

2006
LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2006 (NO. 2)
EXPLANATORY STATEMENT

Presented by
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SUMMARY OF CLAUSES

Clause 1 Name of Act

Clause 1 is a technical clause and sets out the name of the proposed Act as the *Children and Young People Amendment Act 2006 (No.2)*.

Clause 2 Commencement

Clause 2 is the commencement provision. The Act will commence on a day fixed by the Minister by written notice.

Clause 3 Legislation Amended

Clause 3 provides that this Amendment Bill amends the *Children and Young People Act 1999*.

Clause 4 New section 3A

Clause 4 provides that other legislation applies in relation to offences against the Act, specifically the Criminal Code and the *Legislation Act 2001*.

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

This clause extends the application of the Act to include pre-natal reports.

Clause 6 New Section 157A Pre-natal reporting - anticipated abuse and neglect

Clause 6 introduces pre-natal reporting to allow the Chief Executive to receive and respond to voluntary pre-natal reports during a woman's pregnancy.

Pre-natal reporting is necessary for the Chief Executive to respond to reports made during a pregnancy that a child who may be born as a result of the pregnancy may be in need of care and protection. Community members are currently reporting to the Chief Executive their concerns of the risk of future abuse or neglect to children who may be born and consequently there is legal ambiguity about the status of this information. There was also strong support for the introduction of pre-natal reporting at law, in community consultation undertaken as part of the Review of the Children and Young People Act.

Other Australian jurisdictions have enacted similar pre-natal reporting provisions (see for example, section 21A, *Child Protection Act 1999* (Qld) and section 25, *Children And Young Persons (Care And Protection) Act 1998* (NSW)). A number of reviews of child deaths have highlighted the imperative for pre-natal reporting provisions to allow statutory child protection agencies to intervene early to prevent serious injury or death to vulnerable, at risk infants (see for example, Queensland Ombudsman, 2003, *An investigation into the adequacy of the actions of certain government agencies in relation to the safety, well being and care of the late baby Kate, who died aged 10 weeks*).

The pre-natal reporting provisions engage human rights law. Section 9(2) of the *Human Rights Act 2004* provides that the right to life applies from the time of birth. The provisions will not affect the law in relation to the legal status of the unborn child.

The pre-natal reporting provisions will allow the Chief Executive to undertake a voluntary assessment of whether the child is likely to be in need of care and protection after the child is born. The provisions will also enable the Chief Executive to provide, or arrange the provision of, voluntary support services to the pregnant woman and other family members who may be involved in the care of the child after birth, including for example the child's father.

The pre-natal reporting provisions may be considered to encroach upon the pregnant woman's rights and liberties, in particular, the right not to have her privacy (and family) interfered with unlawfully or arbitrarily (section 12, *Human Rights Act 2004*) and the right of the family to protection (section 11, *Human Rights Act 2004*). Section 28 of the *Human Rights Act 2004* provides that human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society.

In considering the reasonableness of the intrusion on these rights, the following factors have been considered:

- Child death reviews across Australia have consistently identified the need for legislative provisions that allow concerns about unborn children to be reported and responded to, in order to provide early support.
- The objective of these provisions is to reduce the likelihood the child will be in need of care and protection when born. This will be achieved through the Chief Executive providing or arranging the provision of appropriate support services to the pregnant woman with her consent.
- To ensure that intervention by the Chief Executive is proportionate and least restrictive, the Bill does not enable the Chief Executive to take action to compel a pregnant woman to do or not do something.

It is considered that this engagement of rights is a justifiable limit on the right to privacy for the pregnant woman and is proportionate to the objective served by the provisions in reducing the likelihood of future abuse or neglect of children.

Clause 7 Section 160 Dishonest Reports

Clause 7 expands the offence for dishonestly making a voluntary or mandatory report to include a pre-natal report.

Clause 8 Section 162 Chief Executive must record reports

This clause extends the obligation to record each voluntary and mandatory report to include pre-natal reports and any assessment made as a result of these reports.

