

Australian Capital Territory

Children and Young People (Use of Force) Policy and Procedures 2022 (No.1)

Notifiable instrument NI2022-455

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 (Use of Force) Policy and Procedures 2022 (No.1)*.

2 Commencement

This instrument is to commence the day after notification.

3 Repeal

NI2018-451 is revoked.

4 Policies and operating procedures

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

Catherine Rule
Director-General
Community Services Directorate
9 September 2022

Use of Force Policy and Procedures

1. Introduction and Purpose

This policy and procedures addresses the requirement at section 223(6-7) of the *Children and Young People Act 2008* for the Director-General to make a youth detention policy or operating procedure in relation to the use of force that covers:

- the circumstances, and by whom, force may be used
- the kinds of force that may be used
- and the use of restraints.

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 6.6.4 relates to the use of force. 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 10 Protection from torture and cruel, inhuman or degrading treatment

- (1) No-one may be –
- (a) tortured or.
- (b) treated or punished in a cruel, inhuman or degrading way.

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 63, 64, 65
 - (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 A youth worker, transfer officer and escort officer is authorised to use force at or in relation to a detention place, in accordance with the *Children and Young People Act 2008*, this policy and procedures and approved training, by using the minimum force necessary to achieve the purpose for which force is being used and in a way that reduces the risk of causing injury.
- 3.2 Only those youth workers, transfer escorts and escort officers who have successfully completed the approved training are permitted to use force at or in relation to a detention place.
- 3.3 The Manager must ensure youth workers receive approved training in relation to the use of force, including the use of instruments of restraint. The Manager must ensure that instruments of restraint are only used by youth workers in accordance with this policy.
- 3.4 The Manager must ensure that transfer escorts and escort officers who are not youth workers have been trained in the use of approved techniques and instruments of restraint.
- 3.5 Any use of force by a youth workers, transfer escorts and escort officers not authorised by the Act and this policy and procedures will be investigated. This may include a referral to police for criminal investigation (refer to 'Liability of Youth Workers Using Force'). Disciplinary procedures under the *Public Sector Management Act 1994* may also be commenced against a youth worker in these circumstances.

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 Group Manager, Executive Group Manager (Deputy) (A), Executive Branch Manager, Child and Youth Protection Services Operations (B), Executive Branch Manager, Youth Justice (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).

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.

Corrections officer is a person appointed under section 19 of the *Corrections Management Act 2007* by the Director-General responsible for that Act.

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.

Executive Branch Manager, Child and Youth Protection Services Operations refers to the responsible senior executive in the Community Services Directorate.

Executive Branch Manager, Youth Justice refers to the responsible senior executive of a detention place 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.

Duty of care refers to the obligation by youth workers to take reasonable care to avoid injury or loss to a person whom it could be reasonably foreseen might be injured by an act or omission.

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.

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

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.

Instruments of restraint include restraint belts, flexicuffs, shields, helmets, handcuffs and other approved items.

Manager refers to the Executive Branch Manager of a detention place during normal business hours, or in the event this person is unavailable, the Deputy Centre 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.

Police refers to ACT Policing.

Prohibited thing is a thing declared under section 148 of the *Children and Young People Act 2008* by the Director-General to be prohibited if the Director-General

reasonably believes that the declaration is necessary or prudent to ensure safety and security of a young person or other people at a detention place. The declaration of prohibited things is contained in the Search and Seizure Policy and Procedures.

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* as a record of any search, seizure or use of force. All forms recording these activities must be completed and filed in the register.

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.

Restraint means body contact or the use of instruments of restraint including restraint belts, flexicuffs, shields, helmets, handcuffs and other approved items.

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 Manager for the management of a young person in a way that separates the young person from some or all other young people due to safety and security reasons (e.g. health reasons or for the young person's protection). There are four types of directions that may be made by the Manager to authorise the segregation of a young person within a detention place (1) Safe Room Segregation Direction, (2) Safety and Security Segregation Direction, (3) Protective Custody Segregation Direction, (4) Health Segregation Direction.

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

Staff refers to youth workers and other authorised persons.

Support person is someone who is capable of supporting and representing the young person's interests. This may be another youth worker who is capable of fulfilling this function.

