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Detention Services Manual- Safety and security management - Use of force

Procedural Instruction

This Procedural Instruction describes the concept of use of force and how force may be applied, and must be reported, when used in the immigration detention network.

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1. Introduction

1.1. Purpose

- 1.1.1. This Procedural Instruction (PI) gives policy and procedural guidance to Australian Border Force (ABF) and Facilities and Detainee Services Provider (FDSP) officers on the use of force (UoF) and/or restraint to achieve lawful and operational outcomes in immigration detention facilities (IDFs), as specified in the *Migration Act 1958* (Migration Act).
- 1.1.2. This guidance is intended to minimise the risk of inappropriate UoF and risk of harm to detainees, officers and third parties, thereby reducing the risk of negative exposure of the ABF.

s. 22(1)(a)(ii)

1.2. Legislative framework

- 1.2.1. Section 252A of the Migration Act provides powers for allowing authorised officers to strip search a detainee in order to locate items that can inflict bodily injury and/or help a person to escape immigration detention.
- 1.2.2. In many cases, UoF is allowed under a specific legislative power, however, in other cases, officers may rely on common law or the law of the State or Territory (as applicable) to use reasonable force against a detainee to prevent self-harm, defend themselves or another person and/or to prevent damage to property.
- 1.2.3. Further relevant references of UoF under the Act are included in:
- s189 detention of unlawful non-citizens
 - s192 detention of visa holders whose visas liable to cancellation
 - s198 removal from Australia of unlawful non-citizens
 - s252(8) searches of persons
 - s252AA(2) power to conduct a screening procedure
 - s252B(1)(k) use of force in conducting a strip search
 - s253 detention of deportee and
 - s261AE(1)–(4) use of force in carrying out identification tests

s. 22(1)(a)(ii)

1.3. Guiding Principles

- 1.3.1. The guiding principles in relation to the application of UoF and/or restraint in the immigration detention environment is encapsulated in the immigration values s. 22(1)(a)(ii) which states that detainees

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will be treated fairly and reasonably within the law and that conditions of immigration detention will ensure the inherent dignity of the human person.

2. Scope

2.1. In Scope

- 2.1.1. This PI provides guidance to all officers who may be required to use force in the performance of their duties in the immigration detention network (including where a detainee is outside of an immigration detention facility, but remains in 'immigration detention' as defined in s5(1) of the Migration Act because, for example, they are in the company of, and restrained by, an officer).

2.2. Out of Scope

- 2.2.1. This PI does not apply to:
- officers that are not performing official duties
 - detainees subject to a Residence Determination (community placement) arrangement
 - compliance field operations.

s. 22(1)(a)(ii)

4. Procedural Instruction

4.1. Use of force

- 4.1.1. The following considerations and obligations apply to the application of force and/or restraint in the immigration detention network (IDN), where **restraint refers to physical rather than legislative**:

- **there is a presumption against the use of force**, including restraints, during movements within an IDF, transfers between IDFs, and during transport and escort activities outside of IDFs
- conflict resolution through **negotiation and de-escalation, where practicable, must be considered** before the UoF and/or restraint is used
- UoF and/or restraint should **only be used as a measure of last resort**
- the amount of force used and the application of restraints **must be reasonable**
- UoF and/or restraint may be used to **prevent the detainee inflicting self-injury, injury to others, escaping or destruction of property**
- UoF and/or restraint **may only be used for the shortest amount of time possible to the extent that it is both lawfully and reasonably necessary**. If the management of a detainee can be achieved by other means, force must not be used

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- UoF and/or physical restraint **must not** include cruel, inhumane or degrading treatments
- UoF and/or restraint **must not be used for the purposes of punishment**
- the excessive UoF and/or restraint is unlawful and **must not** occur in any circumstances, excessive force on a detainee may constitute an assault and
- all instances where UoF and/or restraint are applied (including any follow-up action), **must be reported** in accordance with the relevant FDSP operational procedures.

