

Australian Capital Territory

## **Children and Young People (Search and Seizure) Policy and Procedures 2018 (No. 1)**

**Notifiable instrument NI2018-448**

made under the

***Children and Young People Act 2008*, section 143 youth detention policy 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 2018 (No. 1)*.

### **2 Commencement**

This instrument is to commence the day after notification.

### **3 Repeal**

NI2015-397 is revoked.

### **4 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 people.

Bernadette Mitcherson  
Director-General  
Community Services Directorate  
7 August 2018

# 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 their safety and security. Section 9 of the *Human Rights Act 2004* provides 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 people, people other than young people, areas, vehicles and things at a detention place, and vehicles used for transporting young people, contributes to the objective of keeping young people 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* (the Act) is the primary source of authority for the operations of a detention place. Chapter 7 of the Act is particularly relevant to this policy and procedures. The provisions of the Act must be complied with at all times by staff exercising functions at a detention place.
- 2.2 The policies and procedures provide specific directions to implement the provisions of the Act and other relevant legislation, including the *Human Rights Act 2004*.
- 2.3 Human rights that are protected by the *Human Rights Act 2004* and that are relevant to this policy and procedures are:

### Section 19 Humane treatment when deprived of liberty

- (1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person must be segregated from convicted people, except in exceptional circumstances.
- (3) An accused person must be treated in a way that is appropriate for a person who has not been convicted.

### Section 20 Children in the criminal process

- (1) An accused child must be segregated from accused adults.
- (2) An accused child must be treated in a way that is appropriate for a person of the child's age who has not been convicted.
- (3) A child must be brought to trial as quickly as possible.
- (4) A convicted child must be treated in a way that is appropriate for a person of the child's age who has been convicted.

- 2.4 The following international human rights standards apply in the ACT and are relevant to this policy and procedure:
  - (a) Convention on the Rights of the Child
  - (b) United Nations Standard Minimum Rules for the Administration of Juvenile Justice

- (c) United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- (d) Standard Minimum Rules for the Treatment of Prisoners
- (e) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- (f) United Nations Declaration on the Rights of Indigenous People.

### 3. Authorisations and Delegations

- 3.1 The Manager is responsible for ensuring that 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
Legislative Authority under <i>Children and Young People Act 2008</i>	Reference in this policy and procedure	Search Type	Decision-maker for search
Section 252 (1)	6.14	Scanning, frisk or ordinary search of young person to ensure safety and security of the young person or other people at the detention place	Director, Bimberi, Deputy Senior Manager, Operations Manager, On-Call Manager (after hours), Unit Manager, Team Leader
Section 252(2)	6.15	Scanning, frisk or ordinary search of young person if suspicion the young person is carrying a prohibited or dangerous thing	Director, Bimberi, Deputy Senior Manager, Operations Manager, On-Call Manager (after hours), Unit Manager, Team Leader, Youth worker
Section 254(1)	6.22	Some young people are strip searched on admission and induction to Bimberi to ensure the health and/or safety and/or security of the young person or	Director, Bimberi, Deputy Senior Manager, Operations Manager, On-Call Manager (after hours), Unit Manager, Team Leader

		other people at the detention place	
Section 258(1)	6.30	Strip search of young person for reasons other than at induction	Director, Bimberi, Deputy Senior Manager, Operations Manager, On-Call Manager (after hours), Unit Manager, Team Leader
Section 264(1)	6.46	Body search of young person	Director, Bimberi
Section 275(1)	6.86	Search of premises, property and vehicles	Director, Bimberi, Deputy 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 people	Director, Bimberi, Deputy Senior Manager, Operations Manager, On-Call Manager (after hours), Unit Manager, Team Leader
Section 249	6.124	Search involving use of search dog	Director, Bimberi, Deputy Senior Manager, Operations Manager

#### 4. Definitions

**Aboriginal person** is defined in the dictionary of the *Children and Young People Act 2008* as a person who is a descendant of the Indigenous inhabitants of Australia; who regards himself or herself as an Aboriginal or if the person is a child, is regarded as an Aboriginal by a parent or family member; and is accepted as an Aboriginal by an Aboriginal community.

**Accredited person** is defined in section 137 of the *Children and Young People Act 2008* and means the young person's Child and Youth Protection Services worker if the Director-General has parental responsibility for the young person, a representative approved by the Manager of an entity providing a service or program to the young person, a lawyer representing the young person, an Official Visitor, a Commissioner exercising functions under

the *Human Rights Commission Act 2005*, the Public Advocate and the Ombudsman.

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

**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 that have delegations as authorised persons are: Executive Director, Senior Director (A), Director, Child and Youth Protection Services Operations (B), Director, Bimberi (B), Deputy Senior Manager (C), Operations Manager (D), Programs and Services Manager (D), Unit Managers (E), Team Leaders (F), Youth Workers (G), Family Engagement Officer (F), Sports and Recreation Officers (F).

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

**Child** means a person who is under 12 years of age (as defined under section 11 of the *Children and Young People Act*).

**Child and Youth Protection Service** refers to the branch in the Community Services Directorate that is responsible for the Child Protection and Youth Justice functions of the *Children and Young People Act 2008* and related legislation.

**Commissioner** refers to one of the appointed Commissioners exercising functions under the *Human Rights Commission Act 2005*. The functions include the resolution of complaints between users and providers of services for children and young people and to promote improvements for service provision.

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

**Detention place** means a declared detention place.

**Direction** means an instruction that may be given by a youth worker under section 146 of the *Children and Young People Act 2008* to a young person about anything related to the criminal matters chapters. A young person must comply with any direction given to the young person by the Director-General or delegate under section 184 of the *Children and Young People Act 2008*. Non-compliance by a young person with a direction is a behaviour breach and may be dealt with through the Behaviour Management Policy and Procedures or Discipline Policy and Procedures.