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

This clause extends the protection of people making reports to include reporters honestly making pre-natal reports.

Clause 10 Section 164(c) Protection of Public Advocate and person providing information to Public Advocate

This clause amends the term ‘in good faith’ to ‘honestly’ in accordance with current drafting practice.

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

Clause 11 removes sections 399(2)(b), 399(2)(c) from the Children and Young People Act. This has the effect of retaining the current provisions regarding search and seizure (sections 399, 400 and 401) for children and young people subject to a Therapeutic Protection Order. Detailed policy work underpinning an appropriate search and seizure scheme for children and young people subject to therapeutic protection is being progressed as part of a Bill to re-write the Children and Young People Act.

Clause 11 also removes section 399(3) from the Children and Young People Act as section 399 will now apply to children and young people on therapeutic protection orders.

Clause 12 Chapter 13A Detainees – search and seizure

Overview

This clause creates a new chapter, 13A.

Chapter 13A updates the search and seizure powers in relation to children and young people who are remanded or committed to a youth detention centre under the Act, which are currently outlined at sections 399, 400 and 401 of the Children and Young People Act.

Chapter 13A arose from a commitment made by the Minister for Disability and Community Services in July 2005 that the standing orders underpinning the administration of Quamby Youth Detention Centre would be updated to ensure their compatibility with the Human Rights Act. The search provisions in the Act require simultaneous amendment in order to ensure that searches of children and young people detained at the youth detention centre are done in a way that is compatible with the Human Rights Act.

Searches of children and young people who are remanded or committed to a youth detention centre, are necessary to prevent the entry of unauthorised items that may harm any person within a youth detention centre, including the detained child or young person. The Human Rights Act provides at section 9 that everyone has the right to life. Public authorities have a positive duty to protect the life of a person in care or custody of the Territory. This search and seizure scheme, involving the use of force in certain circumstances, will protect against the unlawful admittance of contraband which could threaten the safety of children and young people detained at the youth detention centre.

Strip searches and searches of body-cavities are inherently degrading, and therefore engage principles of human rights, in particular sections 10(1)(b) (inhuman or degrading treatment), 11(2) (protection of the child), 12 (privacy), and 19(1) (humane treatment) of the Human Rights Act.

To ensure that searches of detainees are proportionate to the necessary aim of the searches, the Bill introduces a number of obligations on persons conducting or assisting with a search. These obligations (outlined below) are introduced to ensure that children and young people who are searched are treated humanely and with respect for their inherent dignity, and are protected from unlawful or arbitrary interferences with their privacy.

Some of the primary obligations include:

- Searches must be conducted in an area providing reasonable privacy;
- The degree of visual inspection is limited to that which is strictly necessary;
- A requirement to consider any information known about the detainee's individual characteristics such as age, maturity and history (for example - history of abuse, impairment and sexuality) in deciding whether an invasive search is necessary and in how that search is conducted; and
- A requirement to consider the individual circumstances of the detainee to determine if it is necessary and prudent for a person with parental responsibility to be present during a strip search on admission or a body search.

Part 13A.1 Preliminary

This part sets out whom the chapter applies to and key definitions.

Section 401AA Application – Chapter 13A

This section provides that the search and seizure chapter applies to a child or young person who is kept or detained at a shelter or institution because they have been charged with an offence and not admitted to bail or are required to be placed or detained under section 96, 122, 123, 124, 125 or 140 and any other provision of a territory law or a law of the Commonwealth, State or another territory.

This chapter does not apply to a child or young person who is subject to a Therapeutic Protection Order or who is at the shelter known as Marlow Cottage.

Section 401AB Definitions – Chapter 13A

This section sets out the definitions of the types of searches and related terms contemplated by chapter 13.

The definitions are aligned with the *Crimes Act 1900*, part 10.

There are a number of terms that have meanings for this Chapter which differ from other parts of the Act. 'Youth detention centre' describes a shelter, institution or other place (excluding a correctional centre) at which a child or young person may be kept or detained under this Act. 'Detainee' describes a child or young person who is kept or detained at a shelter or institution as described at section 401AA. 'Youth detention officer' is a new term that describes an officer whose functions include the detention of a child or young person under this chapter. A 'shelter' does not include the shelter known as Marlow Cottage.

