



Australian Capital Territory

Children and Young People Amendment Act 2007

A2007-4

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Australian Capital Territory

Children and Young People Amendment Act 2007

A2007-4

An Act to amend the *Children and Young People Act 1999*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2006-674

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Children and Young People Amendment Act 2007*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Children and Young People Act 1999*.

4 New section 3A

insert

3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1).

- s 160 (Dishonest reports—offence).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**5 Children and young people to whom Act applies
Section 9 (c)**

substitute

- (c) who are subject to an event or circumstances happening in the ACT giving rise to a report under section 157A (Prenatal reporting—anticipated abuse or neglect), section 158 (Voluntary reporting) or section 159 (Mandatory reporting).

6 New section 157A

insert

157A Prenatal reporting—anticipated abuse or neglect

- (1) This section applies if, during a pregnancy, a person suspects or believes that a child who may be born as a result of the pregnancy may be in need of care and protection.

- (2) The person may report the suspicion or belief, and the supporting reasons, to the chief executive.
- (3) The chief executive may, with the consent of the pregnant woman, take whatever action the chief executive considers appropriate in relation to the report, including any of the following:
 - (a) providing a voluntary assessment of whether the child is likely to be in need of care and protection after the child is born;
 - (b) providing or arranging voluntary support services for the pregnant woman, and any family member who may be involved in caring for the child.
- (4) The chief executive is not required to act in relation to a report under this section.
- (5) The chief executive must ensure, as far as practicable, that any action taken because of this section is appropriate and consistent with the pregnant woman's human rights.

7 Section 160

substitute

160 Dishonest reports—offence

A person must not dishonestly make a report under section 157A, section 158 or section 159.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

8 Section 162

substitute

162 Chief executive must record reports

The chief executive must make and keep a written record of—

- (a) each of the following:
 - (i) a report made to the chief executive under section 157A (Pre-natal reporting—anticipated abuse or neglect);
 - (ii) any assessment made because of the report; and
- (b) each of the following:
 - (i) a report made to the chief executive under section 158 (Voluntary reporting) or section 159 (Mandatory reporting);
 - (ii) any child protection appraisal made because of the report.

**9 Protection of people making reports
Section 163 (1)**

omit

If a person makes a report under section 158 or 159 in good faith—

substitute

If a person honestly makes a report under section 157A (Prenatal reporting—anticipated abuse or neglect), section 158 (Voluntary reporting) or section 159 (Mandatory reporting)—

**10 Protection of public advocate and person providing information to public advocate
Section 164 (c)**

omit

in good faith

substitute

honestly

**11 Power to conduct personal search of child or young person
Section 399 (2) and (3)**

substitute

- (2) This section applies to a child or young person who is under a therapeutic protection order.

12 New chapter 13A

insert

Chapter 13A Detainees—search and seizure

Part 13A.1 Preliminary

401AA Application—ch 13A

- (1) This chapter applies to a child or young person (each of whom is a *detainee*) who is required to be kept or detained at a shelter or institution—
- (a) because he or she has been charged with an offence and not admitted to bail; or

- (b) under any of the following:
 - (i) section 96 (Disposition of young offenders);
 - (ii) section 122 (Temporary custody before transfer between institutions);
 - (iii) section 123 (Powers of Supreme Court);
 - (iv) section 124 (Adjournment of criminal proceedings);
 - (v) section 125 (Placing in shelter or correctional centre);
 - (vi) section 140 (Temporary custody pending interstate transfer); or
 - (c) under any other provision of a territory law or a law of the Commonwealth, a State or another territory.
- (2) To remove any doubt, this chapter does not apply to a child or young person only because the child or young person is under a therapeutic protection order.

401AB Definitions—ch 13A

In this chapter:

authorised doctor means a doctor authorised under section 401AE.

authorised health professional means a health professional authorised under section 401AE.

authorised nurse means a nurse authorised under section 401AE.

body search, of a detainee, means a search of the detainee's body, including an examination of an orifice or cavity of the detainee's body.

detainee—see section 401AA (1).

frisk search, of a detainee, means—

- (a) a search of the detainee conducted by quickly running the hands over the detainee's outer clothing; and
- (b) an examination of anything worn or carried by the detainee that is conveniently and voluntarily removed by the detainee.

health service—see the *Health Professionals Act 2004*, section 15.

ordinary search, of a detainee, means a search of the detainee, or of anything in the detainee's possession, and may include—

- (a) requiring the detainee to remove only the detainee's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves, or headwear; and
- (b) an examination of anything removed.

prohibited thing means a thing declared to be a prohibited thing under section 401AD.

scanning search, of a detainee, means a search of the detainee by electronic or other means that does not require the detainee to remove the detainee's clothing or be touched by someone else.

