

Australian Capital Territory

## **Children and Young People (Discipline) Policy and Procedures 2018 (No.1)**

### **Notifiable instrument NI2018-433**

made under the

### ***Children and Young People Act 2008*, section 143 youth detention policy and operating procedures**

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**1 Name of instrument**

This instrument is the *Children and Young People (Discipline) Policy and Procedures 2018 (No.1)*.

**2 Commencement**

This instrument is to commence the day after notification.

**3 Repeal**

NI2015-369 is revoked.

**4 Policies and operating procedures**

Under section 143 of the *Children and Young People Act 2008*, I make the attached Discipline Policy and Procedures to facilitate the effective and efficient management of detention services for young people.

Bernadette Mitcherson  
Director-General  
Community Services Directorate  
7 August 2018

# Discipline Policy and Procedures

## 1. Introduction and Purpose

This policy and procedures is to be read and understood in conjunction with the Behaviour Management Policy and Procedures and Reporting and Investigation Policy and Procedures.

This policy and procedures intersects with the Behaviour Management Policy and Procedures as a response to a behaviour breach. Disciplinary action involves a young person being charged with a behaviour breach and this may lead to the imposition of higher behaviour management consequences.

Behaviour management action taken under this policy and procedures or the Behaviour Management Policy and Procedures must not affect a young person's minimum entitlements outlined at Table 6B of the Behaviour Management Policy and Procedures.

## 2. Legal Authority and Obligations

- 2.1 The *Children and Young People Act 2008* (the Act) is the primary source of authority for the operations of a detention place. Chapters 8 and 9 of the Act are particularly relevant to this policy and procedures. The provisions of the Act must be 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 Act and other relevant legislation, including the *Human Rights Act 2004*.
- 2.3 The *Administrative Decisions (Judicial Review) Act 1989* allows for a person who is adversely affected by an administrative decision made under a law to apply to the Supreme Court for review of the decision.
- 2.4 Human rights that are protected by the *Human Rights Act 2004* and that are relevant to this policy and procedure are:

### Section 19 Humane treatment when deprived of liberty

- (1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person must be segregated from convicted people, except in exceptional circumstances.
- (3) An accused person must be treated in a way that is appropriate for a person who has not been convicted.

### Section 20 Children in the criminal process

- (1) An accused child must be segregated from accused adults.
- (2) An accused child must be treated in a way that is appropriate for a person of the child's age who has not been convicted.
- (3) A child must be brought to trial as quickly as possible.
- (4) A convicted child must be treated in a way that is appropriate for a person of the child's age who has been convicted.

- 2.5 The following international human rights standards apply in the ACT and are relevant to this policy and procedures:
  - (a) United Nations Convention on the Rights of the Child

- (b) United Nations Standard Minimum Rules for the Administration of Juvenile Justice
- (c) United Nations Rules for the Protection of Juveniles Deprived of their Liberty Rule 66, 67, 68, 69, 70, 71
- (d) Standard Minimum Rules for the Treatment of Prisoners
- (e) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- (f) United Nations Declaration on the Rights of Indigenous People.

### 3. Authorisations and Delegations

- 3.1 The Manager is responsible for ensuring that staff receive training in this policy and procedures, including training in the implementation of proactive strategies to promote positive behaviour.
- 3.2 The delegates of the Director-General who may make decisions or take action under the Act in response to minor behaviour breaches or behaviour breaches are outlined in Column 4 of Table 3A. Column 5 addresses the requirements in the Act for different decision-makers at key decision-making points.

**Table 3A Decision-makers for reactive strategies—behaviour management or discipline response to minor behaviour breaches or behaviour breaches**

Column 1	Column 2	Column 3	Column 4	Column 5
Legislative Authority under <i>Children and Young People Act 2008</i> and term used to describe decision-maker	Reference/s in Behaviour Management Policy and Procedures or Discipline Policy and Procedures	Action	Delegates who may make decision or take action	Who the decision-maker must not be
Section 293 Youth worker	6.71 Behaviour Management Policy and Procedures	Youth worker may: a) give the young person feedback about their behaviour b) give the young person a warning c) reprimand the young person d) refer the alleged behaviour breach to the Administrator in a behaviour breach report form	Youth worker, Team Leader, Unit Manager, Operations Manager, Programs and Services Manager, Deputy Senior Manager, Director, Bimberi	Initial decision-maker can be a youth worker as described, but there are rules about later decision-makers not being the same person (see below)
Sections 291 and 295(2)(b)	6.89 Behaviour Management	To investigate an alleged behaviour breach in	Team Leader, Unit Manager, Operations	The investigator must be a

Column 1	Column 2	Column 3	Column 4	Column 5
Legislative Authority under <i>Children and Young People Act 2008</i> and term used to describe decision-maker	Reference/s in Behaviour Management Policy and Procedures or Discipline Policy and Procedures	Action	Delegates who may make decision or take action	Who the decision-maker must not be
Investigator	Policy and Procedures	accordance with the reporting and investigation procedures	Manager, Programs and Services Manager, Deputy Senior Manager, Director, Bimberi	different person to the youth worker who refers the alleged behaviour breach in a behaviour breach report form (above) and a different person to the Administrator (below)
Section 295(4) Administrator	6.85–6.93 Behaviour Management Policy and Procedures	Administrator may: (a) arrange for an investigator to investigate the alleged behaviour breach (b) take no further action (c) give the young person feedback about their behaviour (d) give the young person a warning (e) reprimand the young person (f) for a minor behaviour breach—impose behaviour management consequences (g) refer the alleged behaviour breach to police (h) charge the young person in a charge notice	Unit Manager (may take any action except referring an alleged behaviour breach to police), Operations Manager, Programs and Services Manager, Deputy Senior Manager, Director, Bimberi	The Administrator must be a different person to the youth worker who refers the alleged behaviour breach in a behaviour breach report form and a different person to the investigator
Section 302 Administrator	6.10, 6.15 Discipline	Administrator may take the	As above	As above

