

Australian Capital Territory

Children and Young People (Places of Detention) Aboriginal and Torres Strait Islander Residents Standing Order 2007 (No 1)*

Disallowable instrument DI2007-3

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) Aboriginal and Torres Strait Islander Residents 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 – Aboriginal and Torres Strait Islander Residents.

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 handbooks and will be supported by ongoing training.

STANDING ORDER
ABORIGINAL AND TORRES STRAIT ISLANDER RESIDENTS

The ACT Government, as a member of the Council of Australian Governments, has committed to the National Framework of Principles for Delivering Services to Indigenous Australians, which are aimed at improving the delivery of services, building greater opportunities and helping Indigenous families and individuals to become self sufficient.

Aboriginal and Torres Strait Islander peoples are a distinct group of peoples. They are the Indigenous Peoples of Australia who are not an homogeneous group of people, who were dispossessed of their land, historically denied fundamental rights, and until recent times, denied respect as human beings and the opportunity to re-establish themselves on an equal basis with other Australians.

The Senior Manager will ensure all staff working in an Institution receive cultural awareness training. The training will include information on the *National Framework of Principles for Delivering Services to Indigenous Australians* and an overview of *Bringing Them Home: The Stolen Children Report*, and the recommendations of the *Royal Commission into Aboriginal Deaths in Custody*. This will provide staff with better understanding of the issues faced by Aboriginal and Torres Strait Islander families.

All Standing Orders have been written with consideration of recommendations from the *Royal Commission into Aboriginal Deaths in Custody (RCIADIC)*.

- 1. Working with and Understanding Aboriginal and Torres Strait Islander Residents**
- 1.1
 - (a) Aboriginal and Torres Strait Islander people have a unique world-view and values system and a right to express and exercise their culture(s),
 - (b) Aboriginal and Torres Strait Islander people are over-represented in custody,
 - (c) there are complex underlying issues stemming from the consequences of history and the general level of socio-economic disadvantage within Aboriginal and Torres Strait Islander communities that primarily leads Aboriginal and Torres Strait Islander people into contact with the justice systems. Issues surrounding the loss of identity, poverty, poor health and education outcomes, and the inter-generational consequences of the 'stolen generation' are some of the issues affecting Aboriginal and Torres Strait Islander people on a daily basis.
- 1.2 All staff working in an Institution should undertake their duties, particularly as they relate to Aboriginal and/or Torres Strait Islander residents in a manner that reflects and acknowledges:
 - (a) the considerations outlined above;
 - (b) that each and every staff member is part of a collective effort across the service system to address the over-representation of Aboriginal and Torres Strait Islander people in custody and can play an important role in empowering residents to take control of their life; and
 - (c) that the behaviour of staff and their treatment of residents must contribute in a positive way to addressing the over-representation of Aboriginal and Torres Strait Islander people in custody and is reflective and consistent with the spirit of the considerations outlined in this Standing Order.
- 1.3 The following are some specific issues that staff must take into consideration when engaging with Aboriginal and/or Torres Strait Islander residents. Staff must be mindful of:

- (a) the history of removal by child welfare agencies in Australia of Indigenous children from their families thereby creating a 'stolen generation' and the possible impact this may have on children and young people in detention, their families and grandparents;
- (b) the impact that detention and separation can have including feelings of shame and guilt that may be associated with being placed in custody or having a family member detained. Additional support from the Case Management Unit, for example, may be appropriate at the time of admission;
- (c) specific health considerations of Aboriginal and/or Torres Strait Islander residents. For example, staff must provide residents with the opportunity to access Aboriginal and Torres Strait Islander specific health services;
- (d) the placement of Aboriginal and/or Torres Strait Islander residents with other Aboriginal and/or Torres Strait Islander residents is highly preferable. For example, this may include the use of adjoining rooms where possible and appropriate;
- (e) the importance of kin, including extended family relationships and the wider community, for example, when staff are seeking to contact an emergency contact, or support person for a resident they must give appropriate consideration of the relationship between kin; family and kinship obligations, including attendance at funerals and events which have cultural or spiritual significance. For example, considerations for special purpose leave must take into consideration the importance of Kin or the cultural/spiritual significance of the event;
- (f) the importance of expression of culture, for example, food, customs, spirituality, celebrations, ceremonies and arts and dance. For example, where possible the use of the Aboriginal and Torres Strait Islander Cultural Area within the Institution should be utilised for cultural specific activities; and
- (g) recognition and acceptance that Aboriginal and Torres Strait Islander societies are neither static nor homogeneous. For example, staff should be aware that appropriate cultural response for different families/communities may not be the same.

