

Australian Capital Territory

**Children and Young People (Places of Detention) Use of Force Standing Order 2007
(No 1)***

Disallowable instrument DI2007-9

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) Use of Force 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 – Use of Force.

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 USE OF FORCE

1 Use of Force

- 1.1 This Standing Order addresses use of force by staff at an Institution and permits the use of force only in response to an unacceptable risk of escape, good order of the Institution, immediate harm to the resident, or other children, young people, visitors or staff within an Institution.
- 1.2 For the purposes of this Standing Order, use of force includes body contact and the use of approved instruments of restraint (restraint belt, flexicuffs, shields, helmets and handcuffs).
- 1.3 This Standing Order is written with the understanding that residents are likely to be particularly vulnerable with high levels of early trauma and adversity and high rates of mental disorder. Residents are also highly likely to have specific difficulties in interpersonal functioning, understanding and control of emotional states and impulses.

2 Approved Training

- 2.1 The Senior Manager must ensure staff receive appropriate training in use of force.
- 2.2 The use of force must only be administered in accordance with this Standing Order and approved training.
- 2.3 Only those staff members who have successfully completed the approved training (2.1) are permitted to use force on a resident.

3 Before Using Force

- 3.1 Except in an emergency situation, force may only be used as a last resort once all other interventions and strategies have been employed to manage the situation. Some strategies that should be attempted prior to a use of force are at section 3.2.
- 3.2 Alternative interventions that should be considered for use prior to using force, include:
 - (a) responding to cues indicating the potential for escalation of threatening or disruptive behaviour;
 - (b) discussing the concerns/problems/issues with the resident;
 - (c) reflective listening and feedback to demonstrate to the resident that their concerns have been heard and understood;
 - (d) attempts to de-escalate the situation by facilitating a conflict resolution process and/or meeting with the people concerned;
 - (e) involving other staff members;
 - (f) involving a health professional or other suitable person;
 - (g) being clear with instructions while remaining calm and respectful; and/or
 - (h) the use of the resident's cabin or an alternative space or room.
- 3.3 Where time and circumstances permit, staff must make every effort to ensure that other residents do not observe force being used.

4 When Using Force

- 4.1 Force must be considered an option of last resort.
- 4.2 On every occasion the amount of force used must be the minimum force necessary to restrain or to move a resident in order to maintain safety, management and good order (including security) of an Institution.

- 4.3 The application of force must cease immediately after the need to restrain or involuntarily move a resident has passed. When using force, staff must not increase the amount of force applied once they have a resident under control.
- 4.4 Staff may use force in the following circumstances in order to maintain the safety, management and good order (including security) of an Institution:
- (a) to prevent escape from custody;
 - (b) as a process of self defence if attacked or under imminent threat of attack and there is no other way of protecting oneself from harm;
 - (c) to protect another person including a resident, a staff member or any other person visiting an Institution from attack or harm and where no other means are available for their protection;
 - (d) to prevent a resident from harming him or herself;
 - (e) to move a resident to the safe room;
 - (f) to prevent or quell a riot or persistent serious disruption to the good order of an Institution;
 - (g) where a resident refuses to comply with a lawful direction and all other reasonable steps have been taken to persuade the resident to comply; or
 - (h) to undertake a personal or area search in order to seize any dangerous or harmful article or substance that is reasonably suspected to be in the possession of a resident.
- 4.5 Unless circumstances described at 4.6 apply, staff must warn a resident of their intention to use force prior to the application of the force. Wherever possible this should be articulated using language the resident can easily understand.
- 4.6 In circumstances where staff believe on a reasonable grounds that, the giving of a warning to a resident, about an intention to use force, would result in injury to a person, or in an escape, staff are not required to give warning before using force.
- 4.7 A resident should be given further opportunity to comply with staff instructions, in full knowledge that force may be applied if refusal continues.
- 4.8 Any use of force not explicitly provided for in this Standing Order will be investigated. This may include investigation by the Police and charges may be laid. Disciplinary procedures under the *Public Sector Management Act 1994* may also be commenced.
- 4.9 When deciding whether to use instruments of restraint on a resident, staff must first consider whether under the circumstances, the use of handcuffs or other instruments of restraint is an appropriate use of force. Instruments of restraint must only be used with approval from a Manager, and if time permits, the Senior Manager.
- 5 Restrictions on Use of Force**
- 5.1. Staff must not exert physical force in the form of a pressure point hold.
- 5.2 Further, staff must not use force that deliberately causes harm, pain or injury, or is degrading or humiliating or as a form of punishment.
- 6 Health Assessment and Treatment**
- 6.1 If force has been used against a resident, the resident must be offered and /or given access to appropriate health assessment and treatment as soon as possible following the use of force and consistent with Standing Order - Health and Wellbeing.
- 7 Debriefing of Staff and Access to Support and Counselling For Residents**
- 7.1 Staff and residents involved in a use of force incident should be offered debriefing and support as soon as possible after the incident has occurred.

8 Surveillance

- 8.1 If the situation permits, audio or video surveillance of an incident where force has been used should be kept for future reference/evidence. These records are to be stored by the Manager in a manner that will protect them from inappropriate or illegal access, destruction, damage, disclosure, theft or loss and disposed of in accordance with the *Territory Records Act 2002* under the approved records disposal schedule set out in the Departmental Records Management Program.

9 Records and Reporting

- 9.1 Any actions taken under this Standing Order must be recorded as a Category One Incident Report 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.
- 10.5 Police complaint. The young person could seek this avenue immediately upon the incident having occurred. Police would determine if they have reasonable evidence upon which to investigate and proceed to a possible charge.

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.