

Australian Capital Territory

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

Notifiable instrument NI2008–397

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 (Segregation) 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 Segregation Policy and Procedures to facilitate the effective and efficient management of detention services for young detainees.

Martin Hehir
Chief Executive

8 September 2008

Segregation Policy and Procedures

1. Introduction and Purpose

Segregation of a young detainee means the restriction or denial of the young detainee's opportunity to go into, or be in, a particular part of a detention place or to associate with other young detainees. Segregation may be achieved through the separate confinement of the young detainee or any other measures considered necessary by the Manager. The segregation of a young detainee is a fundamental way of managing security and good order and the safety and health of the young detainee subject to a segregation direction and all young detainees within the detention place.

Segregation directions may only be used for these purposes where the criteria for making the segregation direction are met. Segregation of a young detainee must not be used for punishment or disciplinary purposes. Segregation of a young detainee must not affect the minimum standards applying to the young detainee under section 141 of the *Children and Young People Act 2008*. This does not, however, prevent the standards being applied in a manner that ensures the effect of the segregation direction is upheld. The Minimum Living Conditions Policy and Procedures provides guidance in applying the standards during a segregation direction.

This policy outlines four types of directions which may be made by the Manager to authorise the segregation of a young detainee within a detention place:

- (a) Safe room segregation direction;
- (b) Safety and security segregation direction;
- (c) Protective custody segregation direction; and
- (d) Health segregation direction.

Safe room segregation involves separate confinement of the young detainee in a designated part of the detention place known as a safe room to prevent an imminent risk of the young detainee harming himself or herself and where less intrusive intervention has been unsuccessfully implemented or considered not appropriate. The use of a safe room occurs within the context of an overarching therapeutic approach. As placement in a safe room involves isolation of the young detainee so placed, use of a safe room needs to occur only with strict safeguards after other interventions have failed to reduce the risk to the young detainee. Isolation can cause harm to a young detainee's psychological wellbeing, therefore placement of a young detainee in a safe room is a practice of last resort.

Safety and security segregation of a young detainee is authorised by this policy if the young detainee poses a risk to another young detainee, a youth detention officer or anyone else at a detention place or if the young detainee poses a risk to the security or good order of a detention place.

Protective custody segregation of a young detainee is authorised by this policy if the young detainee is at risk from another young detainee or young detainees and the segregation is necessary to protect the young detainee's safety.

Health segregation of a young detainee may be directed by the Manager under this policy if the young detainee is at risk because of their physical or mental health, or poses a risk to anyone else because of their physical or mental health.

This policy also addresses circumstances where an interstate segregation authority is in force for a young detainee and the young detainee is transferred into custody at a detention place. The interstate segregation authority continues to apply to the young detainee by translating the authority into a local segregation direction which is in force for up to 3 days after the young detainee is admitted to a detention place.

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 Division 6.6.3 of the *Children and Young People Act 2008* relates to the authority to make a segregation direction for a young detainee at a detention place. All segregation directions must be implemented in a manner that upholds the following rules:

Section 205 Purpose of segregation under div 6.6.3
To remove any doubt, segregation under this division must not be used for punishment or disciplinary purposes.

Section 206 Segregation not to affect minimum living conditions

- (1) The segregation of a young detainee under this division is not to affect the standards applying to the young detainee under section 141 (Detention places—minimum living conditions).
- (2) However, subsection (1) does not prevent the application of the standards in a way that is necessary and reasonable for the purpose of the segregation.

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 segregation are:

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

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.

3. Authorisations and Delegations

- 3.1 The Manager has authority to make a safe room segregation direction, safety and security segregation direction, health segregation direction or protective custody segregation direction under this policy.
- 3.2 The Manager has authority to review a safe room segregation direction under this policy. The Senior Manager or Director has authority to review a safety and security, protective custody or health segregation direction under this policy.
- 3.3 The Manager must ensure that notice of any segregation direction made is given to the people listed at 6.79 of this policy within the required timeframe.
- 3.4 The Senior Manager, Operations Manager and Unit Managers must ensure that a register of segregation directions is maintained and the register includes the information outlined at 6.78 of this policy.

