



For Official Use Only

# Managing Minors in Immigration Clearance

## Procedural Instruction

This instruction applies to the immigration clearance of persons less than 18 years old. These persons are considered 'minors' under the Migration Act 1958.

Approval Date	30 April 2018
Date of Review	30 April 2019
Contact	s. 47E(d)
Document ID (PPN)	BC-2676
TRIM Reference	s. 22(1)(a)(ii)

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

For Official Use Only

## Table of Contents

<b>1. Introduction</b>	<b>4</b>
1.1. Background	4
<b>2. Scope</b>	<b>4</b>
2.1. In Scope	4
2.2. Out of Scope	4
<b>3. Glossary</b>	<b>5</b>
<b>4. Procedural Instruction</b>	<b>7</b>
4.1. Managing minors through the arrival and departure process	7
4.1.1. Airline arrangements for minors	7
4.2. Obligations in managing children at the border on arrivals	8
4.2.1. Sections 4AAA and 11 of the Immigration (Guardianship of Children) (IGOC) Act	8
4.2.2. Article 3 of the Convention on the Rights of the Child (CRC)	8
4.2.3. Relevant CRC obligations for decisions made regarding minors in immigration clearance	9
4.2.5. Important considerations when managing families with minors subject to same day removal	10
4.2.6. Health and character concerns	10
4.2.7. Possible child abduction and /or human trafficking	10
4.2.8. Working with Children Checks (WWCC)	11
4.2.9. Managing suspected child abuse and/or neglect victims	11
4.2.10. Duties of an Independent Observer	11
4.2.11. Requirements for immigration clearance and incoming passenger cards	12
4.2.12. Reasons for referral of a minor in immigration clearance	12
4.2.13. Actioning the referrals of accompanied minors	13
4.2.14. Actioning referrals of unaccompanied minors	13
4.2.15. Visa grant to a minor in immigration clearance	14
4.2.16. Accompanied minors	14
4.2.17. Preparation and procedures involved in a formal interview	14
4.2.18. Section 192 questioning detention	15
4.2.19. Visa Cancellation	15
4.2.20. Events after refused immigration clearance	16
4.2.21. Case management of a minor	16
4.2.22. Removal of the minor	16
4.3. Managing minors through the Departure Clearance process	17
4.3.1. Departure Clearance of an accompanied minor	17
4.3.2. Departure Clearance of an unaccompanied minor	17
<b>5. Accountability and responsibilities</b>	<b>19</b>
<b>6. Statement of Expectation</b>	<b>19</b>
<b>7. Related Framework documents</b>	<b>20</b>
7.1. Policy Statement	20
7.2. Procedural Instructions	20
<b>8. References and legislation</b>	<b>20</b>
8.1. Migration Act 1958	20

## For Official Use Only

8.2. Immigration (Guardianship of Children) Act 1946	20
<b>9. Consultation</b>	<b>21</b>
9.1. Internal consultation	21
9.2. External consultation	21
<b>10. Document details</b>	<b>22</b>
10.1. Document change control	22
10.2. Approval	22

Released by Department of Home Affairs  
under the *Freedom of Information Act 1982*

# 1. Introduction

## 1.1. Background

This instruction aims to:

- Identify cases of concern with the travel of minors that may come to the attention of Australian Border Force (ABF) officers
- Advise ABF officers on considerations when dealing with cases of concern involving minors
- Provide additional background to ABF officers about various circumstances of minors who may be arriving or departing at airports.

## 2. Scope

### 2.1. In Scope

This instruction applies to managing minors in immigration clearance under the *Migration Act 1958* for travellers in both air and sea ports.

### 2.2. Out of Scope

This instruction does not cover clearance of travellers and/or goods under the *Customs Act 1901*.

This instruction does not apply to travellers that are not deemed to be minors under the *Migration Act 1958*(the *Migration Act*).

