

Australian Capital Territory

Children and Young People (Reporting and Investigation) Procedures 2008 (No 1)

Notifiable instrument NI2008– 394

made under the

Children and Young People Act 2008, Section 294 Reporting and investigation procedures

1 Name of instrument

This instrument is the *Children and Young People (Reporting and Investigation) Procedures 2008 (No 1)*.

2 Commencement

This instrument is to commence on 9 September 2008.

3 Procedures

Under section 294 of the *Children and Young People Act 2008*, I make the attached Reporting and Investigation Procedures.

Martin Hehir
Chief Executive

8 September 2008

Reporting and Investigation Procedures

1. Introduction and Purpose

The Reporting and Investigation Procedures address the requirement at section 294 of the *Children and Young People Act 2008* for the Chief Executive to make procedures about the making, recording and investigation of behaviour breach reports.

The reporting and investigation procedures must be read in conjunction with the behaviour management and discipline policies and procedures.

The reporting and investigation procedures address:

- a) The content of behaviour breach reports and forms;
- b) Who may make decisions in relation to responding to a behaviour breach report form;
- c) Informing young detainees of behaviour breach reports and their right to contact support people for assistance; and
- d) The role of support people for young detainees in the disciplinary process.

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.
- 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 Chapters 8 and 9 of the Act address behaviour management and discipline procedures at a detention place. The Behaviour Management Policy and Procedures address the requirement at section 297 of the *Children and Young People Act 2008* for the Chief Executive to establish a behaviour management framework for responding to minor behaviour breaches. The Reporting and Investigation Procedures address the requirement at section 294 of the *Children and Young People Act 2008* for the Chief Executive to make procedures about the making, recording and investigation of behaviour breach reports.

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 behaviour management are:

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

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

3. Authorisations and Delegations

- 3.1 The delegates of the Chief Executive who may make decisions or take action under chapters 8 and 9 of the *Children and Young People Act 2008* in response to minor behaviour breaches or behaviour breaches are outlined in Table 3A of the Behaviour Management and Discipline Policies and Procedures. Refer to this Table.
- 3.2 Investigator is defined in section 291 of the *Children and Young People Act 2008* and means an authorised person to whom the Chief Executive has delegated functions of an investigator under part 8.2 of the Act or a person appointed to be an investigator under section 292 of the Act. The delegates who may act as investigators are Team Leaders, Unit Managers, Operations Manager, Programs and Services Manager or Senior Manager.
- 3.3 The Senior Manager may appoint a person as an investigator under section 292 of the *Children and Young People Act 2008*.

4. Definitions

Behaviour breach is defined at section 287 of the *Children and Young People Act 2008*. A list of behaviours that constitute a behaviour breach is at Schedule 1 of the Behaviour Management policy.

Behaviour breach report form is the form used to report a young detainee's alleged behaviour breach to an administrator under section 293(2)(d) of the *Children and Young People Act 2008*.

Behaviour management is defined broadly to mean any intervention or strategy implemented by staff designed or intended to influence or manage the behaviour of young detainees. Behaviour management interventions and strategies are divided into proactive and reactive strategies.

Behaviour management consequences may be imposed in response to a minor behaviour breach under the behaviour management policy or in response to a behaviour breach under the discipline policy. Behaviour management consequences under the behaviour management policy are prescribed by section 298 of the *Children and Young People Act 2008*. These consequences are a fine up to \$25, a withdrawal of privileges for not longer than 6 days, a requirement to make an apology to a person affected by the minor behaviour breach and a requirement to perform extra chores for not longer than 2 hours. Behaviour management consequences under the discipline policy are prescribed by section 318 of the *Children and Young People Act 2008*. These consequences are a fine up to \$250, a withdrawal of privileges for not longer than 60 days, a requirement to make an apology to a person affected by the behaviour breach and a requirement to perform extra chores for not longer than 20 hours.

Behaviour management plan is a plan developed in consultation with a young detainee which has the objective of addressing negative and challenging behaviours displayed by the young detainee at a detention place.

Behaviour management strategy includes proactive or preventative strategies to promote positive and pro-social behaviour by young detainees and reactive strategies to respond to negative or challenging behaviour by young detainees.

Incentive scheme is designed to recognise and reinforce socially acceptable and positive behaviours by young detainees within a detention place.

Investigator is defined in section 291 of the *Children and Young People Act 2008* and means an authorised person to whom the Chief Executive has delegated functions of an investigator under part 8.2 of the Act or a person appointed to be an investigator under section 292 of the Act. The delegates who may act as investigators are Team Leaders, Unit Managers, Operations Manager, Programs and Services Manager or Senior Manager.

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.

Minor behaviour breach is defined at section 288 of the *Children and Young People Act 2008*. A minor behaviour breach is a behaviour breach that is not of a serious or persistent nature; does not involve a serious risk to the health or safety of someone else at a detention place; and does not involve a serious risk, or serious or persistent disruption, to the security or good order at a detention place.

