

Australian Capital Territory

Children and Young People (Transfers) Policy and Procedures 2008 (No 1)

Notifiable instrument NI2008–389

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 (Transfers) Policy and Procedures 2008* (No 1).

2 Commencement

This instrument is to commence on 9 September 2008.

3 Policies and operating procedures

I make the attached Transfers Policy and Procedure to facilitate the effective and efficient management of detention services for young detainees.

Martin Hehir
Chief Executive

8 September 2008

Transfers Policy and Procedures

1. Introduction and Purpose

The transfer of a young detainee under this policy means the movement of a young detainee from a detention place to a health facility or correctional centre within the ACT. A transfer of a young detainee may be necessary for the health, wellbeing, safety or secure custody of the subject young detainee or other young detainees at a detention place.

This policy and procedure addresses transfer directions which can be made by the Manager to transfer a young detainee to a health facility or a correctional centre within the ACT if the young detainee is an adult. A health facility is a hospital or other facility where health services are provided, for example, a dental surgery or day surgery clinic. Correctional centre is defined in the dictionary of the *Corrections Management Act 2007* and means a place declared to be a correctional centre under section 24 of that Act. The Alexander Maconochie Centre is declared as a correctional centre under this definition.

A young detainee may require planned or emergency health care treatment or services that can only be provided outside a detention place. A transfer direction to a health facility for a young detainee may be necessary in these circumstances. A young detainee remains in the custody of the Chief Executive while receiving treatment or services at a health facility, including during the period of any admission. Arrangements must be made to ensure the safe custody of the young detainee during any admission to a health facility. A young detainee may also be granted a local leave permit to receive health services outside a detention place (refer to Local and Interstate Leave Policy and Procedure).

A transfer direction to a correctional centre may only be made for an adult young detainee who is 18 years or over during the course of their remand, sentence or other detention authority in accordance with this policy. An adult young detainee who is 21 years or older must not be detained at a detention place and a transfer direction to a correctional centre must be made for the adult young detainee.

This policy does not address the transfer interstate of young detainees to health facilities, juvenile detention centres or other interstate facilities. This is addressed by the interstate transfer policy and procedure.

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: Division 5.1.3 (Transfers to health facilities), Division 5.1.4 (Transfers of young detainees who become adults), Division 5.1.5 (Notifying people of transfers).
- 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 has the authority to make transfer directions to a correctional centre after consultation with the Director. If the Senior Manager is not available, the Director may make a transfer direction for a young detainee to a correctional centre.
- 3.2 The Manager has the authority to make transfer directions to a health facility.

4. Definitions

Adult young detainee is a young detainee who is 18 years or over, but under 21 years. An adult young detainee who is 21 years or older cannot be detained at a detention place.

Correctional centre is defined in the dictionary of the *Corrections Management Act 2007* and means a place declared to be a correctional centre under section 24 of that Act. The Alexander Maconochie Centre is declared as a correctional centre under this definition.

Detention place is a place declared by the Minister to be a detention place under section 142 of the *Children and Young People Act 2008*.

Escort officer is defined in the dictionary of the *Children and Young People Act 2008* and means a youth detention officer, a police officer or a corrections officer.

Health facility means a hospital or other facility where health services are provided, for example, a dental surgery or day surgery clinic.

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.

Nominated person, for an adult young detainee, is a person nominated by the young detainee at the time of admission to whom the Chief Executive can give notifications under the *Children and Young People Act 2008*. The details of the nominated person must be entered in the register of young detainees.

Register of young detainees is a register that the Senior Manager, Operations Manager and Unit Managers are obliged to keep under section 185 of the *Children and Young People Act 2008*.

Safe room segregation direction means a segregation direction given by the Manager under section 209 of the *Children and Young People Act 2008*.

Treating Doctor is a doctor appointed under section 97 of the *Children and Young People Act 2008* for a detention place by the Chief Executive responsible for the administration of the *Health Act 1993*. The treating doctor's functions are to provide health services to young detainees and to protect the health of young detainees, including preventing the spread of disease at a detention place.

Young detainee is defined in section 95 of the *Children and Young People Act 2008* and means a child, young person or person aged 18 to 21 years who is required to be held in the Chief Executive's custody.