### 3. Glossary

Table 1 – Common terms and definitions used in this instruction

Term	Acronym (if applicable)	Definition
Australian Border Force officer	ABF officer	An ABF officer is an Immigration and Border Protection worker (see section 4 Australian Border Force Act) authorised to perform border clearance duties.
Australian Federal Police	AFP	Is the organisation whose role is to enforce Commonwealth criminal law, contribute to combating complex, transnational, serious and organised crime affecting Australia's national security and to protect Commonwealth interests from criminal activity in Australia and overseas.
Convention of the Rights of Children	CRC	Children's rights are the human rights of children with particular attention to the rights of special protection and care afforded to minors. The Convention on the Rights of the Child (CRC) of 1989 defines a child as any human person who has not reached the age of eighteen years.
e-passport		A biometric passport that has an embedded electronic microprocessor chip that contains biometric information that can be used to authenticate the identity of a passport holder.
Formal interview		Are interviews held with a traveller in immigration clearance, excluding the initial conversations at the primary or outward clearance line.
Guardianship under the Immigration (Guardianship of Children) Act 1946		Under the IGOC Act, the Minister for Home Affairs is the legal guardian of certain unaccompanied non-citizen minors if the following circumstances are present at the time of the minor's entry to Australia: <ul style="list-style-type: none"> <li>• the minor has not turned 18 years of age</li> <li>• the minor is entering Australia as a non-citizen</li> <li>• the minor is not entering Australia in the charge of or for the purposes of living with a parent, relative who is 21 years of age or over, or intending adoptive parent</li> <li>• the minor intends or is intending to become a permanent resident of Australia</li> </ul>
Incoming Passenger Card	IPC	Is a card including personal particulars and a declaration of incoming travellers required to present to a clearance officer under Regulation 3.01(3) of the <i>Migration Regulations 1994</i> (Migration Regulations).

Released by Department of Home Affairs under the Freedom of Information Act 1982

## For Official Use Only

Term	Acronym (if applicable)	Definition
Independent observer	IO	Is an adult who is independent of the Department and ensures agencies treat an unaccompanied minor fairly, appropriately and reasonably. Independent observers provide pastoral or physical care of unaccompanied minors while they attend interviews, meetings and immigration processes undertaken by ABF or other government agencies on Christmas Island and the Australian mainland. These may include entry interviews, Australian Federal Police (AFP) and other intelligence interviews, interviews directly concerning their immigration status, identity processes and returns and removals processes.
Minor		A person under 18 years of age.
Minor accompanied by a parent (natural or adoptive) or legal guardian		A person under 18 years of age who has arrived in Australia under the direct care of one or both of their parents (natural or adoptive).
Minor accompanied by a relative or an adult who is not related to the minor		A person under 18 years who has arrived in Australia under the direct care of a relative (a person related to the minor by blood or marriage) or an adult who is unrelated to the minor but has been authorised by the minor's parents to provide care and be responsible for the minor while in Australia.
Public Interest Criteria	PIC	Means a criterion set out in a clause of Schedule 4 of the Migration Regulations 1994 ( <i>Migration Regulations</i> ), and a reference to a public interest criterion by number is a reference to the criterion set out in the clause so numbered in that Schedule.
Unaccompanied minor		Is a person under 18 years of age who has arrived, or intends to depart in Australia without their parent, relative or an adult.
Working with Children Checks	WWCC	In Australia, state and territory governments are responsible for the administration of statutory child protection. Some state and territory governments have introduced legislation that requires individuals working with children, in a paid or volunteer role, to undertake a WWCC

Released by Department of Home Affairs under the Freedom of Information Act 1982

## 4. Procedural Instruction

### 4.1. Managing minors through the arrival and departure process

Australian law considers a minor to be a person under the age of 18.

Standard immigration clearance processes apply to all persons, regardless of age. However, in the case of minors, additional care must be taken in assessing for potential issues.

As a matter of Departmental policy, a minor (under the age of 16) cannot be held liable for any incorrect information on a passenger card.

