

Australian Capital Territory

Corrections Management (Searching) Policy 2023

Notifiable instrument NI2023–117

made under the

Corrections Management Act 2007, s14 (Corrections policies and operating procedures)

1 Name of instrument

This instrument is the *Corrections Management (Searching) Policy 2023*

2 Commencement

This instrument commences on the day after its notification day.

3 Policy

I make this policy to facilitate the effective and efficient management of corrections services.

4 Revocation

This instrument revokes *Corrections Management (Searching) Policy 2022* [NI2022-25].

Narelle Pamplin
Acting Commissioner
ACT Corrective Services
28 February 2023

SEARCHING

POLICY NO. S4

ACT CORRECTIVE SERVICES



ACT
Government

Justice and Community Safety

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1 PURPOSE

ACT Corrective Services (ACTCS) is committed to ensuring that prohibited things are prevented from entering a correctional centre and to detecting any prohibited things that may be within a correctional centre in order to maintain a safe and secure environment for detainees, staff and visitors.

ACTCS is committed to upholding the human rights of staff, visitors and detainees. ACTCS staff acting under this policy will give due consideration to human rights, including but not limited to:

- the right not to be subjected to torture or treated or punished in a cruel, inhuman or degrading way
- the right to privacy and reputation
- the right to be treated with humanity and respect, and with respect for the inherent dignity of the human person.

This policy establishes the requirements for searches of people and areas in a correctional centre.

2 SCOPE

This policy applies to all ACTCS staff and correctional operations.

Where required, the Assistant Commissioner Custodial Operations (ACCO) may establish operational procedures under this policy, including a Searching Program to provide strategic direction to searches in a correctional centre.

3 DEFINITIONS

Belief	Belief on reasonable grounds is based on facts or evidence that would lead a reasonable person to think that a search is prudent. Belief requires a higher level of certainty than suspicion.
Correctional centre	Places declared to be a correctional centre under the <u>Corrections Management Act 2007 (ACT)</u> , including but not limited to, the Alexander Maconochie Centre and the Court Transport Unit.
Frisk search	A search of a person conducted by running the hands over the person's outer garments, and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

Ordinary search A search of a person, or of articles in a person’s possession, that includes requiring the person to remove the person’s overcoat, coat or jacket and any gloves, shoes or hat, and an examination of those items, and does not involve touching the person being searched.

Prohibited things Any item listed in the *Prohibited Things Declaration*.

Routine search A search in a correctional centre which can be conducted regularly or in a randomised manner to achieve a set target in accordance with the *Searching Program*.

Scanning search The search of a person by electronic or other means in which the person is not required to:

- remove clothing (except outer clothing, such as asking someone to remove a coat or jacket)); or
- be touched by another person.

A scanning search may be conducted via a metal detector (portable or otherwise), x-ray machine, itemiser, Corrections Search Dogs or other device authorised for use.

Seizeable item Anything that:

- is a prohibited thing; or
- may be used by the detainee in a way that may involve:
 - intimidating anyone else; or
 - an offence or disciplinary breach; or
 - a risk to the personal safety of anyone else; or
 - a risk to security or good order at a correctional centre.

Searching Program A document that provides guidance to staff in applying the policy in different circumstances including where a particular search is expected to be conducted, the types of searches, and the alternative searches that may be conducted. While the Searching Program provides guidance to staff, the decision to conduct a person search must be made on a case-by-case basis.

Strip search A search of a detainee, or of articles in the detainee’s possession, that will include:

- a. requiring the detainee to remove all their clothing (not at the same time); and

- b. a visual examination of the detainee’s body, ears, nose, and mouth (but not the detainee’s other body orifices or cavities) and of that clothing.

Suspicion To suspect on reasonable grounds that a detainee may be concealing a seizeable item or prohibited thing, there must be an observation of something that does not look ‘right’ or a feeling that something *has* been concealed.

Targeted search A search of specific detainees, staff, visitors, or areas in a correctional centre in response to documented intelligence and/or other forms of information that gives reasonable grounds for suspicion to justify a search.

