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# Section 189 detention at the border

## Procedural Instruction

This procedural instruction applies to the detention of unlawful non-citizens (UNC) in immigration clearance under section 189 of the *Migration Act 1958* (Migration Act).

Approval Date	15 November 2018
Date of Review	15 November 2019
Contact	s. 47E(d) [REDACTED] @abf.gov.au
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TRIM Reference	s. 22(1)(a)(ii) [REDACTED]

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# 1. Introduction

## 1.1. Background

This procedural instruction should be read in conjunction with *Procedural Instruction: Events after refused immigration clearance*.

# 2. Scope

## 2.1. In Scope

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 passengers and/or goods under the *Customs Act 1901* (Customs Act).

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### 3. Glossary

Table 1 – Common terms and definitions used in this instruction

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 Border Force officer	ABF officer	An ABF officer is an Immigration and Border Protection worker (see section 4 <i>Australian Border Force Act 2015</i> ) 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.
Compliance, Case Management and Detention Portal	CCMD	Is a portal used to record and manage visa compliance, case management, detention client data and departmental decisions.
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.
Immigration clearance		Is a person who is in immigration clearance in the circumstances set out in the <i>Migration Act 1958</i> (Migration Act).
Immigration detention		Under the Migration Act immigration detention means: <ul style="list-style-type: none"> <li>(a) being in the company of, and restrained by:               <ul style="list-style-type: none"> <li>i) an officer</li> <li>ii) in relation to a particular detainee—another person directed by the Secretary or Australian Border Force Commissioner to accompany and restrain the detainee</li> </ul> </li> <li>(b) being held by, or on behalf of, an officer:               <ul style="list-style-type: none"> <li>i) in a detention centre established under this Act</li> <li>ii) in a prison or remand centre of the Commonwealth, a State or a Territory</li> <li>iii) in a police station or watch house</li> </ul> </li> </ul>

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Term	Acronym (if applicable)	Definition
		<p>iv) in relation to a non-citizen who is prevented, under section 249, from leaving a vessel—on that vessel; or</p> <p>v) in another place approved by the Minister in writing but does not include being restrained as described in subsection 245F(8A), or being dealt with under paragraph 245F(9)(b).</p> <p><b>Note 1:</b> Subsection 198AD(11) provides that being dealt with under subsection 198AD(3) does not amount to immigration detention.</p> <p><b>Note 2:</b> This definition extends to persons covered by residence determinations (see section 197AC).</p>
Immigration Detention Facility	IDF	Is a place of residence for a person who has been detained while their immigration status is being resolved.
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.
Migration Zone		<p>Has the meaning given by section 5 of the Migration Act as meaning the area consisting of the States, the Territories, Australian resource installations and Australian sea installations and, to avoid doubt, includes:</p> <ul style="list-style-type: none"> <li>• land that is part of a State or Territory at mean low water</li> <li>• sea within the limits of both a State or a Territory and a port</li> <li>• piers, or similar structures, any part of which is connected to such land or to ground under such sea</li> </ul> <p>but does not include sea within the limits of a State or Territory but not in a port.</p>
Preliminary Client Placement Recommendation	PCPR	Is an online form located within the CCMD portal.
Unlawful non-citizen	UNC	Has the meaning given by section 14 of the Migration Act as meaning a non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen; and to avoid doubt, a non-citizen in the migration zone who, immediately before 1 September 1994, was an illegal entrant within the meaning of the Migration Act as in force then became, on that date, an unlawful non-citizen.

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# 4. Procedural Instruction

## 4.1. Detaining an unlawful non-citizen

If an Australian Border Force (ABF) officer knows or reasonably suspects that a traveller in immigration clearance is an unlawful non-citizen (UNC), the ABF officer must detain the person under subsection 189(1) of the *Migration Act 1958* (Migration Act).

Once this state of mind is reached, the officer must detain the UNC.

Officers should give all UNCs detained under s189(1) a copy of the Very Important Notice - Information on your detention (VIN) (Appendix A). The VIN sets out the information detainees must be made aware of, under s194, such as the detainee's right to apply for visas and informs the detainee as to:

- their right to request access to lawyers or consular representatives
- their options for leaving Australia.

If it appears the UNC does not understand English, either:

- an interpreter should assist them in reading the VIN, or
- the detainee should be given a VIN translated into a language they can understand.

The VIN is available in English and a range of foreign languages and is available on LEGEND.

During detention processing, the ABF officer must:

- obtain the UNC's consent to record the detention process on a digital recorder – the officer must not start recording if permission is not granted and stop recording if the UNC changes their mind after providing permission
- s. 47E(d) [REDACTED] see *Procedural Instruction: Electronic recording of external search, baggage examination and record of interview at airports*
- verbally inform the UNC as soon as reasonably practicable:
  - why they are known or reasonably suspected to be an UNC in the Migration Zone
  - they are being placed in immigration detention under section 189(1) of the Migration Act
  - the time of detention
  - the detention outcome, that is, removal from Australia as soon as reasonably practicable
- record in writing the time and location of immigration detention and why the detainee is known to be or suspected to be a UNC
- inform the detainee they have the right to contact the relevant embassy or consulate.

To lawfully maintain an UNC's immigration detention under section 189(1) of the Migration Act, the ABF officer must continue to know or reasonably suspect the traveller is an UNC. In immigration clearance, the receipt of new information or evidence may mean an officer cannot maintain that knowledge or reasonable suspicion that a person is a UNC. For example, the ABF officer may become aware that:

- s. 47E(d) [REDACTED]
- [REDACTED]

Where an ABF officer knows that a person is not a UNC, or cannot maintain a reasonable suspicion that a person is a UNC, they must release the person from detention. For further information see, *Field Operations (Field Compliance)*.

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### 4.2. Visa applications and legal advice

It is not the ABF officer's role to provide legal advice regarding any topic including visa applications.

If a traveller requests legal assistance, the ABF officer must:

- provide a telephone directory without endorsing a provider
- allow access to a telephone and/or internet access.

### 4.3. System updates

The ABF officer must update Mainframe promptly and accurately.

s. 47E(d)

In the Compliance, Case Management and Detention Portal (CCMD), record the traveller's detention and detention location as s. 47E(d)

**Note:** the UNC's detention placement location must be updated prior to completing a Request for Service (RFS) (Appendix B).

### 4.4. Detention placement

The ABF officer must consult with their supervisor when considering the UNC's detention placement.

The following issues can influence detention placement decisions and should be reported to the delegate determining UNC placement:

- s. 47E(d)

- 
- 
- 
- 

#### Detention at the airport – summary removal

Once the person is detained under section 189 of the Migration Act, section 198 of the Migration Act requires the removal to take place as soon as reasonably practicable. Where a person cannot be removed directly from the airport, the person will be placed at the Immigration Detention Facility (IDF) pending removal.

If Detention Service Provider (DSP) assistance is required, the ABF officer is to:

- submit a RFS to the DSP through Departmental systems
- contact the DSP by telephone after submitting the RFS.

For more information see, *Procedural Instruction: Summary removal*.

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### Transfer to an IDF – pending removal within 72 hours

Where it is not practical to hold an UNC at the airport pending removal, the DSP must be engaged so that immigration detention at a location other than at the airport can be arranged. Examples of where it is not practical to detain an UNC at the airport are if the UNC is not due for departure within 24 hours and/or there are insufficient or unsuitable local resources or the timing of airport closure.

Where the DSP has been engaged, the DSP's role is to maintain detention of the UNC in immigration detention pending removal from Australia.

To engage the DSP the ABF officer must:

- s. 47E(d) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- complete Form 41 – Property Receipt to facilitate transfer of the UNC's passport from the UNC to the Department (Appendix C).

Note: For information about policy and procedures involving property transfers contact s. 47E(d) [REDACTED] [@abf.gov.au](mailto:[REDACTED]@abf.gov.au).

### Transfer to an IDF – summary removal will not occur within 72 hours

In certain circumstances summary removal will not occur within 72 hours. This may occur because of outstanding matters such as the UNC's s. 47E(d) [REDACTED]

[REDACTED]. In these circumstances, the ABF officer is to engage the DSP.

The DSP is to maintain detention of the UNC in immigration detention pending an immigration outcome.

To engage the DSP the ABF officer must:

- s. 47E(d) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

**Note:** If the DSP cannot provide appropriate accommodation, the officer should escalate the matter to the ABF duty/airport manager.

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### Assistance from the Detention Service Provider

DSP officers provide assistance for summary removal, transfer of an UNC to an IDF, and static guarding of UNC's. The ABF officer must:

- brief the DSP officers on the UNC's behaviour, and the result s. 47E(d)
- transfer the UNC's belongings to the DSP, if applicable

s. 47E(d)

Where a UNC is to be transferred to the DSP for transportation to an IDF, the ABF officer must update the UNC's detention location in CCMD.

Note: Until the new detention location is updated in CCMD, the DSP will not be able to view the UNC's Accommodation and Care Service.

### 4.5. Carrier obligations

The carrier that brought a traveller to Australia who is subsequently refused immigration clearance may be required by law to transport the traveller from Australia, see *Procedural Instruction: Events after refused immigration clearance*.

### 4.6. Police interaction

If the UNC is in immigration detention and the AFP or State/Territory police indicate the UNC is of interest refer to *Procedural Instruction: Events after refused immigration clearance*.

### 4.7. Claims that may engage Australia's protection obligations

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

Once a supervisor or duty manager has provided advice to the ABF officer on how to proceed, the ABF officer must undertake the appropriate course of action for the UNC in accordance with the procedures in *Procedural Instruction: Protection claims at the border*.

### 4.8. Systems outage

In the event Departmental systems are unavailable, the officer must:

- s. 47E(d)
- complete a manual RFS by;
  - scanning the RFS and emailing a copy of the RFS to the DSP
  - create a record of the RFS s. 47E(d)

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- s. 47E(d)

## 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) @abf.gov.au or telephone: 02 s. 47E(d) 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

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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 in conjunction with the following documents:

### 7.1. Policy Statement

[TT-2983] Border Clearance.

### 7.2. Procedural Instructions

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

[BC-684] Electronic Recording of External Search, Baggage Examination and Record of Interview at Airports

[BC-2421] Duty of care at the border

[BC-2460] Summary removal

[BC-2436] Protection claims at the border

[BE-5351] Field Operations (Field Compliance)

[BC-2671] Events after refused immigration clearance

## 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
- section 189 outlines an ABF officer's power to detain an UNC
- section 194 provides that the detainee is to be told of consequences of detention as soon as reasonable practicable after their detention under s189.

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## 9. Consultation

### 9.1. Internal consultation

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

- Integrity Security and Assurance Division, Integrity and Professional Standards Branch
- FOI Privacy and Records Management Branch, Records Management Section
- Traveller Policy Branch, Traveller Policy Section
- Legal Division
- ABF Governance Branch, National Detention and Removals Programme Section.

### 9.2. External consultation

No external consultation.

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BCS Category/Function	Trade and Traveller Clearance Management
BCS Sub-Category/Sub-Function	Passenger and Crew Processing
Period of Effect	15 November 2021

**10.1. Document change control**

Version number	Date of issue	Author(s)	Brief description of change
1.0	23 Mar 17	Traveller Operational Policy	Updated document to PI
1.2	18 May 17	Traveller Operational Policy	Incorporated comments from stakeholder feedback
1.1	23 May 17	PPCF Control Framework	Cleared PPCF Quality Assurance
1.2	18 Jun 18	Civil Litigation/ PPCF Advice	Cleared Legal review
1.3	18 Sep 18	Traveller Operational Policy	Updated to Home Affairs template and reviewed for SES approval

**10.2. Approval**

Approved by:	Don Smith Commander ABF Governance	Released by Department of Home Affairs under the Freedom of Information Act 1982
Approved on (date):	<b>15 November 2018</b>	

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## 11. Appendix

## 11.1. Appendix A

## Very Important Notice – Information about your detention

Available in LEGEND



**Australian  
BORDER FORCE**

**Very Important Notice**  
Information about your detention

Form  
**1423**

**You need to:**

- read this notice
- sign to show that you have read and understand the information in this notice
- ask an immigration officer if you have any questions about the notice or your detention.

**Why you have been detained**

You have been detained under section 189 of the *Migration Act 1958* (the Act) because it is known or reasonably suspected that you are an unlawful non-citizen (that is, you do not hold a visa that is in effect).

In most circumstances, you will be kept in immigration detention until you are removed from Australia or granted a visa. For further information on the length of your detention, refer to the paragraph titled 'Length of your detention'.

**Leaving Australia**

As you do not hold a visa, you do not have permission to remain in Australia. You are therefore expected to leave Australia as soon as possible. You can end your time in detention by choosing to leave Australia. You can speak to an immigration officer or the International Organization for Migration (IOM) about your return options and the benefits of voluntary removal. IOM is independent of the Department of Home Affairs (the Department) and the Australian Border Force (the ABF) and can assist people who want to leave Australia but who need some help to do so. IOM can also provide independent information about returning to your home country to help you make an informed decision.

If you do not choose to leave Australia the ABF will still arrange for your removal, including:

- obtaining travel documents on your behalf;
- booking travel on your behalf;
- removing you from Australia.

If you are unable to pay for the costs of your removal from Australia, you will owe money to the Australian Government for these costs.

**Where you can seek help**

At any time, you can seek help from:

- a lawyer;
- a registered migration agent;
- your country's consular representative.

If you would like to speak with any of these people, you should ask an immigration officer or detention centre officer to help you.

You have the right to ask questions and/or make complaints about the conditions of your detention. If you think you have been unfairly treated, you can contact:

- a detention centre officer;
- the Department or the ABF;
- the Australian Human Rights Commission;
- the Office of the Commonwealth Ombudsman.

If you wish to contact any of the above, you can ask an immigration officer or detention centre officer to help you.

**Visa options**

Since you are known or reasonably suspected to be an unlawful non-citizen, your visa options will be limited and in some cases you may not have any options to apply for a visa. If you intend to make an application for a visa, you may wish to seek legal or migration advice beforehand. Otherwise, general information about Australian visas is available on the Department's website [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au)

**Visa application time limits (Section 195 of the Act)**

Please note that in most cases there are time limits on applying for visas (other than for bridging visas or protection visas) while you are in detention. In accordance with section 195 of the Act you may apply for a visa within 2 working days after the day on which you receive this notice, or if you inform an officer in writing within those 2 working days of your intention to apply – within the next 5 working days after those 2 working days.

If you do not apply for a visa within the time allowed, you may not apply for a visa, other than a bridging visa or a protection visa, after that time.

**If you are an unauthorised maritime arrival or offshore entry person**

If you arrived by boat at an excised offshore place, such as Christmas Island, you may be prevented under the Act from making an application for a visa. You may wish to seek legal or migration advice about the application bars which may apply to you.

**Bridging visa E (BVE)**

A BVE is a temporary visa that, if granted to you, will result in you being released from immigration detention as a lawful non-citizen. There is no time limit on when you can make an application for a BVE after you are taken into detention.

**BVE decision**

If you make a valid application for a BVE, a decision on it must be made within the following timeframes:

- 2 days; or
- 28 days if you bypassed immigration clearance and came to the notice of the Department within 45 days of entering Australia or were refused immigration clearance; or
- 90 days, if the Department has a concern about your character. If this applies to you, you will be advised in writing.

If the Department refuses to grant you a BVE, you will generally not be able to make a valid application for another BVE within 30 days of the refusal, or within 30 days of having the review of the refusal decision finalised by the Administrative Appeals Tribunal (if you were able to apply for review and did so). However, you may be able to make an application for a BVE within the 30 days if an immigration officer is satisfied that you will meet the criteria for the grant of a BVE.