Examples of scanning searches

- 1 passing a portable electronic or other device over or close to a detainee
- 2 requiring a detainee to pass by or through an electronic or other device

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

shelter does not include the shelter known as Marlow Cottage.

strip search, of a detainee, means a search of the detainee, or of anything in the detainee's possession, under section 401AM (Admission to youth detention centre—strip search for initial assessment) or section 401AQ (Strip searches directed by chief executive) that may include—

- (a) requiring the detainee to remove all of the detainee's clothing; and
- (b) an examination of—
 - (i) the detainee's body (but not the detainee's body orifices or cavities); and
 - (ii) the detainee's clothing.

youth detention centre means a shelter, institution or other place (other than a correctional centre) at which a child or young person may be kept or detained under this Act.

youth detention officer means an officer whose functions include the detention of a detainee at a youth detention centre.

401AC Relationship with other laws

To remove any doubt, this chapter is additional to, and does not limit, any other provision in relation to searches of detainees under another territory law, or a law of the Commonwealth, a State or another territory.

401AD Prohibited things

- (1) The chief executive may declare a thing to be a prohibited thing if the chief executive believes, on reasonable grounds, that the declaration is necessary or prudent to ensure security or good order at a youth detention centre.

- (2) A declaration is a notifiable instrument.

Examples of prohibited things

- 1 a weapon or something crafted as a weapon
- 2 alcohol
- 3 a controlled drug under the Criminal Code
- 4 a mobile phone

Note 1 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Note 2 The power to make an instrument includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48.)

Note 3 A notifiable instrument must be notified under the Legislation Act.

401AE Authorised health professionals

- (1) The chief executive may authorise a health professional to exercise functions under this chapter.

Note **Health professional** includes a doctor and nurse registered under the *Health Professionals Act 2004*.

- (2) However, the chief executive must ensure, as far as practicable, that a detainee's treating health professional is not asked to exercise a function as an authorised health professional under this chapter in relation to the detainee.
- (3) Subsection (2) does not apply if the chief executive believes on reasonable grounds that—
- (a) there is an imminent and serious threat to the personal safety of the detainee or someone else; and
 - (b) compliance with subsection (2) would exacerbate the threat.

(4) In this section:

treating health professional, in relation to a detainee, means a health professional who has a professional relationship with the detainee for the provision of health services.

Part 13A.2 Searches generally

401AF Intrusiveness of searches

A person conducting a search of a detainee under this chapter must ensure, as far as practicable, that the search—

- (a) is the least intrusive kind of search that is necessary and reasonable in the circumstances; and
- (b) is conducted in the least intrusive way that is necessary and reasonable in the circumstances.

Example

searching for a prohibited thing by a scanning search rather than a frisk search

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

401AG Register of searches

- (1) This section applies to a search under any of the following sections:
 - (a) section 401AM (Admission to youth detention centre—strip search for initial assessment);
 - (b) section 401AQ (Strip searches directed by chief executive);
 - (c) section 401AW (Body searches directed by chief executive);
 - (d) section 401AZG (Searches—premises and property generally);
 - (e) section 401AZH (Searches of detainee cells—privileged material);

- (f) section 401AZI (Searches of detainee cells—suspected privileged material).
- (2) The chief executive must keep a register containing the following details in relation to each search:
 - (a) the name of each detainee searched;
 - (b) the reason for the search;
 - (c) when and where the search was conducted;
 - (d) the name of each person present at any time during the search;
 - (e) details of anything seized during the search;
 - (f) details of any force used for conducting the search, and why force was used;
 - (g) anything else prescribed by regulation.
 - (3) The register may contain any other details the chief executive considers relevant.
 - (4) The register must be available for inspection by any of the following:
 - (a) a judge or magistrate;
 - (b) the official visitor;
 - (c) the human rights commissioner;
 - (d) the privacy commissioner;
 - (e) the public advocate;
 - (f) the ombudsman;
 - (g) anyone else prescribed by regulation.
 - (5) The public advocate must inspect the register at least once every 3 months.

401AH Searches of transgender and intersex detainees

- (1) This section applies if a transgender or intersex detainee is to be searched under this chapter.
- (2) The detainee may require that either a male or a female conduct the search.
- (3) If the detainee requires that a male conduct the search, the detainee is taken, for this chapter, to be male.
- (4) If the detainee requires that a female conduct the search, the detainee is taken, for this chapter, to be female.

