

## Juliet Butterworth

---

**From:** infoandprivacy  
**Sent:** Friday, 7 July 2023 4:05 PM  
**To:** [REDACTED]  
**Subject:** Formal Access Application - Notice of Decision - Our ref: GIPA23 [REDACTED]  
**Attachments:** Records for release.pdf



7 July 2023

Our ref: GIPA23 [REDACTED]

### NOTICE OF DECISION

Good afternoon

I refer to your formal access application under the *Government Information (Public Access) Act 2009* (GIPA Act) that you lodged with the Department of Communities and Justice (the Department) where you requested access to:

*A copy of Policies, procedures and guidelines for employees at Cobham Plains Juvenile Justice Centre during the date ranges listed above. We ask that this include, but not limited to, any policy information regarding strip searching of young offenders.*

*Date Range: 2014 - 2016*

#### Decision

I am authorised by the principal officer of the Department to decide your access application under section 9(3) of the GIPA Act.

Under section 53 of the GIPA Act, the Department must undertake reasonable searches as may be necessary to find any of the government information applied for that was held by the Department when the application was received, using the most efficient means reasonably available to the Department. I can confirm that a thorough search has been conducted of the Department's records management systems for any information that falls within the scope of your request.

I have considered your request in view of the objectives of the GIPA Act where you have a legally enforceable right to obtain information, unless there is an overriding public interest against disclosure of the subject information. Further, I have also considered the requirements of section 74 of the GIPA Act, which provides that an agency may delete information from a record if the deleted information does not fall within the scope of the information applied for.

In deciding your application, I was required to conduct a "public interest test" where the public interest considerations favouring disclosure of government information were weighed against those factors that do not favour disclosure. On this occasion, I have not identified any public interest factors against the disclosure of the information that you have requested.

Therefore, in accordance with section 58(1)(a) of the GIPA Act, I have decided to provide you with a complete copy of the information that falls within the scope of your request.

#### Review rights

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. You have three review options:

- An internal review lodged with the Department’s Open Government, Information and Privacy Unit, within 20 working days of the date of this Notice;
- An external review by the NSW Information Commissioner, within 40 working days of the date of this Notice; or
- An external review by the NSW Civil and Administrative Tribunal, within 40 working days of the date of this Notice.

I have assessed that the information released in response to your formal access application is information that would be of interest to other members of the public and is suitable to be recorded in the disclosure log. The Department will record certain details about your application (excluding your personal information) in its 'disclosure log' (under sections 25 and 26 of the GIPA Act), which is available on our website. Please advise if you object to the information released being included in the Disclosure Log.

Please do not hesitate to contact me in the first instance to discuss any concerns you have in relation to this decision, noting that you have been provided with a complete copy of the information requested.

Further information about your review rights can be located on the Information and Privacy Commission’s website at <https://www.ipc.nsw.gov.au/fact-sheet-your-review-rights-under-gipa-act>.

Please contact our office at [infoandprivacy@dcj.nsw.gov.au](mailto:infoandprivacy@dcj.nsw.gov.au) if you have any queries regarding this matter.

Kind regards

**Doreen L**

Open Government, Information and Privacy

**Department of Communities and Justice | Legal**

E [infoandprivacy@dcj.nsw.gov.au](mailto:infoandprivacy@dcj.nsw.gov.au)

Locked Bag 5000

Parramatta NSW 2124



**Communities and Justice**

I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

DISCLAIMER: This email message, including any attachments, is intended for the individual or entity to whom it is addressed and may contain information that is confidential, privileged and/or exempt from disclosure under applicable law. If you have received this email in error you must not disclose or use the information in it. Please delete the email and any copies and notify the sender. Confidentiality or privilege are not waived or lost by reason of the mistaken delivery to you. Views expressed in this message are those of the individual sender, and are not necessarily the views of the Department of Communities and Justice. The Department accepts no liability for any loss or damage arising from the use of this email or attachments and recommends that the recipient check this email and any attached files for the presence of viruses.

Use of electronic mail is subject to NSW Department of Communities and Justice policy and guidelines.

Please consider the environment before printing this email.



# Client Protection & Wellbeing Policy

---

**DOCUMENT CONTROL**

---

**Client Protection & Wellbeing**

---

**Category:** Policy

---

**Maintained by:** Office of the Chief Executive

---

**Version Date:** March 2014

---

**Status:** Final

---

---

## Table of Contents

<b>1. Introduction</b> .....	<b>3</b>
<b>2. Purpose</b> .....	<b>3</b>
<b>3. Scope</b> .....	<b>3</b>
<b>4. Objectives</b> .....	<b>4</b>
<b>5. Legal requirements</b> .....	<b>4</b>
5.1 Statutory Duty of Care.....	5
<b>6. Employee Misconduct and Work Performance Issues</b> .....	<b>6</b>
<b>7. Child Protection Intervention</b> .....	<b>6</b>
7.1 Aboriginal and Cultural Considerations .....	7
<b>8. Reporting</b> .....	<b>7</b>
Mandatory Reporting.....	7
8.1 Mandatory Reporting of Child at Risk of Significant Harm.....	7
8.2 Under the care of the Minister for Community Services .....	8
8.3 Unborn child .....	8
8.4 Homelessness.....	8
8.5 Exchange of information and coordination of services .....	8
8.6 Reportable allegation or reportable conviction against an employee .....	9
8.7 Employee Disciplinary Proceedings .....	11
8.8 Department of Education and Communities .....	11
8.9 Allegations of assault or other reportable conduct by police officers.....	11
8.10 Assault amounting to physical injury or sexual abuse .....	12
8.11 Confidentiality and safeguard for reporters.....	12
<b>9. Disciplinary Action/Removal from Office</b> .....	<b>12</b>
9.1 Public sector employees.....	12
9.2 Conference convenors .....	13
9.3 Non-Juvenile Justice Employees .....	13
<b>10. Record Keeping: Allegations and Action taken</b> .....	<b>13</b>
<b>11. Implementing this Policy</b> .....	<b>14</b>
<b>12. Monitoring and Evaluating the Policy</b> .....	<b>14</b>
12.1 Review of the policy .....	14
<b>APPENDIX 1 Definitions</b> .....	<b>15</b>
<b>APPENDIX 2 References and Resources</b> .....	<b>22</b>
<b>Version Control and Change History</b> .....	<b>23</b>

## 1. Introduction

Juvenile Justice NSW is responsible for the management of young offenders in the community or in custody. It is committed to the promotion of the safety, welfare and wellbeing of children and young people. Juvenile Justice also shares responsibility with service delivery partners to ensure that children and young people are protected from abuse and neglect.

Juvenile Justice recognises that institutional environments, such as Juvenile Justice centres, can have a negative effect on children and young people and that system abuse<sup>1</sup> can occur. Juvenile Justice has a responsibility to ensure that policies and practices are designed to minimise harm that may occur during a period in custody and that systems are in place to identify, report and address harm if it does occur.

This policy should be read in conjunction with the:

- Juvenile Justice *Code of Conduct* and related policies; [Code of conduct](#)
- *Child Wellbeing and Child Protection – NSW Interagency Guidelines*.  
Hyperlink to webpage: [Guidelines](#)

The Juvenile Justice *Client Protection and Wellbeing Policy 2014* replaces the *Client Protection Policy 2013*.

## 2. Purpose

The purpose of this policy is to promote the welfare and protection of children and young people who are clients<sup>2</sup> of Juvenile Justice NSW and in particular to ensure that employees and non-Juvenile Justice employees<sup>3</sup> (including but not limited to external consultants, contractors, volunteers, students, Official Visitors and chaplains):

- are aware of Juvenile Justice protocols and professional obligations in respect to the safety, welfare and wellbeing of clients; and
- ensure that employees are aware of Juvenile Justice and NSW legislative mandatory reporting obligations, in relation to clients who are, or may be, abused, neglected and at risk of significant harm.

## 3. Scope

The policy covers allegations of reportable conduct by employees, abuse of clients by other clients and abuse perpetrated by people outside the juvenile justice service environment. It also concerns mandatory notification to the NSW Ombudsman of reportable allegations or convictions against an employee.

---

<sup>1</sup> 'Systems abuse' refers to the 'harm done to children in the context of policies or programs that are designed to provide care or protection. The child's welfare, development or security are undermined by the actions of individuals or by the lack of suitable policies, practices and procedures within systems or institutions' (Cashmore, J., & Bussey, K. 1994, *The Credibility of Child Witnesses: Judicial Views*, School of Behavioural Sciences, Macquarie University)

<sup>2</sup> See Definitions

<sup>3</sup> A non-employee is anyone who delivers a service to a Juvenile Justice client in the community or detention centre regardless of their employment status.

The policy concerns all incidents of abuse or neglect that an employee witnesses against a child or young person. This includes all incidents where employees have reasonable grounds to suspect that a child or young person is at risk of significant harm, including instances that are reported by clients or by other people.

This policy applies to all employees and non-employees, whether engaged on a permanent, temporary, casual or volunteer basis. This includes, but is not limited to non-employees in contact with Juvenile Justice clients, external consultants, contractors, volunteers, students, Official Visitors and Chaplains.

Juvenile Justice must ensure that partner<sup>4</sup>, contracted or registered participating agencies and individuals that fall within the scope of this policy are aware of the requirements relating to the provisions of the *Children and Young Persons (Care and Protection) Act 1998*, the *Ombudsman Act 1974* and the *Commission for Children and Young People Act 1998* and other relevant legislative instruments relating to child protection.

## 4. Objectives

The key objectives of the policy and associated guidelines are to ensure that:

- (a) Employees, non-employees in contact with Juvenile Justice clients and others covered by the scope of this policy are aware of their responsibilities in promoting the safety, welfare and wellbeing of clients;
- (b) appropriate organisational and work place policies and procedures are in place to ensure the safety, welfare and wellbeing of clients;
- (c) systems are in place to address concerns about employees conduct and others covered by the scope of this policy;
- (d) organisations who receive funding from Juvenile Justice NSW are aware of their responsibilities under the *Children and Young Person (Care and Protection) Act 1998* and the *Commission for Children and Young People Act 1998*; and
- (e) Juvenile Justice NSW statutory reporting requirements are fulfilled.

## 5. Legal requirements

The following NSW legislative instruments form the basis of this policy, including but not limited to:

- (a) *Children and Young Persons (Care and Protection) Act 1998*;
- (b) *Children (Community Service Orders) Act 1987*;
- (c) *Children (Criminal Proceedings) Act 1987*;
- (d) *Children (Detention Centres) Act 1987*;
- (e) *Commission for Children and Young People Act 1998*;
- (f) *Crimes Act 1900*;

---

<sup>4</sup> Any agency: for profit or not for profit non-government agency to which a referral is made with respect to a client under the age of 18.

- (g) *Ombudsman Act 1974 Part 3A*;
- (h) *Public Interest Disclosures Act 1994*;
- (i) *Government Sector Employment Act 2013*;
- (j) *Young Offenders Act 1997*.

The key pieces of child protection legislation in NSW are:

- *Children and Young Persons (Care and Protection) Act 1998*;
- *Commission for Children and Young People Act 1998*;
- *Ombudsman Act 1974 [Part 3A]*;
- *Child Protection (Working with Children) Act 2012*.

Juvenile Justice employees are mandatory reporters<sup>5</sup> according to the *Children and Young Persons (Care and Protection) Act 1998*. They must make a report to the Child Protection Helpline if they have reasonable grounds to suspect that a child is at risk of significant harm.

Juvenile Justice is a designated government agency for the purposes of the *Ombudsman Act 1974*. The NSW Ombudsman must be notified of any reportable allegation or reportable conviction against an employee of which Juvenile Justice becomes aware.

The *Child Protection (Working with Children) Act 2012* prohibits Juvenile Justice from employing a barred person in child-related work. Section 11 of this Act requires a national police check and review of findings of misconduct involving children. The result of the check and review results in either a clearance to work with children for five years or a bar against working with children.

## 5.1 Statutory Duty of Care

Employees have a duty of care<sup>6</sup> towards Juvenile Justice clients, in that it is reasonably within their power, they must ensure the safety, welfare, and wellbeing of clients. Failure of an employee to discharge his or her duty of care, or otherwise to act within the law, may result in the employee or Juvenile Justice (or both) being liable to criminal or civil action.

In addition, statutory provisions exist that create offences specific to Juvenile Justice administration. For example, an employee who conducts him/herself in the following manner is guilty of an offence and is liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both:

- punishes a detainee, or causes a detainee to be punished, in a manner prohibited; or
- without lawful authority delivers or attempts to deliver a detainee alcohol, drugs or other contraband of any kind; or

---

<sup>5</sup> section 27 of the Children and Young People (Care and Protection) Act 1998

<sup>6</sup> Juvenile Justice Code of Conduct 2010

- without lawful excuse discloses any information obtained in connection with his or her employment.

## 6. Employee Misconduct and Work Performance Issues

Juvenile Justice is committed to ensuring that fair and effective systems exist for managing unsatisfactory work performance, unacceptable conduct or workplace behaviour, misconduct, reportable conduct or misconduct that may involve reportable conduct involving employees.

The *Government Sector Employment Act 2013* provides direction if employees<sup>7</sup> fail to comply with relevant legislation or the Juvenile Justice code of conduct, rules, regulations, policies and procedures or who fail to reach or maintain acceptable standards of performance.

Juvenile Justice NSW Directors and Managers are not required to undertake a formal inquiry. Their role is limited to obtaining and forwarding information to the Employment Relations & Professional Conduct Unit for consideration by the Professional Conduct Committee.

## 7. Child Protection Intervention

Child abuse and neglect are complex and serious problems that can have detrimental and far-reaching consequences for children and young people and their families.

Child and young people abuse<sup>8</sup> refers to intentional action that has resulted in or appears likely to result in the:

- (a) physical injury or sexual abuse of a child or young person; or
- (b) child or young person suffering emotional or psychological harm of such a kind that the emotional or intellectual development of the child or young person is, or is likely to be, significantly damaged; or
- (c) physical development or health of a child or young person being significantly harmed.

Children and young people neglect<sup>9</sup> refers to situations where the child or young person's basic needs (e.g. supervision, medical care, nutrition, shelter or education) have not been met, or are at risk of not being met, to such an extent that it can be reasonably expected to have a significant adverse impact on the child or young person's safety, welfare or well-being. This lack of care could be constituted by a single act or omission or a pattern of acts or omissions. The carer may or may not be the parent.<sup>10</sup>

---

7 Excluding Youth Justice Conference Convenors

8 According to section 227 of the Children (Care and Protection) Act 1998

9 According to section 228 of the Children (Care and Protection) Act 1998

10 NSW Government, Interagency Guidelines, Child Wellbeing and Child Protection, Fact Sheet: Making a child protection report – How do I know if a child or young person is being abused or neglected?



The definition in the *Ombudsman Act 1974* of sexual abuse and misconduct, assault, ill-treatment, neglect and behaviour causing psychological harm differs from the definitions of child and young people abuse and neglect in the *Children (Care and Protection) Act 1998*. The employment context sets a different threshold for reportable conduct (see section 8.3).

## 7.1 Aboriginal and Cultural Considerations

Culture and experience influence parenting and care giving practices. Mandatory reporting should not occur for behaviours or practices that are culturally unfamiliar unless the reporter considers that the impact or effects of these place a child at risk of significant harm.

Conversely, behaviours that are suspected of causing risk of significant harm should not be minimised or dismissed on cultural grounds.

The principles in relation to care and protection for Aboriginal and Torres Strait Islander people are contained in Chapter 2, Part 2 of the *Children and Young Persons (Care and Protection) Act 1998*. This includes the promotion of self-determination through programs and strategies, as well as participation in decision making by Aboriginal communities and families.

Any information, such as cultural, linguistic, refugee, migration and/or settlement factors that may assist in the assessment of a case should always be included in a report to the Child Protection Helpline.

## 8. Reporting

### Mandatory Reporting

#### 8.1 Mandatory Reporting of Child at Risk of Significant Harm

Employees of Juvenile Justice are mandatory reporters<sup>11</sup> and must complete the Mandatory Reporter Guide (MRG) to determine whether their concern about a child<sup>12</sup> constitutes a suspected risk of significant harm (ROSH). It is mandatory to report a child up to the age of 16 years. The legislation allows the reporting of concerns about young people aged 16-17 years. Employees are encouraged to report a vulnerable young person over the age of 16 who is unable to make an informed decision.

The interactive online MRG forms part of the common assessment framework for all agencies working with children or young people and is intended to assist mandatory reporters to determine whether a case meets the threshold for risk of significant harm. The MRG assists critical thinking; it does not prohibit a mandatory reporter from a course of action he/she believes is appropriate.

Decision trees can be accessed to assist with the most common issues a mandatory reporting officer will need to consider. Decision trees are available for a wide range

---

<sup>11</sup> According to section 27 of the Children and Young People (Care and Protection) Act 1998

<sup>12</sup> The Children and Young Persons (Care and Protection) Act 1998 only make it mandatory to report a child up to the age of 16 years as a person who is under the age of 16 years

of issues of concern about a child or young person or carers' concerns are accessed at: [www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au). [Keep Them Safe](#)

## 8.2 Under the care of the Minister for Community Services

If none of the MRG Decision trees apply but you are concerned about a child/young person who is in the care of the Secretary or under the parental responsibility of the Minister for Community Services,<sup>13</sup> you must advise the Child Protection Helpline regardless of the MRG outcome. These instances include, but are not limited to:

- child or young person is pregnant;
- child or young person has run away;
- child or young person is missing;
- child or young person is homeless;
- child or young person is seriously injured or has been involved in a critical incident;
- reportable conduct by Community Services employee (including foster carer).

## 8.3 Unborn child

Employees who have reasonable grounds to suspect, before the birth of a child, that the child may be at risk of significant harm after his or her birth *may* make a report to the Child Protection Helpline.

## 8.4 Homelessness

A child (under 16) who is homeless or living away from home without their carer's permission is considered to be at risk of significant harm and a report should be made to the Child Protection Hotline.