Column 1	Column 2	Column 3	Column 4	Column 5
Legislative Authority under <i>Children and Young People Act 2008</i> and term used to describe decision-maker	Reference/s in Behaviour Management Policy and Procedures or Discipline Policy and Procedures	Action	Delegates who may make decision or take action	Who the decision-maker must not be
	policy and procedure	disciplinary action stated in the charge notice		
Section 306 Review officer	6.59 Discipline policy and procedure	Administrator must arrange for a review officer to conduct an internal review into the behaviour breach charged	Operations Manager, Programs and Services Manager, Deputy Senior Manager, Director, Bimberi, Director, Child and Youth Protection Services Operations	The review officer must be a different person to the youth worker who made the allegation report, who investigated the behaviour breach and the Administrator
Section 307 Review officer	6.22 Discipline policy and procedure	Review officer may take disciplinary action, may refer the charge to the police or DPP or must dismiss the charge	As above	As above
Section 312 External reviewer	6.64 Discipline Policy and procedures	External reviewer must review decision made by review officer or refuse to review decision	Appointed external reviewer (magistrate)	Anyone other than appointed external reviewer

#### 4. Definitions

**Aboriginal person** is defined in the dictionary of the *Children and Young People Act 2008* as a person who is a descendant of the Indigenous inhabitants of Australia, who regards himself or herself as an Aboriginal or if the person is a child, is regarded as an Aboriginal by a parent or family member, and is accepted as an Aboriginal by an Aboriginal community.

**Accredited person** is defined in section 137 of the *Children and Young People Act 2008* and means the young person's Child and Youth Protection Services worker if the Director-General has parental responsibility for the young person, a representative approved by the Manager of an entity providing a service or

program to the young person, a lawyer representing the young person, an Official Visitor, a Commissioner exercising functions under the *Human Rights Commission Act 2005*, the Public Advocate and the Ombudsman.

**Administrator** is defined at section 286 of the *Children and Young People Act 2008* and means an authorised person to whom the Director-General has delegated functions of an Administrator under Chapter 8 Criminal matters - discipline at detention places. The delegates who may act as Administrators are Unit Managers (who may take any action except referring an alleged behaviour breach to police), Operations Manager, Programs and Services Manager, Deputy Senior Manager and Director, Bimberi.

**All staff** refers to youth workers, authorised persons or other Directorate staff providing services at or visiting a detention place in a work-related capacity and staff of ACT Government agencies providing services to young people in a detention place.

**Authorised person** is a person who has been delegated a power under the *Children and Young People Act 2008* or another Territory law and is exercising a function under the criminal matters chapters of the *Children and Young People Act 2008*. The positions that have delegations as authorised persons are: Executive Director, Senior Director (A), Director, Child and Youth Protection Services Operations (B), Director, Bimberi (B), Deputy Senior Manager (C), Operations Manager (D), Programs and Services Manager (D), Unit Managers (E), Team Leaders (F), Youth Workers (G), Family Engagement Officer (F), Sports and Recreation Officer (F).

**Balance of probabilities** is a standard of proof associated with civil and administrative proceedings. This standard has a lower threshold than the criminal standard of beyond reasonable doubt. Proving a fact on the standard of the balance of probabilities means that the existence of the fact is more probable than not.

**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.

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

**Behaviour management** means any intervention or strategy implemented by staff designed or intended to influence or manage the behaviour of young people. Behaviour management interventions and strategies are divided into proactive and reactive strategies.

**Behaviour management consequence** means action/s that may be imposed in response to a minor behaviour breach. Behaviour management consequences under this policy and procedure are prescribed by section 298 of the *Children and Young People Act 2008* and 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 and Procedures are prescribed by section 318 of the *Children and Young People Act 2008* and 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 person which has the objective of addressing negative and challenging behaviours displayed by the young person at a detention place.

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

**Charge notice** is a notice given to a young person to commence disciplinary action against the young person.

**Child** means a person who is under 12 years of age (as defined under section 11 of the *Children and Young People Act 2008*).

**Child and Youth Protection Service** refers to the branch in the Community Services Directorate that is responsible for the Child Protection and Youth Justice functions of the *Children and Young People Act 2008* and related legislation.

**Detention place** means a declared detention place.

**Direction** means an instruction that may be given by a youth worker under section 146 of the *Children and Young People Act 2008* to a young person about anything related to the criminal matters chapters. A young person must comply with any direction given to the young person by the Director-General or delegate under section 184 of the *Children and Young People Act 2008*. Non-compliance by a young person with a direction is a behaviour breach and may be dealt with through the Behaviour Management Policy and Procedures or Discipline Policy and Procedures.

