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Individualised Assessments

Procedural Instruction

This document provides procedural guidance for Individualised Assessments.

Approval Date	16 January 2018
Date of Review	16 January 2019
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Document ID (PPN)	VM-5272
TRIM Reference	ADD2017/2950545

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1. Introduction

1.1. Individualised assessments

An individualised assessment is used to determine whether *non-refoulement* obligations exist, in circumstances where a person on a vessel or reasonably suspected by a maritime officer to have been on such a vessel when it was detained under section 69 of the *Maritime Powers Act 2013* may in turn be detained and taken to another destination under section 72 of the *Maritime Powers Act 2013*.

2. Scope

2.1. In Scope

This procedural instruction provides guidance for officers on the following:

- the roles and responsibilities of those involved in the process
- the thresholds and tests applicable for the assessment process and how these differ from the Protection visa process
- conducting an individualised assessment interview to collect information relating to the person's reasons for attempting to enter Australia, *non-refoulement* related issues and consideration and use of any adverse information (if relevant)
- forming a view about a person's reasons for attempting to enter Australia
- referring individuals for further consideration as appropriate, and
- finalising cases including recording outcomes and notifying the person.

2.2. Out of Scope

These instructions do not include logistical arrangements relating to individualised assessments. These instructions also do not include the process for the screening of persons entering Australia through airports and seaports or any claims that may be raised in relation to the Pre-Transfer Assessment (PTA).

3. Glossary

Table 1 – Glossary of terms

Term	Acronym (if applicable)	Definition
Assessing officer		The DIBP officer making the assessment on the individualised assessment.
<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>	CAT	An international treaty that recognizes human rights and in Article 3 expresses a <i>non-refoulement</i> obligation.
Country of Origin Information	COI	Information on human rights, political situation, legal framework, security, cultural, social and economic conditions, the geography, and events and incidents in the country of origin of asylum seekers.
Complementary Protection	CP	The term given to a protection claim grounded on Australia's obligations under Articles 6 and 7 of the ICCPR and Article 3 of the CAT or the Second Optional Protocol, reflected in paragraph 36(2)(aa) of the <i>Migration Act 1958</i> .
<i>International Covenant on Civil and Political Rights</i>	ICCPR	An international treaty that recognises human rights and in Articles 6 and 7 imply <i>non-refoulement</i> obligations.
Interview officer		The DIBP officer conducting the individualised assessment interview.
Joint Agency Task Force, Operation Sovereign Borders	JATF OSB	Military-led border security operation aimed at combating maritime people smuggling and protecting Australia's borders established in September 2013. The Joint Agency Task Force (JATF) is a whole-of-government initiative, supported by a wide range of Federal Government contributing agencies.
Maritime Border Command	MBC	Civil maritime security Division operating in Australian maritime jurisdiction to ensure compliance to Australia's maritime security, immigration, fishing and customs laws.
Protection Caseload Resolution Section	PCRS	Provides operational policy advice and support relating to pre PV application processes and after a decision has been made.
<i>1952 Convention relating to the Status of Refugees as amended by the 1967 Protocol</i>	Refugees Convention	An international treaty setting out the definition of a refugee and the rights of refugees and which contains an express <i>non-refoulement</i> obligation at Article 33.
Translating and Interpreting Service	TIS	An interpreting service provided by the Department of Immigration and Border Protection for people who do not speak English and for agencies and businesses that need to communicate with their non-English speaking clients.
Humanitarian Program Operations Branch	TPVA	Responsible protection and non-refoulement assessments through statutory and non-satutory processes.
UAM observer		The role of a UAM observer in the interview is to provide support to an Unaccompanied Minor (UAM) or vulnerable person who may be in an unfamiliar and intimidating environment.

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4. Procedural Instruction

4.1. Conducting interviews

An individualised assessment interview is usually face to face and should be conducted by an experienced officer with relevant background and training in *non-refoulement* - the interview officer. An interpreter should be provided where it is inappropriate to conduct the interview in English.

