

Australian Capital Territory

## **Children and Young People (Treatment of Convicted and Non-Convicted Young Detainees) Policy and Procedures 2008 (No 1)**

Notifiable instrument NI2008–390

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 (Treatment of Convicted and Non-Convicted Young Detainees) Policy and Procedures 2008 (No 1)*.

### **2 Commencement**

This instrument is to commence on 9 September 2008.

### **3 Policies and operating procedures**

Under section 143 of the *Children and Young People Act 2008*, I make the attached Treatment of Convicted and Non-Convicted Young Detainees Policy and Procedures to facilitate the effective and efficient management of detention services for young detainees.

Martin Hehir  
Chief Executive

8 September 2008

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

## 1. Introduction and Purpose

The purpose of this policy and procedure is to promote understanding of the difference in legal status between convicted and non-convicted young detainees and provide for differential treatment and management of non-convicted young detainees at a detention place to reflect their legal status and ensure human rights law is upheld.

For this policy, a reference to a convicted young detainee means a young detainee whose detention is a consequence of a particular conviction or convictions. It is not to be interpreted as applying to a young detainee who has previously been convicted if the fact of their detention is not related to the previous conviction or convictions. A reference to a convicted young detainee includes a young detainee who is convicted or found guilty but not yet sentenced and a young detainee who is convicted or found guilty but is appealing their conviction or finding of guilt.

For this policy, a reference to a non-convicted young detainee means a young detainee who has not been tried, found guilty or convicted and may include a young remandee. A non-convicted young detainee is entitled to the legal presumption of innocence under section 22 of the *Human Rights Act 2004* which provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. Unlike convicted young detainees, non-convicted young detainees are not detained at a detention place as a punishment.

This policy gives effect to human rights requirements that non-convicted young detainees must be treated and managed differently to young detainees who are convicted in reflection of their legal status.

Any entitlements outlined in this policy are taken to be an entitlement for the Behaviour Management and Discipline Policy and Procedures. This means that entitlements outlined in this policy must not be affected by disciplinary or behaviour management action taken against the young detainee.

This policy and procedure complies with the requirement at section 171 of the *Children and Young People Act 2008* for the Chief Executive to make a youth detention policy or operating procedure providing for different treatment of convicted young detainees and non-convicted 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 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 138, 139, 171 (see below).
- 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*.

### Section 138, *Children and Young People Act 2008*

#### 138 Treatment of young detainees generally

Functions under the criminal matters chapters in relation to a young detainee must be exercised as follows:

- (a) to respect and protect the young detainee's human rights;
- (b) to ensure the young detainee's decent, humane and just treatment;
- (c) to preclude torture or cruel, inhuman or degrading treatment;
- (d) to ensure the young detainee is not subject to further punishment (in addition to deprivation of liberty) only because of the conditions of detention;
- (e) to ensure the young detainee's conditions in detention comply with section 141 (Detention places—minimum living conditions);
- (f) to promote, as far as practicable, the young detainee's reintegration into society;
- (g) for a young detainee who is a young offender—to promote, as far as practicable, the young detainee's rehabilitation.

### Section 139, *Children and Young People Act 2008*

#### Treatment of young remandees

(1) Functions under the criminal matters chapters in relation to a young remandee must also be exercised to recognise and respect that—

- (a) the young remandee must be presumed innocent of any offence for which the young remandee is remanded in custody; and
- (b) the detention is not imposed as punishment of the young remandee.

(2) Subsection (1) does not apply if the young remandee—

- (a) has been convicted or found guilty of the offence for which the young remandee is detained; or
- (b) is under a sentence of imprisonment in relation to another offence.

Example—par (2) (a)

a convicted young person remanded in custody for sentencing

### Section 171, *Children and Young People Act 2008*

(1) Without limiting section 143 (Youth detention policies and operating procedures), the chief executive must make a youth detention policy or operating procedure providing for different treatment of convicted young detainees and non-convicted young detainees.