**Director, Child and Youth Protection Services Operations** refers to the responsible senior executive in the Community Services Directorate.

**Director, Bimberi** refers to the Director of a detention place and the responsible senior executive in the Community Services Directorate.

**Director-General** means the Director-General of the Community Services Directorate with administrative responsibility for the *Children and Young People Act 2008*, unless otherwise specified in this policy and procedure.

**Disciplinary action** means one or more of the following actions taken against a young person following a disciplinary charge: giving the young person a warning; reprimanding the young person; imposing behaviour management consequences on the young person.

**Double jeopardy** is defined in section 24 of the *Human Rights Act 2004* to protect individuals against being punished or tried twice for the same offence if they have been finally convicted or acquitted.

**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 person, decisions made by a review officer to find a behaviour breach charge proven and to take disciplinary action against the young person. The external reviewer also has functions under the segregation policy to review, upon application by the affected young person, segregation directions related to safety and security, protective custody and health.

**Incentive scheme** means the actions that are designed to recognise and reinforce socially acceptable and positive behaviours by young people 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 Director-General 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, Deputy Senior Manager or Director, Bimberi.

**Manager** refers to the Director of a detention place during normal business hours, or in the event this person is unavailable, the Deputy Senior Manager, or in the event this person is unavailable, the Operations Manager, or in the event this person is unavailable, a Unit 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* and 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 safety and security of a young person or other people at a detention place.

**Nominated person** is a person nominated by a young person aged 18-21 years at the time of admission to whom the Director-General 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.

**Parental responsibility** is defined at section 15 of the *Children and Young People Act 2008* and means all the duties, powers, responsibilities and authority parents have by law in relation to their children, including daily care and long-term care responsibility for the child or young person. Each parent of a child or young person aged under 18 years has parental responsibility for the child or young person. A person may have or share parental responsibility for a child or young person under a court order under the *Children and Young People Act*



2008 or another law or in the circumstances outlined at sections 17 and 18 of the Act.

**Privilege** is defined at section 289 of the *Children and Young People Act 2008* and means any amenity, facility or opportunity the young person may have the benefit of at a detention place, but does not include anything that is an entitlement for the young person.

**Review officer** is defined at section 303 of the *Children and Young People Act 2008* to mean an authorised person to whom the Director-General has delegated functions of a review officer for internal reviews under division 8.4.2 of the Act and the discipline policy.

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

**Segregation Direction** is a specific instruction given by the Manager for the management of a young person in a way that separates the young person from some or all other young people due to safety and security reasons (e.g. health reasons or for the young person's protection).

**Staff** refers to youth workers and other authorised persons.

**Support person** is defined at section 286 of the *Children and Young People Act 2008* and means a person can be a support person if:

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

**Withdrawal of privilege** is a behaviour management strategy that has a purpose to restore socially appropriate pro-social behaviour by withdrawing a young person's privileges when they are demonstrating inappropriate behaviour.

**Young person** is defined at section 12 of the *Children and Young People Act 2008* and means a person who is aged 12 years and older, but under 21 years, who is required to be held in the Director-General's custody. A young person who is 21 years or older cannot be detained at a detention place. Young person means the same thing as young detainee, and young person aged 18-21 years means the same things adult young detainee, in the *Children and Young People Act 2008*.

**Youth worker** is defined at section 96 of the *Children and Young People Act 2008* and means an authorised person to whom the Director-General has delegated functions of a youth worker under the criminal matters chapters. The positions that have delegation as a youth worker for the policies and procedures

are: Director, Bimberi (B), Deputy Senior Manager (C), Operations Manager (D), Programs and Services Manager (D), Unit Managers (E), Team Leaders (F), Youth Workers (G), Family Engagement Officer (F), Sports and Recreation Officer (F). Youth worker means the same as youth detention officer in the *Children and Young People Act 2008*.

## 5. Principles

### Legislative Principles

5.1 The Act sets out the principles that must be considered by all decision-makers making decisions under this policy and procedures.

#### 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 or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced
  - (b) the child or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption
  - (c) the child 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 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 principle

- (1) 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 Director-General as providing ongoing support services to the child or young person or the child 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 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 and young people 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 child or young person the opportunity to re-enter the community
  - (i) it is a high priority that intervention with children or young people must promote their rehabilitation, and must be balanced with the rights of any victim of the child or young person'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 (e.g. the *Convention on the Rights of the Child*).
- (4) A reference in subsection (1) to a 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.

#### Operational Principles

- 5.2 The following considerations inform this policy and procedures:
- (a) proactive strategies promote positive and pro-social behaviour by young people and minimise reliance on reactive strategies to respond to negative or challenging behaviour
  - (b) negative behaviour displayed by young people should be viewed in context of the behaviour being displayed and the characteristics of the

- young person, 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 person understands the behaviour identified as negative, the nature of, and reasons for, the response and what action the young person 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. Policy and Procedures

### Strategies to Responding to Negative Behaviour

- 6.1 Negative and challenging behaviour means behaviour that is undesirable, socially unacceptable and/or inappropriate. It includes non-compliant behaviour, oppositional behaviour, minor behaviour breaches, behaviour breaches and behaviour which may constitute a criminal offence.
- 6.2 Negative behaviour should be seen on a continuum from behaviour that does not cause risk or harm to a person, property or security to behaviour that causes minor, moderate or serious risk or harm to a person, property or security.