Transfer escort means a person who is authorised under a transfer agreement, transfer arrangement or transfer order to take and keep custody of a young person. The transfer escort must be a police officer, a corrections officer, a youth worker or a person acting as a transfer escort with the approval of the Manager.

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: Executive Branch Manager, Youth Justice (B), Deputy Centre Manager (C), Operations Manager (D), Intelligence and Classification Officer (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*.

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 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 procedure:

- (a) restrictive strategies such as the use of force are always an option of last resort after all other interventions and strategies have been employed to de-escalate an incident and manage the situation
- (b) force that is used must be proportionate to the circumstances and reasonable and necessary to achieve the purpose for which it is being used

6. Policy and Procedures

Before Using Force

6.1 Before using force youth workers, transfer escorts and escort officers must consider and/ or employ alternative strategies such as:

- (a) responding to cues indicating the potential for escalation of threatening or disruptive behaviour

- (b) withdrawal from the situation
 - (c) discussing the concerns/problems/issues with the person
 - (d) reflective listening and feedback to demonstrate to the person that their concerns have been heard and understood
 - (e) attempting to de-escalate the situation by facilitating a conflict resolution process and/or meeting with the people concerned
 - (f) involving other youth workers
 - (g) involving a health professional or other suitable person
 - (h) being clear with instructions while remaining calm and respectful
 - (i) the use of the young person's cabin or an alternative space or room.
- 6.2 Except in an urgent situation, youth workers, transfer escorts and escort officers must consider the following before using force against a person:
- (a) the person's age, sex, physical and mental health and known history such as a history of abuse
 - (b) the physical and developmental capacity of the person if the proposed force involves any restraint of the person.
- 6.3 Youth workers, transfer escorts and escort officers must ensure the use of force in relation to a young person is not observed by another young person. The only exception to this rule is in an urgent situation where a youth workers, transfer escorts and escort officers reasonably believes that complying with this rule would create a risk of injury to a person, including a staff or the young person. This exception may apply in the following circumstances:
- (a) the use of force to de-escalate an incident involving continued non-compliance with a direction by more than one young person that is likely to escalate to a disturbance
 - (b) the use of force to intervene in an assault by one young person against another young person
 - (c) the use of force to prevent an escape attempt by more than one young person.

Grounds for Using Force

- 6.4 To be authorised to use force under 6.5, a youth worker, transfer escort and escort officer must reasonably believe that the purpose for which force is to be used cannot be achieved in another way such as through the application of alternative strategies at 6.1.
- 6.5 Youth workers, transfer escorts and escort officers may use necessary and reasonable force on a young person in the following circumstances:
- (a) to prevent escape from custody
 - (b) as a process of self defence if attacked or under imminent threat of attack and there is no other way of protecting oneself from harm
 - (c) to protect another person including a young person, a staff member or any other person visiting a detention place from attack or harm and where no other means are available for their protection
 - (d) to prevent a young person from harming himself or herself
 - (e) to enforce a Segregation Direction, including to move a young person to a safe room, after all reasonable steps have been taken to persuade the young person to comply with the direction

- (f) to prevent or quell a riot or persistent serious disruption to the safety and security of a young person, other young people or other people at a detention place
 - (g) to prevent or stop the commission of an offence or in response to a serious safety or security risk a young person, other young people or other people at a detention place
 - (h) to prevent unlawful damage, destruction or interference with property
 - (i) to undertake a personal or area search, to seize a prohibited thing or a dangerous or harmful article or substance that is reasonably suspected to be in the possession of a young person, or to prevent the loss, destruction or contamination of anything seized during a search.
- 6.6 Youth workers may use force on people other than young people in certain circumstances (refer to 'Use of Force in relation to People other than Young People').

