

Australian Capital Territory

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

**Notifiable instrument NI2018-453**

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 (Segregation) Policy and Procedures 2018 (No.1)*.

### **2 Commencement**

This instrument is to commence the day after notification.

### **3 Repeal**

NI2015-402 is revoked.

### **4 Policies and operating procedures**

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

# Segregation Policy and Procedures

## 1. Introduction and Purpose

The segregation of a young person is a fundamental way of managing risks to the safety and/or security of a young person or other young people or other people at a detention place.

This policy outlines four types of directions that may be made by the Manager to authorise the segregation of a young person within a detention place:

- (a) Safe Room Segregation Direction
- (b) Safety and Security Segregation Direction
- (c) Protective Custody Segregation Direction
- (d) Health Segregation Direction.

This policy and procedures also addresses circumstances where an interstate segregation authority is in force for a young person and the young person is transferred into custody at a detention place. The interstate segregation authority continues to apply to the young person by translating the authority into a local Segregation Direction which is in force for up to 3 days after the young person is admitted to a detention place.

## 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. Division 6.6.3 of the Act relates to the authority to make a Segregation Direction for a young person at 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 All Segregation Directions must be implemented in a manner that upholds the following rules:

**Section 205 Purpose of segregation under div 6.6.3**

- (1) To remove any doubt, segregation under this division must not be used for punishment or disciplinary purposes.

**Section 206 Segregation not to affect minimum living conditions**

- (1) The segregation of a young detainee under this division is not to affect the standards applying to the young detainee under section 141 (Detention places - minimum living conditions).
- (2) However, subsection (1) does not prevent the application of the standards in a way that is necessary and reasonable for the purpose of the segregation.

- 2.3 The policies and procedures provide specific directions to implement the provisions of the Act and other relevant legislation, including the *Human Rights Act 2004*.
- 2.4 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 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 67
- (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 has authority to make the safe room Segregation Direction, Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction under this policy and procedures.
- 3.2 The Manager has authority to review the safe room Segregation Direction under this policy and procedures. The Director, Bimberi and Director, Child and Youth Protection Services Operations have the authority to review a Safety and Security Segregation Direction, Protective Custody Segregation Direction or Health Segregation Direction under this policy and procedures.
- 3.3 The Manager must ensure that notice of any Segregation Direction made is given to the people listed at 6.90 within the required timeframe.
- 3.4 The Manager must ensure that a Register of Segregation Directions is maintained that includes the information outlined at 6.91.
- 3.5 A Segregation Direction may only be used for purposes where the criteria for making the direction are met. Segregation of a young person must not be used for punishment or disciplinary purposes. Segregation of a young person must not affect the minimum standards applying to the young person. This does not, however, prevent the standards being applied in a

manner that ensures the effect of the Segregation Direction is upheld (refer to the Minimum Living Conditions Policy and Procedures).

#### 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), Sport and Recreation Officer (F). Youth worker means the same as youth detention officer in the *Children and Young People Act 2008*.

**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.

**Commissioner** refers to one of the appointed Commissioners exercising functions under the *Human Rights Commission Act 2005*. The functions include the resolution of complaints between users and providers of services for children and young people and to promote improvements for service provision.

**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.

**Escort officer** is defined in the dictionary of the *Children and Young People Act 2008* and means a youth worker, a police officer or a corrections officer.

**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 this policy and procedure to review, upon application by the affected young person, Segregation Directions related to safety and security, protective custody and health.

**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 or young person's Aboriginal or Torres Strait Islander community.

**Health professional** is defined in the dictionary of the *Children and Young People Act 2008* and means a health professional registered under the *Health Professionals Act 2004* or someone who is a health professional registered under a corresponding law of a local jurisdiction within the meaning of that Act. A health professional may be a non-treating health professional who is authorised to exercise non-treating functions or a treating health professional who is authorised to exercise treating or therapeutic functions.

**Health Segregation Direction** means a Segregation Direction made by the Senior Manager under section 214 of the *Children and Young People Act 2008*.

Health segregation of a young person may be authorised if the young person is at risk because of their physical or mental health, or poses a risk to anyone else because of their physical or mental health.

**Lock down** refers to the operational response that is an interruption to daily routine whereby young people and other people are asked to remain in a particular place for a period of time in order to manage a risk to safety and security of young people or other people at a detention place (e.g. to manage a serious or life threatening injury or health complaint, a lock down may be required to prevent the entry to, or exit from, a detention place by any person other than emergency response services). Lock down does not involve segregation.

