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Ms Leanne McLean  
Commissioner for Children and Young People  
Level 1, 119 Macquarie Street  
HOBART TAS 7000

**By Email:** [childcomm@childcomm.tas.gov.au](mailto:childcomm@childcomm.tas.gov.au)

*Leanne*

Dear Commissioner

In May last year, I wrote to you expressing my appreciation for your Memorandum of Advice on the searches of children and young people in custodial facilities in Tasmania.

At that time I informed you of actions that were already being taken by the Tasmania Prison Service, Communities Tasmania and Tasmania Police to address the concerns you raised. I also noted that these agencies would continue to work together to determine the best approach for developing a more consistent legal framework.

An interagency Working Group was created with senior executive representatives from the three relevant Departments, chaired by the Department of Justice. The Working Group was supported by a Project Team comprising officers from legislation and policy areas within the relevant Departments.

The Working Group met throughout 2019 and identified possible legislative and policy changes to provide consistency and better protections of the wellbeing of young people in relation to searching processes for youth in custody across different custodial facilities in Tasmania. The Working Group subsequently provided their advice to Government for consideration.

On behalf of myself as Attorney-General and Minister for Justice, the Hon Roger Jaensch MP, Minister for Human Services, and the Hon Mark Shelton MP, Minister for Police, Fire and Emergency Services, I am also pleased to inform you of the Government's response to the recommendations in your Memorandum of Advice.

**Recommendation 1a: The practice of routine strip searching of children and young people in custody cannot be justified and should cease.**

The Government accepts this recommendation.

The Tasmania Prison Service (Department of Justice), the Department of Police, Fire and Emergency Management and Communities Tasmania have responded to this recommendation with operational changes resulting in the cessation of the routine strip searching of children and young people in custody.

I would like to draw your attention to some specific examples of departmental responses that have been implemented to this recommendation.

The Tasmania Prison Service has reviewed relevant Director's Standing Orders (DSOs) and implemented a risk assessment from 1 July 2019 which informs correctional officers as to whether a juvenile presents a low, moderate or high risk of harming themselves or others, and the appropriate level of search required to mitigate that risk, commencing from non-intrusive searching methods such as a metal detector.

Data from the Launceston and Hobart Reception Prisons from 1 July 2019 to 29 February 2020 indicates that of the 199 youths admitted across both Reception Prisons only 35% have been subject to a personal search. Improvements to search registers are also enabling statistics and outcomes for searches of young people to be easily retrieved so this can continue to be monitored into the future.

The Department of Justice has also given consideration to electronic security as part of a broader upgrade of technology and will continue to explore technologies that may offer an appropriate and effective alternative to personal searches.

Communities Tasmania implemented a new *Personal Searches of Young People detained at Ashley Youth Detention Centre (AYDC)* procedure in September 2019.

The new procedure requires that all personal searches must be based on reasonable grounds and that the type of search is to be aligned with an assessment of risk. The least intrusive personal search method appropriate to the risk is to be used. The procedure also reinforces the delegations for authorisation of a personal search and introduces the requirement that partially clothed searches are undertaken by staff members of the same gender. Implementation of the new procedure included the review and expansion of the search registers to ensure they capture all the required information and appropriate training of AYDC staff.

Tasmania Police has also reviewed, and continues to review, relevant search protocols. While parts of police stations are watch houses for the purposes of the YJ Act, holding people in these custodial facilities is limited. Where Tasmania Police facilities may be required to hold people in custody, Tasmania Police does not routinely strip search children or young people.

**Recommendation 1b: 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.

The Government intends to undertake legislative reform in relation to the searches of children and young people to respond to this and other recommendations in your Memorandum of Advice.

Part of these reforms will be the inclusion of criteria which restrict how and when a search is conducted to 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.

**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.

The Government recognises there is complexity in the current legislative framework associated with searches of youth in custody in custodial facilities in Tasmania, with authority for searches at different stages of custody included within the *Police Offences Act 1935*, the *Corrections Act 1997* and the *YJ Act*.