Note For the meaning of *transgender person* and *intersex person*, see the Legislation Act, s 169A and s 169B.

401AI Notice of strip and body searches—person with parental responsibility for detainee

The chief executive must ensure, as far as practicable, that another person with parental responsibility for a detainee is told about any strip search or body search of the detainee—

- (a) before the search is conducted; or
- (b) if it is impracticable to tell the person before the search—as soon as practicable after the search.

Note 1 In some circumstances the chief executive is a person with parental responsibility for a detainee (see s 224).

Note 2 A proposed strip or body search need not be conducted in the presence of the person notified (see s 401AM, s 401AQ and s 401AY).

Part 13A.3 Scanning, frisk and ordinary searches

401AJ Directions for scanning, frisk and ordinary searches

- (1) The chief executive may, at any time, direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a detainee if the chief executive believes, on reasonable grounds, that the search is prudent to ensure security or good order at a detention centre.
- (2) Also, a youth detention officer may conduct a scanning search, frisk search or ordinary search of a detainee if the officer suspects, on reasonable grounds, that the detainee is carrying—
 - (a) a prohibited thing; or
 - (b) something that may be used by the detainee in a way that may involve—
 - (i) an offence; or
 - (ii) a risk to the personal safety of the detainee or someone else; or
 - (iii) a risk to security or good order at a youth detention centre.

401AK Requirements for scanning, frisk and ordinary searches

- (1) The youth detention officer who conducts a scanning search, frisk search or ordinary search of a detainee must—
 - (a) tell the detainee about the search and the reasons for the search and ask for the detainee's cooperation; and
 - (b) for a frisk search or ordinary search—conduct the search in a private area or an area that provides reasonable privacy for the detainee; and

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- (c) if clothing is seized because of the search—ensure the detainee searched is left with, or given, reasonably appropriate clothing to wear.
- (2) A frisk search or ordinary search of a detainee must not be conducted in the presence or sight of—
 - (a) another detainee; or
 - (b) someone else whose presence is not necessary for the search.
 - (3) A frisk search of a detainee must be done by a youth detention officer of the same sex as the detainee.
 - (4) Subsection (3) does not apply if the chief executive believes on reasonable grounds that—
 - (a) there is an imminent and serious threat to the personal safety of the detainee or someone else; and
 - (b) compliance with subsection (3) would exacerbate the threat.

Part 13A.4 Strip searches

401AL Admission to youth detention centre—initial assessment

- (1) The chief executive must ensure that—
 - (a) each detainee admitted to a youth detention centre is assessed as soon as practicable to identify any immediate—
 - (i) physical or mental health needs or risks; and
 - (ii) safety or security needs or risks; and
 - (b) any needs and risks identified by the assessment are addressed.
- (2) The assessment under subsection (1) of a detainee's health needs or risks (the *health assessment*) must be made within 24 hours after the detainee's admission to a youth detention centre.

- (3) The health assessment must—
 - (a) be made by a doctor or nurse who is not an authorised doctor or authorised nurse in relation to the detainee; and
 - (b) include an assessment (the *self-harm assessment*) of the detainee's risk of self-harm.
- (4) However, the self-harm assessment may be made by a health professional other than the nurse or doctor.

Note The *Mental Health (Treatment and Care) Act 1994* also includes provision for assessment orders, and emergency detention and care, under that Act.

401AM Admission to youth detention centre—strip search for initial assessment

- (1) The chief executive may direct a youth detention officer to strip search a detainee if the chief executive believes on reasonable grounds that the strip search is necessary for an assessment under section 401AL.
- (2) The strip search must be conducted in the presence of a person with parental responsibility for the detainee if—
 - (a) the chief executive believes, on reasonable grounds, that it is necessary and prudent for the person to be present; and
 - (b) the detainee agrees to the person being present.
- (3) In making a decision under subsection (1) or (2), the chief executive must have regard to the detainee's age, maturity and any known history.