Where the minor is under 18, they should not be formally interviewed without a parent or accompanying adult or an Independent Observer (IO) present.

Where a minor is too young to read or comprehend the content of an incoming passenger card (IPC), it should be completed by:

- an accompanying parent or legal guardian
- an authorised third party with whom the minor is travelling
- where the minor is unaccompanied, an ABF officer.

If an ABF Officer confirms that an accompanying adult does not intend to care for the minor whilst they are in Australia, the minor may be considered an unaccompanied minor. If the unaccompanied minor intends to reside permanently in Australia, the minor may fall under the Minister's legal guardianship under the *Immigration (Guardianship of Children) Act 1946* (the IGOC Act). To determine whether the minor falls under the IGOC Act, please contact Unaccompanied Humanitarian Minors and Guardianship section s. 47E(d) for an IGOC assessment.

For further information, see *Procedural Instruction: Passenger Cards* and *Procedural Instruction: Processing domestic passengers on international flights*

At the primary clearance point ABF officers must ask basic questions before determining whether a formal interview with the child or the engagement of an IO.

IOs may attend interviews and meetings between accompanied minors and the Department and/or other agencies where no adult relative is present during the interview or where concern exists regarding the adult relative's understanding of processes and capability of acting in the best interests of the minor with regards to a minor's physical and emotional wellbeing.

If it is necessary to gather extensive information from the minor, an interview room should be used to ensure privacy and confidentiality.

Steps that can be taken to minimise the negative impacts on the child in their interactions with the Department include, but are not limited to, the following:

- ensuring that the family unit stays together, if applicable
- progressing the matter as expeditiously as possible
- ensuring interaction in the child's presence is calm, respectful and discrete
- check the individual immigration status of family members for any variation, if applicable.

#### 4.1.1. Airline arrangements for minors

An ABF officer would generally consider an airline escort as an indicator that the child has permission from their parent or guardian to travel.

## For Official Use Only

Under the International Air Transport Association's (IATA) Recommended Best Practice for Minors, airlines generally refer to a minor as a child under 16 years old and an unaccompanied minor as a child under 16 years old who is travelling alone, or travelling only in the company of another child aged less than 16 years old.

Generally, airlines require unaccompanied minors under 12 years old to travel under the airline's minor arrangements. These arrangements ensure a minor is escorted by an airline representative on arrival or departure through immigration and customs processing. Airlines may also offer an escorted service for unaccompanied between 12 and 16 for a fee.

### 4.2. Obligations in managing children at the border on arrivals

#### 4.2.1 Sections 4AAA and 11 of the Immigration (Guardianship of Children) (IGOC) Act

Section 4AAA of the IGOC Act and section 6 of the IGOC Act have the effect that the Minister is the legal guardian of non-citizen minors if at the time of the minor's arrival to Australia:

- the minor is entering Australia as a non-citizen
- the minor is not entering Australia in the the care and responsibility of a parent, or relative who is 21 years of age or over
- the minor intends or intended to become a permanent resident in Australia.

If an ABF officer is dealing with an unaccompanied minor who they believe may fall under the Minister's guardianship, they should contact UHM and Guardianship sections. 47E(d)

Section 11 of the IGOC Act gives the Minister the authority to exclude a child or class of children from the provision of the IGOC Act. The current section 11 order excludes the following classes of minors:

- minors who are tourists or visitors
- minors who are prohibited immigrants by virtue of a provision of the Migration Act
- minors whose continued presence in Australia is subject to a limitation as to time imposed by law, other than minors who on arrival in Australia claim asylum as refugees.

#### 4.2.2. Article 3 of the Convention on the Rights of the Child (CRC)

Article 3 of the CRC provides:

*'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'*

Note this means that the best interests of the child must be treated as a consideration, not necessarily the primary consideration in exercising any discretionary power under the Act.

