

Youth Justice Regulation 2016

Explanatory notes for SL 2016 No.156

made under the

Youth Justice Act 1992

General Outline

Short Title

This regulation may be cited as the *Youth Justice Regulation 2016*.

Authorising law

Section 54(1)(b) *Statutory Instruments Act 1992*

Section 314 and Schedule 2 of the *Youth Justice Act 1992* (the YJ Act)

Policy objectives and the reasons for them

Under section 54(1)(b) of the *Statutory Instruments Act 1992*, subordinate legislation automatically expires first, on 1 September, 10 years after its making unless it is temporarily exempted from expiry. A regulation may be exempted from expiry for up to a year if the Act under which it is made is subject to a review.

The *Youth Justice Regulation 2003* (YJ Regulation 2003) came into effect on 26 June 2003, and was originally due to expire in 2013; however, due to ongoing review of the YJ Act, it was further exempted.

The regulation gives effect to the policy objectives of the Act by regulating on matters listed in Schedule 2 of the YJ Act.

The remade regulation also provides appropriate subordinate legislation in response to the most recent amendments made to the YJ Act in 2016 which included the introduction of new restorative justice processes.

Achievement of policy objectives

The *Youth Justice Regulation 2016* (the 2016 Regulation), came into effect on 1 September 2016 and replaced the YJ Regulation 2003 from its expiry on 31 August 2016, providing updated subordinate legislation.

Remaking the YJ Regulation 2003 ensured its structure and content continued to meet the operational needs of those most directly affected by it, including children and young people and youth justice staff. Consistent with the intent of the *Statutory Instruments Act 1992*, remaking the YJ Regulation 2003 also ensured it remained relevant and of a high standard.

The 2016 Regulation achieves the policy objectives by remaking the *Youth Justice Regulation 2003* with the re-write including minor amendments throughout in the form of updates in terminology, rearrangement of various provisions for the purpose of increased clarity and re-numbering of sections.

While the remade *Youth Justice Regulation 2016* is largely consistent with the previous YJ Regulation 2003, the following key regulatory updates and amendments are provided as part of the re-write:

Part 2 – Youth justice processes

Title of Part 2 of the YJ Regulation 2003 is amended to '*Restorative justice processes*' to reflect amendments to the YJ Act which includes the reinstatement of the former court referred youth justice conference and alternative diversion program as part of an expanded restorative justice process.

The 2016 Regulation amends the title of Section 4 of the YJ Regulation 2003 from '*Child to be told about contravention of conference agreement*' to '*Child to be told about contravention of restorative justice agreement*'.

Section 4 of the 2016 Regulation is further amended to reflect that a child must be told about the outcomes for contravening either a conference agreement or an alternative diversion program agreement under the YJ Act.

The above gives effect to recent amendments to the YJ Act where a conference agreement or an alternative diversion program agreement can be returned to the referring agent. To this effect, reference to section 24 of the YJ Act has also been removed.

Part 3 Proceedings and community based orders

Section 5 Contents of pre-sentence report

Section 5(1)(c) is amended to provide for a pre-sentence report to only include *the offence/s to which the report relates* to rather than the *circumstances* of the offence/s. This amended provision ensures pre-sentence reports only include offence specific information concerning a child or young person. Additional information such as the circumstances and nature surrounding the offence will continue to be detailed in other more relevant reports (for example, QP9), thus ensuring pre-sentence reports remain succinct.

Part 3 also includes amendments to section 5(1)(j) to ensure details provided in a pre-sentence report only include information for those sentencing options that are relevant to the child or young person. This will result in pre-sentence reports only detailing relevant sentencing options assessed and determined suitable for a young person, and will have the effect of reports providing relevant and succinct information to the courts in their determination of sentencing outcomes.

Division 2 – Community based orders

The 2016 Regulation omits reference to *community service* in Division 2 and replaces it with an *activity*. The intended effect is that *activity* will broadly incorporate all activities referred to under a community based order in the YJ Act, including: probation order, graffiti removal order, community service order, intensive supervision order, conditional release order and restorative justice order.

Section 8 Limits on chief executive's directions relating to community based order

Section 8 of the 2016 Regulation prescribes limits upon the chief executive to direct a child to perform an activity under a community based order. A new provision, section 8(2)(b) provides that any trauma experienced by a child is taken into consideration by the chief executive when directing the child to perform an activity under a community based order.

This new amendment reflects Youth Justice's implementation of a trauma informed practice framework across all aspects of the youth justice system including practice, policies and procedures. This will allow staff to better identify any trauma informed behaviours, to manage, and address the needs of children and young people in youth justice services.

An amendment to section 8(8) provides that for the purposes of calculating the maximum number of hours the chief executive can direct a child to perform an activity under subsections 8(4), (5) and (6), it must include time spent in rest and meal breaks under subsection (7) for calculating overall time spent performing the activity.

Part 4 Detention centres

Section 11 Medical examination of child before admission

The 2016 Regulation omits reference to a '*medical practitioner*' and replaces it with a '*doctor*' in sections 11 and 26 to provide increased clarity and updated terminology.

