 2
Complete Revision

Management and administration of Australian Defence Force members under 18 years of age

Department of Defence
CANBERRA ACT 2600

22 April 2008

Issued with the authority of the Chief of the Defence Force and the Secretary of the Department of Defence pursuant to section 9A of the *Defence Act 1903* for members of the Australian Defence Force.

Issued with the authority of the Secretary pursuant to section 20 of the *Public Service Act 1999* for Department of Defence Australian Public Service employees.

NICK WARNER
Secretary

A.G. HOUSTON
Air Chief Marshal
Chief of the Defence Force

LIST B—ISSUE NO PERS B/4/2008

Single Service filing instructions

This instruction should be filed as:

1. NAVY PERS 61-4
2. ARMY PERS 116-17
3. AIR FORCE PERS 29-30

Sponsor:

Deputy Secretary People Strategies and Policy

Sponsor contact:

Directorate of Military Personnel Policy

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Cancellation

DI(G) PERS 33-4 ISSUE NO PERS B/9/B2005 of 1 JUL 2005 (AL1) is cancelled.

Note

This amendment incorporates a title change.

MANAGEMENT AND ADMINISTRATION OF AUSTRALIAN DEFENCE FORCE MEMBERS UNDER 18 YEARS OF AGE

INTRODUCTION

1. Defence and the Australian Defence Force (ADF) has a duty to ensure that all personnel are provided with a safe working environment and system of work. This duty is particularly significant where personnel are considered in a legal sense to be 'vulnerable'. Vulnerable personnel may be identified by a wide range of characteristics depending on the individual circumstances, including age, gender, life experience and familiarity with Service culture.

2. ADF members under the age of 18 years (minors) are a specific class of vulnerable person to which additional legal and moral obligations apply. Members of the ADF who deal with and are responsible for such personnel must be aware of their responsibilities when managing minors.

SCOPE

3. This Instruction is applicable to those minors who are members of the permanent and reserve elements of the ADF. It applies to minors from the time they are appointed/enlisted, when they have signed to become members of the ADF.

4. The Instruction provides broad guidance on the appropriate discharge of the ADF's responsibilities and prescriptive measures where these are required. Issues within this Instruction are not exhaustive and Services must consider all relevant issues relating to a particular working environment.

EXCLUSIONS

5. This Instruction does not provide policy or procedural guidance on issues relating to the recruitment of minors to the ADF. Nor does it address the issues relating to the management of minors who are not members of the ADF, such as members of the Service cadet schemes or civilian work experience students.

POLICY STATEMENT

6. The effective management of under-age personnel is essential in order for Defence to meet its international and national legal obligations. This Instruction outlines the ADF's responsibilities relating to the management and administration of minors.

DEFINITIONS

7. The definitions which apply to this Instruction are in [annex A](#).

AUSTRALIAN DEFENCE FORCE'S LEGAL RESPONSIBILITY FOR THE CARE OF MINORS

Duty of care

8. In general terms, an employer (such as Defence) must take reasonable care for the safety of all its employees (including ADF members). That obligation is non-delegable. The employer's duty is described as a 'personal duty'. The obligation arises by reason of the special features of the employer/employee relationship.

9. The courts decide on a case-by-case basis whether the employer took reasonable care to avoid exposing employees unnecessarily to a risk of injury. The employer's duty is one of reasonable care. Whether the employer has discharged that duty of care is always dependant upon the facts of each case. Many factors need to be taken into account having regard to the variable standard of care required to fulfil the duty of care in each particular case.

10. The Commonwealth of Australia (through the Department of Defence) has a legal duty of care to ensure reasonable care is taken for the safety of engaged members. There is a requisite standard of care required to be met by the Commonwealth to discharge the duty of care. The standard of care required on the part of the Commonwealth for the care of minors is higher simply because those ADF members are minors. That is, minors fall into a class of person described as vulnerable for whom the law provides a higher standard of care. If there is established a breach of duty of care and there is injury, loss and damage as a result of that breach (which is not too remote in law), then the employee will succeed in establishing negligence on the part of the Commonwealth.

