

Australian Capital Territory

**Children and Young People (Places of Detention) Police Interviews Standing Order 2007
(No 1)***

Disallowable instrument DI2007-10

made under the

Children and Young People Act 1999, Chapter 14 Standards and Standing Orders,
section 403 (Standing Order making power)

1 Name of instrument

This instrument is the *Children and Young People (Places of Detention) Police Interviews Standing Order 2007 (No 1)*.

2 Commencement

This instrument is to commence on 8 January 2007.

3 Standing Order

I make the attached Standing Order:
Standing Order – Police Interviews.

Katy Gallagher, MLA
Minister for Disability and Community Services
23 November 2006

*Name amended under Legislation Act, s 60

Children and Young People (Places of Detention) Standing Orders Introduction

A duty of care obligation is imposed on Institution staff upon the receiving of all children and young people into the custody at an Institution.

The Standing Orders set out minimum permanent standards to be met by all staff in the daily carriage of their duties. These Standing Orders provide a set of specific directions to enable staff to implement the provisions of the *Children and Young People Act 1999* and all relevant legislation (for example; *the Human Rights Act 2004*) with regard to the management of all young persons held in custody.

An Institution provides services to maximise rehabilitation and reintegration back into the community upon release. This is enhanced through ensuring each resident is detained within a safe and secure environment, with living conditions that meet the minimum requirements specified through the Standing Orders in regards to privacy and dignity, programs and services including educational, vocational and health services, and that consideration has been given to the specific individual characteristics of each resident such as their vulnerability as a child or young person, perceived maturity, sex, abilities, strengths and cultural identity. This is reflected in individualised care plans, which are developed as part of the case management process.

These Standing Orders recognise that children and young people who offend may be particularly vulnerable due to a wide range of risk factors and may have already experienced high levels of early trauma or adversity. Children and young people who come into contact with the justice system may have specific difficulties in interpersonal functioning, understanding and impulse control issues. The Standing Orders seek to reduce any further psychological harm whilst a child or young person is resident in an Institution and as such, the Standing Orders stress the rehabilitative and therapeutic role of all staff working in the Institution.

This Standing Order needs to be read and applied in the context of all Standing Orders. Standing Orders – Provision of Information, Review of Decisions and Complaints, Records and Reporting and Aboriginal and Torres Strait Islander Residents, in particular, have application and need to be considered across all the other Standing Orders. For example, when addressing a resident's health needs, staff must consider the requirements of the Health and Welfare Standing Order along with Standing Orders-Provision of Information, Review of Decisions and Complaints and Records and Reporting, and if the resident is an Aboriginal or Torres Strait Islander, also Standing Order – Aboriginal and Torres Strait Islander Residents.

Standing Orders will be supplemented by a staff, and a resident and carers handbook and will be supported by ongoing training.

STANDING ORDER POLICE INTERVIEWS

- 1 Police Interviews of a Resident in an Institution – as a Suspect in a Criminal Investigation**
 - 1.1 Police may interview a resident at an Institution for the purpose of an investigation into a criminal offence where Police suspect or believe that the resident may have committed or be implicated in the commission of an offence.
 - 1.2 When seeking to conduct an interview of a resident at an Institution, Police must contact the Institution as soon as possible to make this request.
 - 1.3 Where possible, Police Interviews of residents at an Institution will be conducted between the hours of 9am and 5pm Monday to Friday, unless otherwise approved by the Manager.
 - 1.4 Police may only remove a resident from an Institution for the purpose of conducting an interview if they have a Court Order or Warrant to do so.

- 2 Police Interviews of Resident at an Institution – as a Complainant or a Witness**
 - 2.1 Police may interview a resident at an Institution for the purpose of receiving a complaint from a victim of an alleged criminal activity (e.g. assault) or take a witness statement from a resident who witnessed an alleged criminal activity.
 - 2.2 Upon receiving a request from a resident to contact the Police, the Manager will ensure that this request is forwarded as soon as practicable to the Police to attend the Institution.
 - 2.3 The Manager will provide any available information to the Police in relation to a resident's complaint (e.g. video surveillance, staff witness reports).
 - 2.4 The Manager will arrange this interview in accordance with all sections of this Standing Order and ensure that the resident is appropriately supported by a parent, person with parental responsibility for the resident, adult family member or independent person suitable to the resident, or legal representative suitable to the resident.

