



# Immigration Detention Centres

## Searches at immigration detention facilities

Searches of rooms occupied by detainees at immigration detention facilities (eg sleeping quarters) require a search warrant, other applicable search power or the consent of the detainee themselves. The consent or agreement of the Department of Home Affairs (HA)/Australian Border Force (ABF), or a contractor performing functions at the facility such as s 47E(d), is unlikely to be sufficient to authorise the entry into detainees' rooms to carry out a search of the room. However, if a search is only to be carried out in common areas, public areas or administrative areas of an immigration detention facility, the consent or agreement of HA, ABF or a relevant contractor will be sufficient to authorise such a search.

If a search of a detainee's room is required for the investigation of a Commonwealth offence, a search warrant under section 3E of the *Crimes Act 1914* (Cth) should be obtained.

Where the relevant facility is a Commonwealth place (eg Villawood Immigration Detention Centre) and a search of a detainee's room is required for the investigation of a State offence (as applied by the *Commonwealth Places (Application of Laws) Act 1970* (Cth)), a search warrant or other applicable search power under relevant State laws will be required. Only State police, or AFP members who are special constables of the relevant State police force and whose instrument of appointment allows, are able to obtain a search warrant under applied State laws. See the [BPG on Application of Laws at Immigration Detention Facilities](#) for further information on operation of State laws in Commonwealth places.

Searches of the person of a detainee should be carried out under a search warrant (or other applicable State search power) unless a specific *Migration Act 1958* (Cth) power can be relied

upon. *Migration Act* search powers are specific to locating certain types of items, so may not be broad enough to allow a search for the type of evidential material that may be sought in all cases. For example, section 252 of the *Migration Act* is limited to authorising a search of a detainee, their clothing and any property under their immediate control to find out whether they are holding a weapon or other thing capable of being used to inflict injury or help a person escape, or a thing that may be evidence for grounds to cancel their visa.

Use of force within immigration detention facilities

AFP members should be aware that there is some complexity concerning the ability of s 47E(d) employees, or other personnel performing relevant duties (eg Australian Border Force or Department of Home Affairs officers), to use force towards detainees at immigration detention centres (IDCs). This is due to a lack of clarity in the *Migration Act 1958* (Cth) surrounding the circumstances in which relevant officers are authorised to use force. The paper at the following link outlines the considerations AFP members should have regard to when handling reports of violence towards s 47E(d) and other officers at IDCs (*Summary of considerations for reports of 147.1 Criminal Code offences against s 47E(d) at IDCs*).

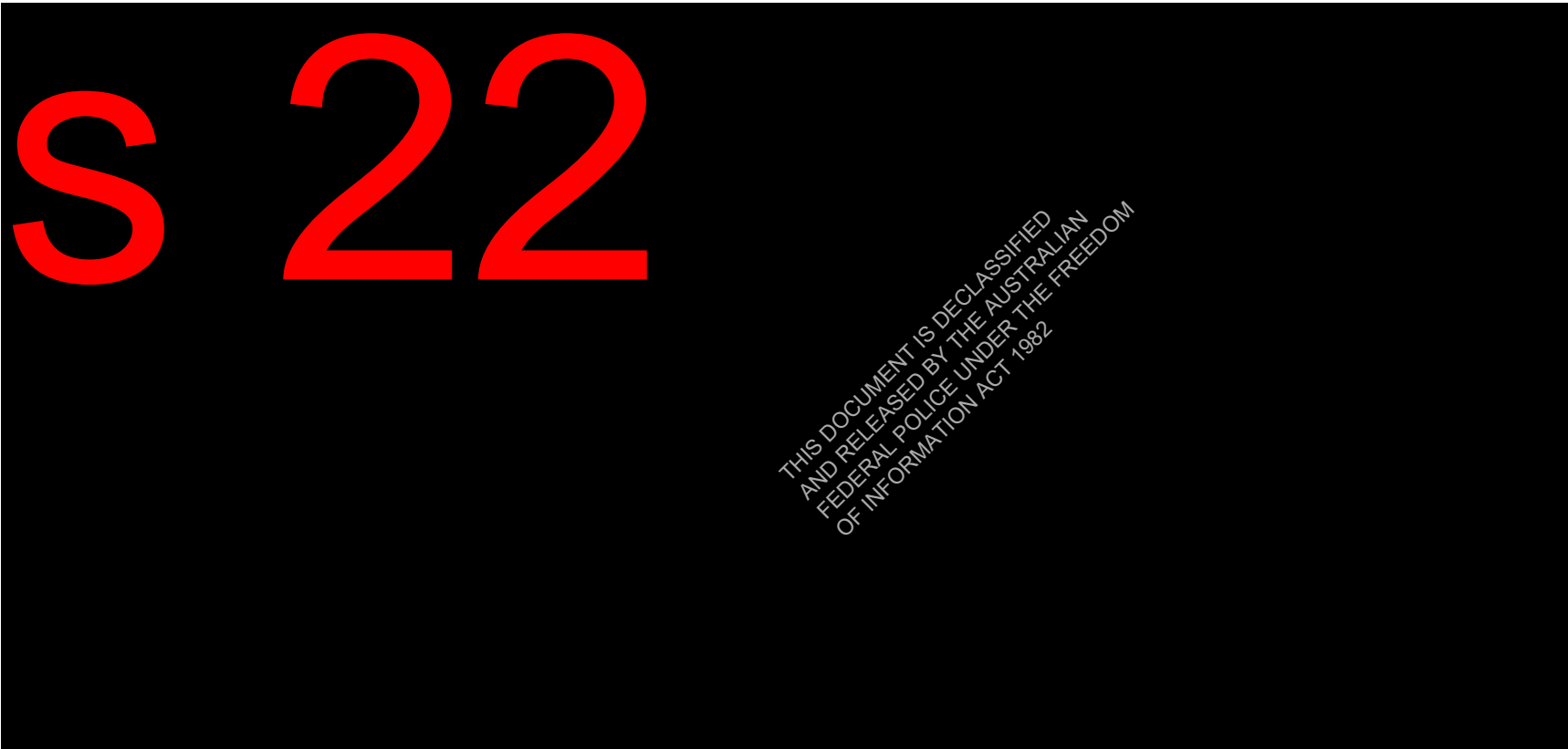
The issues arise because, while relevant officers at an IDC can clearly use force under the *Migration Act* against immigration detainees to prevent their escape, there is currently no clear power to use force for the purposes of the day-to-day management of an IDC or maintaining order within the facility. This means that the ability of relevant officers to use force to move a detainee from one section of an IDC to another, for example, to accommodate new detainees or to minimise disputes between particular detainees is limited. Note that there are some specific circumstances where use of force against a detainee is authorised, for example, during the carrying out of a search of a detainee under a specific search power.

The complexity surrounding this issue means that in deciding a course of action AFP members should carefully consider the particular circumstances of any report of violence against s 47E(d) or other relevant officers in IDCs, taking into account the range of considerations raised in the paper mentioned above.

## Further guidance material

- [Police Powers in Immigration Detention Facilities comparative table](#)
- [Summary of considerations for report of 147.1 Criminal Code offences against s 47E\(d\) at IDCs](#)

## Governance and External Agreements



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