

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 06 November 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(PIID/021) – Inquiry - Prohibiting items in Immigration Detention- Process for conducting a strip search -**

Asked:

Provide a copy of the procedures used when seeking permission to conduct a strip search and the procedures and policy used when undertaking the search.

Answer:

The following extracts from existing detention instructions provide the procedures used when seeking permission to conduct a strip search and the procedures and policy used when undertaking the search.

- *Detention Services Manual – Chapter 8 – Safety and Security – Strip Searches of Detainees;*
- *Section 3 – Strip searches of detainees (Detention SOP – 61A – Screening and search of detainees; and*
- *Section 6 – Strip searches of minors (Detention SOP – 6 – Management of minors in detention).*

# Detention Services Manual

## Chapter 8 - Safety and security

### Strip searches of detainees

#### Important notice

Minors (detainees under 18):

- require immediate attention to ensure their best interests are considered
- should be placed in detention accommodation as a last resort, for the shortest practicable time, and in the least restrictive form
- are not to be detained in an immigration detention centre for accommodation or while their immigration pathway is being processed.

#### About this instruction

This departmental instruction provides guidance on the strip search procedures that apply to detainees. The instruction comprises:

- Background
- The strip search procedure (s252A)
- Rules for conducting a strip search
- Possession and retention of certain things obtained during a strip search procedure
- Recordkeeping
- Reporting requirements and other matters
- Checklists and forms.

#### *Related instructions*

- Direction No. 51 - Strip search of immigration detainees

In DSM - Chapter 1 - Legislative and principles overview:

- Service delivery values
- Duty of care to detainees
- Privacy of personal and identifying information

In DSM - Chapter 3 - Entering and leaving detention:

- Personal property

In DSM - Chapter 8 - Safety and security:

- Use of reasonable force in immigration detention.

#### *Latest changes*

##### **Legislative**

Nil.

##### **Policy**

This instruction, which is part of the centralised departmental instructions system (CDIS), was re-issued on 1 September 2015 mainly to:

- improve web-content accessibility and
- update owner details (below).

As the content of the instruction has not yet been updated, the instruction may be incomplete, inaccurate and out-of-date.
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**Owner**

Enforcement Policy and Procedure Section

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## Background

This part comprises eleven sections:

- Purpose
- Guiding principles
- What is a strip search
- Legislative framework
- Responsibility for strip searches of detainees
- What is the purpose of a strip search and who can be searched
- Who can conduct a strip search
- The department's obligations under the Privacy Act
- Who can assist in the conduct of a strip search
- Strip search procedure is independent of other searches
- Strip search provisions relating to illegal foreign fishers and persons in environment detention.

## Purpose

This instruction provides guidance on strip search procedures conducted on detainees.

In this instruction, any reference to “detainee” refers only to a person in an immigration detention facility (IDF).

## Guiding principles

The guiding principle in relation to the way strip searches are conducted is encapsulated in DSM - Chapter 1 - Legislative and principles overview - Service delivery values that states that detainees will be treated fairly and reasonably within the law and that conditions of immigration detention will ensure the inherent dignity of the human person. Relating this principle to the conduct of strip searches of detainees, this means that detainees who are the subject of such a search for the purpose of ensuring the safety of all in the facility, must nevertheless be afforded the level of privacy and respect that safeguards the inherent dignity of their person.

Where a strip search of a minor in immigration detention is considered necessary, in addition to the authorisation procedures outlined in this instruction the following departmental officers must be advised immediately:

- senior case manager
- DIBP centre manager, as delegated guardian in the case of an unaccompanied minor (UAM)
- deputy state/territory director and
- First Assistant Secretary responsible for detention operations.

The Minister must also be informed when a strip search is to be conducted on a UAM for whom the Minister is the guardian under the Immigration (Guardianship of Children) Act.

### What is a strip search

As per s252A(2) of the Act, a strip search of a detainee means a search of the person, of their clothing or of a thing in their possession, and may include:

- (a) requiring the person to remove some or all of their clothing and
- (b) an examination of that clothing and of the person's body (but not the person's body cavities, including the mouth).

### Legislative framework

There are three distinct search powers under the Act, which only apply to detainees. These are the powers to conduct:

1. searches of detainees (pat down searches), their clothing and property under their immediate control (s252)
2. strip searches (s252A) and
3. screening procedures (s252AA).

This instruction provides policy and procedural guidance to officers and authorised officers (including police) who are involved in the conduct of strip searches under s252A and is complemented by Direction No. 51 - Strip search of immigration detainees made by the Minister under s499 of the Act.

### Responsibility for strip searches of detainees

The department and the detention services provider have a duty of care under common law for the safety, security and wellbeing of all detainees, staff and other persons at immigration detention facilities. In meeting duty of care obligations, lawfully conducted strip search procedures on persons during the course of their immigration detention may be carried out where the circumstances require it. All officers need to treat detainees with dignity and respect while strip searches are undertaken, and are reminded to maintain the privacy of detainees. For policy and procedure, refer to DSM - Chapter 1 - Legislative and principles overview - Duty of care to detainees.

### What is the purpose of a strip search and who can be searched

Section 252A(1) of the Act provides that a strip search procedure may be conducted on a detainee '... by an authorised officer, without warrant, to find out whether there is hidden on the person, in his or her clothing or in a thing in his or her possession a weapon or other thing capable of being used:

- (a) to inflict bodily injury; or

(b) to help the detainee, or any other detainee, to escape from immigration detention.’

Detainees who are under 10 must not be strip searched in any circumstances (s252B(1)(f)).

Detainees who are at least 10 but under 18 can be strip searched in certain circumstances (s252B(1)(g)). See [Rules for conducting a strip search](#).

A strip search under s252A of the Act can be conducted only in relation to ‘detainees’, in other words, persons ‘detained’, that is, held in immigration detention (see s5(1) of the Act). A person can be held in immigration detention in a detention centre and in other places approved by the Minister in writing, including, but not limited to immigration residential housing and immigration transit accommodation. Detention centres and other places of detention are known collectively as IDFs.

The strip search procedure does not apply to persons covered by residence determinations, as well as detainees to whom s252F of the Act applies (that is, detainees held in state/territory prisons or remand centres).

Checklists for authorised officers have been prepared outlining the procedural and legislative requirements depending on the age and circumstances of the detainee to be strip searched. The checklists reiterate the rules for conducting a strip search which are set out in the instruction and are to be used as an additional safeguard.

### **The checklists must be used and strictly followed when conducting a strip search.**

The checklists are:

- [Checklist - Strip search of detainees aged at least 10 but under 18 years](#)
- [Checklist - Strip search of detainees aged at least 18 years who are capable of managing their own affairs](#)
- [Checklist - Strip search of detainees aged at least 18 years who are incapable of managing their own affairs.](#)

### **Who can conduct a strip search**

Under s252A(1) of the Act, a strip search procedure in relation to a detainee may be conducted by an *authorised officer*.

An authorised officer means an officer authorised in writing by name by the Minister or the Secretary in accordance with s5(1) of the Act. In practice it is the Minister who usually provides the written authorisation by way of a written instrument. Only a person who is an authorised officer, that is, someone who is authorised and who has received the required training, and holds a current police clearance is able to conduct a strip search when legislative requirements are satisfied - see [Strip search training requirements](#).

In practice, employees of the detention services provider who are authorised officers will usually conduct strip searches of detainees.

Officers can check authorisations/delegations by referring to the Instruments of Delegation and Authorisation (Ministerial Instrument M10 - External - Ministerial Instruments) TRIM link on Bordernet, or emailing the [Legislative Instruments Unit](#).

### **The department’s obligations under the Privacy Act**

All officers involved in conducting a strip search procedure must be aware of the department’s obligations under the Australian Privacy Principles contained in the Privacy Act.



For policy and procedure, refer to [DSM - Chapter 1 - Legislative and principles overview - Privacy of personal and identifying information](#).

### Who can assist in the conduct of a strip search

Section 252B(5) of the Act provides that a strip search of a detainee may be conducted with the assistance of another person if the authorised officer conducting the strip search considers that to be necessary for the purposes of conducting it. That person must be of the same sex as the detainee unless:

- the person is a medical practitioner and
- a medical practitioner of the same sex as the detainee is not available within a reasonable time.

For further explanation, see [Rules for conducting a strip search](#).

### Strip search procedure is independent of other searches

Section 252A(7) of the Act provides that a strip search of a detainee may be conducted under this section irrespective of whether a search of the detainee is conducted under s252 or a screening procedure is conducted in relation to the detainee under s252AA.

For example, a person entering the detention environment for the first time and undergoing the reception process could initially be searched under s252 and, if required, subsequently screened under s252AA of the Act. If a reasonable suspicion is formed for the purposes of s252A(3)(a) a strip search under s252A of the Act could be carried out in addition to these other searches.

### Strip search provisions relating to illegal foreign fishers and persons in environment detention

The strip search provisions under s252A apply equally to illegal foreign fishers held in immigration detention. The Fisheries Management Act 1991 (FMA), the Torres Strait Fisheries Act 1984 (TSFA) and the Environmental Protection and Biodiversity Conservation Act 1999 (EPBCA) contain provisions that correspond closely to s252A of the Migration Act that empower authorised officers to conduct strip searches of persons in fisheries detention under those other Acts:

- if illegal foreign fishers are held in fisheries detention at an IDF, under the FMA, the power to conduct the equivalent strip search procedure is clause 17 of Part 3, Division 3 of Schedule 1A of the FMA
- if illegal foreign fishers are held in fisheries detention under the TSFA, the power to conduct the equivalent strip search procedure is contained in clause 17 of Part 3, Division 3 of Schedule 2 of the TSFA
- if illegal foreign fishers are held in environment detention under the EPBCA at, for example the Northern Immigration Detention Centre, the power to conduct the equivalent strip search procedure is contained in clause 17 of Part 3, Division 3 of Schedule 1 of the EPBCA
- an authorised officer who is empowered to conduct a strip search procedure on illegal foreign fishers under s252A is also empowered to do so under the FMA, TSFA and EPBCA depending upon which Act was used to support the relevant fisheries detention of the person concerned - refer to clause 17 of Schedule 1A of the FMA, clause 17 of Schedule 2 of the TSFA or clause 17 or Schedule 1A of the EPBCA.

The following general guidelines can be followed in relation to the corresponding provisions under the FMA, TSFA and EPBCA:

- this instruction as a whole applies to the conduct of strip searches under those corresponding provisions described above
- authorised officers for s252A are also authorised for those corresponding provisions (unless specifically excluded) and
- different officers (for example, under the FMA) must authorise the conduct of strip searches under those corresponding provisions.

## The strip search procedure (s252A)

This part comprises four sections:

- What are the preconditions for conducting a strip search
- What is suspicion on reasonable grounds
- How do I obtain authorisation for a strip search
- Information to be provided to detainees.

### What are the preconditions for conducting a strip search

Under s252A(3), a strip search may be conducted by an authorised officer only if:

- (a) an officer suspects on reasonable grounds that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subsection (1); and
- (b) the officer referred to in paragraph (a) suspects on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing; and
- (c) the strip search is authorised as follows:
  - i. if the detainee is at least 18 - the Secretary or an SES Band 3 employee in the department (who is not the officer referred to in paragraphs (a) and (b) nor the authorised officer conducting the strip search), authorises the strip search because he or she is satisfied that there are reasonable grounds for those suspicions;
  - ii. if the detainee is at least 10 but under 18 - a magistrate orders the strip search because he or she is satisfied that there are reasonable grounds for those suspicions.

### What is suspicion on reasonable grounds

Legal precedent provides guidance on what can be reasonable grounds for suspicion, namely:

“a suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to ‘a slight opinion’, but without sufficient evidence”

(Kitto J High Court - Bacon Pty Ltd v Rees).

It is relevant to keep in mind that different persons need to form reasonable suspicions at different times, for example, the officer who forms the initial reasonable suspicions, and the person who authorises the strip search, who must, in effect, confirm that there are reasonable grounds for those suspicions.

An officer must also reasonably suspect that it is necessary to conduct a strip search of the detainee. Reasonable suspicion may come from any of the following, but is not limited to:

- information from a witness
- unusual behaviour from the detainee
- answers given to questions asked by the officer and/or
- the visible outline of something weapon-like hidden in the detainee's clothes or that appears to be hidden on his or her body and that cannot be recovered using the ordinary screening and search powers under s252AA and s252 respectively.

If an authorised officer suspects on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover the weapon or other item (s252A(3)(b)), could include but is not limited to, the case where a detainee refuses on request, to identify or hand over to an officer a weapon or item reasonably suspected to be hidden on their person.

### How do I obtain authorisation for a strip search

#### Authorisation for a strip search

Once reasonable suspicion has been established, before the authorisation of a strip search is obtained, the authorised officer should make every effort to advise another officer - such as one of the officer's line managers or an officer authorised to conduct strip searches - of their suspicions and of any course of action they believe may be necessary. The officer should also notify the DIBP centre manager.

Prior to requesting authorisation for a strip search, the facilities and detainee services provider (FDSP) is to consult the health services manager (HSM) at the IDF in which the person is being detained, although this may not always be possible, depending on all the circumstances. Contacting the Director, Detention Health Services Section, National Office can assist in locating the HSM if they are not immediately accessible. The HSM can advise whether the detainee in question has a condition (for example, a history of mental health issues, torture and trauma or sexual assault) that could potentially be exacerbated by the intrusive nature of a strip search.

If the FDSP continues to seek authorisation for a strip search, the authorising magistrate, Secretary or SES Band 3 officer should be made aware of all health-related issues and the potential impacts that a strip search may have on the detainee. Where authorisation has been obtained for a strip search of a detainee with health-related issues, the HSM should, wherever possible, be on hand during the search, or alternatively, be physically present during the strip search if:

- the detainee has nominated the HSM to attend the strip search or
- the HSM is representing the detainee's interests and the detainee has no objection to the HSM being present.

It is intended that the advice of the HSM would not prevent a strip search from occurring if there is otherwise reasonable suspicion that the detainee is carrying a weapon or other dangerous item, but be available in a support capacity.

#### For a detainee 18 or over

A written request for the authorisation of the strip search of detainees 18 or over must be provided to the DIBP centre manager using the Request for/provision of authorisation to conduct a strip search of a detainee aged at least 18 years. The DIBP centre manager will liaise with the department in relation to obtaining authorisation from the Secretary of the department or a SES Band 3 officer.

The FDSP centre manager is responsible for drafting the request.

A strip search must not be conducted until authorisation has been given by the Secretary, or SES Band 3 officer in the department, for the strip search of a detainee 18 or over. The request for authorisation may be conveyed to the Secretary, an SES Band 3 officer, or a magistrate either orally or in writing. As a matter of practice, the request for authorisation should be faxed or emailed to the Secretary or SES Band 3 officer authorising the strip search. The Secretary or SES Band 3 officer is required to record and sign the written request for authorisation within one business day after it is given (s252A(4)(b)).

#### For a detainee under 18 years of age

It is departmental policy that minors are not to be processed or accommodated in an IDC for any reason. Minors must not be taken to an IDC for the purposes of undertaking a strip search.

Minors under the age of 10 must not be strip searched.

Searching officers should be aware that the treatment and the conditions of the searching process for minors are humane and have as little adverse impact on the minor as possible.

A searching procedure of a minor should be conducted in the presence of a parent or guardian (or an independent person if the minor is unaccompanied). If it is not acceptable to the minor to have their parent, guardian or independent person present, another person can be present, who is capable of representing the minor's best interests and who, as far as practicable, is acceptable to the minor.

The form Request for/provision of an order by a magistrate to conduct a strip search of a detainee aged at least 10 but under 18 years is to be completed when making a request to a magistrate for authorisation to strip search a detainee aged at least 10 but under 18 years. The DIBP centre manager will arrange to place the request before a magistrate. As a matter of practice, if a magistrate is required to authorise the strip search, the basis for the suspicions on reasonable grounds should be faxed or emailed to the magistrate.

Whenever a magistrate is asked to authorise a strip search, it is necessary for legal reasons to ensure that the magistrate is aware that, under the Act, this power is conferred upon the magistrate in their personal capacity and the magistrate need not accept the conferral of the power.

The provisions in the Act relating to authorisation by a magistrate are as follows:

- a magistrate has this power conferred in a personal capacity and not as a court or a member of a court (s252A(6A))
- a magistrate need not accept the power conferred (s252A(6B)) and
- exercising the power has the same protection and immunity as if they were exercising that power as a member of the court of which the magistrate is a member (s252A(6C)).

A strip search must not be conducted on a person under 18 until authorisation has been given by a magistrate. The magistrate is required to record and sign the written request for authorisation within one business day after it is given (s252A(4)(b)).

