

# CHILDREN AND YOUNG PEOPLE (PLACES OF DETENTION) USE OF FORCE STANDING ORDER 2007 (No 2)

## Disallowable Instrument DI 2007–264

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 FORCE

#### 1. INTRODUCTION

The Children and Young People Places of Detention Standing Orders comprise 13 individual Standing Orders, 11 of which were notified as part of a suite of Disallowable Instruments in January 2007 (DI2007-1 to DI2007-11). At that time, the Search and Behaviour Management Strategies Standing Orders, notified in DI2005-167, were yet to be revised and remained in force, subject to DI2007-1.

A new Search Standing Order has now been completed and notified (DI2007-259). This Standing Order complies with amendments to the *Children and Young People Act 1999*, made through the *Children and Young People Act Amendment Act 2007*. As a result of the new Search Standing Order, six of the Standing Orders notified in January 2007 have been revoked and replaced with new Standing Orders. The new Standing Orders, amended as a result of the Search Standing Order are:

- Admission and Classification Standing Order (No 2) (DI2007-258)
- Provision of Information, Review of Decisions and Complaints Standing Order (No 2) (DI2007-260)
- Health and Wellbeing Standing Order (No 2) (DI2007-261)
- Visits, Phone Calls and Correspondence Standing Order (No 2) (DI2007-262)
- Safety and Security Standing Order (No 2) (DI2007-263)
- Use of Force Standing Order (No 2) (DI2007-264)

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 AS A RESULT OF THIS DISALLOWABLE INSTRUMENT

The *Children and Young People (Places of Detention) Use of Force Standing Order 2007 (No 2)* revokes the *Children and Young People (Places of Detention) Use of Force Standing Order 2007 (No 1)*.

## 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 FORCE

The objective of this Standing Order is to establish a framework for the use of force including the use of instruments of restraint.

The principles underpinning the Standing Order are that:

- use of force is an option of use as last resort, when all other strategies and interventions have been exhausted,
- only the minimum use of force absolutely necessary to move or restrain a person should be employed,
- force must cease immediately after the need to restrain or move a resident has passed,
- staff must not use force that deliberately causes harm, pain, injury or is degrading or humiliating, or as a form of punishment, and
- issues of security (preventing escapes) and good order are given a high priority in operational terms.

### Summary of Sections

#### *Section 1. Use of Force*

This section stipulates that the use of force is only permitted in accordance with this Standing Order and includes the use of approved instruments of restraint, including restraint belt, flexicuffs, shields, helmets, handcuffs and body force.

This section outlines to staff the vulnerability of some residents because of their experience of previous trauma and mental health issues. It describes the presentation of some residents; for example, lack of impulse control and the need to take these issues into account in the staff's therapeutic and rehabilitative roles.

This section states that any use of force not explicitly provided for under this Standing Order will be investigated and may lead to police charges or disciplinary procedures.

#### *Section 2. Approved Training*

The only staff able to use force are those who have completed appropriate 'use of force' training. Such training will be conducted in the initial stages of employment and regularly throughout employment.

#### *Section 3. Before Using Force*

This section outlines that, except in cases of emergency, force will be used as a last resort and where all other control methods have been exhausted and have failed. The key feature of alternative de-escalation strategies is the important relationship between the residents and staff in which the staff recognise the strengths and abilities of residents and their ability to choose to be responsible and accountable for their behaviour.

#### *Section 4. Grounds for Using Force*

This section specifies the limited circumstances that could justify staff using force on a resident. This section also states that if a person providing support to a resident during a strip or body search does not comply with a staff member's request that they leave a vicinity, staff may use force on that person. This section also specifies that if staff use force in relation to a person providing support to a resident during a strip or body search, they must comply with all other aspects of this Standing Order.

#### *Section 5. Rules for Using Force*

This section emphasises that on every occasion only the minimum force should be employed for the shortest possible period of time, and specifies other requirements that must be followed when force is used. Staff must warn a person of their intention to use force and give them opportunity to comply with staff instructions, thereby removing the need to use force, prior to application of the force. Only in circumstances where giving a warning would create a risk of injury are staff allowed to dispense with the warning. The Manager must approve the use of restraints. This section also requires that, wherever possible a use of force on a resident in relation to a search, must be undertaken by staff of the same sex as the resident.

#### *Section 6. Restrictions on Use of Force*

This section explicitly describes the practices that staff must avoid in the use of force. Staff must not exert physical force in the form of a pressure point hold and must not use force that deliberately causes harm, pain or injury to a resident. Use of force must not be used as a form of punishment.

#### *Section 7. Health Assessment and Treatment*

This section emphasises that, if force has been used against residents, they must be offered/given access to appropriate health assessment and treatment as soon as possible after the use of force. As with all the Standing Orders, health has a broad definition and therefore includes psychological and mental health assessment and treatment. Standing Order – Health and Wellbeing must be applied.

#### *Section 8. Debriefing of Staff and Access to Support and Counselling for Residents*

This section recognises the complexity of tasks required by staff. It is designed to reduce and prevent unwanted psychological sequelae to traumatic events by promoting emotional processing through the ventilation and normalisation of reactions and preparation for possible future experiences.

#### *Section 9. Surveillance*

This section directs staff to use audio or video surveillance of an incident involving the use of force if the situation permits and describes the storage and disposal of any tapes.

#### *Section 10. Records and Reporting*

All reports should be placed on a confidential individual file, which is updated regularly and accessible only to authorised persons. The requirements are set out in Standing Order – Records and Reporting, and are compliant with the requirements of the DHCS Records Management Plan (*Territory Records Act 2002*).

All reports of use of force must also be placed on the Use of Force Register maintained at the Institution.

*Section 11. 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 to ensure that they are kept informed and receive a timely response. This section also refers staff to Standing Order – Provision of Information, Review of Decisions and Complaints. Staff are informed by this section that a resident may seek to make a complaint to the Police, against any actions taken under this Standing Order. Police investigation will determine the need to proceed to a possible charge.

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

The use of force engages several rights under the *Human Rights Act 2004*: eg, the right to humane treatment when deprived of liberty (s.19) and the right to life (s.9) which provides the highest threshold for the protection of the physical and mental integrity of the person. It confers a negative obligation on state agents to refrain from arbitrary violence and a positive duty to safeguard life in detention. The right to humane treatment protects the resident from humiliation as well as physical abuse. S.12 (Right to Privacy and Reputation) protects the use of information concerning a person's reputation from which their identity is apparent or can be ascertained.

The use of force engages with the Right to Freedom of Movement (s.13). The use of force must be considered as that which is necessary and proportionate to maintain security and safety within an Institution. This Standing Order contains clear directions as to which staff can use force, how and in what conditions. It specifies the scope and limitations of the use of force. It stresses that staff should always use the least intrusive methods, and provides for mediating any effects through health assessment and treatment.

The reasons the Standing Order engages human rights relate to the necessity of maintaining the security (preventing escapes) and good order of an Institution. In order to achieve an Institution's aims of rehabilitation and reintegration, and to provide a safe, secure, calm and healthy environment, it is justifiable to restrict these rights in accordance with s 28 of the *Human Rights Act 2004*.