



Commissioner's Guidelines: Decision making about individual exemptions from Australia's inwards travel restriction policy

1. Purpose of these guidelines

The purpose of these guidelines is to:

- Provide the Australian Border Force (ABF) Commissioner's guidance to decision makers considering requests for exemption from Australia's inwards travel restrictions

1.1 Commissioner's principles

The following principles apply to the decision making covered by these guidelines:

- It is the Commissioner's general expectation that a person has been granted a visa prior to applying for inwards travel.
- Consideration of a case for exemption from the inwards travel restriction policy is to be guided by the Commissioner's Guidelines.
- If there is a threat to the health of the public in Australia, it is generally not appropriate to exercise discretion for a person to receive exemption from inwards travel restrictions
- It is a relevant consideration in assessing the veracity of a person's claims, if a person has previously provided false or misleading information to the ABF or the Department of Home Affairs (the Department)
- The Commissioner expects a person requesting an exemption to provide relevant supporting information, as far as can be reasonably expected, in the circumstances of the proposed travel.
 - The Commissioner agrees that there may be some circumstances where documentation may not be provided due to the urgent nature of the grounds for requesting a discretionary exemption – such as where a close relative is critically ill and likely to die. A lack of documents in these circumstances, in and of itself, is not a sufficient reason to refuse a person's request for discretionary exemption.

1.2 Individual requests for exemption from Australia's travel restrictions

The ABF Commissioner and decision makers may grant individual exemptions from Australia's travel restrictions.

Cases that demonstrate circumstances such as those described below, may generally be considered to satisfy the requirements for exemption to inwards travel restrictions. Supporting evidence, sufficient to satisfy the decision maker, should be provided.

- Where an Australian citizen or Australian permanent resident minor whose parent or parents are in Australia is travelling with a non-exempt traveller (such as a non-citizen parent, aunt, grandparent etc.), that non-exempt traveller who is accompanying the child can be considered as meeting compelling and compassionate guidelines. This consideration applies for the sole purpose of ensuring appropriate

guardianship and welfare arrangements during the Australian citizen and Australian permanent resident minor's return to Australia.

- Where an Australian citizen or Australian permanent resident minor seeks to travel with a non-exempt traveller, the following is required: a copy of the minor's birth certificate; written consent from the minor's parent/s, including details of who will travel with the child; a copy of the parent/s' identification; and evidence of the non-exempt traveller's relationship with the minor.
- Foreign nationals travelling at the invitation of the Australian Commonwealth Government for the purpose of assisting in the COVID-19 response or whose entry would be in the national interest.
- People with critical skills, including nurses, doctors, medical specialists, engineers, marine pilots and crews. Skills must be critical to Australia's COVID-19 response or economic recovery. Any support from a State, Territory or Commonwealth government authority will be considered favourably. Consideration should include any beneficial economic, health, social or employment outcomes for Australian citizens. Consideration should be given to people:
 - providing critical or specialist medical services, including air ambulance, medical evacuations and delivering critical medical supplies
 - with critical skills required to maintain the supply of essential goods and services (such as in medical technology, critical infrastructure, telecommunications, engineering and mining, supply chain logistics, aged care, agriculture - including shearers, primary industry, food production, and the maritime industry)
 - delivering services in sectors critical to Australia's economic recovery (such as financial technology, large scale manufacturing, film and television production and emerging technology), where no Australian worker is available
 - providing critical skills in religious or theology fields, including specialist skills within a school context, people holding a senior religious position such as a senior cleric or bishop within a diocese, where no Australian worker is available
 - whose entry would otherwise be in Australia's national interest, supported by the Australian Government or a state or territory government authority
- Changes announced by the Government on 01 September 2020 introduced a Priority Migration Skilled Occupation List (PMSOL) based on advice from the National Skills Commission and other Commonwealth departments. The PMSOL prioritises migration for people with critical skills through employer sponsored visa programs to fill skills needs, help create jobs and rebuild Australia's economy and recovery from COVID-19. The PMSOL identifies 17 occupations that are considered to be critical for the recovery of the Australian economy. The 17 occupations are:
 - Chief Executive or Managing Director (111111)
 - Construction Project Manager (133111)
 - Mechanical Engineer (233512)
 - General Practitioner (253111)
 - Midwife (254111)
 - Registered Nurse (Aged Care) (254412)
 - Registered Nurse (Critical Care and Emergency) (254415)
 - Registered Nurse (Medical) (254418)
 - Registered Nurse (Perioperative) (254423)
 - Registered Nurses nec (254499)
 - Developer Programmer (261312)
 - Software Engineer (261313)
 - Maintenance Planner (312911)
 - Resident Medical Officer (253112)
 - Psychiatrist (253411)
 - Medical Practitioner nec (253999)
 - Registered Nurse (Mental Health) (254422)

- This will support ongoing work to ensure our migration program and the processing of exemptions to travel restrictions supports critical sectors, essential to Australia’s response to and recovery from COVID-19.
- People working in the media or entertainment industry where there is evidence of significant economic benefit to Australia, and where there is evidence of support from the relevant state or territory government where the event or production is taking place.
- Cases demonstrating strong compassionate circumstances that, if not taken into account, would result in serious, ongoing and irreversible harm and continuing hardship to an Australian citizen or an Australian family unit, where at least one member of the family is an Australian citizen or Australian permanent resident.
- Compassionate circumstances regarding the age and/or health and/or psychological state of the person that, if not taken into account, would result in serious, ongoing and irreversible harm and continuing hardship to the person.
- Strong economic, scientific, cultural or other benefit to Australia would result from the person being permitted to enter Australia. Support from a state, territory or Commonwealth government authority should be given considerable weight.
- The parent or legal guardian of a minor who is lawfully present in Australia, including when holding a temporary visa, and can establish that the minor was usually resident in Australia before the introduction of Australia’s travel restrictions.