401AN Strip search on admission—no-one with parental responsibility for detainee available

- (1) This section applies in relation to a strip search of a detainee under section 401AM if—
- (a) a person with parental responsibility for the detainee cannot be contacted before the search is conducted; or
- Note* For a requirement to contact a person with parental responsibility, see s 401AI.
- (b) no-one with parental responsibility for the detainee is available to be present at the search; or
 - (c) the detainee does not agree to a person with parental responsibility for the detainee being present at the search.
- (2) The chief executive must ensure that the strip search is conducted in the presence of someone (a **support person**) who—
- (a) the chief executive believes on reasonable grounds can support and represent the interests of the detainee; and
 - (b) the detainee agrees should be present at the search.
- Note* In some circumstances the chief executive is a person with parental responsibility for a detainee (see s 224).
- (3) However, the search may continue in the absence of a support person if—
- (a) the detainee does not agree to a support person being present; or
 - (b) the chief executive directs the support person to leave under section 401AO (2).

401AO Strip search on admission—directing person to leave

- (1) This section applies if a strip search of a detainee under section 401AM is being conducted in the presence of—
 - (a) a person with parental responsibility for the detainee; or
 - (b) a support person under section 401AN (2).
- (2) The chief executive may direct the person to leave if the chief executive believes, on reasonable grounds, that the person is preventing or hindering the conduct of the search.

401AP Removing people from search area

- (1) The chief executive may direct a youth detention officer to enforce a direction under section 401AO (2) if the person given the direction contravenes the direction.
- (2) The youth detention officer may use force that is necessary and reasonable to enforce the direction.

401AQ Strip searches directed by chief executive

- (1) The chief executive may direct a youth detention officer to strip search a detainee only if—
 - (a) the chief executive suspects, on reasonable grounds, that the detainee has something concealed on the detainee that—
 - (i) is a prohibited thing; or
 - (ii) may be used by the detainee in a way that may involve an offence, a risk to the personal safety of the detainee or someone else, or a risk to security or good order at a youth detention centre; and
 - (b) a scanning search, frisk search or ordinary search of the detainee has failed to detect the thing.

- (2) To remove any doubt, the strip search need not be conducted in the presence of a person with parental responsibility for the detainee.
- (3) This section does not apply to a strip search under section 401AM (Admission to youth detention centre—strip search for initial assessment).

401AR Obligations of youth detention officer before strip search

- (1) This section applies if a youth detention officer proposes to strip search a detainee.
- (2) The youth detention officer must tell the detainee—
 - (a) whether the detainee will be required to remove clothing during the search; and
 - (b) if the detainee will be required to remove clothing, why the removal is necessary.
- (3) If the detainee asks why the search is being conducted in a particular way, the youth detention officer must tell the detainee the reasons.
- (4) The youth detention officer must ask for the detainee's cooperation for the search.

401AS Youth detention officers at strip searches

- (1) A strip search of a detainee must be conducted—
 - (a) by a youth detention officer of the same sex as the detainee; and
 - (b) in the presence of 1 or more other youth detention officers each of whom must be the same sex as the detainee.
- (2) However, the number of youth detention officers present during the search must be no more than is necessary and reasonable to ensure the search is carried out as safely and effectively as possible.

- (3) The youth detention officer conducting the search may direct another youth detention officer mentioned in subsection (1) (b) to provide assistance that the conducting officer believes, on reasonable grounds, is necessary and reasonable for the search.
- (4) The requirement in subsection (1) (b) that a youth detention officer be the same sex as the detainee does not apply if the chief executive believes on reasonable grounds that—
 - (a) there is an imminent and serious threat to the personal safety of the detainee or someone else; and
 - (b) compliance with that requirement would exacerbate the threat.

401AT Strip searches—general rules

- (1) The youth detention officer conducting a strip search of a detainee must conduct the search—
 - (a) in a way that—
 - (i) provides reasonable privacy for the detainee; and
 - (ii) is appropriate, having regard as far as practicable, to the detainee’s sexuality and any known impairment, condition or history; and
 - (b) as quickly as practicable.
- (2) The strip search must be conducted in a private area or an area that provides reasonable privacy for the detainee.

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- (3) The strip search must not be conducted—
- (a) in the presence of someone of the opposite sex to the detainee, other than—
 - (i) a person present under section 401AM (2) (Admission to youth detention centre—strip search for initial assessment) or section 401AN (Strip searches on admission—no-one with parental responsibility for detainee available); or
 - (ii) another youth detention officer present under section 401AS (4); or
 - (b) in the presence or sight of someone else whose presence is not necessary for the search or for the safety of anyone present.
- (4) Subject to part 13A.7 (Searches—use of force), the strip search must not involve any touching of the detainee’s body by a youth detention officer.