**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.

**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.

**Protective Custody Segregation Direction** means a Segregation Direction made by the Senior Manager under section 213 of the *Children and Young People Act 2008*. Protective custody segregation of a young person is authorised if the young person is at risk from another young person or young people and the segregation is necessary to protect the young person's safety.

**Register of Searches and Uses of Force** means the register that must be kept by the Director-General under section 195 of the *Children and Young People Act 2008*.

**Register of Segregation Directions** means the register that must be kept by the Director-General under section 222 of the *Children and Young People Act 2008*.

**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).

**Reportable incident** means an incident or event that:

- (a) significantly affects the security, operations or the routine of a detention place
- (b) disrupts or threatens to disrupt or harms or threatens to harm the personal safety of any individual at a detention place including young people, youth workers, staff or visitors
- (d) has the potential to attract media attention
- (e) involves drugs or violence.

**Safe room** is a part of a detention place declared by the Director-General to be the safe room for the purpose of safe room segregation under section 208 of the *Children and Young People Act 2008*. In order to declare the safe room, the Director-General must be satisfied that its design will minimise the harm that a young person can do to himself or herself while in the room; and it allows monitoring of, and communication with, the young person by the Director-General and health professionals.

**Safe Room Segregation Direction** means a Segregation Direction made by the Director, Bimberi under section 209 of the *Children and Young People Act 2008*. The Safe Room Segregation Direction involves placing the young person in the safe room to prevent an imminent risk of the young person harming himself or herself.

**Safety and Security Segregation Direction** means a Segregation Direction made by the Senior Manager under section 212 of the *Children and Young People Act 2008*. A direction may be authorised if the young person poses a risk to the safety and security of another young person, a youth worker or anyone else at a detention place.

**Segregation** means the restriction or denial of a young person's opportunity to go into, or be in, a particular part of a detention place or to associate with other young people.

**Segregation Direction** is a specific instruction given by the Director, Bimberi 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). There are four types of directions that may be made by the Director, Bimberi to authorise the segregation of a young person within a detention place (1) Safe Room Segregation Direction, (2) Safety and Security Segregation Direction, (3) Health Segregation Direction, (4) Protective Custody Segregation Direction.

**Special Management Direction** is a specific instruction given by the Director, Bimberi relating to the need to implement or maintain special conditions for the management of a young person.

**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.

**Treating doctor** is a doctor appointed under section 97 of the *Children and Young People Act 2008* for a detention place by the Director-General responsible for the administration of the *Health Act 1993*. The treating doctor's functions are to provide health services to young people and to protect the health of young people, including preventing the spread of disease at a detention place.

**Use of force** means the amount of effort required to reduce an immediate risk and to maintain the safety and security of a young person or other people. Use of force is an option of last resort and must be the minimum necessary to achieve the required outcome. The use of force is not a response to achieve compliance with a direction. Use of force includes body contact and the use of instruments of restraint.

**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), Sport and Recreation Officer. 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 procedure.

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| Section 8 Best interests of children and young people paramount consideration |
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- (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 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 and 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 procedures:

- (a) a decision-maker must consider the age, maturity, cultural identity, physical and mental health and known history of the young person, such as a history of abuse, in deciding whether to make a Segregation Direction
- (b) segregation that results in the isolation of a young person should be used only as an option of last resort and the young person should be subject to close observations
- (c) segregation must not be used for punishment or disciplinary purposes or for reasons of administrative convenience (e.g. a shortage of youth workers)
- (d) segregation is not to be used as a behaviour management technique or for rehabilitative purposes (refer to the Behaviour Management Policy and Procedures)

- (e) segregation must not affect a young person's minimum living conditions (refer to Minimum Living Conditions Policy and Procedures), however, the conditions may be applied in a way that ensures the Segregation Direction is upheld
- (f) a young person's attendance at school is based on the concept of reasonable and appropriate adjustment and a young person subject to a Segregation Direction will be provided with educational materials in keeping with safety and security considerations
- (g) the duration of the segregation shall be as short as possible to address the risk to the young person or other young people
- (h) a Segregation Direction must be revoked as soon as it is considered no longer reasonable and necessary for the purpose for which it was implemented
- (i) a decision to segregate a young person will be subject to regular internal review, with a young person having the right to apply for external review of segregation decisions
- (j) the use of the safe room occurs within the context of an over-arching therapeutic approach. As placement in the safe room involves isolation of the young person so placed, use of the safe room needs to occur only with strict safeguards after other interventions have failed to reduce the risk to the young person. Isolation can cause harm to a young person's psychological wellbeing, therefore placement of a young person in the safe room is a practice of last resort.