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.

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

External reviewer is a magistrate appointed by the Minister under section 309 of the *Children and Young People Act 2008*. The external reviewer is an independent and external person who has the function of reviewing, upon application by the affected young detainee, decisions made by a review officer to find a behaviour breach charge proven and to take disciplinary action against the young detainee. The external reviewer also has functions under the

segregation policy to review, upon application by the affected young detainee, segregation directions related to safety and security, protective custody and health.

Health professional is defined in the dictionary of the *Children and Young People Act 2008* and means a health professional registered under the *Health Professionals Act 2004* or someone who is a health professional registered under a corresponding law of a local jurisdiction within the meaning of that Act.

Health segregation direction means a segregation direction made by the Manager under section 214 of the *Children and Young People Act 2008*.

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.

Protective custody segregation direction means a segregation direction made by the Manager under section 213 of the *Children and Young People Act 2008*.

Register of segregation directions is a register that the Senior Manager, Operations Manager and Unit Managers are obliged to keep under section 222 of the *Children and Young People Act 2008*.

Safe room is a part of a detention place declared by the Chief Executive to be a safe room for the purpose of safe room segregation under section 208 of the *Children and Young People Act 2008*. In order to declare a safe room, the Chief Executive must be satisfied that its design will minimise the harm that a young detainee can do to himself or herself while in the room; and it allows monitoring of, and communication with, the young detainee by the Chief Executive and health professionals.

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

Safety and security segregation direction means a segregation direction made by the Manager under section 212 of the *Children and Young People Act 2008*.

Segregation of a young detainee means the restriction or denial of the young detainee's opportunity to go into, or be in, a particular part of a detention place or to associate with other young detainees. It may include separate confinement.

Treating Doctor is a doctor appointed under section 97 of the *Children and Young People Act 2008* for the 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.

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

5.1 The following legislative requirements and operational principles are to guide all decision making in relation to segregation of a young detainee:

- (a) A decision maker must consider the age, maturity, cultural identity, physical and mental health and known history of the young detainee, such as a history of abuse, in deciding whether to make a segregation direction;
- (b) Segregation which results in the isolation of a young detainee should be used only as an option of last resort and the young detainee should be subject to close observation procedures;
- (c) Segregation must not be used for punishment or disciplinary purposes or for reasons of administrative convenience, such as a shortage of Youth Detention Officers;
- (d) Segregation must not affect a young detainee's minimum living conditions outlined in the Minimum Living Conditions Policy and Procedures, however, the standards may be applied in a way that ensures the segregation direction is upheld;
- (e) The duration of the segregation shall be as short as possible to address the risk to the young detainee or other young detainees;
- (f) A segregation direction must be revoked as soon as it is considered no longer reasonable and necessary for the purpose for which it was implemented; and
- (g) A decision to segregate a young detainee will be subject to regular internal review, with a young detainee having the right to apply for external review of segregation decisions.

5.2 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

Safe room segregation

Prior to making a safe room segregation direction

6.1 A young detainee is placed in a safe room under a safe room segregation direction to prevent an imminent risk of the young detainee harming himself or herself. A safe room segregation direction may only be made if the criteria for making the direction at 6.6 of this policy are met.

6.2 Before the Manager may make a safe room segregation direction, the Manager must implement, or arrange for the implementation of, the following less restrictive strategies to prevent an imminent risk of the young detainee harming himself or herself, unless it is considered not appropriate to

implement these strategies because of the urgency and seriousness of the situation:

- (a) responding to cues indicating the potential for escalation of threatening or disruptive behaviour;
- (b) discussing the concerns/problems/issues with the young detainee;
- (c) reflective listening and feedback to demonstrate to the young detainee that their concerns have been heard and understood;
- (d) attempts to de-escalate the situation by facilitating a conflict resolution process and/or meeting with the people concerned;
- (e) involving other youth detention officers;
- (f) involving a health professional or other suitable person;
- (g) being clear with instructions while remaining calm and respectful; and/or
- (h) the use of the young detainee's cabin or an alternative space or room.