2 Application of this Standing Order

- 2.1 The application of this Standing Order aims to widen the scope of rehabilitative and supportive programs and practices available to Aboriginal and Torres Strait Islander residents. Program and service delivery responses for Aboriginal and/or Torres Strait Islander residents should be inclusive of, but not limited to, culturally specific programs and services.
- 2.2 Staff must encourage and support Aboriginal and/or Torres Strait Islander residents to engage with all appropriate program or service opportunities including culturally specific services. It is hoped that these programs and services will provide Indigenous residents with the opportunity to strengthen their links with the Aboriginal and/or Torres Strait Islander community and their own cultural and spiritual understanding.
- 2.3 The Senior Manager is responsible for assisting the Institution's staff to develop a better understanding of Aboriginal and/or Torres Strait Islander culture and will coordinate events and activities of cultural significance, including celebrations to promote reconciliation and healing.
- 2.4 Staff must participate in training aimed at improving cultural understanding and service delivery.

- 2.5 All staff are responsible for forming and maintaining positive relationships with residents, particularly those who have identified as Aboriginal and/or Torres Strait Islander.
- 2.6 All staff should encourage Aboriginal and/or Torres Strait Islander residents to participate fully in educational or vocational programs, counselling, or other activities that will enable the residents to develop in a socially responsible way and enhance and maintain their cultural identity.
- 2.7 This will be achieved through regular contact with the resident, liaison with families, carers and cultural agencies and ensuring the resident's cultural and/or spiritual needs and wishes are met through the case management process.
- 2.8 Staff must consider the content of this Standing Order, with any other relevant Standing Orders, in relation to any resident who identifies as Aboriginal and/or Torres Strait Islander.

3 Identification

- 3.1 Staff must never assume the nationality and/or cultural background of a resident based on their appearance or other reason. Staff must ask every resident about their nationality and/or cultural identity.
- 3.2 Organisations transferring children or young people into the custody of an Institution may provide information on their nationality and/or cultural background. Even when such information is provided, staff must still ensure they ask and confirm the nationality and/or cultural identity of every resident.
- 3.3 Personal information obtained from a resident must be recorded on all relevant files. This information is to be used to ensure that the resident is managed with respect to their cultural needs and obtains appropriate help and support during their period in detention.

4 Notification and Access to Case Management Unit

- 4.1 As soon as possible after the admission of an Aboriginal and/or Torres Strait Islander resident, the Case Management Unit must be notified. The introduction of the resident to a case manager must be arranged as soon as it is reasonable to do so and no later than by the end of the next normal business day after the resident's admission. Staff must advise the resident that this will occur and if there is any delay, also advise the resident of the delay and reasons for it, and talk to the resident about any other support that could be provided during this delay.
- 4.2 Case Management staff must make necessary arrangements to provide assistance to the resident, and must ensure they obtain the informed consent from any Aboriginal and/or Torres Strait Islander resident prior to contacting or notifying relevant agencies or individuals.

5 Provision of Information, Review of Decisions and Complaints

- 5.1 Staff must ensure residents, parents and 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.
- 5.2 A resident, parents and 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.
- 5.3 Staff must ensure that the Standing Order - Provision of Information, Review of Decisions and Complaints is followed in relation to the above.
- 5.4 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.

6 Records and Reporting

- 6.1 Once established, the cultural background of the resident must be clearly documented on all official files relating to the resident.
- 6.2 Any actions taken under this Standing Order must be recorded according to the requirements set out in the Standing Order- Records and Reporting.
- 6.3 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.

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.