

## **Children and Young People (Discipline) Policy and Procedures 2008 (No 1)**

Notifiable instrument NI2008– 393

made under the

*Children and Young People Act 2008*, Section 143 Youth detention policies and operating procedures

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**1 Name of instrument**

This instrument is the *Children and Young People (Discipline) Policy and Procedures 2008 (No 1)*.

**2 Commencement**

This instrument is to commence on 9 September 2008.

**3 Policy and Procedures**

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

Martin Hehir  
Chief Executive

8 September 2008

# Discipline Policy and Procedures

## 1. Introduction and Purpose

The Behaviour Management Policy and Procedures, Discipline Policy and Procedures and Reporting and Investigation Procedures are to be read and understood in conjunction with each other.

The Behaviour Management Policy and Procedures implement proactive and preventative strategies within the detention place and in working with young detainees to promote positive and pro-social behaviours by young detainees. The Behaviour Management Policy and Procedures also outline reactive strategies for responding to negative behaviour by a young detainee including behaviour which is a minor behaviour breach. Behaviour management consequences may be imposed under the Behaviour Management Policy and Procedures for minor behaviour breaches.

The Discipline Policy and Procedures intersect with the Behaviour Management Policy and Procedures as a response to a behaviour breach. Disciplinary action involves a young detainee being charged with a behaviour breach and this may lead to the imposition of higher behaviour management consequences.

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

## 2. Legal Authority and Obligations

- 2.1 The *Children and Young People Act 2008* is the primary source of authority for the operations of a detention place. The provisions of the *Children and Young People Act 2008* 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 *Children and Young People Act 2008* and other relevant legislation, including the *Human Rights Act 2004*.
- 2.3 Chapters 8 and 9 of the *Children and Young People Act 2008* address behaviour management and discipline procedures at a detention place. The Behaviour Management Policy and Procedures address the requirement at section 297 of the *Children and Young People Act 2008* for the Chief Executive to establish a behaviour management framework for responding to minor behaviour breaches. The Reporting and Investigation Procedures address the requirement at section 294 of the *Children and Young People Act 2008* for the Chief Executive to make procedures about the making, recording and investigation of behaviour breach reports.

The following international human rights standards apply in the ACT:

- Convention on the Rights of the Child;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice;

- United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
- Standard Minimum Rules for the Treatment of Prisoners;
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

International human rights standards that are relevant to behaviour management and discipline are:

**United Nations Rules for the Protection of Juveniles Deprived of their Liberty -**

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

### 3. Authorisations and Delegations

- 3.1 The Senior Manager is responsible for ensuring staff receive training in this Policy and Procedure, including training in the implementation of proactive strategies to promote positive behaviour.
- 3.2 The delegates of the Chief Executive who may make decisions or take action under chapters 8 and 9 of the *Children and Young People Act 2008* in response to minor behaviour breaches or behaviour breaches are outlined in Column 4 of Table 3A. Column 5 addresses the requirements in the *Children and Young People Act 2008* for different decision-makers at key decision-making points.

**Table 3A Decision-makers for Reactive Strategies - Behaviour Management or Discipline Response to Minor Behaviour Breaches or Behaviour Breaches**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Legislative Authority under <i>Children and Young People Act 2008</i> and term used to describe decision-maker</b>	<b>Reference/s in Behaviour Management Policy and Procedures or Discipline Policy and Procedures</b>	<b>Action</b>	<b>Delegates who may make decision or take action</b>	<b>Who the decision-maker must not be</b>
Section 293 Youth detention officer	6.71 Behaviour Management Policy and Procedures	Youth detention officer may: a) Give the young detainee feedback about their behaviour; b) Give the young detainee a warning; c) Reprimand the young detainee; d) Refer the alleged behaviour breach to the administrator in a behaviour breach report form	Youth worker, Team Leader, Unit Manager, Operations Manager, Programs and Services Manager, Senior Manager	Initial decision-maker can be a youth detention officer as described, but there are rules about later decision-makers not being the same person (see below).
Sections 291 and 295(2)(b) Investigator	6.87 Behaviour Management Policy and Procedures	To investigate an alleged behaviour breach in accordance with the reporting and investigation procedures	Team Leader, Unit Manager, Operations Manager, Programs and Services Manager, Senior Manager	The investigator must be a different person to the youth detention officer who refers the alleged