Rules for Using Force

- 6.7 Preservation of life is the paramount consideration in an emergency situation and all youth workers, transfer officers and escort officers have an obligation to protect the right to life of young people. Force likely to cause grievous bodily harm or death may be used only in cases where it is reasonable to believe there exists a serious counter-threat of serious bodily harm or death.
- 6.8 On every occasion the amount of force used by youth workers, transfer escorts and escort officers must be the minimum force necessary to achieve the purpose for which force is being used and applied in a way that reduces the risk of causing injury.
- 6.8 The use of force must cease immediately after the need to restrain or involuntarily move a person has passed. When using force, youth workers, transfer escorts and escort officers must not increase the amount of force applied once the person is under control.
- 6.9 Unless circumstances described at 6.11 apply, youth workers, transfer escorts and escort officers must warn a person of their intention to use force prior to the application of the force. Wherever possible this should be done using language the person can easily understand.
- 6.10 A person given a warning under 6.9 should be given further opportunity to comply with the youth worker's, transfer escort's or escort officer's instructions, in full knowledge that force may be applied if refusal continues.
- 6.11 In urgent circumstances where the youth worker, transfer escort or escort officer believes on reasonable grounds that giving a warning under 6.9 to a person about an intention to use force would create a risk of injury to a person, the youth worker, transfer escort and escort officer is not required to give a warning before using force (e.g. an assault in progress or a young person is engaging in self-harm).

Additional rules for the use of instruments of restraint

- 6.12 Instruments of restraint must only be used with approval from a Manager, if time permits. The Manager must ensure, as far as practicable, that the use of force involving an instrument of restraint is proportionate to the circumstances and in particular that:
- (a) the circumstances are sufficiently serious to justify the use of the restraint

- (b) the kind of restraint is appropriate in the circumstances
 - (c) the restraint is used appropriately in the circumstances.
- 6.13 When deciding whether to use an instrument of restraint as part of or during a use of force, youth workers, transfer escorts and escort officers must consider whether the use of an instrument of restraint is proportionate to the circumstances.

Restrictions on Use of Force

- 6.14 Youth workers, transfer escorts and escort officers must:
- (a) not exert physical force in the form of a pressure point hold
 - (b) not use force that deliberately causes harm, pain or injury, or is degrading or humiliating or as a form of punishment
 - (c) not restrain a young person using the prone position, double basket or the double-seated embrace.
 - (d) not use spit hoods or mechanical restraint chairs.

Health Assessment and Treatment after Use of Force

- 6.15 The treating doctor or a nurse must be notified every time a use of force is used against a young person.
- 6.16 If force is used against a young person that has caused an injury to the young person, the Manager or Team Leader must ensure the young person is examined as soon as practicable following the use of force by a treating doctor or nurse and that appropriate health care is available to the young person consistent with the Health and Wellbeing Policy and Procedures. An injury includes any injury to the young person's body observed by a staff, such as bruising or marks, or any injury or potential injury identified by the young person, such as a complaint of pain to a body part.
- 6.17 If force has been used against a young person that has not caused an injury to the young person, the Manager or Team Leader must ensure the young person is offered a medical examination by a treating doctor or nurse as soon as practicable following the use of force. If the young person accepts the offer of a medical examination, the Manager or Team Leader must ensure the medical examination is arranged as soon as practicable and that appropriate health care is available to the young person consistent with the Health and Wellbeing Policy and Procedures.

Use of Force for Searches

- 6.18 The Search and Seizure Policy and Procedures addresses the searching of people and seizing of things during the search (refer to Search and Seizure Policy and Procedures)
- 6.19 A youth worker, transfer escort or escort officer may use necessary and reasonable force in relation to searches in the following circumstances:
- (a) to conduct a search under the Search and Seizure Policy and Procedures
 - (b) to assist at a body search under the Search and Seizure Policy and Procedures
 - (c) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during a search.
- 6.20 A youth worker, transfer escort or escort officer must comply with all aspects of this policy and procedure in the use of force for searches.

- 6.21 If the use of force is required while a young person is being searched, or in relation to a search of a young person, a youth worker, transfer escort or escort officer applying force, must, wherever possible, be of the same sex as the young person.

Interstate Transfers - Powers of Transfer Escorts to Use Force

- 6.22 The Local and Interstate Leave Policy and Procedures addresses the interstate transfer of young people in custody under a transfer agreement, transfer arrangement or transfer order (refer Local and Interstate Leave Policy and Procedures).
- 6.23 To keep custody of the young person under the transfer, a transfer escort may:
- (a) give the young person any direction that the transfer escort believes on reasonable grounds is necessary and reasonable
 - (b) use force in accordance with this policy and procedures.