However, if applying the MRG to a young person over 16 years due to concerns of homelessness and there are no other risk issues, a mandatory reporter must have a young person's consent to report homelessness to the Child Protection Helpline. Employees are encouraged to report a vulnerable young person over the age of 16 who is unable to make an informed decision.

## 8.5 Exchange of information and coordination of services

Chapter 16A<sup>14</sup> provisions allow government and non-government agencies to share or exchange information about concerns relating to the safety, welfare and wellbeing of a child or young person, or of a class of children or young people to assess risks, make decisions and identify and deliver appropriate services. Consent is not necessary but should be sought where possible.

---

<sup>13</sup> According to section 79 of the Children and Young People (Care and Protection) Act 1998

<sup>14</sup> Currently the legislation only allows the exchange of information in relation to an unborn child if the unborn has been the subject to a pre-natal report under section 25.

The release or exchange of information should:

- have regard to the child's best interests as paramount and work towards providing support to maintain their safety;
- promote communication between agencies/services to ensure the best support options are considered and provided;
- take on a shared responsibility with respect to the safety, welfare and wellbeing of children and young people;
- consider that the child safety, welfare and wellbeing remain paramount and information exchange may supersede/override privacy/confidentiality needs.

Where a risk of significant harm report contains an allegation of reportable conduct against an employee of another agency, in addition to investigating the risk of significant harm report, the employing agency will be advised of the allegation, and will seek the reporter's consent to disclose their identity to the employer to assist in their reportable conduct investigation.

The head of a designated government or non-government agency<sup>15</sup> is required to notify the NSW Ombudsman of any reportable allegation or conviction against an employee of the agency within 30 days, and to report to the NSW Ombudsman the results of any investigation and action taken with respect to the reportable allegation or conviction.

## Reportable Conduct

### 8.6 Reportable allegation or reportable conviction against an employee<sup>16</sup>

Juvenile Justice is a designated government agency for the purposes of Part 3A of the *Ombudsman Act 1974*: Juvenile Justice must notify the NSW Ombudsman of any reportable allegation or reportable conviction against an employee regardless of where the alleged abuse occurred, i.e., either in the course of their employment or outside working hours in their private lives.

The NSW Ombudsman must be notified of any reportable allegation against a person employed or engaged by Juvenile Justice whether or not the abuse has been substantiated. This is an allegation based reporting system. Reports made to the Employment Relations & Professional Conduct Unit are assessed and the necessary referrals are made from that unit to external agencies, such as NSW Police Force or the NSW Ombudsman.

The requirements of the *Ombudsman Act 1974* cover anyone who is employed<sup>17</sup> by Juvenile Justice whether or not their position requires them to work with children; and anyone engaged by Juvenile Justice that provides services to children and young people, including but not limited to:

- contractors and subcontractors;

---

<sup>15</sup> A designated agency in NSW is an agency accredited in accordance with the regulations under the *Children and Young Persons (Care and Protection) Act 1998* to provide out of home care services and includes Community Services and Ageing, Disability and Home Care.

<sup>16</sup> See s. 25C of the *Ombudsman Act 1974*; Under Part 2.7 of the *Public Sector Employment & Management Act 2002*, action can be taken by the department against an employee who, without reasonable excuse, fails to make a report as required by this policy.

<sup>17</sup> This definition is different to, and broader than, the definition under s. 33 of the *Commission for Children & Young People Act 1998*.

- sessional supervisors and mentors;
- monitors for youth justice conferencing outcome plans;
- volunteers;
- work experience participants;
- student placements, e.g., TAFE or tertiary students;
- clergy, ministers of religion, members of religious orders and instructors of religion who provide pastoral or liturgical support and services<sup>18</sup>.
- Official Visitors
- Staff or volunteers of services funded by Juvenile Justice NSW

A reportable allegation must be notified to the NSW Ombudsman when the:

- (a) person who is subject of the reportable allegation is a current employee, as defined in section 25A of the *Ombudsman Act 1974*, at the time the allegation was made;
- (b) allegation refers to a description of behaviour that constitutes a reportable allegation; and
- (c) child who is the subject of the reportable allegation was under 18 years of age at the time of the alleged offence or behaviour.

### **8.6.1 Duties of the Secretary or Delegate**

The *Ombudsman Act 1974* requires the head of a designated division or public authority in NSW to ensure that systems are in place for recording and responding to allegations of reportable conduct of an employee.

The Secretary or delegate must:

- determine which allegations and convictions are to be notified to the NSW Ombudsman as reportable allegations or convictions and which matters are exempt from notification<sup>19</sup>;
- conduct an investigation whenever information is received that comprises an allegation of reportable conduct, including conduct exempt from notification to the NSW Ombudsman<sup>20</sup>, or a reportable conviction against an employee. In such circumstances it is Juvenile Justice responsibility to investigate and make a decision about the management, supervision or continued employment of an employee the subject of the allegation or conviction<sup>21</sup>; and
- notify the NSW Ombudsman of any reportable allegation or reportable conviction against an employee, even if Juvenile Justice does not propose to take any action against the employee.

---

<sup>18</sup> See the Memorandum of Understanding between the Juvenile Justice and Civil Chaplaincies Advisory Committee 2009.

<sup>19</sup> In accordance with legislation and the Class or Kind Determination (section 25 CA of the Ombudsman Act 1974)

<sup>20</sup> In accordance with legislation and the Class or Kind Determination

<sup>21</sup> NSW Ombudsman, Child protection in the workplace 2004

Anyone against whom allegations are made is entitled to procedural fairness and natural justice and may make written submissions to the Secretary or delegate concerning the reportable allegation or conviction.

## **8.7 Employee Misconduct Proceedings<sup>22</sup>**

The Secretary or delegate must notify the Commissioner for the Office of the Children's Guardian of the name and other identifying particulars of any employee against whom relevant employment proceedings<sup>23</sup> have been completed, except where the inquiry finds that there was no reportable conduct or the conduct fell within the Class or Kind Agreement between Juvenile Justice and the Office of the Children's Guardian.

The Juvenile Justice NSW, Employee Relations and Professional Conduct (ER&PC) Unit may report non-employees to the Commissioner for the Office of the Children's Guardian if there is concern that the employer may not report or inquire into the allegations or conduct.

### **8.7.1 Vexatious complaints**

Where a complaint or report made in accordance with this policy is deemed to be frivolous, vexatious or founded on improper motives, the matter must be referred to the Coordinator, Employment Relations & Professional Conduct Unit for further consideration and assessment and, where necessary, appropriate referrals.

Upon receipt of the referral, the Coordinator, Employment Relations & Professional Conduct Unit, will assess all available information and make a determination as to the appropriateness of any further action. This may include action under the Government Sector Employment Act 2013, referral to an external agency (NSW Police Force, Independent Commission Against Corruption or the NSW Ombudsman), or counselling of the person(s) involved.

Under the *Public Interest Disclosures Act 1994*, protection is not available for disclosures which are frivolous or vexatious.

## **8.8 Department of Education and Communities**

In the event of an incident or allegation of reportable conduct of an employee of the Department of Education and Communities (DEC) based at a Juvenile Justice centre, the DEC Employee Performance & Conduct Directorate must be notified by contacting 9266 8070.<sup>24</sup>

## **8.9 Allegations of assault or other reportable conduct by police officers**

All allegations of assault upon clients by police, either prior to or during the Juvenile Justice involvement, must be reported to the NSW Police Customer Assistance Unit by contacting 1800 622 571.

---

<sup>22</sup> See s. 39 of the *Commission for Children and Young People Act 1998*.

<sup>23</sup> An investigation concerning allegations of reportable conduct

<sup>24</sup> Department of Education and Communities, Responding to Allegations Against Employees in the Area of Child Protection, at

[https://www.det.nsw.edu.au/policies/staff/child\\_protect/alleg\\_emp/PD20050263.shtml?level=Schools&categories=Schools%7CWellbeing%7CChild+protection](https://www.det.nsw.edu.au/policies/staff/child_protect/alleg_emp/PD20050263.shtml?level=Schools&categories=Schools%7CWellbeing%7CChild+protection) on 26 February 2014.

### **8.10 Assault amounting to physical injury or sexual abuse**

Any incident or allegation of assault causing physical injury or sexual assault on a client must be reported to NSW Police Force.

### **8.11 Confidentiality and safeguard for reporters**

Risk of significant harm reports to Community Services are confidential and the reporter's identity is, subject to some limited exceptions, protected by law<sup>25</sup> if the report is made in good faith. The law offers the following protections<sup>26</sup>:

- the report shall not be held to be a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- no liability for defamation can be incurred because of the making of the report;
- the report, or its contents, is not admissible in any proceedings as evidence against the person who made the report;
- a person cannot be compelled by a court to provide the report or give any evidence as to its contents;
- a reporter may consent to the disclosure of their identity to a court. If however consent isn't given then a court may only order the disclosure of the reporter's identity if it is satisfied that the evidence is of critical importance to the case and that failure to admit it would prejudice the proper administration of justice;
- a report is an exempt document under the *Freedom of Information Act 1989*.

If law enforcement agencies require the identity of a reporter in order to investigate serious offences alleged to have been committed against children or young people, the identity of the reporter may be released to the police. The reporter will be notified that their identity is to be released to the police unless doing so would prejudice the police investigation.

Similarly, if a report or notification is made to the NSW Ombudsman in relation to reportable conduct, employees are not liable for defamation or civil proceedings incurred because of the disclosure.

Employees requiring further information or advice on the limited liability of employees should contact a union representative or a solicitor.<sup>27</sup>

## **9. Misconduct/Removal from Office**

### **9.1 Public sector employees**

The Chief Executive should apply the *Government Sector Employment Act 2013*, its Regulations and associated rules when found to have engaged in misconduct, reportable conduct or other statutory breach.

---

<sup>25</sup> As per Section 29 of the *Child and Young Person (Care and Protection) Act 1998*

<sup>26</sup> Child Wellbeing & Child Protection NSW Interagency Guidelines

<sup>27</sup> Employees may also contact Juvenile Justice Legal Services for information; however officers of that unit are not in a position to offer detailed advice on the subject.

## **9.2 Conference convenors**

Schedule 1(3)(2) of the *Young Offenders Act 1997*, provides the Secretary (or delegate) with the authority to remove a Conference Convenor from office at any time.

## **9.3 Non-Juvenile Justice Employees**

Directors and Managers are responsible for making all non-Juvenile Justice employees aware of the agency's expectations of conduct. This includes but is not limited to external consultants, contractors, volunteers, students, Official Visitors and Chaplains. It is also the Director or Manager's responsibility to take the necessary action to address any concerns about their conduct.

All Directors and Managers must report all allegations of reportable conduct made against external consultants, contractors, volunteers, students, official visitors and chaplains and any other non-Juvenile Justice employee, immediately to the Juvenile Justice Employment Relations and Professional Conduct Unit. Juvenile Justice is required to inform the Ombudsman about the allegation and conduct an investigation. Juvenile Justice will inform the individual's organisation and/or professional body (for example, a professional registration or complaints panel) that an inquiry is being conducted.

Juvenile Justice will conduct an inquiry to resolve an allegation of misconduct to determine whether the individual under investigation:

- can return to work with clients in centres or the community; or
- suspend the individual's services in centres and the community.

When the inquiry has been completed the agency will provide the Ombudsman with the report relating to the inquiry, copies of all of the statements and other documents which form the basis of the report and the results of the inquiry.

Government and non-government agencies are also required to report and investigate allegations of reportable conduct to the Ombudsman.

The process requires compliance with the principles of procedural fairness. For guidance, a helpful link is: <http://www.psc.nsw.gov.au/employmentportal>.

## **10. Record Keeping: Allegations and Action taken**

Each stage of the reporting and inquiry process must be thoroughly documented. In particular records should be maintained of the following by:

- an initiating employee recording the details of an allegation made or conduct observed, the name of the informer, the identity of the parties, the nature of the allegation, the time it was made and when it was reported to the Employment Relations & Professional Conduct Unit or other officer;
- the Employment Relations & Professional Conduct Unit recording the receipt of the allegations or other information and the steps taken in response;

- the Secretary or delegate when determining the action to be taken in response to any risks that may be disclosed by the allegation, the course of the investigation, what action should be taken as a result of the investigation;
- the person conducting an investigation, recording the evidence that supports or argues against the alleged conduct having happened.

Records in relation to allegations and reportable conduct are to be maintained and disposed of in accordance with the *State Records Act 1998* and other legislation as prescribed.

## **11. Implementing this Policy**

All employees must read, understand and complete current and relevant training about this policy. Employees with client contact must have a detailed understanding of this policy. Employees without client contact must have an understanding of the principles and purpose of the policy. Directors and managers must make non-employees aware of the policy.

## **12. Monitoring and Evaluating the Policy**

Juvenile Justice is committed to developing and maintaining a monitoring and evaluation system to ensure that key objectives of the *Children and Young Persons (Care and Protection) Act 1998* are met and sustained.

To facilitate monitoring of the policy, all employees are required to keep records of the following:

- completed Mandatory Reporter Guide (MRG) reports;
- risk of significant harm (ROSH) reports to the Community Services Helpline;
- outcome of the ROSH reports from Community Services;
- requests for services from non-government agency services;
- outcomes of requests for non-government agency services;
- requests for exchange of information under Chapter 16A between Juvenile Justice, Community Services and other government and non-government agencies.

### **12.1 Review of the policy**

A review of this policy and associated guidelines will be scheduled a year from the date of approval of the policy or at such time as the provisions of the *Child Protection (Working with Children) Act 2012* and associated Regulation are implemented.



## APPENDIX 1 Definitions

The legal context determines the exact definition of some terms used in this policy.

Word/Term	Definition
<b>Agency</b>	<b>Agency</b> refers to all public sector services. The <i>Ombudsman Act 1974</i> also uses the term to refer to certain non-government service providers or organisations that fall within the Ombudsman’s child protection jurisdiction.
<b>Allegations which are exempt</b>	<p>According to section 25 CA of the <i>Ombudsman Act 1974</i>, allegations which are exempt from notification to the Ombudsman are matters which relate to:</p> <ul style="list-style-type: none"> <li>• conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or</li> <li>• the use of physical force that, in all the circumstances, is trivial or negligible, but only if the employer is an agency to which Part 3A of the <i>Ombudsman Act 1974</i> applies and the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or</li> <li>• conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA of the <i>Ombudsman Act</i>.</li> </ul> <p><b>Note:</b> For the purposes of the Ombudsman Act, ‘child’ means a child or young person under the age of 18 years.</p>
<b>At risk of significant harm</b>	<p><b>At risk of significant harm</b> is defined in section 23 of the <i>Children and Young Persons (Care and Protection) Act 1998</i>:</p> <p>(1) For the purposes of this Part and Part 3, a child or young person is at risk of significant harm if current concerns exist for the safety, welfare or wellbeing of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:</p> <p>(a) the child’s or young person’s basic physical or psychological needs are not being met or are at risk of not being met,</p> <p>(b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,</p> <p>(b1) in the case of a child or young person who is required to attend school in accordance with the Education Act 1990—the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,</p>

Word/Term	Definition
	<p>(c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,</p> <p>(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,</p> <p>(e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,</p> <p>(f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.</p> <p>Note. Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.</p> <p>(2) Any such circumstances may relate to a single act or omission or to a series of acts or omissions.</p>
<b>Child</b>	<p><b>Child</b> is defined in the <i>Children and Young Persons (Care and Protection) Act 1998</i> as a person who is under the age of 16 years.</p> <p><b>Child</b> is defined in the <i>Ombudsman Act 1974</i> as a person under the age of 18 years</p>
<b>Child and Young Person Abuse</b>	<p><b>Abuse</b> is defined in section 227 of the <i>Children and Young People (Care and Protection) Act 1998</i> as any intentional action by a person that has resulted in or appears likely to result in:</p> <p>(a) the physical injury or sexual abuse of a child or young person, or</p> <p>(b) a child or young person suffering emotional or psychological harm of such a kind that the emotional or intellectual development of the child or young person is, or is likely to be, significantly damaged; or</p> <p>(c) the physical development or health of a child or young person being significantly harmed.</p>
<b>Child-related employment</b>	<p>Is defined in the <i>Commission for Children and Young People Act 1998</i> as:</p> <p>(a) any employment of the following kind that primarily involves direct contact with children where that contact is not directly supervised by a person having the capacity to direct the person in the course of the employment:</p> <p>(i) employment involving the provision of child protection services,</p> <p>(ii) employment in pre-schools, kindergartens and child care centres (including residential child care centres),</p>

Word/Term	Definition
	<p>(iii) employment in schools or other educational institutions (not being universities),</p> <p>(iv) employment in detention centres (within the meaning of the <a href="#">Children (Detention Centres) Act 1987</a>) and juvenile correctional centres (within the meaning of the <a href="#">Crimes (Administration of Sentences) Act 1999</a>),</p> <p>(v) employment in refuges used by children,</p> <p>(vi) employment in wards of public or private hospitals in which children are patients,</p> <p>(vii) employment in clubs, associations, movements, societies, institutions or other bodies (including bodies of a cultural, recreational or sporting nature) having a significant child membership or involvement,</p> <p>(viii) employment in any religious organisation,</p> <p>(ix) employment in entertainment venues where the clientele is primarily children,</p> <p>(x) employment as a babysitter or childminder that is arranged by a commercial agency,</p> <p>(xi) employment involving fostering or other child care,</p> <p>(xii) employment involving regular provision of taxi services for the transport of children with a disability,</p> <p>(xiii) employment involving the private tuition of children,</p> <p>(xiv) employment involving the direct provision of child health services,</p> <p>(xv) employment involving the provision of counselling or other support services for children,</p> <p>(xvi) employment on school buses,</p> <p>(xvii) employment at overnight camps for children, and</p> <p>(a1) means (without limiting paragraph (a)) any employment of the following kind:</p> <p>(i) employment comprising the provision of an education and care service,</p> <p>(ii) employment as a person involved in the control or management of an education and care service,</p> <p>(iii) employment as a certified supervisor (within the meaning of the <a href="#">Children (Education and Care Services) National Law (NSW)</a>) in relation to an education and care service under that Law,</p> <p>(iiia) employment as a certified supervisor (within the meaning of the <a href="#">Children (Education and Care Services) Supplementary Provisions Act 2011</a>) in relation to a State regulated education and care service under that Act,</p> <p>(iv) employment as an assessment officer within the meaning of section 27A of the <a href="#">Children and Young Persons (Care and Protection) Act 1998</a>,</p> <p>(v) employment as the principal officer of a designated agency within the meaning of the <a href="#">Children and Young Persons (Care and Protection) Act 1998</a>,</p> <p>(vi) employment as the principal officer of an accredited adoption service provider within the meaning of the <a href="#">Adoption Act 2000</a>,</p>