Section 401AC Relationship with other laws

This section provides that this chapter is additional to, and does not limit, any other Territory, State or Commonwealth laws related to searches of detainees.

Section 401AD Prohibited things

Preventing contraband from being kept, or smuggled into, a youth detention centre is a key way of keeping every person in a youth detention centre safe.

This section enables the Chief Executive to declare things, or classes of things, to be prohibited, where the Chief Executive believes that the declaration is necessary or prudent to ensure security and good orders at the youth detention centre. Section 145(b) of the *Legislation Act 2001* interprets words in Acts as meaning both singular and plural unless explicitly stated otherwise. Any prohibited thing under this section would apply to the whole class of things. For example, if scissors were prohibited then all types of scissors would be prohibited.

Any declaration is a notifiable instrument and must be notified on the ACT Legislation Register in accordance with the *Legislation Act 2001*.

Section 401AE Authorised health professionals

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1992) stated that:

73. A prison doctor acts as a patient's personal doctor. Consequently, in the interests of safeguarding the doctor/patient relationship, he should not be asked to certify that a prisoner is fit to undergo punishment. Nor should he carry out any body searches or examinations requested by an authority, except in an emergency when no other doctor can be called in.

Subsection (1) enables the Chief Executive to authorise a health professional to exercise search functions under this Chapter. Subsections (2) and (3) require the Chief Executive to ensure that a detainee's treating health professional is not asked to exercise search functions under this chapter in relation to the detainee, except in an emergency where there is an imminent and serious threat to safety and compliance with the requirement would exacerbate that threat. A treating health professional is someone who has a professional relationship with the detainee for the provision of health services.

Part 13A.2 Searches generally

This part provides the powers and procedures for personal searches of children and young people who are detained at a youth detention centre.

Section 401AF Intrusiveness of searches

This section obliges the person conducting a search under this chapter to undertake the type of search that is commensurate with, and proportionate to, the circumstances.

This section also invokes the principle of proportionality. The exercise of power must be: necessary and rationally connected to the objective, the least intrusive in order to accomplish the object, and not have a disproportionately severe effect on the person to whom it applies.

For this chapter, frisk, scanning and ordinary searches are less intrusive searches than strip searches or body searches.

Section 401AG Register of searches

This section obliges the Chief Executive to keep a register of strip searches (including on admission), body searches, searches of premises and property and searches of detainee's cells. The register must include the information set out in subsection (2) or anything else the Chief Executive considers relevant as per subsection (3). Subsection (2)(b) requires the Chief Executive to record the reasons for the search – it is intended this would include (when relevant) details of a particular prohibited thing being searched for and the basis for the Chief Executive's suspicion that the detainee was concealing the thing.

This section does not prescribe that the register must be a hard-copy book. The register may be electronic.

The register must be available for inspection on request by certain listed persons and agencies set out at subsection (4). The register must be inspected by the Public Advocate at least once every three months.

Section 401AH Searches of transgender and intersex detainees

A number of sections in this chapter require that a person conducting a search, or is present at a search, to be the same sex as the detainee being searched. These provisions would have an ambiguous and potentially discriminatory application where the child or young person being searched is an intersex person or transgender person.

This section provides guidance on how the Chief Executive should determine the detainee's sex for the purpose of conducting a search under this chapter. This section allows an intersex or transgender detainee to require that a search be conducted by a person of the same sex as the sex with which the detainee identifies.

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

This section requires the Chief Executive to notify a person with parental responsibility for the detainee that a strip search (including on admission) or a body search will take place. If the person with parental responsibility cannot be contacted before the search is conducted, they must be notified after the search is conducted.

Part 13A.3 Scanning, Frisk and Ordinary Searches

This part provides the powers and obligations for scanning, frisk and ordinary searches of children and young people who are detained at a youth detention centre.

