

Australian Capital Territory

Children and Young People (Use of Force) Policy and Procedures 2008 (No 1)

Notifiable instrument NI2008–398

made under the

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

1 Name of instrument

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

2 Commencement

This instrument is to commence on 9 September 2008.

3 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 detainees.

Martin Hehir
Chief Executive

8 September 2008

Use of Force Policy and Procedures

1. Introduction and Purpose

The emphasis of the behaviour management policy is to implement proactive and preventative strategies within the detention place and in working with young detainees which promote positive and pro-social behaviours by young detainees. The effective implementation of proactive and preventative strategies in the detention place will reduce the need to implement reactive and restrictive strategies to respond to negative behaviour displayed by young detainees.

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. Force that is used must be proportionate to the circumstances and reasonable and necessary to achieve the purpose for which it is being used.

This policy and procedure addresses the requirement at section 223(6) for the Chief Executive to make a youth detention policy or operating procedure in relation to the use of force.

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. The following sections of the *Children and Young People Act 2008* are relevant to this policy and procedure: Division 6.6.4. This policy and procedure addresses the requirement at section 223(6) for the Chief Executive to make a youth detention policy or operating procedure in relation to the use of force (see below).
- 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*.

222 Managing Use of Force

(6) The chief executive must make a youth detention policy or operating procedure in relation to the use of force, including provision in relation to the following:

- (a) the circumstances, and by whom, force may be used;
- (b) the kinds of force that may be used;
- (c) the use of restraints.

Human rights that are protected by the *Human Rights Act 2004* and that are relevant to this policy and procedure are:

- 10 Protection from torture and cruel, inhuman or degrading treatment etc
- (1) No-one may be—

- (a) tortured; or
- (b) treated or punished in a cruel, inhuman or degrading way.

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.

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 the use of force are:

United Nations Rules for the Protection of Juveniles Deprived of their Liberty:

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

3. Authorisations and Delegations

3.1 This policy and procedure addresses use of force by youth detention officers at a detention place and permits the use of force only in accordance with the *Children and Young People Act 2008* and this policy and procedure.

3.2 For the purposes of this policy and procedure, use of force includes body contact and the use of instruments of restraint (restraint belt, flexicuffs, shields, helmets, handcuffs and other approved items).

3.3 The Senior Manager must ensure, as far as practicable, that the use of force in relation to the management of young detainees is always a last resort; and consistent with this policy and procedure and the *Children and Young People Act 2008*.

- 3.4 The Senior Manager must ensure youth detention officers receive approved training in relation to the use of force, including the use of instruments of restraint. The Senior Manager must ensure that instruments of restraint are only used in accordance with this policy.
- 3.5 Only those youth detention officers who have successfully completed the approved training are permitted to use force at or in relation to a detention place.
- 3.6 The Senior Manager must ensure that transfer escorts and escort officers who are not youth detention officers have been trained in the use of approved techniques and instruments of restraint.
- 3.7 Any use of force by a youth detention officer not authorised by the *Children and Young People Act 2008* and this policy and procedure will be investigated. This may include a referral to police for criminal investigation (refer to 'Liability of Youth Detention Officers Using Force' in this Policy and Procedure). Disciplinary procedures under the *Public Sector Management Act 1994* may also be commenced against a youth detention officer in these circumstances.

4. Definitions

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

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

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.

Register of searches and uses of force is a register that the Senior Manager, Operations Manager and Unit Managers are obliged to keep under section 195 of the *Children and Young People Act 2008*.

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

Staff refers to youth detention officers and other authorised persons. An 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 which have delegations as authorised persons for the policies and procedures are: Executive Director (A), Director (B), 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), Case Managers (F/8), Aboriginal Liaison Officer (G/5).

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

offender. The transfer escort must be a police officer, a corrections officer, a youth detention officer or a person acting as a transfer escort with the approval of the Senior Manager.

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

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.

6. Policy and procedures

Before Using Force

6.1 Force may only be used as a last resort and after all other strategies have been employed or considered to manage the situation.

6.2 Alternative strategies that must be employed or considered for use prior to using force include:

- (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 young detainee;
- (d) reflective listening and feedback to demonstrate to the young detainee 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 detention officers;
- (g) involving a health professional or other suitable person;
- (h) being clear with instructions while remaining calm and respectful; and/or
- (i) the use of the young detainee's cabin or an alternative space or room.

6.3 Except in an urgent situation, youth detention officers must consider the following before using force against a young detainee:

- (a) the young detainee's age, sex, physical and mental health and known history such as a history of abuse; and
- (b) the physical and developmental capacity of the young detainee if the proposed force involves any restraint of the young detainee.

