

Australian Capital Territory

## **Children and Young People (Visits, Phone Calls and Correspondence) Policy and Procedures 2008 (No 1)**

Notifiable instrument NI2008–384

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 (Visits, Phone Calls and Correspondence) 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 Visits, Phone Calls and Correspondence Policy and Procedure to facilitate the effective and efficient management of detention services for young detainees.

Martin Hehir  
Chief Executive

8 September 2008

# Visits, Phone Calls and Correspondence Policy and Procedures

## 1. Introduction and Purpose

Maintenance of relationships with family members and significant people in the community is very important for young detainees. Visits, phone calls and correspondence are the means by which these relationships can be maintained. Contact and support from family members and significant people can help support young detainees during their period at a detention place and also contribute to young detainees' rehabilitation and successful reintegration into the community following their release from custody.

Young detainees have statutory minimum entitlements in relation to visits, phone calls and correspondence as outlined in the Minimum Living Conditions Policy and Procedures. Young detainees must have reasonable access to telephone, mail and other facilities for communicating with people in the community. Young detainees must also have reasonable opportunities to receive visits from family members, significant people and accredited people and to communicate with their lawyers. The Manager may not prohibit receipt of a visit, phone call or correspondence with a family member, significant person or accredited person as a punishment for a young detainee.

Staff have a responsibility to support the maintenance of contact between young detainees and their families and other appropriate support persons. Staff should be mindful that some young detainees' families may be dealing with a range of difficult issues and may require support to maintain their contact with their family member or significant person in the detention place. It is appropriate for staff to assist families in this, including by supportive listening to family members' concerns and referral to appropriate agencies if required. If staff become aware of conflict between a young detainee and members of the young detainee's family, staff should discuss options with the family for counselling support.

The Visits, Phone Calls and Correspondence Policy and Procedure is to be read in conjunction with the Visiting Conditions. Section 228 of the *Children and Young People Act 2008* allows the Chief Executive to declare conditions that apply in relation to visits to a detention place. The Visiting Conditions comply with section 228 of the *Children and Young People Act 2008*.

## 2. Legal Authority and Obligations

2.1 The *Children and Young People Act 2008* is the primary source of authority for the operations of a detention place. The provisions of the *Children and Young People Act 2008* must be complied with at all times by staff exercising functions at a detention place. The following sections of the *Children and Young People Act 2008* are relevant to this policy and procedure: sections 173, 174, 175, 177, 178, 179, 201, 202, 203, Div 6.6.5, Div 6.6.6.

- 2.2 The policies and procedures provide specific directions to implement the provisions of the *Children and Young People Act 2008* and other relevant legislation, including the *Human Rights Act 2004*.

### 3. Authorisations and Delegations

- 3.1 The Senior Manager is responsible for ensuring the Visits, Phone Calls and Correspondence Policy and Procedures and Visiting Conditions are applied at a detention place.
- 3.2 The Senior Manager must ensure that an Approved Persons Register is maintained for each young detainee recording the name and contact details of each person approved by the Manager to have contact with a young detainee through visits, phone calls and correspondence.
- 3.3 The Senior Manager holds overall authority for determining the schedule of visits and phone calls at a detention place.
- 3.4 The Senior Manager must ensure, as far as practicable, that young detainees can send and receive as much mail as they wish.
- 3.5 The Senior Manager may make a direction for the reading of a random selection of incoming and outgoing ordinary mail under this policy in accordance with section 201(3) of the *Children and Young People Act 2008*.

### 4. Definitions

**Accredited person** for a young detainee is defined in section 137 of the *Children and Young People Act 2008* and means the young detainee's care and protection worker if the Chief Executive has parental responsibility for the young detainee, a representative approved by the Manager of an entity providing a service or program to the young detainee, a lawyer representing the young detainee, an Official Visitor, a Commissioner exercising functions under the *Human Rights Commission Act 2005*, the Public Advocate and the Ombudsman.

**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.

**Manager** refers to the Senior Manager of a detention place during normal business hours, or in the event this person is unavailable, the Operations Manager of a detention place, or in the event this person is unavailable, a Unit Manager or in the event a Unit Manager is unavailable, the Programs and Services Manager. Outside normal business hours, this refers to the on-call manager.

**Ordinary mail** is defined at section 201 of the *Children and Young People Act 2008* and means all mail that is not protected mail.

**Parental responsibility** is defined at section 15 of the *Children and Young People Act 2008* and means all the duties, powers, responsibilities and authority parents have by law in relation to their children, including daily care and long-term care responsibility for the child or young person. Each parent of a child or young person has parental responsibility for the child or young person. A person may have or share parental responsibility for a child or young person under a court order under the *Children and Young People Act 2008* or another law or in the circumstances outlined at sections 17 and 18 of the Act.