6.3 The criteria for making a safe room segregation direction will only be satisfied in circumstances where less restrictive strategies have not reduced the imminent risk of the young detainee harming himself or herself, or less restrictive strategies have been considered but were not appropriate because of the urgency and seriousness of the situation.

Criteria for making a safe room segregation direction

6.4 When considering whether to make a safe room segregation direction, the Manager must consider the young detainee's age, maturity, cultural identity, physical and mental health and known history of the young detainee, such as a history of abuse.

6.5 The Manager must also consider any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young detainee. This should include consideration of whether the young detainee is of Aboriginal or Torres Strait Islander cultural background and the impact on the young detainee of making a segregation direction.

6.6 The Manager may direct that a young detainee be segregated from other young detainees by separate confinement in a safe room if:

- (a) the Manager believes on reasonable grounds that the segregation is necessary to prevent an imminent risk of the young detainee harming himself or herself; and
- (b) the Manager has:
 - i. tried less restrictive ways to prevent an imminent risk of the young detainee harming himself or herself but the less restrictive ways have not been successful; or
 - ii. considered less restrictive ways to prevent an imminent risk of the young detainee harming himself or herself but the less restrictive ways were not appropriate.

Implementing a safe room segregation direction

6.7 As soon as practicable after making a safe room segregation direction, a youth detention officer must explain to the young detainee the reasons for

the direction and request the young detainee's co-operation with the direction.

- 6.8 As soon as practicable after making a segregation direction, the Manager must also give the young detainee written notice of the segregation direction or arrange for this notice to be given to the young detainee by a youth detention officer (refer to 'Giving notice of segregation directions'). The Manager must ensure the notice is also given to the people listed at 6.79 of this policy.
- 6.9 If a young detainee fails to comply with a direction to go to the safe room, a youth detention officer may use force to place the young detainee in the safe room. If force is used, a youth detention officer must comply with the Use of Force Policy and Procedures. A youth detention officer must record in the register of segregation directions details of any force used to compel compliance with the direction and the reasons for force being used.
- 6.10 In order to protect the privacy of the young detainee, the placement of a young detainee in the safe room under a safe room segregation direction, and any force used to compel compliance with the direction, must not be done in the presence or sight of another young detainee, unless the Manager believes on reasonable grounds that:
- (a) there is an imminent and serious threat to the personal safety of the young detainee or someone else; and
 - (b) compliance with this rule would exacerbate the threat.
- 6.11 The Manager must ensure that other young detainees do not observe the young detainee while they are in the safe room.
- 6.12 Once a young detainee is placed in a safe room, the door must be locked.
- 6.13 Any young detainee placed in a safe room must be observed at five-minute intervals or more often. The level of observation provided should be determined by the nature of the young detainee's behaviour (for example, self damaging behaviour may require constant observation and/or contact by a youth detention officer or health professional/s).
- 6.14 Constant video surveillance and recording of a young detainee in a safe room must be undertaken by the Control Room/Duty Point.
- 6.15 If a young detainee suffers an injury prior to entering or while in a safe room, they must receive immediate medical attention, at the earliest time that is safe for the young detainee, youth detention officer and/or the health professional.

Review of safe room segregation directions

- 6.16 The period a young detainee is placed in a safe room must be the minimum possible time. In addition to the requirements at 6.19 for formal

reviews, the Manager must continuously assess the need for the safe room segregation direction to remain in force and the Manager must revoke the direction if the Manager believes on reasonable grounds that the grounds for making the direction no longer exist. As a guide, when a young detainee shows de-escalated behaviour (for example, the young detainee is calm and their behaviour appears to have returned to normal) for a period of five to ten minutes, the safe room segregation direction should be revoked.

