

**MIGRATION ACT 1958
DIRECTION UNDER SECTION 499**

**SCREENING PROCEDURES IN RELATION TO
IMMIGRATION DETAINEES**

Direction No. 26

PREAMBLE

This Direction gives guidance to authorised officers who pursuant to section 252AA of the *Migration Act 1958* (the Act) may conduct a screening procedure, without warrant, in relation to an immigration detainee. A screening procedure means:

- causing a detainee to walk, or to be moved, through screening equipment; or
- passing hand-held screening equipment over or around a detainee or around things in a detainee's possession; or
- passing things in a detainee's possession through screening equipment or examining such things by X-ray.

The legislative provisions and this Direction reflect the need to provide a sound framework which:

- recognises the need for the Department of Immigration and Multicultural Affairs (the Department), in furtherance of the duty of care owed to, and its responsibilities for the safety and security of, all immigration detainees, staff and other persons at detention centres, to lawfully conduct screening procedures on immigration detainees if and when the circumstances require it;
- provides the Department with the powers to meet its obligations with regard to managing and maintaining the good order or security arrangements of detention centres;
- reflects community expectations of the preservation of the dignity and privacy entitlements of detainees undergoing a screening procedure;
- provides safeguards for the rights of detainees undergoing a screening procedure; and
- provides appropriate levels of protection for officers in the execution of their duties.

THEREFORE I, Philip Maxwell Ruddock, the Minister for Immigration and Multicultural Affairs, hereby give the following direction pursuant to section 499 of the Act.

1. This direction may be cited as Direction No. 26.

RESPECT AND DIGNITY

2. An authorised officer conducting a screening procedure in relation to a detainee under section 252AA of the Act must treat the detainee with respect and dignity as far as it is possible to do so.

PRIVACY

3. An authorised officer conducting a screening procedure in relation to a detainee under section 252AA of the Act must respect the privacy of the detainee as far as it is possible to do so.
4. An authorised officer conducting a screening procedure in relation to a detainee under section 252AA of the Act must comply with the Commonwealth *Privacy Act 1988* (the Privacy Act) as well as other relevant legislation.
5. In accordance with Information Privacy Principle 2 contained in section 14 of the Privacy Act, an authorised officer should ensure that before any personal information is obtained as a result of the exercise of the power under section 252AA of the Act, a detainee is made aware of:
 - the purpose for which the personal information is being collected;
 - any legal authority for the collection; and
 - any person, body or agency to which the information to be collected is normally disclosed.
6. An authorised officer must not use or disclosure any personal information collected as a result of conducting a screening procedure under section 252AA of the Act other than in accordance with Information Privacy Principles 10 and 11 of the Privacy Act.
7. For the purposes of clause 5 and clause 6, personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion [Privacy Act, s.6].
8. When conducting a screening procedure in relation to a detainee under section 252AA of the Act, an authorised officer **must not** do any of the following:
 - remove any of the detainee's clothing nor require a detainee to remove any of his or her clothing; or
 - pass on personal information about a detainee, except in accordance with the disclosure and use of personal information under the Privacy Act and other relevant laws.

9. If another authorised officer assists with the conduct of a screening procedure under section 252AA of the Act, then he or she must also adhere to these directions.

CONDUCTING A SCREENING PROCEDURE IN RELATION TO A DETAINEE

10. An authorised officer conducting a screening procedure in relation to a detainee under section 252AA of the Act **must**:
 - i. be an officer authorised to conduct screening procedures on detainees;
 - ii. explain to the detainee the reason or reasons for the screening procedure;
 - iii. ensure the rules for conducting a screening procedure as set out in the Act (s252AA) are followed; and
 - iv. ensure that, if he or she takes possession of and retains an item or items found during the search, then the relevant provisions of the Act are followed (s252C).
11. A screening procedure **must not**:
 - i. subject the detainee to greater indignity than is reasonably necessary to conduct the screening procedure;
 - ii. be conducted for any reason other than those provided for in subsection 252AA(1) of the Act or for no reason at all;
 - iii. be conducted by an officer who is not an authorised officer for the purposes of conducting the screening procedure;
 - iv. involve the removal of any of the detainee's clothing;
 - v. involve the use of greater force than is reasonably necessary to conduct the screening procedure; or
 - vi. contravene the requirements set out at Clause 8 of this Direction.

USE OF REASONABLE FORCE WHEN CONDUCTING A SCREENING PROCEDURE

12. If a detainee refuses to undergo a screening procedure under section 252AA of the Act and it appears that reasonable force may be required, the authorised officer conducting the screening procedure **must**:
 - i. advise the detainee that section 252AA allows reasonable force to be used in order to conduct a screening procedure;

- ii. advise the detainee that unless cooperation is forthcoming, the authorised officer intends to use reasonable force in order to conduct the screening procedure;
 - iii. allow the detainee a reasonable period in which to voluntarily submit to the screening procedure;
 - iv. only proceed to use reasonable force to conduct the screening procedure with the approval of and under the supervision of his or her line manager; and
 - v. if appropriate, seek the assistance of another authorised officer prior to conducting the screening procedure.
13. If reasonable force is required in order to conduct a screening procedure under section 252AA of the Act, an authorised officer who intends to use reasonable force **must** have regard to the following principles when deciding the level of force required:
- i. it is a matter for the judgement of the authorised officer as to the level of force required in each particular situation but the level of force used must be objectively justifiable as reasonable;
 - ii. the amount of force used will not be reasonable unless it is proportionate to the amount of resistance offered by the detainee; and
 - iii. reasonable force should only be used when no other options are available (refer to clause 12);
14. If reasonable force is used during the conduct of a screening procedure, the authorised officer who conducted the screening procedure should record in an accurate and timely manner the circumstances surrounding his or her use of reasonable force. Any personal information contained in this record must be handled in accordance with the Privacy Act.

DATE OF EFFECT

21. This Direction has effect from 28 September 2001.

Dated 27 September 2001

PHILIP RUDDOCK
Minister for Immigration and Multicultural Affairs