



Chief Executive's Guidelines on the Use of Coercive Powers under the *Public Safety (Public Protection Orders) Act*

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Chief Executive's Foreword

At the Department of Corrections, our aim is to break the cycle of re-offending. With the right support at the right time, many offenders are able to complete their prison sentence and go on to live crime-free in the community. Unfortunately, there are a few dangerous offenders who will remain highly likely to immediately re-offend once they have been released. Existing mechanisms, such as extended supervision orders and parole, allow the Department of Corrections to monitor, manage and recall offenders to prison. However, sometimes these tools are not enough to protect the public.

The introduction of Public Protection Orders follows the Government's commitment to introduce civil detention orders to house the most high-risk offenders at a secure residence within prison grounds. Public Protection Orders are civil orders, not criminal punishments.

Work is underway to establish a Public Protection Order residence in the grounds of Christchurch Men's Prison. It will be separate from the existing prison and have its own secure perimeter fence. The residents will live in individual units, which will look more like a basic home than an institution or prison cell. A residence manager will be responsible for the overall management of the residence and will be responsible for ensuring that the civil intent of this legislation is realised.

From time to time, it will be necessary for the residence manager to use coercive powers in order to keep staff and residents safe. It is crucial that this is done in a fair and justified manner. The following guidelines reflect the Department of Corrections commitment to uphold the civil nature of the Public Protection Order regime and to keep the use of coercive force to a minimum.

The guidelines are issued in accordance with a legislative requirement to do so under Section 120(2) of the Public Safety (Public Protection Orders Act) 2014. They form only a small part of a wider suite of operations and training material that is being developed to support the safe and effective running of the residence. While recognising the need to maintain a quality of life for the residents, the offenders who will live in this facility are high-risk. Our first priority must be to keep the community safe and public safety will always be our bottom line.



Ray Smith
Chief Executive
Department of Corrections

Overview

The Public Safety (Public Protection Orders) Act 2014 (the Act) empowers a High Court to issue a public protection order (PPO) that would allow for the detention of very high risk individuals at a secure residence within prison precincts.

PPOs are civil detention orders for individuals who have served a finite prison sentence, but still pose a very high risk of imminent and serious sexual or violent offending. The introduction of PPOs follows the Government's commitment to introduce civil detention orders for the most high-risk offenders.

Recognising resident rights

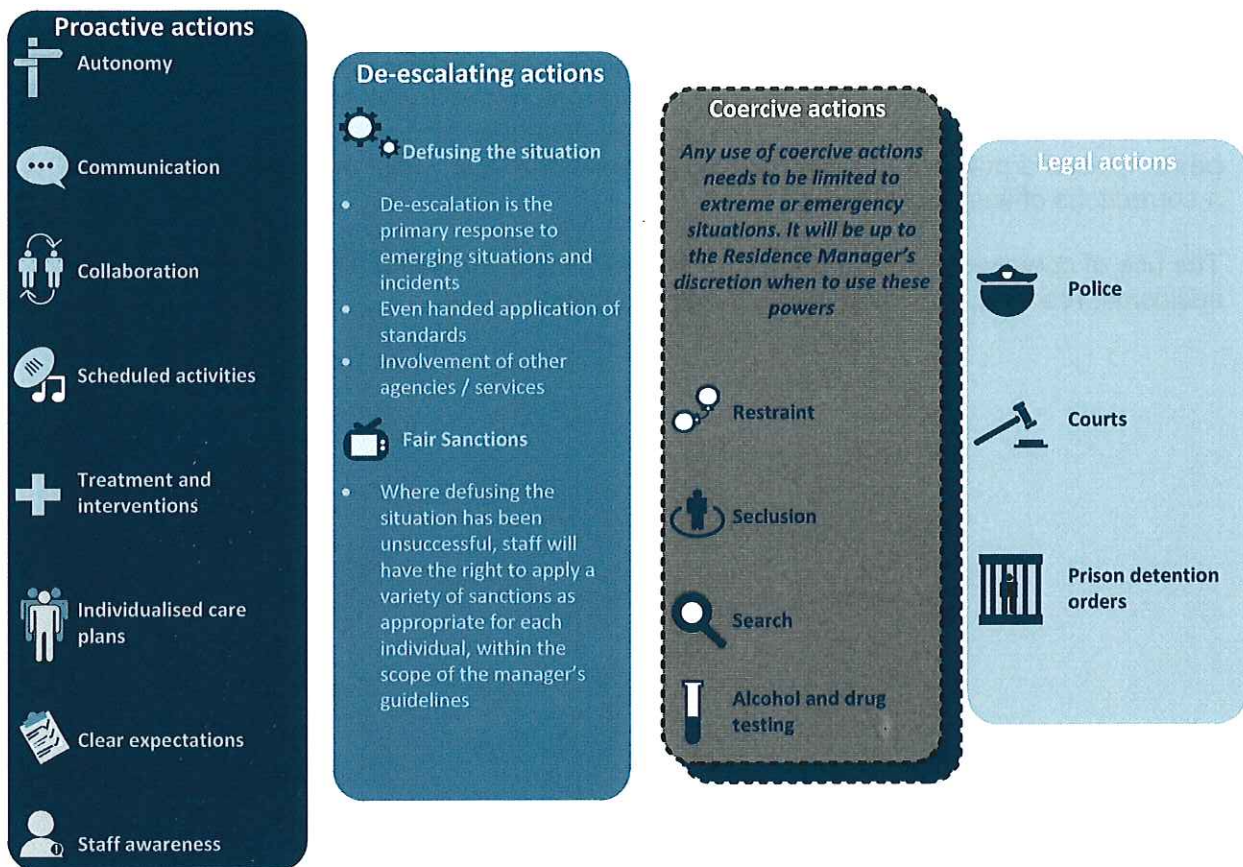
As a civil regime, residents are not prisoners and their accommodation and management must reflect their status as detainees under a civil detention environment. Residents have all of the rights of ordinary citizens except to the extent that those rights are limited by the Act and any rules, guidelines and instructions made under the Act. Residents are entitled to respect and dignity as human beings. The management of the residence should be guided by the following principles:

- *A resident must be given as much autonomy and quality of life as is compatible with the health and safety and well-being of the resident and other persons and the orderly functioning of the residence.*
- *A decision that adversely affects a resident must be reasonable and proportionate to the objective sought to be achieved.*

Achieving compliance in a civil setting

A civil compliance framework will apply in residences which emphasises a proactive management approach as the model for assisting residents to move towards managing their own behaviour.

Civil Compliance Framework



In practice, this will mean residents are involved in decision making and are supported to manage their day to day lives with as much autonomy as possible. Open communication will be encouraged and residents will have personalised management plans, which include potential rehabilitative treatment and/or other interventions to support the resident to reduce their risk of harming others and reoffending. Residents will also be given the opportunity to provide input into the making of rules and into the running of the residence for the purpose of its orderly functioning. All staff will understand the risks posed by each resident and will monitor potential triggers for behavioural changes.

Where the order of the residence is compromised by the actions of a resident, the first response by staff will be to seek to defuse the situation through de-escalation techniques and good use of incentives.

At the upper end of the compliance framework, *coercive powers* and legal actions are available to residence managers and staff in order to maintain the safety and the orderly functioning of the residence. These are serious measures and in a civil setting must only be applied if the circumstances entirely justify it and less penalising options have been considered and dismissed.

Establishing Guidelines for the Use of Coercive Powers

Section 120(2) of the Public Safety (Public Protection Orders Act) 2014 provides for the making of Chief Executive Guidelines or instructions to residence managers and to persons exercising powers under section 73(1) on the exercise of coercive powers. A coercive power means a power that authorises a residence manager, staff member of a residence or a corrections officer to use force.

The use of coercive powers are relevant to searches, alcohol and other drug testing, seclusion, restraint, escorting and in cases of an emergency.

1.0 Search

Section 63 to 67 Search of residents, other persons and the residence

(1) For the purpose of detecting a prohibited item or an item that may endanger the health and safety of a resident or any other person, the residence manager, a staff member of the residence, or a corrections officer may conduct—

(a) a search of any resident:

(b) a search of any item carried by, or in the possession of, any resident:

(c) a search of the residence or any part of the residence:

(d) a search of any item that is in, or is taken or delivered to, the residence.

Sections 63(2) to 63(6) describe the form and manner in which searches of residents are to be conducted

Section 64 allows for the manager or a staff member to conduct a search on persons, other than residents, who wish to enter or who are in the residence, for the purpose of detecting prohibited items. The form and manner in which these searches are to be conducted is described as well as the consequences of a refusal to be searched

Section 65 extends the authority to conduct searches on residents and other persons by including authority to search any item carried by or in the possession of that person and any clothing. It describes the form and manner in which these searches are to be conducted.

