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# Summary removal

## Procedural Instruction

This procedural instruction applies to travellers refused immigration clearance, located at an airport or an immigration detention facility (IDF) or due for removal from Australia within 72 hours.

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Contact	s. 47E(d) [REDACTED]
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## Table of Contents

<b>1. Introduction</b>	<b>4</b>
1.1. Background	4
<b>2. Scope</b>	<b>5</b>
2.1. In Scope	5
2.2. Out of Scope	5
<b>3. Glossary</b>	<b>6</b>
<b>4. Procedural Instruction</b>	<b>7</b>
4.1. Carrier obligations	7
4.2. Summary removal (airport turnaround)	7
4.3. Submitting a Request for Service	7
Traveller transfer	7
4.4. The Detention Service Provider removal process	8
All DSP interactions	8
Summary removal – traveller held at airport	8
Summary removal – traveller held at IDF	8
4.5. Preparation for outward immigration clearance	8
Supervising traveller's property	8
4.6. Airline check in	9
Notification of departure time	9
4.7. Outwards immigration clearance	9
Escorting traveller to the departure area	9
Boarding the aircraft	10
4.8. Other important considerations – changes	10
Court order staying the removal of the traveller	10
The traveller refuses to board the aircraft/captain refuses to carry the traveller	11
The traveller claims protection on return to the airport	11
4.9. Other important considerations – changes	11
<b>5. Accountability and responsibilities</b>	<b>12</b>
<b>6. Statement of Expectation</b>	<b>12</b>
<b>7. Related Framework documents</b>	<b>13</b>
7.1. Policy Statement	13
7.2. Procedural Instructions	13
<b>8. References and legislation</b>	<b>13</b>
8.1. Migration Act 1958	13
<b>9. Consultation</b>	<b>13</b>
9.1. Internal consultation	13
9.2. External consultation	13
<b>10. Document details</b>	<b>14</b>
10.1. Document change control	14

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10.2. Approval	14
<b>11. Appendices</b>	<b>15</b>
11.1. Appendix A – Form 41 Property Receipt	15
11.2. Appendix B – Preliminary traveller placement indicators	16

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# 1. Introduction

## 1.1. Background

This instruction provides guidance for Australian Border Force (ABF) officer's when managing travellers who have been refused immigration clearance at an Australian airport, or who are due for removal from an IDF within 72 hours.

This instruction includes the different circumstances surrounding a removal including:

- summary removal (airport turnaround)
  - summary removal – traveller held at airport
  - summary removal traveller held at IDF.
- Detention Service Provider (DSP) involvement with a removal
  - submitting a Request for Service (RFS) through the Compliance, Case Management, Detention (CCMD) portal.

The integrity and safety of the traveller and their property is paramount when engaging in the removals process and ABF officer's must facilitate the removal following the steps required:

- prepare for outward immigration clearance by interrogating departmental systems to confirm the traveller has not made a claim for protection or that there is a court order to stop the removal
- supervising the travellers property at all times including completing Form 41 – Property Receipt (Appendix A) to transfer the traveller's property from the ABF to the traveller
- prepare for airline check in as the traveller will remain in ABF office/holding cell with an ABF/DSP officer, whilst airline check-in takes place
- Complete outwards immigration clearance by escorting the traveller to the departure area for security processing and await direction from an airline representative for the traveller to board the aircraft.

In any removal situation there is a risk the traveller will refuse to board the aircraft, or the captain refuses to carry the traveller. The importance of preparing the traveller for removal from Australian should not be underestimated.

In the event the traveller refuses to board the aircraft ABF officers should continue to engage with them to determine the reason for refusing to board with the aim of facilitating the removal where possible. Where the traveller continues to refuse to board the aircraft, the option for an escorted removal must be considered.

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## 2. Scope

### 2.1. In Scope

This procedural instruction provides information regarding removal of travellers who have been refused immigration clearance once arriving in Australia via aircraft.

This procedural instruction includes information for when a traveller/captain refuses to board the aircraft pending a removal.

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

### 2.2. Out of Scope

This procedural instruction does not provide advice or procedures for detaining travellers at the border.

This procedural instruction does not apply to the maritime environment.

This procedural instruction does not apply to clearance of travellers 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 Australian Border Force Act) authorised to perform border clearance duties.
Australian Federal Police	AFP	Is the organisation whose role is to enforce Commonwealth criminal law, contribute to combating complex, transnational, serious and organised crime affecting Australia's national security and to protect Commonwealth interests from criminal activity in Australia and overseas.
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).
Compliance, Case Management and Detention	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 Detention Facility	IDF	Is a place of residence for a person who has been detained while their immigration status is being resolved.
Immigration Clearance		Is a person who is in immigration clearance in the circumstances set out in the <i>Migration Act 1958</i> (Migration Act).
Preliminary Client Placement Recommendation	PCPR	A recommendation based on the decision process for a detainee's accommodation placement. The recommendations are based on certain risk factors and/or indicators that have been taken into consideration for their placement.

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## 4. Procedural Instruction

### 4.1. Carrier obligations

When a traveller is refused immigration clearance, the carrier who brought the traveller to Australia will be required by law to transport the traveller from Australia, see *Procedural Instruction: Events after refused immigration clearance* and *Procedural instruction: Carrier obligations and offences*.