## **6. Policy and Procedures**

### Safe Room Segregation

#### *Prior to making the Safe Room Segregation Direction*

- 6.1 A young person is placed in the safe room under the safe room Segregation Direction to prevent an imminent risk of the young person harming himself or herself. The Director, Bimberi may only make the safe room Segregation Direction if the criteria for making the direction at 6.4-6.6 are met.
- 6.2 Before making the safe room Segregation Direction, the Director, Bimberi must implement, or arrange for the implementation of, the following less restrictive strategies to prevent an imminent risk of the young person harming himself or herself, unless it is considered not appropriate to implement these strategies because of the urgency and seriousness of the situation:
  - (a) responding to cues indicating the potential for escalation of threatening or disruptive behaviour
  - (b) discussing the concerns/ problems/ issues with the young person
  - (c) reflective listening and feedback to demonstrate to the young person that their concerns have been heard and understood and what will be done to attempt to resolve their concerns
  - (d) attempts to de-escalate the situation by facilitating a conflict resolution process and/or meeting with the person or people concerned
  - (e) involving other youth workers
  - (f) involving a health professional or other suitable person
  - (g) being clear with instructions while remaining calm and respectful

- (h) the use of the young person's room or an alternative space or room.
- 6.3 The criteria for making the safe room Segregation Direction will only be satisfied in circumstances where less restrictive strategies have not reduced the imminent risk of the young person harming himself or herself, or less restrictive strategies have been considered but were not appropriate because of the urgency and/or seriousness of the situation.

*Criteria for making the safe room Segregation Direction*

- 6.4 When considering whether to make the safe room Segregation Direction, the Director, Bimberi must consider the young person's age, maturity, cultural identity, physical and mental health and known history of the young person, such as a history of abuse.
- 6.5 The Director, Bimberi must also consider any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young person. This should include consideration of whether the young person is of Aboriginal and/or Torres Strait Islander cultural background and the impact on the young person of making a Segregation Direction.
- 6.6 The Director, Bimberi may direct that a young person be segregated from other young people by placing them in the safe room if:
  - (a) the Director, Bimberi believes on reasonable grounds that the segregation is necessary to prevent an imminent risk of the young person harming himself or herself
  - (b) the Director, Bimberi has:
    - i. tried less restrictive ways to prevent an imminent risk of the young person harming himself or herself but the less restrictive ways have not been successful
    - ii. considered less restrictive ways to prevent an imminent risk of the young person harming himself or herself but the less restrictive ways were not appropriate.

*Implementing the Safe Room Segregation Direction*

- 6.7 As soon as practicable after making the safe room Segregation Direction, a youth worker must explain to the young person the reasons for the direction and request the young person's cooperation with the direction.
- 6.8 The Director, Bimberi will ensure that when the safe room Segregation Direction is made, the young person's classification, behaviour management plan, case management plan and Special Management Directions are reviewed.
- 6.9 As soon as practicable after making the safe room Segregation Direction, the Director, Bimberi must also give the young person written notice of the Segregation Direction or arrange for this notice to be given to the young person by a youth worker (refer to 'Giving Notice of Segregation Directions'). The Director, Bimberi must ensure the notice is also given to the people listed at 6.90.
- 6.10 If a young person fails to comply with a direction to go to the safe room, a youth worker may use force to place the young person in the safe room. If force is used, a youth worker must comply with the Use of Force Policy and Procedures. A youth worker must record the details of any force used

to compel compliance with the direction and the reasons for force being used in the Register of Segregation Directions.

- 6.11 In order to protect the privacy of the young person, the placement of a young person in the safe room under the safe room Segregation Direction, and any force used to compel compliance with the direction, must not be done in the presence or sight of another young person, unless the Director, Bimberi believes on reasonable grounds that:
- (a) there is an imminent and serious threat to the personal safety of the young person or someone else and
  - (b) compliance with this requirement would exacerbate the threat.
- 6.12 The Director, Bimberi must ensure that other young people do not observe the young person while they are in the safe room.
- 6.13 Once a young person is placed in the safe room, the door must be locked.
- 6.14 Any young person placed in the safe room must be observed at five-minute intervals or more often. The level of observation provided should be determined by the nature of the young person's behaviour (e.g. self damaging behaviour may require constant observation and/or contact by a youth worker or health professional, treating doctor or nurse).
- 6.15 Constant video surveillance and recording of a young person in the safe room must be undertaken by the Control Room/duty point.
- 6.16 If a young person suffers an injury prior to entering or while in the safe room, they must receive immediate medical attention, at the earliest time that is safe for the young person, youth worker and/or the health professional, treating doctor or nurse.