**Director, Child and Youth Protection Services Operations** refers to the responsible senior executive in the Community Services Directorate.

**Director, Bimberi** refers to the Director of a detention place and the responsible senior executive in the Community Services Directorate.

**Director-General** means the Director-General of the Community Services Directorate with administrative responsibility for the *Children and Young People Act 2008*, unless otherwise specified in this policy and procedure.

**Family member** is defined in section 13 of the *Children and Young People Act 2008* and means the child's or young person's parent, grandparent or step-parent; or son, daughter, stepson or stepdaughter; or sibling; or uncle or aunt; or nephew, niece or cousin. For an Aboriginal or Torres Strait Islander child or young person, a family member includes a person who has responsibility for the child or young person in accordance with the traditions and customs of the child's or young person's Aboriginal or Torres Strait Islander community.

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

**Manager** refers to the Director of a detention place during normal business hours, or in the event this person is unavailable, the Deputy Senior Manager, or in the event this person is unavailable, the Operations Manager, or in the event this person is unavailable, a Unit 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 person who is under 18 years has experienced or is experiencing non-accidental physical injury or sexual abuse.

**Nominated person** is a person nominated by a young person aged 18-21 years at the time of admission to whom the Director-General 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 Director-General 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 persons 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 Director-General 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 people and alcohol and drug testing.

**Observing officer** refers to the Manager or youth worker who observes the Searching Officer conducting a scanning, frisk, ordinary or strip search of a young person. An observing officer does not participate in the search.

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

**Parental responsibility** is defined at section 15 of the *Children and Young People Act 2008* and means all the duties, powers, responsibilities and authority parents have by law in relation to their children, including daily care and long-term care responsibility for the child or young person. Each parent of a child or young person aged under 18 years has parental responsibility for the child or young person. A person may have or share parental responsibility for a child or young person under a court order under the *Children and Young People Act 2008* or another law or in the circumstances outlined at sections 17 and 18 of the Act.

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

**Police** means ACT Policing.

**Privileged information** is information to which client legal privilege attaches, such as, for example, confidential information provided by a young person to their legal representative, or by a young person's legal representative to a young person, 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 Director-General to be prohibited if the Director-General reasonably believes that the declaration is necessary or prudent to ensure safety and security of a young person or other people at a detention place. The Declaration of Prohibited Things is at Schedule 1.

**Protected mail** is defined at section 201 of the *Children and Young People Act 2008* and means mail between a young person and any of the following:  
(a) a lawyer representing the young person

- (b) an Official Visitor
- (c) a Commissioner
- (d) the ACT Public Advocate
- (e) the Ombudsman.

**Register of Searches and Uses of Force** means the register that must be kept by the Director-General under section 195 of the *Children and Young People Act 2008*.

**Register of Young Detainees** means the register that must be kept by the Director-General under section 185 of the *Children and Young People Act 2008*. The details of every young person who is admitted to a detention place must be recorded on the register at induction. The register comprises of the young person's individual Bimberi Client residential file and information stored electronically on the Youth Justice Information System (YJIS).

**Reportable incident** means an incident or event that:

- (a) significantly affects the security, operations or the routine of a detention place
- (b) disrupts or threatens to disrupt or harms or threatens to harm the personal safety of any individual at a detention place including young people, youth workers, staff or visitors
- (d) has the potential to attract media attention
- (e) involves drugs or violence.

**Scanning search** is a search of a young person or other person by electronic or other means that does not require the young person or other person to remove clothing or be touched by someone else (e.g. 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.

**Searching Officer** refers to the Manager or youth worker who conducts a scanning, frisk, ordinary or strip search of a young person.

**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 person (whether that vehicle is in or outside of a detention place).

**Staff** refers to youth workers and other authorised persons.

**Strip search** is a search of a young person, or of anything in the young person's possession and includes requiring the young person to remove part or all of their clothing (but only either those covering the young person's upper or lower half of the body at any given time) and a visual inspection of the young person's body and clothing. A strip search does not include



examination of the young person's body orifices or cavities with the exception of visual inspection of ears, nose and mouth which does not involve touching the young person.

**Support person** is defined at section 286 of the *Children and Young People Act 2008* and means a person can be a support person if:

- (a) the young person chooses the person to assist the young person or represent the young person's interests and
- (b) the Manager considers:
  - i. the person is capable of assisting the young person or representing the young person's interests and
  - ii. it is in the young person's best interests for the person to be the young person's support person.

**Torres Strait Islander person** is defined in the dictionary of the *Children and Young People Act 2008* as a person who is a descendant of the Indigenous inhabitants of the Torres Strait Islands; who regards himself or herself as a Torres Strait Islander or if the person is a child, is regarded as a Torres Strait Islander by a parent or family member; and is accepted as a Torres Strait Islander by a Torres Strait Islander community.

**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 person. The transfer escort must be a police officer, a corrections officer, a youth worker or a person acting as a transfer escort with the approval of the Director-General or Director, Bimberi.

**Treating doctor** is a doctor appointed under section 97 of the *Children and Young People Act 2008* for a detention place by the Director-General responsible for the administration of the *Health Act 1993*. The treating doctor's functions are to provide health services to young people and to protect the health of young people, including preventing the spread of disease at a detention place.

**Use of force** means the amount of effort required to reduce an immediate risk and to maintain the safety and security of a young person or other people. Use of force is an option of last resort and must be the minimum necessary to achieve the required outcome. The use of force is not a response to achieve compliance with a direction. Use of force includes body contact and the use of instruments of restraint.