Section 401AJ Directions for scanning, frisk and ordinary searches

This section enables the Chief Executive to direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a detainee at any time that the Chief Executive believes is prudent for security or good order at a youth detention centre.

Subsection (2) enables a youth detention officer to conduct a scanning, frisk or ordinary search of a detainee if they suspect the detainee is carrying a prohibited thing or something that is a

risk to the safety of the detainee or others, may involve an offence or is a risk to security or good order of the youth detention centre.

Section 401AK Requirements for scanning, frisk and ordinary searches

This section sets out the procedure required for scanning, frisk and ordinary searches.

This section obliges the youth detention officer conducting a search under this section to:

- tell the detainee about the search and the reasons for the search and ask for their cooperation;
- ensure the detainee searched is left with or given reasonably appropriate clothing, if clothing is seized because of the search;
- for frisk and ordinary searches - conduct the search in an area that provides reasonable privacy and ensure that the search is not carried out in the presence or sight of someone whose presence is not necessary for the search, including another detainee; and
- for frisk searches – ensure that the officer conducting the search is the same sex as the detainee, unless there is an imminent and serious threat to the personal safety of detainee or someone else and compliance would exacerbate the threat.

Part 13A.4 Strip Searches

This part provides the powers and obligations for strip searches of children and young people who are detained at a youth detention centre.

Section 401AL Admission to youth detention centre – initial assessment

This section requires the Chief Executive to ensure that each detainee admitted to a youth detention centre is assessed for any risks and needs associated with the detainee's health, safety or security.

Subsection (1) requires the Chief Executive to respond to any risks or needs identified.

Principle 24 of the United Nation's *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988) states:

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after [their] admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Subsection (2) creates a statutory requirement for health assessments to occur within 24 hours of a detainee's admission into a youth detention centre.

Subsection (3) requires an assessment to be made by a doctor or nurse (who is not a doctor or nurse authorised to perform search functions under this chapter), and must include an assessment of the detainee's risk of self-harm.

Subsection (4) enables the assessment of the risk of self-harm to be made by a health professional other than the doctor or nurse.

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

Preventing contraband finding its way into a youth detention centre, particularly weapons and drugs, is an important method of keeping every person in a youth detention centre safe.

This section enables the Chief Executive to direct a strip search upon admission without the need to decide if a search is warranted by any evidence of a detainee concealing something. Admission to a youth detention centre is a high risk time for the entry of contraband. This section intends to enable a strip search to occur where it is considered to be necessary as part of the admission process.

Section 401AZM enables any contraband, or suspected contraband, to be seized by the Chief Executive.

Subsections (1) and (3) of section 401AM require the Chief Executive to first ascertain whether a strip search is necessary, after considering any information known about the detainee's age, maturity and known history (for example - history of abuse, impairment and sexuality).

Subsections (2) and (3) of section 401AM require the Chief Executive to then ascertain if it is necessary and prudent for the strip search to be undertaken in the presence of a person with parental responsibility, after considering the detainee's age, maturity and known history (for example - history of abuse, impairment and sexuality). Prudent, in this context, would include whether the Chief Executive considered the person with parental responsibility to be acceptable to attend the search. For example, the Chief Executive may be aware that the person with parental responsibility has posed a risk to security and good order of the centre in the past by attempting to bring contraband into the youth detention centre. The detainee must also agree to the presence of the person with parental responsibility.

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

Where it has been determined by the Chief Executive that it is necessary and prudent for a person with parental responsibility to attend under section 401AM, this section requires that if that person cannot be contacted or is unavailable to attend the search or the detainee does not agree with their presence, then the search must be conducted in the presence of someone else who can support and represent the detainee's interests and is acceptable to the detainee. This may include a delegate of the Chief Executive who is capable of fulfilling this function.

Subsection (3) provides that if the detainee does not agree to the presence of a support person, or if the Chief Executive directs the person to leave under 401AO(2), then the search can continue in their absence.

Section 401AO Strip search on admission - directing person to leave

This section allows the Chief Executive to direct a person present for a strip search to leave if they are acting in a way that prevents or hinders the search from being undertaken effectively. 401AN (3) allows the search to continue in this circumstance.

