

Australian Capital Territory

## **Children and Young People (Aboriginal and Torres Strait Islander Young Detainees) Policy and Procedures 2008 (No 1)**

Notifiable instrument NI2008–383

made under the

*Children and Young People Act 2008*, Section 143 Youth Detention policies and operating procedures

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**1 Name of instrument**

This instrument is the *Children and Young People (Aboriginal and Torres Strait Islander Young Detainees) Policy and Procedures 2008 (No 1)*.

**2 Commencement**

This instrument is to commence on 9 September 2008.

**3 Policies and operating procedures**

Under section 143 of the *Children and Young People Act 2008*, I make the attached Aboriginal and Torres Strait Islander Young Detainees Policy and Procedures to facilitate the effective and efficient management of detention services for young detainees.

Martin Hehir  
Chief Executive

8 September 2008

# Aboriginal and Torres Strait Islander Young Detainees Policy and Procedures

## 1. Introduction and Purpose

The ACT Government, as a member of the Council of Australian Governments, has committed to the National Framework of Principles for Delivering Services to Indigenous Australians, which are aimed at improving the delivery of services, building greater opportunities and helping Indigenous families and individuals to become self sufficient.

Aboriginal and Torres Strait Islander peoples are a distinct group of peoples. The Indigenous Peoples of Australia, who are not an homogeneous group of people, have been dispossessed of their land, historically denied fundamental rights, and until recent times, frequently denied respect as human beings and the opportunity to establish themselves on an equal basis with other Australians.

The Senior Manager will ensure all staff working at a detention place receives cultural awareness training. The training will include information on the National Framework of Principles for Delivering Services to Indigenous Australians and an overview of Bringing Them Home: The Stolen Children Report, and the recommendations of the Royal Commission into Aboriginal Deaths in Custody. This will provide staff with better understanding of the issues faced by Aboriginal and Torres Strait Islander families.

All policies and procedures have been written with consideration of recommendations from the Royal Commission into Aboriginal Deaths in Custody (RCIADIC).

## 2. Legal Authority and Obligations

2.1 The *Children and Young People Act 2008* sets out the principles that must be considered by all staff making decisions under the Act and this policy in relation to Aboriginal and Torres Strait Islander young detainees.

## 3. Authorisations and Delegations

3.1 This policy aims to widen the scope of rehabilitative and supportive programs and practices available to Aboriginal and Torres Strait Islander young detainees. Program and service delivery responses for Aboriginal and/or Torres Strait Islander young detainees should be inclusive of, but not limited to, culturally specific programs and services.

3.2 Staff must encourage and support Aboriginal and Torres Strait Islander young detainees to engage with all appropriate program or service opportunities including culturally specific services. It is hoped that these programs and services will provide Indigenous young

detainees with the opportunity to strengthen their links with the Aboriginal and Torres Strait Islander communities and their own cultural and spiritual understanding.

3.3 The Senior Manager is responsible for assisting staff to develop a better understanding of Aboriginal and Torres Strait Islander culture and will coordinate events and activities of cultural significance, including celebrations to promote reconciliation and healing.

3.4 Staff must participate in training aimed at improving cultural understanding and service delivery.

3.5 All staff are responsible for forming and maintaining positive relationships with young detainees, particularly those who have identified as Aboriginal and/or Torres Strait Islander.

3.6 All staff should encourage Aboriginal and/or Torres Strait Islander young detainees to participate fully in educational or vocational programs, counselling, or other activities that will enable the young detainees to develop in a socially responsible way and enhance and maintain their cultural identity.

3.7 This will be achieved through regular contact with the young detainee, liaison with families, carers and cultural agencies and ensuring the young detainee's cultural and/or spiritual needs and wishes are met through the case management process.

3.8 Staff must consider the content of this policy and procedure, with any other relevant Policy and procedures, in relation to any young detainee who identifies as Aboriginal and/or Torres Strait Islander.

