



Changes to gender arrangements for searches and health services

The *Youth Justice (Conduct of Searches and Other Matters) Amendment Regulation 2024* (the Amendment Regulation) made changes to the *Youth Justice Regulation 2016* (YJ Regulation) to:

- update arrangements for determining the gender of persons who will conduct searches or provide health services in youth detention centres (YDCs), to reflect trauma-informed contemporary best practice
- provide for x-ray imaging searches in YDCs, to reduce the need for searches involving the removal of clothes
- establish a new youth remand centre in Wacol.

This factsheet explains the changes made to the gendered search and health services provisions. Those changes commenced on 30 September 2024.

Previous arrangements

The YJ Regulation provides for a range of searches in YDCs, including:

- searches that involve touching, but not the removal of clothes ('pat down searches')
- searches involving the removal of clothes, referred to as 'partially clothed' searches because the dignity of the child is preserved to the greatest extent practicable by searching the top and bottom halves of the child separately, allowing them to remain partially clothed at all times
- 'body searches', involving an examination of an orifice or cavity of the child's body by a doctor. No body searches are known to have ever been undertaken in Queensland youth detention centres.

From 2016, the YJ Regulation required the chief executive to ensure that searches involving touching, and partially clothed searches, were conducted:

- for a transgender or intersex child – by a detention centre employee of the sex requested by the child; or
- otherwise – by a detention centre employee of the same sex as the child.

Similar arrangements applied to the doctor who conducted a body search, if reasonably practicable.

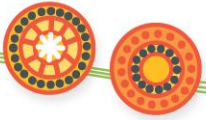
The YJ Regulation also required that a child be asked whether they wanted to receive health services from a practitioner of the same sex as the child and required the chief executive to take reasonable steps to comply with the request.

These arrangements assumed the only sexes were male, female, and intersex.

Births, Deaths and Marriages Registration Act 2023

The *Births, Deaths and Marriages Registration Act 2023* (the BDMR Act) commenced on 24 June 2024. The BDMR Act allows persons to alter the record of their sex, nominating a sex descriptor of their choice that is most appropriate and meaningful to them. 'Sex' and 'sex descriptor' in this context is more commonly referred to as gender or gender identity.

Under the 2016 search provisions, YDC staff would be unable to search a transgender or intersex child who requests a sex other than male or female, unless by coincidence a member of staff identifies as that sex and is available.



Staff would also be unable to search other children who do not identify as male or female, because it is unlikely there will be a staff member of the same sex.

The 2016 health services arrangements would not allow, for example, a child who does not identify as male or female to request health services from a male or female practitioner.

New arrangements – searches

The Amendment Regulation updated the YJ Regulation to ensure that search practices in YDCs are inclusive of gender diverse children (consistent with the BDMR Act), and in line with contemporary, trauma-informed best practice for all children.

The amendments require all detainees, by the end of the first business day after admission, to be given the opportunity to nominate the sex of the employee who is to search them, should a search be required. In practice, this will be in conversation with the child's caseworker. Caseworkers are human services graduates who receive ongoing professional supervision and are best placed to have these conversations which could involve the disclosure by vulnerable young people of private information they may not have disclosed before.

The arrangements apply to partially clothed searches, body searches, and x-ray imaging searches which were introduced by the Amendment Regulation. For gender diverse children (transgender, intersex, or otherwise not male or female), they also apply to pat down searches.

Formal registration of a sex descriptor under the BDMR Act is not required.

Multiple nominations are permitted, with an order of preference.

The chief executive must make a decision as soon as practicable. A nomination may be refused if the chief executive reasonably believes it is not associated with the genuine

needs of the child or is made for an improper purpose. It is anticipated that genuine needs may relate to, for example, gender identity, sexual orientation, or a history of abuse.

If a search is required, accepted nominations must be accommodated unless it is not reasonably practicable to do so. In that case, the search is to be conducted by an employee the chief executive considers appropriate.

Prior to a nomination being accepted, or if no nomination is made, the default position is that males are searched by males and females by females. Gender diverse children will be given the option at the time of a search to nominate the sex of the employee who is to search them, but this will not displace the requirement for the opportunity to be given to make a standing nomination by the end of the first business day after admission, in conversation with the child's caseworker.

These changes aim to minimise further trauma to children in YDCs and allow both children and staff to focus more on rehabilitation.

New arrangements – health services

The Amendment Regulation introduced new arrangements for health services.

These do not mirror the arrangements for searches, because unlike searches which follow standard procedures, it is not possible to anticipate the nature of health services that a child may require while in detention.

Instead, when a health service is required, the child must be given at least two opportunities to nominate the sex of the person who is to provide the service. If neither is reasonably practicable, the service is to be provided by a person the chief executive considers appropriate.

These changes also aim to minimise further trauma to children in YDCs.