- 6.17 If a young detainee is placed in a safe room, the Manager must, as soon as possible, request the attendance and assistance of appropriate health professionals, to provide a health assessment and if necessary, treatment. Refer to the Health and Wellbeing Policy and Procedures for more information on health assessments and treatment in this circumstance.
- 6.18 The Manager must consider any recommendations made by the health professional, in addition to any other relevant considerations, in order to determine an appropriate response.
- 6.19 While a safe room segregation direction is in force, the Manager must formally review a safe room segregation direction after it has been in effect for 2 hours ('initial review') and at the end of every subsequent 2 hour period for which it is in effect ('each subsequent review').
- 6.20 In undertaking each subsequent review, the Manager must seek, and have regard to, the advice of a health professional in making a decision under 6.22.
- 6.21 In addition to the initial review and each subsequent review required under 6.19, the Manager may also review a safe room segregation direction at any other time on the Manager's own initiative or at the verbal or written request of the young detainee or written request of a person who has been given notice of the segregation direction under 6.79 who is acting on the young detainee's behalf. If a young detainee, or a person on their behalf, requests a review of a segregation direction, and the Manager refuses to review the segregation direction, the Manager must record their reasons for refusing to review the direction in the register of segregation directions.
- 6.22 After undertaking an initial review, each subsequent review or a review under section 6.21 of this policy, 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 [refer to Transfers Policy and procedures].
- 6.23 The Manager may make consecutive safe room segregation directions if the criteria at 6.6 for making each safe room segregation direction are met.

Procedures following revocation of safe room segregation direction

- 6.24 Following revocation of a safe room segregation direction, a young detainee must be assessed to determine any particular needs the young detainee may have. Where considered appropriate, the Manager must seek further health assessment and treatment from a health professional in relation to the young detainee's health and wellbeing.
- 6.25 The Manager may give directions about when a young detainee exiting from a safe room should return to their regular daily program. The emphasis should be on the normalisation of routine as soon as possible. The Manager may also review the young detainee's placement and determine the most appropriate placement for the young detainee in the transitional period following the young detainee's exit from a safe room.
- 6.26 The Manager must:
- (a) download the video record of the young detainee whilst he or she was in a safe room; and
 - (b) keep it as a record, in accordance with the Records and Reporting policy.

Reporting safe room segregation directions

- 6.27 The making of a safe room segregation direction is a Reportable Incident and must be reported on in accordance with requirements of the Records and Reporting policy.
- 6.28 The Unit Manager must ensure youth detention officers complete all necessary reports before they complete their shift, unless otherwise approved by the Manager.
- 6.29 Refer to 'Reporting and recording all segregation directions' for additional procedures in relation to safe room segregation directions.

Safety and Security segregation

Making and revoking a safety and security segregation direction

- 6.30 Safety and security segregation is a requirement for the management of a young detainee in a way that separates them from some or all other young detainees due to significant safety and security reasons.
- 6.31 When considering whether to make a safety and security segregation direction, the Manager must consider the young detainee's age, maturity, cultural identity, physical and mental health and known history of the young detainee, such as a history of abuse.
- 6.32 The Manager must also consider any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young detainee. This should include consideration of whether the young detainee is of Aboriginal or Torres Strait Islander cultural background and the impact on the young detainee of making a segregation direction.

- 6.33 The Manager may direct that a young detainee be segregated from other young detainees if the direction is reasonable and necessary to ensure:
- (a) the safety of any person at the detention place; or
 - (b) security or good order at the detention place.
- 6.34 The Manager must revoke the direction if the Manager believes on reasonable grounds that the segregation is no longer reasonable and necessary for the purpose for which it was implemented.
- 6.35 For procedures applying to implementation of safety and security segregation directions, refer to ‘Procedures for implementation of safety and security, health and protective custody segregation directions’.

