

CHILDREN AND YOUNG PEOPLE (PLACES OF DETENTION) HEALTH AND WELLBEING STANDING ORDER 2007 (No 1)

Disallowable Instrument DI 2007–5

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 – HEALTH AND WELLBEING

1. INTRODUCTION

The Children and Young People Places of Detention Standing Orders comprise 13 individual Standing Orders, 11 of which are notified as part of this suite of Disallowable Instruments. The Searches and Behaviour Management Strategies Standing Orders, notified in DI2005-167, are yet to be revised and remain in force, subject to DI2007-1.

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

New Standing Orders

The new Standing Orders are:

- Standing Order – Provision of Information, Review of Decisions and Complaints
- Standing Order – Records and Reporting
- Standing Order – Aboriginal and Torres Strait Islander Residents
- Standing Order – Admission and Classification
- Standing Order – Health and Wellbeing
- Standing Order – Visits, Phone Calls and Correspondence
- Standing Order – Safety and Security
- Standing Order – Use of a Safe Room
- Standing Order – Use of Force
- Standing Order – Police Interviews
- Standing Order – Death in Custody.

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 – HEALTH AND WELLBEING

The objective of this Standing Order is to provide a set of minimum standards and guidelines that are consistent with human rights standards to ensure the health and wellbeing of residents in an Institution. Health and wellbeing services to residents occur within a framework that recognises that many young people who are in an Institution may have experienced early adversity and maltreatment and come from complex family and social backgrounds. This Standing Order has been written to address the need to consider psychological and emotional vulnerability, difficulties with emotional regulation and reflective functioning of many residents.

Staff must also be mindful that residents may be experiencing a range of mental health problems including depression, which may be exacerbated by isolation and observation.

Providing humane treatment to residents is a central function of an Institution. Given that an Institution is an environment in which people are held on an involuntary basis, issues of security (preventing escapes) and good order are given a high priority in operational terms. An Institution is also entrusted to provide a rehabilitative regime that gives residents opportunities for reintegration into the community. There needs to be an effective balance, which ensures that considerations of security and order do not become unduly oppressive, or misused.

Staff must also recognise the additional considerations required for the appropriate care of a resident who is an Aboriginal or Torres Strait Islander person. These provisions include that staff are aware of the impact detention may have on the resident and family and also the specific health needs of an Aboriginal or Torres Strait Islander resident, allowing appropriate access to relevant health services.

Summary of Sections

Section 1. Minimum Standards

Minimum standards relate to medical assessments, assessment of risk of self-harm, assessments and treatment by health professionals, suitably-equipped premises for consultation, dispensing of medication, access to a second opinion, rehabilitation services and supports, approved use of a private medical practitioner or dental service, maintenance of personal cleanliness, educational and living skills programs and the provision of special diets.

The section states that it is the responsibility of the Senior Manager to ensure that staff hold current first aid qualifications and hold regular training on the identification and management of young people at risk of self-harm and suicide. The section further covers the issue of consent and follow-up response if this consent is unable to be obtained.

Section 2. General Protocols

General Protocols broadly covered in the Health and Wellbeing Standing Order include:

Health

This section defines health for the purposes of this standing order. The definition is a broad one, and a number of dimensions are included in the standing order (but these are not exhaustive). It also states all staff of an Institution have responsibility for residents' health. The section then indicates that the Program and Services Manager holds responsibility for the coordination of service delivery with a focus on prevention and early intervention in order to meet residents' specific individual needs most effectively.

First-aid equipment and training

This section states that it is the responsibility of the Senior Manager to ensure that there is adequate provision of first aid equipment and supplies throughout an Institution. The section also states that designated staff must regularly audit the contents of all first aid kits and restock them as necessary. Finally, the section covers the requirement for staff to have in their possession a fully-stocked first-aid kit when undertaking an escort.

Medication

This section specifies that medication must only be given to a resident in accordance with the dosage guidelines prescribed by a medical practitioner. Staff must only provide this medication

to residents when it has been placed in an approved container (Webster Pack or similar) and clearly marked with the resident's name and dosage details. The Unit Manager must approve the dispensing of non-prescription medication if appropriate. In instances requiring clarification, the Unit Manager must seek advice from a relevant health professional. The section provides specific directions as to what is required when staff provide assistance in giving medication to a resident and necessary action if the resident refuses to take prescribed medication.

Syringes and other sharps

This section states that it is the Senior Manager's responsibility to ensure that staff receive appropriate training in the disposal of syringes and other sharps, and outlines actions for the safe disposal of syringes and other sharps and the appropriate response to needle stick injuries or punctures.

Management of blood and bodily fluid spills

This section states that it is the Senior Manager's responsibility to ensure that staff receive regular training in the management of blood and other bodily fluid spills. The section also instructs on the appropriate response to a blood or bodily fluid spill, the necessity (if any) to preserve spills for use as evidence in the investigation of a crime, and the safe disposal of spills.

Management of infectious diseases

This section states that it is the Senior Manager's responsibility to ensure that all staff receive regular training in communicable and infectious disease prevention and treatment. The section also states that the Manager is to seek advice from a relevant health professional and issue instructions regarding the safe management of an Institution.

Section 3. Management of Health Needs

This section covers the following:

Internal responses

Directions relating to:

- health assessments and treatment to ensure residents' physical, psychological, emotional and social needs (including those relating to drug and alcohol and self-harm and suicide). Where appropriate, health information should include the development of individual case management plans, resident classification, placement and observation regimes, any special management directions;
- a direction for staff and follow-up response if they become aware of a residents' health information. This relates to:
- classification, observation, placement, special management directions or case management plan, and
- imminent danger to a resident.

