

Australian Capital Territory

Children and Young People (Death in Custody) Policy and Procedures 2008 (No 1)

Notifiable instrument NI2008–400

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 (Death in Custody) 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 Death in Custody Policy and Procedure to facilitate the effective and efficient management of detention services for young detainees.

Martin Hehir
Chief Executive

8 September 2008

Death in Custody Policy and Procedures

1. Introduction and Purpose

The purpose of the death in custody policy is to outline policy and procedures which must be complied with by staff following the death of a young detainee in custody as a result of any cause or suspected cause.

For the purpose of this policy, a death in custody means the death of a young detainee under detention at a detention place, at a health facility, under escort, or on approved leave, whether within or outside the ACT. This policy and procedure applies to the death of a young detainee in any of these circumstances.

A death in custody is a matter for the jurisdiction of the ACT Coroner, pursuant to the *Coroners Act 1997*, which is an Act that provides for the holding of inquests into deaths and also contains specific provisions relating to a death in custody.

ACT Policing have a protocol by which they are responsible for notifying the Coroners Office in the event of a death in custody. Police are directed by the Coroner to investigate the death of a person in custody. Youth detention officers are defined as custodial officers for the *Coroners Act 1997*. Section 78 of the *Coroners Act* requires a custodial officer to report their knowledge of a death in custody to a coroner as soon as practicable if they have reasonable grounds to believe the death has not been reported.

Section 70 of the *Coroners Act 1997* provides for the family or a representative to request authorisation from the Coroner to view the body of the deceased person, inspect the scene where the death occurred or be present at a post mortem examination. When authorised by the Coroner, staff of the detention place must assist and support such an inspection.

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 The *Coroners Act 1997* requires a coroner to hold an inquest into the manner and cause of death of a person who dies in custody. A coroner also has jurisdiction to hold an inquest into the manner and cause of death of a person outside the ACT if the person usually resides in the ACT and dies in custody. This includes the death of a young detainee under escort outside the ACT, on leave outside the ACT under an interstate leave permit or subject to a transfer direction to a place outside the ACT, for example, an interstate health facility.

- 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 this policy and procedure are:

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

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

3. Authorisations and Delegations

- 3.1 Staff are responsible for applying the Health and Wellbeing Policy and Procedures in circumstances where a young detainee suffers an injury or illness that is life threatening.
- 3.2 Staff are responsible for applying the Death in Custody Policy and Procedures in circumstances where a young detainee is reported deceased.

4. Definitions

Custodial officer is defined in section 3D of the *Coroners Act* and includes the Chief Executive responsible for the *Children and Young People Act 2008* or an authorised person under the Act.

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

5. Principles

- 5.1 The principles informing this policy and procedure are:

- Staff of a detention place have a legal duty to implement all reasonable measures to protect and preserve the life of a young detainee;
- Staff of a detention place have responsibilities following the death of a young detainee to ensure all necessary notifications and reports are made in accordance with this policy and procedure;
- A Coroner and Police acting under the direction of a Coroner have jurisdiction to investigate the circumstances of the young detainee's death and staff have a role in facilitating this; and
- The family of the young detainee are entitled to timely, full and open reporting regarding the circumstances of the young detainee's death in a sensitive manner and with appropriate respect for their cultural and religious beliefs.

6. Policy and Procedures

Application of Health and Wellbeing policy

- 6.1 In responding to a young detainee who is seriously injured or suspected to be deceased, staff must make every effort to preserve and maintain life in accordance with the Health and Wellbeing policy, which outlines responses to young detainee injuries and the management of other young detainees and the detention place during and after an incident.
- 6.2 Staff must be mindful that the only person who can make the declaration that a person is deceased is a doctor.

Following the Death of a Young Detainee

Responsibility of first responding staff member

- 6.3 If a staff member is notified a young detainee has died, the staff member must immediately inform the Senior Manager and, if necessary, the Control Room.
- 6.4 If the Senior Manager is unavailable, the staff member must notify the Manager.

Responsibilities of the Control Room

- 6.5 The Control Room must provide the details of the person or people with parental responsibility for the deceased young detainee and give these details to the Senior Manager/Manager.
- 6.6 The Control Room must notify the Unit Manager.
- 6.7 The Control Room must notify ACT Policing.

Responsibilities of the Unit Manager

- 6.8 The movement of staff to and from the location of the incident is to be strictly limited to those directly involved in responding to the situation.