**Prohibited thing** is a thing declared under section 148 of the *Children and Young People Act 2008* by the Chief Executive to be prohibited if the Chief Executive reasonably believes that the declaration is necessary or prudent to ensure security or good order at a detention place. The declaration of prohibited things is contained in the Search and Seizure Policy and Procedures.

**Protected mail** is defined at section 201 of the *Children and Young People Act 2008* and means mail between a young detainee and any of the following:

- (a) a lawyer representing the young detainee;
- (b) an Official Visitor;
- (c) a Commissioner exercising functions under the *Human Rights Commission Act 2005*;
- (d) the Public Advocate; and
- (e) the Ombudsman.

**Significant person** for a child or young person is defined in section 14 of the *Children and Young People Act 2008* and means a person (other than a family member) who the child or young person, a family member of the child or young person or the Manager considers is significant in the child's or young person's life.

**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).

**Visitor** is defined at section 137 of the *Children and Young People Act 2008* to include a person wishing to enter a detention place as a visitor.

**Youth detention officer** is defined at section 96 of the *Children and Young People Act 2008* and means an authorised person to whom the Chief Executive has delegated functions of a youth detention officer under the criminal matters chapters. The positions which have delegations as youth detention officers for the policies and procedures are: 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).

## 5. Principles

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. These are:

### 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 Procedure

### Young Detainees' Access to Visits, Phone Calls and Correspondence

- 6.1 The Manager must ensure young detainees have reasonable opportunities for access to visits, phone calls and correspondence, consistent with operational requirements.
- 6.2 The following are the minimum entitlements for young detainees to personal visits, phone calls and correspondence:
  - (a) for personal visits from a family member or significant person - one visit of one hour each week;
  - (b) for telephone calls - one call on admission (refer to 'Telephone call at admission'); and four personal calls each week to a family member or significant person;
  - (c) for correspondence – mail may be sent to and received from a family member, significant person or other person nominated by the young detainee and approved by the Manager.
- 6.3 These entitlements must not be affected by action taken under the Behaviour Management or Discipline Policies and Procedures and may only be restricted or limited in accordance with the criteria in this Policy and Procedure.
- 6.4 The Manager must ensure that a young detainee has reasonable opportunities for visits, phone calls and correspondence with accredited people. This entitlement must not be affected by action taken under the Behaviour Management or Discipline Policies and Procedures and may only be restricted or limited in accordance with the criteria in this policy and procedure.
- 6.5 The Senior Manager holds overall authority for determining the schedule of visits and phone calls at a detention place.
- 6.6 The Senior Manager must ensure that people approved to have contact with a young detainee are aware of the:
  - (a) processes for booking visits and making phone calls to young detainees;
  - (b) visit and phone call schedule; and
  - (c) processes for correspondence.
- 6.7 Visits and phone calls will usually only be available during scheduled times, unless otherwise authorised by the Manager.
- 6.8 In exceptional circumstances, for example, if a young detainee is experiencing significant distress or if there are significant issues in a young detainee's family, the Manager must consider the provision of additional visits or phone calls. It is expected that staff will be flexible in attempting to meet the needs of a young detainee and their family at such times.
- 6.9 The Manager will notify the Senior Manager of any variation to the authorised contact schedule as per 6.7 or 6.8.
- 6.10 The Senior Manager must provide the Director with a copy of the visits and phone calls schedule and of any variation to this schedule.

### Telephone call at Admission

- 6.11 A young detainee may make a telephone call at the time of admission to an accredited person (including a lawyer), a person with parental responsibility, a nominated person for an adult young detainee, a family member or a significant person, however, a telephone call to one of these persons may be denied if the circumstances at 6.12 apply.
- 6.12 The Manager may make a direction that the young detainee is not to make a telephone call to a particular person, or not to make a telephone call at the time of admission, if the Manager reasonably suspects:
- (a) the call may undermine security and good order at a detention place;
  - (b) the call may revictimise a victim;
  - (c) the call may undermine a process for the investigation of a complaint or a review of a decision;
  - (d) the call has the purpose of causing harm or distress to a community member (including a victim); or
  - (e) it is necessary and reasonable to safeguard the best interests of the young detainee, such as protecting the young detainee from emotional harm likely to be caused by contact with the person due to the nature of their relationship.
- 6.13 If a direction is made that the young detainee is not to make a telephone call to a particular person under 6.12 above, the young detainee must be given the opportunity to nominate another person outlined at 6.11 above to make a telephone call to.
- 6.14 If a direction is made that the young detainee is not to make a telephone call at the time of admission under 6.12 above, the young detainee must be given the opportunity to make a telephone call as soon as practicable thereafter.