4 PRINCIPLES

- 4.1 There is the potential for significant harm caused by the introduction of prohibited things into a correctional centre (*Prohibited Things Declaration*). Searching of people and areas in accordance with Part 9.4 of the *Corrections Management Act 2007 (ACT)* is implemented to prevent or detect the introduction of prohibited things into a correctional centre and maintain a safe and secure environment.
- 4.2 Correctional officers are empowered to conduct a search under Part 9.4 of the *Corrections Management Act 2007 (ACT)* and in accordance with this policy.
- 4.3 Correctional officers may be directed to search any part of a correctional centre, and anything at a correctional centre including anything in the possession of anyone at a correctional centre in accordance with section 122 of the *Corrections Management Act 2007 (ACT)*. This includes private vehicles inside the gazetted perimeter of a correctional centre (including car parks and other areas outside the perimeter fence) notified under section 24 of the *Corrections Management Act 2007 (ACT)*.
- 4.4 All areas of a correctional centre will be searched, and all searches, whether conducted on a routine or ad-hoc basis will be in accordance with the *Searching Program*.
- 4.5 ACTCS is committed to ensuring all searches of a person are the least intrusive kind of search that is reasonable and necessary in the circumstances and conducted in the least intrusive way, taking the human rights of a person into consideration.

- 4.6 Scanning searches may be used as a less intrusive alternative to strip searches in certain circumstances. For more information, see the *Searching Program* and the *X-ray Body Scanner Search Operating Procedure*.
- 4.7 Transgender detainees and detainees born with variations in sex characteristics recorded on the detainee electronic record must be searched in accordance with their declared gender preference.

Recording searches

- 4.8 Any part of a correctional centre may be monitored for any activity or movement in accordance with section 100 of the *Corrections Management Act 2007 (ACT)*.
- 4.9 ACTCS is committed to taking all reasonable steps to ensure the reasonable privacy of the detainee during a strip search.

Reasonable adjustment

- 4.10 Reasonable adjustments to search procedures must be made when searching pregnant women, persons with injuries, disabilities or other additional needs in accordance with the *Searches Requiring Reasonable Adjustment Operating Procedure*, and the specific needs of the person. This includes persons with visible and non-visible disabilities, such as mental illness or intellectual disability.
- 4.11 Gender, cultural and religious sensitivity will be applied when conducting searches of persons or property.
- 4.12 Searches of religious headwear and items must be conducted in accordance with the *Religious Considerations for Searches Operating Procedure*.
- 4.13 It is imperative that respect and dignity is provided to transgender detainees who may feel distressed and vulnerable while undergoing physiological changes (*Management of Transgender Detainees and Detainees Born with Variations in Sex Characteristics Policy*).

5 GENERAL

- 5.1 All persons, vehicles and items entering or leaving a correctional centre will be searched in accordance with this policy, the *Searching Program* and searching operating procedures.
- 5.2 The General Manager of a correctional centre is responsible for:
- a. maintaining a *Searching Program* for the correctional centre, including:
 - i. search types

- ii. search location and expected search frequencies and
- iii. compliance measures
- b. the recording of all strip searches in accordance with section 110 of the *Corrections Management Act 2007 (ACT)* and
- c. ensuring a person's right to privacy and dignity is upheld during a search by providing suitable and designated search facilities in each correctional centre.

5.3 The following types of searches will occur in a correctional centre:

- a) Targeted searches
of specific detainees, staff members, visitors, or areas in a correctional centre in response to documented intelligence and/or other information that gives reasonable grounds for suspicion to justify a search
- b) Searches based on reasonable suspicion or reasonable belief
- c) Routine searches
planned search activities in accordance with the *Searching Program*.

5.4 Searches that occur at a correctional centre are undertaken:

- a. where there is a belief on reasonable grounds that it is prudent to conduct the search to protect:
 - i. the safety of anyone at a correctional centre; or
 - ii. the security and good order at a correctional centre
 and/or, in relation to searching detainees:
- b. where there are reasonable grounds to suspect that the detainee is carrying:
 - i. a seizeable item; or
 - ii. anything that creates or is likely to create a risk to the personal safety of the detainee or any person, or to security and good order at a correctional centre.

Under section 5.4a., staff, visitors and detainees may be required to undergo a frisk, ordinary or scanning search. Section 5.4b and other forms of searching only applies to detainees.

5.5 When determining whether to conduct a search, for each detainee on each occasion:

- a. the correctional officer must form a reasonable suspicion; OR

- b. a correctional officer grade 2 (CO2) or above must form a reasonable belief that a search is prudent and direct the search to be undertaken.

5.6 A CO2 or above may make a direction, based on reasonable belief, that a search is prudent each time the defined circumstances in that occasion apply.

Example: It may be prudent in order to protect the safety, security or good order of a correctional centre to frisk search a detainee returning to their accommodation after working in another part of the centre.

Example: A program of randomised searches of areas may be considered prudent to protect the safety, security or good order of a correctional centre.