No risk or harm to a person or property or security or	Minor risk or harm to a person or property or security	Moderate risk or harm to a person or property or security	Serious risk or harm to a person or property or security
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Negative Behaviour → Minor Behaviour Breach → Behaviour Breach

- 6.3 Staff must assess negative behaviour displayed by a young person in the context of:
  - (a) the characteristics of the young person, including their age, maturity, developmental stage, rehabilitation needs, known history such as a history of abuse or neglect, and whether the young person has a disability or mental illness or disorder
  - (b) the circumstances of the behaviour being displayed by the young person, such as a negative event experienced by the young person preceding the behaviour that assists in understanding the behaviour or aggravating circumstances which escalate the behaviour on the continuum of negative behaviour
  - (c) the overall behavioural record of the young person in custody
  - (d) the rehabilitative needs and goals of the young person as identified through the young person's case plan.
- 6.4 The nature of the response to negative behaviour must:
  - (a) be prompt and timely
  - (b) be managed in the least restrictive manner possible and ensure that sanctions or consequences for negative behaviour are graduated
  - (c) be individualised to the young person taking into account the contextual factors outlined above
  - (d) be reasonable and proportionate to the circumstances and seriousness of the behaviour as identified on the continuum of causing no harm to causing serious harm to a person, property or security

- (e) assist the young person to understand why the behaviour is negative, the nature of, and reasons for, the response and what action the young person can take to modify their behaviour.

#### *Intersection with Behaviour Management Policy and Procedures*

- 6.5 The procedures outlined in the Behaviour Management Policy and Procedures must be followed prior to commencing disciplinary action against a young person.
- 6.6 Disciplinary action may only be commenced by way of a charge notice given to the young person by the Administrator.

#### *Action by Administrator*

- 6.7 After receiving a behaviour breach report form, the Administrator must consider the report and determine the most appropriate response.
- 6.8 The Administrator must inform the young person that a behaviour breach report has been made. The young person must be informed in a way he or she can understand. The Administrator must also inform the young person that they may contact a support person or persons for assistance in responding to an alleged behaviour breach (refer to Reporting and Investigation Policy and Procedures).
- 6.9 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 the Reporting and Investigation Policy and Procedures.
- 6.10 The Administrator may take no further action in relation to the report if it is considered appropriate.
- 6.11 The Administrator may take 1 or more of the following actions:
  - (a) give the young person feedback about their behaviour (refer to 'Giving feedback')
  - (b) give the young person a warning (refer to 'Giving a warning')
  - (c) reprimand the young person (refer to 'Reprimanding')
  - (d) if it is a minor behaviour breach, impose behaviour management consequences (refer to 'Imposing behaviour management consequences for minor behaviour breaches')
  - (e) refer the behaviour breach to the police for criminal investigation, subject to 6.43 (refer to 'Referring to police')
  - (f) charge the young person in a charge notice form (refer to 'Commencing disciplinary action').
- 6.12 If the Administrator is a Unit Manager and the Administrator believes the behaviour breach should be referred to the police, the Unit Manager must refer the behaviour breach report form to the Operations Manager, Deputy Manager or Director, Bimberi. The Operations Manager, Deputy Senior Manager or Director, Bimberi is responsible for deciding whether to refer the behaviour breach to the police.

#### *Commencing disciplinary action*

- 6.13 The Administrator may commence disciplinary action against the young person by way of a disciplinary charge.
- 6.14 To charge a young person, the charge notice must be given to the young person.

- 6.15 After a charge notice has been given to a young person, the young person has a right to contact a support person or persons to assist them (refer to Reporting and Investigation procedures).
- 6.16 Following a charge notice being given to a young person, the young person may:
- (a) admit to the breach as charged and accept the proposed disciplinary action by indicating this on the charge notice form and signing the part of the charge notice designated for this purpose (refer to 'Behaviour Breach Admitted by Young Person')
  - (b) apply for internal review by indicating this on the charge notice form and signing the part of the charge notice form designated for this purpose (refer to 'Internal Review')
  - (c) take no action within the required timeframe - this is if the young person does not admit to the charge and accept the proposed disciplinary action under 6.14(a) or apply for internal review under section 6.14(b) within the required timeframes.
- 6.17 If the young person takes no action under section 6.14(c), the Administrator may take disciplinary action proposed in the charge notice if the young person understands the proposed action and the action is in accordance with 'Taking Disciplinary Action and Imposing Behaviour Management Consequences for Behaviour Breaches'.
- 6.18 The Administrator must give written notice to the young person of the decision to take action under 6.15 using the 'Notice of disciplinary action to young person' form.

*Behaviour breach admitted by young person*

- 6.19 A young person may admit to the behaviour breach as charged and accept the proposed disciplinary action stated in the charge notice.
- 6.20 The young person must do this in writing by indicating this on the charge notice form and signing the part of the charge notice designated for this purpose.
- 6.21 The young person must give the charge notice indicating their election to admit to the breach as charged and accept proposed disciplinary action to a Unit Manager not later than 48 hours after the charge notice is given. If the Unit Manager is not the Administrator, the Unit Manager must give the form to the Administrator. The Administrator can extend the timeframe of 48 hours for the election to be given in a written notice to the young person.
- 6.22 If the young person admits to the breach as charged and accepts the proposed disciplinary action by returning the form, the Administrator may take disciplinary action proposed in the charge notice if the young person understands the proposed action and the action is in accordance with 'Taking Disciplinary Action and Imposing Behaviour Management Consequences for Behaviour Breaches'.
- 6.23 The Administrator must give written notice to the young person of the decision to take action using the 'Notice of disciplinary action to young person' form.

