



**For Official Use Only**

# Removal from Australia – Implementing removal from Australia

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia.

Approval Date	27 July 2018
Date of Review	27 July 2018
Contact	Detention and Removal Operational Policy Section
Document ID (PPN)	BE-5496
TRIM Reference	ADD2018/1954866

# Table of Contents

<b>1. Introduction</b>	<b>3</b>
1.1. Overview	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	4
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1. Access to legal representation	4
4.2. Access to family and visitors	5
4.3. Audio-visual recording of removal	5
4.4. Baggage and property	5
4.5. Transport of removee to departure point	7
4.6. Airport arrangements	7
4.7. Who holds travel documents and funds during the removal?	8
4.8. Authority to abort a removal	8
4.9. Completion of removal/deportation	9
<b>5. Accountability and responsibilities</b>	<b>9</b>
Table 1 – Procedural Instruction roles and responsibilities	9
<b>6. Statement of Expectation</b>	<b>10</b>
<b>7. Related Framework documents</b>	<b>10</b>
7.1. Policy Statement	10
7.2. Procedural Instructions	11
7.3. Supporting Material	12
<b>8. References and legislation</b>	<b>12</b>
<b>9. Consultation</b>	<b>12</b>
9.1. Internal consultation	12
9.2. External consultation	13
<b>10. Document details</b>	<b>13</b>
10.1. Document change control	13
10.2. Procedural Instruction approval	13

# 1. Introduction

## 1.1. Overview

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

A non-citizen in the migration zone who does not hold a visa that is in effect is a UNC. If a UNC is unwilling or unable to resolve their visa status through visa grant or acquisition of citizenship the non-citizen will have no right to remain in Australia and will be liable for immigration detention under s189 of the *Migration Act 1958* (the Act) and removal from Australia under s198 of the Act.

### Purpose

All twenty (20) Removal from Australia PIs are designed to assist departmental and ABF officers, contracted service providers and stakeholders in effecting the removal of UNCs from Australia in a lawful manner, consistent with the departmental status resolution approach. PIs will assist officers in planning, managing and effecting a removal.

Each Removal from Australia PI is listed by subject in related framework documents. All PIs for Removal from Australia should be implemented in conjunction with [VM-5273](#) in PPCR *Departure Policy (returns, removals and departure support)* Policy Statement (TRIM: PCD2018/1001).

# 2. Scope

## 2.1. In Scope

This PI, sets out procedures and provides guidance on:

- removees access to legal representation, family and visitors
- audio-visual recording of removal
- baggage and property
- transport of removee
- airport arrangements
- authority to abort a removal
- completion of removal.

Suspected Illegal Foreign Fishers (IFF) will become liable for detention and removal on cessation of an enforcement visa<sup>1</sup>. For further information refer to:

- [DM-590](#) in PPCR (*Detention Services Manual (DSM) – Illegal Foreign Fishers – Illegal Foreign Fishers*)
- [BE-628](#) in PPCR (*DSM – Illegal Foreign Fishers – Enforcement visas*).

<sup>1</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.

## 2.2. Out of Scope

### Border and arrival turnaround

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

If UNC's who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

### Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

### Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either independently as a UNC or as the holder of a Bridging visa managed by either ABF or the Department.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Case Resolution - Returns and removals - Return services*).

## 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Removal from Australia Glossary*).

## 4. Procedural Instruction

### 4.1. Access to legal representation

Section [256](#) of the Act requires departmental, ABF or Facilities and Detainee Service Provider (FDSP) officers to provide a removee in immigration detention, at their request, with all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to their immigration detention. This includes providing the removee with access to a telephone and a telephone directory or access to the internet. The removee should be assisted to effectively utilise these sources of information, for example, by being provided translation assistance or information technology assistance as required.

Where a removee asks to speak to a particular legal representative, the Department should, if possible, provide the business hours telephone number for that person.

Removees should be informed that costs associated with accessing a legal service provider will be at their own expense, unless they have made other arrangements (which may include funding through a legal assistance scheme or an agreement for *pro bono* services with a particular legal service provider).

In the context of removal under [s198](#) of the Act, requests by removees to access legal assistance during their removal should be facilitated until such time as it is no longer reasonably practicable to do so. What is



reasonable will depend on the circumstances including what is happening operationally and whether facilities to access legal assistance are readily available having regard to the particular operational environment.

The removal of a person from Australia is not prevented or delayed by a person's inability to make contact with the legal representative (for example, where the legal representative contacted was unavailable or where the person is waiting for a message to be returned by the legal representative).

Officers who are asked to facilitate access to a legal representative/advisor must ensure they record details of the request and any action taken in response to the request (for example, attempts to facilitate access, timing of access, relevant operational contingencies preventing access).

[DM-601](#) in PPCR (*Accessing Legal Representation and Migration Agents*) describes the procedures for providing detainee access to representation by a legal practitioner or a migration agent.

## 4.2. Access to family and visitors

If there is sufficient time, relatives and friends who wish to see a removee before departure may visit the removee at the place of detention before the removee leaves for the airport. The visit will be subject to standard procedures for visiting an immigration detention facility. Officers should not facilitate visits at the airport.

Refer to [DM-3258](#) in PPCR (*Visitor management*) which describes the procedure for managing visits to immigration detention facilities together with [DM-3288](#) in PPCR (*DSM – Safety and security management - Screening and searching of detainees and their property*) which describes the procedures for the screening and inspection of visitors.

## 4.3. Audio-visual recording of removal

### For certain high risk cases

In high risk cases it may be appropriate to make an audio-visual (AV) record of the removal of a removee from Australia. This will provide the Department with a visual record of any incidents that might later be investigated and assist in the development of improved policy and procedures.

FDSP officers must limit AV recording of a removal to removal activity within the immigration detention facility (IDF) and during transport to the airport. For legal reasons, the removal process in an airport during a flight or during transit in foreign countries, generally cannot be recorded.

For further information on the legal framework and purpose of AV recording in IDFs, refer to [DM-614](#) in PPCR *DSM - Safety and security - Audio-visual recording*). Such a recording would constitute the making of a record for the purposes of the *Australian Border Force Act 2015* (ABF Act) and the collection of personal information for the purposes of the *Privacy Act 1988* and must comply with both Acts.

## 4.4. Baggage and property

### Baggage management

Removal officers must ensure a removee's baggage is managed effectively to avoid any problems relating to contraband items and excess baggage arising at the airport. Officers are to advise removees in advance of departure of baggage limits and their options for managing excess baggage - refer to [BE-5496](#) in PPCR (*Removal from Australia – Implementing removal from Australia – Standard baggage allowance for removee*). For removal from correctional facilities, officers will need to liaise with the facility about the baggage management and limits.

When removing a detainee from an IDF, the FDSP must weigh and check all property before the detainee leaves the IDF. The removal officer must discuss with the FDSP the best time to weigh the baggage and follow up any issues.

Any money or property held in trust for the removee is to be returned to the removee just prior to arrival at the destination country. Escorts should be instructed not to surrender any property or funds to the removee until they have arrived at the destination country, or are transferring to the final leg of a multiple-transit journey. The person must sign a property receipt form upon receipt of their property.

For compliant removals, the FDSP should check, weigh and store the baggage at the earliest opportunity (at least 24 hours before departure) to allow time to resolve any issues.

If the removee is transiting through another detention facility before being removed from Australia, the FDSP must undertake these baggage procedures at the original IDF where the removee was detained, unless other arrangements have been made.

All property should remain in the care of the FDSP or escort at all times from final checking of baggage to the end of the escorted journey. This includes travel documents, cash, phones, medication and carry-on baggage.

### Opportunity to dispose of articles before removal and en route

Before removal commences, the Department is to give a removee the opportunity to dispose of any possessions that they do not wish to take with them and advise them to consider the possible implications of carrying particular personal effects to the destination country (for example, religious articles).

The removee is allowed to discard any of their possessions during the removal if they wish to do so provided this does not unduly impede the removal (for example, property has been sealed by the FDSP and needs to be retrieved and re-opened) or contravene any laws or pose a risk to the community.

For details regarding disposal of possessions, dangerous items and excess property refer to [DM-3285](#) in PPCR (*Management of Detainee Property – Standard Operating Procedure*) (TRIM ADF2016/46958).

### Standard baggage allowance for removee

Before the removee is removed, departmental staff should advise a person of the standard baggage allowance, using the [Information on removal baggage limits](#) form (TRIM ADD2018/287286), if appropriate.

If officers determine that baggage issues may jeopardise the removal, officers should consult their supervisor or their removal/compliance manager.

Additional luggage allowance may be available in certain circumstances. Officers must use their judgment and discretion in deciding to permit excess baggage, taking into consideration that:

- the escort service provider will not assist removees in carrying baggage that is over the standard baggage allowance
- if excess baggage charges are incurred these should be attributed to the removee's debt to the Commonwealth.

The removal officer may use a portion of any post-removal support provided to the removee to pay for excess baggage if the removee is unable to pay - refer to [BE-5501](#) in PPCR (*Removal from Australia – Post removal support*).

### If transport does not allow for standard baggage allowance

If the removee is unable to take the standard baggage allowance (for example, due to baggage limits on the aircraft), officers may, if warranted, arrange to ship the remaining baggage to the destination address. They should add the cost of the shipping to the removee's debt to the Commonwealth.

## Baggage/property not taken by the removee

If a removee leaves baggage/property at the detention facility, the Department is to advise them of their options - refer to '[Information on removal baggage limits](#)' (TRIM ADD2018/287286).

## 4.5. Transport of removee to departure point

Removal officers will need to submit a Request for service (RFS) in CCMD portal, requesting the FDSP to transport the removee to the airport within the required timeframe for the removal and ensuring that they are presented in a manner compliant with baggage and screening protocols in force.

### RFS request

An RFS will include the following:

- date of the removal
- identity of the detainee
- location of the detainee
- destination of the removal
- transport and escort (T&E) support requested from the service providers and coordination with other parties

The RFS should also contain information relating to any known risk factors associated with the task or the detainee.

### Pre-removal searches

Section 252 of the Act provides officers with powers of search and seizure in specified circumstances.

If the FDSP is escorting the removee during the entire removal, they should perform a pat down search at the IDF or other place of detention for weapons or implements for escape. If the removee is to be an unescorted removal, the FDSP should conduct searches according to the FDSP's discharge operational procedures. The FDSP should also search a removee's baggage, including carry-on baggage, according to approved guidelines. Refer to [BE-5496](#) in PPCR (*Removal from Australia – Implementing removal from Australia – Baggage and property*). FDSP officers or correctional services officers will usually perform searches of removees being removed directly from correctional facilities.

For detailed information refer to [s252 of the Act](#) and [DM3288](#) in PPCR (*Screening and Search of Detainees – Standard Operating Procedure*).

## 4.6. Airport arrangements

Public departure lounges should be avoided at both domestic and international airports wherever possible, particularly for involuntary removal.

By liaising with departmental airport staff, removal officers can arrange to have a removee await their flight in a secure area of the airport. It may also be beneficial to arrange secure waiting areas at overseas transit points with overseas compliance officers. Removal officers must also comply with any airport inspection procedures.

Although airport staff are not generally expected to be directly involved in implementing removal, officers may seek their assistance in certain circumstances. For very sensitive/high risk removals, if possible, the airport manager or senior staff should be on hand at check-in to assist a smooth departure from Australia. They can assist if a holding area is required for the removee and arrange airside access, where possible.

Officers must notify operators of Australian airports in advance of the movement of dangerous persons through their facility - refer to [BE-5489](#) in PPCR (*Removal from Australia – Aviation security requirements – Notification requirements*).

### Deportation – when the visa ceases

Section 82 of the Act provides that a person's visa ceases when the person leaves Australia because of the deportation order under s200. The Department must not cancel the visa before execution of the deportation order because the associated review rights involved in cancelling the visa would delay the deportation. For more information, refer to [VM-993](#) in PPCR (*Character and security - Criminal deportations*).