Section 401AP Removing people from search area

This section allows the Chief Executive to direct a youth detention officer to use force which is necessary and reasonable to ensure compliance with a direction to leave a strip search under section 401AO (2).

Section 401AQ Strip searches directed by Chief Executive

This section enables the Chief Executive to direct a youth detention officer to conduct a strip search if the Chief Executive suspects that the detainee may be carrying a prohibited thing, something that may be used in a way that may involve an offence, something that could injure anyone at the youth detention centre or elsewhere, or be a risk to the security or good order of the youth detention centre.

This section provides that a strip search must not be conducted unless a scanning, frisk or ordinary search has already been carried out for that purpose.

This section does not apply to strip searches on admission to the youth detention centre.

Section 401AR Obligations of youth detention officer before strip search

This section sets out the rules that the youth detention officer must comply with before a strip search is conducted, including telling a detainee whether they will be required to remove any clothing, and the reasons for this if a detainee seeks an explanation; and seeking the cooperation of the detainee.

Section 401AS Youth detention officers at strip searches

Subsection (1)(a) requires that a strip search must be conducted by a youth detention officer who is the same sex as the detainee.

Subsection (1)(b) requires that the strip search must be conducted in the presence of one or more youth detention officers who are the same sex as the detainee, and subsection (2) requires the number of officers present during the search to be no more than is necessary and reasonable to ensure the search is carried out safely and as effectively as possible. Subsection (3) enables officers to assist in the search, if the officer conducting the search reasonably believes it is necessary and reasonable for the search. Subsection (4) allows officers present at the search to be the opposite sex, if the Chief Executive reasonably believes there is an imminent and serious threat to personal safety and also reasonably believes that compliance with the same-sex requirement would exacerbate that threat.

Section 401AT Strip searches – general rules

This section sets out the general rules that the youth detention officer must comply with during the conduct of a strip search:

- the search must be conducted as quickly as possible and in a way that provides reasonable privacy and is appropriate to the detainee's sexuality, impairment or history (for example - history of abuse);
- a search must not be conducted in the presence of anyone who is of the opposite sex, except if they are a doctor or nurse who is acceptable to the detainee, or a person with

parental responsibility or a support person, or a youth detention officer present at the search;

- a search must not be conducted in the presence or sight of anyone whose presence is not necessary for the search or for the safety of anyone present; and
- the touching of a detainee's body is not permitted.

Section 401AU Strip searches – rules about visual inspection of detainee's body

This section sets out the rules about the visual inspection of a detainee's body during a strip search which the youth detention officer must comply with:

- The detainee's genital area (or female detainee's breasts) must not be searched unless it is necessary to do so; and
- The search must not involve more visual inspection of the detainee's body than is reasonably necessary. Visual inspection of the detainee's genital area, anal area, buttock and breasts must be kept to a minimum.

Section 401AV Strip searches – rules about detainee's clothing

This section sets out the rules about the detainee's clothing during a strip search that the youth detention officer must comply with:

- A search must not involve the removal of more clothes, or the removal of more clothes at any time, than is reasonably necessary. A person must not be more than half undressed at one time;
- The person must be allowed to dress in private as soon as the whole search process is finished; and
- If clothing is seized, the person must be offered adequate replacements.

Part 13A.5 Body Searches

Section 401AW Body searches directed by Chief Executive

Body searches are the most intrusive search possible. This section authorises contact with a detainee's orifices to enable a physical search of the detainee's orifices, known as a body search.

Subsection (1) enables the Chief Executive to authorise a doctor to conduct a body search of a detainee if the Chief Executive reasonably suspects: the detainee has ingested or inserted something that may be harmful to themselves; or the detainee has a prohibited thing concealed in their body that may be used in a way that may pose a substantial risk to security or good order at a youth detention centre. Subsection (2) requires the Chief Executive, in deciding to authorise a body search, to give consideration to the detainee's age, maturity and known history (for example - history of abuse, impairment and sexuality).