### 4.2. Summary removal (airport turnaround)

A summary removal (airport turnaround) must be supported by the legislative provisions located at section 198(2) of the Migration Act. Considerations to summary removal will likely include:

- establishing the legislative authority to undertake summary removal action against a traveller refused immigration clearance. Note – individuals that are refused immigration clearance but have made a valid application for a substantive visa (that can be granted while the traveller is in the migration zone) and are waiting on a decision on that visa application, are not liable for summary removal. Examples include but are not limited to combined visa applications e.g. Partner visas. Sections 198(2)(c)(i) & (ii) of the Migration Act refer.
- the airline's ability to remove the traveller as soon as practicable
- the traveller's situation, for example:
  - access to a travel document
  - no known medical issues which will prevent the traveller from flying
  - no pending visa applications/claims before a delegate of the department
- ABF airport facilities
- ABF airport staffing resources.

Summary removals may occur with or without the assistance of the Detention Service Provider (DSP).

### 4.3. Submitting a Request for Service

If the assistance of the DSP is required, the ABF officer is to complete a Request for Service (RFS) through the Compliance, Case Management and Detention (CCMD) portal. The DSP may be required:

- for a traveller detained at the airport
- to transfer a traveller to an Immigration Detention Facility (IDF).

The DSP should be contacted to confirm receipt of the request after each submission.

#### Traveller transfer

Where a traveller is to be transferred either from an airport to an IDF or from an IDF to the airport, the ABF officer is to:

- ensure the ABF duty of care obligations are met
- complete a RFS instructing the DSP on the actions required. For situations where the traveller is to be transferred from a detention facility to the airport, the ABF officer should check if a request was submitted at the time of the traveller's transfer from the airport to a detention facility
- contact DSP and confirm the details of the RFS.

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If the DSP cannot meet ABF requirements, for example, inability to provide appropriate accommodation, the ABF officer should escalate the matter to their supervisor.

### 4.4. The Detention Service Provider removal process

#### All DSP interactions

Where a DSP assists with a summary removal, the ABF officer is to undertake the following additional steps:

- inform colleagues upon arrival of the DSP
- if required, issue the DSP officers with appropriate passes, see *Procedural instruction: Issuing visitor passes*. Valid Aviation Security Identification Card (ASIC) holders are not required to obtain a visitor pass
- supervise DSP officers whilst on ABF premises
- instruct DSP officers on when and how to contact responsible ABF officers.

DSP officers' role will be defined in the RFS and may include the following:

- monitoring the traveller in a holding room until traveller's departure
- effecting the departure of the traveller from Australia by escorting the traveller to the boarding gate (and aircraft door when necessary)
- remaining at the departure gate until the aircraft has pushed back and taken off (subject to holding valid ASIC), in case of possible offload of the traveller or aircraft departure issues.

#### Summary removal – traveller held at airport

In addition to the above steps, the ABF officer is to escort DSP officers to the traveller.

#### Summary removal – traveller held at IDF

In addition to the above steps in all DSP interactions, the ABF officer is to:

- escort DSP officers and the traveller to the ABF office/holding room
- request a verbal briefing from DSP officers about the traveller's risk assessment, focusing on the traveller's behaviour in immigration detention and en-route to the airport.

### 4.5. Preparation for outward immigration clearance

To facilitate removal, the ABF officer is to:

- check departmental systems to verify the traveller has not made a Protection visa application, nor has a court order staying the removal
- ensure a mobile phone and/or radio is carried at all times whilst conducting business away from the ABF office.

#### Supervising traveller's property

In preparation for a traveller's removal, the ABF officer is to:

- use Form 41 – Property Receipt to transfer the traveller's property from ABF to the traveller, ensuring the traveller's travel document is included on this form

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- retain the traveller's travel document until it is handed to an airline representative at the door of the aircraft
- ensure all items are accounted for and received by the traveller paying particular attention to the valuables
- ensure Form 41 – Property Receipt is signed by the traveller and countersigned by the ABF officer in the appropriate place
- check the traveller's carry-on luggage for prohibited items
- check the traveller's carry-on luggage for quantity limits relating to liquid, aerosols and gels, and if necessary provide the traveller with the requisite plastic bag.

### 4.6. Airline check in

The traveller remains in ABF office/holding cell with an ABF/DSP officer, whilst airline check-in takes place.

The ABF officer is to:

- carry a mobile phone or radio while conducting business away from the office
- determine if the traveller has excess luggage and discuss any logistical issues with their supervisor
- take the traveller's check-in luggage, travel document and copy of booking reference/itinerary (if provided) to the relevant airline's departure check-in counter
- liaise with the relevant airline representative to facilitate check-in
- request a time that the traveller should present at the boarding gate – summary removals are generally boarded first or last
- direct any irregular requests by the airline representative to the airline duty manager in the first instance, and then the supervisor for further direction
- collect travel document, boarding pass(es) and baggage receipts from the airline, retaining travel document and boarding pass(es).

### Notification of departure time

The ABF officer is to:

- notify the traveller of the expected departure time
- provide the traveller with their baggage receipts (unless retained by airline)
- advise the supervisor of the anticipated departure time
- inform the airport security supervisor, for example, Immigration Status Service (ISS) by telephone, or in person, the estimated time of escort through the security screening area or as per local arrangements
- provide updates of unscheduled delays to the traveller, DSP, and supervisor.

