

CHILDREN AND YOUNG PEOPLE (PLACES OF DETENTION) PROVISION OF INFORMATION, REVIEW OF DECISIONS AND COMPLAINTS STANDING ORDER 2007 (No 2)

Disallowable Instrument DI 2007–260

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- PROVISION OF INFORMATION, REVIEW OF DECISIONS AND COMPLAINTS

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 As a result of the new Search Standing Order, six of the Standing Orders notified in January 2007 have been revoked and replaced with new Standing Orders. 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) Provision of Information, Review of Decisions and Complaints Standing Order 2007 (No 2)* revokes the *Children and Young People (Places of Detention) Provision of Information, Review of Decisions and Complaints 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). Absolute rights are 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 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 - PROVISION OF INFORMATION, REVIEW OF DECISIONS & COMPLAINTS

The objective of this Standing order is to establish a framework for the provision of information, review of decisions and complaints.

Principles underpinning this Standing Order are that:

- providing information to children and young people and their families is an important component of the rehabilitation process;
- resident and family views are important;
- resident and family involvement in decision-making is encouraged and supported; and that
- reviews of decisions and complaints will be handled in a fair, confidential and responsive manner.

Summary of Sections

General Principles

This section outlines the principles under which the Institution operates regarding the provision of information, review of decisions and complaints.

Section 1. Terms for the Purpose of this Standing Order

This section describes the processes required to ensure information is provided to residents and their families and defines the terms 'review of decisions' and 'complaints' for the purposes of the Standing Order. The section instructs staff about their responsibility to communicate with residents and their families in such a way that they understand and can be engaged. .

Section 2. Legal Requirements

This section describes the general principles staff must follow when making a decision or taking action in relation to a child or young person. These are prescribed by the *Children and Young People Act 1999*. The child or young person or anyone else involved in decision-making at an Institution should be given sufficient information in a way that they can understand so that they can be fully engaged in the process. The section stresses that the views of the child or young person must be sought and considered in any decision-making process and that anyone else involved in decision-making should be given the opportunity to give his/her views about the wellbeing of the child or young person involved.

Section 3. Overview of the Complaints Process

This section details the complaints process for the Department of Disability, Housing and Community Services and describes the hierarchy of the complaints-handling system and who will deal with the different levels of complaints. It outlines the four levels of complaints. It is envisaged most complaints dealt with at an Institution will be at Level 1.

Section 4. If a Resident, Family or Visitors (non staff member) Seek a Review of a Decision

This section deals with the process when a review of a decision is sought by a resident, family or visitor to an Institution. This section outlines that requests for reviews of decisions may be to staff within an Institution or to the Public Advocate or the Official Visitor.

The section outlines processes for documenting and handling requests for a review of a decision conducted by staff at an Institution and requires that the resident, family or visitor be treated with respect and sensitivity and that reviews are fair and consistent with legislation, policy and procedures.

If a request for a review of a decision is made to the Public Advocate or Official Visitor, staff are directed to provide any assistance required through providing the phone number and/or complaint forms.

Section 5. If a Resident, Family or Visitors (other than Staff) Make a Complaint Level 1

This section describes procedures for processing Level 1 complaints. These include:

Level 1 complaints that cannot be resolved by the staff member initially receiving the complaint must be documented and forwarded to the Program and Services Manager.

The Program and Services Manager will note the complaint and it will be numbered and tracked. If the Program and Services Manager considers a complaint is better handled by the Operations Manager, the Program and Services Manager must refer the complaint to that Manager.

The manager handling a complaint must review the matter about which the complaint is made, make recommendations, seek the agreement of the Senior Manager of the review process and outcome, and provide feedback to the complainant.

This section stresses the importance of keeping the complainant informed of the progress of the complaint and the outcome. The objective of this section is to ensure that the complainant is assisted through the process and that the process is fair and consistent with legislation, policy and procedures.

This section also provides that if the resident, family or visitor making a complaint is not satisfied, they will be referred to the Director for a review as a Level 2 complaint.

Section 6. Records and Reporting

This section requires that all reports 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*).