Officers are to endorse the removee's visa label (if any) with a note that it will cease on deportation and include the date and time of scheduled deportation. A delegated officer is to render the visa inoperative and sign and date the label (if any).

Removal officers are to record details of the deportation in all relevant departmental systems.

## 4.7. Who holds travel documents and funds during the removal?

### Escorted removal

If a removee is accompanied by security escorts during removal, the escort usually holds the removee's travel documents and passenger card (for the destination country) until arrival at the final destination. If a Removal Liaison Officer (RLO) is involved, they are responsible for holding the travel document and passenger card. Security escorts or RLOs also usually carry any of the removee's funds which should be counted and given to the removee (and receipted and signed by all parties) shortly before landing at the final destination.

### Unescorted removal

If a removee is not escorted during removal, airlines may have a policy that cabin staff carry the removee's travel document and return it to the removee upon arrival. This can minimise the risk of the travel document being lost and the passenger then becoming regarded as an undocumented arrival in a transit or destination country - something for which airlines may be fined.

Otherwise officers may give travel documents to a compliant and low-risk removee with the agreement of the airline when the removee boards the aircraft for their removal. If any removee funds are handed to the removee or cabin staff, a signed receipt must be obtained from the relevant party.

## 4.8. Authority to abort a removal

In planning a removal, it is expected that removal officers will develop contingency arrangements to manage key risks and to ensure the health, safety and security of the removal operation. Nevertheless, despite careful planning, there may be situations where a removal is aborted until alternative arrangements can be made. This may occur, for example, where the airline denies uplift prior to boarding, or where a removee's behaviour cannot be adequately managed without posing an unacceptable risk to the health and safety of the removee, the escort party or other persons. In this regard, officers should also refer to work health and safety policy at [Work Health and Safety information](#).

In these circumstances, it is expected that any decision to abort a removal will be made after prior consultation with the removal manager.

In limited situations, however, consultation with a removal manager may either not be practical or possible. This may include where there is risk of imminent harm to the removee or another person. In these

## For Official Use Only

circumstances, a relevant departmental officer, or a member of the removal party may make the decision to abort a removal, and inform the removal manager as soon as possible.

### 4.9. Completion of removal/deportation

#### Completion of an escorted removal

An escorted removal is completed only when the removee reaches the immigration clearance point at the final destination.

It is a requirement of the IATA Security Manual 'Requirements for Escorts' that, if it has been determined that a removee requires security escorts, escorts are to be provided to the initial **entry port of the country of final destination**. This applies to the use of security, welfare and/or medical escorts.

Only in very rare circumstances should a security escort, escort a removee only to a transit destination and then allow them to proceed as an unescorted removal. The only occasion that this process can be considered for variation is where a destination country has been assessed as a 'Do not Travel' destination by DFAT, and it has been deemed too dangerous for departmental/ABF personnel (including escort parties) to travel to that destination. In this circumstance, the escort party must accompany the removee until they depart from the last transit point prior to entry into the destination country.

The removal plan/procedures should clearly specify at what point the escort function in relation to the removal is finalised. It will usually be when the removee has commenced or completed immigration clearance in the initial port of entry unless there are post-removal care handover arrangements to be carried out.

Removal officers are to agree the process for confirming the removee's arrival at the destination with the escorts as part of the removal planning and must include details in the Operational Departure Plan (ODP). Usually, once the removee has successfully cleared the primary line at their destination, the escort is to provide confirmation by phone, text or email to the removal manager as agreed in the ODP.

After the removal is completed, escorts are required to send the removal officer an Escort's removal report - refer to [BE-5491](#) in PPCR (*Removal from Australia – Escort arrangements*).

#### Completion of an unescorted removal

Whether from the FDSP, the Department or the ABF, the officer/s supervising the departure must accompany the removee to the point of departure and remain at the aircraft bay or departure gate until the aircraft has departed. The officer is to remain at the airport for a short time in case the aircraft is forced to return. Should this happen, a departmental or ABF officer with the appropriate training is to take the person into detention ([s189](#)) and the removal officer must inform relevant departmental offices/staff that the departure has been aborted/postponed.

## 5. Accountability and responsibilities

Table 1 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<ul style="list-style-type: none"> <li>The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met.</li> <li>Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures.</li> </ul>



## For Official Use Only

Position	Accountability and/or responsibility
	<ul style="list-style-type: none"> <li>Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives.</li> <li>Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review.</li> <li>Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out.</li> </ul>
Superintendent (EL2) Detention and Removal Operational Policy (DROP)	<ul style="list-style-type: none"> <li>Clearance of Procedural Instruction</li> <li>Approval of updates to policy</li> </ul>
Inspector (EL1) DROP	<ul style="list-style-type: none"> <li>Ensures Procedural Instruction is updated to reflect current policy</li> <li>Ensures support materials comply with Procedural Instruction</li> </ul>

## 6. Statement of Expectation

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

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

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

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

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

## 7. Related Framework documents

### 7.1. Policy Statement

[VM-5273](#) in PPCR (*Departure Policy (returns, removals and departure support)*) TRIM: PCD2018/1001

[BC-763](#) in the PPCR (*Status Resolution System Control Framework*) TRIM: ADD2019/2439251.

## For Official Use Only

### 7.2. Procedural Instructions

Document	PPCR	TRIM Number
Character and security - Criminal deportations	VM-993	LEGEND
Pre-removal Clearances and Informed Request for Removal Statements	VM-3226	LEGEND
Removal and Detention Costs	DM-567	<u>PCD2017/6030</u>
Removal from Australia	BE-5488	ADD2018/1956150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791
Removal from Australia – Facilities and detainee service provider assessments	BE-5493	ADD2018/1954814
Removal from Australia – Health assessments	BE-5494	ADD2018/1954834
Removal from Australia – Impediments to removal	BE-5495	ADD2018/1954849
Removal from Australia – Information disclosure to effect removal	BE-5497	ADD2018/1954878
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896
Removal from Australia – Operational planning and logistics	BE-5499	ADD2018/1954904
Removal from Australia – Post-removal procedures	BE-5500	ADD2018/1954930
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal Availability Assessment	BE-5503	ADD2018/1954951
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961
Removal from Australia – Removal of minors and families	BE-5505	ADD2018/1954965
Removal from Australia – Removing detainees from different environments	BE-5506	ADD2018/1954972
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980
Removal from Australia – Voluntary removal	BE-5508	ADD2018/1954983
s5G - Relationships and family members - Child-parent relationships	VM-3065	LEGEND

## For Official Use Only

### 7.3. Supporting Material

Document	PPCR	TRIM / Website
DSM -Safety and security management - Audio-visual recording	DM-614	ADF2018/5596016
DSM – Legal Service – Detainee access to legal representation and migration agents	DM-601	ADD2018/5670598
DSM – Safety and security management - Screening and searching of detainees and their property	DM-3289	ADD2018/5730283
DSM- Visitor management – Visitor management	DM-3258	ADD2018/5733568
Information on removal baggage limits form		ADD2018/287286
Management of Detainee Property – Standard Operating Procedure	DM-3285	ADF2016/46958
Pre-removal Clearances and Informed Request for Removal Statements	VM-3226	
Removal from Australia - Glossary	BE-5509	ADD2018/1955777
Status Resolution System Control Framework – Mandatory Control Points	BC-6186	ADD2019/2439257

## 8. References and legislation

*Australian Border Force Act 2015*

*Migration Act 1958*

*Migration Regulations 1994*

*Privacy Act 1988 Schedule 1 – Australian Privacy Principles*

## 9. Consultation

### 9.1. Internal consultation

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

- Complex Case Resolution
- Enforcement Operations Central
- Field and Removal Operations Vic./Tas.
- Field and Removal Operations, Enforcement Command QLD
- Field Operations and Removals WA
- International Obligations and SHP Section
- Legal Opinions
- Legal Opinions - Legal Framework and Notifications Section



## For Official Use Only

- National Detention and Removal Programme (Detention policy)
- Operation Sovereign Borders, Joint Agency Task Force
- Refugee and International Law
- Removal Operations HQ, Enforcement Command
- Removal Operations NSW
- Status Resolution Framework Section

### 9.2. External consultation

No external stakeholder were consulted in the development of this Procedural Instruction.

## 10. Document details

<b>BCS Category/Function</b>	Border enforcement
<b>BCS Sub-Category/Sub-Function</b>	Program management and evaluation
<b>Period of Effect</b>	27 July 2021

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1	27 July 2018	Detention and Removal Operational Policy	Separation of Implementing removal from Australia topic
2	30 July 2019	Detention and Removal Operational Policy	Update of references to Control Framework. Process update to RFS

### 10.2. Procedural Instruction approval

<b>Document owner</b>	Don Smith, Commander ABF Governance
<b>Approval date</b>	27 July 2018



**For Official Use Only**

# Removal from Australia – Post-removal procedures

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia.

Approval Date	27 July 2018
Date of Review	27 July 2019
Contact	Detention and Removal Operational Policy Section s. 47E(d) @abf.gov.au
Document ID (PPN)	BE-5500
TRIM Reference	ADD2018/1954930

# Table of Contents

<b>1. Introduction</b>	<b>3</b>
1.1. Overview	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	3
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1. Reviewing the escort's removal report	4
4.2. Post-removal debriefing	4
4.3. Removal with post-removal handover assessments	6
4.4. Updating departmental systems post-removal	6
<b>5. Accountability and responsibilities</b>	<b>8</b>
Table 1 – Procedural Instruction roles and responsibilities	8
<b>6. Statement of Expectation</b>	<b>8</b>
<b>7. Related Framework documents</b>	<b>9</b>
7.1. Policy Statements	9
7.2. Procedural Instructions	9
7.3. Supporting Material	10
<b>8. References and legislation</b>	<b>10</b>
<b>9. Consultation</b>	<b>10</b>
9.1. Internal consultation	10
9.2. External consultation	11
<b>10. Document details</b>	<b>11</b>
10.1. Document change control	11
10.2. Procedural Instruction approval	11

# 1. Introduction

## 1.1. Overview

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

A non-citizen in the migration zone who does not hold a visa that is in effect is a UNC. If a UNC is unwilling or unable to resolve their visa status through visa grant or acquisition of citizenship the non-citizen will have no right to remain in Australia and will be liable for immigration detention under s189 of the *Migration Act 1958* (the Act) and removal from Australia under s198 of the Act.

### Purpose

All Removal from Australia PIs are designed to assist departmental and ABF officers, contracted service providers and stakeholders in effecting the removal of UNCs from Australia in a lawful manner, consistent with the departmental status resolution approach. PIs will assist officers in planning, managing and effecting a removal.

Each Removal from Australia PI is listed by subject in related framework documents. All PIs for Removal from Australia should be implemented in conjunction with [VM-5273](#) in PPCR *Departure Policy (returns, removals and departure support)* Policy Statement TRIM: PCD2018/1001.

## 2. Scope

### 2.1. In Scope

This PI sets out procedures and provides guidance on:

- review of escort removal report
- post-removal debriefing
- post-removal handover assessments
- updating departmental systems post-removal.

Suspected Illegal Foreign Fishers (IFF) will become liable for detention and removal on cessation of an enforcement visa<sup>1</sup>. For further information refer to:

- [DM-590](#) in PPCR (*Detention Services Manual (DSM) – Illegal Foreign Fishers – Illegal Foreign Fishers*)
- [BE-628](#) in PPCR (*DSM – Illegal Foreign Fishers – Enforcement visas*).

### 2.2. Out of Scope

#### Border and arrival turnaround

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

<sup>1</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.

If UNC's who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

## Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

## Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either as a UNC or as the holder of a Bridging visa managed by either ABF or Home Affairs.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Case Resolution - Returns and removals - Return services*).