An authorised doctor acting under this section is immune from liability under section 407 of the Act.

Section 401AX Obligations of Chief Executive before body search

This section sets out the rules that the Chief Executive must comply with before a doctor is authorised to conduct a body search, including telling a detainee whether they will be required

to remove any clothing, and the reasons for this if a detainee seeks an explanation; and seeking the cooperation of the detainee.

Section 401AY People present at body searches

This section sets out who can be present at a search.

Subsection (2) ensures a nurse is also present at the search and that of the two medical people present at the search, at least one must be the same sex as the detainee.

Subsection (3) allows the Chief Executive to direct one or more youth detention officers to be present at the search. Subsection (4) requires the number of officers present during the search to be no more than is necessary and reasonable to ensure the search is carried out safely and as effectively as possible. Subsection (5) allows officers present at the search to be the opposite sex, if the Chief Executive reasonably believes there is an imminent and serious threat to personal safety and also reasonably believes that compliance with the same -sex requirement would exacerbate that threat.

Subsections (6) and (7) requires that the search be conducted in the presence of a person with parental responsibility if their presence is necessary and prudent, after the Chief Executive considers the detainee's age, maturity and history (for example - history of abuse, impairment and sexuality). The detainee must agree for them to be present. Prudent, in this context, would include whether the Chief Executive considered the person with parental responsibility to be acceptable to attend the search and if the search was not required in an emergency.

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

Where it has been determined by the Chief Executive that it is necessary and prudent for a person with parental responsibility to attend under section 401AY(6), this section requires that if that person cannot be contacted or is unavailable to attend the search or the detainee does not agree with their presence, then the search must be conducted in the presence of someone else who can support and represent the detainee's interests and is acceptable to the detainee. This may include a youth detention officer who is capable of fulfilling this function.

Subsection (3) provides that if the detainee does not agree to the presence of a support person, or if the Chief Executive directs the person to leave under 401AZA(2), then the search can continue in their absence.

Section 401AZA Body search - directing person to leave

This section allows the Chief Executive to direct a person present for a search to leave if they are acting in a way that prevents or hinders the search from being undertaken effectively. Subsection 401AZ(3) allows the search to continue in this circumstance.

Section 401AZB Removing people from search area

This section allows the Chief Executive to direct a youth detention officer to use force which is necessary and reasonable to ensure compliance with a direction to leave a body search under section 401AZA (2).

Section 401AZC Help for body searches

This section allows a doctor conducting a body search to ask the Chief Executive for assistance that the doctor believes is reasonable and necessary for the search. The Chief Executive is enabled to direct or authorise a youth detention officer or someone else present for the search to assist in its conduct. The person providing the assistance must be of the same sex, except if the Chief Executive reasonably believes there is an imminent and serious threat to personal safety and also reasonably believes that compliance with the same-sex requirement would exacerbate that threat.

A person assisting under this section is immune from liability under section 407 of the Act.

Section 401AZD Body searches – rules about detainee’s clothing

This section sets out the rules about the detainee’s clothing during a body search that must be complied with:

- A search must not involve the removal of more clothes, or the removal of more clothes at any time, than is reasonably necessary. A person must not be more than half undressed at one time;
- The person must be allowed to dress in private as soon as the whole search process is finished; and
- If clothing is seized, the person must be offered adequate replacements.

Section 401AZE Body searches – rules about touching detainee

This section allows a doctor who is authorised by the Chief Executive to conduct the body search by the Chief Executive may touch and examine the detainee’s body orifices for the search. The nurse, who is present but not conducting the search, may touch and examine the detainee’s orifices.

Section 401AZF Seizing things discovered during body search

Subsection (1) allows anything discovered during the search to be seized by the doctor, unless seizing the thing would cause injury to the detainee or someone else. Subsection (2) requires anything seized to be passed on to the relevant youth detention officer.

Part 13A.6 Searches of premises and property

This part provides the powers and obligations for searches of premises and property at a youth detention centre.