Word/Term	Definition
	<p>(vii) employment as a self-employed person or as a subcontractor (by or on behalf of or in a relevant agency) if that employment involves direct contact with children and the contact is not directly supervised by a person having capacity to direct the self-employed person or subcontractor in the course of his or her work, and</p> <p>(b) includes any other employment of a kind prescribed by the regulations, but does not include any employment of a kind excluded by the regulations.</p>
<b>Clients</b>	<p><b>Clients</b> referred to in this policy include all children and young people with whom Juvenile Justice employees have contact with in the process of their work. This may include children and young people who are siblings or other family members of children and young people who have been referred for a youth justice conference, subject to community supervision or detained in a juvenile justice centre.</p>
<b>Conference Convenor</b>	<p><b>Conference Convenor</b> means a person appointed under section 60 of the <i>Young Offenders Act 1997</i>.</p>
<b>Secretary</b>	<p><b>Secretary</b>, unless otherwise stated, means the Secretary of the Department of Attorney General &amp; Justice.</p>
<b>Employee</b>	<p>For the purpose of this Policy, <b>employee</b> means:</p> <p>(a) any employee of the agency, whether on salary or wages or piece-work rates, and</p> <p>(b) any individual engaged by the agency whether or not they are employed to work directly with children or young people (including in the capacity of a volunteer), and</p> <p>(c) any deemed employee, such as Youth Justice Conference Convenors</p> <p>d) any contractor, instructor of religion or student on placement.</p> <p>e) Official Visitors</p>
<b>Juvenile Justice</b>	<p><b>Juvenile Justice</b> means the NSW Department of Attorney General and Justice, Juvenile Justice.</p>
<b>Mandatory reporter</b>	<p><b>Mandatory reporter</b> is defined in section 27 of the <i>Children and Young People (Care and Protection) Act 1998</i> as:</p> <p>(a) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children, and</p> <p>(b) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education,</p>

Word/Term	Definition
	children's services, residential services, or law enforcement, wholly or partly, to children.
<b>Neglect</b>	<p><b>Neglect</b> means neglect by a person (whether or not an employee of Juvenile Justice) to provide, without reasonable excuse, adequate and proper food, nursing, clothing, medical aid, mental health care, education or lodging to a child or young person in his or her care.</p> <p><b>Neglect</b> in the context of reportable conduct has a different definition: Neglect includes either an action or inaction by a person who has care responsibilities towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.</p> <p><b>Supervisory neglect:</b> An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or An intentional or reckless failure to adequately supervise a child, or a significantly careless act or failure to act, that:</p> <ul style="list-style-type: none"> <li>• involves a gross breach of professional standards, and</li> <li>• has the potential to result in the death of, or significant harm to, a child.</li> </ul> <p><b>Carer neglect:</b> Grossly inadequate care that involves depriving a child of the basic necessities of life: such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.</p> <p><b>Failure to protect from abuse:</b> An obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.</p> <p><b>Reckless acts (or failure to act):</b> A reckless act, or failure to act, that:</p> <ul style="list-style-type: none"> <li>• involves a gross breach of professional standards, and</li> <li>• has the potential to result in the death of, or significant harm to, a child.</li> </ul> <p>An incident can constitute neglect if it contains any element within this definition.</p>
<b>Ombudsman</b>	<b>Ombudsman</b> means the New South Wales Ombudsman.
<b>Barred person</b>	<p><b>Barred person</b> means:</p> <p>Offences listed in Schedule 2 of the <a href="#">Child Protection (Working With Children) Act 2012</a> are disqualifying offences which means they will lead to an automatic bar against working with children in NSW.</p>
<b>Reasonable</b>	<b>Reasonable grounds</b> to report concerns about the safety of a child or a young person does not require proof. Indicators that

Word/Term	Definition
<p><b>grounds</b></p>	<p>represent reasonable grounds to report risk of significant harm include:</p> <ul style="list-style-type: none"> <li>• a child or young person discloses that he or she has suffered or is suffering non accidental physical injury or sexual abuse</li> <li>• someone else advises you that a child or young person has been sexually abused or non-accidentally injured, or</li> <li>• your own observations of the child or young person’s physical condition or behaviours lead you to reasonably suspect that the child or young person has suffered or is suffering non-accidental physical injury or sexual abuse.</li> </ul>
<p><b>Reportable allegation</b></p>	<p><b>Reportable allegation</b> means an allegation of sexual assault, sexual misconduct, assault, ill-treatment, neglect or behaviour causing psychological harm against an employee and involving a child under the age of 18 years at the time of the alleged conduct.</p>
<p><b>Reportable conduct</b></p>	<p><b>Reportable conduct</b> is defined in section 25A of the <i>Ombudsman Act 1974</i> and section 33(1) of the <i>Commission for Children and Young People Act 1998</i> as:</p> <p>(a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child, or</p> <p>(aa1) any offence or misconduct involving child abuse material (within the meaning of Division 15A of Part 3 of the <i>Crimes Act 1900</i>), or</p> <p>(a1) any child pornography offence or misconduct involving child pornography, or</p> <p>(a2) any child-related personal violence offence (within the meaning of Division 2), or</p> <p>(a3) an offence under section 91J, 91K, 91L or 91M of the <i>Crimes Act 1900</i> committed against, with or in the presence of a child, or</p> <p>(a4) an offence that was reportable conduct at the time that it was committed, or</p> <p>(b) any assault, ill-treatment or neglect of a child, or</p> <p>(c) any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.</p> <p><b>Note:</b></p> <p>Examples of conduct that would not constitute <b>reportable conduct</b> include (without limitation) touching a child in order to attract a child’s attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.</p>

Word/Term	Definition
	Reportable Conduct is also defined in the <i>Ombudsman Act 1974</i> .
<b>Reportable conviction</b>	<b>Reportable conviction</b> means a conviction (including a finding of guilt without the court proceeding to a conviction), in this State or elsewhere, of an offence involving reportable conduct.
<b>Volunteer</b>	For the purpose of the <i>Commission for Children and Young People Act 1998</i> , a volunteer is an 'employee' according to the definition in the <i>Ombudsman Act 1974</i> .
<b>Young person</b>	<b>Young person</b> is defined in the <i>Children and Young People (Care and Protection) Act 1998</i> as a person who is aged <b>16 years or above but who is under the age of 18 years</b> .  (This differs from the <i>Ombudsman Act 1974</i> which defines a child as a <b>person under the age of 18 years</b> ).

## APPENDIX 2 References and Resources

The electronic version of this document contains links to the listed documents.

### Procedures

Client Protection and Wellbeing Procedures

### Policy

- [Appointment and engagement of convenors](#) (December 2010);
- [Case Management Policy](#) (2010);
- [Client Complaints Policy](#) (May 2012);
- [Code of Conduct](#) (July 2010);
- [Conduct and Performance Procedural guidelines](#);
- [Detainee Behaviour Intervention Framework](#) (November 2009);
- [Fraud Control and Corruption Prevention Policy](#) (2005);
- [Registrable offenders policy and procedures](#) (October 2009);
- [Registrable offenders policy and procedures](#) (October 2009);

### Forms

- [Summary of an Allegation or Complaint Against an Employee form](#)
- [Risk Assessment form](#) (to accompany Summary of an allegation or Complaint against an employee form)

### Resources

- Australasian Juvenile Justice Administrators (2009) [Standards for Juvenile Custodial Facilities](#)
- [Child Wellbeing and Child Protection - NSW Interagency Guidelines](#)
- [Class or Kind Agreement](#) (June 2010)
- [Convention on the Rights of the Child](#), United Nations General Assembly Resolution 44/25
- [Keep Them Safe: A shared approach to Child Wellbeing](#)
- Keep Them Safe: [Reporting child protection concerns](#)
- [Mandatory Reporter Guide](#)
- [Fact Sheet: Mandatory Reporter Guide](#)
- [Memorandum of Understanding between the Juvenile Justice and Civil Chaplaincies Advisory Committee 2008](#)
- [New South Wales Ombudsman](#)
- [NSW Ombudsman Child Protection fact sheets](#)
- NSW Ombudsman fact sheet: [Child protection legislation: what employers and employees need to know](#)



- NSW Ombudsman Child protection fact sheet No 04: [Planning and conducting an investigation.](#)
- NSW Ombudsman Practice Updates: [Defining Reportable Conduct](#)
- NSW Ombudsman Practice Updates: [Making a Finding](#)
- [Online Mandatory Reporter Guide](#)
- [State Records Authority's General Retention and Disposal Authority - Personnel Records \(GDA 28\)](#)
- United Nations [Standard Minimum Rules for the Administration of Juvenile Justice.](#)

**Legislation**

- [Children and Young Persons \(Care and Protection\) Act 1998;](#)
- [Children \(Community Service Orders\) Act 1987;](#)
- [Children \(Detention Centres\) Act 1987;](#)
- [Child Protection \(Working with Children\) Act 2012;](#)
- [Commission for Children and Young People Act 1998;](#)
- [Crimes Act 1900;](#)
- [Ombudsman Act 1974;](#)
- [Public Interest Disclosures Act 1994;](#)
- [Young Offenders Act 1997](#)

**Useful contacts**

**Community Services** Child Protection Helpline Phone: 13 36 27 (TTY 9633 7698)

**Version Control and Change History**

Version Control	Date Effective	Approved By	Amendment
1	February 2013	V. Ruisis	First version
2	April 2014	V. Ruisis	Final



## Use of Force

### When to use this procedure

Use this procedure when other forms of interventions have failed or are not appropriate and use of force is reasonable and necessary to resolve the situation.

### What is 'Use of Force?'

Any intentional physical actions used by a staff member on a detainee to control or move the detainee against their will. There are three types of force: Pre-planned, Situational and Immediate.

Is this your first time using this procedure? See and understand:

- Responding Safely to Challenging Behaviour Policy
- Detainee Behaviour Intervention Framework
- Use of instruments of restraint procedure
- Use of protective equipment procedure
- Safe Operating Procedure: Risk Management
- Work, Health & Safety Act 2011
- Contacting the After-Hours Justice Health Nurse Flowchart

### Start using this procedure

#### Your responsibilities

Find your role. Find what you need to do.

Role	When required	Responsibilities
All Employees	Always	All Employees <a href="#">steps</a>
Duty Manager	In the absence of the Unit Manager	Unit Manager <a href="#">steps</a>
Unit Manager	Always	Unit Manager <a href="#">steps</a>
Assistant Unit Manager / Shift Supervisor	Always As Unit Supervisor in the absence of / or as directed by Unit / Duty Manager	Assistant Unit Manager / Shift supervisor <a href="#">steps</a> Unit Manager <a href="#">steps</a>
Assistant Manager (CS)	Always	Assistant Manager (CS) <a href="#">steps</a>
Assistant Manager (G)	Always	Assistant Manager (G) <a href="#">steps</a>
Centre Manager	Always	Centre Manager <a href="#">steps</a>

## Procedural steps

Role	Responsibilities
All Employees	<p><b>Risk based decision making</b></p> <p>Risk based decision making must be used by staff to achieve an environment that's safe for staff and detainees. The time taken to make a decision will be equal to how quickly a situation escalates. A good risk-based decision that complies with operational procedures can reasonably justify action taken by staff.</p> <p>Risk-based decisions must also consider the <i>Work Health and Safety Act (2011)</i> that requires risks in the workplace to be eliminated or minimised by ensuring staff are given the highest level of protection against harm to their health, safety and welfare.</p> <p><b>When making a risk based decision:</b></p> <ol style="list-style-type: none"> <li>1. <b>Assess</b> the scenario you are presented with by gathering all facts.</li> <li>2. <b>Consider</b> the range of control options available to you to manage the scenario, if time permits</li> <li>3. <b>Consider</b> a range of consequences that could occur depending on your actions.</li> <li>4. <b>Assess</b> risk associated with each pathway and potential outcome.</li> <li>5. <b>Determine</b> hazards associated with each pathway.</li> <li>6. <b>Make</b> decisions and take actions that achieve pathway of least risk (for both staff and detainees).</li> <li>7. <b>Make</b> a decision quickly if a situation is likely to escalate.</li> <li>8. <b>Intervene</b> with force only after assessing the risk. If not safe, wait until there are sufficient employees and/or equipment available to safely contain the situation.</li> </ol> <p><b>Restrictions on use of force</b></p> <p>Never use more force than is reasonably necessary in the circumstance. Employees must:</p> <ol style="list-style-type: none"> <li>1. <b>Avoid</b> restricting a detainee's airway in any way during use of force.</li> <li>2. <b>Avoid</b> striking a detainee during use of force except in a situation of self defence</li> <li>3. <b>Avoid</b> intentionally restraining a detainee in the head or neck area</li> <li>4. <b>Avoid</b> applying any pain compliance techniques or holds; that is, a hold when purposefully applied causes pain so detainee complies with a direction.</li> </ol> <p><b>Note:</b> If force which is listed as 'restricted' (above) is used by an employee in response to a situation, they will be required to participate in an agency investigation of the event. Disciplinary</p>

action may occur if the action taken cannot be reasonably justified.

### Seeking medical assistance

#### If a detainee is injured during a use of force:

1. **Call** an ambulance immediately if the young person is unconscious, bleeding excessively, finding it hard to breathe, appears to be in excessive pain or if you have any major concerns for the health of the young person
2. **Apply** first aid where appropriate
3. **Notify** JH&FMHN when practicable after calling an ambulance
4. **Notify** JH&FMHN (after-hours Nurse Manager outside of business hours) if a detainee requires or requests non-immediate medical assistance, is complaining of, or exhibiting the following symptoms:

- Tenderness, pain or tingling sensations
- Bleeding
- Feeling pain when they open their mouth or are having trouble speaking properly.
- Not being able to see or hear properly.
- Abdominal pain, feeling excessively thirsty, cold or light-headed.
- Vomiting or headache.
- Memory or concentration problems.
- Dizziness or difficulty balancing.
- Pale, white or yellow pallor.

**Note:** Justice Health does not require immediate notification of the use of force unless the detainee has requested to see the nurse; and/or there are concerns for the detainee's health or wellbeing

Youth Officer

People you need:

- Duty Manager
- Unit Supervisor
- Psychologist

**Note:** The term 'Unit Supervisor' refers to the employee who is in charge of the unit at the time. This may include a Unit Manager, Assistant Unit Manager or Shift Supervisor.

### Pre-planned use of force

**Used when it is necessary to control or move a detainee against their will in order to conduct a room removal, transport involving a vehicle, or movement from one place to another. There is time to consult the procedures and other staff, plan for the intervention, and the situation is unlikely to escalate rapidly while the planning process is undertaken:**

1. **Contact** unit supervisor, **inform** them of the situation and request they attend unit immediately
2. **Remain** at a safe distance to restrict detainee's ability to move out of an area; ensuring detainee is contained until assistance arrives
3. **Check** other employees are appropriately supervising other detainees in the area
4. **Ask** other employees to move other detainees to another area out of sight
5. **Check** surrounding area for obstacles, potential weapons or other dangerous items
6. **Remove** any items that may harm detainee/staff as soon as it is safe to do so
7. **Direct** detainee to move from one place to another in accordance with Clause 65 of the *Children (Detention Centres) Regulation 2010*.
8. **Inform** detainee of consequences for failing to comply with instructions
9. **Supervise** detainee until further instructions are received from Unit Supervisor
10. **Follow** plan for use of force as directed by Unit Supervisor.
11. **Record** use of force on hand held recorder when instructed to do so.
12. **Use** protective equipment when instructed to do so (Use of Protective Equipment Procedures)
13. **Apply** handcuffs as determined by unit supervisor (Use of Instruments of Restraint Procedure)
14. **Move** detainee to required location as per plan

### Situational use of force

**When a situation is unfolding that does not pose an immediate risk to staff safety but requires an intervention, such as self harming, damage to property, and escaping:**

1. **Contact** unit supervisor, inform them of the situation and request they attend unit immediately.
2. **Determine** appropriate action required based on immediate danger to detainee, self and others. (*Risk Based Decision Making*)
3. **Check** there are enough employees available to respond to the situation
4. **Inform** other supervising employees of proposed actions
5. **Intervene** using reasonable force to contain the situation, if assessed as safe to do so. In the case of self harm, refer to *infection control principles*
6. **Place** detainee/s in segregation when required for safety of self or others

### Immediate use of force

**When a situation occurs that poses a direct and immediate risk to employee and/or detainee health and safety or employees**

**need to act in self-defence, such as a detainee assaulting an employee or another detainee:**

1. **Call** for immediate assistance via radio /duress alarm system
2. **Determine** appropriate action required, based on immediate danger to employees and detainees (**Risk Based Decision Making**)
3. **Use** reasonable force to attempt to contain detainee from inflicting further harm to employees and detainees until assistance arrives, if possible
4. **Move** detainee to segregation when assistance has arrived

**Use of force on a pregnant detainee**

There are increased potential risks when using force on a pregnant detainee, therefore employees must:

1. **Negotiate** with the detainee and prolong as long as possible
2. **Use** reasonable force only as a last resort
3. **Remove** all other detainees from the area
4. **Use** a minimum of three employees to conduct the movement/force
5. **Avoid** laying a pregnant detainee on her stomach wherever possible
6. **Avoid** laying a detainee on her back if it is known that she is at least three months pregnant
7. **Attempt** to lay the detainee in the recovery position wherever possible (on her side)
8. **Apply** handcuffs to the front of the detainee if handcuffs are necessary
9. **Support** the detainee using an employee on either side

**Use of force in double rooms or rooms with bunk beds**

There may be circumstances when it is necessary to remove a detainee from a double room or from a room with a double bunk installed. Due to the risk associated with using force in this situation, employees must:

1. **Assess** risk to safety of employees entering the room
2. **Assess** risk to safety of all detainees in room (for example, attempting to remove one detainee may place another detainee in the room at risk of being harmed in the process)
3. **Assess** risk to safety of employees and detainee/s by the detainee/s position in the room (for example, the detainee/s may be difficult to reach or may fall if on the top bunk)
4. **Follow** the procedure for pre-planned use of force
5. **Seek** assistance from other employees to form a response team to safely restrain the detainee/s.

