

# Corrections Management (Women and Children Program) Policy 2015\*

**Notifiable instrument NI2015-48**

made under the

***Corrections Management Act 2007*, section 14(1) (Corrections policies and operating procedures)**

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## **1 Name of instrument**

This instrument is the *Corrections Management (Women and Children Program) Policy 2015*.

## **2 Commencement**

This instrument commences on the day after it is notified.

## **3 Policy**

I make the

WOMEN AND CHILDREN PROGRAM POLICY

attached to this instrument, to facilitate the effective and efficient management of correctional services.

## **4 Revocation**

This instrument revokes notifiable instrument NI2010-449.

[SIGNED]

Bernadette Mitcherson  
Executive Director  
ACT Corrective Services  
30 January 2015

\*Name amended under Legislation Act, s 60

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)



Alexander Maconochie Centre (AMC)  
**WOMEN AND CHILDREN PROGRAM**  
(Care in Custody)  
**POLICY**



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## **Purpose**

To provide an opportunity for women coming into custody who are carers for young child (including a baby) to continue to care for the child during the custody event. Allowing continuity of care enables the forming of attachment between mother and child during the critical first three years of life. Evidence demonstrates a range of untoward long term outcomes for the child when inadequate attachment occurs.

Serving the best interests of the child is the dominant consideration for this policy. However, it is recognised some women will be unable to adequately care for a child or may present an unacceptable safety and/or security risk for the caring in custody program.

## **Authority**

### **Legislation**

*Corrections Management Act 2007*, Sections 12(1)(g),46,47,48,49 and Part 9.8

*Family Law Act 1975*

*Children and Young People Act 2008*

*Human Rights Act 2004*

*Privacy Act 1988*

## Scope of change

This is a major review of the previous policy.

## Policy

### Definitions

#### ***Best interests of the child***

Defined at Section 349 of the *Children and Young People Act 2008*. In practical terms the following elements are taken into account in determining the best interests of the child:

- The physical and emotional safety of the child (including the management of any special health or developmental issues)
- Maintaining a pre-existing attachment to a primary carer in the first three years of life and the effect on attachment of changing the primary care giver
- Capability of the carer and care risks that might present
- The developmental effects on the child living in the custody environment. The age of the child and the likely length of stay are key determinates
- Maintaining contact between the child and significant others
- Cultural connection and development issues (particularly for Aboriginal and/or Torres Strait Islander children)

#### ***Child***

For the purposes of this policy; from birth, up to and including the fourth year of life. The first three years are critical for attachment and an additional year has been added to provide policy flexibility to make determinations that are in the best interests of the child.

#### ***Primary carer***

The natural mother or other female who has been the sole or main carer for the child for a substantial period immediately prior to the custody event.

#### ***Community carer***

A suitable person, who is acceptable to the mother, to: provide care for the child in the event of a need to suspend or terminate the care in custody arrangements; and take the child to and from any approved external appointments.

#### ***Co-resident carer***

A female detainee residing in the designated cottage approved by the mother and ACT Corrective Services (ACTCS) who volunteers to provide short period respite child care and assistance on a needs basis.

#### ***Co-resident detainees***

Female detainees volunteering to reside in the cottage hosting the care in custody program. These women are screened for suitability for child contact by ACTCS and are acceptable to the mother to have contact with her child.

***Risk assessment***

The systematic collection and evaluation of information and informed opinions supporting the making of decisions relating to the applicant's parenting capability; the care needs and well being of the child; child safety and the security and good order of the AMC. Information will include the applicant's current offence(s); prior criminal history; social circumstances; drug and alcohol use; her health and that of the child and custodial behaviour history.

A 'Working with Vulnerable People's' check will form part of the application risk assessment process and will also be undertaken in respect of the proposed community carer.

**Rationale**

Literature indicates a strong relationship between the extent and quality of attachment that forms between the mother and child in the earliest years of life and longer term outcomes for the child. Where attachment is disrupted, either through lack of continuity of care or inadequate parenting, there are likely to be adverse consequences for the child. There is evidence of heightened rates of mental illness; behavioural issues and poor educational attainment when attachment is disrupted.

