

**Treaty specific report  
to be read in conjunction with Australia's Common  
Core Document 2007 and Australia's Fourth Report  
under the Convention on the Rights of the Child**

**Initial Report  
under the Optional Protocol to the Convention on the  
Rights of the Child on the Involvement of Children in  
Armed Conflict**

**Australia**

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## Table of Contents

<b><i>ABBREVIATIONS</i></b>	<b>i</b>
<b><i>EXECUTIVE SUMMARY</i></b>	<b>ii</b>
<b><i>INTRODUCTION</i></b>	<b>1</b>
<b>A. Preparation and structure of report</b>	<b>1</b>
<b>B. Consultation with State and Territory Governments</b>	<b>2</b>
<b>C. Consultation with Non-Government Organisations</b>	<b>2</b>
<b>D. External Territories</b>	<b>2</b>
<b><i>IMPLEMENTATION OF THE OPTIONAL PROTOCOL</i></b>	<b>3</b>
<b>1. General measures of implementation</b>	<b>3</b>
<b>2. General principles of the Convention on the Rights of the Child</b>	<b>4</b>
<b><i>ARTICLE BY ARTICLE ANALYSIS OF THE OPTIONAL PROTOCOL IN AUSTRALIA</i></b>	<b>5</b>
<b>Article 1</b>	<b>5</b>
<b>Article 2</b>	<b>6</b>
<b>Article 3</b>	<b>6</b>
<b>Article 4</b>	<b>9</b>
<b>Article 5</b>	<b>9</b>
<b>Article 6</b>	<b>10</b>
<b>Article 7</b>	<b>13</b>
<b><i>ANNEX: LEGISLATION AND ADMINISTRATIVE ARRANGEMENTS</i></b>	<b>16</b>

## ***Abbreviations***

ADF	Australian Defence Force
ADFC	Australian Defence Force Cadets
AGD	Attorney-General's Department
ACT	Australian Capital Territory
CIMIC	Civil and Military Cooperation
Cth	Commonwealth of Australia
DIAC	Department of Immigration and Citizenship
DoHA	Department of Health and Ageing
HREOC	Human Rights and Equal Opportunity Commission (Now Australian Human Rights Commission)
JSCOT	Joint Standing Committee on Treaties
NSW	New South Wales
NGO	Non-Government Organisation
NT	Northern Territory
PASTT	Program of Assistance to Survivors of Torture and Trauma
Qld	Queensland
SA	South Australia
SCOT	Standing Committee on Treaties
Tas	Tasmania
UN	United Nations
Vic	Victoria
WA	Western Australia
UNICEF	United Nations Children's Fund

## ***Executive summary***

The Australian Government is pleased to present to the Committee on the Rights of the Child Australia's Initial Report under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

This report combined with the Fourth Report under the Convention on the Rights of the Child is the first time that Australia has submitted any report to the Committee on the Rights of the Child as a supplement to its Common Core Document. The Government trusts that this approach will assist the Committee in assessing Australia's implementation of all the major human rights treaties, as well as the Convention on the Rights of the Child and both its Optional Protocols.

This report should therefore be read in conjunction with the supplementary report to the Core Document, which constitutes Australia's Fourth Report under the Convention on the Rights of the Child.

The Australian Government is satisfied that this report demonstrates that Australia has fully implemented its obligations under each article of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Australia considers that this Optional Protocol plays an important part in securing the rights of children all over the world and protecting their right to life and survival.

## ***Introduction***

### ***A. Preparation and structure of report***

1. This is Australia's Initial Report to the Committee on the Rights of the Child (the Committee) submitted under article 8, paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Optional Protocol).
2. Australia signed the Optional Protocol on 21 October 2002, and ratified it on 26 September 2006. It entered into force for Australia on 26 October 2006, pursuant to article 10(2) of the Optional Protocol.
3. This Report has been prepared in accordance with the Committee's Guidelines Regarding Initial Reports to be Submitted by States Parties under Article 8(1) of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict<sup>1</sup> and the Harmonized Guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents.<sup>2</sup> Accordingly this report is a supplement to Australia's Common Core Document of 2007 and should be read in conjunction with that Core Document.
4. This report is also submitted as a supplementary report to Australia's Fourth Report on the Convention on the Rights of the Child submitted in accordance with article 44, paragraph 1(b) of the Convention on the Rights of the Child (Convention).
5. This supplementary report addresses information on the specific steps taken to implement the Optional Protocol.
6. The reporting period for this report is October 2006 to October 2008.

