

Australian Capital Territory

## **Children and Young People (Search and Seizure) Policy and Procedures 2008 (No 1)**

Notifiable instrument NI2008–396

made under the

*Children and Young People Act 2008*, Section 143 Youth detention policies and operating procedures

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**1 Name of instrument**

This instrument is the *Children and Young People (Search and Seizure) Policy and Procedures 2008 (No 1)*.

**2 Commencement**

This instrument is to commence on 9 September 2008.

**3 Policies and operating procedures**

Under section 143 of the *Children and Young People Act 2008*, I make the attached Search and Seizure Policy and Procedures to facilitate the effective and efficient management of detention services for young detainees.

Martin Hehir  
Chief Executive

8 September 2008

# Search and Seizure Policy and Procedures

## 1. Introduction and Purpose

Personal and property searches at a detention place are necessary to prevent the entry of prohibited and other things into a detention place that may cause harm to a person or jeopardise security and good order. The *Human Rights Act 2004* 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, including their protection from a risk of harm caused by another person and from self inflicted harm. Searching young detainees, people other than young detainees, areas, vehicles and things at a detention place, and vehicles used for transporting young detainees, contributes to the objective of keeping young detainees and all persons who visit or work at a detention place safe.

## 2. Legal Authority and Obligations

- 2.1 The *Children and Young People Act 2008* is the primary source of authority for the operations of a detention place. The provisions of the *Children and Young People Act 2008* must be complied with at all times by staff exercising functions at a detention place. Chapter 7 of the Act relates to search and seizure at a detention place.
- 2.2 The policies and procedures provide specific directions to implement the provisions of the *Children and Young People Act 2008* and other relevant legislation, including the *Human Rights Act 2004*.
- 2.3 Staff of a detention place are mandated reporters under the *Children and Young People Act 2008*. A report must be made to the Centralised Intake Service of Care and Protection Services if a staff member reasonably believes that a young detainee who is under 18 years has experienced or is experiencing sexual abuse or non-accidental physical injury by any person.

## 3. Authorisations and Delegations

- 3.1 The Senior Manager is responsible for ensuring staff receive appropriate training in, and have access to, appropriate equipment before undertaking searches.
- 3.2 The decision maker for different searches is specified in Column 4 of Table 1.

**Table 1 Decision-makers for decision to conduct a search**

Column 1	Column 2	Column 3	Column 4
<b>Legislative Authority under <i>Children and Young People Act 2008</i></b>	<b>Reference in this policy and procedure</b>	<b>Search Type</b>	<b>Decision-maker for search</b>
Section 252 (1)	6.13	Scanning, frisk or ordinary search of	Senior Manager, Operations

		young detainee to ensure security or good order	Manager, On-Call Manager (after hours), Unit Manager, Team Leader
Section 252(2)	6.14	Scanning, frisk or ordinary search of young detainee if suspicion the young detainee is carrying a prohibited or dangerous thing	Senior Manager, Operations Manager, On-Call Manager (after hours), Unit Manager, Team Leader, Youth worker
Section 254(1)	6.21	Strip search of young detainee for initial assessment on admission	Senior Manager, Operations Manager, On-Call Manager (after hours), Unit Manager, Team Leader
Section 258(1)	6.30	Strip search of young detainee for reasons other than an initial assessment	Senior Manager, Operations Manager, On-Call Manager (after hours), Unit Manager, Team Leader
Section 264(1)	6.46	Body search of young detainee	Manager
Section 275(1)	6.87	Search of premises, property and vehicles	Senior Manager, Operations Manager, On-Call Manager (after hours), Unit Manager, Team Leader
Section 274	6.134 6.135	Scanning, frisk or ordinary search of people other than young detainees	Senior Manager, Operations Manager, On-Call Manager (after hours), Unit Manager, Team Leader
Section 249	6.124	Search involving use of search dog	Senior Manager, Operations Manager

## 4. Definitions

**Adult young detainee** is a young detainee who is 18 years or over, but under 21 years. An adult young detainee who is 21 years or older cannot be detained at a detention place.

**All staff** refers to youth detention officers, authorised persons, other Departmental staff providing services at or visiting a detention place in a work-related capacity and staff of ACT Government agencies providing services to young detainees at a detention place.

**Body search** is a search conducted by a non-treating doctor of a young detainee's body, including an examination of an orifice or cavity of the young detainee's body.

**Corrections officer** is a person appointed under section 19 of the *Corrections Management Act 2007* by the Chief Executive responsible for that Act.

**Frisk search** is a search of a young detainee or other person conducted by quickly running the hands over the young detainee or other person's outer clothing and an examination of anything worn or carried by the young detainee or other person that is conveniently and voluntarily removed by the young detainee or other person.

**Manager** refers to the Senior Manager of a detention place during normal business hours, or in the event this person is unavailable, the Operations Manager of a detention place, or in the event this person is unavailable, a Unit Manager or in the event a Unit Manager is unavailable, the Programs and Services Manager. Outside normal business hours, this refers to the on-call manager.

**Mandated reporter** under the *Children and Young People Act 2008* includes staff at a detention place. The Act requires a staff member to report a reasonable belief that a young detainee who is under 18 years has experienced or is experiencing non-accidental physical injury or sexual abuse.

**Nominated person**, for an adult young detainee, is a person nominated by the young detainee at the time of admission to whom the Chief Executive can give notifications under the *Children and Young People Act 2008*. The details of the nominated person must be entered in the register of young detainees.

**Non-treating doctor** is defined at section 246 of the *Children and Young People Act 2008* to mean a doctor who is authorised, orally or in writing, by the Chief Executive to exercise a non-treating health function under section 98 of the Act. Non-treating health functions are conducting and assisting at body searches, identification of transgender young detainees and alcohol and drug testing.

**Non-treating nurse** is defined at section 246 of the *Children and Young People Act 2008* to mean a nurse who is authorised, orally or in writing, by the

Chief Executive to exercise a non-treating health function under section 98 of the Act. Non-treating health functions are conducting and assisting at body searches, identification of transgender young detainees and alcohol and drug testing.

**Ordinary mail** is defined at section 201 of the *Children and Young People Act 2008* and means all mail that is not protected mail.

**Ordinary search** is a search of a young detainee or other person, or of anything in the young detainee or other person's possession, and may include requiring a young detainee or person to remove only the young detainee's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves, or headwear and an examination of any thing removed. It also includes asking a young detainee or other person to empty their pockets.

**Personal search** is a search of a person, as opposed to of a place. Personal searches mean scanning, frisk, ordinary, strip and body searches.

**Privileged information** is information to which client legal privilege attaches, such as, for example, confidential information provided by a young detainee to their legal representative, or by a young detainee's legal representative to a young detainee, or between two or more legal representatives. It is also information that is a protected confidence under the *Evidence (Miscellaneous Provisions) Act 1991*, division 4.5 (Protection of counselling communications). This means a counselling communication made by, to or about a person against whom a sexual offence was or is alleged to have been committed.

**Prohibited thing** is a thing declared under section 148 of the *Children and Young People Act 2008* by the Chief Executive to be prohibited if the Chief Executive reasonably believes that the declaration is necessary or prudent to ensure security or good order at a detention place. The declaration of prohibited things is contained in schedule 1 of this policy.

**Protected mail** is defined at section 201 of the *Children and Young People Act 2008* and means mail between a young detainee and any of the following:

- (a) a lawyer representing the young detainee;
- (b) an Official Visitor;
- (c) a Commissioner exercising functions under the *Human Rights Commission Act 2005*;
- (d) the Public Advocate; and
- (e) the Ombudsman.

**Register of searches and uses of force** is a register that the Senior Manager, Operations Manager and Unit Managers are obliged to keep under section 195 of the *Children and Young People Act 2008*.

**Scanning search** is a search of a young detainee or other person by electronic or other means that does not require the young detainee or other person to remove clothing or be touched by someone else. For example,

passing a portable electronic device over a person, or requiring a person to pass by or through an electronic or other device.

**Search dog** is a dog that has been specifically trained as a search dog and is used for searching purposes under the control of a Corrections Officer and in accordance with this policy and procedure.