**Visitor** is defined at section 137 of the *Children and Young People Act 2008* to include a person wishing to enter a detention place as a visitor.

**Young person** is defined at section 12 of the *Children and Young People Act 2008* and means a person who is aged 12 years and older, but under 21 years, who is required to be held in the Director-General's custody. A young person who is 21 years or older cannot be detained at a detention place. Young person means the same thing as young detainee, and young person aged 18-21 years means the same things adult young detainee, in the *Children and Young People Act 2008*.

**Youth worker** is defined at section 96 of the *Children and Young People Act 2008* and means an authorised person to whom the Director-General has delegated functions of a youth worker under the criminal matters chapters. The positions that have delegation as a youth worker for the policies and procedures are: Director, Bimberi (B), Deputy Senior Manager (C), Operations Manager (D, Programs and Services Manager (D), Unit Managers (E), Team Leaders (F), Youth Workers (G), casual Family Engagement Officer (F), Sports and Recreation Officer (F). Youth worker means the same as youth detention officer in the *Children and Young People Act 2008*.

## 5. Principles

### Legislative Principles

5.1 The Act sets out the principles that must be considered by all decision-makers making decisions under the Act and this policy and procedure.

#### 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 or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced
  - (b) the child or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption
  - (c) the child 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 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 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 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 Director-General as providing ongoing support services to the child or young person or the child 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 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 and young people 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 child or young person the opportunity to re-enter the community
  - (i) it is a high priority that intervention with children and young people must promote their rehabilitation, and must be balanced with the rights of any victim of the child or young person's offence and the interests of the community.
- (2) The decision-maker may also consider any other relevant matter.

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| <p>(3) The youth justice principles are intended to be interpreted consistently with relevant human rights instruments and jurisprudence (e.g. the <i>Convention on the Rights of the Child</i>).</p> <p>(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.</p> |
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### Operational Principles

- 5.2 The following considerations inform this policy and procedures:
- (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 and security of a young person or other people
  - (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 Act and this policy and procedures
  - (c) force will not be used to conduct a search unless there is immediate and significant risk of safety and security to a young person or another person (refer to Use of Force Policy and Procedures)
  - (d) the type of search undertaken must always be the least intrusive type of search that is commensurate with and proportionate to the circumstances
  - (e) a young person is likely to be particularly vulnerable during a personal search
  - (f) staff will make every effort to minimise the potential negative impact of a search on a young person and support the psychosocial, emotional and mental health needs of a young person during a search
  - (g) 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 People

- 6.1 There are five types of personal searches of a young person that are authorised by the Act 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 person by electronic or other means that does not require the young person to remove clothing or be touched by someone else
  - (b) ordinary search - this is a search of a young person, or of anything in the young person's possession, and may include requiring a young person to remove only the young person's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves, or headwear and an examination of anything removed. It also includes asking a young person to empty their pockets
  - (c) frisk search - this is a search of a young person conducted by quickly running the hands over the young person's outer clothing and an

- examination of anything worn or carried by the young person that is conveniently and voluntarily removed by the young person
- (d) strip search - this is a search of a young person, or of anything in the young person's possession and it includes requiring the young person to remove part or all of the young person's clothing (but only either those covering the young person's upper or lower half of the body at any given time) and a visual inspection of the young person's body and clothing.
  - (e) body search - this is a search conducted by a non-treating doctor of a young person's body, including an examination of an orifice or cavity of the young person's body.
- 6.2 There are general criteria for making a decision to conduct a personal search of a young person and rules for conducting a personal search of a young person. 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 6.9. In addition, if a young person objects to a search, rules at 6.10 to 6.13 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 6.14 and 6.15. The criteria for undertaking a strip search upon induction of a young person to a detention place are at 6.22. The criteria for undertaking a strip search of a young person for reasons other than an initial assessment are at 6.30. The criteria for directing a body search of a young person are at 6.46.
- 6.4 In addition to the general rules for undertaking all personal searches of a young person, there are further rules for the conduct of specific types of personal searches of young people. The rules for scanning, frisk and ordinary searches are at 6.16 to 6.19. The rules for all strip searches are at 6.34 to 6.45. The rules for body searches are at 6.53 to 6.63.

#### *Rules for all personal searches*

- 6.5 In making a decision to undertake a personal search of a young person, 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 person, and in deciding how to conduct a personal search of a young person, the decision-maker must consider information known about the young person'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 person.
- 6.7 Before undertaking a personal search of a young person, a youth worker undertaking the search must explain to the young person the process and the purpose of the search in a manner that the officer reasonably considers the young person will understand (considering the young person's age and maturity and any other relevant factor). The youth worker must ask for the young person's cooperation to the

search and answer any questions asked by the young person about the conduct of the search.

- 6.8 Before undertaking a personal search of a young person the Searching Officer should ask for another officer to be present and/or contact the control room to ensure camera visibility. The CCTV officer does not have a role to participate in observing the search.
- 6.9 Certain personal searches require the Searching Officer to be the same sex as the young person, 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 Procedures outline the procedures for a transgender or intersex young person to identify their sexual identity at the time of admission. If a young person has not done this, the young person may require that either a male or female person conduct the search. If the young person requires a male conduct the search, the young person is taken to be a male for the purposes of this policy. If the young person requires a female conduct the search, the young person is taken to be a female for the purposes of this policy.