### People Who May Visit, Make or Receive Phone Calls and Correspond with Young Detainees

- 6.15 Only approved people may have contact with a young detainee, through visits, phone calls and/or correspondence. The Manager is responsible for giving this approval.
- 6.16 A young detainee's lawyer does not need approval to visit, only approval of dates and times of visits.
- 6.17 The Senior Manager must ensure that an Approved Persons Register is maintained for each young detainee recording the name and contact details of each person approved by the Manager to have contact with a young detainee through visits, phone calls and/or correspondence.
- 6.18 Approved personal contacts for each young detainee may include family members, significant people and where relevant, people from the young person's community.
- 6.19 Approved professional contacts for each young detainee may include:
- (a) an accredited person; and
  - (b) any other person or agency providing a professional service to a young detainee who is not a personal contact or accredited person.
- 6.20 A young detainee will only be allowed to correspond or have phone contact with people approved under section 6.15 at the addresses and phone numbers recorded on the register at section 6.17.



- 6.21 In determining whether to approve a person under section 6.15, the Manager must consider the best interests of the young detainee, including:
- (a) the young detainee's views, age and assessed level of maturity;
  - (b) the views of the young detainee's parent or person with parental responsibility;
  - (c) the nature of the relationship between the young detainee and the person (including the length of the relationship and the likely influence of the person on the young detainee);
  - (d) any known history of offending by the person, particularly, but not only, any known history of co-offending by the person and the young detainee (see section 6.22 for more information about this point);
  - (e) any legal recommendations or requirements (eg. Protection Order, recommendation of a Court);
  - (f) information or recommendations from a professional service provider (eg. from Care and Protection Services); and/or
  - (g) any other relevant matter.
- 6.22 A known history of offending (including but not limited to, the person having previously been a young detainee at a detention place) must not be used, in isolation, as a reason to refuse to approve a person under section 6.15. If the person being considered for approval is a family member of a young detainee, a known history of offending must not be used as a reason for refusing approval under section 6.15.
- 6.23 In considering whether to approve a person under the age of 18 years to have contact with a young detainee through a visit, phone call or correspondence, the Manager must, in addition to considering matters at section 6.21, also consider:
- (a) the person's views, age and assessed level of maturity; and
  - (b) the views of the person with parental responsibility for the child or young person.
- 6.24 The Manager must inform a young detainee and any person refused contact, of the decision. The Manager must also inform both parties of the reasons for that decision, unless the Manager reasonably believes that doing so is likely to have a detrimental effect on the emotional or mental wellbeing of the young detainee.
- 6.25 The Senior Manager must provide information in writing to the Director of a decision to refuse approval of a person to have contact with a young detainee. This must include the name of the refused person, details of the relationship between the person and the young detainee and the reasons for refusal.
- 6.26 The Director must keep a record of decisions reported at section 6.25.

#### Scheduling of Visits and Phone Calls

- 6.27 The Senior Manager holds overall authority for determining the schedule of visits and phone calls.
- 6.28 The visiting schedule must be provided to visitors seeking to arrange a visit with a young detainee. A person seeking to book a visit to a detention place for the first time must be informed of the procedures for the person's arrival at, and entry to, the detention place.

- 6.29 Visits and phone calls will only be available during scheduled times unless otherwise authorised by the Manager.
- 6.30 Visits are to be pre-arranged with staff, preferably allowing 24 hours notice. A person seeking to book a visit time with a young detainee must contact either the Main Reception or the Case Management Unit directly. Requests received through the Main Reception will be forwarded to the appropriate person or area (either the Case Management Unit or Manager).
- 6.31 The Manager will determine the duration of each visit and phone call, giving consideration to:
- (a) the best interests of the young detainee;
  - (b) physical, emotional and mental health of all young detainees and, where known, visitors;
  - (c) the young detainee's rehabilitation and reintegration needs;
  - (d) security and good order of the detention place; and
  - (e) operational requirements.
- 6.32 The Manager may approve visits and phone calls out of scheduled times when it is considered appropriate and reasonable to do so.
- 6.33 In the event that there is a change to an arranged visit or phone call, the Manager must ensure all reasonable efforts are made to notify the visitor.
- 6.34 If there is a change to the routine visit schedules, the Senior Manager must ensure all reasonable efforts are made to give sufficient notice to visitors and young detainees.

#### Young Detainee's Right to Decline a Visit, Phone Call or Correspondence

- 6.35 A young detainee may decline to receive a visitor, phone call or correspondence. Where a young detainee declines a visit or phone call, staff will ensure the person seeking to visit or phone the young detainee is informed of the refusal as soon as practicable. Where a young detainee declines to receive correspondence, staff must place the correspondence in the young detainee's property.
- 6.36 Staff must make a record of a young detainee's decision to decline a visit, phone call or correspondence. The record of the refusal is to be placed in the young detainee's personal file.