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

Transfers Generally

- 6.1 The views of the young detainee must be sought and considered before making a decision to transfer a young detainee to a health facility or correctional centre except in urgent circumstances where this would create a risk to the young detainee or another person.
- 6.2 The Manager is responsible for ensuring that all relevant information on the young detainee is provided to the receiving facility in order to ensure continuity of care.

Transfer to Health Facility for Health Services

- 6.3 A transfer to a health facility may be necessary in circumstances where a young detainee requires planned or emergency health services outside a detention place. The Health and Wellbeing policy and procedure outlines these circumstances.
- 6.4 The Manager may, in writing, direct that a young detainee be transferred to a health facility if the Manager believes on reasonable grounds that it is necessary for the young detainee to receive health services at a health facility.
- 6.5 In making a decision to transfer a young detainee to a health facility, the Manager must consider:
- (a) the advice of a treating doctor;
 - (b) the health, safety, wellbeing and secure custody of the subject young detainee;
 - (c) the health, safety and wellbeing of other young detainees at a detention place;
 - (d) any recommendations made by health or other professionals in relation to the transfer direction.

- 6.6 For planned health services requiring a transfer direction to a health facility, the treating doctor is responsible for making arrangements with the health facility for the provision of service to the young detainee, including admission if necessary.
- 6.7 The Manager may direct an escort officer to escort the young detainee to or from the health facility, and remain with the young detainee while at the facility, including during any period of admission to the health facility.

Transfer to Health Facility for Body Search

- 6.8 A transfer direction may be made for the transfer of a young detainee to a health facility for a body search. Refer to Search and Seizure Policy and Procedures.

Transfer to Health Facility following Safe Room Segregation Direction

- 6.9 Following the making of a safe room segregation direction in accordance with the segregation policy and procedure, the safe room segregation direction must be reviewed after it has been in force for 2 hours (initial review) and at the end of every subsequent 2 hour period it has been in force (each subsequent review). The direction may be reviewed at any other time.
- 6.10 After any one of these reviews, the Manager must make one of the following decisions:
- (a) To confirm the safe room segregation direction;
 - (b) To make a further safe room segregation direction if the grounds exist;
 - (c) To revoke the direction;
 - (d) To make a direction that the young detainee be transferred to a health facility.
- 6.11 Before making a direction that the young detainee be transferred to a health facility, the Manager must have regard to the advice of a health professional.
- 6.12 A direction that the young detainee be transferred to a health facility may be necessary in the following circumstances:
- (a) the young detainee requires emergency medical assessment and/or treatment during the safe room segregation direction;
 - (b) the young detainee's behaviour remains escalated following multiple safe room segregation directions and it is reasonably believed that the young detainee remains at imminent risk of harming himself or herself.

Effect of Transfer of Young Detainee to Health Facility

- 6.13 A young detainee is in the legal custody of the Chief Executive for the period the young detainee is at a health facility, including during any period of admission, while the young detainee remains subject to a legal authority for detention.
- 6.14 If the legal authority for the young detainee's detention lapses or ceases to exist for any reason (for example, a successful bail application) during the person's admission to a health facility, the

Manager must ensure that health facility staff are notified as soon as practicable and necessary arrangements are made for the person's transition from the custody of the Chief Executive to the care of the health facility.

- 6.15 If the young detainee is admitted to a health facility, the Manager must make directions for the safe custody of the young detainee at the health facility including:
- (a) Arrangements for the young detainee's supervision and observation;
 - (b) Communication with health facility staff about arrangements for the young detainee's care and custody, including arrangements for consent to the young detainee's health care assessment and treatment; and
 - (c) Arrangements for the young detainee to have contact with family members, significant people and accredited persons (refer to 'Visits to a Young Detainee at a Health Facility').
- 6.16 In circumstances where a young detainee leaves or attempts to leave a health facility without approval of the Manager, the procedures at 'Escapes and Attempted Escapes' in the Safety and Security Policy and Procedure must be applied by escort officers.