- 3 Rights of a Resident**
 - 3.1 The Manager must ensure that a resident who requires support and/or assistance in order to fully participate in a Police Interview will receive the required support or assistance. This may include access to communication devices, interpreter services, sign language, appropriate information materials, translated information materials and/or a person of religious or cultural significance.
 - 3.2 A resident has the right to refuse a Police Interview. The Manager must ensure that a written record of the refusal is documented and signed by the resident. A copy of this record is to be placed on the resident's file.
 - 3.3 If in the course of a Police Interview, a resident expresses their wish to refuse to participate any further in the interview, staff must immediately stop the interview. Staff must ensure that a written record of the refusal is documented and signed by the resident. A copy of this record must be placed on the resident's file.

 - 3.4 For Police interviews under section 1 above
 - 3.4.1 For the purposes of police interviews, where a resident is a suspect in a criminal investigation, staff must comply with the *Children and Young People Act 1999* and Section 23K (3) (d) of the *Crimes Act 1914* (Cwlth).

- 3.5 For Police interviews under section 2 above
- 3.5.1 Any person attending as a support person under this section must act with the consent of the resident, be suitable to them and ensure they act in the best interests of the resident.
- 4. Before Conducting an Interview**
- 4.1 When seeking to conduct an interview of a resident at an Institution, Police must contact an Institution as soon as possible to make the request. During this contact the Manager must ask the Police to give maximum notice of the date and time of the interview.
- 4.2 The Manager must ensure an appropriate room is provided for the interview. The interview room should be private and prevent others (staff, visitors etc.) from overhearing the interview.
- 4.3 The Manager must ensure arrangements are made so that the interview can continue for as long as appropriate, without disruption (for example, a resident will not be removed from an interview for the purpose of a routine lockdown period). However, the Manager must ensure a resident being interviewed receives appropriate breaks for food, rest etc. For example, if the interview occurs during a mealtime, provisions must be made for the resident to have a break from the interview to attend scheduled meal times.
- 5 Use of an Interview Friend**
- 5.1 Staff must ensure that a resident to be interviewed by Police is aware of the obligation for an Interview Friend to be present during the interview.
- 5.2 In compliance with the *Children and Young People Act* and Section 23K (3) (d) of the *Crimes Act 1914* (Cwlth), staff must ensure that prior to an interview by Police, the Police have arranged for one of the following people to be present during the interview as an interview friend:
- (a) a parent or person with parental responsibility for the resident;
 - (b) an adult family member suitable to the resident;
 - (c) a legal representative suitable to the resident; or
 - (d) if none of the above are available, an independent person, who is not a Police Officer, who is suitable to the resident.
- 5.3 If the resident is Aboriginal and/or Torres Strait Islander, the Manager will ensure the resident is aware of their rights for the Interview Friend to be an Aboriginal and/or Torres Strait Islander legal representative or member of the Aboriginal and/or Torres Strait Islander community.
- 5.4 The Manager must ensure the requests of a resident regarding an Interview Friend or support person are conveyed to the Police to allow the appropriate arrangements to be made.
- 5.5 If a resident requests the involvement of a staff member as an independent Interview Friend, this must only occur:
- (a) as a last resort;
 - (b) if the staff member has consented to be involved;
 - (c) if the staff member has had no involvement in an investigation of the offence; and
 - (d) if their involvement has been approved by the Manager.
- 5.6 Staff must ensure that the resident is permitted to talk with their Interview Friend in private prior to the commencement of the Police Interview.

5.7 The Manager must ensure that interested staff have access to training on the role of an Interview Friend.

6 Interviews Without the Presence of an Interview Friend

6.1 Despite the conditions outlined in section 3.4, where there is an imminent risk of death or serious injury to a person, or serious damage to property, Police may conduct an interview of a resident without the presence of an Interview Friend. On these occasions, the Manager must ensure that a staff member suitable to the resident is available to observe the interview and terminate the interview if requested to do so by the resident or the Police Officer or if in the opinion of the observing staff member it is necessary to ensure the safety of the resident.