Section 401AZG Searches—premises and property generally

This section enables the Chief Executive to search any part of a youth detention centre; anything at a centre; and any vehicle used to transport a detainee. The examples provided clarify the intended extent of the powers. The power extends to any possessions in a detainee’s cell or carried by a detainee, but not to the extent of the detainee’s clothing.

The power does not extend to searches of detainees or other persons in the youth detention centre.

Searches of premises and property may be conducted physically or with the aid of an electronic device or other technology.

Section 401AZH Searches of detainee cells – privileged material

This section allows a youth detention officer to search a cell in the absence of a detainee, provided that the detainee removes any privileged material from the cell or the material is stored in accordance with arrangements for secure storage made by the Chief Executive.

Section 401AZI Searches of detainee cells – suspected privileged material

This section provides obligations for the youth detention officer in searching a cell if they suspect the detainee's cell contains privileged information.

The following rules apply:

- The detainee must be present for the search, except if it is urgent and the officer believes that complying with this rule would create a risk of injury to any person.
- The search may include an examination of any privileged material found in the cell.
- The officer must not read the privileged material, except if it is urgent and the officer believes that complying with this rule would create a risk of injury to any person.

Part 13A.7 Searches – Use of force

This part provides the powers and obligations for using force to carry out a search under this chapter.

Section 401AZJ Searches—managing use of force

The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Rules 63-65) provides that instruments of restraint and force:

- can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorised and specified by law and regulation;
- may be resorted to prevent self-injury, injuries to others or serious destruction of property ;
- should not cause humiliation and degradation, should be used restrictively and for the shortest possible period of time ;
- if used, medical and other relevant personnel should be consulted and its use reported to a higher administrative authority; and
- carrying and use of weapons by personnel is prohibited in any facility where juveniles are detained.

The *Standard Minimum Rules for the Treatment of Prisoners* (Rules 33-34 and 54) provides that:

- use of force can be used in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations;
- force can be used no more than is strictly necessary and incident must be reported immediately to director;
- officers shall be given special physical training to enable them to restrain aggressive prisoners; and
- restraint as a punishment is prohibited.

The provisions governing any use of force under the Bill are set out in the Standing Order on Use of Force for Quamby Youth Detention Centre established as a disallowable instrument under 403(2)(d) of the Children and Young People Act. This standing order reflects a range of safeguards embodied in international human rights instruments as outlined above. Section 31(1) of the Human Rights Act allows relevant international law, and the judgments of foreign and international courts and tribunals, to interpret a human right.

This section explicitly enables the use of force to carry out a search or secure anything seized, or that needs to be seized, in a search. The effect of this section is that reasonable force can be used to secure a detainee's compliance with the search.

The inappropriate use of force could potentially cause injury to the detainee, limits the ability of individuals to move freely and is inherently degrading. It therefore engages principles of human rights, in particular sections 9(1) (right to life), 10(1)(b) (cruel, inhuman or degrading treatment), 11(2) (protection of the child), 13 (freedom of movement) and 19(1) (humane treatment) of the Human Rights Act.

Under this section, the Chief Executive is required to make arrangements to ensure as far as practicable that force used in relation to a search is always a last resort, no more than is necessary, by an officer of the same sex as the detainee, and in accordance with this section and the standing orders. Subsection (2) sets out matters that may be addressed by the standing orders in relation to the use of force.

Section 401AZK Searches - authorised use of force

This section allows a youth detention officer to use force that is reasonable and necessary to conduct a search under this chapter or to preserve anything seized or that may be seized during the search. This section requires the officer to give a warning about the intended use of force and give sufficient time for the warning to be observed, except where doing so would create a risk of injury to someone. The officer can use no more force than is necessary and reasonable and must ensure as far as practicable, force is used in a way that reduces the risk of injury or death.

Part 13A.8 Seizing property

This part provides the powers and procedures for seizing property at the youth detention centre.

Section 401AZL Seizing mail etc

Subsection (1) enables the Chief Executive to seize prohibited things in a detainee's mail, or any other thing in the mail that may harm someone. Section 401AD enables the Chief Executive to declare things, or classes of things, to be prohibited.