### Immediately following use of force

1. **Check** detainee is safe and secure
2. **Remove** any items which may be used as a weapon, as soon as it is safe to do so
3. **Ask** employees and detainees involved if they have any injuries
4. **Report** any issues or concerns to Unit Supervisor
5. **Follow** directions of Unit Supervisor for managing detainee
6. **Participate** in team debrief and review

### After use of force – electronic, written and verbal reports

1. **Complete** all reports, as directed by your supervisor prior to completing shift, which may include:
  - a. *'Use Of Force'* report (CIMS)
  - b. staff *Incident* report (CIMS)
  - c. *Misbehaviour reports, where necessary (CIMS)*
  - d. *'Record of Checks'* Book
  - e. CIMS case notes *and*
  - f. any other relevant documentation, as directed.

### Reporting and recording use of force – CIMS reports

**Note:** All employees who have applied force during the event must complete a separate use of force staff report.

1. **Check** CIMS 'In Tray- To Do' for notification.
2. **Refer** to SupportPoint for CIMS online help.
3. **Complete** Use of Force report in your own words.
4. **Check** report is a true and factual account of your participation in Use of Force, including team debrief.
5. **Check** information with your supervisor before saving record, if you are unsure about the report.
6. **Submit** report to supervising officer for review.
7. **Select** 'decline to complete report' and submit to nominating/supervising officer **ONLY** if you were not involved in the Use of Force and have been nominated in error.

Assistant Unit Manager, Shift Supervisor

- People you need:
- Duty Manager
  - Unit Manager
  - Youth Officers

**Note:** The term 'Unit Supervisor' refers to the employee who is in charge of the unit at the time, this may include a Unit Manager, Assistant Unit Manager or Shift Supervisor.

### Pre-planned use of force

**When it is necessary to control or move a detainee *against their will* in order to conduct a room removal, transport involving a vehicle, or movement from one place to another.**



**There is time to consult the procedures and other staff, plan for the intervention, and the situation is unlikely to escalate rapidly while the planning process is undertaken.**

1. **Contact** Unit /Duty Manager, inform them of the situation and request they attend the unit immediately
2. **Remain** at a safe distance to restrict detainee's ability to move out of the area; ensuring detainee is contained until assistance arrives.
3. **Check** youth officers are appropriately supervising other detainees in the area.
4. **Direct** youth officers to move other detainees to another area out of sight.
5. **Check** surrounding area for obstacles, potential weapons or other dangerous items and **remove** any items that may harm detainee/staff.
6. **Give** detainee an instruction to move from one place to another in accordance with Clause 65 of the *Children (Detention Centres) Regulation 2010*.
7. **Inform** detainee of consequences for failing to comply with staff instruction.
8. **Supervise** detainee until further instructions are received from Unit /Duty Manager.
9. **Follow** directions of Unit Manager / Duty Manager
10. **Direct** employees in appropriate use of force.
11. **Use** and/or **instruct** employees to use protective equipment (Use of Protective Equipment Procedures) as determined by Unit /Duty Manager.
12. **Apply** handcuffs as directed by Unit Supervisor/Duty Manager (Use of Instruments of Restraint Procedure).
13. **Move** detainee to required location as per plan.
14. **Follow** relevant procedures based on determined approach as directed by Unit /Duty Manager.

### **Situational use of force**

**When a situation is unfolding that does not pose an immediate risk to employee and/or detainee safety but requires an intervention, such as self harming, damage to property, and escaping.**

1. **Contact** Unit /Duty Manager inform them of the situation and request they attend unit immediately.
2. **Determine** appropriate action required based on immediate danger to other detainees or employees (*Risk Based Decision Making*)
3. **Check** there are enough employees available to respond to situation
4. **Inform** other supervising employees of proposed actions.
5. **Intervene**, using reasonable force to contain situation, if assessed as safe to do so.
6. **Place** detainee/s in segregation, for safety of self or others
7. **Remove** any dangerous items to prevent risk of harm to

detainee.

8. **Follow** the *Incident- Self Harm Procedure* if detainee has self - harmed

**Note:** Use of protective equipment may be required for infection control purposes and instruments of restraint may be required to prevent further self harming/injury to detainee and staff.

### Immediate use of force

**When a situation occurs that poses a direct and immediate risk to employee and/or detainee health and safety or employees need to act in self-defence, such as a detainee assaulting an employee or another detainee.**

1. **Call** for immediate assistance via radio /duress alarm system.
2. **Determine** appropriate action required based on immediate danger to employees and detainees (*Risk Based Decision Making*)
3. **Restrain/contain** detainee from inflicting further harm to themselves, employees or other detainees until assistance arrives, if possible.
4. **Use** reasonable force to prevent injury to self or others.
5. **Move** detainee to segregation when assistance has arrived.

### Immediately following use of force

1. **Ask** detainee if they require medical assistance. If after-hours refer to the *Seeking Medical Assistance*
2. **Report** any concerns regarding a detainee's physical or psychological health or wellbeing to the Unit / Duty Manager.
3. **Check** remaining detainees are settled and secure.
4. **Check** if any employees require medical attention.
5. **Inform** Unit Manager / Duty Manager if referral to the *Employee Assistance Program (EAP)* is required.
6. **Follow** relevant *Segregation, Incident or Misbehaviour* procedures as required
7. **Participate** in debrief meeting
8. **Participate** in 'Detainee Risk Review'

**Note:** Justice Health does not require immediate notification of the use of force unless:

- the detainee has requested to see the nurse; and/or
- there are concerns for the detainee's health or well being (symptoms detailed in *Seeking Medical Assistance*)

### After use of force – electronic, written and verbal reports

1. **Complete all reports**, prior to completing shift, which may include:
  - a. *'Use Of Force' report(CIMS)*
  - b. completing and submitting a staff incident report before leaving the centre on day of *incident* (CIMS)

- c. *Misbehaviour* reports, where necessary (CIMS)
- d. *Segregation* reports, where necessary,
- e. *'Record of Checks'* Book
- f. brief details of incident in Unit Log Book
- g. CIMS case notes; and
- h. *any other relevant documentation, as directed.*

### Reporting and recording use of force – CIMS reports

**Note:** All employees who have applied force during the event must complete a separate use of force report.

#### As 'incident supervisor' (*Incident – General*) or 'inquiry officer' (*Misbehaviour*)

1. **Add** 'was force used?' yes
2. **Nominate** all employees involved in Use of Force to complete 'Use of Force' staff reports
3. **Check** CIMS 'In Tray – To Do' for notifications
4. **Review** all staff reports for accuracy of information and quality of report
5. **Determine** if report is an accurate account and force used was 'reasonable and necessary' to respond to situation
6. **Determine** if further action required, including debrief, counselling, referrals
7. **Document** details and outcome of debrief and review
8. **Provide** comment and endorse Use of Force report
9. **Nominate** Unit Manager to review and analyse report

#### Unit Manager

People you need:

- Assistant Manager
- Duty Manager
- Shift Supervisor /Assistant Unit Manager
- Youth Officers

#### Pre-planned use of force

1. **Direct** unit employees to move other detainees away from area
2. **Direct** unit employees to remove any obstacles, potential weapons or other dangerous items that may harm detainee/staff.
3. **Check** detainee is given an instruction to move from one place to another in accordance with Clause 65 of the *Children (Detention Centres) Regulation 2010*
4. **Check** detainee is informed of consequences for failing to comply with instructions
5. **Assess** situation, ensuring enough employees are available to use force to restrain or move the detainee. (A minimum of two employees should be involved in use of force or more based on risk to employees and detainee/s)
6. **Determine** need for use of handcuffs based on risk of harm in accordance with *Use of Instruments of Restraint Procedure*
7. **Gain** approval for the use of instruments of restraint from

appropriate manager, if time permits and there is a more senior employee available

8. **Develop** plan for use of force with relevant employees, referring to room removal procedures if relevant
9. **Inform** all relevant employees of plan for using force
10. **Check** all directions are clear and understood
11. **Direct** employees to wear protective equipment if determined necessary
12. **Inform** Justice Health nurse of pre-planned use of force action
13. **Instruct** employees to video record use of force where time permits
14. **Follow** related procedures based on determined approach

### Situational and immediate use of force

1. **Respond** to call for assistance and attend area to assess situation.
2. **Check** there are enough employees to respond to the situation
3. **Direct** other available employees to attend area to assist if deemed necessary
4. **Assist** employees with use of force where required.
5. **Inform** Duty Manager of situation and seek their assistance if required.
6. **Direct** employees to place detainee/s in segregation for safety of self and others.

### Following use of force

1. **Check** safety, security of other detainees in the unit/area
2. **Refer** detainee to the psychologist following any self harm/suicide attempt
3. **Inform** primary counsellor about event, including use of force
4. **Inform** Education & Training Unit, Justice Health Registered Nurse and other program providers of pending Risk Reviews.
5. **Report** any concerns regarding a detainee's health or well being to the Justice Health Nurse. If after-hours refer to '*Contacting the Justice Health Nurse Medical Instruction*'.
6. **Check** if any employees involved in incident need medical assistance
7. **Conduct** debrief and review of incident with staff involved
8. **Consult** with employees involved about appropriate course of follow up
9. **Refer** employees to Employee Assistance Program where necessary
10. **Document** details and outcome of debrief and review in CIMS
11. **Conduct** a risk review to determine if detainee's access to programs needs to be modified.

**NOTE:** Justice Health does not require immediate notification of use of force unless:

- the detainee has requested to see the nurse; and/or
- there are concerns for the detainee's health or well being (symptoms detailed in '*Seeking Medical*

*Assistance)*

**If event involves assault allegation/an alleged criminal offence**

1. **Check** incident procedures are followed (*Incident - General information*)
2. **Check** relevant mandatory reporting requirements are followed if necessary (*Incident Reporting Policy*)
3. **Report** all allegations of a criminal nature to the police.
4. **Direct** employees to complete Work Health Safety reporting requirements in SAP, if required.
5. **Secure** all CCTV footage of incident. (*CCTV Procedure*)

**After use of force – verbal, written and electronic reports**

1. **Check** referral has been made to psychologist following any self harm/suicide attempt
2. **Make** referral to Employee Assistance Program following any serious incident
3. **Check** primary counsellor informed about event, including Use of Force
4. **Determine** if detainee requires a *Detainee Risk Management Plan* or another type of intervention
5. **Determine** if a new alert needs to be added in CIMS.
6. **Check** school (DEC), Justice Health Registered Nurse and other program providers are informed of event including Use of Force and any changes in risk assessment.
7. **Refer** to CSM for Risk Review if required
8. **Conduct** 'Risk Review' if required before CSM can be convened.
9. **Check all reports are completed**, including:
  - a. *'Use Of Force'* report (CIMS)
  - b. *Incident* report, if required (CIMS)
  - c. *Misbehaviour* reports, where necessary (CIMS)
  - d. *Segregation* reports, where necessary,
  - e. *'Record of Checks'* Book
  - f. brief details of incident in Unit Log Book
  - g. CIMS case notes; and
  - h. any other relevant documentation.

**Reporting and recording use of force – CIMS reports**

**Note:** All employees who have applied force during the event must complete a separate use of force staff report.

**As 'incident supervisor' (*Incident – general*) or 'inquiry officer' (*misbehaviour*)**

1. **Add** 'was force used?' yes
2. **Nominate** all employees involved in Use of Force to complete 'Use of Force' staff reports
3. **Check** CIMS 'In Tray – To Do' for notifications
4. **Review** all staff reports for accuracy of information and quality

	<p>of report</p> <ol style="list-style-type: none"> <li>5. <b>Determine</b> if report is an accurate account and force used was 'reasonable and necessary' to respond to situation</li> <li>6. <b>Determine</b> if further action required</li> <li>7. <b>Provide</b> comment and <b>endorse</b> Use of Force report</li> <li>8. <b>Document</b> team debriefing and review</li> <li>9. <b>Organise</b> counselling referrals for employee (through Employee Assistance Program) and detainee, if required</li> </ol> <p><b>As 2<sup>nd</sup> Approving Officer</b></p> <ol style="list-style-type: none"> <li>1. <b>Check</b> CIMS 'In Tray-To Do' for notification</li> <li>2. <b>Refer</b> to SupportPoint for CIMS online help</li> <li>3. <b>Review</b> all staff reports for accuracy of information and quality documentation within report.</li> <li>4. <b>Return</b> report to author for correction / quality improvement if required</li> <li>5. <b>Determine</b> if report/s is an accurate account and force used was 'reasonable and necessary' to respond to situation</li> <li>6. <b>Analyse</b> Use of Force report</li> <li>7. <b>Check</b> debrief occurred and was documented</li> <li>8. <b>Ensure</b> counselling referrals were completed for employee (through Employee Assistance Program) and detainee where required</li> <li>9. <b>Provide</b> comment and approve Use of Force report</li> <li>10. <b>Nominate</b> Assistant Manager to review and analyse report</li> </ol>
<p><b>Assistant Manager (CS)</b></p>	<p>People you need:</p> <ul style="list-style-type: none"> <li>• Unit Supervisor</li> <li>• Duty Manager</li> <li>• Centre Manager</li> </ul> <p><b>Pre-planned use of force</b></p> <ol style="list-style-type: none"> <li>1. <b>Assess</b> the risk posed to the safety of detainees and employees (<i>Risk Based Decision Making</i>)</li> <li>2. <b>Consider</b> all alternative interventions before approving use of force, if you are the approving officer</li> <li>3. <b>Assist</b> Unit Supervisor/ Duty Manager to develop a plan for use of force when required</li> <li>4. <b>Determine</b> if <i>Instruments of Restraint</i> are required and <b>approve</b> use if necessary</li> <li>5. <b>Determine</b> the need for employees to use <i>Protective Equipment</i> and <b>approve use</b> when necessary</li> <li>6. <b>Monitor</b> situations and <b>provide</b> assistance to Unit Supervisor /Duty Managers and unit employees when necessary</li> </ol> <p><b>Following use of force</b></p> <ol style="list-style-type: none"> <li>1. <b>Check</b> if any detainee/s or employee/s have suffered any injury</li> <li>2. <b>Check</b> Justice Health Registered Nurse have been informed of any concerns regarding a detainee's physical or psychological health or well being</li> <li>3. <b>Check</b> safety, security of other detainees in the unit/area</li> </ol>

4. **Check** detainee has been referred to psychologist in relation to any self-harm incident
5. **Check** employees have been referred to Employee Assistance Program if required.
6. **Consult** with Unit Manager to consider if an immediate risk review is required (*Incident – General Procedure*)
7. **Determine**, in consultation with Unit Supervisor/Duty Manager if detainee requires a *Detainee Risk Management Plan* or another type of intervention
8. **Consult** with Unit Supervisor/Duty Manager and determine if detainee needs to be discussed at the CSM or requires another case plan intervention
9. **Check** any change in risk assessment has been communicated to all relevant staff (including the Education and Training Unit , Justice Health & other program providers)
10. **Check** the primary counsellor working with detainee has been informed about use of force and other behavioural concerns
11. **Check** all relevant reports are completed and approved accordingly, including;
  - a. *Use Of Force report (CIMS)*
  - b. *Incident* report, if required (CIMS)
  - c. *Misbehaviour reports, where necessary (CIMS)*
  - d. *Segregation* reports, where necessary
  - e. *'Record of Checks' Book*
  - f. brief details of incident in Unit Log Book
  - g. details of team debrief and review
  - h. CIMS case notes; and
  - i. *any other relevant documentation*

### Reporting and recording use of force – CIMS reports

**Note:** All employees who have applied force during the event must complete a separate use of force staff report

1. **Check** 'CIMS In Tray-To Do' for notification
2. **Refer** to SupportPoint for CIMS online help
3. **Review** 'Use of Force' reports for accuracy and quality of information provided in the report
4. **Determine** if report/s is an factual account and force used was 'reasonable and necessary' to respond to situation
5. **Analyse** Use of Force report
6. **Determine** if further action required, including debrief, counselling, referrals
7. **Provide** comment and **approve** Use of Force report
8. **Nominate** Assistant Manager responsible for unit where detainee resides to review report

#### Assistant Manager (G)

- People you need:
- Unit Supervisor
  - Duty Manager

#### Pre-planned use of force

1. **Assess** the risk posed to the safety of detainees and

- employees (*Risk Based Decision Making*)
2. **Consider** all alternative interventions before approving Use of Force
  3. **Assist** Unit Supervisor/ Duty Manager to develop a plan for use of force when required
  4. **Determine** if instruments of restraint are required and approve use when necessary
  5. **Determine** the need for employees to use *Protective Equipment* and approve use when necessary
  6. **Monitor** situation and provide assistance to Unit Supervisor/Duty Managers and unit employees when necessary

### Following use of force

1. **Check** if any detainee/s or employee/s have suffered any injury.
2. **Check** Justice Health Registered Nurse has been informed of any concerns regarding a detainee's physical or psychological health and well being
3. **Check** safety and security of other detainees in the unit/area
4. **Check** detainee has been referred to psychologist in relation to any self-harm incident
5. **Check** employees have been referred to *Employee Assistance Program* if required (following any serious incident)
6. **Consult** with Unit Manager to consider if an immediate risk review is required (*Incident – General Procedure*)
7. **Determine** in consultation with Unit Supervisor/Duty Manager if detainee requires a *Detainee Risk Management Plan* or another type of intervention
8. **Check** any change in risk assessment has been communicated to all relevant employees and stakeholders (including the Education and Training Unit, Justice Health & other program providers)
9. **Check** the primary counsellor working with detainee has been informed about use of force and other behavioural concerns
10. **Check** all relevant reports are completed correctly and approved accordingly, including;
  - a. *Use Of Force report (CIMS)*
  - b. *Incident* report, if required (CIMS)
  - c. *Misbehaviour reports, where necessary (CIMS)*
  - d. *Segregation* reports, where necessary
  - e. *'Record of Checks' Book*
  - f. brief details of incident in Unit Log Book
  - g. details of team debrief and review
  - h. CIMS case notes; and
  - i. *any other relevant documentation*
11. **Check** any security breaches are addressed.