#### Manager's Right to Prohibit a Visit, Phone Call or Correspondence

- 6.37 The Manager may make a direction to prohibit the receipt of a visit, the receipt or making of a phone call or the receipt or sending of correspondence by a young detainee to an approved personal contact if the Manager reasonably suspects that the visit, phone call or correspondence may:
- (a) undermine security or good order at a detention place;
  - (b) revictimise a victim;
  - (c) undermine a process for the investigation of a complaint or a review of a decision;
  - (d) have the purpose of causing harm or distress to a community member (including a victim); or

- (e) it is necessary and reasonable to safeguard the best interests of the young detainee, such as protecting the young detainee from emotional harm likely to be caused by contact with the person due to the nature of their relationship or other consideration outlined at section 6.21.
- 6.38 The Manager may make a direction to prohibit a young detainee's contact with an accredited person by visit, phone call or correspondence if the Manager reasonably suspects that the contact may undermine security or good order at a detention place or undermine a process for the investigation of a complaint or a review of a decision. The Manager must inform the young detainee and accredited person of the decision to prohibit a visit, phone call or correspondence and the reasons for the decision.
- 6.39 If the Manager prohibits a visit, phone call or correspondence under 6.37 or 6.38, the Manager must record this decision and the reasons for it in the Approved Persons Register.
- 6.40 The Manager must inform a young detainee, and upon request, the person whose contact has been prohibited (other than an accredited person required to be notified under 6.38), of a decision to prohibit a visit, phone call or correspondence. The Manager must also inform both parties of the reasons for this decision, unless the Manager reasonably considers that doing so may have a detrimental effect on the emotional or mental wellbeing of the young detainee.
- 6.41 If the Manager refuses the receipt of a visit, phone call or correspondence by a young detainee section 6.37 or 6.38, the Manager must report the decision to the Director in writing.
- 6.42 The Director must keep a record of decisions reported under section 6.41.

#### Conditions of Visits and Phone Calls

- 6.43 The Manager may determine the conditions of a visit including:
  - (a) the time and duration;
  - (b) the nature of supervision and contact;
  - (c) the number of visitors allowed to visit a young detainee; and
  - (d) any other conditions considered appropriate.
- 6.44 The Manager may determine the conditions of telephone calls, including:
  - (a) the time and duration of the call; and
  - (b) any other condition considered appropriate.
- 6.45 The Manager may, if requested by a young detainee, visitor or phone caller, impose additional conditions.
- 6.46 Costs associated with young detainees' minimum entitlements to telephone calls will be met by the Department and telephone calls above the minimum entitlements may be purchased by young detainees under the incentive scheme.
- 6.47 The Manager will record any conditions of a visit and/or phone calls in the Approved Persons Register.
- 6.48 All visits with a young detainee will be in one of the categories listed below at section 6.49. The category of the visit will be determined by a risk assessment that includes consideration of the following:
  - (a) security and safety of all young detainees, visitors and staff; and

- (b) health and wellbeing of young detainees, visitors and staff.
- 6.49 Visit categories will be as follows:
- (a) Casually supervised contact: These visits will take place under the casual visual supervision of a youth detention officer. Appropriate physical contact between a young detainee and the young detainee's visitor/s is permitted. This visit category will be allowed when there are no known risks against the factors at section 6.48.
  - (b) Directly supervised contact: These visits will take place in a visiting area under the direct visual observation of a youth detention officer. Appropriate physical contact between a young detainee and the young detainee's visitor/s is permitted. This visit category will be allowed when the Manager assesses that there is some risk against one or more factors at section 6.48.
  - (c) Supervised non-contact: All supervised non-contact visits shall take place in a visiting area under the direct supervision of a youth detention officer. No physical contact will be permitted during the visit. This visit category will be allowed when the Manager assesses that there is a considerable risk against one or more factors at section 6.48.
- 6.50 Youth detention officers must ensure that communication at a visit between a young detainee and any of the following persons is not subject to audio monitoring or recording: a lawyer representing the young detainee, an Official Visitor, a Commissioner exercising functions under the *Human Rights Commission Act 2005*, the Public Advocate and the Ombudsman.
- 6.51 Staff must not attend a meeting between a young detainee and his or her legal representative unless requested by the legal representative and/or the young detainee.
- 6.52 Staff must protect a young detainee's privacy whilst the young detainee is making or receiving phone calls unless to do so is reasonably considered likely to affect the safety or security of a person or a detention place.

#### Procedures for Visitors on Arrival at, and Departure from a Detention Place

- 6.53 A Visiting Conditions Information Sheet outlining conditions of entry, requirements for visitor conduct and general information must be provided to each visitor on their arrival at a detention place for the first time. A copy of the Visiting Conditions Information Sheet for general visitors is at Schedule 1 of the Visiting Conditions. A copy of the Visiting Conditions Information Sheet for Accredited Persons is at Schedule 2 of the Visiting Conditions.
- 6.54 It is a condition of entry that all visitors, aged 16 years and over, acknowledge they have read and understood the Visiting Conditions Information Sheet and agree to the Visiting Conditions by signing an acknowledgement form. Staff must assist a visitor to understand the visiting conditions if a visitor requests assistance.