Health segregation

Making and revoking a health segregation direction

- 6.36 Health segregation is a requirement for the management of a young detainee in a way that separates the young detainee from some or all other young detainees for assessment or to protect any person within the detention place because of the young detainee’s health.
- 6.37 In making or revoking a health segregation direction, the Manager must have regard to any advice by a treating doctor given in relation to the segregation of the young detainee.
- 6.38 The Manager may direct that a young detainee be segregated from other young detainees if the Manager believes on reasonable grounds that the segregation is reasonable and necessary to:
- (a) assess the young detainee’s physical or mental health;
 - (b) protect anyone (including the young detainee) from harm because of the young detainee’s physical or mental health; or
 - (c) prevent the spread of disease.
- 6.39 When considering whether to make a health segregation direction, the Manager must consider the young detainee’s age, maturity, cultural identity, physical and mental health and known history of the young detainee, such as a history of abuse.
- 6.40 The Manager must also consider any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young detainee. This should include consideration of whether the young detainee is of Aboriginal or Torres Strait Islander cultural background and the impact on the young detainee of making a segregation direction.
- 6.41 The Manager must revoke the direction if the Manager believes on reasonable grounds that the segregation is no longer reasonable and necessary for the purpose for which it was implemented.

6.42 In making or revoking a health segregation direction, the Manager must have regard to any advice by a treating doctor given in relation to the segregation of the young detainee.

6.43 For procedures applying to implementation of health segregation directions, refer to 'Procedures for implementation of safety and security, health and protective custody segregation directions'.

Protective custody segregation

Making and revoking a protective custody segregation direction

6.44 A young detainee may request that a protective custody segregation direction be made for them. A request may be made verbally or in writing.

6.45 After receiving a request from a young detainee or at the Manager's own initiative, the Manager may direct that the young detainee be segregated from other young detainees if the Manager believes on reasonable grounds that the segregation is reasonable and necessary to protect the young detainee's safety.

6.46 When considering whether to make a protective custody segregation direction, the Manager must consider the young detainee's age, maturity, cultural identity, physical and mental health and known history of the young detainee, such as a history of abuse.

6.47 The Manager must also consider any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young detainee. This should include consideration of whether the young detainee is of Aboriginal or Torres Strait Islander cultural background and the impact on the young detainee of making a segregation direction.

6.48 In deciding whether to make a protective custody segregation direction, the Manager may make, or cause to be made, further inquiries to determine whether the direction is reasonable and necessary to protect the young detainee's safety, for example, interviewing other young detainees.

6.49 The Manager must revoke the direction if the Manager believes on reasonable grounds that the segregation is no longer reasonable and necessary for the purpose for which it was implemented.

6.50 For procedures applying to implementation of protective custody segregation directions, refer to 'Procedures for implementation of safety and security, health and protective custody segregation directions'.

Procedures for implementation of safety and security, health and protective custody segregation directions

6.51 After making a safety and security, health or protective custody segregation direction, the Manager must decide the arrangements for the young detainee's segregation.

- 6.52 In deciding the arrangements for the young detainee's segregation, the Manager must ensure the arrangements for the young detainee's segregation are the least restrictive necessary to uphold the segregation direction.
- 6.53 As soon as practicable after making a segregation direction, a youth detention officer must explain to the young detainee the reasons for the direction and request the young detainee's co-operation with arrangements for the segregation direction.
- 6.54 As soon as practicable after making a segregation direction, the Manager must also give the young detainee written notice of the segregation direction or arrange for this notice to be given to the young detainee by a youth detention officer (refer to 'Giving notice of segregation directions'). The Manager must ensure the notice is also given to the people listed at 6.79 of this policy.
- 6.55 If a young detainee fails to comply with the segregation direction, a youth detention officer may use force to enforce the direction. If force is used, a youth detention officer must comply with the Use of Force Policy and Procedures. A youth detention officer must record in the register of segregation directions details of any force used to compel compliance with the direction and the reasons for force being used.
- 6.56 During the period the segregation direction is in force, the Manager must give directions for the frequency of observations for the young detainee and ensure the young detainee is regularly monitored.
- 6.57 A segregation direction must not affect a young detainee's minimum living conditions outlined in the Minimum Living Conditions Policy and Procedures, however, the standards may be applied in a way that ensures the segregation direction is upheld. Refer to the Minimum Living Conditions Policy and Procedures which outlines the application of the standards during a segregation direction.

