COPP 8.5 Allegations

Youth Detention Centre

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| Principles and Standards In context of the  [Australian Human Rights Commission National Principles for Child Safe Organisations, 2018](https://childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf)  Risk management strategies focus on preventing, identifying and mitigating risks to children and young people.  The organisation, including staff and volunteers, understands children and young people’s diverse circumstances and provides support and responds to those who are vulnerable.  [Australasian Youth Justice Administrators Standards, 2009](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx)  Principles of procedural justice are applied.  Victims’ rights and responsibilities are upheld. |

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# Scope

This Commissioner’s Operating Policy and Procedure (COPP) applies to all Youth Detention Centre (YDC) Custodial Officers and staff.

# Policy

The Department is committed to protecting the safety and welfare of detainees.

This COPP provides the procedure for the appropriate, immediate response to an allegation from a detainee. Where a detainee makes an allegation against staff this shall be immediately reported to the Superintendent (or authorised Custodial Officer) and managed in accordance with Departmental policies. Additionally, this COPP outlines the requirements for the mandatory reporting of child sexual abuse in accordance with legislation[[1]](#footnote-1).

Staff at the YDC shall take reasonable actions to prevent and protect detainees from harm. Effective supervision as well as positive staff and detainee relationships enable staff to promote a safe environment characterised by mutual respect, trust, humanity and good communication.

Good communication promotes detainee trust in staff and therefore enables effective problem-solving. Custodial Officers and staff have a responsibility to respond to detainee allegations and ensure appropriate action is taken.

Allegations by detainees may include (but are not limited to) allegations of assault, abuse, theft or damage. Some allegations may result in an investigation by the Western Australia (WA) Police Force and a possible charge. Charges may be criminal[[2]](#footnote-2) or a YDC charge[[3]](#footnote-3).

All communications with detainees should be embedded in such a way that language diversity is acknowledged and understood.

The Department has a responsibility to ensure detainees are treated fairly and the rights of detainees are respected during an investigation. Procedures for identifying, reporting and managing allegations shall be transparent and dealt with in a timely, trauma informed culturally sensitive manner.

# Procedures

## Immediate considerations

### There are a number of immediate processes a Custodial Officer may need to consider and act upon when receiving an allegation by a detainee. This includes, but is not limited to:

1. the immediate safety and welfare of the detainee, including calling for assistance
2. the type and severity of the allegation, for example, the allegation may require reporting to the WA Police Force and/or may relate to a potential charge or offence.
3. escalation
4. crime scene preservation
5. the time frame of the allegation
6. additional reporting.

## Ongoing safety and welfare

### The safety and welfare of the detainee is paramount at all times, the Custodial Officer shall call for additional assistance as required, at any stage during or at the completion of the process.

### Custodial Officers must be mindful of the vulnerability of detainees involved and shall provide support without exception.

## Escalation, evidence preservation and initial notifications

### The Custodial Officer shall, where possible, determine the type and severity of the allegation and manage accordingly.

### The Custodial Officer shall contact the Unit Manager (or authorised Custodial Officer) where they believe an allegation may result in a WA Police Force report and/or a criminal charge or offence if proven to have occurred. This includes, but is not limited to allegations of:

1. physical assault
2. sexual assault
3. threatening behaviour
4. drug possession
5. theft.

### The Custodial Officer shall contact the Unit Manager (or authorised Custodial Officer) for guidance where the allegation is unclear, or the Custodial Officer is unable to determine the type and severity.

### The Unit Manager (or authorised Custodial Officer) may contact the Assistant Superintendent Security (or authorised Custodial Officer) for additional guidance following the above.

### Where an allegation includes information, which may result in a detention centre charge and/or has the potential to be reported to the WA Police Force the Unit Manager shall immediately inform the Senior Officer (or authorised Custodial Officer).

### The Senior Officer (or authorised Custodial Officer) shall contact the Assistant Superintendent Security (or authorised Custodial Officer)

### The Assistant Superintendent Security (or authorised Custodial Officer) shall determine if the allegation is to be reported to the WA Police Force.

### The Assistant Superintendent Security (or authorised Custodial Officer) shall seek guidance where applicable, from the WA Police Force on further management and communicate to relevant staff.

### Staff are not to commence investigation where a detainee alleges a criminal offence has been committed and the offence has been reported to WA Police Force as this may jeopardise any subsequent investigations.

### Staff discussing the allegation shall be mindful of the following:

1. the amount of the information obtained from the detainee
2. establishing the facts of the allegation
3. where the allegation has the potential to result in a criminal charge, the method of collecting information, for example, not using leading questions.

### Where an allegation involves another detainee and where appropriate, the Unit Manager (or authorised Custodial Officer) shall ensure detainees allegedly involved in the incident have no contact with each other and are separated and managed appropriately.

### The Assistant Superintendent Security (or authorised Custodial Officer) shall provide further advice on crime scene and evidence preservation following consultation with the WA Police Force and in accordance with the [Policy for Gathering and Preservation of Evidence, Continuity of Exhibits](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/prison-security.aspx) and [Procedures for the Preservation of Evidence, Continuity of Exhibits, Drug Movements and Inventory Control](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/prison-security.aspx).

