

# CHILDREN AND YOUNG PEOPLE (PLACES OF DETENTION) RECORDS AND REPORTING STANDING ORDER 2007 (No 1)

## Disallowable Instrument DI 2007-2

made under the

*Children and Young People Act 1999*, Chapter 14, Standards and Standing Orders –  
Section 403 (Standing Order-Making Power).

---

### EXPLANATORY STATEMENT STANDING ORDER – RECORDS AND REPORTING

#### 1. INTRODUCTION

The Children and Young People Places of Detention Standing Orders comprise 13 individual Standing Orders, 11 of which are notified as part of this suite of Disallowable Instruments. The Searches and Behaviour Management Strategies Standing Orders, notified in DI2005-167, are yet to be revised and remain in force, subject to DI2007-1.

The Standing Orders set out minimum standards to be met by all staff when carrying out their duties in an Institution. They provide a specific set of directions to enable all staff to implement the provisions of the *Children and Young People Act 1999* (the Act), *Human Rights Act 2004* (the HR Act) and the *Public Sector Management Act 1994*. All staff must apply these Standing Orders when carrying out their duties within an Institution. Some Standing Orders also specify requirements of other people in their dealings with a resident or an Institution.

#### 2. CHANGES IN STANDING ORDERS

##### New Standing Orders

The new Standing Orders are:

- Standing Order – Provision of Information, Review of Decisions and Complaints
- Standing Order – Records and Reporting
- Standing Order – Aboriginal and Torres Strait Islander Residents
- Standing Order – Admission and Classification
- Standing Order – Health and Wellbeing
- Standing Order – Visits, Phone Calls and Correspondence
- Standing Order – Safety and Security
- Standing Order – Use of a Safe Room
- Standing Order – Use of Force
- Standing Order – Police Interviews
- Standing Order – Death in Custody.

### 3. NEED FOR NEW STANDING ORDERS

In 2005, the *Children and Young People Act 1999* (the Act) was amended to provide that the Minister may make Standing Orders relating to a place of detention, by way of a Disallowable Instrument (s 403). Quamby Youth Detention Centre (Quamby) is a place of detention and is the main location at, or in relation to which, these Standing Orders relate.

27 Standing Orders were made under this provision in 2005.

The need for new Standing Orders has arisen out of statutory compliance work being undertaken by the Office for Children, Youth and Family Support in the Department of Disability, Housing and Community Services, and as part of a range of improvements to service delivery in youth justice, that include alignment of practice with human rights requirements.

In early April 2005, the Human Rights Commissioner agreed to audit Quamby and its compliance with the *Human Rights Act 2004*. The new Standing Orders address the recommendations made by the Human Rights Commissioner in her 2005 audit.

### 4. CONTEXT AND DESCRIPTION OF KEY TERMS

The term "Institution" is used throughout the Standing Orders. For the purpose of the Standing Orders, an Institution is a place that has been declared an Institution under the Act; and a place that has been declared a shelter under the Act, if the place has also been declared as an institution under the Act. The use of this term with this definition allows the Standing Orders to apply to Quamby and any other place that meets the criteria of the definition. This means that, for example, if Quamby is evacuated in an emergency, and residents moved to another place that meets the definition of Institution, the Standing Orders will continue to apply. The definition also provides that the Standing Orders do not apply at a place that is declared a shelter under the Act, but not also an Institution.

Quamby is the only permanent place in the ACT that meets the above definition for Institution. Quamby accommodates male and female children and young people aged 10 or older who have been refused bail, have been remanded to a shelter or sentenced to an institution by ACT Courts. A young person aged above 18 may remain at Quamby to complete a sentence imposed on the young person as a juvenile.

The term 'resident' has been used in the Standing Orders to refer to children and young people detained in an Institution to avoid any confusion about which children and young people are referred to.

Staff of an Institution must provide services to maximise rehabilitation of residents and their reintegration into the community upon release. Staff of an Institution must ensure residents are detained in a safe and secure environment, with living conditions that meet the minimum requirements specified through the Standing Orders. These include a requirement to consider the specific individual characteristics, strengths and needs of each resident, including their vulnerability as a child or young person, perceived maturity, sex, abilities, and cultural identity.