*Taking disciplinary action and imposing behaviour management consequences*

- 6.24 Disciplinary action that may be taken against a young person by the Administrator or review officer (refer to 'Internal Review') includes one or more of the following actions:

- (a) providing a formal warning
- (b) reprimanding the young person
- (c) impose behaviour management consequence/s on the young person.

#### *Providing a formal warning*

- 6.25 The purpose of the formal warning to a young person following a minor behaviour breach or behaviour breach is to reflect that a behaviour breach has occurred and to give the young person an opportunity to learn from their behaviour and change their future behaviour.
- 6.26 Formal warnings are used to notify a young person that behaviour is not acceptable and provide them with an opportunity to modify their behaviour in the future. After receiving the behaviour breach report the Unit Manager may issue a Warning/Reprimand and must do the following:
- (a) provide the young person with a copy of the completed warning/reprimand form
  - (b) place a copy of the completed warning/reprimand form on the young person's file.

#### *Issue a Reprimand*

- 6.27 The purpose of reprimanding a young person is to formally caution them about committing about the behaviour breach and to advise them that repetition of the behaviour may lead to a more serious consequence. In reprimanding a young person, the Unit Manager must:
- (a) complete a warning/reprimand form
  - (b) issue the warning/reprimand form to the young person
  - (c) provide feedback prior to or at the same time as the warning/reprimand.
- 6.28 After receiving the report the Unit Manager must:
- (a) provide the young person with a copy of the completed warning/reprimand form
  - (b) place a copy of the completed warning/reprimand form on the young person's file.

#### *Impose behaviour management consequences for Minor Behaviour breaches and Behaviour breaches*

- 6.29 The Administrator or review officer may impose one or more of the following behaviour management consequences for a behaviour breach, after considering the young person's age, developmental capacity, rehabilitation needs and known history:
- (a) a fine, not exceeding \$250
  - (b) a withdrawal of or loss privileges, for no longer than 60 days
  - (c) a requirement to make an apology to a person affected by the behaviour breach
  - (d) a requirement to perform extra chores, for not longer than 20 hours.

#### *Fine*

- 6.30 If the Administrator imposes a fine, the dollar amount of the fine must be converted to the dollar value of the incentive point e.g. at the rate of 1 point per 20 cents. The points must be deducted from the balance of the young person's points as recorded on the Incentives, Rewards and Consequences Record.

- 6.31 If a young person is charged with two or more behaviour breaches arising from one incident, the total of the behaviour management consequences imposed for the breaches must not, for any particular kind of consequence, be more than the maximum penalty that may be imposed for any one of the breaches.

#### *Withdrawal of or loss of privileges*

6.32 Items and opportunities beyond those required by legislation are considered a privilege. In imposing a withdrawal of privileges, the Administrator must specify which of the following privileges are being withdrawn:

- (a) access to the gym or pool outside program times
- (b) access to purchases
- (c) any other privilege that does not affect a young person's minimum entitlements outlined at Table 6B.

#### *Loss of privileges*

6.33 The Administrator may instruct that the young person receive loss of privileges such as partial withdrawal or the withdrawal of specific privilege or entitlement. The young person may receive loss of privileges as a consequence for a behaviour breach.

6.34 The items and programs typically removed from young people for 'Loss of privileges' constitutes but is not limited to all or part of the following:

- (a) no access to television in room
- (b) no access to incentive purchases, other than those required by legislation such as phone calls
- (c) no access to specified recreational equipment such as paints, makeup and MP3 player
- (d) no access to the computer games and gaming consoles
- (e) no access to the secure area of the gymnasium\*
- (f) no access to the swimming pool\*
- (g) no attendance at specified programs and /or group activities
- (h) no access to privileged or personal property such as pens, posters, remote control, body wash
- (i) no access to leave.

\*Access to the gymnasium, swimming pool and some programs may be partially removed, adding the stipulation that it can only be accessed when attending a planned program supervised by the Sport and Recreation Officer.

6.35 Items removed or withheld from the young person and their room are stored in the young person's duty point box. The items are to be reinstated when the Loss of Privileges period is served, pending any clearance required by the Team Leader and Unit Manager.

#### *Requirement to perform extra chores*

6.36 In imposing a requirement to perform extra chores, the administrator must arrange for the young person to perform the extra chores within their residential unit or within the Centre.

#### *Community Service Work*

6.37 Community Service Work can be issued to a young person in accordance with the Community Service Work policy. The policy which stipulates what



tasks can be allocated, and how many incentive points equates to each task.

