

CHILDREN AND YOUNG PEOPLE (PLACES OF DETENTION) DEATH IN CUSTODY STANDING ORDER 2007 (No 1)

Disallowable Instrument DI 2007–11

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 – DEATH IN CUSTODY

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 – DEATH IN CUSTODY

This Standing Order outlines requirements for staff following notification of the death of a resident. The Standing Order informs staff of the procedures in relation to the requirements for notifying family, next of kin and the Coroners Office. The response to a death in custody is one that will require clear communication between the Coroners Office, ACT Policing and staff of an Institution.

Summary of Sections

Section 1. Application

This section of the Standing Order requires that staff comply with Standing Order - Health and Wellbeing for the response to serious or life-threatening injury. Paramount consideration must be given by staff to the preservation of the life of the resident with security considerations in such situations being secondary. This section also notes that only a medical practitioner may declare that a person is deceased.

Section 2. Following the Death of Resident

In the event that staff are notified of the death of a resident, this section details the requirements of the first staff member so notified, the Control Room, Unit Manager and Senior Manager. Control Room and Unit Manager responsibilities include notification to the Police and Senior Manager and maintaining the security of any possible evidence.

The Senior Manager under this section must notify a number of people including, in consultation with the police, the family of the deceased person. Reasonable attempts must be made to notify the family in person and an invitation to inspect the scene of the death and the body of the deceased may be required, if authorised by the police and/or the Coroner. A notification must be provided to the Director, Client and Adolescent Services, and if appropriate the Director, Care and Protection.

The Senior Manager is required to provide a written brief to the Director, Client and Adolescent Services, and to ensure that all documents, personal effects and official files relating to the deceased resident are secured.

The responsibilities for the provision of debriefing, counselling and support for staff, residents and family are also covered by this section.

This section is intended to ensure that contact with the family of the deceased resident is respectful, sensitive and culturally appropriate, and that staff of an Institution provide all relevant assistance to the Coroner and police.

Section 3. Media

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

Section 4. Provision of Information, Review of Decisions and Complaints

This section explains that the family of the deceased resident or other residents may make a request for review of decision or make a complaint in relation to matters covered by this Standing Order. The section further requires that staff comply with Standing Order – Provision of Information, Review of Decisions and Complaints which provides detailed explanation of decision review and complaints procedure.

Section 5. Records and Reporting

This section requires that staff comply with Standing Order – Records and Reporting and also specifies directions in relation to internal reporting requirements. The most senior staff member on duty will be responsible for completion of a Death In Custody Report, in addition to Incident Reports completed by all staff involved in the incident, including staff involved in responding to an injured resident who is subsequently declared deceased. The Senior Manager is responsible for the production of the Brief to accompany the Death in Custody Report to the Director, Client and Adolescent Services.

Engagement with the *Human Rights Act 2004*

Under s.1 of the Standing Order, staff are required to ensure that appropriate responses under Standing Order – Health and Wellbeing are applied. Action taken under this section will ensure that the right to life (under s.9 of the Act) is protected as far as possible in the situation.

The application of this Standing Order requires staff interaction with the families of residents in a manner that is appropriate both because of the circumstances and also out of respect for the cultural background of the family. Interactions with families in this manner are supportive of s.11, s.14 and s. 27 of the *Human Rights Act 2004* (protection of the family and children, freedom of thought, conscience, religion and belief and rights of minorities).