6.2 In the event that Police seek to interview a resident in accordance with section 6.1 above, the resident still retains his/her right to refuse to participate in an interview. If a resident refuses to participate in an interview under these circumstances, the Manager must ensure that a written record of the refusal is documented and signed by the resident. A copy of this record is to be placed on the resident's file.

7 Police Firearms in the Institution

7.1 Police attending an Institution for the purpose of an interview must store their firearm upon entry in an approved weapons safe. The key to the safe will remain with the Police until the firearm is retrieved.

7.2 Under no circumstances are staff of an Institution to handle a Police firearm.

7.3 Where a Police Officer refuses to store his/her firearm, the Manager must be immediately advised. The Police Officer is to be refused entry unless otherwise approved by the Manager.

8 Counselling and Support

8.1 If during the course of a Police Interview a resident experiences emotional distress and a request is made by the resident, Interview Friend or support person, for support, staff will make all reasonable attempts to arrange for support from an appropriate health professional or other suitable person.

8.2 In the event that support is unavailable, and considered appropriate, the Manager may stop or postpone the interview until support becomes available.

8.3 The Manager must ensure that the resident has access to appropriate supports following the completion of the interview.

9 Records and Reporting

9.1 Any actions taken under this Standing Order must be recorded according to the requirements set out in the Standing Order - Records and Reporting.

9.2 All required reports are the responsibility of staff and are to be fully completed before staff members complete their shift, unless otherwise approved by the Manager.

10 Provision of Information, Review of Decisions and Complaints

10.1 Staff must ensure residents, their parents and all those with parental responsibility, family and visitors are provided with information about things that affect them in a timely manner and in a manner that is likely to be understood.

10.2 A resident, their parents and all those with parental responsibility, family and visitors are able to request a review of a decision or make a complaint about something that happens at an Institution, to the Institution, the Public Advocate or the Official Visitor.

- 10.3 Staff must ensure that the Standing Order - Provision of Information, Review of Decisions and Complaints is followed in relation to the above.
- 10.4 Staff must engage with the person seeking a review of a decision or making a complaint in a respectful manner and ensure sufficient information is provided on the process of review or investigation. Staff must assist fully in any complaint or review process.

STANDING ORDERS GLOSSARY – MEANING OF COMMONLY USED TERMS

Aboriginal or Torres Strait Islander is a person who has identified as Aboriginal and/or Torres Strait Islander.

Aboriginal and Torres Strait Islander Services Unit refers to the Branch of the same name within OCYFS.

Adult means a person who is at least 18 years old.

Audio Record is a record created through the use of a listening device and may be a written transcript resulting from the use of such a device.

Body Receipt Register is an official record of all children and young people admitted to an Institution by the ACT Policing, or from interstate or removed by the ACT Ambulance Service. The Body Receipt Register is kept in the Control Room.

Complaint is an expression of dissatisfaction with an Institution's policies and procedures, staff or the service provided to a resident, family member or visitor as per Section 1 of the Children and Young People, (Places of Detention) Standing Order-Provision of Information, Review of Decisions and Complaints 2006 (No1).

Care and Protection Services within the Office for Children, Youth and Family Support (OCYFS), Department of Disability, Housing and Community Services, is the government entity charged with statutory responsibility for protecting and promoting the safety and wellbeing of all children and young people in the ACT. Pursuant to the *Children and Young People Act 1999*, the Chief Executive is responsible for receiving and responding to any information which may indicate that a child or young person has been abused, neglected or is in need of care and protection.

Care of the Chief Executive The Chief Executive (CE) of the Department of Disability, Housing and Community Services has parental responsibility for children and young people by virtue of Care and Protection Orders issued in the ACT Childrens Court. In these situations, the Childrens Court Magistrate may choose to give either day-to-day or long-term parental responsibility to the CE. Children and young people who are on such Orders are said to be 'in the care of the CE'.