# 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Removal from Australia – Glossary*).

# 4. Procedural Instruction

## 4.1. Reviewing the escort's removal report

All escorting parties must provide a completed Escort's removal report within 10 working days of removal completion. One report per escorting party is required, that is, one report from each type of escort present during the removal but not from each individual escort. Refer to [RBE-5491](#) in PPCR (*Removal from Australia – Escort arrangements - Escort reporting*).

Removal officers must review the report and record their review of the report on departmental systems/file. If the report reveals incidents during the removal (for example, use of force, administration of medication, possible inappropriate behaviour towards the removee) removal officers must advise their immediate supervisor and refer the issue to an EL1 officer (or higher) to consider an appropriate response.

The officer is to record any further action on departmental systems.

## 4.2. Post-removal debriefing

### Purpose of a post-removal debriefing

A post-removal debrief is a detailed after-action review of an activity, incident or occurrence to establish the facts related to the sequence of events, actions, reactions, counteractions, decisions and outcomes. A debrief focusses on organisational learning by considering opportunities for improvement in organisation, policy and procedures, command and control, personnel, training, system and equipment, support, facilities and engagement with external agencies. Debrief outcomes can provide a significant contribution to organisation learning and process improvement. For detailed guidance on procedures for conducting debriefing for all activities, incidents and occurrences refer to [DM-3304](#) in PPCR (*Debriefing*).

## When to conduct a debrief

A debrief can be held for cases where:

- sensitive legal, policy, procedural, inter-government or other issues arose during the planning, preparation or conduct of the removal
- a successful removal involved particularly sensitive elements (for example, use of force or restraints, self-harm or removal of particularly vulnerable persons)
- a removal was aborted due to sensitivities or complexities
- a removal involved significant political, community or media interest
- unprecedented issues arose, or
- the requirement for 48 hours' notice of removal was waived.

The debriefing should cover pre-removal planning and the physical removal from the point when the person was provided with the Notice of Intention to Remove from Australia refer to [RBE-5504](#) in PPCR (*Removal from Australia – Removal notification – Providing the person with the Notice of intention to remove*).

## Debriefing participants of the removal

A post-removal debrief is conducted when sufficient time (normally 3-5 days) has elapsed after the completion of the removal to allow for full consideration of the incident and the organisational response.

All departmental staff and contractors involved in an event (activity, incident or occurrence) should participate in the debrief. Personnel who are unable to attend should be engaged separately by the facilitator. Participants may include:

- the removal officer
- the removal liaison officer leading the escorts and relevant removal staff/travel unit staff
- the removees case manager or a community status resolution officer
- litigation officers
- contracted escort officers, if appropriate and available to participate
- a detention health services provider representative, if there are medical issues requiring input
- a Ministerial Intervention representative, if a Ministerial Intervention request has been lodged by a removee
- a Facilities and detainee service provider (FDSP) representative, if the removee is being removed from detention
- Removal Operations Head Quarters (HQ).

## Debriefing minutes

The removal officer should record all debriefings. As a minimum, the minutes should include the following:

- the legal, policy, procedural and other issues arising from the removal
- how these issues were addressed or overcome
- the impact and management of any incidents
- any changes identified to current policies or procedures
- existing policies or new policies/practices identified to resolve issues/incidents and
- follow-up action required within the Department or externally.

The facilitator should forward/email copies of the debriefing minutes to all participants and, if there are relevant issues, to non-participants such as:

- regional removal managers
- local compliance and/or ABF managers
- litigation officer.

### 4.3. Removal with post-removal handover assessments

If the removee required medical or welfare care arrangements in their home country, removal officers must:

- review the completed [Escort's Removal Report](#) (TRIM: ADD2008/849043) (if the removee was escorted), taking care to note the handover information
- report the outcome of the removal and handover information to their immediate supervisor and at least an EL 1 level officer (or higher).

### 4.4. Updating departmental systems post-removal

#### Requirements

Removal officers **must** ensure that:

- the removee is listed on the Movement Alert List - refer to '[Movement alert list](#)' (MAL).
- the departure is recorded on ICSE and other departmental systems - refer to '[CCMD portal and ICSE](#)'
- finalise the Removals service in portal
- all removal costs have been calculated (as a debt to the Commonwealth), or request for debt waiver and forwarded to debtors for entry in departmental financial systems. Instructions on notification to the relevant areas is provided in:
  - [DM-567](#) in PPCR (*Removal and detention costs*).
  - [BE-5488](#) in PPCR (*Removal from Australia – liability for cost of removal*).

For guidance in recording removal consistently on the Compliance, Case Management and Detention (CCMD) portal, refer to the relevant [Portal step-by step guide](#) (TRIM: ADF2012/33976).

#### Movement alert list (MAL)

Responsibility for entering a removee's details on MAL following the removee's removal varies from office to office and case to case. The removal officer, however, is ultimately responsible for ensuring that the MAL entry is made.

The entry is to:

- indicate that the removee was removed under [s198](#) of the Act (or other section)
- list the removee's and jointly liable person's debt to the Commonwealth
- list the relevant exclusion public interest criteria (PICs) and/or special return criteria (SRCs):
  - PIC [4004](#) - Debts to the Commonwealth
  - PIC [4013](#) - Eligibility for grant of certain visas may be affected for three (3) years after the date of visa cancellation

- PIC [4014](#) - eligibility for grant of certain (mostly temporary) visas may be affected for three (3) years if the date of departure is more than 28 days since last substantive visa ceased
- SRC [5001](#) - deportations and some s501 cancellations. (**Note:** SRC 5001 applies only if the person's visa was cancelled (not refused) wholly or partly because they were found to have a substantial criminal record or they were found not to be of good character, having regard to their past and present criminal conduct or their past and present criminal and general conduct)
- SRC [5002](#) - removal under [s198](#), [s199](#) or [s205](#) of the Act.

The actual amount of the removal debt, however, is not to be listed in MAL. For more detail, refer to [DM-567](#) in PPCR (*Removal and detention costs*).

Officers requiring more information should consult the detailed MAL instructions available from their Compliance Manager. See [VM-990](#) in PPCR (*Exclusion periods*).

## CCMD portal and ICSE

Removal officers must ensure that the following details, and the relevant CCMD portal qualifier (and, if applicable, sub-status) are recorded in departmental systems:

- the 'country departed to' field has been completed
- the flight details have been recorded
- if the removee is escorted during removal, the reason for the escorts (for example, Department of Infrastructure and Regional Development requirement)
- immigration detention details have been updated
- in the case of a removee being deported, the removee's visa has been manually ceased, and
- all relevant notes have been recorded, including 'case manager notified'.

Before finalising the event on departmental systems, the removal officer is to check the removee's record to ensure that the person has only one client ID and that the removee's record is showing the removee as being offshore. If there is more than one client ID for the removee, it is the removal officer's responsibility to arrange for the IDs to be 'merged'. The form for requesting ID merger is available on IMMI.net. For assistance, email IT Support.

## CCMD portal qualifier

- Involuntary escorted
- Involuntary unescorted
- Criminal deport
- Voluntary escorted
- Voluntary unescorted
- Finalised - Client deceased
- Finalised - Client now Australian citizen
- Finalised – Escaped
- Finalised - Lawful - case law affected
- Finalised - Substantive visa granted
- Finalised - Whereabouts unknown
- Finalised - Granted BVE



## For Official Use Only

- Finalised - Request for removal withdrawn
- Finalised - Protection assessment ongoing

## 5. Accountability and responsibilities

Table 1 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<ul style="list-style-type: none"> <li>• The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met.</li> <li>• Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures.</li> <li>• Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives.</li> <li>• Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review.</li> <li>• Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out.</li> </ul>
Superintendent (EL2) Detention and Removal Operational Policy (DROP)	<ul style="list-style-type: none"> <li>• Clearance of Procedural Instruction</li> <li>• Approval of updates to policy</li> </ul>
Inspector (EL1) DROP	<ul style="list-style-type: none"> <li>• Ensures Procedural Instruction is updated to reflect current policy</li> <li>• Ensures support materials comply with Procedural Instruction</li> </ul>

## 6. Statement of Expectation

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

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

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

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

## For Official Use Only

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

## 7. Related Framework documents

### 7.1. Policy Statements

[VM-5273](#) in PPCR, *Departure Policy (returns, removals and departure support)* TRIM: PCD2018/1001

[BC-763](#) in PPCR (*Status Resolution System Control Framework*) TRIM: ADD2019/2439251.

### 7.2. Procedural Instructions

Document	PPCR	TRIM Number
Pre-removal clearances and Informed Request for Removal Statements	VM-3226	LEGEND
Removal and Detention Costs	DM-567	<a href="#">PCD2017/6030</a>
Removal from Australia	BE-5488	ADD2018/1956150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791
Removal from Australia – Facilities and detainee service provider assessments	BE-5493	ADD2018/1954814
Removal from Australia – Health assessments	BE-5494	ADD2018/1954834
Removal from Australia – Impediments to removal	BE-5495	ADD2018/1954849
Removal from Australia – Implementing removal from Australia	BE-5496	ADD2018/1954866
Removal from Australia – Information disclosure to facilitate removal	BE-5497	ADD2018/1954878
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896
Removal from Australia – Operational planning and logistics	BE-5499	ADD2018/1954904
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal Availability Assessment	BE-5503	ADD2018/1954951
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961

## For Official Use Only

Document	PPCR	TRIM Number
Removal from Australia – Removal of minors and families	BE-5505	ADD2018/1954965
Removal from Australia – Removing detainees from different environments	BE-5506	ADD2018/1954972
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980
Removal from Australia – Voluntary removal	BE-5508	ADD2018/1954983

### 7.3. Supporting Material

Document	PPCR	TRIM / Website
Debriefing	DM-3304	
<a href="#">Escort's Removal Report</a>		ADD2008/849043
<a href="#">Portal step-by step guide</a>		ADF2012/33976
Removal from Australia - Glossary	BE-5509	ADD2018/1955777

## 8. References and legislation

- *Australian Border Force Act 2015*
- *Migration Act 1958*
- *Migration Regulations 1994*
- *Privacy Act 1988 Schedule 1* – Australian Privacy Principles

## 9. Consultation

### 9.1. Internal consultation

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

- AAT and Removals Injunctions Section
- ABF Operational Risk Management
- Complex Case Resolution
- Detention and Removal Operational Policy (detention policy)
- Detention Health Operations Section
- Enforcement Operations Central
- Field and Removal Operations, Enforcement Command QLD
- Field and Removal Operations Vic./Tas.
- Field Operations and Removals WA

## For Official Use Only

- International Obligations and SHP Section
- Legal Opinions
- Operation Sovereign Borders, Joint Agency Task Force
- Protection Caseload Resolution
- Records Management
- Refugee and International Law
- Removal Operations HQ
- Removal Operations NSW
- Secrecy and Disclosure Unit – Information Governance Section
- Status Resolution Framework Section

### 9.2. External consultation

No external stakeholder were consulted in the development of this Procedural Instruction.

## 10. Document details

<b>BCS Category/Function</b>	Border enforcement
<b>BCS Sub-Category/Sub-Function</b>	Program management and evaluation
<b>Period of Effect</b>	27 July 2021

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1	27 July 2018	Detention and Removal Operational Policy	Separation of Post-removal procedures topic
2	5 August 2019	Detention and Removal Operational Policy	Update reference to Control Framework and minor edits

### 10.2. Procedural Instruction approval

<b>Document owner</b>	Don Smith, Commander ABF Governance
<b>Approval date</b>	27 July 2018



**For Official Use Only**

# Removal from Australia – Removal Availability Assessment

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia.

