

Australian Capital Territory

Children and Young People (Death in Custody) Policy and Procedures 2018 (No.1)

Notifiable instrument NI2018-438

made under the

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

1 Name of instrument

This instrument is the *Children and Young People (Death in Custody) Policy and Procedures 2018 (No.1)*.

2 Commencement

This instrument is to commence the day after notification.

3 Repeal

NI2015-384 is revoked.

4 Policies and operating procedures

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

Bernadette Mitcherson
Director-General
Community Services Directorate
7 August 2018

Death in Custody Policy and Procedures

1. Introduction and Purpose

This policy and procedures provides the actions following the death of a young person in custody. A death in custody means the death of a young person under detention at a detention place, at a health facility, under escort, or on approved leave, whether within or outside the ACT.

A death in custody is a matter for the jurisdiction of the ACT Coroner under the *Coroners Act 1997* that provides for the holding of an inquest into a death and also contains specific provisions relating to a death in custody.

Police are responsible for notifying the ACT Coroner's Office in the event of a death in custody. Police are directed by the Coroner to investigate the death.

2. Legal Authority and Obligations

- 2.1 The *Children and Young People Act 2008* (the Act) is the primary source of authority for the operations of a detention place. The provisions of the Act must be complied with at all times by staff exercising functions at a detention place.
- 2.2 The policies and procedures provide specific directions to implement the provisions of the Act and other relevant legislation, including the *Human Rights Act 2004*.
- 2.3 The *Coroners Act 1997* requires a Coroner to hold an inquest into the manner and cause of death of a person who dies in custody. A Coroner also has jurisdiction to hold an inquest into the manner and cause of death of a person outside the ACT if the person usually resides in the ACT and dies in custody. This includes the death of a young person under escort outside the ACT, on leave outside the ACT under an interstate leave permit or subject to a transfer direction to a place outside the ACT (e.g. an interstate health facility).
- 2.4 Section 70 of the *Coroners Act 1997* provides for the family or a representative to request authorisation from the Coroner to view the body of the deceased person, inspect the scene where the death occurred or be present at a post mortem examination. When authorised by the Coroner, staff of the detention place must assist and support such an inspection.
- 2.5 Human rights that are protected by the *Human Rights Act 2004* and that are relevant to this policy and procedure are:

Section 19 Humane treatment when deprived of liberty

- (1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person must be segregated from convicted people, except in exceptional circumstances.
- (3) An accused person must be treated in a way that is appropriate for a person who has not been convicted.

Section 20 Children in the criminal process

- (1) An accused child must be segregated from accused adults.
- (2) An accused child must be treated in a way that is appropriate for a person of the child's age who has not been convicted.
- (3) A child must be brought to trial as quickly as possible.
- (4) A convicted child must be treated in a way that is appropriate for a person of the child's age who has been convicted.

- 2.6 The following international human rights standards apply in the ACT and are relevant to this policy and procedures:
- (a) United Nations Convention on the Rights of the Child
 - (b) United Nations Standard Minimum Rules for the Administration of Juvenile Justice
 - (c) United Nations Rules for the Protection of Juveniles Deprived of their Liberty Rule 57
 - (d) Standard Minimum Rules for the Treatment of Prisoners
 - (e) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
 - (f) United Nations Declaration on the Rights of Indigenous People.

3. Authorisations and Delegations

- 3.1 Staff are responsible for applying the Health and Wellbeing Policy and Procedures in circumstances where a young person suffers an injury or illness that is life threatening.
- 3.2 Staff are responsible for applying the Death in Custody Policy and Procedures in circumstances where a young person is reported deceased.
- 3.3 Youth workers are defined as custodial officers for the *Coroners Act 1997*. Section 78 of the *Coroners Act 1997* requires a custodial officer to report their knowledge of a death in custody to a coroner as soon as practicable if they have reasonable grounds to believe the death has not been reported.
- 3.4 Staff must be mindful that the only person who can make the declaration that a person is deceased is a doctor.

4. Definitions

Aboriginal person is defined in the dictionary of the *Children and Young People Act 2008* as a person who is a descendant of the Indigenous inhabitants of Australia; who regards himself or herself as an Aboriginal or if the person is a child, is regarded as an Aboriginal by a parent or family member; and is accepted as an Aboriginal by an Aboriginal community.

Accredited person is defined in section 137 of the *Children and Young People Act 2008* and means the young person's Child and Youth Protection Services worker if the Director-General has parental responsibility for the young person, a representative approved by the Manager of an entity providing a service or program to the young person, a lawyer representing the young person, an Official Visitor, a Commissioner exercising functions under

the *Human Rights Commission Act 2005*, the Public Advocate and the Ombudsman.

All staff refers to youth workers, authorised persons, other Directorate staff providing services at or visiting a detention place in a work-related capacity and staff of ACT Government agencies providing services to young people in a detention place.