#### *Review of Safe Room Segregation Direction*

- 6.17 The period a young person is placed in the safe room must be the minimum possible time. In addition to the requirements at 6.19 the Director, Bimberi must continuously assess the need for the Safe Room Segregation Direction to remain in force and the Director, Bimberi must revoke the direction if the Director, Bimberi reasonably believes that the grounds for making the direction no longer exist. As a guide, when a young person shows de-escalated behaviour (e.g. the young person is calm and their behaviour appears to have returned to normal) for a period of five to ten minutes, the Safe Room Segregation Direction should be revoked.
- 6.18 If a young person is placed in the safe room, the Director, Bimberi must, as soon as possible, request the attendance and assistance of appropriate health professionals, to provide a health assessment and if necessary, treatment (refer to the Health and Wellbeing Policy and Procedures).
- 6.19 The Director, Bimberi must consider any recommendations made by the health professional, in addition to any other relevant considerations, in order to determine an appropriate response.
- 6.20 While the safe room Segregation Direction is in force, the Director, Bimberi must formally review the safe room Segregation Direction after it has been in effect for 2 hours ('initial review') and at the end of every subsequent 2 hour period for which it is in effect ('each subsequent review').

- 6.21 In undertaking each subsequent review, the Director, Bimberi must seek, and have regard to, the advice of a health professional in making a decision under 6.22.
- 6.22 In addition to the initial review and each subsequent review, the Director, Bimberi may also review the safe room Segregation Direction at any other time on the Director, Bimberi own initiative or at the verbal or written request of the young person or written request of a person who has been given notice of the Segregation Direction under 6.90 who is acting on the young person's behalf. If a young person, or a person on their behalf, requests a review of the safe room Segregation Direction, and the Director, Bimberi refuses to review the direction, the Director, Bimberi must record the reasons for the refusal in the direction in the Register of Segregation Directions.
- 6.23 After an initial review, each subsequent review or a review under 6.21, the Director, Bimberi must make one of the following decisions:
- (a) confirm the Safe Room Segregation Direction or
  - (b) make a further Safe Room Segregation Direction if the grounds exist or
  - (c) revoke the Safe Room Segregation Direction or
  - (d) make a direction that the young person be transferred to a health facility (refer to Transfers Policy and Procedures).
- 6.24 The Director, Bimberi may make consecutive Safe Room Segregation Directions if the criteria at 6.6 for making each Safe Room Segregation Direction are met.

*Procedures following revocation of Safe Room Segregation Direction*

- 6.25 Following revocation of the safe room Segregation Direction, a young person must be assessed to determine any particular needs the young person may have. Where considered appropriate, the Director, Bimberi must seek further health assessment and treatment from a health professional in relation to the young person's health and wellbeing.
- 6.26 The Director, Bimberi may give directions about when a young person exiting from the safe room should return to their regular daily program. The emphasis should be on the normalisation of routine as soon as possible. The Director, Bimberi may also review the young person's placement and determine the most appropriate placement for the young person in the transitional period following the young person's exit from the safe room.
- 6.27 The Director, Bimberi must:
- (a) download the video record of the young person while he or she was in the safe room and
  - (b) keep it as a record, in accordance with the Records and Reporting Policy and Procedures.

*Reporting Safe Room Segregation Direction*

- 6.28 The making of the safe room Segregation Direction is a Reportable Incident and must be reported on in accordance with the Records and Reporting Policy and Procedures.
- 6.29 The Manager must ensure youth workers complete all necessary reports before they complete their shift, unless otherwise approved by the Manager (refer to 'Reporting and Recording all Segregation Directions').

