

CHILDREN AND YOUNG PEOPLE (PLACES OF DETENTION) VISITS, PHONE CALLS AND CORRESPONDENCE STANDING ORDER 2007 (No 2)

Disallowable Instrument DI 2007–262

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 – VISITS, PHONE CALLS AND CORRESPONDENCE

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 As a result of the new Search Standing Order, six of the Standing Orders notified in January 2007 have been revoked and replaced with new Standing Orders.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) Visits, Phone Calls and Correspondence Standing Order 2007 (No 2)* revokes the *Children and Young People (Places of Detention) Visits, Phone Calls and Correspondence 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 - VISITS, TELEPHONE CALLS AND CORRESPONDENCE

The objective of this Standing Order is to provide staff, residents and visitors (both personal and professional) with a clear guide to maintain appropriate access to visits, phone calls and correspondence. It stresses the importance of the maintenance of relationships with family members, friends and other significant people in the community to a resident's rehabilitation and reintegration into the community. Visits, phone calls and correspondence are the means by which these relationships can be maintained.

The Standing Order stresses that all staff have a responsibility actively to support the maintenance of contact between residents and their families and other appropriate supports.

Summary of Sections

Section 1. Residents' Access to Visitors, Phone Calls and Correspondence

This section details the key responsibilities of the Senior Manager for ensuring that residents have maximum opportunities for access to visits, phone calls and correspondence, and the authority to determine the schedule for visits and phone calls. The Senior Manager is responsible for ensuring that approved contacts are informed of the schedules and rules governing access to visits and phone calls.

The Manager is able to change the schedule of visits and phone calls if, in the Manager's opinion, there are significant issues that warrant this. The Senior Manager is to provide a copy of the schedule of visits and phone calls and any variation to these to the Director for accountability purposes.

Section 2. People Who May Visit, Make or Receive Phone Calls and Correspond With Residents

This section requires people who wish to have contact with a resident at an Institution to seek approval, whether they intend contact to be in person, by phone call or by written correspondence. Only people who have been approved by the Manager under this section will be recorded on the Approved Contacts Register. All decisions to restrict personal and professional contacts with residents are made under this section. The Manager is required to consider a number of factors as outlined in this section of the Standing Order. If the proposed contact is someone under 18 years, additional considerations must be made.

All decisions to restrict or prohibit contact with a resident are made with appropriate consideration to the best interest of the child or young person and the recognised rehabilitative benefits of positive contacts with family and community. This section stresses that it is the responsibility of all staff to be mindful of the complexities involved and be supportive of contact.

The Senior Manager is accountable to the Director for any refusal to approve a person for contact. The Director may overturn this decision.

Section 3. Scheduling of Visits and Phone Calls

This section provides a schedule of appropriate times for visits and phone calls. Only the Senior Manager may alter these times. When varying these times, reasonable attempts must be made to notify any visitors. The Manager will also determine the duration of all visits and give consideration to the health and wellbeing of the residents, their rehabilitation and reintegration needs, and the safety, security and good order of the Institution. People who wish to visit a resident are required to pre-arrange visits, preferably with 24 hours notice.

Section 4. Residents' Right to Decline a Visit or Phone Call

Residents have the right to refuse any visits or phone calls. Under this section, staff are required to maintain an accurate record of any such refusal by a resident to a visit or phone call.

Section 5. Manager's Right to Refuse/Decline a Visit, Phone Call or Correspondence

This section gives the Manager the authority to restrict contact with a resident, including visits, phone calls or correspondence. It stresses that refusal of a visit, phone call or receipt of correspondence from a family member is not to be used as a punishment but that non-family contacts such as girl/boy friend may be restricted as part of a management plan. The Manager must create a record of such a decision and will, if appropriate, inform the resident and contact person of the reasons for doing so.

The Senior Manager is accountable to the Director for any refusal to approve a person for contact. The Director may overturn this decision.

Section 6. Conditions of Visits and Phone Calls

The Manager is required to place appropriate conditions on all visits and phone calls to safeguard the health and wellbeing of residents, staff and visitors and security of an Institution. A record must be kept that documents all conditions, which may include but is not limited to supervision, duration and physical contact, including reasons for any limitations imposed on a visit or phone call.

This section describes in detail visit categories and gives clear directions to staff on how to perform their duties concerning supervision of contact visits. This section also provides staff with specific direction for appropriate conduct for professional and legal visits. It stresses the importance of protecting the resident's privacy as far as possible without compromising the safety and good order of an Institution.

Section 7. Procedures for Visitors on Arrival at and Departure from an Institution

Visitors to an Institution will be provided a Conduct Information Sheet on arrival in an Institution. The information sheet will provide visitors with all necessary information including direction regarding prohibited items, responsibilities and conduct during and after a visit. Visitors will also be required to produce photographic identification and sign the appropriate logbook and may be required to submit items for a search. Storage will be provided for all prohibited items or other items not being taken to a visit.

Legal practitioners must not be asked to submit their property for search unless staff form a reasonable suspicion that a the person may be concealing prohibited items or non-legal items that may threaten the safety or security of an Institution.

Section 8. Conduct by Visitors and Residents During Visits

This section describes acceptable conduct during a visit. Visitors are required to comply with reasonable directions and conditions of a visit and not engage in disruptive or inappropriate behaviour. Inappropriate behaviour is described as any behaviour that potentially could cause harm or offence to any person present in the visits area.

Section 9. Resident Clothing During Visits

The Manager may grant authorisation for residents to wear their own clothing during a visit.