**Searches of premises, property and vehicles** are searches of any part of a detention place, anything at a detention place (including anything in the custody or possession of anyone at a detention place and including any vehicle at a detention place) or of any vehicle used for transporting a young detainee (whether that vehicle is in or outside of a detention place).

**Staff** refers to youth detention officers and other authorised persons. An authorised person is a person who has been delegated a power under the *Children and Young People Act 2008* or another Territory law and is exercising a function under the criminal matters chapters of the *Children and Young People Act 2008*. The positions which have delegations as authorised persons for the policies and procedures are: Executive Director (A), Director (B), Senior Manager (C/3), Acting Senior Manager (C/4), Operations Manager (E/7), Programs and Services Manager (E/8), Unit Managers (F/7), Team Leaders (G/6), Youth Workers (I/4), Casual Youth Workers (J/3), Case Managers (F/8), Aboriginal Liaison Officer (G/5).

**Strip search** is a search of a young detainee, or of any thing in the young detainee's possession and it includes requiring the young detainee to remove part or all of the young detainee's clothing (but only either those covering the young detainee's upper or lower half of the body at any given time) and a visual inspection of the young detainee's body and clothing. A strip search does not include examination of the young detainee's body orifices or cavities with the exception of visual inspection of ears, nose and mouth which does not involve touching the young detainee.

**Transfer escort** means a person who is authorised under a transfer agreement, transfer arrangement or transfer order to take and keep custody of a young offender. The transfer escort must be a police officer, a corrections officer, a youth detention officer or a person acting as a transfer escort with the approval of the Senior Manager.

**Youth detention officer** is defined at section 96 of the *Children and Young People Act 2008* and means an authorised person to whom the Chief Executive has delegated functions of a youth detention officer under the criminal matters chapters. The positions which have delegations as youth detention officers for the policies and procedures are: Senior Manager (C/3), Acting Senior Manager (C/4), Operations Manager (E/7), Programs and Services Manager (E/8), Unit Managers (F/7), Team Leaders (G/6), Youth Workers (I/4), Casual Youth Workers (J/3).

## 5. Principles

The *Children and Young People Act 2008* sets out the principles that must be considered by all decision-makers making decisions under the Act and this policy. These are:

### Section 8, Best interests of children and young people paramount consideration

- (1) In making a decision under this Act in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration.
- (2) In making a decision under this Act otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people.

### Section 9, Principles applying to Act

- (1) In making a decision under this Act in relation to a child or young person, a decision-maker must have regard to the following principles where relevant, except when it is, or would be, contrary to the best interests of a child or young person:
  - (a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
  - (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;
  - (c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;
  - (d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing.
- (2) A decision-maker exercising a function under this Act must, where practicable and appropriate, have qualifications, experience or skills suitable to apply the principles in subsection (1) in making decisions under the Act in relation to children and young people.

### Section 10, Aboriginal and Torres Strait Islander children and young people principle

- In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, in addition to the matters in section 8 and section 9, the decision-maker must take into account the following:
- (a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;
  - (b) submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the chief executive as providing ongoing support services to the child or young person or the child's or young person's family;
  - (c) Aboriginal and Torres Strait Islander traditions and cultural values (including kinship rules) as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.

## Section 94, Youth justice principles

- (1) For the criminal matters chapters, in deciding what is in the best interests of a child or young person, a decision-maker must consider each of the following matters that is relevant:
  - (a) if a child or young person does something that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;
  - (b) a child or young person should be dealt with in a way that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways;
  - (c) a child or young person should be consulted about, and be given the opportunity to take part in making, decisions that affect the child or young person, to the maximum extent possible taking into consideration their age, maturity and developmental capacity;
  - (d) if practicable and appropriate, decisions about an Aboriginal and Torres Strait Islander child or young person should be made in a way that involves their community;
  - (e) if a child or young person is charged with an offence, he or she should have prompt access to legal assistance, and any legal proceeding relating to the offence should begin as soon as possible;
  - (f) a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary;
  - (g) children, young people and other young offenders should be dealt with in the criminal law system in a way consistent with their age, maturity and developmental capacity and have at least the same rights and protection before the law as would adults in similar circumstances;
  - (h) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;
  - (i) it is a high priority that intervention with young offenders must promote their rehabilitation, and must be balanced with the rights of any victim of the young offender's offence and the interests of the community.
- (2) The decision-maker may also consider any other relevant matter.
- (3) The youth justice principles are intended to be interpreted consistently with relevant human rights instruments and jurisprudence.

### Example

#### Convention on the Rights of the Child

- (4) A reference in subsection (1) to a child or young person includes a reference to a person who is at least 18 years old but is being dealt with in relation to an offence committed, or alleged to have been committed, when he or she was under 18 years old.

The following operational principles underpin the search and seizure policy and procedure:

- (a) Personal and property searches at a detention place are necessary to prevent the entry of prohibited things and unauthorised items that may cause a risk to the safety of a person or security and good order;
- (b) Any personal search involves a limitation on a person's right to privacy and a search will only be authorised in accordance with the *Children and Young People Act 2008* and this policy and procedure;



- (c) The type of search undertaken must always be the least intrusive type of search that is commensurate with and proportionate to the circumstances;
- (d) A young detainee is likely to be particularly vulnerable during a personal search;
- (e) Staff will make every effort to minimise the potential negative impact of a search on a young detainee and support the psychosocial, emotional and mental health needs of a young detainee during a search;
- (f) Any person being searched at a detention place will be treated in a manner that upholds their dignity and is respectful.

## 6. Policy and Procedures

### Personal Searches of Young Detainees

- 6.1 There are five types of personal searches of a young detainee which are authorised by the *Children and Young People Act 2008* and this policy and procedure. These searches must be viewed on a continuum from least intrusive to most intrusive personal search types. From least intrusive to most intrusive, the search types are:
- (a) **Scanning search** - this is a search of a young detainee by electronic or other means that does not require the young detainee to remove clothing or be touched by someone else.
  - (b) **Ordinary search** - this is a search of a young detainee, or of anything in the young detainee's possession, and may include requiring a young detainee to remove only the young detainee's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves, or headwear and an examination of any thing removed. It also includes asking a young detainee to empty their pockets.
  - (c) **Frisk search** - this is a search of a young detainee conducted by quickly running the hands over the young detainee's outer clothing and an examination of anything worn or carried by the young detainee that is conveniently and voluntarily removed by the young detainee.
  - (d) **Strip search** – this is a search of a young detainee, or of any thing in the young detainee's possession and it includes requiring the young detainee to remove part or all of the young detainee's clothing (but only either those covering the young detainee's upper or lower half of the body at any given time) and a visual inspection of the young detainee's body and clothing.
  - (e) **Body search** – this is a search conducted by a non-treating doctor of a young detainee's body, including an examination of an orifice or cavity of the young detainee's body.
- 6.2 There are general criteria for making a decision to conduct a personal search of a young detainee and rules for conducting a personal search of a young detainee. These criteria and rules must be applied for all personal searches. The criteria and rules for all personal searches are at sections 6.5 to 6.8. In addition, if a young detainee objects to a search, rules at sections 6.9 to 6.12 apply.
- 6.3 In addition to the general criteria for decision-making for all personal searches, the criteria for undertaking the specific type of personal

search must be met before the search is authorised. The criteria for undertaking scanning, frisk and ordinary searches are at sections 6.13 and 6.14 of this policy. The criteria for undertaking a strip search upon admission of a young detainee to a detention place are at section 6.21. The criteria for undertaking a strip search of a young detainee for reasons other than an initial assessment are at section 6.30. The criteria for directing a body search of a young detainee are at section 6.46.

- 6.4 In addition to the general rules for undertaking all personal searches of a young detainee, there are further rules for the conduct of specific types of personal searches of young detainees. The rules for scanning, frisk and ordinary searches are at sections 6.16 to 6.19. The rules for all strip searches are at sections 6.34 to 6.45. The rules for body searches are at sections 6.53 to 6.63.