Importantly, as Article 3 has regard for 'all actions concerning children', officers should assess the best interests of a child in relation to:

- decisions directly relating to a child and
  - decisions about a family member, primary care giver or other person who has claimed responsibility for the child, even if the decision does not directly relate to the child. This is because any decision about a parent or primary care giver will affect the child. The child concerned may be a non-citizen, or an Australian citizen child of a non-citizen parent.
- The meaning of 'best interests of the child' is not defined, but is informed, in part, by the principles in the CRC. The principles that are most likely to be relevant to actions in relation to children in immigration clearance are:

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

## For Official Use Only

- protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse;
- families should be able to stay together, as far as possible;
- respect for the rights and duties of parents and other relevant family members and recognition that both parents have common responsibilities for the upbringing and development of the child;
- the child has the right to preserve his or her identity, including nationality, name and family relations as recognised by law;
- prevention of the illicit transfer and non-return of children abroad;
- freedom of religion; and
- the views of the child should be given weight in accordance with the child's age, maturity and level of understanding.

Although it may be assessed that a particular decision would be in the best interests of a child, it does not automatically follow that it is the decision that should be so made. Article 3 requires that the best interests of the child be a consideration in all actions concerning children.

The best interests of the child must be weighed with or against any other primary considerations in the specific circumstances, for example, the objectives of the relevant provision/s in the Act; and Community protection.

### 4.2.3. Relevant CRC obligations for decisions made regarding minors in immigration clearance

When taking actions that concern or affect a minor, the decision-maker must consider Australia's obligations under the CRC where there is a discretion to do so. However, it is important to note that when exercising a power that does not specifically address the best interests of the child and which does not allow the decision-maker any discretion, there is generally no scope to consider the obligations under the CRC.

In considering and CRC obligations, ABF officers should consider the following to ensure compliance with the CRC:

- the best interest of the minor must be a primary consideration in any decision, especially affecting children where the power being exercised is discretionary. This will include decisions about visa cancellations of parents or guardians even if the decision does not primarily relate to the minor because such a decision will affect the minor
- preserve the family unit and the right of the minor to be cared for by their parents, unless competent authorities have found this to not be in the best interest of the minor (to prevent abuse or neglect). Where a minor is temporarily deprived of their family environment, special arrangements should be made for their care, welfare and support
- when a minor has to be detained, it should be as a matter of last resort and for the shortest possible period of time. It is government policy that where immigration detention does occur family groups will, whenever possible, be accommodated together. If it is necessary to separate a minor from their family, the minor must be able to maintain contact with them and should be kept separate from adults who are not family members. The priority is that children and, where possible, their families will be placed in the least restrictive form of appropriate accommodation for the shortest practical time
- when a parent has requested that the minor be removed when they are removed, ensure the request is dealt with in a positive, humane and expeditious manner
- when a decision is being made that will affect the minor, ensure that the minor's views are given weight in accordance with the child's age and maturity and level of understanding;

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

## For Official Use Only

- consider the appropriate treatment of the minor given their age, level of understanding and maturity, gender, cultural background, and other needs such as medical and religious requirements

### 4.2.4. Important considerations when managing unaccompanied minors

Where a child is being processed through immigration clearance without a responsible adult, and the child's circumstances of travel are such that an officer has concerns about their welfare arrangements, or for any reason it is clear that they have been abandoned, then:

- all reasonable efforts must be made to identify and contact the child's parents or an adult in Australia responsible for their care. These efforts can commence with inquiries by ABF officers and cooperation with partner agencies at the airport, airlines and airport facilities managers
- the case must be escalated to the Supervisor
- when the minor is an unlawful non-citizen, appropriate accommodation should be arranged, a case manager should be immediately allocated, and information passed on about the circumstances of the minor to the case manager for further action
- State welfare authorities and police should be contacted for assistance by the Supervisor, either while the minor is in immigration clearance or once they are taken to appropriate accommodation.

