



Australian Government
Department of Defence

DEFENCE INSTRUCTIONS (GENERAL)

Department of Defence
CANBERRA ACT 2600

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Amendments to Defence Instruction (General) PERS 33–4 are issued pursuant to section 9A of the *Defence Act 1903*.

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Secretary

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General
Chief of the Defence Force

LIST B—ISSUE NO PERS B/9/2005

Amendment

PERS 33–4 *Recruitment and employment of members under 18 years in the Australian*
AMDT NO 1 *Defence Force*
Complete Revision

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

Cancellation

DI(G) PERS 33–4 ISSUE NO PERS B/14/2002 of 28 JUN 2002 is cancelled

RECRUITMENT AND EMPLOYMENT OF MEMBERS UNDER 18 YEARS IN THE AUSTRALIAN DEFENCE FORCE

INTRODUCTION

1. Australian Defence Force (ADF) policy is required to comply with Australia's Protocol obligations. Accordingly, and in anticipation of Australia signing the 'Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (the Protocol)', the ADF should:
 - a. provide a binding declaration outlining the minimum age at which Australia permits voluntary recruitment into their defence forces; and
 - b. detail safeguards that are to be applied to members under the age of 18 years, as required by the Protocol.

AIM

2. The aim of this instruction is to detail the ADF minimum voluntary recruitment age, and the conditions of employment that are to apply to ADF members under the age of 18 years (minors) as required by the Protocol.

DEFINITIONS

3. For the purpose of this instruction the following definitions are to apply:
 - a. **Minor.** A minor is a person under the age of 18 years.
 - b. **Military school.** A military school is a place or establishment where military personnel receive instruction. Such places or establishments may be operated by, or under control of, or provide instruction on behalf of the ADF.

RECRUITMENT

Minimum voluntary recruitment age

4. While the Protocol requires State Parties to raise the minimum voluntary recruitment age above the age of 15 years, the ADF will continue to observe a minimum voluntary recruitment age of 17 years. The exception to this rule is entrants to military schools, apprentices and members of Service cadet schemes.

Proof of age

5. Personnel wishing to join the ADF must present an original or certified copy of their birth certificate to their recruiting officer.

Consent

6. All minors must have the written informed consent of their parents or their guardians to join the Services before their enlistment or appointment.

Recruitment information

7. All applicants wishing to join the ADF must be fully informed of the nature of their future duties and responsibilities.

Voluntary recruitment

8. The recruitment of all minors must be genuinely voluntary.

Discharge 'Duty of Care' obligations

9. The ADF has an obligation to ensure that the parents or guardians of minors are made aware of any premature discharge action being taken against the minor. In such cases, commanding officers are to ensure those parents or guardians are informed as soon as practical.

EMPLOYMENT/DEPLOYMENT

10. In accordance with Australia's international obligations, the ADF will take all feasible measures to ensure that minors do not participate in hostilities.

Requirement

11. While ADF service requires members to serve wherever and whenever required, the ADF must meet international obligations in respect of minors. Accordingly, all feasible measures are to be taken to ensure that minors are not deployed to an area of 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.

12. Where a minor is on the strength 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 are to be returned to a safe area without undue delay.

13. A commander is not obliged to remove a minor from direct participation in hostilities where:

- a. circumstances beyond the control of the commander do not permit removal,
- b. where it would be more dangerous to the minor to attempt to do so, or
- c. where it would prejudice the effectiveness of the mission.

However, nothing in this paragraph relieves a commander of the obligation to do everything possible within their power to prevent minors from participating directly in hostilities.

14. 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 on a ship that is diverted at short notice to an area of hostility, and it is not possible 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.

Member responsibilities

15. 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.

Compliance

16. Australian Defence Force Headquarters is to be advised immediately of any instance where this requirement cannot be met.

PROTOCOL EXEMPTIONS

17. Age limitations do not apply to entrance to military schools. This exemption extends to civilian institutions used by the ADF to train members, and in particular, apprentices. A list of authorised establishments, both military and civilian, to which this age exemption applies, are to be held by single Service Director-General Career Management.

SERVICE CADET SCHEMES

18. As members of Service cadet schemes are not recruited into the ADF, and are therefore not members of the ADF, age restrictions do not apply.

DEFENCE FORCE DISCIPLINE ACT INTERVIEW PROCEDURES INVOLVING MINORS

19. When a minor is a suspect under the *Defence Force Discipline Act 1982* (DFDA), the minor is only to be interviewed in the presence of an 'interview representative'. An 'interview representative' in relation to a minor means:

- a. a parent or guardian of the person or a legal practitioner acting for the person;
- b. if a parent, guardian or legal practitioner is unavailable—a relative or colleague of the person who is acceptable to the person; or
- c. if no person covered by a. or b. is available—an independent person.

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.

20. 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.

21. If the minor is being interviewed as a witness, there is no requirement for an 'interview representative' to be present.

22. If during an interview, a minor is identified as a suspect the interview should be suspended until an 'interview representative' is selected in accordance with [paragraph 19](#).

23. If 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.

24. All reasonable costs are to be met by the member's parent unit.

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