Reward is an object, activity or type of special recognition given to a young detainee immediately following a young detainee displaying positive behaviour or achievement. Rewards are not cumulative and cannot be withdrawn as a consequence of a minor behaviour breach or behaviour breach.

Support person, for the behaviour management and discipline policies and reporting and investigation procedures, is defined at section 286 of the *Children and Young People Act 2008*. A person can be a support person for a young detainee if:

- (a) the young detainee chooses the person to assist the young detainee or represent the young detainee's interests; and
- (b) the Manager considers—
 - (i) the person is capable of assisting the young detainee or representing the young detainee's interests; and
 - (ii) it is in the young detainee's best interests for the person to be the young detainee's support person.

Withdrawal of privileges is a behaviour management consequence that may be imposed in response to a minor behaviour breach under the behaviour management policy or in response to a behaviour breach under the discipline policy.

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.

Youth detention officer is defined at section 96 of the *Children and Young People Act 2008* and means an authorised person to whom the Chief Executive has delegated functions of a youth detention officer under the criminal matters chapters. The positions which have delegations as youth detention officers for the policies and procedures are: Senior Manager (C/3), Acting Senior Manager (C/4), Operations Manager (E/7), Programs and Services Manager (E/8), Unit Managers (F/7), Team Leaders (G/6), Youth Workers (I/4), Casual Youth Workers (J/3).

5. Principles

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

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

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

Section 9, Principles applying to Act

- (1) In making a decision under this Act in relation to a child or young person, a decision-maker must have regard to the following principles where relevant, except when it is, or would be, contrary to the best interests of a child or young person:
 - (a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
 - (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;
 - (c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;
 - (d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing.
- (2) A decision-maker exercising a function under this Act must, where practicable and appropriate, have qualifications, experience or skills suitable to apply the principles in subsection (1) in making decisions under the Act in relation to children and young people.

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

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

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

Section 94, Youth justice principles

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

- (a) if a child or young person does something that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;
- (b) a child or young person should be dealt with in a way that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways;
- (c) a child or young person should be consulted about, and be given the opportunity to take part in making, decisions that affect the child or young person, to the maximum extent possible taking into consideration their age, maturity and developmental capacity;
- (d) if practicable and appropriate, decisions about an Aboriginal and Torres Strait Islander child or young person should be made in a way that involves their community;
- (e) if a child or young person is charged with an offence, he or she should have prompt access to legal assistance, and any legal proceeding relating to the offence should begin as soon as possible;
- (f) a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary;
- (g) children, young people and other young offenders should be dealt with in the criminal law system in a way consistent with their age, maturity and developmental capacity and have at least the same rights and protection before the law as would adults in similar circumstances;
- (h) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;
- (i) it is a high priority that intervention with young offenders must promote their rehabilitation, and must be balanced with the rights of any victim of the young offender's offence and the interests of the community.

- (2) The decision-maker may also consider any other relevant matter.
- (3) The youth justice principles are intended to be interpreted consistently with relevant human rights instruments and jurisprudence.

Example

Convention on the Rights of the Child

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

Behaviour Management and Discipline Principles

The following operational principles underpin the behaviour management and discipline policies and procedures:

- (a) proactive strategies promote positive and pro-social behaviour by young detainees and minimise reliance on reactive strategies to respond to negative or challenging behaviour;
- (b) negative behaviour displayed by young detainees should be viewed in context of the behaviour being displayed and the characteristics of the young detainee, including their age, maturity, developmental stage and rehabilitation needs, where appropriate;
- (c) any response to negative behaviour must be prompt and timely and must ensure the young detainee understands the behaviour identified as negative, the nature of, and reasons for, the response and what action the young detainee can take to modify their behaviour;
- (d) negative behaviour should be managed in the least restrictive manner possible and sanctions or consequences for negative behaviour should be graduated.

6. Procedures

Reactive Strategies – Behaviour Management Response to Minor Behaviour Breaches

- 6.1 The Reporting and Investigation Procedures intersect with the Behaviour Management Policy and Procedures at the point a decision is made by a youth detention officer to make a report about a minor behaviour breach or a behaviour breach. The youth detention officer must comply with the procedures under Behaviour Breach Reports below in making a report.

Behaviour breach reports

- 6.2 The purpose of referring a minor behaviour breach or behaviour breach to an administrator is to escalate the alleged behaviour breach for consideration of a behaviour management response or discipline response.
- 6.3 To report a minor behaviour breach or a behaviour breach, a youth detention officer must complete a behaviour breach report form at schedule 5 of the Behaviour Management Policy and Procedures.
- 6.4 The youth detention officer must give the completed behaviour breach report form to the officer acting as Administrator.

Responding to a behaviour breach report

- 6.5 After receiving a behaviour breach report form, the administrator must consider the report and determine the most appropriate response, which may include further investigation. Refer to 'Investigating a Behaviour Breach' below.