In other cases, the travel plans of a minor who is alone may not be suspicious, but still of concern. For example, where a minor is waiting in transit alone for an unusually long time before a connecting flight. If ABF officers become aware of such situations, they may be able to assist airlines or other partner agencies to provide a higher standard of care for the minor.

### 4.2.5. Important considerations when managing families with minors subject to same day removal

When a family member or responsible adult travelling with a minor is detained at the airport ABF officers should consider whether there are special needs for the minor. For example, facilities for feeding infants and baby change facilities.

### 4.2.6. Health and character concerns

If a minor (unaccompanied or otherwise) declares 'Yes' to health and / or character questions, the ABF officer should confirm with them if they intended to tick 'Yes'.

To ascertain whether the minor has the required understanding and maturity to comprehend the nature of the IPC questioning, the ABF officer should apply a conversational tone to inquiries about the minor's background and level of education and literacy.

Where the minor responds that they have understood the declaration and a formal interview will be necessary, see *Procedural Instruction: Character Concern* and *Procedural Instruction: Foreign nationals and tuberculosis*.

For New Zealand minors declaring criminal convictions, see *Procedural Instruction: Behaviour Concern Non-Citizen*.

### 4.2.7. Possible child abduction and /or human trafficking

Officers and/or agencies may identify passengers of concern in immigration clearance because of possible child abduction and / or human trafficking. These cases must be referred to the AFP, see *Procedural Instruction: Working with AFP*.

Released by Department of Home Affairs  
under the Freedom of Information Act 1982



## For Official Use Only

An IO must be impartial and objective in their behaviour and attitude towards a minor. They must ensure that the minor is treated fairly, equally and age appropriately. An IO should not be a Department or other government official involved in the minor's immigration clearance.

The role of the IO is to:

- communicate with the minor prior to the interview's commencement, if necessary
- build rapport with the minor
- explain to the minor that they are not a legal representative or an advocate and will be present during the interview to assist them with their physical and emotional wellbeing
- ensure appropriate toilet and food breaks are provided to the minor
- monitor for inappropriate questioning and/or behaviour by the interviewer
- ensure the minor is given the opportunity to ask questions and have their questions answered
- raise concerns, for example, emotional and physical wellbeing of the minor, with the interviewer
- intervene when he or she holds a concern for the minors wellbeing or believes an interviewing officer is behaving inappropriately towards a minor
- maintain documentation for concerns raised.

The ABF officer must retain any original notes taken by the IO and attach it to the minor's file. Before providing a copy of the notes to the IO, ensure any unrelated personal information is blanked out.

### 4.2.11. Requirements for immigration clearance and incoming passenger cards

#### Travel documentation belonging to a minor

In cases of concern in immigration clearance, documents which may indicate that the travel of the minor is legitimate include:

- s. 47E(d)
- 
- 
- 
- 
- 
- 
- 

### 4.2.12. Reasons for referral of a minor in immigration clearance

The reasons minors come to the attention of ABF officers include, but are not limited to, the following:

- s. 47E(d)
- 

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

s. 47E(d)

- 
- 
- 
- 

#### **4.2.13. Actioning the referrals of accompanied minors**

If a minor travelling with a parent/s or legal guardian is referred, the ABF officer has a duty of care to engage in primary conversation with the parent/s or legal guardian to establish:

- the purpose of the visit to Australia
- the intended accommodation arrangement for the family unit
- if travelling with one parent, the other parent's current location, and reason for travelling with the minor
- whether written consent (letter) of the non-accompanying parent has been provided.

If a minor travelling with an accompanying adult (not a parent or legal guardian) is referred, the ABF officer is responsible for engaging in conversation with the adult to establish:

s. 47E(d)

- 
- 
- 
- 
- 
- 

In general, if a minor applies for protection in immigration clearance, regardless of whether they have right of entry to Australia, their details and any interview outcomes should be forwarded to UHM and Guardianship section at s. 47E(d) for an IGOC assessment.