11. Specific legislation, such the [Occupational Health and Safety \(Commonwealth Employment\) Act 1991](#) applies to Defence. Under this legislation there is a statutory obligation on the part of Defence to take all reasonably practicable steps to protect the health and safety at work of employees. This is described as the general duty under the [Occupational Health and Safety \(Commonwealth Employment\) Act 1991](#).

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

12. **The Convention.** The United Nations Convention on the Rights of the Child, implemented in 1990 and ratified by Australia, sets out the civil, political, economic, social and cultural rights of children.

13. **The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (the Protocol).** The Optional Protocol strengthens the protections contained in the Convention. Most importantly, it obliges signatories to the Convention to take all feasible 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 agreements.

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 minors into the ADF must take into account the following obligations:

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

15. If a minor has been recruited contrary to the requirements of the Protocol, the ADF will take all feasible measures to ensure that the minor's service in the ADF is terminated as soon as practicable.

16. **Compliance with State and Territory child protection legislation.** Each Australian State and Territory has either introduced or is planning to introduce legislation requiring additional clearances (known as Working with Children checks) for those adults who work with children in positions or organisations which have a child-related focus. Defence is not considered to be child-related employment for the purposes of this legislation and minors who are enlisted or appointed by the ADF are engaged to perform the same duties as their adult colleagues. Therefore, Defence personnel who work with minors (who are ADF members) as part of their normal duties are currently exempt from these checks.

MANAGEMENT OF MINORS DURING TRANSITION PERIOD

17. The ADF commences its responsibility for minors from the point in time at which the minor officially joins the ADF. This includes the transition stage where the minor is travelling from their place of enlistment/appointment to the relevant initial training establishment.

18. **Travel arrangements.** The ADF (through Defence Force Recruiting (DFR)) is responsible for the management of all travel arrangements for minors from the enlistment/appointment venue to the training establishment. Minors are to travel using the organised transportation and are not permitted to travel with family and friends to the relevant training establishment.

19. **Chaperoning of minors during transition period.** DFR is responsible for ensuring that minors are escorted, by appropriate personnel, to the departure point at which their travel to the training establishment commences (eg the airport). DFR is also to ensure that minors are chaperoned, by appropriate personnel, on any travel during the transition period which requires overnight accommodation. An 'appropriate person' is to be a person assigned by DFR personnel, and must not be an adult enlistee/recruit. Commanding Officers (COs) of training establishments must ensure that appropriate arrangements are made to escort minors from the arrival point (eg airport or train station) to the relevant training establishment.

20. **Behaviour standards.** As minors are members of the ADF from their time of appointment/enlistment, from this point onwards they are also subject to the requirements of the [Defence Force Discipline Act 1982](#) (DFDA) and Administrative sanctions. This would occur where their conduct, performance or standards are unsatisfactory or their actions or behaviour have adversely impacted, or are likely to impact, on the efficiency, reputation or operational effectiveness of the ADF. The application of the [DFDA](#) and Administrative sanctions includes during their transition from their place of enlistment to their training establishment. A briefing on the [DFDA](#) is to be delivered to minors by trained DFR personnel during the recruiting process.

RESPONSIBILITIES

Minors

21. Minors are expected to meet the same behavioural standards as adult colleagues in either operational or training units. They are also subject to the same conditions of service and employment policies as their adult colleagues, including [DFDA](#) and Administrative sanctions.

22. Minors must comply with relevant Commonwealth and State legislation, including legislation on the following issues:

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

Services

23. Services must ensure that a common and consistent approach to the management of minors is developed and maintained throughout their organisation. Each Service Headquarters (HQ) is responsible for the development of policy for management of minors within the respective Service.

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

- a. compliance with State and Territory laws covering minors including those regarding alcohol, prohibited substances, tobacco, gambling, tattoos, body piercing and adult classified products;
- b. measures to ensure the safety of minors in terms of:
 - (1) training regimes;
 - (2) accommodation;
 - (3) prohibited areas;
 - (4) parental permission requirements; and
 - (5) leave off-base;
- c. physical health and medical issues; and
- d. mental health and welfare issues.

25. **Joining instructions.** Recruit training establishments must provide minors and their parents (via DFR Centres) with pre-course information prior to their enlistment 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. Within one-week after the commencement of initial training and subsequent specific courses or training, COs must dispatch to parents of minors a program setting out point of contact details, general details of the planned activities and the general locations at which trainees will undertake course and/or recreational activities. This documentation is in addition to any information which may be published on the Defence internet website.