Case Conference/ Case Management Conference refers to a meeting of all parties involved with a resident including parents/guardians, agencies and the resident. The purpose of such meetings is to ensure that all parties are working towards common goals for the resident in a coordinated and collaborative way.

Case Management Plan is a plan that is developed for residents as part of case management of residents. A case management plan sets goals and strategies for intervention with a resident, including the resident's developmental, educational and emotional needs. Residents are actively engaged in the development of their individualised plan.

Case Manager is a staff member responsible for assisting residents to set goals for their future, both whilst in custody and on return to the community, and supporting and monitoring

their progress towards achieving those goals through an individual planning and support process. The Case Manager will liaise with agencies with the resident and coordinate meetings to ensure a consistent and planned approach is developed (see also Case Management Plan and Case Conference).

Case Management Unit is part of the administration of an Institution. It is responsible for supporting a resident through a coordinated and holistic case management approach, focusing on the individual needs, strengths and positive engagement of the individual, their family and appropriate supports.

Child, when used to indicate a person's age, refers to a person under 12 years of age.

Conjoining Spaces refers to spaces that allow residents in these places to have direct access to each other without staff assistance. An example of conjoining spaces is two rooms with a door between them that can be opened by the people in the two rooms.

Contraband refers to any unauthorised item within an Institution, eg. drugs, weapons, alcohol, cigarettes.

Control Room is the central point of information exchange within an Institution and is directly concerned with maintaining security, and the safety of all persons within the centre. No entry to or exit from an Institution, or movement within an Institution (outside of the units) occurs without authorisation by the Control Room Operator.

Co offender is a person who has, or is alleged to have, assisted another person to attempt or complete a criminal act or who has jointly undertaken such an act.

Crisis Assessment and Treatment Team (CATT) is part of ACT Mental Health Services, that provides a 24-hour, seven days per week, service for assessment and treatment of people showing signs of mental illness or severe emotional distress, particularly in crisis situations.

Custodial Escort means an escort under the *Custodial Escorts Act 1998* by an escort other than a Police Officer.

Debriefing is a semi structured crisis intervention designed to reduce and prevent unwanted psychological stress following traumatic events by promoting emotional processing through the ventilation and normalisation of reactions and preparation for possible future experiences.

Departmental Identification means OCYFS, Department of Disability, Housing and Community Services photographic identification, which must be worn by staff while on duty.

Director means the person undertaking the duties of the Director with responsibility for an Institution. The Senior Manager is subordinate to this position.

Disposal Schedule (*Territory Records Act 2002*) The OCYFS disposal schedule has been approved by the Territory Records Office and is, for the present, available on the Territory Records Office website at

<http://www.territoryrecords.act.gov.au/index> <http://www.territoryrecords.act.gov.au/index>

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

Emergency Service means the ambulance service, the fire brigade, the rural fire service or the State Emergency Services.

Emergency Response Plan refers to an Institution's emergency response plan as described in the Children and Young People (Places of Detention) Standing Order – Safety and Security 2006 (No 1).

Exhibit Book is an official record that is kept and maintained at an Institution for the purpose of registering any contraband located on a resident or within the Institution.

First Aid Training for Staff relates to approved training for First Aid Officers, as recommended in the ACT Workcover Code of Practice: ACT First Aid in the Workplace. The Senior Manager is responsible for ensuring that all operational staff are fully trained and hold a current recognised qualification of Senior First Aid certificate or equivalent, or a relevant higher qualification.

Fully Stocked First Aid Kit is a First Aid Kit stocked to a level that is appropriate for the environment of an Institution. Sufficient numbers of fully stocked first aid kits must be available at an Institution at all times and a fully stocked first aid kit must be available during any escort of a child or young person to or from the Institution.

Freedom of Information Act 1989 is the legislation permitting members of the public to access certain official documents of the Territory.

Health Professional refers to persons with a recognised health qualification such as a Medical Practitioner, Nurse, Dentist, Psychologist etc. A full list of these persons is provided in the *Health Professionals Act 2004*.

Health Records (Privacy and Access) Act 1997 is the legislation governing the recording and management of any record deemed to be a health record to protect the privacy and integrity of, and access to, personal health information and related purposes.