Approval Date	27 July 2018
Date of Review	27 July 2021
Contact	Detention and Removal Operational Policy Section s. 47E(d) @abf.gov.au
Document ID (PPN)	BE-5503
TRIM Reference	ADD2018/1954951

# Table of Contents

<b>1. Introduction</b>	<b>3</b>
1.1. Overview	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	4
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1. The RAA Mandatory Control Points (MCPs)	4
4.2. RAA for illegal foreign fishers	5
4.3. RAA for IMAs	6
4.4. RAA sign-off	6
4.5. RAA validity period	7
<b>5. Accountability and responsibilities</b>	<b>7</b>
Table 1 – Procedural Instruction roles and responsibilities	7
<b>6. Statement of Expectation</b>	<b>8</b>
<b>7. Related Framework documents</b>	<b>8</b>
7.1. Policy Statements	8
7.2. Procedural Instructions	9
7.3. Supporting Material	10
<b>8. References and legislation</b>	<b>10</b>
<b>9. Consultation</b>	<b>10</b>
9.1. Internal consultation	10
9.2. External consultation	11
<b>10. Document details</b>	<b>11</b>
10.1. Document change control	11
10.2. Procedural Instruction approval	11

# 1. Introduction

## 1.1. Overview

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

A non-citizen in the migration zone who does not hold a visa that is in effect is a UNC. If a UNC is unwilling or unable to resolve their visa status through visa grant or acquisition of citizenship the non-citizen will have no right to remain in Australia and will be liable for immigration detention under s189 of the *Migration Act 1958* (the Act) and removal from Australia under s198 of the Act.

### Purpose

All Removal from Australia PIs are designed to assist departmental and ABF officers, contracted service providers and stakeholders in effecting the removal of UNCs from Australia in a lawful manner, consistent with the departmental status resolution approach. PIs will assist officers in planning, managing and effecting a removal.

Each Removal from Australia PI is listed by subject in related framework documents. All PIs for Removal from Australia should be implemented in conjunction with [VM-5273](#) in PPCR *Departure Policy (returns, removals and departure support)* Policy Statement TRIM: PCD2018/1001.

# 2. Scope

## 2.1. In Scope

This PI sets out procedures and provides guidance on:

- Removal Availability Assessments (RAA)
- escalation for complex cases, barriers to completion, or other concerns
- RAA for illegal foreign fishers (IFF)
- RAA for illegal maritime arrivals (IMAs)
- RAA for onshore compliance
- RAA sign-off.

Suspected IFFs will become liable for detention and removal on cessation of an enforcement visa<sup>1</sup>. For further information refer to:

- [DM-590](#) in PPCR (*Detention Services Manual (DSM) – Illegal Foreign Fishers – Illegal Foreign Fishers*)
- [BE-628](#) in PPCR (*DSM – Illegal Foreign Fishers – Enforcement visas*).

<sup>1</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.



## 2.2. Out of Scope

### Border and arrival turnaround

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

If UNC's who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

### Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

### Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either independently as a UNC or as the holder of a Bridging visa managed by either ABF or the Department.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Case Resolution - Returns and removals - Return services*).

## 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Removal from Australia Glossary*).

## 4. Procedural Instruction

### 4.1. The RAA Mandatory Control Points (MCPs)

#### About RAA

The RAA is the key tool in determining and confirming whether a UNC is both liable (under [s198](#) of the Act) and available for removal and forms part of [BC-763](#) in PPCR (*Status Resolution System Control Framework*) 'Control Framework', as Mandatory Control Point (MCP10).

Removal officers must complete an RAA for all removal operations, whether an individual is being removed voluntarily or involuntarily.

There are specific RAA forms designed according to risk factors present in a particular cohort:

- the standard compliance RAA
- an RAA for IFF leaving voluntarily
- an RAA for a person who is a IMA, as defined under s5AA of the Act.



The standard compliance RAA is used for all removal operations other than those involving IFFs and IMAs. The standard RAA and IFF/IMA modified RAAs are automatically generated in the Compliance, Case Management and Detention (CCMD) portal.

The RAA prompts the assessing officer (an APS4 or above, removal officer) to consider both legislative and policy issues related to removal through a series of factual and procedural-related questions. These questions cover:

- identity, immigration status at the time of removal, nationality and right of entry into the country of removal
- unfinalised visa applications, merits review, judicial review or requests for ministerial intervention
- any unresolved substantial claims, complaints or investigations by third parties or need for pre-removal clearances (PRC)
- fitness to travel and consideration of any special return needs
  - a set of citizenship related questions adapted for removal officers to assist in determining citizenship status is contained in 'Citizenship questions' TRIM: ADD2018/2310349.

The RAA provides an approving officer with evidence to support consideration of the request for approval to proceed with removal of a person from Australia under s198 of the Act. Assessing officers must demonstrate to the approving officer their independent thinking about a case rather than relying on past checks and assurances provided by other officers in relation to the removee. Doing so will provide documentary evidence that a removal officer has carefully considered the case, should the lawfulness of removal ever come into question. Matters that removal officers need to turn their minds to in answering RAA questions are discussed in the Common Facts section of the Removal availability assessment guide - onshore compliance TRIM ADD2012/136167.

## Escalation for complex cases, barriers to completion, or other concerns

If an issue/case is significant enough to warrant senior leadership involvement, the removal Superintendent will escalate the matter to the relevant Commander. Systemic issues and trends can also be discussed in the Employer, Field and Removals Best Practice Group (EFRBPG) meetings, attended by Removal Superintendents. If necessary, the EFRBPG can facilitate the escalation of significant unresolved issues to the appropriate Commander.

## 4.2. RAA for illegal foreign fishers

IFFs who request removal in writing (i.e. voluntary) are removed under s198(1) of the Act. Those IFFs that do not request removal in writing (i.e. involuntary) can be removed under s198(2) or another subsection of s198 of the Act applicable to their circumstances. Refer to: [BE-5488](#) in PPCR (*Removal from Australia PI - Legislative grounds for removal*).

The RAA for IFFs has been developed to address the different risks in this caseload and is used when s198(1) of the Act is invoked.

### Individual IFFs

The RAA for IFFs is to be used to assess and record availability for removal of individual IFFs who:

- are willing to be removed voluntarily
- do not present with any complexities that may impact on the removal (for example, health, security or welfare risks).

The RAA for IFFs is available in the CCMD portal and the guidelines for completing it are in TRIM - refer to 'Removal availability assessment guide – illegal foreign fishers' TRIM: ADD2018/2297400.

The standard RAA form must be used if an IFF:

- is to be removed involuntarily, or
- was to be removed voluntarily, but has become involuntary, or
- at any stage of the removal process presents with health, legal or immigration complexities.

### 4.3. RAA for IMAs

The RAA for IMAs is tailored to meet the specific circumstances of the legacy caseload of unauthorised/IMAs and illegal/maritime arrivals. Note that the term IMA is a broad non-legislative term used in the Department to describe persons who arrive by sea. Unauthorised maritime arrival (UMA) is a defined term in s5AA of the Act. The IMA RAAs intent is to identify those persons meeting the definition of a UMA, and to ensure that the relevant legislative provisions are correctly applied according to the unlawful non-citizen's date and place of arrival. Key legislative provisions relate to liability for transfer to a regional processing country (RPC) and access to assessment of Protection visa claims.

To mitigate the risk of unlawfully removing a UMA from Australia, this RAA for IMAs should be completed for all IMAs to establish whether or not the unlawful non-citizen is by definition a UMA.

The RAA used for IMA individuals and groups is available in the CCMD portal.

Refer to Removal availability assessment guide - Illegal Maritime Arrival TRIM: ADD2017/2686591 for instructions on completing the RAA.

### 4.4. RAA sign-off

#### Clearance – approving officer

Removals manager (APS6/Supervisor or EL1/Inspector) will review a draft RAA and related evidence before submitting it to an approving officer for sign off.

The authorisation for RAA signoff depends on the type of removal case. Any sensitive and/or high profile cases should be escalated to the next level of approving officer. If the case falls into more than one category, the most senior approving officer applies.

#### ABF Commander (SES band 1 level)

Criteria:

- all unaccompanied minors (UAMs)
- all s200 deportations
- all s199 and s205 requests for removal of citizen/ lawful family members of removees
- all cases where Child Wellbeing Branch has noted concerns or the need for senior level oversight of a removal including minors (through a Best Interests of the Child Consideration)
- all cases where mental health or intellectual incapacity affects decision-making ability (as advised by IHMS).

#### ABF Superintendent (EL2)

Criteria:

- all cases where an *informed request for removal* has been required (and signed by the removee) as part of the pre-removal clearance referral process
- all removal of people who refuse to request removal in writing in line with s198(1) of the Act or who are otherwise uncooperative with efforts to remove them from Australia (i.e. involuntary removal)

## For Official Use Only

- any sensitive and/or high profile cases can be escalated to the next level of approving officer.

### ABF Inspector (EL1)

Criteria:

All removal of people who request removal in writing in line with s198(1) of the Act and are cooperating with efforts to remove them from Australia (i.e. voluntary removal) and who **do not** meet EL2 or SES criteria. For example:

- s501 detainees who request removal from prison or immigration detention **and do not** meet any of the pre-removal clearance risk factors
- voluntary removal of visa overstayers
- voluntary removal of IMA crew and IFFs (including minors)
- voluntary prison to plane removal of people **who have not** had a visa cancelled or refused (except those who require an informed request for removal, then these must be signed off by the Superintendent)
- voluntary removal of unauthorised air arrivals not removed within 72 hours.

An approving officer will only approve the RAA once they are satisfied it includes an appropriate level of evidence to support the removal and based on an objective consideration of evidence are satisfied that the person is available and liable for removal. The approving officer approves the RAA in CCMD, at which point the decision is finalised and the RAA is complete.

## 4.5. RAA validity period

Once an authorised officer has approved an RAA, it is valid for seven (7) days from the date of approval. The removal officer must complete a new RAA if the person's liability or availability for removal changes, for example, if the person decides they do not wish to depart Australia voluntarily and lodges an application for a substantive visa, merits review or judicial review which cannot be resolved prior to the removal date.

A signed RAA is a written record of the Department's intention to remove a person from Australia under s198. The courts can independently review the Department's decision making process using the signed and dated RAA. As mentioned above, the RAA ensures consistency in the departmental assessment of how and why it is "reasonably practicable" to remove a person from Australia. It is essential that the removal officer attaches the evidence they have considered in the RAA. The recordkeeping surrounding the RAA decision must be accurate and comprehensive as a court would require these documents to review removal planning and assessment, if needed. The removal of a person from Australia is a significant power with significant consequences. Removals officers must be prepared to demonstrate that they are acting lawfully.

## 5. Accountability and responsibilities

Table 1 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<ul style="list-style-type: none"> <li>The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met.</li> <li>Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures.</li> </ul>

## For Official Use Only

Position	Accountability and/or responsibility
	<ul style="list-style-type: none"> <li>Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives.</li> <li>Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review.</li> <li>Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out.</li> </ul>
Superintendent (EL2) Detention and Removal Operations Policy (DROP)	<ul style="list-style-type: none"> <li>Clearance of Procedural Instruction</li> <li>Approval of updates to policy</li> </ul>
Inspector (EL1) DROP	<ul style="list-style-type: none"> <li>Ensures Procedural Instruction is updated to reflect current policy</li> <li>Ensures support materials comply with Procedural Instruction</li> </ul>

## 6. Statement of Expectation

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

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

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

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

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

## 7. Related Framework documents

### 7.1. Policy Statements

[VM-5273](#) in PPCR Departure Policy (returns, removals and departure support) TRIM: PCD2018/1001

[BC-763](#) in PPCR (*Status Resolution System Control Framework*) TRIM: ADD2019/1193028.