### **Rules for all Personal Searches**

- 6.5 In making a decision to undertake a personal search of a young detainee, the decision-maker must ensure that the search is the least intrusive search that is necessary and reasonable in the circumstances and that the search is conducted in the least intrusive way that is necessary and reasonable in the circumstances.
- 6.6 In making a decision to undertake a strip or body search of a young detainee, and in deciding how to conduct a personal search of a young detainee, the decision-maker must consider information known about the young detainee's individual characteristics such as age and maturity, impairment and known history such as any experience of abuse so as to minimise adverse psychological impact on the young detainee.
- 6.7 Before undertaking a personal search of a young detainee, a youth detention officer undertaking the search must explain to the young detainee the process and the purpose of the search in a manner that the officer reasonably considers the young detainee will understand (considering the young detainee's age and maturity and any other relevant factor). The youth detention officer must ask for the young detainee's cooperation to the search and answer any questions asked by the young detainee about the conduct of the search.
- 6.8 Certain personal searches require the searching officer to be the same sex as the young detainee, unless exceptional circumstances exist as outlined in this policy. These searches are frisk searches, strip searches and body searches. The Admission and Classification policy and procedure outlines procedures for a transgender or intersex young detainee to identify their sexual identity at the time of admission. If a young detainee has not done this, the young detainee may require that either a male or female person conduct the search. If the young detainee requires a male conduct the search, the young detainee is taken to be a male for the purposes of this policy. If the young detainee requires a female conduct the search, the young detainee is taken to be a female for the purposes of this policy.

## **Objections to Personal and Property Searches by Young Detainees**

- 6.9 For all personal searches and when searching a young detainee's cabin or a young detainee's property, a young detainee can object to a search and their objection must be acknowledged and recorded in the register of searches and uses of force
- 6.10 If a young detainee objects to a search because they are not comfortable with the youth detention officer delegated to carry out the search, and it is a requirement that a youth detention officer of the same sex as the young detainee conduct the search, then, where practicable, consideration should be given as to whether another youth detention officer of the same sex should be assigned to carry out the search.
- 6.11 An objection will not necessarily result in the search being suspended or cancelled. The Manager must authorise a search that is objected to by a young detainee. In determining whether to authorise a search that is objected to by a young detainee, the Manager must balance the following considerations:
- (a) The young detainee's reasons for objecting to the search;
  - (b) Any risks to the safety and wellbeing of the young detainee;
  - (c) Any risks to the safety and wellbeing of others at a detention place; and
  - (d) Any risks to security and good order at a detention place.
- 6.12 The Manager's decision must be documented in the Register of Searches and Uses of Force.

## **Scanning, frisk and ordinary searches of young detainees**

### Criteria for decision making regarding scanning, frisk and ordinary searches of young detainees

- 6.13 The Senior Manager, Operations Manager, Unit Manager, Team Leader or On-Call Manager may, at any time, direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a young detainee if the decision-maker reasonably believes that the search is necessary to ensure security or good order, including in the following circumstances:
- (a) a direction that all young detainees entering a detention place undergo a scanning search;
  - (b) a direction that all young detainees returning to a detention place after escorted or unescorted leave must undergo a scanning, frisk or ordinary search;
  - (c) a direction that all young detainees are subject to a scanning, frisk or ordinary search prior to entering their cabin;
  - (d) a direction that a scanning search be undertaken on a randomly selected young detainee or young detainees at irregular intervals;
  - (e) a direction that a scanning, frisk or ordinary search of a young detainee occur after a non-contact visit.
- 6.14 A youth detention officer may conduct a scanning search, frisk search or ordinary search of a young detainee if the officer reasonably suspects that the young detainee is carrying a prohibited thing or an item that could be used in an unlawful way or a way that is a risk to the

safety of a person or security and good order, including in the following circumstances:

- (a) Information provided to or gathered by the officer suggests the young detainee has concealed a prohibited thing on their person, for example, during a non-contact visit;
  - (b) An item which is approved for a specific program purpose, such as a woodworking tool, is not accounted for at the end of the program and it is reasonably suspected the item is in the possession of the young detainee;
  - (c) A scanning search of the young detainee conducted under section 6.13 above indicates the presence of a prohibited thing or unauthorised item and an ordinary or frisk search is necessary to confirm the indication.
- 6.15 In circumstances where a young detainee is suspected of having a prohibited thing or an item that could be used in an unlawful way or a way that is a risk to the safety of a person or security and good order on their person, a more intrusive search such as a strip search may only be undertaken if a scanning, frisk or ordinary search of the young detainee has been undertaken and has failed to detect the item suspected to be concealed. Refer to 'Strip searches directed for reasons other than initial assessment'.

#### Rules for conducting scanning, frisk and ordinary searches of young detainees

- 6.16 A youth detention officer conducting a scanning, frisk or ordinary search (the searching officer) must ensure the rules outlined in this section are complied with in conducting the search.
- 6.17 The searching officer must ensure that frisk and ordinary searches take place in a private area or an area that affords the young detainee reasonable privacy consistent with the purpose of the search.
- 6.18 A frisk search or an ordinary search must not be conducted in the presence of another young detainee or anyone else whose presence is not necessary for the search.
- 6.19 A frisk search must be conducted by a searching officer of the same sex as the young detainee. The only exception to this rule is if the decision-maker for the search reasonably believes there is an imminent and serious threat to the personal safety of the young detainee or someone else and complying with this requirement would increase this risk (for example, in circumstances where the search has to be performed without delay).

#### **Strip Searches**

- 6.20 A strip search of a young detainee may be authorised in one of the following two circumstances:
- (a) At the time of the young detainee's admission, if the Senior Manager, Operations Manager, Unit Manager, Team Leader or On-Call Manager reasonably believe that the search is necessary for an initial assessment; or
  - (b) At any other time, if the Senior Manager, Operations Manager, Unit Manager, Team Leader or On-Call Manager reasonably suspect that the young detainee has something concealed on them that is a

prohibited thing or may be used by the young detainee in a way that may involve an offence, a risk to the safety of a person or a risk to security or good order at a detention place; and a scanning, frisk or ordinary search of the young detainee has been undertaken and has failed to detect the item suspected to be concealed.

### Strip searches on young detainee's admission to detention place

#### *Criteria for decision-making*

- 6.21 The Senior Manager, Operations Manager, Unit Manager, Team Leader or On-Call Manager may direct a youth detention officer to strip search a young detainee if the decision-maker believes on reasonable grounds that the strip search is necessary for an initial assessment, having regard to the young detainee's age, maturity, developmental capacity and known history.
- 6.22 An initial assessment following admission has two components:
- (a) an assessment of the young detainee's physical and mental health needs and risks, and
  - (b) an assessment of any safety or security needs and risks of the young detainee.
- 6.23 A strip search may be authorised if the decision-maker reasonably believes it is necessary for either the health or the safety/security assessment. Refer to Admission and Classification Policy and Procedure for more information about the initial assessment.
- 6.24 The decision-maker must consider, and if necessary, give appropriate weight to, all relevant information available in relation to making a decision about whether or not to conduct a strip search of a young detainee for the purpose of a health and/or safety/security assessment. Sections 6.25 and 6.26 below provide examples of information about a young detainee, which, if available, the decision-maker would need to take into consideration when making a decision about a strip search for an initial assessment on admission. Information in each of these examples is a potentially relevant consideration in determining the best interests of the young detainee in relation to a decision to conduct a strip search.
- 6.25 Examples of information that would support a decision to conduct a strip search include:
- (a) there is some information to suggest the young detainee has a history of self harming (for example, marks on arms or knowledge of young person) and staff believe it is possible that the young detainee may have something hidden on their body that they could use to self harm;
  - (b) a young detainee is unknown to staff, information received from Police indicates that he/she has been engaged in drug taking, and there is a suspicion that they may have concealed prohibited things in their clothes or on their body; and
  - (c) a young detainee is unknown to staff, is highly agitated, is denying drug use and is aggressive to staff.
- 6.26 Examples of information that would support a decision not to conduct a strip search include:

- (a) a young detainee is previously known to staff and there is no history of drug use or violence, the young detainee has an excellent behavioural record in custody and has advised staff that they are not using drugs;
  - (b) a young detainee has been assaulted recently and is displaying signs of stress and anxiety;
  - (c) staff suspect the young detainee may have been sexually abused; and
  - (d) the young detainee discloses religious beliefs which would mean a strip search is likely to be particularly traumatic from a religious perspective.
- 6.27 A strip search as part of an initial assessment for a young detainee who is under 18 years old must be conducted in the presence of a person with parental responsibility if the decision-maker believes that it is necessary and in the best interests of the young detainee because of their vulnerability and the young detainee agrees to the person being present. Refer to 'Attendance of Persons with Parental Responsibility or Support Persons at a Strip Search for an Initial Assessment or a Body Search'.
- 6.28 A strip search as part of an initial assessment for an adult young detainee may be conducted in the presence of a support person if the decision-maker believes that it is necessary or desirable because of the young detainee's vulnerability and the young detainee agrees to the person being present. Refer to 'Attendance of Persons with Parental Responsibility or Support Persons at a Strip Search for an Initial Assessment or a Body Search'.
- 6.29 A person with parental responsibility for a young detainee who is under 18 years or an adult young detainee's nominated person must be informed of a strip search as part of an initial assessment as soon as practicable before the search is conducted or if it is not practicable to do so before the search is conducted, as soon as practicable after the search. Refer to 'Notification of Persons with Parental Responsibility and Nominated Persons of Strip Searches'.

### Strip searches directed for reasons other than initial assessment

#### *Criteria for decision-making*

- 6.30 The Senior Manager, Operations Manager, Unit Manager, Team Leader or On-Call Manager may direct a youth detention officer to conduct a strip search of a young detainee if:
- (a) the decision-maker reasonably suspects that the young detainee has something concealed on them that is a prohibited thing or may be used by the young detainee in a way that may involve an offence, a behaviour breach, a risk to the safety of a person or a risk to security or good order at a detention place; and
  - (b) a scanning, frisk or ordinary search of the young detainee has been undertaken and has failed to detect the item suspected to be concealed.
- 6.31 A person with parental responsibility for a young detainee who is under 18 years or an adult young detainee's nominated person must be informed of a strip search as part of an initial assessment as soon as practicable before the search is conducted or if it is not practicable to do so before the search is conducted, as soon as practicable after the

search. Refer to ‘Notification of Persons with Parental Responsibility and Nominated Persons of Strip Searches’.

### Notification of Persons with Parental Responsibility and Nominated Persons of Strip Searches

- 6.32 As far as practicable, the decision-maker for a strip search must ensure that a person with parental responsibility for a young detainee who is under 18 years or for an adult young detainee, their nominated person is informed about a strip search of the young detainee before the search is conducted.
- 6.33 If it is not practicable to tell a person with parental responsibility or nominated person about the strip search before it is conducted, for example, if there is an imminent or serious threat to the safety of the young detainee, staff or others or to the safety and security of a detention place, the decision-maker for a strip search must ensure the person with parental responsibility or nominated person is informed about the search as soon as practicable after it has been conducted.

### Rules for all strip searches

- 6.34 A youth detention officer conducting a strip search of a young detainee in any of the above circumstances must ensure the rules outlined in this section are complied with in conducting the search.
- 6.35 The strip search has to be conducted by a minimum of two youth detention officers, the searching officer, who conducts the search and the observing officer, who observes the searching officer. The number of staff present during the search must be no more than is necessary and reasonable to ensure the search is carried out as safely and effectively as possible.
- 6.36 Except in the case of a search with the use of force, the strip search must not involve touching the young detainee’s body.
- 6.37 A youth detention officer conducting a strip search must inform the young detainee, prior to the commencement of the search, whether the young detainee will be required to remove clothing, how the clothing is to be removed and why this is necessary. The search must not involve the removal of more clothes than is necessary and reasonable for the search at any time, including both the upper and lower parts of the young detainee’s body being uncovered at the same time.
- 6.38 The strip search must be conducted in a private area or an area that provides reasonable privacy for the young detainee.
- 6.39 The strip search must be conducted as quickly as practicable and in a way that is appropriate considering the young detainee’s age, maturity, impairment and known history such as any experience of abuse.
- 6.40 The Searching Officer must ensure that there is no more visual inspection of a young detainee's body than is reasonable and necessary to conduct the search and must not visually inspect the genital area, buttocks or female young detainees’ breasts unless the officer considers it necessary to do so for the search.

- 6.41 Following the search, the young detainee must be allowed to dress in private as soon as the search is finished.
- 6.42 The searching officer, observing officer and any other youth detention officer who is present for the search must be the same sex as the young detainee unless the decision-maker for the search reasonably believes that there is an imminent and serious threat to the personal safety of the young detainee and compliance with this requirement would increase this threat. The decision-maker's reasons for believing the requirement did not apply must be recorded in the register of searches and uses of force.
- 6.43 If a strip search is deemed necessary but is not possible, for example if the young detainee is violent and attempting to search him or her could place the young detainee or staff at significant risk, or the young detainee is refusing a search, or the young detainee presents as completely overwhelmed by the possibility of a strip search, delaying or ceasing a strip search may be considered. If this occurs, the young detainee must be placed in a sterile location and be appropriately observed, with their contact and movement restricted and the decision to strip search is to be reviewed when the young detainee is less distressed or is calmer.
- 6.44 Staff must consider how best to balance the requirements of the search process with any other operational requirements. This consideration is particularly important in cases of strip searches performed outside normal business hours. Refer to the Admission and Classification Policy and Procedure.
- 6.45 The Searching Officer must document the reason to complete or not to complete a strip search in the Register of Searches and Uses of Force.

## **Body Searches**

### Criteria for decision-making regarding conducting a body search

- 6.46 Having regard to the young detainee's age, maturity, developmental capacity and known history, the Manager may direct a non-treating doctor to conduct a body search of a young detainee if the Manager reasonably suspects that:
- (a) the young detainee has ingested or inserted an item that may jeopardise the young detainee's health or well being; or
  - (b) the young detainee has concealed a prohibited thing in their body that may be used in a way that could pose a substantial risk to security or good order at a detention place.
- 6.47 The Manager may arrange for a non-treating doctor to attend at a detention place for the conduct a body search or direct the young detainee's transfer to a health facility for a body search if it is considered necessary, for example, in urgent and serious circumstances. The Policies and Procedures for Transfers, Safety and Security and Health and Well Being must be applied to transfer a young detainee to a health facility for a body search.
- 6.48 A body search for a young detainee who is under 18 years old must be conducted in the presence of a person with parental responsibility if the Manager believes that it is necessary and in the best interests of the young detainee because of their vulnerability and the young detainee agrees to the person being present. Refer to 'Attendance of Persons with



Parental Responsibility or Support Persons at a Strip Search for an Initial Assessment or a Body Search’.

- 6.49 A body search for an adult young detainee may be conducted in the presence of a support person if the Manager believes that it is necessary or desirable because of the young detainee’s vulnerability and the young detainee agrees to the person being present. Refer to ‘Attendance of Persons with Parental Responsibility or Support Persons at a Strip Search for an Initial Assessment or a Body Search’.
- 6.50 A person with parental responsibility for a young detainee who is under 18 years or an adult young detainee’s nominated person must be informed of a body search as soon as practicable before the search is conducted or if it is not practicable to do so before the search is conducted, as soon as practicable after the search. Refer to ‘Notification of Persons with Parental Responsibility and Nominated Persons of Body Searches’.

#### Notification of Persons with Parental Responsibility and Nominated Persons of Body Searches

- 6.51 As far as practicable, the decision-maker for a body search must ensure that a person with parental responsibility for a young detainee who is under 18 years or for an adult young detainee, their nominated person is informed about a body search of the young detainee before the search is conducted.
- 6.52 If it is not practicable to tell a person with parental responsibility or nominated person about the body search before it is conducted, for example, if there is an imminent or serious threat to the safety of the young detainee, staff or others or to the safety and security of a detention place, the decision maker for the search must ensure the person with parental responsibility or nominated person is informed about the search as soon as practicable after it has been conducted.