Authorised person is a person who has been delegated a power under the *Children and Young People Act 2008* or another Territory law and is exercising a function under the criminal matters chapters of the *Children and Young People Act 2008*. The positions that have delegations as authorised persons are: Executive Director, Senior Director (A), Director, Child and Youth Protection Services Operations (B), Director, Bimberi (B), Deputy Senior Manager (C), Operations Manager (D), Programs and Services Manager (D), Unit Managers (E), Team Leaders (F), Youth Workers (G), Family Engagement Officer (E), Sport and Recreation Officer.

Child means a person who is under 12 years of age (as defined under section 11 of the *Children and Young People Act*).

Child and Youth Protection Service refers to the branch in the Community Services Directorate that is responsible for the Child Protection and Youth Justice functions of the *Children and Young People Act 2008* and related legislation.

Custodial officer is defined in section 3D of the *Coroners Act 1997* and includes the Director-General responsible for the *Children and Young People Act 2008* or an authorised person under the Act.

Detention place means a declared detention place.

Direction means an instruction that may be given by a youth worker under section 146 of the *Children and Young People Act 2008* to a young person about anything related to the criminal matters chapters. A young person must comply with any direction given to the young person by the Director-General or delegate under section 184 of the *Children and Young People Act 2008*. Non-compliance by a young person with a direction is a behaviour breach and may be dealt with through the Behaviour Management Policy and Procedures or Discipline Policy and Procedures.

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

Director, Bimberi refers to the Director of a detention place and the responsible senior executive in the Community Services Directorate.

Director-General means the Director-General of the Community Services Directorate with administrative responsibility for the *Children and Young People Act 2008*, unless otherwise specified in this policy and procedure.

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

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

Manager refers to the Director of a detention place during normal business hours, or in the event this person is unavailable, the Deputy Senior Manager, or in the event this person is unavailable, the Operations Manager, or in the event this person is unavailable, a Unit Manager. Outside normal business hours, this refers to the On-call Manager.

Nominated person is a person nominated by a young person aged 18-21 years at the time of admission to whom the Director-General can give notifications under the *Children and Young People Act 2008*. The details of the nominated person must be entered in the Register of Young Detainees.

Parental responsibility is defined at section 15 of the *Children and Young People Act 2008* and means all the duties, powers, responsibilities and authority parents have by law in relation to their children, including daily care and long-term care responsibility for the child or young person. Each parent of a child or young person aged under 18 years has parental responsibility for the child or young person. A person may have or share parental responsibility for a child or young person under a court order under the *Children and Young People Act 2008* or another law or in the circumstances outlined at sections 17 and 18 of the Act.

Police refers to ACT Policing

Register of Young Detainees means the register that must be kept by the Director-General under section 185 of the *Children and Young People Act 2008*. The details of every young person who is admitted to a detention place must be recorded on the register at induction. The register comprises of the young person's individual Bimberi Client residential file and information stored electronically on the Youth Justice Information System (YJIS).

Staff refers to youth workers and other authorised persons.

Torres Strait Islander person is defined in the dictionary of the *Children and Young People Act 2008* as a person who is a descendant of the Indigenous inhabitants of the Torres Strait Islands; who regards himself or herself as a Torres Strait Islander or if the person is a child, is regarded as a Torres Strait

Islander by a parent or family member; and is accepted as a Torres Strait Islander by a Torres Strait Islander community.

Young person is defined at section 12 of the *Children and Young People Act 2008* and means a person who is aged 12 years and older, but under 21 years, who is required to be held in the Director-General's custody. A young person who is 21 years or older cannot be detained at a detention place. Young person means the same thing as young detainee, and young person aged 18-21 years means the same things adult young detainee, in the *Children and Young People Act 2008*.

Youth worker is defined at section 96 of the *Children and Young People Act 2008* and means an authorised person to whom the Director-General has delegated functions of a youth worker under the criminal matters chapters. The positions that have delegation as a youth worker for the policies and procedures are: Director, Bimberi (B), Deputy Senior Manager (C), Operations Manager (D), Programs and Services Manager (D), Unit Managers (E), Team Leaders (F), Youth Workers (G), Family Engagement Officer (F), Sport and Recreation Officer. Youth worker means the same as youth detention officer in the *Children and Young People Act 2008*.

5. Principles

Legislative Principles

5.1 The Act sets out the principles that must be considered by all decision-makers making decisions under the Act and this policy and procedure.

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.

Operational Principles

5.2 The following considerations inform this policy and procedures:

- (a) staff of a detention place have a legal duty to implement all reasonable measures to protect and preserve the life of a young person
- (b) staff of a detention place have responsibilities following the death of a young person to ensure all necessary notifications and reports are made in accordance with this policy and procedure
- (c) a Coroner and police acting under the direction of a Coroner have jurisdiction to investigate the circumstances of the young person's death and staff have a role to facilitate the investigation
- (d) the family of the young person is entitled to timely, full and open reporting regarding the circumstances of the young person's death in a sensitive manner and with appropriate respect for their cultural and religious beliefs.