#### 4. Definitions

**Aboriginal person** is defined in the dictionary of the *Children and Young People Act 2008* as a person who is a descendant of the indigenous inhabitants of Australia; who regards himself or herself as an Aboriginal or if the person is a child, is regarded as an Aboriginal by a parent or family member; and is accepted as an Aboriginal by an Aboriginal community.

**All staff** refers to youth detention officers, authorised persons, other Departmental staff providing services at or visiting a detention place in a work-related capacity and staff of ACT Government agencies providing services to young detainees at a detention place.

**Family member** is defined in section 13 of the *Children and Young People Act 2008* and means the child's or young person's parent, grandparent or step-parent; or son, daughter, stepson or stepdaughter; or sibling; or uncle or aunt; or nephew, niece or cousin. For an

Aboriginal or Torres Strait Islander child or young person, a family member includes a person who has responsibility for the child or young person in accordance with the traditions and customs of the child's or young person's Aboriginal or Torres Strait Islander community.

**Staff** refers to youth detention officers and other authorised persons. An authorised person is a person who has been delegated a power under the Children and Young People Act 2008 or another Territory law and is exercising a function under the criminal matters chapters of the Children and Young People Act 2008. The positions which have delegations as authorised persons for the policies and procedures are: Executive Director (A), Director (B), Senior Manager (C/3), Acting Senior Manager (C/4), Operations Manager (E/7), Programs and Services Manager (E/8), Unit Managers (F/7), Team Leaders (G/6), Youth Workers (I/4), Casual Youth Workers (J/3), Case Managers (F/8), Aboriginal Liaison Officer (G/5).

**Torres Strait Islander person** is defined in the dictionary of the *Children and Young People Act 2008* as a person who is a descendant of the indigenous inhabitants of the Torres Strait Islands; who regards himself or herself as a Torres Strait Islander or if the person is a child, is regarded as a Torres Strait Islander by a parent or family member; and is accepted as a Torres Strait Islander by a Torres Strait Islander community.

## 5. Principles

5.1 The *Children and Young People Act 2008* sets out the principles that must be considered by all decision-makers making decisions under the Act and this policy.

Section 8, Best interests of children and young people paramount consideration

- (1) In making a decision under this Act in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration.
- (2) In making a decision under this Act otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people.

Section 9, Principles applying to Act

- (1) In making a decision under this Act in relation to a child or young person, a decision-maker must have regard to the following principles where relevant, except when it is, or would be, contrary to the best interests of a child or young person:
- (a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
  - (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;

(c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;  
(d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing.

(2) A decision-maker exercising a function under this Act must, where practicable and appropriate, have qualifications, experience or skills suitable to apply the principles in subsection (1) in making decisions under the Act in relation to children and young people.

#### Section 10, Aboriginal and Torres Strait Islander children and young people principle

In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, in addition to the matters in section 8 and section 9, the decision-maker must take into account the following:

- (a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;
- (b) submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the chief executive as providing ongoing support services to the child or young person or the child's or young person's family;
- (c) Aboriginal and Torres Strait Islander traditions and cultural values (including kinship rules) as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.

#### Section 94, Youth justice principles

(1) For the criminal matters chapters, in deciding what is in the best interests of a child or young person, a decision-maker must consider each of the following matters that is relevant:

- (a) if a child or young person does something that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;
- (b) a child or young person should be dealt with in a way that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways;
- (c) a child or young person should be consulted about, and be given the opportunity to take part in making, decisions that affect the child or young person, to the maximum extent possible taking into consideration their age, maturity and developmental capacity;
- (d) if practicable and appropriate, decisions about an Aboriginal and Torres Strait Islander child or young person should be made in a way that involves their community;
- (e) if a child or young person is charged with an offence, he or she should have prompt access to legal assistance, and any legal proceeding relating to the offence should begin as soon as possible;

- (f) a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary;
  - (g) children, young people and other young offenders should be dealt with in the criminal law system in a way consistent with their age, maturity and developmental capacity and have at least the same rights and protection before the law as would adults in similar circumstances;
  - (h) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;
  - (i) it is a high priority that intervention with young offenders must promote their rehabilitation, and must be balanced with the rights of any victim of the young offender's offence and the interests of the community.
- (2) The decision-maker may also consider any other relevant matter.
- (3) The youth justice principles are intended to be interpreted consistently with relevant human rights instruments and jurisprudence.

