

CHILDREN AND YOUNG PEOPLE (PLACES OF DETENTION) ADMISSION AND CLASSIFICATION STANDING ORDER 2007 (No 2)

Disallowable instrument DI 2007–258

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 – ADMISSION AND CLASSIFICATION

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 As a result of the new Search Standing Order, six of the Standing Orders notified in January 2007 have been revoked and replaced with new Standing Orders.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) Admission and Classification Standing Order 2007 (No 2)* revokes the *Children and Young People (Places of Detention) Admission and Classification 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 - ADMISSION AND CLASSIFICATION

The objective of this Standing Order is to establish a consistent operational framework for the admission and classification of residents within an Institution or Shelter (as defined within the

Glossary for these Standing Orders). Staff must consider when applying the Standing Order that children and young people admitted to an Institution may already be considered particularly vulnerable, with high levels of early trauma and adversity. Such situations may also lead to the development of specific difficulties in inter-personal functioning, understanding and control of emotional states and impulses. With these considerations in mind, staff must recognise that reception and induction at an Institution is a key transition period, and one in which the building of a positive and supportive relationship between staff and a resident is particularly important.

Summary of Sections

Section 1. Before Admitting a Child or Young Person

This section requires staff to undertake a basic assessment of the health and wellbeing of a child or young person arriving at the Institution prior to their being accepted into custody, and directs referral to an appropriate health service if the child or young person requires intervention by a health professional. It further requires that staff satisfy themselves that there is proper legal authority for the child or young person to be held at the Institution.

Section 2. Admission and Induction

2.1. Initial procedures

This section outlines the initial reception procedures for newly received residents and includes the welcoming of a resident, provision of information relating to rights and obligations, and obtaining relevant information from the resident, managing resident property and searching.

The section indicates that staff are required to apply the procedures of this section in a manner that is flexible and takes into account the following factors:

- the number of residents who need to be inducted,
- the presentation (including assessed level of anxiety or distress or risks) of the resident,
- any information already known to staff about the resident (for example, if the resident has previously been in the Institution, information about their background and general behaviour),
- the age and assessed maturity of the resident; and
- the overall operational needs of the Institution.

It also provides some guidance in relation to a search of a newly received resident, in particular, where a parent or person with parental responsibility or support person is required to be present for a search. However, this section makes clear that searches of newly received residents must be conducted in accordance with the Standing Order - Search.

Section 2.2. Welcoming the resident and ensuring that any pressing issues are identified and, if appropriate, addressed, while maintaining security and safety

This section requires staff, on completion of initial procedures, to move residents to a secure area within the Institution and seek to obtain information regarding any pressing issues or concerns that they may have. Staff must inform residents of the role played by Case Management and that they will have an opportunity to access a number of support services, coordinated through the Case Management area.

Section 2.3. Induction: providing to the resident initial information about the Institution (including the resident's rights and obligations) and the resident's legal circumstances

This section deals with the collection and provision of information when a child or young person is detained at an Institution. It provides information to staff on their responsibilities in relation to residents' privacy and confidentiality. The section details procedures for supporting residents

with limited literacy, or who are from a non-English speaking background. Staff are also required to obtain the informed consent of the resident for the appropriate sharing of information, and apply Standing Order – Provision of Information, Review of Decisions and Complaints as appropriate.

Subsections 2.4. Obtaining information about the resident

This section provides that staff are required to maintain an accurate record of the induction process, and are provided with a number of key issues in relation to which they are required to seek information.

Section 2.5. Aboriginal and/or Torres Strait Islander Residents

This section provides staff with specific instructions in relation to the admission of Aboriginal or Torres Strait Islander residents. Staff must ensure that all residents are provided with opportunities to gain access to relevant services and support networks that may exist within their communities. If residents have identified themselves as being Aboriginal or Torres Strait Islander people, staff are to seek their consent and actively seek to work in partnership with the Aboriginal and Torres Strait Islander community in the delivery of services and supports to the residents.

