



For Official Use Only

Arrival, immigration clearance and entry - Immigration clearance at airports and seaports

Procedural Instruction

Immigration clearance is the process at the border that determines who has the authority to enter Australia and who does not under the Migration Act

Document approval date	24 September 2018
Contact details	s. 47E(d)
Document ID (PPN)	BC-536
TRIM record number	OPD2016/171830
Primary influencing Legislation(s)	Migration Act 1958

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

For Official Use Only

Table of Contents

1. Introduction	5
2. Scope	5
2.1. In Scope	5
2.2. Out of Scope	5
3. Glossary	6
4. Procedural Instruction	14
PART A: Immigration Clearance - An Overview	14
4.1. What is immigration clearance	14
4.2. When is a person in immigration clearance?	14
4.3. When is a person refused immigration clearance?	15
4.4. When does a person bypass immigration clearance?	15
4.5. Australian citizens and immigration clearance	16
4.6. Non-citizens and immigration clearance	16
4.7. Detention of persons refused immigration clearance	17
4.8. Visa ceases if holder fails to comply with immigration clearance requirements	18
4.9. Last port of clearance and 'Tech-Stops'	19
PART B: Clearance Authorities	19
4.10. The role of the clearance officers	19
4.11. Role and responsibilities of primary clearance officers	20
4.12. SmartGate automated clearance processing	21
PART C: Immigration Clearance - What Evidence Arriving Persons Must Present	23
4.13. About requirements under section 166 of the Migration Act	23
4.14. Other requirements under section 166 of the Migration Act	23
4.15. Persons exempt from section 166 requirements	23
4.16. Passenger compliance section 166 requirements	25
4.17. Incoming Passenger cards	26
4.18. Arriving Australian citizens	27
4.19. Arriving non-citizens	28
4.20. Unauthorised maritime arrivals (UMA)	29
4.21. Transitory persons	31
4.22. Persons involved in international disaster relief	31
4.23. Special purpose visa (SPV) holders	31
4.24. APEC business travel card (ABTC) holders	32
PART D: When and Where Persons Must Present Evidence	32
4.25. About section 167 of the Migration Act	32
4.26. When and where evidence is to be presented at a port	32
4.27. When and where evidence is to be presented at an on-port	32
4.28. Temporarily proclaimed ports	33
4.29. Emergency situations	33
4.30. On a vessel	34
4.31. Advance Passenger Processing	35
4.32. Pre-cleared flight - when and where evidence is to be presented	35
PART E: Persons Exempt From Presenting Evidence of Identity	36
4.33. About section 168 of the Migration Act	36

For Official Use Only

4.34.	Allowed inhabitants of the Protected Zone	36
PART F: Domestic Passengers on International Flights to Give Evidence of Identity		37
4.35.	Domestic passengers	37
PART G: Assistance With Evidence		37
4.36.	Assistance with evidence	37
PART H: Departing Persons may be Required to Present Certain Evidence		37
4.37.	About section 175 of the Migration Act	37
4.38.	Departing Australian citizens	38
4.39.	Departing non-citizens	38
PART I: Referral to a Secondary Clearance Officer		38
4.40.	Purpose of referral	38
4.41.	General referral procedures	39
4.42.	Inwards referrals	39
4.43.	Referrals from SmartGate	40
4.44.	Referrals - Australian citizens	41
4.45.	Referrals - non-citizens	43
4.46.	Information sought from referred passenger	44
4.47.	Power to search	45
4.48.	Referrals - identity irregularities	46
4.49.	Suspected forged or fraudulent documentation	46
4.50.	Referrals stemming from visa irregularities	47
4.51.	Outwards referrals	54
PART J: Refusal of Clearance, Detention and Summary Removal		56
4.52.	Overview	56
4.53.	Refused immigration clearance	56
4.54.	Detention of unlawful non-citizens	57
4.55.	Summary removal	61
PART K: Persons who Leave the Migration Zone but are Taken not to Have Left Australia		64
4.56.	About section 80 of the Migration Act	64
4.57.	Section 80 and immigration clearance requirements	64
4.58.	Effect of section 80 on visas and movements	65
4.59.	Round-trip cruises	65
4.60.	Seeking RTC status	66
4.61.	Revocation of round-trip cruise status	66
PART L: Designated Foreign Dignitaries		67
4.62.	About this part	67
4.63.	Policy background	67
4.64.	Who can be a designated foreign dignitary	67
4.65.	Exemption from border processing	68
Designated foreign dignitaries - general operation		68
4.66.	How a person becomes a designated foreign dignitary	68
4.67.	Designated foreign dignitary - persons specified in instrument	69
4.68.	Designated foreign dignitary - class of persons specified in instrument	69
4.69.	Designated foreign dignitary - accompanying immediate family members	70
4.70.	Ministerial instrument	70
4.71.	Designated foreign dignitaries and immigration clearance	71
4.72.	Designated foreign dignitaries - at the border	71
4.73.	Compliance with visa conditions	72
4.74.	Evidence of foreign dignitary status	73

For Official Use Only

PART M: The Immigration Framework	73
4.75. Immigration arrangements	73
4.76. Evidence of identity	74
4.77. Inwards immigration clearance	74
4.78. Outward immigration clearance	75
5. Accountability and responsibilities	75
6. Statement of Expectation	75
Directions	75
Policy, Guidance and Recommendations	76
Exercise of Legislative Powers and Functions	76
What happens if this Policy Statement is not followed?	76
7. Related Framework documents	76
7.2. Policy Statement	76
7.3. Procedural Instructions	76
7.4. Supporting Material	77
8. References and legislation	77
9. Consultation	78
9.2. Internal consultation	78
9.3. External consultation	78
10. Document details	78
10.2. Document change control	78
10.3. Procedural Instruction approval	78
10.4. Procedural Instruction approval	79

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

1. Introduction

This instruction provides advice and procedural guidance on immigration clearance, that is, Division 5 of Part 2 of the *Migration Act 1958* (Cth) (the Migration Act), which provides the legislative basis for immigration clearance procedures at Australian airports and seaports.

The substance of this Procedural Instruction (PI) has been derived from the former Procedural Advice Manual (PAM) *PAM3: Act - Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*.

Further changes to this instruction have been made to reflect the transition of immigration clearance roles and responsibilities to the Australian Border Force (ABF).

2. Scope

2.1. In Scope

This instruction provides advice and procedural guidance on immigration clearance, that is, Division 5 of Part 2 of the Migration Act, which provides the legislative basis for immigration clearance procedures at Australian airports and seaports.

2.2. Out of Scope

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

3. Glossary

Table 1 - Common terms and definitions used in this instruction

Term	Acronym (if applicable)	Definition (if applicable)
Advance Passenger Processing	APP	Is a traveller processing system. All travellers travelling to Australia, including all transit travellers, must be processed through APP. Note: Infringement notices may be issued to operators who fail to comply with APP obligations.
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.
Airline Liaison Officer	ALO	Strategically located at key international airports, ALOs operate ahead of the border to identify and manage threats and risks before they reach the Australian border. ALOs contribute to strengthening Australia's border and national security.
Airside		Is the secure area where passengers are immigration cleared and may include the transit lounge.
Allowed inhabitant of the Protected Zone		Is defined in section 5(1) of the Migration Act and means an inhabitant of the Protected Zone, other than an inhabitant to whom a declaration under section 16 of the Migration Act (presence declared undesirable).
APEC Business Travel Card	ABTC	A card for frequent APEC business travellers to travel from their place of residence to an APEC economy (other than Australia) for business purposes.
Asia-Pacific Economic Cooperation	APEC	APEC is a regional economic forum established to leverage the growing interdependence of the Asia-Pacific. APEC aims to ensure goods, services, investment and people move easily across borders.
Asia-Pacific Forces	APF	Includes members of the armed forces of Brunei, Fiji, Malaysia, Thailand or Tonga who travel to Australia, or

For Official Use Only

		are in Australia, in the course of his or her duty. They holds military identity documents and movement orders issued from an official source of the relevant country.
Australian Declaratory Visa	ADV	Is an administrative process that connects a person's status as an Australian citizen with a non-Australian travel document the person holds.
Australian passport		Is a passport issued under the <i>Passports Act 2005</i> (Passports Act 2005).
Authorised Officer		Has the meaning given by section 5(1) of the Migration Act 1958 (Migration Act). Namely, meaning an officer authorised in writing by the Minister or the Secretary for the purposes of that provision.
Behaviour Concern Non-Citizen	BCNC	Has the meaning given by section 5(1) of the <i>Migration Act 1958</i> (Migration Act). Namely: <ul style="list-style-type: none"> • has been convicted of a crime and sentenced to death or to imprisonment for at least one year • has been convicted of 2 or more crimes and sentenced to imprisonment for periods that add up to at least one year • has been charged with a crime where the person was of unsound mind has been removed or deported from Australia or removed or deported from another country.
Boarding Pass		Means a document that permits a person to board an aircraft, given to the person by the operator of the aircraft.
Bogus Document		In relation to a person, means a document that the Minister reasonably suspects is a document that: <ul style="list-style-type: none"> • purports to have been, but was not, issued in respect of the person • is counterfeit or has been altered by a person who does not have authority to do so • was obtained because of a false or misleading statement, whether or not made knowingly.
Bypass Immigration Clearance		A person has bypassed immigration clearance in the circumstances set out in section 172(4) of the Migration Act 1958 (Migration Act).

s. 47E(d)

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

For Official Use Only

Civilian Vessel		Defined for Division 3.2 of the Regulations to mean a vessel other than a vessel of the regular armed forces of a Government recognised by Australia (regulation 3.13 of the <i>Migration Regulations 1994</i> (Cth (the Regulations))).
Clearance Authority		Is defined by section 165 of the Migration Act 1958 (Migration Act) and means a clearance officer or an authorised system.
Clearance Officer		Has the meaning as defined by section 165 of the <i>Migration Act 1958</i> (Migration Act), as an officer, or other person, authorised by the Minister to perform duties for the purposes of Part 2 Division 5 of the Migration Act.
Commonwealth Armed Forces	CAF	Includes members of the armed forces from a Commonwealth country who travel to Australia, or is in Australia, in the course of his or her duty. They hold military identity documents and movement orders issued from an official source of the relevant country.
Crew List		Is a list signed by the master of a vessel showing the number, full names and citizenship, and identity document details of each member of the crew.
Crew Travel Authority	CTA	Is not a visa. It is simply a registration system for processing crew through APP. The Special Purpose visa (SPV) gives crew members their legal immigration status whilst in Australia.
Criminal Justice Stay Certificate	CJSC	<p>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.</p> <p>Commonwealth CJSCs are issued by the Department of Home Affairs under section 147 of the <i>Migration Act 1958</i> (Migration Act).</p>

s. 47E(d)

For Official Use Only

		<ul style="list-style-type: none"> travellers at overseas check-in points, such as airports and seaports people through border clearance at the Australian Border.
Electronic Travel Authority	ETA	A subclass 601 visa is an electronically issued and stored authority for travel to Australia.
Enter Australia		In relation to a person, means enter the migration zone. Section 43(2) of the <i>Migration Act 1958</i> (Migration Act) provides that a person on an aircraft only enters Australia when the aircraft lands in the country.
Entry Control Point	ECP	Is the initial point of entry into Australia.
Excised Offshore Place	EOP	Is defined in section 5 of the Migration Act 1958 to mean any prescribed external Territories or islands and Australian sea or resource installations.
Expected Movement Record	EMR	Is a record created in the Advance Passenger Processing (APP) system for a traveller's expected arrival or departure.
Guest of Government	GoG	Means the status certain distinguished foreign visitors to Australia by the Commonwealth Government and confers certain benefits and privileges on the visitor.
Identity Document		<p>Is defined in section 5(1) of the Migration Act and in relation to a member of the crew of a vessel, means -</p> <ul style="list-style-type: none"> an identification card, in accordance with a form approved by the Minister, in respect of the member signed by the master of the vessel, or (this refers to the Form 302 - Seamen's Identification Card) a document, of a kind approved by the Minister, as an identity document for the purposes of the Migration Act, in respect of the member.
Immigration Cleared		Has the meaning given by section 172(1) of the <i>Migration Act 1958</i> (Migration Act).
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.

For Official Use Only

Immigration Clearance		Is a person who is in immigration clearance in the circumstances set out in the <i>Migration Act 1958</i> (Migration Act).
Incoming Passenger Card	IPC	Is a card including personal particulars and a declaration of incoming travellers are required to present to a clearance officer under Regulation 3.01(3) to the <i>Migration Regulations 1994</i> (Migration Regulations).
International Civil Aviation Organization	ICAO	<p>Is a United Nation's specialised agency, established by States in 1944 to manage the administration and governance of the Convention on International Civil Aviation.</p> <p>ICAO works with the Convention's 191 Member States and industry groups to reach consensus on international civil aviation Standards and Recommended Practices (SARPs) and policies in support of a safe, efficient, secure, economically sustainable and environmentally responsible civil aviation sector.</p>
Leave Australia		Is defined in section 5(1) of the Migration Act and in relation to a person, means, subject to section 80 of the Migration Act (leaving without going to other country), leave the migration zone.
Maritime Crew Visa	MCV	Is a subclass 988 temporary visa for members or prospective members, of the crew of non-military ships travelling to Australia, as well as members of their family unit.
Master		Is defined in section 5(1) of the Migration Act and means the person in charge or command of the vessel.
Migration Zone		<p>Has the meaning given by section 5 of the <i>Migration Act 1958</i> (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"> land that is part of a State or Territory at mean low water sea within the limits of both a State or a Territory and a port

For Official Use Only

		<ul style="list-style-type: none"> piers, or similar structures, any part of which is connected to such land or to ground under such sea <p>but does not include sea within the limits of a State or Territory but not in a port.</p>
On-port		Is defined in section 165 of the Migration Act for the purposes of Division 5 of Part 2 and in relation to a person, means a port in Australia to which the person will travel after entering Australia at another port.
Overseas Vessel		<p>Has the meaning given by section 165 of the <i>Migration Act 1958</i> (Migration Act) as:</p> <ul style="list-style-type: none"> a vessel on which persons travel from outside Australia to a port and then to an on-port or ports a vessel on which persons travel from a port to another port or ports and then to a place outside Australia.
Passenger Analysis Clearance Evaluation System	PACE	Is a system used to process travellers at Australia's international air and seaports.
Passenger Card		In section 97 of the Migration Act, passenger card is defined for Subdivision C of Division 3 of Part 2 of the Act. It states that it has the meaning given by subsection 506(2) and, for the purposes of section 115 of the Migration Act, includes any document provided for by Migration regulations under paragraph 504(1)(c).
Passenger Clearance Course	PCC	Prerequisite competency based training course required by clearance officers to use the PACE system.
Passport		Includes a document of identity issued from official sources, whether in or outside Australia, and having the characteristics of a passport, but does not include a document, which may be a document called or purporting to be a passport, that the regulations declare is not to be taken to be a passport.

s. 47E(d)

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

For Official Use Only

		<ul style="list-style-type: none"> people through border clearance at the Australian border.
Port		<p>Has the meaning given by section 5(1) of the <i>Migration Act 1958</i> (Migration Act) as:</p> <ul style="list-style-type: none"> a proclaimed port a proclaimed airport.
Pre-cleared flight		Is defined in section 5(1) of the Migration Act and means a flight declared under section 17 of the Migration Act to be a pre-cleared flight.
Primary Support Point	PSP	A secondary point at airports in arrivals and departures where travel documents are re-scanned following failure of satisfying passport reader evaluation at the primary line.
Proclaimed Airport		<p>Has the meaning given by section 5(1) of the <i>Migration Act 1958</i> (Migration Act) as:</p> <ul style="list-style-type: none"> a port appointed under section 15 of the <i>Customs Act 1901</i> (Customs Act) a port appointed by the Minister under subsection (5) of the Customs Act.
Proclaimed Port		<p>Has the meaning given by section 5(1) of the <i>Migration Act 1958</i> (Migration Act) as:</p> <ul style="list-style-type: none"> a port appointed under section 15 of the <i>Customs Act 1901</i> (Customs Act) a port appointed by the Minister under subsection (5) of the Customs Act.
Refused Immigration Clearance	RIC	Occurs when a person is refused immigration clearance in the circumstances set out in section 172(3) of the Migration Act 1958 (Migration Act).
Regional Seaport Officer	RSO	Officers responsible for the facilitation and clearance of maritime vessels, including passengers and crew.
Round Trip Cruise	RTC	RTC is the term that is used to describe a voyage that meets section 80 of the <i>Migration Act 1958</i> (Migration Act).
Special Category Visa	SCV	A class of visa for which eligibility is derived from section 32(2)(a) or section 32(2)(c) of the <i>Migration Act</i>

For Official Use Only

		1958 (Migration Act) and can only be granted to New Zealand citizens.
Special Purpose Visa	SPV	A class of temporary visa to provide lawful status to non-citizens who need to travel to, enter and remain in Australia but to whom the standard visa regime and, in some circumstances, immigration clearance processes, are taken not to apply.
Status of Forces Agreement	SOFA	Is an agreement between Australia and France, Malaysia, New Zealand, Papua New Guinea, the Republic of the Philippines, Singapore, Turkey or the United States of America. Members of the armed forces of one of those countries hold military identity documents and movement orders issued from an official source of the relevant country.
Transit Without Visa	TWOV	<p>A transit traveller (also known as "transit without visa") is defined in Regulation 1.03 <i>Migration Regulations 1958</i> (Migration Regulations) to be a person who:</p> <ul style="list-style-type: none"> enters Australia by aircraft holds a confirmed onward booking to travel to a third country on an aircraft within, 8 hours of the person's arrival in Australia holds documentation necessary to enter the country of their destination. The travellers who are eligible to TWOV are specified by legislative instrument made under Regulation 2.40(1)(n) of the Migration Regulations.
Unauthorised Maritime Arrival	UMA	Has the meaning given by section 5AA of the <i>Migration Act 1958</i> (Migration Act) as meaning a person who has entered Australia by sea and becomes an unlawful non-citizen because of that entry, and is not an excluded maritime arrival.
Vessel		Defined in section 5(1) of the Migration Act to include an aircraft or an installation.
Visa Determination officer	VDO	Defined in section 5(1) of the Migration Act to include an aircraft or an installation.

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

4.Procedural Instruction

PART A: Immigration Clearance - An Overview

4.1 What is immigration clearance

Immigration clearance is the process, defined in section 172 of the Migration Act, to regulate the entry of persons into Australia and to ensure that those who enter have authority to do so in accordance with the Migration Act, that they are who they claim to be and that they provide other information (namely, an incoming passenger card (IPC)) if required to do so.

Under this process, a clearance Authority assesses a person's authority to enter Australia (either the person is an Australian citizen, a visa holder or a person eligible for the grant of a visa in immigration clearance) as well as the person's travel document.

When the person's identity and authority to enter are confirmed, and any other information required under section 166 of the Migration Act is provided, the Clearance Authority clears that person for entry to the migration zone. See PART C: Immigration Clearance - What Evidence Arriving Persons Must Present. Under section 172 of the Migration Act, a person:

- is immigration cleared (section 172(1))
- is in immigration clearance (section 172(2))
- is refused immigration clearance (section 172(3))
- bypasses immigration clearance (other than a person who is refused immigration clearance) (section 172(4)).

Section 172 of the Migration Act provides that Australian citizens are either immigration cleared under section 172(1) or bypass immigration clearance under section 172(4).

Australian citizens cannot be refused immigration clearance - see paragraph Arriving Australian citizens.

4.2. When is a person in immigration clearance?

Under section 172(2) of the Migration Act, a person is in immigration clearance if the person:

- is with a clearance officer, or at an authorised system, for the purpose of satisfying the requirements of section 166 of the Migration Act
- has not been refused immigration clearance.