## For Official Use Only

### 7.2. Procedural Instructions

Document	PPCR	TRIM Number
Australian Citizenship Status Assessments for activities being undertaken under the Migration Act 1958	VM-532	ADD2018/1997953
Pre-removal clearances and Informed Request for Removal Statements	VM-3226	LEGEND
Removal and Detention Costs	DM-567	<u>PCD2017/6030</u>
Removal from Australia	BE-5488	ADD2018/1956150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791
Removal from Australia – Facilities and detainee service provider assessments	BE-5493	ADD2018/1954814
Removal from Australia – Health assessments	BE-5494	ADD2018/1954834
Removal from Australia – Impediments to removal	BE-5495	ADD2018/1954849
Removal from Australia – Implementing removal from Australia	BE-5496	ADD2018/1954866
Removal from Australia – Information disclosure to facilitate removal	BE-5497	ADD2018/1954878
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896
Removal from Australia – Operational planning and logistics	BE-5499	ADD2018/1954904
Removal from Australia – Post-removal procedures	BE-5500	ADD2018/1954930
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961
Removal from Australia – Removal of minors and families	BE-5505	ADD2018/1954965
Removal from Australia – Removing detainees from different environments	BE-5506	ADD2018/1954972
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980
Removal from Australia – Voluntary removal	BE-5508	ADD2018/1954983

## For Official Use Only

### 7.3. Supporting Material

Document	PPCR	TRIM / Website
Citizenship questions		ADD2018/2310349
RAA Attachments Guide		ADD2017/351348
Removal Availability Assessment Guide – Illegal Foreign Fishers	BE-6156	ADD2018/2297400
Removal Availability Assessment Guide – Illegal Maritime Arrivals	BE-6158	ADD2017/2686591
Removal Availability Assessment Guide – Onshore Compliance	BE-6157	ADD2012/136167
Removal from Australia - Glossary	BE-5509	ADD2018/1955777
Request for Pre-removal Clearances and Informed Request for Removal Statement		ADD2016/113318
Status Resolution System Control Framework Mandatory Control Points	BC-6186	ADD2019/2439257

## 8. References and legislation

- *Australian Border Force Act 2015*
- *Migration Act 1958*
- *Migration Regulations 1994*
- *Privacy Act 1988 Schedule 1* – Australian Privacy Principles

## 9. Consultation

### 9.1. Internal consultation

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

- AAT and Removals Injunctions Section
- ABF Operational Risk Management
- Complex Case Resolution
- Detention and Removal Operational Policy (detention policy)
- Detention Health Operations Section
- Enforcement Operations Central
- Field and Removal Operations, Enforcement Command QLD
- Field and Removal Operations Vic./Tas.
- Field Operations and Removals WA
- International Obligations and SHP Section

## For Official Use Only

- Legal Opinions
- Operation Sovereign Borders, Joint Agency Task Force
- Protection Caseload Resolution
- Records Management
- Refugee and International Law
- Removal Operations HQ, Enforcement Command
- Removal Operations NSW
- Secrecy and Disclosure Unit – Information Governance Section
- Status Resolution Framework Section

### 9.2. External consultation

No external stakeholder were consulted in the development of this Procedural Instruction.

## 10. Document details

<b>BCS Category/Function</b>	Border enforcement
<b>BCS Sub-Category/Sub-Function</b>	Program management and evaluation
<b>Period of Effect</b>	27 July 2021

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1	27 July 2018	Detention and Removal Operational Policy	Separation of RAA topic
2	25 July 2019	Detention and Removal Operational Policy	Critical Control Points (CCP) changed to Mandatory Control Points (MCP). RAA validity policy added and minor edits

### 10.2. Procedural Instruction approval

<b>Document owner</b>	Don Smith, Commander ABF Governance
<b>Approval date</b>	27 July 2018

**For Official Use Only**

# Removal from Australia – Facilities and detainee service provider assessments

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia.

Approval Date	31 July 2018
Date of Review	31 July 2021
Contact	<u>Detention and Removal Operational Policy Section</u>
Document ID (PPN)	BE-5493
TRIM Reference	ADD2018/1954814



# Table of Contents

<b>1. Introduction</b>	<b>3</b>
1.1. Overview	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	3
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1.1. About FDSP assessments	4
4.2. Requesting the FDSP assessment	5
<b>5. Accountability and responsibilities</b>	<b>5</b>
Table 1 – Procedural Instruction roles and responsibilities	5
<b>6. Statement of Expectation</b>	<b>6</b>
<b>7. Related Framework documents</b>	<b>6</b>
7.1. Policy Statements	6
7.2. Procedural Instructions	6
7.3. Supporting Material	7
<b>8. References and legislation</b>	<b>8</b>
<b>9. Consultation</b>	<b>8</b>
9.1. Internal consultation	8
9.2. External consultation	8
<b>10. Document details</b>	<b>9</b>
10.1. Document change control	9
10.2. Procedural Instruction approval	9

# 1. Introduction

## 1.1. Overview

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

A non-citizen in the migration zone who does not hold a visa that is in effect is a UNC. If a UNC is unwilling or unable to resolve their visa status through visa grant or acquisition of citizenship the non-citizen will have no right to remain in Australia and will be liable for immigration detention under s189 of the *Migration Act 1958* (the Act) and removal from Australia under s198 of the Act.

### Purpose

All Removal from Australia PIs are designed to assist departmental and ABF officers, contracted service providers and stakeholders in effecting the removal of UNCs from Australia in a lawful manner, consistent with the departmental status resolution approach. PIs will assist officers in planning, managing and effecting a removal.

Each Removal from Australia PI is listed by subject matter in related framework documents. All PIs for Removal from Australia should be implemented in conjunction with VM-5273 in PPCR *Departure Policy (returns, removals and departure support)* Policy Statement (TRIM: PCD2018/1001).

# 2. Scope

## 2.1. In Scope

This PI sets out procedures and provides guidance on:

- the purpose of facilities and detainee service provider (FDSP) assessment
- making a FDSP assessment request.

Suspected Illegal Foreign Fishers (IFF) will become liable for detention and removal on cessation of an enforcement visa<sup>1</sup>. For further information refer to:

- DM-590 in PPCR (*Detention Services Manual (DSM) – Illegal Foreign Fishers – Illegal Foreign Fishers*)
- BE-628 in PPCR (*DSM – Illegal Foreign Fishers – Enforcement visas*).

## 2.2. Out of Scope

### Border and arrival turnaround

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to BC-536 in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

If UNCs who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

<sup>1</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.

## Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

## Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either independently as a UNC or as the holder of a Bridging visa managed by either ABF or the Department.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Case Resolution - Returns and removals - Return services*).

## 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Removal from Australia Glossary*).

## 4. Procedural Instruction

### 4.1.1. About FDSP assessments

The FDSP assessment assists removal officers to determine the appropriate mode of travel for a removee.

The *Aviation Transport Security Regulations 2005* (the ATSR) deal with persons in custody (PIC) under the Migration Act. Persons in immigration detention that will be removed or deported, including IFFs will require a security assessment to determine ATSR requirements that will apply during the removal operation. The ATSR require that operators of prescribed aircraft, and in some cases operators of security controlled airports, be notified in advance of the travel of immigration PICs. For information on the ATSR and travel types, refer to [BE-5489](#) in PPCR (*Removal from Australia – Aviation security requirements for PICs*).

The FDSP assessment is based on information on the person's history in detention, which may indicate the person's potential to act in a disruptive manner. This information establishes a profile of the person that includes their behaviour, health and potential escort needs and attitude towards removal. The FDSP provides assessments for persons in immigration detention facilities.

For persons being removed from correctional facilities the correctional facility conducts the assessment report. Unlike the FDSP assessment, the state correctional authorities do not use a uniformly consistent template for these types of security assessments.

A FDSP assessment, or a similar report/information for removal from correctional facilities, is required unless the person is not being removed from a secure/guarded detention environment.

Note that border arrivals and turnarounds are out of the scope of this PI. Refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

The information provided in the assessment will become part of the overall removal risk assessment process. It also informs:

- the completion of the Departmental Aviation Assessment (DAA). Refer to [BE-5489](#) in PPCR (*Removal from Australia – Aviation security requirements*)

## For Official Use Only

- escort requirements
- the request for uplift approval
- the completion of the operational departure plan
- the completion of a Removal Availability Assessment (RAA). Refer to [BE-5503](#) in PCR (*Removal from Australia – Removal Availability Assessment*).

To make a complete assessment of the risks associated with the person's travel, a removal officer should consider the FDSP assessment together with the person's file, departmental systems and other information available to the Department. It is the removal officer's responsibility to review the security assessment and ensure it is consistent with information held by the Department..

### 4.2. Requesting the FDSP assessment

The FDSP/corrections assessment is valid for 28 calendar days from the date of completion by the FDSP/correctional facility (not date of receipt), and must be valid at the time of removal. To ensure that information is current at the time of removal an FDSP/correctional facility incident report for the person being removed should be requested seven (7) days prior to removal. If there are any incidents reported since the date of the assessment that may affect the removal, for example incidents of uncooperative behaviour, a new FDSP assessment should be requested.

If the initial FDSP assessment is provided within seven (7) days of the removal, officers do not need to request an FDSP/correctional facility incident report on the removee unless it is considered a complex, sensitive or high risk removal case.

To obtain the FDSP assessment officers are to contact the FDSP and request a FDSP assessment of the person. This process is also followed to obtain an incident report and an updated FDSP assessment.

For persons held in a correctional facility, who are subject to removal, a FDSP equivalent assessment should be sought. Generally, the removal officer should contact the Prison Records Section of the respective correctional facility; however, there may be other local arrangements in place.

## 5. Accountability and responsibilities

Table 1 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<ul style="list-style-type: none"> <li>• The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met</li> <li>• Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures</li> <li>• Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives</li> <li>• Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review</li> <li>• Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out</li> </ul>

## For Official Use Only

Position	Accountability and/or responsibility
Superintendent (EL2) Detention and Removal Operational Policy (DROP)	<ul style="list-style-type: none"> <li>• Clearance of Procedural Instruction</li> <li>• Approval of updates to policy</li> </ul>
Inspector (EL1) DROP	<ul style="list-style-type: none"> <li>• Ensures Procedural Instruction is updated to reflect current policy</li> <li>• Ensures support materials comply with Procedural Instruction</li> </ul>

## 6. Statement of Expectation

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

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

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

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

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

## 7. Related Framework documents

### 7.1. Policy Statements

[VM-5273](#) in PPCR, *Departure Policy (returns, removals and departure support)* TRIM: PCD2018/1001

[BC-763](#) in PPCR (*Status Resolution System Control Framework*) TRIM: ADD2019/243925.