## Safety and Security Segregation

### *Prior to making a Safety and Security Segregation Direction*

- 6.30 Safety and security segregation is a requirement for the management of a young person in a way that separates them from some or all other young people due to significant safety and security reasons. The Manager may direct that a young person be segregated from other young people if the direction is reasonable and necessary to ensure the safety and security of any person at the detention place.
- 6.31 Before making a Safety and Security Segregation Direction, the Manager must implement, or arrange for the implementation of, the following less restrictive strategies to prevent an imminent risk of the young person harming himself or herself, unless it is considered not appropriate to implement these strategies because of the urgency and seriousness of the situation:
- (a) responding to cues indicating the potential for escalation of threatening or disruptive behaviour
  - (b) discussing the concerns/ problems/ issues with the young person
  - (c) reflective listening and feedback to demonstrate to the young person that their concerns have been heard and understood and what will be done to attempt to resolve their concerns
  - (d) attempts to de-escalate the situation by facilitating a conflict resolution process and/or meeting with the person or people concerned
  - (e) involving other youth workers
  - (f) involving a health professional or other suitable person
  - (g) being clear with instructions while remaining calm and respectful
  - (h) the use of the young person's room or an alternative space or room.
- 6.32 The criteria for making a Safety and Security Segregation Direction will only be satisfied in circumstances where less restrictive strategies have not reduced the imminent risk to the young person or any person, or less restrictive strategies have been considered but were not appropriate because of the urgency and/or seriousness of the situation.

### *Making and revoking a Safety and Security Segregation Direction*

- 6.33 When considering whether to make a Safety and Security Segregation Direction, the Manager must consider the young person's age, maturity, cultural identity, physical and mental health and known history of the young person, such as a history of abuse.
- 6.34 The Manager must also consider any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young person. This should include consideration of whether the young person is an Aboriginal and/or Torres Strait Islander young person and the impact on the young person of making a Segregation Direction.
- 6.35 As soon as practicable after making a Safety and Security Segregation Direction, a youth worker must explain to the young person the reasons for the direction and request the young person's cooperation with the direction.
- 6.36 The Manager will ensure that when a Safety and Security Segregation Direction is made, the young person's classification, behaviour management plan, case management plan and Special Management Directions are reviewed.

- 6.37 The Manager must revoke the Safety and Security Segregation Direction if the Manager believes on reasonable grounds that the segregation is no longer reasonable and necessary for the purpose for which it was implemented.
- 6.38 For procedures applying to implementation of Safety and Security Segregation Directions, refer to 'Procedures for Implementing Safety and Security, Health and Protective Custody Segregation Directions'.

### Health Segregation

#### *Prior to making a Health Segregation Direction*

- 6.39 Health segregation is a requirement for the management of a young person in a way that separates the young person from some or all other young people for assessment or to protect any person within the detention place because of the young person's health.
- 6.40 Before making a Health Segregation Direction, the Manager must implement, or arrange for the implementation of, the following less restrictive strategies to prevent an imminent risk of the young person harming himself or herself, unless it is considered not appropriate to implement these strategies because of the urgency and seriousness of the situation:
- (a) responding to cues indicating the potential for escalation of threatening or disruptive behaviour
  - (b) discussing the concerns/ problems/ issues with the young person
  - (c) reflective listening and feedback to demonstrate to the young person that their concerns have been heard and understood and what will be done to attempt to resolve their concerns
  - (d) attempts to de-escalate the situation by facilitating a conflict resolution process and/or meeting with the person or people concerned
  - (e) involving other youth workers
  - (f) involving a health professional or other suitable person
  - (g) being clear with instructions while remaining calm and respectful
  - (h) the use of the young person's room or an alternative space or room.
- 6.41 The criteria for making a Health Segregation Direction will only be satisfied in circumstances where less restrictive strategies have not reduced the imminent risk to the young person or other people, or less restrictive strategies have been considered but were not appropriate because of the urgency and/or seriousness of the situation.

#### *Making and revoking a Health Segregation Direction*

- 6.42 In making or revoking a Health Segregation Direction, the Manager must have regard to any advice by a treating doctor given in relation to the segregation of the young person.
- 6.43 The Manager may direct that a young person be segregated from other young people if the Manager believes on reasonable grounds that the segregation is reasonable and necessary to:
- (a) assess the young person's physical or mental health
  - (b) protect anyone (including the young person) from harm because of the young person's physical or mental health
  - (c) prevent the spread of disease.