*Example*

*a youth detention policy or operating procedure, in accordance with the United Nations Rules for the Protection of Juveniles Deprived of Liberty, for non convicted young detainees to:*

*·be provided, if possible, with opportunities to pursue work with remuneration and to continue education and training (r 18)*

*·receive and retain materials for their leisure and recreation that are compatible with the interests of the administration of justice (r 18)*

(2) For chapter 8, a young detainee's entitlement in relation to treatment in detention includes anything expressed to be an entitlement in a youth detention policy or operating procedure made for subsection (1).

(3) In this section:

convicted young detainee means a young detainee whose detention is because of the young detainee's conviction for an offence.

The following sections of the *Human Rights Act 2004* are relevant to the treatment of convicted and non-convicted young detainees:

#### *Section 19, Human Rights Act 2004*

Humane treatment when deprived of liberty

(1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.

(2) An accused person must be segregated from convicted people, except in exceptional circumstances.

(3) An accused person must be treated in a way that is appropriate for a person who has not been convicted.

#### *Section 20, Human Rights Act 2004*

Children in the criminal process

(1) An accused child must be segregated from accused adults.

(2) An accused child must be treated in a way that is appropriate for a person of the child's age who has not been convicted.

(3) A child must be brought to trial as quickly as possible.

(4) A convicted child must be treated in a way that is appropriate for a person of the child's age who has been convicted.

#### *Section 22, Human Rights Act 2004:*

22 Rights in criminal proceedings

(1) Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

(2) Anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else:

(a) to be told promptly and in detail, in a language that he or she understands, about the nature and reason for the charge;

(b) to have adequate time and facilities to prepare his or her defence and to communicate with lawyers or advisors chosen by him or her;

(c) to be tried without unreasonable delay;

(d) to be tried in person, and to defend himself or herself personally, or through legal assistance chosen by him or her;

(e) to be told, if he or she does not have legal assistance, about the right to legal assistance chosen by him or her;

(f) to have legal assistance provided to him or her, if the interests of justice require that the assistance be provided, and to have the legal assistance provided without payment if he or she cannot afford to pay for the assistance;

(g) to examine prosecution witnesses, or have them examined, and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as prosecution witnesses;

(h) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court;

(i) not to be compelled to testify against himself or herself or to confess guilt.

(3) A child who is charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.

(4) Anyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher court in accordance with law.

The following international human rights standards apply in the ACT:

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

International human rights standards that are relevant to the treatment of non-convicted young detainees are:

Rules 17, 18 and 28 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their

legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

#### Rule 13 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice

##### 13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance—social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality.

#### Standard Minimum Rules for the Treatment of Prisoners:

##### C. PRISONERS UNDER ARREST OR AWAITING TRIAL

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners," hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.  
(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.  
(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

### 3. Authorisations and Delegations

3.1 This policy and procedure is to be applied by staff.

### 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.

**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.

**Convicted young detainee** means a young detainee whose detention is a consequence of a particular conviction or convictions. It is not to be interpreted as applying to a young detainee who has previously been convicted if the fact of their detention is not related to the previous conviction or convictions. A reference to a convicted young detainee includes a young detainee who is convicted or found guilty but not yet sentenced and a young detainee who is convicted or found guilty but is appealing their conviction or finding of guilt.

**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.

**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.

**Non-convicted young detainee** means a young detainee who has not been tried, found guilty or convicted and may include a young remandee.

**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).

**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.

**Young remandee** is defined in section 137 of the *Children and Young People Act 2008* and the dictionary of the *Crimes (Sentence Administration) Act 2005* as a remandee who is under 18 years old; or a remandee who is over 18 years old but under 21 years old and is on remand in relation to an offence alleged to have been committed when he or she was under 18 years old.

## 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 Procedures**

### Interaction with non-convicted young detainees

6.1 Staff must interact with non-convicted young detainees in a manner consistent with their entitlement to the presumption of innocence.