### For a group of detainees

Under exceptional circumstances, it is permissible to request authorisation to conduct a strip search under s252A, on a group of detainees. In such an exceptional circumstance, the form Request for/provision of authorisation to conduct the strip search of multiple detainees aged at least 18 years is to be completed when making such a request. The DIBP centre manager will liaise with the department in relation to obtaining authorisation from the Secretary or an SES Band 3 officer.

The FDSP centre manager (as an authorised officer) is responsible for drafting the request. The form must list the details of each detainee who are proposed to be strip searched.

FDSP officers must never include the names of both adults and minors in the same schedule. Requests to search adults and minors must be recorded entirely separate.

### How authorisation for a strip search may be provided

It is the responsibility of the person authorising the strip search to decide whether the information provided justifies the strip search as required by s252A(3)(c) of the Act.

Under s252A(4), authorisation for a strip search for the purposes of s252A(3)(c):

- may be given by telephone, fax or email and
- must be recorded in writing and signed by the person giving the authorisation within one business day after it is given.

Under s252A(8) a 'business day' is a day that is not a Saturday, Sunday or public holiday in the place where the authorisation is given.

Failure to comply with the requirements above will not affect the validity of a strip search conducted on the basis of that authorisation (s252A(5)).

### Oral authorisation

In extreme circumstances it may not be possible to obtain written authorisation for a strip search from the Secretary of the department, SES Band 3 officer or a magistrate, for example, due to communications failure. In such circumstances, it may be possible to obtain oral authorisation, however, a notation must be made by the officer requesting the authorisation or order on the request form to indicate the reasons why oral authorisation has been sought.

The notation must include the name of the person who provided the authorisation or order, their position, the date and time of the authorisation and the information they provided orally to the authorising officer.

The requesting officer should also sign the written notation on the appropriate form, either the:

- Request for/provision of authorisation to conduct a strip search of a detainee aged at least 18 years or
- Request for/provision of an order by a magistrate to conduct a strip search of a detainee aged at least 10 but under 18 years.

The authorising officer is still required to complete and sign the written authorisation at the earliest opportunity to comply with their statutory obligation. As a matter of policy, oral authorisation should only be sought in extreme circumstances where it is impossible to obtain written authorisation.

## The power to authorise a strip search cannot be delegated

Section 252A(6) provides that the power to authorise a strip search under s252A(3)(c) cannot be delegated to any other person.

## Information to be provided to detainees

### Background

A strip search of a detainee can be an intrusive and humiliating experience. Therefore, it is important that the detainee is provided with information in a language that the person understands that explains:

- the reason for the strip search
- the process for conducting the strip search
- that, if the detainee so wishes, an interpreter will be made available either in person where at all possible or by telephone and
- the detainee's rights under s252A and s252B of the Act with regard to the strip search
- any consequences associated with the possible detection of illegal or contraband items.

### Information sheet for detainees

The detainee must be given information explaining the effect of s252A and s252B prior to undergoing a strip search. The information must be in writing and in a language that the detainee can understand.

Information to be provided to a detainee about strip searches and the law is to be provided to detainees prior to a strip search:

- if a detainee is illiterate or appears to have reading difficulties an interpreter must be provided to explain the written information to the detainee
- in the case of minors, their parent/guardian or, if an unaccompanied minor, an independent person, must be present when this information is provided.

### Acknowledgment form for detainees

Before a strip search is conducted, the detainee must be asked to sign a form acknowledging that they have been given:

- information explaining the effect of s252A and s252B and
- adequate time to read the information.

The Acknowledgment form for a detainee who is to undergo a strip search is to be provided to the detainee.

If the detainee is aged at least 10 but under 18 years or is incapable of managing their own affairs and does not sign, their parent, guardian or an independent person should be provided with the opportunity to sign the acknowledgment form on the detainee's behalf.

A copy of the acknowledgment form is to be offered to the detainee, in a language they understand.

If the detainee refuses to sign the acknowledgment form, the officer authorised to conduct the strip search must record on the form:

- the fact of the refusal
- that the relevant information was provided to the detainee and
- the grounds for the refusal, if those grounds are given.

The detainee should be advised that refusal to sign the acknowledgment form will not prevent the strip search from proceeding.

The acknowledgment form is to be maintained as part of the central records of strip searches, with a copy to be placed in the detainee's file, in accordance with the Australian Privacy Principles of the Privacy Act (refer to The department's obligations under the Privacy Act).

## Rules for conducting a strip search

This part comprises two sections:

- Rules
- Additional requirements when performing a strip search.

### Rules

A strip search procedure conducted on a detainee under s252A of the Act must be carried out in accordance with the rules set out under s252B and must:

- be conducted in a private area
- be conducted by an authorised officer of the same sex as the person undergoing the strip search
- if the person undergoing the strip search is at least 10 but under 18, or incapable of managing their affairs, be conducted in the presence of:
  - (i) the detainee's parent or guardian if that person is in immigration detention with the detainee undergoing the strip search and is readily available at the same place or
  - (ii) if that is not acceptable to the detainee undergoing the strip search or there are no such persons, another independent person (other than an authorised officer) who is capable of representing the detainee's interests and who, as far as is practicable in the circumstances, is acceptable to the detainee undergoing the strip search
- if the detainee undergoing the strip search is at least 18, and is not incapable of managing their affairs, be conducted in the presence of:
  - another person (if any) nominated by the detainee undergoing the strip search, if that other person is readily available at the same place as the detainee undergoing the strip search and willing to attend the strip search within a reasonable time

A strip search will not be prevented from being conducted if a detainee who is capable of managing their affairs refuses or fails to nominate a person to attend the strip search within a reasonable time, or if the detainee is unable to nominate a person to attend the strip search who is readily available at the same place as the detainee and willing to attend the strip search within a reasonable time

- provide the detainee undergoing the strip search with reasonably similar replacement clothing if during or as a result of the strip search any of the detainee's clothing is damaged or destroyed, or retained under s252C of the Act and
- provide a paper smock to the detainee undergoing the strip search if required during the search as a means of ensuring a level of dignity while enabling the search to continue.

An authorised officer conducting a strip search procedure under s252A of the Act in accordance with the rules set out under s252B **must not**:



- subject the detainee undergoing the strip search to greater indignity than is reasonably necessary to conduct the strip search
- conduct the strip search in the presence or view of a person who is of the opposite sex to the detainee undergoing the strip search, unless they are either a medical practitioner assisting the authorised officer conducting the strip search, where a medical practitioner of the same sex is not available within a reasonable time, or they fit within one of the following categories of persons and the detainee undergoing the search does not object to their presence:
  - (i) a parent or guardian, or person representing the detainee's interests, other than an authorised officer or
  - (ii) a person nominated by the detainee undergoing the strip search to attend the strip search
  - (iii) an independent person in the case of vulnerable detainees or detainees not fully capable of managing their own affairs ('incapable persons').
- conduct the strip search in the presence or view of a person whose presence is not necessary for the purposes of the strip search, unless they are one of the following persons:
  - (i) a parent or guardian or person representing the detainee's interests (other than an authorised officer) if the detainee has no objection to that person being present
  - (ii) a person nominated by the detainee undergoing the strip search to attend the strip search
  - (iii) an independent person in the case of vulnerable detainees or detainees not fully capable of managing their own affairs ('incapable persons')
  - (iv) a medical practitioner assisting the authorised officer conducting the strip search
- conduct a strip search on a detainee who is under 10 years of age
- conduct a search of the detainee's body cavities
- remove more items of clothing, or undertake more visual inspection than they believe on reasonable grounds to be necessary to determine whether there is hidden on the person in their clothing or in a thing in his or her possession, a weapon or other thing described in s252A(1) or
- conduct a strip search with greater force than is reasonably necessary to conduct the strip search.

### Additional requirements when performing a strip search

#### Rules

In addition to the rules set out in s252B of the Act for conducting a strip search, an authorised officer should ensure that the following rules are followed:

- that they do not request the detainee to adopt certain postures or positions during the strip search that compromise the privacy and dignity of the person
- a photograph or video is not to be taken of the detainee when they are stripped of clothing
- personal information about the detainee is not passed on to others, except in accordance with the disclosure and use of personal information under the Privacy Act and other relevant laws.



### Uncertainty about the age of the detainee

If there is uncertainty that a detainee is under 18, the authorised officer should err on the side of caution and presume that the detainee is a minor. If it is uncertain that a detainee is under 10, the authorised officer should also err on the side of caution and presume that the detainee is under this age.

### Access to interpreter during a strip search

If it is practicable in the circumstances and if required by the authorised officer or requested by the detainee, an interpreter must be provided for the detainee being strip searched.

The interpreter's role is to brief the detainee on the details provided in the written information and assist the detainee with any questions they may wish to ask the officer authorised to conduct the strip search. The interpreter should not be present in the room during the course of the strip search procedure unless they are nominated to be present by the detainee being strip searched.

If an interpreter nominated by the detainee is not available in person, then an interpreter should be accessed by telephone.

The detainee being strip searched may request that the interpreter remain present during the strip search procedure. See DSM - Chapter 4 - Communication and visits - Translating and interpreting services.

### Access to counselling

All detainees who undergo a strip search are to be offered counselling after the search has been conducted.

### Access to medical assessment

All detainees who undergo a strip search are to be offered access to a nurse for medical/health assessment after the search has been conducted.

### Occupational health and safety requirements

Authorised officers conducting the strip search must wear surgical/protective gloves in addition to the standard issue uniform.

### Persons assisting the authorised officer

If considered necessary, the authorised officer conducting the strip search may seek the assistance of another person or persons during the search. Such person(s) must not actually conduct the strip search, however, such person(s) may assist in tasks such as using reasonable restraint on the detainee being strip searched.

Apart from assisting the authorised officer during the strip search, the person required to assist can also act as a witness to the proceedings. This is important to help ensure that correct procedures are followed at all stages of the search. Such a person might include another officer in the IDF or a medical practitioner. Such a person does not have to be an 'officer' for the purposes of the Act however they must be of the same sex unless they are a medical practitioner assisting the authorised officer conducting the strip search, and a medical practitioner of the same sex as the detainee being strip searched is not available within a reasonable time.

A person who authorises a strip search of a detainee must not participate in the conduct of the search.

## When is a detainee considered as not being able to manage their own affairs

For the purposes of determining whether a detainee is 'incapable of managing their own affairs', this may be assessed by, but is not limited to, circumstances where:

- a medical practitioner provides a certificate indicating, in their opinion, that the detainee is temporarily or permanently incapable of managing their own affairs
- a psychiatric assessment has been obtained indicating that the detainee is temporarily or permanently incapable of managing their own affairs or
- the officer conducting the strip search forms the opinion, based upon reasonable grounds, that the detainee is in a traumatised or stressful state and is presently unable to comprehend the situation, or make a significant decision, in relation to their own affairs.

## If a detainee refuses to undergo a strip search

If a detainee refuses to undergo a strip search procedure under s252A of the Act and it appears that reasonable force may be required, the authorised officer conducting the strip search procedure must comply with the following procedure:

- advise the detainee that s252B(1)(k) of the Act allows reasonable force to be used in order to conduct a strip search
- advise the detainee that unless cooperation is forthcoming, the authorised officer intends to use reasonable force in order to conduct the strip search
- allow the detainee a reasonable period in which to voluntarily remove any items of clothing that are necessary to conduct the strip search. At this point the authorised officer should provide the detainee with the opportunity to hand over the item they believe them to be concealing
- if necessary, seek the assistance of another officer prior to conducting the strip search
- if force is used officers must follow the advice provided on the use of reasonable force and record keeping in the use of reasonable force
  - minors under the age of 10 must not be stripped searched, therefore use of force must not be applied to minors under the age of 10 for the purposes of strip searching - see Ministerial Direction 51
  - use of force must be applied only as a last resort, must be justifiable and proportionate to the amount of resistance offered
  - the level of force used must not involve greater force than is reasonably necessary to conduct the strip search procedure. If at any stage the detainee cooperates or complies, the use of reasonable force must cease immediately
  - the use of force must not subject the detainee being searched to greater indignity than is reasonably necessary to conduct the strip search procedure
- every endeavour must be made to try and preserve the humanity and dignity of the person being searched. For example, ensure privacy from anyone not required to be involved.

## Possession and retention of certain things obtained during a strip search procedure

This part comprises eight sections:

- Items retained during a strip search procedure
- Items not permitted in an IDF
- Dealing with an illegal item
- Referral to health services manager staff
- Return of items retained during a strip search
- Not returning items found during a strip search
- An authorised officer may apply for a thing to be retained for a further period
- Magistrate may order that a thing be retained.

### Items retained during a strip search procedure

Under s252C of the Act, an authorised officer may take possession of and retain an item found in the course of a strip search procedure under s252A of the Act, if the item:

- might provide evidence of the commission of an offence against the Act or
- is forfeited or forfeitable to the Commonwealth (which includes things that are the object of a s252A search).

Examples of items forfeited or forfeitable to the Commonwealth are described in s252A(1) and include a weapon or other thing, capable of being used to inflict bodily injury, or to help the detainee, or any other detainee, to escape from immigration detention.

If an item is found and taken into possession:

- a FDSP officer must give the detainee a Property Receipt Form if the item is one which might provide evidence of the commission of an offence against the Act, however, no receipt is required if the item is forfeited or forfeitable to the Commonwealth and
- if it is a thing that is forfeited or forfeitable to the Commonwealth, s252C(3) requires that it must be given to a constable. The Crimes Act 1914 s3(1) defines a constable as a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

### Items not permitted in an IDF

A lawful item found during a strip search, which is not required as evidence but which is a controlled item and not permitted in the IDF, should be placed in storage and processed through the normal security procedures and property protocol. Refer to:

- DSM - Chapter 8 - Safety and security - Items not permitted in immigration detention
- DSM - Chapter 3 - Entering and leaving detention - Personal property.

### Dealing with an illegal item

If, during the course of a strip search under s252A of the Act, a detainee is found to be in possession of illegal items, for example, illegal drugs or child pornography, the officer must:

- retain the illegal item and store safely in the presence of another FDSP officer
- record and store on file an itemised description of the illegal item
- notify the police and ask that they collect the illegal item from the facility and

- ensure that any action such as storing illegal drugs is taken at the instigation of the police.

When the police collect the illegal item the following procedure must be followed by the FDSP:

- ask the police officer to sign a receipt for the illegal item
- provide a copy of the receipt to the police officer and retain a copy for file
- request the police officer sign the item description record and
- file the record as required.

### Referral to health services manager staff

If, during the course of a strip search under s252A, a detainee is found to be in possession of illegal drugs or non-prescribed medications, vitamins or supplements, the authorised officer should refer the detainee immediately to the HSM for assessment.

### Return of items retained during a strip search

Under s252C(4) of the Act, the authorised officer must take reasonable steps to return a non-controlled item permitted in detention facilities, that was retained during a strip search to the detainee from whom it was taken, or to the owner if that detainee is not entitled to possess it, if one of the following happens:

- it is decided that the item is not to be used in evidence or
- the period of 60 days after the authorised officer takes possession of the item ends.

### Not returning items found during a strip search

Under s252C(5) and s252E of the Act, an authorised officer is not required to return to a detainee an item retained during a strip search if:

- the authorised officer is authorised by a law, court or tribunal of the Commonwealth, a state/territory to retain, destroy or dispose of the item (refer s252C(5)(b))
- proceedings involving the retained item were instituted before the end of the 60 day period and have not yet been completed, for example, an appeal to a court in relation to those proceedings (refer s252C(5)(a)(i)) or
- notwithstanding the 60 day period, upon an application by an authorised person under s252D (see below), a magistrate orders that the authorised officer may retain the thing for a specified period (refer s252C(5)(a)(ii) and s252E):
  - (i) for an investigation into whether an offence has been committed or
  - (ii) so that evidence of an offence can be secured for a prosecution.

### An authorised officer may apply for a thing to be retained for a further period

An item does not have to be returned after the 60 day period has lapsed if the authorised officer believes it is necessary to retain the item for a further period under certain circumstances. The officer must then apply to a magistrate for an extension of time to retain the item.

The certain circumstances under which an application to a magistrate can be made are when the proceedings in which the item might provide evidence have not commenced before the end of:

- the 60 day period or
- a period previously specified in a magistrate's order (refer s252E).

Prior to making the application, the authorised officer must:

- take reasonable steps to discover whose interests would be affected if the item continued to be retained (refer s252D(3)(a)) and
- if it is practicable to do so, notify that person or those persons that an application is to be made (refer s252D(3)(b)).