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<sup>1</sup> Adopted by the Committee at its 736<sup>th</sup> meeting (twenty-eighth session) on 3 October 2001: CRC/OP/AC/1 (14 November 2001).

<sup>2</sup> Committee on the Rights of the Child, General Guidelines Regarding the Form and Content of Periodic Reports to be Submitted by States Parties under Article 44, Paragraph 1(b), of the Convention, CRC/C/58/Rev.1 (29 November 2005); Fourth Inter-Committee Meeting, Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents, HRI/MC/2005/3 (1 June 2005).

## ***B. Consultation with State and Territory Governments***

7. As outlined in the Common Core Document, Australia has a Federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Australian Government and the six States: New South Wales, Victoria, Queensland, South Australia, Tasmania and Western Australia – and two internal self-governing Territories: the Australian Capital Territory and the Northern Territory. For the purposes of this report, the two internal self-governing Territories may be regarded as standing substantially in the same position as the States.

8. The majority of the subject matter of the Optional Protocol is something over which the Commonwealth (and not the States and Territories) has traditionally exercised jurisdiction. Pursuant to section 114 of the Australian Constitution, States are prohibited from raising military forces. While extensive consultations were undertaken with the States and Territories in preparing for ratification of the Optional Protocol, as is the case with all treaties which Australia is considering ratifying, in implementing the Optional Protocol no State or Territory legislation was necessary for Australia to give effect to this instrument.

## ***C. Consultation with Non-Government Organisations***

9. The Australian Government sought the views of NGOs in the process of drafting this report. It also sought the views of Australia's National Human Rights Institution, the Human Rights and Equal Opportunity Commission (HREOC – now known as the Australian Human Rights Commission).

## ***D. External Territories***

10. The territory of Australia includes a number of external Territories. Of these, only Norfolk Island and the Indian Ocean Territories, comprising the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island, are inhabited. Norfolk Island is essentially self-governing, for example, it has its own health and social security systems. However, the Australian Government retains the power of veto over legislation in some areas, including the scope of this Optional Protocol.

## ***Implementation of the Optional Protocol***

### ***1. General measures of implementation***

11. While child soldiers are not an issue domestically, Australia considers that the recruitment and use of persons under 18 as soldiers remains a serious problem for the international community. The United Nations Children's Fund (UNICEF) estimates that 300,000 child soldiers are involved in more than 30 conflicts worldwide. The Optional Protocol strengthens the protections contained in the Convention. Most importantly, it obliges States Parties 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.

12. The text of the Optional Protocol and a National Interest Analysis of the Optional Protocol were tabled in the Australian Federal Parliament on 22 June 2004. Within the Parliament, the Joint Standing Committee on Treaties (JSCOT) examined and reported on the Optional Protocol. The Committee's enquiries involved extensive consultation and public hearings and its report was unanimously in favour of ratifying the Optional Protocol. The Australian Government also consulted States and Territories through the Standing Committee on Treaties (SCOT). The SCOT consists of senior Federal, State and Territory officers and meets twice a year to consider treaties and other international instruments of sensitivity and importance to the States and Territories. Subsequently, Australia ratified the Optional Protocol on 26 September 2006.

13. It is Australia's practice not to ratify a treaty until domestic law and policy ensures compliance with its obligations. In preparing to ratify the Optional Protocol, on 28 June 2002, the Chief of the Defence Force and the Secretary of the Department of Defence jointly signed Defence Instruction (General) PERS 33-4 (the Defence Instruction),<sup>3</sup> which was subsequently amended and re-issued on 4 July 2005 and

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<sup>3</sup> Section 9A of the *Defence Act 1903* (Cth) provides that the Secretary of the Department of Defence and the Chief of the Defence Force shall jointly have the administration of the ADF and in pursuance of this power may issue instructions known as Defence Instructions (General). Defence Instructions have the same force of law as subordinate legislation like regulations as they are made in writing, are of a quasi legislative character and are made pursuant to an Act of Parliament. Further, breaches of Defence Instructions can amount to offences under military law and can result in penalties for offenders as significant as breaches of the ordinary criminal law including: fines, detention and imprisonment.

again on 22 April 2008.<sup>4</sup> The purpose of the Defence Instruction is to give effect to article 3 of the Optional Protocol regarding the ADF's minimum voluntary recruitment age and the conditions that are to apply to members of the ADF who are under 18 years of age.