#### Rules for Body Searches

- 6.53 If the Manager authorises a body search, the Manager must ensure the following rules are complied with in conducting the search.
- 6.54 A youth detention officer present at a body search must inform the young detainee, or arrange for the young detainee to be informed, prior to the commencement of the search, whether the young detainee will be required to remove clothing, and if so, why this is necessary. The search must not involve the removal of more clothes than is necessary and reasonable for the search at any time, and only either the upper or lower parts of the young detainee’s body may be uncovered at the same time. If the young detainee asks why a search is being conducted in a particular way, a youth detention officer must tell the young detainee the reason.
- 6.55 Whether the body search is conducted at a detention place or elsewhere, the Manager overseeing the search and any youth detention officer present at a body search must ensure the search is conducted in a private area or an area that provides reasonable privacy for the young detainee.

- 6.56 The Manager must ensure that a non-treating doctor is authorised to conduct a body search of a young detainee and that a non-treating nurse is present during the search.
- 6.57 If the non-treating doctor conducting the body search is not the same sex as the young detainee, the non-treating nurse must be the same sex. Only the health professional of the same sex as the young detainee is authorised to touch and examine the young detainee's body (see section 272 of the *Children and Young People Act 2008*).
- 6.58 The Manager may direct one or more youth detention officers to be present during the search. The youth detention officers must be the same sex as the young detainee unless the Manager reasonably believes that there is an imminent and serious threat to the personal safety of the young detainee and compliance with this requirement would increase this threat. If this occurs, the Manager's reasons for believing the requirement did not apply must be recorded in the register of searches and uses of force.
- 6.59 The Manager must ensure that the number of youth detention officers present during the search is no more than is necessary and reasonable to ensure the search is conducted as safely and effectively as possible.
- 6.60 The youth detention officers must be positioned in such a way as to ensure the safety of all parties during the search, whilst maintaining the privacy and dignity of the young detainee.
- 6.61 If the non-treating doctor or non-treating nurse requests assistance whilst carrying out a body search, a youth detention officer may provide the requested assistance or direct another youth detention officer to assist in the conduct of the search. The youth detention officer assisting must be the same sex as the young detainee unless the most senior youth detention officer present at the search reasonably believes there is an imminent and serious threat to the personal safety of the young detainee and compliance would increase this threat. The most senior youth detention officer's reasons for believing the requirement did not apply must be recorded in the register of searches and uses of force. If time permits, the issue of whether a youth detention officer present at a body search who is not of the same sex as the young detainee being searched can assist in the conduct of the search should be discussed with the Manager who made the decision under section 6.58 that the youth detention officer should be present at the search.
- 6.62 Following the search, the young detainee must be allowed to dress in private as soon as the search is finished.
- 6.63 Any thing seized through the body search by a non-treating doctor must be handed over to a youth detention officer for storage and necessary documentation in the Exhibit Book.

### **Attendance of Persons with Parental Responsibility or Support Persons at a Strip Search for an Initial Assessment or a Body Search**

- 6.64 Admission to a detention place can be a stressful time for a young detainee. The role of persons with parental responsibility or support persons is most crucial on admission. Young detainees will be most vulnerable during this period and persons with parental responsibility or

support persons may play an important role in assisting the young detainee to cope.

6.65 In addition, the conduct of a body search may also reflect a stressful time for a young detainee, and in these circumstances also, a person with parental responsibility or support person for a young detainee may be able to provide emotional support.

#### *Young Detainees who are under 18 years*

6.66 A strip search as part of an initial assessment or a body search of a young detainee who is under 18 years must be conducted in the presence of a person with parental responsibility for the young detainee if the decision-maker for the search believes on reasonable grounds that it is necessary and in the best interests of the young detainee for the person to be present and the young detainee agrees to the person being present. As outlined above, the decision-maker for a strip search is the Senior Manager, Operations Manager, Unit Manager, Team Leader or On-Call Manager and the decision-maker for a body search is the Manager.

6.67 In deciding whether it is necessary and in the best interests of a young detainee who is under 18 years for a person with parental responsibility to be present for a strip search as part of an initial assessment or a body search, the decision-maker must have regard to:

- (a) whether it is necessary because of the young detainee's vulnerability considering the young detainee's age, maturity, developmental capacity and known history (eg. previous reactions to strip or body searches, any known history of abuse, any known mental illness or impairment); and
- (b) whether it is in the best interests of the young detainee for the person to be present, including whether the person with parental responsibility is acceptable to attend the search. For example, if the person with parental responsibility has previously posed a risk to security and good order of a detention place, by attempting to bring a prohibited thing into a detention place, then the person may not be considered acceptable to attend a search.

6.68 If a decision is made that it is necessary and in the best interests of a young detainee for a person with parental responsibility to attend the search, but a person with parental responsibility cannot be contacted or is unavailable to attend the search, or the young detainee does not agree with their presence, then the decision-maker must ensure that the search is conducted in the presence of someone else who the decision-maker reasonably believes can support and represent the young detainee's interests (a 'support person') and who is acceptable to the young detainee. This may be another youth detention officer who is capable of fulfilling this function.

6.69 If the young detainee does not agree to a support person being present, then the search may continue in the absence of a support person.

### *Adult Young Detainees*

- 6.70 A strip search as part of an initial assessment or a body search for an adult young detainee may be conducted in the presence of a support person if the decision-maker for the search believes that it is necessary or desirable because of the young detainee's vulnerability and the young detainee agrees to the person being present.
- 6.71 In deciding whether it is necessary or desirable for a support person to be present because of the adult young detainee's vulnerability, the decision-maker may have regard to the adult young detainee's age, maturity, developmental capacity and known history.
- 6.72 A support person is someone who is capable of supporting and representing the adult young detainee's interests. This may be another youth detention officer who is capable of fulfilling this function.
- 6.73 If the adult young detainee does not agree to the presence of a support person, the search may continue in the absence of a support person.

### *Procedures applying to attendance of persons with parental responsibility or support persons*

- 6.74 It is preferable for different people to undertake the roles of observing officer (see 6.35 for definition of observing officer) and support person (see 6.68 for definition of support person). However, in some circumstances, either dictated by operational requirements or by a young detainee not wishing a third person to be present during the search, one youth detention officer may undertake the dual roles of observing officer and support person.
- 6.75 There are time implications regarding seeking a person with parental responsibility or support person to be present at a search of a young detainee. Meeting this requirement may cause some delay to the ability to search a young detainee. Consideration should be given to endeavouring to contact a person with parental responsibility or support person soon after a decision is made that it is necessary for the person to be present, to allow sufficient time for the person with parental responsibility or support person to arrive at a detention place.
- 6.76 If delaying the search in order for a person with parental responsibility or support person to arrive is likely to compromise the safety of the young detainee, other persons or the safety, security or good order of a detention place, the decision-maker may decide that it is not in the best interests of the young detainee for the person to be present and may conduct the search without the presence of a person with parental responsibility or support person. The young detainee must be informed of the reasons for this.
- 6.77 If a person with parental responsibility or a support person is present for a search, the young detainee must be asked whether they would prefer that person to stand near the searching officer (in line of sight of the young detainee) or to stand near the observing officer (outside line of sight of the young detainee but near enough to allow verbal communication).

- 6.78 The searching officer must document in the register of searches and uses of force the decision about whether it is necessary for a person with parental responsibility or a support person to be present at a strip search as part of an initial assessment or a body search.

### Removing People from the Search Area

- 6.79 If a person with parental responsibility or a support person who is present during a strip or body search is preventing or hindering the search, a youth detention officer may direct the person to leave. Wherever possible, a youth detention officer must give the person with parental responsibility or the support person a warning prior to giving the person a direction to leave the detention place.
- 6.80 If a person with parental responsibility or a support person refuses to comply with a direction to leave the detention place, a youth detention officer may use necessary force to remove the person.
- 6.81 If a youth detention officer uses force, the officer must comply with the section 'Use of Force during Searches' of this Policy and Procedure (at 6.117 to 6.119) and the Use of Force Policy and Procedure.

