

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Disability and Community Services)

Children and Young People Amendment Bill 2006 (No 2)

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(As presented)

(Minister for Disability and Community Services)

Children and Young People Amendment Bill 2006 (No 2)

A Bill for

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

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

1 **1 Name of Act**

2 This Act is the *Children and Young People Amendment*
3 *Act 2006 (No 2)*.

4 **2 Commencement**

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

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

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

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

15 **3 Legislation amended**

16 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.

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

16 **7 Section 160**

17 *substitute*

18 **160 Dishonest reports—offence**

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

21 Maximum penalty: 50 penalty units, imprisonment for 6 months or
22 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)—

1 **10 Protection of public advocate and person providing**
2 **information to public advocate**
3 **Section 164 (c)**

4 *omit*

5 in good faith

6 *substitute*

7 honestly

8 **11 Power to conduct personal search of child or young**
9 **person**
10 **Section 399 (2) and (3)**

11 *substitute*

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

14 **12 New chapter 13A**

15 *insert*

16 **Chapter 13A Detainees—search and seizure**

17 **Part 13A.1 Preliminary**

18 **401AA Application—ch 13A**

19 (1) This chapter applies to a child or young person (each of whom is a
20 *detainee*) who is required to be kept or detained at a shelter or
21 institution—

22 (a) because he or she has been charged with an offence and not
23 admitted to bail; or

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

15 **401AB Definitions—ch 13A**

16 In this chapter:

17 *authorised doctor* means a doctor authorised under section 401AE.

18 *authorised health professional* means a health professional

19 authorised under section 401AE.

20 *authorised nurse* means a nurse authorised under section 401AE.

21 *body search*, of a detainee, means a search of the detainee's body,

22 including an examination of an orifice or cavity of the detainee's

23 body.

24 *detainee*—see section 401AA (1).

1 **frisk search**, of a detainee, means—

2 (a) a search of the detainee conducted by quickly running the
3 hands over the detainee’s outer clothing; and

4 (b) an examination of anything worn or carried by the detainee that
5 is conveniently and voluntarily removed by the detainee.

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

7 **ordinary search**, of a detainee, means a search of the detainee, or of
8 anything in the detainee’s possession, and may include—

9 (a) requiring the detainee to remove only the detainee’s overcoat,
10 coat, jacket or a similar article of clothing and any footwear,
11 gloves, or headwear; and

12 (b) an examination of anything removed.

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

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

18 **Examples of scanning searches**

19 1 passing a portable electronic or other device over or close to a detainee

20 2 requiring a detainee to pass by or through an electronic or other device

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

24 **shelter** does not include the shelter known as Marlow Cottage.

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

6 (a) requiring the detainee to remove all of the detainee's clothing;
7 and

8 (b) an examination of—

9 (i) the detainee's body (but not the detainee's body orifices
10 or cavities); and

11 (ii) the detainee's clothing.

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

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

17 **401AC Relationship with other laws**

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

22 **401AD Prohibited things**

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

1 (2) A declaration is a notifiable instrument.

2 **Examples of prohibited things**

3 1 a weapon or something crafted as a weapon

4 2 alcohol

5 3 a controlled drug under the Criminal Code

6 4 a mobile phone

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

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

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

15 **401AE Authorised health professionals**

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

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

20 (2) However, the chief executive must ensure, as far as practicable, that
21 a detainee's treating health professional is not asked to exercise a
22 function as an authorised health professional under this chapter in
23 relation to the detainee.

24 (3) Subsection (2) does not apply if the chief executive believes on
25 reasonable grounds that—

26 (a) there is an imminent and serious threat to the personal safety of
27 the detainee or someone else; and

28 (b) compliance with subsection (2) would exacerbate the threat.

1 (4) In this section:

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

5 **Part 13A.2 Searches generally**

6 **401AF Intrusiveness of searches**

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

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

13 **Example**

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

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

19 **401AG Register of searches**

20 (1) This section applies to a search under any of the following sections:

- 21 (a) section 401AM (Admission to youth detention centre—strip
22 search for initial assessment);
23 (b) section 401AQ (Strip searches directed by chief executive);
24 (c) section 401AW (Body searches directed by chief executive);
25 (d) section 401AZG (Searches—premises and property generally);
26 (e) section 401AZH (Searches of detainee cells—privileged
27 material);