Person searches

5.7 Person searches include scanning, frisk, ordinary and strip searches.

5.8 All searches of a person:

- a. must be the least intrusive kind of search that is reasonable and necessary in the circumstances; and
- b. must be conducted in the least intrusive way, in accordance with section 108 of the Corrections Management Act 2007 (ACT).

5.9 The decision on what is the least intrusive form of search will be informed by a consideration of human rights under the Human Rights Act 2004.

5.10 Some movements around and to/from a correctional centre pose a greater risk to the safety and security of a correctional centre than others. Such risks may contribute to a correctional officer forming reasonable suspicion or a belief that a search is prudent to manage the higher level of risk in these circumstances.

This might include scenarios such as:

- a. the person has been out of line of sight of officers
- b. the person has been liaising with third parties
- c. detainees being transported to/from court
- d. detainees moving around the centre to activity locations
- e. detainees engaging in socialisation, such as gatherings and visits (social and inter-prison)
- f. detainees leaving activity areas such as Education, Kitchen, Industries, etc.
- g. detainees leaving Health or receiving medication
- h. external workers entering and leaving the AMC
- i. detainees entering the Crisis Support Unit or the Management Unit.

- 5.11 X-ray body scanners are the default searching method for scanning searches, where practicable and appropriate to do so. For more information, see the *X-ray Body Scanner Search Operating Procedure*.
- 5.12 Where a search is inconclusive, a more intrusive search may be required.

Searching people entering a correctional centre

- 5.13 All people entering a correctional centre will be informed of their rights, the authority for being searched and that police may be notified following the detection of a prohibited thing or seizeable item (*Appendix A; Prohibited Things Declaration; Visits Policy*).
- 5.14 All people entering a correctional centre will be searched, including items in their possession, as per section 5.3.
- 5.15 ACTCS recognises that some people may have medical exemptions that prevent them from undergoing a specific type of search and that in this instance other kinds of searches may be required. Any person, excluding detainees, who refuses to participate in any search will not be permitted entry into a correctional centre.
- 5.16 Reasonable force may be used to remove a person from a correctional centre who refuses a search and does not follow a direction to leave correctional centre grounds (*Use of Force and Restraint Policy*). Police may be contacted for any such situation.

Safety during searches

- 5.17 Correctional officers must wear issued protective gloves and any other form of protective equipment considered necessary (e.g., overalls, eye protection, hard hat, etc) when conducting a search.

6 SEARCHING POLICY STATEMENT

- 6.1 The searching policy statements at Appendix A will be used to notify detainees, visitors and staff of the searches they will be subject to on entering a correctional centre.

7 CORRECTIONS SEARCH DOGS

- 7.1 At any time, Corrections Search Dogs may be deployed to search:
- a. any area within a correctional centre
 - b. any person, including staff, detainees, visitors or contractors

- c. incoming mail and other items
 - d. vehicles.
- 7.2 The use of a Corrections Search Dog to search a person will be carried out with respect and due regard to the sensitive nature of the search, in accordance with the Corrections Search Dogs Operating Procedure and the Religious Considerations for Searches Operating Procedure.
- 7.3 Notice informing visitors that all people entering a correctional centre will be searched, including where relevant by Corrections Search Dogs, in accordance with section 5.3, will be prominently displayed in the reception area.
- 7.4 Where a search dog makes an indication during a search, this may provide grounds for reasonable suspicion or belief, and thereby require another form of search.

8 SEARCHES OF DETAINEES

- 8.1 Detainee searches will be undertaken based on reasonable suspicion OR reasonable belief that it is prudent to undertake the search, as guided by the Searching Program for a correctional centre.
- 8.2 Detainees escorted, or granted leave, from a correctional centre will be assessed for the level of search required. This assessment will consider risk that relates to:
 - a. active Escape 1, Suicide or Self-harm 1 or Violence risk alerts (Risk Alerts Policy);
 - b. the reason for the escort; and
 - c. any other relevant information.
- 8.3 The level of search under section 8.2 must be the least intrusive type of search appropriate to the risk assessment.

Refusal to be searched and use of force

- 8.4 Where a detainee refuses a search:
 - a. if the search is a scanning search using an x-ray body scanner, officers must proceed in accordance with section 5 of the X-ray Body Scanner Search Operating Procedure
 - b. reasonable force may be used to carry out the search in accordance with section 126(1)(a) of the Corrections Management Act 2007 (ACT) (Use of Force and Restraint Policy); and
 - c. the detainee may be disciplined in accordance with the Discipline Policy.