There is a standard form to be used for obtaining an order by a magistrate for the retention for a further period of things obtained during a strip search or screening procedure. Refer to TRIM document ADD2010/289950 - “Request for/provision of an order by a magistrate for the retention for a further period of things obtained during a screening procedure or strip search”. Contact details for local magistrates are available from the DIBP centre manager. When providing reasons for seeking an order (refer to clause 4 of the form), authorised officers should provide an indication of the length of the further period of retention required.

An application under s252D of the Act should ordinarily be made by the authorised officer who originally took possession and retained the item under s252C.

If the authorised officer who originally took possession and retained the item under s252C has moved to another IDF, that officer should be contacted so they can make the application under s252D. The authorised officer should ensure that the outcome of the application is brought to the attention of the DIBP centre manager at the relevant IDF.

If the authorised officer who originally took possession and retained the item under s252C is on leave, has retired or is unable to make an application under s252D for any other reason, an application under s252D for the item to be retained for a further period may be made by another officer who is an authorised officer for the purposes of s252D.

### Magistrate may order that a thing be retained

Under certain circumstances a magistrate may order that a thing retained by an authorised officer during a screening procedure or a strip search be retained for a further period (s252E).

The order must specify the period for which the authorised officer may retain the thing.

A magistrate is not compelled to accept the power conferred by s252E of the Act. The power is conferred in a personal capacity.

If the magistrate chooses to exercise a power under s252E, they have the same protection and immunity as if exercising that power as, or as a member of, the court of which they are a member (s252E(5)).

## Recordkeeping

### Recordkeeping

Any record of personal information that is created or obtained as a result of the exercise of the strip search procedure must be treated in accordance with the department’s obligations under the Privacy Act 1988 (Privacy Act). For details on record keeping, refer to [DSM - Chapter 1 - Legislative and principles overview - Recordkeeping](#).

### Information to be contained in the record

The record of each strip search must include information necessary to ensure that an accurate report of the search has been made. Such information includes:

- the name of the detainee who underwent the strip search
- where and when the strip search was conducted
- why the strip search was conducted

- the names of the officers who:
  - (i) formed the suspicion on reasonable grounds (s252A(3)(a) and (b))
  - (ii) sought the authorisation for the strip search and
  - (iii) conducted the strip search (s252A(1))
- if the detainee is at least 18 years of age, the name of the officer who authorised the strip search and the record of authorisation by that officer (s252A(3)(c)(i) and s252A(4)(b))
- the names of all other persons present during the strip search and the reason they were present
- if the detainee is at least 10 but under 18 years of age, the name of the magistrate and a copy of the magistrate's order authorising the strip search (s252A(3)(c)(ii))
- whether a partial or full strip search was conducted
- the completed relevant checklist to ensure a clear record of the procedures that were followed:
  - Checklist - Strip search of detainees aged at least 10 but under 18 years
  - Checklist - Strip search of detainees aged at least 18 years who are capable of managing their own affairs
  - Checklist - Strip search of detainees aged at least 18 years who are incapable of managing their own affairs
- whether the detainee co-operated or not, attaching the Acknowledgment form for a detainee who is to undergo a strip search
- if force was used, the circumstances surrounding the use of force
- whether a weapon or other thing was obtained from the strip search and, if so, what was done with them and
- any other matters relevant to the conduct of the strip search.

A copy of this record should be maintained as part of the central file of the records of strip searches, and a copy should be placed on the file of the detainee.

## Reporting requirements and other matters

This part comprises five sections:

- Reporting requirements
- Strip searches must be reported to the Secretary and the Minister
- Reporting to parliament
- Strip searches conducted in contravention of the Act
- Strip search training requirements.

### Reporting requirements

Strip searches must be reported orally by an authorised officer to the DIBP centre manager at the IDF, as soon as reasonably practicable (and no later than two hours after the search), on the conduct and outcome of the search.

A strip search is classified as a “Major Incident”. The FDSP is responsible for completing a post-incident report on the strip search. The department is responsible for maintaining the overall quality of post-incident reviews for every major and critical incident through appropriate feedback to the FDSP. Refer to DSM - Chapter 8 - Safety and security - Incident management and reporting.

### *Strip searches must be reported to the Secretary and the Minister*

The relevant Assistant Secretary in National Office is responsible for notifying the Minister and the Secretary within 24 hours of the authorisation for the strip search being given. The documentation required is a ministerial submission with an attached Statement to Parliament which is subsequently included in a summary schedule to be tabled before Parliament on a six monthly basis.

Note: The Brief on strip search of detainee is a sample document to guide preparation of the Ministerial Brief. **The most recent departmental cleared template is to be used in preparing the Ministerial Brief.**

### *Reporting to parliament*

Once every six months, the Minister will cause to be laid before each House of the Parliament a statement providing summary information on the number of strip searches undertaken under the powers conferred by s252A of the Act within 15 sitting days of that House:

- if the strip search is undertaken between 1 January and 30 June (inclusive) in a year - after 1 July in that year or
- if the strip search is undertaken between 1 July and 30 December (inclusive) in a year - after 1 January in the following year.

A template for preparing the Statement to Parliament is included in this instruction. A formatted printable version of the template is available in TRIM at ADD2013/1051351.

The Statement to Parliament is not to include the names or any information about the detainee/s, the officer/s who conducted the strip search, any person assisting in the strip search, any officer or magistrate who authorised or ordered the strip search, or any other person in attendance at the strip search.

The Statement to Parliament will be returned from the Minister’s Office signed by the Minister. The Tabling Officer in the Parliamentary Coordination Section, National Office will photocopy all signed tabling statements to Parliament which accompany submissions and briefs. The original Statement to Parliament is kept by the Tabling Officer and a photocopy is returned to the officer who prepared it. If the original Statement to Parliament is returned to the officer who prepared the submission, it is to be forwarded to the Tabling Officer and a copy will be provided in return. It is the Tabling Officer’s responsibility to prepare and send to the Minister’s office a summary of all Statements to Parliament on a six monthly basis.

### *Strip searches conducted in contravention of the Act*

A strip search that has been conducted in contravention of the Act must be immediately reported to the DIBP centre manager. For example, when an officer thinks that a strip search may have been unlawful, because the officer is aware that a strip search was not authorised, or an officer was present at a strip search when excessive force may have been used in all the circumstances. The DIBP centre manager must report the matter to the:

- relevant senior case manager
- relevant deputy state/territory director



- Assistant Secretary, Compliance Status Resolution Branch and
- First Assistant Secretary responsible for detention operations

who will report the incident to the AFP for investigation.

### Strip search training requirements

The Secretary or an SES Band 3 officer must not authorise a strip search to be conducted pursuant to s252A(3)(c)(i) of the Act unless they have received training in the relevant legislative and policy requirements. The relevant training includes:

- the power to conduct a strip search
- the grounds for authorising and conducting a strip search
- the pre-conditions for a strip search
- the role of officers authorising a strip search
- record keeping and
- reporting requirements.

FDSP officers who are nominated as potential authorised officers for the purpose of conducting a strip search must:

- undergo mandatory training and
- hold a current police clearance.

An officer must not be made an authorised officer for the purpose of conducting a strip search under s252A unless they have received and satisfactorily completed training in the relevant legislative and policy requirements, including:

- civil rights and liberties
- cultural awareness
- the grounds for conducting a strip search
- the pre-conditions for a strip search
- the role of officers involved in conducting a strip search
- the procedures for conducting a strip search
- the procedures relating to items retained during a strip search
- record keeping and
- reporting.

### Checklists and forms

The checklists and forms associated with this instruction, which are contained in TRIM document ADD2013/1051351, comprise:

- Checklist - Strip search of detainees aged at least 10 but under 18 years
- Checklist - Strip search of detainees aged at least 18 years who are capable of managing their own affairs
- Checklist - Strip search of detainees aged at least 18 years who are incapable of managing their own affairs
- Request for/provision of authorisation to conduct a strip search of a detainee aged at least 18 years
- Request for/provision of an order by a magistrate to conduct a strip search of a detainee aged at least 10 but under 18 years



- Request for/provision of authorisation to conduct the strip search of multiple detainees aged at least 18 years
- Information to be provided to a detainee about strip searches and the law
- Acknowledgment form for a detainee who is to undergo a strip search
- Brief on strip search of detainee
- Statement to Parliament.

## Checklist - Strip search of detainees aged at least 10 but under 18 years

### *Attachment A*

A formatted printable version of this document is available to officers through TRIM (reference ADD2013/1051351).

## **BEFORE A STRIP SEARCH**

### *Preconditions*

- ☐ I am an authorised officer for the purposes of conducting a strip search under the Migration Act 1958 (the Act).
- ☐ I am the same sex as the detainee I intend to strip search.
- ☐ I have (or I am satisfied that another officer has) a suspicion on reasonable grounds<sup>1</sup> that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing capable of being used:
  - (a) to inflict bodily injury or
  - (b) to help the detainee, or any other detainee, to escape from immigration detention.
- ☐ I have (or I am satisfied that another officer has) a suspicion on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing.
- ☐ I have made every reasonable effort to advise another officer (such as my line manager or another authorised officer) of these suspicions and of the course of action I believe is necessary to take.
- ☐ I have informed the Centre Manager at the detention facility of these suspicions and of the course of action I believe it is necessary to take.
- ☐ I am satisfied that the detainee is aged at least 10 but under 18 years.
- ☐ I HAVE REQUESTED AND OBTAINED A WRITTEN ORDER FROM A **MAGISTRATE** AUTHORISING THE STRIP SEARCH OF THE DETAINEE (using the appropriate form where possible) OR:  
  
I HAVE REQUESTED AND OBTAINED AN ORAL ORDER FROM A **MAGISTRATE** AUTHORISING THE STRIP SEARCH OF THE DETAINEE AND HAVE SIGNED A NOTATION TO THIS EFFECT (using the appropriate form where possible).

**WARNING: If you proceed without this authorisation the search will be unlawful and you may be liable for assault charges.**

- ☐ I have arranged for a private area in which to conduct the strip search.

### *Provision of information about the strip search*

- ☐ I have provided the detainee with written information (Information to be provided to a detainee about strip searches and the law), in a language that they understand, about the strip search.

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<sup>1</sup> For guidance on what constitutes a suspicion on reasonable grounds, refer to heading in instruction "What is suspicion on reasonable grounds"

- ☐ If the detainee so wishes and it is at all possible to do so, I have arranged for an interpreter to be made available to them (either in person or by telephone).
- ☐ If the detainee is illiterate or appears to have reading difficulties, I have arranged for an interpreter to explain the written information to them (either in person or by telephone).
- ☐ I have given the detainee adequate time to read the information and to ask any questions about the strip search.
- ☐ I have asked the detainee or their parent, guardian or representative to sign an acknowledgment form (Acknowledgment form for a detainee who is to undergo a strip search), in a language that they understand, acknowledging that they have been given information about the strip search and adequate time to read that information.
- ☐ If the detainee or their parent, guardian or representative refuses to sign the acknowledgment form, I have recorded the refusal on the form and any reasons for refusal if provided.<sup>2</sup>
- ☐ I have offered a copy of the acknowledgment form to the detainee.
- ☐ I have added a copy of the signed acknowledgment form to the detainee file.

#### *Presence of others during strip search*

If the detainee's parent or guardian is in immigration detention with the person and is readily available at the same place:

- ☐ I have checked that the detainee has no objections to their parent or guardian being present for the strip search.
- ☐ If the detainee has no objections, I have arranged for the detainee's parent or guardian to be present for the strip search.

If the detainee's parent or guardian is unavailable or the person objects to their presence:

- ☐ I have arranged for another person who is capable of representing the detainee's interests to be present for the strip search.
- ☐ I have checked that this person is, as far as is practicable in the circumstances, acceptable to the detainee.
- ☐ I have checked that this person is not an authorised officer for the purposes of conducting a strip search.

If I consider it necessary to obtain the aid of another person (or persons) to assist during the strip search:

- ☐ I have ensured that the person (or persons) assisting is the same sex as the detainee unless they are a medical practitioner and a medical practitioner of the same sex as the detainee is not available within a reasonable time.
- ☐ Apart from the above, there is no one else present for the strip search.

#### *Rules for conducting a strip search*

Before proceeding with the strip search, I note that I am aware of the following:

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<sup>2</sup> A refusal to sign the Acknowledgment Form does not prevent the strip search from proceeding

- ☐ I must wear gloves whilst conducting the strip search.
- ☐ I must not search the detainee's body cavities (including the mouth).
- ☐ I must not ask, or force, the detainee to remove more items of clothing than I believe on reasonable grounds to be necessary for conducting the search.
- ☐ I must not ask the detainee to adopt postures or positions that would unnecessarily compromise their privacy and dignity and must provide the detainee with a paper smock if they request it.
- ☐ I must not gather or record any personal information about the detainee unless it is necessary for the purposes of conducting the strip search and must use that information in accordance with the provisions of the Privacy Act.

*Use of reasonable force if detainee is uncooperative*

If the detainee is uncooperative and it appears that reasonable force may be required:

- ☐ I have advised the detainee that I am empowered to use reasonable force to conduct the search.
- ☐ I have advised the detainee that, unless cooperation is forthcoming, I intend to use reasonable force in order to conduct the search.
- ☐ I have given the detainee a reasonable period in which to cooperate before applying reasonable force.
- ☐ If necessary and I have not already done so, I have sought the assistance of another person, of the same sex where applicable, to conduct the search.

**AFTER A STRIP SEARCH**

*Possession and retention of items*

- ☐ I have taken possession of and retained only a thing or things found during the strip search that:
  - (a) might provide evidence of the commission of an offence against the Act or
  - (b) are forfeited or forfeitable to the Commonwealth.
- ☐ I have given the detainee a Property Receipt Form for each thing (if any) taken possession of and retained during the strip search, unless the thing is forfeited or forfeitable to the Commonwealth.
- ☐ I note that if the thing is forfeited or forfeitable to the Commonwealth I am required to give it, as soon as reasonably practicable, to a police officer.
- ☐ If, during the course of a strip search under s252A of the Act, a detainee is found to be in possession of illegal drugs and/or prescription drugs that have been obtained without the knowledge of health centre staff, the detainee should be immediately referred to the health centre for assessment by health centre staff.

**NB:** The police must be notified and requested to collect any illegal drugs from the facility.

### *Reporting and recording*

- ☐ I have reported orally to the Detention Centre Executive at the detention facility, as soon as reasonably practicable (and no later than two hours after the search), on the conduct and outcome of the strip search.
- ☐ I have made an accurate record of the strip search that includes all the information specified DSM - Chapter 8 - Strip searches of detainees - Information to be contained in the record.
- ☐ I have attached to the record a copy of the magistrate's order.
- ☐ I have added a copy of the signed acknowledgment form to the detainee file.
- ☐ In accordance with incident reporting procedures, I have prepared an incident report on the strip search and provided it to the Detention Centre Executive at the detention facility and to the Detention Operations Section, National Office within six hours of the search or before the end of my shift.

### *General*

- ☐ I have offered the detainee professional counselling after the search has been conducted.
- ☐ If any of the detainee's clothing has been damaged, destroyed or retained as a result of the strip search, I have provided them with adequate replacement clothing.

### *Details of authorised officer*

Signature: ..... Date: .....

Name: ..... Time: .....

## Checklist - Strip search of detainees aged at least 18 years who are capable of managing their own affairs

### Attachment B

*A formatted printable version of this document is available to officers through TRIM (reference ADD2013/1051351).*

### Before a strip search<sup>3</sup>

#### Preconditions

- ☐ I am an authorised officer for the purposes of conducting a strip search under the Migration Act 1958 (the Act).
  - ☐ I am the same sex as the detainee I intend to strip search.
  - ☐ I have (or I am satisfied that another officer has) a suspicion on reasonable grounds<sup>4</sup> that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing capable of being used:
    - (a) to inflict bodily injury or
    - (b) to help the detainee, or any other detainee, to escape from immigration detention.
  - ☐ I have (or I am satisfied that another officer has) a suspicion on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing.
  - ☐ I have made every reasonable effort to advise another officer (such as my line manager or another authorised officer) of these suspicions and of the course of action I believe is necessary to take.
  - ☐ I have informed the Centre Manager at the detention facility of these suspicions and of the course of action I believe is necessary to take.
  - ☐ I am satisfied that the detainee is aged at least 18 years.
  - ☐ I am satisfied that the detainee is capable of managing their own affairs.
  - ☐ I HAVE REQUESTED AND OBTAINED WRITTEN AUTHORISATION FROM THE **SECRETARY OR AN SES BAND 3 EMPLOYEE** IN THE DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION TO CONDUCT THE STRIP SEARCH OF THE DETAINEE (using the appropriate form where possible).
- OR
- ☐ I HAVE REQUESTED AND OBTAINED ORAL AUTHORISATION FROM THE **SECRETARY OR AN SES BAND 3 EMPLOYEE** IN THE DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION TO CONDUCT THE STRIP SEARCH OF THE DETAINEE AND HAVE SIGNED A NOTATION TO THIS EFFECT (using the appropriate form, where possible).