### The Assistant Superintendent Security (or authorised Custodial Officer) shall inform the Superintendent where the allegation has been reported to the WA Police Force.

### Where the alleged assault is of a sexual nature, following contact with the WA Police Force the Superintendent (or authorised Custodial Officer) shall discuss with the YDC Health Services (HS) staff in regards to contact with the [Sexual Assault Resource Centre](https://www.kemh.health.wa.gov.au/Our-services/Statewide-Services/SARC) (SARC).

### The WA Police Force shall be informed if the victim intends to pursue a criminal charge.

### The Superintendent shall notify the Deputy Commissioner Women and Young People of allegations which may result in a criminal charge.

## Additional Notifications

### The Superintendent (or authorised Custodial Officer) shall determine, where appropriate, any additional notifications of allegations that may be required, including, but not limited to:

1. the detainee’s responsible adult
2. Case Planning Manager
3. Youth Justice Officer
4. Department of Communities, Child Protection (DCCP).

## Ongoing support and referrals

### Where appropriate, the Custodial Officer shall provide initial support to the detainees involved in the allegation.

### Further support and/ or referrals shall be determined and actioned as appropriate.

### Additional ongoing support may include, but is not limited to:

1. referral to HS and/ or psychological services
2. counselling
3. external services, for example, SARC, DCCP
4. consideration for the At-Risk Management System (ARMS)
5. consideration for the Support and Monitoring System (SAMS)
6. behaviour management.

## Documentation

### The Custodial Officer shall document in TOMS accordingly.

## Incident reporting and internal investigation

### Custodial Officers shall report incidents in accordance with [COPP 8.1 – Incident Reporting](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

### Investigation into an allegation which is not reported to the WA Police Force shall be in accordance with [COPP 8.1 – Incident Reporting](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

### A detainee shall not be subjected to a detention offence charge until it is determined that the detainee will not be charged with a criminal offence.

### Detention centre offences and charges shall be managed in accordance with [COPP 6.4 – Offences and Charges](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

## External investigation

### Staff shall inform the Unit Manager (or authorised Custodial Officer) of any external agencies, requesting information and/ or requesting an investigation into an allegation (i.e. the State Ombudsman).

### The Superintendent (or authorised Custodial Officer) shall be informed of any external agencies requesting to investigate an allegation.

### Where an interview by an external agency is requested as part of an investigation the Superintendent (or authorised Custodial Officer) shall be notified prior to the interview being conducted. The Superintendent or (authorised Custodial Officer) shall determine the appropriate action and support for the detainee during the interview and investigation.

### Official visitors shall be managed in accordance with [COPP 11.3 – Official Visitors](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

## Mandatory reporting of child sexual abuse

### It is a legal requirement[[4]](#footnote-4) for WA Medical Practitioners, Nurses, Teachers and Police Officers to report all reasonable beliefs of child sexual abuse.

### Reporting of child sexual abuse by HS staff at a YDC shall be in accordance with [HS Policies and Procedures](https://dojwa.sharepoint.com/sites/health-services) and by teachers at the YDC shall be in accordance with the ‘Youth Detention Centre Education Handbook’. Reports of all reasonable beliefs of child sexual abuse are reported to [the Department of Communities - Child Protection and Family Support](https://mandatoryreporting.dcp.wa.gov.au/Pages/Home.aspx).

### A copy of the written mandatory report is sent to the WA Police Force by the DCCP.

# Annexures

## Related COPPs and documents

* [COPP 6.4 – Offences and Charges](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [COPP 8.1 – Incident Reporting](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [COPP 11.3 – Official Visitors](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [Policy for Gathering and Preservation of Evidence, Continuity of Exhibits](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/prison-security.aspx)
* [Procedures for the Preservation of Evidence, Continuity of Exhibits, Drug Movements and Inventory Control](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/prison-security.aspx)

## Definitions and acronyms

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| Term | Definition |
| Allegation | A claim or assertion that someone has done something illegal or wrong, typically made without proof. |
| Alleged Assault | A person has made an allegation of a physical and / or sexual assault. |

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| Child Sexual Abuse | Child sexual abuse includes sexual behavior in circumstances where –   1. the child is the subject of bribery, coercion, a threat, exploitation, or violence; or 2. the child has less power than another person involved in the behavior; or 3. there is significant disparity in the developmental function or maturity of the child and another person involved in the behavior.   A child is a person under the age of 18 years. |
| Commissioner’s Operating Policy and Procedure (COPP) | COPPs are policy documents that provide instructions to staff as to how the relevant legislative requirements are implemented. |
| Crime Scene | The area associated with a suspected crime from/in which physical evidence may be obtained. This can include structures, rooms, open areas, vehicles and cells. |
| Custodial Officer | An officer with custodial functions, appointed under section 11(1) of the *Young Offenders Act 1994*; or a person who is appointed under section 11(1a)(a) as a custodial officer. This includes but is not limited to Youth Custodial Officers, Unit Managers and Senior Officers. |

