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Bona Fides

Procedural Instruction

This instruction applies to the assessment of visa holders and whether their reasons for entering Australia are consistent with the visa they hold.

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Introduction

1.1. Background

s. 47E(d)

Australian Border Force (ABF) officers must make every effort to review the traveller's circumstances and resolve identity and visa status issues as soon as practicable.

2. Scope

2.1. In Scope

This procedural instruction applies to Australian Border Force (ABF) officers who must make every effort to review the traveller's circumstances and resolve identity and visa status issues as soon as practicable.

This procedural instruction applies to staff in the aviation and maritime environments providing immigration clearance under the *Migration Act 1958 (Migration Act)*.

2.2. Out of Scope

This procedural instruction does not apply to clearance of travellers and/or goods under the *Customs Act 1901 (Customs Act)*.

3. Glossary

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	The Australian Border Force is an agency within the Home Affairs portfolio responsible for offshore and onshore border control enforcement, investigations, compliance and detention operations in Australia.
Australian citizen		Has the meaning given by section 4 of the <i>Australian Citizenship Act 2007</i> (Australian Citizenship Act).
Automated Telephone Interpreters Service	ATIS	Is an automated immediate interpreting service for agency clients who need to access a phone interpreter.
Bona fide		Is Latin for "in good faith". The term mean 'genuine' or 'real'. A Bona fide passport is a genuine document; a bona fide identity is the real identity of a person.
Border Clearance officer	BCO	Is an ABF officer who has a delegated authority to undertake primary Customs, Immigration and Biosecurity clearance.
s. 47E(d)		
Close Circuit Television	CCTV	Is a system of video monitoring at Australia's international airports and seaports.
Detention Service Provider	DSP	Is a company contracted by the ABF to carry out service roles when a person is detained. The DSP is responsible for ensuring the management and safety and security of detainees, including the effective resolution of all security matters within the detention environment on a day-to-day basis.
s. 47E(d)		
Immigration officer's report	M304	Is a report consisting of components, such as personal and flight details, narrative and coding, which together form a unified client record in the event a traveller is referred for secondary clearance
Incoming Passenger Card	IPC	Is a card including personal particulars and a declaration of incoming travellers are required to present to a clearance

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Term	Acronym (if applicable)	Definition
		officer under Regulation 3.01(3) to the <i>Migration Regulations 1994</i> (Migration Regulations).
Integrated Client Service Environment (Production & Offspring)	ICSE	Is a processing system used to record and process citizenship, sponsorship and nomination applications and a multitude of onshore and offshore visa applications.
Passenger Analysis Clearance Evaluation System	PACE	Is a system used to process travellers at Australia's international air and seaports.
Passport		Includes a document of identity issued from official sources, whether in or outside Australia, and having the characteristics of a passport, but does not include a document, which may be a document called or purporting to be a passport, that the regulations declare is not to be taken to be a passport.

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Person Identification Digit	PID	Is a unique number assigned to a record within the Travel and Immigration Processing System (TRIPS) database.
Visa Determination Officer	VDO	Is an ABF officer who has a delegated authority to undertake primary Customs, Immigration and clearance.

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4. Procedural Instruction

s. 47E(d)

4.2. Identity and immigration status

Establishing the traveller's correct identity and immigration status is very important. Prior to considering visa cancellation, the ABF officer should interrogate Mainframe to determine the s. 47E(d)

4.3. Initial system checks

s. 47E(d)

4.4. Preliminary discussion at the primary line

When a traveller is s. 47E(d)) at the primary line, the Visa Determination Officer (VDO) must:

- confirm the traveller's details s. 47E(d) on Passenger Analysis Clearance Evaluation (PACE), otherwise s. 47E(d)

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- ensure the BCO provides both the traveller's travel document and Incoming Passenger Card (IPC).

When a traveller is s. 47E(d) [REDACTED], the VDO must s. 47E(d) [REDACTED].

The VDO must then:

- introduce themselves to the traveller and state they are from the ABF
- consider the traveller's level of English:
 - if required, and telephone access is available, contact the Automated Telephone Interpreters Service (ATIS) or engage an ABF officer, fluent in the traveller's language, to assist in interpreting preliminary questions
- check the IPC for the s. 47E(d) [REDACTED] and emergency contact details
- briefly advise the traveller the reason for s. 47E(d) [REDACTED] clarification of visa details
- examine the travel document for authenticity (noting s. 47E(d) [REDACTED], evidence of prior travel and visas
- rescan the travel document at the Primary Support Point if any concerns are held in relation to the document's authenticity
- photocopy the traveller's IPC and travel document bio-data page, and s. [REDACTED] if appropriate s. 47E(d) [REDACTED]
- s. 47E(d) [REDACTED], if not created on entry.

s. 47E(d) [REDACTED]

4.5. Consequences of preliminary discussion

Visa Determination Officer concludes the traveller is bona fide

Where a decision is made the s. 47E(d) [REDACTED], the officer must:

- consider verbally counselling the traveller on their visa conditions
- inform the traveller they will be immigration cleared
- s. 47E(d) [REDACTED] to inform other ABF officers the referral is resolved.