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<b>Legislative Authority under <i>Children and Young People Act 2008</i> and term used to describe decision-maker</b>	<b>Reference/s in Behaviour Management Policy and Procedures or Discipline Policy and Procedures</b>	<b>Action</b>	<b>Delegates who may make decision or take action</b>	<b>Who the decision-maker must not be</b>
				behaviour breach in a behaviour breach report form (above) and a different person to the administrator (below).
Section 295(4) Administrator	6.87-6.90 Behaviour Management Policy and Procedures	Administrator may: a) Arrange for an investigator to investigate the alleged behaviour breach; b) take no further action; c) Give the young detainee feedback about their behaviour; d) Give the young detainee a warning; e) Reprimand the young detainee; f) for a minor behaviour breach—impose behaviour management consequences; g) refer the alleged behaviour breach to police; h) charge the young detainee in a charge notice	Unit Manager (may take any action except referring an alleged behaviour breach to police), Operations Manager, Programs and Services Manager, Senior Manager	The administrator must be a different person to the youth detention officer who refers the alleged behaviour breach in a behaviour breach report form and a different person to the investigator.
Section 302 Administrator	6.10, 6.15 Discipline policy and procedure	Administrator may take the disciplinary action stated in the charge notice	As above	As above
Section 306	6.29	Administrator must	Operations	The review

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Review Officer	Discipline policy and procedure	arrange for a review officer to conduct an internal review into the behaviour breach charged	Manager, Programs and Services Manager, Senior Manager, Director	officer must be a different person to the youth detention officer who made the allegation report, who investigated the behaviour breach and the administrator.
Section 307 Review Officer	6.32-6.35 Discipline policy and procedure	Review officer may take disciplinary action, may refer the charge to the police or DPP or must dismiss the charge	As above	As above
Section 312 External reviewer	6.51 Discipline Policy and procedures	External reviewer must review decision made by review officer or refuse to review decision	Appointed external reviewer (magistrate)	Anyone other than appointed external reviewer

#### 4. Definitions

**Administrative Decisions (Judicial Review) Act 1989** is an Act which allows for a person who is adversely affected by an administrative decision made under a law to apply to the Supreme Court for review of the decision.

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

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

**Behaviour breach** is defined at section 287 of the *Children and Young People Act 2008*. A list of behaviours that constitute a behaviour breach is at Schedule 1 of the Behaviour Management policy.

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

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

**Behaviour management consequences** may be imposed in response to a minor behaviour breach under the behaviour management policy or in response to a behaviour breach under the discipline policy. Behaviour management consequences under the behaviour management policy are prescribed by section 298 of the *Children and Young People Act 2008*. These consequences are a fine up to \$25, a withdrawal of privileges for not longer than 6 days, a requirement to make an apology to a person affected by the minor behaviour breach and a requirement to perform extra chores for not longer than 2 hours. Behaviour management consequences under the discipline policy are prescribed by section 318 of the *Children and Young People Act 2008*. These consequences are a fine up to \$250, a withdrawal of privileges for not longer than 60 days, a requirement to make an apology to a person affected by the behaviour breach and a requirement to perform extra chores for not longer than 20 hours.

**Behaviour management plan** is a plan developed in consultation with a young detainee which has the objective of addressing negative and challenging behaviours displayed by the young detainee at a detention place.

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

**Charge notice** is a notice given to a young detainee to commence disciplinary action against the young detainee. The form at schedule 8 of the Behaviour Management Policy and Procedure must be used.

**Disciplinary action** means one or more of the following actions taken against a young detainee following a disciplinary charge:

- (a) Giving the young detainee a warning;
- (b) Reprimanding the young detainee; and
- (c) Imposing behaviour management consequences on the young detainee.

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

**Incentive scheme** is designed to recognise and reinforce socially acceptable and positive behaviours by young detainees within a detention place.

**Investigator** is defined in section 291 of the *Children and Young People Act 2008* and means an authorised person to whom the Chief Executive has delegated functions of an investigator under part 8.2 of the Act or a person appointed to be an investigator under section 292 of the Act. The delegates who may act as investigators are Team Leaders, Unit Managers, Operations Manager, Programs and Services Manager or Senior Manager.