- 6.55 A refusal by a visitor to sign an acknowledgement form must be reported to the Manager. The Manager must decide whether to allow the visitor entry to a detention place or direct the person to leave a detention place. In making this decision, the Manager must have regard to the visitor's reason/s for refusing to sign an acknowledgement form and the purpose of their visit.
- 6.56 At the time of a visitor's first visit to a detention place, it is a condition of entry that the visitor is required to produce two forms of identification (including one with a photograph) and agree to be enrolled in the biometric system. The Manager has discretion to waive the requirement for two forms of identification to be produced in circumstances where a person is not able to meet this requirement.
- 6.57 Visitors must wait in the reception area until the visit is approved. A visitor may be escorted to the Visits Centre by a youth detention officer.

#### Prohibited Things

- 6.58 It is a condition of entry that a visitor does not bring a prohibited thing into a detention place, give a prohibited thing to a young detainee or remove a prohibited thing from a detention place.
- 6.59 A list of prohibited things will be provided to each visitor with the Visiting Conditions Information Sheet.
- 6.60 The Visiting Conditions Information Sheet must include information that it is an offence under section 230 of the *Children and Young People Act 2008* for a person to take a prohibited thing into a detention place, give a prohibited thing to a young detainee or remove a prohibited thing from a detention place.
- 6.61 If a youth detention officer reasonably suspects that a person has possession of a prohibited thing at a detention place, the officer must report the suspicion to the Manager. The Manager may direct a scanning, frisk or ordinary search of the person in accordance with the Search and Seizure Policy and Procedures. A prohibited thing that is discovered must be seized and the police must be notified.

#### Conduct by Visitors During Visits

- 6.62 During a visit, visitors must:
- (a) comply with all directions given by a youth detention officer (refer to 'Directions to Visitors');
  - (b) comply with any conditions for the visit;
  - (c) not engage in physical contact, behaviour or use language that may offend staff, other young detainees or visitors; and
  - (d) be considerate of, and not cause disruption to, other visits.
- 6.63 Adult visitors or primary caregivers are responsible for the care and behaviour of any children brought into the Visits Centre.
- 6.64 Youth detention officers must make reasonable attempts to restrict/prohibit inappropriate behaviour. Inappropriate behaviour is behaviour that is reasonably considered as potentially causing harm or offence to any person present in the visits area.

### Personal Searches of Visitors

- 6.65 The Search and Seizure Policy and Procedures outline the authority for a scanning, frisk or ordinary search of a visitor. Refer to the Search and Seizure Policy and Procedures.

### Property of visitors

- 6.66 It is a condition of entry that a visitor submits their property for a scanning search prior to entering the Centre to detect for prohibited things.
- 6.67 A visitor's property may also be subject to a search after entry to the Centre.
- 6.68 While conducting a search of a visitor's property under section 6.66 or 6.67, youth detention officers must ensure all reasonable attempts are made to respect the privacy and confidentiality of the visitor.
- 6.69 A visitor who, without reasonable excuse, refuses a reasonable request given by a youth detention officer to submit his or her property for a search, may have the visit refused or be required to place their property in a locker provided and/or have restrictions regarding supervision and/or contact placed on their visit.
- 6.70 In cases where an accredited person or other professional visitor refuses to submit to a property search, the Manager may refuse to authorise the visit. Decisions made under this section need to be reported to the Senior Manager.
- 6.71 If a lawyer representing a young detainee refuses a property search on the basis of legal privilege, only essential items (paperwork and folders) may be taken into the consultation with the young detainee. The lawyer must secure all other property in the locker provided. If a lawyer representing a young detainee refuses to follow a reasonable request by a youth detention officer, the Manager may refuse to authorise the visit. Decisions made under this section must be reported to the Senior Manager.
- 6.72 Prior to beginning the visit, visitors must secure their items of property not authorised to be taken into a visit in the coin-operated locker provided. Visitors are responsible for providing the coin for operation of the locker which will be refunded upon retrieval of property from the locker.
- 6.73 Appropriate secure storage for larger items of property will be made available where necessary.
- 6.74 The visitor's property must be retrieved by the visitor at the completion of the visit.
- 6.75 A visitor leaving a detention place following a visit may be required to handover any items that staff believe to be items removed from the detention place without permission, and/or unauthorised items believed to have been given to them by a young detainee during the visit.
- 6.76 If a visitor refuses such a request, staff must allow the visitor to leave and must notify the Manager.
- 6.77 The Senior Manager must report decisions under this section to the Director in writing.