- 6.38 A completion date for Community Service Work must be noted in the charge notice, as well as further consequences to be issued if the Community Service Work is not completed. A new completion date should be set if the failure to complete Community Service Work was outside of the young person's control, e.g. operational requirements that result in staff unavailable to supervise the young person performing Community Service Work.
- 6.39 In making a decision about the nature of behaviour management consequences to impose for a behaviour breach, the Administrator or review officer must be satisfied that the consequence/s to be imposed are reasonable and proportionate to the circumstances and gravity of the behaviour and the following considerations are balanced appropriately:
- (a) the desirability of consistent consequences for behaviour breaches of similar nature and seriousness by young people
  - (b) the desirability of young people understanding the monetary value of repair and replacement of property damaged through a behaviour breach
  - (c) the importance of restorative principles in repairing and improving relationships between the young person and a person affected by their behaviour, such as a requirement to make an apology to a person affected by the behaviour breach.

*Requirement to make an apology to person affected*

- 6.40 In imposing a requirement to make an apology to person/s affected by a minor behaviour breach, the administrator is to:
- (a) arrange for a Case Manager or Unit Manager to facilitate the making of a verbal or written apology by the young person to the affected person/s
  - (b) explain the nature of the consequence/s being imposed to the young person
  - (c) provide written notice to the young person of the consequence/s imposed
  - (d) place a copy of the notice given to the young person on the young person's file.
- 6.41 If a young person is charged with two or more behaviour breaches arising from one incident, the total of the behaviour management consequences imposed for the breaches must not, for any particular kind of consequence, be more than the maximum penalty that may be imposed for any one of the breaches.

*Limits on behaviour management consequences*

- 6.42 There are limits on the behaviour management consequences that a young person may receive for repetitive minor behaviour breaches or behaviour breaches. A behaviour management plan should be developed for young people displaying persistent negative or challenging behaviour which incorporates proactive and responsive strategies to be implemented with the young person in accordance with 6.57 Behaviour Management policy and procedure.
- 6.43 Prior to imposing behaviour management consequences for a minor behaviour breach or behaviour breach, the Administrator must review any previous behaviour management consequences imposed on the young person for minor behaviour breaches or behaviour breaches.

- 6.44 The review must consider the cumulative total of behaviour management consequences imposed previously through fines (in dollar value), withdrawal of privileges

*Referring to police*

- 6.45 A report of a behaviour breach by a young person may be referred to the police by a decision-maker at different decision-making points under the Behaviour Management and Discipline Policies and Procedures if:
- (a) the behaviour breach report reveals information about the commission of an offence
  - (b) the decision-maker considers it appropriate to refer the report to police for criminal investigation because the behaviour has caused or is causing serious harm or risk to a person or property.
- 6.46 The decision-making points when this may occur are:
- (a) in response to a behaviour breach report form by an Administrator (refer to 'Referring to police' in the Behaviour Management Policy and Procedures)
  - (b) after a review officer has completed an internal review.
- 6.47 The referral must be in writing and accompanied by the behaviour breach report form and any investigation reports completed.
- 6.48 The 'Responding to behaviour which is a behaviour breach and criminal offence' must be referred to before the decision-maker refers to police.

*Responding to behaviour which is a behaviour breach and criminal offence*

- 6.49 The list of behaviour breaches at Schedule 1 includes behaviour that may also constitute a criminal offence, such as an assault. The following rules apply to ensure that the young person does not receive administrative and criminal sanctions for the same behaviour as this would infringe the legal principle of double jeopardy.
- 6.50 A decision may be made at different decision-making points (outlined at section 6.44) to refer behaviour by a young person that is, or may be, a criminal offence to the Chief Police Officer for criminal investigation.
- 6.51 If behaviour management consequences have been imposed under the Behaviour Management Policy and Procedures or this policy and procedures, the young person cannot be prosecuted for an offence arising out of the same facts. Conversely, disciplinary action for the behaviour breach must not be taken against the young person if a court has convicted the young person or found the young person guilty of a criminal offence related to the breach.
- 6.52 Following a referral being made to the police under the Behaviour Management Policy and Procedures and this policy and procedure, the young person must not be charged with a behaviour breach.
- 6.53 If the young person has been charged with a behaviour breach, the charge must be suspended pending advice from the police regarding what action, if any, will be taken against the young person.
- 6.54 The police must advise the Director, Bimberi of the outcome of the criminal investigation as soon as practicable after it is completed.
- 6.55 If the young person is or will be prosecuted as a result of the criminal investigation, disciplinary action against the young person must be discontinued. An operational response to the young person's behaviour may be required (refer to 'Responsive strategies and operational response to young person following minor behaviour breach or behaviour breach').

