

# **Detention Services Manual**

## **Chapter 8 – Safety and security**

### **Items not permitted in immigration detention**

#### **1. BACKGROUND**

The risk mitigation strategies used to manage the good order and security at immigration detention facilities (IDFs) ensure the health and safety of all those in that facility. A primary risk mitigation strategy is placing conditions on the entry and use of particular items. Those items may be the property of either: the detainees, the detention service provider (DSP), departmental officers or visitors. Arrangements for exceptional circumstances which exist at individual types of facilities are also identified in this instruction.

#### **2. PURPOSE AND SCOPE**

This instruction provides Departmental and DSP officers (including Health Services Manager personnel) with guidance on the management of items that may present a risk to the health, security and good order of IDFs. This instruction applies to:

- Immigration Detention Centres (IDC);
- Immigration Transit Accommodation (ITA);
- Immigration Residential Housing (IRH); and
- facility-based Alternative Places of Detention (APODs)

Discretionary decisions may be made on an individual basis by the department Regional Manager for issues which have not been anticipated by this policy.

This instruction does not apply to people in Community detention or non-facility based APODs, See [LINK] s97A(b) of the *Migration Act 1958* (the Act)

For further information on the types of facilities in the IDF network, see relevant instructions in [LINK] *PAM3: Act - DSM - Chapter 2 - Client placement*; and [LINK] *DSM – Chapter 2 – Client placement – Placement options within the immigration detention network*.

#### **3. PRINCIPLES**

The department has a duty of care towards detainees, DSP and departmental personnel and visitors, see [LINK] *DSM Chapter 1: Legislative and Principles Overview- Service Delivery Values*. The department must exercise reasonable care to protect them from any reasonably foreseeable harm by providing a safe and healthy environment, by excluding specific categories of items from entering IDFs.

#### **4. LEGISLATIVE FRAMEWORK**

This instruction is based on Sections 252 – 252G of the Act which outlines the legislative framework for conducting searches and screening procedures in IDF.

#### **5. SCREENING PEOPLE IN IMMIGRATION DETENTION**

All detainees are subject to screening by DSP personnel. S252(2) [LINK] permits an officer to search a detainee, their clothing and any property under their immediate control, without a warrant, for a weapon or item capable of inflicting injury or to assist with escape.

S252c(1) [LINK] allows an authorised officer to take possession of and retain items found in the course of screening or the conduct of a strip search under [LINK] s252A, if the item found may provide evidence of a commission of an offence against the Act or is forfeited or forfeitable to the Commonwealth. See: [LINK] *DSM - Chapter 8 - Safety and security - Searches of People in Immigration Detention*. Should an illegal item be found during a search or a screening procedure of a detainee [LINK] s252(1)(a) or s252AA(1) or s252A, the item must be dealt with according to established procedures, see [LINK] *DSM Chapter 8 - Safety and security - Screening of persons in immigration detention* for additional information.

## **6. SCREENING VISITORS**

### **6.1 Immigration Detention Centres (IDC)**

Under s252G(1) of the Act, an authorised officer may request a visitor to an IDC to undergo a non-intrusive screening procedure. The agreement of the visitor is required before screening. Departmental officers or DSP personnel have no power under the Act to physically search a visitor. See: [LINK] *DSM: Chapter 4 – Screening & inspection powers: Entry to Immigration Detention Centre*.

Following screening, if there is reasonable suspicion that a visitor has illegal, excluded or controlled items in their possession, they may be asked to surrender the item and can be refused entry if they do not comply. Visitors can also be refused entry if they are unwilling to comply, as a condition of entry into an IDC, to undergo screening, see: [LINK] *DSM - Chapter 4 – Communication & Visits - Visitors & entry to immigration detention facilities*.

### **6.2 Immigration Residential Housing (IRH), Immigration Transit Accommodation (ITA) and facility-based Alternative Places of Detention (APOD)**

The powers set out in s252g of the Act do not apply to alternative places of detention such as IRH and ITA or facility based APOD, as these facilities are not immigration detention centres established under s273 of the Act. However, as these facilities are owned or occupied by the department, the department is entitled under common law, to impose conditions of entry for visitors to these premises.