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**11.2. Appendix B**

**Request for Service**

Available in TRIM under ADD2009/167028

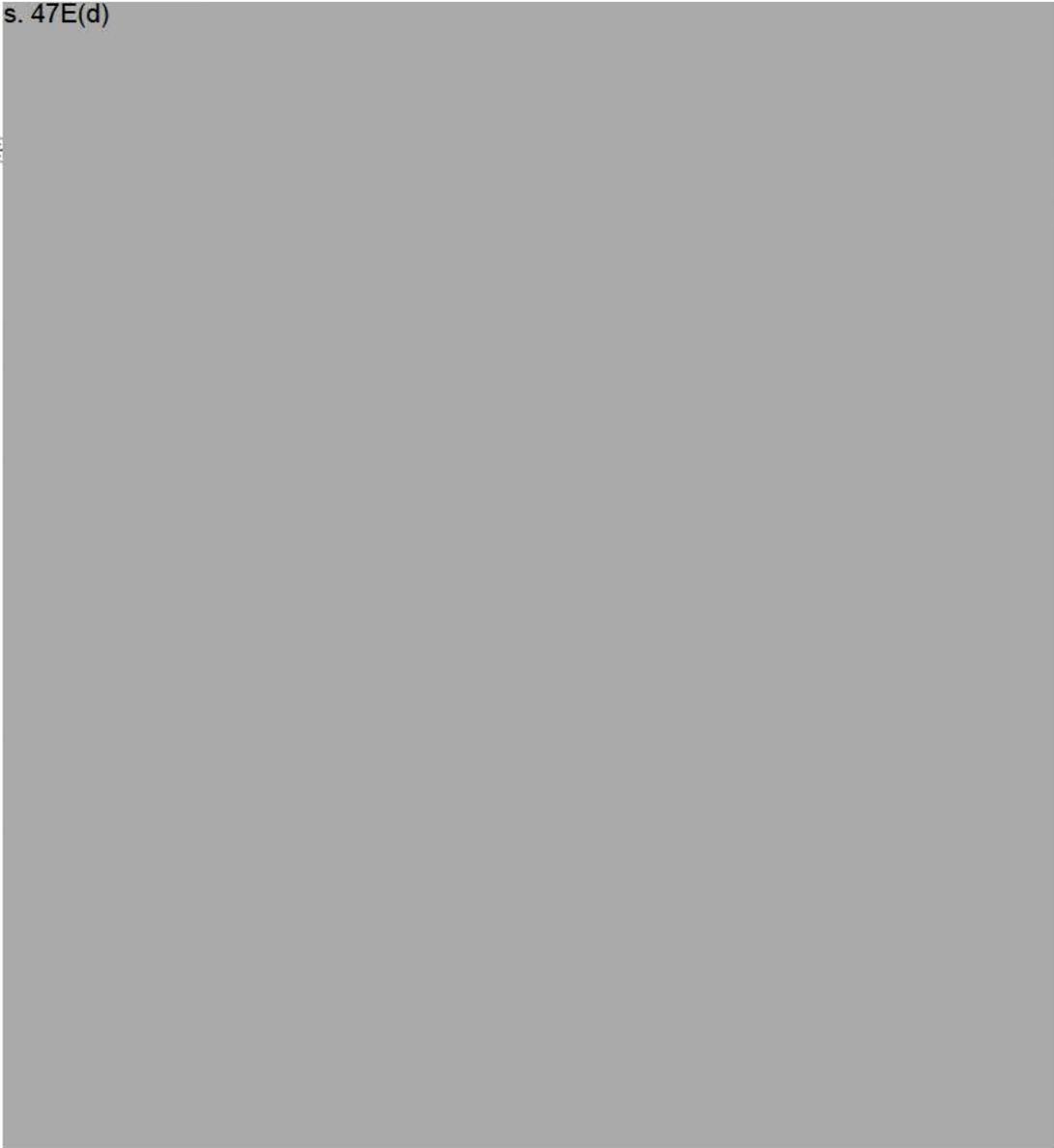
  
Australian Government  
Department of Immigration  
and Citizenship

DIAC – IN - CONFIDENCE

**REQUEST FOR SERVICE**

**RFS Number**  
(If supplied by Provider)

s. 47E(d)



people our business  
DIAC – IN - CONFIDENCE

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**11.3. Appendix C**

**Form 41 – Property Receipt**

Available in LEGEND



**Australian  
BORDER FORCE**

**Property receipt**

Form <b>41</b>
-------------------

Please open this form using Adobe Acrobat Reader. Either type in the fields provided or print this form and complete it using a pen and BLOCK LETTERS.

**Important information about privacy**

Your personal information is protected by law, including the *Privacy Act 1988*. Important information about the collection, use and disclosure (to other agencies and third parties, including overseas entities) of your personal information, including sensitive information, is contained in form 1442i *Privacy notice*. Form 1442i is available from the Department of Home Affairs (the Department) website [www.homeaffairs.gov.au/allforms](http://www.homeaffairs.gov.au/allforms) or offices of the Department. You should ensure that you read and understand form 1442i before completing this form.

Receipt number

Name of property owner/person from whom goods were received, or returned to


Contact details

  
  
 Postcode

Telephone number  (Area code )

Description of property

Reason for property being held (see reverse)

1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

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# Detention and Search (s.252 Migration Act)

## Procedural Instruction

This instruction applies to the searching of a non-citizen and any belongings in their immediate possession in immigration clearance under the *Migration Act 1958*.

Approval Date	10 December 2018
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# 1. Introduction

## 1.1. Background

The power to conduct searches is provided under section 252 of the *Migration Act 1958* (the Migration Act) and does not apply to Australian citizens. The person searched must be a non-citizen who:

- has been detained in Australia; or
- has not been immigration cleared and an authorised officer suspects there are reasonable grounds for considering cancellation of the person's visa.

For procedures relating to the detention and search of persons, including the frisk search, external search, internal non-medical scan and internal search of persons under the *Customs Act 1901* (the Customs Act), see *Procedural Instruction: Detention and Search (s.219 Customs Act)*.

Australian Border Force (ABF) officers may seek assistance in performing the search from other government agencies present at the port, such as the Australian Federal Police (AFP).

ABF officers are authorised to search a person, their clothing and any property under their immediate control without a warrant for one of the purposes set out in section 252(2), which are:

- a) to find out whether there is hidden on the person, in the clothing or in the property, a weapon or other thing capable of being used to inflict bodily injury or to help the person to escape from immigration detention
- b) to find out whether there is hidden on the person, in the clothing or in the property, a document or other thing that is, or may be, evidence for grounds for cancelling the person's visa

Care should be taken to ensure the person is subjected to the least amount of indignity and force required while performing the search. Special authorisation under section 252A(3) of the Migration Act is required to conduct a strip search. Unless conducting an authorised strip search, the person cannot be required to remove clothing.

Searches must be conducted under the Migration Act when considering the cancellation of a visa. Searches cannot be conducted under section 219L of the Customs Act. Detention under 219L is to be used only when an ABF officer suspects on reasonable grounds that a person is unlawfully carrying prohibited goods.

## 2. Scope

### 2.1. In Scope

This procedural instruction applies to officers in the Aviation and Maritime environments providing immigration clearance under the Migration Act 1958.

A search conducted on a non-citizen under section 252 (Searches of persons) of the Migration Act.

A search conducted on a non-citizen under section 252A (Power to conduct a strip search) of the Migration Act.

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Clearance of persons and/or goods under the Customs Act 1901.

Detention and search of Australian Citizens.

A search conducted under section 219 of the Customs Act.

A screening procedure conducted under section 252AA (Power to conduct a screening procedure) of the Migration Act.

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### 3. Glossary

Table 1 – [Insert Table title]

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 Border Force Commissioner	ABF Commissioner	Is the Commissioner/ head of the ABF.
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 citizen		Has the meaning given by section 4 of the <i>Australian Citizenship Act 2007 (Australian Citizenship Act)</i> .
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.
Australian Federal Police officer	AFP officer	Is a person engaged under section 24 of the <i>Australian Federal Police Act 1979 (Australian Federal Police Act)</i> .
Authorised Search officer	ASO	An ABF officer who has successfully completed the Detention and Search training course. Officers are required to successfully complete an online course and assessment, undertake practical (role-play) assessments and be assessed as competent by a Workplace Assessor. Officers are required to undergo Detention and Search recertification every two years.
Baggage		Consists of (but is not limited to) bags, cases, and containers which hold a traveller's articles during transit.
Detain		Has the meaning given by section 5 of the <i>Migration Act 1958 (Migration Act)</i> . To detain means to: <ul style="list-style-type: none"> <li>• take into immigration detention</li> <li>• keep, or cause to be kept, in immigration detention</li> </ul> take such action and use such force as are reasonably necessary.

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Term	Acronym (if applicable)	Definition
Detainee		Has the meaning given by section 5 of the Migration Act 1958 (Migration Act) to mean a person detained.
Immigration clearance		Is a person who is in immigration clearance in the circumstances set out in the <i>Migration Act 1958 (Migration Act)</i> .
Immigration detention		<p>Under the <i>Migration Act 1958 (Migration Act)</i> immigration detention means:</p> <p>(a) being in the company of, and restrained by:</p> <ul style="list-style-type: none"> <li>i) an officer</li> <li>ii) in relation to a particular detainee—another person directed by the Secretary or Australian Border Force Commissioner to accompany and restrain the detainee</li> </ul> <p>(b) being held by, or on behalf of, an officer:</p> <ul style="list-style-type: none"> <li>i) in a detention centre established under this Act</li> <li>ii) in a prison or remand centre of the Commonwealth, a State or a Territory</li> <li>iii) in a police station or watch house</li> <li>iv) in relation to a non-citizen who is prevented, under section 249, from leaving a vessel—on that vessel</li> <li>v) in another place approved by the Minister in writing</li> </ul> <p>but does not include being restrained as described in subsection 245F(8A), or being dealt with under paragraph 245F(9)(b).</p> <p><b>Note 1:</b> Subsection 198AD(11) provides that being dealt with under subsection 198AD(3) does not amount to immigration detention.</p> <p><b>Note 2:</b> This definition extends to persons covered by residence determinations (see section 197AC).</p>
Non-citizen		Has the meaning given by Section 5 of the <i>Migration Act 1958 (Migration Act)</i> as a person who is not an Australian citizen.
Secretary		Means the Secretary/ head of the Department of Home Affairs.
SES Band 3 employee		For the purposes of the Migration Act 1958 (in particularly to relation to section 252A of the Migration Act), an SES Band 3 employee means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.
Strip search		As per section 252A(2) of the Migration Act 1958 (Migration Act), a strip search of a detainee means a search of the person, of their clothing or of a thing in their possession, and may include requiring the person to remove some or all of their

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Term	Acronym (if applicable)	Definition
		clothing and/or an examination of that clothing and of the person's body (but not the person's body cavities, including the mouth).

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## 4. Procedural Instruction

The Migration Act confers on certain persons the powers to conduct three types of searches of non-citizens under sections 252, 252A and 252AA, namely:

- search of persons and their immediate property (section 252)
- strip search (section 252A)
- screening procedure (section 252AA) – out of scope of this instruction.

### PART A: SECTION 252 SEARCH

#### 4.1. Circumstances for conducting a search

Section 252 of the Migration Act specifies the circumstances in which an authorised officer (as defined under the Migration Act) may conduct a search. In accordance with section 252(1), a search may be conducted of a person, the person's clothing, and any property under the immediate control of the person without warrant for one of the purposes set out in section 252(2).

- is detained in Australia (in accordance with the definition of 'detain' in section 5(1) of the Migration Act, (this means the person is in 'immigration detention' in Australia)
- has not been immigration cleared and an authorised officer suspects there are reasonable grounds for considering cancellation of the person's visa.

#### 4.2. Reason for conducting a search

The purposes for conducting a search under section 252(1) are set out in section 252(2) of the Migration Act. The two purposes are:

- to find out whether there is hidden on the person, in the clothing or in the property, a weapon or other thing capable of being used to inflict bodily injury or to help the person to escape from immigration detention
- to find out whether there is hidden on the person, in the clothing or in the property, a document or other thing that is, or may be, evidence for grounds for cancelling the person's visa.

Where an ABF officer has suspicions the non-citizen (who is not a detainee) is concealing a weapon, but has no belief there may be grounds for cancelling the non-citizen's visa, the officer may request a fellow ABF officer who is an Authorised Search Officer (ASO) to perform a search under section Division 1B of the Customs Act. The ASO should ensure prerequisite conditions under the Customs Act to conduct the search have been met. See Procedural Instruction: *Detention and Search (s.219 Customs Act)*.

The AFP may also undertake a search of the non-citizen. In such cases, ABF officers must record in their official notebooks they are ceasing the exercise of their power under section 252 of the Migration Act and include the details of the action taken.

Failure to comply with the scope of the specified power as set out in the Migration Act may expose officers and/or the ABF to civil or criminal proceedings and sanctions and negatively impact the image of the ABF.

Property in the immediate control of the person is considered to be the items which the person has with them at the time they are to be searched. This may include:

- baggage and suitcases

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- outer clothing/apparel
- unworn clothing
- packages (sealed or unsealed)
- sporting equipment
- musical instruments
- electrical equipment.

An Authorised Officer cannot exercise their search powers under section 252 of the Migration Act to search for items that do not fall within the scope of section 252(2). Section 252 can be used to search for illicit drugs and chemicals in limited circumstances where the relevant item may be capable of inflicting bodily injury or be evidence for grounds for cancelling the person's visa.

The following are examples of items that may be located during a search and fall within the scope of section 252 of the Migration Act. This list is not exhaustive.

### **Documents or other items that are, or may be, evidence for cancelling a person's visa**

- counterfeit travel documents
- employment records
- pay slips
- resumes
- laptop/notebook or personal internet enabled devices (PIED)
- tools of trade.

### **Weapons**

- guns (including replicas), knives, machetes, clubs or ammunition
- items capable of being used to inflict bodily injury include pocket knives, razor blades, syringes, fireworks, lighters or matches, disabling sprays, scissors and other cutting implements.

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### 4.3. Restrictions on searches

There are restrictions placed on searches of a person, a person's clothing and their property under section 252 of the Migration Act.

The Authorised Officer **must not**:

- require the person to remove items of clothing (section 252(5))
- use more force than is reasonably necessary to conduct the search (section 252(8))
- subject the person to greater indignity than is reasonably necessary required to perform the search (section 252(8))
- conduct a search for any reason other than to find out whether there is hidden on the person, in the clothing or in the property under the immediate control of the person items within scope of section 252(2) of the Migration Act.

An Authorised Officer may take possession of a weapon or any other item capable of being used to inflict bodily injury, or document or other thing that is, or may be, evidence for grounds for cancelling the person's visa, found in the course of a search. The Authorised Officer may retain any such item for such time as he or she thinks necessary for the purpose of the Migration Act (section 252(4)).

In accordance with section 252(6) of the Migration Act, a search under section 252 of the Migration Act of a person and the person's clothing shall be conducted by:

- an Authorised Officer of the same sex as the person
- in a case where an Authorised Officer of the same sex as the person is not available to conduct the search - any other person who is of the same sex and:
  - is requested by an authorised officer
  - agrees to conduct the search.

It is Departmental policy that the person requested to do the search pursuant to section 252(6)(b) of the Migration Act is:

- another ABF officer
- a police officer who is readily available or involved in the operation.

Under these circumstances, the search must be conducted in the presence of the ABF officer.

### 4.4. Searching minors

The "best interests of the child" principle is a primary consideration for minors (persons under 18 years of age). ABF Officers should ensure the treatment and conditions of the search procedure for minors are humane and have as little adverse impact on the individual as possible.

Under policy, a search of a minor is to be conducted only where there is the belief that there is on their person a weapon or other thing capable of being used to inflict bodily injury or to help the minor to escape from immigration detention. Approval by an ABF Superintendent must be sought before a search is conducted on a minor who is under 12 years of age.

Any search of a minor should be conducted in the presence of a parent or guardian. If the minor does not want to have their parent or guardian present, another adult must be present who is capable of representing the minor's best interests and who, as far as is practicable in the circumstances, is acceptable to the minor.

Every opportunity, including a reasonable timeframe, must be given to the minor to comply with the request to progress with a search request.

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### 4.5. Conducting the search

#### Preparation

In preparation for conducting the search, the ABF officer who is an Authorised Officer should consider conducting the search in an interview room or private area

- the person's privacy, avoiding wherever possible the indignity of a public search
- having another Departmental/ABF employee present where possible as a witness during the search.

Where the person is of indeterminate sex the ABF officer should:

- check the person's passport and official records to determine the person's sex
- discuss the case with a supervisor

#### Searching

4.5.1. When conducting the search, the ABF officer should:

- be of the same sex
- use an interpreter if required
- ensure a witness of the same sex is present during the search
- identify themselves
- identify the witness(es) who will be present during the search
- explain the purpose of, and legislative authority for the search
- if searching a minor, ensure a parent or guardian is present if at all possible, or alternatively an independent observer. See *Procedural Instruction: Managing Minors in Immigration Clearance*
- provide the person an opportunity to relinquish any items of interest or to empty pockets/bags prior to the search
- only ask persons to remove jackets, hats etc., as persons are not required to remove clothing unless an authorised strip search is being performed
- conduct the search wearing gloves
- pat the person's clothing with open hands to determine if the person has anything of interest in their clothes or on their body
- not use more force or subject a person to greater indignity than is reasonably necessary in order to conduct the search
- search property in a way that will not be offensive to the person or damage the person's property
- cease the search as soon as it is evident the search will not yield any items that provided the reasons for the search under section 252(2) of the Migration Act
- cease the search if the person's clothing becomes dislodged
- recommence the search only once the person has secured their clothing
- issue property receipts for any items seized, using Form 41 Property receipt (see appendix A).