### *Internal review*

- 6.56 This section applies if, after a charge notice has been given to a young person, the young person elects to apply for internal review of the charge by indicating this on the charge notice form and signing the part of the charge notice designated for this purpose.
- 6.57 After a charge notice has been given to a young person, the young person has a right to contact a support person or persons to assist them to apply for a review of the charge. The Unit Manager must ensure the young person has access to facilities to contact a support person or persons and to consult with those people (refer to Reporting and Investigation Policy and Procedures).
- 6.58 The young person must give the charge notice indicating their election to apply for internal review to a Unit Manager not later than 48 hours after the charge notice is given.
- 6.59 If the Unit Manager is not the Administrator, the Unit Manager must give the form to the Administrator. The Administrator can extend the timeframe of 48 hours for the election to be given in a written notice to the young person.
- 6.60 After a young person has made an application for internal review, the Administrator must arrange for the conduct of an internal review into the behaviour breach charged in the charge notice by a review officer.
- 6.61 If the Administrator was the Unit Manager, Operations Manager, Programs and Services Manager or Deputy Senior Manager, the Director, Bimberi must be the review officer and conduct the internal review or arrange for another delegate to conduct the review, in accordance with the rules about who the decision-maker must not be in column 5 of Table 3A. If the Administrator was the Director Bimberi, the Operations Manager may be the review officer and conduct the review.
- 6.62 The review officer must conduct the review in accordance with chapter 9 of the *Children and Young People Act 2008* which outlines procedures for the conduct of disciplinary reviews (refer to 'Procedures for internal and external reviews').
- 6.63 The review officer must inform the young person that they have the right to apply for external review of the decision within seven days and the right to contact a support person or persons to assist them to apply for an external review. The Manager must ensure that the young person has access to facilities to contact a support person as soon as practicable and to consult with the support person.
- 6.64 If the review officer is not satisfied that the breach as charged has been proven on the balance of probabilities, the review officer must dismiss the charge. The charge may also be dismissed if the review officer is satisfied it would be appropriate for other reasons to do so (e.g. the young person has been discharged from a detention place).
- 6.65 The review officer may refer the charge to police if satisfied it is necessary or appropriate to do so (refer to 'Referring to police'). The young person must also be informed of action taken under 6.61, 6.62 or 6.63.

### *External review*

- 6.66 This section applies if, after the review officer has found the charge proven and taken disciplinary action, the young person applies for external review to the external reviewer.
- 6.67 If the review officer has found the charge proven and taken disciplinary action, the young person may apply for a review of the decision not later than seven days after receiving notice of the decision.
- 6.68 An application for external review by a young person does not prevent the taking of the disciplinary action by the review officer. However, if the external reviewer later reduces or sets aside the behaviour management consequence/s imposed by the review officer and the young person has repaid part or all of the consequence/s, the procedures at 'Decision by external reviewer to amend decision' apply.
- 6.69 Following application being made by a young person for an external review, the external reviewer must:
- (a) conduct a review of the review officer's decision
  - (b) refuse to review the decision.
- 6.70 The external reviewer must give prompt written notice to the young person and support person/s of the reasons for refusal and notice that they may apply for review of the decision under the *Administrative Decisions (Judicial Review) Act 1989*.
- 6.71 The external reviewer must conduct the review in accordance with Chapter 9 of the *Children and Young People Act 2008* which outlines procedures for the conduct of disciplinary reviews (refer to 'Procedures for Reviews').
- 6.72 After conducting a review, the external reviewer may:
- (a) confirm and uphold the review officer's decision
  - (b) amend the review officer's decision or
  - (c) set aside the review officer's decision and substitute a new decision.
- 6.73 The external reviewer must give prompt written notice to the young person, support person/s and the Manager of the reasons for their decision and notice that the young person may apply for review of the decision under the *Administrative Decisions (Judicial Review) Act 1989*.

### *Decision by external reviewer to amend decision*

- 6.74 If the external reviewer reduces or sets aside the behaviour management consequence/s imposed by the review officer and the young person has repaid part or all of the consequences, the young person must be provided with credit for the repaid consequences.
- 6.75 If the external reviewer's decision reduces or sets aside a fine, the Manager must credit the amount of points deducted to the young person's points balance.
- 6.76 For any other behaviour management consequence, the Manager must take steps to provide reasonable and equivalent credit for the consequences already repaid by the young person, in consultation with the young person.

### *Procedures for Internal and External Reviews*

- 6.77 Chapter 9 of the *Children and Young People Act 2008* outlines the procedures that apply in conducting an internal review by the review officer or an external review by an external reviewer. These procedures also apply to a review of a Segregation Direction conducted by an external reviewer.

- 6.78 A review may be conducted by the review officer holding a hearing or it may be conducted by reference to information collected. If a hearing is held, the procedures at 'Holding a hearing for a review' must be followed. Proceedings at a review are not open to the public.
- 6.79 A review must be conducted with as little formality and technicality, and as quickly as the requirements of the *Children and Young People Act 2008* and a proper consideration of the charge allow.
- 6.80 A review is an administrative process in which:
- (a) the rules of natural justice apply
  - (b) the laws of evidence do not apply
  - (c) evidence must not be given on oath or by affidavit
  - (d) the question whether a young person has committed a behaviour breach must be decided on the balance of probabilities.

#### *Giving notice of the review*

- 6.81 The review officer must give written notice of the review to the young person and the Manager (for an external reviewer).
- 6.82 The young person may make submissions to the review officer for the review in any form acceptable to the review officer. This may be in writing or in another format, such as audio recording. The Manager must:
- (a) offer to provide reasonable assistance to the accused person to put the submissions in a form acceptable to the review officer
  - (b) tell the young person that they may have a support person or persons to assist them to prepare submissions.
- 6.83 The review officer must consider any submission given to the review officer by the young person before the closing date for submissions stated in the notice of the review given to the young person.

#### *Requesting written reports and information*

- 6.84 The review officer may, by written notice given to any of the following persons, require the person to promptly give the review officer a written report about the young person for a review:
- (a) the Manager of a detention place (for an external reviewer)
  - (b) the Manager of Child and Youth Protection Services
  - (c) the Director of Public Prosecutions
  - (d) a public servant.
- 6.85 The person given the notice must comply with the request under section 326 of the *Children and Young People Act 2008*.
- 6.86 The review officer may, by written notice given to any person, require the person:
- (a) to provide stated information to the review officer relevant to the review
  - (b) to produce to the review officer a stated document or thing relevant to the review.
- 6.87 A person is not required to give information, or produce a document or other thing, to the review officer if the Minister certifies in writing that giving the information, or producing the document or other thing:
- (a) may endanger a young person or anyone else
  - (b) is contrary to the public interest.