### 7.2. Procedural Instructions

Document	PPCR	TRIM Number
Pre-removal clearances and Informed Request for Removal Statements	VM-3226	LEGEND
Removal and Detention Costs	DM-567	<a href="#">PCD2017/6030</a>
Removal from Australia	BE-5488	ADD2018/1956150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574



## For Official Use Only

Document	PPCR	TRIM Number
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791
Removal from Australia – Health assessments	BE-5494	ADD2018/1954834
Removal from Australia – Impediments to removal	BE-5495	ADD2018/1954849
Removal from Australia – Implementing removal from Australia	BE-5496	ADD2018/1954866
Removal from Australia – Information disclosure to effect removal	BE-5497	ADD2018/1954878
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896
Removal from Australia – Operational planning and logistics	BE-5499	ADD2018/1954904
Removal from Australia – Post-removal procedures	BE-5500	ADD2018/1954930
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal Availability Assessment	BE-5503	ADD2018/1954951
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961
Removal from Australia – Removal of minors and families	BE-5505	ADD2018/1954965
Removal from Australia – Removing detainees from different environments	BE-5506	ADD2018/1954972
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980
Removal from Australia – Voluntary removal	BE-5508	ADD2018/1954983

### 7.3. Supporting Material

Document	PPCR	TRIM / Website
Detention Service Provider Assessment: Aviation Security Risk	-	ADD2014/580380
Removal from Australia - Glossary	BE-5509	ADD2018/1955777
Status Resolution System Control Framework Mandatory Control Points	BC-6186	ADD2019/2439257

## 8. References and legislation

- *Australian Border Force Act 2015*
- *Aviation Transport Security Regulations 2005*
- *Migration Act 1958*
- *Migration Regulations 1994*
- *Privacy Act 1988 Schedule 1* – Australian Privacy Principles

## 9. Consultation

### 9.1. Internal consultation

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

- AAT and Removals Injunctions Section
- ABF Operational Risk Management
- Complex Case Resolution
- Detention and Removal Operational Policy (Detention policy)
- Detention Health Operations Section
- Enforcement Operations Central
- Field and Removal Operations, Enforcement Command QLD
- Field and Removal Operations Vic./Tas.
- Field Operations and Removals WA
- International Obligations and SHP Section
- Legal Opinions
- Onshore Contracts
- Operation Sovereign Borders, Joint Agency Task Force
- Protection Caseload Resolution
- Records Management
- Refugee and International Law
- Removal Operations HQ, Enforcement Command
- Removal Operations NSW
- Secrecy and Disclosure Unit – Information Governance Section
- Status Resolution Framework Section

### 9.2. External consultation

No external stakeholder were consulted in the development of this Procedural Instruction.



## For Official Use Only

### 10. Document details

<b>BCS Category/Function</b>	Border enforcement
<b>BCS Sub-Category/Sub-Function</b>	Program management and evaluation
<b>Period of Effect</b>	31 July 2021

#### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1	31 July 2018	Detention and Removal Operational Policy	-
2	30 July 2019	Detention and Removal Operational Policy	References to new Control Framework updated. Other minor edits to document links/TRIM references and updates to section names

#### 10.2. Procedural Instruction approval

<b>Document owner</b>	Commander ABF Governance
<b>Approval date</b>	31 July 2018



**For Official Use Only**

# Removal from Australia – Operational planning and logistics

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia.

Approval Date	31 July 2018
Date of Review	31 July 2019
Contact	Detention and Removal Operational Policy Section s. 47E(d) @abf.gov.au
Document ID (PPN)	BE-5499
TRIM Reference	ADD2018/1954904

<b>1. Introduction</b>	<b>3</b>
1.1. Overview	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	3
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1. Operational Departure Plan (ODP)	5
4.2. Escort Operational Orders (EOO)	5
4.3. Removal destination and route	5
4.4. Organising travel	6
4.5. ABF reporting	9
<b>5. Accountability and responsibilities</b>	<b>10</b>
Table 2 – Procedural Instruction roles and responsibilities	10
<b>6. Statement of Expectation</b>	<b>10</b>
<b>7. Related Framework documents</b>	<b>11</b>
7.1. Policy Statements	11
7.2. Procedural Instructions	11
7.3. Supporting Material	12
<b>8. References and legislation</b>	<b>12</b>
<b>9. Consultation</b>	<b>13</b>
9.1. Internal consultation	13
9.2. External consultation	13
<b>10. Document details</b>	<b>14</b>
10.1. Document change control	14
10.2. Procedural Instruction approval	14

# 1. Introduction

## 1.1. Overview

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

A non-citizen in the migration zone who does not hold a visa that is in effect is a UNC. If a UNC is unwilling or unable to resolve their visa status through visa grant or acquisition of citizenship the non-citizen will have no right to remain in Australia and will be liable for immigration detention under s189 of the *Migration Act 1958* (the Act) and removal from Australia under s198 of the Act.

### Purpose

All twenty (20) Removal from Australia PIs are designed to assist departmental and ABF officers, contracted service providers and stakeholders in effecting the removal of UNCs from Australia in a lawful manner, consistent with the departmental status resolution approach. PIs will assist officers in planning, managing and effecting a removal.

Each Removal from Australia PI is listed by subject in related framework documents. All PIs for Removal from Australia should be implemented in conjunction with [VM-5273](#) in PPCR *Departure Policy (returns, removals and departure support)* Policy Statement (TRIM: PCD2018/1001).

## 2. Scope

### 2.1. In Scope

This PI sets out procedures and provides guidance on:

- Operational Departure Plan (ODP)
- Escort Operational Orders (EEO)
- Organising travel including removal destination and route
- ABF reporting for removal operation

Suspected Illegal Foreign Fishers (IFF) will become liable for detention and removal on cessation of an enforcement visa<sup>1</sup>. For further information refer to:

- [DM-590](#) in PPCR (*Detention Services Manual (DSM) – Illegal Foreign Fishers – Illegal Foreign Fishers*)
- [BE-628](#) in PPCR (*DSM – Illegal Foreign Fishers – Enforcement visas*).

### 2.2. Out of Scope

#### Border and arrival turnaround

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

<sup>1</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.

If UNCs who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

## Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

## Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either independently as a UNC or as the holder of a Bridging visa managed by either ABF or Home Affairs.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Case Resolution - Returns and removals - Return services*).

# 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Annex A – Removal from Australia – Glossary*).

# 4. Procedural Instruction

## 4.1. Removal planning

Removal planning is commenced as soon as practicable following referral to a regional removals team. Both escorted and unescorted removals require administrative tasks, in relation to:

- valid travel documents
- review of removal date
- cultural and religious sensitivities
- removal destination and route
- international transit
- travel booking and spending approval
- uplift approval.

Escorted removal operations, whether voluntary or involuntary, require additional logistical administration for the assigned escorts and reporting requirements in the ABF. Operational planning to provide escorts with relevant removee information, key communication and contacts is completed in the operational departure plan (ODP).

Removals officers are advised to document all the relevant records in CCMD and TRIM when planning a removal.

## 4.2. Operational Departure Plan (ODP)

### About the ODP

The [Operational Departure Plan \(ODP\)](#) (TRIM ADD2016/1039055) is the key tool used for describing how a removal will be executed and resourced along with information regarding logistical considerations, sensitivities, as well as a communication strategy and key contact details. These may be replaced by National or Local Operational Orders for ABF removal operations identified as high risk/complexity.

An ODP is required for all escorted removals together with a Security Risk Assessment (refer to [BE-5491](#) in PPCR (*Removal from Australia – Escort arrangements – 4.10. Security risk assessments for overseas escorts*) which is conducted by the Security Overseas Travel Section. The purpose of this assessment is to identify personal security and safety risks and put appropriate mitigation treatments in place for officers and escorts who travel to high risk destinations.

Removal officers must save a copy of the ODP in TRIM and link it to the case in the Compliance, Case Management and Detention (CCMD) portal. All escorts should also carry a copy during the removal operation.

The [Operational Departure Plan \(ODP\) Guide](#) (TRIM ADD2011/1327425) provides advice on completing the ODP.

Officers should be aware of the provisions in Part 4A of the Act regarding identifying information. Section 336C of the Act provides that access to identifying information is an offence unless the person is authorised to access the information for the purpose for which it was accessed. Section 336E of the Act provides that the disclosure of identifying information is an offence unless the disclosure is a permitted disclosure for the purposes of subsection 336E(2).

For policy and procedure on disclosure, refer to [IIB-1537](#) in PPCR (*Identifying information - Access and disclosure*). For specific information on aviation procedures and escort requirements refer to:

- [BE-5489](#) (*Removal from Australia – Aviation security requirements*)
- [BE-5491](#) (*Removal from Australia – Escort arrangements*).

For more information and guidance on operational planning, email [S. 47E\(d\)](#) [@abf.gov.au](mailto:S.47E(d)@abf.gov.au).

## 4.3. Escort Operational Orders (EOO)

The Facilities and Detainee Service Provider (FDSP) will prepare an EOO for each escorted removal. The EOO provides a chronological outline of the removal operation, including a description of all procedures and contingency plans, and must be attached to the ODP.

## 4.4. Removal destination and route

### Destination

The removal provisions of the Act do not specify the destination for removal. Departmental policy is that a person may be removed only to a country of citizenship or a country where they have the right of entry and stay.

### Route

The Department is not obliged to remove a person to a specific city or town within the destination country. Usual practice is to remove the person to an international airport nearest to their final destination. As part of the post-removal support arrangements, officers may arrange for further domestic transport. Removal officers are to discuss transport arrangements/routes for removees with special needs with a supervisor.

When choosing the airline and route, officers should consider:

- cost and timing of flights
- departure point from Australia
- stopover time at transit points
- baggage issues at transit points (for example, can the removees baggage be checked through to connecting flights or does it have to be collected? What implications can this have for security? Can the removal officer obtain assistance to manage the removees baggage so that escorts can concentrate on supervising the removee?)
- visa and security requirements at transit points, especially potential difficulties in certain transit countries
- implications of using other airlines for any necessary connecting flights.

### Voluntary removees who purchase their own ticket

If a person subject to removal wishes to purchase their own airline ticket (or use an existing ticket) to affect their removal, officers may stipulate to the person the date they must travel, the airline they must use and routes they must travel. This is within the scope of the (implied) power of s198(1) of the Act.

The Consent to use airline ticket for removal form (TRIM: ADD2008/868573) must be completed in these circumstances.

## 4.5. Organising travel

### Cultural and religious sensitivities

When organising a removal, officers must consider the removee's religious and cultural sensitivities. For example, if removing a person during a religious holiday, officers should meet the removee's prayer and meal requirements as best as possible in the circumstances of the removal.

### Booking travel

Removal officers must book and pay for all travel through the Department's contracted travel service provider.

Any further questions regarding these instructions, email [s. 47E\(d\) @homeaffairs.gov.au](mailto:s.47E(d)@homeaffairs.gov.au).

Removal/travel unit officers should request the travel service provider to book flights and if required accommodation (including for any escorts) using the departmental Removal travel request form.

Generally, transit accommodation is not required as the officer should choose the most direct route. If transit accommodation is required it should, where possible, be in a transit hotel located within the terminal and not past immigration control.

Refer to:

- [BE-5489](#) in PPCR (*Removal from Australia – Aviation security requirements*) regarding procedures for assessing a person's air travel type, escort requirements and notification requirements to aircraft and airport operators.
- [BE-5491](#) in PPCR (*Removal from Australia – Escort arrangements – 4.7. Escort conditions – non-departmental employees*) for details of appropriate rest periods and accommodation for escorts.

### Official travel expenditure approval

Airfare, accommodation and associated expenses for international travel require approval from the relevant financial delegate. Approval limits and instructions to ABF officers are located in [FM-4808](#) in PPCR (*Accountable Authority Instructions – Part 2 Spending money - International Travel*).



Note that travel includes the total estimated cost (GST inclusive) of international travel, either individually or for a group activity such as, a removal operation. Aircraft charters for removal purposes are not subject to departmental official travel requirements. Refer to [FM-4808](#) in PPCR (*Accountable Authority Instructions – Part 2 Spending money – 2.110. Official Travel*). Applicable financial delegations for domestic travel and aircraft charter expenditure are contained in [FM-1261](#) in PPCR (*Financial Delegation Schedules*).

For further detail on Official travel refer to [FM-1265](#) in PPCR (*Financial Management Guide 1.02.03 - Official Travel*).

## Charter flights

The Department may determine that a charter flight is appropriate for the removal of larger groups of UNCs or for individuals for whom the Department cannot get uplift approval from a commercial carrier.

Factors that may give rise to the consideration of a charter aircraft include, but are not limited to:

- how many persons are being removed
- availability of commercial flights
- detention management issues
- foreign government requirements
- community/media sensitivities
- appropriate travel/transit routes
- efficient use of commonwealth funds
- risks to the person/s
- escort requirements/medical needs.