No staff are permitted entry to the area other than for the following purposes:

- (a) first aid or evacuation of other persons,
 - (b) security management, or
 - (c) as approved by the Unit Manager.
- 6.9 Subject to section 6.8 above, no person shall have access to the area other than the Coroner, Police, a Police approved medical practitioner or persons approved by the Coroner and/or Police until the investigations are complete.

Responsibilities of the Senior Manager

- 6.10 The Senior Manager/Manager must immediately notify the Director.
- 6.11 The Senior Manager must arrange for Police to notify the young detainee's parent or a person with parental responsibility or for an adult young detainee, the young detainee's nominated person. The person to be notified will be determined by the young detainee's client file, and this information must be provided to Police.
- 6.12 The Senior Manager must, if appropriate and authorised by the Police and/or the Coroner, extend an invitation to the parent or person with parental responsibility or nominated person for an adult young detainee to view the body of the deceased young detainee and inspect the scene of the death.
- 6.13 If the young detainee is Aboriginal and/or Torres Strait Islander, the Senior Manager, after consultation with the Police, will make arrangements to meet with the young detainee's family to obtain their input into what culturally appropriate arrangements should be made. The Senior Manager will contact the Case Management Unit regarding known supports for the family to assist in delivering the information.
- 6.14 At all times information provided should be given in a sensitive manner, respecting the culture and interests of the persons receiving the information and the entitlement of such persons to full and open reporting around the circumstances of the death.
- 6.15 If the Chief Executive has parental responsibility for the young detainee, the Senior Manager must notify the Director, Care and Protection.
- 6.16 As soon as possible after the incident, the Senior Manager must ensure all relevant documentation and official records at a detention place are moved to a secure location. No additions or removals are to be made to these records and no staff are to access the files unless authorised by the Senior Manager.
- 6.17 The Senior Manager shall ensure that ACT Policing or ACT Ambulance Service complete the Body Receipt Register when they assume custody of a deceased young detainee.

- 6.18 The Senior Manager will arrange debriefing for staff. The Senior Manager must ensure access to support and counselling for young detainees, visitors and staff.
- 6.19 The Senior Manager must ensure appropriate assistance to the family of a deceased young detainee is provided if the family request it.
- 6.20 The Senior Manager must ensure all information or evidence relating to a Police or Coronial investigation is made available to investigating Police or the Coroner upon request. Wherever possible, copies of documentation must be retained by the Senior Manager, or as instructed by the Director.
- 6.21 The Senior Manager will ensure that arrangements are made for release of the young detainee's property to the young detainee's next of kin in accordance with the Property Policy and Procedures.

Media

- 6.22 Staff must refer all media inquiries to the Manager, Media and Communications, Department of Disability, Housing and Community Services. Staff must not give any other information to the media.

Provision of Information, Review of Decisions and Complaints

- 6.23 Staff must ensure young detainees, their parents and all those with parental responsibility, family and visitors are provided with information about things that affect them in a timely manner and in a manner that is likely to be understood.
- 6.24 A young detainee, their parents and all those with parental responsibility, family and visitors are able to request a review of a decision or make a complaint about something that happens at the detention place, to staff at the detention place, the Public Advocate or the Official Visitor.
- 6.25 Staff must ensure that the Provision of Information, Review of Decisions and Complaints Policy and Procedures are followed in relation to the above.
- 6.26 Staff must engage with the person seeking a review of a decision or making a complaint in a respectful manner and ensure sufficient information is provided on the process of review or investigation. Staff must assist fully in any complaint or review process.

Records and Reporting

- 6.27 In the event of the death of a young detainee, the Records and Reporting Policy and Procedures must be applied.

- 6.28 Staff responding to, or encountering an injured young detainee who is then subsequently declared deceased, must complete an Incident Report before leaving the detention place.
- 6.29 The most senior staff member on duty is to commence completion of the Death in Custody Report. All entries in the Report are to be initialled by the person making the entry. Completion of the full report is the responsibility of the Senior Manager.
- 6.30 A copy of this Report and a Brief must be prepared by the Senior Manager and provided to the Director.

7. Forms and Templates

Incident Report

8. Related Policies and Procedures

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

Health and Wellbeing Policy and Procedures

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

Records and Reporting Policy and Procedures

Property Policy and Procedures

9. Further References

Dictionary for Policies and Procedures

Royal Commission into Aboriginal Deaths in Custody, available at <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/rciadic/>