*Objections to personal and property searches by young people*

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

*Scanning, frisk and ordinary searches of young people: criteria for decision making*

- 6.14 The Manager may, at any time, direct a youth worker to conduct a scanning search, frisk search or ordinary search of a young person if the decision-maker reasonably believes that the search is necessary to ensure safety and security of a young person or other person, including in the following circumstances:
- (a) a direction that a young person entering a detention place undergoes a scanning search

- (b) a direction that a young person returning to a detention place after escorted or unescorted leave must undergo a scanning, frisk or ordinary search
  - (c) a direction that a young person is 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 person or young people at irregular intervals
  - (e) a direction that a scanning, frisk or ordinary search of a young person occurs after a non-contact visit.
- 6.15 A youth worker may conduct a scanning search, frisk search or ordinary search of a young person if the youth worker reasonably suspects that the young person 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 or security of a young person including in the following circumstances:
- (a) information provided to or gathered by the youth worker suggests the young person has concealed a prohibited thing on their person, for example, during a non-contact visit
  - (b) an item that 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 person
  - (c) a scanning search of the young person conducted under 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.
- 6.16 In circumstances where a young person is suspected of having on their person a prohibited thing or an item that could be used in an unlawful way or a way that is a risk to the safety and security of a young person or other person, a more intrusive search such as a strip search may only be undertaken if a scanning, frisk or ordinary search of the young person has been undertaken and has failed to detect the item suspected to be concealed (refer to '*Strip searches other than admission and induction: criteria for decision-making*').

*Rules for conducting scanning, frisk and ordinary searches of young people*

- 6.16 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 an area that has a camera and is private and away from where other workers or young people are present.
- 6.18 A frisk search or an ordinary search must not be conducted in the presence of another young person 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 person. The only exception to this rule is if the decision-maker reasonably believes there is an imminent and serious threat to the personal safety of the young person or someone else and complying with this requirement would increase this risk (e.g. in circumstances where the search has to be performed without delay).

### *Strip searches*

- 6.20 A strip search of a young person may be authorised by a decision-maker in the following circumstances:
- (a) on induction to the detention place to ensure safety and security of the young person or other people if the decision-maker reasonably believes that the search is necessary
  - (b) at any other time, if the decision-maker reasonably suspects that the young person has something concealed on them that is a prohibited thing or may be used by the young person in a way that may involve an offence, a risk to the safety and security of a young person or other people at a detention place and a scanning, frisk or ordinary search of the young person has been undertaken and has failed to detect the item suspected to be concealed.
- 6.21 The decision-maker must seek advice from the Director, Bimberi, Deputy Senior Manager, Operations Manager, or Unit Manager about whether a strip search should be undertaken in the following circumstances:
- (a) when it is known that a strip search will be particularly deleterious for a young person
  - (b) when the young person is showing extreme agitation or distress at the prospect of being strip searched
  - (c) when the child or young person is a transgender or intersex young person.

### *Strip searches on admission and induction: criteria for decision-making*

- 6.22 A strip search of a young person at admission and induction may be authorised if the decision-maker reasonably believes it is necessary for either the health and/ or the safety and security of a young person, having regard to the young person's age, maturity, developmental capacity and known history (refer to Admission and Classification Policy and Procedures).
- 6.23 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 person at admission and induction.
- 6.25 Information that the decision-maker is to consider in making a decision to conduct a strip search includes:
- (a) there is some information to suggest the young person has a history of self harming (e.g. marks on arms or knowledge of young person) and staff believe it is possible that the young person may have something hidden on their body that they could use to self harm
  - (b) a young person is unknown to staff, information received from police indicates that he/she been engaged in drug taking, and there is a suspicion that they may have concealed prohibited things in their clothes or on their body
  - (c) a young person is unknown to staff, is highly agitated, is denying drug use and is aggressive to staff.
- 6.26 Information that would support a decision not to conduct a strip search includes:



- (a) a young person is previously known to staff and there is no history of drug use or violence, the young person has an excellent behavioural record in custody and has advised staff that they are not using drugs
  - (b) a young person has been assaulted recently and is displaying signs of stress and anxiety
  - (c) staff suspect the young person may have been sexually abused
  - (d) the young person discloses religious beliefs which would mean a strip search is likely to be particularly traumatic from a religious perspective.
- 6.27 A strip search of a young person 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 person because of their vulnerability and the young person agrees to the person being present (refer to 'Attendance of persons with parental responsibility or support persons at a strip search at induction or body search').
- 6.28 A strip search for a young person aged 18-21 years 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 person's vulnerability and the young person agrees to the person being present (refer to 'Attendance of persons with parental responsibility or support persons at a strip search at induction or a body search').
- 6.29 A person with parental responsibility for a young person who is under 18 years or the nominated person for a young person aged 18-21 years must be informed of a strip search as soon as practicable before the search is conducted or if this is not practicable, as soon as practicable after the search (refer to 'Notification of persons with parental responsibility and nominated persons of strip searches').

*Strip searches other than admission and induction: criteria for decision-making*

- 6.30 The decision-maker may direct a youth worker to conduct a strip search of a young person at any time if:
- (a) the decision-maker reasonably suspects that the young person has something concealed on them that is a prohibited thing or may be used by the young person in a way that may involve an offence, a behaviour breach, a risk to the safety and security of a young person or other person at a detention place and
  - (b) a scanning, frisk or ordinary search of the young person has been undertaken and has failed to detect the item suspected to be concealed.
- 6.31 Appropriate consideration must be given to whether a suitable support person should be present during, or notified prior to, a strip search. A person with parental responsibility or a nominated person must be informed of a strip search before the search is conducted or, if this is not practicable, 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 or a nominated person is informed about a strip search of the young person 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 (e.g. there is an imminent and serious threat to the personal safety of the young person, staff or someone else), the decision-maker must ensure that 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 worker conducting a strip search of a young person 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 workers, 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 person's body.
- 6.37 A youth worker conducting a strip search must inform the young person, prior to the commencement of the search, whether the young person 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 person'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 person.
- 6.39 The strip search must be conducted as quickly as practicable and in a way that is appropriate considering the young person'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 person's body than is reasonable and necessary to conduct the search and must not visually inspect the genital area, buttocks or female young person's breasts unless the officer considers it necessary to do so for the search.
- 6.41 Following the search, the young person 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 worker/ CCTV operator who is present for the search must be the same sex as the young person unless the decision-maker reasonably believes that there is an imminent and serious threat to the personal safety of the young person 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 (e.g. if the young person is violent and attempting to search them could place the young person or staff at significant risk, or the young person is refusing a search, or the young person 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 person 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 person is less distressed or is calmer. The young person's objection to the search must be recorded.
- 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 Procedures).
- 6.45 The Searching Officer must complete the 'reason for search' field in the Unit Search Log and Incident Report form and document the reason to complete or not to complete a strip search in the Unit Search Log and Incident Report Form.