14. In addition to the changes brought about by the Defence Instruction, sections 268.68 and 268.88 of the Commonwealth *Criminal Code Act 1995* required amendment. These sections refer to the war crime of using, conscripting or enlisting children in an armed conflict. Section 268.68 refers to international armed conflict and section 268.88 refers to non-international armed conflict. Before amendment in accordance with the Optional Protocol, these sections were only concerned with persons under 15 years of age. Both sections have now been amended to accord with article 4 of the Optional Protocol requiring states to adopt legal measures to prohibit the recruitment or use in hostilities of children under 18 years of age by armed groups that are distinct from the armed forces of a State (see Annex).

15. At the time of ratification of the Optional Protocol, the ADF fully complied with the Optional Protocol and consequently no changes to Defence policy or regulations were required. This remains the situation. Similarly all Australian laws were compliant with the Optional Protocol at time of ratification (and remain so).

16. Copies of the principal legislative texts and administrative and other relevant instructions to the armed forces are provided in the Annex to this report.

## **2. General principles of the Convention on the Rights of the Child**

17. The Australian Government is satisfied that its implementation of this Optional Protocol ensures that the general principles of the Convention are upheld and respected.

18. The general principles, which include non-discrimination, primacy of the best interests of the child, right to life, survival and development and respect for the views of the child, are all considered as part of the process by which the legislative and policy measures to implement the Optional Protocol were made.

19. All persons under 18 years of age must have the written consent of their parent or guardian to join the ADF prior to enlistment or appointment. If a minor has been

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<sup>4</sup> Defence Instruction (General) PERS 33-4, issued 4 July 2005: < [http://content.defencejobs.gov.au/pdf/triservice/DFT\\_Document\\_MembersUnder18Policy\\_20080422.pdf](http://content.defencejobs.gov.au/pdf/triservice/DFT_Document_MembersUnder18Policy_20080422.pdf) > (Revised 22 April 2008).



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 (see further paragraphs 28-32 below).

## ***Article by article analysis of the Optional Protocol in Australia***

### ***Article 1***

20. The Australian Government interprets this article to mean that persons under 18 years of age should not be deployed to areas where there is a likelihood of hostilities. Persons under 18 years are required to undertake 'military exercises, normal military duty, weapons training and other military training in accordance with normal Service requirements'.<sup>5</sup>

21. The minimum voluntary service age for service in the ADF is 17 years of age; however, candidates under 17 years of age (they must be at least 16 years and six months old) may apply, but must have approval from the single Service Career Management Agency and must reach 17 years of age prior to completion of training in a designated military school. Defence Interviewers endeavour to ensure that all candidates, but particularly those under 18, have the maturity to cope with separation from family and the psychological rigours of military training.

22. The Defence Instruction, paragraph 47, provides that 'all feasible measures' are to be taken to ensure that minors do not participate in hostilities.

23. The Defence Instruction continues in paragraph 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.

24. Paragraph 49 specifies exceptions to the requirement that minors be removed from the scene of hostilities. These are where:

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

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<sup>5</sup> Defence Instruction (General) PERS 33-4, above n 4, paragraph 52.

25. However, the commander must do everything possible within his or her power to ensure that minors do not directly participate in hostilities.

## **Article 2**

26. This article is given effect in peace time in the Defence Instruction, paragraph 8, which provides: ‘The recruitment of all minors must be genuinely voluntary.’<sup>6</sup> Except in times of war, there is no conscription and no compulsory recruitment in Australia. Part IV of the *Defence Act 1903* (Cth) provides for conscription in times of war. Section 59 provides that only persons over 18 years of age are liable for service in the ADF in times of war.

27. A full Australian birth certificate is the preferred proof of candidate identity (and age). However, an Australian passport of two or more years’ validity or an Australian citizenship certificate may also be accepted. Birth certificate extracts and commemorative certificates are not deemed acceptable evidence of candidate identity.

## **Article 3**

### **Paragraph 1**

28. Consistent with the Optional Protocol and Australia’s declaration made at the time of ratification, which allows for the recruitment of persons under 18 years of age subject to certain conditions, the ADF continues to observe a minimum voluntary recruitment age of 17 years. The exception to this rule is entrants to military schools and apprentices. All persons under 18 years of age wishing to join the ADF must have the written informed consent of their parents or legal guardians before their enlistment or appointment and their recruitment must be genuinely voluntary. The Australian requirements set a higher standard than the international obligations for the protection of minors.

