

Australian Capital Territory

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

**Notifiable instrument NI2018-437**

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 (Complaints Management) Policy and Procedures 2018 (No.1)*.

**2 Commencement**

This instrument is to commence the day after notification.

**3 Repeal**

NI2015-383 is revoked.

**4 Policies and operating procedures**

Under section 143 of the *Children and Young People Act 2008*, I make the attached Complaints Management 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

# Complaints Management Policy and Procedures

## 1. Introduction and Purpose

All young people have a right to complain about a decision made about them, the standard of care, accommodation, programs or treatment they receive at a detention place. People with parental responsibility, nominated persons, family members, staff, significant persons and visitors also have the right to make a complaint about anything they experience at a detention place, or to complain on behalf of a young person.

The term *complaint* is all encompassing and may include everything from allegations of serious misconduct, to seeking additional information about why something happened, to making suggestions as to how to improve or change something at the detention place.

Regardless, complaints are valuable in providing feedback to improve practices and to ensure that concerns are addressed rather than escalating. Effective complaints handling will assist to develop a more positive environment for all staff and young people and for family members, significant persons and visitors at the detention place.

This policy and procedures aims to:

- (a) resolve complaints quickly and effectively and at the lowest level of formality possible. Clear, timely and well-documented communication is essential to managing complaints appropriately
- (b) ensure effective communication between family, young people and staff through both frequent informal communication and more formal planned forums between stakeholders such as Unit meetings and case conferences

In many cases, concerns and complaints can be resolved quickly and effectively through informal communication with young people, their family members or significant others. In some cases a young person may simply want to have the reasons for a decision clearly explained to them, or may want an opportunity to have their views and concerns listened to and taken seriously.

It is important that all informal communication about a concern raised by a young person, or a person with parental responsibility, family member, nominated person, significant person or visitor on behalf of a young person, is clearly recorded in a young person's case file and in the appropriate electronic database systems. Even if the young person does not wish to make a formal complaint, informal conversations about a concern or complaint must be recorded. This makes it easier for others to know what is happening in the case management of a young person, and whether an issue has already been resolved if a young person raises it again.

## **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. The provisions of the Act 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 *Freedom of Information Act 2016* provides the legal right for individuals to view personal and non-personal information held by ACT Ministers, ACT Government Directorates and some statutory authorities.
- 2.4 Human rights that are protected by the *Human Rights Act 2004* and that are relevant to this policy and procedure are:

### **Section 95**

If a service [for children and young people] is provided at premises, the provider must provide information at the premises to service consumers about their right to make complaints [to the ACT Children & Young People Commissioner] and how feedback may be given to the service provider.

- 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
  - (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 All youth workers, Team Leaders and Managers are responsible for ensuring the complaints procedures are followed. This includes making timely and clear file notes and ensuring all concerns and complaints are taken seriously.
- 3.2 The Programs and Services Manager is responsible for maintaining a database for all formal complaints and must give every completed complaint form a reference number and provide a monthly report to the Manager.
- 3.3 The Program and Services Manager must also provide a three monthly summary report to the Manager and the Director, Child and Youth Protection Services Operations on all informal concerns and complaints raised by complainants.
- 3.4 The Manager must ensure that young people, people with parental responsibility, nominated persons, family members, visitors and

significant people have access to information that details procedures for complaints process.

#### 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.

**All staff** refers to youth workers, authorised persons, 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).

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

**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.

**Complainant** is any person who submits a complaint (e.g. a complainant may be a child, young person, parent, family member, significant person, carer, advocate, community organisation or any person including visitors and staff).

**Complaint** is an expression of dissatisfaction with a decision, action, a policy and/or procedure, staff or a service provided to a young person, person with

parental responsibility, nominated person, family member or a visitor. A complaint can be lodged in person or in writing (letter or email) with a youth worker, Manager, the Public Advocate, the Official Visitor, the Children, Youth and Families Complaints Unit, Ombudsman, or the Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989*.

**Complaint form** refers to the mechanism for recording a formal complaint.

**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.

**Family member** is defined in section 13 of the *Children and Young People Act 2008* and means the child's or young person's parent, grandparent or step-parent; or son, daughter, stepson or stepdaughter; or sibling; or uncle or aunt; or nephew, niece or cousin. For an Aboriginal or Torres Strait Islander child or young person, a family member includes a person who has responsibility for the child or young person in accordance with the traditions and customs of the child's or young person's Aboriginal or Torres Strait Islander community.

**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.

**Mandated reporter** under the *Children and Young People Act 2008* includes staff at a detention place. The Act requires a staff member to report a reasonable belief that a young person who is under 18 years has experienced or is experiencing non-accidental physical injury or sexual abuse.

**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.

**Register of Young Detainees** means the register that must be kept by the Director-General under section 185 of the *Children and Young People Act 2008*. The details of every young person who is admitted to a detention place must be recorded on the register at induction. The register comprises of the young person's individual Bimberi Client residential file and information stored electronically on the Youth Justice Information System (YJIS).