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Where a person refuses to co-operate and participate in a search, they may be detained under section 252(3) of the Migration Act for the purposes of conducting the search.

ABF officers must record any searches they have conducted in their notebooks and in the departmental referral system.

## PART B: SECTION 252A STRIP SEARCHES

### 4.6. Requirements and conditions

A Strip Search of a person under section 252A of the Migration Act is similar to a search under section 252, but allows the Authorised Officer conducting the search to require a detainee to remove some or all their articles of clothing, and to examine that clothing and the detainee's body (but not the detainee's body cavities).

Unlike a search under section 252, which can be conducted on a detainee or a non-citizen who has not been immigration cleared (where an Authorised Officer suspects there are reasonable grounds for cancelling the person's visa) a Strip Search under section 252A may be conducted only on a detainee (i.e. a person in immigration detention).

A Strip Search under section 252A may be conducted without warrant by an authorised officer only if:

- an officer suspects on reasonable grounds there is hidden on the detainee, in his or her clothing or in a thing in their possession, a weapon or other item capable of being used to inflict bodily injury or to help the detainee (or any other detainee) to escape from immigration detention
- the officer referred to in paragraph (a) suspects on reasonable grounds it is necessary to conduct a Strip Search of the detainee to recover that weapon or other thing
- the strip search is authorised as follows (note the power to authorise a strip search cannot be delegated: section 252A(6)):
  - i. if the detainee is at least 18—the Secretary or Australian Border Force Commissioner, or an SES Band 3 employee in the Department (who is not the officer referred to in paragraphs (a) and (b) nor the authorised officer conducting the Strip Search), authorises the Strip Search because he or she is satisfied that there are reasonable grounds for those suspicions
  - ii. if the detainee is at least 10 but under 18—a magistrate orders the strip search because he or she is satisfied that there are reasonable grounds for those suspicions

### 4.7. What is suspicion on reasonable grounds

In accordance with section 252(3A) of the Migration Act, an officer may on reasonable grounds form a suspicion there is hidden on the detainee, in their clothing or in a thing in their possession a weapon or other item capable of being used to inflict bodily injury or to help the detainee (or any other detainee) to escape from immigration detention on the basis of:

- a search conducted under section 252 (whether by that officer or another officer)
- a screening procedure conducted under section 252AA (whether by that officer or another officer)

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- any other information that is available to the officer.

Legal precedent provides guidance on what can be considered as reasonable grounds for suspicion, namely a suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to 'a slight opinion', but without sufficient evidence.

### 4.8. Obtaining authority

Once reasonable suspicion has been established and before obtaining authorisation for a strip search the ABF officer should escalate the case to the ABF Inspector.

Special authority is required in order to perform a strip search. The authority required is determined by the detainee's age and is set out in section 252A(3) of the Migration Act. Where the detainee is:

- at least 18 years old, the search can only be authorised by the Secretary, or Australian Border Force Commissioner or an SES Band 3 officer of the ABF or Department who is satisfied there are reasonable grounds for the authorised officer's suspicions that there is hidden on the detainee, in their clothing or in a thing in their possession a weapon or other item capable of being used to inflict bodily injury or to help the detainee (or any other detainee) to escape from immigration detention, and it is necessary to conduct a strip search of the detainee to recover that weapon or other thing
- at least 10 but under 18 years of age, the search can only be authorised by a magistrate who is satisfied there are reasonable grounds for those suspicions.

The SES Band 3 officer cannot be the same person as the ABF officer who held the initial suspicion on reasonable grounds or the ABF officer to whom the referral had been made too.

The power to authorise a strip search under section 252A cannot be delegated under section 252A(6).

The authority to conduct a strip search may be given by phone, fax or other electronic means, and must be recorded in writing and signed by the person giving the authorisation within one business day after it was given under section 252A(4).

### 4.9. Carrying out the strip search

The ABF officer **must** ensure the strip search complies with the requirements outlined in section 252B of the Migration Act, which include the following:

- it must not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search
- it must be conducted in a private area
- it must be conducted by an authorised officer of the same sex as the detainee
- it must be conducted in the presence or view of ABF officers of the same sex who are required to be present
- it must not involve the removal of more items of clothing, or more visual inspection, than the Authorised Officer conducting the search believes on reasonable grounds to be necessary to determine whether there is hidden on the detainee, in their clothing or in a thing in their possession a weapon or other item described in Subsection 252A(1) removes enough of the detainee's clothing or conducts a

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visual inspection of the detainee as is required to locate any items for which the search is undertaken

- it must not be conducted with greater force than is reasonably necessary to conduct the strip search
- it must not be conducted on a detainee who is under 10
- if the detainee is at least 10 but under 18, or is incapable of managing their own affairs the search must be conducted in the presence of:
  - (i) the detainee's parent or guardian if that person is in immigration detention with the detainee and is readily available at the same place
  - (ii) if that is not acceptable to the detainee or subparagraph (i) does not apply, another person (other than an Authorised Officer) who is capable of representing the detainee's interests and who, as far as is practicable in the circumstances, is acceptable to the detainee
- it must not involve a search of the detainee's body cavities.

**Note:** that this is not a complete outline of s 252B - please refer to the legislation itself to ensure all requirements are complied with.

If an item of the detainee's clothes is damaged or destroyed in the process of the search, or retained, adequate appropriate clothing must be provided to the detainee.

## PART C: POSSESSION AND RETENTION

### 4.10. Possession and retention of certain things obtained during a screening procedure or strip search

Where the ABF officer discovers a weapon or other item capable of being used to inflict bodily injury or to help the person to escape from immigration detention or a document or other item that is, or may be, evidence for grounds for cancelling the person's visa the ABF officer is permitted to take possession of the item and retain it for such time as the authorised officer thinks necessary for the purposes of the Migration Act (refer section 252(4)(b)).

The ABF officer should:

- retain weapons and items that could be used to escape from immigration detention while the person is in detention (if custody is transferred to the Facilities and Detainee Service Provider the retained items should also be transferred)
- issue receipts to the person for any property they have taken possession of which is to be retained for a significant period of time, using Form 41 Property receipt. See *Procedural Instruction: Events after refused immigration clearance.*

Where documents or items are located that are not the subject of the search but may be of interest to other law enforcement agencies (for example narcotics), ABF officers should refer their findings to the appropriate government agency present at the port.

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The *Privacy Act 1988* permits ABF officers to disclose the information if it is reasonably necessary for enforcement of the criminal law or a law imposing a pecuniary penalty, or protection of the public revenue. However, ABF officers have no power to take possession of such items.

The Migration Act provides the legislative overview of possession and retention of things obtained during a strip search conducted under section 252A. For further information, refer to section 252C of the Migration Act.

## PART D: REPORTING REQUIREMENTS

### 4.11. Record keeping

ABF officers must make contemporaneous records of all searches conducted under section 252 and s252A of the Migration Act. It is preferable that such records include notes taken during the search and digital recordings and are recorded in TRIM. This requirement is to protect the person undergoing the search as well as the ABF officers concerned in the event of an allegation of impropriety in relation to the search.

On completion of the search, the ABF officer must ensure the following is recorded within Departmental Referrals system and on the detainee's file:

- s. 47E(d)
- 
- 
- 
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If items are to be retained for a significant period of time then receipts for any property that has been taken possession of should be issued to the person, using Form 41 *Property receipt*. A copy of Form 41 should also be retained on the detainee's file.

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## 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\(d\)@abf.gov.au](mailto:s.47E(d)@abf.gov.au) or telephone: 02 s.47E(d) 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.

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### 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 in conjunction with the following documents:

### 7.1 Policy Statement

[TT-2983] Border Clearance

### 7.2 Procedural Instructions

[BC-699] Detention and Search (s.219 Customs Act)

[BC-2473] Imposters and false/fraudulently obtained travel documents

[BC-2671] Events after refused immigration clearance

[DM-3274] Duty of Care at the border

[BC-2676] Managing Minors in Immigration Clearance

## 8. References and legislation

### Migration Act 1958

This Act sets out the primary requirements relating to searches in immigration clearance:

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

- Section 252 – Searches of persons
- Section 252A – Power to conduct a strip search
- Section 252B – Rules for conducting a strip search
- Section 252C – Possession and retention of certain things obtained during a screening procedure or strip search

### Privacy Act 1988

This act provides for the establishment and management of the Australian Public Service.

- Section 13, which sets out the APS Code of Conduct.

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### Public Service Act 1999

This act provides for the establishment and management of the Australian Public Service.

- Section 13, which sets out the APS Code of Conduct.

### Australian Border Force Act 2015

This act provides for the establishment and management of the Australian Border Force, the Australian Border Force Commissioner and persons performing work for the Department.

- Section 44 – Disclosure to certain bodies and persons.
- Section 46 – Permitted purposes.

## 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 Branch, 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.

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BCS Category/Function	Trade & Traveller Clearance Management
BCS Sub-Category/Sub-Function	Passenger and Crew Processing
Period of Effect	10 December 2021

**10.1. Document change control**

Version number	Date of issue	Author(s)	Brief description of change
1.0	12 Apr 17	s. 22(1)(a)(ii)	Update of document into PI.
1.1	09 June 17		Cleared PPCF QA.
1.2	28 Feb 18		Review for SES approval.
1.3	20 Nov 18		Review for SES approval

**10.2. Approval**

Approved by:	Don SMITH Commander ABF Governance
Approved on (date):	<b>10 December 2018</b>

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# 11. Appendices

## 11.1 Appendix A

### Form 41 – Property receipt

(Available on Department of Home Affairs website)

**Australian BORDER FORCE** **Property receipt** **Form 41**

Please open this form using Adobe Acrobat Reader. Either type in the fields provided or print this form and complete it using a pen and BLOCK LETTERS.

**Important information about privacy**  
Your personal information is protected by law, including the Privacy Act 1988. Important information about the collection, use and disclosure (to other agencies and third parties, including overseas entities) of your personal information, including sensitive information, is contained in form 14425. Privacy notice: Form 14425 is available from the Department of Home Affairs (the Department) website [www.homeaffairs.gov.au/allforms](http://www.homeaffairs.gov.au/allforms) or offices of the Department. You should ensure that you read and understand form 14425 before completing this form.

Receipt number: \_\_\_\_\_  
 Name of property owner/person from whom goods were received, or returned to: \_\_\_\_\_  
 Contact details: \_\_\_\_\_  
 Telephone number: (Area code) \_\_\_\_\_ Postcode: \_\_\_\_\_

Description of property	Reason for property being held (see reverse)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	

Where property is not being held for one of the reasons listed on reverse, please specify: \_\_\_\_\_

Signature of officer returning the property: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Signature of person to whom the property is received: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Signature of witness: \_\_\_\_\_ Title/profession: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

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# Detention and Search (Divisions 1B and 1BA Customs Act 1901)

## Procedural Instruction

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# 1. Purpose

To inform Australian Border Force (ABF) officers of legislative requirements and procedures relating to the detention and search of suspects under Division 1B, and the detention and search of persons for the purposes of law enforcement co-operation under Division 1BA of the *Customs Act 1901* (Customs Act). It should be noted the detention of reportable child offenders at the border (s.219ZJB of the Customs Act) is addressed in a separate Procedural Instruction, *Detention of Reportable Child offenders at the border (s.219ZJB Customs Act)*.

## 1.1. Background

The powers in relation to the detention and search of suspects, and the detention and search of persons for purposes of law enforcement cooperation are specified in Division 1B and Division 1BA of Part XII of the Customs Act.

Division 1B of the Customs Act concerns the detention and search of suspects (s219L - s219ZJ of the Customs Act) and provides officers with powers, in select circumstances, and subject to a range of conditions, to:

- detain for frisk searches
- require the production of things
- detain for external searches
- detain for internal searches
- carry out internal (non-medical) scans of persons, and
- arrange for internal (medical) searches by a medical practitioner.

Division 1BA of the Customs Act concerns the detention and search of persons for purposes of law enforcement co-operation. Officer powers are found in s219ZJA to s291ZJJ- 291ZJJ) of the Customs Act and are subject to a range of conditions. An officer may detain a person if the person is in a designated place and the officer has reasonable grounds to suspect the person has committed, is committing, or intends to commit a serious Commonwealth offence or a prescribed State or Territory offence. An officer may also detain a person subject to a warrant or bail condition; or for national security or security of a foreign country reasons, in certain circumstances and where certain conditions are met.

# 2. Scope

## 2.1. In Scope

This Procedural Instruction applies to officers in the aviation environment where they may be required to detain and search persons under the Customs Act.

## 2.2. Out of Scope

Detention and Search of persons under the *Migration Act 1958*. Detention of reportable child offenders at the border (s.219ZJB of the Customs Act) is addressed in a dedicated PI entitled *Detention of Reportable Child offenders at the border (s.219ZJB Customs Act)*.

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### 3. Roles of Officers

A brief summary of the roles of officers involved in the detention and search process is explained in this section.

Table 1 – Roles of officers

Role	Description
Authorised officer (AO)	<p>Defined in s4(1) of the Customs Act to mean an officer of Customs authorised under subsection 4(1AA) to exercise the powers or perform the functions of an authorised officer under that provision.</p> <p>Subsection 4(1AA) provides that the Comptroller-General of Customs may, by writing, authorise an officer of Customs to exercise the powers or perform the functions of an authorised officer under a specified provision of this Act.</p> <p>Of note, the AO:</p> <ul style="list-style-type: none"> <li>• Reviews the circumstances of detention</li> <li>• Communicates with all concerned</li> <li>• Decides if reasonable grounds for suspicion exist</li> <li>• Decides if the person is to be detained for the purposes of an external search or is to be released</li> <li>• Where appropriate, completes and signs an order to search.</li> </ul>
Authorised Search officer (ASO)	<ul style="list-style-type: none"> <li>• An officer who has successfully completed a training course on Detention and Search powers.</li> <li>• Required to successfully complete an online course and assessment, undertake practical (role play) assessments and be assessed as competent by a Workplace Assessor.</li> <li>• Required to undergo Detention and Search re-certification every two years.</li> </ul>
Body Scanner Operator (BSO)	<ul style="list-style-type: none"> <li>• An officer authorised in writing by the Comptroller-General of Customs to use prescribed equipment for the purposes of internal non-medical scan and who is an Authorised Search officer (ASO) and who has also completed the CEO approved Internal Body Scanner Operational Training.</li> <li>• Required to undergo the BSO course recertification every two years.</li> <li>• Required to undergo Image Analysis re-certification every year.</li> </ul>
Detention officer (DO)	<p>Defined in s4(1) of the Customs Act: For the purposes of Subdivision A (Detention and frisk search of suspects) of Division 1B as—an officer of Customs who is a detention officer because of a declaration under subsection 219ZA(1); or</p> <p>For the purposes of Subdivision B (Detention and external search of suspects)—an officer of Customs who is a detention officer because of a declaration under subsection 219ZA(2); or</p>

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Role	Description
	<p>For the purposes of Subdivision C (Detention and internal search of persons suspected of internally concealing substances etc)—an officer of Customs who is a detention officer (DO) because of a declaration under subsection 219ZA(3).</p> <p>Under s219ZA of the Customs Act, the Comptroller-General of Customs may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of the (above) subdivisions.</p> <p>Of note, the DO:</p> <ul style="list-style-type: none"> <li>• For a frisk search, must be an APS3 (Border Force officer) or above</li> <li>• For external and internal searches, must be an APS5 (Senior Border Force officer) or above</li> <li>• Must hold current certification as an Authorised Search Officer.</li> <li>• Exercises the power of detention</li> <li>• Determines whether reasonable grounds for suspicion exist</li> <li>• Determines if the detainee is a PINOP</li> <li>• Determines whether the detainee needs an interpreter or language card</li> <li>• Decides on the appropriate level of search</li> <li>• Explains the detention and search process</li> <li>• Informs the detainee of their rights</li> <li>• Obtains informed consent using an information card</li> <li>• Formally detains the person</li> </ul> <p>Conveys the reasonable grounds for suspicion to other officers and the Australian Federal Police if necessary.</p>
Referring officer (RO)	<p>Initially suspects on reasonable grounds and communicates these suspicions to the Detention Officer (DO).</p> <p>May also act as the Search Officer (SO) for the purposes of a frisk search where the officer is of the same sex<sup>1</sup> as the detainee.</p> <p>May act as the Witnessing Officer (WO) (if the RO is an officer or a police officer) but should not become a SO unless:</p> <ul style="list-style-type: none"> <li>• there is no other officer available; and/or</li> <li>• no other officer of the same sex<sup>1</sup> as the detainee is available.</li> </ul>
Search officer (SO)	<ul style="list-style-type: none"> <li>• Can conduct a frisk search (an external search can be conducted by any Part XII certified officer, any Part XIII certified officer or a police officer)</li> <li>• Must hold current certification as an Authorised Search Officer</li> <li>• Must be of the same sex<sup>1</sup> as the detainee</li> <li>• Obtains reasonable grounds for suspicion and the level of search from the DO and makes appropriate records of the reason e.g. in their notebook or official system</li> </ul>

<sup>1</sup> Persons who identify as transgender must be consulted as to their preference for a male or female officer to conduct the search.