### **Paragraphs 2 and 4**

29. Australia’s Declaration under the Optional Protocol reflects standard Government policy, and accords with the Defence Instruction.

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<sup>6</sup> Defence Instruction (General) PERS 33-4, above n 4, paragraph 14a.

### Paragraph 3

30. The ADF is divided into the three services (Navy, Army and Air Force) for the purposes of recruitment and each service conducts its own recruitment. To apply for a career in the Navy, Army or Air Force in Australia applicants must be at least 16 years and 6 months old and the minimum age for voluntarily joining the ADF is 17 years. The Defence Instruction states: 'All applicants wishing to join the ADF must be fully informed of the nature of their future duties and responsibilities.' The Declaration made by Australia on ratifying the Optional Protocol specifies that:

Persons wishing to join the ADF must present an original certified copy of their birth certificate to their recruiting officer. Before their enlistment or appointment, all ADF applicants who are less than 18 years of age must present the written informed consent of their parents or guardians.

31. Should parents wish to withdraw their consent after the minor has joined the ADF, the minor's service in the ADF may be terminated. The Defence Personnel Regulations confer 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. 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, Commanding Officers must seek legal advice to determine whether action should be pursued.

32. Those under the age of 18 years wishing to leave the ADF may do so without penalty upon the withdrawal of parental consent as detailed in the Defence Instruction.

33. The Defence Force Recruitment website's Candidate Resource Centre<sup>7</sup> provides detailed information on recruitment procedures (including interviews and fitness tests), career paths, what is required of service men and women in each service and the important requirements for joining the ADF.

34. Information Sessions are held regularly at local Defence Force Recruiting Centres. These sessions give applicants, or those considering applying, an

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<sup>7</sup> <[www.defencejobs.gov.au](http://www.defencejobs.gov.au)>.

opportunity to find out more about what life in the Navy, Army or Air Force is really like. Australian Defence Force Staff make themselves available to answer questions about the positions available and other issues relevant to the applicant. The information sessions are usually held after work hours on weekdays, or on weekends and run for approximately an hour. The environment is relaxed with no obligation for applicants to continue the recruitment process.

35. ADF recruitment personnel also attend school career open days and school assemblies, as do many other employers, to provide students with information on a career in the ADF and relevant recruitment procedures.

### **Paragraph 5**

36. The ADF does not operate military schools, but it does run a cadet scheme. Members of the cadet scheme are not members of the Australian Defence Force.

#### *Cadet scheme*

37. The Australian Defence Force Cadets (ADFC) are open to young men and women aged from 12 ½ to 18 years. It is a community-based youth development organisation of 22,000 cadets and 2,100 cadet staff in 475 units and squadrons across Australia.

38. The ADFC provides a common approach to managing and developing the three cadet organisations – Australian Navy Cadets, Australian Army Cadets and Australian Air Force Cadets. All three organisations have strong links with their parent Australian Defence Force Services – Navy, Army and Air Force – and servicemen and women support a range of activities.

39. The ADFC is partly funded by the Australian Government through the Department of Defence, with the remainder of the funding being provided by schools and community organisations.

40. The ADFC aspires to be Australia's leading youth development organisation recognised by the community as developing youth with a sense of purpose, responsibility, respect of self and others, leadership ability and a commitment to voluntary service. As an ADF Cadet, young Australians are able to take part in adventurous, fulfilling and educational activities in a military setting.

41. Serving military personnel work with the Navy, Army and Air Force Cadet Corps to support ADFC activities. For some young people, participation in the ADF Cadets is the first voluntary step towards recruitment in the permanent forces or

reserve forces. Those who choose to pursue non-military careers leave Cadets with skills and qualities that prepare them well for later life. There is no requirement that young people joining the ADFC become members of the ADF when they reach 18 years of age.

#### **Article 4**

42. No armed groups operate as distinct from the armed forces of Australia. In any event, as noted above in paragraph 14, the Commonwealth Criminal Code, sections 268.68 and 268.88 make the war crime of using, conscripting or enlisting children in an armed conflict an offence under Australian law. Section 268.68 refers to international armed conflict and section 268.88 refers to non-international armed conflict and both provisions have extraterritorial effect. The various offences under these sections carry maximum penalties of 17 years, 15 years and 10 years imprisonment.