More specifically, following circumstances would generally meet inward exemption requirements:

- Non-citizens requiring urgent or critical medical treatment in Australia, including medical evacuations. Circumstances will include consideration by State and Territory governments on a case-by-case basis, and are subject to the capacity of receiving medical facilities. An accompanying family member may also be considered where a minor requires treatment; where a medical condition is life threatening; or where medical advice supports the requirement for the family member to travel
- Those seeking to attend a funeral of a close family member. A close family member is defined as a parent, sibling, partner, child and grandparents
- Those seeking to visit a close family member who is seriously ill where there is little support in Australia.
- The partner of a person who is in Australia and in the final trimester of their pregnancy or otherwise due to give birth. This instruction also applies to temporary visa holders in Australia and their partners.
- Military personnel, including those who form part of a Status of Forces Agreement, Commonwealth Armed Forces, and Asia Pacific Forces.
- The immediate family member of a non-citizen with critical skills in Australia, where the person in Australia holds a temporary or provisional visa. The impact to Australia should be considered – including if there is a high risk that the person with critical skills will depart Australia if they are unable to reunite with their immediate family member. Objective evidence of the ongoing criticality of the relevant skill from a state or territory government should be given considerable weight.
- Elite sporting teams who are able to demonstrate how their entry and stay is critical to Australia, including support from the relevant Commonwealth, state or territory government agency.
- Where a non-crew member is considered critical to the operation of a vessel and/or where a State or Territory authority or tourism body provides support.

1.3 Other relevant information

For all cases considered under these guidelines, the decision maker will consider information on any other relevant issues, including the following:

- Whether the presence of the person in Australia would pose a threat to the health of the public in Australia.
- Whether there are character concerns in relation to the person, particularly concerns related to criminal conduct – and whether this would give rise to related cancellation consideration.

- Information about a person’s history of compliance with Australian laws, including migration laws, and whether this would give rise to related cancellation consideration, such as:
 - any offence or fraud against the migration or citizenship legislation
 - any failure to comply with their visa conditions
 - any periods as an unlawful non-citizen in the community
 - their history of cooperation and engagement with the department to resolve their immigration status, particularly in relation to identity and travel documents
- Details of any ongoing court proceedings.
- The level and nature of the person’s integration into the Australian community and the length of time they have been in Australia, both as a lawful and unlawful non-citizen.
- Where a decision maker identifies that an exemption request has raised circumstances within any of the considerations outlined above, further advice must be sought from this instruction’s owner (Border Measures Program Management Branch) to determine appropriate handling.

1.4 The Commissioner is not limited by these guidelines

The Commissioner may consider approving an exemption to Australia’s travel restrictions in cases where the circumstances do not fall within those described in these guidelines, if the Commissioner considers it to be in the public interest to do so.

Where the Commissioner believes it is appropriate, the Commissioner will seek further information to determine whether to consider a case.

The Commissioner will personally consider a range of matters, including all matters involving consideration of Australia’s *non-refoulement* obligations, as set out in his decision making summary.

Further, the Commissioner will personally consider all requests for:

- Members of elite sporting teams
- People who are undertaking research (especially on a Student visa). Any request from a PhD research student should include evidence of support from a relevant Government agency outlining why the research is considered essential and/or in Australia’s national interest and how their role is critical to the research
- Year 11/12 students (only where a letter of support from their Australian school and the relevant state or territory health authority is provided).
- Students who are in their final years of study of a medical, dental, nursing or Allied Health Profession university degree, where they have evidence of a confirmed placement in an Australian hospital or medical practice. Allied Health Professions include: Arts therapy, audiology, chiropractic, diagnostic radiographer/medical imaging technologist, dietetics, exercise physiology, genetic counselling, music therapy, occupational therapy, optometry, orthoptics, orthotics/prosthetics, osteopathy, perfusion, physiotherapy, podiatry, psychology, rehabilitation counselling, social work, sonography and speech pathology
- Anyone considered to be of ‘social or cultural benefit’
- Visa holders who fall within the at risk/refugee/humanitarian cohort, e.g. Class XB visa holders
- People who are considered to be ‘grant ready’ for permanent residence, and who are proposing to travel to Australia for visa grant
- People providing critical skills in religious or theology fields, including specialist skills within a school context, people holding a senior religious position such as a senior cleric or bishop within a diocese, where no Australian worker is available
- Other novel, unusual or high risk requests

These guidelines should be read in conjunction with the following document:

Inward Travel Restrictions Operation Directive