- 6.44 When considering whether to make a Health Segregation Direction, the Manager must consider the young person's age, maturity, cultural identity, physical and mental health and known history of the young person, such as a history of abuse.
- 6.45 The Manager must also consider any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young person. This should include consideration of whether the young person is an Aboriginal and/or Torres Strait Islander young person and the impact on the young person of making a Segregation Direction.
- 6.46 As soon as practicable after making a Health Segregation Direction, a youth worker must explain to the young person the reasons for the direction and request the young person's cooperation with the direction.
- 6.47 The Manager will ensure that when a Health Segregation Direction is made, the young person's classification, behaviour management plan, case plan and Special Management Directions are reviewed.
- 6.48 The Manager must revoke the Health Segregation Direction if the Manager believes on reasonable grounds that the segregation is no longer reasonable and necessary for the purpose for which it was implemented.
- 6.49 For procedures applying to implementation of Health Segregation Directions, refer to 'Procedures for Implementing Safety and Security, Health and Protective Custody Segregation Directions'.

#### Protective Custody Segregation

##### *Prior to making a Protective Custody Segregation Direction*

- 6.50 Protective custody segregation is a requirement for the management of a young person in a way that separates the young person from some or all other young people because the young person is at risk from another young person or young people and the segregation is necessary to protect the young person's safety and security.
- 6.51 Before making a Protective Custody Segregation Direction, the Manager must implement, or arrange for the implementation of, the following less restrictive strategies to prevent an imminent risk of the young person harming himself or herself, unless it is considered not appropriate to implement these strategies because of the urgency and seriousness of the situation:
  - (a) responding to cues indicating the potential for escalation of threatening or disruptive behaviour
  - (b) discussing the concerns/ problems/ issues with the young person
  - (c) reflective listening and feedback to demonstrate to the young person that their concerns have been heard and understood and what will be done to attempt to resolve their concerns
  - (d) attempts to de-escalate the situation by facilitating a conflict resolution process and/or meeting with the person or people concerned
  - (e) involving other youth workers
  - (f) involving a health professional or other suitable person
  - (g) being clear with instructions while remaining calm and respectful
  - (h) the use of the young person's room or an alternative space or room.
- 6.52 The criteria for making a Protective Custody Segregation Direction will only be satisfied in circumstances where less restrictive strategies have

not reduced the imminent risk to the young person, or less restrictive strategies have been considered but were not appropriate because of the urgency and/or seriousness of the situation.

#### *Making and revoking a Protective Custody Segregation Direction*

- 6.53 A young person may request that a Protective Custody Segregation Direction be made for them. A request may be made verbally or in writing.
- 6.54 After receiving a request from a young person or at the Manager's own initiative, the Manager may direct that the young person be segregated from other young people if the Manager believes on reasonable grounds that the segregation is reasonable and necessary to protect the young person's safety.
- 6.55 When considering whether to make a Protective Custody Segregation Direction, the Manager must consider the young person's age, maturity, cultural identity, physical and mental health and known history of the young person, such as a history of abuse.
- 6.56 The Manager must also consider any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young person. This should include consideration of whether the young person is an Aboriginal and/or Torres Strait Islander young person and the impact on the young person of making a Segregation Direction.
- 6.57 In deciding whether to make a Protective Custody Segregation Direction, the Manager may make, or request to be made, further inquiries to determine whether the direction is reasonable and necessary to protect the young person's safety (e.g. interviewing other young people).
- 6.58 As soon as practicable after making a Protective Custody Segregation Direction, a youth worker must explain to the young person the reasons for the direction and request the young person's cooperation with the direction.
- 6.59 The Manager will ensure that when a Protective Custody Segregation Direction is made, the young person's classification, behaviour management plan, case management plan and Special Management Directions are reviewed.
- 6.60 The Manager must revoke the Protective Custody Segregation Direction if the Manager believes on reasonable grounds that the segregation is no longer reasonable and necessary for the purpose for which it was implemented.
- 6.61 For procedures applying to implementation of protective custody Segregation Directions, refer to 'Procedures for Implementing Safety and Security, Health and Protective Custody Segregation Directions'.