Incident Report refers to a report about an incident at or in relation to an Institution as required by the Children and Young People (Places of Detention) Standing Order – Records and Reporting 2006 (No 1).

Informed Consent is an indication of consent by a person who has been given enough information to form a 'reasonable understanding' of the situation for which consent is being sought, including all reasonably possible consequences arising from the giving or withholding of consent. A staff member seeking to determine whether a person has or can form a 'reasonable understanding' must consider the age, the assessed level of maturity and intellectual ability and mental health of the person. Where a staff member assesses that a resident does not have a 'reasonable understanding' in relation to a matter about which informed consent is sought, the staff member must seek consent from a parent or person with parental responsibility for the resident.

Institution means (i) a place that is declared to be an institution under the *Children and Young People Act 1999*; and (ii) a place that is declared to be a shelter under the *Children and Young People Act 1999*, if the place is also declared as an institution.

Intersex means a person who, because of a genetic condition, was born with reproductive organs or sex chromosomes that are not exclusively male or female.

Key Worker is a member of staff who is allocated the responsibility of providing additional day to day support to a resident. They work closely with Case Managers to monitor and support the daily implementation of a resident's Case Management Plan.

Manager during normal business hours this term refers to the Operations Manager of an Institution, or, in the event this person is unavailable, the Senior Manager of an Institution. Outside normal business hours, this refers to the on-call manager.

Mandated Reporter under the *Children and Young People Act 1999* includes staff at an Institution and requires them to report any suspected non accidental physical injury or sexual abuse to a child or young person.

Medical Practitioner means a doctor.

Observations occur to ensure the safety and engagement (where appropriate) of a resident within an Institution. Further information about observations is in the Children and Young People (Places of Detention) Standing Order –Admissions and Classification 2006 (No 1).

OCYFS-Office for Children, Youth and Family Support is part of the Department of Disability, Housing and Community Services. An Institution is administered through the OCYFS.

Official Vehicle refers to a government vehicle and the guidelines that govern the use of such vehicles, specifically, that they are for the purpose of government related business only. Persons who are not government employees can only be transported in official vehicles for purposes related to government business.

Official Visitors carry out functions as prescribed by the *Children and Young People Act 1999*.

On-Call Manager refers to the person undertaking the duties of 'on-call manager' outside normal business hours.

Operations Manager is an assistant manager of an Institution or a person acting in this position. He/she is responsible for the day to day operational and security requirements of an Institution and reports directly to the Senior Manager of an Institution. Section 1 of the Children and Young People, (Places of Detention) Standing Order, Safety and Security 2006 (No1) provides information regarding the lines of authority for staff at an Institution.

Parental Responsibility means all the duties, powers and responsibilities parents ordinarily have by law in relation to their children; it includes responsibility for the day to day or long term care, welfare and development of the child or young person. A person has parental responsibility for a child if: the person is the child's parent; a court order is in force in favour of the person; or the person has parental responsibility following emergency action.

Privacy Act 1988 is legislation making provision to protect the privacy of individuals and for related purposes.

Program and Services Manager is responsible for overseeing the coordination and delivery of case management, programs and services to residents.

Pro Social Modeling is the demonstration by staff of behaviour and/or language that reflect positive community values and expectations, including punctuality, courtesy, empathy and consideration of others.

Public Advocate means the person appointed under the *Public Advocate Act 2005*. The Public Advocate advocates for the best interests of children and young people. The Public Advocate has monitoring responsibilities under the *Children and Young People Act 1999*. Residents are able to make complaints to, or seek assistance from the Public Advocate.

Public Sector Management Act 1994 is legislation to regulate the administration of the public sector of the Territory, and for related purposes. Staff working in an Institution must comply with the requirements of this Act.

Record is a document in paper or electronic format that provides evidence of a business activity performed by staff. A record may include a written report, photograph, video footage or audio recording (or transcript from audio recording).