**Manager** refers to the Senior Manager of a detention place during normal business hours, or in the event this person is unavailable, the Operations Manager of a detention place, or in the event this person is unavailable, a Unit Manager or in the event a Unit Manager is unavailable, the Programs and Services Manager. Outside normal business hours, this refers to the on-call manager.

**Minor behaviour breach** is defined at section 288 of the *Children and Young People Act 2008*. A minor behaviour breach is a behaviour breach (at Schedule 1) that is not of a serious or persistent nature; does not involve a serious risk to the health or safety of someone else at a detention place; and does not involve a serious risk, or serious or persistent disruption, to the security or good order at a detention place.

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

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

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

**Support person**, for the behaviour management and discipline policies and reporting and investigation procedures, is defined at section 286 of the *Children and Young People Act 2008*. A person can be a support person for a young detainee if:

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

**Withdrawal of privileges** is a behaviour management consequence that may be imposed in response to a minor behaviour breach under the behaviour management policy or in response to a behaviour breach under the discipline policy.

**Young detainee** is defined in section 95 of the *Children and Young People Act 2008* and means a child, young person or person aged 18 to 21 years who is required to be held in the Chief Executive's custody.

**Young remandee** is defined in section 137 of the *Children and Young People Act 2008* and the dictionary of the Crimes (Sentence Administration) Act 2005 as a remandee who is under 18 years old; or a remandee who is over 18 years old but under 21 years old and is on remand in relation to an offence alleged to have been committed when he or she was under 18 years old.

**Youth detention officer** is defined at section 96 of the *Children and Young People Act 2008* and means an authorised person to whom the Chief Executive has delegated functions of a youth detention officer under the criminal matters chapters. The positions which have delegations as youth detention officers for the policies and procedures are: Senior Manager (C/3), Acting Senior Manager (C/4), Operations Manager (E/7), Programs and Services Manager (E/8), Unit Managers (F/7), Team Leaders (G/6), Youth Workers (I/4), Casual Youth Workers (J/3).

## 5. Principles

The *Children and Young People Act 2008* sets out the principles that must be considered by all decision-makers making decisions under the Act and this policy. These are:

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

In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, in addition to the matters in section 8 and section 9, the decision-maker must take into account the following:

- (a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;
- (b) submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the chief executive as providing ongoing support services to the child or young person or the child's 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's 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, young people and other young offenders 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 young offender the opportunity to re-enter the community;
  - (i) it is a high priority that intervention with young offenders must promote their rehabilitation, and must be balanced with the rights of any victim of the young offender'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.

Example

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.

Behaviour Management and Discipline Principles

The following operational principles underpin the behaviour management and discipline policies and procedures:

- (a) proactive strategies promote positive and pro-social behaviour by young detainees and minimise reliance on reactive strategies to respond to negative or challenging behaviour;
- (b) negative behaviour displayed by young detainees should be viewed in context of the behaviour being displayed and the characteristics of the young detainee, including their age, maturity, developmental stage and rehabilitation needs, where appropriate;
- (c) any response to negative behaviour must be prompt and timely and must ensure the young detainee understands the behaviour identified as negative, the nature of, and reasons for, the response and what action the young detainee can take to modify their behaviour;
- (d) negative behaviour should be managed in the least restrictive manner possible and sanctions or consequences for negative behaviour should be graduated.

## 6. Policy and Procedure

### Reactive Strategies - Responding to Negative Behaviour

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

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

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

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

- 6.4 The procedures outlined in the Behaviour Management Policy and Procedures must be followed prior to commencing disciplinary action against a young detainee.
- 6.5 Disciplinary action may only be commenced by way of a charge notice given to the young detainee by the administrator. The charge notice form is at Schedule 6 of the Behaviour Management Policy and Procedures.