### 4.7. Outwards immigration clearance

#### Escorting traveller to the departure area

The ABF officer is to:

- escort the traveller and DSP to the transit area for security processing

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- have the traveller's travel document
- proceed to the relevant departure gate in preparation for boarding of the aircraft
- locate the traveller in close proximity to the departure gate
- in the absence of DSP, perform static guard duties
- approach the airline boarding staff, confirm approximate boarding time and advise of the traveller's, ABF's and DSP's presence (where necessary)
- ensure the above actions are completed in a manner that attracts the least amount of public scrutiny and avoids an increase to the traveller's security risks and anxiety levels.

### Boarding the aircraft

At the time of boarding the ABF officer is to:

- await direction from an airline representative to board the aircraft
- accompany the traveller and the DSP officer, if present, from the boarding area to the door of the aircraft
- hand the traveller's travel document and boarding pass(es) to an airline representative
- at the time of boarding do not give the travel document and boarding pass(es) to the traveller
- the travel document may be retained by an airline representative until the final disembarkation
- after the traveller has boarded the aircraft, accompany the DSP officer, if present, back to the departure gate
- request DSP ASIC holders, if present, remain in the departure lounge until the aircraft has departed (non-ASIC holders must be escorted by an ABF officer at all times).

## 4.8. Other important considerations – changes

### Court order staying the removal of the traveller

When a traveller or a legal representative claim they are in the process of obtaining a court order staying the removal, the ABF officer must contact the supervisor to decide the appropriate course of action.

If notified that a court order stating the removal has been issued, the ABF officer is to:

- obtain details of the court order including date of the order, name of the judge and the court contact the Litigation Branch, National Office either via email s. 47E(d) or phone s. 47E(d)
- send a copy of the court order to the Litigation Branch.

If the Litigation Branch confirms that the order to stay removal is valid, the ABF officer is to:

- notify the airline that the removal is to be discontinued and, if required, arrange to collect the traveller's check-in luggage
- issue the airline with the notice 'advice of inability to make available removee' under section 217(1) of the Migration Act
- update the airport manager on the situation.

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### **The traveller refuses to board the aircraft/captain refuses to carry the traveller**

The importance of preparing a traveller for removal from Australia cannot be underestimated. Engaging a traveller at the start of removal and advising of departure arrangements should encourage cooperation.

A traveller may refuse to be removed from Australia and resist boarding an aircraft. In such situations the ABF officer is to:

s. 47E(d)

The traveller and DPS officers should be escorted back to ABF offices or holding rooms pending further action.

Airport staff may need to discuss an escorted removal on another flight requiring traveller transfer.

### **The traveller claims protection on return to the airport**

If at any time the traveller 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 refer the traveller to their supervisor for advice on how to proceed.

Once their supervisor has provided advice, the ABF officer must undertake the appropriate course of action for the traveller in accordance with the procedures in *Procedural instruction: Managing claimants for protection*. This includes advising the delegate of the potential protection claim. If the traveller is in immigration detention and the AFP or State/Territory police indicate the traveller is of interest see *Procedural instruction: Events after refused immigration clearance*.

## **4.9. Other important considerations – changes**

When it appears likely that a traveller will not be removed within 72 hours, because of outstanding matters such as health, identity, visa application, travel documentation, behaviour, availability of flights or protection claims, the ABF officer is to engage the DSP.

The DSP is to hold the traveller in an IDF pending an immigration outcome.

The ABF officer is to:

- ensure duty of care obligations continue to be met pending the traveller transfer from ABF to the DSP
- complete the Preliminary Client Placement Recommendation (PCPR) in CCMD based on facts, observations and placement indicators in the Preliminary Traveller Placement indicators (Appendix B)
- if a traveller is considered vulnerable or high risk, the ABF officer must escalate to their supervisor
- contact and discuss the PCPR with Detention Operations
- complete a RFS in CCMD and attach a PDF copy of the PCPR to the RFS
- contact the DSP client service manager and discuss the RFS and PCPR. In the CCMD portal create a referral to Case Management

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- transfer ownership of the traveller's Compliance Status Resolution (CSR) service in the CCMD portal. **Note:** If the DSP cannot provide appropriate accommodation the ABF officer should escalate the matter to the supervisor.

## 5. Accountability and responsibilities

If ABF officers require clarification or assistance in regard to this instruction, they should contact the National Border Programme by email s. 47E(d) or telephone: s. 47E(d) AEST.

The Superintendent, National Border Programme 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 Advice and Support section has responsibility for preparation and dissemination of the Policy Statement in relation to this Procedural Instruction.

## 6. Statement of Expectation

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

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

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

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

All records created as a result of this procedure must be managed in accordance with the Records Management Policy Statement. Records created as a result of this policy/procedure must be saved in TRIM RM8 or an approved business system.

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## 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 at airports and seaports

[BC-2565] Carrier obligations and offences

[BC-2671] Events after refusal of immigration clearance

[BC-2678] Issuing visitor passes

[BC-2446] Section 189 Detention.

## 8. References and legislation

### 8.1. Migration Act 1958

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

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

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

- section 198 outlines the removal from Australia of unlawful non-citizens
- section 217 outlines vessels that are required to convey certain removees.