6.4 Youth detention officers must ensure the use of force in relation to a young detainee is not observed by another young detainee. The only exception to this rule is in an urgent situation where a youth detention officer reasonably believes that complying with this rule would create a risk of injury to a person, including a staff member or the young detainee. 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 detainee which is likely to escalate to a disturbance;
- (b) the use of force to intervene in an assault by one young detainee against another young detainee; or
- (c) the use of force to prevent an escape attempt by more than one young detainee.

Grounds for Using Force

- 6.5 Force must be considered an option of last resort. In order for a youth detention officer to be authorised to use force under 6.7, a youth detention 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 6.2.
- 6.7 Youth detention officers may use necessary and reasonable force on a young detainee 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 detainee, 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 detainee from harming him or herself;
 - (e) to enforce a segregation direction, including to move a young detainee to a safe room, after all reasonable steps have been taken to persuade the young detainee to comply with the direction;
 - (f) to prevent or quell a riot or persistent serious disruption to the good order of a detention place;
 - (g) where a young detainee refuses to comply with a direction and all other reasonable steps have been taken to persuade the young detainee to comply;
 - (h) to prevent or stop the commission of an offence or behaviour breach;
 - (i) to prevent unlawful damage, destruction or interference with property; or
 - (j) 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 detainee, or to prevent the loss, destruction or contamination of anything seized during a search.

Rules for Using Force

- 6.8 On every occasion the amount of force used 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.
- 6.9 The application of force must cease immediately after the need to restrain or involuntarily move a young detainee has passed. When using force, youth detention officers must not increase the amount of force applied once they have a young detainee under control.
- 6.10 Unless circumstances described at 6.12 apply, youth detention officers must warn a person of their intention to use force prior to the application of the force. Wherever possible this should be articulated using language the person can easily understand.
- 6.11 A person given a warning under 6.10 should be given further opportunity to comply with the youth detention officer's instructions, in full knowledge that force may be applied if refusal continues.

- 6.12 In urgent circumstances where the youth detention officer believes on reasonable grounds that giving a warning under 6.10 to a person about an intention to use force would create a risk of injury to a person, the youth detention officer is not required to give a warning before using force. Examples of urgent circumstances are an assault in progress or a young detainee engaging in self-harm.

Additional Rules for the Use of Instruments of Restraint

- 6.13 The use of force under this policy and procedure includes the use of instruments of restraint. Instruments of restraint include restraint belts, flexicuffs, shields, helmets, handcuffs and other approved items.
- 6.15 Instruments of restraint must only be used with approval from a Manager, Unit Manager or Team Leader if time permits. The authorising officer 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; and
 - (b) the kind of restraint is appropriate in the circumstances; and
 - (c) the restraint is used appropriately in the circumstances.
- 6.15 When deciding whether to use an instrument of restraint as part of or during a use of force, youth detention officers must consider whether the use of an instrument of restraint is proportionate to the circumstances.

Restrictions on Use of Force

- 6.16 Youth detention officers must not exert physical force in the form of a pressure point hold.
- 6.17 Youth detention officers must not use force that deliberately causes harm, pain or injury, or is degrading or humiliating or as a form of punishment.

Health Assessment and Treatment after Use Of Force

- 6.18.1 If force has been used against a young detainee which has caused an injury to the young detainee, the Manager or Team Leader must ensure the young detainee is examined as soon as practicable following the use of force by a treating doctor and that appropriate health care is available to the young detainee consistent with the Health and Wellbeing Policy and Procedures. An injury includes any injury to the young detainee's body observed by a youth detention officer, such as bruising or marks, or any injury or potential injury identified by the young detainee, such as a complaint of pain to a body part.
- 6.19 If force has been used against a young detainee which has not caused an injury to the young detainee, the Manager or Team Leader must ensure the young detainee is offered a medical examination by a treating doctor or nurse as soon as practicable following the use of force. If the young detainee 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 detainee consistent with the Health and Wellbeing Policy and Procedures.

Use of Force for Searches

- 6.20 A youth detention 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; or
 - (b) to assist at a body search under the Search and Seizure Policy and Procedures; or
 - (c) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.
- 6.21 Youth detention officers must comply with all aspects of this policy and procedure in the use of force for searches.
- 6.22 If the use of force in relation to a young detainee is required whilst the young detainee is being searched, or in relation to a search of a young detainee, a youth detention officer applying force, must, wherever possible, be of the same sex as the young detainee.