26. **Training of unit personnel.** COs must ensure that all Defence personnel within their establishment, who have, or may have, dealings with minors, have received appropriate training on working with minors. Director-General Defence Education, Training and Development is the sponsor for the learning outcomes for the training of staff working with minors and the associated assessment guidance to confirm that those outcomes have actually been achieved by individuals. In those units with minors, these outcomes and assessment guidance are to be included as part of the formal induction training for unit personnel as well as any annual training requirements.

ADMINISTRATIVE ARRANGEMENTS

Support arrangements

27. **Welfare and Mental Health Issues.** COs must ensure that unimpeded access to welfare support mechanisms, such as chaplain and psychology services, the Defence Community Organisation and the Defence Equity Advice Lines is provided. As soon as possible when arriving at an establishment, minors 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. COs must ensure that such welfare support personnel within their establishments are appropriately trained and/or qualified and are to take all reasonable steps to make support services available on a 24-hour, seven days a week basis. In addition, COs should implement an internal mentoring system to assist minors in adapting to the ADF environment.

28. In order to monitor and evaluate the suitability and operation of welfare and support arrangements within the training establishment, COs are to establish review processes which are to be conducted during the minors' stay at the establishment. These reviews should also consider the application of single-Service policies on issues such as fraternisation and suicide awareness. In-course feedback is to be sought, where possible, from minors on welfare issues during any course longer than one-week. Such feedback should be obtained, where possible, by an individual independent of the chain of command (for example a psychologist or a chaplain). Such surveys should, where practical, be incorporated into existing survey mechanisms. Feedback is to be documented and reported to the Service Training Commands (or equivalent), whilst being 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 Commands (or equivalent).

29. In the event of an injury to, or hospitalisation of, a minor, the procedures contained within [Defence Instruction \(General\) \(DI\(G\) PERS 11–2—Notification of Service and Non-Australian Defence Force casualties](#) are to be followed. In addition, personnel must comply with Defence Occupational Health and Safety requirements, such as the completion of [Form AC 563—Defence OHS Incident Report](#) available on the Defence Web Forms System.

Complaint process

30. All minors must receive comprehensive information concerning the complaint processes and mechanisms, both Service and civilian, that are available to them. Base personnel, as nominated by the CO, who provide these briefings are to also include contact details and the rights of members to access the various organisations and processes.

31. 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](#). Recording of complaints is to be undertaken in accordance with [DI\(G\) ADMIN 27–1—Freedom of Information Act—Implementation in the Department of Defence](#) and [DI\(G\) ADMIN 27–2—Access to Defence and Defence-related archival records under the Archives Act 1983](#).

Accommodation

32. Established ADF policy prohibits relations of a sexual or intimate nature between trainees and the general military population. Consideration needs to be given to the training population into which minors are placed, and their special vulnerability to inappropriate overtures of a sexual or intimate nature. Minors may also be vulnerable to coercion to consume alcohol and drugs.

33. COs must promulgate guidance on accommodation of minors, with a view to mitigating these risks. However, this does not infer that minors need to be accommodated separately from the general population. Issues for review include proximity to showers, toilet facilities and high visibility areas. COs are to ensure that accommodation arrangements are reviewed after an initial period of one-week, and should remain subject to ongoing routine review to ensure that their suitability is maintained.

Disclosure of personal information

34. The [Privacy Act 1988](#) (Privacy Act) governs the use and disclosure of ‘personal information’ by Defence personnel. Personal information is defined broadly by the [Privacy Act](#) as ‘information or opinions that can identify a living person’. Therefore, there will be a significant amount of personal information held by Defence that relates to all Defence personnel, including those under 18 years.

35. The terms ‘use’ and ‘disclosure’ are also given specific meaning within the [Privacy Act](#). ‘Use’ means the management of information within an agency, while ‘disclosure’ relates to the release of information outside of an agency. For example, the release of personal information to a minor’s parents would be considered to be a ‘disclosure’.

36. Defence personnel who are record keepers may only use or disclose personal information in accordance with Information Privacy Principles 10 and 11 which may be found in [section 14](#) of the [Privacy Act \(annex B\)](#). In general, personal information may only be used for a purpose which is directly related to the purpose for which it was collected. For example, the information on an ADF member’s clothing record could be used to determine what has been issued to a member. Similarly, personal information should only be disclosed in limited circumstances.