Visitors wishing to enter ITAs, IRH and facility based APODs are required to sign a Conditions of Entry form (in conjunction with the Visitor Application form) which sets out the screening and inspection processes for their entry to such premises. Refusal to sign this form entitles the department to refuse entry to the facility.

Even on giving consent to being screened, a visitor may still be refused entry to an ITA, IRH or facility based APOD [LINK] s252G (4):

- if they refuse to present items in their possession for screening;
- if in possession of an item that is not permitted in a facility and refuse to hand it over; or
- where there is reasonable suspicion that a visitor possesses such an item.

See: [LINK] *DSM - Chapter 4 - Communication & Visits - Visitors and entry into immigration detention facilities - Section 7.1 Power to refuse entry - s252G(7)*.

### **6.3 Recording refusal of entry to visitors**

Should a person be refused entry into an IDF, especially for a high profile visit, the DSP must record the refusal as an incident and follow incident reporting procedures.

## **7. CATEGORY OF ITEMS**

Decisions as to whether items may be brought into an IDF are to be recorded in accordance with normal reporting procedures. Any disputes over whether particular items are permitted in the IDF, or conditions of entry and use, are to be escalated to the Regional Manager for a for decision and later confirmed in writing.

Visitors may be provided with access to secure lockers or secure storage areas for items that are not permitted to be brought into the IDF and other items they decide not to take into the IDF. See[LINK]: *DSM Chapter 4 – Communication and Visits – Visitors and entry into immigration detention facilities.*

### **7.1 Mobile phones**

IMAs and other people within border screening are not permitted to possess mobile telephones, see [LINK] DSM Chapter 2 – Client Placement – Border screening detention.

### **7.2 Illegal items**

Examples of illegal items as defined under Australian law include, but are not limited to, illicit drugs and weapons.

### **7.3 Excluded items**

Excluded items are otherwise lawful in the Australian community but are not permitted in an IDF in any circumstances because they present risks to the health, privacy, security or safety of those in the facility, or they are offensive to others. Excluded items that belong to a detainee, but are not permitted in the IDF, are to be stored as ‘in-trust’ property or otherwise dealt with in accordance with departmental procedures. For examples of items which are excluded. See: *[LINK] ‘List A’ in Attachment.*

### **7.4 Controlled items**

Controlled items are otherwise lawful in the Australian community. See: [LINK] ‘List B’ in Attachment for examples. Decisions about bringing controlled items into the IDF are to be made by the Regional Manager in consultation with DSP Centre Manager.

Any disputes about the entry of a controlled item into an IDF, or the conditions of entry and use, are to be referred to the Regional Manager for resolution. The decision may include the requirement to register the item with the DSP; only use the item in the presence of a DSP officer; or to prevent entry of the item into a facility.

Under these conditions, the DSP may permit staff, personal and professional visitors to bring certain ‘controlled’ items into the IDF and apply certain conditions of entry and use. Prior approval should be sought by these visitors when bringing such items into an IDF. See [LINK]: DSM Chapter 4 – Communication and visits – Visitors and entry into immigration detention facilities.

Controlled items that belong to a detainee, but are not permitted in the IDF, are to be stored as ‘in-trust’ property or otherwise dealt with in accordance with departmental procedures.

### **7.5 Removal of potentially dangerous items during heightened tensions**

In preparation for potential disturbances when intelligence indicates unrest within an IDF, any items that are potentially dangerous and can be misused during a disturbance, must be locked away securely or removed from the facility by DSP staff. Examples of such items can include: sharp kitchen implements; items used by the HSM, including syringes; and any on-site tools used in the course of maintenance or construction.

## **8 ITEMS PERMITTED IN IMMIGRATION ALL DETENTION FACILITIES**

Items permitted in all IDFs are those that are not detrimental to a person’s health and the good order and security of the facility. Decisions about permitting items in an IDF are to be made by DSP staff. *See: [LINK] ‘List C’ in Attachment* for examples.