## 9. Consultation

### 9.1. Internal consultation

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

- Integrity and Professional Standards Branch, Integrity and Professional Standards
- FOI Privacy and Records Management Branch, Records Management Section
- Traveller Policy Branch, Traveller Policy Advice and Support Section
- Legal Advice & Operational Support, 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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## 10. Document details

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

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	04 May 17	National Border Programme	Update of document into PI
1.2	24 May 17	National Border Programme	Cleared PPCF Quality Assurance
1.3	03 May 18	National Border Programme	Converted to Home Affairs template and reviewed for SES approval

### 10.2. Approval

Approved by:	Don SMITH Commander ABF Governance
Approved on (date):	03 June 2018


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# 11. Appendices

## 11.1. Appendix A – Form 41 Property Receipt

(Available in hard copy only)

	<b>Australian BORDER FORCE</b>	<b>Property receipt</b>	<div style="border: 1px solid black; padding: 5px; display: inline-block;">             Form <b>41</b> </div>																																																																																				
<p><b>Important information about privacy</b></p> <p>Your personal information is protected by law, including the <i>Privacy Act 1988</i>. 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 <i>Privacy notice</i>. Form 1442i is available from the Department of Home Affairs (the Department) website <a href="http://www.homeaffairs.gov.au/allforms">www.homeaffairs.gov.au/allforms</a> or offices of the Department. You should ensure that you read and understand form 1442i before completing this form.</p>		<p>Receipt number <input style="width: 100%;" type="text"/></p> <p>Name of property owner/person from whom goods were received, or returned to <input style="width: 100%;" type="text"/></p> <p>Contact details <input style="width: 100%;" type="text"/></p> <p style="text-align: right;">Postcode <input style="width: 100%;" type="text"/></p> <p>Telephone number <input style="width: 100%;" type="text"/> (Area code <input style="width: 100%;" type="text"/>)</p>																																																																																					
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## 11.2. Appendix B – Preliminary traveller placement indicators

The following placement indicators and associated risks should be taken into account when considering a traveller's placement:

- health and wellbeing
- behaviour or demeanour
- family structure
- availability of community support
- background and any specific religious and cultural sensitivities
- immigration pathway
- immigration history
- availability of appropriate detention accommodation
- relevant security and risk assessment factors.

Government policy also plays a significant role in the placement of certain cohorts of travellers. These include:

- all unaccompanied minors and minors with families to be referred for residence determination
- other vulnerable clients (in line with section 197AB guidelines on LEGEND) to be referred for residence determination.

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# Events after refusal of immigration clearance

## Procedural Instruction

This procedural instruction applies in circumstances where a traveller has been refused immigration clearance.

Document approval date	8 August 2018
Last PPCF review date	8 August 2019
Contact details	s. 47E(d)
Document ID (PPN)	BC-2671
TRIM record number	OPD2017/171839
Primary influencing Legislation(s)	Migration Act 1958

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## Table of Contents

<b>1. Introduction</b>	<b>3</b>
1.1. Background	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	3
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>6</b>
4.1. Informing the traveller of the process	6
Obligations to facilitate legal and visa application advice	6
4.2. Preliminary discussion at the primary line	7
Processing Australian Federal Police Referrals	7
4.3. Australian Federal Police interaction with the traveller	7
Travellers suspected of criminality	8
4.4. Court order staying the removal of the traveller	8
<b>5. Accountability and responsibilities</b>	<b>9</b>
<b>6. Statement of Expectation</b>	<b>9</b>
<b>7. Related Framework documents</b>	<b>9</b>
7.1. Policy Statement	9
7.2. Procedural Instructions	9
<b>8. References and legislation</b>	<b>10</b>
8.1. Migration Act 1958	10
<b>9. Consultation</b>	<b>10</b>
9.1. Internal consultation	10
9.2. External consultation	10
<b>10. Document Details</b>	<b>11</b>
10.1. Document change control	11
10.2. Procedural Instruction approval	11
<b>11. Appendix</b>	<b>12</b>
11.1. Appendix A	12
Form 1360 – Request for consular access for people in immigration detention	12
11.2. Appendix B	13
Form 930 – Liability to pay costs	13
11.3. Appendix C	14
Offences under the Migration Act AFP Referral Form	14

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# 1. Introduction

## 1.1. Background

Under section 172(3) of the *Migration Act 1958* (the Migration Act) a traveller is refused immigration clearance if the traveller has had their visa cancelled by a Border Entry officer (BEO), or they refuse, or are unable, to show evidence, information or personal identifiers, for example:

- the traveller has their visa cancelled and is subsequently not granted a visa
- the traveller has their application for a Special Category visa (SCV) or application for a Protection visa, refused and is subsequently not granted a visa
- the traveller arrives without a valid travel document
- the traveller arrives with a valid travel document, but without a visa and is not granted an Electronic Travel Authority (ETA) or Border visa.

Where a decision is made in immigration clearance to cancel a traveller's visa or where a determination is made that a traveller is refused immigration clearance, unless the traveller has subsequently applied for and been granted a visa, the traveller becomes an unlawful non-citizen (UNC) and is liable to being taken into immigration detention and removed from Australia.

## 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.

### 2.2. Out of Scope

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

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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.
Australian Federal Police officer	AFP officer	Is a person engaged under section 24 of the <i>Australian Federal Police Act 1979</i> (Australian Federal Police Act).
Border Entry officer	BEO	Is an ABF officer who has a delegated authority to undertake secondary Customs, Immigration and Biosecurity clearance.
Border visa	TA-773	Is a visa available in limited circumstances to certain persons who: <ul style="list-style-type: none"> <li>• arrive in Australia not holding a visa</li> <li>• are not exempt from Australian visa requirements</li> <li>• are seeking immigration clearance.</li> </ul>
Criminal Justice Stay Certificate	CJSC	May be requested and issued in relation to a person in Australia who is required to remain in Australia temporarily for the purpose of the administration of criminal justice.  Commonwealth CJSCs are issued by the Department of Home Affairs under section 147 of the <i>Migration Act 1958</i> (Migration Act).
Detainee		Has the meaning given by section 5 of the <i>Migration Act 1958</i> (Migration Act) to mean a person detained.
Electronic Travel Authority	ETA	A subclass 601 visa is an electronically issued and stored authority for travel to Australia.