#### **Article 5**

43. Australia is a party to the following treaties, which provide for certain obligations in relation to the protection of children in armed conflict and from engagement in armed conflict:

- *Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949*: Australia signed 4 January 1950 and ratified 14 October 1958.
- *Geneva Convention II for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949*: Australia signed 4 January 1950 and ratified 14 October 1958.
- *Geneva Convention III relative to the Treatment of Prisoners of War, Geneva, 12 August 1949*: Australia signed 4 January 1950 and ratified 14 October 1958.
- *Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, 12 August 1949*: Australia signed 4 January 1950 and ratified 14 October 1958.
- *Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977*: Australia signed 7 December 1978 and ratified 21 June 1991.

- *Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977*: Australia signed 7 December 1978 and ratified 21 June 1991.
- *Rome Statute of the International Criminal Court, 17 July 1998*: Australia signed 9 December 1998 and ratified 1 July 2002.
- *ILO Convention 182 on the Worst Forms of Child Labour*: Australia ratified 19 December 2006.

44. Australian law, policies and programs comply with the obligations under these instruments.

## **Article 6**

### **Paragraphs 1 and 2**

45. Australia has ensured that it effectively implements the provisions of the Optional Protocol by enacting offences in accordance with its provisions which apply both within Australia and extraterritorially and the Defence Instructions to ensure that the provisions of the Optional Protocol are respected by the ADF.

46. As outlined above, sections 268.68 and 268.88 of the Criminal Code (Cth) have been amended. They make it an offence for a member of an armed group to use, conscript or enlist a person under 18 years old into an armed group. These offences give effect to certain war crimes under the Rome Statute of the International Criminal Court and take into account the provisions of the Optional Protocol by raising the age requirement from 15 years to 18 years for members of armed groups that are not national armed forces. For national armed forces, the offence is to recruit people younger than 15 years.

47. Although the Optional Protocol has not been specifically enacted into legislation in Australia, as also outlined above, the Defence Instruction is the Department of Defence implementing mechanism for the Optional Protocol. Not only is the fact that the ADF abides by the Optional Protocol made clear in the Defence Instructions, but also, the Department of Defence recruitment website states: ‘The ADF abides by the spirit and intent of the Optional Protocol on the Rights of the Child

on Involvement of Children in Armed Conflict’ and there is a link to the Defence Instructions.<sup>8</sup>

48. The Optional Protocol itself is available on the Australian Treaties Library website.<sup>9</sup>

*Training of armed forces and peacekeepers*

49. All ADF members both full time and part time are required to undergo law of armed conflict training in accordance with Defence policy. The single services (Navy, Army, Air Force) Chiefs are responsible for ensuring their members are adequately trained. There are four levels of training available ranging from basic to advanced training. Training is delivered during initial and professional development courses, specific specialist courses and pre-deployment training. Members are trained to a level of understanding commensurate with their duties and responsibilities.

50. Training incorporates both theoretical and practical training. Theoretical training provided to non-commissioned and commissioned officers includes a specific element dealing with the principles of command responsibility. Training at the lower level rank level is provided by the single services in consultation with their supporting legal officers. Pre-deployment training is operation specific and again provided by supporting legal officers.

51. The Australian Defence Force Warfare Centre and Defence Legal Service usually deliver advanced training to mid to higher rank officers. Professional legal training to Australian Defence Force Legal Officers is provided by University academic staff as well as Government subject matter experts.

52. Law of armed conflict training utilises a range of assessment methods including written examinations, theoretical problem discussion and events inserted into unit field exercises. Australian Defence Force Training Policy is detailed in Defence Instruction (General) OPS 33-1, *Australian Defence Force Law of Armed Conflict Training*, published 27 January 1994.<sup>10</sup>

53. All major ADF units deployed on overseas operations will have a dedicated Civil and Military Cooperation (CIMIC) team. One of the roles of a CIMIC team is to identify any specific needs of the local community and, where it is within resources, to facilitate the provision of assistance. If assessed that minors were at

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<sup>8</sup> See <<http://www.defencejobs.gov.au/recruitmentCentre/under17>>.

<sup>9</sup> <<http://www.austlii.edu.au/dfat>>.