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<sup>3</sup> Note that this checklist is for assistance only, and does not remove the obligation on an authorised officer to be properly familiar with the details of the relevant legislation and associated instructions.

<sup>4</sup> For guidance on what constitutes a suspicion on reasonable grounds, refer to section 0 What is suspicion on reasonable grounds.

**Warning: If you proceed without this authorisation the search will be unlawful and you may be liable for assault.**

- ☐ I have arranged for a private area in which to conduct the strip search.

#### *Provision of information about the strip search*

- ☐ I have provided the detainee with written information, in a language that they understand, about the strip search.
- ☐ If the detainee so wishes and it is at all possible to do so, I have arranged for an interpreter to be made available to them (either in person or by telephone).
- ☐ If the detainee has difficulties reading or understanding the information, I have arranged for an interpreter to explain the written information to them (either in person or by telephone).
- ☐ I have given the detainee adequate time to read the information and to ask any questions about the strip search.
- ☐ I have asked the detainee to sign an acknowledgment form, in a language that they understand, acknowledging that they have been given information about the strip search and adequate time to read that information.
- ☐ If the detainee refuses to sign the acknowledgment form, I have recorded the refusal on the form and any reasons for refusal if provided.<sup>5</sup>
- ☐ I have offered a copy of the acknowledgment form to the detainee.

#### *Presence of others during strip search*

- ☐ I have advised the detainee that they may nominate another person to be present for the strip search.

If the detainee has nominated another person to be present for the strip search:

- ☐ I have checked that the nominated person is readily available at the same place as the detainee.
- ☐ I have checked that the person is willing to attend the strip search within a reasonable time.
- ☐ If the above conditions are met, I have arranged for the nominated person to be present for the strip search.

If I consider it necessary to obtain the aid of another person (or persons) to assist during the strip search:

- ☐ I have ensured that the person (or persons) assisting is the same sex as the detainee unless they are a medical practitioner and a medical practitioner of the same sex as the detainee is not available within a reasonable time.
- ☐ Apart from the above, there is no one else present for the strip search.

#### *Rules for conducting a strip search*

Before proceeding with the strip search, I note that I am aware of the following:

- ☐ I must wear gloves whilst conducting the strip search.

---

<sup>5</sup> A refusal to sign the Acknowledgment Form does not prevent the strip search from proceeding.

- ☐ I must not search the detainee's body cavities (including the mouth).
- ☐ I must not ask, or force, the detainee to remove more items of clothing than I believe on reasonable grounds to be necessary for conducting the search.
- ☐ I must not ask the detainee to adopt postures or positions that would unnecessarily compromise their privacy and dignity and must provide the detainee with a paper smock if they request it.
- ☐ I must not gather or record any personal information about the detainee unless it is necessary for the purposes of conducting the strip search and must use that information in accordance with the provisions of the Privacy Act.

#### *Use of reasonable force if detainee is uncooperative*

If the detainee is uncooperative and it appears that reasonable force may be required:

- ☐ I have advised the detainee that I am empowered to use reasonable force to conduct the search.
- ☐ I have advised the detainee that, unless cooperation is forthcoming, I intend to use reasonable force in order to conduct the search.
- ☐ I have given the detainee a reasonable period in which to cooperate before applying reasonable force.
- ☐ If necessary and I have not already done so, I have sought the assistance of another person, of the same sex where applicable, to conduct the search.

#### *AFTER A STRIP SEARCH*

##### *Possession and retention of items*

- ☐ I have taken possession of and retained only a thing or things found during the strip search that:
  - (a) might provide evidence of the commission of an offence against the Act or
  - (b) are forfeited or forfeitable to the Commonwealth.
- ☐ I have given the detainee a Property Receipt Form for each thing (if any) taken possession of and retained during the strip search, unless the thing is forfeited or forfeitable to the Commonwealth.
- ☐ I note that if the thing is forfeited or forfeitable to the Commonwealth I am required to give it, as soon as reasonably practicable, to a police constable.
- ☐ If, during the course of a strip search under s252A of the Act, a detainee is found to be in possession of illegal drugs and/or prescription drugs that have been obtained without the knowledge of health centre staff, the detainee should be immediately referred to the health centre for assessment by health centre staff.

NB: Illegal drugs are forfeitable to the Commonwealth. The police must be notified and requested to collect the drugs from the facility.

##### *Reporting and recording*

- ☐ I have reported orally to the Detention Centre Executive at the detention facility, as soon as reasonably practicable (and no later than two hours after the search), on the conduct and outcome of the strip search.



- ☐ I have made an accurate record of the strip search that includes all the information specified in the instruction in Information to be contained in the record.
- ☐ I have attached to the record a copy of the record of authorisation by the Secretary or a SES Band 3 officer in the Department.
- ☐ In accordance with incident reporting procedures, I have prepared an incident report on the strip search and provided it to the Detention Centre Executive at the detention facility and to the Detention Operations Section, National Office within 6 hours of the search or before the end of my shift, whichever comes first.

#### *General*

- ☐ I have offered the detainee professional counselling after the search was conducted, and have arranged counselling for the detainee if requested.
- ☐ If any of the detainee's clothing has been damaged, destroyed or retained as a result of the strip search, I have provided them with adequate replacement clothing.

#### *Details of authorised officer*

Signature: ..... Date: .....

Name: ..... Time: .....

## Checklist - Strip search of detainees aged at least 18 years who are incapable of managing their own affairs

### Attachment C

*A formatted printable version of this document is available to officers through TRIM (reference ADD2013/1051351).*

### Before a strip search<sup>6</sup>

#### Preconditions

- ☐ I am an authorised officer for the purposes of conducting a strip search under the Migration Act 1958 (the Act).
- ☐ I am the same sex as the detainee I intend to strip search.
- ☐ I have (or I am satisfied that another officer has) a suspicion on reasonable grounds<sup>7</sup> that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing capable of being used:
  - (a) to inflict bodily injury or
  - (b) to help the detainee, or any other detainee, to escape from immigration detention.
- ☐ I have (or I am satisfied that another officer has) a suspicion on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing.
- ☐ I have made every reasonable effort to advise another officer (such as my line manager or another authorised officer) of these suspicions and of the course of action I believe is necessary to take.
- ☐ I have informed the department manager at the detention facility of these suspicions and of the course of action I believe is necessary to take.
- ☐ I am satisfied that the detainee is aged at least 18 years.
- ☐ I am satisfied that the detainee is incapable of managing their own affairs.
- ☐ I HAVE REQUESTED AND OBTAINED WRITTEN AUTHORISATION FROM THE **SECRETARY OR AN SES BAND 3 EMPLOYEE** IN THE DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION TO CONDUCT THE STRIP SEARCH OF THE DETAINEE (using the appropriate form where possible).

OR

- ☐ I HAVE REQUESTED AND OBTAINED ORAL AUTHORISATION FROM THE **SECRETARY OR AN SES BAND 3 EMPLOYEE** IN THE DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION TO CONDUCT THE STRIP SEARCH OF THE DETAINEE AND HAVE SIGNED A NOTATION TO THIS EFFECT (using the appropriate form where possible).

---

<sup>6</sup> Note that this checklist is for assistance only, and does not remove the obligation on an authorised officer to be properly familiar with the details of the relevant legislation and associated instructions.

<sup>7</sup> For guidance on what constitutes a suspicion on reasonable grounds, refer to section 0 What is suspicion on reasonable grounds.

**Warning: If you proceed without this authorisation the search will be unlawful and you may be liable for assault.**

- ☐ I have arranged for a private area in which to conduct the strip search.

*Provision of information about the strip search*

- ☐ I have provided the detainee with written information, in a language that they understand, about the strip search.
- ☐ If the detainee so wishes and it is at all possible to do so, I have arranged for an interpreter to be made available to them (either in person or by telephone).
- ☐ If the detainee has difficulties reading or understanding the information, I have arranged for an interpreter to explain the written information to them (either in person or by telephone).
- ☐ I have given the detainee adequate time to read the information and to ask any questions about the strip search.
- ☐ I have asked the detainee or their parent, guardian or representative to sign an acknowledgment form, in a language that they understand, acknowledging that they have been given information about the strip search and adequate time to read that information.
- ☐ If the detainee or their parent, guardian or representative refuses to sign the acknowledgment form, I have recorded the refusal on the form and any reasons for refusal if provided<sup>8</sup>.
- ☐ I have offered a copy of the acknowledgment form to the detainee.

*Presence of others during strip search*

If the detainee's parent or guardian is in immigration detention with the person and is readily available at the same place:

- ☐ I have checked that the detainee has no objections to their parent or guardian being present for the strip search.
- ☐ If the detainee has no objections, I have arranged for the detainee's parent or guardian to be present for the strip search.

If the detainee's parent or guardian is unavailable or the detainee objects to their presence:

- ☐ I have arranged for another person who is capable of representing the detainee's interests to be present for the strip search.
- ☐ I have checked that this person is, as far as is practicable in the circumstances, acceptable to the detainee.
- ☐ I have checked that this person is not an authorised officer for the purposes of conducting a strip search.

If I consider it necessary to obtain the assistance of another person (or persons) to conduct the strip search:

---

<sup>8</sup> A refusal to sign the Acknowledgment Form does not prevent the strip search from proceeding.

- ☐ I have ensured that the person (or persons) assisting is the same sex as the detainee unless they are a medical practitioner and a medical practitioner of the same sex as the detainee is not available within a reasonable time, or they fit within one of the following categories of people and the detainee undergoing the search does not object to their presence:
  - (i) a parent or guardian, or person representing the detainee's interests, other than an authorised officer
  - (ii) a person nominated by the detainee undergoing the strip search to attend the strip search.
- ☐ Apart from the above, there is no one else present for the strip search.

#### *Rules for conducting a strip search*

Before proceeding with the strip search, I note that I am aware of the following:

- ☐ I must wear gloves whilst conducting the strip search.
- ☐ I must not search the detainee's body cavities (including the mouth).
- ☐ I must not ask, or force, the detainee to remove more items of clothing than I believe on reasonable grounds to be necessary for conducting the search.
- ☐ I must not ask the detainee to adopt postures or positions that would unnecessarily compromise their privacy and dignity and must provide the detainee with a paper smock if they request it.
- ☐ I must not gather or record any personal information about the detainee unless it is necessary for the purposes of conducting the strip search and must use that information in accordance with the provisions of the Privacy Act.

#### *Use of reasonable force if detainee is uncooperative*

If the detainee is uncooperative and it appears that reasonable force may be required:

- ☐ I have advised the detainee that I am empowered to use reasonable force to conduct the search.
- ☐ I have advised the detainee that, unless cooperation is forthcoming, I intend to use reasonable force in order to conduct the search.
- ☐ I have given the detainee a reasonable period in which to cooperate before applying reasonable force.
- ☐ If necessary and I have not already done so, I have sought the assistance of another person, of the same sex where applicable, to conduct the search.

### **AFTER A STRIP SEARCH**

#### *Possession and retention of items*

- ☐ I have taken possession of and retained only a thing or things found during the strip search that:
  - (a) might provide evidence of the commission of an offence against the Act or
  - (b) are forfeited or forfeitable to the Commonwealth.

- ☐ I have given the detainee a Property Receipt Form for each thing (if any) taken possession of and retained during the strip search, unless the thing is forfeited or forfeitable to the Commonwealth.
- ☐ I note that if the thing is forfeited or forfeitable to the Commonwealth I am required to give it, as soon as reasonably practicable, to a police constable as defined in the Crimes Act 1914 (Cth).
- ☐ If, during the course of a strip search under s252A of the Act, a detainee is found to be in possession of illegal drugs and/or prescription drugs that have been obtained without the knowledge of health centre staff, the detainee should be immediately referred to the health centre for assessment by health centre staff.

**NB:** Illegal drugs are forfeitable to the Commonwealth. The police must be notified and requested to collect the drugs from the facility.

### *Reporting and recording*

- ☐ I have reported orally to the Detention Centre Executive at the detention facility, as soon as reasonably practicable (and no later than two hours after the search), on the conduct and outcome of the strip search.
- ☐ I have made an accurate record of the strip search that includes all the information specified in Information to be contained in the record.
- ☐ I have attached to the record a copy of the record of authorisation by the Secretary or an SES Band 3 employee in the Department.
- ☐ In accordance with incident reporting procedures, I have prepared an incident report on the strip search and provided it to the Detention Centre Executive at the detention facility and to the Detention Operations Section, National Office within six hours of the search or before the end of my shift.

### *General*

- ☐ I have offered the detainee professional counselling after the search has been conducted.
- ☐ If any of the detainee's clothing has been damaged, destroyed or retained as a result of the strip search, I have provided them with adequate replacement clothing.

Details of authorised officer

Signature: ..... Date: .....

Name: ..... Time: .....

## Attachment D

## Request

2. The details of the detainee to be strip searched are as follows:

CCMD Portal Identification Number: .....

**Insert the reasons for you forming your reasonable suspicion that a prohibited item is hidden on the detainee (attach another page if additional space is required):**

[illegible]







[illegible]

Signature of officer requesting authorisation: .....





State/Territory:..... Facsimile: .....

## ORDER

8. Pursuant to subparagraph (ii) of the Act, I

..... {insert name}, a magistrate, order a strip search to be conducted on ..... {insert name of detainee to be searched} being satisfied that there are reasonable grounds for suspecting that:

- (a) there is hidden on the above mentioned detainee, in their clothing or in a thing in his or her possession a prohibited item; and
- (b) it is necessary to conduct a strip search of the detainee to recover this item.

*Insert the reasons why you are satisfied there are reasonable grounds for those suspicions (attach another page if additional space is required):*

[illegible]

9. I am satisfied that the strip search will be conducted by an officer who is an authorised officer for the purposes of [s252A](#) of the Act who is the same sex as the detainee to be strip searched.

10. As provided in [s252A\(6A\)](#) of the Act, I make this order in my personal capacity and not as a court or as a member of a court.

11. Signature: ..... Date:.....

State/Territory: ..... Time:.....

**PLEASE FAX THIS FORM AFTER AUTHORISATION TO THE NUMBER AT  
CLAUSE 7 AND FORWARD THE ORIGINAL TO THE RELEVANT DETENTION  
OPERATIONS ASSISTANT SECRETARY IN NATIONAL OFFICE PO BOX 25  
BELCONNEN, ACT, 2616**

#### **Oral Authorisation**

*{To be completed by the officer requesting an order authorising the strip search where it is not possible to request and/or obtain initial authorisation by fax}*

12. I have obtained oral authorisation from  
..... *{insert name}* a magistrate in the  
State/Territory of..... to conduct a strip search on  
.....*{insert name of detainee to be searched}*.

13. Date of authorisation: .....

Time of authorisation: .....

Signature of officer requesting authorisation:.....

Request for/provision of authorisation to conduct the strip search of multiple detainees  
aged at least 18 years

*Attachment F*

A formatted printable version of this document is available to officers through TRIM  
(reference ADD2013/1051351).

COMMONWEALTH OF AUSTRALIA

Migration Act 1958

THIS FORM IS FOR USE ONLY IN EXCEPTIONAL CIRCUMSTANCES WHERE THE  
STRIP SEARCH OF MULTIPLE DETAINEES AGED AT LEAST 18 YEARS IS  
REQUIRED.

Request

1. I .....{insert name} being an  
officer under the Migration Act 1958 (the Act) request authorisation for the person/s named  
at clause 6 to conduct strip a search pursuant to s252A of the Act of the detainees named at  
clause 2.

2. The details of the detainees to be strip searched are as follows: (attach another page if  
additional space is required)

Detention facility where the following detainees are

detained:.....

Name:..... Age:.... Sex:... .Detainee

Identifier:.....

Name:..... Age:.... Sex:... .Detainee

Identifier:.....

Name:..... Age:.... Sex:... .Detainee

Identifier:.....

Name:..... Age:.... Sex:... .Detainee

Identifier:.....

Name:..... Age:.... Sex:... .Detainee

Identifier:.....

Name:..... Age:.... Sex:... .Detainee

Identifier:.....

Name:..... Age:.... Sex:... .Detainee

Identifier:.....

Name:..... Age:.... Sex:... .Detainee

Identifier:.....

Name:..... Age:.... Sex:... .Detainee

Identifier:.....

Name:..... Age:.... Sex:... .Detainee  
Identifier:.....

Name:..... Age:.... Sex:... .Detainee  
Identifier:.....