37. Where a person has consented to the use or disclosure of information, then there is no impediment to the information being used or disclosed accordingly. Should a situation arise where a member refuses to consent, legal advice must be sought on whether the [Privacy Act](#) allows for the use or disclosure of the personal information in the particular circumstances. Such a situation may arise where a unit wishes to disclose a minor’s personal information to their parents or guardians, but the minor does not wish such disclosure to occur.

38. To avoid this situation, when collecting personal information Defence personnel must ensure that they clearly inform a minor if it is anticipated that such information will be disclosed to another party, such as a parent, and that the minor provides a signature to acknowledge that they have understood that such disclosure may be made. In order to ensure that minors are clearly aware of the circumstances in which information shall be disclosed by Defence to their parent(s), the form in [annex C](#) must be signed by all members of the ADF who are minors. This form is to then be held on the member’s personnel file and referred to whenever personal information is collected from the minor. If the minor proceeds on posting to another establishment, a new acknowledgement form, in [annex C](#), is to be completed at the new location. The acknowledgement form is valid until the minor turns 18 years of age.

Access to and consumption of alcohol and adult classified products

39. COs must ensure that appropriate procedures are in place to prevent the purchase and consumption of alcohol and prohibited substances by minors when on duty and/or on Defence property. In addition, adult classified products are not permitted to be in the possession of, or be purchased by, minors. Defence personnel are to be instructed that they are not to facilitate minors with the purchase of, or access to, alcohol, prohibited substances or other adult classified products.

Identification cards

40. Identification cards for minors are to be issued in accordance with [DI\(G\) PERS 52-1—Defence Identity and Access Control Cards](#).

After-hours/off-duty activities

41. Written parental consent is required for minors with any off-duty overnight stays off base. Service HQs must ensure that each establishment promulgates guidance in Standing Orders about approved leave activities, as referred to in [paragraph 24](#). This guidance is to include, but not be limited to:

- a. recording requirements on information for the proposed leave activities,
- b. identification of locations and people the minor is permitted to stay at and with,

- c. travel arrangements,
- d. emergency contact numbers, and
- e. log in and log out procedures if the minor does not return at the allocated time.

Termination of Service

42. **Withdrawal of parental consent after commencement.** All minors must receive the written consent of their parent(s) in order to join the ADF. Should parent(s) wish to withdraw this consent after the minor has joined the ADF, the minor's service in the ADF may be terminated. The Defence Personnel Regulations confers a discretionary power to terminate an ADF member on the basis of specified conditions, including the withdrawal of parental consent. This Regulation does not mandate that termination should occur, but rather provides that these conditions are a legitimate basis for termination.

43. As the reason for withdrawal of parental consent may be different in each case, any reply by the member must be properly considered. In cases where there is a strong conflict between the wishes of the parent(s) and the minor (where the minor does not wish their service to be terminated), or between parents, COs must seek legal advice to determine whether action should be pursued. For Air Force, advice should be sought from the Personnel Management Agency. In order to maintain a consistent tri-Service approach to this issue, Director Advising in Defence Legal is the point of contact for all requests for legal advice related to the termination of a minor's service in the ADF. If the minor does not wish to contest the termination, COs are to implement processes for the minor as per the relevant Service policy. It is not necessary in these instances for COs to contact Defence Legal for legal advice.

44. Where termination action is being initiated for a minor, and units are informing their parents of the action, Defence personnel must comply with the requirements of the [Privacy Act](#) as discussed in [paragraphs 34. to 38.](#) Minors who have signed the form in [annex C](#) have acknowledged that information on termination action would be released to their parents, but if there is any uncertainty in relation to this issue legal advice should be sought to confirm the appropriate actions. If post-termination travel and accommodation is being arranged by Defence, Defence personnel must have regard to the need to ensure that the arrangements are safe, adequate and appropriate for a minor. Payment for any such travel is to be in accordance with single-Service discharge procedures.