*Example*

*Convention on the Rights of the Child*

- (4) A reference in subsection (1) to a child or young person includes a reference to a person who is at least 18 years old but is being dealt with in relation to an offence committed, or alleged to have been committed, when he or she was under 18 years old.

## **6. Policy and Procedures**

### Working with and Understanding Aboriginal and Torres Strait Islander Young Detainees

6.1 The following considerations inform the Aboriginal and Torres Strait Islander Policy and Procedures:

- (a) Aboriginal and Torres Strait Islander people have a unique world-view and values system and a right to express and exercise their culture(s),
- (b) Aboriginal and Torres Strait Islander people are over-represented in custody,
- (c) there are complex underlying issues stemming from the consequences of history and the general level of socio-economic disadvantage within Aboriginal and Torres Strait Islander communities that contributes to Aboriginal and Torres Strait Islander people's contact with the justice systems. Issues surrounding the loss of identity, poverty, poor health and education outcomes, and the inter-generational consequences of the 'stolen generation' are some of the issues affecting Aboriginal and Torres Strait Islander people on a daily basis.

6.2 All staff working at a detention place should undertake their duties, particularly as they relate to Aboriginal and/or Torres Strait Islander young detainees in a manner that reflects and acknowledges:

- (a) the considerations outlined above;
- (b) that each and every staff member is part of a collective effort across the service system to address the over-representation of Aboriginal and Torres Strait Islander people in custody and can

- play an important role in empowering young detainees to take control of their life; and
- (c) that the behaviour of staff and their treatment of young detainees must contribute in a positive way to addressing the over-representation of Aboriginal and Torres Strait Islander people in custody and is reflective and consistent with the spirit of the considerations outlined in this policy and procedure.

6.3 The following are some specific issues that staff must take into consideration when engaging with Aboriginal and/or Torres Strait Islander young detainees. Staff must be mindful of:

- (a) the history of removal by child welfare agencies in Australia of Indigenous children from their families thereby creating a 'stolen generation' and the possible impact this may have on children and young people in detention, their families and grandparents;
- (b) the impact that detention and separation can have, including feelings of shame and guilt and disruption to the family unit, that may be associated with being placed in custody or having a family member detained. Additional support from the Case Management Unit, for example, may be appropriate at the time of admission;
- (c) specific health considerations of Aboriginal and/or Torres Strait Islander young detainees. For example, staff must provide young detainees with the opportunity to access Aboriginal and Torres Strait Islander specific health services;
- (d) the need to place Aboriginal and/or Torres Strait Islander young detainees with other Aboriginal and/or Torres Strait Islander young detainees, or with another young detainee that they know wherever possible. For example, the use of conjoining rooms must be positively considered for Aboriginal and/or Torres Strait Islander young detainees on admission to the detention place in accordance with the Admission and Classification Policy and Procedure;
- (e) the importance of kin, including extended family relationships and the wider community, for example, when staff are seeking to contact an emergency contact, or support person for a young detainee they must give appropriate consideration of the relationship between kin; family and kinship obligations, including attendance at funerals and events which have cultural or spiritual significance. For example, considerations for special purpose leave must take into consideration the importance of Kin or the cultural/spiritual significance of the event;
- (f) the importance of expression of culture, for example, food, customs, spirituality, celebrations, ceremonies and arts and dance. For example, where possible the use of the Aboriginal and Torres Strait Islander Cultural Area at a detention place should be utilised for cultural specific activities; and
- (g) recognition and acceptance that Aboriginal and Torres Strait Islander societies are neither static nor homogeneous. For example, staff should be aware that appropriate cultural response,

including through cultural care plans, for different families/communities may not be the same.