Planned use of force

- 4.1.2. Planned UoF, where planning to use force and approvals can be sought is considered normal business activities.
- 4.1.1. Under the FDSP contract, planned UoF includes a requirement for the FDSP to prepare a risk analysis and consult with the Detention Health Service Provider (DHSP) to ensure that no medical reasons preclude the UoF, including restraints, against a detainee.
- 4.1.2. In consulting with the DHSP on a planned UoF, the FDSP must document the request for information from the DHSP in writing, as well as any advice provided by the DHSP. Written advice received from the DHSP must be included in the UoF approval request submitted to the ABF Detention Superintendent (Facility).
- 4.1.3. Approval for planned UoF can be provided verbally in exceptional circumstances, where time constraints apply, but **must** be documented after the event in accordance with Incident Reporting Guidelines.
- 4.1.4. Planned UoF, including the use of restraints, **must not** commence prior to approval of the ABF Detention Superintendent (Facility) for the UoF being received. In the event that approval for intended UoF is not received in time, it becomes and must be reported as an unplanned UoF event.
- 4.1.5. Where there is a planned UoF involving more than one detainee (such as a bulk transfer operation), the planning documents for the operation must consider whether UoF/restraints are necessary in relation to each detainee on an individual basis. In this circumstance, authorisation must be separately obtained for the UoF/restraints in relation to each detainee. That is, there is to be no blanket consideration or approval given to planned UoF/restraints where multiple detainees are involved. In addition, there should be no presumption that a detainee should be restrained only because it is necessary to restrain another detainee.

Unplanned use of force

- 4.1.6. Unplanned UoF may be used in an immediate or emergency situation where a response is required and circumstances prevent an opportunity to seek approval, or prepare a risk analysis for using force and/or restraints.

4.2. Last resort principles

- 4.2.1. All UoF and/or restraint should be proportionate to the situation, objectively justifiable and only used as a measure of last resort. What this means is that the officer reasonably believes that there is no other option other than the UoF and/or restraint. The level of force must be proportionate to the threat being faced and always at the minimum level required to achieve legislative outcomes.
- 4.2.2. Force should not be used unless it is reasonably necessary to achieve a lawful outcome. In the first instance, officers should seek to achieve the desired objective, whenever possible, by de-escalation techniques such as discussion, negotiation, verbal persuasion and co-operation.

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- 4.2.3. All officers must assess every situation and use all options available that do not involve the UoF to manage any given situation. Planning (where possible) and effective communication are key elements in resolving matters before moving to UoF.

Examples where force may be used

- 4.2.4. Appropriate UoF and/or physical restraint in an IDF may be necessary to:
- prevent a minor from harming persons or preserve them from situations that would otherwise harm them
 - prevent escape
 - prevent a detainee from injuring themselves or others
 - manage riotous behaviour by a group of detainees
 - prevent a detainee inflicting damage to property
 - conduct a search procedure conduct a screening procedure or conduct a strip search procedure and/or
 - collect personal identifiers.

4.3. Identity issues

- 4.3.1. Officers must be aware of any specific legislative provisions related to vulnerable detainees. For example, s261AE of the Migration Act not does authorise the UoF on minors or 'incapable persons' when carrying out an identification test.
- 4.3.2. Officers who require advice about any identity issue or a potentially complex case should contact Complex Identity Advice (CIA) section on s22(1)(a)(ii).
- 4.3.3. For more information, refer to:

s. 22(1)(a)(ii)

- s. 22(1)(a)(ii) [@homeaffairs.gov.au](mailto:s22(1)(a)(ii)@homeaffairs.gov.au)

4.4. Detainees of special consideration

- 4.4.1. Officers must exercise care and informed decision making before using reasonable force and/or restraints against any detainee. However, vulnerable people and the existence of certain qualities or factors, which are not always readily identifiable or demonstrated, may contribute to a detainee's behaviour. These may, in turn, affect the decision to use force and/or restraints and the manner in which it is used.
- 4.4.2. The UoF **must always be reasonable** and officers **must consider the individual circumstances** of any detainee against whom force and/or restraints need to be used.
- 4.4.3. Detainees of special consideration are vulnerable persons that may include those:
- who are minors
 - requiring special medical attention
 - at risk of self-harm
 - with suspected mental health issues