Facilitating quality mother and child attachment in the first three years of life is an important strategy in addressing inter-generational disadvantage. It is also noted the attachment does not necessarily have to be with the birth mother as the quality and continuity of care are the critical factors.

A significant proportion of women coming into custody in the ACT are mothers and some are (or shortly will be) mothers of very young children. The program is intended to give an opportunity for women in that situation to apply to care for their child while in-custody.

Applications will be determined after consideration of a range of factors, including an assessment of care capability and risks; custody risks posed by the mother; the ability of the centre to meet the needs of the developing child; the availability of a suitable nominated alternative Community Carer and a detainee Co-resident Carer who is acceptable to the applicant and to ACTCS.

It is not proposed to make the program available to male applicants as it is not feasible at the AMC to provide an appropriately safe and secure environment. There are currently no examples nationally of males participating as primary carers for a child whilst in custody but it is recognised that from time to time such an arrangement might be in the best interests of a child.

**Principles**

Continuity of care in the early stages of life is important for a child in forming attachment and inadequate attachment produces adverse consequences.

The best interest of the child is the primary consideration in applying this policy.

Some women coming into custody will not be able to adequately care for a child or they may pose an unacceptable risk. A risk assessment is undertaken with a focus upon the safety of the child and maternal capability. The risk assessment process is ongoing during care in custody and, under some circumstances, will necessitate termination of the arrangement.

Care in custody requires the continuing availability of an approved alternative Community carer within the community. This is necessary to enable the child to attend any required external appointments and to take over care in the event it becomes necessary to suspend or terminate the care in custody arrangement.

Female detainees willing to be co-resident in the child care in custody unit are critical to the success of care in custody through preventing isolation of the mother and by providing ongoing support.

A selected co-resident detainee, acceptable to the mother and screened for child safety risks, must be available to provide short term respite and support for care in-custody arrangements. Any other co-resident detainees are also screened for suitability for child contact.

The initial application to participate and a subsequent care in custody plan will take into account the likely length of sentence and the age of the child to ensure goals are practical and achievable. It may not be feasible to plan for the child to be with the mother for the whole of her sentence.

Operational imperatives may necessitate termination of care in custody even without there being any fault or shortcoming on the part of the mother. Every reasonable effort will be made to prevent the need for terminating a care in custody arrangement if this is in the best interests of the child.

## **Scope**

The care in custody program is potentially available to mothers and female primary carers for babies and pre-school children who are up to and including four years of age. It is not available to males who are fathers or primary care givers.

Program entry and ongoing participation is subject to assessment criteria related to the capacity of the participant to safely and adequately care for the child; the availability of a suitable community carer should there be a need to terminate the care in custody arrangement; the availability of a suitable co-resident carer in custody; availability of one or more additional female detainees suitable and willing to co-reside in the designated unit and the assessed level of risk to the child and the good order and security of the AMC.

An additional factor is the ongoing capacity of the AMC to host the care in custody participant and for the needs of the child to be met whilst living in the custody environment.

ACTCS will endeavour to support care in custody being feasible in situations where there are difficulties in relation to an available community carer or suitable available female detainees to live in the unit and provide support. ACTCS will work with Care and Protection authorities and community agencies with a view to establishing satisfactory alternative arrangements.

## **Application process and assessment**

### **Advisory Committee**

An advisory committee, chaired by the General Manager, Custodial Operations, comprising ACTCS staff, representatives from other ACT government agencies and a non-government agency considers applications to participate in the Women and Children Program and recommends to the Executive Director, ACTCS whether the application should be approved.

The Care and Protection authority is represented on the Advisory Committee and it is recognised that agency has statutory responsibilities and powers relevant to caring in custody determinations.

An appropriate care plan addressing the needs of both the child and the mother will be developed with input from the committee in the event the application is being recommended for approval.