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Traveller is low risk

Where a traveller is considered to be low risk, the ABF officer is to discuss relevant bona fide issues with their ABF supervisor.

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Interview preparation

In preparation for a formal bona fide interview, the ABF officer is to:

s. 47E(d)



- gather required equipment, for example:
 - digital recorder (ensure battery is full)
 - record of interview template
 - health screening questionnaire
 - writing paper and pens
- use a Money verification sheet to:
 - confirm the traveller's ability to fund their stay

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- ensure accountability and transparency in the management of the traveller's money
- commence a Traveller Monitoring Sheet, to ensure all actions and times are recorded
- source relevant information relating to the traveller's reasons for travel, including recording results from the baggage search, for example tools, clothing and documents
- photocopy documents relating to:

s. 47E(d)



If the traveller cannot be interviewed promptly the ABF officer must:

- relocate the traveller to an appropriate waiting area, as per local arrangements
- discuss alternative arrangements with their ABF supervisor if concerns are held the traveller may abscond
- inform the traveller of the reason for the relocation
- attempt to resolve the delay as soon as practicable.

Immediately prior to commencement of the interview the ABF officer should:

- secure the traveller's luggage outside the interview room
- activate the Close Circuit Television (CCTV) monitor in the interview room and other areas where ABF officers interact with the traveller.

Preparing the traveller for interview

The ABF officer must inform the traveller they will be interviewed to determine if they can be immigration cleared and they will remain in immigration clearance until it is decided. The ABF officer should then:

- escort the traveller into the ABF interview room
- confirm the traveller understands the interpreter (if applicable), or has an acceptable understanding of English for interview
- request the traveller remove any items from their pockets to ensure personal safety, to be held by ABF for safekeeping or request traveller to place in their luggage.

Where the traveller refuses to cooperate, an ABF officer may consider carrying out a search.

Depending on the circumstances, the ABF officer is to ensure the removal of items that may:

- inflict harm, for example, equipment, tools, medication, clothing
- be required for further investigations, for example, mobile phones, notes, identity cards.

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The ABF officer is to ensure the traveller's belongings are:

- returned, if appropriate, or are no longer required
- recorded on the traveller's file if they are retained by the Detention Service Provider (DSP).

Obtain the traveller's consent to proceed with the interview. If the traveller does not consent, advise them a decision will be made based on the existing evidence.

Where a traveller is willing to cooperate with the interview process the ABF officer must:

- instruct the traveller on use of the call button (if available) and the presence of the CCTV monitor
- advise the traveller to inform the interviewing officer if a break is required at any time or for any reason during the interview.

Questioning detention

If the traveller is uncooperative and the ABF officer has knowledge or a reasonable suspicion the traveller holds a visa that may be cancelled, the ABF officer may consider detaining the traveller for questioning about matters relating to their visa under section 192 of the Migration Act.

4.6. Conducting the interview

When conducting the formal interview the ABF officer must:

- inform the traveller the interview will be recorded
- record verification of funds using a Money verification form if required.

When using the Money verification form, where possible it is recommended to:

- have a second officer present during this process
- ask the traveller, or the second ABF officer, to count the money and other contents of wallet or bag, for example, credit cards, licences, out loud for the digital recording
- ask the traveller, or the second ABF officer, to verbally confirm and sign the verification that all money has been returned to them.

When completing the appropriate questions of the record of interview, gather information that will assist in determining if the traveller's intentions comply with their visa conditions.

The traveller's responses may lead the ABF officer to ask additional questions or seek clarification of matters not included in the interview template.

Ensure the traveller is asked about their health. The record of interview template explains when the Health screening questionnaire should be completed.

Details of the interview must be recorded in writing including:

- interview start time
- suspension(s) and recommencement(s)
- interview finish time
- toilet/drink/meal breaks
- any other duty of care events, such as telephone calls.

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When the interview is completed, the ABF officer must inform the traveller the interview is completed and the details of their case will be discussed with the ABF supervisor.