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- with physical or known psychological vulnerabilities such as being victims of torture and trauma
 - suspected of having been the victims of people trafficking
 - that are frail and/or the elderly.
- 4.4.4. Officers must use greater care than would otherwise be required should reasonable force be warranted against a detainee of special consideration.
- 4.4.5. Where medical evidence is provided that supports a detainee's mobility being severely limited, for example through the use of crutches or a wheelchair, there is a presumption against the use of restraints against that detainee.
- 4.4.6. Officers must be aware of the distress that can be inflicted on a minor should they see their parent, guardian or any detainee being restrained.
- 4.4.7. UoF and/or restraints must not be used on a minor unless an officer believes, on reasonable grounds, that it is essential to safely transport or protect the welfare and/or security of the minor or another person.

Torture and Trauma counselling

- 4.4.8. Detainees being escorted to Torture and Trauma (T&T) counselling outside of an IDF are only to be subject to UoF and/or physical restraint only as a last resort.
- 4.4.9. Where the risk of an escort remains a concern, consideration may also be given to having the activity occur within the IDF. DHSP and T&T counselling providers can facilitate this as a preferred option.

4.5. Instruments of restraint

Only approved items

- 4.5.1. Whether mechanical or otherwise, only items approved by the Commissioner ABF are to be used in an IDF. Law enforcement agencies may use other restraints in the lawful execution of their duties and in accordance with any applicable legislation and/or policy. Instruments of restraint must:
- **never** be applied as a punishment or for discipline
 - **never** be applied as a substitute for medical treatment
 - **never** be used for convenience or as an alternative to reasonable staffing
 - be removed once the threat has diminished and the officer believes that the person is no longer a threat to themselves, others or property.
- 4.5.2. Unless the situation requiring instruments of restraint is an emergency, any planned application first requires a detailed risk-management assessment to be undertaken in accordance with established procedures.

s. 22(1)(a)(ii)

Use of restraints

- 4.5.4. The use of all chemical agents of restraint, including sedatives, tear gas, pepper spray and capsicum spray by all ABF and FDSP officers is strictly prohibited. Whenever an instrument of restraint is applied, where practicable, an appropriately trained/qualified officer not involved in the process should observe and record the occurrence.

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- 4.5.5. Commander Detention Operations (National) or delegated ABF Detention Superintendents may instruct the FDSP not to restrain a detainee and provide alternative direction regarding risk mitigation strategies.
- 4.5.6. In an emergency situation the decision to apply an instrument of restraint will be made by the most senior officer present. Once restraints are applied, the ABF Detention Superintendent (Facility) is to be advised of the use of the instrument of restraint as soon as is practicable.
- 4.5.7. The decision to remove an instrument of restraint will be made by the most senior officer present. Once restraints are removed, the ABF Detention Superintendent (Facility) is to be advised of the removal of the instrument of restraint as soon as is practicable.
- 4.5.8. The use and removal of an instrument of restraint is to be reported to the Department in accordance with normal reporting standards s. 22(1)(a)(ii)

4.6. Transport and escort

- 4.6.1. Physical restraints during transport and escort (T&E) applies to those for whom the risk assessment indicates that they potentially pose a high risk or above, this includes:
- having an adverse behavioural or violent criminal history
 - having a history of escape
 - a detainee who is in detention for less than 28 days providing officers insufficient information to form a clear understanding of risk
 - a detainee that is an adult that is not accompanying children, and
 - a detainee that has no physical impairment that would prevent them from escaping, or causing harm to themselves or others.
- 4.6.2. In practice this means that UoF and/or physical restraint will be determined following risk-management procedures.
- 4.6.3. An instrument of restraint may be used on a detainee who, at any stage of being escorted, exhibits behaviour that could reasonably be viewed as posing a risk to the safety of themselves, others, property or an attempt to escape.
- 4.6.4. If a detainee is restrained an officer **must**:
- conduct checks at regular intervals
 - be aware at all times of the safety of the detainee including while travelling in a restrained manner in a motor vehicle
 - take special account of the detainee's comfort and dignity, particularly when there is a need to apply restraints to the detainee for a lengthy period.
- 4.6.5. There is an accepted inherent risk stemming from a likely lack of knowledge of any person who has been in detention for less than 28 days. Unless the ABF or any service provider provides further information or direction, the FDSP **may** determine these detainees as a high risk of escape. Consequently, these detainees **may** be escorted in mechanical restraints. Noting the risks, the FDSP must consider each instance on a case-by-case basis weighing up the risks of escape against the broader reputational risk of the Department.