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Role	Description
	<ul style="list-style-type: none"> <li>• Explains the process of the search and use of equipment such as gloves</li> <li>• Ascertains the ongoing consent of the detainee (see consent requirements under s219RAA)</li> <li>• Must only conduct the search to the level authorised by the Detention Officer.</li> </ul>
Witnessing officer (WO)	<ul style="list-style-type: none"> <li>• Must hold current certification as an Authorised Search Officer</li> <li>• Must be of the same sex as the detainee (except for the purposes of a frisk conducted in public)</li> <li>• Receives information regarding the reasonable grounds for suspicion and the level of search from the DO</li> <li>• Observes the search noting relevant times and conversations</li> <li>• Watches for signs of withdrawal of consent</li> <li>• Ensures searches are conducted in line with the information contained within this Procedural Instruction and other relevant instructions published in the PPCR.</li> </ul>

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## 4. Procedural Instruction

### 4.1. Workplace health and safety considerations

Persons internally concealing drugs are at risk of death or significant health issues in the event of the rupture or leakage from packaging. If there is any apparent deterioration in the physical condition of a detainee the Detention Officer (DO) must immediately seek medical assistance. Where a person is transported to hospital, details of the attending paramedical staff and proposed emergency department must be reported to ABF Operational Commands and the Australian Federal Police (AFP) Operations Coordination Centre (AOCC) on 02 6126 7755.

Medical advice on the detainee's ability to undergo a search may need to be sought or arrangements may need to be made to have first aid assistance available prior to undertaking a search.

Gloves must be worn when conducting searches for Work Health & Safety reasons. Officers may be required to search persons who are suffering from a communicable disease, including sexually transmitted diseases. Measures, such as the wearing of personal protective equipment and precautionary arrangements, must be taken in advance if this fact is known to, or reasonably suspected by, the officer.

There may be occasions where the person being searched reveals the extent of their medical condition after the officer has handled soiled clothing or other property. If this situation arises, the officer must seek medical advice as soon as possible so appropriate decontamination procedures can be followed.

An officer who believes they may have been exposed to a communicable disease must notify their supervisor immediately. If the officer who may have been exposed to the communicable disease cannot notify the supervisor, the supervisor must be notified by any officer who is aware of the exposure.

A supervisor notified of an officer's potential exposure to a communicable disease must take all reasonable steps to protect the health and safety of the officer, including:

- provide and ensure first aid treatment
- refer the officer to an appropriate medical service as soon as practicable
- ensure an incident report is completed.

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# PART 1 – GENERAL REQUIREMENTS

## 4.2. Training

### Training for frisk, external and internal searches

To obtain certification as an Authorised Search officer (ASO), officers must successfully complete the Detention and Search training course, and must be recertified every two years.

Officers (or their supervisors and/or training advisors) must initiate re-certification processes three to six months prior to expiry of their certification.

Where an officer does not complete re-certification requirements within a period of six months of the date their certification expired, the officer must complete the initial certification requirements as part of their recertification process.

When certification has expired, an officer is no longer an ASO and therefore cannot participate in any detention and search procedures (other than as a referring officer).

Any frisk or external search must be carried out by an officer of the same sex as the detainee<sup>2</sup> and must be in the presence of a Witness Officer (WO). The WO must also be of the same sex as the detainee, except for a frisk done in public. Accordingly, any search assessment activities undertaken in the course of training must be performed by officers of the same sex as the role player.

	Initiate Re-cert process	Certification Expires	Must re-certify
	1.5 Years	2 years	within 6 months
Year One	Year Two		Six months
Able to conduct searches			Unable to conduct searches

### Training for Body Scanner Operator

To become and maintain status as a Body Scanner Operator (BSO), officers must:

- complete the approved BSO Course (XRU7A), with recertification every two years
- be certified as an ASO
- have completed Unit 1 X-Ray and Radiological Safety and Awareness (XRU1) course
- complete and maintain the Unit 7 Image Analysis (XRU7) course on analysing internal body scanner images every 12 months.

The BSO course is competency based, and consists of verbal instruction and demonstrations as well as individual hands-on practical experience. The training is delivered by either a Subject Matter Expert or a Competency Assessment Training Officer.

For further instructions see *Procedural Instruction: Internal Search Using Body Scanner (BC-692)*.

<sup>2</sup> Persons who identify as transgender must be consulted as to their preference for a male or female officer to conduct the search.

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### 4.3. Personal searches conducted under an Act other than the Customs Act

Officers may have powers to detain and/or search persons in some circumstances under other legislation. Examples of these Acts are:

- Migration Act 1958
- Environment Protection and Biodiversity Conservation Act 1999
- Maritime Transport and Offshore Facilities Security Act 2003 (MTOFSA)
- Maritime Powers Act 2013 (MPA)
- Anti-Money Laundering and Counter Terrorism Financing Act 2006 (AMLCTF)
- Aviation Transport Security Act 2004 (ATSA).

Where a person is detained for the purposes of a search under another Act, the search must be conducted under that Act, not the Customs Act.

Persons detained under another Act are only entitled to the review or appeal processes under that Act. They are not entitled to the review or appeal processes offered under the Customs Act.

Officers must ensure compliance with the appropriate rights and obligations according to the Act under which the person has been detained and the powers exercised.

### 4.4. Categories of search under Part XII, Division 1B

#### Frisk search

Section 219L and 219M of the Customs Act deals with frisk searches in detail. A frisk search means the search of a person conducted by quickly running of 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 (s4(1) of the Customs Act). This type of search does not involve officers touching the skin of the person.

#### External search

Sections 219, 291Q, 219R, 219RAA, 219ZAA, 219ZAB, 219ZAC and 219ZAE of the Customs Act deal with external searches in detail. Departmental policy recognises two levels of external searches:

- B1 – consists of the removal of some or all outer clothing
- B2 – consists of the removal of some or all outer clothing and underclothing including underwear.

#### Internal non-medical scan

An internal non-medical scan is an internal scan carried out under s219SA, s219SB, s219ZAA, s219ZAB, s219ZAC and 219ZAE of the Customs Act using the Smiths Detection B-SCAN 16HR-DV (as prescribed by regulation 125 of the Customs Regulation, which is an x-ray internal body scanner. The internal non-medical scan must be carried out by an officer who is authorised to use the equipment (the x-ray).

#### Internal medical search

Internal medical searches are discussed in detail in s219V, 219Z and 219ZF of the Customs Act. An internal medical search is a search conducted, subject to a range of conditions, by a medical practitioner at a hospital or the surgery or other practising rooms of a medical practitioner registered or licensed under a law

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of a State or Territory providing for the registration of medical practitioners (regulation 126). This search can include an x-ray, ultrasound, Computed Tomography scan or physical examination.

### 4.5. Categories of search under Part XII, Division 1BA

#### Search of person detained under this division

Under s219ZJD of Part XII of Division 1BA, an officer may, in relation to a person detained under this division:

- conduct a frisk search or an ordinary search of the person
- search the clothing that the person is wearing and any property under the person's immediate control, where the officer believes on reasonable grounds that it is necessary to do so for the purposes of:
  - determining whether there is concealed on the person, or in the person's clothing or property, a weapon or other thing capable of being used to inflict bodily injury or to assist the person to escape from detention
  - in the case of a person detained under s219ZJB (a person suspected of committing a serious Commonwealth offence or prescribed State or Territory Offence) – preventing the concealment, loss or destruction of evidence of, or relating to, the offence concerned
  - in the case of a person detained under s219ZJCA (a person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country) – preventing the concealment, loss or destruction of material of interest for national security or the security of a foreign country.

Importantly, a search under s219ZJD must be conducted:

- as soon as practicable after the person is detained
- by an officer of the same sex as the detained person.

An officer who conducts a search under this Division may seize any weapon or anything mentioned in s219ZJD(1)(c) specifically a weapon or other thing capable of being used to inflict bodily injury or to assist the person to escape from detention; or any weapon or anything the officer has reasonable grounds to believe is a thing:

- with respect to which an offence has been committed
- that will afford evidence of the commission of an offence
- that was used, or intended to be used, for the purposes of committing an offence
- that is of interest for national security of a foreign country.

If a weapon or other thing is seized under this Division, officers must ensure it is delivered, or made available, to a Police officer (see s219ZJD(4) for details).

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### Frisk search

Under Division 1BA, frisk search has the same definition as in Division 1B (refer to Glossary).

### Ordinary search

Under Division 1BA, ordinary search has the same definition as in Division 1B (refer to Glossary).

## 4.6. Consent under Part XII, Division 1B

### Obtaining informed consent

Before conducting a search under Division 1B, the officer must be satisfied that all relevant legal requirements (including state of mind requirements) have been met (e.g. suspicion on reasonable grounds). The officer must also ensure the detainee clearly understand their rights (for detainees not fluent in English see s219ZD of the Customs Act).

To ensure informed consent, the DO must provide a full and detailed explanation of the persons' rights and outline exactly what the search procedures will involve in a language the traveller can understand (information cards in various languages or an interpreter may be used).

The right to refuse to consent should be put to the person very clearly, as well as the fact that if consent is given, he/she can withdraw it at any time.

If the person is 18 years of age or over, or not in need of protection and wishes to consent to an internal search, the consent form must be signed by the detainee.

Where it is believed or is apparent the person is illiterate or cannot understand English, the DO or an appropriate interpreter must read the Information Card and Consent Form to the person. Use of an interpreter including the interpreter's name must be recorded in the search register. (s. 47E(d) [REDACTED])

[REDACTED]. The interpreter must sign the register if they are present. If a phone interpreter is used, the register must be notated with 'telephone interpreter' instead of a signature.

If there is any doubt in the officer's mind as to whether the person clearly understands their rights or the explanations provided, even with the aid of an interpreter, then they are to be regarded as having refused consent.

*N.B Consent is not a requirement when conducting a search under Division 1BA.*

### Withdrawal of consent

During any search, a person may withdraw consent at any time.

The person must do or say something to the officer to clearly indicate the original consent is being withdrawn.

Officers must look for verbal and non-verbal indicators the detainee is unhappy or reluctant about complying with any aspect of the search as it progresses, and clarify whether their consent is still valid.

## 4.7. Use of interpreters

Where an ABF officer or police officer detaining a person under this Division has reasonable cause to believe that a person is not fluent in English, the officer must take all reasonable steps to ensure during the person's detention, a person competent to act as an interpreter is used and acts as an interpreter for the purpose of communication (s219ZD of the Customs Act).

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Officers with suitable qualifications and in receipt of the Community Language Allowance are permitted to perform simple communication tasks, for example communicating with persons regarding their travel itinerary or the contents of their baggage.

To avoid actual or perceived conflicts of interest or integrity concerns, where a DO has determined that reasonable grounds for suspicion exist (or the officer has a reasonable belief), officers must cease to provide interpretation and a Telephone Interpreter Service must be used.

An interpreter provided by the Telephone Interpreter Service must be used where:

- the person requests an interpreter
- the DO has determined that reasonable grounds for suspicion exist and wishes to conduct a search, but there is reasonable cause to believe that:
  - the person does not speak English
  - is unable, because of inadequate knowledge of the English language or for any other reason, to communicate orally with reasonable fluency in the English language.

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# PART 2 – PART XII, DIVISION 1B DETENTION AND SEARCH OF SUSPECTS

## 4.8. Detention of persons

In order to enable the detention of a person, a DO must form and continue to hold reasonable grounds to suspect a person is unlawfully carrying any prohibited goods on their body or a suspicious substance internally.

Where a DO suspects on reasonable grounds a person may be carrying prohibited goods on their person, the DO may detain the person for the purposes of a frisk or an external search.

Where a DO suspects on reasonable grounds a person is internally concealing a suspicious substance, the person may be detained for the purposes of carrying out an internal non-medical scan or seeking an order for an internal search (s219S(1) of the Customs Act).

Once the DO ceases to hold the reasonable grounds, the detainee must be released from detention.

Subsection 219ZE(1) of the Customs Act states the detention (and any search) of a person under Division 1B **must cease immediately** where any of the following apply:

- an order is made under this Division that the person be released
- an order for the detention of the person is revoked
- an order for the detention of the person has ended and subsection 219V(5) does not apply
- if the detention is under Subdivision A—no detention officer suspects on reasonable grounds that the person is unlawfully carrying prohibited goods on their body
- if the detention is under Subdivision B—no detention officer suspects on reasonable grounds that the person is unlawfully carrying prohibited goods on his or her body
- if the detention is under Subdivision C—no detention officer suspects on reasonable grounds that the person is internally concealing a suspicious substance
- an ultrasound of the person is completed.

## 4.9. Person In Need Of Protection (PINOP)

Subsection 4(20) of the Customs Act provides that a person is in need of protection for the purposes of Division 1B if, and only if, the person is:

- (a) under 18 years of age
- (b) in a mental or physical condition (whether temporary or permanent) that makes the person incapable of managing his or her affairs).

If a PINOP is detained for an external search or an internal search, an order must be made to a Division 1B Judge or Division 1B Magistrate (s219X). The Judge or Magistrate must, if satisfied the person is a PINOP, appoint a person (other than an ABF officer or police officer) to represent the detainee's interests in relation to this Division.

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Although there are no legal provisions for a PINOP detained for a frisk search, officers need to approach the situation with care and comply with these policy instructions:

- if a detainee is a minor, the frisk search must be conducted in private and in the presence of a consenting parent or guardian
- if the person is 'otherwise' in need of protection, the search must be upgraded to an external search and the matter reviewed by a Justice of the Peace or Magistrate.

### 4.10. Cautioning for the purposes of conducting a personal search

Where a person is only suspected of carrying prohibited goods on their person, a personal search (frisk or external) may be carried out. While a person is detained under section 219L (and, by force of section 219P, this section applies to the person); or a person is detained under section 219Q; a DO or police officer may question the person:

- for the purpose of carrying out an external search of the person under this section
- concerning any prohibited goods found to have been illegally carried by the person on his or her body as a result of the carrying out of an external search of the person under this section.

The DO or police officer must not question the detainee under subsection (12) unless the DO or police officer has informed the detainee ("cautioned" the detainee):

- the questioning is for the purpose of conducting an external search
- the person is not obliged to answer any questions asked of them
- anything said by the person may be used in evidence
- the person has the right to communicate with another person.

*N.B. the rights of a person to communicate with another person when detained under Subdivision B should be considered with regard to s219R(8).*

Specific to subdivision C—Detention and internal search of persons suspected of internally concealing substances etc., if the person is detained under an order for, or consents to an internal search, and the officer needs to question the person to determine whether they are internally concealing a suspicious substance, the detainee must be cautioned that:

- the questioning is for the purpose of determining whether the detainee is internally concealing a suspicious substance; or concerning any such substance found to have been internally concealed by the person (s219W(4)(a))
- the person is not obliged to answer any questions (s219W(5)(a))
- anything said by the detainee may be used in evidence (s219W(5)(b))
- the person has the right to consult a lawyer and to communicate with another person at any time (s219W(1) and s219W(5)(c)).

Further, s219W provides that a person detained under subdivision C—Detention and internal search of persons suspected of internally concealing substances etc, may at any time:

- N.B. the rights to consult a lawyer
- subject to s219W(3), communicate with another person.

Where a person detained under this Subdivision wishes to consult a lawyer, an ABF officer or police officer must arrange for the person to consult a lawyer of the person's choice.

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An ABF officer or police officer may stop a person so detained from communicating with another person if the officer believes on reasonable grounds that such communication should be stopped in order to:

- safeguard the processes of law enforcement
- protect the life and safety of any person.

### 4.11. A person to communicate with another person when detained under Subdivision C should be considered with regard to the Crimes Act caution and rights

Once a belief is formed that a Commonwealth offence has been committed and the person will be questioned about their involvement in the offence, the person becomes a 'protected suspect' as defined in subsection 23B(1) of the Crimes Act. The Crimes Act caution and rights must be given prior to any further questioning otherwise the admissibility of any further statements or conversations may be rejected by the Court.