*Body searches: criteria for decision-making*

- 6.46 Having regard to the young person's age, maturity, developmental capacity and known history, the Manager may direct a non-treating doctor to conduct a body search of a young person if the Manager reasonably suspects that:
- (a) the young person has ingested or inserted an item that may jeopardise the young person's health or wellbeing
  - (b) the young person has concealed a prohibited thing in their body that may be used in a way that could pose a substantial risk to safety and security of a young person or other people 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 person's transfer to a health facility for a body search if it is considered necessary (e.g. in urgent and serious circumstances). The Transfers Policy and Procedures, Safety and Security Policy and Procedures and Health and Wellbeing Policy and Procedures must be applied to transfer a young person to a health facility for a body search.
- 6.48 A body search for a young person who is aged under 18 years 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 person because of their vulnerability and the young person agrees to the person being present (refer to 'Attendance of persons with parental responsibility or support persons at a strip search at induction or a body search').
- 6.49 A body search for a young person aged 18-21 years may be conducted in the presence of a support person if the Manager believes that it is necessary or desirable because of the young person's vulnerability and the young person agrees to the person being present (refer to 'Attendance of persons with parental responsibility or support persons at a strip search at induction or a body search').

- 6.50 A person with parental responsibility for a young person who is under 18 years or a nominated person for a young person aged 18-21 years 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.

*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 or a nominated person is informed about a body search of the young person 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 (e.g. if there is an imminent or serious threat to the safety and security of the young person, other young people or other people), 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 Director, Bimberi must ensure the following rules are complied with in conducting the search.
- 6.54 A youth worker present at a body search must inform the young person, or arrange for the young person to be informed, prior to the commencement of the search, whether the young person 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 person's body may be uncovered at the same time. If the young person asks why a search is being conducted in a particular way, a youth worker must tell the young person the reason.
- 6.55 Whether the body search is conducted at a detention place or elsewhere, the Manager overseeing the search and any youth worker 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 person.
- 6.56 The Manager must ensure that a non-treating doctor is authorised to conduct a body search of a young person 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 person, the non-treating nurse must be the same sex. Only the health professional of the same sex as the young person is authorised to touch and examine the young person's body (see section 272 of the *Children and Young People Act 2008*).
- 6.58 The Manager may direct one or more youth workers to be present during the search. The youth workers must be the same sex as the young person unless the Manager reasonably believes that there is an imminent and serious threat to the personal safety of the young person 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 workers 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 workers must be positioned in such a way as to ensure the safety of all parties during the search, while maintaining the privacy and dignity of the young person.
- 6.61 If the non-treating doctor or non-treating nurse requests assistance while carrying out a body search, a youth worker may provide the requested assistance or direct another youth worker to assist in the conduct of the search. The youth worker assisting must be the same sex as the young person unless the most senior youth worker present at the search reasonably believes there is an imminent and serious threat to the personal safety of the young person and compliance would increase this threat. The most senior youth worker'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 worker present at a body search who is not of the same sex as the young person being searched can assist in the conduct of the search should be discussed with the Manager who made the decision under 6.58 that the youth worker should be present at the search.
- 6.62 Following the search, the young person must be allowed to dress in private as soon as the search is finished.
- 6.63 Anything seized through the body search by a non-treating doctor must be handed over to a youth worker for storage and necessary documentation in the Exhibit Book.

*Attendance of persons with parental responsibility or support persons at a strip search at induction or a body search*

- 6.64 Admission and induction to a detention place can be a stressful time for a young person. The role of persons with parental responsibility or support persons is most crucial on admission and induction. Young people will be most vulnerable during this period and persons with parental responsibility or support persons may play an important role in assisting the young person to cope.
- 6.65 In addition, the conduct of a body search may also reflect a stressful time for a young person, and in these circumstances also, a person with parental responsibility or support person for a young person may be able to provide emotional support.

*Young people who are aged under 18 years*

- 6.66 A strip search as part of induction or a body search of a young person who is aged under 18 years must be conducted in the presence of a person with parental responsibility if the decision-maker for the search believes on reasonable grounds that it is necessary and in the best interests of the young person for the person to be present and the young person agrees to the person being present.
- 6.67 In deciding whether it is necessary and in the best interests of a young person for a person with parental responsibility to be present for a strip

search as part of induction or a body search, the decision-maker must have regard to:

- (a) whether it is necessary because of the young person's vulnerability considering the young person's age, maturity, developmental capacity and known history (e.g. previous reactions to strip or body searches, any known history of abuse, any known mental illness or impairment)
  - (b) whether it is in the best interests of the young person for the person to be present, including whether the person with parental responsibility is acceptable to attend the search (e.g. if the person with parental responsibility has previously posed a risk to safety and security of a young person or other people at 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 person 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 person does not agree with their presence, then the decision-maker must ensure that the search is conducted in the presence of a support person and who is acceptable to the young person. This may be another youth worker who is capable of fulfilling this function.
- 6.69 If the young person does not agree to a support person being present, then the search may continue in the absence of a support person.