Risk

45. When determining establishment policy for minors, Service HQs are to consider the level of risk, both emotional and physical, with particular cognisance of the highest likely level of vulnerability. Each Service is to ensure that establishment COs develop and promulgate a risk management plan for the care of minors while under their responsibility. The risk management plan must be reviewed annually, and contribute to the overall development of the establishment risk management plan. This plan is to include, but not be limited to, the issues identified in [paragraph 24.](#)

EMPLOYMENT/DEPLOYMENT

Post-training employment

46. To assist in awareness and facilitate the tracking of minors during transition between training establishments and/or units, the losing establishment/unit must advise the gaining establishment/unit that a minor is being transferred into their care. Such notification must occur for all attachments and postings, and is to be formally acknowledged by the gaining establishment/unit. Unless specifically agreed beforehand, the losing establishment/unit retains overall responsibility for the minor until they report to the gaining unit, utilising a standard form and acknowledgement advice. The losing establishment/unit is to make transport arrangements for the minor to travel to the gaining unit, including accompanying them to the point of departure. COs of the gaining establishment/unit must ensure that appropriate arrangements are made to escort minors from the arrival point to the establishment/unit.

Deployment into hostilities

47. In accordance with Defence's obligations under the Protocol, Services must take all feasible measures to ensure that minors do not participate in hostilities. That is, to the maximum extent possible, and where it will not adversely impact on the conduct of operations, minors should not be deployed into areas of operations where there is a likelihood of hostile action.

48. Where a minor is part of a unit that is required to deploy to an area of hostility, that minor 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, minors in that unit must be returned to a safe area without undue delay.

49. A CO is not obliged to remove a minor 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 minor to attempt to do so, or
- c. it would prejudice the effectiveness of the mission.

50. However, nothing in [paragraph 49.](#) relieves a CO of the obligation to do everything possible within their power to prevent minors from participating directly in hostilities.

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

52. **Member responsibilities.** Despite the requirement that minors 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.

53. **Compliance.** COs must immediately advise J1 Joint Operations Command and Deputy Chief Joint Operations of any instance where the minor cannot be returned to a safe place and must be deployed with their unit.

DEFENCE FORCE DISCIPLINE ACT INTERVIEW PROCEDURES INVOLVING MINORS

54. 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'.

55. A minor must only be interviewed under the [DFDA](#) in the presence of an 'interview representative'. An 'interview representative' in relation to a minor means:

- a. a parent of the minor or a legal practitioner (as identified under section [101F](#) of the [DFDA](#)) acting for the minor;
- b. if a parent or legal practitioner is unavailable—an adult relative or colleague of the minor who is acceptable to the minor; or
- c. if no person covered by [subparagraph a.](#) or [subparagraph b.](#) is available—an independent adult who is acceptable to the minor.

56. The role of the 'interview representative' is to provide a physical presence in support of the minor during their [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 minor. 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 minor. If a statement is produced as a result of the interview, the 'interview representative' must also sign the statement.

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.

58. The minor and the 'interview representative' must be allowed to communicate, if so desired by the minor, 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 minor, the investigating officer may exclude the 'interview representative' from being present during the interview. However, if this occurs, then proceedings must be halted until another acceptable representative is available.

59. All reasonable costs, as determined by the CO, are to be met by the minor's unit. Reasonable costs may include, but are not limited to, the travel and legal fees for the minor's legal practitioner, parent or both.

RELATED LEGISLATION, INSTRUCTIONS, ORDERS, PUBLICATIONS AND WEBSITES

Commonwealth Legislation

Privacy Act 1988

Occupational Health and Safety (Commonwealth Employment) Act 1991

Crimes Act 1914

Criminal Code Act 1995

Public Service Act 1999

Defence Legislation

Defence Force Discipline Act 1982

Defence Act 1903

Defence Force Discipline Appeals Act 1955

Defence (Personnel) Regulations 2002

State and Territory Legislation

Child Protection (Prohibited Employment) Act 1998 (NSW)

Commission for Children and Young People Act 2000 (QLD)

Child Protection (Offender Reporting and Registration) Act 1994 (NT)

Working with Children (Criminal Record Checking) Act 2004 (WA)