#### Procedures for Implementing Safety and Security, Health and Protective Custody Segregation Directions

- 6.62 After making a Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction, the Manager must decide the arrangements for the young person's segregation.
- 6.63 The Manager will ensure that when a Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction is made, the young person's classification,

- behaviour management plan, case plan and Special Management Directions are reviewed.
- 6.64 In deciding the arrangements for the young person's segregation, the Manager must ensure the arrangements for the young person's segregation are the least restrictive necessary to uphold the Segregation Direction.
- 6.65 As soon as practicable after making a Segregation Direction, a youth worker must explain to the young person the reasons for the direction and request the young person's cooperation with arrangements for the direction.
- 6.66 As soon as practicable after making a Segregation Direction, the Manager must also give the young person written notice of the Segregation Direction or arrange for this notice to be given to the young person by a youth worker (refer to 'Giving Notice of Segregation Directions'). The Manager must ensure the notice is also given to the people listed at 6.90.
- 6.67 If a young person fails to comply with the Segregation Direction, a youth worker may use force to enforce the direction. If force is used, a youth worker must comply with the Use of Force Policy and Procedures. A youth worker must record any force used to compel compliance with the direction and the reasons for force being used in the Register of Segregation Directions.
- 6.68 During the period the Segregation Direction is in force, the Manager must give directions for the frequency of observations for the young person and ensure the young person is regularly monitored.

#### Duration of Safety and Security, Health and Protective Custody Segregation Directions

- 6.69 All Segregation Directions must be revoked by the Manager as soon as a belief is formed that the segregation is no longer reasonable and necessary for the purpose for which it was implemented.
- 6.70 A Safety and Security Segregation Direction, Health Segregation Direction and Protective Custody Segregation Direction may continue in force for 28 days after it is made, unless it is revoked earlier.
- 6.71 Following an internal review of a Segregation Direction by the Manager or Director under 6.72-6.79 and a subsequent Segregation Direction being made, the direction continues for 90 days after the further direction, or latest direction, is given, unless earlier revoked.

#### Review of Safety and Security, Health and Protective Custody Segregation Directions

##### *Internal review of Segregation Directions*

- 6.72 The Director, Bimberi or Director, Child and Youth Protection Services Operations may review a Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction at any time on the Director, Bimberi or Director, Operations own initiative.
- 6.73 The Director, Bimberi or Director, Child and Youth Protection Services Operations may review a Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction at any time on verbal or written request by the young person, or written request

- by a person who has been given notice of the Segregation Direction who is acting on the young person's behalf. If a young person or a person on their behalf, requests a review of a Segregation Direction, and the Director, Bimberi or Director, Child and Youth Protection Services Operations refuses to review the direction, the Director, Bimberi or Director, Child and Youth Protection Services Operations must record the reasons for the refusal in the Register of Segregation Directions and give notice to the person seeking the review.
- 6.74 The Director, Bimberi or Director, Child and Youth Protection Services Operations must review a Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction in any of the following circumstances:
- (a) prior to any transfer of the young person, including a transfer to a correctional centre
  - (b) within 7 days after the direction has been in force (the 'initial review')
  - (c) within 7 days after the day of the initial review
  - (d) within each subsequent period of 14 days while it remains in force (the 'subsequent review').
- 6.75 The Director, Bimberi or Director, Child and Youth Protection Services Operations must review a Health Segregation Direction on request by a treating doctor or health professional.
- 6.76 In reviewing a Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction, the Director, Bimberi or Director, Child and Youth Protection Services Operations must assess any ongoing risks to the young person or other people and consider whether a Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction is the most appropriate way to address those risks.
- 6.77 After reviewing the original Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction, the Director, Bimberi or Director, Child and Youth Protection Services Operations must make one of the following decisions:
- (a) confirm the direction or
  - (b) make a further Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction if the grounds for making the direction exist
  - (c) revoke the original Safety and Security Segregation Direction, Health Segregation Direction or Protective Custody Segregation Direction if the Director, Bimberi or Director, Child and Youth Protection Services Operations believes on reasonable grounds that the segregation is no longer reasonable and necessary for the purpose for which it was implemented.
- 6.78 In making a decision under 6.77 in relation to a Health Segregation Direction, the Director, Bimberi or Director, Child and Youth Protection Services Operations must have regard to any advice by a treating doctor or health professional given in relation to the segregation.
- 6.79 A decision made under 6.77 must be recorded in the Register of Segregation Directions and notice given to the young person and any person who sought a review of the Safety and Security Segregation

Direction, Health Segregation Direction or Protective Custody Segregation Direction.