- 8.5 Reasonable force may also be used to prevent the loss, destruction or contamination of anything seized, or that may be seized, during a search in accordance with section 126(1)(c) of the Corrections Management Act 2007 (ACT).
- 8.6 Human rights considerations must be taken into account when making a decision to use force to conduct a strip search, in accordance with the Strip Search Operating Procedure.
- 8.7 Where force is used on a detainee to carry out a search, non-essential staff must leave the scene prior to the use of force and the use of force must be recorded on handheld video camera in accordance with the Use of Force and Restraint Policy.

Scanning Searchings with an X-ray Body Scanner

- 8.8 In accordance with this policy and the Searching Program, a scanning search may occur with an x-ray body scanner:
- a. on admission to a correctional centre (section 111(1)(b) of the Corrections Management Act 2007 (ACT)
 - b. as one of the searching options available to officers, noting that a strip search may still be required after an x-ray body scan search
 - c. where an officer has reasonable grounds for suspicion that a detainee is concealing an item on or in their person and a less intrusive search would likely not be effective in detecting an item
 - d. where a CO2 Area Supervisor or above has reasonable grounds to believe that it is prudent to search the detainee because:
 - i. the detainee has recently not been under the control or immediate supervision of a corrections officer; and
 - ii. the detainee may have had an opportunity to obtain a seizeable item; and
 - iii. a less intrusive form of search would likely not be effective in detecting an item.

Strip searches

- 8.9 Strip searches are only conducted on detainees, and only where:
- a. there are reasonable grounds for suspicion that the detainee has an item on their person that:
 - i. is a prohibited thing; or
 - ii. may be used by the detainee to:
 - a. intimidate someone; or
 - b. commit an offence or disciplinary breach; or

- c. create a risk to the personal safety of anyone; or
 - d. create a risk to security and good order at a correctional centre; or
 - b. there are reasonable grounds to believe that it is prudent to search the detainee because:
 - i. the detainee has recently not been under the control or immediate supervision of a corrections officer; and
 - ii. the detainee may have had an opportunity to obtain a seizeable item; and
 - c. a less intrusive form of search:
 - i. is not available;
 - ii. is not likely to detect more than a limited range of items; or
 - iii. could only be carried out using force that would likely make it ineffectual.

8.10 All strip searches will be conducted in accordance with the *Searching Program*, the *Strip Search Operating Procedure*, section 70 of the *Corrections Management Act 2007 (ACT)* and where relevant, the *Searches Requiring Reasonable Adjustments Operating Procedure*.

8.11 In accordance with the *Strip Search Operating Procedure*, strip searches must be:

- a. authorised by a Correctional Officer Grade 2 or above; and
- b. recorded on the detainee's electronic record.

8.12 Strip searches are **not** to be conducted as part of routine searches and must only be conducted where there is suspicion or reasonable belief that it is prudent to conduct the search.

8.13 Transgender detainees and detainees born with variations in sex characteristics recorded on the detainee electronic record must be searched in accordance with their declared gender preference, which may include officers of different genders for different parts of the body.

Example: A transgender detainee may request that a female officer search the upper half of the body and a male officer search the lower.

8.14 A detainee must not be requested to 'squat and cough' during a strip search, and detainees who initiate this practice must be told that it is not required.

- 8.15 Detainees must not be strip-searched in succession when escorted between ACT correctional centres, unless there is reasonable suspicion that justifies the search.
- 8.16 Detainees must not be strip-searched in the presence of another detainee, or any other person who is not required to be present at that time.
- 8.17 Under the CCTV Policy, the viewing of live or recorded CCTV is strictly limited to positions and circumstances which require this access. The Strip Search Operating Procedure outlines how strip searches conducted in areas monitored by CCTV are managed and that staff must have a genuine reason for viewing footage of a strip search.
- 8.18 Footage of a strip search of a detainee that occurs in a monitored area will only be stored where required under law, the CCTV Policy or Use of Force and Restraints Policy and will be disposed of in accordance with set timeframes (CCTV Policy).

9 SEARCHES OF PROPERTY

- 9.1 Detainee property will be searched on admission to a correctional centre and during a search of areas and cells (Searching Program).
- 9.2 Searches of detainee property must take account of religious and cultural beliefs (Religious Considerations for Searches Operating Procedure).

10 SEARCHES BY POLICE

- 10.1 Police may conduct a search of a person or area in a correctional centre where they are authorised to do so under the relevant police powers. Police may also assist correctional officers in carrying out a search and as part of a joint operation between ACT Policing and ACTCS.