- 1 (f) section 401AZI (Searches of detainee cells—suspected
2 privileged material).
- 3 (2) The chief executive must keep a register containing the following
4 details in relation to each search:
- 5 (a) the name of each detainee searched;
- 6 (b) the reason for the search;
- 7 (c) when and where the search was conducted;
- 8 (d) the name of each person present at any time during the search;
- 9 (e) details of anything seized during the search;
- 10 (f) details of any force used for conducting the search, and why
11 force was used;
- 12 (g) anything else prescribed by regulation.
- 13 (3) The register may contain any other details the chief executive
14 considers relevant.
- 15 (4) The register must be available for inspection by any of the
16 following:
- 17 (a) a judge or magistrate;
- 18 (b) the official visitor;
- 19 (c) the human rights commissioner;
- 20 (d) the privacy commissioner;
- 21 (e) the public advocate;
- 22 (f) the ombudsman;
- 23 (g) anyone else prescribed by regulation.
- 24 (5) The public advocate must inspect the register at least once every
25 3 months.

1 **401AH Searches of transgender and intersex detainees**

2 (1) This section applies if a transgender or intersex detainee is to be
3 searched under this chapter.

4 (2) The detainee may require that either a male or a female conduct the
5 search.

6 (3) If the detainee requires that a male conduct the search, the detainee
7 is taken, for this chapter, to be male.

8 (4) If the detainee requires that a female conduct the search, the
9 detainee is taken, for this chapter, to be female.

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

12 **401AI Notice of strip and body searches—person with parental**
13 **responsibility for detainee**

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

17 (a) before the search is conducted; or

18 (b) if it is impracticable to tell the person before the search—as
19 soon as practicable after the search.

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

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

1 **Part 13A.3 Scanning, frisk and ordinary**
2 **searches**

3 **401AJ Directions for scanning, frisk and ordinary searches**

4 (1) The chief executive may, at any time, direct a youth detention
5 officer to conduct a scanning search, frisk search or ordinary search
6 of a detainee if the chief executive believes, on reasonable grounds,
7 that the search is prudent to ensure security or good order at a
8 detention centre.

9 (2) Also, a youth detention officer may conduct a scanning search, frisk
10 search or ordinary search of a detainee if the officer suspects, on
11 reasonable grounds, that the detainee is carrying—

12 (a) a prohibited thing; or

13 (b) something that may be used by the detainee in a way that may
14 involve—

15 (i) an offence; or

16 (ii) a risk to the personal safety of the detainee or someone
17 else; or

18 (iii) a risk to security or good order at a youth detention
19 centre.

20 **401AK Requirements for scanning, frisk and ordinary searches**

21 (1) The youth detention officer who conducts a scanning search, frisk
22 search or ordinary search of a detainee must—

23 (a) tell the detainee about the search and the reasons for the search
24 and ask for the detainee's cooperation; and

25 (b) for a frisk search or ordinary search—conduct the search in a
26 private area or an area that provides reasonable privacy for the
27 detainee; and

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

15 **Part 13A.4 Strip searches**

16 **401AL Admission to youth detention centre—initial assessment**

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

- 1 (3) The health assessment must—
- 2 (a) be made by a doctor or nurse who is not an authorised doctor
- 3 or authorised nurse in relation to the detainee; and
- 4 (b) include an assessment (the *self-harm assessment*) of the
- 5 detainee’s risk of self-harm.
- 6 (4) However, the self-harm assessment may be made by a health
- 7 professional other than the nurse or doctor.
- 8 *Note* The *Mental Health (Treatment and Care) Act 1994* also includes
- 9 provision for assessment orders, and emergency detention and care,
- 10 under that Act.

11 **401AM Admission to youth detention centre—strip search for**

12 **initial assessment**

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

1 **401AN Strip search on admission—no-one with parental**
2 **responsibility for detainee available**

3 (1) This section applies in relation to a strip search of a detainee under
4 section 401AM if—

5 (a) a person with parental responsibility for the detainee cannot be
6 contacted before the search is conducted; or

7 *Note* For a requirement to contact a person with parental responsibility,
8 see s 401AI.

9 (b) no-one with parental responsibility for the detainee is available
10 to be present at the search; or

11 (c) the detainee does not agree to a person with parental
12 responsibility for the detainee being present at the search.

13 (2) The chief executive must ensure that the strip search is conducted in
14 the presence of someone (a *support person*) who—

15 (a) the chief executive believes on reasonable grounds can support
16 and represent the interests of the detainee; and

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

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

20 (3) However, the search may continue in the absence of a support
21 person if—

22 (a) the detainee does not agree to a support person being present;
23 or

24 (b) the chief executive directs the support person to leave under
25 section 401AO (2).