### 4.12. Controlled toilets

Should the person wish to use the toilet at any time during a detention and search, they should be permitted to do so in a controlled toilet. For further detail see *Procedural Instruction: Controlled Toilets*.

### 4.13. Search of diplomatic or consular personnel

Certain persons are given immunity from personal searches as follows:

- accredited diplomatic agents or consular officers (including heads of missions or posts) and family members forming part of their household, taking up or resuming a posting in Australia
- accredited diplomatic agents or consular officers (including heads of missions or posts), and family members forming part of their household, in transit through Australia to take up, resume or return from a posting in a third country
- accredited diplomatic or consular couriers who possess a valid travel document which clearly identifies them as such.

The above categories of persons will normally be travelling on a diplomatic or official passport containing a Subclass 995 (Diplomatic (Temporary)) visa (Subclass 995) and Subclass 403 (Temporary Work (International Relations)) in the Privileges and Immunities stream (Subclass 403).

**Note:** A Subclass 995 and Subclass 403 visa does not of itself signify diplomatic status - persons other than the above may also be carrying diplomatic/official passports, containing a Subclass 995 or 403 visa. These people include the mission's service staff, representatives of the European Community, representatives of international organisations, and official representatives of government bodies. These people are not exempt from frisk or external search, and should be treated in the same manner as other persons.

s. 47E(d)

Department of Foreign Affairs and Trade (DFAT). Officers are to follow local instructions for contacting DFAT on these matters.

When a non-exempt diplomatic/official passport holder is searched, and prohibited or quarantine restricted goods are located, the Protocol Branch of DFAT must be advised immediately of the seizure of the goods, and advice sought as to the status of the diplomat.

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# CHAPTER 1: Detention and Frisk Search of Suspects

This chapter refers to Subdivision A of Division 1B of Part XII of the Customs Act – Detention and frisk search of suspects (s219L – s219P).

## 4.14. The detainee's rights

If detained at a designated place that is a s234AA (places set aside for the purposes of the Customs Act), the person must be advised of their legal right to request for the frisk search be carried out in a private area of the detention place. Any search, regardless of being private or public, should be in a controlled environment selected by the officer.

If detained at a designated place other than a s234AA place, i.e. wharves, tarmac areas or on board ships, the officer conducting the search must make every effort to give the person as much personal privacy as the circumstances of the search allow, but must also take into account the detainee's wishes. For example, the detainee may indicate a strong preference to be frisked in full view of other persons in the vicinity.

The Customs Act does not accord any special rights for PINOPs undergoing a frisk search. However, officers should exercise reasonable care and sound judgement when dealing with PINOPs.

Where a person under 18 years of age is to be frisk searched:

- the persons parent/legal guardian or an independent witness (not an officer conducting customs functions) must be present during the detention and consent process and subsequent search and their consent obtained
- the frisk must be carried out in a private area of a detention place.

If no consent is given or a guardian is not present, then officers should not proceed with a frisk search, but should consider an external search and meet the necessary requirements

## 4.15. Guidelines

The Frisk Search Information Card (*TRIM ref number: ADD2017/2237571*) is available and must be provided to the person by the DO. The DO should determine if an interpreter or different language card is required.

A frisk search is the quick and methodical running of hands over the persons outer garments. This may include an examination of anything worn by the persons that is voluntarily removed. This is a search that does not involve officers touching the skin of the detainee. For more information on how to conduct a frisk search, officers must refer to the training manual.

Officers must not demand that a person remove any items of clothing, for example overcoats, coats, jackets, gloves, shoes and/or hats.

If the person voluntarily removes outer clothing, they should be thanked for their co-operation. Under no circumstances is an officer conducting a frisk search to give the impression that a person is required to remove any clothing or footwear.

Where a person voluntarily removes an article/s of clothing, the search officer (SO) should search the item/s.

Persons who identify as transgender must be consulted as to their preference for a male or female officer to conduct the search and to be a witness to the search.

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Where a person detained at a s234AA place elects to be frisked at the initial place of detention in full public view (e.g. at the baggage counter), a WO must be appointed and the DO should remain to act as another witness. This is always preferred as the DO can immediately answer any queries raised by the person.

The WO must be of the same sex as the person.

If the person elects to be frisked in private they must be escorted to an interview room set aside for that purpose, and the DO should assign an officer to act as the SO. The SO must be of the same sex as the person and hold a current certification as an ASO.

### **4.16. Refusal to submit to a frisk search or failure to produce things located during a frisk search**

Where a person refuses to submit to a frisk search or produce anything found during a frisk search, the DO must conduct an external search as soon as practicable (s219R of the Customs Act).

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# CHAPTER 2: Detention and External Search of Suspects

This chapter refers to Subdivision B of Division 1B of the Customs Act – Detention and external search of suspects (s219Q - s219RAA).

An external search is conducted when a person has refused to submit to a frisk search, or has refused to produce for inspection things found as a result of a frisk search, or a DO suspects on reasonable grounds the detainee is unlawfully carrying prohibited goods on their body.

## 4.17. Electronic recording of external search

An officer **must** inform the person prior to any external search being conducted that a **recording of the search** may be made and if produced, such a record will be provided to the person as soon as practicable (s219RAA(1) of the Customs Act).

## 4.18. The detainee's rights

### Consent and the withdrawal of consent

Under s219R(1) (c) (ii) and (iii) the detainee must consent to be searched and the consent must be recorded in compliance with s219RAA(2). The person may withdraw their consent to the external search at any time. At this time the matter must be reviewed by a Justice of the Peace or, in certain circumstances, by an Authorised Officer (AO).

### Communication with other persons, including relatives and lawyer

The person **may** at any time **communicate with another person**. However, an officer may stop the communication in order to safeguard the processes of law enforcement or protect the life and safety of any person (s219R(7) and 219R(8)). Where the person wishes to communicate with another person, the DO s. 47E(d)

The person may wish to inform travelling companions or waiting relatives of the delay. In these instances, the DO should offer to pass a message to waiting friends or relatives, unless this is likely to compromise law enforcement processes.

Communication with another person can include a lawyer. The DO should assist the person, but the person must arrange for this legal consultation and the search will not be delayed pending the arrival of the lawyer.

### Answering questions

The person is not obliged to answer any questions.

## 4.19. Detention of a person

The person must be informed they have been detained for the purposes of an external search in accordance with s219Q of the Customs Act.

It must be made clear to the person they have been detained in custody, they are not free to leave and that they are not under arrest.

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The detainee must be taken as soon as practicable/without any undue delay to the nearest detention place (appropriately equipped search room or vehicle that affords adequate personal privacy). What is reasonably possible in a particular case will depend on, among other things, the time/place/conditions of the detention.

### 4.20. Informed consent

To ensure properly informed consent, the DO must provide a full and detailed explanation of the detainee's rights and a full description of what will happen and what will not happen during the external search. For example:

- the necessity of wearing rubber gloves should be explained
- an assurance must be given that at no time will the detainee be touched after their clothes have been removed
- the limits of a B1 or B2 category search need to be outlined
- a smock will be offered to provide some privacy.

The right to refuse consent and to have the matter determined by a Justice of the Peace or AO should be put to the detainee very clearly.

The right to withdraw consent at any time during the search must be explained.

As soon as it becomes evident the detainee does not understand their rights, refuses to consent to a search or withdraws their consent an application for an order to search should be made to a Justice or AO.

### 4.21. Application to a Justice or Authorised Officer for an order for an external search of the detainee

A Justice is any Justice of the Peace having jurisdiction in the place. The Justice selected should be one of a designated panel who has been briefed on the operation of the legislation and accustomed to the exercise of the ordinary judicial functions of the office. A Justice must be completely independent of any involvement with normal day-to-day operations. A list of Justices is kept locally and must be reviewed regularly by list owners.

The detainee must be advised of the likely availability of a Justice and continued detention will be necessary until the Justice attends. It should be noted that in some jurisdictions such as NSW, the availability of Justices authorised to act under Commonwealth legislation is very limited.

If there is a delay in obtaining an order from a Justice, the detainee should be advised and given the opportunity to waive their right to a Justice and choose the option of having the matter reviewed by an AO. This will be the most senior officer on location with responsibility for the operational area at the time.

In all circumstances, a PINOP must be referred to a Justice for review. The only exceptions to this are outlined in s219R (1A) Customs Act.

The DO must prepare a written application for an order to conduct an external search using one of the two templates provided for this purpose. In considering an application by a DO for an order to conduct an external search, a Justice or AO must review all known matters about the person prior to making an order for search or release.

It is necessary for the Justice or AO to undertake the review at the place of detention.

As part of the review process, the Justice or AO is free to question the person concerned prior to making the order. This must be in the presence of the DO and a summary of the conversation recorded in the DOs notebook. If any recordings are in process, the DO should suspend the recording to permit the conversation.

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Proceedings before a Justice or AO should take place as follows:

- the DO must apply to be heard separately from the person
- proceedings should be conducted in private if the Justice or AO agree
- relevant documentary evidence should be available for presentation to the Justice or AO in accordance with the Secrecy and Disclosure provisions found in Part 6 of the Australian Border Force Act 2015 (ABF Act), e.g. s. 47E(d) [REDACTED], evidence that the detainee is/is not a PINOP
- the Justice or AO should be given an explanation as to why any aspects of the reasonable grounds for suspicion should not be disclosed to the person e.g. s. 47E(d) [REDACTED] [REDACTED] Where appropriate, the officer (other than the DO) who originated the request for the person to be searched should also be available to present evidence
- an order by a Justice or AO to release the detainee is final and effective immediately
- any comments made by the Justice or AO in issuing or refusing the order must be recorded by the DO in their notebook.

### 4.22. Order to search

The Justice or AO must not make an external search order unless they are satisfied that there are reasonable grounds for suspecting the person is unlawfully carrying prohibited goods. The Justice or AO cannot rely on the DO's suspicion. The Justice or AO is required to make up their own mind.

If an order is given, the search must be conducted as soon as practicable.

Where a Justice or AO orders the search to proceed but the person refuses to submit, then officers must proceed with caution. Ultimately, if the search is ordered by a Justice then s219ZC(2) and s219ZC(2A) of the Customs Act empower an officer to use reasonable and necessary force in conducting the search.

Where a person has chosen to have an AO consider the application for an order for an external search (even though a Justice is available), the search is ordered by an AO and the person refuses to submit to the search, a Justice must be asked to review the matter before considering the use of reasonable force. An exception to this procedure is where the services of a Justice are not reasonably available.

If the Justice or AO does not make an order for external search, they must order that the person be released immediately.

The original application and signed order should be filed in the appropriate registry file. The Justice or AO retain a copy of the application and order for their own records. A copy of the signed order must be given to the person.

### 4.23. Where an external search is ordered and the detainee is a PINOP

As soon as a person has been identified as being a PINOP, their detention for search must be referred to a Justice wherever one is reasonably available. An AO can only be consulted if a Justice is not reasonably available.

Where an external search is ordered by the Justice or AO and the detainee is a PINOP, the order will specify that the search must be carried out in the presence of:

- the persons legal guardian

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- a specified person (not being an ABF officer or police officer) being a person who is capable of representing the detainee's interests in relation to the search.

As far as practicable, this person must also be acceptable to the detainee.

The specified person must be given an explanation of what the search will involve. Their role in the search to act in the interest of the person and be informed of the detainee's rights with the aid of relevant information cards.

Where a young child is involved, the AO should actively involve the parent or guardian in the search where such action would be beneficial to the conduct and completion of the search, such as assisting with the removal of outer clothing.

There are special provisions in Part 1C of the Crimes Act that govern how a person under 18 years of age is to be treated.

### 4.24. Conduct of an external search

Each external search must be electronically recorded where recording equipment is available, for example at airports.

Only the SO and WO should be present during the search, except where:

- a specified person is required to be present by order of a Justice or AO
- an interpreter is required.

When an interpreter has been arranged who is of the same sex<sup>1</sup> as the detainee it would be desirable for communication purposes for the interpreter to remain in the room during the search. This needs the agreement of both the detainee and the interpreter.

It may not be feasible for the interpreter to remain in the room (because they are not of the same sex as the detainee). In these circumstances, the DO should ensure the interpreter agrees with the detainee on a pre-arranged signal that will clearly indicate to the officer conducting the search the detainee wants the interpreter to be brought back into the room for further communication.

A paper smock must be offered to the detainee as a matter of course.

Gloves must be worn for Work Health & Safety reasons. An officer must explain this before the gloves are put on. Officers should never enter the search room already wearing gloves.

The period in which a person is fully undressed (if they have elected not to wear a smock) must be kept to an absolute minimum.

### 4.25. Limits of an external search

An external search is divided into two sub-categories (B1 and B2) for customs purposes. The level approved and the search itself should only go as far as is strictly necessary to allay an officer's grounds for suspicion. Once suspicion no longer exists, the search must be terminated and the person released immediately.

An external search can only be used if the detainee refuses to submit to a frisk search under Subdivision A, Division 1B of Part XII of the Customs Act, or if the person, having submitted to the search, refuses to produce a thing they are required to produce under section 219N (typically items suspected to be, or contain, prohibited goods that are unlawfully carried), or to determine whether a person is carrying prohibited goods on their body; there must be no attempt to examine or look into body cavities and the search must not be used solely or predominantly to gather material to justify detention for an internal search.

While in the process of conducting an external search, if the officer discovers signs of possible internal concealment, leading the officer to have a reasonable suspicion of an internal concealment, the external

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search should be suspended and an internal non-medical scan conducted and/or the person referred for an internal search.

If there is no longer a suspicion of internal concealment following a non-medical scan, the external search can be resumed, if required.

An officer may require the person to stand with their feet apart during an external search, however, the detainee must not be asked to:

- bend over
- perform any other physical action designed to expose the anal/genital area to better view, e.g. placing a leg up on a chair.

A request to part the buttocks may only be made in exceptional circumstances and only as the final step in the process when strong suspicions suggest concealment on the surface of the skin in that area. Such a request may only be made in cases where the body shape/size of the detainee combined with strong grounds for suspicion prompting the initiation of the search are present.

If a detainee is uncooperative and/or refuses a request to expose a particular part of their body, then such unwillingness must be clarified in case it signifies withdrawal of consent.

In exceptional circumstances, a person can be asked to remove externally worn sanitary protection or incontinence aids. Officers must be able to substantiate the basis for such a request and a replacement item must be available in the case of sanitary protection.

It is not permissible as part of an external search to ask a female to remove internally worn sanitary protection for inspection. If there are doubts in the officer's mind a tampon may be disguising an internal concealment of narcotics, then this, together with other factors, needs to be considered in deciding whether detention for internal search may be justified. It is not acceptable to suggest to a detainee that removal of a tampon might avoid the need for an internal search.

Artificial limbs and other prostheses may be examined if necessary to satisfy grounds for suspicion. The ASO should consider if medical or first aid assistance is required to facilitate this.

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# CHAPTER 3: Detention and internal non-medical scan

Where a DO forms reasonable grounds to suspect a person is internally concealing a suspicious substance, a DO must detain the person for the purposes of carrying out an internal search.

Subject to certain conditions, the person may be invited to participate in an internal non-medical scan performed by an authorised body scanner operator (BSO) using prescribed body scanning equipment, in lieu of being detained for the purpose of an internal medical search.

## 4.26. Legislation and powers under the Customs Act 1901

### Paragraph 219S(1)(a)

The legislation provides that a person may be detained for the purposes of carrying out an internal non-medical scan when a DO or police officer suspects on reasonable grounds a person is internally concealing a suspicious substance.

Where a person has been detained for the purposes of carrying out an internal non-medical scan, a DO may invite that person to consent to an internal non-medical scan where the eligibility requirements can be satisfied.

### Paragraph 219S(2)(a)

An ABF officer or police officer must, as soon as practicable, take the person to the nearest detention place suitable for the detention of the person.

### Subsection 219SA(1)

An internal non-medical scan must be carried out as soon as practicable where:

- there are reasonable grounds to believe the person is not in need of protection
- the person consents to an internal non-medical scan using the prescribed equipment (Reg 125 of the Customs Regulation)
- the requirements in inviting consent stipulated in s219ZAA are met.

### Subsection 219SA(2)

An internal non-medical scan must only be carried out:

- using equipment prescribed (Reg 125 of the Customs Regulation) for the internal non-medical scan purpose
- by an officer who is authorised for the purposes of s219ZAA(3) (a BSO).

### Section 219SB

The person must be referred for an internal medical search where a person has been invited to consent to an internal non-medical scan and either:

- a person refuses an invitation to consent to an internal non-medical scan
- an internal non-medical scan has begun but is not completed and the DO retains reasonable grounds to suspect the person is internally concealing a suspicious substance

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- after an internal non-medical scan is completed, the DO retains reasonable grounds to suspect the detainee is internally concealing a suspicious substance.