An IGOC assessment will be undertaken as soon as possible, however, note that IGOC status does not affect decisions made under the Migration Act.

s. 47E(d)

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

#### **4.2.14. Actioning referrals of unaccompanied minors**

If an unaccompanied minor is referred, the ABF officer must:

s. 47E(d)

- 
- 
- 
- 
- 
- 
- 
- 
- 
- 

#### **4.2.15. Visa grant to a minor in immigration clearance**

Where the minor is invited to apply for a visa in immigration clearance, the ABF officer should read Procedural Instruction: *Granting an ETA in Immigration Clearance*, if applicable, see Procedural Instruction: *Granting Border Visas in Immigration Clearance*, and if applicable

- consider relevant Public Interest Criteria (PIC)
- where applicable, consider the immigration clearance outcomes of the accompanying adult.

#### **4.2.16. Accompanied minors**

Where the ABF officer has doubts about the minor's capacity to understand the immigration clearance process, an interview should not proceed without the involvement of a parent or accompanying adult or an IO.

An IO must also be engaged if there are concerns about the adult's understanding of immigration processes and their capability to act in the best interests of the minor's physical and emotional wellbeing.

#### **4.2.17. Preparation and procedures involved in a formal interview**

Should the Supervisor authorise a formal interview with an IO and an unaccompanied minor, the ABF officer must:

- brief the IO on the individual case
- provide regular updates to a Supervisor
- remain with the minor and IO at all times
- arrange the interview room or an appropriate private area to conduct the interview allowing the interviewer and minor to be at equal eye level
- consider the minor's ability to communicate, including the need for an interpreter
- ask age appropriate questions

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

## For Official Use Only

- structure the interview to include general questions at the beginning, for example, questions about friends, schools
- explain to the minor during the interview:
  - the reason for the interview
  - the role of the IO
  - the need to ask questions
- be open to listening to the minor's perception of issues in addition to listening to the literal meaning of their responses.

### 4.2.18. Section 192 questioning detention

Detention of a minor must be considered as a last resort and **must not** occur prior to:

- discussing the case with an ABF Inspector
- engaging an IO, where the minor is unaccompanied
- satisfying the questioning detention provisions, see Procedural Instruction: *Questioning detention*.

### 4.2.19. Visa Cancellation

The Migration Act makes no relevant distinction between adults and minors in regard to a client's visa eligibility and status.

Where there is a decision to cancel an accompanying adult's visa the, ABF officer must consider that if the minor's visa may be consequently cancelled under section 140 of the Migration Act, see *Procedural Instruction: Visa cancellation*.

Where a minor holds a visa in their own right and a decision is made to cancel the accompanying adult's visa, the ABF officer must consider if there are grounds to consider cancellation of the minor's visa.

Where a minor is clearly too young to be formally interviewed, for example under five, and the accompanying adult does not request the cancellation of the visa (considering that the minor could not be detained and removed with the adult), the ABF officer should discuss, with their Supervisor, whether there are any grounds for cancelling the minor's visa under section 140 or section 116 of the Migration Act.

Where there are grounds to consider cancellation of either the adult and/or the minor's visa, the ABF officer should also take into consideration the best interests of the minor in their decision-making about the practicalities for the minor following the cancellation, including if the accompanying adult:

- will be invited to apply for a Border visa
- will be detained
- will be transferred to an immigration detention facility
- will be removed from Australia
- has requested cancellation of the minor's visa in writing.

In broad terms, regulation 2.43(1)(h) of the *Migration Regulations 1994* (the Migration Regulations) provides for cancelling a temporary visa held by a minor if their parent, custodian or guardian asks that it be cancelled. However, there is no equivalent ground for cancelling a permanent visa held by a minor.

The prescribed grounds are that:

- the minor is not a spouse, a former spouse or engaged to be married
- an adult who can lawfully determine where the visa holder is to live asks the delegate, in writing, to cancel the visa
- the delegate is satisfied that there is no compelling reason to believe that the cancellation of the visa would not be in the best interests of the minor.

