

Searches of Children and Young People in Custody in Tasmania June 2020

The Commissioner for Children and Young People Leanne McLean today welcomed the Tasmanian Government's acceptance of her recommendations regarding the searches of children and young people in custody in Tasmania.

"In May 2019, I provided advice to the Tasmanian Government that the then practice of routine strip searching of children and young people in custodial settings could not be justified and should cease," Ms McLean said

"As I pointed out in my advice, the experience of being strip searched can be humiliating and distressing and has the potential to re-traumatise children who have been sexually abused.

"Instead, I proposed a new approach to all searches of children and young people in custody based on human rights standards.

"I made a total of nine recommendations in relation to the practice of searching of children in custody – the Government recently provided a formal response to that advice. In its response, the Government accepted six recommendations outright and three in principle.

"This is a good step in the right direction, and I commend the Attorney General for her consideration and acceptance of my advice. I also commend the Tasmanian Prison Service (Department of Justice), the Department of Police, Fire and Emergency Services, and the Department of Communities Tasmania for their collaborative work to improve search processes which have already resulted in improvements for young people, including a cessation of the routine strip searching of children in custody.

"I have been advised that as result of changes to operational processes made following my advice, from 1 July 2019 to 29 February 2020, of the 199 youths admitted across both the Launceston and Hobart Reception Prisons, 35% have been subject to a personal search (strip search).

"I have also been advised that improvements to search registers are enabling statistics and outcomes for searches of young people to be easily retrieved.

"I remain concerned at the numbers of children continuing to be strip searched and will continue to monitor the effect of the changes in practice and policy and the effect of the proposed legislative reforms.

The full implementation of my recommendations will require legislative change. I have been advised there is work underway to develop the legislative and other reforms. I look forward to the opportunity to contribute to this process."

Ms McLean said her Recommendations from her Memorandum of Advice in May, 2019, included:



Recommendation 1:

a. The practice of routine strip searching of children and young people in custody cannot be justified and should cease. **The Government accepts this recommendation.**

b. Legislation authorising searches of children and young people in custody in all custodial premises in Tasmania should reflect the fundamental human right standard that searches of children and young people in custody should be conducted only when reasonable, necessary and proportionate to a legitimate aim. **The Government accepts this recommendation in principle.**

Recommendation 2:

The legislative bases for all searches of children and young people in custody in Tasmania should be clarified and consolidated to provide a single, unambiguous point of reference. **The Government accepts this recommendation.**

Recommendation 3:

Consideration should be given to introducing in legislation applicable to all searches of children and young people in custody:

- a statement as to guiding principles;
- a clearly stepped out hierarchy of searches; and
- clear criteria to guide a determination of which type of search is permissible and justified in particular circumstances.

The principles, hierarchy of searches and criteria to guide decision making should reflect fundamental human rights standards and principles, including that searches of children and young people in custody should be conducted only when reasonable, necessary and proportionate to a legitimate aim and should be developed by agencies in consultation with stakeholders. **The Government accepts this recommendation in principle.**

Recommendation 4:

Consideration should be given to investing in alternative security strategies or technologies such as body scanners which would further minimise reliance on more invasive searches such as strip searches. **The Government accepts this recommendation.**

Recommendation 5:

Having regard to relevant human rights standards, and no matter the type of search conducted, the use of force should be limited to circumstances of last resort and, if force is required, there should be clear lines of authorisation. **The Government accepts this recommendation.**

Recommendation 6:

Regulations should clearly outline the way in which searches of children and young people in custody are to be conducted so as to promote the dignity and self-respect of the child or young person concerned and to minimise any associated trauma, distress or other harm. **The Government accepts this recommendation in principle.**

Recommendation 7:

The key elements of the legislative and regulatory framework governing searches of children and young people in custody should be provided to children and young people in an accessible format before a search is conducted. This information should explain their

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right to make a complaint and the process for doing so. **The Government accepts this recommendation.**

Recommendation 8:

All searches of children and young people in custody in custodial settings should be recorded on a search register. Search registers should be available for inspection or review by independent statutory officers with relevant monitoring or inspectorate functions. **The Government accepts this recommendation.**

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