A person remains in immigration clearance until one of three statuses occur:

- they have been immigration cleared
- been refused immigration clearance
- have bypassed immigration clearance.

Although no time limit is placed on a person entering Australia to present for immigration clearance, persons are required to comply with section 166 'without unreasonable delay'. In relation to immigration clearance at airports, 'without unreasonable delay' should be taken to mean as soon as practicable after disembarkation from the aircraft - see paragraph Passenger compliance section 166 requirements.

For Official Use Only

Any person who is unable to comply with section 166 of the Migration Act at the primary line should be referred immediately to a secondary clearance officer. Any claims made by a person in relation to their immigration status should be explored - see PART I: Referral to a Secondary Clearance Officer.

The *Migration Regulations 1994* (Cth) (Migration Regulations) specify which visas can be applied for in immigration clearance. Visas that can be applied for at an airport are:

- Special Category (TY-444) visas (SCVs)
- Border (TA-773) visas
- Protection (XA-866) visas
- Electronic Travel Authority (UD-601) visas (ETAs).

A person may apply for any of the above while in immigration clearance (for more information, see paragraph, Visa applications in immigration clearance).

See Procedural Instructions:

- *Special Category Visas in Immigration Clearance [BC-2470]*
- *Managing Claimants for Protection [BC-2436]*
- *Border Visa Grant in Immigration Clearance [BC-2538]*.

4.3. When is a person refused immigration clearance?

Under section 172(3) of the Migration Act, a person is refused immigration clearance if they are in immigration clearance with a clearance officer and:

- has refused to, or is unable to, present to a clearance officer evidence of their identity and a visa, as required by section 166(1)(a)
- has refused to, or is unable to, provide to a clearance officer the information required on an IPC as required by section 166(1)(b)
- (if a non-citizen) had their visa cancelled in immigration clearance (and have not been subsequently granted another visa)
- has refused to, or is unable to, comply with any requirements referred to in section 166(1)(c) to provide one or more personal identifiers to a clearance officer (refer to Traveller Operational Policy if such cases come to attention prior to a decision to refuse).

4.4. When does a person bypass immigration clearance?

Under section 172(4) of the Migration Act, a person, other than a person who is refused immigration clearance, bypasses immigration clearance if they are required to comply with section 166 but they:

- leave the port or prescribed place where they entered Australia without complying with section 166
- enter Australia at other than a port and, while section 43(1)(c) applies, fail to comply with section 166 at the prescribed place within the prescribed time (as provided for by section 167(2) and regulation 3.04 of the Migration Regulations)
- enters Australia a place other than a port or prescribed place, and section 43(1)(c) does not apply - that is, there was no risk to a person's health and safety that necessitated entry at other than a port - see paragraph Emergency situations.

Australian citizens

An Australian citizen bypasses immigration clearance if they leave a port without complying with section 166 of the Migration Act.

Non-citizens who bypass clearance

A non-citizen who enters at a port holding a visa and leaves the port without complying with section 166 of the Migration Act bypasses immigration clearance and becomes an unlawful non-citizen (because section 174 of the Migration Act ceases their visa).

A non-citizen who is taken to have bypassed immigration clearance and will become an unlawful non-citizen (because sections 173 and 174 of the Migration Act operate to cease the visa) when they:

- enter at a place other than a port in contravention of section 43 of the Migration Act
- hold a visa
- do not present to an officer or clearance officer within 2 working days after entering Australia (for an allowed inhabitant of the protected zone, the prescribed period is 5 working days after they go to a part of the migration zone outside the protected area).

A non-citizen who enters Australia without holding a visa and who bypasses immigration clearance is an unlawful non-citizen. Note however that bypassing immigration clearance is not an offence, it is merely a failure to comply with section 166 of the Migration Act.

A non-citizen who bypasses immigration clearance is an unlawful non-citizen and is subject to detention under section 189 of the Migration Act. This will be the responsibility of compliance officers - see *Procedural Instruction: Act - Compliance and Case Resolution - Compliance - Immigration detention and the powers to detain*.

4.5. Australian citizens and immigration clearance

Australian citizens cannot be refused immigration clearance. A person in immigration clearance who claims to be an Australian citizen but cannot provide an Australian passport as evidence in support of that claim, requires a secondary clearance officer to examine the person's claim. The secondary clearance officer is to follow the guidelines set out in paragraph Referrals - Australian citizens.

If the person is an Australian citizen, the clearance officer could clear that person under section 166(4) of the Migration Act, if the officer knows or reasonably believes that the person is an Australian citizen. The person is still required, however, to comply with evidence requirements set out in section 166.

4.6. Non-citizens and immigration clearance

A non-citizen will fail to comply with paragraphs 166(1)(a) and (b) of the Migration Act if one or more of the following apply:

- they do not hold a visa and do not make an application for a visa
- they do not hold a visa and their application for a visa in immigration clearance is refused
- the visa they hold is cancelled in immigration clearance
- their application for a visa cannot be decided within a reasonable time (for example, the person has sought to engage Australia's protection obligations)
- they cannot provide a primary clearance officer with a passport or travel document as evidence of their identity - for example:
 - the person has lost their passport in which a valid visa is evidenced

For Official Use Only

- the passport they present is not their document but contains a visa that 'belongs' to them
- the document the person presents is found to be fraudulent and was used to obtain a visa
- a passenger presents another person's passport containing the visa of another person (for example, a stolen passport).

While in immigration clearance, a visa holder may have their visa cancelled by an officer that is a delegate of the Minister for Home Affairs (section 117(1)(b) of the Migration Act). Most commonly this will result from a secondary clearance officer's decision that the visa holder secondary clearance officer's decision that the visa holder did not have at the time of grant or has ceased to have an intention to remain in Australia to visit (for example, under section 116(1)(g) because a ground appears to exist at Regulation 2.43(1)(j)(i) of the Migration Act when a Visitor (FA-600) visa holder who admits to an intention to work).

The grounds for cancelling a visa, including while the visa holder is in immigration clearance, are outlined in section 116 of the Migration Act.

A non-citizen may have their visa cancelled and be refused immigration clearance up until the time they pass beyond the perimeter of the port or prescribed place at which they have been in immigration clearance.

The refusal of immigration clearance to a visa holder renders them an unlawful non-citizen by operation of section 174 of the Migration Act - that is, if a visa holder is required to comply with section 166 and does not comply, the visa ceases.

Secondary clearance officers may be required to make a finding on the facts available that a visa has ceased under section 174 of the Migration Act. Officers should take care when making a finding on the facts available that would result in the visa ceasing, because this will result in the non-citizen's detention under section 189 of the Migration Act and removal (unless they have an un-finalised visa application). If there are any doubts as to whether the non-citizen holds a visa, to avoid the risk of detaining a lawful non-citizen (that is, a visa holder) it may be more appropriate to consider **cancelling** the visa.

Regulation 3.08 of the Migration Regulations provides for a penalty to be imposed on a person who fails to complete an IPC if required to do so under section 166 of the Migration Act.

4.7. Detention of persons refused immigration clearance

A non-citizen who does not comply with section 166 of the Migration Act and is refused immigration clearance is an **unlawful non-citizen**. They must be detained under section 189 of the Migration Act, and may also be prevented under section 249 of the Migration Act from leaving a vessel on which the person arrived in Australia.

If the non-citizen has been restricted on board the vessel they arrived on under section 249 of the Migration Act, there may not be a requirement to remove them for temporary transfer to a detention centre unless there are concerns raised by the non-citizen or the vessel's master. Under section 249 of the Migration Act, the non-citizen may remain on the vessel and leave Australia on board that vessel.

Section 198(2) of the Migration Act provides for the removal from Australia of unlawful non-citizens who have been refused immigration clearance. If an unlawful non-citizen detained in immigration clearance cannot be removed immediately - for example, if the next available flight is not available until the following day or later - arrangements should be made to transfer the person to a place of detention.

In the case of a summary removal where the non-citizen were refused immigration clearance at the airport, if a non-citizen is transferred to a detention facility to await their flight for removal, the responsibility for detention arrangements will fall to removal officers at the detention centre during this time. Responsibility for progressing removal arrangements, however, will remain with airport officers. See paragraph Summary removal for further information.

For Official Use Only

On occasion, a person claiming to be an Australian citizen will present a foreign passport on arrival in Australia and may be delayed while an officer investigates the person's claim of Australian citizenship. A delay will not constitute immigration detention for the purposes of section 189 of the Migration Act. Evidence required and procedures for establishing a person's claim of Australian citizenship are outlined in paragraph Referrals - Australian citizens.

Section 191(1) of the Migration Act provides for the release from immigration detention of a person if:

- the person gives evidence of their identity and Australian citizenship
- an officer knows or reasonably believes that the person is an Australian citizen
- the person complies with section 166 and either shows an officer evidence of being a lawful non-citizen or is granted a visa.

4.8. Visa ceases if holder fails to comply with immigration clearance requirements

Section 174 of the Migration Act - Failure to comply with section 166

Section 174 of the Migration Act provides that a visa ceases if the visa holder is required to comply with section 166 and does not comply. This provision removes all doubt as to the consequences of bypassing or failing to comply with Australia's immigration controls.

The effect of section 174 of the Migration Act extends to any visa holder who enters otherwise than through a port in accordance with section 43(1)(c) of the Migration Act (that is, the entry was made for reasons of health and/or safety), but who subsequently fails to comply with section 166 - see paragraph Emergency situations.

Any person whose visa ceases under section 174 of the Migration Act is an unlawful non-citizen and is subject to detention and removal. However, officers should consider specific circumstances in determining the course of action to be taken in respect of any person who fails to comply with section 166.

If:

- a visa has ceased because the person has failed to comply with section 166, but
- the officer determines that the circumstances were beyond the person's control.

the officer should consider options to allow the person to remain in Australia in accordance with the person's needs. In such cases the officer may wish to contact Traveller Operational Policy s. 47E(d) for further advice, if required.

Section 173 of the Migration Act - Entry other than accordance with section 43

Section 173 provides that a visa ceases if the visa holder enters Australia in a way that contravenes section 43 of the Migration Act (relating to entry to Australia), which usually must be at a port.

Broadly speaking, section 43 provides that visa holders must enter at a port or on a pre-cleared flight, unless particular circumstances apply, including if the health and safety of a person or a prescribed reason make it necessary to enter Australia in another way, or in a way authorised by an authorised officer.

If the visa ceases because of the operation of section 173, the person becomes an unlawful non-citizen and is subject to detention and removal.

Officers should ensure that the relevant pre-conditions as per sections 43 and 173 of the Migration Act have been satisfied before reaching a conclusion that the visa has ceased - see paragraph Emergency situations.

4.9. Last port of clearance and 'Tech-Stops'

Last port clearance

In addition to the requirements under the Migration Act, there are departure clearance requirements under other legislation, including the Customs Act. Even though the Migration Act does permit clearance prior to last port of departure, requirements under other legislation can only be completed at the last port of departure from Australia to a place outside Australia.

For operational reasons it is preferable for all clearance processes (including immigration clearance) be performed at the final port of departure from Australia to a place outside Australia. For example, an aircraft departing Sydney for Jakarta and refuelling in Darwin can only be cleared outwards, completely under all relevant legislation, in Darwin.

This process and that in relation to international tech-stops outlined below, does not apply to international passenger aircraft, meaning an aircraft that is being used to provide a regular international passenger air services or a regular international passenger charter air services.

International Tech Stop

For operational reasons, an International 'tech-stop' is defined as an aircraft travelling from a place outside of Australia to another place outside Australia, however stops within Australia to, most commonly, refuel the aircraft, make unexpected essential repairs or to respond to an emergency requirement to land the aircraft.

It is important that although travellers may or may not disembark the aircraft, all crew and passengers must hold an appropriate visa whether that be a transit or other type of visa. For such International 'tech-stops', the flight must be cleared at the location of the stop.

Domestic Tech Stop

For operational reasons, a Domestic 'Tech-Stop' is defined as an aircraft travelling from a place outside of Australia to a place inside Australia, however the aircraft stops inside Australia at a place that is not its final destination to refuel the aircraft. There is no cargo exchange, nor any crew or passenger changes with this stop.

There may be instances where the airline requests a tech-stop for the purposes of refuelling. For instance a flight travelling from Malaysia to Perth, requests a tech-stop in Port Hedland. Clearance of the aircraft must always be conducted at the first port of arrival in Australia, in this example this would be Port Hedland. These clearances should always be facilitated by the ABF. Extreme circumstances that prevent ABF officers from attending clearance should be discussed with the Traveller Operational Policy s. 47E(d). Additionally the final destination port should be consulted to confirm that they are aware of the need and are able to undertake clearance activities.

PART B: Clearance Authorities

4.10. The role of the clearance officers

ABF officers are responsible for undertaking both primary and secondary clearance processing at airports and seaports.

ABF officers performing these functions are authorised by the Minister to act as **clearance officers** as defined in section 165 of the Migration Act. They are also authorised officers for the purposes of section 43(1) of the Migration Act. However prior to undertaking their duties officers should check the relevant instruments of authorisation (available on Legend) to ensure that they are able to exercise these powers.


The document detailing the role of primary clearance officers working in immigration clearance is the Passenger Clearance Course (PCC), developed by Traveller Operational Policy in conjunction with the ABF.

4.11. Role and responsibilities of primary clearance officers

The role and responsibilities of primary clearance officers vary depending on whether the officer is undertaking airport or seaport clearance duties.

In the course of their duties, a primary clearance officer is required to:

s. 47E(d)



Seaports clearance officers are to also:

s. 47E(d)



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

4.12. SmartGate automated clearance processing

Provision for automated border processing

The Migration Act allows eligible passport (specific ePassport) holders to be immigration cleared through the voluntary use of an automated border processing system known as SmartGate. Eligible ePassports are specified in a Secretary's Determination made under section 175A of the Migration Act: see Determination of Eligible Passports – Instrument IMMI 14/079 dated 22 August 2014 (<https://www.legislation.gov.au/Details/F2014L01165>).

SmartGate is a two-step process:

- **Kiosk:**
Eligible ePassport holders use a SmartGate kiosk verifying the person is an eligible ePassport holder and, if applicable, that the person holds a visa that is in effect. The kiosk will also check that the biographical details on the Machine Readable Zone of the ePassport match the biographical details contained on the microchip of the ePassport. For non-citizens, the kiosk also verifies whether the person is of health or character concern by asking health and character related questions to be answered via a touch-screen. s. 47E(d)
[REDACTED]
[REDACTED]
- **Gate:**
Users who successfully clear the SmartGate kiosk are given a ticket advising them to proceed to the SmartGate 'gate'. The gate verifies the person's identity using facial recognition technology by taking a live image of the person's face and comparing the image with a digital image stored on a chip in their eligible passport. If the verification is unsuccessful, the person is referred to a clearance officer for manual processing.

In specific circumstances where the person's identity or authority to enter are **not** confirmed (that is, the requirements of section 166 of the Migration Act are not satisfied), SmartGate will refer the passenger to the primary line for manual processing. If the person is still unable to satisfy these requirements with the primary clearance officer, they will be referred to a secondary clearance officer to continue the immigration clearance process.

An Incoming Passenger Card is still required

Persons using SmartGate must still complete an IPC. The IPC completed by the SmartGate user is handed to an ABF officer at the back of hall once the passenger has been successfully cleared through the electronic gate.

New Zealand citizens

SmartGate grants New Zealand citizens an SCV without the need for a clearance officer to be present during the process. If a New Zealand citizen is applying for an SCV on arrival and chooses to be processed by the automated system, they must:


- hold, and provide to SmartGate, a section 175A eligible New Zealand ePassport
- be neither a behaviour concern non-citizen nor a health concern non-citizen.

SmartGate will not "refuse" immigration clearance or the grant of an SCV; all cases requiring further consideration by an officer are referred to the primary line. For those passengers who choose to be processed manually, the IPC will remain an application for an SCV. Those who are processed by SmartGate will apply for an SCV by answering the health and character questions and making a declaration on the kiosk screen. For more information, see *Procedural Instruction: Sch2Visa444 - Special Category*.

What SmartGate does

SmartGate:

s. 47E(d)



Persons excluded from SmartGate

There are several categories of persons excluded from SmartGate, including persons:

- who are taken to hold a special purpose visa (SPV), other than aircrew from eligible nationalities)
- who do not hold a section 175A eligible ePassport
- who are under 10 years old
- whose visa conditions include “must not enter before” and “must not marry before”
- who do not hold an eligible passport (as specified in the determination made under section 175A of the Migration Act or
- travelling between Australian external territories such as Christmas, Cocos and Norfolk Islands. This is because movements between the Australian mainland and external territories are considered domestic travel for immigration purposes.

The above groups are required to present to the primary line to be processed.

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

PART C: Immigration Clearance - What Evidence Arriving Persons Must Present

4.13. About requirements under section 166 of the Migration Act

Section 166 of the Migration Act sets out the evidence that most persons entering Australia are required to present to a Clearance Authority in order to be immigration cleared under section 172. It makes it clear that, subject to the exceptions identified in section 168 of the Migration Act, all persons, including Australian citizens, are required, without unreasonable delay, to identify themselves to a clearance authority and to provide information required by the Migration Act and the Migration Regulations.

Part 1 of Schedule 9 to the Migration Regulations sets out:

- groups of persons to whom special arrangements apply under section 166 of the Migration Act
- the form of identity these groups must present as well as whether they need to complete an IPC.

4.14. Other requirements under section 166 of the Migration Act

For section 166(1)(b) of the Migration Act, regulation 3.03(1) of the Migration Regulations provides that the information required by a clearance officer, namely responses to the health and character questions on the IPC, is set out in regulation 3.02.

Regulation 3.01(3) requires passengers to present a completed IPC to the clearance officer. Part 1 of Schedule 9 to the Migration Regulations sets out groups of persons to whom special arrangements apply under section 166 and whether these persons need to complete an IPC.

Regulations 3.03(2), 3.03(3) and 3.03(4) (made under section 166(3)), prescribe the ways that a range of categories of persons comply with the clearance provisions of section 166(1) and section 166(2).

At the kiosk, SmartGate requires an eligible ePassport to be presented and a declaration made regarding the passport holder's health and character. SmartGate users are still required to provide a completed, signed and dated IPC to a clearance officer, however the collection of the IPC takes place at the back of the hall instead of at the primary line.

4.15. Persons exempt from section 166 requirements

Section 168 of the Migration Act

Section 168 of the Migration Act provides the following exemptions from the requirement to comply with section 166:

- allowed inhabitants of the Protected Zone in specified circumstances - see paragraph Allowed inhabitants of the Protected Zone and
- persons in a class prescribed by regulation 3.06 of the Migration Regulations and set out in Part 2 of Schedule 9 to the Migration Regulations – see Regulation 3.06.