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4.7. After using force and/or restraint

Reporting use of force and/or restraint

- 4.7.1. All officers are accountable and must be able to justify their UoF and/or restraint.
- 4.7.2. The UoF and/or restraint is accountable to the Department, external and internal review bodies and the courts. Accurate recording and reporting ensures accountability and trust in the UoF and/or restraint and that officers are applying it appropriately.
- 4.7.3. Recording and reporting also provides an opportunity to identify training and future equipment needs, repeated areas of concern or threats to officers and others generally.
- 4.7.4. The reporting and recording of UoF and/or restraint must be done in accordance with the relevant Detention SOPs.
- 4.7.5. All detainees who have been subject to UoF and/or restraints must be medically assessed. In most cases, this will be undertaken by the DHSP.

s. 22(1)(a)(ii)

Debriefing

- 4.7.7. All officers present during situations in which force and/or restraint has been used must be debriefed by a suitably qualified senior officer as soon as reasonably practicable. Debriefing sessions should be structured to provide officers with an opportunity to discuss issues and concerns arising from the particular incident and the circumstances that UoF and/or restraints were applied.
- 4.7.8. Departmental/ABF officers may also avail themselves of the Employee Assistance Program (EAP), which provides free confidential and professional assistance through short-term counselling and consulting.
- 4.7.9. Debriefing should also be provided to people who have been the subject of UoF and/or restraint. This process serves an important role in reducing stress, and can assist in re-establishing positive relationships between those involved in the incident.

After care

- 4.7.10. UoF may be required in any number of circumstances, however, the welfare of the person subjected to that UoF and personnel involved in the action are paramount. All departmental/ABF officers and contractors using force must ensure that first aid and wellbeing considerations are applied and managed for any detainee subjected to force.
- 4.7.11. For more information, refer to s22(1)(a)(ii) @abf.gov.au.

Complaints

- 4.7.12. Where a person in immigration detention believes they have been subjected to force that is excessive, not appropriate or unreasonable, they must be advised of, and allowed to access, the full range of complaints handling mechanisms available to all detainees, including:
 - the FDSP
 - the Department/ABF
 - the Australian Human Rights Commission
 - the Commonwealth Ombudsman

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- the Australian Federal Police (AFP) and
- legal representation if requested.

5. Accountability and responsibilities

Table 1 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
ABF Detention Superintendent (Facility)	<p>Exercise overall management of the IDF.</p> <p>Supervise ABF officer/s, particularly when utilising UoF.</p> <p>Receive and facilitate any applications for the planned UoF.</p> <p>Communicate decisions for the UoF to the FDSP Facility Operations Manager (FOM).</p> <p>Consider and make decisions on planned UoF for a T&E task.</p>
ABF Officer	<p>Perform functions, duties as permitted, authorised under law, and specific relevant Acts pertaining to immigration and detention functions.</p> <p>Ensure knowledge of relevant legislation and policies, particularly legislative UoF provisions.</p> <p>Apply training and qualifications responsibly and in accordance with legislation and policy.</p> <p>Ensure decision-making and actions are properly documented and reported.</p>
Detention Health Services Provider (DHSP) staff	<p>Responsible for medical response and support of detainee. Support decision making in the UoF against detainees and providing advice to relevant departmental/ABF officers and contractors about any known health issues that may affect the UoF. Assess detainee's health following any UoF.</p>
Emergency Response Team (ERT)	<p>Respond to and manage critical and major incidents and perform emergency response duties in accordance with relevant national and site-specific work instructions. Use the following as appropriate:</p> <ul style="list-style-type: none"> • cordon and containment • personal protective equipment • disorder tactics • room extraction • barricade and hostage response.
FDSP Authorised Officer	<p>Conduct screening and search activities in accordance with the Migration Act and appropriate delegation, authorisation, training and qualifications.</p> <p>May use force to complete certain actions under relevant legislative provisions and as specifically authorised under an Instrument of Authorisation for those provisions.</p>
FDSP FOM	<p>Fulfil the role of line manager and supervise FDSP officers.</p> <p>Provide advice and oversight to officers in the UoF.</p>