**Note:** Once detained for an internal non-medical scan, it is not necessary that the person is further detained for an internal medical search. Section 219SB directs that if any of the above conditions apply and the detainee does not consent to an internal medical search under s219V, arrangement for internal medical search, then s219T, initial order for detention, applies.

An internal non-medical scan must be carried out by an BSO of the same sex as the person. The officer must have successfully completed the Detention and Search Training Course.

The WO must also be of the same sex as the detainee. In addition, both the BSO and WO must be an ASO.

Detainees who identify as transgender must be consulted as to their preference for either male or female officers to conduct and witness the scan.

### 4.27. Eligibility

#### Detainee has been scanned on a previous occasion

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) dictates that each individual's effective dose from internal non-medical scanning be limited to 10 micro Sieverts ( $\mu\text{Sv}$ ) per year.

A detainee must not be subjected to an internal non-medical scan where a scan would result in individual's annual effective dose from internal body scanning exceeding  $10\mu\text{Sv}$ , unless given approval by a Registrar or Radiologist.

#### Medical conditions/pregnancy

Prior to inviting a person to consent to participate in an internal non-medical scan, a DO must ask the detainee if they have any known medical conditions or whether there are any medical reasons why they should not participate in an internal non-medical scan. An example of this may be someone who is or has recently undergone radiation treatment for cancer. In such instances, the officer should seek advice from a Registrar and/or Radiologist if a scan can/should be conducted.

Prior to inviting a female to consent to participate in an internal non-medical scan, a DO must ask the female if they are pregnant or if they have any reason to believe they may be pregnant. Policy precludes a DO from inviting a pregnant woman to consent to an internal non-medical scan.

When assessing the capability of a person to participate in an internal non-medical scan, officers must not ask the following detainee's to participate:

- minors and/or PINOPs
- wheelchair bound persons, persons relying on physical support of another person or walking frames to stand
- people incapable of reacting to audio or visual signals or directions.

#### Detainees' wellbeing

Persons internally concealing drugs are at risk of death or significant health issues in the event of the rupture of or leakage from packaging. If there is any apparent deterioration in the physical condition of a person, the DO must immediately seek medical assistance. Where a person is transported to hospital, details of the attending paramedical staff and proposed emergency department must be reported to the AFP Operations Coordination Centre (AOCC) on 02 6126 7755.

The DO is responsible for ensuring all details, including times, persons involved and conversations of any health issues are recorded and corroborated in official notebooks.

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### 4.28. Consent for an internal non-medical scan

If a person has been detained under s219S of the Customs Act, for the purpose of undertaking an internal non-medical scan, the BSO may carry out an internal non-medical scan of the person, as soon as practicable, if:

- there are reasonable grounds to suspect the person is internally concealing suspicious substances
- there are reasonable grounds to believe the person is not a PINOP
- the person consents
- the requirements of s219ZAA are met in inviting the detainee to provide their consent.

Where the eligibility requirements cannot be satisfied, a non-medical scan must not be performed (refer above for eligibility requirements).

### 4.29. Radiation exposure considerations

The ARPANSA licence for the internal body scanner requires that officers retain records of persons' exposure to ionising radiation (effective dose).

The licence requires that a person must not be subjected to an internal non-medical body scan where a scan would result in that individual's annual effective dose from internal body scanning exceeding 10 $\mu$ Sv, unless given approval by a Registrar or Radiologist.

The Smiths B-SCAN 16HR-DV body scanner prescribed for use in conducting an internal non-medical scan may operate in three imaging modes: Full Body only; Torso View only; and Dual View. Dual View mode combines both Full Body and Torso View in one scan cycle.

The effective radiation dose for each scan mode is:

- Full Body            1.4  $\mu$ Sv
- Torso View         1.1  $\mu$ Sv
- Dual View           2.5  $\mu$ Sv

Before conducting an internal non-medical scan, the BSO s. 47E(d) [redacted] whether the person has been subject to any internal non-medical scan during the preceding 12 months.

The DO must ensure that s. 47E(d) [redacted]

To minimise a person's radiation exposure, no more than three scans may be conducted each time a person is detained for an internal non-medical scan. This includes re-scans which may be done at the request of the Registrar or Radiologist or after the use of the controlled toilet.

Once the BSO is able to interpret an image no further scans are to be conducted.

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### 4.30. Indications of concealment

#### Indication of external concealment

The x-ray internal body scanning technology is designed to provide an image of a person's internal cavities for the purpose of making a presumptive decision as to the presence of internally concealed suspicious substances.

Where a DO retains suspicion the person is internally concealing a suspicious substance, the detainee must be referred to AFP for consideration of an internal medical search before dealing with any prohibited goods found in the course of baggage examination, frisk or external search.

The officer's notebook, s. 47E(d) to record any frisk or external search informed by a non-medical scan.

#### Internal search following detection in baggage or from frisk or external search

A person may be detained for an internal non-medical scan following the detection of prohibited goods during baggage examination or from frisk or external search.

The person may be questioned in relation to the DO's reasonable suspicion the person may be internally concealing a suspicious substance.

Once a belief is formed there is sufficient evidence to establish the person has committed a Commonwealth offence, the person will be questioned for investigation purposes about their involvement in the alleged offence. The person becomes a 'protected suspect' as defined in Part IC of the Crimes Act (please refer to the *Procedural Instruction for Part IC of the Crimes Act*).

Where a DO retains suspicion the person is internally concealing a suspicious substance the person must be referred to the AFP for consideration of an internal medical search before dealing with any prohibited goods found in the course of the baggage examination, frisk or external search.

### 4.31. Procedures for detaining a person for an internal non-medical scan

#### Appointing a Body Scan Search Officer

Before a person is invited for an internal non-medical scan, the Referring Officer (RO) will refer their concerns to a DO.

The DO will invite the person to participate in the scan and seek consent for an internal non-medical scan.

Where a person consents to undertake an internal non-medical scan, the DO must assign a BSO to carry out the scan.

The BSO must be of the same sex as the person. Transgender persons must be consulted as to their preference for a male or female officer.

The BSO will prepare the body scan room and scanner for the internal non-medical scan.

X-ray equipment will not expose an embryo or foetus to more than the general public limit. However, an adjustment will be made in the workplace for pregnant officers should they opt not to operate x-ray systems. The decision to accept the role of the BSO is the responsibility of the pregnant officer.

#### Appointment of Witnessing Officer (WO)

Before detaining a person, the DO must appoint a WO. The WO must hold current certification as an ASO.

The WO will attend all further activity in relation to the detention of the detainee.

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The WO must be of the same sex as the person. Transgender persons must be consulted as to their preference for a male or female officer.

Subject to the preceding paragraph, the DO may witness the internal non-medical scan only where a suitable WO is not reasonably available.

X-ray equipment will not expose an embryo or foetus to more than the general public limit. However, an adjustment will be made in the workplace for pregnant officers should they opt not to operate x-ray systems. The decision to accept the role of the WO is the responsibility of the pregnant officer.

### Interpreter

Interpreters may remain in the body scanner room while the person is being scanned provided the interpreter is of the same sex as the person, and the person consents to the interpreter remaining in the room.

Where phone interpreters are being utilised, the phone does not need to be disconnected for the duration of the scan.

### Person's rights and caution

The DO must not question the person to determine whether the person is internally concealing drugs unless the person has been given a caution and rights under s219W(5) of the Customs Act. Before questioning the person, the person must be advised that:

- the detainee is not obliged to answer any questions
- anything said by the detainee may be used in evidence
- the detainee has the right to communicate with a lawyer or another person.

If the person wishes to consult a lawyer, the DO must arrange for the person to consult a lawyer of the person's choice before the scan is conducted (S.219W(1)(a) and (2)).

The person **may** at any time **communicate with another person**. However, an officer may stop the communication in order to safeguard the processes of law enforcement or protect the life and safety of any person (S 219W(1)(b) and (3)). Where the person wishes to communicate with another person, the DO must s. 47E(d)

The person may wish to inform travelling companions or waiting relatives of the delay. In these instances, the DO should offer to pass a message to waiting friends or relatives, unless this is likely to compromise law enforcement processes.

### Seeking consent

To ensure the person gives informed consent to an internal non-medical scan, the DO must provide the person with sufficient understanding of:

- their rights
- the prescribed equipment
- how the prescribed equipment will be used
- what use may be made of any evidence the prescribed equipment might produce.

The Information for a Person Offered an Internal Non-Medical Scan card (Information Card) must be provided to the person to facilitate this process.

The person must sign a Consent for Internal Non-Medical Scan Form (Consent Form).

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### Refusal to give consent

A person does not have to provide a reason for refusing to consent to undertake an internal non-medical scan.

However, any reason(s) given for refusing to consent must be recorded in official notebooks and in the s. 47E(d)

A person may recant their refusal to consent to an internal non-medical scan. DO's must ensure the person is providing informed voluntary consent to participate in an internal non-medical scan and there has been no duress on the person to recant their refusal to consent.

If the person does refuse consent and the DO retains reasonable grounds to suspect the person is internally concealing a suspicious substance, the detainee must be referred to the AFP for consideration of an internal medical search.

### Withdrawal of consent

A person may withdraw consent at any time. Although, once scanning is concluded the detainee cannot withdraw consent for the scan that was just conducted.

If the first scan is unable to be interpreted and a rescan is necessary, the person can withdraw consent and not participate in the next scan.

Officers must look for verbal and non-verbal indicators that the person is clearly unhappy or reluctant about complying with any aspect of the search as it progresses and clarify whether their consent is still valid.

If consent is withdrawn and the DO retains reasonable grounds to suspect the person is internally concealing a suspicious substance the detainee must be referred to AFP for consideration of an internal medical search.

## 4.32. Conduct of an internal non-medical scan

The DO and WO will escort the person to the body scanning room.

The DO will hand the person over to a BSO.

The DO will depart the room before any search and wait outside the room for completion of scanning.

The BSO will:

- confirm the person's identity
- confirm the person's consent
- reinforce the person's right to withdraw consent
- prepare the person for scanning.

The BSO must consider the person's physical capacity to undergo internal non-medical scanning and the person's apparent physical health. The BSO must refer any capacity or health concerns to the DO before scanning commences so that reasonably practicable steps can be taken to ensure the health and safety of the detainee. An officer should also consider whether a person may also be a PINOP for the purposes of conducting an internal non-medical scan.

The person must not be scanned more than three times in a single search (or screening).

All initial scans should be taken using "Dual View" mode.

The BSO may determine that a side-on scan is appropriate to increase the effectiveness of the scan. Side-on scans will only be taken as second or third scans.

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After each scan, the BSO will assess the image. The WO may be consulted only if they are also an authorised BSO.

Scanning is concluded after three scans, irrespective of whether the BSO is able to determine that any image would cause the DO to either retain or dismiss their reasonable suspicion.

In all cases, the BSO must advise the person the internal non-medical scan is concluded.

The scanned images must be referred to the relevant radiology provider during agreed radiology support times for assistance with image analysis.

The advice of the radiologist as to whether the person may or may not be internally concealing a suspicious substance will assist the BSO to assess the scan image and provide further information to the DO to determine whether or not the person should be referred to the AFP.

If, as a result of examining a scan image, the radiologist provides a referral the person should seek medical advice, the relevant form, and a print out of the images listed on the form, must be provided to the person.

In the event that a Registrar and/or Radiologist is unavailable to assist with image analysis, the BSO must consult and show the scan image with other BSOs before providing advice to the DO.

On completion of scanning, the BSO will review and analyse the images and provide advice to the DO of their opinion of the images/s, including whether the detainee should be referred to the AFP for consideration of an internal medical search.

The BSO will complete the notebook and s. 47E(d) [REDACTED] and action the scan images as per the requirements in Section Post Scan Management and Section Image Handling, Recording and Storage detailed in this Procedural Instruction.

### 4.33. Post scan management

#### Ambiguously abnormal/ambiguous scan

If the image/s cause the DO to retain suspicion the detainee may be internally concealing a suspicious substance:

- the DO will arrange an interview room
- the DO will contact the AFP
- the DO and WO will escort the person to the interview room
- the DO will advise the person they will be referred to the AFP for consideration of an internal search.

#### Unambiguously normal scan

If the resulting image/s from the scan indicate unambiguously normal (there is a low probability the person is internally concealing a suspicious substance) but the DO retains suspicion on reasonable grounds the person is concealing a suspicious substance due to other indicators s. 47E(d) [REDACTED], the person must be referred to the AFP for an internal medical search. Officers should appropriately record their justification in contemporaneous notes.

If the resulting image/s from the scan indicate unambiguously normal, that there is a low probability the person is internally concealing a suspicious substance, and the DO no longer retains suspicion on reasonable grounds the person is concealing a suspicious substance:

- The DO must immediately advise the person and formally release the person from detention
- The DO must invite the person to participate in a post scan discussion to provide feedback about their experience

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- If the person does not agree to participate in a post scan discussion, s219ZE of the Customs Act provides the person must immediately be released from detention
- If the person agrees to participate in a post scan discussion for the purposes of providing feedback about their experience, the DO and WO will escort the person to the interview room. It is important to note this discussion will be held after the person is released from detention – this discussion is not included in the detention time
- The person must be provided with a signed Letter of Explanation on release from detention.

If the detainee is released at any place other than the place at which they were first detained, and the detainee so requests, the detainee must immediately be returned free of charge to the place of the first detention: s219ZE(3) refers.

### 4.34. Handover to AFP

Where following an internal non-medical scan the DO continues to hold a reasonable suspicion the person is internally concealing a suspicious substance, the person shall be referred to AFP for consideration of an internal medical search.

A Suspected Internal Referral Form (SIRF) must be completed. The following must be included in the SIRF:

- s. 47E(d)
- [REDACTED]
- [REDACTED]
- [REDACTED]

Electronic or Digital Images may be provided to the AFP if the disclosure of that information complies with the Secrecy and Disclosure provisions in Part 6 of the ABF Act in the course of an officer's duties. Images may be shown to medical practitioners under this part regarding protecting the health and safety of a person.

Where requested by attending AFP officers, the DO must allow AFP officers to view the electronic internal non-medical scan images. The BSO must be present, to operate the scanner image analysis software and discuss the image.

For further information on guidance on handover procedures see:

- *Procedural Instruction: Electronic Recording of External Search, Baggage Examination and Record of Interview in Airports*
- *Procedural Instruction: Post Detection Procedures.*

### 4.35. Scan image handling, recording and storage

#### Backing-up images

s. 47E(d)

This is conducted by the Subject Matter Expert or Competency Assessment Training Officer.

Back up images must be registered in the Register of Electronic Records.

#### Storage

Body scan images when linked by image reference number to records s. 47E(d)

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s. 47E(d)

Prior to backing up images a Supervising officer may authorise a BSO to make copies of images for retention for training or reference purposes. Images retained for training or reference purposes must have all identification marking removed from the retained image.

### Disposing of records

Section 219ZAE of the Customs Act provides further detail on when an image of an internal non-medical scan must be deleted and under what circumstances, including:

- images must be deleted from the B-SCAN system s. 47E(d) must be destroyed as soon as practicable 12 months after the date of recording if relevant proceedings have not been initiated or have been discontinued
- the period of 12 months may be extended by a magistrate if the magistrate is satisfied there are special reasons for doing so
- images must be deleted as soon as practicable if the person is found to have committed a relevant offence but no conviction is recorded or is acquitted of a relevant offence and no appeal is lodged/confirmed, unless there is another relevant investigation or proceeding against the person.

After deletion, a witness to the deletion of the electronic recording must initial the Register of Electronic Records.

### De-Identifying images for training or reference purposes

A Supervising Officer may authorise a BSO to make copies of images for retention for training or reference purposes.

A Supervising Officer should consider the training or reference merit of each image being considered for retention.

### Providing images to AFP and/or medical practitioners

By signing the Consent Form, the detainee specifically permits the disclosure of scan images to the AFP and medical practitioners. This consent satisfies the Secrecy and Disclosure provisions under Part 6 of the ABF Act.

Electronic or Digital Images may be provided to AFP under the terms of Part 6 of the ABF Act in the course of an officer's duties. Images may be shown to medical practitioners under this part regarding protecting the health and safety of a person.

### Access to documentation and electronic recordings

Requests for access to documents or electronic recordings from partner agencies (excluding the AFP), other organisations or persons are subject to the provisions of Part 6 of the ABF Act, *the Freedom of Information Act 1982* and the Privacy Act.