11 PROHIBITED THING AND SEIZEABLE ITEM FINDS

- 11.1 Where a prohibited thing or seizeable item is located during a search, the incident must be reported in accordance with the Incident Reporting, Notifications and Debriefs Policy.
- 11.2 The seizure, labelling, evidence continuity, storage and disposal of prohibited things and seizeable items will be managed in accordance with the Management of Evidence Operating Procedure.

12 COMPLAINTS

12.1 Where someone wishes to make a complaint to ACTCS in relation to a search, they can do so:

- for detainees, in accordance with the *Detainee Requests and Complaints Policy*
- for visitors, via the ACTCS website
- for staff, with their Divisional Executive in the first instance.

12.2 Complaints may also be raised directly with any of the following external complaint avenues where appropriate:

- Public Advocate
- ACT Ombudsman
- Human Rights Commission
- Official Visitor (*Official Visitor Policy*).

13 RELATED DOCUMENTS

- Frisk Search and Ordinary Search Operating Procedure
- Strip Search Operating Procedure
- Searching — Areas Operating Procedure
- Searching — Area Pre-unlock and Pre-activity Checks Operating Procedure
- Searching — Cells Operating Procedure
- Searching — Cells Infrastructure Checks Operating Procedure
- X-ray Body Scanner Search Operating Procedure
- Vehicle Searches Operating Procedure
- Religious Considerations for Searches Operating Procedure
- Searches Requiring Reasonable Adjustments Operating Procedure
- Detainee Movements Operating Procedure
- Searching Program
- Use of Force and Restraint Policy
- Prohibited Things Declaration
- Management of Evidence Operating Procedure
- Visits Policy
- Detainee Requests and Complaints Policy
- Official Visitor Policy

- Incident Reporting, Notifications and Debriefs Policy
- CCTV Policy
- Perimeter Checks Operating Procedure
- Entry Searching Operating Procedure
- Corrections Search Dogs Operating Procedure
- Risk Alerts Policy

Narelle Pamplin
 Acting Commissioner
 ACT Corrective Services
 28 February 2023

Document details

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V3	January-23	Minor Revisions	J Papadopoulos
V2	January-22	Revised and first issued	H Cheney
V1	October-19	First Draft	L Kazak

Searching Policy Statements - notices

The searching policy statements below will be used to notify detainees, visitors and staff of the searches they will be subject to on entering a correctional centre.

Detainees

Correctional officers are authorised under Part 9.4 of the Corrections Management Act 2007 (ACT) to search detainees.

The Searching Policy and Searching Program detail how searches are conducted.

Detainees will be informed of the search that is to be conducted.

Detainees will have the opportunity to declare any prohibited thing or seizeable item on or in their person prior to a search.

Disciplinary proceedings may be commenced under the Discipline Policy, and/or police notified, for any prohibited thing or seizeable item located during the search.

Detainees will undergo a scanning search (conducted by an x-ray body scanner) on admission to a correctional centre in accordance with section 111(1)b of the Corrections Management Act 2007 (ACT).

Detainees will be strip searched on admission to a correctional centre in accordance with section 70 of the Corrections Management Act 2007 (ACT).

Detainees may be strip searched where there are reasonable grounds for suspicion or reasonable grounds to believe that it is prudent to search a detainee as they may be concealing a seizeable item on their person that is not able to be detected through another form of search, in accordance with section 113 of the Corrections Management Act 2007 (ACT).

Visitors

All visitors will be searched on entry to a correctional centre without exception in accordance with the Searching Policy.

Visitors may be required to be subject to a scanning search, frisk or ordinary search.

Corrections Search Dogs may be used to conduct scanning searches of visitors.

Correctional officers are authorised under Part 9.4 of the Corrections Management Act 2007 (ACT) to search any person entering a correctional centre.

Visitors will be informed of the search that is to be conducted.

Visitors will be denied entry to a correctional centre for refusing to submit to a search. Force will not be used to search a visitor. Where a visitor refuses to leave a correctional centre when directed, necessary and reasonable force may be used to enforce the direction.

Visitors will have the opportunity to declare any prohibited thing or seizeable item on their person prior to a search.

Any item of visitor property, including vehicles, may be searched.

Any prohibited thing located during a search may be provided to police.

Staff

All staff may be required to submit to a scanning search on entry to and exit from a correctional centre.

Staff may be required to be subject to a frisk or ordinary search.

Corrections Search Dogs may be used to search staff at any time.

Staff members who refuse to submit to a search will not be permitted to enter a correctional centre.

Any prohibited thing or seizeable item located during a search may be provided to police.