3. As required by paragraph 252A(3)(a) of the Act and taking into account the provisions of s252A(3A) of the Act, for the reasons outlined below, I suspect on reasonable grounds that there is hidden on the above mentioned detainees, in their clothing or in a thing in their possession weapons, or other things, capable of being used to inflict bodily injury; or to help these detainees or another detainee to escape from immigration detention (“prohibited item”).

THE DETAIL PROVIDED IN THIS APPLICATION MUST BE SUFFICIENT TO ENSURE THE LEVEL AND TYPE OF REASONABLE SUSPICION/S APPLY EQUALLY TO ALL PERSONS NAMED IN THIS DOCUMENT. IF THIS IS NOT THE CASE, A SEPARATE APPLICATION FORM MUST BE COMPLETED FOR EACH PERSON FOR WHOM THERE ARE DIFFERING SUSPICIONS

Insert the reasons for you forming your reasonable suspicion that prohibited items are hidden on the detainees (attach other pages if additional space is required):

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

4. As required by paragraph 252A(3)(b) of the Act and for the reasons outlined below, I also suspect on reasonable grounds that it is necessary to conduct a strip search of the above mentioned detainees to recover the prohibited items.

Insert the reasons for you forming your reasonable suspicion that a strip search is necessary to recover the prohibited items (attach another page if additional space is required):

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....



5. I have informed the Centre Manager at the detention facility of these suspicions and the course of action I believe it is necessary to take.

6. The strip searches will be conducted by the following authorised officer/s for the purposes of s252A of the Act. The officer/s successfully completed the required strip search training, have a current AFP criminal check recorded on file and are the same sex as the detainees to be strip searched.

Officer Name:..... Date completed training:.....

Officer Name:..... Date completed training:.....

Officer Name:..... Date completed training:.....

Officer Name:..... Date completed training:.....

7. Signature: .....Date: .....

Position: ..... Time: .....

Facility (if applicable): ..... Telephone: .....

State / Territory: ..... Facsimile: .....,.....

AUTHORISATION – TO BE COMPLETED BY SECRETARY OR SES BAND3

8. Pursuant to subparagraph 252A(3)(c)(i) of the Act,

I, .....{insert name}, the Secretary or an SES Band 3 employee of the Department of Immigration and Border Protection {delete whichever does not apply} authorise a strip search to be conducted on the above mentioned detainees, being satisfied that there are reasonable grounds for suspecting that:

(a) there is hidden on the above mentioned detainees, in their clothing or in things in their possession prohibited items referred to above; and

(a) it is necessary to conduct a strip search of the above mentioned detainees to recover these items.

Insert the reasons why you are satisfied there are reasonable grounds for those suspicions (attach another page if additional space is required):

[illegible]

9. I am satisfied that the strip searches will be conducted by officer/s who are authorised officer/s for the purposes of s252A of the Act who are the same sex as the detainees to be strip searched.

10. Signature: ..... Date: .....

Position: ..... Time: .....

(Please ensure signature appears on the same page as section 9)

PLEASE FAX THIS FORM AFTER AUTHORISATION TO THE NUMBER AT CLAUSE 7 AND FORWARD THE ORIGINAL TO THE RELEVANT DETENTION OPERATIONS ASSISTANT SECRETARY IN NATIONAL OFFICE

#### Oral Authorisation

(To be completed by the officer requesting authorisation for the strip searches where it is not possible to request and/or obtain initial authorisation by fax)

11. I have obtained oral authorisation from..... {insert name} the Secretary or an SES Band 3 employee of the Department of Immigration and Border Protection {delete whichever does not apply} to conduct strip searches on {insert names of detainees to be searched}

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

12. Date of authorisation: .....

Time of authorisation: .....

Signature of officer requesting authorisation:.....

## Information to be provided to a detainee about strip searches and the law

### *Attachment G*

A formatted printable version of this document is available to officers through TRIM (reference ADD2013/1051351).

The Migration Act 1958 (the Act) provides for the strip search of detainees under the following conditions:

- if an officer\* suspects on reasonable grounds that you have hidden on your body, or in your clothes, or in something in your possession:
  - a weapon or
  - other thing

which could be used to hurt someone or to help you or another detainee escape from immigration detention and

- you do not hand over the weapon or any such things to the officer and
- authorisation has been obtained for the search.

A warrant is **NOT** required for the strip search to take place.

- Under the Act children under 10 years old cannot be strip searched.
- If you are between at least 10 years and under 18 years of age, authorisation for the search has been given by a magistrate\*\* in accordance with the Act.
- If you are over 18 years of age, authorisation for the search has been given by a senior officer (the Secretary or a Senior Executive Officer, Band 3) of the Department in accordance with the Act\*\*.

The search will be conducted by an officer authorised under the Act to conduct strip searches.

### *WHAT IS A STRIP SEARCH*

- This means you will have to **TAKE OFF** some or all of your clothes so that the authorised officer\*\*\* conducting the search can see if you have hidden a weapon or thing described above in your clothes or on your body.
- The search **WILL NOT** include a search of your body cavities.
- The search will be carried out in a private area by an authorised officer of the same sex as you.
- The authorised officer may ask another person to help him or her carry out the search. This person will be of the same sex as you unless:
  - the person is a medical practitioner, for example a doctor, and
  - a medical practitioner of the same sex as you is not available within a reasonable time.
- The authorised officer conducting the search must wear gloves for health and safety reasons.
- There will be a paper smock provided for you during the search.
- An authorised officer may take possession of and retain a weapon or thing described earlier, or another thing that might provide evidence of the commission of an offence against the Act.

- If you have any information or know of any reasons that might affect the search, please tell the officer who is to conduct the search.
- You may ask questions or seek the assistance of an interpreter.

### *YOUR RIGHTS UNDER THE LAW*

If you are a child (at least 10 but under 18), or you are over 18 and incapable of managing your affairs:

- your parent or guardian must be present if they are in detention with you and are readily available.
- If your parent or guardian is not available or if you do not wish either of them to be present during the strip search, someone who is capable of representing your interests will be present. This person, as far as is practicable in the circumstances, should be acceptable to yourself.

If you are an adult (18 and over), you:

- may nominate another person to be present during the strip search. If you are unable to nominate someone who is readily available at the same place as you, and who is willing to attend the strip search within a reasonable time, the strip search can still proceed.
- will be provided with adequate clothing if during the search any of your clothing is retained, damaged or destroyed.

### *PRIVACY ACT 1988*

The department and its service provider will not disclose personal information about you obtained during a strip search to others, except in accordance with the Privacy Act 1988. Information may be passed on to law enforcement agencies and others who carry out the department's functions.

### Notes

\* Under the Act s5(1), an "officer" means:

- i an officer of the Department, other than an officer specified by the Minister in writing; or
- ii a person, other than a person specified by the Minister in writing, who is:
  - an officer for the purposes of the Customs Act 1901 or
  - a protective service officer for the purposes of the Australian Protective Service Act 1987
- iii a member of the Australian Federal Police or of the police force of a State or Territory or
- iv any other person authorised by the Minister, by notice published in the Gazette, to be an officer for the purposes of this Act.

\*\* Under the Act, paragraph 252C(3) specifies that the strip search of a detainee over 18 years of age must be authorised by the Secretary or an SES Band 3 employee in the Department of Immigration and Border Protection. Section 252A(3)(c)(ii) specifies that the strip search of a detainee at least 10 years and less than 18 years of age must be authorised by a magistrate.

\*\*\* Under the Act (s.5(1)), an “authorised officer” means an officer “authorised in writing by the Minister or the Secretary for the purposes of that provision”.

## Acknowledgment form for a detainee who is to undergo a strip search

### *Attachment H*

A formatted printable version of this document is available to officers through TRIM (reference ADD2013/1051351).

I, ..... (insert full name of person), being a person accommodated at..... (insert location), have been advised that I am to undergo a strip search pursuant to s252A and s252B of the Migration Act 1958 (the Act).

I acknowledge that I have been given:

- information explaining s252A and s252B of the Act
- information explaining the purpose for which my personal information will be collected and the types of persons, bodies or agencies to which it may be disclosed
- adequate time to read the information and
- if required, the opportunity to access an interpreter.

I understand that if I refuse to sign the Acknowledgment Form, an authorised officer will record information below which:

- outlines that the steps described above have been carried out
- records the fact that I have refused to sign and
- records the fact that I have given no reason for refusing to sign or
- records the reasons (if any) that I have given for refusing to sign this Acknowledgment Form.

The detainee should be advised that refusal to sign the Acknowledgment Form will not prevent the strip search from proceeding.

Signed: .....Dated: .....

(signature of detainee)

Complete if person refuses to sign this Acknowledgment Form

The person, ....., held at ..... (insert location where held), has refused to sign this Acknowledgment Form. I certify that he/she\* has been given:

- information explaining the effect of s252A and s252B of the Migration Act 1958 (the Act)
- information explaining the purpose for which his/her\* personal information will be collected and the types of persons, bodies or agencies to which it may be disclosed
- adequate time to read the information and
- if required, the opportunity to access an interpreter.

The grounds for the refusal have not been given/have been given.\* If grounds have been given, record them below.

.....  
.....  
.....  
.....  
.....

Signed: ..... Witness: .....  
(Officer authorised to conduct the search)

\* Cross out whichever is not applicable

Date: .....

## Brief on strip search of detainee

### *Attachment I*

A formatted printable version of this document is available to officers through TRIM (reference ADD2013/1051351).

Submission

In-Confidence

For Information/Action

To: Minister

Subject: Brief on strip search of detainee

Purpose: To provide you with the details of a strip search that was conducted on a detainee on *(insert date strip search was conducted)*.

Urgency: Please action before *(insert date)*  
*(short reason here)*

On *(insert date strip search was requested)*, the department received a request from *(insert title/role/organisation of person who made the request)*, to authorise the strip search of a detainee, *(insert name of detainee)*, located at the *(insert location of detainee)* immigration detention centre (IDC) (or name of other immigration detention facility if not an IDC).

This request was made in writing for the purposes of section 252A of the *Migration Act 1958* (the Act). Authorisation to perform a strip search under the Act was given by Deputy Secretary *(insert name and title of Secretary or SES Band 3 officer)* (Attachment A) in accordance with departmental guidelines: Detention Services Manual Chapter 8 - Strip searches of detainees.

The search was conducted by an authorised officer of *(insert name of detention service provider)* at *(insert time strip search was conducted)* on *(insert date strip search was conducted)* at the *(insert location of detainee)* IDC (incident report at Attachment B). Prior to the search, *(insert name of detainee)* was provided with an information form (Attachment C) and was given adequate information and assistance about various matters relating to the conduct of the search (see Attachment D signed by *(name of detainee, or FDSP officer if person refused to sign)*).



Attached is a draft statement to Parliament (Attachment E) required as a result of a strip search of a detainee.

### *Attachments*

Attachment A: Request for / provision of authorisation to conduct a strip search of a detainee is included in this instruction (depending on age of person, see either Request for/provision of authorisation to conduct a strip search of a detainee aged at least 18 years or Request for/provision of an order by a magistrate to conduct a strip search of a detainee aged at least 10 but under 18 years)

Attachment B: Incident Report - Strip Search (further information on preparing an incident report can be found in Reporting requirements)

Attachment C: Request for/provision of authorisation to conduct the strip search of multiple detainees aged at least 18 years is included in this instruction

Attachment D: An Acknowledgment form for a detainee who is to undergo a strip search is included in this instruction

Attachment E: A Statement to Parliament is included in this instruction

*(insert any other attachments that are deemed relevant for example other information or case management briefs relating to the person)*

### *Recommendation*

That you:

Note that the strip search was conducted in accordance with the legislative requirements of section 252A of the Act

agreed / not agreed

That you sign the statement for tabling in Parliament at Attachment A at the next Parliamentary sittings.

signed / not signed

Authorising Officer Signature, FAS  (insert name here) (insert position Title here) (insert date) (insert phone number)	Minister Signature, Date
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*Minister/Parliamentary Secretary's Comments*

Contact Officer: (insert Name, Position, Section/Branch, Phone number)

**Through**

Cc:           Parliamentary Secretary  
              Secretary  
              Deputy Secretaries  
              *(insert any others as necessary)*

## *Background*

*(insert detainee's immigration history if not already documented in other attachments included)*

*(insert name of detention service provider)* must request permission as required by paragraph 252A(3)(C) of the Act and take into account the provisions of subsection 252A(3A) of the Act. As *(insert name of detention service provider)* had formed reasonable suspicion that hidden on *(insert name of detainee)*, in his/her clothing or in a thing in their possession may be a weapon, or other thing, capable of being used to inflict bodily injury; or to help the detainee or another detainee to escape from immigration detention ("prohibited item") Attachment A.

*(insert reason/s for suspecting person and why a pat search or screening could not be used as an alternative to a strip search to detect the suspected item/s)*

The strip search was performed in a manner that preserved *(insert name of detainee)* dignity and allowed the searching officer to properly conduct the search as documented in the *(insert name of detention service provider)* Incident Report - Strip Search" Attachment B. *(insert name of person)* was provided with information about the search as well as interpreting services if he/she so wished (Attachment C). *(insert name of person)* declined/accepted to use an interpreter. *(insert name of person)* also signed the "Acknowledgement Form" Attachment D.

*(insert details of any previous incidents in which the person was involved)*

Statement to Parliament

*Attachment J*

A formatted printable version of this document is available to officers through TRIM (reference ADD2013/1051351).

Statement to Parliament regarding number of strip searches undertaken under the powers conferred by s252A of the Migration Act 1958.

The number of strip searches undertaken between (insert either: 1 January and 30 June 2XXX OR 1 July and 31 December 2XXX was (insert number of strip searches conducted during the relevant period).

(insert name of Minister)

Minister for Immigration and Border Protection

END OF DOCUMENT

## Section 3 - Strip searches of detainees

A strip search can be undertaken of a detainee by an authorised officer, without a warrant, to find out whether they have hidden on them, in their clothing or in any property under their immediate control, a weapon or thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention. If other items are found that are suspected to be illegal (for example, illicit drugs), follow procedures in 'Detention SOP – Evidence Management'.

A weapon or item might not have been revealed during screening or a pat down search but an officer might form a suspicion based on reasonable grounds that removal of the person's clothing and an inspection of their body (but not their body cavities) could reveal relevant items hidden from view.

A strip search may be undertaken irrespective of whether the detainee has been previously searched under s 252 or screened under s 252AA of the Migration Act.

A strip search is a necessarily intrusive act and can be extremely embarrassing to the detainee and others. It is a measure of last resort and should be applied only when other less intrusive measures have proven inconclusive or insufficient. Detainees must be treated with the utmost respect and dignity when being strip searched.

The strip search of detainees aged at least 10 but under 18 years may only be undertaken with the authorisation of a magistrate. A greater degree of care and sensitivity must be followed and the search conducted in an appropriate manner as to lessen the impact to this age group of detainees.

Detainees under the age of 10 years cannot be strip searched (s252B(1)(f)).

Section 252A and 252B set out the power of an authorised officer to conduct a strip search of a detainee. A detainee who is aged 18 or over can only be strip searched with the authorisation of the Secretary, the ABF Commissioner, or an SES Band 3 employee in the Department (or an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3). A detainee who is aged at least 10 but under 18 years can only be strip searched with the authorisation of a magistrate.

Authorised officers conducting a strip search must wear surgical/protective gloves in addition to the standard issue uniform.

This section sets out the procedures for undertaking strip searches of detainees under sections 252A and 252B of the Migration Act. It does not apply to persons in the following circumstances:

- the person is held in immigration detention in a prison or remand centre or a State or Territory, and a law of that State or Territory confers a power to search persons, or things in the possession of persons, serving sentences or being held in the prison or remand centre (see s 252F of the Migration Act); or
- the person (a suspected illegal foreign fisher or a suspected foreign offender) is detained in an IDF under the Fisheries Management Act, the Torres Strait Fisheries Act or the Environment Protection and Biodiversity Conservation Act.