A partner agency, organisation or individual may request copies of documentation and/or electronic recordings of detention and searches. This may occur during the investigation of the offence, following an individual person complaint or during an investigation by the Commonwealth Ombudsman, the Australian

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Commission for Law Enforcement Integrity, the Human Rights and Equal Opportunities Commission or the Office of the Australian Information Commissioner.

All requests from partner agencies, external organisations or individuals related to documents (including images) regarding the Internal Body Scanner will be directed to Operational Capability Branch responsible for the Body Scanner policy.

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# CHAPTER 4: Internal search

This paragraph refers to Subdivision C of Division 1B – Detention and internal search of persons suspected of internally concealing substances (s219RA to s219Z of the Customs Act).

Persons will be referred for an internal medical search where a DO suspects on reasonable grounds the person is internally concealing a suspicious substance; or an internal non-medical scan is positive or inconclusive; or if the person is not approved for or does not consent to an internal non-medical scan.

## 4.36. The detainee's rights

### Lawyer consultation

Under subsection 219W(1) of the Customs Act, the person may at any time consult a lawyer of their choice, or communicate with another person (subject to certain exceptions as set out in subsection 219W(3)). While this will normally be arranged by the AFP, the DO, ABF officer or police officer must arrange for the person to consult a lawyer of their choice.

### Consent and withdrawal of consent

The person may refuse to consent to the search. The detainee may also withdraw any consent provided at any time. In these circumstances, the AFP must apply to a Judge or Magistrate for an order for an internal search of the person.

### Communication with other persons, including companions

The detainee may at any time wish to communicate with another person. However, a DO or an AFP officer may stop the communication in order to safeguard the processes of law enforcement or protect the life and safety of any person (subsection 219W(3)). Where the person wishes to communicate with another person, the DO or AFP officer must carefully review all the information available in assessing whether there are reasonable grounds to believe the communication would compromise the law enforcement process or endanger the life and safety of any person. s. 47E(d)

The person may only wish to inform travelling companions or waiting relatives of the delay and such requests must be handled sympathetically. The DO or AFP officer must offer to pass a message to waiting friends or relatives, unless this is likely to compromise law enforcement processes.

## 4.37. Officers' role in an internal search

If an external search has not been conducted at the time a person is detained for an internal search, the officer must consider whether it is possible the person is externally concealing goods which may prove to be a security risk during transfer of the person to the police or an appropriate medical facility. If officers do have concerns, they should inform the responding AFP officers.

If a frisk search has already been conducted at the baggage examination bench, this may be sufficient to satisfy any security concerns.

If a DO suspects on **reasonable grounds** that a person is internally concealing a suspicious substance, the person may be detained.

Questioning of a detainee by the DO is permitted only after the person has been formally cautioned that:

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- they are not obliged to answer questions
- anything said may be used in evidence
- they have the right to consult a lawyer of their choice and communicate with another person at any time.

If the person makes no admission and, as a result of questioning, the DO's suspicions are allayed and the ABF officer no longer holds reasonable grounds for suspicion, then the person should be released immediately.

### 4.38. Detention and handover to AFP

Where a person is suspected on reasonable grounds of internal concealment (or has been detained for the purposes of an external search and a DO considers after the search there are reasonable grounds to suspect the person is internally concealing a suspicious substance, or has been referred after the non-medical scan process), the DO shall:

- advise the person they are detained (or detention is continuing) pursuant to s219S of the Customs Act
- continue the detention until the person is taken into custody by the AFP
- provide a SIRF and all relevant information relating to the detention and any search of the person to the AFP.

It is important the AFP is contacted as soon as practicable once reasonable grounds for suspicion have been established. The AFP will make their own assessment if there are reasonable grounds to suspect that the person is internally concealing a prohibited substance.

The AFP will not accept the matter if their assessment is reasonable grounds do not exist.

If accepted by the AFP, the DO and/or the senior officer on duty should be prepared to release an officer/s to accompany the AFP if an application is made for the detention or extended detention of the person. The relevant officer/s may be required to give evidence to a Magistrate or Judge in support of the application.

### 4.39. Withdrawal of consent

Having given consent, a person can **withdraw** it any time. A judicial order may be sought if officers wish to conduct, or continue with, the search.

ABF officers need to look for verbal and non-verbal indicators if the person is clearly unhappy or reluctant about complying with any aspect of the search as it progresses, and must ask whether they still continue to consent to the search.

### 4.40. Persons 'in need of protection'

If there are reasonable grounds to believe a person is a PINOP at the time of first detention, an application is to be made to a Judge only. If the Judge is satisfied that the person is a PINOP, they will appoint a person to represent the person's interests.

If the person is not a PINOP at the time of first detention, but there are reasonable grounds to believe the person has become 'in need of protection' while they are detained under Subdivision C, then an application must be made to a Judge (or Magistrate if the person is being detained by order of a Magistrate) as soon as practicable.

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Officers need to watch for any deterioration in the person's mental or physical condition while they are being detained and decide whether this would render the detainee temporarily incapable of managing their affairs.

# PART 3: PART XII, DIVISION 1BA, DETENTION AND SEARCH OF PERSONS FOR PURPOSES OF LAW ENFORCEMENT COOPERATION

## CHAPTER 1: Part XII, Division 1BA, Sections 219ZJA-219ZJJ (excluding section 219ZJCA, which is covered in Chapter 2 below), detention and search of persons for the purposes of law enforcement cooperation

### 4.41. General principles

The detention and search provisions of Division 1BA in Part XII differ to those found in Division 1B of the Customs Act, which covers circumstances in which a person is suspected of carrying prohibited goods on their person, or internally concealing a suspicious substance. The purpose of Division 1BA is to detain a person for handover into police custody under specified circumstances. When a person is detained under Division 1BA, a frisk or ordinary search may be conducted to determine whether the person is concealing a weapon, or to prevent the destruction of evidence of the offence, or material of interest for national security of security of a foreign country, without the need for consent.

Division 1BA enables a person to be detained for hand-over to State or Territory police, or the AFP. Division 1BA does not apply for the purposes of detaining and handing over to Investigations Branch (Enforcement Command).

*Detention of reportable child offenders at the border (s.219ZJB Customs Act is addressed in a separate PT located on the Policy Procedure Control Register).*

### 4.42. Detention of persons – s219ZJB and ZJC

An ABF officer may detain a person if the person is at a designated place and the officer has reasonable grounds to suspect the person has committed, is committing or intends to commit, a serious Commonwealth offence or a prescribed State or Territory offence, or has an outstanding warrant for their arrest or is the subject of a bail condition not to leave Australia.

A serious *Commonwealth offence* means an offence against a law of the Commonwealth that is punishable on conviction by imprisonment for a period of **12 months or more** (s219ZJA of the Customs Act).

Officers should consider the following non-exhaustive factors when determining whether there are reasonable grounds to form the requisite suspicion under the relevant detention powers. There could be

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other factors which contributes to whether there are reasonable grounds to form suspicion, and officers should consider them depending on the circumstances of the matter:

- s. 47E(d)

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If an officer is detaining a person and ceases to have reasonable grounds to suspect the person has committed, is committing or intends to commit, a serious Commonwealth offence or a prescribed State or Territory offence, the officer must **release the person from detention immediately** under subsection 219ZJB(4) of the Customs Act.

### 4.43. Use of force in relation to detention

Where an officer exercises powers in relation to a person under Division 1BA they must not use more force, or subject the person to greater indignity, than is reasonable and necessary (subsection 219ZJG(1) of the Customs Act). For example, where an officer detains (or attempts to detain), or prevents (or attempts to prevent) a person escaping detention, the officer may use reasonable force. In these circumstances, an officer must not do an act likely to cause death or grievous bodily harm to the person, unless the officer believes on reasonable grounds that doing the act is necessary to protect life or prevent serious injury to the officer or any other person (subsection 219ZJG(2) of the Customs Act).

When dealing with a person who resists officers at an airport, the AFP should be asked to attend in a supporting role.

The test for the use of reasonable force to detain and search a person is not what the officer thinks is reasonable, but whether a prudent and reasonable person would agree that under the circumstances the force used was reasonable and necessary. In other words, this is an objective test.

### 4.44. The detainee's rights

An officer who detains a person under this Division must inform the person at the time of detention of the reason for the person's detention, unless the detainee's own actions make it impracticable to do so. An officer must produce identification that they are an officer if requested to do so by the person.

If a person is detained for more than **2 hours** (s219ZJB(5) and s219ZJCA(4) of the Customs Act) (or in the case of a person subject to a warrant or bail condition, **45 minutes** (s219ZJC(4) of the Customs Act)), the officer must inform the person of their right to have a family member, or another person, notified of their detention. If the person so wishes, the officer must take all reasonable steps to notify the family member, or another person.

An officer may **refuse** to notify a family member, or another person, if the officer believes on reasonable grounds that notification should not be made in order to safeguard national security, the security of a foreign country or the processes of law enforcement, or protect the life and safety of any person (s219ZJB(7) of the

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Customs Act). If an officer exercises this right, they must notify the Ombudsman (via the approved letter template) within 7 days.

Reasonable steps must be taken to ensure the person's health and safety are not at risk during the period of detention.

If the person has been in detention for longer than 4 hours, an appropriate form of nourishment and water (if available) may be provided as long as the detention is not compromised.

### 4.45. Detention of minors (under 18 years of age)

For the purposes of s219ZJJ of the Customs Act, a minor is considered to be any person under the age of 18 years.

The officer must inform a minor (or a person reasonably believed to be a minor) of their right for a parent or guardian (or person described in s219ZJJ(1)(c)) to be notified of their detention (s219ZJJ of the Customs Act).

Upon the request of the person, the officer must take all reasonable steps to notify such a person and inform them:

- that the minor has been detained
- the place where the minor is being held
- the place where the minor will be transferred by police, if known at the time of contacting
- the reason for detention (unless if detained under s219ZJCA of the Customs Act for national security/security of a foreign country reasons).

Any notification **may be refused** if the officer believes on reasonable grounds that notification should not be made in order to safeguard national security, the security of a foreign country or the processes of law enforcement, or protect the life and safety of any person.

At the time the ABF officer advises a police officer of the minor's detention, the ABF officer must also advise the police officer the person is a minor.

### 4.46. Detention Officer's obligations

The officer must produce identification (in the form of an ID Card or Aviation Security Identity Card (ASIC)) if they are requested to do so by the person (s219ZJF of the Customs Act).

After detaining the person, the ABF officer must advise a police officer of the person's detention as soon as practicable and ensure the detainee is made available to the police officer as soon as practicable.

If the officer no longer has reasonable grounds to suspect the person has committed, or was committing, an offence, the officer must release the person from detention immediately (s219ZJB of the Customs Act).

There is no requirement to caution the person (Crimes Act caution) but the officer must notate, in their official notebook or other official record, any information volunteered by the person during the period of detention.

To avoid doubt, the detainee is not under arrest and at no time should they be told that they are under arrest. As the detainee is not under arrest, the 4 hour 'investigation period' limitation imposed by the Crimes Act does not apply.

The officer is not to ask the detainee any questions in relation to any suspected offences whilst being detained.

The detainee must be moved to a 'detention place' for the purpose of continuing detention until delivered into the custody of a police officer (s219ZJH of the Customs Act).

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If such a room in a designated place is not available, the person must be detained in a room or vehicle at another place (only if it is convenient and suitable to do so) that meets similar standards for health and safety and security.

The person is still considered to be under detention while being moved to a place of detention, even if the place of detention is not in a designated place (s219ZJH of the Customs Act).

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# CHAPTER 2: Part XII, Division 1BA, Section 219ZJCA detention of person for national security or security of a foreign country

## 4.47. General principles

Once again, these provisions differ to the detention and search provisions in Division 1B when a person is suspected of carrying prohibited goods on their person or internally concealing a suspicious substance. The purpose of s219ZJCA of Division 1BA of the Customs Act is to detain a person where the officer is satisfied the **person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country.**

## 4.48. Detention of persons

An officer may detain a person if the person is at a designated place and the officer is satisfied on reasonable grounds the person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country (s219ZJCA of the Customs Act).

Section 219ZJA of the Customs Act defines 'national security' as having the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*:

- Australia's defence, security, international relations or law enforcement interests.

If the person has been in detention for longer than **4 hours**, an appropriate form of nourishment and water (if available) may be provided as long as the detention is not compromised.

Importantly, an officer who detains a person under this section must (subject to subsection 219ZJCA(3) of the Customs Act) ensure that the person is made available, as soon as practicable, to a police officer in person to be dealt with according to law.

### Release from detention

Under subsection 219ZJCA(3) of the Customs Act, an officer who is detaining a person under this section must release the person from detention immediately if:

- the officer ceases to have reasonable grounds to suspect the person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country
- the person is made available to a police officer
- a police officer indicates they have no further interest in the person.

### Family member or other person notification

Under s219ZJCA of the Customs Act, if a person is detained for more than 2 hours (subsection 219ZJCA(4) of the Customs Act), the DO must inform the person of their right to have a family member or another person notified of the persons detention, unless the officer believes on reasonable grounds that such notification should not be made in order to:

- safeguard national security, the security of a foreign country or the processes of law enforcement
- protect the life and safety of any person.

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If the person detained wishes to have a family member or another person notified of the person's detention, the officer must take all reasonable steps to notify the family member or the other person.

### 4.49. Detention of minors (under 18 years of age)

The officer must inform a minor (or a person reasonably believed to be a minor) of their right for a parent or guardian or another person who is capable of representing their interests to be notified of their detention (s219ZJJ of the Customs Act).

Upon the request of the person, the officer must take all reasonable steps to notify such person and inform them:

- the minor has been detained
- the place where the minor is being held
- the place where the minor will be transferred to by police, if known at the time of contacting the parent, guardian or person representing the minor's interests.

If officers subsequently knows of the place where the minor being transferred to by the police, then the officer may inform the parent, guardian or person representing the minor's interests of that place.

Any notification **may be refused** if the officer believes on reasonable grounds that notification should not be made in order to safeguard national security, the security of a foreign country or the processes of law enforcement, or protect the life and safety of any person.

At the time the ABF officer advises a police officer of the minor's detention, the officer must also advise the police officer that the person is a minor.

### 4.50. Use of force in relation to detention

If a person resists detention, the officer may use reasonable force. The officer must not use more force, or subject the person to greater indignity, than is reasonable and necessary (subsection 219ZJG(1) of the Customs Act).

When dealing with persons who resist officers at airports, the AFP should be asked to attend in a supporting role.

The test for the use of reasonable force to detain and search a person is not what the officer thinks is reasonable, but whether a prudent and reasonable person would agree the force used was reasonable and necessary under the circumstances. It is an objective test.

### 4.51. Detention Officer's obligations

The officer must produce identification (in the form of an ID card or ASIC) if he/she is requested to do so by the person.

After detaining the person, the officer must advise a police officer of the person's detention as soon as practicable and ensure the person is made available to the police officer as soon as practicable.

If the officer no longer has reasonable grounds to suspect that the person has committed, or was committing, an offence, the officer must release the person from detention immediately.

There is no requirement to caution the person (Crimes Act caution) but the officer must notate any information volunteered by the person during the period of detention.

The person is not under arrest and at no time should they be told they are under arrest. As the person is not under arrest, the 4 hour 'investigation period' limitation imposed by the Crimes Act does not apply.

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The officer is not to ask the detainee any questions in relation to any suspected offences whilst being detained.

The person must be moved to a 'detention place' for the purpose of continuing detention until delivered into the custody of a police officer.

If such a room in a designated place is not available, the person must be detained in a room at another place (only if it is convenient and suitable to do so) that meets those minimum standards.

The person is still considered to be under detention while being moved to a place of detention, even if the place of detention is not in a designated place.

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# PART 4: POST SEARCH PROCEDURES RELATING TO ALL CATEGORIES OF DETENTION AND SEARCH

## 4.52. Post search procedures

### When goods are found

Where goods have been located as a result of a personal search and there are reasonable grounds to believe the person has breached the Customs Act or other Customs legislation, the person and the goods shall be dealt with under *Procedural Instruction: Post Detection Procedures*.

### When no goods are found

When a SO informs the DO that no prohibited goods have been found and the person is no longer reasonably suspected of carrying such goods, the DO must immediately release the person from detention.

The DO must conduct a post search discussion with the released person in the presence of the witness to the search.

For all negative external searches and or internal non-medical scan, a duly completed and signed letter of explanation must be handed to the person.

## 4.53. Recording requirements

The DO is responsible for ensuring all recording and reporting of searches is completed in a timely manner.

### Notebooks

All officers involved in all searches (s. 47E(d) ) must complete their official notebook entry in accordance with the *Procedural Instruction Official Diaries and Notebooks*.

s. 47E(d)

s. 47E(d)

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s. 47E(d)

### Complaints and compliments

On completion of a search and/or scan, the DO must ask if the person has any questions or concerns with the way the search was conducted.

