

Australian Capital Territory

Children and Young People (Minimum Living Conditions) Policy and Procedures 2008 (No 1)

Notifiable instrument NI2008–386

made under the

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

1 Name of instrument

This instrument is the *Children and Young People (Minimum Living Conditions) 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 Minimum Living Conditions Policy and Procedures to facilitate the effective and efficient management of detention services for young detainees.

Martin Hehir
Chief Executive

8 September 2008

Minimum Living Conditions Policy and Procedures

1. Introduction and Purpose

The *Children and Young People Act 2008*, the *Human Rights Act 2004* and human rights law prescribe permanent minimum standards to be provided to all young detainees at a detention place. These standards include minimum living conditions such as access to sufficient nutritional food and drink, access to sufficient suitable clothing, access to suitable facilities for personal hygiene and reasonable opportunities to communicate with family members and significant people.

While these standards are permanent, the standards may need to be applied differently at certain times to ensure the safety of a person or security and good order at a detention place, for example, during a segregation direction or the declaration of an emergency. This policy outlines the application of the standards during such circumstances.

The minimum standards include entitlements for each young detainee under the *Children and Young People Act 2008*. A young detainee's entitlements must not be affected by action taken under the behaviour management or discipline policies, for example, through the withdrawal of privileges. These entitlements are outlined in schedule 1 of this policy. Certain minimum entitlements are higher than the statutory minimum entitlement (for example, phone calls).

While this policy outlines the permanent minimum standards to be provided to young detainees, the objective is to exceed these minimum standards as far as practicable to ensure the highest possible standard of custodial care is provided to young detainees.

2. Legal Authority and Obligations

- 2.1 The *Children and Young People Act 2008* is the primary source of authority for the operations at 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.
- 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*.
- 2.3 Section 141 and part 6.5 of the *Children and Young People Act 2008* outline the minimum permanent standards to be provided to all young detainees at a detention place (see below).

<p>141 Detention places—minimum living conditions (1) To protect the human rights of young detainees in detention at detention places, the Senior Manager must ensure, as far as practicable (including during any emergency declared under section 149), that conditions at detention places meet at least the following minimum standards:</p>
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- (a) young detainees must have access to sufficient nutritional food and drink to avoid hunger and poor nourishment;
- (b) young detainees must have access to sufficient suitable clothing that does not degrade or humiliate young detainees;
- (c) young detainees must have access to suitable facilities for personal hygiene;
- (d) young detainees must have suitable accommodation and bedding for sleeping in reasonable privacy and comfort;
- (e) young detainees must have reasonable access to the open air and exercise;
- (f) young detainees must have reasonable access to telephone, mail and other facilities for communicating with people in the community;
- (g) young detainees must have reasonable opportunities to receive visits from family members, significant people and accredited people;
- (h) young detainees must have reasonable opportunities to communicate with their lawyers;
- (i) young detainees must have reasonable access to news and education services and facilities to maintain contact with society;
- (j) young detainees must have access to suitable health services and health facilities;
- (k) young detainees must have reasonable opportunities for religious, spiritual and cultural observances.

Example—par (k)

observances and practices relating to religious or spiritual beliefs, including Aboriginal and Torres Strait Islander spiritual beliefs

(2) Part 6.5 applies to living conditions at detention places.

The following international human rights standards apply in the ACT:

- a) Convention on the Rights of the Child;
- b) United Nations Standard Minimum Rules for the Administration of Juvenile Justice;
- c) United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
- d) Standard Minimum Rules for the Treatment of Prisoners;
- e) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

The *Children and Young People Act 2008* and this policy and procedure reflect the entitlements outlined in these instruments for children, young people and young adults in custody, including the following:

United Nations Rules for the Protection of Juveniles Deprived of their Liberty –

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is

physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided at the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

3. Authorisations and Delegations

- 3.1 The Senior Manager is responsible for ensuring minimum living conditions under the *Children and Young People Act 2008* and this policy are upheld.
- 3.2 Staff are responsible for applying the Minimum Living Conditions Policy and Procedures.

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.

Commissioner exercising functions under the *Human Rights Commission Act 2005* refers to one of the three appointed Commissioners: the Human Rights and Discrimination Commissioner, the Health Services Commissioner and the Disability and Community Services and Children and Young People Commissioner. The functions of the Human Rights Commission include the resolution of complaints between users and providers of services for children and young people and to promote improvements for service provision.

