

Australian Capital Territory

Children and Young People (Reporting and Investigation) Policy and Procedures 2018 (No.1)

Notifiable instrument NI2018-446

made under the

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

1 Name of instrument

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

2 Commencement

This instrument is to commence the day after notification.

3 Repeal

NI2015-395 is revoked.

4 Policies and operating procedures

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

Reporting and Investigation Policy and Procedures

1. Introduction and Purpose

This policy and procedures addresses the requirement at section 294 of the *Children and Young People Act 2008* for the Director-General to make policy and procedures about the making, recording and investigation of behaviour breach reports.

This policy and procedures address:

- (a) the content of behaviour breach reports and forms
- (b) who may make decisions in relation to responding to a behaviour breach report form
- (c) informing young people of behaviour breach reports and their right to contact support people for assistance
- (d) the role of support people for young people in the disciplinary process.

This policy and procedures must be read in conjunction with the Behaviour Management Policy and Procedures and the Discipline 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. 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 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.

Section 27 Rights of minorities

- (1) Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.

2.4 The following international human rights standards apply in the ACT and are relevant to this policy and procedure:

- (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 delegates of the Director-General who may make decisions or take action under Chapters 8 and 9 of the *Children and Young People Act 2008* in response to minor behaviour breaches or behaviour breaches are outlined in Table 3A of the Behaviour Management and Discipline Policies and Procedures.
- 3.2 The Manager may appoint a person as an investigator under section 292 of the *Children and Young People Act 2008*.

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, 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) and Sports and Recreations Officer (F).

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 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 an 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 framework is referred to at section 297 of the *Children and Young People Act 2008* and is this Behaviour Management Policy and Procedures.

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 responsive strategies to respond to negative or challenging behaviour by young people.

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.

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, 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.

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 at 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.

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.

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.

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.

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 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 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 child or young person includes a reference to a person who is at least 18 years old but is being dealt with in relation to an offence committed, or alleged to have been committed, when he or she was under 18 years old.

Operational Principles

5.2 The following considerations inform this policy and procedure:

- (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 Procedure

Reactive Strategies Behaviour Management Response to Minor Behaviour Breaches

6.1 This policy and procedure intersects with the Behaviour Management Policy and Procedures at the point a decision is made by a youth worker to make a report about a minor behaviour breach or a behaviour breach. The youth worker must comply with the procedures under 'Behaviour breach reports' in making a report.

Behaviour breach reports

6.2 The purpose of referring a minor behaviour breach or behaviour breach to an administrator is to escalate the alleged behaviour breach for consideration of a behaviour management response or discipline response.

- 6.3 To report a minor behaviour breach or a behaviour breach, a youth worker must complete a behaviour breach report form in accordance with the Behaviour Management Policy and Procedures.
- 6.4 The youth worker must give the completed behaviour breach report form to the officer acting as Administrator.

Responding to a behaviour breach report

- 6.5 After receiving a behaviour breach report form, the Administrator must consider the report and determine the most appropriate response, which may include further investigation (refer to 'Investigating a behaviour breach').

Investigating a behaviour breach

- 6.6 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 these procedures.
- 6.7 Further investigation may be necessary in one or more of the following circumstances:
- (a) the facts of the alleged behaviour breach are unclear
 - (b) a number of young people were involved in the alleged behaviour breach
 - (c) the alleged behaviour breach was witnessed by a number of people and their accounts of the incident require collecting for verification of the facts
 - (d) the alleged behaviour breach is of a serious nature and further investigation is necessary to determine whether the alleged behaviour breach should be referred to police.
- 6.8 An investigator may be a delegate of the Director-General or a person appointed to be an investigator under section 292 of the *Children and Young People Act 2008*. If the investigator is a delegate of the Director-General, the investigator must not be the youth worker who made the behaviour breach report or administrator who was given the behaviour breach report.
- 6.9 The Manager may appoint an investigator who is not a delegate for the purpose of investigating an alleged behaviour breach if the circumstances of the alleged behaviour breach indicate that an external and independent investigation is required. The Manager may appoint a person as an investigator under section 292 of the *Children and Young People Act 2008*.
- 6.10 Following a request by the Administrator to investigate an alleged behaviour breach, the investigator may undertake any of the following actions:
- (a) interview the young person
 - (b) interview witnesses to the alleged behaviour breach including other young people and staff
 - (c) review any monitoring records of the alleged behaviour breach
 - (d) gather other relevant information (e.g. medical reports and file information).
- 6.11 The investigator must prepare a report detailing the nature of investigations undertaken and provide the report to the Administrator. The report must include a recommendation regarding what action, if any, should be taken in relation to the alleged behaviour breach.

