

Searches of children and young people in custody in Tasmania May 2019

The Commissioner for Children and Young People today released her Advice to Government on searches of children and young people held in custody in Tasmania.

Commissioner Leanne McLean said her Advice, if followed, would better promote and protect the rights and wellbeing of children and young people in custody. Further, it would help ensure relevant legislation, policies and procedures regarding all personal searches are in line with well-established human rights standards and principles and contemporary best practice.

“As I have made very clear in my public comments on this issue, I believe the practice of routine strip searching of children and young people in custody cannot be justified and should cease” Ms McLean said.

“Instead, I propose a new approach to all searches of children in custody, where decisions on when and how to search are based on considerations of risk and on what is reasonable and necessary in the particular circumstances.

“I believe this approach can be achieved in a way that appropriately maintains and promotes the safety and security of custodial environments for children and young people, staff, visitors and others.”

Ms McLean said media reports relating to the practice of routine strip searching of children at Hobart Reception Prison have, in part, led to her decision to provide this Advice.

“The scope of my Advice is broader– it looks at the rules which apply to children and young people in the various custodial settings they might find themselves in.

“It is apparent that different rules apply to searches of children and young people in custody across different custodial settings.

“This is confusing and undesirable, and instead there should be a single legislative basis for all searches of children and young people across all custodial facilities where they may be detained - including in police watch-houses, reception prisons and detention centres.”

Ms McLean said data recently released by the Department of Justice shows that, in the 2018 calendar year, 218 minors in the custody of the Tasmania Prison Service were subject to a strip search by Tasmania Prison Staff.

Furthermore, data released by the Department of Communities Tasmania shows that a total of 203 unclothed searches were conducted on children and young at Ashley Youth Detention Centre during the period 1 June 2018 to 30 November 2018. No contraband was found as a result of any of those searches.



CCYP Recommendations

Recommendation 1:

- a. The practice of routine strip searching of children and young people in custody cannot be justified and should cease.
- 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.

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.

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.

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.

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.

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.

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.



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.

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