1 **401AO Strip search on admission—directing person to leave**

2 (1) This section applies if a strip search of a detainee under
3 section 401AM is being conducted in the presence of—

4 (a) a person with parental responsibility for the detainee; or

5 (b) a support person under section 401AN (2).

6 (2) The chief executive may direct the person to leave if the chief
7 executive believes, on reasonable grounds, that the person is
8 preventing or hindering the conduct of the search.

9 **401AP Removing people from search area**

10 (1) The chief executive may direct a youth detention officer to enforce a
11 direction under section 401AO (2) if the person given the direction
12 contravenes the direction.

13 (2) The youth detention officer may use force that is necessary and
14 reasonable to enforce the direction.

15 **401AQ Strip searches directed by chief executive**

16 (1) The chief executive may direct a youth detention officer to strip
17 search a detainee only if—

18 (a) the chief executive suspects, on reasonable grounds, that the
19 detainee has something concealed on the detainee that—

20 (i) is a prohibited thing; or

21 (ii) may be used by the detainee in a way that may involve an
22 offence, a risk to the personal safety of the detainee or
23 someone else, or a risk to security or good order at a
24 youth detention centre; and

25 (b) a scanning search, frisk search or ordinary search of the
26 detainee has failed to detect the thing.

1 (2) To remove any doubt, the strip search need not be conducted in the
2 presence of a person with parental responsibility for the detainee.

3 (3) This section does not apply to a strip search under section 401AM
4 (Admission to youth detention centre—strip search for initial
5 assessment).

6 **401AR Obligations of youth detention officer before strip search**

7 (1) This section applies if a youth detention officer proposes to strip
8 search a detainee.

9 (2) The youth detention officer must tell the detainee—

10 (a) whether the detainee will be required to remove clothing
11 during the search; and

12 (b) if the detainee will be required to remove clothing, why the
13 removal is necessary.

14 (3) If the detainee asks why the search is being conducted in a particular
15 way, the youth detention officer must tell the detainee the reasons.

16 (4) The youth detention officer must ask for the detainee's cooperation
17 for the search.

18 **401AS Youth detention officers at strip searches**

19 (1) A strip search of a detainee must be conducted—

20 (a) by a youth detention officer of the same sex as the detainee;
21 and

22 (b) in the presence of 1 or more other youth detention officers each
23 of whom must be the same sex as the detainee.

24 (2) However, the number of youth detention officers present during the
25 search must be no more than is necessary and reasonable to ensure
26 the search is carried out as safely and effectively as possible.

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

11 **401AT Strip searches—general rules**

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

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

16 **401AU Strip searches—rules about visual inspection of**
17 **detainee’s body**

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

1 **401AV Strip searches—rules about detainee’s clothing**

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

14 **Part 13A.5 Body searches**

15 **401AW Body searches directed by chief executive**

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

1 **401AX Obligations of chief executive before body search**

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

17 **401AY People present at body searches**

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

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

14 **401AZ Body searches—no-one with parental responsibility for**
15 **detainee available**

- 16 (1) This section applies in relation to a body search of a detainee if—
- 17 (a) a person with parental responsibility for the detainee can not be
18 contacted before the search is conducted; or
- 19 *Note* For a requirement to contact a person with parental responsibility,
20 see s 401AI.
- 21 (b) no-one with parental responsibility for the detainee is available
22 to be present at the search; or
- 23 (c) the detainee does not agree to a person with parental
24 responsibility for the detainee being present at the search.
- 25 (2) The chief executive must ensure that the body search is conducted in
26 the presence of someone (a *support person*) who—
- 27 (a) the chief executive believes on reasonable grounds can support
28 and represent the interests of the detainee; and

- 1 (b) the detainee agrees should be present at the search.
- 2 *Note* In some circumstances the chief executive is a person with parental
3 responsibility for a detainee (see s 224).
- 4 (3) However, the body search may continue in the absence of a support
5 person if—
- 6 (a) the detainee does not agree to a support person being present;
7 or
- 8 (b) the chief executive directs the support person to leave under
9 section 401AZA (2).

10 **401AZA Body search—directing person to leave**

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

18 **401AZB Removing people from search area**

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

1 **401AZC Help for body searches**

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

15 **401AZD Body searches—rules about detainee’s clothing**

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

1 **401AZE Body searches—rules about touching detainee**

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

6 **401AZF Seizing things discovered during body search**

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

14 **Part 13A.6 Searches of premises and**
15 **property**

16 **401AZG Searches—premises and property generally**

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

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

2 **Examples of searches under this section**

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

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

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

12 (2) However, this section does not authorise a search of—

13 (a) anyone at a youth detention centre; or

14 (b) any clothing being worn at the time of the search by anyone at
15 a youth detention centre.