### If event involves assault allegation/an alleged criminal offence

1. **Check** incident procedures are followed (*Incident - General Information Procedure*)



2. **Check** relevant mandatory reporting requirements are followed if necessary ([Incident Reporting Policy](#))
3. **Check** all allegations of a criminal nature have been reported to the police.
4. **Check** relevant Work Health Safety reporting requirements are completed and submitted
5. **Check** employee/s involved receive appropriate counselling and support

### Reporting and recording use of force – CIMS reports

**Note:** All employees who have applied force during the event must complete a separate use of force report

1. **Check** CIMS 'In Tray-To Do' for notification.
2. **Refer** to SupportPoint for CIMS online help.
3. **Review** all staff reports for accuracy of information and quality of report
4. **Determine** if report/s is an accurate account and force used was 'reasonable and necessary' to respond to situation
5. **Analyse** Use of Force report
6. **Determine** if further action required, including debrief, counselling, referrals
7. **Review** 'Use of Force' reports for accuracy and quality of information provided in the report.
8. **Provide** comment and approve Use of Force reports.
9. **Nominate** Centre Manager to review report if you have any issues/concerns about employee actions, processes, procedures
10. **Review** use of force returns monthly.

Centre Manager

1. **Check** 'CIMS In Tray-'To Do' for notification
2. **Review** 'Use of Force' reports when informed of issues/concerns
3. **Determine** if further action required
4. **Inform** Regional Director of any issues or concerns, or allegations against employees in response to use of force
5. **Review** Use of Force returns monthly

### Legislation

#### **Children (Detention Centres) Regulation 2010** **Part 7 Maintenance of order**

- **Clause 62**
- **Clause 65**
- **Clause 66**

### Change log

Date	Reason for change	Details of change
1 September	All Juvenile Justice Centre Procedures have been	The position of Unit Coordinator has been deleted and replaced with Shift

Use of Force June 2014

2009	changed to reflect the staffing restructure within Juvenile Justice Centres.	Supervisor or Assistant Unit Manager.
December 2010	Children (Detention Centres) Regulations 2010	updated reference to; Children (Detention Centres) Regulations 2010
June 2013	Contacting Justice Health Nurse for medical assistance.	JHRN not to be notified of all UOF- only when young person requests or a staff member has a concern for the young person's health or wellbeing.
10 March 2014	Use of Force in CIMS	Procedure reviewed & updated to include changes in reporting requirements.
April 2014	Change to legislation	Procedure reviewed and updated to reflect changes in legislated reporting requirements. Procedure also incorporates legislated responsibilities under WH&S.

# Code of Ethics and Conduct Policy

## Essential Summary

An employee's prime responsibility is to place the public interest above their own personal interests and to demonstrate the core values of the Public Sector and Department at all times:

- Integrity
- Trust
- Service
- Accountability
- Respect

In addition to demonstrating the core values of the Public Sector all employees should demonstrate values of ethical and honest behaviour; professionalism and responsibility; fairness and equity; learning and innovation; and collaboration.

The Code does not attempt to provide a detailed and exhaustive list of what to do in every aspect of our work instead it represents a broad framework that will help all employees decide on an appropriate course of action when faced with an ethical issue or professional decisions.

The Code applies to all employees of the Department and Senior Executives.

## Table of Contents

<b>1. Scope and purpose</b>	<b>4</b>
<b>2. Definitions</b>	<b>4</b>
<b>3. Roles and responsibilities</b>	<b>4</b>
3.1 Strategic Human Resources Division are required to:	4
3.2 Senior Executives or delegated roles are required to:	4
3.3 Employees are required to:	5
<b>4. What drives our conduct</b>	<b>5</b>
4.1 Who does the code apply to?	5
4.2 What happens if an employee breaches this Code?	6
4.3 Procedural fairness	7
4.4 Unlawful or criminal conduct	7
4.5 Principles for professional behaviour	7
<b>5. Professional and ethical decision making</b>	<b>8</b>
5.1 Conflict of interest	8
<b>6. Professional behaviour</b>	<b>10</b>
6.1 Treating people with dignity and respect	10
6.2 Working with children	10
6.3 Professional behaviour towards employees and others	11
6.4 Use of alcohol, drugs and tobacco	12
<b>7. Representing the Department</b>	<b>14</b>
7.1 Conduct while off duty	14
7.2 Public Comment	14
7.3 Social media and public websites	15
7.4 Political and community participation	16
7.5 Personal references	16
7.6 Other paid employment	17

7.7	Volunteering	18
7.8	Code applies to contractors, consultants, volunteers, chaplains and students	19
7.9	Dress and presentation	19
7.10	Prior to leaving	19
7.11	After separation	19
<b>8.</b>	<b>Accountability</b>	<b>20</b>
8.1	Departmental resources	20
<b>9.</b>	<b>Reporting suspected wrong doing</b>	<b>21</b>
9.1	Duty to report corrupt conduct	22
9.2	Corruption	22
9.3	Corrupt conduct	22
9.4	Maladministration	22
9.5	Serious and substantial waste of public resources	23
9.6	Fraud	23
<b>10.</b>	<b>Compliance</b>	<b>23</b>
10.1	Where to get more information	23
10.2	Relevant legislation and sources of authority	23
<b>11.</b>	<b>Monitoring and review</b>	<b>24</b>
<b>12.</b>	<b>Related documents</b>	<b>25</b>
<b>13.</b>	<b>Support and advice</b>	<b>25</b>
<b>14.</b>	<b>Document information</b>	<b>26</b>
<b>15.</b>	<b>Document history</b>	<b>26</b>
<b>16.</b>	<b>Attachment 1 – Conflict of Interest Disclosure/ Management Form</b>	<b>27</b>

# 1. Scope and purpose

The Public Service Commissioner has issued a direction for the heads of government sector agencies to implement the *Code of Ethics and Conduct for NSW government sector employees*.

The implementation of the Code may be by way of incorporation in a Department Code of Conduct to form a single consolidated document, or by adoption separately.

The Department has developed this supplementary Code, to be read and complied with in conjunction with the Public Service Commission's Code of Ethics and Conduct.

This document and the *Code of Ethics and Conduct for NSW government sector employees* sets out the standards of conduct, ethics and behaviour required of all employees and a process for managing non-compliance.

This Code supersedes all divisional or agency-based documents on Code of Ethics and Conduct. It is to be read in conjunction with the Public Service Commission's Code of Ethics and Conduct.

Divisional area managers must be aware of their responsibilities under this Code and align operational documents to the Departmental Code of Ethics and Conduct.

This Code will apply from the date of effect.

## 2. Definitions

### **This/The Code:**

The *Code of Ethics and Conduct for NSW government sector employees* and the supplementary Code of Ethics and Conduct are considered jointly to be "the Code"

## 3. Roles and responsibilities

### **3.1 Strategic Human Resources Division are required to:**

- monitor and maintain the Code.
- provide advice and guidance to the Department and individuals and ensure that training and support is provided to employees.

### **3.2 Senior Executives or delegated roles are required to:**

- ensure that employees are aware of and understand the principles of this Code and their obligations in relation to the Code.
- refer issues or non-compliance to Strategic Human Resources for action.

### **3.3 Employees are required to:**

- comply with this Code.
- seek supervisor/manager advice and guidance when required.
- commit to the Code through Esign on and myPerformance agreements.

## **4. What drives our conduct**

The people of New South Wales have a right to expect Department of Justice employees to work with a high level of efficiency, fairness, impartiality and integrity.

An employee's prime responsibility is to place the public interest above their own personal interests and to demonstrate the core values of the Public Sector and Department at all times:

- Integrity
- Trust
- Service
- Accountability
- Respect

In addition to demonstrating the core values of the Public Sector all employees should demonstrate values of ethical and honest behaviour; professionalism and responsibility; fairness and equity; learning and innovation; and collaboration.

The Code does not attempt to provide a detailed and exhaustive list of what to do in every aspect of our work instead it represents a broad framework that will help all employees decide on an appropriate course of action when faced with an ethical issue or professional decisions.

### **4.1 Who does the code apply to?**

The Code applies to all employees of the Department and Senior Executives.

By accepting employment with the Department, employees must be aware of and comply with this Code.

Therefore, employees must:

- engage in personal and professional conduct that upholds the reputation of the Department;
- apply the Department's policies, procedures and guidelines;
- act ethically and responsibly; and
- be accountable for actions and decisions made.

Contractors, consultants, volunteers and students must be aware of this Code and act in line with the conduct described in it. While contractors, consultants, volunteers and students are not subject to misconduct action, conduct that would be assessed as being a serious breach of the Code may result in their contract/placement being terminated.

When engaging or managing external consultants, contractors, volunteers or students, it is an employee's responsibility to make them aware of the Department's expectations during the period of their engagement. It is also an employee's responsibility to take the necessary action to address any concerns about their conduct.

## **4.2 What happens if an employee breaches this Code?**

When deciding what, if any action should be taken in relation to a breach of this Code, each case should be considered on its own facts and circumstances.

The options to consider when deciding what action to take include:

- the seriousness of the breach; the likelihood of the breach occurring again;
- whether the staff member has committed the breach more than once;
- the risk the breach poses to staff, clients or any others; and
- whether the breach would be serious enough to warrant misconduct action.

Employees must report breaches of the Code by colleagues to their supervisor or manager. If the breach is by their supervisor or manager then it should be reported to the next line manager.

Matters involving a breach of the Code may constitute misconduct and may be managed as a Professional Standards matter.

Section 69(1) of the *Government Sector Employment Act 2013* states that misconduct extends to the following:

- (a) a contravention of this Act or an instrument made under this Act,
- (b) taking any detrimental action (within the meaning of the *Public Interest Disclosures Act 1994*) against a person that is substantially in reprisal for the person making a public interest disclosure within the meaning of that Act;
- (c) taking any action against another employee of a government sector agency that is substantially in reprisal for a disclosure made by that employee of the alleged misconduct of the employee taking that action.

The subject matter of any misconduct by an employee may relate to an incident or conduct that happened while the employee was not on duty or before his or her employment.

If a matter proceeds to an inquiry, the inquiry is to be conducted in accordance with the [Government Sector Employment Act 2013](#) and [Government Sector Employment Rules 2014](#), which require compliance with the principles of procedural fairness.



### **4.3 Procedural fairness**

Procedural fairness, also known as natural justice, applies in situations where a decision is to be taken which could have a detrimental effect on the rights, interests or legitimate expectations of an employee. Any employee who might suffer detriment as a result of a decision (be they the complainant or the relevant employee) should be afforded procedural fairness.

Procedural fairness refers to a process that provides fairness to all parties. It includes the right to be heard, the right to be treated without bias, the right to be informed of allegations being made and to be provided with an opportunity to respond to them and the right to be advised of the status of the complaint.

### **4.4 Unlawful or criminal conduct**

Unlawful or criminal conduct at work or whilst off duty may also involve a breach of the Code and may constitute misconduct.

Employees convicted of a serious offence/s may be liable to court imposed sanctions and may also be liable to misconduct action.

Given the nature of risk to the Department and the high level of expectation of ethical behaviour by employees in the Justice Portfolio breaches of this Code may result in suspensions from duty. Depending on the nature and/or seriousness of the breach and/or offence suspension may be with or without pay.

### **4.5 Principles for professional behaviour**

Employees must be aware of the Department's policies, procedures, guidelines and delegations, particularly those that apply to their work and/or their exercising of authority or authority to act. Many of these are available online; others may be made available to employees through induction and training and development programs. If employees are uncertain about the scope or content of a policy, procedure or guideline with which they must comply, they should seek clarification from their supervisor.

Employees must also be familiar with the legislation and/or regulations under which they are employed as this may specify requirements with which they need to comply.

Employees are expected to:

- perform their duties to the best of their ability and be accountable for their performance;
- adhere to all reasonable instructions and/or directions;
- comply with lawful directions;
- carry out their duties in a professional, competent and conscientious manner;
- act in good faith in providing advice or service that is honest, impartial and comprehensive, irrespective of their personal views;

- be courteous, respectful and responsive in dealing with their colleagues, clients, their families and members of the public;
- work collaboratively with their colleagues; and
- be mindful of their duty of care and safety of themselves and others; and be aware that if their conduct has the potential to damage the reputation of the Department, even if it is in a private capacity, this could lead to further action.

## **5. Professional and ethical decision making**

### **5.1 Conflict of interest**

A conflict of interest occurs when an employee is in a position to be influenced by their private interests when doing their job. Real or perceived conflicts of interest exist when it is likely that an employee could be influenced or could be perceived to be influenced by a personal interest when performing their official duties. Conflicts of interest may lead to biased decision making, which may constitute corrupt conduct.

#### **5.1.1 What is a conflict of interest?**

Examples of conflict of interests relating to a personal interest may include (but are not limited to) situations where an employee may have:

- a financial interest or the employee is aware that a family member, relative, friend or associate has a financial interest in a matter they deal with in the course of their work;
- a personal relationship that could be seen to unduly affect the employees decision, for instance, when conducting a job selection;
- a close personal relationship with another staff member;
- personal beliefs or attitudes that could influence, or may be perceived to influence, the employees impartiality;
- other paid employment which conflicts with the employees duties; and
- participation in political activities or making political comments that may relate to, or be seen as relating to, the work of the Department.

Conflicts of interest, whether real or perceived, must be reported to the employees' supervisor and recorded.

### 5.1.2 Resolving conflicts of interest

To resolve or manage a conflict of interest which occurs or could occur, a range of options is available depending on the significance of the conflict. These include:

- the supervisor/manager recording the details of the conflict and taking no further action in relation to the conflict because the potential for conflict is minimal or can be eliminated by disclosure or effective supervision;
- the supervisor/manager removing the employee from the particular activity or decision where the conflict arises and documenting this;
- the employee transferring from the area of work or particular task where the conflict arises without disadvantage;
- the supervisor/manager of the employee with the conflict checking and endorsing (if appropriate) all action with respect to the matter creating the conflict;
- the supervisor/manager referring the decision to a senior manager;
- the employee relinquishing the personal interest; and
- the employee restricting their personal interest so that it does not impinge on the workplace.

To ensure that honesty and integrity is not questioned, it is an employee's responsibility to:

- recognise and disclose any actual, potential, or perceived conflict of interest to their supervisor, manager or another appropriate more senior manager;
- take appropriate steps to resolve the conflict of interest in accordance with policy prior to engaging in the affected work; and
- not knowingly make decisions or convey information that may obtain, or may appear to obtain, a personal benefit or a benefit for family members, relatives, close friends, business partners of associates, unless it is a benefit received in common with a class of people who would ordinarily receive the benefit.

All supervisors/managers are additionally responsible for facilitating compliance by those they supervise by:

- being aware of the risks of conflicts inherent in the work of the employees they manage;
- advising employees on appropriate ways to manage a conflict of interest;
- recording the receipt of disclosures of conflicts of interest as reported to them by employees, using the Conflict of Interest Form at attachment 1. This is to be kept confidential in a secure place by the supervisor/manager for future reference if necessary; and
- a copy is to be provided to the employee who made the disclosure, to the Director, Human Resources (HR) Business Partner for approval and to the Director, Ethics, Safety and Industrial Relations for review and recording on the Conflict of Interest Register.

The ultimate decision concerning the appropriate course of action to take over a real, perceived or potential conflict of interest rests with the relevant manager.

## 6. Professional behaviour

### 6.1 Treating people with dignity and respect

All employees have the right to be treated with respect, and it is everyone's responsibility to ensure this occurs. Employees are to treat their colleagues, clients, their families and members of the public with respect, fairness and consistency. Employees are to be courteous and sensitive to the needs of others and provide all necessary and appropriate assistance as practicable. For further information please refer to the Department's *Dignity and Respect Guidelines* (currently under development).

### 6.2 Working with children

It is important that employees working with children understand and observe child protection legislation. Pursuant to *Part 3A* of the *Ombudsman Act 1974*, all employees working with children must report to their supervisor/manager if they or a colleague are convicted of, or an allegation has been made against them or a colleague relating to, reportable conduct involving children (i.e. a person under the age of 18 years). This applies to situations at work or in their private life.

Reportable conduct means any sexual offence or sexual misconduct committed against, with or in the presence of a child, including child pornography offences, or any assault, ill-treatment or neglect of a child, or any behaviour that causes psychological harm to a child.

Employees working with children are also required to report if an Apprehended Violence Order has been issued against them where a child is recorded as requiring protection from them, or if a report to Family & Community Services has been made about their conduct which meets the definition of reportable conduct.

All employees working with children have an obligation to ensure the Department is made aware of any convictions or allegations of reportable conduct as soon as practicable.

Employees working with children should report this information to their supervisor or directly to the respective Director, HR Business Partner.

Employees working with children must not develop a relationship with any client that is, or that can be misinterpreted as having a personal rather than a professional interest. To do so raises serious questions of conflict of interest, trust, confidence, dependency, and of equality of treatment.