Regulation 3.06

For section 168(3) of the Migration Act, regulation 3.06 exempts the following classes of person (see Part 1 of Schedule 9 to the Migration Regulations) from complying with section 166 of the Migration Act:

- Transit passengers specified by legislative instrument under regulation 2.40(1)(n):
 - These persons hold SPVs while in the transit lounge at an airport for periods of up to 8 hours. The Border Operations Centre (BOC) s. 47E(d)

For Official Use Only

s. 47E(d)

○ s. 47E(d)

- Persons visiting Macquarie Island if permission for the visit has been granted in writing before the visit by the Secretary to the Department of Primary Industries, Parks, Water and Environment
- Australian citizens who form part of an Australian National Antarctic Research Expedition from an Australian Antarctic station, and who are returning to Australia on board a vessel owned or chartered by the Commonwealth. The wording of this exemption reflects current practice and maintains the requirement to comply with section 166 for those persons entering Australia from non-Australian bases in the Antarctic
- Members of the Status of Forces Agreement (SOFA), Asia-Pacific Forces (APF) and Commonwealth Armed Forces (CAF) who enter Australia at a seaport, hold military identity documents and movement orders issued from an official source of the relevant country and are travelling to Australia in the course of their duty
- Foreign naval forces members, provided permission to enter the migration zone from the vessel of which they form part of the complement was given in advance by the Australian Government
- Official guests of Government and their accompanying immediate family members
- Designated foreign dignitaries
- Indonesian traditional fishermen who have prescribed status under regulation 2.40 of the Migration Regulations
- Those non-citizen children born in Australia who under section 10 of the Migration Act are taken to have entered Australia at birth and who have not left the migration zone:
 - Part 2 item 1A of Schedule 9 to the Migration Regulations ensures that these newborn children are not required to give evidence of identity at the time of birth in the migration zone
 - Under section 78 of the Migration Act, the child is taken at the time of birth to have been granted a visa (other than an SPV) of the same kind and class and on the same terms and conditions (if any) as the visa(s) of their parents
- Australian citizen or a non-citizen who holds one of the following types of visa that is in effect:
 - Permanent visa
 - Subclass 400 visa
 - Subclass 457 visa

who is taken to enter Australia because section 9A(3)(c) of the Migration Act is satisfied in respect of the person and whose entry has been reported in writing to Immigration.

For guidelines on:

- designated foreign dignitaries – see PART L: Designated Foreign Dignitaries
- those categories of persons listed above who hold SPVs - see *Procedural Instruction: Act - Act based visas - Special purpose visas- Immigration clearance of SPV holders.*

4.16. Passenger compliance section 166 requirements

Must be 'without reasonable delay'

Passengers are required to comply with section 166 of the Migration Act without unreasonable delay. 'Without unreasonable delay' should be interpreted to mean as soon after disembarkation as practicable, provided the facilities to administer the clearance provisions are available to the passenger.

Delays that could be considered **reasonable** are generally those delays incurred for reasons that are outside the passenger's control – for example:

- industrial action
- medical evacuation
- fire or other emergency.

In an airport context, delays that may be considered **unreasonable** would occur in circumstances where a passenger has had every opportunity to comply with section 166 of the Migration Act after disembarkation but conceals themselves in the airport. Officers should look closely at the circumstances of such persons to determine the reasons for the person's concealment and avoidance of immigration clearance.

In a prescribed way

Regulation 3.03 and Part 1 of Schedule 9 to the Regulations prescribes the way in which the following persons must comply with section 166:

- Australian citizens
- SPV holders
- SCV holders
- ETA holders
- Visitor (FA-600) visa holders who hold an APEC Business Travel Card
- eVisa holders
- eligible persons who choose to use SmartGate.

Regulation 2.06 of the Migration Regulations lists categories of non-citizens who do not require a visa to travel to Australia, namely, New Zealand citizens who hold and produce a New Zealand passport that is in force. Schedule 1 to the Migration Regulations allows these persons, if eligible, to apply for an SCV, in immigration clearance – see:

- item 1219 of Schedule 1 to the Migration Regulations
- *Procedural Instruction: Sch2Visa444 - Special Category.*

SmartGate can grant SCVs in immigration clearance only if the New Zealand citizen meets health and character requirements and successfully passes the "face to passport" check at the electronic clearance gate.

Persons to be eligible for the grant of a SPV on arrival, will need to be processed by a primary line officer. For further guidance on processing SPV holders, see: *Procedural Instruction: Act - Act based visas - Special purpose visas.*

4.17. Incoming Passenger cards

As an immigration clearance requirement

Section 166(1)(b) of the Migration Act requires persons (whether Australian citizens or non-citizens) entering Australia to provide the clearance authority any information required to be given by the Act or the Regulations. The information required is prescribed in regulation 3.01 of the Migration Regulations, and provides that these persons must provide a completed IPC, (unless exempted). See *Procedural Instruction: Act - Arrival, immigration clearance and entry - Passenger cards*.

Under regulation 3.01 of the Migration Regulations, persons in the following circumstances must provide an IPC in accordance with the directions set out on the card as well as other information specified in regulation 3.01(4), unless exempted by regulations or covered by sections 168 and 169 of the Migration Act:

- persons arriving on board a vessel at a port in Australia in the course of, or at the conclusion of, an overseas flight or an overseas voyage
- persons leaving Australia on board a vessel bound for or calling at a place outside Australia
- persons on board an aircraft arriving at, or departing from, an airport in Australia, being an aircraft operated by an international air carrier.

Section 506(3) of the Migration Act provides for the inclusion on the IPC of questions about a non-citizen's health, criminal convictions, the purpose of their visit, any unpaid debts to the Commonwealth and any removal, deportation or refused admittance to Australia or a foreign country. However, of these, the current IPC asks questions only about a passenger's health status and criminal convictions.

Regulation 3.08 provides that it is an offence for a person to fail to complete an IPC if required by the Migration Regulations to do so. The offence attracts a penalty of 10 penalty units. A person who fails to complete an IPC when required to do so may have bypassed immigration clearance.

For those New Zealand citizens applying for an SCV in immigration clearance who choose to use SmartGate, an SCV application as per item 1219(3)(d) of Schedule 1 to the Migration Regulations can be made by answering health and character questions asked by the automated system. In this instance, the IPC is **not** an application for an SCV. Persons using SmartGate are still required to fill out an IPC. The IPC completed by SmartGate users is handed to an ABF officer at the back of hall once the person has successfully cleared through the electronic gate, or handed to a primary line officer if the person is referred from SmartGate for manual processing.

Passenger card exemption

Section 506(2) of the Migration Act provides that the Migration Regulations may exempt certain non-citizens travelling to Australia from completing an IPC.

Regulation 3.01(2) exempts the following persons from having to complete an IPC:

- certain SPV holders as identified in Part 1 of Schedule 9 to the Migration Regulations
- those persons who, under regulation 3.06, are not required to comply with the immigration clearance information requirements of section 166 of the Migration Act – see Part 2 of Schedule 9 to the Migration Regulations. See *PAM3: Act – Act based visas – Special purpose visas*
- A person who enters Australia on a non-military ship and as a member of the crew of that non-military ship, or as a member of the family unit of a member of the crew of that non-military ship.

Australian External Territories

All travellers who travel to and from the mainland to/from Christmas, Cocos and/or Norfolk Islands must present a complete and accurate IPC. As of 1 July 2016, the Australian Government resumed governing responsibility for Norfolk Island and the Migration Act 1958 will be extended to include Norfolk Island as an

external territory. Norfolk Island is a domestic flight for immigration purposes, however, it remains an international movement for ABF and Biosecurity purposes.

The ABF officer should ensure that all details on the IPC match identification presented and cross check the travellers boarding pass to validate that all of the documentation presented corresponds. All IPC coding is to remain in place and IPC checked/actioned for any questions relating to ABF and biosecurity.

4.18. Arriving Australian citizens

Under section 166(1)(a)(i) of the Migration Act, Australian citizens (whether or not also the national of another country) must, without unreasonable delay, show a clearance authority an Australian passport or prescribed other evidence of identity and Australian citizenship – see section 166(4) “Reasonable belief” provision – namely, a person is taken to have complied with subparagraph 166(1)(a)(i) if a clearance officer knows or reasonably believes that the person is an Australian citizen: see paragraphs 4.45.7- 4.45.10. (Note: The Migration Regulations do not currently prescribe any ‘other evidence’ of Australian citizenship and identity.)

Under section 166(1)(b) of the Migration Act, Australian citizens must also give the clearance officer ‘any information required to be given by the Migration Act or the Migration Regulations’ - namely, a completed IPC – see regulations 3.01-3.03 of the Migration Regulations.

An Australian passport is defined in section 5 of the Migration Act as ‘a passport issued under the *Australian Passports Act 2005*’ (the Passports Act). For all purposes relevant to immigration clearance, section 9(1) of the Passports Act indicates that the term ‘travel-related documents’ includes Certificates of Identity or Documents of Identity issued under section 9 of the Passports Act.

For guidelines on these travel documents, see *PAM3: Act - Passports, travel documents and visa evidencing - Travel documents* [BC-537]:

- Documents of Identity
- Certificates of Identity.

For the purposes of this PI, it should be noted that:

- Certificates of Identity are issued only to non-citizens; the Australian Passports Determination 2005 (“the Australian Passports Determination”, made under section 57 of the Passports Act) precludes Australian citizens from being issued with an Australian Certificate of Identity
- Clearance officers should check the nationality field on the biographical data page of Australian Certificates of Identity to confirm the holder’s nationality; although the person holds an Australian travel document, the person is not to be processed for immigration clearance as an Australian citizen
- Australian Documents of Identity can be issued to Australian citizens or citizens of other Commonwealth countries (section 8 of the Australian Passports Determination). Clearance officers should check the nationality field on the biographical data page of Australian Documents of Identity to confirm the holder’s nationality before deciding how the passenger is to be processed for immigration clearance.

Under section 166(4) of the Migration Act a person is taken to have complied with the evidence of identity requirements of section 166 if an ABF officer knows or reasonably believes that the person is an Australian citizen:

- Although the onus is on Australian citizens to show their Australian passport to comply with section 166 of the Migration Act, under section 166(4) a person may be taken to have complied with section 166 if a secondary clearance officer to whom the person has been referred, knows or reasonably believes that the person is an Australian citizen

For Official Use Only

- This provision is to ensure that, if possible, unnecessary delay of Australian citizens at the border is avoided.

See:

- paragraph Purpose of referral, for guidance on exercising the 'reasonable belief' provisions
- Attachment B: Evidence of Australian Citizenship, for a list of kinds of evidence of Australian citizenship
- See *Air SOP: Immigration clearance of Australian citizens* [BC-2536].

4.19. Arriving non-citizens

Section 166 requirements

Section 166 of the Migration Act requires non-citizens to:

- present to a clearance authority evidence of identity and evidence of a visa that is in effect and that is held by the non-citizen
- provide the clearance authority any information required to be given by the Migration Act or the Migration Regulations.

Identity

Regulation 3.03(3) sets out acceptable forms of evidence of identity and of visas as required by section 166(1)(a) of the Migration Act.

Although the evidence of identity for non-citizens that has generally been accepted is a national passport, other forms of identity are also acceptable - see *Procedural Instruction: Act - Passports, travel documents and visa evidencing - Travel documents*.

For example:

- certain military personnel may use military identity documents (see Part 1 item 5 of Schedule 9 to the Migration Regulations)
- certain non-citizens may use Australian travel documents (Documents of Identity and Certificates of Identity – see paragraph Arriving Australian citizens).

Evidence of visa

From 1 September 2015, Australia ceased issuing visa labels to holders of Australian visas.

As a result, most non-citizens in immigration clearance now only present a passport and provide a completed IPC (crew of non-military ships arriving on their vessel are exempt from the IPC requirement unless they are a New Zealand citizen seeking an SCV).

In these cases, evidence of a visa is taken to be shown when the visa holder provides the clearance authority with their valid passport to enable the clearance authority to check the validity of the visa on departmental systems.

In some cases, a non-citizen will need to present a passport of a particular nationality. For example, ETA visa holders must show an **ETA eligible passport** - see item 21 of Part 1 of Schedule 9 to the Migration Regulations.

Regulation 3.03AA of the Migration Regulations sets out the evidence that may be requested of a maritime crew visa (MCV) holder. By way of example, a clearance officer may request this evidence if doubts exist as to the bona fides of an arrival who is a seafarer or the seafarer's partner or dependent child.

For Official Use Only

For more information on visa evidencing, see *PAM3: Act - Passports, travel documents and visa evidencing - Visa evidencing and visa evidence charge*.

Personal identifiers

Section 166(1)(c) of the Migration Act gives a clearance authority the power to require a citizen or a non-citizen in immigration clearance to provide one or more **personal identifiers**. Personal identifier is defined in section 5A of the Migration Act. Section 257A of the Migration Act creates the power for an officer to require a person to provide a personal identifier. By way of general examples, personal identifiers collected for the purposes of section 166 may include one or more of the following:

- a photograph or other image of the person's face and shoulders
- the person's signature
- any other personal identifier contained in the person's passport or other travel document.

Personal identifiers, which are sometimes referred to as "biometrics", include the identifiers that the Department has collected, such as photographs and signatures, as well as identifiers collected using new digital technologies.

Exceptional Circumstance

There may be rare circumstances where a legitimate traveller is unable to meet and be immigration clearance under section 166 of the Migration Act. s. 47E(d)

These cases should always be referred to a visa determination officer for action. The visa determination officer should ensure a referral is created that details the steps taken to identify the traveller and determine immigration clearance.

If the VDO supports clearance the case should be escalated to the on duty inspector and Regional Command for decision prior to clearing the traveller. All details of the case should be recorded in the Departmental referral system.

4.20. Unauthorised maritime arrivals (UMA)

In 2013, the Migration Act was amended by the *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013* (the Amending Act). The Amending Act repealed the definition of 'offshore entry person' but retained the definitions of 'excised offshore place' and 'excision time'. It inserted the definition of 'unauthorised maritime arrival' with effect from 1 June 2013.

Definition

Under section 5AA(1) of the Migration Act, an **unauthorised maritime arrival** is a person, (other than an 'excluded maritime arrival') who entered Australia by sea at either an excised offshore place or any other place at any time after 1 June 2013, and the person became an unlawful non-citizen because of that entry into Australia.

Unauthorised maritime arrivals cannot apply for a visa

Section 46A(1) of the Migration Act prohibits an unauthorised maritime arrival from making a valid application for a visa if they are in Australia and are an unlawful non-citizen or hold a bridging visa, temporary protection visa or a temporary visa prescribed for section 46A (see regulation 2.11A), unless the Minister determines under section 46A(2) of the Migration Act that, in the public interest, section 46A(1) of the Migration Act does not apply. Unauthorised maritime arrivals are also subject to regional processing arrangements under section 198AD of the Migration Act.

Unauthorised maritime arrivals cannot make a valid application for **any** class of visa. However, persons who arrive in Australia by sea and become an unlawful non-citizen because of that entry are **not** unauthorised

For Official Use Only

maritime arrivals if they are an 'excluded maritime arrival'; such persons are not prevented by section 46A(1) of the Migration Act from making a valid application for a visa.

Under section 5AA(3) of the Migration Act, a person is an **excluded maritime arrival** if they:

- are a New Zealand citizen who holds and produces a New Zealand passport that is in force
- holds and produces a passport that is in force and the person is ordinarily resident on Norfolk Island
- hold and produce an ETA-eligible passport
- enter Australia accompanied by another person who holds and produces an ETA-eligible passport and the person is included in that passport.

If it is possible to grant the person a visa before they arrive in Australia and become an unlawful non-citizen, this is the preferred option.

Cancelling a visa in clearance at a seaport

If a non-citizen is granted a visa and then travelled to Australia with a valid visa in effect only to have that visa cancelled in immigration clearance, that person would not become a UMA. This is because they entered the migration zone lawfully.

A person does not automatically become an UMA when immigration clearance is refused. A person will only be a UMA if they fall within the circumstances specified in section 5AA of the Migration Act (see: paragraph 4.21.2 Definition).

Unauthorised maritime arrivals must be refused immigration clearance

An unauthorised maritime arrival as described in paragraph Unauthorised maritime arrivals cannot apply for a visa and must be refused immigration clearance.

Under section 172(3) of the Migration Act, a person is refused immigration clearance if the person is with a clearance officer for the purposes of section 166 of the Migration Act and refuses, or is unable, to show a clearance officer the evidence required under section 166(1)(a) of the Migration Act (namely, evidence of identity and of a visa).

An UMA is, by definition, a person who became an unlawful non-citizen on entry to Australia. Such persons will be unable to meet the requirements of section 166(1)(a) and, therefore, section 172(3)(b) of the Migration Act. Because the person cannot show evidence of a visa, officers must refuse them immigration clearance under section 172(3) of the Migration Act. UMAs must be detained under section 189 of the migration Act, and they may also be prevented under section 249 of the Migration Act from leaving a vessel on which they arrived in Australia.

Maritime Crew visa (MCV) holders who arrive with undecided applications

A non-citizen who enters Australia by sea and is a crew member on a commercial vessel who has applied for a MCV which has not been granted and does not hold any other visa that is in effect, is an UMA unless they fall within the definition of an 'excluded maritime arrival'.

A non-citizen who has arrived as a UMA but who has an undecided valid MCV application is still entitled to have their outstanding application processed. This is because the Minister must consider a valid visa application and make a decision on it unless it is withdrawn (section 47 of the Migration Act). The bar on making a valid visa application in section 46A of the Migration Act does not invalidate a valid visa application made offshore at a time when a person was not a UMA. Section 46A only operates to prevent someone to whom it applies from making a visa application after that person becomes a UMA and is in Australia and is an unlawful non-citizen or holds a bridging visa, temporary protection visa or a temporary visa prescribed for section 46A (see regulation 2.11A).

Non-citizens arriving with undecided MCV applications could be granted an MCV while in Australia.

Maritime Crew visa holders who arrive at an excised offshore place

The holder of an MCV may enter Australia at an excised offshore place provided they comply with regulation 2.06AAA of the Migration Regulations. If the holder of an MCV enters Australia otherwise than as provided for in regulation 2.06AAA, section 173 of the Migration Act will cause their MCV to cease. Regulation 2.06AAA provides that a MCV that is in effect is permission for the holder to enter Australia at an excised offshore place on a non-military ship that has submitted a pre-arrival report to the ABF in accordance with sections 64, 64ACA and 64ACB of the Customs Act.

The MCV does not cease if entry has been authorised by a clearance officer and the vessel has submitted the necessary pre-arrival report to the ABF.

4.21. Transitory persons

Sections 42(2A)(c), 42(2A)(ca) and 198B of the Migration Act allow for the movement of **transitory persons** to enter Australia for medical, legal, security, transit or other reasons. Transitory persons is defined as a person.

Transitory persons enter Australia under escort, without a substantive visa of any kind, and remain unlawful non-citizens for the duration of their stay in Australia (they also remain in immigration detention while in Australia).

4.22. Persons involved in international disaster relief

Persons involved in international disaster relief may travel to Australia with visas, or be subject to special arrangements declared by the Minister. In such cases if unsure as to the person's visa status, ABF officers should consult the BOC. If the person is confirmed to be a visa holder, their entry is to be expedited.

ABF officers would normally have prior warning of the arrival of persons involved in international disaster relief and the department would normally have organised pre-clearance and visas to facilitate the persons' entry to Australia. Occasionally such persons may receive uplift approval from the BOC and require a secondary clearance officer to grant the person a Border visa on arrival in Australia. See *PAM3: Act - Act based visas - Special purpose visas*.

4.23. Special purpose visa (SPV) holders

Section 33 of the Migration Act provides that a non-citizen is taken to have been granted an SPV:

- if they have a prescribed status or are a member of a class of persons that have a prescribed status (see regulation 2.40)
- the Minister declares the non-citizen or persons of a class (of which the non-citizen is a member) under section 33(2)(b) to hold an SPV.

Clearance officers must ensure that the person is part of a class prescribed under regulation 2.40 or is subject to a declaration made under section 33(2)(b) of the Migration Act. See:

- *PAM3: Act - Act based visas - Special purpose visas*
- *PAM3: Act - Arrival, immigration clearance and entry - Crew Travel Authority (CTA)*.

Airline crew members and airline positioning crew members are taken to hold SPVs (see regulation 2.40). They must show a clearance authority evidence of their identity and IPC as specified in Part 1 of Schedule 9 to the Regulations.

4.24. APEC business travel card (ABTC) holders

All economies participating in the Asia Pacific Economic Co-operation (APEC) Business Travel Card (ABTC) scheme have agreed to provide priority processing to card holders at border entry/exit points. ABTC holders are fast-tracked through special APEC lanes (shared with aircrew) at major airports.

