

# CHILDREN AND YOUNG PEOPLE (PLACES OF DETENTION) USE OF A SAFE ROOM STANDING ORDER 2007 (No 1)

## Disallowable Instrument DI 2007-8

made under the

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

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### EXPLANATORY STATEMENT STANDING ORDER – USE OF A SAFE ROOM

#### 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 – USE OF A SAFE ROOM**

The legislative authority for this Standing Order is under the *Children and Young People Act 1999*.

The objective of this Standing Order is to establish a framework for the use of a Safe Room that is consistent with human rights standards. The use of a Safe Room in an Institution is designed to minimise the potential damage residents can do to themselves, while also allowing for monitoring and communication from a remote location. The Standing Order also clarifies that the use of a Safe Room is different to segregation and/or isolation.

Providing humane treatment to residents is a central function of an Institution. Given that an Institution is an environment in which people are held on an involuntary basis, issues of security (preventing escapes) and good order are given a high priority in operational terms. An Institution is also entrusted to provide a rehabilitative regime that gives residents opportunities for integration back into the community. There needs to be an effective balance which ensures that considerations of security and order do not become unduly oppressive or are misused to justify inhuman behaviour or treatment towards residents.

## **Summary of Sections**

### *Section 1. Definitions*

This section provides a broad definition of a Safe Room in an Institution and specifies how the use of this Room is distinct from segregation and/or isolation.

### *Section 2. Criteria for use of a Safe Room*

This section provides the criteria to be met prior in placing a resident in a Safe Room. These criteria include the protection of the safety and wellbeing of a resident and only where there are no alternative actions that can be taken to afford equal protection. This section also refers to section 3 for alternate strategies that may be considered.

The section also specifies instances when a resident must not be placed in a Safe Room; such instances being:

- as a form of punishment, containment or isolation,
- the sole purpose of upholding the good order of an Institution,
- as part of treatment program, or
- because of a staff shortage.

### *Section 3. Processes for Instigating Placement of a Resident in a Safe Room*

Under this section, staff must seek the approval of the Manager, or the most senior operational staff member on duty if the Manager is unavailable, prior to placement in the Safe Room. This section provides alternative interventions which should be considered prior to the use of a Safe Room (eg, reflective listening and feedback and the involvement of Institution health professionals). This section aims to protect the dignity of residents being placed in the Safe Room by providing that staff attempt to ensure that other residents do not observe the intervention or the residents in a Safe Room. In instances when the use of force is required, staff are required to apply Standing Order – Use of Force.

### *Section 4. Using the Safe Room*

This section provides clear instruction on the use of a Safe Room, including:

- the requirement for the Manager to request the assistance as soon as possible of appropriate health professionals, particularly in relation to assessment and treatment of the resident,
- that the door is to be locked once a resident is placed in a Safe Room,
- determination of the level of supervision required once a resident is placed in a Safe Room,
- the use of video surveillance and recording,
- follow-up responses if a resident is injured while in a Safe Room,
- that the period of time a resident is placed in a Safe Room should be the minimum possible, and the importance of the Manager considering the recommendations of a health professional in making decisions on this issue,

- guidelines for releasing residents from a Safe Room once they show signs of de-escalation; and
- a requirement for reviews of the ongoing use of a Safe Room by the Manager if a resident is placed in a Safe Room for more than an hour. These reviews must happen at a maximum time interval of hourly, and the Manager must seek advice from any person who the Manager thinks may be of assistance in undertaking this review, including a relevant health professional.

#### *Section 5. Procedures after a resident leaves the Safe Room*

This section covers follow-up procedures once residents leave a Safe Room, including whether or not the residents have any particular needs, the necessity for further assessment and treatment, whether or not residents should return to their daily program, downloading the video recording of residents while in a Safe Room, and records and reporting requirements.

#### *Section 6. Reporting*

This section contains directions in relation to internal reporting requirements, the Unit Manager's responsibility to ensure that staff complete all necessary reports, and the requirement for the Manager to notify the Director of Client and Adolescent Services, the Office of the Public Advocate (OPA) and the parent/s or Chief Executive, Care and Protection Services, (if applicable) when a resident is placed in a Safe Room.