### *Possession of review documents*

6.88 The review officer may have possession of a document or other thing produced to the review officer for a review for as long as the review officer considers necessary.

### *Records of reviews*

6.89 The review officer for a review must keep a written record of proceedings at the review. The record must be filed on the young person's file.

### *Holding a hearing for a review*

6.90 The review officer must give written notice of a hearing for the review to the young person and the Manager (if the review officer is an external reviewer). The notice must include:

- (a) a statement about where and when the hearing is to be held
- (b) a statement about the young person's entitlements under section 331 and section 332 of the *Children and Young People Act 2008*.

6.91 The hearing must be held at a detention place, unless the Manager determines that it is not practicable for the review to be held at a detention place. The young person is entitled to be present at a hearing for a review.

6.92 For a hearing for a review, the review officer may, by written notice given to the young person or anyone else, require the person to appear before the review officer, at a stated time and place, to:

- (a) answer questions and/or
- (b) produce a stated document or other thing relevant to the review.

6.93 A person is taken to have complied with a notice under 6.80(b) if the person gives the document or other thing to the review officer before the time stated in the notice for its production.

6.94 The review officer at a hearing for a review may require the young person, or a witness, appearing before the review officer to do one or more of the following:

- (a) answer a question relevant to the review
- (b) produce a document or other thing relevant to the review.

6.95 The review officer at the hearing may disallow a question put to a person if the presiding review officer considers the question is unfair, unduly prejudicial or vexatious, or involves an abuse of the review process.

6.96 The review officer may allow a Youth Worker or anyone else to be present, and to be heard, at a disciplinary hearing (e.g. a witness or another young person).

6.97 If the young person appears at a hearing for a review in relation to the young person, the young person is entitled to:

- (a) be heard, examine and cross-examine witnesses and make submissions for the review
- (b) have a support person or lawyer present to make submissions on the young person's behalf.

6.98 The review officer may, by written order, exclude the young person from a hearing for the review if the young person, without reasonable excuse:

- (a) unreasonably interrupts, interferes with or obstructs the hearing
- (b) contravenes a reasonable direction by the review officer about the conduct of hearing.

6.99 If the young person fails without reasonable excuse to attend a hearing for the review, the review officer may conduct the hearing, and make a decision on the charge, in the young person's absence.

6.97 Section 335 of the *Children and Young People Act 2008* allows a review officer to give a direction for a person to appear before a hearing by audiovisual or audio link.

## **7. Forms and Templates**

Behaviour breach report form  
Charge notice form  
Notice of disciplinary action to young person form  
Notice of disciplinary review to young person form  
Notice of review officer's decision form  
Segregation Direction

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

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

Behaviour Management Policy and Procedures  
Complaints Management Policy and Procedures  
Health and Wellbeing Policy and Procedures  
Leave Policy and Procedures  
Minimum Living Conditions Policy and Procedures  
Segregation Policy and Procedures  
Use of Force Policy and Procedures  
Visits, Phone Calls and Correspondence Policy and Procedures  
Reporting and Investigation Policy and Procedures.

### Policies and Procedures in Child and Youth Protection Services

Single Case Management Policy and Procedures

## **9. Further References**

NA

## **10. Review**

10.1 This policy and procedures will be reviewed at least once every two years.

### Schedule 1 Behaviour breaches

The following behaviours constitute a behaviour breach under section 287 of the *Children and Young People Act 2008*:

(a)	Contravening a direction by a youth worker under this Act
(b)	Being in a prohibited area without the Manager's approval
(c)	Smoking
(d)	Taking (in any way) alcohol, a prohibited substance or an unauthorised medicine into the young person's body
(e)	Providing a positive test sample for alcohol or a drug when directed, under this Act, to provide a test sample
(f)	Making, possessing, concealing, knowingly consuming or dealing with a prohibited thing, without the Manager's approval
(g)	Gambling
(h)	Being disrespectful or abusive towards a youth worker in a way that undermines the officer's authority
(i)	Being disrespectful or abusive towards another person
(j)	Intentionally or recklessly engaging in conduct that endangers, or may endanger, the health or safety of the young person or anyone else
(k)	Fighting
(l)	Assaulting someone else
(m)	Theft
(n)	Possessing stolen property
(o)	Possessing or dealing in things without the Manager's approval
(p)	Intentionally or recklessly damaging or destroying property belonging to someone else
(q)	Interfering with property belonging to someone else, without approval by the owner of the property
(r)	Creating or participating in a disturbance, or other activity, likely to endanger safety or security of a young person or other people at a detention place
(s)	Contravening a condition of a leave permit under section 241 or an interstate leave permit under section 242
(t)	Doing anything for the purpose of escaping, or assisting a young person to escape, from detention
(u)	Offering, giving or taking a bribe
(v)	Planning, conspiring or attempting, or assisting anyone else planning, conspiring or attempting, to commit a behaviour breach
(w)	Threatening to do anything mentioned in paragraphs (j), (k), (l), (p) or (r).