## **9 ITEMS PERMITTED IN IRH**

IRH provides a flexible and supportive housing environment for detainees who are assessed as low flight and security risks. Because IRH are designed to resemble a normal domestic environment and those accommodated in them meet the risk criteria, a number of items used in a household environment but normally controlled or excluded in other IDFs, are allowed in an IRH. For examples, see: *[LINK] ‘List C’ in Attachment*.

The DSP must regularly assess each person’s ability to responsibly use the items allowed into an IRH. The DSP has the discretion as to which items are permitted in IRH. Any disputes about whether items are permitted in IRH or conditions of entry and use are to be resolved by the Regional Manager.

## **10 INCIDENT REPORTING**

Examples of incidents involving the management of controlled or excluded items from entering an IDF, may include: a critical incident such as the refusal of entry to a high profile visitor, minor incidents such as a minor disturbance, visitors refused access, or a prohibited article or substance being found.

In these circumstances, the DSP must raise an incident report in accordance with contractual incident reporting procedures whenever there is a critical, major or minor incident. See [LINK]: *DSM Chapter 8 – Safety and Security – Incident management and reporting*.

## **ATTACHMENT**

### **LIST A: EXCLUDED ITEMS**

Excluded items include:

- all mobile phones for IMAs;
- alcohol;
- non-prescribed pharmaceutical medication;
- traditional medical remedies;
- prescribed pharmaceutical medication not supported by a medical certificate and not cleared by the HSM for personal use by the detainee;
- travel and identity documents, including passports;
- personal equipment such as cameras, mobile phones or other communication technology with Personal Internet Enabled Devices (PIED), internet, audio, photographic or videoing recording capabilities;
- pornographic books, magazines or related material; and
- material that incites violence, racism or hatred.

### **LIST B: CONTROLLED ITEMS**

Categories of controlled items that may present a risk to health and safety of people in immigration detention, visitors and staff, include, but are not limited to:

- Perishable foods (such as cured, air-dried or fermented products, uncooked animal or fish products and eggs) brought in, or provided to detainees for personal use by visitors:
  - these items are restricted to pre packaged sealed containers with a use-by date for management of appropriate short-term storage and not resold or traded within IDFs;
- subject to HSM advice, brand name non-prescribed complementary health care supplements (e.g. vitamin and minerals);
- sharp items, including syringes, knives, scissors or razor blades;
- outside contractor tools and equipment;
- glass items, including mirrors and picture frames;
- electrical items may be brought in, with prior approval for use by detainees, subject to space and safety considerations and, a current electrician's certificate stating compliance with relevant safety regulations;
- aerosol and pressure propelled products;
- professional, craft, sporting equipment and other tools used for programs and activities run by approved visitors – must be removed at the end of the activity visit; and
- items used in religious worship, such as sacramental wine, candles or religious instruments such as Sikh dagger/Kirpan, provided by an approved religious visitor – must be consumed or removed at the end of the visit.

Examples of controlled items that may present a risk to privacy, safety or security include, but are not limited to:

- computers with modem;
- communication devices and PC peripherals - including, but not limited to USB storage devices, flash drives, disk drives, scanners, printers or MP players with audio recording capabilities;
- cash, cheques and bank cards; and
- personal photographs, including photographic identification documents.

**LIST C: ITEMS PERMITTED IN ALL IDFs**

**IMMIGRATION DETENTION FACILITIES**

Examples of items permitted in IDFs include:

- personal items such as clothing, MP players without recording capabilities, battery radios and non-aerosol personal toiletries;
- mobile phones without camera or recording capabilities (except for irregular maritime arrivals and those in border screening detention); and
- computers without modems, camera and audio recording capability.

**IMMIGRATION RESIDENTIAL HOUSING**

In addition to the above items permitted in IDFs, the following controlled items may be provided and used by persons accommodated in IRH:

- kitchen equipment, including a reasonable range of knives and other implements used for preparing meals on a daily basis within IRH;
- sports equipment used on a casual basis for personal recreation;
- art and craft tools that can be reasonably used within IRH for personal recreation; and
- IHMS prescribed medicines for personal use and first aid equipment.