Section 2.6. Ensuring the resident hands over personal property, showers and changes into Institutional clothing

This section requires the correct recording and storage of all personal items brought to the Institution by the resident. It also requires that any item or material which cannot be legally returned to residents when they are discharged from the Institution (eg, alcohol, or cigarettes when the child or young person is under the age of 16) or which, because of its nature, cannot be stored at the Institution, is returned to a parent or person with parental responsibility as soon as possible. Items that are considered linked to a possible criminal offence will be given to the police if directed by the Manager. Direction is also provided for when residents are found to have medication in their possession.

Section 3. Information Provided to Parents or Persons with Parental Responsibility at Reception

This section requires staff to notify the parent or person with parental responsibility for the resident and advise them of the location of the young person and that the young person is safe. Staff will provide information regarding the visiting times of the Institution, the details of the next court appearance and answer any question that they are capable of answering. Staff must notify Care and Protection Services if the resident is in the care of the Chief Executive, and further ensure that information is communicated to a parent or person with parental responsibility in language that is easily understood by the parent or person.

Section 4. Involvement of Parents and/or People with Parental Responsibility and Aboriginal and Torres Strait Islander Services Unit in Case Management

This section requires staff to seek the involvement of parent(s) or people with parental responsibility in case and transition planning. Where a resident is in the care of the Chief Executive, this will include the involvement of Care and Protection Services. With the consent of the resident, staff may seek the involvement of the relevant community members to assist in this process. For residents who are also involved with Care and Protection or Community Youth Justice, the Case Management Unit may seek to involve the Aboriginal and Torres Strait Islander Services Unit, emphasising the need to maintain one case plan for each resident.

Section 5. Observation, Placement, Classification and Special Management Requirements

This section deals with the classification, placement, observation and special management directions of residents within the institution. Placement considerations are guided by a Resident Observation, Placement and Special Management Assessments (ROPSMA), which is detailed in this section, and conducted by the Classification Review Committee (CRC). The role of the CRC is explained within this section, which includes the requirement to meet once per month to review the classification of residents.

The Senior Manager may, under this section, make decisions to alter resident observation and placement arrangements without the CRC, although such a change must be formally recorded.

The Section requires that the Senior Manager must inform the Director, Client and Adolescent Services, of all decisions made under the section in relation to the placement, observation and special needs arrangements of a resident. The section also defines the levels of observation and risk, in relation to both observation and placement decisions, and guidance on the use of segregation. Decisions to segregate must be based on safety and security reasons, or legal requirements; eg, separation of co-offenders and victims and perpetrators. In making a decision to segregate residents, staff must take into account the consideration outlined in the section. This section stresses that, when a decision is made to segregate residents, the best interests of all residents will be the primary consideration and that it must be done in the least intrusive manner for the shortest possible time. This is to avoid any implications for a resident's psychological health and wellbeing.

Section 6. Aboriginal and Torres Strait Islander Residents

In addition to the requirements of section 5, this section provides for consideration by the Senior Manager of any known relationship between Aboriginal or Torres Strait Islander residents (ie, relative or person of significance) in the decision-making process.

Section 7 – Female Residents

In determining the placement of a resident in accordance with section 5, this section emphasises the need to give due consideration to the desirability of separate sleeping quarters for female and male residents.

Section 8 – 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* (Cwlth) 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 9. 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 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.

Engagement with the *Human Rights Act 2004*

Placement decisions made under this Standing Order must take into account the individual needs of each resident where this might be in conflict with other human rights principles relating to separation of young people. In this manner the Standing Order is consistent with rule 28 of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, which states:

'The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.'

Given that the number of residents at any time is likely to be small, placement decisions will in most cases need to balance a range of considerations (eg. small population of young people in the Institution and the need to support a balancing of considerations, and avoidance of isolation) when making placement decisions, rather than particular principles being paramount.