Section 66 allows for the residence manager or other staff to have with them for the purpose of conducting a search any dog and describes the form and manner in which such searches are to be conducted.

Section 67 describes the residence manager's authority to take and inspect any item appearing to be a prohibited item and describes how the manager must deal with the item if the manager is satisfied that the item is a prohibited item.

Guidelines

- 1.1 The searching of persons, their property and the residence contributes to the reduction of contraband within the residence. While these provisions play an important and necessary role in maintaining the safety and wellbeing of all persons within the facility, for those who are being searched, it may be perceived as an intrusion on their personal freedoms. It is therefore vital that care is taken to ensure search powers are exercised reasonably and with consideration of the impact that it may have on the resident or other persons being searched.
- 1.2 The residence manager must ensure a search plan is in place that balances the need to meet security requirements within the residence against both the residents' right to a level of autonomy and quality of life within the boundaries of orderly functioning and safety, and the rights of other persons wishing to enter the residence.

- 1.3 Residence managers must ensure all residence staff are appropriately trained in approved searching procedures.
- 1.4 All searches are to be conducted with decency, sensitivity and in a manner which respects the privacy and dignity of the resident or other person being searched, to the extent possible.
- 1.5 Two staff members must be present when any search is carried out, one of whom will conduct the search and the other to observe.
- 1.6 Rub-down and strip searches must only be carried out by a person of the same sex to the person being searched and no strip search of a resident may be carried out in the view of any person who is not the same sex as the person to be searched.
- 1.7 All visitors to the residence will be scanned prior to entering. Where there are reasonable grounds to suspect that a visitor may be carrying a prohibited item a rub down search may be carried out but only with that person's consent. Rub down searches must be carried out in a manner that affords the person maximum privacy and preserves their dignity.
- 1.8 Any decision to decline a visitor entry to the residence must be explained to that person immediately and the reasons for the refusal must be provided to them in writing. All decisions to decline entry must be recorded in a register kept for this purpose.
- 1.9 The use of dogs for searching may only be authorised by the residence manager or a member of staff with delegated responsibility for the residence in the manager's absence.
- 1.10 Records relating to all searches must be maintained in accordance with operating guidelines and made available for inspection by statutory visitors.

Guiding Principles

Searches must be carried out in accordance with section 63-67 of the Act and operating guidelines. All searches must be conducted with decency, sensitivity and in a manner that respects the privacy and dignity of the resident or persons being searched as much as is reasonably possible.

2.0 Drug and alcohol testing

Section 68 *Drug or alcohol tests*

Resident may be required to submit to drug or alcohol test

(1) If the manager has reasonable grounds to believe that a resident has used any substance that falls within any of paragraphs (b) to (d) of the definition of prohibited item in [section 3](#), or consumed alcohol without permission, the manager may require the resident to submit to a test for the purpose of detecting whether the resident has used any of those substances or consumed alcohol, or both.

(2) The tests administered under subsection (1) must comply with any guidelines or instructions that are relevant to the administration of such tests.

(3) The guidelines or instructions may specify the kinds of sample that a resident may be required to supply (including, without limitation, a sample of saliva, hair, breath, or urine, or other bodily sample) and the circumstances and manner in which any sample is to be supplied.

(4) However, in no case may a resident be required to supply a sample of his or her blood.

Guidelines

- 2.1 The residence manager and staff must promote an environment which encourages education and prevention as the primary means of managing alcohol and other drug issues within the residence. Residents who seek treatment for substance abuse issues must be supported in their rehabilitation, unless there is no reasonable prospect of rehabilitation reducing the risk to the public posed by the resident.
- 2.2 Where there are reasonable grounds to believe that a resident has used alcohol or a prohibited drug, the ability to test for alcohol and other drug use is central to ensuring:
 - the security of the residence and the health and safety of all persons within it is maintained;
 - potential users are identified in a timely manner so that a rehabilitative response can be developed where appropriate;
 - breaches of security are detected and responded to.
- 2.3 Residence managers must ensure alcohol and other drug testing is implemented in a professional manner, with due consideration for resident's rights to privacy and dignity.
- 2.4 Residents must be provided with information about the drugs policy and the circumstances that could lead to their being tested for alcohol or other drug use. These include but are not limited to:
 - the detection of alcohol and drug paraphernalia within the residence;
 - the resident exhibiting possible signs of substance use;
 - credible intelligence that a resident has used a prohibited substance.