The Advisory Committee is comprised as follows:

- General Manager, Custodial Operations (Committee Chair)
- Senior Manager, Offender Services and Programs
- Custodial Area Manager
- Program Co-ordinator (acts as committee secretary)
- Indigenous Case Manager (when an applicant is Aboriginal or Torres Strait Islander)
- Justice Health Medical Director
- Office for Children, Youth and Family Support representative
- A non-government agency representative (from an agency with experience and expertise relevant to prisoner's children)

The committee may co-opt additional expert knowledge and opinion on a needs basis with the approval of the General Manager, Custodial Operations.

It is accepted some care in custody applications may pose difficult competing considerations that could lead to an application to care in custody being refused. In such circumstances it may be appropriate to co-opt additional committee input from the Public Advocate for Children and Young People.

## **Application**

Applicants to participate in the program must agree to sign any necessary waivers of confidentiality for accessing normally private records in order for essential information to be gathered and viewed by members of the Advisory Committee and the Executive Director, ACTCS as part of the application and approval process.

The records may include those held by other government agencies with involvement with the mother and/or the child. Medical information may only be viewed by Justice Health officials and relevant information passed on purely on a need to know basis.

The Program Co-ordinator undertakes the following tasks:

- Receive applications to participate in the program and assisting applicants through the process
- Co-ordinate and support the functioning of the Advisory Committee
- Liaise with external agencies and organisations involved with the program and co-ordinating their work with AMC staff
- Arrange for required assessments and reports used to determine the applicant's suitability and capability for participating in the program and the risk elements involved in participation
- Collate, verify and assess background information and social circumstances relevant to the application
- Monitor and provide ongoing support for participants in the program
- Collect and collate relevant data in relation to individual participants and the program generally.

In order for an application to be considered by the Advisory Committee the Program Co-ordinator will provide, inter alia, the following information:

- The circumstances and routine of the child
- History of contact between the mother (and child) and Care and Protection authorities
- Family and social history
- Records of the mother's alcohol and/or drug use
- Any known physical or mental health issues that are relevant to considering the application
- Antecedents (details of current offence and previous criminal history)
- Conduct in current and previous periods of imprisonment.

Non-medical staff will not routinely have access to medical information, in respect of either the mother or her child, but will be guided by Justice Health advice as to whether or not there are any medical conditions of relevance or concern.

Justice Health will also advise in relation to any need for further medical investigations necessary for determining the application. As a condition for participating in the program applicants must give approval for Justice Health to access

medical records relating to the applicant and/her child and to provide relevant information to members of the Advisory Committee on a need to know basis only.

Application for care in custody may be made by a detainee in custody prior to finalisation of a court matter in order to avoid or minimise unnecessary separation of mother and child.

For practical reasons applications to care in custody may not be able to be determined while a woman is in the community prior to possible commencement of a custody event, although the application process may commence prior to the custody event.

### **Program Eligibility**

The care in custody program is potentially available to any woman in custody who is the mother or primary carer for a pre-school child who is four years of age or younger. The following criteria will be assessed in determining suitability for the program:

- The child does not attend school and is less than five years of age
- The applicant is the natural mother of the child or is a female who has been the primary carer for the child either since birth or for a substantial period of time
- The applicant has lawful custody of the child and is not the subject of an order of a court restricting her contact with the child
- The applicant is not the subject of an adverse finding by Care and Protection Authorities that is currently relevant
- There are no indications the applicant's health, including mental health, will not allow her to adequately and safely care for her child whilst in custody
- The applicant does not have alcohol or substance abuse issues that are not being adequately managed in the custody environment
- The applicant's criminal history does not give rise to child safety or security concerns. Of specific concern are sexual offending, violence and indications of impulsive or anger driven high risk behaviour
- The child has been fully immunised according to age and the immunisation program continues to be up to date whilst participating in this program
- The child does not have health issues that cannot be appropriately and adequately managed whilst being cared for in custody
- There is an available suitable alternative carer in the community to take the child to and from the centre for approved external appointments and to take over full time care in the event of there being a need to suspend or terminate care in custody
- The likely duration of care in custody and the age of the child are not such as to unduly restrict the adequacy of a care plan that can be delivered with the context of the AMC environment.