The 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 significant early trauma and/or adversity. Children and young people who come into contact with the

justice system may have specific difficulties in inter-personal functioning, understanding and impulse control issues. The Standing Orders seek to reduce any further psychological harm while a child or young person is resident in an Institution; they therefore stress the rehabilitative and therapeutic role of all staff working in the Institution.

The Institution also provides residents with a range of programs and services including educational, vocational and health services that are not specified in or governed by the Standing Orders. This is reflected in individualised care plans, which are developed as part of the case management process.

The Institution manages residents in such a way that acknowledges their needs and will provide the opportunity to develop in socially responsible ways. Consideration has been given to the particular needs of Aboriginal or Torres Strait Islander children and young people and to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Department is committed to supporting the needs and special considerations for Aboriginal and/or Torres Strait Islander children and young people.

## 5. ENGAGEMENT WITH HUMAN RIGHTS

Given the nature of an Institution as a place of detention for children and young people, the Standing Orders inevitably engage with a number of civil and political rights set out in Part 3 of the *Human Rights Act 2004* (HR Act).

Although all rights in the HR Act are universal and fundamental in nature, some rights are absolute for example, s.10 (Protection from Torture and Cruel, Inhuman or Degrading Treatment). This right is not subject to any limitation, and all of the Standing Orders reflect this.

The Standing Orders have been written to ensure that, where they engage with human rights, the engagement meets the requirements of section 28 of the HR Act, including satisfying the requirement that intrusions on human rights are the least intrusive and are proportional to the objective they seek to achieve.

The following human rights are engaged with to some extent by all the Standing Orders.

**S.9 (Right to Life).** All Standing Orders engage this section regarding the positive duty to protect the life of someone in the care or custody of the state. For example, the safe operation of an Institution requires that the staff protect any resident from causing harm to themselves.

**S.11 (Protection of the Family and Children).** All children or young people are entitled to protection which takes into account their vulnerability because of their age. Protection of a child or young person with high and complex needs in a detention setting may require the balancing of considerations when making decisions, particularly regarding protection from harmful influences and risk situations. When it is determined that action needs to be taken to protect a child or young person, staff must ensure that they comply with the directions outlined in the Standing Order.

**S.12 (Privacy and Reputation).** All Standing Orders engage this section because of the nature of an Institution. There may be a duty of care requirement or a safety and security requirement to engage with this principle; for example, high level monitoring by way of visual

observations and video and audio surveillance. The circumstances that give rise to this are when a resident is, or is at imminent risk of being, extremely agitated, such that the resident's behaviour is causing or is likely to cause physical harm. In these incidents, constant observations/ monitoring are appropriate to ensure the resident's wellbeing. It is noted that staff members must be respectful of the dignity of the resident.

**S.13 (Freedom of Movement).** All Standing Orders engage this section because of the nature of an Institution. Freedom of movement within an Institution is dictated by the nature of a closed environment. Safety and security of both individuals and an Institution are paramount considerations. Prevention of escape and the maintenance of the good order of an Institution are also key requirements. However, the Standing Orders require staff always to use the least intrusive methods to achieve these objectives.

**S.15 (Freedom of Association).** Given the nature of an Institution, there will be times when freedom of association of individuals within an Institution and with visitors to an Institution may require balancing with the requirements to ensure safety and security and provide therapeutic interventions to residents.

**S.16 (Freedom of Expression).** All Standing Orders reinforce that all residents, family, visitors, those with parental responsibility and staff have the right to seek and receive information. As part of the rehabilitation and therapeutic process, there is a positive duty to encourage full participation by all members of these groups in decisions that affect them.

**S.19 (Humane Treatment when Deprived of Liberty).** All Standing Orders engage this section. Limitations will be based on the need to balance considerations when decisions are being made rather than paramountcy for particular principles. For example, given the small population of young people in an Institution in the ACT, considerations of separating convicted from non-convicted residents will be balanced with considerations taking account of the residents' needs and special requirements according to their age, personality, sex, type of offence, mental and physical health and the safety and security aspects.

**S.20 (Children in the Criminal Process).** All Standing Orders engage this section as all children and young people at an Institution are involved in a criminal process. The Standing Orders reflect that there is a positive duty to treat children and young people appropriately and as normally as possible within an Institution.