Investigating a behaviour breach

- 6.6 If the administrator considers that further investigation is necessary, the administrator may arrange for an investigator to investigate the alleged behaviour breach in accordance with these procedures.
- 6.7 Further investigation may be necessary in one or more of the following circumstances:
- (a) the facts of the alleged behaviour breach are unclear;
 - (b) a number of young detainees were involved in the alleged behaviour breach;
 - (c) the alleged behaviour breach was witnessed by a number of people and their accounts of the incident require collecting for verification of the facts;
 - (d) the alleged behaviour breach is of a serious nature and further investigation is necessary to determine whether the alleged behaviour breach should be referred to police.
- 6.8 An investigator may be a delegate of the Chief Executive or a person appointed to be an investigator under section 292 of the *Children and Young People Act 2008*. The delegates who may act as investigators are Team Leaders, Unit Managers, Operations Manager, Programs and Services Manager or Senior Manager. If the investigator is a delegate of the Chief Executive, the investigator must not be the youth detention officer who made the behaviour breach report or administrator who was given the behaviour breach report.
- 6.9 The Senior Manager may appoint an investigator who is not a delegate for the purpose of investigating an alleged behaviour breach if the circumstances of the alleged behaviour breach indicate that an external and independent investigation is required. The Senior Manager may appoint a person as an investigator under section 292 of the *Children and Young People Act 2008*.
- 6.10 Following a request by the administrator to investigate an alleged behaviour breach, the investigator may undertake any of the following actions:
- (a) interview the subject young detainee;
 - (b) interview witnesses to the alleged behaviour breach including other young detainees and staff;
 - (c) review any monitoring records of the alleged behaviour breach; and
 - (d) gather other relevant information, for example, medical reports and file information.
- 6.11 The investigator must prepare a report detailing the nature of investigations undertaken and provide the report to the administrator. The report must include a recommendation regarding what action, if any, should be taken in relation to the alleged behaviour breach.

- 6.12 Following the administrator receiving a report from the investigator, the administrator must decide what action, if any, should be taken in relation to the alleged behaviour breach. The section 'Action by Administrator' in the Behaviour Management Policy and Procedures should be referred to for action that may be taken in relation to the alleged behaviour breach.

Informing young detainees of behaviour breach reports and their right to contact support people for assistance

- 6.13 The administrator receiving a behaviour breach report must inform the young detainee that a behaviour breach report has been made. The young detainee must be informed of the breach in a way he or she can understand.
- 6.14 The administrator must also inform the young detainee that they may contact a support person or persons for assistance in responding to the behaviour breach report.
- 6.15 A support person can be chosen by the young detainee. To become the young detainee's support person, the Manager must consider the person is capable of assisting the young detainee or representing their interests and it is in their best interests for the person to be the young detainee's support person.
- 6.16 The following people are appropriate support persons for a young detainee:
- (a) A lawyer;
 - (b) A staff member not involved in any action in relation to the alleged behaviour breach;
 - (c) The Public Advocate; or
 - (d) A representative of an agency providing services to the young detainee.
- 6.17 The Manager may consider that a person is not capable of fulfilling the role of a support person in the following circumstances:
- (a) the person poses a risk to security and good order (for example, the person has previously attempted to take a prohibited thing into a detention place);
 - (b) the person has acted against the young detainee's interests in the past (for example, by preventing or hindering the conduct of a search of the young detainee);
 - (c) the nature of the relationship between the person and the young detainee is not in the best interests of the young detainee (for example, due to a history of abuse or co-offending).
- 6.18 If the Manager considers that a person chosen by a young detainee is not capable of fulfilling the role of a support person, the young detainee must be informed and given the right to elect another support person.
- 6.19 After the support person is chosen by the young detainee and agreed to by the Manager, the young detainee must be allowed to contact the support person or persons for assistance in responding to an alleged behaviour breach. The Manager must ensure the young detainee is provided with facilities to contact the support person or persons and consult with them via telephone or in person.

Role of support people for young detainees in disciplinary process

- 6.20 A young detainee has the right to contact a support person or persons after disciplinary action has commenced when:
- (a) a charge notice form has been given to the young detainee to assist the young detainee to decide whether to admit to the breach as charged and accept the proposed disciplinary action or to assist the young detainee to apply for an internal review of the charge;
 - (b) a review officer has completed an internal review and taken disciplinary action against the young detainee and the young detainee has the right to apply for an external review.
- 6.21 The Manager must ensure the young detainee is provided with facilities to contact the support person or persons and consult with them via telephone or in person.
- 6.22 The young detainee is entitled to have a support person or lawyer present at a hearing for an internal or external review to make submissions on their behalf.

7. Forms and Templates

Refer to Behaviour Management and Discipline Policies and Procedures

8. Related Policies and Procedures

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

Behaviour Management Policy and Procedures
Discipline Policy and Procedures

9. Further References

Refer to Behaviour Management Policy and Procedures and Discipline Policy and Procedures

Dictionary for Policies and Procedures