4.2. The purpose of the interview

The purpose of the interview is to ascertain the person's reasons for attempting to enter Australia and whether those reasons indicate the person may potentially engage *non-refoulement* obligations.

The interview officer will collect all relevant information, record observations and may refer/discuss this with the team leader of the interview officers.

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4.4. Managing the interview

The individualised assessment interview is non-adversarial and is intended to elicit from the person information that is relevant in identifying *non-refoulement* claims.

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Interview officers must consider the personal circumstances of the person being interviewed to ensure that the interview is conducted in a manner sensitive to these circumstances. These circumstances might include, but are not limited to, the following:

- cross-cultural issues;
- interpreter requirements;
- family unit considerations; and,
- the age of the person, including whether they are a minor.

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4.6. Recording the interview

A written transcript of the interview is prepared as the interview is conducted. As far as possible this should be a verbatim record of the interview (particularly when the interview is not otherwise digitally recorded). The transcript should also record the details of all persons attending the interview including interpreters and support person. Requirements for recording information are included in the interview template.

Please note the consent for the recording of the interview is contained in the interview transcript pro-forma.

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4.8. Recording the interview outcomes

Following the completion of the interview, the interview officers should, with reference to the interview transcript and in consultation with the team leader, record all information collected and their observations

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The purpose of the Individualised Assessment Obligations File Note is to record the considerations of whether a return can be effected in a manner consistent with *non-refoulement* obligations.

The Individualised Assessment Protection File Note should focus on the key details of the person's reasons for attempting to enter Australia and any *non-refoulement* related issues raised by the person.

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The interview officers should also include other relevant observations in relation to the interview, such as whether the person appeared to be distressed, whether there were signs or indications of torture or trauma, whether the person claimed to have or appeared to have a disability or other obvious physical impairment, and any other information to assist in the assessor's consideration of the interview report.

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4.11. Guidelines for recording outcomes and notification

TRIM RM8 - All individualised assessment documents and related files, notification emails, interview transcripts and Individualised Assessment Protection File Notes, and the overall screening outcomes are to be stored in TRIM RM8. ^{s47E(d)}

4.12. Notification

An individualised assessment is undertaken when persons are intercepted and interviewed at sea and is informed by section 72(4) of the *Maritime Powers Act 2013*, which states that a maritime officer may detain a person on a vessel and take the person to a place outside Australia. It is the Department's policy that *non-refoulement* obligations will be considered for all individualised assessment matters.

The person should be notified as soon as operationally practical of the outcome of the assessment.

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For more information refer *Division 8 – Placing and moving persons: section 72 of the Maritime Powers Act 2013*

5. Accountability and responsibilities

Table 2 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Director Protection Caseload Resolution Section <small>s47E(d)</small>	Author of PI. Accountable for the upkeep and consultation in relation to this PI.

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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8. References and legislation

Section 198AD of the *Migration Act 1958*

Section 72 of the *Maritime Powers Act 2013*

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9. Consultation

9.1. Internal consultation

These stakeholders were consulted in the development of this Procedural Instruction:

- Refugee and International Law Section, Legal Advice and Operational Support Branch
- Temporary Protection Visa Assessment Branch
- Secrecy and Disclosure Section
- Status Resolution Framework Return & Removal Policy Section, Community Protection and Border Policy Branch
- Child Welfare Policy Section, Child Protection and Wellbeing Branch
- Onshore Protection Policy Section, Humanitarian, Family and Citizenship Policy Branch
- Joint Agency Taskforce, Operation Sovereign Borders
- Counter People Smuggling Section, Pacific and Transnational Issues Branch
- Records Management Section, FOI Privacy and Records Management Branch

10. Document details

BCS Category/Function	Visa and Migration Management.
BCS Sub-Category/Sub-Function	Refugee and Humanitarian Visa Management.
Period of Effect	16 January 2021

10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
xxxx	xxxx	xxxx	xxxx
xxxx	xxxx	xxxx	xxxx

10.2. Approval

Approved by:	Miranda Lauman, A/g First Assistant Secretary, Refugee and Humanitarian and Visa Management Division
Approved on (date):	16 January 2018

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