



**2011  
Child Rights  
NGO Report  
Australia**

**Optional Protocol to the Convention  
on the Rights of the Child on the  
involvement of children in armed  
conflict.**

*The information below is provided in response to a request from the Committee Secretariat. It is for the information of the Committee only. The Child Rights Taskforce has not endorsed the above information and makes no recommendation in relation to it.*

**AGE OF RECRUITMENT INTO NATIONAL ARMED FORCES**

The Australian Defence Force (ADF) is the national armed force consisting of a navy, army and air force and is under the control of the Australian Government's Department of Defence. Australian legislation does not provide for a minimum age for voluntary recruitment to the ADF;<sup>i</sup> however, conscription in war time is limited to persons aged 18 or over.<sup>ii</sup> A Defence Force Chief may determine conditions with which a person must comply to be eligible to enlist as a member of the Chief's Service.<sup>iii</sup>

Australia's compliance with the Protocol is regulated by policy. Australia permits people as young as 17 years old to serve in the ADF.<sup>iv</sup> Persons under 18 years of age who serve in the ADF are required to undertake military exercises, military duty, weapons training and other military training.<sup>v</sup> However, consistent with Article 1 of the Protocol, the Defence Instructions require the ADF to take "all feasible measures" to ensure that minors serving in the ADF do not directly participate in hostilities.<sup>vi</sup> This limitation applies "to the maximum extent possible, and where it will not adversely impact on the condition of operations."<sup>vii</sup> It is therefore not an absolute safeguard against direct participation in hostilities of military members under the age of 18.

The Defence Instructions also provide that 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.<sup>viii</sup> In

the event that a unit is in transit or on exercise when hostilities break out, minors in that unit must be returned to a safe area without undue delay.<sup>x</sup> Exceptions to this requirement include where circumstances are beyond the control of the commanding officer, or where removal would be dangerous or "prejudice the effectiveness of the mission."<sup>x</sup> Again, these exceptions leave open the possibility that a military member under the age of 18 may end up directly participating in hostilities. However, the Instructions require that commanding officers "do everything possible within their power to prevent minors from participating directly in hostilities" and specify that there "should be very few circumstances" in which this requirement cannot be met.<sup>xi</sup>

**CHALLENGES AND AREAS FOR IMPROVEMENT**

Although the ADF's policies aim to prevent minors from directly participating in hostilities, and (as at August 2009) no minors have participated in "warlike military operations" since Australia's signing of the Protocol<sup>xii</sup>, there is scope for minors in the ADF to remain amongst and to participate directly in hostilities.<sup>xiii</sup>

**For consideration:** that Australia consider raising the minimum age for entry into the ADF to 18 years.

Raising the minimum age would provide greater assurance that Australia was taking "all feasible measures" to comply with Article 1 of the Protocol. It would also be "more conducive to the realization of the rights of the child" as per Article 5. As Professor Steven Freeland points out, "making a statement by changing our recruitment policies is a real opportunity for Australia to come to the fore in this [child soldier] debate. It would cost us very little and promote us well."<sup>xiv</sup>

**POLICIES OF ARMED FORCES**

In accordance with Article 3(3) of the Protocol, safeguards have been implemented in Australia. Persons under 18 years of age applying to enter the ADF must provide an original or certified birth certificate to a recruiting officer as proof of age.<sup>xv</sup> Furthermore, minor applicants must provide the written consent of their parents or guardians prior to their enlistment.<sup>xvi</sup> Minor applicants must be fully informed of the duties involved in military service<sup>xvii</sup> and recruitment of minors must be "genuinely voluntary."<sup>xviii</sup>

**ACTIVE RECRUITMENT POLICIES IN SCHOOLS AND PUBLIC ADVERTISING**

The ADF has recruitment teams that visit Australian schools and promote careers in the ADF as well as school development programs.<sup>xix</sup> Additionally, the ADF operates

a one year ADF work experience program for students who have completed secondary school with no obligation to commit to a career in the ADF.<sup>xx</sup>

Children over the age of 10 years old can register for Defence Jobs Membership to receive recruitment information and news from the ADF.<sup>xxi</sup> The Coalition to Stop the Use of Child Soldiers have expressed their concern about children being encouraged to register their details for ADF recruitment.<sup>xxii</sup>