Visits to a Young Detainee at a Health Facility

- 6.17 A young detainee transferred to a health facility under a transfer direction may receive visitors as approved by the Manager.
- 6.18 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 of the hospital;
 - (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.
- 6.19 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, significant persons and accredited persons.

Discharge of Young Detainee from Health Facility

- 6.20 Following the young detainee's admission to a health facility, the young detainee may be discharged from the health facility only if:
- (a) the discharge is approved by the health professional in charge of the young detainee's care; or
 - (b) the Manager directs in writing that the young detainee be removed from the facility.
- 6.21 In making a decision to direct the discharge of the young detainee from the health facility, the Manager must consider:

- (a) the health of the young detainee, including any advice from health professionals involved in the young detainee's health care;
 - (b) the safety and secure custody of the young detainee within the health facility;
 - (c) the safety and wellbeing of other persons within the health facility.
- 6.22 The Manager may give a direction for ensuring that a young detainee discharged from a health facility is returned to a detention place stated in the direction.
- 6.23 The Manager must ensure that a young detainee returned to a detention place in accordance with a direction made under 6.20(b) is provided with health care considered necessary by treating health professionals following their discharge from a health facility.

Transfer of Adult Young Detainee to Correctional Centre

- 6.24 A transfer direction to a correctional centre may only be made for an adult young detainee. An adult young detainee is a young detainee who is 18 years or over, but under 21 years.
- 6.25 A transfer direction may be made for an adult young detainee who is on remand, under sentence or subject to any other legal authority for admission at a detention place.
- 6.26 An adult young detainee may apply for a transfer to a correctional centre. The application must state the reasons for which the transfer is requested.
- 6.27 After receiving an application from a young detainee or on the Senior Manager's own initiative, the Senior Manager may in writing direct that an adult young detainee be transferred to a correctional centre. Before making a direction that an adult young detainee be transferred to a correctional centre, the Senior Manager must consult with the Director.
- 6.28 In making a direction, the Senior Manager must be satisfied that the transfer is in the best interests of the adult young detainee or other young detainees at a detention place.
- 6.29 In deciding whether the transfer is in the best interests of the adult young detainee or other young detainees, the Senior Manager must consider the following:
- (a) the adult young detainee's views and wishes;
 - (b) the adult young detainee's maturity and known history;
 - (c) the adult young detainee's developmental needs and capacity;
 - (d) if the adult young detainee is serving a sentence - the time remaining to be served by the young detainee;
 - (e) the behaviour of the adult young detainee, particularly if it presents a risk to the safety of other young detainees or staff at a detention place;
 - (f) whether the adult young detainee is likely to be vulnerable in a correctional centre;
 - (g) the availability of services or programs appropriate for the adult young detainee at the correctional centre; and
 - (h) whether the adult young detainee is more likely to be rehabilitated at a detention place or correctional centre.
- 6.30 The Senior Manager may consider any other relevant information, including the remaining duration of the legal authority for the young

detainee's detention and the young detainee's relationships with family members and significant people.

- 6.31 Before making a transfer direction for an adult young detainee to a correctional centre, the Senior Manager must consult with the officer in charge of a correctional centre regarding the following:
- (a) information known about the adult young detainee recorded in the register of young detainees, including behaviour, known risks and security classification;
 - (b) the Senior Manager's reasons for making a transfer direction to a correctional centre for the adult young detainee; and
 - (c) arrangements for the transfer direction to be given effect, including arrangements for the young detainee's escort to the correctional centre and transfer of the young detainee's property.

