

CHILDREN AND YOUNG PEOPLE (PLACES OF DETENTION) SEARCH STANDING ORDER  
2007 (No 1)  
Disallowable Instrument DI 2007-259  
**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 – SEARCH*

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.

This new Search Standing Order has now been completed. 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 As a result of this new Search Standing Order, six of the Standing Orders notified in January 2007 have been revoked and replaced with new Standing Orders.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, which include amendments arising from this Standing Order are:

- o Admission and Classification Standing Order (No 2) (DI2007-258)
- o Provision of Information, Review of Decisions and Complaints Standing Order (No 2) (DI2007-260)
- o Health and Wellbeing Standing Order (No 2) (DI2007-261)
- o Visits, Phone Calls and Correspondence Standing Order (No 2) (DI2007-262)
- o Safety and Security Standing Order (No 2) (DI2007-263)
- o 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) Search Standing Order 2007 (No 1)* revokes the *Children and Young People (Places of Detention) Search Standing Order 2005 (No 1) DI2005-167*.

## 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, which 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, this Standing Order inevitably engages 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 this Standing Order reflects this.

This Standing Order has been written to ensure that, where it engages 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 the Search Standing Order.

**S.9 (Right to Life).** This Standing Order engages this section regarding the positive duty to protect the life of someone in the care or custody of the state. For example, public authorities have a positive duty to protect the life of a person in care or custody of the Territory. This search and seizure scheme, involving the use of force in some circumstances, will protect against the unlawful admittance of contraband which could threaten the safety of children and young people detained at the youth detention centre.

**S.10 (Inhuman or Degrading Treatment)** Strip searches and searches of body cavities are inherently degrading. The Search Standing Order ensures that searches of residents are proportionate to the necessary aim of the searches. The obligations on staff outlines in the

Standing Order ensure that residents who are searched are treated humanely and with respect for their inherent dignity.

**S.11 (1) (Protection of the 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).** This Standing Order engages 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, searching of a resident or their cabin. The circumstances that give rise to this are searching for the purpose of discovering and removing any item that could harm the resident themselves or others, or involve the committing of an offence or threaten the safety, security or good order of an Institution. 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. The Search Register is part of the open and accountable practice at an Institution and includes residents and parents being able to access the information about 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 paramount for particular principles.

**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.

## **6. STANDING ORDER - SEARCH**

Searches of children and young people who are remanded or committed to an Institution, involving the use of force in certain circumstances, are necessary to prevent the entry of

unauthorised items that may harm any person within an Institution, including the detained child or young person.

The Search Standing Order sets out the obligations on staff conducting or assisting with a search to ensure that searches are proportionate to the aim of the searches.

The objective of this Standing Order is to establish a consistent operational framework for the searching of a resident, mail, premises, property and vehicles within an Institution (as defined within the Glossary for the Standing Orders). Staff must consider when applying the Standing Order that children and young people admitted to an Institution may already be particularly vulnerable. With this consideration in mind, staff must recognise that searching of a resident or their premises must only be undertaken when required.

The search provisions have been rewritten to comply with new legislative requirements and to ensure that searches of children and young people detained at an Institution are done in a way that is compatible with the *Human Rights Act 2004*.

Searches are never to be carried out for punitive purposes. The level of search is to be the least intrusive and most appropriate in the individual circumstances. Searches must be conducted in a professional manner that minimises embarrassment or indignity to the child or young person being searched.

### ***Summary of Sections***

#### *Section 1. Definitions*

This section defines the different types of searches that may be carried out within an Institution and provides definitions for a range of other terms used in this Standing Order. For this Standing Order, frisk, scanning and ordinary searches are less intrusive searches than strip searches or body searches.

*Section 2. Types of searches, decision makers, decision making criteria and search rules.* This section provides a Table that sets out a 'map' for the relationship of different sections of the Standing Order to different searches. Information provided in the Table is: the types of searches and their legislative authority, the decision maker/s for each search, decision-making criteria and rules for conducting each type of search. This will allow staff to quickly identify all the necessary information they must consider when making a decision about whether to conduct a search, and how to conduct a search.

All relevant criteria (listed in Column 4) must be considered when making a decision to conduct a search, and all relevant rules (listed in Column 5) must be followed when conducting a search.

This section also provides more information about Column 3 and criteria listed in Column 4 of the table.

#### *Section 3. General Rules for all Searches*

This section outlines the general requirements for all searches, including the use of force, seizing property and mail, preserving and record keeping of things seized, communicating with residents about searches, residents objecting to a search, mandated reporters response, what to do if a Manager is not available, and training.

A resident can object to a search and their objection must be acknowledged and recorded in the Search Register. Staff must listen to the resident's reasons and attempt to facilitate a resolution to their objection for example, another staff member of the same sex can be asked to carry out the search.

The Manager is able to authorise a search despite the objections of the resident, after considering the level of risk to the resident or others at an Institution, or the risk to the overall safety, security or good order of an Institution. All decisions must be documented in the appropriate place.

This section requires the Manager to ensure all staff carrying out searches receive appropriate training in all aspects of searching. Staff must undertake training before conducting searches.

This section focuses on the need for management and staff to be aware of the needs of the residents, to develop a relationship with residents and to encourage them to participate as fully as they are able in decision making about them. Staff are reminded to be knowledgeable about and apply other relevant Standing Orders.

#### *Section 4. General Rules for Personal Searches*

This section describes the primary obligations for all personal searches:

- o searches must be the least intrusive kind that is necessary,
- o searches must be undertaken by person of the same sex taking into account if the resident is transgender or intersex,
- o searches must be conducted in an area providing reasonable privacy,
- o the degree of visual inspection is limited to what is strictly necessary,
- o there is a requirement to provide the resident with suitable clothing, if a clothing item is taken during a search.