<sup>10</sup> Please note this Defence Instruction is under periodic review to ensure currency and utility.

risk, measures would be scoped and assistance provided through CIMIC liaisons with responsible local authorities. CIMIC teams also liaise with appropriate NGOs, international organisations, and the UN if these agencies are present.

54. All ADF unit commanders on significant overseas operations have a legal officer on their staff or have ready access to a legal officer.

55. It is standard policy on ADF overseas operations that all incidents involving injury to local persons (or damage to their property) are investigated and reported upon. Those reports ensure that the ADF is in a position to address issues of information requests, acknowledgment and accountability.

56. The ADF also establishes procedures, on each overseas operation, for complaints to be investigated and this data is retained for set period of times, depending on the type of information, in accordance with Australian law.

### **Paragraph 3**

57. No children within the jurisdiction of Australia are recruited or used in hostilities contrary to the Optional Protocol.

58. However, children who arrive in Australia from states where they may have been engaged in armed conflict, like all refugee and humanitarian entrants, are eligible for Short Term Torture and Trauma counselling during their time in the Integrated Humanitarian Settlement Strategy (usually for six to twelve months after their arrival in Australia). Those requiring further assistance beyond this time are referred to longer term counselling provided by the Department of Health and Ageing (DoHA).

59. DoHA provides funding under the Program of Assistance for Survivors of Torture and Trauma (PASTT) to assist the psycho-social recovery of humanitarian entrants to Australia who have experienced conflict and human rights abuses, which make them vulnerable to developing mental health problems. Approximately 4,300 clients each year are supported under the current Program.

60. Over the past several years, particularly with the shift in focus of the Humanitarian Program from Europe and the Middle East to Africa, there has been a substantial increase in the size of the client population and in the complexity of their support needs, including an increase in the numbers of children needing support, as many have experienced trauma as child soldiers and slaves. The demand for suitably



qualified counsellors has increased, as has the need for related education and training for mainstream services, such as doctors and schools.

61. In the 2007 Budget, additional funding of \$12.2 million over four years was approved for PASTT to increase the capacity of the funded agencies, so that additional humanitarian entrants would be able to access medium to long-term specialised counselling and related support services. This additional funding has increased the overall capacity of the program from approximately 2,500 to 4,300 clients per annum.

62. Total funding of approximately \$4.7 million per year is currently provided to eight specialized agencies (one in each State and Territory) to deliver a range of services including:

- direct counselling and related support services (including advocacy and referrals to mainstream health and related services) to individuals and/or families who are survivors of torture and trauma, and
- education and training to mainstream health and related service providers, to assist them understand and respond to the needs of survivors of torture and trauma, including former child soldiers.

### ***Article 7***

63. Australia takes an active approach in our international development cooperation program to mitigate the impact of conflict on children in the Asia Pacific region, including countering the problem of child soldiers.

For example:

- Australia is supporting UNICEF to assist the Government of the Philippines to implement the Convention. In the conflict-affected areas of Mindanao in particular, the Australian aid program provides assistance to enhance opportunities for disadvantaged children to access quality education. Australia also provides support for supplemental feeding for malnourished children and funds the provision of a child immunisation program in Mindanao.
- In the North and Eastern conflict-affected areas of Sri Lanka, Australia is supporting UN efforts to prevent and respond to forms of conflict-related violence, including that inflicted on children, incorporating psycho-social care, community based protection and recruitment prevention efforts.

- In East Timor, Australia is providing financial support for child protection officers to work in internally displaced persons camps to ensure the safety, security and well-being of children displaced as a result of armed conflict.
- In Nepal, Australia is supporting the release and reintegration into civilian life in five districts of up to 500 children formerly associated with armed groups, as well as advocacy efforts to secure the release of those still in their custody. This one-year program also addresses the needs of over 2,500 other children vulnerable and/or at-risk of recruitment and at least 7,000 community members are expected to directly benefit from involvement in community reintegration activities.

64. The Australian Government is providing \$200,000 to help UNICEF and the UN Special Representative for Children and Armed Conflict undertake the 10 year Strategic Review of the 1996 Machel Study on “The Impact of Armed Conflict on Children”. The objective of the Review is to assess the progress of existing strategies to prevent child soldier recruitment, increase prosecutions, and enhance the psychosocial well-being and education of children affected by conflict. The Review will develop comprehensive new strategies to mitigate the impact of armed conflict on children and an assessment of lessons learned, best practices and challenges remaining.