Local and Interstate Leave - Powers of Escort Officers to Use Force

- 6.24 The Local and Interstate Leave Policy and Procedures allow a young person to be granted a local or interstate leave permit.
- 6.25 An escort officer escorting a young person under a local or interstate leave permit may, to keep custody of the young person:
- (a) give the young person any direction that the officer believes on reasonable grounds is necessary and reasonable
 - (b) use force in accordance with this policy and procedures.

Use of Force in relation to People other than Young People

- 6.26 Youth workers are authorised to use force at a detention place on people other than young people in the following circumstances:
- (a) to enforce a direction given to a person to not enter or to leave a detention place if the person given the direction contravenes the direction
 - (b) to enforce a direction given to a person with parental responsibility or support person present at a strip search on admission and induction to leave the search area if the person given the direction contravenes the direction (refer to Search and Seizure Policy and Procedures for giving a person a direction to leave in these circumstances)
 - (c) to enforce a direction given to a person with parental responsibility or support person present at a body search to leave the search area if the person given the direction contravenes the direction (refer to Search and Seizure Policy and Procedures for giving a person a direction to leave in these circumstances).
- 6.27 If a youth worker uses force on a person other than a young person in the above circumstances, the youth worker must use the minimum amount of force that is necessary and reasonable to enforce the direction.
- 6.28 In using force on a person other than a young person in the above circumstances the youth worker must comply with this policy and procedures.

Debriefing of Youth Workers and Access to Support and Counselling for Young People

- 6.29 Youth workers, transfer officers and escort officers and young people involved in a use of force incident should be offered debriefing and support as soon as possible after the incident has occurred.

Surveillance

- 6.30 If the situation permits, the Manager must ensure that audio or video surveillance of an incident where force has been used is kept for future reference/evidence. These records are to be stored in a manner that will protect them from inappropriate or illegal access, destruction, damage, disclosure, theft or loss and disposed of in accordance with the *Territory Records Act 2002* under the approved records disposal schedule set out in the Directorate's Records Management Program.

Recording and Reporting Uses of Force

- 6.31 Any use of force against a young person or another person under this policy and procedures must be recorded as a Reportable Incident according to the requirements set out in the Records and Reporting Policy and Procedures.
- 6.32 All required reports are the responsibility of youth workers, transfer officers and escort officers and are to be fully completed before youth workers complete their shift, unless otherwise approved by the Manager.
- 6.33 The Manager must ensure that, as soon as practicable after the end of each month, a report is provided to the Director-General summarising any incidents during the month that involved the use of force in relation to a young person.
- 6.34 A Register of Searches and Uses of Force must be maintained by the Manager. All incidents involving the use of force in relation to young people under this policy and procedures must be recorded in the register. The register must include details of each incident, including the circumstances, the decision to use force and the force used. The register must also include details of any force used for conducting a search, and why force was used.
- 6.35 Details of any force used to compel compliance with a Segregation Direction and the reasons for using force must also be recorded in the Register of Segregation Directions.

Liability of Youth Workers, Transfer Escort and Escort Officers

- 6.36 A youth worker, transfer escort and escort officer may be criminally liable for any excessive use of force.

Provision of Information, Review of Decisions and Complaints

- 6.37 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.
- 6.38 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*.

- 6.39 Staff must ensure that the Complaints Management Policy and Procedures is followed.
- 6.40 A young person may make a complaint to police following an incident involving the use of force. Police will determine if there is reasonable evidence upon which to investigate and proceed to charging a person.

Records and Reporting

- 6.41 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
- 6.42 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

Reportable incidents form
Register of Searches and Uses of Force
Summary Report to Director-General

8. Related Policies and Procedures

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

Behaviour Management Policy and Procedures
Complaints Management Policy and Procedures
Health and Wellbeing Policy and Procedures
Interstate Transfer Policy and Procedures
Safety and Security Policy and Procedures
Search and Seizure Policy and Procedures

Policies and Procedures in Child and Youth Protection Services

Single Case Management Policy and Procedures

Further References

Use of Force Training Manual

10. Review

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