Employees working with children must not enter into a romantic or sexual relationship with any client or former client. It is a breach of this Code and unprofessional for an employee to engage in sexual activity of any kind with clients or former clients, regardless of whether the person is now over the age of consent. For further information please refer to the [NSW Ombudsman](#) and [NSW Office of the Children's Guardian's](#) websites.

## **6.3 Professional behaviour towards employees and others**

As professional employees must strive at all times to relate professionally to colleagues, clients, their families and members of the public and to act with courtesy and fairness. In dealings with others, staff should ensure that they do not prejudice the operations, security or reputation of the Department.

In performing their duties, all employees must act consistently, promptly and fairly. This involves dealing with matters in accordance with approved procedures and in a non-discriminatory manner.

Acts of unfairness involving favouritism, inconsistency or discrimination adversely affect morale and good working relationships and should not occur in the workplace.

### **6.3.1 Respectful language in the workplace and in public**

Employees must use courteous and respectful language in their interactions with colleagues, clients, their families and members of the public.

Everyone has the right to expect that they will be spoken to in a reasonable manner by colleagues and managers. Coarse and obscene language is inappropriate in any Departmental workplace, as is sexual banter and suggestive language.

No employee should tolerate such language and if witnessed, must report it to a supervisor/manager.

### **6.3.2 Maintaining employee confidentiality, privacy and appropriate records**

Employees have a right to expect that their personal information is private and confidential.

In acting with a high level of professionalism employees must ensure that information about their colleagues remains confidential and private. Employees should always exercise caution and sound judgment in discussing other peoples' personal information with other staff.

Normally information should be limited to those who need to know in order to conduct their duties, or to those who can assist in carrying out our work because of their expertise. Gossiping about other employees or unauthorised disclosure of private information (personal phone numbers, address etc) is considered to be unprofessional and a breach of this Code.

In relation to the maintenance of appropriate records, a record serves an essential administrative, legal and historical purpose. Records may be (but not limited to) emails, electronic documents, digital images and audio recordings, correspondence and files.

Employees have a responsibility

- to create and maintain full, accurate and honest records of their work activities, decisions and other business transactions; and
- to capture or store records in line with the *State Records Act (NSW) 1998*.

Managers and Supervisors have a responsibility to ensure that all employees reporting to them comply with their records management obligations. Employees must not destroy records without appropriate authority.

Employees must maintain the confidentiality of all official information and documents which are not publicly available or which have not been published.

The Department may utilise and collect employment related data in accordance with legislative requirements and privacy considerations.

### **6.3.3 Signatures**

Employees are accountable for any documents that they sign. Therefore, employees should carefully read all documents they are asked to sign. Employees must not sign a document, which they know is not factual.

Employees must only sign their own name and must never permit or encourage anyone to sign a name other than their own.

Employees must only use their own name when, for example, sending emails, and should not give the impression that they have the authority of another person without their permission. In addition, when using electronic signatures of a manager or supervisor, an employee must have their express approval on each occasion the electronic signature is used.

## **6.4 Use of alcohol, drugs and tobacco**

The Department is committed to providing a productive, safe and healthy workplace. Employees are responsible for ensuring that their capacity to perform their duties is not impaired by the use of alcohol or drugs, and that the use of such substances does not put them or any other person's health and safety at risk.

Employees must:

- not attend work under the influence of alcohol, illegal drugs or non-prescribed and/or restricted substances;
- not endanger their own safety or the safety of any other person in the workplace by consuming alcohol, illegal drugs or non-prescribed and/or restricted substances;
- notify their supervisor/manager if they are aware that work performance or conduct could be adversely affected as a result of the effect of a prescribed drug;
- take action to resolve any alcohol or other drug-related problems that exist (all employees have access to counselling support from the Employee Assistance Provider); and
- consult a supervisor/manager if there is concern about working with other employees who are perceived to be affected by drugs or alcohol.

#### **6.4.1 Alcohol and other drugs special provisions**

In addition to the above, Juvenile Justice and Corrective Service Divisions have specific requirements relating to alcohol and other drugs. For Divisional specific information please refer to the *Juvenile Justice Safe Operating Procedure: Alcohol and Corrective Services NSW Alcohol & Other Drugs Policy & Procedure*.

#### **6.4.2 Drugs**

Employees must not:

- have illegal drugs in their possession while at work. Any illegal drugs found on Departmental property or in the possession of any person on Departmental property will be reported to the Police; and
- give inmates, clients, visitors or colleagues illegal drugs or restricted substances, or encourage or condone their use.

#### **6.4.3 Tobacco**

The Department has a responsibility to, so far as is reasonably practicable, ensure that employees, clients and visitors whilst at a Departmental worksite, are safe from injury and risks to health.

Smoking is prohibited:

- within all Departmental buildings; in all Departmental vehicles;
- in the grounds of any Department owned and/or leased workplace and
- locations designated by an authorised senior executive as smoking areas are exempt, for example residential staff quarters.

#### **6.4.4 Gambling**

Gambling in the workplace, other than harmless team building activities such as workplace Lotto syndicates, football or other sport tipping competitions or Melbourne Cup sweeps, is inappropriate as it may lead to conflict, indebtedness and perceptions of impropriety.

## 7. Representing the Department

### 7.1 Conduct while off duty

As members of a public sector organisation all employees must, even when off duty, act in accordance with the law and the content of this code. In so doing employees must ensure that they do not bring discredit to themselves as private citizens or to the Department, and that they model exemplary behaviour and act as a positive influence in the community.

Employees should be aware that unlawful or unprofessional conduct, even in a private capacity, which may damage, or has the potential to damage, the reputation of the Department, may constitute misconduct and attract action by the Department in accordance with *section 69(4)* of the *Government Sector Employment Act 2013*.

*Section 69(1)* of the [Government Sector Employment Act 2013](#) provides that action can be taken for misconduct which occurs when an employee is off duty or before his or her employment.

If an employee is charged and receives a court attendance notice in relation to a serious offence or is declared bankrupt, they are required to immediately notify their supervisor/manager. A serious offence is an offence that is punishable by imprisonment for 12 months or more. For further information please refer to the [Government Sector Employment Regulation 2014](#).

It should be noted that employees may be suspended with or without pay as a result of being charged.

A conviction for a serious offence (or a finding of guilt that does not proceed to conviction) may constitute misconduct, whether or not the offence was committed in the course of employment.

### 7.2 Public Comment

Public comment is any comment made where it is expected that it will be seen or heard by members of the public. It includes (but not limited to) the following:

- speaking engagements;
- comment made on social networking sites (such as “Facebook,” “Linked In,” and “Twitter”); on radio, television or in newspapers (including letters to the editor); in books, journals or notices; on the internet, including media-related websites that seek comments on their stories ‘anonymously’ e.g. where a face on the television is obscured; and in e-mail messages.
- As a private individual, employees have the right to participate in public debate on political and social issues. In exercising this right, they also have the responsibility to make it very clear they are speaking as private individuals and not representing the official views of the Department or the Government.

In participating in any political, community and personal activity, employees must:

- not make any comment where it could be inferred that the public comment, although made in a private capacity, is in some way an official comment of the Government or of the Department;



- not make public comment, where the comment, even though unrelated to their normal duties, amounts to criticism sufficiently strong or persistent to give the impression that they are not prepared to implement or administer the policies, procedures and guidelines objectively of the Department or the Government;
- not participate in private political activities in the work environment;
- not use the Department's resources to assist political, community or personal activities;
- not use information obtained through their work at the Department to assist their political, community or personal activities, or make the information known to any other person; and
- not misrepresent the position of the Department on any issue.

Comments made on matters relating to union business by members of unions in their capacity as a local delegate within the Department or by union office holders employed by the Department are permitted under this Code, as long as the employee makes clear that the comments are about the industrial matters that are only related to union business and are made in a union capacity and not as an employee or on behalf of the Department.

Employees are frequently required to represent the Department in an official capacity at interagency meetings, community forums and other meetings with outside agencies and individuals. In representing the Department employees must ensure that they have the appropriate delegation and authorisation to do so and that they are sufficiently briefed on the issues likely to be raised and the appropriate Department responses.

All employees must have the approval of a delegated manager or senior executive before agreeing to address or be involved in seminars or conferences by professional associations, other organisations or non-profit bodies where the program is relevant to the public sector. Employees must also have the approval of a delegated manager or senior executive before making a written submission to such associations or organisations.

As a general rule, employees may only disclose official information that is already in the public domain, such as the Annual Report or official media releases and avoid offering a personal comment. The provision of information should also be consistent with Department and Government policy.

The Department's *Media Policy* outlines circumstances where it is and is not appropriate to make comment to media. Employees must not approach the media on Department-related matters, or discuss Department business with the media unless authorised to do so by the Corporate Communications Unit.

### **7.3 Social media and public websites**

When engaging in social media employees must make it very clear they are engaging in discussion as a private individual and not representing the official views of the Department or the NSW Government.

Only official information that is already in the public domain and does not breach confidentiality requirements may be disclosed.

It is important to note that this section of the Code does not apply to employee's personal use of social media platforms where the employee makes no reference to Department-related issues, unless it has the potential to impact the workplace and bring other employees or the Department into disrepute.

Unlawful or unprofessional conduct, even in a private capacity, which may damage, or has the potential to damage the reputation of the Department, may attract misconduct action by the Department. This includes comments made in social media or public websites in which employees are representing the Department or it may be perceived that they are representing the Department. This extends to comments made on sites including Facebook or Twitter which, because of employment with the Department, is inconsistent with professional responsibilities or has the potential to adversely affect the reputation of the Department.

Employees must also be mindful of making private comment on public media websites, ensuring that any comment made is not referable to the Department and does not bring discredit to the Department. For further information, please refer to the Department's *Social Media Policy* and *Social Media Procedure*.

## **7.4 Political and community participation**

As public servants, employees are free to take part in lawful political activity outside of working hours, so long as it does not interfere with normal duties.

However, employees need to be mindful that in their public life, they are required to serve the government of the day in an impartial manner. Where any political activity may create, or has created, a potential or actual conflict of interest, employees must discuss this with their supervisor/manager immediately.

Special arrangements apply to public employees who have been pre-selected as candidates for, or who propose to contest, State or Federal elections.

## **7.5 Personal references**

Employees are not permitted to use Department letterhead when writing a personal reference for another employee that is considered the employee's personal assessment or opinion, and not those of the Department.

Employees are not permitted to supply references to other employees who are the subject of misconduct action.

If asked to provide a referee report in relation to a recruitment action, the employee is responsible for completing the report honestly and should be based on information that can be verified. False or derogatory statements should not be made about an individual.

## 7.6 Other paid employment

Other paid employment includes furthering the aims, objectives or interests of any of the below for actual or prospective gain:

- any employment for an employer, even when on leave;
- self-employment;
- the private practice of any profession, occupation or trade;
- engaging in or undertaking any commercial business, whether as principal, agent, partner or employee;
- provision of consultancy services;
- accepting or holding office, other than in the Department, with any government of a state, the Commonwealth or any local government;
- writing or editing of books, articles and other published documents;
- lecturing, teaching and tutoring in universities, recognised professional associations and other recognised educational bodies;
- commercial activity associated with owning or participating in the ownership of a primary producing property where the commercial activity is related to the employee's duties;
- any position with a corporation, company or firm; and
- any other paid employment or role within the Department which is in addition to the employee's principal full time employment with the Department.

Approval of other paid employment can only be given for periods of up to 12 months. Employees who seek to renew an existing approval must do so in writing at least four weeks prior to the anniversary date or expiration date (whichever is the sooner) of the approval.

Multiple employment within the Department is subject to the procedures associated with this employment and any breach of these procedures may result in misconduct action. The onus is on the employee to ensure the procedures are not breached. For further information please refer to the Department's Multiple Employment Procedure (currently under development).

Whilst unpaid work does not require approval, if it creates an actual, or a perceived conflict of interest then employees must advise their supervisor/manager.

The Department will consider applications for other paid employment so long as the following conditions are met:

- the nature of the proposed work is clearly defined;
- the number of hours of the proposed work are clearly defined;
- the activity is not in competition with or has links to the Department;

- consideration is given to any potential conflict of interest;
- the work will not damage the reputation of the Department;
- the work will not create a conflict and/or perceived conflict of interest;
- no Department time, employee, intellectual property, facilities, or equipment are to be used in connection with other paid employment;
- the other paid employment must not interfere with the proper and efficient performance of usual duties; and
- the other paid employment does not pose an occupational health and safety risk to the employee (including working excessive hours without sufficient breaks between work).

Employees must not use their official position for personal advantage in pursuit of private income. Where a conflict of interest arises during other paid employment it must be referred to the supervisor/manager who approved the other paid employment immediately, and if it cannot be managed then approval for other paid employment should be withdrawn.

Employees must obtain written approval for other paid employment via submission to a delegated manager. The delegated manager must maintain a record of all applications for other paid employment and their outcome. The submission will be kept on the employee's personnel file for secure record keeping. Employees should also retain a copy of the written approval for inspection when required.

Employees have an obligation to seek approval for any proposed variations to their approved other paid employment from the delegated manager in writing.

Casual only employees, contractors and part time employees are not required to gain approval for other paid employment provided that:

- the work is undertaken during the period that the person is not required to discharge duties for the Department;
- that the discharge of duties for the Department is not adversely affected;
- and the other paid employment does not pose an occupational health and safety risk to the staff member (including working excessive hours without sufficient breaks between work). For further information please refer to the [Government Sector Employment Regulation 2014](#).

## 7.7 Volunteering

The Department encourages voluntary participation in community organisations, charities and professional associations. Such participation does not require approval unless the involvement is likely to conflict with or affect the efficiency or performance of the employee's official duties, or if the Department provides funding to the community organisation, charity or professional association concerned.

An exception to this is trade union delegates in regard to duties as specified by the relevant industrial instrument.

Volunteers/students coming into the Department must be properly inducted into the Department by a supervisor/manager (including completion of the Department's on-line induction).

Volunteers working with children must complete a Working with Children Check – Applicant Declaration and Consent. These are volunteers who mentor disadvantaged children in family-like relationships, or provide intimate personal care (e.g. bathing or toileting) for disabled children. All other volunteers or students on placement working with children must sign the Volunteer/Student Declaration prior to commencing with the Department.

It is an offence for prohibited persons to apply for or attempt to obtain, undertake or remain in child-related employment in any capacity, whether paid, volunteering or self-employed.

## **7.8 Code applies to contractors, consultants, volunteers, chaplains and students**

Contractors, consultants, volunteers, chaplains, students and employees of other organisations with which the Department has contracts or agreements must be aware of this Code and act in line with the conduct described in it. Where the contract or agreement refers to this Code then this Code applies.

## **7.9 Dress and presentation**

All employees should be mindful of the way in which they present themselves in the workplace, particularly if they are in contact with clients, offenders or members of the community. Clothing should always be appropriate to the workplace, consistent with work health and safety standards and enable employees to respond in an emergency.

Dress and presentation should at all times project an image that is consistent with accepted community standards and the work of the Department.

## **7.10 Prior to leaving**

Employees must not improperly use their role to improve their own prospects of future employment. Employees must not allow their work to be improperly influenced by plans for, or offers of, employment outside the Department. Employees must not create a conflict of interest and/or place their integrity and that of the Department at risk.

Employees must return any property they have belonging to the Department prior to leaving.

## **7.11 After separation**

When employees cease employment with the Department, they should not use or take advantage of any confidential information obtained in the course of their official duties unless it has become publicly available.

Current employees, must be careful in their dealings with former employees of the Department and make sure that they do not give them, or appear to give them, favourable treatment or access to privileged information.

Employees should report to their supervisor or line manager any attempts made by former employees to influence or lobby current employees about the Department's activities.

## 8. Accountability

Whilst at work an employee's primary responsibility is to perform their official duties efficiently and use Department resources economically.

### 8.1 Departmental resources

Employees must be familiar with the procedures relating to:

- management of finances;
- use of Department motor vehicles;
- use of meeting rooms and equipment;
- completion of time & attendance records (if relevant to an employee's role); and
- must not use their work e-mail to conduct personal business. In the event of an emergency then staff must ensure that they do not include the standard departmental footer denoting their position.

Employees should also be vigilant in ensuring that the Department's resources are not misused including responsibly using work computers, internet access and email facilities. For further information, please refer to the Department's *Internet Usage Policy*, *Mobile Devices Policy* and *Information Security Policy*.

All employees are to undertake their duties in accordance with Department policy and procedures and are encouraged to participate in forums that provide an opportunity to provide advice or suggestions on development of innovative evidence based programs that create efficiencies and improved outcomes. Sharing ideas and knowledge is an important part of working together as a team.

#### 8.1.1 Electronic communication devices

The Department provides electronic communication facilities for administrative purposes. The Department reserves the right to monitor and view any data stored or transmitted using the Department's facilities. By its nature, electronic communication is a fast and informal way of communicating.

Employees must:

- exercise good judgment when using electronic mail, following the principles of ethical behaviour;
- use appropriate language in electronic mail messages;

- be aware that if an issue addressed in an email becomes the subject of a legal dispute, then those emails would be 'discoverable': that is, the court and all parties to the dispute would be entitled to see them;
- not send messages that are harassing, defamatory, threatening, abusive or obscene;
- not invite clients and former clients into personal social network site;
- remember transmission, storage, promotion or display of inappropriate, offensive, defamatory, or harassing material is strictly forbidden; and
- report any situations of inappropriate use of electronic communication and social networking sites.

The Department's networks must not be used to view, upload, download or circulate any of the following materials:

- inappropriate material;
- sexually related or pornographic messages or material;
- violent or hate-related messages or material;
- racist or other offensive messages aimed at a particular group or individual;
- malicious, libellous or slanderous messages or material; and
- subversive or other messages or material related to illegal activities.

### **8.1.2 Intellectual property**

Documentation such as policies, programs, manuals, courses, training resources, written, developed or produced by an employee or a colleague during the course of the employee's employment with the Department remains the property of the Department. Employees must not use such material for personal benefit or without the expressed approval of an appropriately delegated manager.