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Term	Acronym (if applicable)	Definition
ETA System	ETAS	The Australian Governments system used by travel agents / airlines to submit applications for an Electronic Travel Authority (ETA).
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		<p>Under the <i>Migration Act 1958</i> (Migration Act) 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> </ul> <p>or</p> <ul style="list-style-type: none"> <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>
Public Interest Criteria	PIC	Means a criterion set out in a clause of Schedule 4 of the Migration Regulations 1994 ( <i>Migration Regulations</i> ), and a reference to a public interest criterion by number is a reference to the criterion set out in the clause so numbered in that Schedule.
Refused Immigration Clearance	RIC	Occurs when a person is refused immigration clearance in the circumstances set out in section 172(3) of the <i>Migration Act 1958</i> (Migration Act).
Special Category visa	SCV	A class of temporary visa for which eligibility is derived from section 32(2)(a) or section 32(2)(c) of the Migration Act and can only be granted to New Zealand citizens.

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Term	Acronym (if applicable)	Definition
Special Return Criteria	SRC	Has the meaning given by regulation 1.03 of the <i>Migration Regulations 1994</i> (Migration Regulations) as meaning a criterion set out in a clause of Schedule 5, and a reference to a special return criterion by number is a reference to the criterion set out in the clause so numbered in that Schedule.
Unlawful non-citizen	UNC	Has the meaning given by section 14 of the <i>Migration Act 1958</i> (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.

## 4. Procedural Instruction

### 4.1. Informing the traveller of the process

The Australian Border Force (ABF) officer must ensure the traveller understands:

- visa cancellation decisions made in immigration clearance are not subject to merits review
- the reason(s) for the refused immigration clearance (RIC) determination
- they are an UNC and under section 189 of the Migration Act they must be detained
- any future visa applications may be affected by relevant Public Interest Criteria (PIC) or Special Return Criteria (SRC) which may have the effect of preventing the grant of a relevant visa for a specified period, see PAM3 Visa Cancellation PIC 4013
- UNC departure from Australia PIC 4014 and SRC 5002
- they have a right to contact their embassy or consulate, see Form 1360 - Request for consular access for people in immigration detention (Appendix A)
- the detention process, see *Procedural Instruction: Detention at the border (s.189 Migration Act)*
- the removal process, see *Procedural Instruction: Summary removal*.

#### Obligations to facilitate legal and visa application advice

If, as a result of being refused immigration clearance, a traveller becomes an UNC and is taken into immigration detention (including questioning detention), the ABF officer responsible for the detainee's immigration detention is required to action the detainee's request for legal assistance.

The above obligation only arises if a detainee requests legal assistance and requires the ABF officer responsible for their detention to give the detainee application forms for a visa or afford to the detainee all reasonable facilities for making a statutory declaration for the purposes of the Migration Act or for obtaining legal advice or taking legal proceedings in relation to the detainee's immigration detention.

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However, as a matter of policy, detainees are to be offered the opportunity to seek immigration assistance through a registered migration agent upon their immigration detention or to seek legal advice through a lawyer.

Detainees should only be advised that it is not possible to facilitate access to immigration assistance or legal advice if to do so would unreasonably impede the detainee's removal from Australia.

### 4.2. Preliminary discussion at the primary line

Where a carrier brings a traveller to Australia who is required to be immigration cleared but who either does not comply with immigration clearance or who, upon compliance with immigration clearance is detained as an UNC, the carrier should be served with a written Section 213 Notice, Form 930 – Liability to pay costs (Appendix B), from the Department requiring them to pay the costs of the non-citizen's removal from Australia, see *Procedural Instruction: Summary removal*.

To serve a notice to remove the traveller the ABF officer is to:

- advise the airline by phone that a notice will be served
- consider whether an infringement also applies, see *Procedural Instruction: Carrier obligations and offences*
- discuss returning the traveller to the port of origin on a document issued in accordance with Annex 9 of the International Civil Aviation Organisation (ICAO) Convention on International Civil Aviation, see *Procedural Instruction: Arrival, immigration clearance – immigration clearance at airports and seaports* if the traveller:
  - is not in possession of any travel/identification documentation
  - presented a fraudulent/falsified/counterfeit travel/identification documentation
  - is in possession of documentation that has been impounded for return to the appropriate authorities of the issuing country
  - is in possession of valid travel/identification documentation that has since expired and cannot be renewed.

### Processing Australian Federal Police Referrals

s. 47E(d)

### 4.3. Australian Federal Police interaction with the traveller

The AFP may request to interact with the traveller. In this case, the ABF officer should:

Events after refusal of immigration clearance

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- provide updates regarding AFP/traveller interaction to their supervisor
- allow AFP to use an ABF interview room for initial interview
- continue making arrangements to remove the traveller until AFP indicate that the traveller requires a Criminal Justice Stay Certificate (CJSC)
- request AFP obtain a CJSC where:
  - the traveller is of interest to the AFP
  - AFP request to remove the traveller from the airport, see *Procedural Instruction: Temporary Criminal Justice Stay Certificate*.