#### *Section 7. 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 residents, their parents and all those with parental responsibility, family and visitors are kept informed and receive a timely response. This section also refers staff to Standing Order – Provision of Information, Review of Decisions and Complaints.

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

This Standing Order as a whole has potential to engage with a number of human rights principles. The criteria for its use however stipulate that it is only appropriate within a context of significant risk of harm and only where no other interventions are available that can afford an equal level of protection.

#### *Section 9. Right to Life*

The safe operations of an Institution require that the staff protect any residents from causing harm to themselves. This requirement of protection from harm may in circumstances require the use of the Safe Room. This is only ever done as a last resort. Failure to provide adequate protection from harm in very specific circumstances may consequently be a breach of duty of care and section under s.11(2) of the *Human Rights Act 2004* (relating to protection of a child).

Under s.11(2), every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

This Standing Order is written in recognition that children and young people in an Institution may require high-level interventions to protect their health and safety, with appropriate consideration of their age, physical, and emotional and personal development. Interventions may involve measures such as a Safe Room to provide immediate safety to ensure the young person's ongoing physical safety.

Use of a Safe Room is for the protection of a resident. The Standing Order specifies that a resident must not be placed in a Safe Room as a form of punishment, containment or isolation, for the sole purpose of upholding the good order of an Institution, as a part of a treatment program, or because of a shortage of staff. When it is determined that the use of force is required to place a resident in a Safe Room, staff must ensure that they comply with the directions outlined in Standing Order – Use of Force.

Further, residents must be released from a Safe Room when they show signs of de-escalating from their current crisis, thus providing an opportunity for the least intrusive form of intervention to be applied. The period a resident is placed in a Safe Room should be the minimum possible, based on their level of safety, and consideration must be given to the age, maturity, cultural identity and emotional or mental wellbeing of the resident.

#### *Section 12. Privacy and Reputation*

This Standing Order engages with this principle as it involves:

- high-level monitoring by way of visual observations (at a minimum of five minutes),
- video and audio surveillance,
- video recording, and
- 'down-loading' the event to be kept as a record.

The circumstances that give rise to the placement of a resident in a Safe Room are where the resident is engaging in, or at imminent risk of, extremely agitated behaviour which is including, or is likely to include, physical harm. In such circumstances, frequent or constant observation, monitoring and surveillance are appropriate and necessary to ensure the resident's wellbeing. Further, downloading of the video recording is to be undertaken by the Control Room. This monitoring ensures the safety and wellbeing of the resident as well as protection and accountability for both the resident and an Institution.

In the use of a Safe Room, staff are instructed to make every effort to ensure that other residents do not observe the placement of a resident in the Safe Room, thus attempting to ensure the privacy of the resident is maintained to the highest possible standard.

#### *Section 13. Freedom of Movement*

The locking of a Safe Room door appears to engage this principle. The Safe Room is used as a last resort only after alternative interventions have been tried and considered, the Manager has approved it, and a specific set of criteria have been met. The resident is released from a Safe Room as soon as it is considered safe to do so.

#### *Section 18. Right to Liberty and Security of a Person*

The use of the Safe Room as an intervention engages with subsection 1 and 2 of s.18 of the *Human Rights Act 2004*, which protect the right to liberty and security of a person. As detailed throughout this Explanatory Statement, use of the Safe Room is only permitted in prescribed circumstances detailed within the Standing Order, and in such circumstances that it is appropriate as the last resort to protect the resident from physical harm.

#### *Section 19. Humane Treatment when Deprived of Liberty*

The use of a Safe Room is used as a last resort in order to minimise damage residents can do to themselves. A resident may only be placed in a Safe Room if specific criteria exist (as outlined in the Standing Order). Further, if staff consider the use of a Safe Room appropriate, they must seek the approval of the Manager. The Manager must seek and consider any

recommendations made by a health professional who has been asked to assess and, if necessary, treat a resident who has been placed in a Safe Room.

Alternative interventions should also be considered prior to the use of a Safe Room; for example, reflective listening and feedback, involving other staff members (including health professionals) and the use of the resident's cabin or alternative sterile room/space for a period of "time-out". In circumstances where the use of the Safe Room is unavoidable, staff must make every effort to ensure that other residents do not observe the placement or time in the Safe Room, as this may worsen the situation or bring about undue stress post-use.