6.2 Staff must interact with non-convicted young detainees with an understanding of the following:

- (a) A non-convicted young detainee who is a young remandee may be remanded in custody for a number of reasons including, but not limited to, the nature and seriousness of the offence the person is charged with, a risk of the person failing to appear before a court in relation to the charge and a risk of the person committing an offence while on bail;
- (b) A non-convicted young detainee is not in custody as punishment;
- (c) A non-convicted young detainee may present with issues affecting their health, safety and wellbeing including family or significant relationship difficulties, accommodation difficulties, drug or alcohol use, educational and literacy issues, and mental health issues;
- (d) The length of a non-convicted young detainee's detention will be determined by a court or other authority and this may impact upon the services that can be provided to the young detainee at a detention place;
- (e) Every effort should be made to ensure that a non-convicted young detainee's family and community relationships are supported and promoted and that the young detainee's education, employment, housing and other social integration needs are not detrimentally affected by the period of detention; and
- (f) Interventions with a non-convicted young detainee should address issues affecting the person's health, development, safety and wellbeing, but must not address any offence with which the person has been charged or risk of offending unless the person has been found guilty or convicted of an offence.

### Admission and Classification

#### *Information provided to non-convicted young detainees at admission*

6.3 Staff must inform all young detainees, including non-convicted young detainees, about their right to apply for legal aid and right to legal representation.

6.4 Staff must ensure that all young detainees, including non-convicted young detainees, understand the reason for their detention. It is the responsibility of police to promptly inform a person of the nature of a charge laid against them in a manner that is understood by the person.

#### *Contact with Family Members, Significant People and Accredited Persons*

6.5 Staff must inform all young detainees, including non-convicted young detainees, about their entitlement to make a telephone call 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 at the time of their admission to inform the person of their detention. The telephone call to one of these persons may only be denied in the circumstances outlined in the Admission and Classification Policy and procedures.

- 6.6 All young detainees, including non-convicted young detainees, have the right to communicate with their lawyer and certain oversight persons and agencies in private. Electronic communication (including telephone calls and emails) and communication at a visit between a young detainee and any of the following persons will not be monitored or recorded: 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. Refer to Safety and Security Policy and Procedures.
- 6.7 The Manager must ensure that maximum opportunities are provided for non-convicted young detainees to be able to remain in contact with family members and significant people by telephone calls, mail and visits.

#### *Classification and Placement in residential unit*

- 6.8 Considerations in making decisions about placement of a young detainee at a detention place must be guided by section 166 of the Children and Young People Act 2008 and Rule 28 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (see above), which supports placement decisions that take account of individual young detainee needs where these might be in conflict with other human rights principles relating to separation of young detainees. The principles provided in these rules will be applied to placement decisions at a detention place, including decisions about placement in adjoining spaces/rooms.
- 6.9 In determining the placement of a young detainee at a detention place, the Senior Manager must ensure that:
- (a) Young remandees are separated from sentenced young detainees;
  - (b) Male young detainees are separated from female young detainees;
  - (c) Young detainees who are under 18 are separated from adult young detainees.
- 6.10 A decision may be made by the Senior Manager not to comply with the requirement at 6.9 if the Senior Manager reasonably believes that the placement is in the best interests of the young detainee and all affected young detainees, after balancing the following considerations:
- (a) the best interests, needs and special requirements of the young detainee because of the young detainee's age, sex, emotional or psychological state, physical health, cultural background, vulnerability or any other relevant matter;
  - (b) if it is proposed that a young detainee be isolated because of their placement at a detention place, whether the isolation is in the best interests of the young detainee;
  - (c) the desirability of the care provided to a young detainee being suited to the particular needs of the young detainee in order to protect the young detainee's physical and emotional wellbeing;
  - (d) that it is in the best interests of young detainees to be separated from co-offenders;

- (e) the best interests of all affected young detainees;
  - (f) the security and good order of a detention place;
  - (g) the health and safety needs of all young detainees at a detention place; and
  - (h) requests from Care and Protection Services, a Court or Tribunal, ACT Policing, the Director of Public Prosecutions or other justice agencies, to separate young detainees.
- 6.11 In determining the placement of an Aboriginal or Torres Strait Islander young detainee, the Senior Manager must consider placing the young detainee in a conjoining room with another Aboriginal or Torres Strait Islander young detainee or in a room conjoined with that of another young detainee they know if the assessment of the young detainee indicates the young detainee is at high risk of self-harm or is otherwise highly vulnerable in an alternative placement. In deciding to place an Aboriginal or Torres Strait Islander young detainee in a conjoining room, the Senior Manager must ensure:
- (a) each young detainee has consented to the placement; and
  - (b) a comprehensive assessment of each young detainee has occurred, including an assessment of any risk posed by each young detainee to the other young detainee.