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Position	Accountability and/or responsibility
	<p>Supervise screening procedures undertaken with force.</p> <p>Supervise pat down search procedures undertaken with force.</p> <p>Engage the DHSP to undertake medical treatment and/or assessment of a detainee subjected to force.</p> <p>Receive, consider and recommend the application for UoF to the ABF Detention Superintendent (Facility).</p> <p>Communicate decisions for the UoF to FDSP officers.</p> <p>Ensure that accurate records of the UoF are made and maintained.</p> <p>Ensure notification to appropriate ABF officer of the UoF.</p>
FDSP Officers	<p>Ensure appropriate personal knowledge of relevant legislation and policies, particularly legislative search provisions</p> <p>Personally understand and apply the powers of search in accordance with the law.</p> <p>Handle and manage any equipment according to their training, qualifications and national work instructions</p> <p>Be personally accountable for any UoF.</p> <p>Be personally aware of, and comply with, legal obligations</p> <p>Record and report any UoF.</p>
T&E Manager	<p>Manage all aspects of T&E within an IDF.</p> <p>Evaluate and decide appropriate resourcing and mitigation tools, including UoF, to be utilised during the task.</p> <p>Liaise with ABF Detention Superintendent (Facility) on matters requiring UoF and seek approvals from the ABF Detention Superintendent (Facility) for UoF.</p> <p>Liaise with DHSP on health matters with respect to detainee/s requiring UoF.</p> <p>Provide direction to the T&E escort team leader</p> <p>Ensure that accurate records of the use of force are made and maintained.</p>
T&E Team Leader	Command and manage T&E team during an approved T&E task.

6. Records management

- 6.1.1. All records created as a result of this procedure must be managed in accordance with the Records Management Policy Statement. Records created as a result of this procedure must be saved in TRIM RM8 or an approved business system.

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7. Further assistance

- 7.1.1. If you require further advice or assistance, or would like to provide feedback in relation to this PI, please contact the Detention and Removal Operational Policy section at s22(1)(a)(ii) @abf.gov.au