### Young Detainee Clothing During Visits

- 6.78 During visits, unless otherwise authorised by the Manager, a young detainee must wear clothing issued by a detention place.

### Gifts for Young Detainees and Bringing of Items to and From Visits by Young Detainees

- 6.79 The Manager may authorise the giving of gifts to a young detainee, following consideration of the safety, security and good order of the detention place.
- 6.80 Any approved gifts for a young detainee must be presented by a visitor to staff for inspection prior to the visit.
- 6.81 Any gift regarded as unsuitable must be returned to the person offering the gift.
- 6.82 A young detainee shall not be permitted to take an item into a visit, unless authorised by the Manager.
- 6.83 A young detainee shall not be permitted to take an item from a visit into the residential area unless authorised by the Manager.

### Refusal or Termination of Visits

- 6.84 The Manager may cancel, postpone or terminate any, or all, visits to a detention place if the Manager reasonably believes it is necessary to do so, to safeguard the health and safety of a young detainee or the security and good order of a detention place.
- 6.85 The Manager may make a direction to refuse entry of a visitor to a detention place for a scheduled visit or terminate a visit and direct a visitor to leave a detention place if the Manager reasonably suspects that:
- (a) the visitor is, or appears to be, under the influence of alcohol or drugs;
  - (b) the visitor has possession of a prohibited thing;
  - (c) the direction is necessary and reasonable for security or good order at a detention place;
  - (d) the direction is necessary and reasonable to protect the best interests of a young detainee, for example, in circumstances where the visitor is being verbally abusive; or
  - (e) the visitor has contravened a direction to comply with the Visiting Conditions, and/or any reasonable direction given by a youth detention officer, including a direction to leave a search if the person is preventing or hindering the conduct of the search.
- 6.86 A visitor must comply with a direction given to them not to enter or to leave a detention place. It is an offence under the *Children and Young People Act 2008* if a person fails to comply with a direction not to enter or to leave. The penalty is up to 50 penalty units (\$5,000), imprisonment for 6 months or both.
- 6.87 Where a youth detention officer determines it is necessary to exercise powers under section 6.84 or 6.85, the officer must seek authorisation from the Manager. If the Manager is unavailable they may exercise the powers under these sections and report the matter to the Manager as soon as practicable.

- 6.88 The Manager must ensure the young detainee is informed of the reasons for a decision to refuse to allow a visit to proceed or to terminate a visit unless the Manager reasonably considers doing so may have a detrimental effect on the emotional and/or mental wellbeing of the young detainee.
- 6.89 Decisions made under section 6.84 or 6.85 must be reported to the Senior Manager as soon as practicable.
- 6.90 The Senior Manager must report decisions under sections 6.84 or 6.85 to the Director in writing.

#### Directions to visitors

- 6.91 A youth detention officer may give a visitor a lawful direction to do or not do something to ensure compliance with the Visiting Conditions or security at Bimberi Youth Justice Centre. It is an offence if a visitor fails to comply with a direction given to them by a youth detention officer.
- 6.92 Examples of lawful directions that may be given to a visitor by a youth detention officer include:
- (a) A direction that the visitor comply with conditions for the visit;
  - (b) A direction that the visitor stop certain behaviour such as using offensive language;
  - (c) A direction that the visitor not take an item into a visit.

#### Removal by Force

- 6.93 If a visitor does not comply with a direction to not enter or to leave a detention place, the Manager may direct a youth detention officer to use force to ensure the direction is complied with.
- 6.94 A youth detention officer may use force in relation to a visitor only in accordance with the Use of Force Policy and Procedures.
- 6.95 Any direction to use force under section 6.93 must be reported to the Senior Manager as soon as practicable. Youth detention officers must also report in accordance with the Records and Reporting Policy and Procedures.
- 6.96 The Senior Manager must report the use of force to remove a visitor from a detention place to the Director in writing as soon as practicable.

#### Police Interviews

- 6.97 Interviews of young detainees by police officers must follow the procedures set out under Police Interviews Policy and Procedures.

#### Visits to a Young Detainee at a Health Facility

- 6.98 A young detainee transferred to a health facility under a transfer direction may receive visitors as approved by the Manager.
- 6.99 The Manager may restrict, cancel, or refuse a visit to a young detainee in hospital if it is considered appropriate. Reasons for such a decision may include:
- (a) ensuring the health, safety, wellbeing and secure custody of the young detainee;
  - (b) ensuring the health, safety and wellbeing of other patients, staff and visitors at the health facility;



- (c) supporting a recommendation or direction by hospital staff;
  - (d) following a recommendation or direction by a Court, Care and Protection Service, Police; and/or
  - (e) for any of the reasons that would apply had the visit occurred at a detention place.
- 6.100 In circumstances where the health or medical needs of the young detainee are serious, staff must support and if necessary, facilitate contact with family members and significant persons.

