

Australian Capital Territory

**Children and Young People (Places of Detention) Death in Custody Standing Order 2007  
(No 1)\***

Disallowable instrument DI2007-11

made under the

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

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**1 Name of instrument**

This instrument is the *Children and Young People (Places of Detention) Death in Custody 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 – Death in Custody.

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 DEATH IN CUSTODY

The death of a resident is a death in custody and is a matter for the jurisdiction of the duty Coroner, pursuant to the *Coroners Act 1997*, which is an Act that provides for the holding of inquests into deaths and also contains specific provisions relating to a death in custody. A death in custody includes a death of a resident under detention at a hospital, on escort, or on approved leave.

ACT Policing have a protocol by which they are responsible for notifying the Coroners Office in the event of a death in custody. Police are directed by the Coroner to investigate the death of a person in custody. The Police will also provide direction regarding the notification of the family of a deceased resident. The Senior Manager will, in consultation with the Police, determine the most appropriate person to make the notification. Where circumstances permit, the Senior Manager will notify the family in the company of staff member, i.e. Case Manager, who has a relationship with the resident.

Section 70 of the *Coroners Act 1997*, provides for the family or a representative to request authorisation from the Coroner to view the body of the deceased person, inspect the scene where the death occurred or be present at a post mortem examination. When authorised by the Coroner, staff of an Institution must assist and support such an inspection.

### 1 Application

- 1.1 In the event a resident suffers an injury or is suspected for any reason to be deceased, staff must apply Standing Order - Health and Wellbeing, which outlines responses to resident injuries and the management of other residents and an Institution during and after an incident.
- 1.2 Staff must be mindful that the only person who can make the declaration that a person is deceased is a doctor.

### 2 Following the Death of a Resident

#### 2.1 Responsibility of first responding staff member

- 2.1.1 If a staff member is notified a resident has died, the staff member must immediately inform the Senior Manager and, if necessary, the Control Room.
- 2.1.2 If the Senior Manager is unavailable the staff member must notify the Manager.

#### 2.2 Responsibilities of the Control Room

- 2.2.1 The Control Room must provide the details of the person or people with parental responsibility for the deceased resident and give these details to the Senior Manager/Manager.
- 2.2.2 The Control Room must notify the Unit Manager.
- 2.2.3 The Control Room must notify the ACT Policing.

#### 2.3 Responsibilities of the Unit Manager

- 2.3.1 The movement of staff to and from the location of the incident is to be strictly limited to those directly involved in responding to the situation. No staff are permitted entry to the area other than for the following purposes:
  - (a) first aid or evacuation of other persons,
  - (b) security management, or

- (c) as approved by the Unit Manager.
- 2.3.2 Once the criteria of 2.3.1 have been met, no person shall have access to the area other than the Coroner, Police, a Police approved medical practitioner or persons approved by the Coroner and/or Police until the investigations are complete.
- 2.4 Responsibilities of the Senior Manager
- 2.4.1 The Senior Manager/Manager must immediately notify the Director.
- 2.4.2 After consultation with the Police, the Senior Manager will notify the person with parental responsibility or next of kin of the death. Reasonable attempts must be made to make the notification in person. The person to be notified will be determined by the child or young person's client file, identified as either their next of kin, or nominated emergency contact.
- 2.4.3 When notifying the parent or person with parental responsibility, the Senior Manager must, if appropriate and authorised by the Police and/or the Coroner, extend an invitation to view the body of the deceased resident and inspect the scene of the death.
- 2.4.4 If the resident is Aboriginal and/or Torres Strait Islander, the Senior Manager after consultation with the Police will make arrangements to meet with the resident's family to inform them of the death and to obtain their input into what culturally appropriate arrangements should be made. The Senior Manager will contact the Case Management Unit regarding known supports for the family to assist in delivering the information.
- 2.4.5 At all times notification should be given in a sensitive manner, respecting the culture and interests of the persons being notified and the entitlement of such persons to full and open reporting around the circumstances of the death.
- 2.4.6 If the Chief Executive has parental responsibility for the resident, the Senior Manager must notify the Director, Care and Protection.
- 2.4.7 As soon as possible after the Incident the Senior Manager must ensure all relevant documentation and official records are moved to a secure location. No additions or removals are to be made to these records and no staff are to access the files unless authorised by the Senior Manager.
- 2.4.8 The Senior Manager shall ensure that ACT Policing or ACT Ambulance Service complete the Body Receipt Register when they assume custody of a deceased resident.
- 2.4.9 The Senior Manager will arrange debriefing for staff. The Senior Manager must ensure access to support and counselling for residents, visitors and staff.
- 2.4.10 The Senior Manager must ensure appropriate assistance to the family of a deceased resident is provided if the family request it.
- 2.4.11 The Senior Manager must ensure all information or evidence relating to a Police or Coronial investigation is made available to investigating Police or the Coroner upon request. Wherever possible, copies of documentation must be retained by the Senior Manager, or as instructed by the Director.
- 2.4.12 The Senior Manager will ensure that personal belongings of the deceased resident are returned to the deceased resident's family unless otherwise requested by the family.

### **3 Media**

- 3.1 Staff must refer all media inquiries to the Manager, Media and Communications, Department of Disability, Housing and Community Services. Staff must not give any other information to the media.

### **4 Provision of Information, Review of Decisions and Complaints**

- 4.1 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.
- 4.2 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.
- 4.3 Staff must ensure that the Standing Order - Provision of Information, Review of Decisions and Complaints is followed in relation to the above.
- 4.4 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.

### **5 Records and Reporting**

- 5.1 In the event of the death of a resident Standing Order - Records and Reporting must be applied.
- 5.2 Staff responding to, or encountering an injured resident who is then subsequently declared deceased, must complete an Incident Report before leaving the Institution. The most senior staff member on duty is to commence completion of the Death in Custody Report. All entries in the Report are to be initialled by the person making the entry. Completion of the full report is the responsibility of the Senior Manager.
- 5.3 A copy of this Report and a Brief must be prepared by the Senior Manager and provided to the Director.

## 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>

**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.