Engagement with other specific human rights, or particularly strong engagement with the above-mentioned human rights (that are engaged to some extent by all Standing Orders) by this Standing Order is discussed in Section 6 below.

## **6. STANDING ORDER - RECORDS AND REPORTING**

The objective of this Standing Order is to establish a consistent operational framework for the maintenance of records and reporting within an Institution. It refers to the Records Management Program which is the approved records management program for the Department, as is required under the *Territory Records Act 2002*.

## Summary of Sections

### *Section 1. Records*

This section requires that records relating to the safety, security and management of residents in an Institution must be stored in a manner that is consistent with the Department's Records Management Program. Staff are required to ensure that records are protected from inappropriate disclosure and that access is only granted where informed consent is provided and/or is allowed by provision of legislation.

### *Section 2. Creation of Monitoring Records*

This section explains that all residents and people entering an Institution may be subject to video or audio surveillance. The requirements detailed in the section provide when and under what conditions monitoring can take place, and include the protection of physical safety and mental health of a person, the security of an Institution, requirement of another Standing Order and at the request of a person to be monitored.

All residents will be provided with a privacy statement regarding the collection of personal information or the ability to obtain such information via the *Freedom of Information Act 1989* or through the *Health Records (Privacy and Access) Act 1997*.

Monitoring of residents can only take place in accordance with this Standing Order and the Manager must make all reasonable efforts to ensure that staff of the same sex as the resident will undertake monitoring of residents. Monitoring records are to be stored in accordance with the Department's Records Management Program.

The safety and security of an Institution and the health and wellbeing of residents, staff and visitors are a paramount concern.

### *Section 3. Use of Monitoring Records*

This section describes the purposes for which monitoring records may be downloaded and used. These are divided into reviewing incidents involving staff, residents and/or visitors so that they can be understood and an appropriate response made, to inform training and debriefing and to provide to police as evidence of a crime. On completion of review or other use of record under this section, access must be authorised by the Senior Manager, unless required by law.

### *Section 4. Reportable Incidents*

This section gives overall instruction on what is required for Category 1 and Category 2 reportable incidents. The Standing Order requires that a resident's view of the incident and a medical opinion should be obtained, where relevant, as a part of the record of decisions and actions taken. Staff will attempt to record and obtain information as promptly as possible taking into account that a resident may be injured or demonstrating highly escalated behaviours. In such circumstances, it may not be reasonable to expect that a resident's opinion will be incorporated.

### *Schedule 1*

As provided in s.4.2 of the Standing Order, Schedule 1 provides that all incidents that are considered reportable incidents are either Category 1 or Category 2 incidents. Category 1 incidents are the more serious, requiring notification as soon as practicable to the Director of Client and Adolescent Services. Category 2 is of a less serious nature and requires notification to the Director at the completion of a report on the incident.

These categories have been devised taking into account the nature of a closed Institution with residents who often have trauma backgrounds and mental health issues. One of the aims of an Institution is to not add to psychological damage and to provide an environment that is conducive to positive growth and development.

#### **Engagement with the *Human Rights Act 2004***

The capture of surveillance records is also addressed, providing safeguards for any inappropriate use of monitoring devices. In doing so, the Standing Order protects the right not to have privacy interfered with unlawfully or arbitrarily (19(1) of the *Human Rights Act 2004*). Section 3 also supports this in providing that all reasonable attempts be made to ensure that monitoring of residents is performed by staff of the same sex.

The rights mentioned above are subject to some restrictions that are unavoidable or necessary in a closed secure care environment. The limitations are reasonable and proportionate as they support the maintenance of safety and wellbeing of residents, staff and visitors and the maintenance of the good order of an Institution, and are performed in a respectful and appropriate way.

Section 4 of the Standing Order aims to ensure appropriate application of s.16 of the HR Act (Freedom of Expression and Opinion). This section requires that staff completing reports in relation to an incident under this Standing Order seek and reflect the views and opinions of residents and medical practitioners as appropriate, supporting the right of resident to voice their version of events. Section 5 also assists in the protection of this right by providing a mechanism by which residents, or family members, may ask for a review of a decision or make a formal complaint in relation to the reporting of an incident or subsequent action.