

CHILDREN AND YOUNG PEOPLE (PLACES OF DETENTION) SAFETY AND SECURITY STANDING ORDER 2007 (No 1)

Disallowable Instrument DI 2007-7

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 – SAFETY AND SECURITY

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 – SAFETY AND SECURITY

This Standing Order outlines requirements for staff to provide for the safety and security of the Institution and its residents, staff and visitors. Staff are reminded that Operational staff as well Programs staff play an important role in the rehabilitative process, and that staff are required to conduct interactions with residents that promote and encourage positive personal development of residents.

In Standing Order – Safety and Security there are sections that potentially engage with provisions of the *Human Rights Act 2004*. Human rights engagement is, where relevant, discussed under each section.

Summary of Sections

Section 1. Chain of Authority

This section provides an overview of the staffing structure and responsibilities of the institution, including responsibilities within the two key areas, Operations and Programs. The Operations element is required to ensure the continued safety, security and good order of the Institution and continued secure care, health and wellbeing of its residents. The Program element is required to undertake the coordination of appropriate services, including therapeutic, rehabilitative, case management, education and health services for residents.

Both areas are responsible for the provision of advice to the Senior Manager on the issues for which they are responsible.

Section 2. Resident Safety

This section directs staff to comply with all appropriate Standing Orders in all situations. For example, Standing Order - Use of Force must be applied if necessary in the event of an attempted escape.

Section 3. Safety, Security and Good Order of an Institution

The purpose of the section is to provide clear instruction on matters relating to issues of security and safety in an Institution. The direction provided is to be considered along with any other relevant Standing Orders. The areas covered in this section include the following subsections:

- maintenance of the perimeter and building security,
- authorisation of access to the Institution by potential residents, staff, visitors and vehicles (and includes items brought in by staff prior to the commencement of shift),
- access by staff to the Control Room and use of surveillance equipment,
- prohibited or restricted items, equipment, tools (service providers', contractors' and visitors'), correspondence or supplies in the Institution,
- maintenance/repair of all items or structures in an Institution including vehicles,
- access and use of keys and passes prior to and at the commencement of a shift, and
- guidelines for conducting an escort of a resident.

These subsections provide staff direction for the restriction of entry into an Institution of any items that may cause a risk to the security, safety and good order of the Institution or the health or wellbeing of a resident, staff or visitor. It covers the requirements for continued maintenance of all equipment that is essential to maintain the safe and secure care of residents.

Section 4. Breaches Of Safety And Security

The provisions in this section relate to actual or attempted escapes of a resident from an Institution or when a resident absconds when on supervised or unsupervised leave from the Institution. If the use of force is necessary to prevent a resident from escaping or absconding from supervised leave, staff are required to comply with Standing Order – Use of Force.

In the event of an actual escape from the Institution or when a resident absconds while on leave from the Institution, staff must notify the Unit Manager. The Unit Manager will be required

to maintain communication with the Senior Manager and the police and will make arrangements for the notification of a parent or person with parental responsibility. The Senior Manager must notify the Director, Client Adolescent Services, and, if appropriate, the Director, Care and Protection.

Section 5. Emergency Responses

In this section staff are required to take all reasonable and necessary steps to ensure that risk of death or injury to residents, staff or visitors is minimised and that residents remain in safe custody for the duration of an emergency.

If an emergency situation warrants the evacuation, or partial evacuation, of an Institution, staff are required to evacuate residents to a temporary shelter or Institution which must be declared under s.412 *Children and Young People Act 1999*. In such an event, staff are required to make all reasonable attempts to maintain the placement classifications and separations as required in Standing Order - Admissions and Classifications. In these circumstances, there is the potential to engage with s.11 of the *Human Rights Act 2004* (the protection of the family and children), s.19 (the right to be treated humanly) and s.20 (children in the criminal process). The preservation of the life and physical wellbeing of residents, staff and visitors takes priority over other considerations.

Section 6. Training

This section requires the Senior Manager to ensure that all staff and residents of an Institution are provided with adequate access to training in emergency responses, such as fire hose access, first aid equipment and supplies, and Institution evacuation procedure. The Senior Manager will ensure that staff participate in training covering all sections of this Standing Order.

This section recognises that appropriate training must be provided to prevent or lessen the potential risk in emergency situations.

Section 7. Media

This section requires that, unless otherwise authorised by the Chief Executive, all media inquiries be directed to the Media and Communications Section in the Department of Disability, Housing and Community Services.

Section 8. Provision of Information, Review of Decisions and Complaints

This section instructs staff in relation to the provision of information, review of decisions and complaints. It stresses the responsibility of all staff to facilitate this process in a respectful manner and ensure that a complainant is kept informed and receives a timely response. This section also refers staff to Standing Order – Provision of Information, Review of Decisions and Complaints.

Section 9. Records And Reporting

This section specifies directions in relation to internal reporting requirements and the Unit Manager's responsibility to ensure that staff complete all necessary reports.