**Significant person** for a child or young person is defined in section 14 of the *Children and Young People Act 2008* and means a person (other than a family member) who the child or young person, a family member of the child or young person or the Manager considers is significant in the child or young person's life.

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

**Torres Strait Islander 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 the Torres Strait Islands; who regards himself or herself as a Torres Strait Islander or if the person is a child, is regarded as a Torres Strait Islander by a parent or family member; and is accepted as a Torres Strait Islander by a Torres Strait Islander community.

**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*.

### Legislative Principles

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

#### 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 the 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) all young people have a right to seek a review of a decision or to complain about the standard of care, accommodation, programs or treatment they receive
  - (b) people with parental responsibility, nominated persons, family members, significant others, staff and visitors also have the right to make a complaint, or complain on behalf of a young person
  - (c) all staff have a responsibility to respond to a concern or a complaint - complaints handling is not someone else's problem
  - (d) all concerns and complaints raised by young people, people with parental responsibility, nominated persons, family members, significant others, staff and visitors will be listened to and taken seriously
  - (e) all staff are to 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
  - (f) staff are to respond to concerns and complaints in a respectful, honest and objective manner
  - (g) all complainants will be provided with a response to their complaint within 5 days
  - (h) all concerns and complaints, including response provided, will be clearly documented in a young person's case file and in the appropriate electronic database and filing systems.

## **6. Policy and Procedure**

### Complaints to External Oversight Agencies

- 6.1 All young people, people with parental responsibility, nominated persons, family members, significant people, staff and visitors have the right to make a complaint to:
- (a) the Official Visitor
  - (b) the ACT Public Advocate
  - (c) the ACT Children and Young People Commissioner
- 6.2 If a young person, people with parental responsibility, nominated persons, family members, significant people, staff or visitors asks to met with or speak with any of these agencies, or tells a Bimberi staff member that they would like to make a complaint to one of these agencies, staff must assist that person.
- 6.3 Under no circumstances should staff try to talk a person out of talking with any of these agencies, or threaten them that something will or will not happen if they do. To do so is against the Code of Conduct.

### Reporting Matters to Child and Youth Protection Services and the Police

- 6.4 All staff are mandated reporters under the *Children and Young People Act 2008*. A report must be made to Child and Youth Protection Services if staff reasonably believe that a young person who is aged under 18 years has experienced or is experiencing sexual abuse or non-accidental physical injury by any person.
- 6.5 Similarly, if a young person, or person with parental responsibility, nominated person, family member, or significant person allege that

something has happened that may be a criminal offence, then staff may have an obligation to inform the police.

- 6.6 Staff also have other reporting obligations under the Act (e.g. reporting use of force and segregation) and all staff must act in accordance with these obligations at all times.

### Escalating Serious Matters

- 6.7 In responding to concerns and complaints, if, at any time, a complainant alleges something which, if proven, would constitute a criminal offence or a significant breach of policy, procedure or legislation, then staff must bring that matter to the attention of both the Manager or the Director, Child and Youth Protection Services Operations on the same day as becoming aware of the allegation.

### Responding to Informal Complaints

- 6.8 Staff are likely to be the first ones to hear a concern or complaint from a young person, family member or significant other, and it is the job of all youth workers to respond to these complaints in a supportive and consistent manner.
- 6.9 Many concerns can be addressed immediately if staff take the time to stop, listen, and respond. This may reduce the need for complainants to escalate their concerns into formal complaints, and model s that staff are 'here to help'.
- 6.9 If a young person or someone else raises an informal concern or complaint with staff, then staff should:
- (a) listen and allow the complainant an opportunity to raise their concerns and feel that they are being taken seriously, no matter what the issue is
  - (b) respond if the issue can be resolved there and then, do so. If not, staff should tell the complainant that their concerns will be followed up during the day, or as soon as possible
  - (c) be accountable to do something if a commitment for action is made. If the commitment cannot be fulfilled staff should explain this to the complainant
  - (d) make a note in the young person's case file and in the appropriate electronic database systems of the issues raised, and what was done to assist in resolving the issue. This makes it easier for others to know what is happening in the case management of a young person, and whether an issue has already been resolved if a young person, or other complainant, raises it again
  - (e) check that the complainant is satisfied with the response if they are not then staff should let the complainant know that they can fill in a formal complaint form. If the complainant wants to fill in a complaint form, staff should assist them to do so. Under no circumstances should staff try to talk a complainant out of making a complaint, or threaten them that something will or will not happen if they do make a complaint
  - (f) inform the complainant what happens next by explaining the process to the complainant.

### Responding to Formal Complaints

- 6.10 If a complainant wants to fill in a complaint form, staff should assist them to do so. This may mean that the complainant needs assistance with reading or understanding the form, or with completing the form. However, the information on the form has to be in the words of the complainant.
- 6.11 Once a complainant is satisfied that their complaint form is complete, and that it accurately reflects their concerns, staff who assisted the complainant must provide the form to the Unit Manager of the young person subject to the complaint on the same day. If it is inappropriate to provide the complaint to the young person's Unit Manager (e.g. the complaint is about the Unit Manager), the form must be provided to an alternate Unit Manager or the Operations Manager or Deputy Senior Manager or Director, Bimberi.
- 6.12 Staff who assist the complainant must make a written note in the young person's case file and in the appropriate electronic database systems that a complaint has been made, and the date and time the complaint was provided to the Unit Manager.