When considering the use of a charter flight, the removal officer should prepare a detailed business case for the relevant financial delegate at SES level and the Deputy Commissioner, outlining:

- reason for consideration of charter
- case background
- removal or detention management issues
- operational requirements
- risks with and without use of charter
- assessment of any removal impediments that may impact a charter removal including cost associated with an aborted charter removal
- cost analysis - commercial/charter
- stakeholder impacts
- escort requirements.

Note that the relevant financial delegate could also be the Deputy Commissioner.

The removal officer must engage the relevant post before making any arrangements to determine such matters as entry requirements, obtaining agreement and planning procedure.

Enforcement Command, Removal Operations HQ is responsible for large volume, complex and high risk removal of immigration detainees from Australia. The section can provide support to the broader ABF and Home Affairs domestic and international air charter requirements (email:

s. 47E(d) @abf.gov.au - After hours duty phone number s. 47E(d) and should be contacted for assistance once a need is identified.

For more information email s. 47E(d) @abf.gov.au which has responsibility for arranging domestic and/or international air charters.

### Domestic transit/transfer for removal

If the removal route requires a domestic transit/transfer, the removal officer must consult with removal staff at the transit/transfer point when planning the removal. Local staff will assist interstate removal staff with local arrangements, such as check-in and making holding facilities available, and will ensure that a departmental officer oversights the removal.

If a high risk/profile removal requires a domestic transit/transfer, the officer must advise the local removal/compliance manager.

### International transit

Prior to removal, removal officers should make appropriate arrangements to maintain security for a removee while transiting. Arrangements should mitigate the risks associated with the removal being aborted or turned around at a transit point. This may include arranging to use holding rooms at the transit point. Removal officers should decide transit arrangements in consultation with the local removal manager and with the relevant overseas post. For further details refer to *BE-5498* in PPCR (*Removal from Australia - Notifying stakeholders of the removal - 4.1. Who and when to notify of removal*).

### Paying for accommodation - escorts

Removal officers should book travel and accommodation for escorts through the travel service provider using the departmental Removal travel request form. There may be situations where the travel service provider cannot book accommodation because no properties are available through their agreed travel partners. If the travel service provider advises that this is the case, departmental officers can book accommodation directly with a hotel and pay for that accommodation in one of three ways:

- **Option A: The hotel can invoice the Department:**
  - The departmental travel arranger can request an invoice from the hotel to be sent to the Department
  - For more information about paying invoices phone Accounts Payable on s. 47E(d) or email s. 47E(d) @homeaffairs.gov.au. Liaise with the Travel Unit if this option is chosen
- **Option B: The Department can make a direct payment into the hotel's nominated bank account:**
  - The travel arranger should liaise with the travel service provider and email s. 47E(d) @homeaffairs.gov.au to arrange for the account and contact details of the hotel
  - The use of this option may be restricted by the time of the request
  - Direct payments must be received by Accounts Payable by 10am
  - Liaise with the Travel Unit if this option is chosen.
- **Option C: The escort service provider pays for the accommodation (on corporate credit card or with cash) and their employer invoices the Department for the amount:**
  - The departmental travel arranger can request an invoice from the hotel to be sent to the Department
  - Liaise with the Travel Unit if this option is chosen
  - Receipts must accompany the invoice as proof of purchase (as per the deed)
  - The escort may purchase the hotel accommodation on their corporate credit card or with cash. The officer is then required to invoice the Department for these expenses

- Officers requiring assistance with these options should liaise directly with the travel service provider or email [s. 47E\(d\)@homeaffairs.gov.au](mailto:s.47E(d)@homeaffairs.gov.au)
- **Note:** Cash advances must not be paid out to non-employees. Payments of this type made to security escort officers are not in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

## 4.6. ABF reporting

### Situation report (SITREP)

A SITREP is an agency-wide reporting tool designed to record, alert and raise awareness of operational activity or a Notifiable Event. It is used to enable the planning of further operational response activities, for the gathering and analysis of intelligence and for raising the awareness of and if necessary the action of ABF senior executive. It is to be a complete, concise and accurate record at a given point in time. As such the drafting, clearing and distribution of a SITREP must be timely.

A SITREP is required when the following removal operational activity threshold is met:

- removals to Do Not Travel and Reconsider Your Need to Travel destinations
- removee behaviour – the detainee has displayed violent behaviour in detention/prison and/or has a volatile attitude towards removal
- removal is/or likely to be subject of current media interest
- removal of a minor and
- where Removal Operations HQ have advised that a specific caseload that are an ABF/Home Affairs priority (High level Law Enforcement Agency (LEA) investment/Foreign LEA interest/child exploitation/organised criminal groups/Counter Terrorism Unit (CTU) targets/National Security (NatSec)/worker exploitation/intellectual incapacity).

For each removal that meets above threshold, a SITREP will be produced the day prior to the removal.

- Updates at the first two following points are to be reported by the relevant Regional Command Unit (RCU) to Enforcement Command National Operational Coordination (ECNOC) and Australian Border Operations Centre (ABOC) via a scheduled call email (TRIM ADD2019/2377046). Updates at the third following point can be provided to ECNOC by email or phone. ECNOC will update the SITREP for distribution upon departure ('wheels up').
- upon arrival at destination (exception for removee who is not escorted).
- by exception and could include reporting on transit points (e.g. transfer to other agency/escorts returning to Australia or any incident in transit such as flight delays/uplift denied/apprehension by other agencies).

The initial SITREP should be drafted by a removal officer and cleared by their supervisor. The SITREP is to be sent to the relevant RCU, who will then advise ECNOC and ABOC. ECNOC will work with ABOC to determine the distribution category (TRIM ADD2019/2377048). Point of contact persons should be provided in the SITREP. They normally are Superintendent and/or Inspector.

RCU will advise ECNOC if the SITREP is to be distributed to the relevant overseas post and/or any restrictions in dissemination of sensitive or third party agency information within the SITREP.

After the initial SITREP, further removal activity is to be reported to the RCU through the escort party. If there is urgent or significant cases or cases where a SITREP is unable to be produced, a phone call to ECNOC on (61) (2) [s. 47E\(d\)](#) is to be made as soon as practicable. Alternatively the ECNOC duty officer on (61) [s. 47E\(d\)](#) or the ABOC on (61) (02) [s. 47E\(d\)](#) can be contacted.

## For Official Use Only

All SITREPs should be prepared within the standard SITREP template (TRIM ADD2019/2377047) and have appropriate security classification and privacy markings applied.

## 5. Accountability and responsibilities

*Table 1 – Procedural Instruction roles and responsibilities*

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<ul style="list-style-type: none"> <li>The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met.</li> <li>Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures.</li> <li>Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives.</li> <li>Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review.</li> <li>Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out.</li> </ul>
Superintendent (EL2) Detention and Removal Operational Policy (DROP)	<ul style="list-style-type: none"> <li>Clearance of Procedural Instruction</li> <li>Approval of updates to policy</li> </ul>
Inspector (EL1) DROP	<ul style="list-style-type: none"> <li>Ensures Procedural Instruction is updated to reflect current policy</li> <li>Ensures support materials comply with Procedural Instruction</li> </ul>

## 6. Statement of Expectation

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

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

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

Workers are required to comply with all reasonable and lawful directions contained in this Procedural Instruction. Failure to comply with a direction may be considered a breach of the Australian Public Service

## For Official Use Only

Code of Conduct (for APS employees) or the *Professional Standards Secretary's Direction* under s55 of the *Australian Border Force Act 2015* (for non-APS employees).

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

## 7. Related Framework documents

### 7.1. Policy Statements

[VM-5273](#) in PPCR, *Departure Policy (returns, removals and departure support)* TRIM: PCD2018/1001

[FM-4808](#) in PPCR (*Accountable Authority Instructions – Part 2 Spending money*)

[BC-763](#) in PPCR (*Status Resolution System Control Framework*) TRIM: ADD2019/2439251

### 7.2. Procedural Instructions

Document	PPCR	TRIM Number
Financial Delegation Schedules	FM-1261	
Financial Management Guide 1.02.03 - Official Travel	FM-1265	
Identifying information - Access and disclosure	IIB-1537	
Pre-removal clearances and informed request for removal statements	VM-3226	LEGEND
Removal and Detention Costs	DM-567	<u>PCD2017/6030</u>
Removal from Australia	BE-5488	ADD2018/1956150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791
Removal from Australia – Facilities and detainee service provider assessments	BE-5493	ADD2018/1954814
Removal from Australia – Health assessments	BE-5494	ADD2018/1954834
Removal from Australia – Impediments to removal	BE-5495	ADD2018/1954849
Removal from Australia – Implementing removal from Australia	BE-5496	ADD2018/1954866
Removal from Australia – Information disclosure to facilitate removal	BE-5497	ADD2018/1954878
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896



## For Official Use Only

Document	PPCR	TRIM Number
Removal from Australia – Post-removal procedures	BE-5500	ADD2018/1954930
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal Availability Assessment	BE-5503	ADD2018/1954951
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961
Removal from Australia – Removal of minors and families	BE-5505	ADD2018/1954965
Removal from Australia – Removing detainees from different environments	BE-5506	ADD2018/1954972
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980
Removal from Australia – Voluntary removal	BE-5508	ADD2018/1954983

### 7.3. Supporting Material

Document	PPCR	TRIM / Website
Consent to use airline ticket for removal		ADD2008/868573
Distribution list – Removals activities (SITREP)		ADD2019/2377048
Operational departure plan (ODP)		ADD2016/1039055
Operational departure plan (ODP) guide		ADD2011/1327425
Removal from Australia - Glossary	BE-5509	ADD2018/1955777
Reporting thresholds – Removals (SITREP)		ADD2019/2377042
SITREP format guide (SITREP)		ADD2019/2377047
Schedule call example (SITREP)		ADD2019/2377046

## 8. References and legislation

- *Australian Border Force Act 2015*
- *Migration Act 1958*
- *Migration Regulations 1994*
- *Privacy Act 1988 Schedule 1 – Australian Privacy Principles*
- *Public Governance, Performance and Accountability Act 2013 (PGPA Act).*

## 9. Consultation

### 9.1. Internal consultation

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

- AAT and Removals Injunctions Section
- ABF Operational Risk Management
- Aviation Traveller NSW
- Complex Case Resolution
- Detention and Removal Operational Policy
- Detention Health Operations Section
- Enforcement Operations Central
- Enforcement Command National Operational Coordination (ECNOC)
- Field and Removal Operations, Enforcement Command QLD
- Field and Removal Operations Vic./Tas.
- Field Operations and Removals WA
- International Obligations and SHP Section
- Legal Opinions
- National Operational Coordination
- Operation Sovereign Borders, Joint Agency Task Force
- Protection Caseload Resolution
- Refugee and International Law
- Removal Operations HQ, Enforcement Command
- Removal Operations NSW
- Secrecy and Disclosure Unit – Information Governance Section
- Status Resolution Framework Section

### 9.2. External consultation

No external stakeholder were consulted in the development of this Procedural Instruction.



## For Official Use Only

### 10. Document details

<b>BCS Category/Function</b>	Border enforcement
<b>BCS Sub-Category/Sub-Function</b>	Program Management and Evaluation
<b>Period of Effect</b>	31 July 2021

#### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1	31 July 2018	Detention and Removal Operational Policy	Separation of Operational Planning and Logistics topic
2	10 September 2019	Detention and Removal Operational Policy	Update reference to Control Framework. Addition of removal planning overview and ABF reporting - SITREPs

#### 10.2. Procedural Instruction approval

<b>Document owner</b>	Commander ABF Governance
<b>Approval date</b>	31 July 2018



**For Official Use Only**

# Removal from Australia – Removing detainees from different environments

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia.