65. The ADF itself is aware of the importance of physical and psychological recovery and social reintegration of child victims of armed conflict. The ADF engages in a variety of reconstruction efforts and civil support programs. The focus of such programs is re-establishment of infrastructure and social systems that make up the children's community which can in turn provide for the physical and psychological recovery of the child. An example of one such program in Afghanistan is the opportunity for children (whose average age is 14 to 15) to undertake instruction from ADF personnel at a trade training school. The approximately 500 young Afghanis who have graduated from the school with basic carpentry skills and basic tool kits supplied by AusAid have gained skills to support themselves in the future and actively participate in their country's rebuilding efforts.

66. As addressed above, all major ADF units deployed on overseas operations will have a dedicated CIMIC team. One of the roles of a CIMIC team is to identify any specific needs of the local community and, where it is within resources, to

facilitate the provision of assistance. If it were assessed that minors were at risk of going missing, any personal identification measures would be scoped and assistance provided through CIMIC liaisons with responsible local authorities. CIMIC also liaises with appropriate NGOs, International Organisations, and the UN if these agencies are present.

67. On 26 September 2008 Australia endorsed the Paris Principles and Commitments on the involvement of children in armed conflict and announced it would allocate \$200,000 to support UNICEF's work in the area of child protection for children adversely affected by armed conflict.<sup>11</sup>

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<sup>11</sup> For further details see Minister for Foreign Affairs media release of 26 September 2008: <<http://www.foreignminister.gov.au/releases/2008/fa-s080926a.html>>.

## ***Annex: Legislation and administrative arrangements***

### **The Commonwealth *Criminal Code*:<sup>12</sup>**

#### **268.68 War crime—using, conscripting or enlisting children**

##### *National armed forces*

(1) A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator uses one or more persons to participate actively in hostilities as members of the national armed forces; and
- (b) the person or persons are under the age of 15 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator conscripts one or more persons into the national armed forces; and
- (b) the person or persons are under the age of 15 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

(3) A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator enlists one or more persons into the national armed forces; and
- (b) the person or persons are under the age of 15 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

##### *Other armed forces and groups*

(4) A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator uses one or more persons to participate actively in hostilities other than as members of the national armed forces; and
- (b) the person or persons are under the age of 18 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(5) A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator conscripts one or more persons into an armed force or group other than the national armed forces; and
- (b) the person or persons are under the age of 18 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

(6) A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator enlists one or more persons into an armed force or group other than the national armed forces; and
- (b) the person or persons are under the age of 18 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.

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<sup>12</sup> The Criminal Code is a Schedule to the *Criminal Code Act 1995* (Cth) and is available at: <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/A2606AF5A9792124CA2575A10001B086?OpenDocument>.

## 268.88 War crime—using, conscripting or enlisting children

### *National armed forces*

(1) A person (the *perpetrator*) commits an offence if:

(a) the perpetrator uses one or more persons to participate actively in hostilities as members of the national armed forces; and

(b) the person or persons are under the age of 15 years; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) A person (the *perpetrator*) commits an offence if:

(a) the perpetrator conscripts one or more persons into the national armed forces; and

(b) the person or persons are under the age of 15 years; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years.

(3) A person (the *perpetrator*) commits an offence if:

(a) the perpetrator enlists one or more persons into the national armed forces; and

(b) the person or persons are under the age of 15 years; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 10 years.

### *Other armed forces and groups*

(4) A person (the *perpetrator*) commits an offence if:

(a) the perpetrator uses one or more persons to participate actively in hostilities other than as members of the national armed forces; and

(b) the person or persons are under the age of 18 years; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(5) A person (the *perpetrator*) commits an offence if:

(a) the perpetrator conscripts one or more persons into an armed force or group other than the national armed forces; and

(b) the person or persons are under the age of 18 years; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years.

(6) A person (the *perpetrator*) commits an offence if:

(a) the perpetrator enlists one or more persons into an armed force or group other than the national armed forces; and

(b) the person or persons are under the age of 18 years; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.

### **See also the Defence Instruction (General) PERS 33-4, first issued 4 July 2005:**

<[http://content.defencejobs.gov.au/pdf/triservice/DFT\\_Document\\_MembersUnder18Policy\\_20080422.pdf](http://content.defencejobs.gov.au/pdf/triservice/DFT_Document_MembersUnder18Policy_20080422.pdf)> (Revised 22 April 2008).