### *Commencing disciplinary action*

- 6.6 The administrator may commence disciplinary action against the young detainee by way of a disciplinary charge.
- 6.7 To charge a young detainee, the charge notice form at schedule 6 of the Behaviour Management Policy and Procedures must be given to the young detainee.
- 6.8 After a charge notice has been given to a young detainee, the young detainee has a right to contact a support person or persons to assist them. Refer to Reporting and Investigation procedures.
- 6.9 Following a charge notice being given to a young detainee, the young detainee may:
  - (a) Admit to the breach as charged and accept the proposed disciplinary action by indicating this on the charge notice form and signing the part of the charge notice designated for this purpose (refer to 'Behaviour Breach Admitted by Young Detainee');
  - (b) Apply for internal review by indicating this on the charge notice form and signing the part of the charge notice form designated for this purpose (refer to 'Internal Review');
  - (c) Take no action within the required timeframe – this is if the young detainee does not admit to the charge and accept the proposed disciplinary action under 6.9(a) above or apply for internal review under section 6.9(b) above within the required timeframes.
- 6.10 If the young detainee takes no action under section 6.9(c), the administrator may take disciplinary action proposed in the charge notice if the young detainee understands the proposed action and the action is in accordance with the section 'Taking Disciplinary Action and Imposing Behaviour Management Consequences for Behaviour Breaches' of this Policy and Procedure.
- 6.11 The administrator must give written notice to the young detainee of the decision to take action under 6.10 using the form 'Notice of disciplinary action to young detainee' at schedule 3.

### *Behaviour Breach Admitted by Young Detainee*

- 6.12 A young detainee may admit to the behaviour breach as charged and accept the proposed disciplinary action stated in the charge notice.
- 6.13 The young detainee must do this in writing by indicating this on the charge notice form and signing the part of the charge notice designated for this purpose.

- 6.14 The young detainee must give the charge notice indicating their election to admit to the breach as charged and accept proposed disciplinary action to a Unit Manager not later than 48 hours after the charge notice is given. If the Unit Manager is not the administrator, the Unit Manager must give the form to the administrator. The administrator can extend the timeframe of 48 hours for the election to be given in a written notice to the young detainee.
- 6.15 If the young detainee admits to the breach as charged and accepts the proposed disciplinary action by returning the form, the administrator may take disciplinary action proposed in the charge notice if the young detainee understands the proposed action and the action is in accordance with the section 'Taking Disciplinary Action and Imposing Behaviour Management Consequences for Behaviour Breaches' of this policy and procedure.
- 6.16 The administrator must give written notice to the young detainee of the decision to take action using the form 'Notice of disciplinary action to young detainee' at schedule 3.

*Taking Disciplinary Action and Imposing Behaviour Management Consequences for Behaviour Breaches*

- 6.17 Disciplinary action that may be taken against a young detainee by the administrator or review officer (see 'Internal Review' below) includes one or more of the following actions:
- (a) Giving the young detainee a warning (refer to 'Giving a Warning' in the Behaviour Management Policy and Procedures);
  - (b) Reprimanding the young detainee (refer to 'Reprimanding' in the Behaviour Management Policy and Procedures); and
  - (c) Imposing behaviour management consequence/s on the young detainee.
- 6.18 The administrator or review officer may impose one or more of the following behaviour management consequences for a behaviour breach, after considering the young detainee's age, developmental capacity, rehabilitation needs and known history:
- (a) a fine, not exceeding \$250;
  - (b) a withdrawal of privileges, for not longer than 60 days;
  - (c) a requirement to make an apology to a person affected by the behaviour breach;
  - (d) a requirement to perform extra chores, for not longer than 20 hours.
- 6.19 In making a decision about the nature of behaviour management consequences to impose for a behaviour breach, the administrator or review officer must be satisfied that the consequence/s to be imposed are reasonable and proportionate to the circumstances and gravity of the behaviour and the following considerations are balanced appropriately:
- (a) the desirability of consistent consequences for behaviour breaches of similar nature and seriousness by young detainees;
  - (b) the desirability of young detainees understanding the monetary value of repair and replacement of property damaged through a behaviour breach;
  - (c) the importance of restorative principles in repairing and improving relationships between the young detainee and a person affected by their behaviour, such as a requirement to make an apology to a person affected by the behaviour breach.