The Program Co-ordinator, in consultation with the Chair of the Advisory Committee, ensures the application and associated information is sufficient to enable the Advisory Committee to make an informed recommendation in relation to care in custody.



In considering the application, Advisory Committee members should have regard to any matter or issue they consider to be relevant but with particular focus upon the following:

- Any custody prohibitions or restrictions and any child safety alerts relevant to the application
- The likely capacity of the applicant to continuously provide adequate care for her child whilst in custody
- The age of the child in relation to the likely length of stay in the AMC custody environment
- ACTCS capacity to meet any special developmental or health needs the child may present
- The availability of a willing and suitable alternative carer in the community (for the likely duration of the custody event)
- The availability of a suitable and acceptable co-resident carer and other co-resident detainees (and the likelihood of this being sustained for the duration of the custody event)
- The ability of ACTCS to discharge the duty of care to the child and the mother during the custody event
- Risks to the security and good order of the centre that might be posed by the applicant caring for her child whilst she is in custody. Of possible concern might be protective custody needs of the applicant posing safety issues for the child or reasonably held concerns the applicant may seek to use her situation in the program in prejudicial activities

Applications for care in custody will be determined by the Executive Director, ACTCS with recommendations being provided by the Advisory Committee and the General Manager, Custodial Operations.

## **Participation**

### ***Breast feeding***

Nursing mothers participating in the program will be given every encouragement and support to continue to feed their baby. Should unavoidable circumstances necessitate either the mother or the child being absent from the centre for a brief period, every reasonable effort will be made to facilitate continuation of breast feeding.

### ***Parenting programs and case plan***

Program participants are to be managed in accordance with an individual case plan addressing care in custody, re-offending risk and reintegration related issues.

Case plans should also address parenting responsibilities and in this respect consideration should be given to the level of parenting experience and knowledge the detainee has and her likely parenting capability. Appropriate external input should be sought for the development of this element of the case plan which might include health and safety; parenting skills; child development; nutrition, and hygiene.

### ***Transporting children***

ACTCS staff will not undertake transporting of children from or to the AMC for appointments or activities. Transporting the baby or child will require assistance of the community carer and if private transport is used it must be suitably equipped in terms of child seating and restraint.

If the child requires health related emergency transportation from the centre this will be at the determination of and arranged by Justice Health.

### ***Community carer***

As a pre-condition of participating in the care in custody program the detainee must nominate a willing responsible person in the community to be the alternative carer. This will require ongoing involvement with the mother and child whilst they are living in the custody environment, including taking the child to and from any approved external engagements, but also the possibility of taking over the primary care role should it become necessary to suspend or terminate care in custody.

The community carer nominated must not be precluded from contact with the child by any order of a court and may not be the subject of a child protection concern that is currently relevant. The community carer will be required to self disclose to ACTCS anything that arises during the currency of care in custody that could affect either capability or suitability to continue contact with the child or to be an alternative carer. ACTCS will, as far as is practical, monitor the continuing capability and suitability of the nominated alternative carer.

In the event a woman is unable to nominate a suitable willing person for the alternative community carer role, ACTCS, in conjunction with Care and Protection authorities, will endeavour to make arrangements to allow an otherwise suitable application to proceed. It is envisaged ACTCS would engage with a non-government agency to identify a suitable volunteer alternative carer and support that person in the role.

### ***Nominated co-resident carer and co-resident detainees***

Women in custody at the same time as a program participant may be placed in the designated care in custody accommodation providing they are willing to be so placed and have been screened in terms of child safety and custodial management risks. This arrangement is intended to avoid the program participant being isolated and to provide a more normal parenting environment. Regard is to be had for any wishes or concerns expressed by the program participant when determining suitability of other detainees to co-reside.

At least one other female detainee is to be nominated as a co-resident carer to provide assistance and brief respite for the mother. The chosen detainee must be a volunteer, acceptable to the mother, be approved by ACTCS and not be the subject of a currently relevant child protection concern.

Women selected to reside in the same unit as a program participant, and in particular for the role of co-resident carer, must not present an unacceptable risk to the safety and well being of the child or to the security and good order of the AMC.