The Government proposes to consolidate the requirements for searches of children and young people in custody in custodial facilities in the *Youth Justice Act 1997*. The new consolidated provisions would have application to youth in custody in all custodial facilities as defined by relevant Acts. This would include those facilities managed by Tasmania Police, Communities Tasmania and the Department of Justice.

**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 and notes that these matters will be implemented primarily through policy and operational procedures.

The Government intends to establish a set of guiding principles to inform legislative reform, policy and operational procedures for searches of children and young people in custody in custodial facilities in Tasmania.

**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.

Communities Tasmania is considering this recommendation as part of the further redesign and upgrade of AYDC infrastructure.

The Department of Justice has also given consideration to electronic security as part of a broader upgrade of technology and will continue to explore technologies that may offer an appropriate and effective alternative to personal searches of children and young people.

This is consistent with the acceptance in principle by the Government of Recommendation 15.4 of the Royal Commission into Institutional Responses to Child Sexual Abuse, which includes consideration of 'implementing strategies for detecting contraband, such as risk assessments or body scanners, to minimise the need for strip searching children'.

**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.

It is intended, as part of the legislative reforms proposed by the Government, to consolidate the provisions relating to the power to search children and young people in custody in custodial facilities in Tasmania in the *Youth Justice Act 1997*.

This will provide a single point of reference for provisions relating to the use of force in conducting searches on children and young people; and provide for the use of force to be applied only when reasonable and necessary.

**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.

Operational frameworks and documents issued under provisions of the relevant Acts for which compliance is required under relevant employment agreements and legislation, outline the details of how to appropriately conduct searches of children and young people. These documents will continue to be reviewed as necessary. These documents will address matters in this recommendation, including procedures to minimise any associated trauma, distress or harm.

These operational documents include Tasmania Prison Service Directors Standing Orders (DSO)s, protocols within the Tasmania Police Manual and Communities Tasmania operating procedures.

The proposed legislative reforms will also address this recommendation in part, including the guiding principles to be developed that will address matters such as promoting the dignity and self-respect of the child or young person and minimizing any associated trauma, distress or harm.

**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 right to make a complaint and the process for doing so.**

The Government accepts this recommendation.

Informing youth of search procedures is already undertaken in custodial facilities in Tasmania through a range of means including verbal, visual and/or written information provided to children and young people in custody, as appropriate for the circumstances in which the search is conducted, as part of standard operating procedures.

Complaints systems already operate in custodial facilities in Tasmania and complaints can be made to the Ombudsman for investigation under the *Ombudsman Act 1978*.

The Government will consider additional operational measures that can be implemented within the existing legal framework in custodial facilities to ensure children and young people are appropriately informed about personal searches and complaint systems, including the key elements of the legislative framework.

**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.

Operationally, searches are already recorded in custodial facilities and the Custodial Inspector has access to inspect existing search registers in accordance with the provisions of the *Custodial Inspector Act 2016* and other relevant legislation in relation to custodial facilities.

The Government also intends to include in legislation, a power to make Regulations in relation to search registers. The Government will continue to support the Custodial Inspectorate in their duties, including through the provision of access to existing search registers, as required under relevant legislation.

Thank you again for drawing the Government's attention these important issues.

The Government will consult on the proposed draft legislation with the public and stakeholders before a Bill is introduced into Parliament.

In addition to the work progressed in relation to your Memorandum of Advice, I wish to also inform you of upgrades to the Hobart Reception Prison. These upgrades respond in part to your review of Hobart and Launceston Reception Prisons as places for holding children and young people while awaiting Court sessions or transport to AYDC. The works will primarily focus on providing a number of cells conducive to being aesthetically and functionally comforting for children housed in the watch house component of the Hobart Reception Prison. The scope will be finalised in coming weeks in consultation with the Tasmanian Prison Service and Communities Tasmania, with anticipated completion by the end of the first quarter of 2021. The total project budget is \$500,000, jointly funded by the Department of Justice and Communities Tasmania.

I look forward to hearing your views on the draft legislation and be able to show you these upgrades in due course.

Yours sincerely



Hon Elise Archer MP  
**Attorney-General**  
**Minister for Justice**

cc

Hon Roger Jaensch MP  
Minister for Human Services

Hon Mark Shelton MP  
Minister for Police, Fire and Emergency Services,