- 6.20 If the administrator or review officer imposes a fine, the dollar amount of the fine must be converted to points at the rate of 1 point per 10 cents and the points must be deducted from the young detainee's points balance as recorded on the Incentives, Rewards and Consequences Record.
- 6.21 If the administrator or review officer imposes a withdrawal of privileges, the decision-maker must specify which of the following privileges are being withdrawn:
- (a) television access;
  - (b) access to the gym or pool outside program times;
  - (c) access to purchases;
  - (d) any other privilege that does not affect a young detainee's minimum entitlements outlined at Table 6B of the Behaviour Management Policy and Procedures.
- 6.22 If the administrator or review officer imposes a requirement to perform extra chores, the decision-maker must arrange for the young detainee to perform the extra chores within their residential unit or within the centre.
- 6.23 If the administrator or review officer imposes a requirement to make an apology to a person affected by the minor behaviour breach, the decision-maker must arrange for a Case Manager or Unit Manager to facilitate the making of a verbal or written apology by the young detainee to the affected person/s.
- 6.24 The administrator or review officer must explain the nature of the consequence/s being imposed to the young detainee and provide written notice to the young detainee of the consequence/s imposed. A copy of the notice given to the young detainee must be kept on the young detainee's file.
- 6.25 If a young detainee is charged with two or more behaviour breaches arising from one incident, the total of the behaviour management consequences imposed for the breaches must not, for any particular kind of consequence, be more than the maximum penalty that may be imposed for any one of the breaches.

#### *Internal review*

- 6.26 This section applies if, after a charge notice has been given to a young detainee, the young detainee elects to apply for internal review of the charge by indicating this on the charge notice form and signing the part of the charge notice designated for this purpose.
- 6.27 After a charge notice has been given to a young detainee, the young detainee has a right to contact a support person or persons to assist them to apply for a review of the charge. The Manager must ensure the young detainee has access to facilities to contact a support person or persons and to consult with those people. Refer to Reporting and Investigation Procedures.
- 6.28 The young detainee must give the charge notice indicating their election to apply for internal review to a Unit Manager not later than 48 hours after the charge notice is given. If the Unit Manager is not the administrator, the Unit Manager must give the form to the administrator. The administrator can extend the timeframe of 48 hours for the election to be given in a written notice to the young detainee.

- 6.29 After a young detainee has made an application for internal review, the administrator must arrange for the conduct of an internal review into the behaviour breach charged in the charge notice by a review officer.
- 6.30 If the administrator was the Unit Manager, Operations Manager or Programs and Services Manager, the Senior Manager must be the review officer and conduct the internal review or arrange for another delegate to conduct the review, in accordance with the rules about who the decision-maker must not be in column 5 of Table 3A. If the administrator was the Senior Manager, the Operations Manager may be the review officer and conduct the review.
- 6.31 The review officer must conduct the review in accordance with chapter 9 of the *Children and Young People Act 2008* which outlines procedures for the conduct of disciplinary reviews (see 'Procedures for Internal and External Reviews').
- 6.32 After the review officer has completed the review, the review officer may take disciplinary action if satisfied the breach is proven on the balance of probabilities. The balance of probabilities is a standard of proof associated with administrative proceedings. This standard has a lower threshold than the criminal standard of beyond reasonable doubt. Proving a fact on the standard of the balance of probabilities means that the existence of the fact is more probable than not. Refer to 'Taking Disciplinary Action and Imposing Behaviour Management Consequences for Behaviour Breaches' in this policy and procedure. The review officer must give prompt written notice of the review officer's decision to the young detainee using the form 'Notice of review officer's decision' at schedule 4. A copy of the form must be placed on the young detainee's file. The review officer must inform the young detainee that they have the right to apply for external review of the decision within 7 days and the right to contact a support person or persons to assist them to apply for an external review. The Manager must ensure that the young detainee has access to facilities to contact a support person as soon as practicable and to consult with the support person.
- 6.33 If the review officer is not satisfied that the breach as charged has been proven on the balance of probabilities, the review officer must dismiss the charge.
- 6.34 The charge may also be dismissed if the review officer is satisfied it would be appropriate for other reasons to do so, for example, the young detainee has been discharged from a detention place.
- 6.35 The review officer may refer the charge to police if satisfied it is necessary or appropriate to do so (see 'Referring to police').
- 6.36 The young detainee must also be informed of action taken under 6.33, 6.34 or 6.35.

#### *Referring to police*

- 6.37 A report of a behaviour breach by a young detainee may be referred to the police by a decision-maker at different decision-making points under the Behaviour Management and Discipline Policies and Procedures if:
- (a) the behaviour breach report reveals information about the commission of an offence; and

- (b) the decision-maker considers it appropriate to refer the report to police for criminal investigation because the behaviour has caused or is causing serious harm or risk to a person or property.
- 6.38 The decision-making points when this may occur are:
  - (a) in response to a behaviour breach report form by an administrator (see 'Referring to police' in the Behaviour Management policy);
  - (b) after a review officer has completed an internal review.
- 6.39 The referral must be in writing and accompanied by the behaviour breach report form and any investigation reports completed.
- 6.40 The 'Responding to Behaviour which is a Behaviour Breach and Criminal Offence' section in this policy and procedure must be referred to before the decision-maker refers to police.