- 6.12 Following the Administrator receiving a report from the investigator, the Administrator must decide what action, if any, should be taken in relation to the alleged behaviour breach. The section 'Action by Administrator' in the Behaviour Management Policy and Procedures should be referred to for action that may be taken in relation to the alleged behaviour breach.

Informing young people of behaviour breach reports and their right to contact support people for assistance

- 6.13 The Administrator receiving a behaviour breach report must inform the young person that a behaviour breach report has been made. The young person must be informed of the breach in a way he or she can understand.
- 6.14 The Administrator must also inform the young person that they may contact a support person or persons for assistance in responding to the behaviour breach report.
- 6.15 A support person can be chosen by the young person. To become the young person's support person, the Manager must consider the person is capable of assisting the young person or representing their interests and it is in their best interests for the person to be the young person's support person.
- 6.16 The following people are appropriate support persons for a young person:
- (a) a lawyer
 - (b) a staff member not involved in any action in relation to the alleged behaviour breach
 - (c) the ACT Public Advocate
 - (d) a representative of an agency providing services to the young person.
- 6.17 The Manager may consider that a person is not capable of fulfilling the role of a support person in the following circumstances:
- (a) the person poses a risk to safety and security of a young person or other people (e.g. the person has previously attempted to take a prohibited thing into a detention place)
 - (b) the person has acted against the young person's interests in the past (e.g. by preventing or hindering the conduct of a search of the young person)
 - (c) the nature of the relationship between the person and the young person is not in the best interests of the young person (e.g. due to a history of abuse or co-offending).
- 6.18 If the Manager considers that a person chosen by a young person is not capable of fulfilling the role of a support person, the young person must be informed and given the right to elect another support person.
- 6.19 After the support person is chosen by the young person and agreed to by the Manager, the young person must be allowed to contact the support person or persons for assistance in responding to an alleged behaviour breach. The Manager must ensure the young person is provided with facilities to contact the support person or persons and consult with them via telephone or in person.

Role of support people for young people in disciplinary process

- 6.20 A young person has the right to contact a support person or persons after disciplinary action has commenced when:

- (a) a charge notice form has been given to the young person to assist the young person to decide whether to admit to the breach as charged and accept the proposed disciplinary action or to assist the young person to apply for an internal review of the charge
 - (b) a review officer has completed an internal review and taken disciplinary action against the young person and the young person has the right to apply for an external review.
- 6.21 The Manager must ensure the young person is provided with facilities to contact the support person or persons and consult with them via telephone or in person.
- 6.22 The young person is entitled to have a support person or lawyer present at a hearing for an internal or external review to make submissions on their behalf.

Provision of Information, Review of Decisions and Complaints

- 6.23 Staff must ensure young people, people with parental responsibility, nominated persons, family and visitors are provided with information about matters that affect them in a timely manner and in a manner that is likely to be understood.
- 6.24 A young person, person with parental responsibility, nominated person, family and visitors are able to request a review of a decision or make a complaint about something that happens at a detention place to a youth worker, Manager, the ACT Public Advocate, the Official Visitor, the Children, Youth and Families Complaints Unit, or the Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989*.
- 6.25 Staff must ensure that the Complaints Management Policy and Procedures is followed.

Records and Reporting

- 6.26 Any actions taken under this policy and procedure must be recorded according to the requirements set out in the Records and Reporting Policy and Procedures
- 6.27 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 a staff member reasonably believes 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.

7 Forms and Templates

Behaviour breach form
 Charge notice form
 Incident report form

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
 Discipline 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 procedure will be reviewed at least once every two years.