#### Investigating Formal Complaints

- 6.13 Unit Managers will frequently be the first person to investigate a formal complaint. Once the Unit Manager has received the formal complaint:
- (a) meet with the complainant and tell the complainant that the complaint has been received, clarify any issues that may be unclear, and let them know that they will receive a response to their complaint within 5 days
  - (b) meet with relevant staff and seek information from staff who may be able to assist resolve the complaint. If needed, seek written statements.
  - (c) review relevant records including incident reports, case notes, previous complaints, current policy and procedures, legislation.
  - (d) form a view in doing so, consider:
    - i. Was policy and procedure followed?
    - ii. Was legislation followed?
    - iii. Was the young person, or other complainant, given a reasonable explanation as to why something did or did not happen?
    - iv. Has everything that happened before and after the complaint been appropriately documented?
    - v. Does the complainant need more information?
    - vi. Does the complainant require an apology?
    - vii. Does a previous decision need to be changed?
    - viii. Do any policies or procedures need to be changed?
    - ix. Should disciplinary action be taken against any staff?
    - x. Does the supervisor need to be told?
  - (e) complete the complaint form then meet with the complainant to give them a copy of the completed complaint form, and to explain the response to the complaint. Check that the complainant is satisfied with the response; if they are not let them know that they can have the complaint reviewed by the Manager. If the complainant wants to refer their complaint to the Director, Bimberi, the Unit Manager must do so by the next business day.

#### Review by the Manager

- 6.14 If a complainant elects to have their complaint reviewed by the Manager, it is the responsibility of the Manager to ensure that the investigation of the complaint by the Unit Manager was in accordance with this policy and procedure. The Manager must review the complaint and may decide to confirm or change the original response to the complaint.
- 6.15 A copy of all complaints referred to the Director, Bimberi must also be provided by the Director, Bimberi to the Director, Child and Youth Protection Services Operations.
- 6.16 The Manager must advise the complainant, and the Director, Child and Youth Protection Services Operations, of the outcome of their review within 5 days. This outcome must be clearly explained to the complainant, and clearly documented in the young person's case file and in the appropriate electronic database systems.

#### Complaints Unable to be Resolved to be Determined by the Director, Child and Youth Protection Services Operations

- 6.17 If a complainant remains dissatisfied with the outcome of a review by the Manager, the complainant may elect to refer the complaint to the Director, Child and Youth Protection Services Operations.
- 6.18 It is the responsibility of the Director, Child and Youth Protection Services Operations to ensure that the investigation of the complaint by the Unit Manager and the Manager was in accordance with this policy and procedure.
- 6.19 If the Director, Child and Youth Protection Services Operations is satisfied that the complaint has been investigated in accordance with this policy and procedure, and is satisfied with the outcome of the complaint investigation, the Director, Child and Youth Protection Services Operations may elect to close the complaint as 'considered to the Directorate's satisfaction'. In such circumstances, the Director, Child and Youth Protection Services Operations, or the Director, Bimberi, must advise the complainant that their complaint has been closed.
- 6.20 Even if a complaint has been closed, the complainant retains the right to refer the complaint to:
- (a) the Official Visitor to Bimberi
  - (b) the ACT Public Advocate
  - (c) the ACT Children and Young People Commissioner.
- 6.21 A complainant may elect to refer their complaint to any of these agencies for any reason, including:
- (a) the complainant is not satisfied with the outcome of their complaint
  - (b) the complainant does not agree with the response provided to them
  - (c) the complainant is not satisfied that the complaint was investigated appropriately
  - (d) any other reason the complainant gives.

#### Complaints About Services Provided at a Detention Place

- 6.21 Complaints about services provided at a detention place (including staff from ACT Health and the Education Directorate) will be responded to in accordance with this policy.

- 6.22 If a complainant makes an allegation about an employee who is not from Children, Youth and Families that could be a significant breach of policy, procedure or legislation, then staff must bring the matter to the attention of the Manager. The Manager may choose to bring the allegation to the attention of the Director, Child and Youth Protection Services Operations.

#### Reporting Complaints

- 6.23 The Programs and Services Manager is responsible for maintaining a database for all formal complaints, each complaint form must have a reference number. The Programs and Services Manager is to provide a monthly report to the Director, Bimberi and the Director, Child and Youth Protection Services Operations. This report must include:
- (a) details of issues raised by complainants
  - (b) names of staff named in complaints
  - (c) outcomes of complaints
  - (d) time taken to provide a response.

### **7 Forms and Templates**

Complaint form

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

Admission and Classification Policy and Procedures  
Records and Reporting Policy and Procedures

### **9 Further References**

NA

### **10. Review**

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