#### *Responding to Behaviour which is a Behaviour Breach and Criminal Offence*

- 6.41 The list of behaviour breaches at Schedule 1 includes behaviour which may also constitute a criminal offence, such as an assault. The following rules apply to ensure that the young detainee does not receive administrative and criminal sanctions for the same behaviour as this would infringe the legal principle of double jeopardy.
- 6.42 A decision may be made at different decision-making points (outlined at section 6.38) to refer behaviour by a young detainee which is, or may be, a criminal offence to the Chief Police Officer for criminal investigation.
- 6.43 If behaviour management consequences have been imposed under the Behaviour Management Policy or the Discipline Policy, the young detainee cannot be prosecuted for an offence arising out of the same facts. Conversely, disciplinary action for the behaviour breach must not be taken against the young detainee if a court has convicted the young detainee or found the young detainee guilty of a criminal offence related to the breach.
- 6.44 Following a referral being made to the police under the Behaviour Management and Discipline Policies and Procedures, the young detainee must not be charged with a behaviour breach.
- 6.45 If the young detainee has been charged with a behaviour breach, the charge must be suspended pending advice from the police regarding what action, if any, will be taken against the young detainee.
- 6.46 The police must advise the Senior Manager of the outcome of the criminal investigation as soon as practicable after it is completed.
- 6.47 If the young detainee is or will be prosecuted as a result of the criminal investigation, disciplinary action against the young detainee must be discontinued. An operational response to the young detainee's behaviour may be required (see Reactive Strategies - Operational Response to Young Detainee following Minor Behaviour Breach or Behaviour Breach).

#### *External review by External Reviewer*

- 6.48 This section applies if, after the review officer has found the charge proven and taken disciplinary action, the young detainee applies for external review to the External Reviewer.

- 6.49 If the review officer has found the charge proven and taken disciplinary action, the young detainee may apply for a review of the decision not later than 7 days after receiving notice of the decision.
- 6.50 An application for external review by a young detainee does not prevent the taking of the disciplinary action by the review officer. However, if the external reviewer later reduces or sets aside the behaviour management consequence/s imposed by the review officer and the young detainee has repaid part or all of the consequence/s, the procedures at 'Decision by external reviewer to amend decision' apply.
- 6.51 Following application being made by a young detainee for an external review, the external reviewer must:
- (a) Conduct a review of the review officer's decision; or
  - (b) Refuse to review the decision.
- 6.52 The external reviewer must give prompt written notice to the young detainee and support person/s of the reasons for refusal and notice that they may apply for review of the decision under the *Administrative Decisions (Judicial Review) Act 1989*.
- 6.53 The external reviewer must conduct the review in accordance with chapter 9 of the *Children and Young People Act 2008* which outlines procedures for the conduct of disciplinary reviews (see 'Procedures for Reviews').
- 6.54 After conducting a review, the external reviewer may:
- (a) Confirm and uphold the review officer's decision;
  - (b) Amend the review officer's decision;
  - (c) Set aside the review officer's decision and substitute a new decision.
- 6.55 The external reviewer must give prompt written notice to the young detainee, support person/s and the Senior Manager of the reasons for their decision and notice that the young detainee may apply for review of the decision under the *Administrative Decisions (Judicial Review) Act 1989*.

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

- 6.56 If the external reviewer reduces or sets aside the behaviour management consequence/s imposed by the review officer and the young detainee has repaid part or all of the consequence/s, the young detainee must be provided with credit for the repaid consequence/s.
- 6.57 If the external reviewer's decision reduces or sets aside a fine, the Senior Manager must credit the amount of points deducted to the young detainee's points balance as recorded on the Incentives, Rewards and Consequences Record at Schedule 3 of the Behaviour Management Policy and Procedures.
- 6.58 For any other behaviour management consequence, the Senior Manager must take steps to provide reasonable and equivalent credit for the consequence/s already repaid by the young detainee, in consultation with the young detainee.