#### Identification

6.4 Staff must never assume the nationality and/or cultural background of a young detainee based on their appearance or other reason. Staff must ask every young detainee about their nationality and/or cultural identity.

6.5 Organisations transferring children or young people into the custody of a detention place may provide information on their nationality and/or cultural background. Even when such information is provided, staff must still ensure they ask and confirm the nationality and/or cultural identity of every young detainee.

6.6 Personal information obtained from a young detainee must be recorded on all relevant files. This information is to be used to ensure that the young detainee is managed with respect to their cultural needs and obtains appropriate help and support during their period in detention.

#### Notification and Access to Case Management Unit

6.7 As soon as possible after the admission of an Aboriginal and/or Torres Strait Islander young detainee, the Case Management Unit must be notified. The introduction of the young detainee to a case manager must be arranged as soon as it is reasonable to do so and no later than by the end of the next normal business day after the young detainee's admission. Staff must advise the young detainee that this will occur and if there is any delay, also advise the young detainee of the delay and reasons for it, and talk to the young detainee about any other support that could be provided during this delay.

6.8 Case Management staff must make necessary arrangements to provide assistance to the young detainee, and must ensure they obtain the informed consent from any Aboriginal and/or Torres Strait Islander young detainee prior to contacting or notifying relevant agencies or individuals. Staff must familiarise themselves with the case management plan and cultural care plan.

#### Provision of Information, Review of Decisions and Complaints

6.9 Staff must ensure young detainees, parents and those with parental responsibility; family and visitors are provided with information about things that affect them in a timely manner and in a manner that is likely to be understood.

6.10 A young detainee, parents and those with parental responsibility, family and visitors are able to request a review of a decision or make a complaint about something that happens at the detention place, to staff of the detention place, the Public Advocate or the Official Visitor.



6.11 Staff must ensure that the Provision of Information, Review of Decisions and Complaints Policy and Procedures are followed in relation to the above.

6.12 Staff must engage with the person seeking a review of a decision or making a complaint in a respectful manner and ensure sufficient information is provided on the process of review or investigation. Staff must assist fully in any complaint or review process.

#### Records and Reporting

6.13 Once established, the cultural background of the young detainee must be clearly documented on all official files relating to the young detainee.

6.14 Any actions taken under this policy and procedure must be recorded according to the requirements set out in the Records and Reporting Policy and Procedures.

6.15 All required reports are the responsibility of staff and are to be fully completed before staff members complete their shift, unless otherwise approved by the Manager.

### **7. Forms and Templates**

Not applicable

### **8. Related Policies and Procedures**

#### Policies and Procedures under the *Children and Young People Act 2008*

Admission and Classification Policy and Procedures

Provision of Information, Review of Decisions and Complaints Policy and Procedure

Records and Reporting Policy and Procedures

Death in Custody Policy and Procedures

#### DHCS Policies and Procedures

Reconciliation Statement of Commitment

### **9. Further References**

Dictionary for Policies and Procedures

National Framework of Principles for Government Service Delivery to Indigenous Australians - June 2004

[http://www.facsia.gov.au/internet/facsinternet.nsf/indigenous/framework\\_principles.htm](http://www.facsia.gov.au/internet/facsinternet.nsf/indigenous/framework_principles.htm)

Bringing them home: The 'Stolen Children' report (1997)

[http://www.hreoc.gov.au/social\\_justice/bth\\_report/index.html](http://www.hreoc.gov.au/social_justice/bth_report/index.html)

Royal Commission into Aboriginal Deaths in Custody, available at <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/rciadic/>