Serial	Action	Responsible entity
1.1	<b>Strip search of detainee aged 18 years and over, who is capable of managing their own affairs</b>	
1.1.1	Advise an authorised officer that a detainee might have hidden on them, in their clothing or in a thing in their	Departmental staff or contractor

Serial	Action	Responsible entity
	possession a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention.	
1.1.2	<p>Determine whether there are reasonable grounds to suspect that:</p> <ul style="list-style-type: none"> <li>there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention; and</li> <li>it is necessary to conduct a strip search of the detainee to recover that weapon or other thing.</li> </ul> <p><b>Note:</b> In relation to detainees who are aged 18 or over, the authorised officer who forms this state of mind cannot be the Senior Executive officer (i.e. the Secretary, ABF Commissioner or SES Band 3 employee) who authorises the strip search.</p>	Authorised officer for the purposes of s252A of the Migration Act
1.1.3	<p>Establish that the person is at least 18 years old. If not, go to <b>Section 3.3</b>.</p> <p><b>Note:</b> If there is uncertainty that a detainee is at least 18, proceed on the basis that the detainee is a minor.</p>	Authorised officer for the purposes of s252A of the Migration Act
1.1.4	<p>Establish that the person is able to manage their own affairs. If not, go to <b>Section 3.2</b>.</p>	Authorised officer for the purposes of s252A of the Migration Act
1.1.5	<p>If the authorised officer determines that there are reasonable grounds to suspect the matters mentioned in <b>serial 3.1.2</b> of this Detention SOP, communicate this to the FDSP FOM.</p>	Authorised officer for the purposes of s252A of the Migration Act
1.1.6	<p>If the FDSP FOM agrees with the authorised officer, consult with the HSM to establish whether there are any health issues precluding the strip search or whether any health issues exist that could be exacerbated by the strip search.</p> <p><b>Note:</b> Implement any steps that the HSM recommends to mitigate the effect of the strip search on the detainee.</p>	FDSP FOM
1.1.7	<p>Consider the individual circumstances of the detainee including relevant medical and health history and present findings to the FDSP FOM.</p>	HSM
1.1.8	<p>Brief the FDSP Centre Manager on the need for the search and any issues affecting the conduct of that search.</p> <p>Ensure the officer who will conduct the strip search (if the strip search is authorised) is an 'authorised officer' for the purposes of s 252A of the Migration Act.</p>	FDSP FOM
1.1.9	<p>Brief the ABF Detention Superintendent on the need for search.</p>	FDSP Centre Manager

Serial	Action	Responsible entity
1.1.10	Complete the checklist contained in DSM, Chapter 8 – Safety and Security – Strip searches of detainees (Attachment B): <i>Detainees 18 years capable of managing own affairs</i> TRIM - ADD2013/1051351	Authorised officer for the purposes of s252A of the Migration Act
1.1.11	Complete a request for authorisation to conduct a strip search contained in DSM, Chapter 8 – Safety and Security – Strip searches of detainees (Attachment D): <i>Request for/provision of authorisation to conduct a strip search of a detainee aged at least 18 years</i> TRIM - ADD2013/1051351	Authorised officer for the purposes of s252A of the Migration Act
1.1.12	If the request is to conduct strip search on multiple detainees, complete a request for authorisation to conduct a strip search, contained in DSM, Chapter 8 – Safety and Security – Strip searches of detainees (Attachment F): <i>Request for/provision of authorisation to conduct a strip search of a detainee aged at least 18 years</i> TRIM - ADD2013/1051351	Authorised officer for the purposes of s252A of the Migration Act
1.1.13	Forward the completed application for a strip search to the ABF Detention Superintendent.	FDSP Centre Manager
1.1.14	Ensure the application has sufficient information in it to assist the authorising Senior Executive officer listed below to make an informed decision with respect to the application.	ABF Detention Superintendent
1.1.15	Submit the application for a strip search to the ABF Regional Commander.	ABF Detention Superintendent
1.1.16	Advise the Assistant Commissioner responsible for detention operations of the application and intended action.	ABF Commander Detention Operations
1.1.17	Submit the application to the relevant authorising Senior Executive officer : <ul style="list-style-type: none"> <li>the Secretary of the Department</li> <li>the ABF Commissioner or</li> <li>a SES Band 3 employee in the Department.</li> </ul> <b>Note:</b> The SES Band 3 employee can be an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.	ABF Regional Manager



Serial	Action	Responsible entity
1.1.18	<p>Review the application and decide whether to authorise a strip search on the detainee or detainees.</p> <p>The Secretary, ABF Commissioner or an SES Band 3 employee in the Department can only authorise a strip search if he or she is satisfied that:</p> <ul style="list-style-type: none"> <li>(a) there are reasonable grounds to suspect that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention; and</li> <li>(a) there are reasonable grounds to suspect that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing; and</li> <li>(b) the officer who will conduct the strip search is authorised for the purposes of s 252A of the Migration Act.</li> </ul> <p><b>Note:</b> In relation to detainees who are aged 18 or over, the Senior Executive officer (i.e. the Secretary, ABF Commissioner or SES Band 3 officer) who authorises the strip search cannot also participate in conducting the strip search or be the officer who holds the reasonable suspicions mentioned in serial 3.1.2 above.</p>	<p>Secretary of the Department</p> <p>ABF Commissioner or an SES Band 3 employee in the Department</p>
1.1.19	<p>Advise the ABF Regional Commander of the decision whether to authorise the strip search.</p> <p>The authorisation can be given by phone, fax or other electronic means.</p> <p>The authorisation must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.</p> <p><b>Note:</b> 'business day' means a day that is not a Saturday, Sunday or public holiday in the place where the authorisation is given.</p>	<p>Secretary of the Department</p> <p>ABF Commissioner or an SES Band 3 employee in the Department</p>
1.1.20	<p>If the strip search is authorised, ensure the authorisation is recorded in writing, and signed by the person who gave the authorisation, within one business day after it is given.</p>	ABF Commander Detention Operations
1.1.21	<p>Inform the ABF Detention Superintendent of the decision to authorise (or not authorise) the strip search.</p>	ABF Commander Detention Operations
1.1.22	<p>Inform the FDSP Centre Manager of the decision to authorise (or not authorise) the strip search.</p>	ABF Detention Superintendent
1.1.23	<p>Inform the FDSP FOM of the decision to authorise (or not authorise) the strip search.</p>	FDSP Centre Manager
1.1.24	<p>Inform the authorised officer of the decision to authorise (or not authorise) the strip search.</p>	FDSP FOM



Serial	Action	Responsible entity
1.1.25	If a strip search is not authorised, consult with the FDSP Centre Manager and make an operational decision about appropriate placement and management to mitigate any threats or risk.	ABF Detention Superintendent
1.1.26	Ensure the authorised officer is appropriately trained and qualified to undertake the strip search. See DSM, Chapter 8 – Safety and Security – Strip search training requirements.	FDSP FOM
1.1.27	Ensure that an authorised officer still holds the reasonable suspicions mentioned in serial 3.1.2 above. <b>Note:</b> The authorised officer who holds the reasonable suspicions mentioned in serial 3.1.2 above does not need to be the authorised officer who conducts the strip search.	FDSP FOM
1.1.28	Ensure the authorised officer who will conduct the strip search is of the same sex as the detainee who will be strip searched: <ul style="list-style-type: none"> <li>record any conversations, specific requests and subsequent approvals and actions.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.1.29	Ensure another person is present, preferably another authorised officer, to represent the interests of the Department and mitigate any false accusations of impropriety. The person must not be of the opposite sex to the detainee unless: <ul style="list-style-type: none"> <li>the person is a medical practitioner</li> <li>a medical practitioner of the same sex as the detainee is not available within a reasonable time.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.1.30	Use an interpreter as required in accordance with 'Detention SOP –Translating and interpreting'. If the interpreter is present at the strip search (i.e. the interpreter is not providing their services by telephone), the interpreter must be of the same sex as the detainee.	Authorised officer for the purposes of s252A of the Migration Act

Serial	Action	Responsible entity
1.1.31	<p>The strip search must be conducted in the presence of a person nominated by the detainee, if the nominated person is readily available at the same place as the detainee and willing to attend the strip search within a reasonable time.</p> <p>The authorised officer can proceed with the strip search without the presence of a nominated person if:</p> <ul style="list-style-type: none"> <li>the detainee refuses or fails to nominate a person within a reasonable time; or</li> <li>the detainee is unable to nominate a person who is readily available at the same place as the detainee and willing to attend the strip search within a reasonable time.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.1.32	Explain to the detainee why they are going to be strip searched.	Authorised officer for the purposes of s252A of the Migration Act
1.1.33	Explain the legal authority for the strip search.	Authorised officer for the purposes of s252A of the Migration Act
1.1.34	<p>Before any information is obtained, ensure the detainee has been provided with Form 1442i 'Privacy Notice' and the FDSP Privacy Notice at induction in accordance with 'Detention SOP – Reception and Induction.'</p> <p>In addition, ensure the detainee is aware of:</p> <ul style="list-style-type: none"> <li>the purpose for which the personal information is being collected</li> <li>any legal authority for the collection of the personal information</li> <li>any person, body or agency to which the information collected is normally disclosed.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.1.35	<p>Provide the detainee with written information in a language they understand about the strip search.</p> <p>See DSM, Chapter 8 – Safety and Security (Attachment G).</p> <p><i>Information to be provided to a detainee about strip searches and the law</i></p> <p>TRIM ADD2013/1051351</p>	Authorised officer for the purposes of s252A of the Migration Act
1.1.36	<p>Ensure the detainee has sufficient time to read and understand the information and to ask any questions about the strip search.</p> <p>Assist the detainee, as required, to ensure that he or she either reads the written information or, with the assistance of an interpreter, is made aware of the information.</p>	Authorised officer for the purposes of s252A of the Migration Act

Serial	Action	Responsible entity
1.1.37	<p>Ask the detainee to sign an acknowledgement form, in a language they understand, acknowledging they have been given information about the search and that they have been given sufficient time to understand that information.</p> <p>See DSM, Chapter 8 – Safety and Security – Strip searches of detainees (Attachment H).</p> <p><i>Acknowledgement form for a detainee who is to undergo a strip search</i></p> <p>TRIM ADD2013/1051351</p>	<p>Authorised officer for the purposes of s252A of the Migration Act</p>
1.1.38	<p>If the detainee refuses to sign the acknowledgement form, record the refusal and any reasons, if provided, on the form</p> <p><i>Acknowledgement form for a detainee who is to undergo a strip search</i></p> <p>TRIM ADD2013/1051351</p>	<p>Authorised officer for the purposes of s252A of the Migration Act</p>
1.1.39	<p>Provide a copy of the acknowledgement form to the detainee.</p>	<p>Authorised officer for the purposes of s252A of the Migration Act</p>
1.1.40	<p>Place a copy of the acknowledgement form on the detainee's file.</p>	<p>Authorised officer for the purposes of s252A of the Migration Act</p>
1.1.41	<p>Conduct the strip search in a private area which assists in maintaining the dignity and privacy of the detainee and of the process.</p>	<p>Authorised officer for the purposes of s252A of the Migration Act</p>
1.1.42	<p>Conduct the strip search in accordance with the requirements of ss 252A and 252B, the applicable s 499 direction about strip searches, and the required training and qualifications.</p>	<p>Authorised officer for the purposes of s252A of the Migration Act</p>
1.1.43	<p>Do not:</p> <ul style="list-style-type: none"> <li>ask a detainee to adopt certain postures or positions that compromise the privacy and dignity of the detainee</li> <li>take a photo or video of the detainee when they are naked or undressing</li> <li>use or disclose any of the detainee's 'personal information' except in accordance with the Privacy Act, the ABF Act and (if applicable) the Migration Act.</li> </ul>	<p>Authorised officer for the purposes of s252A of the Migration Act</p>
1.1.44	<p>Video and audio record the strip search procedure <b>avoiding any video of the detainee during the act of undressing or when undressed.</b></p> <p>See 'Detention SOP – Audio and Video Recording'.</p>	<p>Authorised officer for the purposes of s252A of the Migration Act</p>

Serial	Action	Responsible entity
1.1.45	Do not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search. Do not use more force than is reasonably necessary to conduct the search. Do not search the detainee's body cavities.	Authorised officer for the purposes of s252A of the Migration Act
1.1.46	Do not remove, or cause to be removed, more items of clothing than is believed on reasonable grounds to be necessary.	Authorised officer for the purposes of s252A of the Migration Act
1.1.47	Lodge video and audio footage with the ABF in accordance with 'Detention SOP – Audio and Video Recording'.	Authorised officer for the purposes of s252A of the Migration Act
1.1.48	Under s 252C, an authorised officer can take possession of and retain a thing found during a strip search if: (a) the thing might provide evidence of the commission of an offence against the Migration Act, or (b) the thing is a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee to escape from immigration detention. Handle the thing in accordance with 'Detention SOP – Control of Items' and 'Detention SOP – Evidence Management'.	Authorised officer for the purposes of s252A of the Migration Act
1.1.49	If the thing might provide evidence of the commission of an offence against the Migration Act: <ul style="list-style-type: none"> <li>complete a Property Receipt Form</li> <li>place the original of the receipt on the detainee's file</li> <li>provide a copy of the receipt to the detainee</li> <li>manage any evidentiary items in accordance with 'Detention SOP – Evidence Management'.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.1.50	If the thing is a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee to escape from immigration detention: <ul style="list-style-type: none"> <li>no receipt is required to be given to the detainee</li> <li>the thing must be given to a constable as defined in the <i>Crimes Act 1914</i> (Cth)</li> <li>manage the thing in accordance with 'Detention SOP – Evidence Management'.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act



Serial	Action	Responsible entity
1.1.51	<p>If an authorised officer takes possession of a thing under s 252C which might provide evidence of the commission of an offence against the Migration Act, he or she must deal with the thing in accordance with s 252C of the Migration Act. That section imposes a time limit on how long the thing can be retained.</p> <p><b>Note:</b> Sections 252D and 252E deal with authorised officers applying to a magistrate for a thing to be retained for a further period of time.</p>	Authorised officer for the purposes of s252A of the Migration Act
1.1.52	Any other items found during a strip search that are a controlled, excluded or prohibited item can be taken possession of and handled in accordance with 'Detention SOP – Control of Items' and 'Detention SOP – Evidence Management'.	Authorised officer for the purposes of s252A of the Migration Act
1.1.53	If any clothing is damaged, destroyed or retained, provide the detainee with adequate replacement clothing.	Authorised officer for the purposes of s252A of the Migration Act
1.1.54	Offer counselling and medical assessment to the detainee.	Authorised officer for the purposes of s252A of the Migration Act
1.1.55	Arrange counselling and medical assessment for detainee if requested.	Authorised officer for the purposes of s252A of the Migration Act
1.1.56	<p>At conclusion of the strip search, complete an incident report:</p> <ul style="list-style-type: none"> <li>ensure it contains all information specified in DSM, Chapter 8 – Safety and Security – Information to be contained in the record</li> <li>attach the Senior Executive officer's approval to the record.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.1.57	Submit an incident report to the Detention Operations Section using the CCMD portal within six hours of the search.	FDSP FOM
1.1.58	Ensure report to the ABF Detention Superintendent as soon as reasonably practicable but within 24 hours, on the use of the powers under sections <a href="#">252A</a> and <a href="#">252B</a> of the Act.	FDSP FOM
1.1.59	Notify Strategic Border Command of the strip search.	ABF Detention Superintendent
1.1.60	<p>Prepare and submit a brief on the strip search that was undertaken, within 24 hours of the authorisation for the strip search, to the Minister and Secretary.</p> <p>See DSM, Chapter 8 – Safety and Security – Strip search of detainees (Attachments I and J).</p> <p><i>Brief on strip search of detainee</i></p> <p>TRIM ADD2013/1051351</p>	Assistant Commissioner Detention Compliance and Removals

Serial	Action	Responsible entity
<b>1.2</b>	<b>Strip search of a detainee aged 18 years and over and incapable of managing their own affairs</b>	
1.2.1	Advise an authorised officer that a detainee might have hidden on them, in their clothing or in a thing in their possession a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention.	Departmental staff or contractor
1.2.2	<p>Determine whether there are reasonable grounds to suspect that:</p> <p>(a) there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention; and</p> <p>(b) it is necessary to conduct a strip search of the detainee to recover that weapon or other thing.</p> <p><b>Note:</b> In relation to detainees who are aged 18 or over, the authorised officer who forms this state of mind cannot be the Senior Executive officer (i.e. the Secretary, ABF Commissioner or SES Band 3 employee) who authorises the strip search.</p>	Authorised officer for the purposes of s252A of the Migration Act
1.2.3	<p>The authorised officer may form a suspicion on reasonable grounds that it is necessary to conduct a strip search to recover the weapon or other thing in circumstances such as (but not limited to):</p> <p>(a) A detainee refusing on request to identify or hand over a weapon or item reasonably suspected to be hidden on their person.</p>	Authorised officer for the purposes of s252A of the Migration Act
1.2.4	<p>Establish whether the detainee is:</p> <ul style="list-style-type: none"> <li>at least 18 years old</li> <li>able to manage their own affairs.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.2.5	<p>A detainee might be assessed as being incapable of managing their own affairs in circumstances such as (but not limited to):</p> <p>(a) a medical practitioner provides a certificate indicating, in their opinion, that the detainee is temporarily or permanently incapable of managing their own affairs; or</p> <p>(b) a psychiatric assessment has been obtained indicating that the detainee is temporarily or permanently incapable of managing their own affairs; or</p> <p>(c) the authorised officer forms the opinion, based on reasonable grounds that the detainee is in a traumatised or stressful state and is presently unable to comprehend the situation, or make a significant decision, in relation to their own affairs.</p>	Authorised officer for the purposes of s252A of the Migration Act
1.2.6	If the authorised officer determines that there are reasonable grounds to suspect the matters mentioned in serial 3.2.2	Authorised officer for the purposes of s252A

