

## GUIDE 9: SPECIAL CARE PROVISION: ZERO TOLERANCE FOR SEXUAL MISCONDUCT BETWEEN ADULTS AND YOUTH

Defence is committed to providing an environment where youth feel physically and emotionally safe when they engage with Defence. Understanding and adhering to the special care provision is critical to this commitment.

The intent of this guide is to ensure adult Defence personnel understand their responsibilities to:

- a. maintain ethical standards
- b. provide special care provisions to protect youth engaging with Defence and participating in Defence youth activities
- c. ensure youth are aware of their rights.

This guide should be read in conjunction with the Defence [Youth Manual](#).

### Ethical standards

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

Defence acknowledges there is a power imbalance in a relationship between a youth and an adult in the Defence context. Defence does not tolerate any sexual interaction between adults and youth in Defence contexts. **Within a Defence context, 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. This does not include Defence ADF members and APS employees in legal relationships with non-Defence personnel.**

Units may raise additional policies to deal with matters specific to their context.

### Age of consent

The legal age of consent varies across Australian state and territory jurisdictions. [Youth Law Australia](#) provides useful information to help understand the various laws. 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 a criminal offence.

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.

## What is the special care provision?

The special care provision prohibits any person in a supervisory role engaging sexually with a person who is considered a youth, regardless of the legal age of consent. Defence considers any adult in a supervisory role as having special care for youth. Adults in a youth supervisory role are prohibited from having a sexual relationship with participants for whom they have supervisory responsibilities.

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

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). As a result, in the Defence context, the adult participant in any form of intimate relationship carries the blame entirely.

### Scenario

*WO2 Benny is a supervisor of a Defence youth program. WO2 Benny starts giving Darcy, a 15-year-old participant, extra attention. WO2 Benny regularly compliments Darcy's appearance and talents. "You suit those shorts Darcy", he said, to which Darcy giggled. WO2 Benny seems to create situations where he is alone with Darcy, selecting Darcy to give him a hand collecting ration packs, stacking away equipment in the storeroom, and other tasks. WO2 Benny regularly gives Darcy small gifts, such as his patch, other memorabilia and treats, which he does not gift to the other participants. WO2 Benny offers Darcy a lift to and from the program, which Darcy accepts. WO2 Benny arranges to give Darcy special mentoring sessions that isn't part of the regular program. He tells Darcy to keep the mentoring sessions a secret so the other participants do not get jealous.*

*WO2 Benny's behaviour is unacceptable and is considered grooming. WO2 Benny has breached the Defence Youth Safe Code of Conduct (Adult). WO2 Benny has not maintained appropriate boundaries, has deliberately created one-on-one situations with a youth without supervision and has encouraged secrecy. This behaviour puts Darcy at serious risk.*

*WO2 Benny's behaviour needs to be reported to his Chain of Command. The Chain of Command needs to action the allegation in accordance with the relevant policy.*

## Who is considered a youth?

In Defence anyone under the age of 18 is considered a youth. Youth special care provisions extend to over 18s participating in ADF youth programs.

Defence provides a special duty of care towards participants of Defence youth programs who are over the age of 18 (for example, 18 year olds participating in programs such as ADF Cadets, Young Endeavour and Defence Work Experience). Relationships between these participants and other adults in Defence are not appropriate. Adults are prohibited from sexual relationships with participants over 18 described within this provision.

Australian Defence Force (ADF) members under 18 are subject to conditions of Service and employment policies, including the *Defence Force Discipline Act 1982* and administrative sanctions.



## Ensuring youth are aware of their rights

Rights help youth to be treated fairly and equally. It's important that adults and youth are aware of youth's rights and that these rights are upheld. This UN Convention on the rights of a child [poster](#) can assist in understanding these rights.

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.

If a youth makes a complaint, they should be supported, taken seriously and their privacy protected. Ensure the youths physical and emotional safety, allow their voice to be heard and involve them in decisions. The National Office for Child Safety's [Complaint Handling Guide](#), provides practical advice on prioritising safety and promoting the rights of youth.

## Reporting

To ensure appropriate management in the Defence youth context, any pre-existing personal relationships between adults involved in the youth program and youth must be declared to the relevant supervisor. This includes family relationships and friendships.

Intimate relationships between youths (where a youth is over the age of consent for the state or territory but is not in a Defence context) must be reported to the relevant supervisor.

Reporting physical and sexual abuse, including inappropriate relationships to the relevant authority is a moral and, legal responsibility. Mandatory reporting refers to the legal requirement of certain groups of people to report a reasonable belief of child abuse and neglect 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 mandated reporters are those individuals who have frequent contact with children in the course of their work.

Information about mandatory reporting of child abuse and neglect can be found at the [Australian Institute of Family Studies](#) website.

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.

All reporting must be managed in accordance with the Youth Protection Complaint and Event/Incident Management guide (see Defence Youth Manual Section 3, Chapter 3).

## Further assistance

For further information and assistance contact [defence.youth@defence.gov.au](mailto:defence.youth@defence.gov.au)