The ADF organises a cadet program called the Australian Defence Force Cadets ("ADFC"), however, a cadet is not considered to be a member of the ADF.<sup>xxiii</sup> A person can only join the cadets if he or she is between 12.5 and 20 years of age.<sup>xxiv</sup>

There are currently 22,868 cadets.<sup>xxv</sup> The ADFC is described as a "community based youth development organisation" and is promoted as teaching leadership, survival and team building skills and as a means to promote career opportunities in the ADF.<sup>xxvi</sup> Children in the ADFC can participate in military like activities including using simulated and live firing and handling firearms.<sup>xxvii</sup>

Policies on Refugee and Asylum-Seeking Children or Former Child Soldiers being returned to (re)recruitment as Child Soldiers

Australia has no legislation specifically dealing with the return of children to countries where they may be (re)recruited as child soldiers.

In relation to asylum and non-refoulement obligations, Australia has only legislated in respect of those obligations under the Refugee Convention 1951 and the 1967 Protocol.<sup>xxviii</sup> 'Protection visas' are not available for those seeking asylum under any other international convention, including the Convention on the Rights of the Child.

The Minister can consider cases where Australia's international obligations, including non-refoulement obligations under ICCPR, CAT and CRC may be engaged when exercising public interest powers.<sup>xxix</sup> Department of Immigration and Citizenship (DIAC) policy is that persons in these circumstances should be considered by Ministerial Intervention Units for referral to the Minister for consideration of exercising public interest powers.<sup>xxx</sup>

DIAC policy does not, however, specifically refer to the Protocol. The non-refoulement obligations of the CRC that the Minister may take into account are specified as the right to life and freedom from torture and cruel,

inhuman or degrading treatment or punishment.<sup>xxxi</sup> References are also made to other humanitarian considerations such as the best interests of the child.<sup>xxxii</sup>

The only reference to child soldiers in DIAC's<sup>1</sup> policy is in relation to the application of the 'character test' to visa applicants.<sup>xxxiii</sup> There is no reference to protecting the child from being returned to a place where he or she may be (re)recruited as a child soldier.

In 2009 and again in 2011 the government introduced the *Migration Amendment (Complementary Protection) Bill*. The purpose of the Bill is to expand the circumstances in which an applicant is entitled to the grant of a protection visa to include non-refoulement obligations under the ICCPR, CAT and CRC. Again, however, no specific reference is made to the OPAC. The Bill has not been enacted.

**For consideration:** that Australia amend the *Migration Amendment (Complementary Protection) Bill 2011* to include protection for minors who fear return to a country in which they may be (re)recruited as child soldiers.

**For consideration:** that Australia enact the *Migration Amendment (Complementary Protection) Bill 2011* without further delay.

<sup>i</sup> Section 34 *Defence Act 1903*; s24 *Naval Defence Act 1910*; s4E *Air Force Act 1923*.

<sup>ii</sup> Section 59 *Defence Act 1903*.

<sup>iii</sup> Regulation 23 *Defence (Personnel) Regulations 2002*.

<sup>iv</sup> Department of Defence, *Age and Gender* <<http://www.defencejobs.gov.au/recruitmentCentre/canIJoin/ageAndGender/>>

<sup>v</sup> Department of Defence, *Defence Instruction (General) PERS 33-4 AMDT NO 2: Management and Administration of Australian Defence Force Members under 18 years of age* (22 April 2008), paragraph 52

<[http://content.defencejobs.gov.au/pdf/triservice/DFT\\_Document\\_MembersUnder18Policy\\_20080422.pdf](http://content.defencejobs.gov.au/pdf/triservice/DFT_Document_MembersUnder18Policy_20080422.pdf)>

<sup>vi</sup> Ibid paragraph 47.

<sup>vii</sup> Ibid.

<sup>viii</sup> Ibid paragraph 48.

<sup>ix</sup> Ibid.

<sup>x</sup> Ibid paragraph 49.

<sup>xi</sup> Ibid paragraph 50

<sup>xii</sup> Commonwealth, *Parliamentary Debates: Questions on Notice*, Senate, 17 August 2009 (Senator Faulkner), page 5111.

<sup>xiii</sup> Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report - Australia* (2008).