Section 11 of the 2016 Regulation prescribes that a child should not be admitted to a detention centre if the chief executive believes the child is ill, injured or intoxicated and is in need of medical treatment. This section is amended to specify that '*ill*' includes consideration of a child's *physical and/or mental illnesses*. To give this effect, the 2016 Regulation omits from section 11(1)(a) the word *ill* and replaces it with *physically or mentally ill*.

Section 13 Informing child of particular information on admission

The 2016 Regulation omits from section 13(a) and (b) reference to the use of oral communication as the only means of informing a child of relevant information, as soon as practicable, following their admission to a detention centre. This will allow other means of communication to be used as deemed necessary for this purpose e.g. written, verbal or sign language for anyone with hearing impediments.

Section 14 Record of child's property on admission

The 2016 Regulation creates new provisions to reflect current practice where the chief executive must ensure a detention centre employee makes a record in the property register, of the particulars of any property located during the process of a search, including the signing of the record. This is reflected throughout the 2016 Regulation.

Section 15 Informing child about behaviour

The word *orally* is omitted from section 15(2) of the 2016 Regulation, to allow for, similar to section 13, the chief executive to use other appropriate means of communication to inform a child about their behaviour.

Section 16 Managing child's behaviour

The title of section 16 in the 2016 Regulation has been amended from *Management of misbehaviour* to *Managing child's behaviour*. Removing the word *misbehaviour* aligns with implementation of a trauma informed practice framework. This framework has been implemented across all aspects of Youth Justice.

The 2016 Regulation inserts new provisions in section 16(3)(b) to provide that the chief executive must, in determining how best to manage and address a child's behaviour, take into consideration the reasons for the child's behaviour, as well as any known history of trauma and vulnerability that may have contributed to the child's actions.

New provisions are created in the 2016 Regulation to reflect current practice in youth detention centres whereby *detention centre employees* who have the ability to use reasonable force for the purposes of managing a child's behaviour must have successfully completed the physical intervention training as approved by the chief executive of Youth Justice. This is reflected throughout the 2016 Regulation giving regard to staff that may be required to use reasonable force.

These provisions have been included to further ensure the safety of young people and staff in detention centres is maintained, and supports more transparent and accountable practice across Youth Justice.

Division 4 Restraints

The title of section 18 in the 2016 Regulation has been amended from *Chief executive may approve restraints* to *Chief executive may approve restraints and authorise staff members to use restraints* for the purpose of increased clarity.

The 2016 Regulation amends section 18(1) to reflect current practice where the chief executive may, by way of *written notice*, approve types of restraints a staff member may use to restrain a child in the chief executive's custody.

Section 19 of the 2016 Regulation is amended to reflect current practice where an authorised staff member may use approved restraints to restrain a child in the chief executive's custody. The 2016 Regulation gives effect to this by omitting reference to the chief executive and replacing it with a staff member authorised to use approved restraints.

Section 21 Separation of a child in locked room

Section 271 of the YJ Act provides that the chief executive may delegate to an appropriately qualified public service officer (the delegate) a function of the chief executive under the YJ Act.

The 2016 Regulation is amended to reflect current practice whereby approval must be sought by the executive director of the detention centre if a child is being separated for more than two hours. This includes two hours or longer than the centre's normal hours of overnight

confinement. To give this effect, the 2016 Regulation omits reference to a 'detention centre manager' in section 21(2)(a) and replaces it with '*executive director for the detention centre*'.

The 2016 Regulation inserts a new paragraph (3) in section 21 to reflect current practice where the chief executive's approval must be obtained for each successive 24 hour period a child or young person is held in separation.

Division 6 Searches

New provisions are created in the 2016 Regulation to allow a child or young person who identifies as either (or both) transgendered and/ or intersex, to be provided the option and ability to identify the sex of the staff member that is to perform the search on the child or young person. This is reflected throughout the 2016 Regulation.

The 2016 Regulation omits the option of directing a child to be *completely* undressed for the purposes of carrying out a search involving removal of clothes from section 25(1) of the Regulation. The effect, which reflects best practice in detention centres, is that the chief executive may order a child to only be *partly* undressed for the purposes of a search. This practice will ensure the welfare of the child remains paramount, taking into consideration any trauma or abuse suffered by the young person.

Section 25(6) is amended to reflect current practice that a detention centre employee may use reasonable force, if the employee has successfully completed physical intervention training approved by the chief executive and where a child refuses, without a reasonable excuse, to comply with a direction for the purpose of a search.

Section 26(2)(b)(i) and (ii) is amended to provide that a doctor must for the purposes of the search and before conducting a body search of a child, inform the child that they will be required to partially remove clothing during the search. This amendment gives effect to the trauma informed practice framework that is being implemented across the youth justice system.

The 2016 Regulation amends provisions in sections 26(6) and 26(8) with the effect that a doctor must request a detention employee to assist with a search where a child or young person refuses to cooperate with the doctor's request for a search. To give further effect, the assisting detention centre employee may be required to use reasonable force to assist with the search and therefore, must have successfully completed the physical intervention training approved by the chief executive.