- 2.5 Residents must also be informed about the processes for testing, including what to practically expect during the alcohol or drug test, the timeframes, the test result and what the outcome will be depending on the results.
- 2.6 The types of tests that will be used within the residence include a:
- breath alcohol testing device to detect alcohol; and
 - urine test to detect the presence of drugs.
- 2.7 The residence manager may only authorise an alcohol or other drug test where there are reasons to believe that a resident has used a prohibited substance. There must be a staff member who has seen the resident and has reason to believe that the resident may be affected by alcohol and/or other drugs.
- 2.8 The residence manager may limit a resident's rights in response to a failed alcohol or other drug test, to the extent that is necessary to maintain the orderly functioning of the residence. Consequences of a failed alcohol or other drug test must be outlined in the resident's management plan.
- 2.9 If a resident refuses to undergo a test for alcohol or other drugs, the residence manager must:
- take whatever immediate steps are necessary (including but not limited to the use of coercive powers) to ensure the safety and wellbeing of the resident and others in the residence and to ensure the security of the residence;
 - review the circumstances that occurred which caused the reasonable grounds to believe that a resident has used a prohibited substance; and
 - take whatever steps the manager considers necessary to ensure that those circumstances do not recur.
- 2.10 The use of coercive powers such as seclusion and restraint must not be used to compel a resident to submit to an alcohol or other drug test, nor can it be used as a consequence for a failed alcohol or other drug test.
- 2.11 Records relating to alcohol and other drug testing must be maintained in accordance with operating guidelines and made available for inspection by statutory visitors.

Guiding Principles

Alcohol and other drug testing must be carried out in accordance with section 68 of the Act and operating guidelines. Coercive powers must not be used to compel a resident to submit to a test, nor can they be used as a consequence for a positive test.

3.0 Seclusion

Section 71 **Seclusion**

(1) For the purposes of this section, seclusion, in relation to a resident, means placing the resident without others in a room or other area that—

- (a) provides a safe environment for the resident throughout the resident's stay in the room or area; but*
- (b) does not allow the resident to leave without help.*

(2) The manager may place a resident in seclusion if it is necessary to prevent the resident from doing 1 or more of the following:

- (a) endangering the health or safety of the resident or of others;*
- (b) seriously compromising the care and well-being of other persons;*
- (c) significantly disrupting the orderly functioning of the residence.*

(3) The manager who places a resident in seclusion—

- (a) must ensure that the resident is not placed in seclusion for longer than is necessary to achieve the purpose of placing the resident in seclusion; and*
- (b) must comply with guidelines or instructions that are relevant to placing the resident in seclusion.*

(4) The following provisions must be followed when a resident is placed in seclusion:

- (a) in cases other than an emergency, seclusion must be authorised by the manager personally;*
- (b) in an emergency, a resident may be placed in seclusion, without the prior authority of the manager, by a person who, under a delegation given by the manager, has immediate responsibility for the resident, but that person must immediately bring the case to the attention of the manager;*
- (c) the duration and circumstances of each episode of seclusion must be recorded in a register kept in accordance with guidelines or instructions.*

Guidelines

- 3.1 Seclusion is a form of restraint and involves placing a resident in a sufficiently safe space where they cannot exit without assistance. Internationally there is a move to reduce the use of seclusion, based on the potential human rights concerns, and the negative consequences it may have on the person being secluded. Further, there is evidence that seclusion can be reduced without increasing the risk of harm, provided a range of other proactive techniques are implemented.
- 3.2 The residence manager must promote an environment that encourages a range of timely practical prevention methods as the primary means of reducing the use of seclusion and ensuring it remains an uncommon event which is used only when no safe, effective alternative is possible. These methods include, but are not limited to, encouraging resident autonomy and choice, collaborative working relationships between staff and residents, crisis prevention planning, staff monitoring the resident's wellbeing and understanding potential triggers for behavioural declines, involving other specialists and agencies (such as mental health), and de-escalation of incidents.