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 at a detention place during normal business hours, or in the event this person is unavailable, the Operations Manager at a detention place, or in the event this person is unavailable, the 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.

Minister of religion is defined at section 183 of the *Children and Young People Act 2008* and means a person registered under the Marriage Act 1961 (Cwlth), part 4.1 (Authorised celebrants) or a person prescribed by regulation.

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).

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 Senior Manager 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

Information entitlements

6.1 The Admission and Classification Policy and Procedures and Provision of Information, Review of Decisions and Complaints Policy and Procedures address the provision of verbal and written information to young detainees at the time of their admission and during their detention.

6.2 The Senior Manager must ensure that copies of the following are available for inspection by young detainees, family members, significant people and visitors at a detention place:

- (a) the *Children and Young People Act 2008*;
- (b) publicly available youth detention policies and operating procedures.

Minimum Living Conditions—General

6.3 The Senior Manager must ensure the following minimum living conditions for young detainees are provided at a detention place.

Food and drink

6.4 Young detainees are entitled to the provision of food and drink which is nutritionally adequate, as determined by compliance with the *Australian Recommended Dietary Intakes* and the *Dietary Guidelines for Children and Adolescents*.

6.5 Food and drink must be of consistently high quality and include options for special dietary needs, including religious, spiritual or cultural needs of a young detainee, including for example, halal or kosher.

6.6 Any particular diet that is prescribed for a young detainee by a doctor must be provided to the young detainee as far as practicable.

6.7 Meals are provided for young detainees at times consistent with the cultural norms of Australia.

Clothing

6.8 Young detainees are entitled to sufficient suitable underclothing and outerclothing to ensure comfort.

6.9 All young detainees are required to wear detention place clothing while at a detention place to ensure that clothing cannot be used as a tool for the harassment or intimidation of a young detainee. Clothing provided to non-convicted young detainees must be different to that provided to convicted young detainees.

6.10 Detention place clothing supplied to young detainees will meet the standard generally available to and worn by, children, young people and young adults in the community.

6.11 Young detainees may wear their own clothes to court.

6.12 All young detainees, including non-convicted young detainees, may wear their own clothes while on approved leave, with the approval of the Senior Manager.

6.13 All clothing will be laundered regularly.

Personal hygiene

6.14 Young detainees are entitled to suitable, clean, hygienic and reasonably private facilities for personal hygiene.

Sleeping areas

6.15 Young detainees are entitled to clean, comfortable and reasonably private beds and bedding.

Access to open air and exercise

6.16 Young detainees are entitled to daily open air and exercise. The Senior Manager must ensure that the minimum requirement of 2 hours each day will be exceeded as far as practicable through the scheduling of sport and recreation activities.

Religious, spiritual and cultural needs

- 6.17 In accordance with the Admission and Classification Policy and Procedures, a young detainee will be given the opportunity to state their religion and their cultural and Indigenous status at the time of their admission at a detention place.
- 6.18 Young detainees are entitled to observe their religious, spiritual and cultural beliefs and needs as far as practicable and where it does not pose a risk to safety, security and good order at a detention place. This includes:
- (a) observances and practices relating to religious or spiritual beliefs, including for example, special dietary requirements and fasting at certain times;
 - (b) observances or practices arising because a person belongs to a particular culture.
- 6.19 The Senior Manager must ensure, as far as practicable, that young detainees have reasonable access to:
- (a) ministers of religion and other people with standing in a particular culture whom young detainees wish to see for religious, spiritual or cultural purposes, including for example, an elder, priest, monk, nun, rabbi, or imam;
 - (b) religious services at a detention place; and
 - (c) books and other articles associated with their religious, spiritual or cultural beliefs or practices, including for example, the Bible, the Koran, crosses and prayer mats.
- 6.20 A young detainee must not be required to receive a visit from anyone representing a particular religion, spiritual belief or culture, or attend any related service or practice, if the young detainee does not wish to do so.
- 6.21 A young detainee's access to religious, spiritual and cultural observance may be denied or limited if the Senior Manager reasonably suspects that it may:
- (a) undermine security or good order at a detention place;
 - (b) revictimise a victim;
 - (c) circumvent any process for investigating complaints or reviewing decisions under the *Children and Young People Act 2008*; or
 - (d) have the purpose of causing community distress.