Section 28 Property found during search

The word *article* is omitted and replaced with *property* throughout the 2016 Regulation to reflect updates in terminology.

Section 28(1)(a) is amended by inserting *illegal article* to expand the list of articles (restricted and prohibited) that could be found during a search. This amendment gives effect to property that is found during a search of a child and which must be given to the chief executive to be dealt with appropriately.

A new paragraph (3) is inserted in section 28 of the 2016 Regulation to give effect that the chief executive must make a record of any '*find*' located during the process of a search.

Section 30 Correspondence

Section 30(4)(a) is amended by omitting reference to ‘child’ and replacing it with ‘addressee’ to provide increased clarity and updated terminology.

Division 8 Property in a detention centre

For increased clarity, the 2016 Regulation rearranges general provisions for all matters dealing with property in a detention centre listed under Division 8.

Section 33 Chief executive’s power to deal with property in detention centre

New provisions are created in section 33(2)(e) and (f), in the 2016 Regulation with the effect that the chief executive may transfer property to another person for the purposes of an investigation or legal proceeding; or impose restrictions on the use or possession of the property if it has been declared by the chief executive to be a restricted article. Inclusion of these provisions ensures the safety, security and good order of detention centres are maintained at all times.

Division 9 Medical treatment and other services

The 2016 Regulation amends the title of Division 9 from ‘Health and other services’ to ‘Medical treatment and other services’ for the purposes of increased clarity regarding content in this Division.

Reference to a *medical practitioner* in Division 9 is omitted and replaced with a *health practitioner*, with this revised definition allowing for the incorporation of dietitians, social workers and counsellors. The change in language is a result of updates in terminology for the purpose of increased clarity.

Section 36 Reports of medical examination or treatment

Section 36(3)(b)(i) is amended to include a *child’s guardian* in the list of people who are able to inspect a child’s medical examination record with the child’s written consent. This amendment will allow parents or guardians of children and young people to inspect medical records with the child’s written consent.

This amendment is also made in section 40(b) *Death of child in detention centre* whereby the chief executive may inform either the child’s parents or their guardian of a child’s death.

Section 39 Information to be given to public guardian

Section 39(1) of the regulation is amended to reflect current practice providing that the chief executive must give quarterly reports to the public guardian about the information mentioned in section 38(1) of the 2016 Regulation as soon as practicable after the end of each quarter.

Section 42 Visitors record

The title of section 42 of the 2016 Regulation is amended by omitting the word ‘book’ and replacing it with ‘record’ with the effect that a detention centre may at their discretion use any method for recording details of visitors to a centre as deemed appropriate, including electronic means, before a visitor is admitted to the centre.

Section 43 Approved physical intervention training

A new section 43 '*Approved physical intervention training*' is inserted to provide that a chief executive may approve physical intervention training for staff members where staff may have the ability to use reasonable force.

Part 5 Confidential information

Title of section 44 is amended from '*Dealing with confidential information –Act [s289(h)]*' to '*Dealing with confidential information –Act [289(i)]*' to accurately reference the YJ Act.

Section 44(1) of the 2016 Regulation is amended by replacing the word '*essential*' with '*important*' with the effect being that this provision will authorise the disclosure of confidential information where the chief executive is satisfied that disclosure is *important* to the wellbeing of the child with whom the information relates.

Schedule 1 Detention centres

The 2016 Regulation is amended to reflect the correct address for the Brisbane and Cleveland Youth Detention Centres.

Consistency with policy objectives of authorising law

Remaking the YJ Regulation 2003 is consistent with the authorising law, section 54(1)(b) of the *Statutory Instruments Act 1992*, whereby subordinate legislation expires automatically 10 years after its making unless it is temporarily exempted from expiry.

The re-write of the regulation ensures its structure and content continue to meet the operational needs of those most directly affected by it, and is consistent with the intent of the *Statutory Instruments Act 1992*, which is to ensure subordinate legislation remains relevant and of a high standard.

The remade 2016 Regulation is consistent with the policy objectives of the YJ Act. It regulates matters referred to in Schedule 2 of the YJ Act, in accordance with the underlying principles set in the Charter of youth justice principles (Schedule 1 of the Act).

Inconsistency with policy objectives of other legislation

The 2016 Regulation does not present any inconsistencies with policy objectives of other legislation.

Benefits and costs of implementation

The 2016 Regulation does not involve any additional costs.

Consistency with fundamental legislative principles

The *Youth Justice Regulation 2016* deals with searches and seizures of property in a detention centre without a warrant. While these provisions in the regulation affect rights and liberties of individuals, this is done for the welfare of children and staff in detention centres, and to

maintain discipline, security and good order of the detention centre. For these reasons, any breach of the fundamental legislative principles is justifiable.

Consultation

Detailed consultation was undertaken with relevant Youth Justice Stakeholders to ensure the YJ Regulation's structure and content aligned with operational needs and practices. This feedback has been incorporated in the remake of the regulation.

The Office of Best Practice Regulation (OBPR) in the Queensland Competition Authority has been consulted regarding the amendments' regulatory impact. The OBPR has confirmed the amendments are excluded from the regulatory impact statement system.