#### *Young people aged 18-21 years*

- 6.70 A strip search as part of induction or a body search for a young person aged 18-21 years 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 person's vulnerability and the young person agrees to the person being present.
- 6.71 In deciding whether it is necessary or desirable for a support person to be present, the decision-maker may have regard to the young person's age, maturity, developmental capacity and known history.
- 6.72 If the young person 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*

- 6.73 It is preferable for different people to undertake the roles of observing officer and support person. However, in some circumstances, either dictated by operational requirements or by a young person not wishing a third person to be present during the search, one youth worker may undertake the dual roles of observing officer and support person.
- 6.74 There are time implications regarding seeking a person with parental responsibility or support person to be present at a search of a young person. Meeting this requirement may cause some delay to the ability to search a young person. 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.

- 6.75 If delaying the search in order for a person with parental responsibility or support person to arrive is likely to compromise the safety or security of the young person or other people at a detention place, the decision-maker may decide that it is not in the best interests of the young person 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 person must be informed of the reasons for this.
- 6.76 If a person with parental responsibility or a support person is present for a search, the young person must be asked whether they would prefer that person to stand near the Searching Officer (i.e. in line of sight of the young person) or to stand near the observing officer (i.e. outside line of sight of the young person but near enough to allow verbal communication).
- 6.77 The Searching Officer must complete the 'Reason for search' field in the Unit Search Log and Incident Report form and 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 induction or a body search.

#### Removing People from the Search Area

- 6.78 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 worker may direct the person to leave. Wherever possible, a youth worker 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.
- 6.79 If a person with parental responsibility or a support person refuses to comply with a direction to leave the detention place, a youth worker may use necessary force to remove the person.
- 6.80 If a youth worker uses force, the officer must comply with the Use of Force Policy and Procedures.

#### Interstate Transfers - Powers of Transfer Escorts to Search

- 6.81 A transfer escort who is escorting a young person under a transfer order may conduct a scanning search, frisk search or ordinary search of the young person if the transfer escort suspects on reasonable grounds that the young person may be carrying a prohibited thing.
- 6.82 The transfer escort must comply with the 'Rules for all personal searches' and the 'Rules for conducting scanning, frisk and ordinary searches of young people' in conducting the search. The transfer escort may seize a thing in accordance with 'Seizure'.

#### Searches of Premises, Property and Vehicles

##### *Criteria for decision-making*

- 6.83 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'.
- 6.84 The Manager, may direct a youth worker to undertake a search of:

- (a) any area within a detention place
- (b) any vehicle at a detention place
- (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)
- (d) any vehicle used for transporting young people (whether at a detention place or elsewhere).

*Rules for searching premises and property*

- 6.85 Youth workers undertaking area, premises, property and vehicle searches must show the highest regard for the dignity of and respect for young people or other people and their belongings when conducting a search.
- 6.86 Youth workers 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.
- 6.87 For all searches of premises and property where appropriate (e.g. when searching a young person's cabin), a youth worker undertaking the search must explain to the young person the process and the purpose of the search in a manner that the youth worker reasonably considers the young person will understand (considering the young person's age and maturity and any other relevant factor). The youth worker must ask for the young person's cooperation with the search.
- 6.88 When searching a young person's cabin, a youth worker must:
- (a) inform the young person of a search taking place and the reasons for this
  - (b) request that the young person handover any prohibited things they may have in their possession
  - (c) instruct the young person to stand in the doorway of his/her cabin (if the young person's cabin contains privileged material, or is suspected to contain privileged material, the search may only occur in the absence of the young person in accordance with 'Searches of cabins containing privileged material' and 'Searches of cabins suspected to contain privileged material')
  - (d) undertake the search in accordance with training instructions and this policy and procedures.
- 6.89 If a youth worker discovers a thing they are empowered to seize, the youth worker must:
- (a) tell the young person about finding the thing (if it is found in the young person's cabin) and follow directions under 'Seizure'
  - (b) report the finding as a reportable incident (refer to Records and Reporting Policy and Procedures).
- 6.90 If, following an area search, a youth worker forms a reasonable suspicion that a young person may be in a possession of a prohibited thing, the youth worker must inform the young person that further searches may be conducted.
- 6.91 If a youth worker undertakes actions described at 6.89, a scanning, frisk or ordinary search of the young person may be conducted in accordance with 6.14.



### *Searches of cabins containing privileged material*

- 6.92 If a young person has privileged material in their cabin, a search of the young person's cabin may only occur in the absence of the young person if:
- (a) the young person removes the privileged material from the cabin
  - (b) the privileged material is securely stored in the young person'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 people.
- 6.93 The youth worker 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*

- 6.94 If a youth worker suspects on reasonable grounds that a young person's cabin may contain privileged material, the youth worker may only search the young person's cabin while the young person is present, unless the circumstances in 6.95 apply.
- 6.95 If a youth worker reasonably believes that urgent circumstances exist, and complying with the requirement for the young person to be present would create a risk of injury to any person, the officer may conduct the search in the absence of the young person.
- 6.96 If a youth worker finds privileged material whilst searching a young person's cabin, the youth worker may examine the material and anything containing the material (e.g. an envelope), but must not read the material, unless the circumstances in 6.97 apply.
- 6.97 If a youth worker 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 worker 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.
- 6.98 The youth worker 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)*

- 6.99 A youth detention worker 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 Manager to possess the thing
  - (b) anything found at a detention place that the youth worker suspects on reasonable grounds:
    - (i) is being used, or is intended to be used, for the commission of an offence or behaviour breach
    - (ii) jeopardises or is likely to jeopardise safety and security of the young person or other people at a detention place or elsewhere.