Records Management Plan is a departmental program required under the *Territory Records Act 2002* that includes the arrangements for the appropriate capture, creation, identification, storage, security, access to and destruction of, all Department Records as required by this Act. It can be found at <http://www.legislation.act.gov.au/www.legislation.act.gov.au>

Reportable Incident is an incident or event at or in relation to an Institution that must be reported in as required by the Children and Young People (Places of Detention) Standing Order – Records and Reporting 2006 (No 1).

Re-Integration refers to a resident's return to the community. It includes provision of accommodation, education or employment, support programs and counselling services.

Resident means a child or young person who has been admitted to an Institution and is detained there.

Resident and Carers Handbook is a document to provide residents and their carers with information about an Institution and their rights and responsibilities.

Remandee is a child or young person who has been charged but not yet sentenced for an offence, is not admitted to bail and has been taken to an Institution and detained there.

Review of a Decision is a re-examination or reassessment of an administrative decision making process or outcome as per Section 1 of the Children and Young People, (Places of Detention) Standing Order-Provision of Information, Review of Decisions and Complaints 2006 (No1).

Senior Manager is the Senior Manager of an Institution, or the person acting in that position. If the Senior Manager or person acting in that position is not available, the Senior Manager refers to a person nominated by the Director. The Senior Manager reports to the Director. Section 1 of the Children and Young People, (Places of Detention) Standing Order-Safety and Security 2006 (No1) provides information regarding the lines of authority for decision-making in an Institution.

South Eastern Aboriginal Legal Service (SEALS) is an indigenous organisation that provides culturally appropriate legal advocacy and/or representation in legal proceedings, particularly for Aboriginal people in the criminal justice system. Local Courts serviced by the Canberra office are Queanbeyan, Canberra, Goulburn, Yass and Cooma.

Safe Room is a place described and used in accordance with the Children and Young People, (Places of Detention) Standing Order- Use of a Safe Room 2006 (No1)

Search Register is a record of all personal and area searches carried out in an Institution. All searches are logged in this register.

Special Management Direction (SMD) is a specific instruction given by the Senior Manager relating to the need to implement or maintain a special condition for the management of a resident.

Staff means operational employees of the OCYFS working in an Institution who directly or indirectly report to the Senior Manager. Section 1 of the Children and Young People, (Places of Detention) Standing Order, Safety and Security 2006 (No1) provides information regarding the lines of authority for staff at an Institution.

Staff Handbook is a document that provides staff with accessible information about policies and procedures relating to an Institution. The Staff Handbook supplements the Standing Orders and staff training as a form of guidance for and information to staff.

Standing Orders supplement legislative requirements of staff and, together with relevant legislation, set out the minimum permanent standards to be met by staff at an Institution in undertaking their duties.

Sterile Area may include a cabin or other area (eg. unit recreation area), which has been emptied of any item that may be used by a resident to harm themselves, other residents or staff. The term 'sterile cabin' denotes a cabin devoid of any item other than fixtures and fittings or other authorised items

Sterile Zone is an area between the two perimeter fences or a cleared area that forms a secure zone of an Institutions perimeter. The area may not be accessed by anyone without authorisation by the Manager.

Supervision refers to the duty of staff to monitor the whereabouts and safety of residents and, where relevant, visitors.

Time out is an option for de-escalating residents who are displaying inappropriate behaviour. It refers to a direction to a resident, which would occur after a warning or an opportunity to modify their behaviour, to remove themselves to an appropriate area, for example in their unit.

Transgender Person means a person who identifies as a member of a different sex by living, or seeking to live, as a member of that sex; or has identified as a member of a different sex by living as a member of that sex whether or not that person is a recognised transgender person.

Unit Manager this position reports to the Operations Manager and is responsible for managing the security and leading staff during the operation of a shift. The Children and Young People (Places of Detention) Standing Order – Safety and Security 2006 (No 1) provides more information about the chain of authority for decision making in an Institution.

Use of Force Register records any incident where force or restraint has been used. The Use of Force Register is kept in the Control Room.

Visitors Register records all visits in an Institution. The Visitors Register is kept in the Control Room. All visitors also sign a visitor sheet and a visitor entry log, located in a public area of an Institution.

Young Person refers to a person who is 12 years of age but not yet an adult or a person who has been dealt with by a court as though he or she was a young person.