In all circumstances officers must record the details of any questions or concerns and the outcome of the interaction in official notebooks and s. 47E(d)

Complaints and compliments must be reported to the relevant Duty Manager.

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# 5. Accountability and Responsibility

Role	Description
Document author	Responsible for: <ul style="list-style-type: none"> <li>• Drafting policies and procedures in compliance with the Policy and Procedure Control Framework</li> <li>• Using the approved Framework templates</li> <li>• Addressing the key requirement of the policy or procedure</li> <li>• Prior to drafting or reviewing, engage with their Divisional Coordinator.</li> </ul>
Document owner	As the framework document owner, approves PIs and verify that appropriate stakeholder consultations have been completed.
Superintendent, Traveller Operational Policy section	As the framework document owner, the Superintendent is responsible for: <ul style="list-style-type: none"> <li>• regularly evaluating each PI document to ensure that it is still achieves its intended purpose</li> <li>• determining whether a document requires editing or retirement</li> </ul> monitoring change and amendments to legislation or other legal requirements, business operations or risk profiles which may have an adverse effect on PI documents.
ABF border officers	Participate in the PI evaluation and feedback processes and provide suggestions on effectiveness and usability of the document.
Stakeholder	Advise author on policy and procedure relevant to business area. Attend stakeholder consultation workshop. Identify other stakeholders that should be consulted. Review draft documents and provide solution focussed feedback within the specified timeframe. Verify that a completed Compliance SOP complies with policy and procedure related to the business area by endorsing completed SOP.
Subject Matter Expert	A generic term for a departmental staff member or contractor who possesses specific expertise on the processes detailed in that PI/SOP.

## 5.1. Statement of Expectations

### 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.

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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.

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Version number	Date of issue	Author(s)	Brief description of change
1.0	19 Apr 17	s. 22(1)(a)(ii)	Update of document into PI
1.1	30 May 17		Cleared PPCF Quality Assurance
1.2	20 Mar 18		Cleared Legal Review
1.3	21 Mar 18		Reviewed PI
1.3	25 Oct 18		Reviewed and updated comments
1.4	28 Nov 18		PPCF Legal reviewed
1.5	11 Dec 18		Updated and reviewed legal comments
1.6	10 Jan 18		PPCF Legal reviewed
1.7	11 Jan 18		Updated and reviewed legal comments
1.8	17 Jan 18		Cleared Legal Review
1.9	23 Jan 18		Reviewed for SES Approval

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# Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	The Australian Border Force is a part of the Department of Home Affairs, and is responsible for offshore and onshore border control enforcement, investigations, compliance and detention operations in Australia.
Australian Federal Police (AFP)	AFP officer	Is a person engaged under section 24 of the <i>Australian Federal Police Act 1979</i> (Australian Federal Police Act).
Australian Radiation Protection and Nuclear Safety Agency	ARPANSA	The Australian Radiation Protection and Nuclear Safety Agency is an Australian Government's primary authority on radiation protection and nuclear safety. They monitor and identify solar radiation and nuclear radiation risks to the population of Australia.
Aviation Security Identification Card	ASIC	Is a card of that type issued under Part 6 of the <i>Aviation Transport Security Regulations 2005</i> (Aviation Transport Security Regulations).
s. 47E(d)		
Customs controlled area	s234AA place	A section 234AA of the Customs Act place (commonly referred to as a Customs controlled area) is an area within an appointed airport or port that is regularly utilised by officers to exercise their power to patrol, question, detain, arrest, examine and search travellers and goods entering or leaving Australia.
Designated place		<p>As defined in subsection 4(1) of the Customs Act.</p> <p>Is generally anywhere that officers process arriving or departing ships and aircraft and/or international travellers.</p> <p>More specifically, the term 'designated place' refers to:</p> <ul style="list-style-type: none"> <li>• a port, airport or wharf that is appointed (and limits of which are fixed) under section 15 of the Customs Act</li> <li>• a place to which a ship/ aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1) (while the ship/ aircraft remains at that place)</li> <li>• a place a master of a ship or pilot of an aircraft has obtained permission under subsection 58(2) of the Customs Act to arrive (while the ship/aircraft remains there)</li> <li>• a boarding station appointed under section 15 of the Customs Act</li> </ul>

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Term	Acronym (if applicable)	Definition
		<ul style="list-style-type: none"> <li>• a place from which a ship/aircraft which is the subject of a section 175 of the Customs Act permission (this section does not allow for the transfer of goods between aircraft or ships) is required to depart (between grant of permission and departure)</li> <li>• a place to which a ship/aircraft that is the subject of a s175 of the Customs Act permission (this section does not allow for the transfer of goods between aircraft or ships) is required to return (while the ship/aircraft remains there)</li> <li>• a s234AA (customs controlled area) place that is not a place, or part of a place, referred to above.</li> </ul>
Detention officer		<p>Defined in s4(1) of the Custom Act to include:</p> <ul style="list-style-type: none"> <li>• for the purposes of Subdivision A of Division 1B—an officer of Customs who is a detention officer because of a declaration under s219ZA(1); or</li> <li>• for the purposes of Subdivision B of Division 1B—an officer of Customs who is a detention officer because of a declaration under s219ZA(2); or</li> <li>• for the purposes of Subdivision C of Division 1B—an officer of Customs who is a detention officer because of a declaration under s219ZA(3).</li> </ul>
Detention place		<p>For an external search, s219ZB(1)(a) of the Customs Act, detention place is:</p> <ul style="list-style-type: none"> <li>• a room in a section 234AA place: subsection 128(1) of the <i>Customs Regulation 2015</i> (the Customs Regulation)</li> </ul> <p>For detention and external search, the prescribed standards under s219ZB(1)(b) of the Customs Act and set out in subsection 128(2) of the Customs Regulation are:</p> <ul style="list-style-type: none"> <li>• a place where persons inside the place are concealed from the view of persons outside and gives the detainee as much personal privacy as circumstances allow</li> <li>• a place is secured against access by persons other than ABF officers, police officers and any person who, under subsection 219R(5) of the Customs Act, is allowed to be present in the place</li> <li>• a place has reasonably comfortable ventilation and illumination</li> </ul>

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Term	Acronym (if applicable)	Definition
		<p>For detention and internal search, the prescribed standards under s219ZB(2)(a) of the Customs Act, as set out in subsection 128(3) of the Customs Regulation:</p> <ul style="list-style-type: none"> <li>• A hospital, or the surgery or rooms of a registered or licensed medical practitioner, or a room in a section 234AAA place.</li> </ul>
Department of Foreign Affairs and Trade	DFAT	<p>Is the organisation whose roles is to help make Australia stronger, safer and more prosperous by promoting and protecting Australia's interests internationally and contributing to global stability and economic growth.</p>
External search		<p>As defined in subsection 4(1) of the Customs Act.</p> <p>External search in relation to a person, means a search of the body of, or anything worn by, the person; to determine whether the person is carrying any prohibited goods; and to recover any such goods, but does not include an internal examination of the person's body (s4(1) of the Customs Act).</p> <p>External searches are discussed in detail in s219R of the Customs Act.</p> <p>Departmental policy recognises two levels of external searches:</p> <ul style="list-style-type: none"> <li>▪ B1 – consists of the removal of some or all outer clothing; and</li> <li>▪ B2 – consists of the removal of some or all outer clothing and underclothing including underwear.</li> </ul>
Frisk search		<p>As defined in subsection 4(1) of the Customs Act.</p> <p>The search of a person conducted by quickly running of 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.</p> <p>Of note, this type of search does not involve officers touching the skin of the person.</p>
Hard Disk Drive	HDD	<p>A long term storage device using spinning magnetic media in the form of metal discs.</p>
Informed consent		<p>Informed consent means that the individual clearly understands what they are consenting to and what information is involved. A Detention officer must ensure the detainee has given informed consent by giving them a full and detailed explanation of what is and is not going to happen in the language they understand. Information cards and consent forms in various languages must be used to facilitate informed consent.</p>
Internal medical search		<p>As defined in subsection 4(1) of the Customs Act.</p>

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Term	Acronym (if applicable)	Definition
		<p>An internal search carried out under s219Z of the Customs Act by a medical practitioner.</p> <p>An internal medical search is to be carried out by a medical practitioner. See s219Z for details regarding the recovery, during the search, of any substance or thing internally concealed by the detainee.</p>
Internal non-medical scan		<p>As defined in subsection 4(1) of the Customs Act.</p> <p>An internal search carried out using prescribed equipment under section 219SA of the Customs Act.</p>
Internal search		<p>As defined in subsection 4(1) of the Customs Act to mean:</p> <ul style="list-style-type: none"> <li>• an examination (including an internal examination) of the person's body to determine whether the person is internally concealing a substance or thing</li> <li>• in the case of an internal medical search, includes the recovery of any substance or thing suspected on reasonable grounds to be so concealed.</li> </ul>
Letter of explanation		<p>Is a letter given at the completion of a negative external search and internal non-medical scan. The letter sets out several things, including a reiteration of the explanation that was given to the person prior to them consenting to participate in an internal non-medical scan.</p>
Ordinary search		<p>Under subsection 183UA(1) of the Customs Act, an ordinary search means a search of a person or of articles in the possession of a person that may include:</p> <ul style="list-style-type: none"> <li>• requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat</li> <li>• an examination of those items.</li> </ul>
Person in need of Protection	PINOP	<p>As defined in subsection 4(20) of the Customs Act. For purposes of Division 1B, a person is in need of protection <u>if, and only if</u>, the person is a person:</p> <ul style="list-style-type: none"> <li>• under 18 years of age</li> <li>• in a mental or physical condition (whether temporary or permanent) that makes the person incapable of managing their affairs as defined in subsection 4(20) of the Customs Act.</li> </ul>
Personal Search		<p>A search (frisk, external) of a person under the Customs Act or other act.</p>
Prescribed Equipment		<p>Is equipment prescribed by the Customs Regulation for the purposes of conducting an internal non-medical scan.</p>
Prohibited goods		<p>As defined in subsection 4(1) prohibited goods means:</p>

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Term	Acronym (if applicable)	Definition
		<ul style="list-style-type: none"> <li>• goods whose importation or exportation is prohibited by this Act or any other law of the Commonwealth</li> <li>• goods whose importation or exportation is subject to restrictions or conditions under this Act or any other law of the Commonwealth</li> <li>• restricted goods that have been brought into Australia other than in accordance with a permission under subsection 233BABAE(2)</li> <li>• goods subject to customs control.</li> </ul>
Suspected Internal Referral Form	SIRF	An administrative form to complete for suspected referral concealment.
Smock		A garment used for detainee privacy during an external search.
Suspicious substance		A suspicious substance is defined in subsection 4(1) of the Customs Act as a narcotic substance that would, or would be likely to, assist in the proof of the commission of an offence against Division 307 of the <i>Criminal Code</i> that is punishable by imprisonment for a period of 7 years or more.

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# Attachment B – Assurance and Control Matrix

## 1.1. Powers and Obligations

Legislation	Legislative Provision		Is this a delegable power?	If delegable, list the relevant instruments of delegation
	Reference (e.g. section)	Provision		
	s195	Power to question passengers etc.	No	
	s219L	Detention for frisk search	Yes	s219ZA(1) and ABF (C-G) No.1 of 2018
	s219M	Frisk search	No	
	219N	Power to require the production of things	No	
	s219P	Persons to whom section 219R applies	No	
	s219Q	Detention for external search	Yes	s219ZA(2) and ABF (C-G) No.1 of 2018
	s219R	External search	No	
	s219R(14)	External search - authorised officer	Yes	ABF (C-G) No.1 of 2018
	s219RAA	Videotape record may be made of external search	No	
	s219RA	Certain Judges and Magistrates eligible to give orders under this Subdivision	No	
	219S	Initial detention	Yes	s219ZA(1) and ABF (C-G) No.1 of 2018
	s219SA	Internal non-medical scan using prescribed equipment	No	
	s219SB	Seeking detention order following invitation to consent to internal non-medical scan	Yes	ABF (C-G) No.1 of 2018

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Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
	s219T	Initial order for detention	Yes	ABF (C-G) No.1 of 2018
	s219U	Renewal of order for detention	Yes	ABF (C-G) No.1 of 2018
	s219V	Arrangement for internal medical search	Yes	ABF (C-G) No.1 of 2018
	s219W	Detention under this Subdivision	No	
	s219X	Detainee becoming in need of protection	Yes	ABF (C-G) No.1 of 2018
	s219Y	Applications for orders under this Subdivision	Yes	ABF (C-G) No.1 of 2018
	s219ZAA	Use of prescribed equipment for external search or internal non-medical scan	No	
	s219ZAB	Prescribing equipment for use in external searches and internal non-medical scans	No	
	s219ZAC	Authorising officers to use prescribed equipment for external search or internal non-medical scan	No	
	s219ZAD	Giving a record of invitation and consent, or a copy of order	No	
	s219ZAE	Records of results of external search or internal non-medical scan	No	
	s219ZA	Detention officers	Yes	ABF (C-G) No.1 of 2018
	s219ZB	Detention places	No	
	s219ZC	Detention under this Division	No	
	s219ZD	Detainees not fluent in English	No	
	s219ZE	Release from, or cessation of, detention	No	
	s219ZF	Conduct of internal medical search	No	

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Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
	s219ZG	Medical practitioner may take action to preserve detainee's life	No	
	s219ZH	Medical practitioner to answer questions and prepare report	No	
	s219ZJ	Proceedings against medical practitioners	No	
	Section 21 9ZJAA	Prescribed State or Territory offences	No	
	s219ZJB	Detention of person suspected of committing serious Commonwealth offence or prescribed State or Territory offence	No	
	s219ZJC	Detention of person subject to warrant or bail condition	No	
	s219ZJCA	Detention of person for national security or security of a foreign country	No	
	s219ZJD	Search of person detained under this Division	No	
	s219ZJE	Comptroller-General of Customs must give directions about detaining persons under this Division	N/A	F2015L00891
	s219ZJF	Detainees to be given reasons for detention and shown identification on request	No	
	s219ZJG	Use of force in relation to detention	No	
	s219ZJH	Moving detained persons	No	
	s219ZJI	Detainees not fluent in English	No	
	s219ZJJ	Detention of minors	No	
	s219ZK	Nature of functions of Judge or Magistrate	No	
	s219ZL	Protection of Judge or Magistrate	No	

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Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
<i>Crimes Act 1914</i>	Part 1 C	Investigation of Commonwealth offences	No	

### 1.2. Controls and Assurance

<b>Related Policy</b>	[TT-2985] Traveller intervention and response
<b>Procedures / Supporting Materials</b>	[BC-683] Controlled Toilets [BC-684] Electronic Recording of External Search, Baggage Examination and Record of Interview in Airports [BC-692] Internal Search Using Body Scanner [BC-689] Post Detection Procedures [TT-5223] Detention of reportable child offenders at the border (s.219ZJB Customs Act) [BE-2978] Official Diaries and Notebooks
<b>Training/Certification or Accreditation</b>	<u>Authorised Search officer (ASO) Training</u> Detention and Search training course and certification <u>Body Scanner Operator Training</u> Body Scanner Operator Course (XRU7A) Unit 1 X-Ray and Radiological Safety and Awareness (XRU1) course Unit 7 Image Analysis (XRU7) course
<b>Other required job role requirements</b>	Nil
<b>Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)</b>	Advice and outreach on this document can be provided by the Traveller Operational Policy Section s. 47E(d) [redacted] @abf.gov.au
<b>Escalation arrangements</b>	Escalation of concerns or issues regarding this document can be sent to the Traveller Operational Policy Section s. 47E(d) [redacted] @abf.gov.au
<b>Recordkeeping (eg system based facilities to record decisions)</b>	Official Diaries and Notebooks s. 47E(d) [redacted]

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<b>Control Frameworks (please refer to a specific document outlining QA or QC arrangements)</b>	The Border Clearance Policy Statement (TT-2983) and Traveller and Intervention and response Policy Statement (TT-2985) articulate over arching principles of assurance and control, A specific Quality framework is currently under development.
<b>Job Vocational Framework Role</b>	This PI applies to all officers in the Border Enforcement Operations job role.

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## Attachment C – Consultation

### 1.1. Internal Consultation

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

- Foundation and Ports Faculty, ABF College
- Integrity and Professional Standards, Integrity and Professional Standards Branch
- FOI Privacy and Records Management Branch, Records Management Section
- Traveller Policy Branch, Traveller Policy Advice and Support Section.
- National Security and Law Enforcement Legal Branch, Operations Law (Headquarters).

### 1.2. External Consultation

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

- Australian Federal Police

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