### **Interstate Transfers – Powers of Transfer Escorts to Search**

- 6.82 The interstate transfer policy and procedure addresses the interstate transfer of young offenders in custody under a transfer agreement, transfer arrangement or transfer order.
- 6.83 For the interstate transfer policy and procedure, a transfer escort means a person who is authorised under a transfer agreement, transfer arrangement or transfer order to take and keep custody of a young offender. A person who may be authorised as a transfer escort is a police officer, a corrections officer, a youth detention officer or a person acting as a transfer escort with the approval of the Chief Executive.
- 6.84 A transfer escort escorting a young offender under a transfer order may conduct a scanning search, frisk search or ordinary search of the young offender if the transfer escort suspects on reasonable grounds that the young offender may be carrying a prohibited thing.
- 6.85 The transfer escort must comply with the 'Rules for all personal searches' and the 'Rules for scanning, frisk and ordinary searches' outlined in this policy and procedure in conducting the search. The transfer escort may seize a thing in accordance with the 'Seizure' section of this policy and procedure.

### **Searches of Premises, Property and Vehicles**

#### *Criteria for decision-making*

- 6.86 A search of premises, property and vehicles may occur in one or more of the following ways:
- (a) by physical means;
  - (b) with scanning technology;

- (c) with the assistance of a search dog in accordance with the procedures for their use outlined at 'Use of search dogs' in this policy and procedure.

6.87 The Senior Manager, Operations Manager, Unit Manager, On-Call Manager or Team Leader may direct a youth detention officer to undertake a search of:

- (a) any area within a detention place;
- (b) any vehicle at a detention place; or
- (c) any other thing at a detention place, including anything in the custody or possession of anyone at a detention place (but not of anyone or any clothing being worn at the time of the search by anyone at a detention place); or
- (d) any vehicle used for transporting young detainees (whether at a detention place or elsewhere).

#### *Rules for searching premises and property*

6.88 Youth detention officers undertaking area, premises, property and vehicle searches must show the highest regard for the dignity of and respect for young detainees or other people and their belongings when conducting a search.

6.89 Youth detention officers conducting an area search must return the searched area to the condition it was in prior to the search and shall be responsible for the safety and security of the items therein.

6.90 For all searches of premises and property where appropriate (for example when searching a young detainee's cabin), a youth detention officer undertaking the search must explain to the young detainee the process and the purpose of the search in a manner that the youth detention officer reasonably considers the young detainee will understand (considering the young detainee's age and maturity and any other relevant factor). The youth detention officer must ask for the young detainee's cooperation with the search.

6.91 When searching a young detainee's cabin, a youth detention officer must:

- (a) inform the young detainee of a search taking place and the reasons for this;
- (b) request that the young detainee handover any prohibited things they may have in their possession;
- (c) instruct the young detainee to stand in the doorway of his/her cabin (if the young detainee's cabin contains privileged material, or is suspected to contain privileged material, the search may only occur in the absence of the young detainee in accordance with the sections in this policy 'Searches of cabins containing privileged material' and 'Searches of cabins suspected to contain privileged material'); and
- (d) undertake the search in accordance with training instructions and this Policy and Procedure.

6.92 If a youth detention officer discovers a thing they are empowered to seize, the youth detention officer must:

- (a) tell the young detainee about finding the thing (if it is found in the young detainee's cabin) and follow directions under 'Seizing Property' below;
  - (b) report the finding as a reportable incident (See Records and Reporting policy and procedure).
- 6.93 If, following an area search, a youth detention officer forms a reasonable suspicion that a young detainee may be in a possession of a prohibited thing, the youth detention officer must inform the young detainee that further searches may be conducted.
- 6.94 If a youth detention officer undertakes actions described at section 6.93, a scanning, frisk or ordinary search of the young detainee may be conducted in accordance with section 6.14 of this policy.

#### *Searches of cabins containing privileged material*

- 6.95 If a young detainee has privileged material in their cabin, a search of the young detainee's cabin may only occur in the absence of the young detainee if:
- (a) The young detainee removes the privileged material from the cabin; or
  - (b) The privileged material is securely stored in the young detainee's cabin or elsewhere at a detention place. The Manager may make arrangements for the secure storage at a detention place of privileged material for young detainees.
- 6.96 The youth detention officer conducting the search must enter details of a search of a cabin containing privileged material in the register of searches and uses of force.

#### *Searches of cabins suspected to contain privileged material*

- 6.97 If a youth detention officer suspects on reasonable grounds that a young detainee's cabin may contain privileged material, the youth detention officer may only search the young detainee's cabin whilst the young detainee is present, unless the circumstances in section 6.98 apply.
- 6.98 If a youth detention officer reasonably believes that urgent circumstances exist, and complying with the requirement for the young detainee to be present would create a risk of injury to any person, the officer may conduct the search in the absence of the young detainee.
- 6.99 If a youth detention officer finds privileged material whilst searching a young detainee's cabin, the youth detention officer may examine the material and anything containing the material (eg an envelope), but must not read the material, unless the circumstances in section 6.100 apply.
- 6.100 If a youth detention officer reasonably believes that urgent circumstances exist, and complying with the requirement not to read the privileged material would create a risk of injury to any person, the youth detention officer must inform the Manager. The Manager may direct that the privileged material may be read if the Manager reasonably believes that urgent circumstances exist, and complying with the requirement not to read the material would create a risk of injury to any person.

6.101 The youth detention officer conducting the search must enter details of a search of a cabin suspected to contain privileged material in the register of searches and uses of force.

## **Seizure**

### *Seizing Property (other than mail)*

6.102 A youth detention officer must seize any of the following items found during a search or at any other time:

- (a) a prohibited thing found on a person or in a person's custody or possession, unless the person has written permission from the Senior Manager to possess the thing; or
- (b) anything found at a detention place that the youth detention officer suspects on reasonable grounds:
  - i. is being used, or is intended to be used, for the commission of an offence or behaviour breach; or
  - ii. jeopardises or is likely to jeopardise security or good order at a detention place or the safety of a person at a detention place or elsewhere.

6.103 Anything found at a detention place in section 6.102(b) includes anything found in a vehicle at a detention place or in a vehicle used for transporting a young detainee. It does not matter whether the thing is in a person's custody or possession for it to be seized.

6.104 A youth detention officer undertaking a personal search of a young detainee must ensure that the young detainee is left with or given suitable clothing if a clothing item is seized during a personal search.

### *Seizing Mail*

6.105 A youth detention officer must seize ordinary mail or items found in a young detainee's ordinary or protected mail during a search or inspection of a young detainee's postal mail in the following circumstances:

- (a) For protected mail - a thing in a young detainee's protected mail if the youth detention officer reasonably believes it may physically harm the addressee or anyone else or is a prohibited thing; or
- (b) For ordinary mail – a thing in the ordinary mail or the mail itself if the youth detention officer reasonably suspects that the seizure is necessary to prevent from entering or leaving a detention place a prohibited thing, or anything that could be used in a way that may involve an offence, or is a risk to the personal safety of others, or is a risk to security or good order at a detention place; or
- (c) For ordinary mail – a thing in the ordinary mail or the mail itself if the youth detention officer reasonably suspects that the seizure is necessary to prevent mail that is threatening, inappropriate or not in the best interests of a young detainee from entering or leaving a detention place, for example, correspondence which re-victimises a victim, pornography, or correspondence which could be used by the young detainee to obtain or buy goods without the Manager's approval.

6.106 A youth detention officer may only seize a document if the youth detention officer reasonably believes it is not privileged. If a youth



detention officer seizes a document that contains privileged information, the youth detention officer is prohibited from reading the contents of the document and must return the document to the young detainee immediately.

### *Preserving and Record Keeping of Things Seized*

6.107 If a youth detention officer seizes something under section 6.102 or 6.105 or is given something seized by a non-treating doctor undertaking a body search of a young detainee, the thing must be placed in a contraband container and an entry made in the Exhibit Book. The entry must include the following information:

- (a) date and time of seizure
- (b) the name of the youth detention officer who seized (or received from a non-treating doctor conducting a body search) the thing;
- (c) the location where the thing was found;
- (d) details of any young detainee believed to be connected with the thing – and if so, how the young detainee is believed to be connected with the thing; and
- (e) whether the Australian Federal Police has been contacted in relation to the thing.