401AU Strip searches—rules about visual inspection of detainee’s body

- (1) A youth detention officer conducting a strip search of a detainee must not visually inspect the genital area of the detainee and, for a female detainee, the detainee’s breasts, unless the officer suspects, on reasonable grounds, that it is necessary to do so for the search.
- (2) A strip search of a detainee must not involve more visual inspection of the detainee’s body than is necessary and reasonable for the search.
- (3) Without limiting subsection (2), during the strip search of the detainee, any visual inspection of the detainee’s genital area, anal area, buttocks and, for a female detainee, the detainee’s breasts must be kept to a minimum.

401AV Strip searches—rules about detainee’s clothing

- (1) A strip search of a detainee must not involve—
 - (a) the removal from the detainee of more clothes than is necessary and reasonable for the search; or
 - (b) the removal from the detainee of more clothes at any time than is necessary and reasonable for the search; or
 - (c) without limiting paragraph (b), both the upper and lower parts of the detainee’s body being uncovered at the same time.
- (2) A detainee who has been strip-searched must be allowed to dress in private as soon as the search is finished.
- (3) If clothing from a detainee is seized during a strip search, the youth detention officer conducting the search must ensure that the detainee is left with, or given, reasonably appropriate clothing to wear.

Part 13A.5 Body searches

401AW Body searches directed by chief executive

- (1) The chief executive may direct an authorised doctor to conduct a body search of a detainee if the chief executive suspects, on reasonable grounds, that the detainee—
 - (a) has ingested or inserted something in the detainee’s body that may jeopardise the detainee’s health or wellbeing; or
 - (b) has a prohibited thing concealed within the detainee’s body that may be used in a way that may pose a substantial risk to security or good order at a youth detention centre.
- (2) In making a decision under subsection (1), the chief executive must have regard to the detainee’s age, maturity and any known history.

401AX Obligations of chief executive before body search

- (1) This section applies if the chief executive proposes to direct a body search of a detainee under section 401AW.
- (2) The chief executive must tell the detainee—
 - (a) whether the detainee will be required to remove clothing during the search; and
 - (b) if the detainee will be required to remove clothing, why the removal is necessary.
- (3) If the detainee asks why the search is to be conducted in a particular way, the chief executive must tell the detainee the reasons.
- (4) The chief executive must ask for the detainee's cooperation for the search.
- (5) The chief executive must ensure that a body search is conducted—
 - (a) in a private area or an area that provides reasonable privacy for the detainee; and
 - (b) in a way that provides reasonable privacy.

401AY People present at body searches

- (1) An authorised nurse must be present during the body search of a detainee.
- (2) If the authorised doctor conducting the body search is not the same sex as the detainee, the authorised nurse present must be the same sex as the detainee.
- (3) The chief executive may direct 1 or more youth detention officers to be present during the search, each of whom must be the same sex as the detainee.
- (4) However, the number of youth detention officers present during the search must be no more than is necessary and reasonable to ensure the search is carried out as safely and effectively as possible.

- (5) The requirement in subsection (3) that a youth detention officer be the same sex as the detainee does not apply if the chief executive believes on reasonable grounds that—
 - (a) there is an imminent and serious threat to the personal safety of the detainee or someone else; and
 - (b) compliance with that requirement would exacerbate the threat.
- (6) The search must be conducted in the presence of a person with parental responsibility for the detainee if—
 - (a) the chief executive believes that it is necessary and prudent for the person to be present; and
 - (b) the detainee agrees to the person being present.
- (7) In making a decision under subsection (6), the chief executive must have regard to the detainee's age, maturity and any known history.

401AZ Body searches—no-one with parental responsibility for detainee available

- (1) This section applies in relation to a body search of a detainee if—
 - (a) a person with parental responsibility for the detainee can not be contacted before the search is conducted; or

Note For a requirement to contact a person with parental responsibility, see s 401AI.
 - (b) no-one with parental responsibility for the detainee is available to be present at the search; or
 - (c) the detainee does not agree to a person with parental responsibility for the detainee being present at the search.
- (2) The chief executive must ensure that the body search is conducted in the presence of someone (a *support person*) who—
 - (a) the chief executive believes on reasonable grounds can support and represent the interests of the detainee; and

- (b) the detainee agrees should be present at the search.

Note In some circumstances the chief executive is a person with parental responsibility for a detainee (see s 224).

- (3) However, the body search may continue in the absence of a support person if—
 - (a) the detainee does not agree to a support person being present; or
 - (b) the chief executive directs the support person to leave under section 401AZA (2).