Minimum Living Conditions—Communication and Contact

- 6.22 The Visits, Phone Calls and Correspondence Policy and Procedures outlines arrangements for young detainees to communicate with, and have contact with, family members, significant people and accredited persons.
- 6.23 The Senior Manager must ensure the following minimum living conditions for young detainees at a detention place in relation to communication and contact:
- (a) reasonable access to telephone, mail and other facilities for communicating with people in the community;
 - (b) reasonable opportunities to receive visits from family members, significant people and accredited people;
 - (c) reasonable opportunities to communicate with their lawyers;

- (d) reasonable access to news and education services and facilities to maintain contact with society;

Telephone calls

- 6.24 A young detainee is entitled to make:
 - (a) 1 telephone call on admission at a detention place; and
 - (b) 4 telephone calls each week to a family member or a significant person.
- 6.25 A young detainee may also make and receive further telephone calls for necessary contact with a family member, significant person, friend or associate.
- 6.26 Telephone calls may be disallowed or restricted in accordance with the Visits, Phone Calls and Correspondence Policy and Procedures.

Mail

- 6.27 The Senior Manager must ensure, as far as practicable, that young detainees can send and receive as much mail as they wish.
- 6.28 A young detainee is entitled to send mail to, and receive mail from any family member, significant person or other person nominated by the young detainee and approved by the Manager.
- 6.29 Mail may be disallowed or restricted in accordance with the Visits, Phone Calls and Correspondence Policy and Procedures.

News and education

- 6.30 The Senior Manager must ensure, as far as practicable, that young detainees have reasonable access to:
 - (a) newspapers, radio and television broadcasts and other mass media (including the internet) for news and information; and
 - (b) a library or library service; and
 - (c) education or training designed to meet the young detainee's individual needs.
- 6.31 A young detainee is entitled to participate in academic, vocational or cultural education or training which is part of their case management plan, and the Senior Manager is satisfied it would benefit the young detainee in any of the following ways:
 - (a) by providing the young detainee with suitable vocational skills;
 - (b) by promoting the young detainee's rehabilitation or reintegration into society;
 - (c) by contributing satisfactorily to the young detainee's personal development.

Visits

- 6.32 The Senior Manager must ensure that each detention place has suitable facilities for young detainees to receive visits from family members and significant people.
- 6.33 A young detainee is entitled to a visit of at least 1 hour each week from one family member or significant person.
- 6.34 Visits may be disallowed or restricted in accordance with the Visits, Phone Calls and Correspondence Policy and Procedures.

Contact with accredited people

- 6.35 A young detainee is entitled to have adequate opportunities for contact with an accredited person, whether by telephone or mail or by a visit by an accredited person.
- 6.36 Contact with an accredited person may be disallowed or restricted in accordance with the Visits, Phone Calls and Correspondence Policy and Procedures.

Communication with family and others

- 6.37 The Senior Manager must ensure, as far as practicable, that adequate opportunities are provided for young detainees to be able to remain in contact with family members and significant people by telephone calls, mail and visits. The Senior Manager must consider the young detainee's legal status and whether their detention is for a reason other than conviction for an offence.
- 6.38 The Senior Manager must also ensure that the overall treatment of a young detainee, including any segregation or disciplinary action, does not prevent the young detainee from communicating with:
- (a) the courts;
 - (b) accredited people;
 - (c) a doctor of the young detainee's choice for health services;
 - (d) family members;
 - (e) other people with whom the young detainee may communicate under the criminal matters chapters.
- 6.39 The Visits, Phone Calls and Correspondence Policy and Procedures outlines circumstances in which contact with certain people may be restricted.

Minimum Living Conditions—Health care

- 6.40 The Health and Wellbeing Policy and Procedures address the provision of health and wellbeing services to young detainees.
- 6.41 Young detainees are entitled to:
- (a) a standard of health care equivalent to that available to other people in the ACT;
 - (b) appropriate health services for young detainees;
 - (c) conditions in detention that promote the health and wellbeing of young detainees; and
 - (d) as far as practicable, not be exposed to risks of infection.
- 6.42 The Senior Manager must ensure that young detainees have access to:
- (a) regular health checks;
 - (b) timely treatment where necessary, particularly in urgent circumstances;
 - (c) hospital care where necessary;
 - (d) specialist health services from health professionals as far as practicable; and
 - (e) necessary health care programs, including rehabilitation programs as far as practicable.

