

FACT SHEET

Youth Justice Amendment (Searches in Custody) Bill 2022

The *Youth Justice Act 1997* is an Act to provide for the treatment and sanctioning of young persons who have committed offences and for related purposes.

The purpose of the *Youth Justice Amendment (Searches in Custody) Bill 2022* (the Bill) is to amend the *Youth Justice Act 1997* to provide consolidated legislative provisions for searches of youth in custody in custodial facilities.

The amendments respond to recommendations made to the Tasmanian Government by the Commissioner for Children and Young People in her Memorandum of Advice in relation to searches of children and young people in May 2019.

This Bill is in line with best practice legislative approaches in other Australian jurisdictions where the youth's best interests and wellbeing are sought to be protected and promoted. It delivers on the Tasmanian Government's commitment to provide for a consistent decision making framework in respect to how youth are searched in police watch-houses, prisons and detention centres.

This Bill includes the powers of search, seizure, limitations on the use of force and requirements to report use of force. The Bill includes controls to safeguard the exercise of those powers, including a principles-based framework governing the conduct of searches, the establishment of a search register and ensuring relevant information on searches is available to youths, their advocates and the public.

In summary, the Bill:

- provides for searches of youth in custody in custodial facilities, including clothed and unclothed searches. It does not include or apply to body cavity searches or searches under the *Terrorism (Preventative Detention) Act 2005*;
- provides that the persons who may conduct a search are limited to authorised search officers, and applies gender requirements to search officers;
- applies an overarching risk-based legislative framework which restricts searches and the conduct of searches; including:
 - a search is only conducted where necessary and relevant for a search purpose;
 - the type and manner of the search to be proportionate to the circumstances and the least intrusive type of search necessary;
 - additional authorisation is required to conduct an unclothed search;
 - search registers are to include specific information and be available for inspection to assist appropriate auditing and accountability;

- requires that a search officer conducting a search must not use force unless it is the only means the search can reasonably and necessarily be conducted in the circumstances;
- provides for requirements to inform a youth of the intention to undertake a search, and provides for seizure of articles found during searches; and
- provides for the information to be made available to a youth in custody and the public regarding the obligations of the person in charge of the custodial facility under the Act.