Duration of safety and security, health and protective custody segregation directions

- 6.58 All segregation directions must be revoked by the Manager as soon as a belief is formed that the segregation is no longer reasonable and necessary for the purpose for which it was implemented.
- 6.59 A safety and security segregation direction, health segregation direction and protective custody segregation direction continue in force for 28 days after it is made, unless it is revoked earlier.
- 6.60 Following an internal review of a segregation direction and a subsequent segregation direction being made, the direction continues for 90 days after the further direction, or latest direction, is given, unless earlier revoked.

Review of safety and security, health and protective custody segregation directions

Internal review of segregation directions

- 6.61 This section outlines when internal reviews of safety and security, health and protective custody segregation directions may and must be reviewed.
- 6.62 The Senior Manager or Director may review a segregation direction at any time on the Senior Manager or Director's own initiative.
- 6.63 The Senior Manager may review a segregation direction at any time on verbal or written request by the young detainee, or written request by a person who has been given notice of the segregation direction under 6.79 who is acting on the young detainee's behalf. If a young detainee or a person on their behalf, requests a review of a segregation direction, and the Senior Manager refuses to review the segregation direction, the Senior Manager must record their reasons for refusing to review the direction in the register of segregation directions and give notice to the person seeking the review.
- 6.64 The Senior Manager must review a segregation direction in any of the following circumstances:
- (a) prior to any transfer of the young detainee, including a transfer to a correctional centre;
 - (b) within 7 days after it has been in force (the initial review);
 - (c) within 7 days after the day of the initial review; and
 - (d) within each subsequent period of 14 days while it remains in force.
- 6.65 The Senior Manager must review a health segregation direction on request by a treating doctor.
- 6.66 In reviewing a segregation direction, the Senior Manager or Director must assess any ongoing risks to the subject young detainee or other young detainees and consider whether a segregation direction is the most appropriate way to address those risks.
- 6.67 After reviewing the original segregation direction, the Senior Manager or Director must make one of the following decisions:
- (a) To confirm the direction; or
 - (b) To make a further segregation direction if the grounds for making the direction exist; or
 - (c) To revoke the original segregation direction if the Senior Manager believes on reasonable grounds that the segregation is no longer reasonable and necessary for the purpose for which it was implemented.
- 6.68 In making a decision under 6.67 in relation to a health segregation direction, the Senior Manager must have regard to any advice by a treating doctor given in relation to the segregation.

6.69 A decision made under 6.67 must be recorded in the register of segregation directions and notice given to the young detainee and any person who sought a review of the segregation direction.

External review of segregation directions

6.70 This section outlines when segregation directions related to safety and security, health and protective custody segregation directions may be externally reviewed. An external review is undertaken by a magistrate who is appointed by the Minister for this purpose.

6.71 A young detainee may apply to an external reviewer for a review of a segregation direction.

6.72 The segregation of the young detainee under the direction continues during the hearing and deciding of an application for external review, unless otherwise decided by the external reviewer.

6.73 After receiving an application from a young detainee, an external reviewer may:

- (a) review the segregation direction; or
- (b) refuse to review the direction.

6.74 In reviewing a segregation direction, the external reviewer must comply with the procedures outlined in chapter 9 (Criminal matters—conduct of disciplinary reviews) of the *Children and Young People Act 2008*.

6.75 Following completion of a review, the external reviewer may:

- (a) confirm the direction under review; or
- (b) give any direction the Manager may give under the section authorising the direction under review, either by:
 - (i) amending the direction under review; or
 - (ii) setting aside the direction under review and making a direction in substitution for the direction set aside.

6.76 The external reviewer must give prompt written notice of a decision to review or refuse to review a segregation direction, including reasons for the refusal to review the direction. The notice must be given to the young detainee; the Senior Manager; if the young detainee is under 18 years old – a parent or someone who has daily care responsibility, or long term care responsibility, for the young detainee or for an adult young detainee - the young detainee's nominated person.

6.77 After receiving written notice from the external reviewer under 6.76, the Senior Manager must record the external reviewer's decision in the register of segregation directions.