Other than enabling priority processing, ABTC holders are processed in the same way on arrival and departure as other passengers, and must present a passport/travel document as evidence of identity, a passenger card and evidence of a visa that is in effect (by virtue of the visa record in the system).

The ABTC itself is **not** a travel document; it simply indicates whether a non-citizen cardholder has a visa for travel to Australia. If Australia (AUS) is listed on the reverse of the ABTC, this indicates that a Visitor (FA-600) visa has been granted.

For more information about the ABTC, see *PAM3: Div2.2/reg2.07AA - Applications for certain visitor visas - The APEC Business Travel Card Scheme*.

PART D: When and Where Persons Must Present Evidence

4.25. About section 167 of the Migration Act

Section 167 of the Migration Act makes provision for a range of places at which persons entering Australia may comply with section 166 of the Migration Act and specifies time constraints for such compliance.

If a visa holder enters Australia in a way not permitted - that is, in breach of section 43 of the Migration Act - or remains in Australia after bypassing or being refused immigration clearance, their visa ceases by operation of sections 173(1) or 174 of the Migration Act.

4.26. When and where evidence is to be presented at a port

Under section 167(1) of the Migration Act, all persons (whether Australian citizens or non-citizens) entering Australia are, subject to sections 168 and 169 of the Migration Act, required to comply with section 166 at the port at which they arrive, unless permission from the ABF has been given under section 167(1) for them to comply at an on-port (that is, a port in Australia to which the person will travel after entering Australia at another port).

4.27. When and where evidence is to be presented at an on-port

Paragraphs 167(1)(b) and 167(1)(c) of the Migration Act provide for persons to comply with section 166 at an on-port.

Section 43(1)(d) of the Migration Act provides for situations where it is known in advance that visa holders will enter Australia at a place other than a port. The application of this provision ties in with the powers of clearance authority in paragraphs 167(1)(b) and 167(1)(c) of the Migration Act.

Although paragraphs 167(1)(b) and 167(1)(c) of the Migration Act relate to Australian citizens as well as visa holders and non-visa holders, both section 167(1) and section 43 of the Migration Act cover situations where the master of the vessel knows in advance that the vessel's entry to Australia will be at a place other than a port. This covers non-emergency situations and 'routine' exceptions.

The notification procedures in such situations involve the master of the vessel or the visa-holder advising the ABF or the department at the nearest port **within 48 hours of the intended arrival** of the vessel's intended port and estimated time of arrival and details of the passengers, visa holders and crew on board.

Following this notification, the officer will decide and advise the master of the vessel whether section 167(1)(b) or section 167(1)(c) of the Migration Act applies and, where appropriate, authorise the place of entry (that is not at a port) of visa holders under section 43(1)(d) of the Migration Act.

All clearance officers must check the relevant instrument of delegation on Legend to ensure they are authorised for section 43(1)(d).

4.28. Temporarily proclaimed ports

ABF officers are authorised to temporarily appoint a 'proclaimed port or airport' at which persons can comply with section 166 of the Migration Act.

This would require an application to be approved by either (for seaports) the Maritime Traveller Processing Committee (MTPC) or (for airports) the National Passenger Processing Committee, which includes consultation with key border agencies.

Alternatively, an ABF officer may give vessels permission under section 58 of the Customs Act to proceed to another port at which clearance may be undertaken.

4.29. Emergency situations

Sectiond 167(2) and 43(1)(c) of the Migration Act recognise that, because of an emergency situation that places a person's health and safety at risk or because of another prescribed reason, persons might not enter Australia at a port, and might not be able to comply with section 166 immediately upon arrival.

In these situations, regulation 3.04 states that a person must comply with section 166 of the Migration Act within 2 working days at any port where a clearance officer is present or at a departmental office. (Note: No regulations have yet been prescribed under section 43(1)(c)).

The master of a vessel will generally make the decision to enter at a place other than a proclaimed port. As soon as practicable after making that decision, the master should advise the ABF of:

- the nature of the difficulty and the intended time and place of arrival
- where appropriate, if arrival has already taken place, details of the difficulty and the time and place of arrival.

The ABF must pass this information on to the department at the earliest opportunity to enable an officer to attend the vessel if necessary.

Officers may interpret the reference in section 43(1)(c) of the Migration Act to 'health and safety of a person' to include situations of emergency, stress of weather, mechanical failure and other similar situations, all of which can compromise the safety of a person entering Australia. If a person enters otherwise than at a port, officers must carefully consider the person's circumstances to ascertain whether there is good reason, consistent with section 43(1)(c), for the manner of the person's arrival:

- If the manner of the person's entry is consistent with section 43(1)(c), the person has 2 working days from the time at which they entered Australia (that is, entered the migration zone) to comply with section 166 (that is, present for immigration clearance). The time that the person entered the migration zone should be established on the basis of the evidence available to the officer
- If a person cannot demonstrate that there was some reason, consistent with section 43(1)(c), to enter Australia other than at a port, the person will have bypassed immigration clearance. A finding that the person's entry breached section 43 will result in the cessation, under section 173, of any visa held by the person.

There may be cases where a person has entered Australia other than at a proclaimed port and the manner of their entry is consistent with section 43 of the Migration Act, but the person fails to present for immigration clearance within 2 working days of entering Australia (as required by regulation 3.04(b)):

For Official Use Only

- There is no latitude for the person to present for immigration clearance after this 2 working day period has elapsed and, accordingly, the person is taken to have bypassed immigration clearance
- In such cases any visa held by the person would cease under section 174 of the Migration Act (visa ceases if holder remains without immigration clearance).

Medivac flights

The issue of Medivacs is a complicated and delicate matter. We do not always have control over where ABF will undertake clearances in these instances, but situations such as these will occur from time to time.

ABF should, where practical, receive advance notification of the arrival of a medivac. Upon receipt of the persons information, and if possible, before the arrival of the person ABF should confirm using relevant systems the person's identity and perform various checks.

If the person holds a valid visa and travel document, the ABF officer is to immigration clear the person on their valid visa. If the person does not travel with their travel document, the ABF should consider methods for obtaining these documents or copies.

If a person is required to complete a passenger card but is unable to do so, the ABF officer can complete it on behalf of the person. See *Procedural Instruction Passenger Cards and Crew Declarations* for further details if this should occur.

ABF **should not** interfere or delay the person in receiving medical treatment. The border clearance processing of the person is of secondary importance to the person receiving appropriate medical care. Where there is time and is appropriate at the time of the person's arrival, the ABF officer present should perform the following:

s. 47E(d)

In summary, persons entering Australia are required under section 166 of the Migration Act to meet certain requirements in order to be immigration cleared. The requirements are set out in subsection 166(1), namely that without reasonable delay a person presents evidence to a clearance authority that include a the persons passport and if a non-citizen evidence of a visa that is in effect and is held by the person, and a completed IPC.

ABF officers are required to immigration clear each person and conduct a face to travel document check, whether this be at the time of arrival, if practical and does not interfere with the medical treatment, or later when the person is in hospital.

4.30. On a vessel

Section 167(3) of the Migration Act provides for a person to undergo immigration clearance on the vessel (as described in section 165(1)) on which they are travelling to Australia. This provision is generally used for

For Official Use Only

processing passengers on cruise ships or on pre-cleared flights. For further details, see paragraph Pre-cleared flight - when and where evidence is to be presented.

When asked to do so by shipping lines, a clearance officer may join the vessel at the last overseas port of call before the vessel enters the migration zone to process passengers and crew for immigration clearance before they enter Australia. Advanced Passenger Processing (APP) reports are used for en-route clearance processes.

IPCs are collected at the port at which the persons disembark. An officer may then decide if it is necessary to attend the vessel on arrival in Australia to, for example, carry out further document checking, grant a Border visa or refuse immigration clearance and remove an unlawful non-citizen.

Section 167(3) also applies to resources installations and sea installations, as defined in section 5, because these installations are **not** considered to be a 'port'. In most circumstances, crews of such installations are required to enter Australia at a port and be cleared in the usual way. However, there may be occasions where the owner/operator of the installation wishes the installation to proceed directly to its location and applies for permission to do so under section 58 of the Customs Act. Clearance officers will then travel to the installation to immigration clear the crew on location. Section 58 of the Customs Act also states such permission is subject to specified conditions that include the provision by the company of transport and accommodation for clearance officers.

4.31. Advance Passenger Processing

APP is a passenger processing system that provides Australian border control agencies with advance notice of a passenger's arrival on a particular flight or sea vessel.

APP assists border and law enforcement agencies to engage in a high level of screening and border control.

In the air context, information needed for APP is collected at time of check-in and forwarded electronically to Australia. APP also confirms the existence of a 'valid' visa (including ETAs), for those passengers requiring authority to enter Australia, and the passport status of Australian and New Zealand travellers. The APP system interfaces with the ETA system.

For sea passenger and crew arrivals, APP data is collected by the cruise company and input by the ships purser into a standard APP format. The APP batches for crew and passengers are then reported through the departmental APP system which feeds into various systems including the ABF's system.

International passenger airlines and cruise shipping lines are required to provide advance passenger information on all passengers and crew travelling to Australia. For most passengers, APP reporting will be provided through the APP system, or by another electronic approved means (such as fax or email).

See *PAM3: Act - Arrival, immigration clearance and entry - Advance Passenger Information and Processing (Air)*.

4.32. Pre-cleared flight - when and where evidence is to be presented

Under section 17(1) of the Migration Act, specified flights may be declared to be **pre-cleared flights**.

Pre-clearance is a facility used to streamline immigration processing of persons on flights arriving in Australia. It involves the administration of the clearance provisions outside the migration zone.

Section 167(4) of the Migration Act requires persons who travel to Australia on a pre-cleared flight to comply with section 166 of the Migration Act before beginning the flight.

The corresponding provision in section 43 of the Migration Act is section 43(1)(b) - that is, a visa to travel to and enter Australia is permission for the holder to enter Australia on a pre-cleared flight.

Persons travelling on pre-cleared flights are immigration cleared before departure and their proposed point of entry is known before their arrival in Australia.

PART E: Persons Exempt From Presenting Evidence of Identity

4.33. About section 168 of the Migration Act

Section 168 of the Migration Act provides the following exemptions from the requirement to comply with section 166 of the Migration Act:

- persons in a class prescribed by regulation 3.06 and set out in Part 2 of Schedule 9 to the Migration Regulations - see paragraph Persons exempt from section 166 requirements
- allowed inhabitants of the Protected Zone in specified circumstances - see paragraph Allowed inhabitants of the Protected Zone below.

4.34. Allowed inhabitants of the Protected Zone

The **Protected Zone** is defined in section 5(1) of the Migration Act to mean the zone established under Article 10 of the Torres Strait Treaty. In summary, it refers to part of the Torres Strait in far north Queensland.

Under section 168(1) of the Migration Act, **allowed inhabitants of the Protected Zone** who enter a **protected area** in connection with the performance of traditional activities are not required to comply with section 166 of the Migration Act.

If an allowed inhabitant of the Protected Zone wishes to enter or remain in a protected area for other than traditional activities, or if they are a person to whom a section 16 declaration applies, they lose their special status under section 13(2) as a lawful non-citizen and become an unlawful non-citizen under section 14(1) of the Migration Act.

Under section 16 of the Migration Act, the Minister may declare that it is undesirable that specified inhabitants of the Protected Zone continue to be permitted to enter or remain in Australia. In these circumstances they are subject to detention and removal, unless they have been granted a visa (Persons to whom a section 16 declaration applies are required to apply for a visa in the appropriate class and be considered under the relevant criteria for subsequent entry to Australia).

Section 168(2) of the Migration Act applies if an allowed inhabitant of the Protected Zone enters a protected area in connection with the performance of traditional activities, and goes from the protected area to a part of the migration zone outside that area. These persons must comply with the requirements of section 166, including holding a visa and presenting evidence of the visa and identity at a prescribed place and within a prescribed period.

Regulation 3.05 of the Migration Regulations (made under section 168(2)) requires allowed inhabitants of the Protected Zone to whom section 166 applies to comply with immigration clearance requirements at a departmental office or at any place (including a port) where there is a clearance officer. Allowed inhabitants of the Protected Zone are required to comply with section 166 within 5 working days of entering a part of the migration zone outside the protected area.

It is quite common for allowed inhabitants of the Protected Zone to inadvertently enter the migration zone outside a protected area. s. 47E(d)

For further information see:

- *PAM3: Act - Outside the migration zone - Allowed inhabitants of the protected zone*
- Paragraph Summary removal.

PART F: Domestic Passengers on International Flights to Give Evidence of Identity

4.35. Domestic passengers

Section 170 of the Migration Act requires persons on an overseas vessel (that is, aircraft or ship on an international voyage), travelling only from one port to another port within the migration zone (that is, on the domestic leg of an international flight), to present 'prescribed evidence' of their identity, provide a clearance officer any information required by the Migration Act or Migration Regulations and to comply with an requirement to provide one or more personal identifiers (section 257A).

Regulation 3.09 of the Migration Regulations prescribes acceptable evidence of identity for persons travelling on an overseas vessel. A passport is prescribed as one form of evidence of identity for domestic travel on overseas vessels under regulation 3.09(2), and is the form of evidence that will be presented by most persons.

In the absence of a passport, other acceptable forms of evidence of identity as described in regulation 3.09(3) may be presented to a clearance officer, but should bear the full name and a photograph of the person.

Regulation 3.09(4) prescribes a boarding pass to be the information required under section 170(1)(b) of the Migration Act. Passengers are required to indicate in writing what documentation they have presented as evidence of their identity. The boarding pass should be shown to a clearance officer on both commencement and conclusion of the domestic sector of an international flight.

Regulation 3.09(5) requires that, if a minor travels with an adult and both boarding passes are shown to the clearance officer, the accompanying adult's boarding pass should be endorsed with the minor's full name if identity documents cannot be produced for the minor.

PART G: Assistance With Evidence

4.36. Assistance with evidence

Section 171 of the Migration Act requires a person seeking assistance to obtain evidence for the purposes of satisfying section 166, to pay or agree to pay a prescribed fee to meet the cost of doing so. The evidence required by section 166 is:

- in relation to Australian citizens, 'the person's Australian passport or prescribed other evidence'
- in relation to non-citizens, evidence of the person's identity and of a visa that is in effect.

No fee for assistance has been prescribed under section 171. Section 171 could operate only if records in departmental databases were to be prescribed as 'other evidence' for the purposes of section 166.

PART H: Departing Persons may be Required to Present Certain Evidence

4.37. About section 175 of the Migration Act

The immigration clearance procedures under section 175 of the Migration Act for departing persons (that is, persons on board, or about to board, a vessel that is to leave Australia) reflect those under section 166 for arriving persons, except that, under section 175, clearance officers have a discretion whether to require a person to comply.

Present policy requires departing persons to provide evidence of identity and, if the person is a non-citizen, evidence of their permission to remain in Australia.

There is no power under the Migration Act to prevent persons leaving Australia. However, a person's departure could be prevented by other law – for example, provisions that prevent the departure of persons sought by the Australian Federal Police (AFP), or certain minors whose travel is restricted in relation to parenting orders. s. 47E(d)

4.38. Departing Australian citizens

Under paragraphs 175(1)(a) and 175(1)(b) of the Migration Act, a Clearance Authority may require an Australian citizen (whether or not also the national of another country) to:

- show an 'Australian passport or prescribed other evidence of the person's identity and Australian citizenship'
- . As with section 166(1)(a)(i) 'other evidence' is not prescribed in the Regulations
- comply with any requirement made by a clearance officer under section 257A to provide one or more personal identifiers.

There is no power in the Migration Act to require an Australian citizen travelling on a valid passport of another nationality to disclose their Australian citizenship.

4.39. Departing non-citizens

Under section 175(1)(a)(ii) of the Migration Act, a clearance officer may require a non-citizen leaving Australia to:

- show evidence of the person's identity and permission to remain in Australia
- comply with any requirement made by a clearance officer under section 257A to provide one or more personal identifiers.

Evidence of the person's permission to remain in Australia is provided when the person provides the clearance officer with their valid passport to enable the officer to check the visa grant and period of effect on the department's computerised systems.

PART I: Referral to a Secondary Clearance Officer

4.40. Purpose of referral

The purpose of an ABF clearance officer referring a person to a secondary clearance officer, is to enable secondary clearance officer/s to determine the appropriate action to be taken in relation to the person, which may include:

- establishing whether they can comply with the requirements of section 166
- assisting them to complete their IPC
- the cancellation of their visa
- the grant of an appropriate visa
- deciding an application for an SCV
- refusal of immigration clearance (for example, if their visa is cancelled or their application for a visa refused)

- detention and removal (of non-citizens refused immigration clearance under s172(3)) - see paragraph Summary removal
- determining whether a carrier has committed an offence against section 229 or 230 of the Migration Act- see *PAM3: Act - Arrival, immigration clearance and entry - Carrier obligations and offences*.

4.41. General referral procedures

This part outlines procedures at airports where passengers are processed initially by ABF clearance officers using the PACE system (the referral procedures described in this part can apply also to incoming aircrew, however, for simplicity, the procedures are described by reference to 'passengers', not crew).

When a clearance officer refers a passenger to a secondary clearance officer, the clearance officer must give the Departmental officer all relevant documentation (that is, the passenger's travel document, IPC and airline ticket, as well as any other documentation relevant to the referral).

s. 47E(d)

If it is clear that the passenger requires the assistance of an interpreter, this information should be conveyed to the passenger through an interpreter at the earliest opportunity.


Officers interviewing any person in immigration clearance should have regard to the communication needs for persons from non-English speaking backgrounds. Officers should employ the services of an interpreter if necessary.

4.42. Inwards referrals

Any arriving passenger, who is apparently unable or unwilling to comply with the requirements of section 166 of the Migration Act at the primary line, must be referred to a secondary clearance officer for further examination.

s. 47E(d)

s. 47E(d)




4.43. Referrals from SmartGate

Passengers using SmartGate will be referred (at either the kiosk or gate stage) to an ABF primary line officer for a number of reasons.

The SmartGate kiosk will refer passengers who:

s. 47E(d)



For SmartGate users who are referred to a primary line officer for manual processing, further referral to a secondary clearance officer may be required in accordance with circumstances outlined in paragraph 4.41 General referral procedures.

s. 47E(d)

A passenger who has been processed by SmartGate, may be referred to a secondary clearance officer from the back of hall where the IPCs are collected for SmartGate users if they:

- refuse to complete or provide a completed IPC
- do not have an IPC
- have answered "Yes" to the health and/or character questions on the IPC
- are considered by an ABF officer to require the attention of a secondary clearance officer (for example, because a baggage search may cast doubts on the bona fides of a Visitor (FA-600) visa holder).

In such circumstances, the passenger should have their passport, an IPC and their SmartGate ticket, which should be provided to the secondary clearance officer.

4.44. Referrals - Australian citizens

Clearance must be expedited

Clearance of Australian citizens should be expedited as far as possible. In this instruction:

- paragraph Arriving Australian citizens
- paragraph Departing Australian citizens

outline, respectively, inwards clearance requirements and outwards clearance requirements for Australian citizens.

Under section 166(1)(a)(i) of the Migration Act, Australian citizens entering Australia must comply with section 166 by presenting to a clearance authority an Australian passport or 'prescribed other evidence of identity and Australian citizenship'. As no 'other evidence' has been prescribed, Australian citizens must usually show an Australian passport. An Australian citizen leaving Australia may be required to comply with section 175(1)(a)(i) of the Migration Act.

SmartGate will not accept any form of identity other than an Australian ePassport for an Australian citizen. Australian citizens who do not hold an ePassport are required to be processed manually by an ABF primary line officer.