An example of something that may be suspected of causing harm is a substance that is or resembles explosive material, biological agents or poisons.

Subsection (2) enables the Chief Executive to seize a detainee's mail if the Chief Executive believes that doing so would stop the transmission or entry of a prohibited thing. It also enables the Chief Executive to seize mail if the correspondence itself will cause harm of any nature or is a means of making an unauthorised purchase.

Subsection (3) enables the Chief Executive to seize a document, provided that the Chief Executive can reasonably ascertain that the document is not privileged. Subsection (4) provides for the immediate return of material to the detainee which, though reasonably believed not to be privileged, turns out to be privileged. See dictionary for the meaning of privileged material.

Section 401AZM Seizing property—general

This section enables the Chief Executive to seize a detainee's property if the Chief Executive believes that the property would jeopardise the security or good order of the centre or the safety of anyone at the centre or elsewhere.

This section also enables the Chief Executive to seize property that is intended for the commission of an offence.

Any prohibited thing found during a search may also be seized unless written approval exists for the detainee to possess the thing.

This section further enables the Chief Executive to seize a document, provided that the Chief Executive can reasonably ascertain that the document is not privileged. Subsection (4) provides for the immediate return of material to the detainee which, though reasonably believed not to be privileged, turns out to be privileged. See dictionary for the meaning of privileged material.

Section 401AZN Notice of seizure

This section obliges the Chief Executive to notify the detainee in writing of anything seized.

The owner, or the person in possession of the thing, must be notified in writing within 7 days.

Subsection (3) sets out what must be in the notice.

Subsection (4) clarifies that an owner of an item may be a person who is entitled to possession, but not in possession of the item. For example, a detainee may be the owner of something mailed to them, intended as a gift.

Section 401AZO Forfeiture of things seized

This section provides an explicit power for things seized to be forfeited to the Territory.

If an item is allowed to be possessed by a detainee but the owner cannot be found, or the thing cannot be returned to the owner, the item may be forfeited to the Territory.

If an item is prohibited, or may be used to commit an offence, or is unsafe, the item may be forfeited to the Territory.

Subsection (2) enables the Chief Executive to make a decision about what to do with the forfeited item. For example, weapons or drugs may be passed on to the police for destruction; other items may be passed to the public trustee for sale; other items may be kept for the general use of the youth detention centre.

The *Uncollected Goods Act 1996* provides for the disposal of abandoned goods.

Section 401AZP Return of things seized but not forfeited

If something is seized under section 401AZL or 401AZM, but not forfeited under section 401AZO, the Chief Executive is obliged to return the thing to its owner at the end of 6 months after it was seized, or if a proceeding for an offence involving the thing has commenced within that 6 months, then at the end of that proceeding and any appeal.

If an item is no longer required to be retained as evidence, the Chief Executive must return it immediately to the owner.

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

This clause adds pre-natal reports as a form of sensitive information.

Clause 14 Section 405B(2) Definition of child abuse information – Paragraph (b)(i)

This clause omits subsection (a) to cover all records referred to in section 162.

Clause 15 Section 405B(2) Definition of interstate child abuse information – Paragraph (a)

This clause adds pre-natal report information to the meaning of interstate child abuse information in order to ensure that information exchanged between jurisdictions is adequately protected.

Clause 16 Dictionary, note 2, new dot points

This clause inserts a number of new terms into Note 2 in the dictionary.

Clause 17 Dictionary, new definitions

This clause creates new definitions for the terms authorised doctor, authorised health professional, authorised nurse, body search, detainee, frisk search, health professional, health service, privileged, ordinary search, prohibited thing and scanning search.

Clause 18 Dictionary, definition of shelter

This clause creates a definition of shelter for Chapter 13A that is narrower than the overall definition of shelter under the Act, as it excludes the shelter known as Marlow Cottage.

Clause 19 Dictionary, new definitions

This clause creates new definitions for the terms strip search, youth detention centre and youth detention officer.