Division 5, *Summary Offences Act 1966 (Vic)*

Sections 21A and 21B, *Summary Offences Act 1953 (NSW)*

Section 388, *Children and Young Persons Act 1999 (ACT)*

Section 21A, *Summary of Offences Act 1953 (SA)*

Section 138A, *Child Welfare Act 1947 (WA)*

Division 5, *Summary Offences Act 2005 (QLD)*

Tri-Service Instructions

DI(G) ADMIN 0–0–001—*The System of Defence Instructions*

DI(G) ADMIN 27–1—*Freedom of Information Act—Implementation in the Department of Defence*

DI(G) ADMIN 27–2—*Access to Defence and Defence-related archival records under the Archives Act 1983*

DI(G) PERS 11–2—*Notification of Service and Non-Australian Defence Force casualties*

DI(G) PERS 15–1—*Misuse of Alcohol in the Defence Force*

DI(G) PERS 15–2—*Involvement by members of the Australian Defence Force with a prohibited substance*

DI(G) PERS 15–4—*Alcohol testing in the Australian Defence Force*

DI(G) PERS 15–5—*Testing for prohibited substances in the Australian Defence Force under Part VIIIA of the Defence Act 1903*

DI(G) PERS 16–20—*Privacy of health information in Defence*

DI(G) PERS 34–2—*Complaints of Discrimination and Harassment Through the Human Rights and Equal Opportunity Commission*

DI(G) PERS 35–3—*Management and Reporting of Unacceptable Behaviour*

DI(G) PERS 35–4—*Management and Reporting of Sexual Offences*

DI(G) PERS 35–6—*Formal Warnings and Censures in the Australian Defence Force*

DI(G) PERS 36–3—*Inherent requirements of service in the Australian Defence Force*

DI(G) PERS 50–1—*Equity and Diversity in the Australian Defence Force*

DI(G) PERS 52–1—*Defence Identity and Access Control Cards*

RAN Instructions

Australian Books of Reference (ABR) 6289—*RAN Officers' Career Management Manual*

ABR 10—*Sailors' Career Management Manual*

RAAF Instructions

Defence Instruction (Air Force) (DI(AF)) PERS 7–2—*Officers Transfers, Resignations and Retirements*

DI(AF) PERS 7–3—*General Discharge/Transfer Procedures—Permanent Air Force*

Army Instructions

Defence Instruction (Army) (DI(A)) PERS 47–10—*Resignation, Retirement and Termination of Service—Officers*

DI(A) PERS 116–5—*Separation of Regular Army soldiers, Army Reserve soldiers and soldiers on full-time service—policy and procedures*

Defence Documents

Defence Workplace Equity and Diversity Plan 2005–2007

Annexes:

- A. Definitions
- B. Extract from the Privacy Act 1988
- C. Notice of the disclosure of personal information for members of the Australian Defence Force under the age of 18 years

DEFINITIONS

1. The following definitions apply to this Instruction:
 - a. **Adult Classified Products**—refers to Restricted or Extra Sale Control materials, including, but not limited to, internet, literature, CDs/videos, posters and computer games.
 - b. **Commanding Officer**—the individual who holds command within an establishment, unit, base or ship.
 - c. **Duty of care**—is the legal requirement that a person exercise a reasonable standard of care to prevent injury/harm to others which can be reasonably foreseen.
 - d. **Minor**—is a person under the age of 18 years.
 - e. **Parent**—includes the living, legally recognised parents (including adoptive) and/or legal guardians of the minor.
 - f. **Prohibited substance**—is a narcotic substance as defined in the *Customs Act 1901* or any other substance determined to be a prohibited substance by the Chief of the Defence Force for the purposes of part VIIIA of the *Defence Act 1903*.
 - g. **Services**—the three Services within the Australian Defence Force (ADF)—Navy, Army and Air Force.
 - h. **Defence**—means the Defence Organisation, Defence Materiel Organisation and the ADF.
 - i. **Defence employee**—means a person employed in the Department of Defence under [section 22](#) of the *Public Service Act 1999*.
 - j. **Defence member**—as defined in [section 3](#) of the *Defence Force Discipline Act 1982*, means:
 - (1) a member of the Permanent Navy, the Regular Army or the Permanent Air Force;
or
 - (2) a member of the Reserves who:
 - (a) is rendering continuous full-time service; or
 - (b) is on duty or in uniform.
 - k. **Defence personnel**—all Defence employees, Defence civilians (including employees and contractors), Defence members and the equivalents from other organisations who are on exchange to Defence.
 - l. **Vulnerability**—susceptibility to injury or attack, due to the inability to appreciate risk. Such injuries or attacks may take many forms, from physical to emotional and psychological. Vulnerability of minors may be related to the following factors:
 - (1) **Age**—in general terms, the level of vulnerability reduces as age increases, with a minor representing the highest level of vulnerability.
 - (2) **Gender**—a level of vulnerability will exist when the relative proportion of one gender within a group is significantly less than the other.