A person without an Australian passport can demonstrate sufficient evidence of Australian citizenship (and therefore a clearance officer can know or reasonable believe that the person is an Australian citizen) by presenting:

- an Australian Document of Identity
- a non-Australian passport containing an Australian declaratory visa (ADV) that is in effect- see:
 - *PAM3: Act - Identity, biometrics and immigration status - Australian declaratory visas*
 - *PAM3: Act - Passports, travel documents and visa evidencing - Travel documents.*

Subject to meeting other requirements, these persons are to be immigration cleared without referral to a secondary clearance officer. In all other cases, persons claiming to be Australian citizens but who cannot

For Official Use Only

produce an Australian passport or do not hold an ADV that is in effect should be interviewed by a secondary clearance officer to verify the person's identity and citizenship status.

Australian citizens may also be referred to the primary line if SmartGate detects a chip authentication error in the ePassport. When the Australian ePassport holder proceeds to the primary line, the primary line officer will receive a message advising them that the passenger has been referred from SmartGate because of a chip error. This will require referral to a secondary clearance officer for further investigation of the ePassport at the PSP.

"Reasonable belief" provision

In the absence of an Australian passport, section 166(4) of the Migration Act allows a person to be cleared if a clearance officer 'knows or reasonably believes' that the person is an Australian citizen.

If a person claiming Australian citizenship is referred to a secondary clearance officer but is unable to provide **any** evidence of citizenship - including evidence as outlined in

Attachment B: Evidence of Australian Citizenship - the secondary clearance officer may ask the person to complete a statement that includes:

- full personal particulars (date and place of birth, father's name, mother's maiden name)
- any passport details
- dates of travel in and out of Australia
- particulars of acquisition of citizenship, including time of application, office lodged at, and place and date of conferral.

This information may be used to check the various systems, and, where appropriate, any relatives or authorities to assist in establishing a 'reasonable belief' as to the person's identity and Australian citizenship.

If the secondary clearance officer holds a reasonable belief that such a person is an Australian citizen, they should clear the person and should then forward the completed form 304 outlining the situation to the relevant departmental State and Territory Office for confirmation or otherwise of the person's Australian citizenship claims.

State of mind

Legislation may authorise an officer (whether in their own right or as a delegate) to exercise certain powers in specified situations. Many of these powers require an officer to establish a certain threshold of information and establish a required 'state of mind' (i.e. suspicion or belief) before the power can be exercised. As an Australian Border Force Officer, this concept of state of mind is important when considering your role.

Reasonable Belief

In terms of 'reasonable belief' discussed above, this means:

- Belief must be based on facts that would cause a reasonable person in the same position as the officer exercising power to hold that same belief
- The existence of the fact in question must be more than just possible but need not be a certainty
- You must possess knowledge as to the probability of the fact in question.

What does 'reasonable' mean?

The term reasonable is used in many different ways in common language. A common definition which is most akin to reasonable in the context of reasonable suspicion says that something is reasonable if it is: "supported or justified by fact or circumstance".

For Official Use Only

What is reasonable is the opinion or state of mind that a reasonable person would develop based on the same evidence available at the time in similar circumstances as the officer involved in the case. The reasonable person was created by the courts to assist them in assessing cases and to determine if peoples' action were in fact reasonable.

This reasonable person has traditionally been described (in English case law) as "the man on the Clapham omnibus": For Australian purposes this was translated by Justice Deane as "the hypothetical person on a hypothetical Bondi tram." It can be noted that both these suburbs were average middle class suburbs at the time the descriptions were made.

This reasonable person has been further described as being reasonably well educated (completed year 12), prudent and reasonably intelligent but a non-specialist person.

No power to detain Australian citizens under the Migration Act

There is no power under the Migration Act to detain an Australian citizen. The only powers to detain a person are section 189 (unlawful non-citizens) and section 192 (visa liable to cancellation) of the Migration Act.

Section 189(1) of the Migration Act requires an officer to detain any person in the migration zone who they know or reasonably suspect to be an unlawful non-citizen. An officer could, under the grounds provided in section 190 of the Migration Act, reasonably suspect an undocumented person claiming to be an Australian citizen to be an unlawful non-citizen (see paragraph [Summary removal](#)).

Section 190(1) provides that one of the grounds upon which an officer may 'reasonably suspect' that a person is an unlawful non-citizen for the purposes of detention is that the officer knows, or on reasonable grounds suspects, that a person is required to comply with section 166 of the Migration Act but:

- bypassed, attempted to bypass or appeared to attempt to bypass immigration clearance
- did not or was unable to provide evidence of their identity to a clearance officer
- did not or was unable to provide required information (that is, an IPC) to a clearance officer
- went to a clearance officer but was not able to comply with, or did not otherwise comply with any requirement referred to in section 166 to provide one or more personal identifiers to the clearance officer.

If an officer has taken a person into immigration detention because of section 190, section 191 of the Migration Act requires that person to be released if:

- they give evidence of their identity and Australian citizenship
- an officer knows or reasonably believes that the person is an Australian citizen. In order to establish such a reasonable belief, officers should follow the procedures on "Reasonable belief" provision
- Complies with section 166 and presents evidence of being a lawful non-citizen or is granted a visa.

Australian citizens who refuse to complete an IPC, bypass immigration clearance (section 172(4)).

4.45. Referrals - non-citizens

Under section 166(1)(a)(ii) of the Migration Act, a non-citizen who enters Australia must comply with section 166 by showing a clearance authority evidence of identity and a visa.

Non-citizens who cannot comply with section 166 are to be referred to the secondary clearance officer the ABF primary line officer in accordance with the procedures outlined in the Passenger Clearance Course.

4.46. Information sought from referred passenger


Overview

A secondary clearance officer should interview referred passengers to establish:

- the person's identity and citizenship
- if the person is a non-citizen, whether they hold a visa for entry to Australia and
- if the person is a non-citizen the purpose of the person's travel to Australia

If the person is, or is thought to be, a non-citizen, the secondary clearance officer must establish (as relevant):

s. 47E(d)



If a passenger who is the subject of a referral is delayed and that person advises the secondary clearance officer that they are being met by someone at the airport, the secondary clearance officer should, if requested by the passenger, notify anyone waiting for the passenger that the passenger has been delayed.

Relatives or other contacts mentioned by the passenger may be interviewed (by phone if they are not at the port) to confirm the person's claims or statements.

Questioning detention

Section 192 of the Migration Act provides the power for "questioning detention".

The purpose of questioning detention is to enable an officer to question a non-citizen regarding their visa and matters relevant to the visa. Questioning detention is to be used only if the officer knows, or reasonably suspects, that a non-citizen holds a visa that may be liable for cancellation under Subdivision C, D, FA, or G of Division 3 or section 501, 501A or 501B.

For Official Use Only

A visa holder who is interviewed or questioned by an officer about basic details concerning their identity or immigration status while presenting for primary clearance is **not** taken to be in questioning detention. However, if in the course of that preliminary questioning the officer forms a reasonable suspicion that the person's visa is liable to be cancelled under section 116 of the Migration Act, the visa holder may at that time be taken into questioning detention.

If an officer places a person into questioning detention, the person (being a detainee under the s192 Migration Act) must be released within 4 hours of being detained, unless the detainee's visa is cancelled in which case, the person must be detained under section 189. The 4 hour period does not include:

- travel to an appropriate place for questioning
- any period of time during which the questioning was suspended or delayed
 - so that the detainee or someone else on the detainee's behalf could communicate with a representative, friend, relative, guardian, interpreter or consular representative
 - to allow the person so communicated with third party (eg the representative, friend or relative etc) or an interpreter required by an officer to arrive at the place where the questioning is to take place
 - to allow the detainee to receive medical attention
 - because of the detainee's intoxication
 - to allow the detainee to rest or recuperate.

It is possible to detain a visa holder more than once **provided** the period of detention does not exceed 4 hours in total in any 48 hour period (section 192(6) of the Migration Act). If a decision regarding visa cancellation cannot be reached within this time the detainee must be released - see *PAM3: Act - Compliance and Case Resolution - Cancellation - General visa cancellation powers (s109, s116, s128 and s140)*. See *PAM3: Consideration of Questioning Detention (s.192) in Immigration Clearance for further guidance*.

4.47. Power to search

Section 252 of the Migration Act gives an authorised officer the power to search, without warrant, a person and their clothing and property in certain circumstances - namely:

- the person is a non-citizen who has been detained in Australia
 - the person is a non-citizen who has not been immigration cleared
 - an authorised officer has reasonable grounds for suspecting there are reasonable grounds for cancelling the person's visa
 - In order to exercise the search power in section 252 in immigration clearance, the purpose of the search must be 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 escape from immigration detention
- a document or other thing that is, or may be, evidence for grounds for cancelling the person's visa.

The power in section 252 does not permit an authorised officer or another person to remove any of the person's clothing, or to require a person to remove any of his or her clothing.

See:

- *PAM3: Act - Compliance and Case Resolution - Compliance - Field visits*

For Official Use Only

- *PAM3: Act – Compliance and Case Resolution - Compliance -The Compliance Program.*

There is limited scope for seizure of travel documents under section 251 and section 252 of the Migration Act with search warrants; officers should seek guidance on the application of these powers from

s. 47E(d)

Wherever possible, including situations where a warrant has been obtained under section 251(4) (warrant for search of a vessel), or where a search has been conducted without a warrant under section 252, any

s. 47E(d)

4.48. Referrals - identity irregularities

Section 166 of the Migration Act imposes an obligation on persons to provide true evidence of identity in immigration clearance, usually in the form of a valid and acceptable passport - see *PAM3 : Act - Passports, travel documents and visas evidencing - Travel documents*.

Regulation 3.03, made under section 166(3) of the Migration Act, prescribes the way in which certain persons will comply with immigration clearance and recognises that not all persons will need to provide a passport. For example, certain categories of persons who are taken to hold an SPV are not required to present a passport. These persons may be subject to the immigration clearance provisions referred to in Parts 1 and 2 of Schedule 2 to the Migration Regulations. These procedures are discussed in *PAM3: Act - Act based visas - Special purpose visas*.

Under section 188, an officer may require a person who the officer knows or reasonably suspects is a non-citizen to show the officer evidence of being a lawful non-citizen; this includes “evidence of identity”.

- Regulation 3.03 of the Migration Regulations requires a non-citizen in immigration clearance to comply immediately (The requirement to comply can be either oral or in writing)
- If the non-citizen does not give the required evidence, this may give rise to reasonable suspicion that the person is an unlawful non-citizen and lead to summary removal - see:
 - paragraph Summary removal
 - *PAM3: Act - Compliance and Case Resolution - Compliance - Immigration detention and the powers to detain.*

4.49. Suspected forged or fraudulent documentation

Clearance officers are trained to be alert to the possibility of forged or fraudulent travel documents, visa labels and other endorsements. If they suspect a person of presenting at the primary line either a non-genuine/bogus document or a genuine, but altered, document, the person must be referred to a secondary clearance officer.

Suspected bogus or fraudulent travel documents must not be endorsed in any way - see:

- *PAM3: Act - Passports, travel documents and visas evidencing - Travel documents*
- *PAM3: Act - Identity, biometrics and immigration status - False identities and/or bogus documents.*

s. 47E(d)

s. 47E(d)

If the officer is satisfied that the document is genuine but has been altered, the document should **not** be used to remove the person from Australia. Annex 9 to the Convention on International Civil Aviation 1944 (the Chicago Convention) provides, amongst other information about standards and recommended practices for clearance, the authority for the seizure and return to the rightful authorities of travel documents presented by a person impersonating the rightful holder of the travel document:

- The officer should then attempt to arrange with the authorities of the person's country of citizenship in Australia to secure a new travel document for the person's removal (provided the person does claim to be a refugee or raises claims of harm against this country of origin – see section Asylum Seeker Claim within section 4.51 below)
- If it is not possible to obtain another travel document within an acceptable time, the officer should issue the passenger with departmental form 894 (Document Issued in Accordance with Annex 9 of the Chicago Convention) - see:
 - paragraph Summary removal
 - *PAM3: Act - Passports, travel documents and visas evidencing - Travel documents.*

s. 47E(d)

4.50. Referrals stemming from visa irregularities

Arrivals without a visa

Under section 42 of the Migration Act, a non-citizen must not travel to Australia without a visa that is in effect, unless specifically exempted under subsection 42(2), 42(2A) or 42(3). Doing so would make the person an unlawful non-citizen on arrival in Australia and subject to detention and removal.

Arrival of a non-citizen by sea without a visa that is in effect would make the person both an UMA and an unlawful non-citizen, unless they are an excluded maritime arrival under section 5AA(3) of the Migration Act.

A carrier (airline or shipping company) that brings a non-citizen to Australia who does not hold a visa (in circumstances where the person requires a visa) may also be taken to commit an offence against section 229 of the Migration Act and is liable, upon conviction, to a fine not exceeding 100 penalty units (a

For Official Use Only

penalty unit amount is stated by s.44AA of the crimes Act 1914). In most cases, carriers are fined as an alternative to prosecution (at the time of publication the fine amounted to AUD 5 000 per passenger - see *PAM3: Act - Arrival, immigration clearance and entry - Carrier obligations and offences*).

To reduce carriers' exposure to such penalties, the department encourages carriers to check, before allowing them to board, that non-citizens travelling to Australia hold visas that are in effect. International passenger cruise ships (as defined in regulation 3.13 of the Migration Regulations) and most airlines are required to perform APP checks to ensure passengers have the authority to enter Australia.

Before serving an infringement notice on a carrier, a secondary clearance officer should undertake relevant checks (such as reviewing the ETA audit log) to determine the APP checks (if any) the carrier undertook. If it can be established that the carrier conducted the appropriate APP check and followed the immigration directive (see section *General referral procedures*), the carrier would generally not be served a section 229 infringement notice, even if on arrival the passenger is found not to hold a visa. See *PAM3: Act - Arrival, immigration clearance and entry - Carrier obligations and offences*.

As MCVs are not valid for air travel to Australia, foreign sea crew and any partner/dependent children who arrive by air also need to hold a visa that is valid for air travel. If an MCV holder arrives by air and does not hold an appropriate visa for air travel, their MCV will, by operation of law, immediately cease, unless:

- they have received uplift approval from BOC
- they have been brought to Australia for urgent medical treatment or following rescue at sea (sections 43(1A) of the Migration Act and 43(1B) together with regulation 2.06AAA(4) of the Migration Regulations).

Persons whose visa has ceased

A person whose visa has ceased has no visa that is in effect and should be processed accordingly (however, officers should interrogate systems to ensure the person does not hold another visa, such as an ETA, possibly on a different PID record). Before considering granting an ETA or Border visa to facilitate the person's entry, officers should question the person to determine whether they have complied with conditions of visas held previously.

There may also be situations where persons, such as yacht crew, who have completed immigration clearance on outwards boarding under section 175 of the Migration Act but do not leave the migration zone have a visa that has ceased. Officers should refer to the BOC for further advice.

Minors without a visa

If a minor is referred because a visa cannot be located in the system, the secondary clearance officer should interrogate departmental systems to determine whether the minor holds a visa.

In the case of returning Australian permanent residents, officers must establish if the child is an Australian citizen - see paragraph *"Reasonable belief" provision*.

If the minor is a non-citizen, check whether they are eligible to be granted an ETA or Border visa in immigration clearance - the parent(s) should be permitted to apply for a visa on behalf of the child.

In certain circumstances, the carrier may be served an infringement notice for bringing a minor to Australia who does not hold a visa - see *PAM3: Act - Arrival, immigration clearance and entry - Carrier obligations and offences*.


Visa condition not met

In some cases, a person may arrive holding a visa with a condition that a clearance officer must confirm with the visa holder. These include visa conditions 8515 'not to marry before initial entry' and 8502 'not to enter Australia before the entry of [a person specified in the visa]'.

For Official Use Only

If the person has not met, or is unable to meet, that initial entry condition (See *Procedural Instruction: Sch8 - Visa conditions - Breach of entry-related visa conditions (inc. entry date)*), they are to be referred to a secondary clearance officer, who should attempt to ascertain the following:

s. 47E(d)



Cancellation of a visa for breach of either of the above conditions is **discretionary** and it may not be appropriate to cancel the visa and refuse immigration clearance on these grounds unless there are good reasons for doing so in all the circumstances.

Given that a decision **not** to cancel will rely to a large extent on the visa holder's statement, they should be warned of the possibility of their visa being cancelled (under section 109 of the Migration Act) after their entry should their statement prove to be incorrect.

If possible, the relevant overseas post should be contacted to corroborate and/or supplement the visa holder's statement. If an officer **does** decide that the visa should be cancelled, the appropriate section for cancellation is section 116(1)(b) of the Migration Act.

SmartGate will refer to a primary line officer for verification any passenger who holds a visa with such a visa condition attached.

Event-based visas

Several visas, including:

- Bridging B (WB-020)
- Partner - Provisional (UF-309)
- Dependent Child (TK-445)
- Partner (UK-820)
- Maritime Crew (ZM-988)

have their visa period and/or the period of stay limited by an event rather than a date.

Reasons for this "event-based" format include:

- dependency on another visa holder, as with the TK-445 visa (TK-445 visa holders are dependent children of UK-820 visa holders)

For Official Use Only

- the visa period being limited by the result of another immigration or review application that is not finalised and for which it is therefore not possible to specify a date for the visa period.

In most of these cases the notification procedures set out in the Act will ensure that the visa holder is notified if their visa ceases. (In the case of the UK-820 visa, the visa will cease on grant of Subclass 801 visa or on notification of the decision to refuse the application for a Subclass 801 visa).

If the event to which the visa period is tied has occurred and, it follows, the visa has ceased, the person may be refused immigration clearance, because they no longer hold a visa that is in effect (although the grant of a Border visa or ETA should be considered for eligible persons). Detention and removal provisions will apply to the person if the officer is satisfied that the person does not hold another visa that is in effect.

Consideration should be given to issuing a section 229 infringement notice to the carrier that brought the person to Australia without a visa - see:

- section [Summary removal](#)
- *PAM3: Act - Arrival, immigration clearance and entry - Carrier obligations and offences.*

A MCV does not permit travel to Australia by air (section 38B(2) of the Migration Act) unless BOC uplift approval is given or in medical emergency or rescue at sea situations (section 43(1A) and section 43(1B)). The MCV can, however, co-exist with other temporary visas, so it does not cease if the holder is granted a visa to arrive in Australia by air - see section 82(2AA).

An MCV is granted for a period of 3 years (Regulations Schedule 2 clause 988.512 table item 4 of the Migration Regulations); however, the period for which it is **in effect** is subject to certain events that may affect that visa period. For a full list on events affecting the MCV, see Regulations Schedule 2 clause 988.512 of the Migration Regulations.

Visa applications in immigration clearance

Migration law provides for certain classes of visa to be applied for and granted in immigration clearance. Schedule 1 of the Migration Regulations specifies which visas can be applied for in immigration clearance – see further discussion below.

Special Category visa (SCV)

Persons who are New Zealand citizens do not require a visa to **travel** to Australia; they apply for their visa - and have a decision to grant or refuse the visa, made, recorded and evidenced - in immigration clearance. (New Zealand citizens may also have an application for an SCV decided outside immigration clearance).

Electronic Travel Authority (ETA)/Border visa

Secondary clearance officers may grant persons in immigration clearance an ETA or Border visa (if eligible) to facilitate the person's entry to Australia. In the maritime space, unauthorised maritime arrivals are ineligible for any visa including an ETA (UD-601) or Border (TA-773) visa in immigration clearance.

If a person in immigration clearance has been assessed as eligible for an ETA, the grant and record of the decision is made through the Referrals System or Border Security Portal (BSP).

