

**582      Therapeutic protection—medical examination after use of force**

- (1) The operating entity for a therapeutic protection place must ensure that any child or young person in therapeutic protection injured by the use of force under this division is examined as soon as practicable by a doctor (other than a non-treating doctor) and that appropriate health care is available to the child or young person.
- (2) Without limiting subsection (1), the operating entity for a therapeutic protection place must give a child or young person in therapeutic protection the opportunity to be examined by a doctor or nurse (other than a non-treating doctor or non-treating nurse) after the use of force in relation to the child or young person.

**583      Therapeutic protection—monthly reports about use of force**

The operating entity for a therapeutic protection place must, as soon as practicable after the end of each month, give the director-general a report summarising the incidents (if any) during the month that involved the use of force in relation to a child or young person in therapeutic protection.

**Division 16.3.5      Searches**

**Subdivision 16.3.5.1 Application and definitions—div 16.3.5**

**584      Application—div 16.3.5**

This division applies to a child or young person who is in therapeutic protection.

**585      What is a *scanning search*?**

In this part:

*scanning search*, of a child or young person, means a search of the child or young person by electronic or other means that does not

require the child or young person to remove the child's or young person's clothing or be touched by someone else.

**Examples—scanning searches**

- 1 passing a portable electronic or other device over or close to a child or young person
- 2 requiring a child or young person to pass by or through an electronic or other device

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**586 What is a *frisk search*?**

In this part:

*frisk search*, of a child or young person, means—

- (a) a search of the child or young person conducted by quickly running the hands over the child's or young person's outer clothing; and
- (b) an examination of anything worn or carried by the child or young person that is conveniently and voluntarily removed by the child or young person.

**587 What is an *ordinary search*?**

In this part:

*ordinary search*, of a child or young person, means a search of the child or young person or of anything in the child's or young person's possession, and may include—

- (a) requiring the child or young person to remove only the child's or young person's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves, or headwear; and
- (b) an examination of anything removed.

**588 What is a *body search*?**

In this part:

*body search*, of a child or young person, means a search of the child's or young person's body, including an examination of an orifice or cavity of the child's or young person's body.

*Note* Body searches are dealt with in subdiv 16.3.5.5.

**589 What is a *strip search*?**

In this part:

*strip search*, of a child or young person, means a search of the child or young person, or of articles in the child's or young person's possession, under section 598 (Strip searches—authorisation) that may include—

- (a) requiring the child or young person to remove all of the child's or young person's clothing; and
- (b) an examination of—
  - (i) the child's or young person's body (but not the child's or young person's body orifices or cavities); and
  - (ii) the child's or young person's clothing.

*Note* Strip searches are dealt with in subdiv 16.3.5.4.

**590 What is a *dangerous thing*?**

In this part:

*dangerous thing* means a thing that, if used by, or allowed to remain with, a child or young person, may—

- (a) cause serious damage to the health of the child or young person or someone else; or
- (b) threaten the life of the child or young person or someone else.

### **Subdivision 16.3.5.2 Searches generally**

#### **591 Searches—intrusiveness**

A person conducting a search of a child or young person under this division must ensure, as far as practicable, that the search—

- (a) is the least intrusive kind of search that is necessary and reasonable in the circumstances; and
- (b) is conducted in the least intrusive way that is necessary and reasonable in the circumstances.

**Example**

searching for a dangerous thing by a scanning search rather than a frisk search

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

#### **592 Searches—transgender or intersex child or young person**

- (1) This section applies if a transgender or intersex child or young person is to be searched under this division.
- (2) For a child or young person who fails to make a choice under section 573 (2) (a) (Transgender and intersex children and young people—sexual identity)—
  - (a) if the child or young person requires that a male conduct the search, the child or young person is taken, for this part, to be male; and
  - (b) if the child or young person requires that a female conduct the search, the child or young person is taken, for this part, to be female.

*Note 1* For the Act generally, the sex of a child or young person is taken to be the child's or young person's sex entered in the therapeutic protection register under s 573 (7).

*Note 2* For the meaning of *intersex person* and *transgender person*, see the Legislation Act, s 169A and s 169B.