In addition to having no criminal or custodial history giving rise to child safety concerns the detainee should not have an inadequately managed in-custody addiction issue.

The program participant and co-resident detainees must agree in writing to fully comply with ACTCS smoking prohibitions within the residential unit and to refrain from smoking when in the vicinity of the child. Agreeing to and abiding by these conditions is a requirement for both program participation and residing in the care in custody unit.

Due to the small number and transient nature of the female detainee population there may be difficulty on occasions in filling the detainee co-resident carer role. In such circumstances ACTCS is prepared, when necessary, to engage the required support from a suitable community agency, if available, rather than refuse or terminate a care in custody arrangement.

Working with Vulnerable People checks are to be conducted in respect of co-resident detainees and any community volunteers proposed to have contact with the mother and child.

#### ***Centre lockdown provisions***

In the event the AMC is in lockdown and there is a child resident in the facility, there should be no restriction to movement within the cottage and the attached external area during the lockdown unless it is absolutely necessary for reasons of safety and/or security

To the extent feasible, continuity of access to the AMC will be maintained for approved visiting representatives of government and non-government agencies during the lockdown but in any case access for medical staff and an ambulance attending a medical emergency.

#### ***Program supervision and oversight***

Supervision of program participants and co-residents in the designated cottage is provided on an ongoing basis by staff rostered to that area and they are to be briefed relating to the Women and Children in Custody Program and be aware of child safety reporting obligations. Oversight is to be maintained by the Operations Manager with ongoing support from the Program Co-ordinator.

In the event the mother and/or child are Aboriginal and/or Torres Strait Islander, the Indigenous Case Manager is required to provide additional support.

### **Suspending or terminating program participation**

Circumstances may arise during approved care in custody that requires termination of the arrangement and the child to be cared for in the community. This may relate to evolving needs of the child; security, safety or good order concerns or operational constraints.

The decision to terminate care in custody will be taken by the General Manager, Custodial Operations, in consultation with the Executive Director, ACT Corrective Services.

Should it become necessary to suspend or terminate care in custody, staff will work closely with the mother and the community carer to make the best possible arrangements for the ongoing care of the child. A post custody care plan for the child will be developed with their input as well as input from any government and non-government agencies with an ongoing role in relation to the mother and/or the child.

In recognition there may be distress for the mother and others involved with the child, counselling should be made available.

### **Relocation interstate to enable care in custody**

Care in custody at the AMC for a child beyond the age of four is likely to be not in his or her best interests due to the developmental limitations imposed by the environment. Rather than not participate or ending care in custody due to the balance of time the woman is likely to be in custody, she may prefer to voluntarily apply to continue care in custody at the New South Wales Jacaranda Cottages program at Emu Plains on the outskirts of Sydney.

Jacaranda Cottages provides an environment conducive to meeting the care and developmental needs of pre-school age children and offers a range of services required by the mother in relation to parenting responsibilities, re-offending risks and personal development needs.

ACT detainees will need to meet the NSW Corrections program entry requirements but if successful will receive support from ACT CS in terms of assisting with periodic visits from significant others to Emu Plains and facilitating weekend leave when the detainee qualifies.

### **Program records**

A record should be kept and a file created for each application received to care in custody. In addition to the application the file should include relevant assessments, recommendations and determinations.

If care in custody is approved and takes place, the file should also include the care plan and updates as well as information regarding significant events or milestones for

the child. Contact with siblings and significant others as well as developmental progress should also be included.

In the event care in custody is suspended or terminated the approval and reason should be noted.

The records kept should enable authorised access to the file at a future date and should also include information required for accessing related medical records covering issues such as illnesses, injuries sustained whilst in the custody environment and vaccinations received.

Regard needs to be had to rights enjoyed under the *Freedom of Information Act 1989* and the *Information Privacy Act 2014* in terms of file access being requested by or on behalf of the child. Files should not be disposed of other than in accordance with the provisions of the *Territory Records Act 2002*.

### **Related policies and procedures**

Women and Children Program Procedure

Reception and Management of Female Prisoners Policy