- 3.3 When the residence manager is considering the seclusion of a resident, the manager must consider the potential physical and psychological effect to the resident and to others in the residence and the manager should, if necessary, take appropriate professional advice.
- 3.4 A resident must be made aware of circumstances where the use of seclusion will be considered. Once in seclusion a resident must be provided with information including:
- The reason for their seclusion.
 - What they can expect to happen while they are in seclusion.
 - What their entitlements are.
 - How long they can expect to remain secluded.
 - What behaviours they need to exhibit in order for the period of seclusion to be concluded.
- 3.5 A resident who is placed in seclusion must not be restrained unless the residence manager has reasonable cause to believe restraint is necessary to prevent the resident from self-harming, jeopardising the safety of staff and others or causing serious damage to property.
- 3.6 A resident must not be secluded for a period of greater than 24 hours unless the continuation of seclusion has been approved in writing by a medical practitioner.
- 3.7 The specific cultural needs of the resident must be recognised throughout any period of seclusion and relevant cultural advice should, if necessary, be sought in order to maintain cultural safety.
- 3.8 Residents placed in seclusion retain their rights except where their rights are limited by the Act, any rules guidelines or regulations made under the Act or a decision of a manager taken under the Act
- 3.9 Residents who have been placed in seclusion must remain under observation by residence staff. Observation shall be continuous or at an appropriate frequency that ensures the safety of the resident.
- 3.10 Where a resident is secluded in response to an incident of suspected concealment of an unauthorised item, residence staff must immediately notify a registered nurse or registered medical practitioner to seek advice on whether it is necessary to escort the resident to hospital to prevent harm, injury or death of a resident. Staff must maintain observation on the resident pending the advice of the health professional.
- 3.11 Records relating to every episode of seclusion must be maintained in accordance with operating guidelines and made available for inspection by statutory visitors.

Guiding Principles

Seclusion is an uncommon event and must be carried out in accordance with section 71 of the Act and operating guidelines. The duration and circumstances of each period of seclusion must be kept in a register for this purpose. Inspectors will monitor entries in the register.

4.0 Restraint and escort

Section 72 Restraint of residents

(1) A residence manager may restrain a resident if that is necessary to prevent the resident from doing 1 or more of the following:

- (a) endangering the health or safety of the resident or of others:
- (b) seriously damaging property:
- (c) seriously compromising the care and well-being of the resident or of other persons:
- (d) escaping from lawful custody.

(2) The following provisions must be followed when a resident is restrained:

- (a) a person exercising the power of restraint may not use a greater degree of force, and may not restrain the resident for longer, than is required to achieve the purpose for which the resident is restrained:
- (b) no resident may be kept under mechanical restraint for more than 24 hours unless the restraint is approved in writing by a medical practitioner:
- (c) a person exercising the power of restraint must comply with guidelines or instructions that are relevant to the restraint of the resident:
- (d) in cases other than an emergency, the restraint of a resident must be authorised by the manager personally:
- (e) in an emergency, a resident may be restrained, without the prior authority of the manager, by a person who, under a delegation given by the resident's manager, has immediate responsibility for the resident, but that person must immediately bring the case to the attention of the manager:
- (f) the duration and circumstances of each episode of restraint must be recorded in a register kept in accordance with guidelines or instructions.

Section 73 Escort of persons subject to detention orders

(1) A staff member of the residence, corrections officer, or Police employee who is directed by the chief executive or the residence manager to escort a person subject to an interim detention order or a public protection order to or from a place or to supervise that person while outside the residence or a prison has, in relation to that person, all the powers and functions specified in subsections (2) and (3).

(2) A person who may exercise any power under subsection (1) may use any force, and apply any mechanical restraint, that is reasonably necessary for that purpose.

(3) The functions and powers, in relation to the person described in subsection (1), are—

- (a) preventing that person's escape from lawful custody:
- (b) preventing, or detecting and reporting on, the commission or attempted commission by that person of unlawful acts:
- (c) ensuring good order and discipline on that person's part:
- (d) attending to that person's well-being:
- (e) attending to the security of any property of that person that is in that person's possession.