401AZA Body search—directing person to leave

- (1) This section applies if a body search of a detainee is being conducted in the presence of—
 - (a) a person with parental responsibility for the detainee; or
 - (b) a support person under section 401AZ.
- (2) The chief executive may direct the person to leave if the chief executive believes, on reasonable grounds, that the person is preventing or hindering the conduct of the search.

401AZB Removing people from search area

- (1) The chief executive may direct a youth detention officer to enforce a direction under section 401AZA (2) if the person given the direction contravenes the direction.
- (2) The youth detention officer may use force that is necessary and reasonable to enforce the direction.

401AZC Help for body searches

- (1) This section applies if the authorised doctor conducting a body search of a detainee asks the chief executive for assistance that the doctor believes on reasonable grounds is necessary and reasonable for the search.
- (2) The chief executive may direct, a youth detention officer, or authorise someone else present at the search (the *assistant*), to assist in the conduct of the search.
- (3) However, the assistant must be the same sex as the detainee.
- (4) Subsection (3) does not apply if the chief executive believes on reasonable grounds that—
 - (a) there is an imminent and serious threat to the personal safety of the detainee or someone else; and
 - (b) compliance with subsection (3) would exacerbate the threat.

401AZD Body searches—rules about detainee’s clothing

- (1) A body search of a detainee must not involve—
 - (a) the removal from the detainee of more clothes than is necessary and reasonable for the search; or
 - (b) the removal from the detainee of more clothes at any time than is necessary and reasonable for the search; or
 - (c) without limiting paragraph (b), both the upper and lower parts of the detainee’s body being uncovered at the same time.
- (2) A detainee who has been body searched must be allowed to dress in private as soon as the search is finished.
- (3) If clothing from a detainee is seized during a body search, the chief executive must ensure that the detainee is left with, or given, appropriate clothing to wear.

401AZE Body searches—rules about touching detainee

For the body search of a detainee, the authorised doctor or authorised nurse may touch the detainee and examine the detainee's orifices, but only if the doctor or nurse is of the same sex as the detainee.

401AZF Seizing things discovered during body search

- (1) An authorised doctor conducting a body search of a detainee may seize anything mentioned in section 401AW (Body searches directed by chief executive) that is discovered during the search if seizing the thing would not be likely to cause injury to the detainee or someone else.
- (2) The doctor must give the thing seized to a youth detention officer as soon as practicable.

Part 13A.6 Searches of premises and property**401AZG Searches—premises and property generally**

- (1) The chief executive may, at any time, direct a youth detention officer to search—
 - (a) any part of a youth detention centre; or
 - (b) anything at a youth detention centre, including anything in the custody or possession of anyone at a youth detention centre; or

- (c) any vehicle used for transporting a detainee.

Examples of searches under this section

a search of any of the following for a prohibited thing:

- any area or building or part of a building (including a cell) at a youth detention centre
- any storage area, including an area used by detainees or youth detention officers, at a youth detention centre
- any vehicle, machinery or equipment at a youth detention centre

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, this section does not authorise a search of—
- (a) anyone at a youth detention centre; or
 - (b) any clothing being worn at the time of the search by anyone at a youth detention centre.
- (3) In this section:
- search* includes search—
- (a) with a device using electronic or other technology; and
 - (b) by physical means.

401AZH Searches of detainee cells—privileged material

- (1) This section applies if a detainee has privileged material at a youth detention centre.
- (2) A youth detention officer may search the detainee’s cell under section 401AZG in the absence of the detainee if—
- (a) the detainee removes the privileged material from the cell; or
 - (b) the privileged material is stored in accordance with arrangements under subsection (3).

-
- (3) The chief executive may make arrangements for the secure storage at a youth detention centre of privileged material for detainees.

401AZI Searches of detainee cells—suspected privileged material

- (1) If a youth detention officer suspects, on reasonable grounds, that a detainee's cell contains privileged material, the officer may search the cell only if the detainee is present.
- (2) A search under subsection (1) may include an examination of any privileged material, and anything containing the material, found in the cell.
- (3) However, the officer may not read any privileged material found in the cell.
- (4) The officer need not comply with subsection (1) or (3) if the officer believes, on reasonable grounds, that urgent circumstances exist and that compliance with the subsection would create a risk of injury to the officer, the detainee or anyone else.

Part 13A.7 Searches—use of force

401AZJ Searches—managing use of force

- (1) The chief executive must ensure, as far as practicable, that the use of force in relation to a detainee under this chapter is always—
 - (a) the last resort and does not involve more force than necessary and reasonable in the circumstances; and
 - (b) by a youth detention officer of the same sex as the detainee; and
 - (c) in accordance with—
 - (i) this section; and
 - (ii) the standing orders.