8. Statement of Expectation

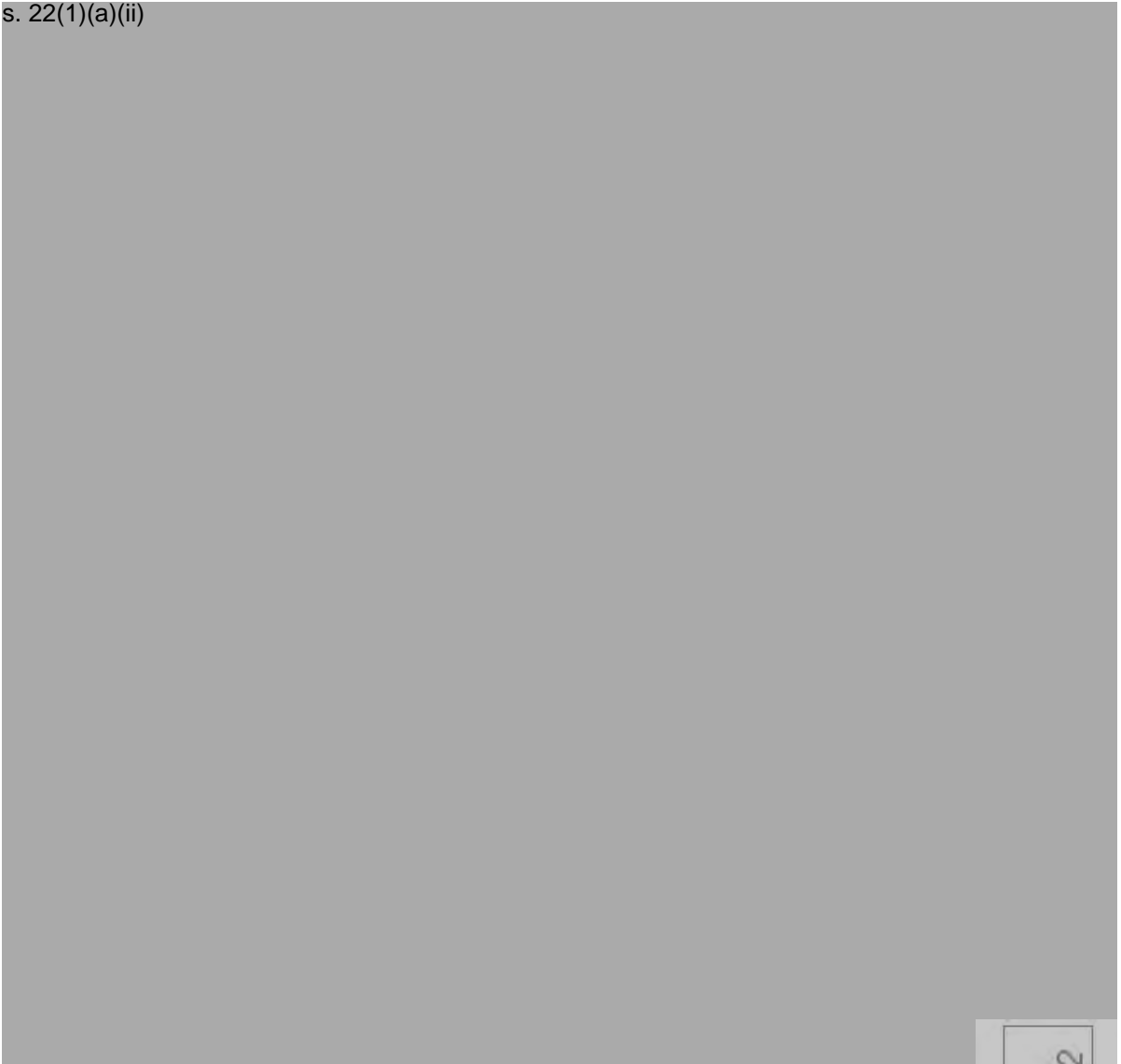
- 8.1.1. The APS Code of Conduct states that 'an APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction' (subsection 13(5) of the *Public Service Act 1999* (Public Service Act)).
- 8.1.2. Failure by an APS employee to comply with any direction contained in a PPCF document may be determined to be a breach of the APS Code of Conduct, which could result in sanctions up to and including termination of employment, as set out in subsection 15(1) of the Public Service Act.
- 8.1.3. The Secretary's Professional Standards Direction, issued under subsection 55(1) of the *Australian Border Force Act 2015* (the ABF Act), requires all IBP workers who are not APS employees (such as contractors or consultants) to comply with any lawful and reasonable direction given by someone in the Department with authority to issue that direction.
- 8.1.4. Failure by an IBP worker who is not an APS employee to comply with a direction contained in a PPCF document may be treated as a breach of the Professional Standards Direction, which may result in the termination of their engagement under section 57 of the ABF Act. Non-compliance may also be addressed under the terms of the contract engaging the contractor or consultant.
- 8.1.5. For all other provisions of PPCF documents, the Secretary and the Commissioner ABF expect all IBP workers to:
- consider whether a proposed departure from any provision set out in a PPCF document is reasonable and justified in the circumstances
 - consider the risks of departing from any provision set out in a PPCF document
 - be responsible and accountable for the consequences of departing from, or not adhering to, the content of, all PPCF documents, including where such departure or non-adherence results in a breach of any legal or other obligations which lead to adverse outcomes for the Department and
 - be responsible for documenting the reasons/justification for their decision to depart from, or not adhere to, any PPCF document.
- 8.1.6. IBP workers who make decisions or who exercise powers or functions under legislation have a duty to make these decisions or exercise these powers or functions in accordance with the requirements of the legislation and legal principle.