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| Detainee | Means a person who is detained in a YDC as defined in s.3 of the *Young Offenders Act 1994*. |
| Offence | An act or omission which renders the person doing the act or making the omission liable to punishment is called an offence. |
| Officers and Employees of Particular Classes | The following descriptions of classes of officers and employees are prescribed for the purpose of s 11(1a)(b) of the *Young Offenders Act 1994*, in r 49(2) of the *Young Offender Regulations 1995*:  (a) Medical staff persons who have undergone medical, nursing or health training and hold qualifications indicating successful completion of that training.  (b) Teaching staff persons who provide recreation or sports supervision, teachers, vocational trainers and social trainers.  (c) Program support staff counsellors, program facilitators and librarians.  (d) Centre support staff cleaning staff, laundry staff, gardening staff, vehicle driving staff, maintenance staff and hairdressers. |
| Physical assault | A person who strikes, touches, or moves, or otherwise applies force of any kind to another person, either directly or indirectly, without their consent, or with their consent if the consent is obtained by fraud. Assault may also arise from administering a drug(s) to another person with an intent to assault.  An assault incident will be reported even when the victim receives no physical injuries. |

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| Public Service Officer | An officer employed in the State Government Public Service, subject to Part 3 of the *Public Sector Management Act 1994* and includes such officers and other persons as are necessary to implement or administer this Act. |
| Senior Officer | A Custodial Officer who is substantive to this rank, or a Unit Manager, or Custodial Officer acting in the capacity of Senior Officer, appointed by the Chief Executive Officer with reference to s11 of the *Young Offenders Act 1994* |
| Sexual Assault | A sexual assault is any sexual act carried out:   1. without a person’s consent 2. where consent is given as a result of intimidation or fraud 3. where consent is unlawful, such as:    * the person is legally deemed incapable of giving consent because of youth, mental incapacity, or    * there is a familial relationship |
|  | 1. where consent could not be given freely and voluntarily (for example if the victim was unconscious or intoxicated)   Sexual assaults include where the victim reports that any person in any manner has sexually assaulted him / her and there is no obvious reason to doubt this claim, or there is clear evidence of such an assault having occurred. |
| Staff | Any person or officer of the Department of Justice, Corrective Services Officer, Youth Custodial Officer or an employee of a particular class: and any contractor who provides services to the Department of Justice. |
| Superintendent | In accordance with section 3 of the *Young Offenders Act 1994, ‘*The person in charge of a YDC |
| The Department | The department of the Public Service principally assisting the Minister in the administration of the *Young Offenders Act 1996* |
| Total Offender Management Solution (TOMS) | An electronic database used by the Department of Corrective Services to record and manage comprehensive information relating to prisoners and detainees. |
| Unit Manager | A Youth Custodial Officer substantive to this rank or Youth Custodial Officer acting in the capacity of Unit Manager, appointed by the Chief Executive Officer with reference to s11 of the *Young Offenders Act 1994*. |
| Youth Detention Centre | The gazetted facility declared by the Minister to be a detention centre to accommodate male and female, remanded or sentenced detainees, refer s. 13 *Young Offenders Act 1994.* |

## Related legislation

* *Children and Community Services Act 2004*
* *Young Offenders Act 1994*
* *Young Offender Regulations 1995*

# Assurance

It is expected that:

* The YDC will undertake local compliance in accordance with the [Compliance Manual.](https://dojwa.sharepoint.com/search/Pages/results.aspx?k=operational%20compliance&ql=3081)
* The Women and Young People Branch, Head Office will undertake management oversight as required.
* Operational Compliance Branch will undertake checks in accordance with the [Operational Compliance Framework](https://dojwa.sharepoint.com/search/Pages/results.aspx?k=operational%20compliance&ql=3081)
* Independent oversight will be undertaken as required.

# Document Version History

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| --- | --- | --- | --- | --- |
| Version no | Primary author(s) | Description of version | Date completed | Effective date |
| 1.0 | Operational Policy | Approved by the A/Director Operational Policy, Compliance and Contracts | 12 June 2020 | 03 August 2020 |
| 2.0 | Operational Policy | Approved by the A/Director Operational Policy, Compliance and Contracts | 25 January 2022 | 25 January 2022 |
| 3.0 | Operational Policy  Memo Reference:  D23/958935  Content Manager Reference:  S23/101088 | Endorsed by the Assistant Commissioner Women and Young People | 9 November 2023 | 18 December 2023 |
| Approved by the Deputy Commissioner Operational Policy | 15 November 2023 |

1. *Children and Community Services Act 2004* [↑](#footnote-ref-1)
2. *Criminal Code Act Compilation Act 1913* [↑](#footnote-ref-2)
3. *Young Offenders Act 1994* [↑](#footnote-ref-3)
4. *Children and Community Services Act 2004* [↑](#footnote-ref-4)