Reporting and recording all segregation directions

Giving notice of segregation directions

6.78 Following a segregation direction being made, the Manager must prepare a notice or arrange for a notice to be prepared with the following information:

- (a) stating the direction; and
- (b) explaining why the direction was given; and
- (c) stating when the direction takes effect; and
- (d) stating how long the direction lasts; and
- (e) explaining that the direction may be reviewed or revoked under section 211 of the *Children and Young People Act 2008* and this policy and procedures (for a safe room segregation direction) or under subdivision 6.6.3.4 of the *Children and Young People Act 2008* and this policy and procedures (for a safety and security, protective custody or health segregation direction).

6.79 The Manager must ensure the notice is given as soon as practicable, and in any case, not later than 24 hours after making the segregation direction, to:

- (a) the Director;
- (b) the young detainee;
- (c) if the young detainee is under 18 years old - a parent or someone who has daily care responsibility, or long term care responsibility, for the young detainee, including the Director, Care and Protection if the Chief Executive has an aspect of parental responsibility;
- (d) for an adult young detainee - the young detainee's nominated person; and
- (e) the Public Advocate.

Register of segregation directions

6.80 The Senior Manager, Operations Manager and Unit Managers must ensure that a register is kept that includes details of all segregation directions made.

6.81 The register must include the following information:

- (a) the name of the young detainee who is subject to the direction;
- (b) the reason for the direction;
- (c) the period for which the direction is in effect;
- (d) details of people notified of the segregation direction under 6.59;
- (e) details of any force used to compel compliance with the direction, and why force was used; and
- (f) details of any confirmation of a segregation direction, or of any other direction, made under 6.67 and 6.76.

Inspection of Register of Segregation directions

6.82 The register of segregation directions must be available for inspection by any of the following:

- (a) a Judge;
- (b) a Magistrate;
- (c) an Official Visitor;

- (d) a Commissioner exercising functions under the *Human Rights Commission Act 2005*;
- (e) the Public Advocate; and
- (f) the Ombudsman.

Segregation of young detainees transferred from interstate

6.83 Section 215 of the *Children and Young People Act 2008* enables an interstate segregation direction for a young detainee to continue in force when the young detainee is transferred to a detention place as if the direction had been made at a detention place.

6.84 After the transfer of a young detainee subject to an interstate segregation authority to a detention place, the Senior Manager must consider the reasons for the making of the segregation direction in the originating jurisdiction and decide whether a segregation direction should be made for the young detainee at a detention place.

6.85 The interstate segregation direction ends 3 days after the day the young detainee is taken into custody at a detention place unless another segregation direction has been made under this policy before the end of the 3 days.

Provision of Information, Review of Decisions and Complaints

6.86 Youth Detention Officers must ensure young detainees, persons with parental responsibility, family members 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. A young detainee must be informed that they have the right to request a protective custody segregation direction is made for them and have the right to request a review of any segregation direction made for them.

6.87 A young detainee, persons with parental responsibility, family members and visitors are able to request a review of a decision or make a complaint about something that happens at or in relation to a detention place, to Youth Detention Officers, the Public Advocate or the Official Visitor.

6.88 Youth Detention Officers must ensure that the Provision of Information, Review of Decisions and Complaints Policy and Procedures are followed in relation to the above.

6.89 Youth Detention Officers 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. Youth Detention Officers must assist fully in any complaint or review.

7. Forms and Templates

Register of segregation directions

Notice of segregation direction
Application by young detainee for external review

8. Related Policies and Procedures

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

Minimum Living Conditions Policy and Procedures
Transfers Policy and Procedures
Behaviour Management Policy and Procedures
Discipline Policy and Procedures
Provision of Information, Review of Decisions and Complaints Policy and Procedures
Records and Reporting Policy and Procedures
Use of Force Policy and Procedures
Interstate Transfer Policy and Procedures

DHCS policies and procedures

DHCS Restrictive Practices Framework: Guidelines for the Development of Restrictive Practices

9. Further References

Dictionary for Policies and Procedures