Section 10. Gifts for Residents and Bringing of Items to and from Visits by Residents

Visitors will be required to present gifts for approval by staff prior to a visit with a resident. Only items approved by the Manager will be permitted into the visits area. The Manager will restrict items that may cause a risk to the safety and security of an Institution or pose a risk to the physical or mental health and wellbeing of residents, staff or other visitors.

Section 11. Refusal or Termination of Visits and Phone Calls

This section provides staff with direction on the refusal or termination of a visit. Decisions to refuse or terminate a visit include: reasonable belief of intoxication or drug influence, inappropriate dress, and potential to cause risk to the health, safety and security of the Institution, its staff and/or residents.

All decision to refuse or terminate a visit or phone call must be reported to the Senior Manager who must inform the Director in writing. The Senior Manager is accountable to the Director for any refusal to approve a person for contact. The Director may overturn this decision.

Section 12. Removal by Force

Staff are instructed not to engage in the physical removal of a visitor unless it is necessary to do so to protect the safety of any person. In such circumstances, staff are to comply with Standing Order – Use of Force. This section requires staff to call the police if a visitor refuses to comply with a reasonable direction under this Standing Order and to secure the safety of any other person who may be exposed to potential risk.

Section 13. Police Interviews

This section directs that, for interviews of resident by the police, staff are to comply with Standing Order - Police Interviews.

Section 14. Hospital Visits

There may be additional restrictions or conditions placed on a visit that occurs in a hospital or medical facility. This section of the Standing Order reflects this. It stresses the importance of staff informing and facilitating contact between the resident and family members where the health or medical needs of the resident are serious.

Section 15. Resident Correspondence

This section classifies resident correspondence as personal, professional or legal.

Staff are referred to the Standing Order – Search for guidance regarding searching correspondence for things.

The Manager has the power to read and censor resident mail where there is a reasonable belief of inappropriate or illegal content. The Senior Manager has the power to instruct, for a defined period of time, that all correspondence (not including legal) be searched, read and censored, as appropriate, where there are significant concerns for the safety and security of an Institution. Staff are required when searching legal correspondence to do so in the presence of the resident. Staff must not read legal correspondence. The Manager will ensure that reasonable attempts are made to provide appropriate assistance to residents who may have difficulty in understanding any correspondence. The Director may arrange for audits of the censoring of correspondence to occur to ensure compliance with this Standing Order.

Section 16. Residents' Contact with their Children

This section instructs that contact between a child and a resident who is a parent or primary carer for the child must be facilitated in the resident's and the resident's child's best interest and in accordance with an individual contact plan.

Section 17. 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 ensures that they are kept informed and receive a timely response. This section refers staff to the relevant Standing Order - Provision of Information, Review of Decisions and Complaints.

Section 18. Records and Reporting

This section instructs staff in relation to records and reporting decisions and incidents under this Standing Order.

Engagement with the *Human Rights Act 2004*

In this Standing Order a number of sections have the potential to engage with the *Human Rights Act 2004*. The primary focus on the operation of this Standing Order is to guide and facilitate contact and support between residents, family members and other people. Visits, phone calls and correspondence between residents, family, friends and professional/legal practitioners are recognised as an integral part of the rehabilitation and reintegration of a resident.

Under s.11 of the *Human Rights Act 2004* (Protection of family and children) and s.12 (Privacy and Reputation), the rights of residents to maintain contact with family, in all forms (visits, phone calls and correspondence), are protected and must not be interfered with unlawfully or arbitrarily. Decisions made under this Standing Order to prohibit or restrict access to family must be given serious consideration to the effects on these rights. Staff should act to support and facilitate contact with family and persons of significance where it is in the best interest of the resident.

The decision to censor correspondence for inappropriate content, especially if the resident is on remand and/or the correspondence is from/to a family member, may cause engagement with s.16 of the *Human Rights Act 2004* (Freedom of Opinion and Expression). Under s.16, all people are provided the right to express, seek and receive ideas and information of any kind and in any format. Decisions to prevent an expression of opinion by a resident or a proposed contact must be made for reasons that fall within strict boundaries. Staff are required only to censor information if the decision is based on a reasonable belief that the information may cause risk to the health and safety of a resident and/or the security and good order of the Institution.

Where a decision is made to search and/or censor the correspondence of a remandee, there is high likelihood that s.19 (Human Treatment when Deprived of Liberty) and s.22 (Rights in the Criminal Process) of the *Human Rights Act 2004* will be engaged. These sections provide for the treatment of an unconvicted person (remandee) to be treated in a manner that is consistent with the treatment of an innocent person. The decision to search and/or censor the correspondence of a remandee must therefore be based on significant evidence of contraband and/or belief of inappropriate/illegal content.

As is detailed above, the right for residents to maintain communication with family and community is thoroughly protected by the *Human Rights Act 2004*. This Standing Order must be applied in a manner that gives appropriate consideration to the detrimental effects that restrictions to contact or correspondence may have on a resident. Staff are required at all times to act in a manner that will ensure the health, safety and wellbeing of all residents, staff and visitors, as well as maintaining the safety and good order of an Institution. To meet the requirements of s.28 of the *Human Rights Act 2004*, consideration must be given to:

- protecting the rights, best interest and views of the resident,
- supporting rehabilitative/reintegration needs of the resident,
- the rights of the contact person (through any form: visit phone or correspondence), and
- the safety and security needs of residents, visitors, staff and the Institution.