If a person in immigration clearance has been assessed as eligible for a Border visa, the passenger should complete Form 871 (Border Visa Application) (translations of which are available in various languages).

Asylum seekers

See section [Referrals of persons seeking protection](#).

Persons with asylum claims might seek protection and this should be considered in immigration clearance at an airport (in the maritime space, if an unauthorised maritime arrival claims to engage Australia's protection obligations, they are subject to transfer to a regional processing country before their claims are assessed).

Criminal Justice Stay Certificate (CJSC)

It is possible for a person who is refused immigration clearance but whose presence in Australia is determined at the border to be required for a criminal justice purpose to be granted a criminal justice stay certificate (CJSC) under section 147 or 148 of the Migration Act.

If a visa is granted

If a visa is granted in immigration clearance, the person must be immigration cleared. If a visa application by an unlawful non-citizen cannot be decided in immigration clearance - for example, an asylum seeker – the person:

- is to be refused immigration clearance
- must be detained under section 189 of the Migration Act and taken to an appropriate place of detention
- must be detained under section 189 of the Migration Act until the visa is granted or they are granted a bridging visa.

See *PAM3: Act - Compliance and Case Resolution - Compliance - The Compliance Program* for further guidance. Officers should maintain close liaison with custody officers to ensure that they are informed of any valid visa applications made while a detainee is waiting for removal.

Referrals of persons seeking protection on arrival at airports

Any person arriving in Australia by air who indicates an intention to seek protection under Australia's non-refoulement obligations under international law), or who otherwise states that they fear returning to their country of citizenship or usual residence or claim to be a refugee, should be referred to a secondary clearance officer and subsequently interviewed. The interview will assist in determining whether the person should be immigration cleared, or further interviewed (undergo a "border entry interview") to explore the nature of their claims.

The border entry interview:

- must be completed if the person is in immigration clearance and indicates they intend to make protection claims
- establishes why the person has travelled to Australia and explores in further detail any fear of harm raised
- records any information that may assist the screening officer consider whether these reasons warrant further consideration against Australia's protection obligations.

All interviews should be recorded and retained on file.

The interview is considered by the screening delegate, who is the Duty Officer: Director, HPO Branch, Refugee, Citizenship and Multicultural Programs Division.

Based on the information provided at the border entry interview, the screening officer will consider whether the person's reasons for travelling to Australia warrant the person remaining in Australia pending further consideration against Australia's protection obligations.

This will result in the person being either "screened in" or "screened out":

- screened-in persons will be detained and transferred to a place of detention, from where they will have the opportunity to have their claims considered through a protection status determination process
- screened-out persons will be the subject of summary removal if their visa is cancelled - for example, on the basis that the reason for the grant of the visa no longer exists – see section 4.55 Summary removal.

For Official Use Only

Regardless of the outcome of the screening process, secondary clearance officers should ensure that these persons are dealt with sensitively. For detailed guidance on procedures for border asylum claims, officers should refer to:

- the Protection Visa Procedures Advice Manual – Unauthorised arrival entry screening
- Procedural Instruction: *Managing Claimants for Protection*.

For information on persons who seek asylum on arrival at a **seaport**, see section Unauthorised maritime arrivals (UMA).

It is not uncommon for asylum seekers to arrive at an airport without documents, having destroyed whatever documents they held before arrival. Often they will claim not to know which flight they travelled on.

If the person presents without a travel document, or with a potentially fraudulent or altered travel document, the entry officer should establish which carrier brought the asylum seeker to Australia; this is for the purposes of imposing penalties on the carrier (where appropriate) as well as assisting in the general verification of the person's claims.

s. 47E(d)

In any case, if an officer determines that an asylum seeker (or several asylum seekers) arrived on a particular flight and the claimant is not listed on the flight's passenger manifest, the officer should consult Traveller Operational Policy, via email to s. 47E(d) before serving an infringement notice under section 229 of the Migration Act on the carrier.

Persons answering "Yes" to the IPC health or character questions

"Do you have tuberculosis?"

Non-citizens who answer "Yes" to the question "Do you have tuberculosis?" on their IPC but whose entry does not generate a systems referral should be referred manually to a secondary clearance officer, who should seek advice from the relevant State/Territory medical contact or Global Health (see the "Suspected Tuberculosis" pages on Bordernet, which also includes the State/Territory medical contracts and Global Health's contact information).

A non-citizen who, at the SmartGate kiosk, declares "Yes" to the question relating to tuberculosis will be referred to a primary line officer for manual processing.

s. 47E(d)

. If, after immigration clearance, a person is granted a visa in Australia (for example, after medical review by organisations such as Global Health and the department's migration medical services provider) for a limited stay period, s. 47E(d) by the BOC to reflect the person's current health status.

If the person leaves Australia and subsequently re-enters, they will usually be immigration cleared without referral. However, if a visa is granted to the person s. 47E(d) by the BOC to reflect the person's current health status, they will be referred to the department on entry to Australia. Officers must interview them to determine if they are receiving treatment and are carrying and taking their medication.

For Official Use Only

If the person is not receiving medical treatment, the officer should immigration clear the person and record the person's residential address and contact phone numbers on the form 304. For further assistance, refer to the "Suspected Tuberculosis" pages on Bordernet.

Health undertaking

Only a Medical Officer of the Commonwealth can issue a health undertaking. If there are concerns regarding a person with suspected tuberculosis, officers should contact the relevant State/Territory medical contact or Global Health for advice. A list of medical contacts is on Bordnet.

In addition to completing the Form 304, officers must notify the case by email to Immigration Health Branch s. 47E(d) with the subject line - "Attn: Health - Suspected TB."

"Do you have any criminal convictions?"

s. 47E(d)

Those details should be noted in writing and the person asked to confirm their account of these factors by signing the record (for the pro forma for this purpose, see

Attachment D: Character history details form.

This information should be taken into account in considering whether to cancel the person's visa (or refuse the person a visa) - see *PAM3: Act - Compliance and Case Resolution - Cancellation - General visa cancellation powers (s109, s116, s128 and s140)*. If it is determined that the person's circumstances do not require the visa to be cancelled, officers should re-commence immigration clearance procedures.

For guidance on SCV applicants who answer "Yes" to the question "Do you have any criminal convictions?" see *Procedural Instruction: Sch2Visa444 - Special Category - Behaviour concern*.

s. 47E(d)

Person refusing to complete an IPC or sign the declaration

Any passenger (whether a non-citizen or an Australian citizen) who refuses to complete an IPC must be referred to a secondary clearance officer. If a language difficulty prevents completion of the IPC, officers should make arrangements to assist the person, either by providing an IPC in the person's preferred language (if available) or by providing access to an interpreter - see *PAM3: Act - Arrival, immigration, clearance and entry - Passenger cards*.

Regulation 3.08 of the Migration Regulations provides that a person who is required to complete a passenger card is liable for a penalty if they fail to do so. (A fine not exceeding 10 penalty units may be imposed.) If such a person refuses to complete a passenger card, the officer should explain the penalty and again invite them to complete the card. If the passenger still refuses to complete the card, officers should make a note of the person's address to enable a summons to be served. See *PAM3: Act - Arrival, immigration, clearance and entry - Passenger cards*.

SmartGate users will also complete an electronic declaration regarding health and character questions at the kiosk, as well as completing a (paper) IPC for collection at the back of hall. If a SmartGate user answers "Yes" to health and/or character questions on the kiosk touch screen, they will be referred to the primary line for manual processing.

A person who has been processed by SmartGate may be referred to a secondary clearance officer from the back of hall where the IPCs are collected for SmartGate users if they:

- refuse to complete or provide a completed IPC

- do not have an IPC.

In such circumstances, secondary clearance officers are to follow the above procedures in requesting the passenger to complete the IPC, or obtaining contact details to enable a summons to be served, where applicable.

Suspected non-bona fide travellers

A non-citizen may be referred to a secondary clearance officer for examination of their bona fides in several ways:

s. 47E(d)

In such cases, a secondary clearance officer:

- must assess any evidence obtained and whether there are grounds for cancelling the person's visa and refusing the person immigration clearance and, if so
- should follow the guidelines set out in paragraph When is a person refused immigration clearance.

4.51. Outwards referrals

All persons

Apart from all systems-generated referrals, ABF clearance officers must also manually refer to a secondary clearance officer outgoing passengers:

- who are seeking to return landside across the ABF barrier after having been processed for outwards clearance
- for whom there are any concerns as to the person's identity or the authenticity of the travel document presented.

Although section 175(1)(b) of the Migration Act provides that a person may be required to give any information prescribed by regulation of the Migration Regulations, the Act provides no power to prevent a person from leaving Australia.

Temporary visa holders who have remained in Australia longer than the period of stay authorised by their visas should be referred to a secondary clearance officer.

For Official Use Only

The officer should inform the person that their visa has ceased under section 82 of the Migration Act. If a multiple entry visa is held and evidenced by way of a visa label in the travel document, the visa label should be stamped "Label Inoperative" (because the visa has ceased under section 82).

Information obtained during an interview should be recorded on a Form 304. Relevant pages of the travel document should be attached to the report. s. 47E(d) and a file created.

The person should be advised of the implications of overstaying and of the possibility that an exclusion period for future travel to Australia may apply - see *PAM3: Act - Compliance - National strategies - Exclusion periods - Request for further information*.

Non-citizens who bypassed inward clearance

If a secondary clearance officer finds, on the facts, that a non-citizen upon entering Australia bypassed immigration clearance, any visa they may have held ceased to be in force under sections 173 or 174 of the Migration Act. Such a person is an unlawful non-citizen and subject to detention until their departure from Australia.

The secondary clearance officer should follow the same procedures as described above to ensure that the s. 47E(d) and that, if applicable, their visa label is defaced. For further procedural advice see paragraph Summary removal.

Persons with expired passports

Persons travelling on an expired passport should be referred to the carrier company for consideration for boarding. A Form 304 should be completed and the person allowed to depart, if the carrier is still willing to take them.

If a clearance officer suspects the person has presented a false or fraudulent passport or visa or other endorsement, the person must be referred to a secondary clearance officer. See:

- paragraph 4.49 Suspected forged or fraudulent documentation
- paragraph 4.47 Power to search (if a warrant for search of a vessel has been obtained under section 251(4))
- Procedural Instruction: *Identity, biometrics and immigration status - False identities and/or bogus documents*.

If an interview reveals the person is an unlawful non-citizen, the person is subject to detention until their departure from Australia.

Persons returning landside

A person or group of persons may seek to return across the Outwards Control Point after they have been processed for outwards clearance because they need urgent medical attention or the flight on which they were departing has been cancelled.

If a person can provide a secondary clearance officer with reasonable grounds for their return across the barrier, the officer may permit them to cross. If permission is given, the officer must ensure the person passing back across the barrier continues to have the immigration status they held immediately before they were processed for outwards clearance.

Upon giving them permission to cross the barrier, the officer must ensure that the departure stamp in the person's passport is stamped "did not depart" and the person's outwards movement is cancelled on the PACE system. In permitting a passenger to cross the barrier:

- a person departing the country in detention must remain in, or return to, detention upon passing back across the barrier

For Official Use Only

- a person who, upon passing back across the barrier, would become an unlawful non-citizen (for example, persons leaving with “expired” visas) must, before crossing the barrier, be granted an appropriate bridging visa, generally in consultation with Compliance - see:
 - Procedural Instruction: *Processing Aborted Flights*
 - Procedural Instruction: *Sch2 Bridging visas - Visa application and related procedures*
 - Procedural Instruction: 3: Act - *Compliance and Case Resolution - Program visas - Bridging E visas*.

Referral reporting procedures

If, following a referral assessment, a secondary clearance officer decides to immigration clear the person, the officer must record their decision and the reason for the decision in a Form 304.

If PACE/TRIPS is not operational (for example, at most seaports), a movement must be generated through the Front End System for an electronic referral record to be created.

The Form 304 - or a screen capture of it - together with photocopies of relevant pages of the travel document, visa, passenger card and any other relevant documents, may be kept on a regional office file.

PART J: Refusal of Clearance, Detention and Summary Removal

4.52. Overview

What is summary removal

Generally, under section 198(2) of the Migration Act summary removal of a non-citizen will be required if they are refused immigration clearance.

A non-citizen in the migration zone who does not hold a visa is an unlawful non-citizen. Under section 189 of the Migration Act, an officer must detain a person who is known, or is reasonably suspected to be an unlawful non-citizen. Under section 198(2) of the Migration Act, summary removal must take place as soon as reasonably practicable to ensure quick and efficient removal of persons who have no lawful right to enter or remain in Australia.

Review of decisions

Decisions made in immigration clearance are not merits-reviewable decisions (see section 338 of the Migration Act) but may be subject to judicial review.

4.53. Refused immigration clearance

“Refused immigration clearance”

“Refused immigration clearance” is a status under the Act that takes effect under circumstances specified by section 172(3) of the Migration Act. The status can be applied up until the time the non-citizen passes beyond the perimeter of the port or prescribed place for clearance.

Under section 172(3), a non-citizen is refused immigration clearance if they are in immigration clearance with a clearance officer and have either:

- refused to, or are unable to, show a clearance officer evidence of their identity and a visa, as required by section 166(1)(a)
- refused to, or are unable to, give a clearance officer the information required on an IPC as required by section 166(1)(b)

For Official Use Only

- had their visa cancelled in immigration clearance and have not been subsequently granted another visa
- refused to, or cannot, comply with any requirements referred to in section 166(1)(c) to provide one or more personal identifiers to a clearance officer (refer to Traveller Policy Section if such cases come to attention prior to a decision to refuse).

See section When is a person refused immigration clearance.

Australian citizens

Australian citizens **cannot** be refused immigration clearance. If a person in immigration clearance claims to be an Australian citizen, but cannot provide an Australian passport as evidence in support of that claim, a secondary clearance officer is to examine the person's claim. Clearance of Australian citizens should be expedited as far as possible.

See paragraph Referrals - Australian citizens.

4.54. Detention of unlawful non-citizens

Determining whether a person is an unlawful non-citizen

A non-citizen who arrives at the immigration clearance point without a visa, or whose visa has been cancelled or has otherwise ceased to be in effect – and subject to the exceptions listed in section Grounds for detention:

- must be referred by the clearance authority to a secondary clearance officer
- should be interviewed to obtain information on their reasons for travelling to Australia without authority (that is, a visa).

If there are grounds to do so, their baggage may be searched (for example section 252 of the Migration Act).

Under section 190 of the Migration Act, an officer is empowered to detain a person under section 189 of the Migration Act if the officer has reasonable grounds for suspecting the person:

- is an unlawful non-citizen
- is or was required to comply with section 166 and
- did one or more of the following:
 - bypassed, attempted to bypass, or appeared to attempt to bypass, immigration clearance
 - went to a clearance authority (either a clearance officer or an automated system) but was unable to present, or otherwise did not present, evidence that section 166 required to be presented
 - went to a clearance authority (either a clearance officer or an automated system) but was unable to provide, or otherwise did not provide, information that section 166 required to be provided
 - went to a clearance officer but was not able to comply with, or did not otherwise comply with, any requirement referred to in s166 to provide one or more personal identifiers to the clearance officer.

Information given to detainee

Section 193 of the Migration Act provides that sections 194 and 195 do not apply to certain individuals. In summary section 193 applies to persons detained under section 189(1) and either refused immigration clearance or prevented from leaving a vessel at a seaport under section 249. Sections 194 and 195 provide

For Official Use Only

that certain information must be provided to a detainee. Where an individual is captured by section 193 it means that an officer does not need to provide:

- advice as to whether they may apply for a visa or what the application process is
- an opportunity to apply for a visa
- access to advice (legal or otherwise) in connection with applications for visas.

It also means that the individual captured by section 193 does not:

- benefit from the concessionary time limits for visa application (for example, between 2 to 5 days) provided for by section 195 of the Migration Act or
- have to be informed of the period of detention and the summary removal process.

In respect of these provisions, officers should also be aware that in limited circumstances, for example, compelling reasons or circumstances beyond the person's control, it may be open to the secondary clearance officer to grant a border visa and immigration clear the person.

For further guidance on Border visas, see *Procedural Instruction: Sch2Visa773 - Border*.

Once a passenger is detained, if the passenger so requests, a secondary clearance officer must advise of the person's right to access consular advice (in accordance with the 1963 Vienna Convention on Consular Relations (Vienna Convention)) and legal advice (in accordance with section 256 of the Migration Act), and provide that access if requested. The officer should provide the person with application forms or afford all reasonable facilities for making a statutory declaration or for obtaining legal advice or taking legal proceedings in relation to their immigration detention - see *PAM3: Act - Compliance and Case Resolution - Compliance - Immigration detention and the powers to detain*.

For further information about protocols for contacting the detainees embassy see section Protocols for detaining a foreign national.

Grounds for detention

Under section 42 of the Migration Act non-citizens must hold a visa to travel to Australia.

Exceptions to this rule are in sections 42(2), 42(2A) and 42(3) of the Migration Act and regulations 2.06.

For further information on the above classes of person, who are exempt from the requirement to hold a visa to travel to Australia, see:

- Procedural Instructions: *Act - Outside the migration zone - Allowed inhabitants of the protected zone*
- Procedural Instruction: *Sch2Visa444 – Special Category*.

A non-citizen in the migration zone who does not hold a visa is an **unlawful non-citizen**. Under section 189 of the Migration Act, an officer must detain a person who is known, or is reasonably suspected to be an unlawful non-citizen.

See section Non-citizens for further information on circumstances that make a non-citizen unlawful.

No power to detain an Australian citizen

Officers should do their utmost to avoid detaining Australian citizens or persons they reasonably believe to be Australian citizens. There is no power under the Migration Act to detain Australian citizens, only the power:

- to detain a person who is suspected of being an unlawful non-citizen section 189

For Official Use Only

- to detain for questioning detention a person who is the holder of a visa which may be liable for cancellation (section 192) . This may, on rare occasions, include an Australian citizen who is unable to establish that they are a citizen.

The most likely scenario in which an Australian citizen is detained is when a person travelling on a foreign passport is unable to establish to the reasonable satisfaction of a clearance authority that they are an Australian citizen (section 166(4)).

As a final safety net, section 191 requires the release from immigration detention if, apart from any evidence of identity or Australian citizenship, an officer is otherwise satisfied that the person is an Australian citizen.

See section [Referrals - Australian citizens](#) for further information on clearance procedures for Australian citizens.

No review

There is no merits review of a visa application decision made in immigration clearance, or of refusal of immigration clearance (officers should refer to section 338 of the Migration Act, decisions reviewable by the Administrative Appeals Tribunal in the and Refugee Division the Migration Review Division of the AAT, for further guidance). However, officers should note that decisions taken in immigration clearance may be judicially reviewable.

Detaining non-citizens at an airport

Where practical, the person may be detained in the airport (for example, the transit lounge) until removal on the relevant airline. It should be noted that in such a case, the definition of **immigration detention** in section 5(1)(a) of the Migration Act applies.

If it is not practical to keep the person at the airport - for example, in cases where the next available flight for the removal of the person is not for some days - the person should be taken to the nearest immigration detention centre or other suitable place of custody in consultation with the Detention Regional Manager, where required. See *PAM3: Act - Compliance and Case Resolution - Compliance - Immigration detention and powers to detain*.

All baggage and belongings should accompany the person to the place of detention.

Young children who are subject to detention and removal should not be separated from a parent. See *PAM3: Act - Detention Services Manual* for further guidance on dealing with minors in immigration detention.

Authorised officers will need to complete:

- form V3A (Request for Officer to Hold in Immigration Detention)
- form 304 (Immigration Inspectors Report)
- form V8 (Notice of Carrier Liability Under section 213) and serve this form on the relevant airline
- form V2 (Notice to Remove Under section 217)
- form V4 (Infringement Notice), in appropriate circumstances, and serve this form on the relevant airline.