Finally, the section specifies the requirement for the Manager to notify Mental Health Services where appropriate, and consider recommendations and advice of health professionals.

Management of a resident's health needs outside an Institution including escorts

Directions relating to:

- non-emergency requirement for a resident to leave an Institution;
- consideration of the transportation method to a health service;

- the information to be provided to the resident as to the appointment time, location and reason for attendance outside of an Institution;
- an outline of information to be provided to the transporting or receiving agency's officer/s to ensure that the resident is appropriately managed and/or supported;
- the necessity for staff to carry Departmental identification at all times and health facility identification when required;
- assessment of the health facility to examine potential safety and security risks;
- conditions for the staff member's role and supervisory requirement during examinations and treatment, and the necessity for the staff member to be of the same sex as the resident where appropriate;
- the staff member's responsibility to ensure that the resident does not gain access to unauthorised items and the appropriate response if suspicion exists that this has occurred; and
- approval for the resident to receive visitors to a health facility outside of an Institution.

Discharge planning

The Programs and Services Manager has the responsibility to ensure that discharge planning for a resident following committal includes appropriate referral and arrangements for on-going management of health and wellbeing needs.

Following a period of remand, the Program and Services Manager is to ensure that referrals and arrangements regarding on-going assessment and treatment are made.

Section 4. Incident Management

This section covers the following broad areas:

Minor injury/health concern in an Institution or on an escort

The section contains directions as to the appropriate response for a staff member if a resident presents with or reports a minor injury or health complaint. It provides further directions for staff in the event that a resident presents with or reports having a minor injury or health complaint on an escort. It provides direction if the Control Room receives communication from an escorting staff member, and their necessary follow-up response.

Serious or life-threatening injury or health concern in an Institution

This section provides descriptions of appropriate follow-up responses in the event a resident presents with or reports a serious or life-threatening injury or health complaint. It provides direction in instances where the Control Room receives a request following a serious or life-threatening injury or health complaint. The section specifies what directions and guidance the Unit Manager will provide to staff and what response is required of the Manager, including which people are to be notified of the life-threatening injury or health concern.

Encountering a seriously-injured or ill resident by a person other than a staff member

This section notes that a person other than an operational staff member may encounter a resident who has suffered a serious or life-threatening injury. It specifies that, once a staff member has been advised of the incident, the resident is to be accompanied to another secure area and be supervised by staff. It states that tradespeople, visitors, professionals and other service providers are to remain on the premises with monitoring and support until police have authorised their exit from an Institution. This section notes that, when securing visitors or non-operational staff, staff must attempt to separate them as appropriate to allow the most effective response to the individual.

The Unit Manager may approve specified phone calls after considering the circumstances. It is noted that the Unit Manager must provide instructions about disclosure of information, and informing potential witnesses they may be required to provide a statement to police.

The section notes requirements of residents who may have witnessed the discovery of an injured resident.

Serious or life-threatening injury or health concern of an escort

The section provides details on the appropriate follow-up response in the event that a resident sustains a serious or life-threatening injury while on an escort. Examples of such injuries include a vehicle accident or assault. These directions relate to the staff member who first becomes aware of the situation and/or any other staff member undertaking an escort.

The section describes what is required of Control Room staff in the event that they are notified of a serious or life-threatening injury or health complaint while on an escort.

It further covers actions to be taken by the Unit Manager and Manager.

Minor, serious or life-threatening injury or health complaint of a person other than a resident

This section contains directions and follow-up response if a staff member, Unit Manager, Manager or Control Room becomes aware of an injury or health complaint to a person in an Institution or on an escort, who is not a resident.

Section 5. Responsibility of Staff to Preserve Evidence for the Investigation of a Crime

This section specifies details concerning the preservation of any evidence or information that may be used in an investigation, including a police investigation. It also deals with the importance of providing first aid or other medical assistance where required.

Section 6. Records and Reporting

This section provides direction concerning what is to be recorded according to the requirements set out in Standing Order – Records and Reporting. It states that staff are mandated reporters under the *Children and Young People Act* and that all reports are the responsibility of staff and are to be fully completed before staff members complete their shift, unless otherwise approved by the Manager.

Section 7. 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 ensure that a complainant is kept informed and receives a timely response. This section also refers staff to the Standing Order – Provision of Information, Review of Decisions and Complaints.

Section 8. Death in Custody

This section states that, in the event of a resident dying in an Institution or on an escort, the provisions of Standing Order – Death in Custody must be applied.

Engagement with *Human Rights Act 2004*

This Standing Order as a whole engages with a number of human rights principles, including:

s.10 (2) Consent to medical or scientific experiment treatment

In all matters that relate to the assessment and treatment of residents in an Institution, the consent of the resident must be obtained. Where consent is not provided and the need for assessment or treatment is considered urgent, the Manager must be notified as soon as possible. The Manager must undertake all necessary or appropriate actions to address the resident's health needs.

Further, where relevant, the Manager must contact parents and/or persons with parental responsibility (including the Chief Executive) in health- and medical-related matters.

s.12 Privacy and Reputation

This Standing Order ensures that all health and wellbeing needs of residents in an Institution are protected and maintained. It may become necessary for examinations and/or treatment to occur in an officer's view (eg, if residents are at serious risk of escape or harm to themselves or others, and/or of suicide). In such instances, staff must maintain appropriate contact with the resident at all times. It is noted that the staff member must be respectful of the dignity of the resident and where appropriate must be of the same sex as the resident.