**Case example** – The Senior Manager gives Joe a consequence of 10 hours extra chores. Joe applies for a review of the decision and the external reviewer reduces the consequence to 5 hours of extra chores. Joe has already performed 7 hours of chores. The Senior Manager must consult with Joe about credit for the extra 2 hours of chores he has performed.

### Procedures for Internal and External Reviews

- 6.59 Chapter 9 of the *Children and Young People Act 2008* outlines the procedures that apply in conducting an internal review by the review officer or an external review by an external reviewer. These procedures also apply to reviews of segregation directions conducted by an external reviewer.
- 6.60 A review may be conducted by the review officer holding a hearing or it may be conducted by reference to information collected. If a hearing is held, the procedures at ‘Holding a Hearing for a Review’ must be followed.
- 6.61 Proceedings at a review are not open to the public.
- 6.62 A review must be conducted with as little formality and technicality, and as quickly as the requirements of the *Children and Young People Act 2008* and a proper consideration of the charge allow.
- 6.63 A review is an administrative process in which:
- (a) the rules of natural justice apply; and
  - (b) the laws of evidence do not apply; and
  - (c) evidence must not be given on oath or by affidavit; and
  - (d) the question whether a young detainee has committed a behaviour breach must be decided on the balance of probabilities. The balance of probabilities is a standard of proof associated with civil and administrative proceedings. This standard has a lower threshold than the criminal standard of beyond reasonable doubt. Proving a fact on the standard of the balance of probabilities means that the existence of the fact is more probable than not.

#### *Giving notice of the review*

- 6.64 The review officer must give written notice of the review to the young detainee and the Senior Manager (for an external reviewer). The form at schedule 2 must be used by a review officer to give notice of the review to a young detainee.
- 6.65 The young detainee may make submissions to the review officer for the review in any form acceptable to the review officer. This may be in writing or in another format, such as audio recording.
- 6.66 The Manager must:
- (a) offer to provide reasonable assistance to the accused detainee to put the submissions in a form acceptable to the review officer; and
  - (b) tell the young detainee that he or she may have a support person or persons to assist them to prepare submissions.
- 6.67 The review officer must consider any submission given to the review officer by the young detainee before the closing date for submissions stated in the notice of the review given to the young detainee.

### *Requesting written reports and information*

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

### *Possession of review documents*

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

### *Records of reviews*

- 6.73 The review officer for a review must keep a written record of proceedings at the review.
- 6.74 The record must be filed on the young detainee's file.

### *Holding a hearing for a review*

- 6.75 If the review officer decides to hold a hearing, the following procedures apply.
- 6.76 The review officer must give written notice of a hearing for the review to the young detainee and the Senior Manager (if the review officer is an external reviewer). The notice must include:
- (a) a statement about where and when the hearing is to be held; and
  - (b) a statement about the young detainee's entitlements under section 331 and section 332 of the Act.
- 6.77 The hearing must be held at a detention place, unless the Senior Manager determines that it is not practicable for the review to be held at a detention place. The young detainee is entitled to be present at a hearing for a review.

- 6.78 For a hearing for a review, the review officer may, by written notice given to the young detainee or anyone else, require the person to appear before the review officer, at a stated time and place, to:
- (a) answer questions; and/or
  - (b) produce a stated document or other thing relevant to the review.
- 6.79 A person is taken to have complied with a notice under section 6.78(b) if the person gives the document or other thing to the review officer before the time stated in the notice for its production.
- 6.80 The review officer at a hearing for a review may require the young detainee, or a witness, appearing before the review officer to do one or more of the following:
- (a) answer a question relevant to the review;
  - (b) produce a document or other thing relevant to the review.
- 6.81 The review officer at the hearing may disallow a question put to a person if the presiding review officer considers the question is unfair, unduly prejudicial or vexatious; or involves an abuse of the review process.
- 6.82 The review officer may allow a youth detention officer or anyone else to be present, and to be heard, at a disciplinary hearing, for example, a witness or another young detainee.
- 6.83 If the young detainee appears at a hearing for a review in relation to the young detainee, the young detainee is entitled to:
- (a) be heard, examine and cross-examine witnesses and make submissions for the review; and
  - (b) have a support person or lawyer present to make submissions on the young detainee's behalf.
- 6.84 The review officer may, by written order, exclude the young detainee from a hearing for the review if the young detainee, without reasonable excuse:
- (a) unreasonably interrupts, interferes with or obstructs the hearing; or
  - (b) contravenes a reasonable direction by the review officer about the conduct of hearing.
- 6.85 If the young detainee fails without reasonable excuse to attend a hearing for the review, the review officer may conduct the hearing, and make a decision on the charge, in the young detainee's absence.
- 6.86 Section 335 of the *Children and Young People Act 2008* allows a review officer to give a direction for a person to appear before a hearing by audiovisual or audio link.