## **9. Reporting suspected wrong doing**

If an employee witnesses wrong-doing or suspected wrong-doing they should discuss the matter with their supervisor or manager. If an employee witnesses wrong-doing or suspected wrong-doing of a serious nature, they may be required to complete a Summary of an Allegation or Complaint Against an Employee Form, which should be discussed with, and provided to, their manager for referral to the relevant Director, HR Business Partner.

## 9.1 Duty to report corrupt conduct

Employees have a public duty to report any corrupt conduct, maladministration and serious and substantial waste of public resources.

The Department will not accept any level of corruption.

Misconduct action will be considered in all instances of corruption and criminal referral will be considered in all instances of corruption identified.

The Department is committed to ensuring that opportunities for corruption are minimised, mitigated against and regularly monitored.

## 9.2 Corruption

Corruption means conduct of any employee, whether or not an employee, that could adversely affect the honest and impartial exercise of official functions by a public official.

It involves improper acts or omissions, improper use of influence or position, or improper use of information. It does not necessarily involve material gain for the employee or material loss to the Department.

## 9.3 Corrupt conduct

Corrupt conduct is more particularly defined in sections 7, 8 and 9 of the Independent Commission Against Corruption Act 1988 and includes the conduct of any person whether or not a public official that could adversely affect the exercise of an official function including conspiring or attempting to commit corrupt conduct. For further information please refer to the [NSW ICAC's](#) website.

## 9.4 Maladministration

Maladministration is conduct or proposed conduct in the exercise of a function involving action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, or based on improper motives.

The word 'maladministration' is used and defined in the *Protected Disclosures Act 1994*. It can be used to describe the nature and scope of the jurisdiction of the NSW Ombudsman which includes conduct of a public authority that appears to be:

- contrary to law;
- unreasonable, unjust, oppressive or improperly discriminatory;
- in accordance with any law or established practice but the law or practice; is, or may be, unreasonable, unjust, oppressive or improperly discriminatory;
- based wholly or partly on improper motives, irrelevant groups or irrelevant consideration;
- based wholly or partly on a mistake of law or fact;



- conduct for which reasons should be given but are not given; and
- otherwise wrong.

For further information please refer to the [NSW Ombudsman's](#) website.

## 9.5 Serious and substantial waste of public resources

Serious and substantial waste of public resources is defined by the NSW Auditor-General as that which encompasses 'uneconomical, inefficient or ineffective use of resources authorised or unauthorised, which results in significant loss or wastage of public funds or resources'. In addressing any complaint of serious or substantial waste, the nature and materiality of the waste is considered. For further information please refer to the [NSW Audit Office's](#) website; the Departments *Fraud Control Plan* (currently under development) and the Department's *Public Interest Disclosure Policy and Procedure*.

## 9.6 Fraud

Fraud means dishonestly obtaining a benefit by deception or other means.

It is deliberate and involves the use of misrepresentations, dishonest or deceitful conduct in order to obtain some unjust advantage over another or to cause disadvantage to the Department or others through actions, omissions or false statements. It includes the theft or improper use of the Department's resources and can be committed by employees or persons external to the Department.

# 10. Compliance

All employees have a responsibility to comply with legislation, policies, procedures, guidelines, this Code and perform their duties effectively.

## 10.1 Where to get more information

If employees have questions about the content of this Code, they need to seek advice from their supervisor or manager in the first instance, and then Strategic Human Resources.

## 10.2 Relevant legislation and sources of authority

Employees are expected to be aware of the Acts and Regulations that legally govern the way they undertake their work. This Code does not stand alone and should be read in conjunction with the following legislation:

- [Anti-Discrimination Act \(NSW\) 1977](#);
- [Children and Young Persons \(Care and Protection\) Act \(NSW\) 1998](#);
- [Children \(Community Service Orders\) Act \(NSW\) 1987](#);
- [Children \(Criminal Proceedings\) Act \(NSW\) 1987](#);

- [Children \(Detention Centres\) Act \(NSW\) 1987](#);
- [Child Protection \(Working with Children\) Act \(NSW\) 2012](#);
- [Crimes Act \(NSW\) 1900](#);
- [Government Information \(Public Access\) Act \(NSW\) 2009](#);
- [Government Sector Employment Act \(NSW\) 2013](#);
- [Government Sector Employment Regulation \(NSW\) 2014](#);
- [Government Sector Employment Rules \(NSW\) 2014](#);
- [Independent Commission Against Corruption Act \(NSW\) 1988](#);
- [Industrial Relations Act \(NSW\) 1996](#);
- [Ombudsman Act \(NSW\) 1974](#);
- [Privacy and Personal Information Protection Act \(NSW\) 1998](#);
- [Public Interest Disclosures Act \(NSW\) 1994](#);
- [Public Finance and Audit Act \(NSW\) 1983](#);
- [State Records Act \(NSW\) 1998](#);
- [Workers Compensation Act \(NSW\) 1987](#);
- [Work Health and Safety Act \(NSW\) 2011](#);
- [Work Health and Safety Regulation \(NSW\) 2011](#);
- [Workplace Injury Management and Workers Compensation Act \(NSW\) 1998](#); and
- [Young Offenders Act \(NSW\) 1997](#).

Other legislation, such as the [Health Administration Act \(NSW\) 1982](#) or the [Psychologists Act \(NSW\) 2001](#) may be relevant to a particular professional area of responsibility. Practising professionals who are employees of the Department should be familiar with and comply with the legislation and codes of conduct and/or codes of practice relating to their area.

Employees are expected to be aware of the policies, procedures and guidelines that apply to their work. This Code does not stand alone and must be read in conjunction with all departmental policy, procedures and guidelines.

## 11. Monitoring and review

Strategic Human Resources is responsible for reviewing the Code and for amending the Code in relation to issues raised across the Department.

This Code will be reviewed in accordance with the policy review schedule and at other times if any significant new information or legislative or organisational change warrants a change in this document. Reviews will be completed in consultation with the appropriate stakeholders for relevance and effectiveness.

Feedback, comments and suggestions about this Code can be directed to your respective Director, HR Business Partner or Strategic Human Resources.

## 12. Related documents

Related documents:

- *Managing Gifts and Benefits Policy*
- *Managing Gifts and Benefits Procedure*
- *Public Interest Disclosure Policy and Procedure*
- *Workplace Issue Management Policy and Guidelines* (currently under development)
- *Media Policy*
- *Internet Usage Policy*
- *Mobile Devices Policy*
- *Social Media Policy*
- *Social Media Procedure*
- *Information Security Policy*

## 13. Support and advice

An employee can get advice and support about this Code from their supervisor/manager.

A supervisor/manager can get advice and support from their respective Director, HR Business Partner.

A senior executive can get advice and support from their respective Director, HR Business Partner or the Director, Ethics, Safety and Industrial Relations or the Executive Director, Strategic Human Resources.

## 14. Document information

---

<b>Title:</b>	Code of Ethics and Conduct
<b>Document Number:</b>	HR002
<b>Policy Owner:</b>	Strategic Human Resources
<b>Policy Custodian:</b>	Director, Ethics, Safety and Industrial Relations
<b>Approver:</b>	Executive Director, Strategic Human Resources
<b>Classification:</b>	Unclassified
<b>Date of Effect:</b>	August 2015
<b>Next Review Date:</b>	August 2018

**File Reference:**

**Key Words:** Ethics, code, conduct, corruption, maladministration, public comment, disclosure, alcohol, drugs, tobacco, gambling

## 15. Document history

---

Version	Date	Reason for Amendment
0.1	26/05/2015	Development of consolidated Department of Justice document
0.2	30/06/2015	Referral to HR leadership team and HR sub-committee for review and feedback
0.3	17/08/2015	Feedback considered by SME and Owner, incorporated as appropriate and referred back to HR leadership team and HR sub-committee for final approval
1.0	26/08/2015	Final Approval by the Department of Justice Executive Committee
1.1	27/08/2015	Incorporated feedback from CEO NSW Trustee and Guardian
1.2	08/09/2015	Incorporated feedback from Justice legal
1.3	07/01/2016	Incorporated feedback from Organisational Performance and Operations Division
1.4	03/05/2016	Improvement to form, approval and feedback process

Printed copies of this document may not be up to date.  
Ensure you have the latest version before using this document.

## 16. Attachment 1 – Conflict of Interest Form

<b>Date of declaration:</b>	
<b>Name of person making the declaration:</b>	
<b>Role / Title:</b>	
<b>Business Division:</b>	
<b>Location:</b>	
<p>A conflict of interest may be; <b>actual, potential or perceived.</b>          Regardless of the type of conflict of interest it is imperative it is:</p> <ul style="list-style-type: none"> <li>• <b>declared</b> by the individual to a supervisor or manager, and</li> <li>• <b>resolved</b> so the conflict is removed, or</li> <li>• <b>managed</b> so as to reduce any ongoing conflict.</li> </ul> <p><b>(Free text fields are to be typed only – not hand written)</b></p>	
<b>1. Declaration of conflict of interest</b> (to be completed by the employee)	
<p><b>Actual</b> conflict of interest is where you already have a conflict.</p> <p><b>Potential</b> conflict of interest is where the conflict is about to happen or could happen.</p> <p><b>Perceived</b> conflict of interest is where other people might reasonably think you are not being objective.</p>	<p>Please provide details of <u>date</u> you became aware any actual, potential or perceived conflicts of interests. Attach any additional materials, if necessary.</p> <p><u>Conflict Type (Actual/Potential/Perceived):</u></p> <p><u>Date:</u></p> <p><u>Describe conflict:</u></p>
<p>Describe how the situation might affect or be seen to potentially affect you or the Department of Justice. Attach any additional materials, if necessary.</p>	

## 2. Proposed management of the conflict (to be completed by the employee)

Please indicate how you propose to manage your conflict.

**Declaration** – I confirm that the above details are correct to the best of my knowledge and I make this declaration in good faith.

Name:

Signature:

Date:

## 3. How the conflict of interest will be managed (to be completed by the supervisor/manager)

**There are five options for managing or resolving a conflict of interest:**

**Restrict** the employees involvement in the process

**Recruit** an independent third party to oversee part or all of the process

**Remove** the employee from the process

**Relinquish** the private interest that causes the conflict

**Resign** from the Department of Justice

The following plan has been agreed to manage the declared conflict of interest.

<b>Approval (Supervisor/Manager)</b>	
Name: Signature:	Date:

Please forward this signed declaration to the Director, HR Business Partner for approval.

<b>4. Director, HR Business Partner Approval (or Delegate)</b>		
<b>Approval – I approve the above Conflict of Interest Form</b>		
Signature: Director, HR Business Partner or Delegate		Date:

Please forward this signed declaration to the Director, Ethics, Safety and Industrial Relations (ESIR) to be reviewed and recorded on the Conflict of Interest Register, which is kept and maintained by ESIR.

<b>5. Director, Ethics, Safety and Industrial Relations Review (or Delegate)</b>		
Signature: Director, ESIR or Delegate		Date:

## Searching Detainees

### When to use this procedure

Use this procedure to search a detainee:

- as part of routine; or
- when there's 'reasonable belief' detainee may be in possession of contraband.

**Note:** Juvenile Justice has a duty of care to its clients and its staff. This duty may be jeopardised if dangerous/other illicit objects/substances are brought into a Juvenile Justice Centre. To minimise entry of such objects/substances into centres staff may need to search detainees under well-defined circumstances and conditions.

### When not to use this procedure

Never use this procedure unless the reasons described in this procedure exist.

Search procedures must never be used to harass/ intimidate a detainee.

Detainees should not be searched outside of published routine, unless approval is given following a staff report indicating a reasonable belief that a detainee has an [illicit object / substance \(contraband\)](#).

The circumstances and types of searches that can be conducted are described in more detail below.

### Before using this procedure

If you have not used this procedure before you must understand:

- [Duty of care](#)
- [National standards and united nations rules](#)
- [Delegation to approve searches](#)
- [Legislation](#)
- [Principles of searching](#)
- [Rules for searching](#)
- [Refusal to be searched](#)

### Types of searches and reasons for their use

With appropriate approval centre staff may perform searches under the circumstances and using the methods outlined below.

- [Wand and clothed body search](#)
- [Strip search](#)
- [Routine strip search / non-routine / one-off strip search](#)
- [Series of random strip searches](#)

### Start using this procedure

Juvenile Justice  
Attorney General & Justice



**Your responsibilities**

Find your role. Find what you need to do.

Role	When required	Responsibilities
All Staff	Always	All Staff <a href="#">steps</a>
Unit Manager	Always	Unit Manager <a href="#">steps</a>
Assistant Unit Manager	In the absence of / or directed by the Unit Manager	Unit Manager <a href="#">steps</a>
Shift Supervisor	In the absence of / or directed by the Unit Manager	Unit Manager <a href="#">steps</a>
Duty Manager	In the absence of those listed above and after-hours	Unit Manager (in consultation with Assistant Unit Manager/Shift Supervisor) <a href="#">steps</a>
Assistant Manager (G)	Always	Assistant Manager (G) <a href="#">steps</a>
Senior Coordinator Court Operations	Always	Senior Coordinator Court Operations <a href="#">steps</a>

Procedural steps

Role	Responsibilities
All staff	<p><b>Wand and clothed body search</b></p> <p>1. <b>Conduct</b> a wand search before a clothed body search. A wand search won't find illicit substances unless there's metal content/wrapping.</p> <p><b>Before starting wand and clothed body search</b></p> <p>People you need:</p> <ul style="list-style-type: none"> <li>Assistant Unit Manager</li> <li>Shift Supervisor</li> </ul> <p>1. <b>Contact</b> Assistant Unit Manager/Shift Supervisor for a <a href="#">non-routine wand and clothed body search</a> (i.e. search based on "reasonable belief"), and:</p> <ul style="list-style-type: none"> <li><b>request</b> approval to conduct wand and clothed body search;</li> </ul>

	<ul style="list-style-type: none"><li>• <b>explain</b> reasons for search;</li><li>• <b>request</b> a second trained staff member attend to observe/conduct search.</li></ul> <p>2. <b>Don't conduct</b> any part of search until there's a second trained officer present.</p> <p><b>For both routine and non-routine searches:</b></p> <ul style="list-style-type: none"><li>• <b>ensure</b> you're in an area where security and privacy can be maintained (this isn't necessary when search consists of a wand search only).</li><li>• <b>ensure</b> detainee is separated from other detainees in area before being searched so contraband items can't be exchanged.</li><li>• <b>inform</b> detainee they'll be given a wand and clothed body search.</li><li>• <b>explain</b> wand and clothed body searching procedure to detainee before starting, unless detainee is familiar with centre procedure.</li></ul> <p>3. <b>Ask</b> detainee if they have any items of contraband.</p> <p>4. <b>Allow</b> them to hand over such items/place them in an evidence bag before search begins.</p> <p>5. If this is a non-admission search/a non-return search:</p> <p>6. <b>inform</b> detainee they may be punished under Misbehaviour provisions/ referred to police if contraband is voluntarily declared and handed over at this stage</p> <p>7. <b>inform</b> detainee decisions regarding punishment will consider fact they voluntarily provided contraband to staff.</p> <p><b>Proceeding with wand search</b></p> <p>1. <b>Direct</b> detainee to remove all articles from their pockets and turn pocket lining out.</p> <p>2. <b>Direct</b> detainee to face away from you.</p> <p>3. <b>Direct</b> detainee to raise their arms up and to the side with palms of their hands facing upwards.</p> <p>4. <b>Direct</b> detainee to place their legs and feet apart with feet flat on ground. This should be at a distance where detainee is still comfortable/can maintain their balance.</p> <p>5. <b>Provide</b> detainee with a low stool (kept especially for this) to stand on, if available. This lowers chances wand will detect metal embedded in floor.</p> <p>6. <b>Direct</b> detainee to remain with arms outstretched and legs apart for entire wand search.</p> <p>7. <b>Move</b> wand across and over detainee's body:</p> <ul style="list-style-type: none"><li>• Right-side of body:<ul style="list-style-type: none"><li>○ <b>start</b> at side of detainee's right foot</li><li>○ <b>move</b> wand up right side of detainee's body to their right armpit</li><li>○ <b>move</b> wand along underside of detainee's right outstretched arm, around their right hand, then across top of right arm, to neck.</li></ul></li></ul>
--	---

	<ul style="list-style-type: none"><li>• Head area:<ul style="list-style-type: none"><li>○ <b>move</b> wand over detainee's head, passing right ear, over and around head area, down past their left ear to neck.</li></ul></li><li>• Left side of body:<ul style="list-style-type: none"><li>○ <b>move</b> wand along top of detainee's left arm, over hand, then along underside of their left arm o move wand down left side of detainee's body, to side of their left foot.</li></ul></li><li>• Inside legs and crotch<ul style="list-style-type: none"><li>○ <b>move</b> wand from inside of detainee's right foot, up along inside right leg, past crotch area, and down inside left leg to left foot.</li></ul></li><li>• Back of body<ul style="list-style-type: none"><li>○ <b>move</b> wand (holding it lengthwise and flat across detainee's body) up along back of detainee's body.</li></ul></li><li>• Soles of shoes<ul style="list-style-type: none"><li>○ <b>direct</b> detainee to raise each of their feet and <b>move</b> wand across sole of each shoe.</li></ul></li><li>• Front of body<ul style="list-style-type: none"><li>○ <b>direct</b> detainee to face you;</li><li>○ <b>move</b> wand (holding it lengthwise and flat across detainee's body) from head down along front of detainee's body.</li></ul></li></ul> <p><b>Proceeding with clothed body search</b></p> <p>People you need:</p> <ul style="list-style-type: none"><li>• Unit Manager</li></ul> <ol style="list-style-type: none"><li>1. <b>Conduct</b> wand search before starting this procedure. Detainees are to remain dressed for a clothed body search.</li><li>2. <b>Direct</b> detainee to remove extra layers of clothing such as jackets, jumpers, sloppy joes and shoes.</li><li>3. <b>Put on</b> a pair of puncture-resistant gloves.</li><li>4. <b>Ensure</b> you're standing at a safe distance from detainee and in sight of second officer.</li><li>5. <b>Direct</b> detainee to remove all articles from their pockets and turn pocket linings out, if not already done during wand search.</li><li>6. <b>Direct</b> detainee to remove following items and place them on a table/ another flat surface:<ul style="list-style-type: none"><li>○ outer jacket/ jumper</li><li>○ shoes and remove inner soles (to be shaken by detainee)</li></ul></li></ol>
--	---