See *PAM3: Act - Arrival, immigration clearance and entry - Carrier obligations and offences* for further advice on forms and procedures.

Detaining non-citizens at a seaport

A non-citizen who does not comply with section 166 of the Migration Act and is refused immigration clearance is an unlawful non-citizen. They must be detained under section 189 of the Migration Act.

If an unlawful non-citizen is detected at a seaport, clearance authorities must inform a Regional Seaports Officer (RSO) as soon as possible.

For Official Use Only

In many cases, it will not be practical for ABF officers to authorise the removal of the unlawful non-citizen to an immigration detention centre pending removal from Australia.

In this circumstance, officers may, under section 249 of the Migration Act, prevent the unlawful non-citizen from leaving the vessel on which they arrived. When that happens, the person is in immigration detention on the vessel (see (b)(iv) in the definition of **immigration detention** in section 5(1) of the Migration Act).

A person who arrives at a seaport in Australia and becomes an unlawful non-citizen because of that entry into Australia, and who is not an **excluded maritime arrival**, is an UMA.

Period of detention

Under section 191 of the Migration Act, a person detained on the basis that they bypassed, attempted to bypass or appeared to attempt to bypass, or did not comply with immigration clearance requirements (section 190) must be released when they:

- give evidence of their identity and Australian citizenship, or otherwise satisfy the officer that they are an Australian citizen
- comply with immigration clearance requirements (section 166) and either presents an officer evidence of a visa or is granted a visa in immigration clearance.

See:

- section Evidence of identity
- section Arriving Australian citizens

for further advice on evidence of Australian citizenship.

Section 196 of the Migration Act provides that an unlawful non-citizen must be kept in immigration detention until they are removed, an officer begins to deal with the non-citizen under section 198AD (3), deported or granted a visa. If the person has applied for a visa, release cannot be effected unless and until the visa has been granted, that is, when the person becomes a lawful non-citizen. .

Protocols for detaining a foreign national

Australia is a party to the Vienna Convention. Article 36(1)(c) of the Vienna Convention creates an obligation for Australia to ensure that foreign consular officers have access to their nationals who are in immigration detention in Australia provided the person consents and has not raised claims of harm against their country of origin (see section Asylum Seeker Claim within section 4.51 above). Consistent with these obligations, detainees must be informed of their right to:

- request consular access at any time
- receive consular access without delay
- refuse consular access at any time
- change their decision on consular access at any time.

Australia's bilateral agreements with China, Indonesia and Vietnam set out additional obligations and requirements for notification and access relating to the detention of those nationals.

Departmental officers must orally inform the nationals of the Vietnam

Indonesia and China that, **unless they explicitly request that their consular post not be notified**, their consular post will be advised that one of its nationals has been detained (without releasing identifying information) and the reasons for their detention.

Unless explicitly requested that consular contact not occur, departmental officers will ensure that the relevant consular post is advised of the detention of one of their nationals and the reasons for that detention.

Further information see: *Detention SOP – Consular Access*

4.55. Summary removal

Overview

Under section 198(1) of the Migration Act an unlawful non-citizen (including an unlawful non-citizen in immigration clearance) must be removed from Australia as soon as reasonable practicable if they make a written request to be removed. Further information see: *PI Summary Removal – TRIM OPD20177/152683*.

In addition, section 198(2) of the Migration Act provides for the removal from Australia of unlawful non-citizens who have been refused immigration clearance.

The person (“removee”) must also be removed as soon as reasonably practicable if they have been refused immigration clearance and detained under section 189(1) and have not subsequently been immigration cleared **and**

- have not made a valid application for a substantive visa that can be granted when the applicant is in the migration zone
- have made a valid application for a substantive visa that can be granted when the applicant is in the migration zone and that application has been finally determined (see section 198(2) of the Migration Act).

If an unlawful non-citizen detained in immigration clearance is not summarily removed within 72 hours, or there is identity or protection related concerns, arrangements should be made to transfer the detainee to a place of detention.

A section 217 notice should be issued to the carrier (that is, the master, owner, agent or charterer of the vessel) who brought the person to Australia. Section 217 of the Migration Act provides for a carrier to comply with the notice within 72 hours of the giving of the notice or such further time as the Secretary or Commissioner allows. A carrier will be exempt from complying with the notice in certain circumstances (see section 219 of the Migration Act).

In accordance with Annex 9 to the Chicago Convention, the aircraft operator who brought an ‘inadmissible person’ to Australia is responsible for removing that person to either the point the person commenced their journey, or to any place where they are admissible – see section Obligations under Annex 9 for the removal of inadmissible persons below.

Obligations under Annex 9 for the removal of inadmissible persons

Australia is a party to the Chicago Convention.

The Chicago Convention is supported by 18 Annexes, one of which is Annex 9 (Facilitation), which specifies international Standards and Recommended Practices for border clearance processes including travel documents, inadmissible persons and removal of deportees.

To view the complete Annex 9 document, see, in TRIM, ADD2012/641773.

In accordance with Annex 9 to the Chicago Convention, Contracting States including Australia agree to cooperate with one another in removing inadmissible persons (Standard 5.1 of Annex 9). The primary responsibility rests on the airline to effect removal via its own services or to make alternative removal arrangements in a reasonable time frame. This can include, for example, arranging the onward flight arrangements, necessary airline escorts and checking that the passenger is able to transit another State if required.

For further information on inadmissible passengers who are transiting see section Transit through Australia of inadmissible passengers.

For Official Use Only

Standard 5.9 of Annex 9, specifies that 'the aircraft operator shall be responsible for the cost of custody and care of an improperly documented person from the moment that person is found inadmissible and returned to the aircraft operator for removal from the State'.

Aircraft operators who bring an inadmissible person to Australia are required under Standard 5.11 of the Annex to return that person to either the point where they commenced their journey or to any place where they are admissible.

Contracting States agree to accept a person removed from a State where the person was found inadmissible if this person commenced their journey from its territory.

The term 'commencement of journey' is defined in Annex 9 as:

'the point at which the person began his/her journey, without taking into account any airport at which he/she stopped in direct transit, either on a through-flight or a connecting flight, if he/she did not leave the direct transit area of the airport in question'.

In other words, the point where the passenger commenced their journey is the point where they have been immigration cleared or entered a particular State. It is important to note that a return to the point of commencement of journey still requires a visa, if required by the relevant State.

For further information on commencement of journey see, in TRIM, ADD2013/1167539 Extract from the Annex 9 Facilitation Manual to the Chicago Convention.

If an inadmissible person is undocumented or improperly documented, difficulties may be experienced in obtaining suitable travel documents to enable the removee to transit through states and enter the State at which they commenced their journey. In an attempt to overcome such difficulties, together section 274 of the Act and regulation 5.33 of the Migration Regulations authorise the Secretary to issue a form of document to facilitate the carriage from Australia of unlawful non-citizens. This document is prescribed form 3 and is issued as departmental form 894 (Document issued in accordance with Annex 9 of the Chicago Convention).

For further information, see *PAM3: Act - Passports, travel documents and visa evidencing - Travel documents*.

If it is not possible to return a person to the point where they commenced their journey, the airline may choose to engage with the passenger to explore the best possible course of action and return the passenger to a place where they are admissible. The term 'any place where [the person] is admissible' is not defined in Annex 9, however it is interpreted as being the State of which the person is a citizen or for which they hold a visa or otherwise allowed to enter.

Summary removal timeframes and cost recovery

Standard 5.10 of Annex 9 allows the airline to recover costs from the passenger for transportation costs involved in the passenger's removal. Although the airline is not precluded from recovering costs, airlines should not unnecessarily delay the passenger's removal and should not abuse the provisions under section 217 of the Migration Act to intimidate or harass passengers to recover costs.

Section 217 of the Act requires a carrier to remove an inadmissible person within 72 hours of being notified or such further time as the Secretary or Commissioner allows. However, it is expected that this will be done as soon as is practicable, as it is in the best interests of that person.

Secondary clearance officers should cooperate with the airline to ensure that the removal occurs as soon as practicable and that the appropriate removal arrangements are put in place as a matter of priority.

Extending the detention of an inadmissible person purely to recoup the cost of a flight from a passenger would be contrary to Annex 9, particularly the requirement on Australia to preserve the dignity of inadmissible persons (Standards 5.2.1 of Annex 9). Therefore, an airline should first return the inadmissible person and subsequently / simultaneously seek to recover costs associated with that removal.

Transit through Australia of inadmissible passengers

As a party to the Chicago Convention, Australia should 'facilitate the transit of persons being removed from another State and extend necessary cooperation to the aircraft operator(s) and escort(s) carrying out such removal' (Standard 5.2 of Annex 9).

It is the responsibility of the airline and the removing State to ensure that a passenger is able to transit another State. Therefore, if an inadmissible person is transiting through Australia to a third country, the removing State must ensure that an appropriate visa is held to enable the person to transit through an Australian port.

This means that the passenger will usually need to:

- have a Transit (TX-771) visa
- be eligible for transit without visa (TWOV), which is actually a special purpose visa.

An inadmissible passenger who is granted a Transit visa for this purpose should also be listed on the s. 47E(d) so that they can be referred for a bona fides check if they presented to immigration clearance.

The airport manager or duty manager may also liaise with the relevant post and airline that is removing an inadmissible person regarding the person's scheduled arrival and departure and noting criminal convictions (if any) and deportation.

For further information on TWOV eligibility see *PAM3: Act - Act-based visas - Special purpose visas - SPV holders by class of person*.

For Transit visa criteria see Part 771 – Transit visa of Schedule 2 to the Migration Regulations.

See also:

- section Obligations under Annex 9 for the removal of inadmissible persons for further information on carrier obligations
- PAM3: Act - Arrival, immigration clearance and entry - Carrier obligations and offences -for further advice on forms to be served on carriers
- PAM3: Act - Compliance and Case Resolution - Compliance -The Compliance Program - for further detailed guidance on arrangements for removing unlawful non-citizens
- PAM3: Act - Passports, travel documents and visa evidencing - Travel documents - for further detailed guidance on arrangements for the issue of documents to facilitate the travel of unlawful non-citizens (ICAO Conventions documents).

Removal of unlawful non-citizens at a seaport

Removal of an unlawful non-citizen who has arrived at a seaport in Australia may be by air or by sea vessel.

Crew members who arrive without a visa may be removed on the vessel on which they travelled to and entered Australia.

Stowaways are subject to careful consideration of their safety and welfare and are usually removed from the vessel on which they arrived. See *PAM3: Act – Arrival, immigration clearance and entry – Stowaways and deserters*.

Removal of dependants

Upon request, the partner and dependent children of an unlawful non-citizen who is being removed may be removed from Australia as soon as practicable (section 199 of the Migration Act). In most cases, the partner and dependent children should be removed with the unlawful non-citizen concerned. Removal of the partner

can occur only at the request of that partner, however, removal of the children of an unlawful non-citizen can be effected at the request of the unlawful non-citizen or of the partner who is being removed.

If the partner and children have had their visas cancelled under section 140 of the Migration Act, they become unlawful non-citizens and are subject to detention and removal under section 198 of the Migration Act.

See *PAM3: Act - Detention Services Manual* for further guidance on dealing with minors in immigration detention.

PART K: Persons who Leave the Migration Zone but are Taken not to Have Left Australia

4.56. About section 80 of the Migration Act

Persons are taken to have left Australia when they leave the migration zone (as defined by section 5(1) of the Migration Act). However, section 80 provides that in particular circumstances, persons may go outside the migration zone, yet be taken not to leave Australia. These circumstances include that they:

- are on a vessel that is outside the migration zone for no longer than the prescribed period of 30 days (as per regulation 3.07 of the Migration Regulations)
- do not go (other than for transit purposes) to foreign country
- remain a passenger or crew member on the vessel while outside the migration zone.

Section 80 generally applies to passengers and crew on:

- departmentally-approved RTC (international passenger voyages that have been granted an exemption under s169(3) of the Act) (see section 4.58 Effect of section 80 on visas and movements)
- cruises classified as “domestic voyages”
- yachts that briefly go outside and re-enter the migration zone
- fishing vessels.

Section 80 is not restricted to the circumstances above, and may also apply to any person who

- leaves the migration zone
- remains on the same vessel that they boarded in the migration zone and
- returns within the prescribed period.

Although section 80 is usually considered in maritime situations, there may be aviation scenarios where it would also apply.

4.57. Section 80 and immigration clearance requirements

Under section 169(1) of the Migration Act, persons on voyages covered by section 80 are not required to meet immigration requirements under section 166, unless directed to do so by a clearance officer.

However, section 169(2) of the Migration Act provides that, in the case of persons on international passenger cruise ships that meet section 80 requirements, the immigration clearance exemption of section 169(1) only applies if the Minister or Secretary determines so under section 169(3) of the Migration Act. For further information, see section Round-trip cruises.

4.58. Effect of section 80 on visas and movements

Persons travelling on a voyage covered by section 80 of the Migration Act are deemed not to have departed Australia and will not have a departure or arrival recorded in the department's movement records system for this voyage.

As such, visas (and visa stay periods) are not affected by the visa holder undertaking a section 80 voyage.

For example:

- a single entry visa will not cease (under section 82(8)) when its holder re-enters the migration zone (because the person is taken not to have left Australia)
- a person who has stayed in Australia for six weeks and takes a two week journey covered by section 80 of the Migration Act will be taken not to have left Australia and will therefore return and be considered as having stayed in Australia continuously for 8 weeks.

As a result:

- persons who hold a multiple entry temporary visa are unable to reactivate the stay period on their visa by undertaking a voyage that is covered by section 80 (for example, travelling outside the migration zone briefly on a yacht, or travelling on a RTC)
- persons on a section 80 voyage are not considered to be "outside Australia" and cannot apply for or be granted a visa (if the visa must be applied for or granted while the applicant is offshore)
- persons on a single entry visa are able to undertake a section 80 voyage during their stay in Australia (although if they are unexpectedly required to depart the vessel offshore, they would need to apply for and be granted another visa in order to re-enter Australia).

4.59. Round-trip cruises

As outlined in section Section 80 and immigration clearance requirements, that passengers and crew on international passenger cruise ship voyages that meet section 80 requirements are exempt from section 166 immigration clearance requirements only if the Minister or Secretary makes a determination under section 169(3) of the Migration Act.

This is referred to by industry and the department as applying for RTC status (RTC is a non-legislative term).

Under section 169(4) of the Migration Act a ship is an international passenger cruise ship if:

- the ship has sleeping facilities for at least 100 persons (other than crew members)
- the ship is being used to provide a service of sea transportation of persons from a place outside Australia to a port in Australia
- that service:
 - is provided in return for a fee payable by persons using the service
 - is available to the general public.

To be granted "RTC status", voyages must meet both the requirements of section 80 of the Migration Act (that is, commence and terminate in Australia, be no longer than 30 days duration and only transit other countries) and the department's additional policy parameters (see section Seeking RTC status, below).

Passengers and crew on an RTC will be exempt from immigration clearance on departure from, and return to, Australia, unless they:

- join the vessel at an overseas port or a place outside Australia ("way port joiners")
- intend to leave the vessel at an overseas port (other than for transit purposes) ("way port leavers")

For Official Use Only

- do not remain a passenger or crew member of the vessel while outside Australia or
- fail to return to Australia within 30 days of departure.

Way port joiners must be reported to the department through the APP website.

4.60. Seeking RTC status

Cruise ship operators or agents can request that the department approve RTC status for particular voyages. Requests are to be submitted by email to Traveller Policy Section

s. 47E(d) and include full particulars of the proposed voyages.

To be approved as an RTC, the proposed voyage must meet:

- the requirements of section 80 of the Migration Act:
 - the voyage commences and terminates in Australia
 - the vessel does not go (other than for transit purposes) to a foreign country and
 - the vessel's absence from Australia does not exceed the prescribed period of 30 days (regulation 3.07 of the Migration Regulations)
- departmental policy conditions:
 - the voyage only visits ports in countries that are no further north than the Equator, no further east than the 180th meridian (180 degrees longitude) and not to the west of Australia
 - each foreign port is visited once only and the period of stay does not exceed 24 hours
 - the voyage does not raise border integrity concerns.

RTC decisions (that is, section 169(3) determinations) are generally made by the delegated EL1 in Traveller Policy Section.

The cruise ship operator or agent will be notified in writing of a decision on their RTC request. This notification will also be sent to other relevant agencies, including the ABF.

4.61. Revocation of round-trip cruise status

RTC status (that is, the exemption from section 166 immigration clearance under section 169(3) of the Migration Act) may be revoked by a delegated departmental officer. In practice, this is generally the delegated EL1 officer in Traveller Policy Section.

Revocation would be appropriate if the particulars of the voyage change, such that it no longer meets either the requirements of section 80 of the Migration Act, or the departmental conditions for approving RTC status. For example:

- the voyage itinerary changes to include visits to foreign ports that raise border security concerns
- for financial reasons the cruise operator decides to "segment" the cruise into single legs (for example, Australia to New Zealand and then New Zealand back to Australia), resulting in many passengers travelling one way only (and thereby needing to comply with section 166 immigration requirements).

Such a change may come to the department's attention either through a request by the cruise operator or agent directly, or by other means, such as advice from the ABF.

If a voyage's RTC status is revoked:

- all passengers and crew would need to comply with immigration clearance requirements both on departure from (unless the status is revoked after voyage commencement), and arrival into, Australia
- APP would be required for all passengers and crew prior to the vessel's re-entry to Australia
- movement records must be created for all crew and passengers undertaking the voyage, if these do not already exist.

PART L: Designated Foreign Dignitaries

4.62. About this part

This part provides:

- guidance on who is a designated foreign dignitary, and when the immigration clearance exempt status commences and ceases
- policy support to assist clearance officers with the processing of designated foreign dignitaries
- guidance on mandatory and discretionary immigration clearance processes and lawful requirements in relation to designated foreign dignitaries.

4.63. Policy background

Consistent with obligations the Australian Government accepts under international law to protect persons with privileges and immunities, certain designated foreign dignitaries who travel to Australia can be exempt from aviation screening and various Customs, Immigration and Biosecurity border processing processes.

The process of facilitating the arrival or departure of designated foreign dignitaries is carried out in accordance with Australia's obligations (under the 1961 Vienna Convention on Diplomatic Relations) to protect privileges and immunities. Such facilitation affords dignity during clearance and allows for an expedited facilitation through international and domestic arrival and departure processes in Australia.

Supporting the above arrangements, the Migration Regulations include **designated foreign dignitaries** (defined in regulation 1.03) as a class of person that, for the purposes of section 168(3), regulation 3.06 exempts (via listing in item 10 of Part 2 of Schedule 9 to the Migration Regulations) from having to comply with section 166 immigration clearance requirements.

4.64. Who can be a designated foreign dignitary

A designated foreign dignitary is a person or a person included in a class of persons specified by the Minister for regulation 3.06A. Designated foreign dignitaries include:

- heads of a foreign state (including reigning monarchs and the Pope), and their accompanying partner and children
- head of the executive government of a foreign country, and their accompanying partner and children
- ministers of the executive government of a government of foreign countries responsible for foreign affairs and their accompanying partner and children.

Additionally, a second group of senior foreign dignitaries and their accompanying partners and children, not included above, may (but in exceptional circumstances only), seek an exemption from aviation security screening and Customs, Immigration & Biosecurity (CIB) border processing:

- These senior foreign dignitaries who wish to be considered for exemption from CIB border processing are required to request an exemption by notifying Department of Foreign Affairs and Trade (DFAT) Protocol Branch via the accredited Australian mission or post in the visiting dignitary's country of origin.