- (3) **Life experience**—life experience informs an individual's ability to manage undesirable or potentially threatening situations. School leavers can generally have limited life experience and therefore have a higher level of vulnerability.
- (4) **Rank**—in general terms, the level of vulnerability reduces as rank increases.
- (5) **Service experience**—exposure to the practical application of Service personnel policies and support systems provides the member with the means to cope with the normal range of occurrences to be found in Service life, and deal with any undesirable or unacceptable situations if they arise. In most cases, sufficient experience will be gained during or shortly after Initial Employment Training/Basic Training.

EXTRACT FROM THE PRIVACY ACT 1988

Part III Division 2—Information Privacy Principles

Section 14: Information Privacy Principles

Principle 2

Solicitation of personal information from individual concerned

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector from the individual concerned;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is generally aware of:

- (c) the purpose for which the information is being collected;
- (d) if the collection of the information is authorised or required by or under law—the fact that the collection of the information is so authorised or required; and
- (e) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose personal information of the kind so collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of that first-mentioned person, body or agency to pass on that information.

Principle 10

Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:

- (a) the individual concerned has consented to use of the information for that other purpose;
- (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
- (c) use of the information for that other purpose is required or authorised by or under law;

- (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
- (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.

2. Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the record-keeper shall include in the record containing that information a note of that use.

Principle 11

Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:

- (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
- (b) the individual concerned has consented to the disclosure;
- (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
- (d) the disclosure is required or authorised by or under law; or
- (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.

3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

NOTICE OF THE DISCLOSURE OF PERSONAL INFORMATION FOR MEMBERS OF THE AUSTRALIAN DEFENCE FORCE UNDER THE AGE OF 18 YEARS

As a member of the Australian Defence Force (ADF) your personal information will often be collected by the Department of Defence (Defence) for the purpose of the administration and management of your employment with the Department of Defence.

Defence is obliged to collect, store, manage, use and disclose personal information in accordance with the Information Privacy Principles (IPPs) set out in the *Privacy Act 1988* (Privacy Act) and also under the *Defence Act 1903*, *Defence Force Discipline Act 1982*, *Defence Force Discipline Appeals Act 1955*, *Crimes Act 1914*, *Criminal Code Act 1995* and the *Defence (Personnel) Regulations 2002*.

Information Privacy Principle 2 requires Defence to clearly inform you that:

it is Defence's usual practice to disclose some of your personal information as is relevant to the incident to your parents or guardians while you remain under the age of 18 years.

Defence does this to ensure that it satisfies its duty of care in being a responsible employer of persons under the age of 18 years.

The following are situations in which your personal information will usually be disclosed to your parents or guardians:

- if you suffer a medical illness or injury,
- if any administrative action is taken against you,
- if any disciplinary action is taken against you under the *Defence Force Discipline Act 1982*,
- if you require any academic performance management under the procedures applicable to your training establishment,
- if you possess or consume alcohol in breach of the law of a jurisdiction prohibiting you to possess or consume alcohol,
- if you possess or view adult classified material in breach of the law of jurisdiction prohibiting you to possess or view adult classified material,
- if you are found to have used a prohibited substance in breach of the law of a jurisdiction, or
- if your service in the ADF is terminated for any reason.

This notice is in respect of your personal information that has been collected by Defence, or may in the future be collected by Defence.

By signing this form, you are acknowledging that Defence has informed you that it is Defence's usual practice to disclose the personal information listed above to your parent or guardian. **If you have any questions or concerns about this form, you may ask to have the form explained to you, or you can seek advice from a legal officer.**

I

ACKNOWLEDGE that I have been informed that my personal information, as collected by Defence, may be disclosed by Defence to my parent or guardian.

Signed.....