6.108 If the thing seized is, or appears to be, illegal (eg drugs), the youth detention officer who seized (or received from a non-treating doctor conducting a body search) the thing, must notify the Police and record this as a Category 2 Reportable Incident in accordance with the Records and Reporting Policy and Procedure.

6.109 If the Australian Federal Police remove a thing that was seized during a search, a youth detention officer must direct the police officer to sign the Exhibit Book before taking possession of the thing.

### *Notice of Seizure, Forfeiting or Returning Things Seized*

6.110 Not later than 7 days after a thing is seized, the youth detention officer who seized the thing must ensure that a written notice is given to the owner, or if they cannot be located to the person from whom the thing was seized to:

- (a) identify the thing seized;
- (b) outline the grounds for seizure;
- (c) inform what will happen to the thing.

6.111 A seized thing may be forfeited to the Territory for disposal if one of the following grounds exist:

- (a) after making reasonable inquiries (given the thing's apparent value), the owner of the thing cannot be found; or
- (b) after making reasonable efforts (given the thing's apparent value), the thing cannot be returned to the owner; or
- (c) the thing is a prohibited thing;
- (d) possession of the thing by a young detainee is an offence or behaviour breach; or
- (e) it is necessary to keep the thing to stop it being used for the commission of an offence or behaviour breach;

- (f) the thing is inherently unsafe; or
  - (g) the thing may be used by the person in a way that may involve a risk to the personal safety of someone else or a risk to security or good order at a detention place.
- 6.112 The Senior Manager or Operations Manager may decide a thing is forfeited to the Territory and deal with a thing forfeited to the Territory as they consider appropriate and subject to any order under the *Crimes Act 1900*, section 249 (Seizure of forfeited articles) and section 282 of the *Children and Young People Act 2008*. If this occurs, the Senior Manager or Operations Manager must ensure a youth detention officer records this as a Category 2 Reportable Incident in accordance with the Records and Reporting Policy and Procedure.
- 6.113 If the thing seized belongs to a young detainee and is not forfeited, then it must be placed in the young detainee's property container and returned to them on their release. Refer to the Property policy and procedures.
- 6.114 If a seized thing is not owned by a young detainee and is not forfeited to the Territory, the thing must be returned to its owner immediately, but not later than the end of 6 months after it was seized, if there is no proceeding for an offence or behaviour breach in relation to the thing.
- 6.115 If a seized thing is not owned by a young detainee and is not forfeited to the Territory, and a proceeding for an offence or behaviour breach involving the thing is commenced, the Senior Manager or Operations Manager must ensure the thing is returned to its owner at the end of the proceeding and any appeal from the proceeding.
- 6.116 If the thing was being kept as evidence of an offence or behaviour breach and the Senior Manager or Operations Manager believes that its retention is no longer necessary, the Senior Manager or Operations Manager must ensure the thing is returned immediately to its owner.

### **Use of force during searches**

- 6.117 A youth detention officer may use necessary and reasonable force to:
- (a) remove people from the search area in accordance with this policy, including support persons or persons with parental responsibility who are present; or
  - (b) conduct a personal or property search in accordance with this policy; or
  - (c) assist at a body search; or
  - (d) prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.
- 6.118 If force is required to be used in relation to a search, staff must comply with the Use of Force policy and procedure.
- 6.119 If force is used during or in relation to a search, including on a young detainee or to remove a person with parental responsibility or a support person from a search area, details of any force used and the circumstances of its use must be documented in the register of searches and uses of force.

## Register of searches and uses of force

6.120 The Senior Manager, Operations Manager and Unit Managers must ensure a register of searches and uses of force is maintained under section 195 of the *Children and Young People Act 2008*.

6.121 Youth detention officers who undertake or assist with the following searches must enter details of the search into the register:

- (a) Strip Search;
- (b) Body Search;
- (c) Search of premises, property or vehicles used to transport young detainees;
- (d) Searches of cabins containing or suspected to contain privileged material.

6.122 For each of the above searches, the following information must be recorded in the register of searches and uses of force:

- (a) the name of the young detainee;
- (b) the date, time and location of search;
- (c) the reason for the search (that is what factors led to a decision to search being made);
- (d) the name and position of the person who made a decision to undertake the search;
- (e) the name of the youth detention officer who conducted the search and any other persons present during the search;
- (f) whether the young detainee objected to the search and the Manager's decision to authorise or not authorise the search;
- (g) when a person with parental responsibility or nominated person for the young detainee was notified about the search (for strip and body searches);
- (h) whether it was considered necessary and in the best interests of a young detainee for a person with parental responsibility or a support person to be present a strip search for an initial assessment or a body search and the reasons for this decision;
- (i) reasons for a decision to ask a person with parental responsibility or a support person to leave;
- (j) details of any force used for conducting the search or removing a person with parental responsibility or support person, and why force was used;
- (k) details of any conversation that occurred with a young detainee during the search, including any requests made by a young detainee about a search and the searching officer's response;
- (l) details of anything seized during the search and the location where it was seized;
- (m) any unusual discoveries such as evidence of bolts, locks or other fittings being tampered with;
- (n) any complaint raised by a young detainee or another person regarding the conduct of the search; and
- (o) the search decision-maker's (or most senior youth detention officer in relation to a decision under 6.61) reasons for believing that the requirements under sections 6.42, 6.58 or 6.61 of this policy for a youth

detention officer conducting, present or assisting at a search to be the same sex as the young detainee did not apply.

- 6.123 The register of searches and uses of force must be available for inspection in accordance with the Records and Reporting Policy and Procedure.

### **Use of search dogs**

- 6.124 The Senior Manager or Operations Manager may make a direction for a search dog to be used for a search under this policy. The Senior Manager or Operations Manager may give the direction only if the Senior Manager or Operations Manager believes on reasonable grounds that the use of the search dog would minimise the intrusiveness of the search being conducted.
- 6.125 The only search dogs authorised to be used under this policy are Corrective Services Dogs which have been specifically trained for searching purposes.
- 6.126 Corrective Services Dogs will only be used for searches at a detention place under the control of an appropriately trained Corrections Officer, in accordance with this policy and procedure and the procedures under the *Corrections Management Act 2007*.
- 6.127 All searches involving the use of dogs must be conducted with decency and sensitivity and in a manner that affords the greatest degree of dignity to a young detainee consistent with the purpose of the search.
- 6.128 The Corrections Officer in control of a search dog must ensure that there is no physical contact with a young detainee by the dog during a search.
- 6.129 The search dog must be under the control of a Corrections officer at all times during the search.
- 6.130 The Senior Manager or Operations Manager must ensure a youth detention officer is present while a search involving the use of a search dog is taking place.
- 6.131 A youth detention officer (and not the Corrections Officer handling the dog) must seize any item in accordance with section 6.102 or 6.105. The youth detention officer who has undertaken the seizure must comply with the procedures outlined under 'Seizure' in relation to the seized thing.
- 6.132 The use of a search dog for a search must be recorded in the register of searches and uses of force.

### **Searching people other than young detainees**

- 6.133 The *Children and Young People Act 2008* authorises low-level searches (scanning, frisk and ordinary searches) of all people entering a detention place or at a detention place to ensure prohibited things or items that may jeopardise safety or security are not admitted to the detention place. This includes all staff, visitors and people providing services at a detention place. This section applies to low-level searches of people other than young detainees at a detention place.