#### *External review*

- 6.80 A young person may apply to an external reviewer for a review of a Segregation Direction.
- 6.81 The segregation of the young person under the direction continues during the hearing and deciding of an application for external review, unless otherwise decided by the external reviewer.
- 6.82 After receiving an application from a young person, an external reviewer may:
- (a) review the Segregation Direction
  - (b) refuse to review the Segregation Direction.
- 6.83 In reviewing a Segregation Direction, the external reviewer must comply with the procedures outlined in chapter 9 (Criminal matters—conduct of disciplinary reviews) of the *Children and Young People Act 2008*.
- 6.84 Following completion of a review, the external reviewer may:
- (a) confirm the Segregation Direction under review
  - (b) give any direction the Manager may give under the section authorising the direction under review, either by:
    - i. amending the direction under review
    - ii. setting aside the direction under review and making a direction in substitution for the direction set aside.
- 6.85 The external reviewer must give prompt written notice of a decision to review or refuse to review a Segregation Direction, including reasons for the refusal to review the direction. The notice must be given to the young person; the Manager; a person with parental responsibility for the young person or a nominated person.
- 6.86 After receiving written notice from the external reviewer under 6.73, the Manager must record the external reviewer's decision in the Register of Segregation Directions.

#### Termination of Segregation Directions

- 6.87 Notice of the termination of all Segregation Directions is to be provided to the ACT Public Advocate as soon as practicable after the direction has been terminated.
- 6.88 When a Segregation Direction ceases the young person will be managed in a less restrictive manner as soon as practicable.

#### Reporting and recording all Segregation Directions

##### *Giving notice of all Segregation Directions*

- 6.89 Following a Segregation Direction being made, the Manager must prepare a notice or arrange for a notice to be prepared with the following information:
- (a) stating the direction
  - (b) explaining why the direction was given
  - (c) stating when the direction takes effect
  - (d) stating how long the direction lasts
  - (e) explaining that the direction may be reviewed or revoked under section 211 of the *Children and Young People Act 2008* and this policy and

procedures (for the safe room Segregation Direction) or under subdivision 6.6.3.4 of the *Children and Young People Act 2008* and this policy and procedures (for a Safety and Security, Protective Custody or Health Segregation Direction).

- 6.90 The Manager must ensure the notice is given as soon as practicable, and in any case, not later than 24 hours after making the Segregation Direction, to:
- (a) the Director, Child and Youth Protection Services Operations
  - (b) the young person
  - (c) if the young person is under 18 years old, a person with parental responsibility for the young person, including the Director, Child and Youth Protection Services Operations, if the Director-General has an aspect of parental responsibility
  - (d) a nominated person if the young person is aged 18-21 years
  - (e) the ACT Public Advocate.

#### Register of Segregation Directions

- 6.91 The Manager must ensure that the following information is placed on the Register of Segregation Directions:
- (a) the name of the young person who is subject to the direction
  - (b) the reason for the direction
  - (c) the period for which the direction is in effect
  - (d) details of people notified of the Segregation Direction
  - (e) details of any force used to compel compliance with the direction, and why force was used
  - (f) details of any confirmation of a Segregation Direction, or of any other direction, made under 6.80 and 6.88
  - (g) any reasons for refusing to review the direction and give notice to the person seeking the review.

#### Inspection of Register of Segregation Directions

- 6.92 The Register of Segregation Directions must be available for inspection by any of the following:
- (a) a Judge
  - (b) a Magistrate
  - (c) an Official Visitor
  - (d) a Commissioner
  - (e) the ACT Public Advocate
  - (f) the Ombudsman.

#### Segregation of Young People Transferred from Interstate

- 6.93 Section 215 of the *Children and Young People Act 2008* enables an Interstate Segregation Direction for a young person to continue in force when the young person is transferred to a detention place as if the direction had been made at a detention place.
- 6.94 After the transfer of a young person subject to an Interstate Segregation Authority to a detention place, the Manager must consider the reasons for the making of the Interstate Segregation Direction in the originating jurisdiction and decide whether a Segregation Direction should be made for the young person at a detention place.

- 6.95 The Interstate Segregation Direction ends 3 days after the day the young person is taken into custody at a detention place unless another Segregation Direction has been made under this policy and procedures before the end of the 3 days.

#### Provision of Information, Review of Decisions and Complaints

- 6.96 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.
- 6.97 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*.
- 6.98 Staff must ensure that the Complaints Management Policy and Procedures is followed.

#### Records and Reporting

- 6.99 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.

### **7. Forms and Templates**

Application by young person for external review form  
Notice of segregation direction form  
Register of Segregation Directions  
Register of Searches and Uses of Force

### **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  
Minimum Living Conditions Policy and Procedures  
Records and Reporting Policy and Procedures  
Use of Force 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.