Interstate Transfers – Powers of Transfer Escorts to Use Force

- 6.23 The Interstate Transfer Policy and Procedures addresses the interstate transfer of young offenders in custody under a transfer agreement, transfer arrangement or transfer order.
- 6.24 For the Interstate Transfer Policy and Procedures, a 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 offender. A person who may be authorised as a transfer escort is a police officer, a corrections officer, a youth detention officer or a person acting as a transfer escort with the approval of the Senior Manager.
- 6.25 In order to keep custody of the young offender under the order, a transfer escort escorting a young offender under a transfer order may:
- (a) give the young offender any direction that the transfer escort believes on reasonable grounds is necessary and reasonable; and
 - (b) use force in accordance with this policy and procedure.
- 6.26 Refer to the Interstate Transfer Policy and Procedures for giving directions to young offenders and the Search and Seizure Policy and Procedures for further powers of transfer escorts, including the authority to search.

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

- 6.27 The Local and Interstate Leave Policy and Procedures allows a young detainee to be granted a local or interstate leave permit.
- 6.28 For the Local and Interstate Leave Policy and Procedures, an escort officer means a police officer, a corrections officer or a youth detention officer.
- 6.29 An escort officer escorting a young detainee under a local or interstate leave permit may, to keep custody of the young detainee:
- (a) give the young detainee any direction that the officer believes on reasonable grounds is necessary and reasonable; and
 - (b) use force in accordance with this policy and procedure.
- 6.30 Refer to the local and interstate leave Policy and Procedures for giving directions to young detainees and further powers of escort officers including the authority to search.

Use of Force in relation to People other than Young Detainees

- 6.31 The *Children and Young People Act 2008* authorises force to be used at a detention place in relation to people other than young detainees 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 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).
- 6.32 If a youth detention officer uses force on a person other than a young detainee in the above circumstances, the youth detention officer must use the minimum amount of force that is necessary and reasonable to enforce the direction.
- 6.34 In using force on person other than a young detainee in the above circumstances, youth detention officers must comply with this policy and procedure.

Debriefing of Youth Detention Officers and Access to Support and Counselling for Young Detainees

- 6.35 Youth detention officers and young detainees involved in a use of force incident should be offered debriefing and support as soon as possible after the incident has occurred.

Surveillance

- 6.36 If the situation permits, audio or video surveillance of an incident where force has been used should be kept for future reference/evidence. These records are to be stored by the Senior Manager 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 Departmental Records Management Program.

Recording and Reporting Uses of Force

- 6.37 Any use of force against a young detainee or another person under this policy and procedure must be recorded as a Category Two Reportable Incident according to the requirements set out in the Records and Reporting Policy and Procedures.
- 6.38 All required reports are the responsibility of youth detention officers and are to be fully completed before youth detention officers complete their shift, unless otherwise approved by the Manager.
- 6.39 The Senior Manager must ensure that, as soon as practicable after the end of each month, a report is provided to the Chief Executive summarising any incidents during the month that involved the use of force in relation to a young detainee.

- 6.40 A register of searches and uses of force must be maintained by the Senior Manager, Operations Manager and Unit Managers. All incidents involving the use of force in relation to young detainees under this policy and procedure 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.
- 6.41 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 Detention Officers Using Force

- 6.42 A youth detention officer is authorised to use force, in accordance with the *Children and Young People Act 2008*, the Use of Force 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.
- 6.43 Preservation of life is the paramount consideration in an emergency situation and all youth detention officers have an obligation to protect the right to life of young detainees.
- 6.44 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.
- 6.45 A youth detention officer may be criminally liable for any excessive use of force.

Provision of Information, Review of Decisions and Complaints

- 6.46 Youth detention officers must ensure young detainees, their parents and all those with parental responsibility, family and visitors are provided with information about things that affect them in a timely manner and in a manner that is likely to be understood.
- 6.47 A young detainee, their parents and all those with parental responsibility, 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 the detention place, the Public Advocate or the Official Visitor.
- 6.48 Youth detention officers must ensure that the Provision of Information, Review of Decisions and Complaints Policy and Procedures is followed in relation to the above.
- 6.49 Youth detention officers must engage with the person seeking a review of a decision or making a complaint in a respectful manner and ensure sufficient information is provided on the process of review or investigation. Youth detention officers must assist fully in any complaint or review process.
- 6.50 A young detainee 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.

7. Forms and Templates

Category Two Reportable Incident
Register of searches and uses of force

Summary Report to Chief Executive

8. Related Policies and Procedures

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

Behaviour Management Policy and Procedures

Search and Seizure Policy and Procedures

Interstate Transfer Policy and Procedures

Health and Wellbeing Policy and Procedures

Safety and Security Policy and Procedures

DHCS policies and procedures

DHCS Restrictive Practices Framework: Guidelines for the Development of Restrictive Practices

9. Further References

Use of Force Training Manual

Dictionary for Policies and Procedures