### **593      Searches—use of force**

- (1) A therapeutic protection person may use force that is necessary and reasonable—
  - (a) to conduct or assist at a search under this division; or
  - (b) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.
- (2) However, the therapeutic protection person may use force only in accordance with division 16.3.4.

### **Subdivision 16.3.5.3 Scanning, frisk and ordinary searches**

#### **594      Directions for scanning, frisk and ordinary searches**

- (1) The operating entity for a therapeutic protection place may, at any time, direct a therapeutic protection person to conduct a scanning search, frisk search or ordinary search of a child or young person if the operating entity believes on reasonable grounds the search is prudent to ensure security or good order at a therapeutic protection place.
- (2) Also, a therapeutic protection person may conduct a scanning search, frisk search or ordinary search of a child or young person if the person suspects on reasonable grounds that the child or young person is carrying—
  - (a) a dangerous thing; or
  - (b) something that may be used by the child or young person in a way that may involve—

- (i) an offence; or
- (ii) a risk to the personal safety of the child or young person or someone else; or
- (iii) a risk to security or good order at a therapeutic protection place.

**595      Scanning, frisk and ordinary searches—requirements before search**

- (1) This section applies if a therapeutic protection person proposes to conduct a scanning, frisk or ordinary search of a child or young person.
- (2) Before the search is conducted, the therapeutic protection person must tell the child or young person—
  - (a) about the search; and
  - (b) the reasons for the search.
- (3) If the child or young person asks why the search is to be conducted in a particular way, the therapeutic protection person must tell the child or young person the reasons.
- (4) The therapeutic protection person must ask for the child's or young person's cooperation for the search.

**596      Frisk and ordinary searches—privacy**

- (1) A frisk search or ordinary search of a child or young person may only be conducted in—
  - (a) a private area; or
  - (b) an area that provides reasonable privacy for the child or young person.
- (2) A frisk search or ordinary search of a child or young person must not be conducted in the presence or sight of—

- (a) another child or young person; or
  - (b) someone whose presence is not necessary for the search or for the safety of anyone present.
- (3) A frisk search of a child or young person must be conducted by a therapeutic protection person of the same sex as the child or young person.
- (4) Subsection (3) does not apply if the operating entity for the therapeutic protection place believes on reasonable grounds that—
- (a) there is an imminent and serious threat to the personal safety of the child or young person or someone else; and
  - (b) compliance with subsection (3) would exacerbate the threat.

**597 Scanning, frisk and ordinary searches—clothing**

If clothing from a child or young person is seized during a scan search, frisk search or ordinary search, the therapeutic protection person conducting the search must ensure that the child or young person is left with, or given, reasonably appropriate clothing to wear.

*Note* Seizure of things found during the search is dealt with in div 16.3.6.

**Subdivision 16.3.5.4 Strip searches**

**598 Strip searches—authorisation**

- (1) The operating entity for a therapeutic protection place may direct a therapeutic protection person to strip search a child or young person only if—
- (a) the operating entity suspects on reasonable grounds that the child or young person has a dangerous thing concealed on the child or young person; and
  - (b) a scanning search, frisk search or ordinary search of the child or young person has failed to detect the thing.

- (2) In making a decision under subsection (1), the operating entity must have regard to the child's or young person's age, maturity, developmental capacity and any known history.

**599 Strip searches—requirements before search**

- (1) This section applies if a therapeutic protection person proposes to strip search a child or young person.
- (2) Before the search is conducted, the therapeutic protection person must tell the child or young person—
- (a) about the search; and
  - (b) the reasons for the search; and
  - (c) whether the child or young person will be required to remove clothing during the search; and
  - (d) if the child or young person will be required to remove clothing—why the removal is necessary.
- (3) If the child or young person asks why the search is being conducted in a particular way, the therapeutic protection person must tell the child or young person the reasons.
- (4) The therapeutic protection person must ask for the child's or young person's cooperation for the search.

**600 Strip searches—second therapeutic protection person must be present**

- (1) A strip search of a child or young person must be conducted—
- (a) by a therapeutic protection person of the same sex as the child or young person; and
  - (b) in the presence of 1 or more other therapeutic protection people, each of whom must be the same sex as the child or young person.



