

# COMMUNITY LEGAL CENTRES TASMANIA

Animal Welfare Community Legal Centre • Environmental Defenders Office • Hobart  
Community Legal Service • Launceston Community Legal Centre • North West Community  
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## Position Statement on Strip Searching of Children

In January 2012 a 12-year-old girl was strip searched twice during a police raid of a Hobart home. Whilst community concern at the heavy-handed actions of the police remains high, Tasmania remains without legislation clearly defining the powers of police to search children and young people. Indeed, a review of strip-searching legislation from other Australian jurisdictions demonstrates a lack of safeguards for children and young persons that must be rectified as a matter of urgency.

Without express legislative safeguards we are concerned that police officers may carry out unlawful searches. This is because police officers may not understand the nuances in search powers between different pieces of legislation.<sup>1</sup> Different search powers contained under different legislative instruments may lead to confusion. At worst these differences may lead to inadvertent abuses of power.

Strip-searching is invasive, humiliating and traumatic. We believe that Tasmania's failure to expressly define the powers of police to search children and young people is a contravention of the United Nations Convention on the Rights of the Child that clearly provides at article 16 that no child shall be subjected to arbitrary interference with his or her privacy:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

We strongly recommend that the Tasmanian Government introduce amendments to the relevant legislative instruments with regards to police powers and the strip-searching of children and young people. Such legislation would provide clarity to police officers and reassure children and young people that their rights were being protected.

We urge the adoption of best-practice legislation that includes consistent rules on the conduct of strip-searches. Most importantly, we recommend the introduction of a minimum age of 12 at which strip-searching is allowed to occur. Raising the age at which children can be strip-searched would ensure consistency with other pieces of Tasmanian legislation.<sup>2</sup> Whilst New South Wales

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<sup>1</sup> See for example the *Poisons Act 1971*; the *Misuse of Drugs Act 2001*, *Search Warrants Act 1997*, *Police Powers (Public Safety) Act 2005* and *Terrorism (Private Detention) Act 2005*.

<sup>2</sup> For example, Attorney-General Brian Wightman recently stating that the *Criminal Code Act 1924* (Tas) would be amended so that there is no defence of mistake as to age if the young person is 12 years or younger: Attorney-General, Strong protections for Children announced. As found at

and the Australian Capital Territory currently provide that children under 10 must not be strip searched,<sup>3</sup> we endorse the advice of the Youth Network of Tasmania and Family Support Services Australia (Tasmania) that 12 is a more appropriate age “due to children (particularly girls) who may be experiencing puberty, and it is at this age that children start having considerable body image issues”.

Other safeguards that CLC Tas urges be legislatively mandated include:

- that the strip search be conducted in a private area; and
- that the strip search not be conducted in the presence or view of a person who is of the opposite sex to the child or young person being searched; and
- the strip search will not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
- a parent, guardian or personal representative of the child or young person being strip searched may, if it is reasonably practicable in the circumstances, be present during a search if the child or young person being searched has no objection to that person being present; and
- that a strip search of a child who is at least 12 years of age but under 18 years of age, or is incapable of managing their own affairs may only be conducted if the person has been arrested and charged or if a court orders that it be conducted and shall be conducted in the presence of a parent or guardian or, if that is not acceptable to the child or young person, in the presence of another person (other than a police officer) who is capable of representing the interests of the child or young person and who, as far as is practicable in the circumstances, is acceptable to the person being searched.
- the strip search must not involve a search of a child or young person’s body cavities or an examination of the body by touch.
- the strip search must not involve the removal of more clothes than the child or young person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- the strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.

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[http://www.premier.tas.gov.au/media\\_room/media\\_releases/strong\\_protections\\_for\\_children\\_announced](http://www.premier.tas.gov.au/media_room/media_releases/strong_protections_for_children_announced) (Accessed 1 February 2013).

<sup>3</sup> Section 33(3) of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW); Section 228 of the *Crimes Act 1900* (ACT).

- the strip search may be conducted in the presence of a medical practitioner of the opposite sex to the child or young person searched if the person being searched has no objection to that person being present.

CLC Tas recommends that these amendments be incorporated into the relevant legislation including the *Misuse of Drugs Act 2001*; *Poisons Act 1971*; *Police Powers (Public Safety) Act 2005* and; *Terrorism (Private Detention) Act 2005*.