16 (3) In this section:

17 *search* includes search—

18 (a) with a device using electronic or other technology; and

19 (b) by physical means.

20 **401AZH Searches of detainee cells—privileged material**

21 (1) This section applies if a detainee has privileged material at a youth
22 detention centre.

23 (2) A youth detention officer may search the detainee’s cell under
24 section 401AZG in the absence of the detainee if—

25 (a) the detainee removes the privileged material from the cell; or

26 (b) the privileged material is stored in accordance with
27 arrangements under subsection (3).

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

3 **401AZI Searches of detainee cells—suspected privileged**
4 **material**

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

17 **Part 13A.7 Searches—use of force**

18 **401AZJ Searches—managing use of force**

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

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

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

11 **401AZK Searches—authorised use of force**

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

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

5 **Example of urgent circumstances**

6 the detainee is assaulting someone or engaging in self-harm

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

10 **Part 13A.8 Seizing property**

11 **401AZL Seizing mail etc**

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

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

3 **Example of inappropriate correspondence—par (b)**

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

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

9 (3) The chief executive may seize a document under this section only if
10 the chief executive believes, on reasonable grounds, that the
11 document is not privileged.

12 (4) If the chief executive believes on reasonable grounds that a
13 document seized under subsection (3) is privileged, the chief
14 executive must return the document to the detainee immediately.

15 (5) In this section:

16 *mail* means postal mail.

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

19 (a) a lawyer representing the detainee;

20 (b) the official visitor;

21 (c) the director of public prosecutions;

22 (d) the human rights commissioner;

23 (e) the privacy commissioner;

24 (f) the public advocate;

25 (g) the ombudsman;

26 (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

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

12 **401AZO Forfeiture of things seized**

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

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

4 **Examples**

- 5 1 giving a forfeited weapon to a youth detention officer
6 2 dumping a forfeited thing of little value

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

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

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

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

19 **401AZP Return of things seized but not forfeited**

- 20 (1) If a thing seized under section 401AZL (Seizing mail etc) or
21 section 401AZM (Seizing property—general) is not forfeited, the
22 chief executive must return it to its owner—

- 23 (a) at the end of the 6 months after the day it was seized; or
24 (b) if a proceeding for an offence involving the thing is started
25 within the 6 months—at the end of the proceeding and any
26 appeal from the proceeding.

- 27 (2) However, if the thing was being kept as evidence of an offence and
28 the chief executive believes, on reasonable grounds, that its
29 retention as evidence is no longer necessary, the chief executive
30 must return the thing immediately.

1 (3) In this section:

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

4 **13 What is *sensitive information*?**
5 **Section 405B (2), definition of *child abuse information*,**
6 **paragraph (a)**

7 *substitute*

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

9 (i) section 157A (Prenatal reporting—anticipated abuse or
10 neglect); or

11 (ii) section 158 (Voluntary reporting); or

12 (iii) section 159 (Mandatory reporting); or

13 **14 Section 405B (2), definition of *child abuse information*,**
14 **paragraph (b) (i)**

15 *omit*

16 section 162 (a)

17 *substitute*

18 section 162

19 **15 Section 405B (2), definition of *interstate child abuse***
20 ***information*, paragraph (a)**

21 *omit*

22 section 158 or section 159

23 *substitute*

24 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.

- 1 ***privileged***—a thing is ***privileged*** if—
- 2 (a) client legal privilege attaches to the thing; or
- 3 (b) it includes a protected confidence under the *Evidence*
- 4 (*Miscellaneous Provisions*) *Act 1991*, division 4.5 (Protection
- 5 of counselling communications).
- 6 ***prohibited thing***, for chapter 13A—see section 401AB.
- 7 ***scanning search***, for chapter 13A—see section 401AB.

8 **18 Dictionary, definition of *shelter***

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

14 **19 Dictionary, new definitions**

- 15 *insert*
- 16 ***strip search***, for chapter 13A—see section 401AB.
- 17 ***youth detention centre***, for chapter 13A—see section 401AB.
- 18 ***youth detention officer***, for chapter 13A—see section 401AB.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2006.

2 Notification

Notified under the Legislation Act on 2006.

3 Republications of amended laws

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

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