**Travellers suspected of criminality**

s. 47E(d)

**4.4. Court order staying the removal of the traveller**

Where the traveller or a legal representative claims that they are in the process of obtaining a court order staying the removal, the ABF officer must advise their supervisor as per local arrangements, see *Procedural Instruction: Summary removal*.

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## 5. Accountability and responsibilities

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

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

## 6. Statement of Expectation

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

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

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

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

All records created as a result of this procedure must be managed in accordance with the Records Management Policy Statement. Records created as a result of this policy/procedure must be saved in TRIM RM8 or an approved business system.

## 7. Related Framework documents

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

### 7.1. Policy Statement

[TT-2983] Primary Clearance

### 7.2. Procedural Instructions

[BC-535] Carrier Obligations and offences.  
 [BC-669] Detention at the border (s.189 Migration Act).  
 [BC-2565] Infringements at the border (s.229 Migration Act).  
 [BC-536] Arrival, immigration clearance – immigration clearance at airports and seaports.  
 [BC-2460] Summary removal.  
 [VM-4861] Temporary Criminal Justice Stay Certificates & Criminal Justice.

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## 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 167 outlines when and where evidence must be present to comply with section 166
- section 168 outlines the circumstances where section 166 does not apply.
- section 172 outlines a person's immigration clearance status, that is, whether the person has been immigration cleared, is in immigration clearance, has been refused immigration clearance or has bypassed immigration clearance.
- section 173 outlines the circumstances where a visa ceases if the holder enters in a way not permitted.
- section 174 outlines the circumstances where a visa ceases if the holder remains without immigration clearance.
- other sections of the Act are also important in the context of immigration clearance, they are:
- section 189 outlines Detention of unlawful non-citizen
- section 198 – Removal from Australia of unlawful non-citizens
- section 213 – Carriers may be liable for costs of removal and deportation.

## 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

No external consultation.

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## 10. Document Details

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

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	09 May 17	s. 22(1)(a)(ii)	Converted to PI template
1.2	20 June 2017	PPCF	Cleared PPCF Quality Assurance
1.3	15 June 2018	Legal	Cleared Legal Review
1.4	26 June 2018	s. 22(1)(a)(ii)	Converted to Home Affairs Template
1.5	26 June 2018	s. 22(1)(a)(ii)	Reviewed for SES Approval

### 10.2. Procedural Instruction approval

<b>Document owner</b>	s. 22(1)(a)(ii) A/a Commander ABF Governance
<b>Approval date</b>	8 August 2018

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# 11. Appendix

## 11.1. Appendix A

### Form 1360 – Request for consular access for people in immigration detention

(Available in LEGEND)



Australian Government  
Department of Immigration  
and Border Protection

### Request for consular access for people in immigration detention

Form  
**1360**

#### Part A – Personal details

- 1 Full name  
Family name   
Given names
- 2 Date of birth 

DAY	MONTH	YEAR
/	/	
- 3 Sex Male ☐ Female ☐
- 4 Present country(ies) of citizenship
- 5 ICSE number
- 6 Do you require an interpreter?  
No ☐  
Yes ☐ Give details  
Language   
Inh number

#### Part C – Signatures

- 10 I declare that:
  - I have read the information contained in form 1442i Privacy notice.
  - I understand the department may collect, use and disclose my personal information (including biometric information and other sensitive information) as outlined in form 1442i Privacy notice.

Printed name

Signature

Date 

DAY	MONTH	YEAR
/	/	

Printed name of witness

Signature of witness

Date 

DAY	MONTH	YEAR
/	/	

We strongly advise that you keep a copy of this request and

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## 11.2. Appendix B

### Form 930 – Liability to pay costs

(Available in LEGEND)



Australian Government  
Department of Immigration  
and Border Protection

### Liability to pay costs *Migration Act 1958 - Section 213(1)*

Form  
**930**

To

I,

Delegate of the Secretary or the Australian Border Force Commission for the purposes of section 213 of the *Migration Act 1958* (the Act),

hereby notify that,

Date of birth 

DAY	MONTH	YEAR
/	/	

a non-citizen who entered Australia and was required to comply with section 166 of the Act and either did not comply, or on complying, was detained under section 189 as an unlawful non-citizen, is subject to removal from Australia under section 198;

and as controller of (state Flight No/Name of vessel)

on which the above named was  
brought to Australia on

Date 

DAY	MONTH	YEAR
/	/	

you are liable to pay to the Commonwealth certain costs relating to the said non-citizen's removal from Australia in respect of which a tax invoice will be rendered to you by the Commonwealth when they have been incurred.