Intersection with Behaviour Management and Discipline Policies and Procedures

6.43 The minimum entitlements for young detainees outlined in this policy and procedure must not be affected by action taken under the behaviour management and discipline policies and procedures, such as through a withdrawal of privileges. A privilege is defined at section 289 of the *Children and Young People Act 2008* as any amenity, facility or opportunity the young detainee may have the benefit of at a detention place, but does not include anything that is an entitlement for the young detainee, as outlined at Schedule 1.

Application of Minimum Living Conditions

6.44 The minimum living conditions must be upheld at all times. While the standards are permanent, the standards may need to be applied in a different way at certain times to ensure the safety of a person or security and good order at a detention place. Examples of times when this may need to occur include:

- (a) during a safe room segregation direction or another segregation direction, in accordance with the Segregation Policy and Procedures;
- (b) during the declaration of an emergency, in accordance with the Safety and Security Policy and Procedures.

6.45 During a safe room segregation direction, a young detainee may not be able to directly communicate with an accredited person while the segregation direction is in effect. The minimum living conditions will be upheld if arrangements are made for a young detainee to have contact with an accredited person as soon as practicable following the end of the safe room segregation direction.

6.46 During the declaration of an emergency, youth detention officers must ensure that the standards set out in this policy are upheld as far as practicable. This applies at a detention place or at a temporary detention place to which young detainees are evacuated. The Senior Manager must make arrangements for the application of this policy at a detention place or a temporary detention place to which young detainees are evacuated. Youth detention officers must also ensure that existing separation and placement decisions are upheld as far as practicable during an emergency declaration. Additional youth detention officers may be required to assist during such a situation to minimise any risk to the safety and security of young detainees and youth detention officers.

Provision of Information, Review of Decisions and Complaints

6.47 A young detainee, or a person acting on their behalf, may make a complaint in accordance with the Provision of Information, Review of Decisions and Complaints Policy and Procedures.

7. Forms and Templates

Not applicable

8. Related Policies and Procedures

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

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

Safety and Security Policy and Procedures

Treatment of Convicted and Non-convicted Young Detainees Policy and Procedures

Admission and Classification Policy and Procedures

Segregation Policy and Procedures

Behaviour Management Policy and Procedures

Discipline Policy and Procedures

Visits, Phone Calls and Correspondences Policy and Procedures

Health and Wellbeing Policy and Procedures

9. Further References

Dictionary for policies and procedures

Schedule 1
Minimum Entitlements for Young Detainees

Minimum living conditions	<p>Young detainees are entitled to statutory minimum living conditions consistent with this policy in relation to:</p> <ul style="list-style-type: none"> (a) Food and drink; (b) Clothing; (c) Hygiene facilities; (d) Sleeping areas; (e) Open air and exercise; (f) Religious, spiritual and cultural needs.
Telephone calls	<p>Young detainees are entitled to make a telephone call on admission and a minimum of 4 telephone calls each week to approved family members and significant people. These telephone calls will be paid for by the centre.</p> <p>Telephone calls in addition to this are an incentive which may be purchased.</p> <p>Young detainees are entitled to unlimited access to telephone contact with accredited people. All telephone calls of this nature are paid for by the centre.</p>
Visits	<p>Young detainees are entitled to receive a visit from a family member or significant person for at least one hour each week.</p>
Mail	<p>Young detainees are entitled to send and receive mail consistent with the Visits, Phone Calls and Correspondence policy.</p>
Contact with Accredited People	<p>Young detainees are entitled to adequate opportunities for contact with an accredited person, whether by telephone or mail or by a visit with an accredited person.</p>
Health Services	<p>Young detainees are entitled to health services consistent with the Minimum Living Conditions Policy and Procedure and Health and Wellbeing Policy and Procedure. Young detainees are entitled to transfers to a health facility where this is necessary for the young detainee to receive health services at the facility.</p>
Education and vocational training	<p>Young detainees are entitled to participate in education. Young detainees are entitled to participate in vocational training approved as part of a case management plan.</p>

Programs	Young detainees are entitled to participate in programs. The nature of the program or programs that a young detainee may participate in is subject to the young detainee's case plan and security classification.
Leave	Young detainees may be granted leave in accordance with the Leave Policy and Procedure.