6. Policy and Procedure

Application of Health and Wellbeing Policy and Procedure

- 6.1 In responding to a young person who is seriously injured or suspected to be deceased, staff must make every effort to preserve and maintain life in accordance with the Health and Wellbeing Policy and Procedures, that outlines responses to young person's injuries and the management of other young people and the detention place during and after an incident (refer to the Health and Wellbeing Policy and Procedures).

Following the Death of a Young Person

Responsibility of the first responder

- 6.2 If staff are notified that a young person has died, staff must immediately inform the Manager and, if necessary, the Control Room.

Responsibilities of the Control Room

- 6.3 The Control Room must provide the details of the person with parental responsibility or nominated person and give these details to the Manager.
- 6.4 The Control Room must notify the Unit Manager.
- 6.5 The Control Room must notify the police.

Responsibilities of the Unit Manager

- 6.6 The movement of staff to and from the location of the incident is to be strictly limited to those directly involved in responding to the situation.
- 6.7 No staff are permitted to enter the area other than for the following purposes:
- (a) as approved by the Unit Manager.
 - (b) first aid or evacuation of other persons
 - (c) security management
- 6.8 Subject to 6.7, no person shall have access to the area other than the Coroner, police, a police approved medical practitioner or persons approved by the Coroner and/or police until the investigations are complete.

Responsibilities of the Director, Bimberi

- 6.9 The Director, Bimberi must immediately notify the Director, Child and Youth Protection Services Operations.
- 6.10 The Director, Bimberi must arrange for police to notify the person with parental responsibility or the young person's nominated person. The person to be notified will be determined by the young person's client file, and this information must be provided to police.
- 6.11 The Director, Bimberi must, if appropriate and authorised by the police and/or the Coroner, extend an invitation to the parent or person with parental responsibility or nominated person to view the body of the deceased young person and inspect the scene of the death.
- 6.12 If the young person is Aboriginal and/or Torres Strait Islander or comes from a culturally and linguistically diverse background, the Senior Manager, after consultation with the police, will make arrangements to

- meet with the young person's family to obtain their input into what culturally appropriate arrangements should be made. The Director, Bimberi will contact Child and Youth Protection Services regarding known supports for the family to assist in delivering the information.
- 6.13 If the Director-General has parental responsibility for the young person, the Director, Bimberi must notify Child and Youth Protection Services.
- 6.14 As soon as possible after the incident, the Director, Bimberi must ensure all relevant documentation and official records at a detention place are moved to a secure location. No additions or removals are to be made to these records and no staff are to access the files unless authorised by the Director, Bimberi.
- 6.15 The Director, Bimberi shall ensure that ACT Policing or ACT Ambulance Service complete the Body Receipt Register when they assume custody of a deceased young person.
- 6.16 The Director, Bimberi will arrange debriefing for staff. The Director, Bimberi must ensure access to support and counselling for young people, visitors and staff.
- 6.17 The Director, Bimberi must ensure appropriate assistance to the family of a deceased young person is provided if the family request it.
- 6.18 The Director, Bimberi must ensure all information or evidence relating to a police or Coronial investigation is made available to investigating police or the Coroner upon request. Wherever possible, copies of documentation must be retained by the Director, Bimberi, or as instructed by the Director, Child and Youth Protection Services Operations.
- 6.19 The Director, Bimberi will ensure that arrangements are made for release of the young person's property to the young person's next of kin in accordance with the Property Policy and Procedures.

Media

- 6.20 Staff must refer all media inquiries to the Manager, Media and Communications, Community Services Directorate. Staff must not give any information to the media.

Provision of Information, Review of Decisions and Complaints

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

Records and Reporting

- 6.24 Any actions taken under this policy and procedure must be recorded according to the requirements set out in the Records and Reporting Policy and Procedures.
- 6.25 Staff responding to, or encountering an injured young person who is then subsequently declared deceased, must complete an Incident Report before leaving the detention place.
- 6.26 The most senior staff member on duty is to commence completion of the Death in Custody Report. All entries in the report are to be initialled by the person making the entry. Completion of the full report is the responsibility of the Director, Bimberi. A copy of this report and a brief must be prepared by the Director, Bimberi and provided to the Director, Child and Youth Protection Services Operations.
- 6.27 All staff are mandated reporters under the *Children and Young People Act 2008*. A report must be made to Child and Youth Protection Services if staff reasonably believes that a young person who is under 18 years has experienced or is experiencing sexual abuse or non-accidental physical injury by any person.

7. Forms and Templates

Accident Incident Report form
ACT Insurance Authority form
Body Receipt Register
Death in Custody Report
Incident report form

8. Related Policies and Procedures

Policies and Procedures under the *Children and Young People Act 2008*
Aboriginal and Torres Strait Islander Young People Policy and Procedures
Complaints Management Policy and Procedures
Health and Wellbeing Policy and Procedures
Property Policy and Procedures
Records and Reporting Policy and Procedures

Policies and Procedures in Child and Youth Protection Services
Single Case Management Policy and Procedures

9. Further References

Royal Commission into Aboriginal Deaths in Custody, available at <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>

10. Review

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