4.65. Exemption from border processing

Partial exemptions and cessation of exemption

In some circumstances, a designated foreign dignitary may be **partially** exempt from border processes. That is, depending on the designated foreign dignitary's circumstances, they may be exempt from one aspect of the border processing but still required to undergo the remaining aspects of border processing. An exemption from one aspect of border processing does not necessarily mean an exemption from all aspects of border processing.

DFAT will provide border agencies with the designated foreign dignitary's itinerary and Advance Passenger Information (API) and will advise from which aspects of border processing the person can be considered exempt. For example, a person might be exempted from aviation security screening and immigration clearance requirements but, due to the countries they have visited, they might still need to be biosecurity screened by DAWR.

Additionally, the Australian Government expects that all foreign dignitaries, regardless of their exempt or non-exempt status, respect Australian laws and procedures. If a visiting foreign dignitary "self declares" or there are serious grounds:

- for suspecting that the foreign dignitary:
 - may not hold an appropriate visa
 - may not comply with conditions of their visa
 - for presuming that the personal baggage of a dignitary contains a prohibited item,

exemption from clearance processes will cease to apply and may result in the foreign dignitary being required to undergo specified aspects of border control procedures.

Should there be serious grounds for suspecting that the designated foreign dignitary may not hold an appropriate visa or may not comply with the conditions of their visa, clearance officers should discuss these circumstances with Traveller Policy Section. If it is decided that the person should **not** be exempt from immigration clearance, normal clearance processes can be conducted. See section **Error! Reference source not found..**

Designated foreign dignitaries - general operation

4.66. How a person becomes a designated foreign dignitary

See regulations 3.06A(1) and (5) of the Migration Regulations.

For section 168(3), which deals with the classes of persons not required to give information under section 166, a person is a **designated foreign dignitary** (as defined in regulation 1.03 of the Migration Regulations) if:

- the **person** is specified in an instrument made under regulation 3.06A(1)(a) - see section **Error! Reference source not found., Error! Bookmark not defined.**
- the person is included in a **class of persons** specified in an instrument made under regulation 3.06A(1)(b) - see section **Error! Reference source not found.**

- the person is an **accompanying member of the immediate family** of a person who is a designated foreign dignitary - see section **Error! Reference source not found.**

4.67. Designated foreign dignitary - persons specified in instrument

See regulation 3.06A(1)(a) of the Migration Regulations.

Senior foreign dignitaries and their accompanying partner and children **not** included in the class of persons specified in an instrument made under regulation 3.06A(1)(b) of the Migration Regulations may seek an exemption from aviation security screening and CIB border processing in exceptional circumstances only. Such persons may include Speakers of Parliament or National Assembly, heads of international organisations or other senior high profile figures.

These senior foreign dignitaries, if they wish to be considered for an exemption, are required to request an exemption at least two weeks prior to their intended date of travel by notifying DFAT Protocol Branch via a formal Third Person Note. The request for exemption will be considered by SCSC and CIB agencies. DFAT will notify these foreign dignitaries if they are approved as designated foreign dignitaries.

After the exemption request has been approved by the SCSC and CIB agencies, the person is, for the purposes of the Migration Act and Migration Regulations, a designated foreign dignitary for the nominated visit. The person will be specified by name in an instrument by an authorised officer and DFAT will provide border agencies with the designated foreign dignitary's itinerary and API.

The exemption will apply to both official and private visits but is **not** an exemption from visa requirements - designated foreign dignitaries are required to hold a visa to travel to and enter Australia -see section Visas.

The exemption from mandatory immigration clearance processes for designated foreign dignitaries who are required to request an exemption would normally apply to a single visit only. Should a foreign dignitary who is required to request an exemption wish to travel to Australia on numerous occasions, they are required to formally request an exemption for each journey.

4.68. Designated foreign dignitary - class of persons specified in instrument

See regulation 3.06(1)(b) of the Migration Regulations.

The following classes of persons have been specified by instrument to be designated foreign dignitaries:

- head of a foreign state (including reigning monarchs and the Pope)
- head of the executive government of a foreign country
- minister of the executive government of a government of foreign countries responsible for foreign affairs.

These classes of persons hold the exempt status as designated foreign dignitaries for as long as they remain in the nominated office. The status exempting these foreign dignitaries from mandatory immigration clearance processes applies for every arrival and departure while they remain in the nominated office.

The exemptions apply to both official and private visits **but are not an exemption from visa requirements** - that is, these persons are still required to hold a visa to travel to and enter Australia.

DFAT have advised foreign missions that for the facilitation and exemption processes to be in place on arrival, designated foreign dignitaries are required to provide formal notification of their itinerary to DFAT two weeks prior to their intended travel. DFAT will then notify border agencies of the designated foreign dignitary's itinerary and provide border agencies with API.

4.69. Designated foreign dignitary - accompanying immediate family members

See regulation 3.06A(5) of the Migration Regulations.

Regulation 3.06A(5) allows for accompanying members of a designated foreign dignitary's immediate family to also be exempt from immigration clearance under section 166.

Regulation 1.12AA defines when a person is a **member of the immediate family** of another person. The immediate family members of a designated foreign dignitary can include:

- their partner and dependent children and
- the parent(s) of the designated foreign dignitary if the designated foreign dignitary is under 18 years old.

'Accompanying' is taken to mean accompanying on the same flight on arrival and departure as the designated foreign dignitary. If the member of the immediate family travels on a different flight from the designated foreign dignitary, the family member is no longer exempt from mandatory immigration clearance processes.

4.70. Ministerial instrument

Delegated power

The power to specify a person as a designated foreign dignitary is delegated - see regulation 3.06A(1)(a) of the Migration Regulations.

The power has been delegated to specific officers to enable those authorised officers to specify a person in an instrument as a designated foreign dignitary. Officers should check their authorisations via the Instruments of Delegations and Authorisation on Legend.

An authorised officer can specify a person by instrument as a designated foreign dignitary if:

- the person has formally requested an exemption through DFAT and
- the request for exemption has been considered by the Australian Government Counter-Terrorism Committee's SCSC in conjunction with this department, the ABF and Biosecurity.

DFAT will provide Traveller Policy Section with a completed copy of the SCSC's assessment once all agencies have provided their input.

The exemption from mandatory immigration clearance processes for designated foreign dignitaries who are required to request an exemption would normally apply to a single visit only. Should a foreign dignitary who is required to request an exemption wish to travel to Australia on numerous occasions, they are required to formally request an exemption for each separate journey. However, there may be circumstances in which a person may be travelling to, or transiting, Australia to and from another country, and so may request an exemption for both of these arrivals and departures. In these cases, an exemption for multiple journeys may be given.

Once the instrument is completed, it should be held on file in Traveller Policy Section. Originals of the instruments along with a copy of the SCSC assessment will be forwarded quarterly to the Instruments Unit, National Office.

Airports do not require a copy of the instrument; they will receive formal advance notice (from DFAT via the BOC), of the arrival of a designated foreign dignitary.

4.71. Designated foreign dignitaries and immigration clearance

Exemption from immigration clearance

For section 168(3) of the Act, regulation 3.06 of the Migration Regulations provides that certain persons, including designated foreign dignitaries, are, as per Regulations Schedule 9 Part 2, exempted from mandatory immigration clearance processes.

Designated foreign dignitaries are exempt from mandatory immigration clearance procedures for both official and private visits, however, they should apply for the most appropriate visa for their intended travel.

These persons will be exempt from mandatory immigration clearance processes upon arrival and departure for specified, pre-notified journeys to and from Australia. Exemption from mandatory immigration clearance processes means exemption from:

- overt “face to passport” check
- completing IPC (for immigration purposes only) and
- providing proof of identity (including passport) and evidence of any visa held.

Notification of a designated foreign dignitary’s impending arrival

The Ceremonial and Hospitality Branch (CERHOS) of the Department of the Prime Minister and Cabinet will manage official GoG visits and the international arrival and departure of private visits by Heads of State and Heads of Government. CERHOS is responsible for managing arrangements to escort through airports a GoG who is exempted from aviation security screening and CIB processing.

If a designated foreign dignitary is **not** visiting as a GoG, DFAT will manage arrangements. In consultation with CERHOS, DFAT will also manage domestic airport facilitation arrangements for Heads of State and Heads of Government on private visits.

Advance notification of a designated foreign dignitary visit will be provided to this department and other relevant border agencies by DFAT. DFAT will notify the BOC, which will notify the relevant airport, Airline Liaison Officers at relevant airports and Traveller Policy Section.

4.72. Designated foreign dignitaries - at the border

Entry screening

Designated foreign dignitaries are facilitated through entry and departure screening processes in Australia by an ABF officer (defined as ‘officers’ in section 5(1) for the purposes of the Migration Act).

ABF officers will continue to handle immigration clearance processing at Australian airports.

For immigration purposes, the exemption from mandatory immigration clearance will mean that, the ABF will not be required to:

- undertake an overt “face to passport” check to confirm the foreign dignitary’s identity
- confirm that their visa is in effect.

Exemption from mandatory immigration clearance processes effectively means that exempt designated foreign dignitaries will not be required to complete an IPC for immigration purposes. However, the IPC will continue to be collected by the ABF for both customs and biosecurity purposes.

Unless there is a significantly high level of reasonable suspicion that there may be visa or immigration clearance issues, a clearance officer would not normally consider invoking discretionary immigration clearance processes for these persons. Any consideration of using the discretionary provisions should be discussed with Traveller Operational Policy in the first instance, via email to

s. 47E(d)

For Official Use Only

On arrival, an exempt dignitary and their accompanying family members should each present a passport and completed IPC for customs, biosecurity and movement record purposes. Expedited clearance through the CIB areas will be available and, if prior arrangement is made, may incorporate the use of a VIP room, if available.

Accompanying party members who are not exempt

Those persons travelling with a designated foreign dignitary who are not exempt from CIB processing will be required to undergo CIB clearance in the normal manner. DFAT will advise if local arrangements will be in place to facilitate the processing of these accompanying party members.

Arrival without documentation

For the purposes of the Migration Act, designated foreign dignitaries have been exempted from the mandatory requirement to provide:

- evidence of their identity
- evidence of a visa that is in effect or evidence of Australian citizenship and
- a completed IPC.

As such, arrival without documentation for these persons has no impact on immigration matters relating to **mandatory** requirements. However, should information come to light during customs and biosecurity processes that may have an impact on the person's **immigration status** (regardless of the exemption from mandatory immigration clearance **processes**), it is possible for discretionary immigration clearance provisions to be invoked. These provisions and the circumstances leading to consideration of applying these provisions should be discussed with Traveller Policy Section, and would normally be of a significant nature.

The exemption from immigration clearance processes will no longer apply if information (including information that may lead to mandatory visa cancellation or consideration of discretionary visa cancellation) becomes available affecting the person's potential immigration status. If this situation arises, the person will require documents. Similarly, carriers may not be prepared to provide uplift for persons who cannot or choose not to present documentation.

For these reasons, DFAT has advised designated foreign dignitaries that they should travel with their passport, so it may be expected that designated foreign dignitaries will provide a passport to the ABF to expedite CIB processing.

4.73. Compliance with visa conditions

DFAT has advised foreign dignitaries that the Australian Government expects that all foreign dignitaries, regardless of their exempt or non-exempt foreign dignitary status, respect Australian laws and procedures.

If a visiting foreign dignitary "self declares" or there are serious grounds to suspect that they may not comply with their visa conditions, immigration clearance processes will cease to apply.

Clearance officers should discuss the issues with Traveller Operational Policy in the first instance. If further questioning is required it is to be conducted in a discrete and fair and reasonable manner remembering that the person is a foreign dignitary.

For more information see section Partial exemptions and cessation of exemption.

4.74. Evidence of foreign dignitary status

No evidence that a person is entitled to the mandatory immigration clearance exempt status will be required to be provided to a clearance officer. The responsible clearance officer facilitating the CIB clearance processes (including the management of exemption to mandatory immigration clearance processes) at the receiving port in Australia will have prior notice of all travellers to whom the exemption applies. DFAT will notify the BOC which will notify the relevant airport, Airline Liaison Officers (ALOs) and Traveller Policy Section.

Should any doubt arise, the clearance officer will contact Traveller Operational Policy to discuss the issues prior to engaging any discretionary clearance provisions in the Act, and prior to undertaking further immigration clearance processes.

PART M: The Immigration Framework

4.75. Immigration arrangements

Visas

Briefly:

- foreign dignitaries who are invited as official guests of the Australian Government are taken to have been granted an SPV under regulation 2.40(1)(c) of the Migration Regulations as a **guest of Government** (GoG)
- all other foreign dignitaries (that is, those not invited as an official GoG) are required to hold an appropriate visa to travel to Australia.

Although designated foreign dignitaries are listed in the same part of the Regulations (namely, Part 2 of Schedule 9 to the Migration Regulations) as persons who are eligible for an SPV upon entry to Australia, designated foreign dignitaries are distinct from all other classes of person in that Part in that they are the only persons in that Part who are **not** always taken to hold an SPV. Part 2 of Schedule 9 to the Migration Regulations is only concerned with those persons not required to comply with section 166 of the Migration Act, it does not relate to whether a person is granted an SPV.

Designated foreign dignitaries **not** travelling as an officially invited GoG are required to hold an appropriate visa for their travel to Australia.

For more detailed guidelines on guest of Government arrangements, see *PAM3: Act - Act-based visas - Special purpose visas - Guest of Government*.

Overseas processing

Designated foreign dignitaries (if not travelling as an officially invited GoG) are required to apply for, be granted and hold an appropriate visa prior to travelling to Australia.

If contacted by a designated foreign dignitary intending to travel to Australia or seeking an exemption from border processing or immigration clearance, officers should advise them to apply for the most appropriate visa for their journey and then refer them to DFAT to provide formal notification of their journey or to request an exemption.

Foreign dignitaries have been advised by DFAT that at least two weeks notice is to be provided via a formal Third Person Note (or its equivalent) to DFAT's Protocol Branch via the accredited Australian mission or post in the visiting dignitary's country of origin. Exemption status may not be available if insufficient advance notice is provided.

Facilitated entry/departure screening

Designated foreign dignitaries are exempt from mandatory immigration clearance processes. The exemption from immigration clearance applies to both official and private visits. Designated foreign dignitaries will be facilitated through entry and departure screening processes in Australia by an ABF officer (defined as an 'officer' in section 5(1) for the purposes of the Migration Act).

4.76. Evidence of identity

Section 166 and section 170 of the Migration Act

Designated foreign dignitaries are not required to comply with section 166 of the Migration Act. Together, regulation 3.06 and Part 2 of Schedule 9 of the Migration Regulations operate to include designated foreign dignitaries as a class of persons not required to comply with section 166. Also, as they are not required to comply with section 166, they have no liability under section 167 in regards to where and when they must comply with section 166.

Although section 170 provides that persons who travel or intends to travel on an overseas vessel to Australia, and then onto another domestic or other port within Australia 'may' be required to satisfy section 166 at the first port of arrival, the last port of arrival before final departure from Australia or all ports of arrival, s. 47E(d)

For more information see:

- section [Exemption from border processing](#)
- section [Compliance with visa conditions](#).

4.77. Inwards immigration clearance

Section 172 of the Migration Act

Section 172(1) of the Migration Act does not apply to designated foreign dignitaries as they are not required to comply with section 166 of the Migration Act.

Section 173 of the Migration Act

Section 173 of the Migration Act provides that a visa held by a person who enters Australia in a way that contravenes section 43 (visa holders must normally enter at a designated port) ceases. It is expected that designated foreign dignitaries will normally enter at a designated port, and in a way that is permitted, and in a way that does not contravene section 43 of the Migration Act.

Section 174 of the Migration Act

Section 174 of the Migration Act provides that a visa held by a person who is required to comply with section 166 ceases if the person is not immigration cleared (as per section 172(1)). Section 174 will not apply to designated foreign dignitaries, as they are not required to comply with section 166.

SmartGate

New Zealand ePassport holders who are designated foreign dignitaries would normally be facilitated through immigration clearance by an officer and will not normally approach the authorised systems, however, there is nothing precluding them from doing so if they wish.

4.78. Outward immigration clearance

The section 175 discretionary requirement that departing persons present certain evidence is invoked when a clearance officer considers that a person who is about to board, or already on board, a vessel departing Australia should be required to provide evidence of identity, visa, or Australian citizenship. Present policy requires departing persons to provide evidence of identity, and, if the person is a non-citizen, evidence of the person's permission to remain in Australia.

s. 47E(d)

5. Accountability and responsibilities

If officers require clarification or assistance in regards to this instruction, they should make contact with Traveller Operational Policy s. 47E(d) who have responsibility for operational policy and programme management of the border for both air and sea under the Customs Act and Migration Act.

All records created as a result of this Procedural Instruction must be managed in accordance with the Records Management Policy Statement. Records created as a result of this Procedural Instruction must be saved in TRIM RM8.

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.

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

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.

7. Related Framework documents

This instruction must be read with:

7.2. Policy Statement

- [BC-2983] Border Clearance

7.3. Procedural Instructions

- [BC-2695] Special Category Visas in Immigration Clearance
- [BC-2538] Border Visa Grant in Immigration Clearance
- [VM-3189] Sch2Visa444 - Special Category
- [BC-5857] Act based visas - Special purpose visas - Immigration clearance
- [VM-3189] Act based visas - Special purpose visas
- [BC-2692] Passenger Cards and Crew Declarations

- [VM-3142] Sch2 Bridging visas - Visa application and related procedures
- [VM-1036] Compliance and Case Resolution - Program visas - Bridging E visas
- [VM-3185] Sch2Visa773 – Border

7.4. Supporting Material

Attachment A: Instrument - Foreign dignitaries – Regulation 3.06A

Attachment B: Evidence of Australian Citizenship

Attachment C: Clearance procedures for domestic passengers on domestic sectors of international flights

Attachment D: Character history details form

Attachment E: Processing procedures – Norfolk Island

8. References and legislation

Migration Act 1958 (the Migration Act)

The 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 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 175 outlines the evidence to be given to a clearance officer upon a person's departure from Australia.

Several other sections of the Act are also important in the context of immigration clearance (all other sections in Division 5 of Part 2 of the Act)

- section 5AA(1) - (meaning of) unauthorised maritime arrival
- section 42 - visa essential for travel
- section 43 - visa holders must usually enter at a port
- section 46A - visa applications by unauthorised maritime arrivals
- section 80 - certain persons taken not to leave Australia.

In addition to the Act, this instruction must be read with:

- Procedural Instructions, which are referred to throughout this instruction.

9. Consultation

9.2. Internal consultation

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

- Traveller Customs and Industry Policy / Traveller Policy Advice and Support Section
- FOI, Privacy and Records Management / Records Management Section
- Integrity and Professional Standards / Integrity and Professional Standards Branch
- National Security and Law Enforcement Legal Branch

9.3. External consultation

No external consultation.

10. Document details

10.2. Document change control

BCS Category/Function	Trade & Traveller Clearance Management
BCS Sub-Category/Sub-Function	Passenger and Crew Processing
Period of Effect	24 September 2021

10.3. Procedural Instruction approval

Version number	Date of issue	Author(s)	Brief description of change
1.0	06 Dec 16	s. 22(1) (a)(ii)	Conversion of PAM3 into PI
1.1	08 Dec 18	s. 22(1) (a)(ii)	Cleared PPCF Quality Assurance
1.2	08 June 18	s. 22(1)(a)(ii)	Cleared Legal Review
1.3	07 Aug 18	s. 22(1)(a)(ii)	Reviewed for SES approval
1.4	13 Sep 18	s. 22(1)(a)(ii)	Reviewed comments from stakeholders

10.4. Procedural Instruction approval

Document owner	Don Smith Commander ABF Governance
Approval date	24 September 2018