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## 11.3. Appendix C

### Offences under the Migration Act AFP Referral Form

(Available in TRIM ADD2012/1340897)



Australian Government

Department of Immigration and Border Protection

### **OFFENCES UNDER THE MIGRATION ACT** **AFP REFERRAL FORM**

#### **Part A – Details**

##### **Escort / People Smuggler**

Is the Escort a resident or Australian citizen
YES / NO

Escort's Name	DOB	Sex (M/F)	Passport number	Citizenship of passport	COB

Citizenship of person if different from COB or passport	PP Issued	Visa subclass	Immigration Status	Flight No.	Reason for Travel

Length of stay	Ticket Issued	Occupation	Intended Address

Contact Phone	Language	Interpreter	Claiming Protection?*
			YES / NO

**Escorted / Passenger Details** (if more than one passenger is involved, see Attachment A)

Passenger's Name	DOB	Sex (M/F)	Passport number	Citizenship of passport	COB

Citizenship of person if different from COB or passport	PP Issued	Visa subclass	Immigration Status	Flight No.	Reason for Travel

Length of stay	Ticket Issued	Occupation	Intended Address

Contact Phone	Language	Interpreter	Claiming Protection?*
			YES / NO

Last Port of Embarkation for Escort and Passenger/s	Time of flight Arrival

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# Visa Cancellation at the Border

## Procedural Instruction

This instruction applies to visa cancellation of non-citizen travellers in immigration clearance

Document approval date	Insert date document was approved by relevant approving officer
Last PPCF review date	30 June 2018
Contact details	s. 47E(d)
Document ID (PPN)	BIC-2482
TRIM record number	OPD2017/213185
Primary influencing Legislation(s)	Migration Act 1958

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# Table of Contents

<b>Visa Cancellation at the Border</b>	<b>1</b>
<b>1. Introduction</b>	<b>3</b>
1.1. Background	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	3
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1. Identity and Consideration to Cancel a Visa	4
4.2. Issuing a Notice of Intent to Cancel a Visa	5
4.2 Decision to Cancel	6
<b>5. Accountability and responsibilities</b>	<b>7</b>
<b>6. Statement of Expectation</b>	<b>7</b>
<b>7. Related Framework documents</b>	<b>7</b>
7.1. Policy Statement	7
7.2. Procedural Instructions	7
<b>8. References and legislation</b>	<b>8</b>
8.1. Migration Act 1958	8
<b>9. Consultation</b>	<b>8</b>
9.1. Internal consultation	8
9.2. External consultation	8
<b>10. Document details</b>	<b>9</b>
10.1. Document change control	9
10.2. Procedural Instruction approval	9



# 1. Introduction

## 1.1. Background

A non-citizen traveller entering Australia is required to present a valid passport and valid visa in order to be immigration cleared. Australian Border Force officers at the airport hold delegations to cancel a visa under the *Migration Act 1958* (the Migration Act). A travel document may be cancelled while in immigration clearance up until the time the non-citizen traveller passes beyond the perimeter of the port or prescribed place in which they presented for inward immigration clearance.

It is possible that a baggage examination may provide information to a traveller's bona fides and the traveller may still be considered for cancellation in immigration clearance before they leave the baggage hall.

The most common visa cancellation powers used in immigration clearance are the provisions under section 116 of the Migration Act. Section 116 lists several grounds for cancellation including prescribed grounds. A list of the prescribed grounds may be found in the Migration Regulations. Visa cancellation decisions in immigration clearance are not subject to merits review, but may be subject to judicial review.

Only ABF officers appropriately delegated may decide to cancel a visa.

# 2. Scope

## 2.1. In Scope

Section 116 of the Migration Act outlines the most common visa cancellation powers used in immigration clearance and should be considered in line with this procedural instruction.

This procedural instruction applies to the visa cancellation of non-citizens in immigration clearance under the Migration Act.

## 2.2. Out of Scope

This procedural instruction does not apply to visa cancellations and baggage examinations under the *Customs Act 1901*.

### 3. Glossary

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	The Australian Border Force is an agency within the Home Affairs portfolio responsible for offshore and onshore border control enforcement, investigations, compliance and detention operations in Australia.
Australian 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.
Integrated Client Service Environment	ICSE	Is a processing system used to record and process citizenship, sponsorship and nomination applications and a multitude of onshore and offshore visa applications.
Immigration officer's report	M304	Is a report consisting of components, such as personal and flight details, narrative and coding, which together form a unified client record in the event a traveller is referred for secondary clearance
Notice of Intention to Consider Cancellation	NOICC	Notice to be handed to a non-citizen traveller where there is evidence to support a visa cancellation.

### 4. Procedural Instruction

#### 4.1. Identity and Consideration to Cancel a Visa

Establishing the non-citizen traveller's correct identity and immigration status is very important. The ABF officer should use all available resources to gather information to assist with identifying a client or verifying a claimed identity.

Prior to considering visa cancellation, the ABF officer must confirm passport and visa details against departmental systems such as the Integrated Client Service Environment (ICSE). This will include visa history and any record of previous visits to Australia.

While in immigration clearance it is open to the ABF officer to question the traveller on the reasons for travelling to Australia and any items held by the traveller.

Having undertaken this research the ABF officer will then decide whether there are any grounds for visa cancellation under Section 116 of the Act. It is also important to discuss the evidence held with the ABF supervisor.

The Cancellation and Character Support Section provides general cancellation support to ABF and the contact is s. 47E(d). The Section provides specialist, technical advice and support for the general cancellation powers including at sections 116 and 128 and 140 of the Act. The Section can also provide advice on exclusion periods.

The ABF supervisor has a major quality check and advisory role in the visa cancellation procedure. The supervisor should be briefed on the completion of all the different steps, in particular the decision making by the ABF officer.