Arrangements for Transfer of Adult Young Detainee to Correctional Centre

- 6.32 If the Senior Manager makes a direction for an adult young detainee to be transferred to a correctional centre, the Senior Manager must ensure the young detainee is provided with information about the transfer direction and the arrangements for the transfer direction to be given effect with as much notice as possible prior to the young detainee's transfer.
- 6.33 The Senior Manager may direct an escort officer to escort the young detainee from a detention place to the correctional centre.
- 6.34 The transfer direction must be signed by the Senior Manager and must accompany the young detainee on admission to a correctional centre.
- 6.35 In circumstances where the adult young detainee is refusing to comply with the transfer direction, the Senior Manager may direct a youth detention officer to use force in accordance with the Use of Force Policy and Procedure to enforce a transfer direction.
- 6.36 Custody for the adult young detainee transfers to the person responsible at the correctional centre at the time of the person's admission to the correctional centre. The young detainee must be dealt with as a detainee under the *Corrections Management Act 2007* once the young detainee is admitted to the correctional centre for the remainder of the legal authority for detention.
- 6.37 A transfer direction made by the Senior Manager for an adult young detainee to be transferred to a correctional centre may include a direction that the adult young detainee will not be admitted to a detention place under any subsequent legal authority for the person's detention while they are aged under 21 years. The Senior Manager must be satisfied that such a direction is in the best interests of the adult young detainee or other young detainees at a detention place after considering the criteria at section 6.29.
- 6.38 Following a transfer direction to a correctional centre being made for an adult young detainee who is serving a remissions-eligible sentence (that is, a sentence of committal made prior to 27 February 2009), the young detainee remains eligible for remissions under section 127 of the *Children and Young People Act 1999*, in accordance with Schedule 1,

Part 1.3, section 710 of the *Children and Young People (Consequential Amendments) Act 2008*.

- 6.39 Following a transfer direction to a correctional centre being made for an adult young detainee who is sentenced to a sentence of imprisonment on or after 27 February 2009, the adult young detainee is not eligible for parole as the person was sentenced as a young offender, in accordance with Schedule 1, Part 1.5, Amendment 1.77 of the *Children and Young People Act 2008*. The adult young detainee may be subject to a combination sentence of imprisonment and a good behaviour order with a supervision condition.

Transfer to Correctional Centre of Adult Young Detainee aged 21 years

- 6.40 An adult young detainee who is 21 years old or older cannot be detained at a detention place.
- 6.41 At the time of a young detainee's admission to a detention place, consideration must be given to whether the legal authority for detention will extend beyond the young detainee turning 21 years. In circumstances where the legal authority for detention will extend beyond the young detainee turning 21 years, arrangements must commence as far as possible in advance of the young detainee turning 21 years to prepare for their transfer to a correctional centre.
- 6.42 The Senior Manager must make a transfer direction for a young detainee who turns 21 years to be transferred to a correctional centre as soon as practicable.
- 6.43 The procedures in relation to 'Notifications of transfer directions' of this Policy and Procedure must be applied.

Notifications of Transfer Directions

- 6.44 Prior to making a transfer direction for a young detainee to a health facility or correctional centre, the Manager must ensure that reasonable steps are taken to notify the following people about the transfer:
- (a) For a young detainee who is under 18 years old, a person with parental responsibility. If the Chief Executive has parental responsibility for the young detainee by court order, Care and Protection Services should be notified. If the Chief Executive and another person share parental responsibility for the young detainee by court order, Care and Protection Services and the other person or persons should be notified.
 - (b) For an adult young detainee, the young detainee's nominated person recorded in the register of young detainees.
- 6.45 In circumstances of urgency where it is not practicable to make the notification prior to the transfer direction being made, the Manager must ensure that reasonable steps are taken to notify the persons at section 6.44 as soon as practicable after the transfer direction, but in any event within 24 hours of the direction being made.
- 6.46 The following details of the notification must be recorded in the register of young detainees:
- (a) The person or persons who were notified;
 - (b) The date and time they were notified;

- (c) The information provided in the notification.

Provision of Information, Review of Decisions and Complaints

- 6.47 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.
- 6.48 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 detention place staff, the Public Advocate or the Official Visitor.
- 6.49 Staff must ensure that the Provision of Information, Review of Decisions and Complaints policy and procedure is followed in relation to the above.
- 6.50 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.

7. Forms and Templates

Application by young detainee for transfer to correctional centre
Transfer direction to correctional centre for adult young detainee

8. Related Policies and Procedures

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

Health and Wellbeing Policy and Procedures
Search and Seizure Policy and Procedures
Leave Policy and Procedures
Use of Force Policy and Procedures
Safety and Security Policy and Procedures
Interstate Transfer Policy and Procedures
Visits, Phone Calls and Correspondence Policy and Procedure s
Behaviour Management Policy and Procedures

9. Further References

Dictionary for Policies and Procedures