Serial	Action	Responsible entity
	above, communicate this to the FDSP FOM.	of the Migration Act
1.2.7	If the FDSP FOM agrees with the authorised officer, consult with the HSM to establish whether there are any health issues precluding the strip search or whether any health issues exist that could be exacerbated by the strip search. <b>Note:</b> Implement any steps that the HSM recommends to mitigate the effect of the strip search on the detainee.	FDSP FOM
1.2.8	Consider the individual circumstances of the detainee including relevant medical and health history and present findings to the FDSP FOM.	HSM
1.2.9	Brief the FDSP Centre Manager on the need for the search and any issues affecting the conduct of that search. Ensure the officer who will conduct the strip search (if the strip search is authorised) is an 'authorised officer' for the purposes of s 252A of the Migration Act.	FDSP FOM
1.2.10	Complete the checklist contained in DSM, Chapter 8 – Safety and Security – Strip searches of detainees (Attachment B): <i>Detainees 18 years capable of managing own affairs</i> TRIM - ADD2013/1051351	Authorised officer for the purposes of s252A of the Migration Act
1.2.11	Complete a request for authorisation to conduct a strip search contained in DSM, Chapter 8 – Safety and Security – Strip searches of detainees (Attachment D): <i>Request for/provision of authorisation to conduct a strip search of a detainee aged at least 18 years</i> TRIM - ADD2013/1051351	Authorised officer for the purposes of s252A of the Migration Act
1.2.12	Forward the completed application for a strip search to the ABF Detention Superintendent.	FDSP Centre Manager
1.2.13	Ensure the application has sufficient information in it to assist the Senior Executive officer listed below to make an informed decision with respect to the application.	ABF Detention Superintendent
1.2.14	Submit the application for a strip search to the ABF Commander Detention Operations.	ABF Detention Superintendent
1.2.15	Advise the Assistant Commissioner responsible for detention operations of the application and intended action.	ABF Commander Detention Operations
1.2.16	Submit the application to the relevant authorising Senior Executive officer: <ul style="list-style-type: none"> <li>• Secretary of the Department</li> <li>• ABF Commissioner or</li> <li>• a SES Band 3 employee in the Department.</li> </ul> <b>Note:</b> The SES Band 3 employee can be an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.	ABF Commander Detention Operations

Serial	Action	Responsible entity
1.2.17	<p>Review the application and decide whether to authorise a strip search on the detainee.</p> <p>The Secretary, ABF Commissioner or an SES Band 3 employee in the Department can only authorise a strip search if he or she is satisfied that:</p> <ul style="list-style-type: none"> <li>(a) there are reasonable grounds to suspect that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention; and</li> <li>(b) there are reasonable grounds to suspect that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing; and</li> <li>(c) the officer who will conduct the strip search is authorised for the purposes of s 252A of the Migration Act.</li> </ul> <p><b>Note:</b> In relation to detainees who are aged 18 or over, the Senior Executive officer (i.e. the Secretary, ABF Commissioner or SES Band 3 officer) who authorises the strip search cannot also participate in conducting the strip search or be the officer who holds the reasonable suspicions mentioned in serial 3.2.2 of this Detention SOP.</p>	<p>Secretary of the Department</p> <p>ABF Commissioner or an SES Band 3 employee in the Department</p>
1.2.18	<p>Advise the ABF Commander Detention Operations of the decision whether to authorise the strip search.</p> <p>The authorisation can be given by phone, fax or other electronic means.</p> <p>The authorisation must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.</p> <p><b>Note:</b> 'business day' means a day that is not a Saturday, Sunday or public holiday in the place where the authorisation is given.</p>	<p>Secretary of the Department</p> <p>ABF Commissioner or an SES Band 3 employee in the Department</p>
1.2.19	<p>If the strip search is authorised, ensure the authorisation is recorded in writing, and signed by the person who gave the authorisation, within one business day after it is given.</p>	ABF Commander Detention Operations
1.2.20	<p>Inform the ABF Detention Superintendent of the decision to authorise (or not authorise) the strip search.</p>	ABF Commander Detention Operations
1.2.21	<p>Inform the FDSP Centre Manager of the decision to authorise (or not authorise) the strip search.</p>	ABF Detention Superintendent
1.2.22	<p>Inform the FDSP FOM of the decision to authorise (or not authorise) the strip search.</p>	FDSP Centre Manager
1.2.23	<p>Inform the authorised officer of the decision to authorise (or not authorise) the strip search.</p>	FDSP FOM
1.2.24	<p>If a strip search is not authorised, consult with the FDSP Centre Manager and make an operational decision about appropriate placement and management to mitigate any threats or risk.</p>	ABF Detention Superintendent



Serial	Action	Responsible entity
1.2.25	Ensure the authorised officer is appropriately trained and qualified to undertake the strip search. See DSM, Chapter 8 – Safety and Security – Strip search training requirements.	FDSP FOM
1.2.26	Ensure that an authorised officer still holds the reasonable suspicions mentioned in <b>serial 3.2.2</b> of this Detention SOP. <b>Note:</b> The authorised officer who holds the reasonable suspicions mentioned in <b>serial 3.2.2</b> above does not need to be the authorised officer who conducts the strip search.	FDSP FOM
1.2.27	Ensure the authorised officer who will conduct the strip search is of the same sex as the detainee who will be strip searched: <ul style="list-style-type: none"> <li>record any conversations, specific requests and subsequent approvals and actions.</li> </ul>	Authorised officer for the purposes of s 252A of the Migration Act
1.2.28	The strip search must be conducted in the presence of: <ol style="list-style-type: none"> <li>the detainee's parent or guardian if that person is in immigration detention with the detainee and is readily available at the same place; or</li> <li>if that does not apply or is not acceptable to the detainee, the strip search must be conducted in the presence of another person (other than an authorised officer) who is capable of representing the detainee's interests and who, as far as practicable in the circumstances, is acceptable to the detainee.</li> </ol> <b>Note:</b> The detainee's parent or guardian does not need to be of the same sex as the detainee. A person capable of representing the detainee's interests does not need to be of the same sex as the detainee, provided the detainee has no objection to that person being present during the strip search.	Authorised officer for the purposes of s 252A of the Migration Act
1.2.29	Ensure another person is present, preferably another authorised officer, to represent the interests of the Department and mitigate any false accusations of impropriety. The person must not be of the opposite sex to the detainee unless: <ol style="list-style-type: none"> <li>the person is a medical practitioner</li> <li>a medical practitioner of the same sex as the detainee is not available within a reasonable time.</li> </ol>	Authorised officer for the purposes of s 252A of the Migration Act
1.2.30	Use an interpreter as required in accordance with 'Detention SOP –Translating and interpreting'. If the interpreter is present at the strip search (i.e. the interpreter is not providing their services by telephone), the interpreter must be of the same sex as the detainee.	Authorised officer for the purposes of s252A of the Migration Act
1.2.31	Explain to the detainee why they are going to be strip searched.	Authorised officer for the purposes of s252A of the Migration Act

Serial	Action	Responsible entity
1.2.32	Explain the legal authority for the strip search.	Authorised officer for the purposes of s252A of the Migration Act
1.2.33	<p>Before any information is obtained, ensure the detainee has been provided with Form 1442i 'Privacy Notice' and the FDSP Privacy Notice at induction in accordance with 'Detention SOP – Reception and Induction'.</p> <p>In addition, ensure the detainee is aware of:</p> <ul style="list-style-type: none"> <li>the purpose for which the personal information is being collected</li> <li>any legal authority for the collection of the personal information</li> <li>any person, body or agency to which the information collected is normally disclosed.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.2.34	<p>Provide the detainee with written information in a language they understand about the strip search.</p> <p>See DSM, Chapter 8 – Safety and Security (Attachment G).</p> <p><i>Information to be provided to a detainee about strip searches and the law</i></p> <p>TRIM ADD2013/1051351</p>	Authorised officer for the purposes of s252A of the Migration Act
1.2.35	If required, have the interpreter explain the written information to the detainee.	Authorised officer for the purposes of s252A of the Migration Act
1.2.36	Ensure the detainee or their parent/guardian etc. has sufficient time to read and understand the information and to ask any questions about the strip search. Assist the detainee or their parent/guardian etc. to ensure that he or she either reads the written information or, with the assistance of an interpreter, is made aware of the information.	Authorised officer for the purposes of s252A of the Migration Act
1.2.37	<p>Ask the detainee or their parent/guardian etc. to sign an acknowledgement form, in a language they understand, acknowledging they have been given information about the search and that they have been given sufficient time to understand that information.</p> <p>See DSM, Chapter 8 – Safety and Security – Strip searches of detainees (Attachment H).</p> <p><i>Acknowledgement form for a detainee who is to undergo a strip search</i></p> <p>TRIM ADD2013/1051351</p>	Authorised officer for the purposes of s252A of the Migration Act
1.2.38	<p>If the detainee and their parent/guardian etc. refuse to sign the acknowledgement form, record the refusal and any reasons, if provided, on the following form:</p> <p><i>Acknowledgement form for a detainee who is to undergo a strip search</i></p> <p>TRIM ADD2013/1051351</p>	Authorised officer for the purposes of s252A of the Migration Act

Serial	Action	Responsible entity
1.2.39	Provide a copy of the acknowledgement form to the detainee.	Authorised officer for the purposes of s252A of the Migration Act
1.2.40	Place copy of the acknowledgement form on the detainee's file.	Authorised officer for the purposes of s252A of the Migration Act
1.2.41	Conduct the strip search in a private area which assists in maintaining the dignity and privacy of the detainee and of the process.	Authorised officer for the purposes of s252A of the Migration Act
1.2.42	Conduct the strip search in accordance with the requirements of s 252A and 252B, the applicable s 499 direction about strip searches, and the required training and qualifications.	Authorised officer for the purposes of s252A of the Migration Act
1.2.43	Do not: <ul style="list-style-type: none"> <li>ask a detainee to adopt certain postures or positions that compromise the privacy and dignity of the detainee</li> <li>take a photo or video of the detainee when they are naked or undressing</li> <li>use or disclose any of the detainee's 'personal information' except in accordance with the Privacy Act, the ABF Act and (if applicable) the Migration Act.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.2.44	Video and audio record the strip search procedure avoiding <b>any video recording of the detainee during the act of undressing or when undressed.</b> <b>See: 'Detention SOP – Audio and Video Recording'.</b>	Authorised officer for the purposes of s252A of the Migration Act
1.2.45	Do not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search. Do not use more force than is reasonably necessary to conduct the search. Do not search the detainee's body cavities.	Authorised officer for the purposes of s252A of the Migration Act
1.2.46	Do not remove, or cause to be removed, more items of clothing than is believed on reasonable grounds to be necessary.	Authorised officer for the purposes of s252A of the Migration Act
1.2.47	Lodge video and audio footage with the ABF in accordance with 'Detention SOP – Audio and Video Recording'.	Authorised officer for the purposes of s252A of the Migration Act

Serial	Action	Responsible entity
1.2.48	<p>Under s 252C, an authorised officer can take possession of and retain a thing found during a strip search if:</p> <ul style="list-style-type: none"> <li>(a) the thing might provide evidence of the commission of an offence against the Migration Act, or</li> <li>(b) the thing is a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee to escape from immigration detention.</li> </ul> <p>Handle the thing in accordance with 'Detention SOP – Control of Items' and 'Detention SOP – Evidence Management'.</p>	Authorised officer for the purposes of s252A of the Migration Act
1.2.49	<p>If the thing might provide evidence of the commission of an offence against the Migration Act:</p> <ul style="list-style-type: none"> <li>(a) complete a Property Receipt Form</li> <li>(b) place the original of the receipt on the detainee's file</li> <li>(c) provide a copy of the receipt to the detainee</li> <li>(d) manage any evidentiary items in accordance with 'Detention SOP – Evidence Management'.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.2.50	<p>If the thing is a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee to escape from immigration detention:</p> <ul style="list-style-type: none"> <li>(a) no receipt is required to be given to the detainee</li> <li>(b) the thing must be given to a constable as defined in the <i>Crimes Act 1914</i> (Cth)</li> <li>(c) manage the thing in accordance with 'Detention SOP – Evidence Management'.</li> </ul>	Authorised officer for the purposes of s252A of the Migration Act
1.2.51	<p>If an authorised officer takes possession of a thing under s 252C which might provide evidence of the commission of an offence against the Migration Act, he or she must deal with the thing in accordance with s 252C of the Migration Act. That section imposes a time limit on how long the thing can be retained.</p> <p><b>Note:</b> Sections 252D and 252E deal with authorised officers applying to a magistrate for a thing to be retained for a further period of time.</p>	Authorised officer for the purposes of s252A of the Migration Act
1.2.52	Any other items found during a strip search that are a controlled, excluded or prohibited item can be taken possession of and handled in accordance with 'Detention SOP – Control of Items' and 'Detention SOP – Evidence Management'.	Authorised officer for the purposes of s252A of the Migration Act
1.2.53	If any clothing is damaged, destroyed or retained, provide the detainee with adequate replacement clothing.	Authorised officer for the purposes of s252A of the Migration Act
1.2.54	Offer counselling and medical assessment to the detainee.	Authorised officer for the purposes of s252A of the Migration Act
1.2.55	Arrange counselling and medical assessment for detainee if	Authorised officer for



Serial	Action	Responsible entity
1.2.56	<p>requested.</p> <p>At conclusion of the strip search, complete an incident report:</p> <ul style="list-style-type: none"> <li>ensure it contains all information specified in DSM, Chapter 8 – Safety and Security – Information to be contained in the record</li> <li>attach the Senior Executive officer's approval to the record.</li> </ul>	<p>the purposes of s252A of the Migration Act</p> <p>Authorised officer for the purposes of s252A of the Migration Act</p>
1.2.57	Submit an incident report to the Detention Operations Section using the CCMD portal within six hours of the search.	FDSP FOM
1.2.58	Ensure report to the ABF Detention Superintendent as soon as reasonably practicable but within 24 hours, on the use of the powers under sections 252A and 252B of the Act.	FDSP FOM
1.2.59	Notify Strategic Border Command of the strip search.	ABF Detention Superintendent
1.2.60	<p>Prepare and submit a brief on the strip search that was undertaken, within 24 hours of the authorisation for the strip search, to the Minister and Secretary.</p> <p>See DSM, Chapter 8 – Safety and Security – Strip search of detainees (Attachments I and J).</p> <p><i>Brief on strip search of detainee</i></p> <p>TRIM ADD2013/1051351</p>	Assistant Commissioner Detention Compliance and Removals
<b>1.3</b>	<b>Strip search of detainee aged at least 10 but under 18 years old</b>	
1.3.1	Refer to 'Detention SOP – Management of Minors in Detention' for information about conducting a strip search of a detainee aged at least 10 but under 18 years old.	Authorised officer for the purposes of s252A of the Migration Act

## Section 6 - Strip searches of minors

### **Important information relevant to this section:**

- Minors under the age of 10 must not be strip searched.
- Minors who are at least 10 but under 18 years of age can only be strip searched with the authorisation of a Magistrate.

### **General information about strip searches of adult detainees**

A strip search can be undertaken on a detainee by an authorised officer, without a warrant, to find out whether they have hidden on them, in their clothing or in any property under their immediate control, a weapon or thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention. If other items are found that are suspected to be illegal (for example, illicit drugs), they may be retained and handed to the police.

A weapon or item might not have been revealed during screening or a pat down search but an officer might form a suspicion based on reasonable grounds that removal of the person's clothing and an inspection of their body (but not their body cavities) could reveal relevant items hidden from view.

A strip search may be undertaken irrespective of whether the detainee has been previously searched under s 252 or screened under s 252AA of the Migration Act.

A strip search is a necessarily intrusive act and can be extremely embarrassing to the detainee and others. It is a measure of last resort and should be applied only when other lesser measures have proven inconclusive or insufficient. Detainees must be treated with the utmost respect and dignity when being strip searched.

For further information about the s252A strip search power, see Detention SOP – Screening and search of detainees.

### **Strip searches of minors under the age of 10**

Minors under the age of 10 **must not be strip searched** (s252B(1)(f) of the Migration Act).