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10. References and legislation

10.1.1. References and legislation include:

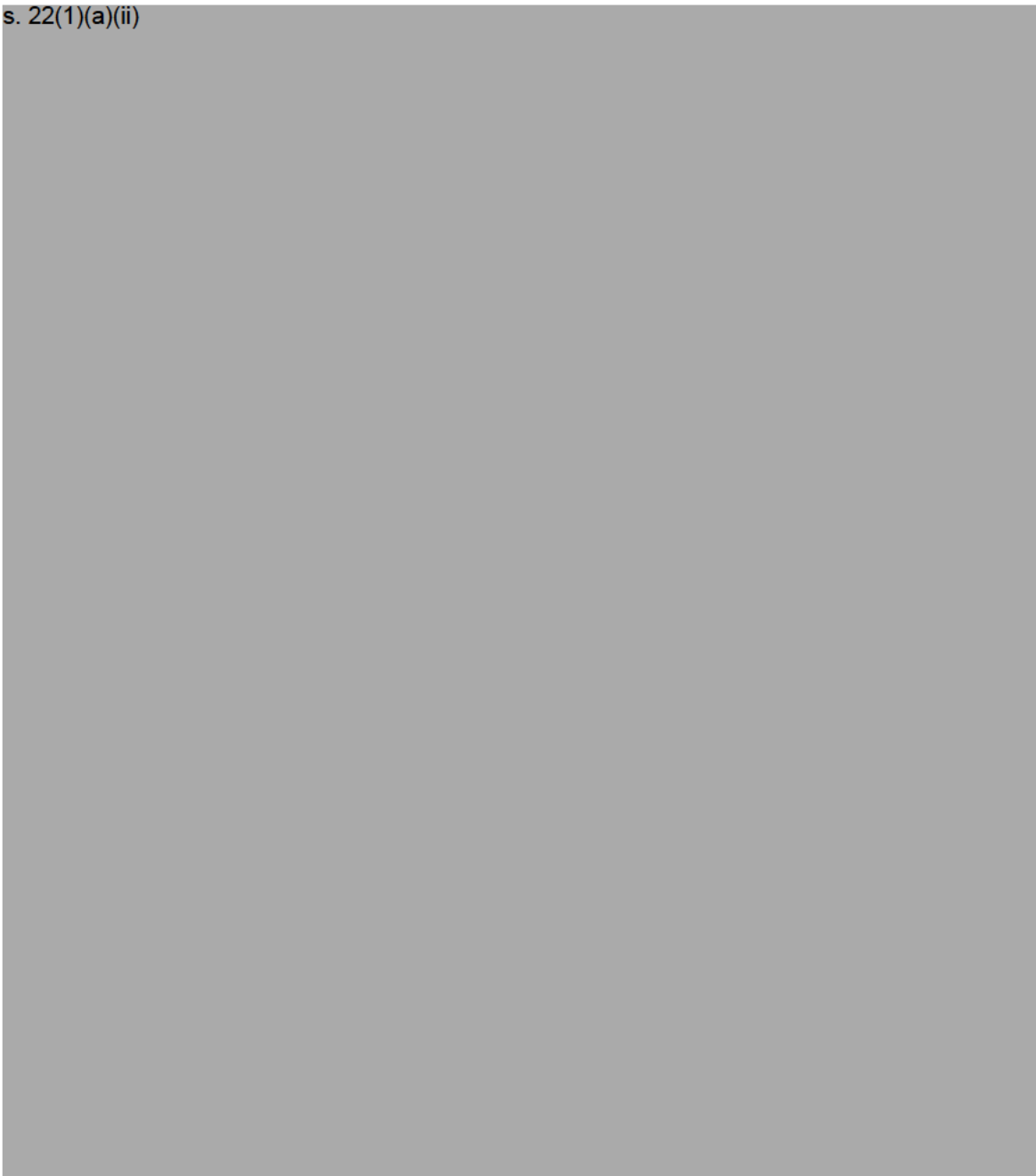
- *Australian Border Force Act 2015*
- Australian Public Service Code of Conduct
- *Freedom of Information Act 1982*
- *Immigration (Guardianship of Children) Act 1946*
- Immigration Detention Facilities and Detainee Services Contract
- *Migration Act 1958*
- *Privacy Act 1988*
- *Public Governance, Performance and Accountability Act 2013*
- *Public Interest Disclosure Act 2013*
- *Public Service Act 1999*