#### Young Detainees' Ordinary and Protected Mail

6.101 Young detainees' correspondence is classified as ordinary and protected mail. Protected mail is defined at section 201 of the *Children and Young People Act 2008* and means mail between a young detainee and any of the following: a lawyer representing the young detainee, an Official Visitor, a Commissioner exercising functions under the *Human Rights Commission Act 2005*, the Public Advocate and the Ombudsman. Ordinary mail is all other mail.

#### *Monitoring Mail - Ordinary Mail*

- 6.102 Section 201 of the *Children and Young People Act 2008* and this policy authorise youth detention officers to monitor a young detainee's ordinary mail.
- 6.103 Ordinary mail is defined at section 201 of the *Children and Young People Act 2008* and means all mail that is not protected mail. Protected mail is defined at section 201 of the *Children and Young People Act 2008* and means mail between a young detainee and any of the following: a lawyer representing the young detainee, an Official Visitor, a Commissioner exercising functions under the *Human Rights Commission Act 2005*, the Public Advocate, the Ombudsman, and a person prescribed by regulation.
- 6.104 A youth detention officer may open and search a young detainee's ordinary mail. A search of a young detainee's ordinary mail includes a search with a device using electronic or other technology, by physical means or with the assistance of a search dog. Refer to the Search and Seizure Policy and Procedures for guidance in relation to searching correspondence.
- 6.105 A youth detention officer may read a young detainee's ordinary mail only if the youth detention officer suspects on reasonable grounds that the mail:
- (a) may undermine security or good order at a detention place; or
  - (b) may revictimise a victim; or
  - (c) may circumvent any process for investigating complaints or reviewing decisions under this Act; or
  - (d) may not be in the best interests of the young detainee (for example, if it is suspected to contain inappropriate content).
- 6.106 Inappropriate content within correspondence may include, but is not limited to, content that may:
- (a) jeopardise the physical, emotional or mental safety or wellbeing of a young detainee or someone else;
  - (b) be sexually explicit;

- (c) be racially vilifying;
  - (d) be degrading in nature;
  - (e) be information that relates to crime, committed or planned; and/or
  - (f) be inappropriate in another way, as determined by the Manger.
- 6.107 Following a young detainee's ordinary mail being read under 6.105, the following details must be recorded in the mail register:
- (a) The name of the young detainee;
  - (b) The name of the youth detention officer reading the mail;
  - (c) The reason/s for the mail being read; and
  - (d) Details of any item found and seized in accordance with the Search and Seizure Policy and Procedure.
- 6.108 Following a search of a young detainee's ordinary mail, the mail must be delivered to the addressee as soon as practicable, unless 6.110 applies.
- 6.109 In considering how to respond to correspondence that contains inappropriate material, a youth detention officer must consider:
- (a) the best interests of the young detainee;
  - (b) physical, emotional and mental health of all young detainees and, where known, any one else;
  - (c) the young detainee's rehabilitation and reintegration needs;
  - (d) security and good order of the detention place;
  - (e) the status and conditions of the sender as an approved contact under section 6.15;
  - (f) the young detainee's views, age and assessed level of maturity;
  - (g) the views of the young detainee's parent or person with parental responsibility for the young detainee;
  - (h) the nature of the relationship between the young detainee and the person (including the length of the relationship and the likely influence of the person on the young detainee);
  - (i) any known history of offending by the person, particularly, but not only, any known history of co-offending by the person and the young detainee;
  - (j) any legal recommendations or requirements (eg Protection Order, recommendation of a Court, a requirement to provide information relating to the investigation of a crime to the Police);
  - (k) information or recommendations from a professional service provider (eg from Care and Protection services; and/or
  - (l) any other relevant matter.
- 6.110 If ordinary mail is searched and/or read under sections 6.104 or 6.105 and inappropriate or illegal material is discovered, a youth detention officer may:
- (a) seize ordinary mail or items found in a young detainee's ordinary mail in accordance with 'Seizing Mail' in the Search and Seizure policy and procedure; or

- (b) as far as possible, censor inappropriate material in ordinary mail addressed to a young detainee and forward the remaining correspondence to the young detainee. If an item is entirely inappropriate and cannot be censored, it must be seized in accordance with 'Seizing Mail' in the Search and Seizure policy and procedure; or returned to the sender or stored with the young detainee's property until the young detainee is released.
- 6.111 If a search of a young detainee's ordinary mail reveals information about, or evidence of the commission of an offence, the Manager must give the information to the Chief Police Officer.
- 6.112 Youth detention officers must provide the young detainee with an explanation for the censoring, withholding or returning to sender of any correspondence, unless doing so would reasonably be considered to pose a risk to the physical or mental health and wellbeing of the young detainee or unless requested not to do so by the Police.
- 6.113 The Director may arrange for audits of the censoring of correspondence to occur to ensure its compliance with this Policy and Procedure and any other relevant guidelines or requirements.