### **Strip searches of minors who are at least 10 but under 18**

A strip search may be undertaken on detainees who are at least 10 years old. Where the detainee is at least 10 but under 18, a greater degree of care and sensitivity must be followed to ensure the detainee's dignity and the appropriateness of the search conducted.

**A detainee who is at least 10 but under 18 years of age can only be strip searched with the authorisation of a magistrate.**

Authorised officers conducting a strip search must wear surgical/protective gloves in addition to the standard issue uniform.

This section sets out the procedures for undertaking strip searches of detainees under sections 252A and 252B of the Migration Act. It **does not apply** to persons in the following circumstances:

- the person is held in immigration detention in a prison or remand centre or a State or Territory, and a law of that State or Territory confers a power to search persons, or things in the possession of persons, serving sentences or being held in the prison or remand centre (see s 252F of the Migration Act); or
- the person (a suspected illegal foreign fisher or a suspected foreign offender) is detained in an IDF under the Fisheries Management Act, the Torres Strait Fisheries Act or the Environment Protection and Biodiversity Conservation Act.

Serial	Action	Responsible entity
<b>1.4</b>	<b>Strip search of detainee aged at least 10 but under 18 years of age</b>	
1.4.1	Advise an authorised officer that a detainee might have hidden on them, in their clothing or in a thing in their possession a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention.	Departmental staff or contractor
1.4.2	Establish that the person is at least 10 but under 18 years of age	Authorised officer for the purposes of s 252A of the Migration Act
1.4.3	If any doubt exists as to whether the detainee is over or under 18 years of age, but is clearly above 10 years of age, take action as if the detainee is at least 10 but under 18 years of age.	Authorised officer for the purposes of s 252A of the Migration Act
1.4.4	If any doubt exists as to whether the detainee is over or under 10 years of age, that detainee should be treated as if they are less than 10 years old. Do not proceed to consider whether to conduct a strip search. Inform the FDSP FOM about the situation.	Authorised officer for the purposes of s 252A of the Migration Act
1.4.5	<p>If satisfied that the detainee is at least 10 but under 18 years old, determine whether there are reasonable grounds to suspect that:</p> <ul style="list-style-type: none"> <li>(a) there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention; and</li> <li>(b) it is necessary to conduct a strip search of the detainee to recover that weapon or other thing.</li> </ul>	Authorised officer for the purposes of s 252A of the Migration Act
1.4.6	<p>The authorised officer may form a suspicion on reasonable grounds that the detainee is hiding a weapon or other thing on the basis of:</p> <ul style="list-style-type: none"> <li>• a search conducted under s 252 (whether by that officer or another officer); or</li> <li>• a screening procedure conducted under s 252AA (whether by that officer or another officer); or</li> <li>• any other information that is available to the officer.</li> </ul> <p><b>Note:</b> Reasonable suspicion may come from any of the following, but is not limited to:</p> <ul style="list-style-type: none"> <li>• information from a witness</li> <li>• unusual behaviour from the detainee</li> <li>• answers given to questions asked by the officer</li> <li>• the visible outline of something weapon-like hidden in the detainee's clothes that cannot be recovered using the screening and search powers in ss 252AA</li> </ul>	Authorised officer for the purposes of s 252A of the Migration Act

Serial	Action	Responsible entity
	and 252 of the Migration Act.	
1.4.7	<p>The authorised officer may form a suspicion on reasonable grounds that it is necessary to conduct a strip search to recover the weapon or other thing in circumstances such as (but not limited to):</p> <ul style="list-style-type: none"> <li>a detainee refusing on request to identify or hand over a weapon or item reasonably suspected to be hidden on their person.</li> </ul>	Authorised officer for the purposes of s 252A of the Migration Act
1.4.8	If the authorised officer determines that there are reasonable grounds to suspect the matters mentioned in serial 6.1.5 above, communicate this to the FDSP FOM.	Authorised officer for the purposes of s 252A of the Migration Act
1.4.9	<p>If the FDSP FOM agrees with the authorised officer, consult with the HSM to establish whether there are any health issues precluding the strip search or whether any health issues exist that could be exacerbated by the strip search.</p> <p><b>Note:</b> Implement any steps that the HSM recommends to mitigate the effect of the strip search on the detainee.</p>	FDSP FOM
1.4.10	Consider the individual circumstances of the detainee including relevant medical and health history and present findings to the FDSP FOM.	HSM
1.4.11	<p>Brief the FDSP Centre Manager on the need for the search and any issues affecting the conduct of that search.</p> <p>Ensure the officer who will conduct the strip search (if the strip search is authorised) is an 'authorised officer' for the purposes of s 252A of the Migration Act.</p>	FDSP FOM
1.4.12	<p>Complete the checklist contained in DSM, Chapter 8 – Safety and Security – Strip searches of detainees (Attachment A):</p> <p><i>Detainees aged at least 10 but under 18 years</i></p> <p>TRIM - ADD2013/1051351</p>	Authorised officer for the purposes of s 252A of the Migration Act
<b>1.5</b>	<b>Obtaining authorisation from the Magistrate</b>	
1.5.1	<p>Complete a request for authorisation to conduct a strip search contained in DSM, Chapter 8 – Safety and Security – Strip searches of detainees (Attachment E):</p> <p><i>Request for/provision of an order by a magistrate to conduct a strip search of a detainee aged at least 10 but under 18 years</i></p> <p>TRIM - ADD2013/1051351</p>	Authorised officer for the purposes of s 252A of the Migration Act
1.5.2	Forward the completed application for a strip search to the ABF Detention Superintendent.	FDSP Centre Manager
1.5.3	Ensure the application has sufficient information in it to assist the Magistrate to make an informed decision with	ABF Detention Superintendent



Serial	Action	Responsible entity
	respect to the application.	
1.5.4	Submit the application for a strip search to the ABF Regional Commander.	ABF Detention Superintendent
1.5.5	Advise the Assistant Commissioner responsible for detention operations of the application and intended action.	ABF Regional Commander
1.5.6	<p>Submit the application to the relevant Magistrate in the appropriate state or territory. As a matter of practice, the application should be faxed or emailed to the Magistrate. Ensure that the Magistrate is aware that:</p> <ul style="list-style-type: none"> <li>the power to order the strip search of a detainee who is aged at least 10 but under 18 is conferred on the Magistrate in his or her personal capacity and not as a court or a member of a court (see s 252A(6A)); and</li> <li>the Magistrate need not accept the conferral of the power (see s 252A(6B)); and</li> <li>the Magistrate exercising a power under s 252A has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the Magistrate is a member (see s252A(6C)).</li> </ul>	ABF Regional Commander
1.5.7	<p>The Magistrate will review the application and decide whether to order a strip search on the detainee. The Magistrate can only order a strip search if he or she is satisfied that:</p> <ul style="list-style-type: none"> <li>there are reasonable grounds to suspect that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee escape from immigration detention; and</li> <li>there are reasonable grounds to suspect that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing; and</li> <li>the officer who will conduct the strip search is authorised for the purposes of s 252A of the Migration Act.</li> </ul>	Magistrate
1.5.8	<p>The Magistrate will advise the ABF Regional Commander of the decision whether to authorise the strip search. The authorisation can be given by phone, fax or other electronic means.</p> <p>The authorisation must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.</p> <p><b>Note:</b> 'business day' means a day that is not a Saturday, Sunday or public holiday in the place where the authorisation is given</p>	Magistrate

Serial	Action	Responsible entity
1.5.9	If the strip search is authorised, ensure the authorisation is recorded in writing, and signed by the person who gave the authorisation, within one business day after it is given.	ABF Regional Commander
1.5.10	Inform the ABF Detention Superintendent of the Magistrate's decision to authorise (or not authorise) the strip search.	ABF Regional Commander
1.5.11	Inform the FDSP Centre Manager of the Magistrate's decision to authorise (or not authorise) the strip search.	ABF Detention Superintendent
1.5.12	Inform the FDSP FOM of the Magistrate's decision to authorise (or not authorise) the strip search.	FDSP Centre Manager
1.5.13	Inform the authorised officer of the Magistrate's decision to authorise (or not authorise) the strip search.	FDSP FOM
1.5.14	If the Magistrate did not authorise a strip search, consult with the FDSP Centre Manager and make an operational decision about appropriate placement and management to mitigate any threats or risk.	ABF Detention Superintendent
1.5.15	If the Magistrate did authorise a strip search, ensure the authorised officer is appropriately trained and qualified to undertake the strip search. See DSM, Chapter 8 – Safety and Security – Strip search training requirements.	FDSP FOM
1.5.16	Ensure that an authorised officer still holds the reasonable suspicions mentioned in <b>serial 6.1.5</b> above. <b>Note:</b> The authorised officer who holds the reasonable suspicions mentioned in <b>serial 6.1.5</b> above does not need to be the authorised officer who conducts the strip search.	FDSP FOM
1.5.17	Ensure the authorised officer who will conduct the strip search is of the same sex as the detainee who will be strip searched: <ul style="list-style-type: none"> <li>record any conversations, specific requests and subsequent approvals and actions.</li> </ul>	Authorised officer for the purposes of s 252A of the Migration Act
1.5.18	The strip search must be conducted in the presence of: the detainee's parent or guardian if that person is in immigration detention with the detainee and is readily available at the same place; or if that does not apply or is not acceptable to the detainee, the strip search must be conducted in the presence of another person (other than an authorised officer) who is capable of representing the detainee's interests and who, as far as practicable in the circumstances, is acceptable to the detainee. <b>Note:</b> The detainee's parent or guardian need not be of the same sex as the detainee.	Authorised officer for the purposes of s 252A of the Migration Act

Serial	Action	Responsible entity
	A person capable of representing the detainee's interests does not need to be of the same sex as the detainee, provided the detainee has no objection to that person being present during the strip search.	
1.5.19	<p>Ensure another person is present, preferably another authorised officer, to represent the interests of the Department and mitigate any false accusations of impropriety.</p> <p>The person must not be of the opposite sex to the detainee unless:</p> <ul style="list-style-type: none"> <li>the person is a medical practitioner; and</li> <li>a medical practitioner of the same sex as the detainee is not available within a reasonable time.</li> </ul>	Authorised officer for the purposes of s 252A of the Migration Act
1.5.20	<p>Use an interpreter as required in accordance with 'Detention SOP – Interpreting and Translating'.</p> <p>If the interpreter is present at the strip search (i.e. the interpreter is not providing their services by telephone), the interpreter must be of the same sex as the detainee.</p>	Authorised officer for the purposes of s 252A of the Migration Act
1.5.21	Explain to the detainee why they are going to be strip searched.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.22	Explain the legal authority for the strip search.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.23	<p>Before any information is obtained, ensure the detainee has been provided with Form 1442i 'Privacy Notice' and the FDSP Privacy Notice at induction in accordance with 'Detention SOP – Reception and Induction of Detainees'</p> <p>In addition, ensure the detainee is aware of:</p> <ul style="list-style-type: none"> <li>the purpose for which the personal information is being collected</li> <li>any legal authority for the collection of the personal information</li> <li>any person, body or agency to which the information collected is normally disclosed.</li> </ul>	Authorised officer for the purposes of s 252A of the Migration Act
1.5.24	<p>Provide the detainee with written information in a language they understand about the strip search.</p> <p>See DSM, Chapter 8 – Safety and Security (Attachment G).</p> <p><i>Information to be provided to a detainee about strip searches and the law</i></p> <p>TRIM ADD2013/1051351</p>	Authorised officer for the purposes of s 252A of the Migration Act
1.5.25	If required, have the interpreter explain the written information to the detainee either in person or by phone.	Authorised officer for the purposes of s 252A of the Migration Act

Serial	Action	Responsible entity
1.5.26	Ensure the detainee or their parent/guardian etc. has sufficient time to read and understand the information and to ask any questions about the strip search. Assist the detainee or their parent/guardian etc. to ensure that he or she either reads the written information or, with the assistance of an interpreter, is made aware of the information.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.27	Ask the detainee or their parent/guardian etc. sign an acknowledgement form, in a language they understand, acknowledging they have been given information about the search and that they have been given sufficient time to understand that information. See DSM, Chapter 8 – Safety and Security – Strip searches of detainees (Attachment H). <i>Acknowledgement form for a detainee who is to undergo a strip search</i> TRIM ADD2013/1051351	Authorised officer for the purposes of s 252A of the Migration Act
1.5.28	If the detainee and their parent/guardian etc. refuse to sign the acknowledgement form, record the refusal and any reasons, if provided, on the following form: <i>Acknowledgement form for a detainee who is to undergo a strip search</i> TRIM ADD2013/1051351	Authorised officer for the purposes of s 252A of the Migration Act
1.5.29	Provide a copy of the acknowledgement form to the detainee or their nominated representative.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.30	Place copy of the acknowledgement form on the detainee's file.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.31	Conduct the strip search in a private area which assists in maintaining the dignity and privacy of the detainee and of the process.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.32	Conduct the strip search in accordance with the requirements of s 252A and s 252B, the applicable s499 direction about strip searches, and the required training and qualifications.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.33	Do not: <ul style="list-style-type: none"> <li>ask a detainee to adopt certain postures or positions that compromise the privacy and dignity of the detainee</li> <li>take a photo or video of the detainee when they are naked or undressing</li> <li>use or disclose any of the detainee's 'personal information' except in accordance with the Privacy Act, the ABF Act and (if applicable) the Migration Act.</li> </ul>	Authorised officer for the purposes of s 252A of the Migration Act



Serial	Action	Responsible entity
1.5.34	Video and audio record the strip search procedure <b>avoiding any video recording of the detainee during the act of undressing or when undressed.</b> <b>See:</b> 'Detention SOP – Audio and Visual Recording'.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.35	Do not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search. Do not use more force than is reasonably necessary to conduct the search. Do not search the detainee's body cavities.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.36	Do not remove, or cause to be removed, more items of clothing than is believed on reasonable grounds to be necessary.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.37	Lodge video and audio footage with the ABF in accordance with 'Detention SOP – Audio and Visual Recording'.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.38	Under s 252C, an authorised officer can take possession of and retain a thing found during a strip search if: <ul style="list-style-type: none"> <li>the thing might provide evidence of the commission of an offence against the Migration Act, or</li> <li>the thing is a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee to escape from immigration detention.</li> <li>Handle the thing in accordance with Detention SOP – Control of Items and Detention SOP – Evidence Management.</li> </ul>	Authorised officer for the purposes of s 252A of the Migration Act
1.5.39	If the thing might provide evidence of the commission of an offence against the Migration Act, follow procedures in 'Detention SOP – Control of Items'.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.40	If the thing is a weapon or other thing capable of being used to inflict bodily injury or to help the detainee or any other detainee to escape from immigration detention, follow procedures in 'Detention SOP – Control of Items'.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.41	If an authorised officer takes possession of a thing under s 252C, which might provide evidence of the commission of an offence against the Migration Act, he or she must deal with the thing in accordance with s 252C of the Migration Act. That section imposes a time limit on how long the thing can be retained. <b>Note:</b> Sections 252D and 252E deal with authorised officers applying to a magistrate for a thing to be retained for a further period of time.	Authorised officer for the purposes of s 252A of the Migration Act

Serial	Action	Responsible entity
1.5.42	Any other items found during a strip search that are a controlled, excluded or prohibited item can be taken possession of and handled in accordance with 'Detention SOP – Control of Items' and 'Detention SOP – Evidence Management'.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.43	If any clothing is damaged, destroyed or retained, provide the detainee with adequate replacement clothing.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.44	Offer counselling and medical assessment to the detainee.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.45	Arrange counselling and medical assessment for detainee if requested.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.46	At conclusion of the strip search, complete an incident report: <ul style="list-style-type: none"> <li>ensure it contains all information specified in DSM, Chapter 8 – Safety and Security – Information to be contained in the record</li> <li>attach the magistrate's order to the record.</li> </ul>	Authorised officer for the purposes of s 252A of the Migration Act
1.5.47	Submit an incident report to the Detention Operations Section using the CCMD portal.	Authorised officer for the purposes of s 252A of the Migration Act
1.5.48	Submit an incident report to Detention Operations Section within six hours of the search.	FDSP Operations Manger
1.5.49	Ensure report to the ABF Detention Superintendent as soon as reasonably practicable but within 24 hours, on the use of the powers under sections 252A and 252B of the Act.	FDSP FOM
1.5.50	Notify Strategic Border Command of the strip search	ABF Detention Superintendent
1.5.51	Prepare and submit a brief on the strip search that was undertaken, within 24 hours of the authorisation for the strip search, to the Minister and Secretary. <b>See:</b> DSM, Chapter 8 – Safety and Security – Strip search of detainees (Attachments I and J). Brief on strip search of detainee TRIM ADD2013/1051351	Assistant Commissioner Strategic Border Command