- (2) The standing orders may make provision in relation to the use of force, including provision in relation to the following:
- (a) the circumstances in which, and by whom, force may be used;
 - (b) the kinds of force that may be used;
 - (c) the use of restraints and weapons;
 - (d) requirements for medical examination after the use of force.

Note The power to make standing orders includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48).

401AZK Searches—authorised use of force

- (1) A youth detention officer may use force that is necessary and reasonable—
- (a) to conduct a search under this chapter; or
 - (b) to assist at a body search under section 401AZC (Help for body searches); or
 - (c) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.
- (2) A youth detention officer may use force in relation to a detainee under this chapter only if the officer—
- (a) gives a clear warning of the intended use of force; and
 - (b) allows enough time for the warning to be observed; and
 - (c) uses no more force than is necessary and reasonable in the circumstances; and
 - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.

- (3) However, the officer need not comply with subsection (2) (b) if the officer believes, on reasonable grounds, that urgent circumstances exist and that compliance with subsection (2) (b) would create a risk of injury to the officer, the detainee or anyone else.

Example of urgent circumstances

the detainee is assaulting someone or engaging in self-harm

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 13A.8 Seizing property

401AZL Seizing mail etc

- (1) The chief executive may seize anything in a detainee's protected mail if the chief executive believes, on reasonable grounds, that the thing—
- (a) may physically harm the addressee or anyone else; or
 - (b) is a prohibited thing.
- (2) The chief executive may seize other mail of a detainee, or anything in the mail, if the chief executive suspects, on reasonable grounds, that the seizure is necessary—
- (a) to stop any of the following entering or leaving a youth detention centre:
 - (i) a prohibited thing;
 - (ii) anything that may be used by the detainee in a way that may involve an offence, a risk to the personal safety of someone else, or a risk to security or good order at a youth detention centre; or
 - (b) to stop threatening or otherwise inappropriate correspondence entering or leaving a youth detention centre; or

- (c) to stop the detainee obtaining or buying goods without the chief executive's approval.

Example of inappropriate correspondence—par (b)

mail addressed to a person by someone convicted of a sexual offence against the person

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The chief executive may seize a document under this section only if the chief executive believes, on reasonable grounds, that the document is not privileged.
- (4) If the chief executive believes on reasonable grounds that a document seized under subsection (3) is privileged, the chief executive must return the document to the detainee immediately.
- (5) In this section:

mail means postal mail.

protected mail means mail between a detainee and any of the following:

- (a) a lawyer representing the detainee;
- (b) the official visitor;
- (c) the director of public prosecutions;
- (d) the human rights commissioner;
- (e) the privacy commissioner;
- (f) the public advocate;
- (g) the ombudsman;
- (h) anyone else prescribed by regulation.

401AZM Seizing property—general

- (1) The chief executive may seize—
 - (a) a prohibited thing found on a detainee or in a detainee's custody or possession, unless the detainee has the written approval of the chief executive to possess the thing; or
 - (b) anything found at a youth detention centre, whether or not in a person's custody or possession, that the chief executive suspects, on reasonable grounds—
 - (i) is being used, or is intended, for the commission of an offence; or
 - (ii) jeopardises or is likely to jeopardise security or good order at a youth detention centre or the safety of anyone at a youth detention centre or elsewhere.
- (2) To remove any doubt, this section extends to anything found in a search under this chapter.
- (3) The chief executive may seize a document under this section only if the chief executive believes, on reasonable grounds, that the document is not privileged.
- (4) If the chief executive believes on reasonable grounds that a document seized under subsection (3) is privileged, the chief executive must return the document to the detainee immediately.

401AZN Notice of seizure

- (1) The chief executive must prepare written notice of a seizure under section 401AZL (Seizing mail etc) or section 401AZM (Seizing property—general).
- (2) Not later than 7 days after the day of the seizure, the chief executive must give written notice of the seizure to—
 - (a) the owner of the thing seized; or

- (b) if the owner can not be identified after reasonable inquiries (given the thing's apparent value)—the person from whom the thing was seized.
- (3) The notice must—
 - (a) identify the thing seized; and
 - (b) outline the grounds for the seizure; and
 - (c) include a statement about the effect of section 401AZO; and
 - (d) include anything else prescribed by regulation.
- (4) In this section:
owner, of a thing, includes a person entitled to possession of the thing.