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- *Work Health and Safety Act 2011 (Cth)*

s. 22(1)(a)(ii)



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12. Document details

BCS Category/Function	Detention Management
BCS Sub-Category/Sub-Function	DM-10 Detention Security
Period of Effect	10 October 2021

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12.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
2.0	30/06/2017	National Detention and Removals Programmes	Update of detention instructions to reflect PPCF requirements.
3.0	22/12/2017	National Detention and Removals Programmes	Reviewed as per Duty Commissioner's request for 'extraordinary review'.
3.1	06/02/2018	Detention and Removals Operational Policy	Update PPCF feedback
4.0	05/10/2018	Detention and Removals Operational Policy	Update post-legal review.


12.2. Procedural Instruction approval

Document owner	Commander ABF Governance
Approval date	10 October 2018

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Detention, Regional Processing and Community Reporting

Use of Force Incidents in Adelaide Immigration Transit Accommodation (ITA) from 1 January 2019 to 31 December 2019

Table 1: Adelaide 'Use of Force' and 'Use of Force – Planned' Incidents by Age Group and Gender

Month/Age Range	Adult Male	Adult Female	Total
January			
18-25	10	0	10
26-35	13	<5	15
36-45	<5	0	<5
46+	7	0	7
February			
18-25	10	<5	12
26-35	9	8	17
36-45	<5	0	<5
46+	6	0	6
March			
18-25	5	0	5
26-35	6	<5	9
36-45	7	0	7
46+	0	<5	<5
April			
18-25	5	<5	6
26-35	6	<5	8
36-45	6	<5	8
46+	<5	0	<5
May			
18-25	7	0	7
26-35	12	5	17
36-45	<5	0	<5
46+	<5	0	<5

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June			
18-25	5	0	5
26-35	9	<5	11
36-45	14	0	14
46+	6	0	6
July			
18-25	5	0	5
26-35	15	<5	17
36-45	<5	0	<5
46+	7	<5	10
August			
18-25	5	0	5
26-35	13	0	13
36-45	5	5	10
46+	11	<5	13
September			
18-25	<5	0	<5
26-35	<5	<5	5
36-45	<5	0	<5
46+	7	<5	8
October			
18-25	<5	0	<5
26-35	13	<5	14
36-45	5	<5	9
46+	6	0	6
November			
18-25	6	0	6
26-35	5	0	5
36-45	7	<5	9
46+	5	0	5
December			
18-25	6	<5	7
26-35	7	<5	11
36-45	<5	0	<5
46+	0	<5	<5
2019 Total	294	56	350

Note 1: Figures are based on departmental systems data as at 6am 1 January 2020.

Note 2: Incidents include 'Use of Force' and 'Use of Force – Planned'.

Note 3: Figures are based on the number of participants involved in incidents, rather than the number of incidents. Multiple participants can be involved in each incident.

Note 4: No 'Use of Force' or 'Use of Force – Planned' incidents occurred in Adelaide ITA for persons under 18 years of age.

Note 5: Figures under five may allow for the identification of individuals and their circumstances. If these figures are to be provided publicly it is recommended that they be represented as "<5" (less than 5).

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