#### Reactive Strategies - Operational Response to Young Detainee following Minor Behaviour Breach or Behaviour Breach

- 6.87 The Behaviour Management Policy and Procedures outline the operational response that may be taken following a minor behaviour breach or behaviour breach.

## 7. Forms and Templates

**Schedule 2** Notice of disciplinary review to young detainee form (pursuant to section 324 of the *Children and Young People Act 2008*)

**Schedule 3** Notice of Disciplinary Action to Young Detainee (pursuant to section 302 of the *Children and Young People Act 2008*)

**Schedule 4** Notice of Review Officer's Decision (pursuant to section 307 of the *Children and Young People Act 2008*)

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

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

Behaviour Management Policy and Procedures

Reporting and Investigation Procedures

Minimum Living Conditions Policy and Procedures

Leave Policy and Procedures

Visits, Phone Calls and Correspondence Policy and Procedures

Health and Wellbeing Policy and Procedures

Segregation Policy and Procedures

Use of Force Policy and Procedures

## **9. Further References**

Dictionary for Policies and Procedures

**Schedule 1**  
**Behaviour Breaches**

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

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



**NOTICE OF DISCIPLINARY REVIEW TO YOUNG DETAINEE**

(Pursuant to section 324 of the *Children and Young People Act 2008*)

Young Detainee's Name: _____	DOB: _____
Behaviour Breach Charged: _____	
Details of Review (where and when): _____	
Name of Review Officer: _____	
Signature: _____	Date: _____

**Notice to Young Detainee**

You are allowed to put your views and information that supports your case forward to the review officer. These are called submissions and they will be considered by the review officer. The rules that apply usually in court about evidence do not apply at a review. You will not be required to give evidence under oath or by affidavit. A decision will be made by the review officer as to whether it is more likely than not that you committed the behaviour breach.

You may give submissions to the review officer in any form that is acceptable to the review officer. You are entitled to help from staff to put your submissions in a form acceptable to the review officer and help from a support person/s in preparing your submissions.

The review officer may decide to hold a hearing. You will be told if this is to happen. You are entitled to be present at a hearing and have a support person or lawyer help you.

Closing date for your submissions is: \_\_\_\_\_



**NOTICE OF DISCIPLINARY ACTION TO YOUNG DETAINEE**

(Pursuant to section 302 of the *Children and Young People Act 2008*)

Young Detainee's Name: _____	DOB: _____
Behaviour Breach Charged: _____	
Name of Administrator: _____	
The young detainee has:	
<input type="checkbox"/> Admitted to the breach as charged and accepted the proposed disciplinary action on the charge notice; or	
<input type="checkbox"/> Taken no action in response to the charge notice within the required timeframe.	
Disciplinary action being imposed:	
_____	
_____	
_____	
_____	
_____	
Signature: _____	Date: _____

**Notice to Young Detainee**

You have been charged with a behaviour breach of \_\_\_\_\_.

The disciplinary action outlined above will be imposed for the behaviour breach charged.

I have had the disciplinary action explained to me and I understand the action being taken.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**NOTICE OF REVIEW OFFICER'S DECISION**

(Pursuant to section 307 of the *Children and Young People Act 2008*)

Young Detainee's Name: _____	DOB: _____
Behaviour Breach Charged: _____	
Name of Review Officer: _____	
Review Officer's Decision and Statement of Reasons:	
_____	
_____	
_____	
_____	
Disciplinary Action being imposed:	
_____	
_____	
_____	
_____	
Signature: _____	
Date: _____	

**Notice to Young Detainee**

You have been charged with a behaviour breach of \_\_\_\_\_.

The Review Officer has completed a review and is satisfied that the behaviour breach charge has been proven. The disciplinary action outlined above will be imposed.

You have the right to apply for external review of the decision within 7 days and the right to contact a support person or persons to assist you to apply for an external review.

I have had the disciplinary action explained to me and I understand the action being taken.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_