*Searches of persons other than young detainees upon entry to detention place and at other times*

- 6.134 The Senior Manager may make a written direction that all people entering a detention place or at a detention place, including all staff, visitors and other people providing services at a detention place, may be subject to a scanning, frisk or ordinary search, if the Senior Manager reasonably believes that the search is necessary to ensure the safety of a person or security or good order at a detention place. If a youth detention officer acting under a written direction believes that complying with the direction is not possible or practical in a particular circumstance, the youth detention officer must contact the Senior Manager or Operations Manager for further direction.
- 6.135 The Senior Manager, Operations Manager, Unit Manager, On-Call Manager or Team Leader may, at any time, direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a person other than a young detainee at a detention place if the decision-maker for the search reasonably believes that the search is necessary to ensure the safety of a person or security or good order. This includes circumstances where the decision-maker reasonably suspects that the person has a prohibited thing or an item that could be used in an unlawful way or a way that is a risk to the safety of a person or security and good order on their person.
- 6.136 The 'Rules for conducting frisk and ordinary searches of all persons other than young detainees' must be applied in conducting an ordinary or frisk search of a person.
- 6.137 If a prohibited thing or an item that could be used in an unlawful way or a way that is a risk to the safety of a person or security and good order is discovered during a scanning, frisk or ordinary search under this section, a youth detention officer must seize the thing in accordance with section 6.102.
- 6.138 If the person objects to the search, refer to the procedures at 'Persons other than young detainees objecting to searches'. Youth detention officers must not use force in conducting a scanning, frisk or ordinary search under this section.

*Rules for conducting frisk and ordinary searches of all persons other than young detainees*

- 6.139 A youth detention officer who conducts a frisk search or ordinary search of a person other than a young detainee at a detention place must:
- (a) tell the person about the search and the reasons for the search and ask for the person's cooperation. If the person objects to the search, refer to the procedures at 'Persons other than young detainees objecting to searches'.
  - (b) conduct the search in a private area or an area that provides reasonable privacy for the person. The area should, as far as practicable, not be within sight or hearing distance of a person who is not required to be present at the search.

- 6.140 A youth detention officer conducting a frisk search of a person under this section must be the same sex as the person being searched, unless it is not practicable for this rule to be complied with, for example, due to staffing issues.
- 6.141 If it is not practicable for the youth detention officer conducting the frisk search to be the same sex as the person being searched, the youth detention officer must arrange for another person of the same sex (who is not a young detainee) to be present while the frisk search is conducted. This may be a youth detention officer, a visitor or another person.
- 6.142 The agreement of the person being frisk searched must be sought to the presence of the other person.

#### *Persons other than young detainees objecting to searches*

- 6.143 If a person objects to a scanning, frisk or ordinary search upon entry to a detention place or after they have entered a detention place, a youth detention officer must explain the reasons for the search and continue to seek the person's co-operation to the search.
- 6.144 A youth detention officer may, as far as practicable, agree to any reasonable request made by the person other than a young detainee in relation to the conduct of the search if it does not compromise the effectiveness of the search. An example of a request which may be agreed to is a request for a different youth detention officer to conduct the search.
- 6.145 If a person other than a young detainee continues to object to a search being undertaken, a youth detention officer must inform the person they will be directed to leave a detention place unless they co-operate with the search.
- 6.146 If a person other than a young detainee continues to object to a search being undertaken, a youth detention officer must direct the person to leave a detention place and escort the person from a detention place. If a person refuses to comply with a direction to leave, youth detention officers must make all reasonable efforts to ensure the direction is complied with. Youth detention officers may use force only in accordance with the Use of Force Policy and Procedure to ensure compliance with the direction to leave.

#### **Records and Reporting**

- 6.147 Any actions taken under this Policy and Procedure must be recorded according to the requirements set out in this Policy and Procedure and the Records and Reporting Policy and Procedure. All necessary forms are available on the Department's Intranet.
- 6.148 All information collected must be placed on the relevant files and should be securely stored in compliance with both the *Privacy Act 1988* and the *Health Records (Privacy and Access) Act 1997*. Under these Acts, personal client records must be stored in a manner that will minimise the risk to damage, inappropriate or illegal access, movement or modification (including staff accessing records without a legitimate reason). Records containing personal information must be kept up to

date and accurate, access by children and young people to their records should be facilitated and if requested corrections/amendments made. Staff must be mindful therefore that information must be kept up to date at all times.

- 6.149 All required reports are the responsibility of staff and are to be fully completed before youth detention officers complete their shift, unless otherwise approved by the Manager.

### **Provision of Information and Complaints**

- 6.150 Staff must ensure young detainees, their parents and all those with parental responsibility, family and visitors are provided with information about matters that affect them in a timely manner and in a manner that is likely to be understood.
- 6.151 A young detainee, person/s with parental responsibility for the young detainee, family and visitors are able to request a review of a decision or make a complaint about something that happens at a detention place to detention place staff, the Public Advocate or the Official Visitor.
- 6.152 Staff must ensure that the Provision of Information, Review of Decisions and Complaints Policy and Procedure is followed in relation to the above.
- 6.153 Staff must engage with the person seeking a review of a decision or making a complaint in a respectful manner and ensure sufficient information is provided on the process of review or investigation. Staff must assist fully in any complaint or review process.

### **Debriefing of Staff and Access to Support and Counselling for Young detainees**

- 6.154 Staff and young detainees should be offered debriefing and support as soon as possible after a difficult search situation has occurred. This includes any search related situations in which the young detainee is upset and/or force is used.

## **6 Forms and Templates**

Register of searches and uses of force  
Exhibit book  
Notice of seizure form

## **7 Related Policies and Procedures**

Policies and Procedures under the *Children and Young People Act 2008*

Property Policy and Procedures  
Records and Reporting Policy and Procedures  
Use of force Policy and Procedures  
Admission and Classification Policy and Procedures  
Interstate transfers Policy and Procedures  
Health and Wellbeing Policy and Procedures

Provision of Information, Review of Decisions and Complaints Policy and Procedures

## **8 Further References**

Dictionary for Policies and Procedures



## **Children and Young People (Prohibited Things) Declaration 2008 (No 1)**

### **Declaration of prohibited things**

Under section 148 of the Children and Young People Act 2008, I declare the following things to be prohibited things at a detention place on the basis that the declaration is necessary or prudent to ensure security or good order at a detention place:

- Cigarettes, cigarette papers, pipes and tobacco;
- Alcohol, drugs or associated paraphernalia;
- Lighters, matches and flints;
- Weapons or firearms;
- Mobile phones;
- Non Issued keys;
- Money, credit cards or bankcards;
- Pornography or material containing adult, criminal or offensive content;
- any part of a thing mentioned above.

### **Declaration of prohibited things subject to exceptions**

I declare the following things to be prohibited things at a detention place, subject to the exceptions outlined below, on the basis that the declaration is necessary or prudent to ensure security or good order at a detention place:

- Prescription and non-prescription medication, other than prescription and non-prescription medication that the Senior Manager has approved to be taken by a young detainee;
- Tools and related equipment, other than at times designated as program times or for a specific program or as approved by the Senior Manager for another lawful purpose;
- Razor blades, knives or anything that can be used to cut, other than at meal times or as authorised by the Senior Manager for another lawful purpose;
- Food stuffs, other than at meal times or as approved by the Senior Manager;
- Prams and bassinets, other than those required for specific needs as approved by the Senior Manager;
- Toiletry products other than those issued or approved for issue by the Senior Manager;
- Grooming products other than those issued or approved for issue by the Senior Manager;
- Needles, syringes or other sharps except those required for specific needs as approved by the Senior Manager;
- Cameras unless approved by the Senior Manager for a specific purpose;

- Handbags, backpacks or bags of any kind unless approved by the Senior Manager;
- Petrol, thinners or propellants of any kind unless approved by the Senior Manager for a lawful purpose;
- Glues or aerosols other than at times designated as program times or for a specific program or as approved by the Senior Manager for another lawful purpose;
- Mirrors, glass, ceramics of any kind other than at times designated as program times or for a specific program or as approved by the Senior Manager for another lawful purpose;
- Jewellery unless approved by the Senior Manager;
- Cosmetics of any kind unless required for specific needs or programs as approved by the Senior Manager;
- Wire, rope or cord of any kind other than at times designated as program times or for a specific program or approved by the Senior Manager for another lawful purpose;
- Portable electronic equipment other than at times designated as program times or for a specific program or approved by the Senior Manager for another lawful purpose; and
- Personal possessions unless approved by the Senior Manager.