## 4.2. Issuing a Notice of Intent to Cancel a Visa

If a decision is made to issue a notice of intent to cancel a visa the ABF officer should issue a Notice of Intention to Consider Cancellation (NOICC). In the notice the ABF officer should:

- document the particulars of grounds for cancellation that appear to exist
- document the evidence (excluding non-disclosable evidence) for which the grounds for cancellation appear to exist
- consider a reasonable time frame for response, taking into account such matters as:
- the Department's definition of a 'reasonable' period (policy requires at least 10 minutes after receipt of NOICC)
- the traveller's wellbeing, whether an interpreter will be needed and whether the traveller is alert and able to respond.

Visa cancellation may affect the status of other substantive visa(s). If a non-citizen traveller holder holds more than one visa, the visa not being considered for cancellation may cease by operation of law.

Visa cancellation may affect the visa status of dependent visa holders. In broad terms, s.140 of the Act provides a power to cancel visas where another traveller's visa has been cancelled under certain provisions, such as s. 116 of the Act.

The ABF officer must consider if the visa holder is lawful as the result of another visa coming into effect. It is also possible that consideration may need to be given to the grant of a Border visa.

When issuing the NOICC it is important to ensure

- the document is explained to the traveller
- the traveller understands they have an opportunity to show the grounds do not exist and/ or there is a reason why the visa should not be cancelled
- the 'invitation for response' section is completed in full, including date, time and location with a reasonable time frame (of at least 10 minutes) provided
- the traveller signs the appropriate section
- if an interpreter was required then their details are also recorded
- the traveller is provided with the original NOICC.

At all times in the interview and visa cancellation process the ABF officer needs to discuss the process with the supervisor.

The interview should be suspended to allow the non-citizen traveller to consider the NOICC and prepare their response. Where the traveller insists on responding (or not responding) immediately, the ABF officer must acknowledge the traveller's desire to respond immediately (or not respond) but afford them a "reasonable period" of time to consider their response.

It is preferred practice that a traveller signs Part A (NOICC) of Form 1111 acknowledging receipt of the notice, however, if a traveller refuses to sign, the ABF officer should write in the signature box 'refused to sign' prior to giving the visa holder the original NOICC.

Once the time for a response has been reached the interview can recommence. The interpreter can be reinstated. The traveller will be reminded that a decision to cancel or not cancel the visa would be made on the information available.

Where the ABF officer is satisfied the grounds identified in the NOICC do exist considering the traveller's response, the ABF officer should proceed to consider reasons why the visa should not be cancelled under those grounds, or whether a new ground would need to be considered.

Where a traveller has refused to respond the traveller should be informed that a decision will be made on the available evidence. No decision on the cancellation should be made until the response time has ceased or the traveller has indicated whether they will respond.

## 4.2 Decision to Cancel

When completing the decision record the ABF officer must consider all relevant information. This could include any third party information and any adverse information held.

Non-citizen travellers need to be notified in writing of a decision to cancel a visa. The ABF officer should complete the notification record and ensure:

- the traveller's details are recorded correctly including full name, visa subclass and grant date
- explain the notification to the traveller
- request the traveller to sign / as well as the interpreter if used.

If a decision is made not to cancel then the case is discussed with the supervisor and the traveller is Immigration cleared, the traveller will be escorted by an ABF officer through the baggage hall ensuring all biosecurity and customs clearance requirements are met.

If a visa is cancelled and no other visa is held then the traveller is detained as an unlawful non-citizen. If the traveller holds no other visa and is not eligible for a Border visa then the traveller is refused immigration clearance. The cancellation may result in the traveller having an exclusion period. The traveller is also entitled to consular assistance.

Throughout the cancellation process the ABF officer must ensure correct and detailed information is recorded on Departmental systems. This includes finalising the referral created in the mainframe referral system. The referral is finalised and the border information M304 report is completed.

## 5. Accountability and responsibilities

If ABF officers require clarification or assistance in regard to this instruction, they should contact the National Border Programme by email s. 47E(d) or telephone s. 47E(d) AEST.

The Superintendent, National Border Programme 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

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

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

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

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

All records created as a result of this procedure must be managed in accordance with the Records Management Policy Statement. Records created as a result of this policy/procedure must be saved in TRIM RM8 or an approved business system.

## 7. Related Framework documents

This instruction must be read with:

### 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  
 [VM-991] General visa cancellation powers (s109, s116, s128, s134B and s140)  
 [BC-2513] New Zealand Citizen sea arrivals  
 [BC-2481] Foreign Nationals and Tuberculosis

[BC-2473]	Imposters and false/fraudulently obtained travel documents
[BC-2461]	Bona Fides
[BC-2701]	Immigration clearance outcomes for ETA and e Visitor holders with non-eligible passports
[BC-2485]	Writing M304 reports
[BC-2538]	Border visa grant in immigration clearance
[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.

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

- Visa Cancellation powers S116, 128 and 140
- Migration Regulation 2.43(1) the prescribed grounds.

## 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
- Legal Division, Legal Advice and Support Branch
- FOI Privacy and Records Management Branch, Records Management Section
- Traveller Policy Branch, Traveller Policy Advice and Support Section.

### 9.2. External consultation

No external consultation

## 10. Document details

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

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	02 Jun 17	s. 22(1)(a)(ii)	Update of document into PI
1.1	30 June 17	s. 22(1)(a)(ii)	Cleared PPCF QA
1.2	16 Jan 18	s. 22(1)(a)(ii)	Review for SES approval
1.3	18 Sep 18	s. 22(1)(a)(ii)	Update onto Home Affairs template

### 10.2. Procedural Instruction approval

<b>Document owner</b>	Don Smith Commander ABF Governance Branch
<b>Approval date</b>	