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

#### **4.2.20. Events after refused immigration clearance**

The following procedures should be read in conjunction with the *Procedural Instruction: Events after refused immigration clearance* and *Procedural Instruction: Section 189 Detention*

Where a minor is refused immigration clearance, the best interests of the minor are the primary consideration. Detention should only be used as a last resort and for the shortest period of time.

The ABF officer, in consultation with their Supervisor, should:

- refer the client to Detention Operations according to local procedures
- provide as much placement advice in regard to specific needs of the client, such as physical or mental health, behavioural or safety concerns or dietary concerns
- endeavour to access the least restrictive and appropriate accommodation and in a facility other than an immigration detention facility
- provide access to embassy or consulate assistance where required, or in cases where the minor or accompanying adult have sought asylum, where they have specifically requested embassy or consulate assistance.

#### **4.2.21. Case management of a minor**

If a detained minor is to be accommodated in an alternative place of detention (outside of the airport) the ABF officer should:

- s. 47E(d)
- 

Case managers will provide advice on a client's placement, if requested. However, it is not a requirement for the ABF officer to consult case management regarding a minor's placement.

#### **4.2.22. Removal of the minor**

The following procedure should be read in conjunction with the *Procedural Instruction: Summary removal*.

In all removals involving minors the best interests of the minor are a primary consideration.

ABF officers should seek advice from Supervisors as to whether a removal is a summary removal or requires referral to the Removals Team.

ABF officers, in consultation with the Supervisors, should:

- contact the minor's parents in the country of origin and providing travel details, where possible
- ensure the minor's passage through transit countries is safe and does not place them at risk of harm by referring to the removals team
- ensure the minor is returned into the custody of their parents or, if this is not possible and in agreement with the minor's parent, a next of kin
- consider whether it would be appropriate in the circumstances of the case to arrange for an escort to accompany the minor to the destination
- ensure the removal is dealt with in a positive, humane and expeditious manner
- ensure the removal is progressed as discussed with the Supervisor/Manager.

The summary removal of an unaccompanied minor can be carried out under the airline unaccompanied minor arrangements if deemed appropriate and with a relevant Superintendent's approval.

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

s. 47E(d)

### **4.3. Managing minors through the Departure Clearance process**

Section 175 of the Migration Act stipulate the legal requirements to be satisfied for departing Australia. These are met where an officer is satisfied with a traveller's identity and where they present a valid travel document. Notwithstanding this, the clearing officer should be aware the best interests of a minor are also a consideration under Article 3 of the CRC in considering whether to request further types of evidence under section 175 of the Migration Act.

As such, officers must be alert to circumstances where it may not be in a minor's best interest to be departing Australia.

It is worth noting there are mechanisms in place to ensure Australian travel documents and visas are not issued to minors without appropriate authorisation from legal guardians. There are also mechanisms in place for guardians to limit a minors ability to depart Australia(i.e. through the courts) even if they do hold a valid travel document and/or visa. As such, in the absence of any triggers by way of alerts it can generally be taken that a minor presenting for departure does have the appropriate consent from their guardian(s) for travel.

#### **4.3.1. Departure Clearance of an accompanied minor**

In most cases a minor will be travelling in the company of a responsible adult. In these circumstances the ABF officer is to identify the adult responsible for the minor. In cases involving groups of minors (such as a school/community group) it is reasonable to conclude that those in the group are under the care of the identified adult/s travelling (eg school teachers or nominated parent/s).

s. 47E(d)

#### **4.3.2. Departure Clearance of an unaccompanied minor**

Where an ABF officer holds concern about an unaccompanied minor attempting to depart Australia without an accompanying adult, the case must be escalated to the Supervisor.

Due to time constraints in the departure clearance process, the ABF officer is to establish the minor's purpose for travel and balance this against the initial concerns around the child's best interests.

s. 47E(d)

If the AFP is unable to attend immediately, explain the process to the minor and engage the services of an IO. The date and time of the conversation must be documented in the officer's notebook.