#### *Section 5. Specific Rules for Searches*

In this section, seven sets of specific rules and requirements are outlined. These are to be read in conjunction with the Table. It is stressed that all staff undertaking a search must apply all specific rules and requirements relevant for the kind of search being conducted, and well as all general rules.

*5A Search Register* - describes the legislative and operational requirements of the Search Register. It requires relevant staff to record the reasons for the search, including where relevant, details of the thing being searched for and the basis of the suspicion that the resident was concealing the thing. The Search Register is part of the open and accountable practice at an Institution, and provision is made in the Standing Order for a resident and their parents being able to access the information about searches of the resident.

*5B Notice to person with parental responsibility for a resident prior to a strip search and body searches* - This section reinforces the requirement for the Manager or Unit Manager to ensure that whenever possible, a person with parental responsibility for the resident is notified before the search takes place, or if they cannot be contacted as soon as possible after the search is completed.

*5C. Additional Rules for Frisk and Ordinary Searches* - these searches must not be conducted in the presence of a person not necessary for the search and must be done by a staff member the same sex as the resident unless there is an imminent and serious threat to personal safety.

*5D- Rules regarding the presence of person with parental responsibility or support person at a strip search for an initial assessment on admission or a body search* - this section stresses that admission to an Institution and circumstances in which a body search of a resident may need to be conducted are likely to be stressful for any child or young person, and that parents can have a role in assisting the child or young person to cope. Staff are required to make a decision about whether it is necessary or prudent for these searches to take place in the presence of someone with parental responsibility. Prudent, in this context, would include whether the decision-maker considers the person with parental responsibility to be acceptable to attend the search. This section outlines considerations that staff need to address when making this decision. The decision making process must also be documented.

If delaying the search will compromise the safety of the resident, staff or other persons or the safety and security or good order of an Institution, the decision-maker may decide to conduct the search without the presence of a person with parental responsibility.

If the decision-maker has decided that a person with parental responsibility should be present at a search, but a person with parental responsibility cannot be contacted or is unavailable or is unacceptable to the resident, the search must be conducted in the presence of the someone else who can support and represent the resident's interests and is acceptable to the detainee. A staff member is capable of fulfilling this function.

*5E Additional Rules for Strip Searches* - this section provides additional rules for conducting strip searches. These include:

- o except in the case of use of force, the strip search must not involve touching the resident's body, orifices or cavities, and
- o at least two staff members must be present for a strip search.

In addition, guidance is provided for responding to circumstances where although a decision has been made to conduct a strip search, it is not possible or preferable to conduct or continue a strip search.

*5F Additional Rules for Body Searches* - body searches are the most intrusive search possible. The Manager must ensure that the reasons for the search and the process is explained clearly to the resident and request the resident's cooperation. A doctor, nurse and at least one staff member are required at a body search; at least one of the medical people must be of the same sex as the resident, although staff must request that wherever possible the doctor and the nurse are the same sex as the resident.

One or more staff member/s must remain with the resident during a body search. They must position themselves in such a way to ensure the safety of all parties during the search whilst maintaining the privacy and dignity of the resident. The search may take place at an Institution, or if there is risk issues, at a hospital. A staff member can assist the doctor or nurse if their assistance is required.

If the resident requires transport and treatment, the relevant Standing Orders- Health and Wellbeing and Safety and Security need to be applied.

Any items obtained in a body search must be documented in the Exhibit Book.

*5G Additional Rules for searches of Premises (including resident's rooms), Property and Vehicles*-this section allows a search of any area or vehicle at an Institution, but not of anyone or any clothing being worn at the time of the search by anyone at an Institution. Staff are directed to show the highest regard for the dignity and privacy of the resident and their belongings when conducting a search and must return the search area to the condition in which they found it.

Directions are given for staff on how to conduct an area and cabin search. A resident should be present at the time of the search unless the resident removes any privileged material from the area being searched.

The Searching Officer is required to explain the reason for the search and request the resident hand over any prohibited items. All other Standing Orders must be followed where they interact for example Standing Order - Visits, Phone Calls and Correspondence, in regards correspondence and Standing Order - Records and Reporting, in regards to reportable incidents.

#### *Section 6-Removing People from the Search Area*

This section documents the processes available for a staff member if a person with parental responsibility or a support person prevents or hinders either a strip or body search. Use of force can be used if required. It also notes the documentation process required.

#### *Section 7 Records and Reporting*

This section requires staff to comply with Standing Order – Records and Reporting, requiring the creation of records to document the management of residents in compliance with *Territory Records Act 2002*. Staff are required to complete relevant reports prior to the completion of their shift, unless authorised by the Manager, to ensure as far as possible that an accurate record of events is completed. Emphasis is added to the need to store personal information in compliance with the requirements of the Privacy Principles of the *Privacy Act 1988* (Commonwealth) and the *Health Records (Privacy and Access) Act 1997*. Staff are further reminded that they are mandated reporters under the *Children and Young People Act*, and the requirements to notify Care and Protection Services of suspected abuse or neglect is detailed here.

#### *Section 8 Provision of Information 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 keep the resident and relevant parties informed in a respectful and timely manner. This section also refers staff to Standing Order – Provision of Information, Review of Decisions and Complaints.

#### *Section 9 Debriefing of Staff and Access to Support and Counselling for Residents*

This section outlines that staff and residents should be offered debriefing and support as soon as possible after a difficult search situation has occurred. This includes any use of force situation or when a resident is upset.