- (2) However, the number of therapeutic protection people present during the search must be no more than is necessary and reasonable to ensure the search is conducted as safely and effectively as possible.
- (3) The person conducting the search may direct someone else mentioned in subsection (1) (b) to provide the assistance that the person believes on reasonable grounds is necessary and reasonable for the search.
- (4) The requirement in subsection (1) (b) that a person be the same sex as the child or young person does not apply if the operating entity for the therapeutic protection place believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the child or young person; and
  - (b) compliance with the requirement would exacerbate the threat.

#### **601 Strip searches—support person must be present**

- (1) The operating entity for a therapeutic protection place must ensure that the strip search is conducted in the presence of someone (a *support person*) who—
  - (a) the operating entity believes on reasonable grounds can support and represent the interests of the child or young person; and
  - (b) the child or young person agrees should be present at the search.
- (2) However, the search may continue in the absence of a support person if—
  - (a) the child or young person does not agree to a support person being present; or
  - (b) the operating entity directs the support person to leave under section 602.

**602 Strip searches—directing support person to leave**

- (1) This section applies if a child or young person is being strip searched in the presence of a support person under section 601.
- (2) The operating entity for the therapeutic protection place may direct the support person to leave if the operating entity believes on reasonable grounds that the support person is preventing or hindering the search.
- (3) If the support person leaves, the search may continue in the absence of the support person.

**603 Strip searches—enforcing direction to leave**

- (1) The operating entity for a therapeutic protection place may direct a therapeutic protection person to enforce a direction under section 602 (2) if the person given the direction contravenes the direction.
- (2) The therapeutic protection person may use force that is necessary and reasonable to enforce the direction.

**604 Strip searches—general rules**

If a therapeutic protection person is strip searching a child or young person, the person must conduct the search—

- (a) in a way that is appropriate, having regard as far as practicable, to the child's or young person's sexuality and any known impairment, condition or history; and
- (b) as quickly as practicable.

**605 Strip searches—privacy**

- (1) A strip search of a child or young person may only be conducted in—
  - (a) a private area; or

- (b) an area that provides reasonable privacy for the child or young person.
- (2) If a therapeutic protection person is strip searching a child or young person, the person must conduct the search in a way that provides reasonable privacy for the child or young person.
- (3) A strip search of a child or young person must not be conducted—
  - (a) in the presence of anyone of the opposite sex to the child or young person, other than—
    - (i) a person present under section 600 (Strip searches—second therapeutic protection person must be present); or
    - (ii) a support person present under section 601 (Strip searches—support person must be present); or
  - (b) in the presence or sight of someone whose presence is not necessary for the search or for the safety of anyone present.

**606 Strip searches—no touching body**

Subject to division 16.3.4 (Use of force), a strip search must not involve touching the child's or young person's body.

**607 Strip searches—visual inspection of body**

- (1) If a therapeutic protection person is strip searching a child or young person, the person must not visually inspect the following areas of the child or young person unless the officer suspects on reasonable grounds that it is necessary to do so for the search:
  - (a) the genital area;
  - (b) for a female child or young person—the breasts.
- (2) A strip search of a child or young person must not involve more visual inspection of the child's or young person's body than is necessary and reasonable for the search.

- (3) Without limiting subsection (2), during the strip search of the child or young person, any visual inspection of the following areas of the child or young person must be kept to a minimum:
- (a) the genital area;
  - (b) the anal area;
  - (c) the buttocks;
  - (d) for a female child or young person—the breasts.

**608 Strip searches—clothing**

- (1) A strip search of a child or young person must not involve—
- (a) the removal from the child or young person of more clothes than is necessary and reasonable for the search; or
  - (b) the removal from the child or young person of more clothes at any time than is necessary and reasonable for the search; or
  - (c) without limiting paragraph (b), both the upper and lower parts of the child's or young person's body being uncovered at the same time.
- (2) After a strip search of a child or young person is finished, the child or young person must be allowed to dress in private.
- (3) If clothing from a child or young person is seized during a strip search, the therapeutic protection person conducting the search must ensure that the child or young person is left with, or given, reasonably appropriate clothing to wear.

*Note* Seizure of things found during the search is dealt with in div 16.3.6.

**Subdivision 16.3.5.5 Body searches**

**609 Body searches—directions**

- (1) The operating entity for a therapeutic protection place may direct a non-treating doctor to conduct a body search of a child or young