	<ul style="list-style-type: none"><li>○ socks – turned inside out</li><li>○ wrist watch and any jewellery.</li></ul> <p>7. <b>Search</b> all removed clothing in front of detainee.</p> <p>8. <b>Use</b> protective equipment at all times when conducting this procedure – eg. gloves, ruler.</p> <p>9. <b>Pay</b> close attention to:</p> <ul style="list-style-type: none"><li>○ collars, cuffs, facings, lapels, seams and linings of clothing</li><li>○ heels and linings of shoes.</li></ul> <p>10. <b>Search</b> detainee's upper body:</p> <ul style="list-style-type: none"><li>● Hands:<ul style="list-style-type: none"><li>○ <b>direct</b> detainee to face you</li><li>○ <b>direct</b> detainee to move their hands out to side of their body with fingers spread apart</li><li>○ <b>check</b> detainee's hands for contraband.</li></ul></li><li>● Head area:<ul style="list-style-type: none"><li>○ <b>direct</b> detainee to bend their head forward</li><li>○ <b>direct</b> detainee to run hands through their hair – from back to front o direct detainee to raise their head, open mouth and remove any false teeth</li><li>○ <b>look</b> into mouth cavity and direct detainee to run a finger around/ between teeth and gums</li><li>○ <b>direct</b> detainee to turn their head to each side and pull ears forward</li></ul></li><li>● Neck and torso:<ul style="list-style-type: none"><li>○ <b>direct</b> detainee to stand facing away from you with their feet apart and arms raised from sides</li><li>○ carefully <b>pat down</b> detainee, starting at back of head</li><li>○ <b>follow</b> a direct course around collar ensuring nothing is hidden inside/ under shirt collar</li><li>○ <b>place</b> both hands on base of detainee's neck covering shoulders with palms open and pressing firmly</li><li>○ <b>pat down</b> back and side to belt line</li></ul></li><li>● Arms:<ul style="list-style-type: none"><li>○ detainee should still be facing away from you</li><li>○ <b>place</b> one hand under detainee's armpit and other hand on top of their shoulder</li><li>○ carefully <b>pat down</b> entire length of both sleeves to cuff /end of shirt</li><li>○ <b>repeat</b> procedure with other arm</li></ul></li></ul> <p>11. <b>Search</b> detainee's lower body:</p>
--	--

	<ul style="list-style-type: none"><li>• Waist and legs:<ul style="list-style-type: none"><li>○ detainee should still be facing away from you</li><li>○ <b>direct</b> detainee to release belt line and turn it out</li><li>○ <b>search</b> belt line</li><li>○ from back of waistline, carefully <b>pat down</b> over buttocks and sides of hips and legs</li><li>○ if detainee is wearing long trousers, starting at either leg, <b>place</b> both hands around leg and carefully <b>pat down</b> from top down</li><li>○ <b>search</b> any trouser turn-ups or cuffs</li><li>○ <b>repeat</b> this on other leg</li></ul></li><li>• Feet:<ul style="list-style-type: none"><li>○ detainee should still be facing away from you</li><li>○ <b>direct</b> detainee to lift one leg at a time to display soles of their feet and toes</li><li>○ <b>direct</b> detainee to wiggle their toes (to release anything held there)</li><li>○ <b>direct</b> detainee to replace any items of clothing/jewellery removed (if such such items are allowed in centre).</li></ul></li></ul> <p><b>12. Wearing</b> protective equipment <b>place</b> items in sharps container/secure evidence bag, if contraband items were found.</p> <p><b>NOTE:</b> All protective equipment is located in Drug Search Kit</p> <p><b>13. Seal</b> container/bag.</p> <p><b>14. Label</b> it with:</p> <ul style="list-style-type: none"><li>• detainee's name and date of birth</li><li>• contraband item found (if unknown, a description, e.g. green vegetable matter, white powdery substance)</li><li>• day, date and time of search</li><li>• your name, as searching officer.</li></ul> <p><b>15. Give</b> evidence to Unit Manager to be secured by Assistant Manager (Generalist)</p> <p><b>Strip search</b></p> <p><b>16. Always</b> conduct a strip search with detainee partially clothed.</p> <p><b>17. Conduct</b> search in following order:</p> <ul style="list-style-type: none"><li>• top half of clothing removed and searched</li><li>• top half of body checked for contraband</li><li>• top half of clothing (one layer) returned and shirt put on by detainee</li><li>• bottom half of clothing removed and searched</li><li>• bottom half of body checked for contraband</li><li>• bottom half of clothing returned and put on by the detainee.</li></ul> <p><b>18. Maintain</b> a high level of sensitivity throughout search procedure.</p>
--	---

19. **Consider** detainee's privacy, decency, sexual assault history, cultural difference and self-respect.
20. **Never** touch detainee at any time during strip search procedure.
21. **Ensure** staff members are same sex as detainee, or if not possible:
  - Staff member conducting strip search must be same sex as detainee and second staff member (observer) of opposite sex (note: this staff member doesn't observe detainee).
  - Searching staff remain in second officer's (observer) sight at all times during search procedure. Second officer is:
    - a witness to searching procedure and
    - responsible for ensuring search procedure is conducted correctly

### Before starting a strip search

People you need:

- Assistant Unit Manager
  - Shift Supervisor
1. **Contact** Assistant Unit Manager/Shift Supervisor for a **non-routine strip search** (i.e. search based on "reasonable belief"), and:
    - **request** approval to conduct strip search
    - **explain** reasons for search
    - **request** a second trained staff member attend to observe/conduct search.
  2. **Don't conduct** any part of search until there's a second trained officer present.
  3. For both routine and non-routine searches:
    - **ensure** you're in an area where security and privacy can be maintained (this isn't necessary when search consists of a wand search only)
    - **ensure** detainee is separated from other detainees in area before being searched so contraband items can't be exchanged
    - **inform** detainee they'll be given a wand and clothed body search
    - **explain** wand and clothed body searching procedure to detainee before starting, unless detainee is familiar with centre procedure.
  4. **Ask** detainee if they have any items of contraband.
  5. **Allow** them to hand over such items/place them in an evidence bag before search begins.
  6. If this is a non-admission search/a non-return search:
  7. **inform** detainee they may be punished under Misbehaviour provisions/referred to police if contraband is voluntarily declared and handed over at this stage
  8. **inform** detainee decisions regarding punishment will consider fact they voluntarily provided contraband to staff

### Proceeding with strip search

People you need:

- Unit Manager
1. **Put on** a pair of puncture-resistant gloves.
  2. **Ensure** you're standing at a safe distance from detainee and in sight of second officer. **Don't touch** detainee at any time during this search.
  3. **Direct** detainee to remove all articles from their pockets and turn pocket linings out, if not already done during wand search.
  4. **Direct** detainee to remove following items and place them on a table/ another flat surface:
    - outer jacket/ jumper
    - shoes and remove inner soles (to be shaken by detainee)
    - socks – turned inside out
    - wrist watch and any jewellery.
  5. **Search** all removed clothing in front of detainee.
  6. **Use** protective equipment at all times when conducting this procedure – eg. gloves, ruler.
  7. **Pay** close attention to:
    - collars, cuffs, facings, lapels, seams and linings of clothing
    - heels and linings of shoes.

**NOTE:** Footwear shouldn't be returned to detainee until entire search is completed.

8. **Direct** detainee to remove extra layers of clothing such as jackets, jumpers, sloppy joes and shoes.
9. **Begin** upper clothing search:
  - **direct** detainee to remove their upper layer of clothing. Undergarments (eg. bras, singlets etc) can be left on until overgarments are searched
  - **direct** detainee to place upper layer of clothing on table
  - **direct** detainee to move away from table
  - **search** all removed items of clothing in presence of detainee and **use** protective equipment (eg. ruler)
  - **pay particular attention** to collars, cuffs, facings, lapels, seams and linings of clothing
  - **direct** detainee to remove undergarments for searching when all upper clothing has been searched
10. **Search** detainee's upper body:
  - Hands:
    - **direct** detainee to face you
    - **direct** detainee to move their hands out to side of their body with

	<ul style="list-style-type: none"><li>○ fingers spread apart</li><li>○ <b>check</b> detainee's hands for contraband</li></ul> <ul style="list-style-type: none"><li>● Head area:<ul style="list-style-type: none"><li>○ <b>direct</b> detainee to bend their head forward</li><li>○ <b>direct</b> detainee to run hands through their hair – from back to front</li><li>○ <b>direct</b> detainee to raise their head, open mouth and remove any false teeth</li><li>○ look into mouth cavity and <b>direct</b> detainee to run a finger around/ between teeth and gums</li><li>○ direct detainee to turn their head to each side and pull ears forward</li></ul></li></ul> <p>11. <b>Visually inspect</b> detainee's top half of body.</p> <p>12. <b>Direct</b> detainee to put on their upper clothing (one layer only).</p> <p>13. <b>Begin</b> lower clothing search:</p> <ul style="list-style-type: none"><li>● <b>direct</b> detainee to remove their lower layer of clothing. Undergarments (eg. underpants, bras) can be left on until overgarments are searched</li><li>● <b>direct</b> detainee to place clothing on table</li><li>● <b>direct</b> detainee to move away from table</li><li>● <b>tell</b> detainee they can turn away from you for privacy</li></ul> <p>14. <b>search</b> all removed clothing in front of detainee and use protective equipment (eg. ruler)</p> <p>15. <b>pay particular attention</b> to pockets, linings, seams and facings in clothing</p> <p>16. <b>conduct</b> search of clothing in this step as quickly as possible (still ensuring a thorough search) so detainee can be searched and clothing returned as soon as possible to reduce embarrassment</p> <p>17. <b>direct</b> detainee to remove undergarments for searching when all lower body clothing has been searched.</p> <p>18. <b>Search</b> detainee's lower body:</p> <ul style="list-style-type: none"><li>● if detainee is wearing long shirt/clothing that comes below waist:<ul style="list-style-type: none"><li>○ <b>ask</b> detainee to lift clothing to waist-line and hold it there while you search lower body</li><li>○ <b>do this</b> as quickly, but thoroughly, as possible to reduce embarrassment.</li></ul></li></ul> <p>19. <b>Visually inspect</b> lower half of detainee's body, including:</p> <ul style="list-style-type: none"><li>● between toes (<b>ask</b> detainee to wiggle toes);</li><li>● soles of feet (<b>ask</b> detainee to lift one leg at a time to display soles)</li><li>● inner parts of legs and pubic area.</li></ul> <p>20. <b>Don't direct</b> detainee to lift genitalia, squat or part buttocks</p> <p>21. <b>direct</b> detainee to put on their lower layer of clothing</p> <p>22. <b>allow</b> detainee to place all remaining clothing on</p>
--	--



	<p>23. <b>return</b> their shoes and socks and any items detainee may've had in their pockets and is allowed to keep.</p> <p>24. <b>Wearing</b> protective equipment <b>place</b> items in sharps container/secure evidence bag, if contraband items were found.</p> <p><b>Note:</b> All protective equipment is located in Drug Search Kit</p> <p>25. <b>Seal</b> container/bag.</p> <p>26. <b>Label</b> it with:</p> <ul style="list-style-type: none"> <li>• detainee's name and date of birth</li> <li>• contraband item found (if unknown, a description, e.g. green vegetable matter, white powdery substance)</li> <li>• day, date and time of search</li> <li>• your name, as searching officer.</li> </ul> <p>27. <b>Give</b> evidence to Unit Manager to be secured by Assistant Manager (Generalist)</p> <p><b>After a search</b></p> <p><b>If items of contraband were found:</b></p> <ol style="list-style-type: none"> <li>1. <b>ensure</b> sharps (syringes and needles) are placed in a puncture-resistant container</li> <li>2. <b>inform</b> Unit Manager of search result.</li> <li>3. <b>Ensure</b> Unit Manager receives sealed container with contraband intact.</li> </ol>
<p><b>Unit Manager</b></p>	<p><b>Wand and clothed body search</b></p> <ol style="list-style-type: none"> <li>1. <b>Conduct</b> training and instruction sessions with supervising/searching staff in centres.</li> </ol> <p><b>Non-routine search</b></p> <ol style="list-style-type: none"> <li>1. <b>Approve</b> search if you decide reasons for it are adequate and reasonable in view of search principles.</li> <li>2. <b>Sign</b> Search Register (JJ-A059).</li> </ol> <p><b>Note:</b> For non-routine wand and clothed body searches this may be done after search is completed.</p> <ol style="list-style-type: none"> <li>3. <b>Document</b> basis of “reasonable belief” in Search Register.</li> </ol> <p><b>After a search</b></p> <p>People you need:</p> <ul style="list-style-type: none"> <li>• Assistant Manager (Generalist)</li> <li>• Logistics officer</li> <li>• Senior Coordinator Court Operations</li> </ul>

	<ul style="list-style-type: none"> <li>• Regional Director</li> </ul> <ol style="list-style-type: none"> <li>1. <b>Report</b> any contraband items found to Assistant Manager (Generalist)/Logistics Officer/Senior Coordinator Court Operations.</li> <li>2. <b>Check</b> search staff placed sharps (syringes and needles) in a puncture-resistant container.</li> <li>3. <b>Check</b> items are placed with detainee's stored property and recorded accurately by Admissions Officer, if items found are:             <ul style="list-style-type: none"> <li>• unauthorised for use within centre, but</li> <li>• not items that should be forfeited (&amp; <b>personal property of detainees</b>).</li> </ul> </li> <li>4. <b>Complete</b> an Incident Advice on CIMS if directed by Assistant Manager (Generalist)/Senior Coordinator Court Operations.</li> <li>5. <b>Refer</b> any other incident reports to Security &amp; Intelligence Unit and Regional Director/Assistant Regional Director.</li> <li>6. <b>Submit</b> Incident Advice and any other incident reports to CIMS Intray of Assistant Manager (Generalist)/Senior Coordinator Court Operations.</li> <li>7. <b>Check</b> Search Register has been completed correctly (JJ-A059).</li> <li>8. <b>Direct</b> staff to enter additional information in Search Register before signing, if there's more information needed.</li> <li>9. <b>Sign</b> appropriate section confirming search was conducted in accordance with departmental procedures, when Search Register is accurately completed.</li> </ol> <p><b>Non-routine /one off strip search</b></p> <p>People you need:</p> <ul style="list-style-type: none"> <li>• Assistant Manager (Generalist)</li> </ul> <ol style="list-style-type: none"> <li>1. <b>Decide</b> if reasons for non-routine search are adequate and reasonable in view search principles.</li> <li>2. <b>Verbally</b> approve search.</li> <li>3. <b>Sign</b> Search Register following verbal approval. Declare basis of "reasonable belief" in Register (JJ-A059).</li> <li>4. <b>Report</b> any contraband items found to Assistant Manager (Generalist).</li> </ol> <p><b>Note:</b> Contraband items found need an Incident Advice per procedure manual (Incident – General Information).</p> <ol style="list-style-type: none"> <li>5. <b>Check</b> search staff placed sharps (syringes and needles) in a puncture-resistant container.</li> <li>6. <b>Check</b> items are placed with detainee's stored property and recorded accurately by Admissions Officer, if they're unauthorised for use by detainee but shouldn't be forfeited.</li> </ol>
<p><b>Assistant Manager (G), Senior Coordinator Court</b></p>	<p><b>Wand and clothed body search</b></p> <ol style="list-style-type: none"> <li>1. <b>Ensure</b> centre/courts &amp; transporting staff have enough wand metal detectors and are located in areas where searches most commonly</li> </ol>

<b>Operations</b>	<p>2. <b>Ensure</b> a procedure is in place for regular checking/maintenance of wand metal detectors.</p> <p>3. <b>Ensure</b> all staff who conducted searches are trained in use of wand metal detectors/ regular refresher training sessions.</p>
-------------------	---

## Legislation

### **Children (Detention Centres) Act 1987:**

- 4 Objects of the Act
- 14 Functions of the Director General
- 17 Private Property
- 17A Detainees not to be supplied with or allowed alcohol, tobacco or adult films
- 20 Complaints of misbehaviour
- 21 Punishments for misbehaviour
- 21 Prohibited punishments for misbehaviour
- 37B Trafficking in alcohol, drugs or other things

### **Children (Detention Centres) Regulation 2010:**

- cl.5. Admission of detainees
- cl.8. Health and medical attention
- cl.9. Maintenance of well being of detainees
- cl.13. Books, newspapers, magazines and other printed material
- cl.14. Radios and other electronic equipment
- cl.15. Unauthorised possession of property
- cl.16. Disposal of property
- cl.17. Records to be kept concerning property
- cl.33. Articles not to be conveyed between visitors and detainees
- cl.34. Refusal and termination of visits
- cl34A. Removal of face coverings by visitors
- cl.35. Searching of visitors
- cl.40. Inspection of mail and parcels

**Part 7.** Maintenance of order

**Part 8.** Misbehaviour

## Change log

Date	Reason for change	Details of change
1 September 2009	All Juvenile Justice Centre Procedures have been changed to reflect the staffing restructure within Juvenile Justice Centres.	The position of Unit Coordinator has been deleted and replaced with Shift Supervisor or Assistant Unit Manager.
24 February 2010	Children (Detention Centres) Regulation 2010	Updated legislation references
06 February 2012	Children (detention Centres) Act 1987 Children (detention Centres) Regulation 2010	corrected listed sections of act and clauses of regulations.

Searching Detainees procedure 2 November 2012

02 November 2012	when not to use this procedure	corrected description to enable searching detainees for routine and when suspicion of contraband exists.
------------------------	--------------------------------	--