- 6.100 Anything found at a detention place in 6.99(b) includes anything found in a vehicle at a detention place or in a vehicle used for transporting a young person. It does not matter whether the thing is in a young person's custody or possession for it to be seized.
- 6.101 A youth worker undertaking a personal search of a young person must ensure that the young person is left with or given suitable clothing if a clothing item is seized during a personal search.

#### *Seizing mail*

- 6.102 A youth worker must seize ordinary mail or items found in a young person's ordinary or protected mail during a search or inspection of a young person's postal mail in the following circumstances:
- (a) for protected mail - a thing in a young person's protected mail if the youth detention worker reasonably believes it may physically harm the addressee or anyone else or is a prohibited thing
  - (b) for ordinary mail - a thing in the ordinary mail or the mail itself if the youth worker 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 safety and security of a young person or other people at a detention place
  - (c) for ordinary mail - a thing in the ordinary mail or the mail itself if the youth worker reasonably suspects that the seizure is necessary to prevent mail that is threatening, inappropriate or not in the best interests of a young person from entering or leaving a detention place (e.g. correspondence that re-victimises a victim, pornography, or correspondence that could be used by the young person to obtain or buy goods without the Manager's approval).
- 6.103 A youth worker may only seize a document if the youth worker reasonably believes it is not privileged. If a youth worker seizes a document that contains privileged information, the youth worker is prohibited from reading the contents of the document and must return the document to the young person immediately.

#### *Preserving and record keeping of things seized*

- 6.104 If a youth worker seizes something under 6.102 or 6.105 or is given something seized by a non-treating doctor undertaking a body search of a young person, 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 worker 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 person believed to be connected with the thing - and if so, how the young person is believed to be connected with the thing
  - (e) whether the police have been contacted in relation to the thing.
- 6.105 If the thing seized is, or appears to be, illegal (e.g. drugs), the youth worker 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 Procedures.

- 6.106 If the police remove a thing that was seized during a search, a youth worker must direct the police officer to sign the Exhibit Book before taking possession of the thing.

*Notice of seizure, forfeiting or returning things seized*

- 6.107 Not later than seven (7) days after a thing is seized, the youth worker 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

- 6.108 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
- (b) after making reasonable efforts (given the thing's apparent value), the thing cannot be returned to the owner
- (c) the thing is a prohibited thing
- (d) possession of the thing by a young person is an offence or behaviour breach
- (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
- (g) the thing may be used by the person in a way that may involve a risk to the safety and security of a young person or other person at a detention place.

- 6.109 The Director, Bimberi, Deputy 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 Director, Bimberi, Deputy Senior Manager or Operations Manager must ensure a youth worker records this as a Category 2 Reportable Incident in accordance with the Records and Reporting Policy and Procedures.

- 6.110 If the thing seized belongs to a young person and is not forfeited, then it must be placed in the young person's property container and returned to them on their release (refer to Property Policy and Procedures).

- 6.111 If a seized thing is not owned by a young person and is not forfeited to the Territory, the thing must be returned to its owner immediately, but not later than the end of six months after it was seized, if there is no proceeding for an offence or behaviour breach in relation to the thing.

- 6.112 If a seized thing is not owned by a young person and is not forfeited to the Territory, and a proceeding for an offence or behaviour breach involving the thing is commenced, the Director, Bimberi, Deputy 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.

6.113 If the thing was being kept as evidence of an offence or behaviour breach and the Director, Bimberi, Deputy Senior Manager or Operations Manager believes that its retention is no longer necessary, the Director, Bimberi, Deputy Senior Manager or Operations Manager must ensure the thing is returned immediately to its owner.

#### Use of Force During Searches

6.114 A youth worker may use necessary and reasonable force to:

- (a) remove a person or people from the search area in accordance with this policy and procedures, including a support person/s or person/s with parental responsibility who are present
- (b) conduct a personal or property search in accordance with this policy and procedures
- (c) assist at a body search
- (d) prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.

6.115 If force is required to be used in relation to a search, staff must comply with the Use of Force Policy and Procedures.

6.116 If force is used during or in relation to a search, including on a young person or to remove a support person or person with parental responsibility or 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

6.117 Youth workers who undertake or assist with the following searches must enter details of the search into the Register of Searches and Uses of Force:

- (a) strip search
- (b) body search
- (c) search of premises, property or vehicles used to transport young people
- (d) searches of cabins containing or suspected to contain privileged material.

6.118 For each of the above searches, the following information must be recorded:

- (a) the name of the young person
- (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 authorised the search
- (e) the name of the youth worker who conducted the search and any other persons present during the search
- (f) whether the young person objected to the search
- (g) when a person with parental responsibility or nominated person was notified about the search (for strip and body searches)
- (h) whether it was considered necessary and in the best interests of a young person 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 asking a person with parental responsibility or a support person to leave the search/ not be present at the search
  - (j) details of any force used in conducting the search and/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 person during the search, including any requests made by a young person 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 during the search such as evidence of bolts, locks or other fittings being tampered with
  - (n) any complaint raised by a young person or another person about the conduct of the search
  - (o) the decision-maker's (or most senior youth worker in relation to a decision under 6.61) reasons for believing that the requirements under 6.42, 6.58 or 6.61 for a youth worker conducting, present or assisting at a search to be the same sex as the young person did not apply
  - (p) if a search dog was used during the search (refer to Use of Search Dogs).
- 6.119 The Register of Searches and Uses of Force must be available for inspection in accordance with the Records and Reporting Policy and Procedures.