Guidelines

- 4.1 Restraint of a resident is a serious intervention and is only to be used, with the least amount of force, after less restrictive interventions have been attempted and found to be inadequate. Proactive approaches must be used at all times. All residence staff must be trained in non violent crisis intervention techniques. Where reactive strategies become necessary, de-escalation strategies should be used before restraint. This may include seeking input from a variety of professionals to support the proactive actions of the residence staff to stabilise a resident's behaviour.
- 4.2 In exercising powers of restraint, the residence manager must be guided by the principles of acting in a resident's good (beneficence), avoiding harm to a resident (non-maleficence), avoiding harm to self and others, and respecting the dignity of the resident and their rights. A resident's medical condition must be taken into account to ensure any use of restraint can be carried out safely.
- 4.3 In all instances, the restraint of a resident must be kept to the minimum period required to achieve the purposes for which the resident was restrained.
- 4.4 No mechanical restraints, other than those approved by the residence manager, may be used either inside the residence or during the course of an escort.
- 4.5 In determining the arrangements for a resident's escort outside of the residence, the residence manager must give consideration to:
 - the security risk posed by the resident;
 - the security measures required to ensure both the resident's and the wider public's safety, including measures for moving through public areas; and
 - the need to ensure security is commensurate with the general public's expectation that their safety is not at risk.
- 4.6 No resident is to be handcuffed or otherwise restrained to any part of a vehicle used for transportation.
- 4.7 Records relating to every instance of restraint must be maintained in accordance with operating guidelines and made available for inspection by statutory visitors.

Guiding Principles

Restraint must be carried out as an intervention of last resort in accordance with sections 72 and 73 of the Act and operating guidelines. All incidences of restraint must be kept in a register for this purpose.

5.0 Security Emergency

Section 74 Responses to security emergencies

(1) If there is a security emergency in a residence, the manager of the prison in which the residence is physically located may, on request by the residence manager, direct 1 or more corrections officers to assist in restoring order at the residence.

(2) A corrections officer who is directed under subsection (1) may—

(a) apply any physical force that is reasonably necessary to prevent residents from—

(i) harming, or continuing to harm, themselves or others; or

(ii) damaging, or continuing to damage, property; and

(b) detain and take to a prison any resident who appears to pose such an unacceptably high risk to the resident or to others, or to both, that the resident cannot be safely managed in the residence.

(3) An officer who uses physical force for any of the purposes referred to in subsection (2) may not use any more physical force than is reasonably necessary in the circumstances.

(4) A resident who is taken to a prison under subsection (2) (b) may be detained in the prison, but if the resident's detention exceeds a period of 24 hours, the chief executive must, within the next working day after the day on which that period of 24 hours expires, apply to the court, in respect of the resident, for a prison detention order and an order under subsection (5).

(5) If it appears to the court on the papers that the application for a prison detention order against the resident is properly made, the court may make an order (an interim prison detention order) ordering that, while that application is pending, the resident continue to be detained in the prison.

(6) Section 86 applies to a person who is taken to a prison under subsection (2)(b) or who is subject to an interim prison detention order as if the person were subject to a prison detention order.

(7) The interim prison detention order ceases to have effect when the application for the prison detention order is finally determined or is discontinued.

(8) If the court declines to grant an interim prison detention order, the resident must be immediately returned to a residence.

(9) In this section, security emergency means a state of affairs, brought about by the conduct of 1 or more persons in a residence that leads the residence manager reasonably to believe that persons or property in the residence cannot be protected from harm or damage without assistance.

Guidelines

- 5.1 A security emergency arises when the residence manager reasonably believes that persons or property cannot be protected from harm or damage without assistance.
- 5.2 Staff members in a security emergency must take action according to the circumstances which should include:

- calling for assistance from other staff members in the residence
 - taking immediate action to reduce the risk of further harm
 - isolating the scene of the incident if necessary
 - ensuring first aid is available
 - taking immediate action to contact the residence manager
 - taking immediate action to contact the prison manager.
- 5.3 Regardless of the number of staff available to assist in a violent incident, staff must only physically intervene if they believe they can remain safe in doing so.
- 5.4 Where an incident requires the summoning of emergency services e.g. where an injury has occurred or a staff member believes an injury has occurred, the staff member must summon the appropriate emergency services.
- 5.5 Where an incident involves the taking of a hostage, the first responding staff member must immediately raise the alarm in a manner that does not escalate the situation. All staff must keep themselves safe and avoid entering into negotiations with the hostage taker.
- 5.6 Seclusion and restraint may be applied by staff to prevent a security emergency. Corrections officers may use coercive powers on residents in the residence if a security emergency has been declared and the manager has requested the assistance of the prison manager.
- 5.7 All security emergencies must be reported to the Chief Executive at the earliest opportunity.

Guiding Principles

A security emergency should be handled in accordance with section 74 of the Act. All security emergencies must be reported to the Chief Executive.

6.0 Requirement to report

- 6.1 The residence manager must maintain registers on any instances where coercive powers have been used. These registers must be made available for review by statutory visitors.