Where it is necessary to gather extensive information from the minor, an interview room should be used to ensure privacy and confidentiality. Steps that can be taken to minimise the impact on the child in their interactions with an ABF officer, AFP officer(s) and an IO can include:

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

## For Official Use Only

- Progressing the matter as expeditiously as possible
- Ensuring interaction in the child's presence is calm, respectful and discrete

s. 47E(d)



Released by Department of Home Affairs  
under the *Freedom of Information Act 1982*

## 5. Accountability and responsibilities

If ABF officers require clarification or assistance in regards to this instruction, they should contact the National Border Programme s. 47E(d) or telephone: s. 22(1)(a)(ii) AEST.

The Superintendent, National Border Programme has the 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 1901* and *Migration Act 1958*.

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

Table 2 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
National Border Programme	<ul style="list-style-type: none"><li>Responsible for the management and development of Procedural Instructions</li></ul>
ABF Officers	<ul style="list-style-type: none"><li>All ABF Officers processing passengers inwards and outwards</li></ul>

## 6. Statement of Expectation

This Procedural Instruction under the PPCF sets out guidance and directions to workers on how to implement the Department's policy.

It is expected that all workers who are subject to this Procedural Instruction will have due regard to it and will only depart from it if:

- the departure is reasonable and justified in the circumstances;
- all risks have been considered; and
- approval has been sought and responsibility accepted for documenting the justification for the decision.

Workers are required to comply with all reasonable and lawful directions contained in this Procedural Instruction. Failure to comply with a direction may be considered a breach of the Australian Public Service Code of Conduct (for APS employees) or the *Professional Standards Secretary's Direction* under section 55 of the *Australian Border Force Act 2015* (for non-APS employees).

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 policy/procedure must be saved in TRIM RM8 or an approved business system.

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

## **7. Related Framework documents**

This instruction must be read in conjunction with the following documents:

### **7.1. Policy Statement**

[TT-2983] Border Clearance

[BE-928] Reporting Child related incidents

### **7.2. Procedural Instructions**

[BC-536] Arrival, immigration clearance and entry - Immigration clearance at airports and seaports

[BC-2452] Behaviour Concern Non-Citizen

[BC-2476] Character Concern

[BC-2671] Events after refused immigration clearance

[BC-2481] Foreign nationals and tuberculosis

[BC-2538] Border visa grant in immigration clearance

[BC-2480] Questioning detention

[BC-2446] Section 189 Detention

[BC-2460] Summary Removal

[BC-2469] Working with AFP

## **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.

### **8.2. Immigration (Guardianship of Children) Act 1946**

This Act sets out the requirements for the Minister of Immigration and Border Protection to be the legal guardian of certain unaccompanied non-citizen minors if circumstances are present at the time of the minor's entry to Australia.

## **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
- Legal Division / Legal Advice and Operational Support
- FOI, Privacy and Records Management / Records Management Section
- Traveller Customs and Industry Policy / Traveller Policy Advice and Support Section
- Unaccompanied Humanitarian Minors (UHM) and Guardianship Section
- Port Operations Command
- Strategic Border Command

### **9.2. External consultation**

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

- No external consultation.

## 10. Document details

BCS Category/Function	Trade & Traveller Clearance Management
BCS Sub-Category/Sub-Function	Passenger and Crew Processing
Period of Effect	Three years from date of original approval.

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	04 May 17	s. 22(1)(a)(ii)	Update of document into PI
2.0	22 Nov 17		Reviewed PI for legal
3.0	09 April 18		Review of content and the inclusion of movement of unaccompanied minors through airports (Departures)
4.0	20 April 2018		Update after Legal Advice.

### 10.2. Approval

Approved by:	Don SMITH Commander ABF Governance
Approved on (date):	30 April 2018

Released by Department of Home Affairs  
under the Freedom of Information Act 1982