#### *Reading Random Sample of Ordinary Mail*

- 6.114 In addition to the circumstances outlined in 6.105, the Senior Manager may direct that a youth detention officer read a random selection of incoming and outgoing ordinary mail if it is considered necessary to maintain the safety and security of young detainees and others and/or the good order of a detention place. This does not require the Senior Manager to form a suspicion of the matters outlined in 6.105.
- 6.115 A direction may take one of the following forms:
  - (a) At periodic intervals determined by the Senior Manager, a sample of all incoming and outgoing ordinary mail is opened and read;
  - (b) A sample of incoming and outgoing ordinary mail is opened and read following a certain number of incoming and outgoing mail items (for example, after every ten items of incoming ordinary mail, the next two items of incoming ordinary mail are opened and read).
- 6.116 The Senior Manager must report to the Director any decision made under section 6.114.
- 6.117 The Director may overturn a decision made by the Senior Manager under section 6.114.

#### *Monitoring Mail - Protected Mail*

- 6.118 The *Children and Young People Act 2008* contains rules for monitoring protected mail. Protected mail is defined at section 201 of the *Children and Young People Act 2008* and means mail between a young detainee and any of the following: a lawyer representing the young detainee, an Official Visitor, a Commissioner exercising functions under the *Human Rights Commission Act 2005*, the Public Advocate and the Ombudsman.
- 6.119 A youth detention officer may open and search a young detainee's protected mail in the young detainee's presence if the youth detention officer suspects on reasonable grounds that the mail contains:
  - (a) something that may physically harm the addressee; or

- (b) a prohibited thing.
- 6.120 A search under 6.119 of a young detainee's protected mail includes a search with any device using electronic or other technology, by physical means or with the assistance of a search dog. Refer to the Search and Seizure Policy and Procedures for guidance in relation to searching correspondence.
- 6.121 However, a youth detention officer must not read a young detainee's protected mail without the young detainee's written consent. Assistance must be provided to young detainees to understand the contents of any correspondence they receive (see 6.124 below).
- 6.122 Following a search of a young detainee's protected mail, the mail must be delivered to the addressee as soon as practicable. A thing in a young detainee's protected mail, but not the mail item itself, may be seized if the youth detention officer reasonably believes it may physically harm the addressee or anyone else or is a prohibited thing. Refer to 'Seizing Mail or Items Found in Mail' in the Search and Seizure Policy and Procedure.
- 6.123 If a search of a young detainee's protected mail reveals information about, or evidence of the commission of an offence, the Manager must give the information to the Chief Police Officer.

#### *Assistance to young detainees*

- 6.124 The Manager must ensure that all reasonable efforts are made to assist a young detainee to understand the contents of any correspondence they receive. In relation to legal or professional correspondence, the Manager may seek assistance from:
- (a) the legal practitioner or service provider who authored the correspondence; or
- (b) another person approved by the legal practitioner or service provider.

#### Young Detainee Contact with their Children

- 6.125 If a young detainee is a parent or primary carer of a child, contact between the young detainee and the child will be facilitated in the manner considered to be in the young detainee's child's and the young detainee's best interests.
- 6.126 An individual plan for such contact will be developed by the Senior Manager of a detention place in conjunction with Care and Protection Services, the young detainee, the child (if to do so is meaningful, given the age and maturity of the child) and, where relevant, other family members.
- 6.127 The Senior Manager must give necessary consideration to the welfare of all young detainees, and the safety and security of a detention place in developing the plan.

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

- 6.128 Staff must ensure young detainees, their parents and all 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.

- 6.129 A young detainee, their parents and all 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 a detention place, to the detention place, the Public Advocate or the Official Visitor.
- 6.130 Staff must ensure that the Provision of Information, Review of Decisions and Complaints Policy and Procedures are followed in relation to the above.
- 6.131 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

- 6.132 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. All necessary forms are available on the Department's Intranet.
- 6.133 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.
- 6.134 The Manager must ensure that a record of searched correspondence is maintained including the results of the search. Where appropriate a record of the search must be kept on the approved persons register, i.e. contraband or illegal content sent by personal contacts.

## **7. Forms and Templates**

Mail register  
Approved Persons Register

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

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

Visiting Conditions  
Admission and Classification Policy and Procedures  
Safety and Security Policy and Procedures  
Search and Seizure Policy and Procedures  
Use of Force Policy and Procedures  
Records and Reporting Policy and Procedures  
Minimum Living Conditions Policy and Procedures

## **9. Further References**

Dictionary for Policies and Procedures