#### Use of Search Dogs

- 6.120 The Director, Bimberi, Deputy Senior Manager or Operations Manager may make a direction for a search dog to be used for a search under this policy and procedures if they believe on reasonable grounds that the use of the search dog would minimise the intrusiveness of the search being conducted.
- 6.121 The only search dogs authorised to be used are Corrective Services Dogs that have been specifically trained for searching purposes.
- 6.122 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 procedures and the procedures under the *Corrections Management Act 2007*.
- 6.123 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 person consistent with the purpose of the search.
- 6.124 The search dog must be under the control of a corrections officer at all times during the search.
- 6.125 The corrections officer in control of a search dog must ensure that there is no physical contact with a young person by the dog during a search.
- 6.126 The Director, Bimberi, Deputy Senior Manager or Operations Manager must ensure a youth worker is present while a search involving the use of a search dog is taking place.
- 6.127 A youth worker (and not the corrections officer handling the dog) must seize any item in accordance with 6.102 or 6.105. The youth worker who has undertaken the seizure must comply with the procedures outlined under 'Seizure' in relation to the seized thing.

6.128 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 People

6.129 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.

#### *Searches of other people upon entry to a detention place and at other times*

6.130 The Manager may make a written direction that all people entering a detention place or at a detention place may be subject to a scanning, frisk or ordinary search, if the Manager reasonably believes that the search is necessary to ensure the safety and security of young people or other people at a detention place. If a youth worker acting under a written direction believes that complying with the direction is not possible or practical in a particular circumstance, the youth worker must contact the Manager for further direction.

6.131 A decision-maker for a search may, at any time, direct a youth worker to conduct a scanning search, frisk search or ordinary search of a person other than a young person at a detention place if they reasonably believe that the search is necessary to ensure the safety and security of a young person or other people at a detention place. 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 and security of a young person or other person.

6.132 The 'Rules for conducting frisk and ordinary searches of persons other than young people' must be applied.

6.133 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 and security of a young person or other person is discovered during a scanning, frisk or ordinary search, a youth worker must seize the thing in accordance with 6.102.

6.134 If the person objects to the search, refer to the procedures at 'Persons other than young people objecting to searches'. Youth workers must not use force in conducting a scanning, frisk or ordinary search under this section.

#### *Rules for conducting frisk and ordinary searches of persons other than young people*

6.135 A youth worker who conducts a frisk search or ordinary search of a person other than a young person 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 people 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.

- 6.136 A youth worker 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 (e.g. due to staffing issues).
- 6.137 If it is not practicable for the youth worker conducting the frisk search to be the same sex as the person being searched, the youth worker must arrange for another person of the same sex (who is not a young person) to be present while the frisk search is conducted. This may be a youth worker, a visitor or another person.
- 6.138 The agreement of the person being frisk searched must be sought to the presence of the other person.

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

- 6.139 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 worker must explain the reasons for the search and continue to seek the person's cooperation to the search.
- 6.140 A youth worker may, as far as practicable, agree to any reasonable request made by the person other than a young person in relation to the conduct of the search if it does not compromise the effectiveness of the search (e.g. a request for a different youth worker to conduct the search).
- 6.141 If a person other than a young person continues to object to a search being undertaken, a youth worker must inform the person they will be directed to leave a detention place unless they cooperate with the search.
- 6.142 If a person other than a young person continues to object to a search being undertaken, a youth worker 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 workers must make all reasonable efforts to ensure the direction is complied with. Youth workers may use force only in accordance with the Use of Force Policy and Procedures to ensure compliance with the direction to leave.

#### Provision of Information, Review of Decisions and Complaints

- 6.143 Staff must ensure young people, people 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.
- 6.144 Staff must ensure that the Complaints Management Policy and Procedures is followed.

#### Records and Reporting

- 6.145 Any actions taken under this policy and procedure must be recorded according to the requirements set out in the Records and Reporting Policy and Procedures.

#### Debriefing of Staff and Access to Support and Counselling for Young People

- 6.146 Staff and young people should be offered debriefing and support as soon as possible after a difficult search has occurred. This includes any

search related situations in which the young person is upset and/or force is used.

## **7 Forms and Templates**

Exhibit Book  
Incident report form  
Notice of seizure form  
Register of Searches and Uses of Force  
Register of Young Detainees

## **8 Related Policies and Procedures**

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

Admission and Classification Policy and Procedures  
Complaints Management Policy and Procedures  
Health and Wellbeing Policy and Procedures  
Property Policy and Procedures  
Records and Reporting Policy and Procedures  
Use of Force Policy and Procedures

### Policies and Procedures in Child and Youth Protection Services

Single Case Management Policy and Procedures

## **9 Further References**

NA

## **10. Review**

10.1 This policy and procedures will be reviewed at least once every two years.



## **Children and Young People (Prohibited Things) Declaration 2015 (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 safety and security of young people and other people 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 the safety and security of young people and other people at a detention place:

- prescription and non-prescription medication, other than prescription and non-prescription medication that the Manager has approved to be taken by a young person
- tools and related equipment, other than at times designated as program times or for a specific program or as approved by the 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 Manager for another lawful purpose
- food stuffs, other than at meal times or as approved by the Manager
- prams and bassinets, other than those required for specific needs as approved by the Manager
- toiletry products other than those issued or approved for issue by the Manager
- grooming products other than those issued or approved for issue by the Manager
- needles, syringes or other sharps except those required for specific needs as approved by the Manager
- cameras unless approved by the Manager for a specific purpose
- handbags, backpacks or bags of any kind unless approved by the Manager

- petrol, thinners or propellants of any kind unless approved by the 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 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 Manager for another lawful purpose
- jewellery unless approved by the Manager
- cosmetics of any kind unless required for specific needs or programs as approved by the 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 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 Manager for another lawful purpose
- personal possessions unless approved by the Manager.