Information verification

The ABF officer should attempt to verify information provided by the traveller at interview. The ABF officer may:

s. 47E(d)



The ABF officer should then:

- consult with their ABF supervisor and discuss evidence gathered
- notify the airline and relevant ABF officers a traveller is currently being interviewed in regard to immigration clearance.

Claims that may engage Australia's protection obligations

If at any time the traveller seeks to engage Australia's protection obligations, or states they are fearful of returning to their country of citizenship or usual residence, the ABF officer must immediately refer the traveller to the ABF supervisor for advice on how to proceed.

Once the ABF supervisor has provided advice, the ABF officer must undertake the appropriate course of action for the traveller in accordance with *Procedural Instruction: Protection claims at the border*.

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4.7. Decision

Traveller assessed as bona fide

If a decision is made after interview that the traveller's purpose for travel to Australia is genuine and consistent with the type of visa held, and grounds for visa cancellation do not exist, or where the evidence does not justify visa cancellation, the ABF officer must:

- verbally counsel the traveller on their visa conditions
- inform the traveller they will be immigration cleared
- s. 47E(d) [REDACTED]
- cease the CCTV monitor to the ABF interview room
- finalise Immigration officers report (M304).

Notifying Inspector of non-bona fide traveller

If the ABF officer is satisfied that grounds for visa cancellation appear to exist, the ABF officer must contact the Border Force Inspector (according to local arrangements) and present the basis of evidence.

If, after discussion with the Border Force Inspector, it is agreed that a visa cancellation process should commence, see *SOP: Visa cancellation*.

5. Accountability and responsibilities

If ABF officers require clarification or assistance in regard to this instruction, they should contact the Traveller Operational Policy Section by email s. 47E(d) [REDACTED] or telephone: s. 47E(d) [REDACTED] AEST.

The Superintendent, Traveller Operational Policy Section has responsibility for the preparation and dissemination of this Procedural Instruction in regards to operational policy and programme management of border clearance activities for air and sea travellers, under the Customs Act and Migration Act.

The Director, Traveller Policy Section has responsibility for preparation and dissemination of the Policy Statement in relation to this Procedural Instruction.

6. Statement of Expectation

Directions

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).

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 1999.

The Secretary's Professional Standards Direction, issued under subsection 55(1) of the Australian Border Force Act 2015, 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.

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 Australian Border Force Act 2015. Non-compliance may also be addressed under the terms of the contract engaging the contractor or consultant.

Policy, Guidance and Recommendations

For all other provisions of PPCF documents, the Secretary and the Commissioner 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;
- be responsible for documenting the reasons/justification for their decision to depart from, or not adhere to, any PPCF document.

Exercise of Legislative Powers and Functions

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.

What happens if this Policy Statement is not followed?


Failure to comply with a direction contained in this document may constitute a breach of the APS Code of Conduct, and may result in a sanction, up to and including termination of employment, being imposed under subsection 15(1) of the Public Service Act 1999.

For IBP workers who are not APS employees, failure to comply may constitute a breach of a direction under section 55 of the Australian Border Force Act 2015, and may result in the termination of their engagement under section 57 of that Act. Non-compliance may also be addressed under the terms of the contract engaging the IBP worker.

7. Related Framework documents

This instruction must be read with:

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



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7.3. Standard Operating Procedures

s. 22(1)(a)
i)

8. References and legislation

8.1. Migration Act 1958

This Act sets out the primary requirements relating to immigration clearance as follows:

- Section 166 outlines the evidence that must be presented to a clearance officer or an authorised system upon entry to Australia.

Other sections of the Act and Regulations are also important in the context of this instruction, they are:

- Section 189 – Detention of unlawful non-citizens
- Section 192 – Detention of visa holders whose visas liable to cancellation
- Section 252 – Searches of person.

9. Consultation

9.1. Internal consultation

The following internal stakeholders were consulted in the development of this Procedural Instruction:

- Integrity and Professional Standards/ Integrity and Professional Standards Branch
- FOI Privacy and Records Management /Records Management Section
- Traveller Policy Branch /Traveller Policy Advice and Support Section
- Legal Division

9.2. External consultation

The following external stakeholders were consulted in the development of this Procedural Instruction:

- No external consultation

10. Document detail

BCS Category/Function	Trade & Traveller Clearance Management
BCS Sub-Category/Sub-Function	Passenger and Crew Processing
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10.1. Document change control

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1.0	02 May 17	s. 22(1)(a)(ii)	Update of document into PI
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1.3	17 Sep 18	s. 22(1)(a)(ii)	Update to Home Affairs Template
1.4	28 Nov 18	s. 22(1)(a)(ii)	Legal comments incorporated

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