#### *Clothing*

- 6.10 All young detainees, including non-convicted young detainees, are required to wear detention place clothing while at a 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 Clothing provided to non-convicted young detainees must be different to that provided to convicted young detainees.
- 6.12 All young detainees, including non-convicted young detainees, may wear their own clothes to court.
- 6.13 All young detainees, including non-convicted young detainees, may wear their own clothes while on approved leave, with the approval of the Senior Manager.

#### *Property*

- 6.14 In making a decision about property that a young detainee is allowed to keep in their possession at the time of the young detainee's admission to a detention place, the Manager must consider the legal status of the young detainee.
- 6.15 As far as practicable, a non-convicted young detainee should be allowed to keep in their possession items of personal property which will not jeopardise safety, security and good order at a detention place.
- 6.16 Examples of property which a non-convicted young detainee may be allowed to keep in their possession by direction of the Manager include:
- (a) Photograph/s of family members;
  - (b) Book/s.

#### *Minimum Living Conditions*

- 6.17 The Minimum Living Conditions Policy and procedures applies to all young detainees, including non-convicted young detainees.

6.18 For non-convicted young detainees, the Minimum Living Conditions Policy and procedures must be applied in a way that has the objective of promoting continuity in the person's family and community relationships, education, employment, housing and other social integration needs (such as income support) during the period of detention, where this is in the person's best interests.

### Health and Wellbeing

6.19 The Health and Wellbeing Policy and Procedures allows all young detainees to have access to a private or specialist health professional or service as approved by the Manager.

### Case Management

6.20 A case management framework is provided to all young detainees, including non-convicted young detainees.

6.21 The development of a case management plan for a young remandee is discretionary under the *Children and Young People Act 2008* and is to be assessed on an individual case basis.

6.22 In deciding whether to develop a case management plan for a young remandee, the case manager must consider the following:

- (a) the period of remand;
- (b) the young remandee's age and development;
- (c) the young remandee's educational needs;
- (d) any special needs of the young remandee, such as family or significant relationship difficulties, accommodation difficulties, drug or alcohol use, educational and literacy issues, and mental health issues.

6.23 A case management plan developed for a non-convicted young detainee should seek to address family, social, health, wellbeing and educational issues identified by the young remandee or case management staff.

6.24 A case management plan and interventions or strategies forming part of case management for a non-convicted young detainee must not seek to directly address an offence or offences if the person has not been found guilty or convicted.

### Separation of non-convicted young detainees from convicted young detainees

6.25 In making a decision to allow a non-convicted young detainee to participate in a program or activity with a convicted young detainee, the decision-maker must believe that the participation is in the best interests of the non-convicted young detainee.

6.26 In determining whether it is in the best interests of the non-convicted young detainee to participate in a program or activity with a convicted young detainee, the decision-maker may take into account the following:

- (a) The availability of the program or activity and whether alternative arrangements may be made for the non-convicted young detainee's participation in the program or activity;
- (b) The benefit to the non-convicted young detainee of participating in the program or activity;

- (c) Any risks associated with the non-convicted young detainee participating in the program or activity, including the risk of a negative influence from a convicted young detainee; and
- (d) The availability and suitability of alternative programs or activities for the non-convicted young detainee to participate in.

### Behaviour Management and Discipline

- 6.27 The behaviour management and discipline policies and procedures apply to all young detainees, including non-convicted young detainees.
- 6.28 The incentive scheme established under the behaviour management policy allows all young detainees, including non-convicted young detainees, to make purchases with points accrued for displaying positive behaviour. Incentives that may be purchased include snack food and drink, TV hire, movie hire and other items such as posters and magazines, subject to an assessment of the suitability of the type of incentive for the young detainee.

## **7. Forms and Templates**

Not applicable

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

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

Admission and Classification Policy and Procedures  
Behaviour Management Policy and Procedures  
Discipline Policy and Procedures  
Minimum Living Conditions Policy and Procedures  
Health and Wellbeing Policy and Procedures  
Property Policy and Procedures  
Safety and Security Policy and Procedures

## **9. Further References**

Dictionary for Policies and Procedures