401AZO Forfeiture of things seized

- (1) A thing seized under section 401AZL (Seizing mail etc) or section 401AZM (Seizing property—general) is forfeited to the Territory if the chief executive decides, on reasonable grounds—
 - (a) that—
 - (i) after making reasonable inquiries (given the thing's apparent value), the owner of the thing cannot be found; or
 - (ii) after making reasonable efforts (given the thing's apparent value), the thing cannot be returned to the owner; or
 - (b) that—
 - (i) possession of the thing by a detainee is an offence; or
 - (ii) it is necessary to keep the thing to stop it being used for the commission of an offence; or
 - (iii) the thing is inherently unsafe.

- (2) The chief executive may deal with a thing forfeited to the Territory under this section, or dispose of it, as the chief executive considers appropriate.

Examples

- 1 giving a forfeited weapon to a youth detention officer
- 2 dumping a forfeited thing of little value

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) However, subsection (2) is subject to any order under the *Crimes Act 1900*, section 249 (Seizure of forfeited articles).

Note 1 The *Crimes Act 1900* also provides for articles forfeited under any law in force in the ACT to be seized by a member of the police force, taken before the Magistrates Court and for the court to order disposal of the article by the public trustee (see s 249 and s 250).

Note 2 The *Uncollected Goods Act 1996* provides generally for the disposal of uncollected goods, including goods abandoned on premises controlled by the Territory.

401AZP Return of things seized but not forfeited

- (1) If a thing seized under section 401AZL (Seizing mail etc) or section 401AZM (Seizing property—general) is not forfeited, the chief executive must return it to its owner—
- (a) at the end of the 6 months after the day it was seized; or
 - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) However, if the thing was being kept as evidence of an offence and the chief executive believes, on reasonable grounds, that its retention as evidence is no longer necessary, the chief executive must return the thing immediately.

(3) In this section:

owner, of a thing, includes a person entitled to possession of the thing.

13 **What is *sensitive information*?
Section 405B (2), definition of *child abuse information*,
paragraph (a)**

substitute

(a) in a report (a *child abuse report*) made under—

- (i) section 157A (Prenatal reporting—anticipated abuse or neglect); or
- (ii) section 158 (Voluntary reporting); or
- (iii) section 159 (Mandatory reporting); or

14 **Section 405B (2), definition of *child abuse information*,
paragraph (b) (i)**

omit

section 162 (a)

substitute

section 162

15 **Section 405B (2), definition of *interstate child abuse
information*, paragraph (a)**

omit

section 158 or section 159

substitute

section 157A, section 158 or section 159

16 Dictionary, note 2, new dot points*insert*

- correctional centre
- Criminal Code
- doctor
- document
- human rights commissioner
- in relation to
- judge
- magistrate
- nurse
- ombudsman
- privacy commissioner
- property
- public advocate

17 Dictionary, new definitions*insert*

authorised doctor, for chapter 13A—see section 401AB.

authorised health professional, for chapter 13A—see section 401AB.

authorised nurse, for chapter 13A—see section 401AB.

body search, for chapter 13A—see section 401AB.

detainee, for chapter 13A—see subsection 401AA.

frisk search, for chapter 13A—see section 401AB.

health professional—see the *Health Professionals Act 2004*, section 14.

health service, for chapter 13A—see section 401AB.

ordinary search, for chapter 13A—see section 401AB.

privileged—a thing is ***privileged*** if—

- (a) client legal privilege attaches to the thing; or
- (b) it includes a protected confidence under the *Evidence (Miscellaneous Provisions) Act 1991*, division 4.5 (Protection of counselling communications).

prohibited thing, for chapter 13A—see section 401AB.

scanning search, for chapter 13A—see section 401AB.

18 Dictionary, definition of *shelter*

substitute

shelter—

- (a) for the Act generally—means a place declared to be a shelter under section 412; and
- (b) for chapter 13A—see section 401AB.

19 Dictionary, new definitions

insert

strip search, for chapter 13A—see section 401AB.

youth detention centre, for chapter 13A—see section 401AB.

youth detention officer, for chapter 13A—see section 401AB.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 12 December 2006.

2 Notification

Notified under the Legislation Act on 20 March 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Children and Young People Amendment Bill 2007, which originated in the Legislative Assembly as the Children and Young People Amendment Bill 2006 (No 2) and was passed by the Assembly on 8 March 2007.

Clerk of the Legislative Assembly

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