Approval Date	31 July 2018
Date of Review	31 July 2019
Contact	Detention and Removal Operational Policy Section
Document ID (PPN)	BE-5506
TRIM Reference	ADD2018/1954972

# Table of Contents

<b>1. Introduction</b>	<b>3</b>
1.1. Overview	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	4
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1. Removal Pending Bridging visa (RPBV) holders	4
4.2. Removal from immigration detention facilities	5
4.3. Removal from criminal detention	5
Prison to Plane (P2P)	5
4.4. Removal from community accommodation made under residence determination	6
Planning for removal	6
4.5. Planning for removal while a person is in the community	7
<b>5. Accountability and responsibilities</b>	<b>7</b>
Table 1 – Procedural Instruction roles and responsibilities	7
<b>6. Statement of Expectation</b>	<b>8</b>
<b>7. Related Framework documents</b>	<b>8</b>
7.1. Policy Statements	8
7.2. Procedural Instructions	8
7.3. Supporting Material	9
<b>8. References and legislation</b>	<b>10</b>
<b>9. Consultation</b>	<b>10</b>
9.1. Internal consultation	10
9.2. External consultation	11
<b>10. Document details</b>	<b>11</b>
10.1. Document change control	11
10.2. Procedural Instruction approval	11

# 1. Introduction

## 1.1. Overview

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

A non-citizen in the migration zone who does not hold a visa that is in effect is a UNC. If a UNC is unwilling or unable to resolve their visa status through visa grant or acquisition of citizenship the non-citizen will have no right to remain in Australia and will be liable for immigration detention under s189 of the *Migration Act 1958* (the Act) and removal from Australia under s198 of the Act.

### Purpose

All Removal from Australia PIs are designed to assist departmental and ABF officers, contracted service providers and stakeholders in effecting the removal of UNCs from Australia in a lawful manner, consistent with the departmental status resolution approach. PIs will assist officers in planning, managing and effecting a removal.

Each Removal from Australia PI is listed by subject in related framework documents. All PIs for Removal from Australia should be implemented in conjunction with [VM-5273](#) in PPCR *Departure Policy (returns, removals and departure support)* Policy Statement TRIM: PCD2018/1001.

## 2. Scope

### 2.1. In Scope

This PI sets out procedures and provides guidance on:

- status resolution of Removal Pending Bridging visa (RPBV) holders
- removal of detainees from different environments including:
  - immigration detention facilities and prisons
  - community based accommodation made under a residence determination.

Suspected Illegal Foreign Fishers (IFF) will become liable for detention and removal on cessation of an enforcement visa<sup>1</sup>. For further information refer to:

- [DM-590](#) in PPCR (*Detention Services Manual (DSM) – Illegal Foreign Fishers – Illegal Foreign Fishers*)
- [BE-628](#) in PPCR (*DSM – Illegal Foreign Fishers – Enforcement visas*).

<sup>1</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.

## 2.2. Out of Scope

### Border and arrival turnaround

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

If UNC's who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

### Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

### Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either independently as a UNC or as the holder of a Bridging visa managed by either ABF or Home Affairs.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Case Resolution - Returns and removals - Return services*).

## 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Removal from Australia Glossary*).

## 4. Procedural Instruction

### 4.1. Removal Pending Bridging visa (RPBV) holders

The status resolution officer (SRO) (case officer) in the relevant office should facilitate departure planning relating to RPBV holders and note any progress in obtaining travel documents or other removal action in corporate systems, CCMD, ICSE and the appropriate case files. It is the Department's preference that RPBV holders leave Australia as lawful non-citizens and status resolution officers may refer the removee to the International Organization for Migration (IOM) to facilitate an immigration outcome for the removee.

Under RPBV condition [8541](#), a person must do everything possible to facilitate his or her removal from Australia and must not obstruct the Department's efforts to effect their removal. If a person is uncooperative in this regard, the Minister may cease their visa, at which time they will become liable for detention and removal from Australia as soon as reasonably practicable. Officers must report/email instances of non-cooperation by RPBV holders to [S. 47E\(d\)](#) [@homeaffairs.gov.au](#), which reports to senior executive on the RPBV caseload.

## 4.2. Removal from immigration detention facilities

### Planning

The Department most commonly removes persons from an immigration detention facility (IDF) as they must be immigration detainees to enliven the removal powers in [s198](#) of the Act. Detailed defensible and auditable planning and organisational processes support a more effective removal, particularly for persons being removed involuntarily. When planning a removal from an IDF, removal officers must coordinate with the Facilities and Detention Service Provider (FDSP) and health services providers along with other stakeholders.

Removal from IDFs require structured arrangements as persons in this environment are usually assessed as higher community safety and security risks.

### Inter-facility transfers

If it is likely that a removee will be transferred to another IDF prior to departure, removal officers must liaise directly with the receiving IDF early in the planning process.

It is important to consider the maintenance of lawful detention throughout any domestic transfers. For further information, refer to [DM-3286](#) in PPCR (*Transfer of custody*) which describes the process for transferring the custody of a detainee to an officer under the Act.

## 4.3. Removal from criminal detention

Removal planning for a non-citizen in criminal detention is conducted in accordance with operational removal instructions for removal from immigration detention. Differences in process arise from State or Territory criminal justice requirements, timing and location of release from a correctional facility, the non-citizens immigration status and pending immigration status on release from criminal detention.

Non-citizens held in criminal detention (for example on remand or serving custodial sentence) who are removed upon release from a correctional facility are known as the prison to plane (P2P) cohort. The Department aims to remove liable non-citizens from Australia at the completion of their custodial sentence with minimal or no accommodation in an immigration detention facility.

### Prison to Plane (P2P)

There are circumstances where a P2P removal directly from a prison to plane cannot be effected including flight availability or transfer from a remote correctional facility. For this reason, the definition of a P2P removal includes persons removed within 72 hours of release from criminal detention. For reporting purposes, the definition consists of two tiers:

Tier one: removal of a non-citizen directly from a correctional facility to an aircraft, without physically being detained within an immigration detention facility prior to removal from Australia; and

Tier two: removal of a non-citizen where departure is delayed for up to 72 hours, following release from a correctional facility, which often includes being physically detained within an immigration detention facility in the interim.

See ON2019-07 Definition of Prison to Plane (P2P) Removals (TRIM ADD2019/1446405).



## 4.4. Removal from community accommodation made under residence determination

### Planning for removal

Residence determination is a form of immigration detention personally determined by the Minister under s197AB of the Act. It enables persons who would otherwise be detained in an immigration detention facility or other form of detention to be accommodated in the community instead. Persons detained under a residence determination are commonly referred to as being held in 'community detention' (CD). The alternative term 'community detention' is used throughout this PI to describe the immigration detention environment.

This form of immigration detention does not require the person to be in the company of or restrained by an officer or other designated person for the purpose of the Act.

Persons in CD may become available for removal and may present with unique and complex situations. Officers must carefully plan, coordinate and manage the removal of persons in this cohort on a case-by-case basis to determine appropriate procedures. As CD is still a form of immigration detention, officers must not unduly delay the removal of these persons and must progress the removal as swiftly as a removal from an IDF to minimise the risk of a removee's detention becoming arbitrary.

### When the revocation of community detention is required

If the Department is removing a person directly from CD, the Minister does not need to revoke residence determination. Under s196(1) of the Act, an unlawful non-citizen detained under s189 of the Act must be kept in immigration detention until they are removed from Australia. Once the non-citizen is removed, they are no longer in the migration zone and the detention power in s189 of the Act no longer operates. If a residence determination is in place but the person is removed, the residence determination is revoked by force of s197AC(4) of the Act because the person is 'released' from immigration detention.

If detention of a non-citizen is required (at a place of immigration detention) prior to removal, the person's CD placement will need to be revoked under s197AD of the Act. Case management will retain responsibility for organising revocation with Immigration Integrity and Community Protection Division program management. However, a removal of interest brief (ROIB) is required from the removal officer for this process, which CD program management will attach with the revocation submission for the Minister's consideration.

### Removal planning concerning community detainees

Process for obtaining travel documents for persons detained in the community is the same as the process for obtaining travel documents for non-citizens detained at an IDF. Non-citizens being removed from a community placement will generally be removed directly from community placement and will not require a revocation (as removal will revoke the residence determination under s197AC(4) of the Act). In such a case the case manager will refer the removee to the regional removal team, who will work together with the case manager to organise the removal. The removal officer should ensure there is a contingency plan organised with the case manager in the case of an aborted removal, ensuring the Department's ability to return the removee to an existing CD placement, if required.

If the person is to be removed involuntarily from Australia, once they have received the instrument of revocation, they will generally be transferred to held detention in order to manage any security issues (unless there is a strong medical recommendation to do otherwise). Removal planning should accommodate both the notification of revocation and notification of removal so that, if possible, they can occur at the same time (subject to any identified risks). The removal officer will take the lead in managing removal coordination once revocation has been handed down and the person is taken in to held immigration detention.

The process for obtaining travel documents for persons in the community is the same as with any person in immigration detention.

## For Official Use Only

If a person in CD does not have a valid travel document, the officer should attempt to obtain one before the CD placement is revoked.

For further guidance on obtaining travel documents for detainees in immigration detention, refer to [BE-5507](#) in PPCR (*Removal from Australia – Travel documents for removal purposes*).

### 4.5. Planning for removal while a person is in the community

Removal officers can plan the removal of persons who are on a removal pathway while they reside in the community on a Bridging E visa. Generally, the person will be engaged with the Status Resolution Network.

Removal officers should work closely with the SRO (case officer) and with regional field and detention operations to plan action to reach an immigration outcome.

Where possible, removal officers are to complete as much pre-departure activity to minimise time in detention. Removal officers should also note the limitations that are associated with the absence of a removal power (including disclosure of information for the purposes of removal. See [BE-5497](#) in PPCR (*Removal from Australia – Information disclosure to effect removal*)).

## 5. Accountability and responsibilities

Table 1 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<ul style="list-style-type: none"> <li>The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met.</li> <li>Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures.</li> <li>Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives.</li> <li>Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review.</li> <li>Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out.</li> </ul>
Superintendent (EL2) Detention and Removal Operational Policy (DROP)	<ul style="list-style-type: none"> <li>Clearance of Procedural Instruction</li> <li>Approval of updates to policy</li> </ul>
Inspector (EL1) DROP	<ul style="list-style-type: none"> <li>Ensures Procedural Instruction is updated to reflect current policy</li> <li>Ensures support materials comply with Procedural Instruction</li> </ul>

## For Official Use Only

## 6. Statement of Expectation

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 (Public Service Act)).

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.

The Secretary's Professional Standards Direction, issued under subsection 55(1) of the *Australian Border Force Act 2015* (the ABF Act), requires all Immigration and Border Protection workers (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 ABF Act. Non-compliance may also be addressed under the terms of the contract engaging the contractor or consultant.

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 and
- be responsible for documenting the reasons/justification for their decision to depart from, or not adhere to, any PPCF document.

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.

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

## 7. Related Framework documents

### 7.1. Policy Statements

[VM-5273](#) in PPCR, *Departure Policy (returns, removals and departure support)* TRIM: PCD2018/1001

[BC-763](#) in PPCR (*Status Resolution System Control Framework*) TRIM: ADD2019/2439251

### 7.2. Procedural Instructions

Document	PPCR	TRIM Number
Removal and Detention Costs	DM-567	<a href="#">PCD2017/6030</a>

## For Official Use Only

Document	PPCR	TRIM Number
Removal from Australia	BE-5488	ADD2018/1956150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791
Removal from Australia – Facilities and detainee service provider assessments	BE-5493	ADD2018/1954814
Removal from Australia – Health assessments	BE-5494	ADD2018/1954834
Removal from Australia – Impediments to removal	BE-5495	ADD2018/1954849
Removal from Australia – Implementing removal from Australia	BE-5496	ADD2018/1954866
Removal from Australia – Information disclosure to facilitate removal	BE-5497	ADD2018/1954878
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896
Removal from Australia – Operational planning and logistics	BE-5499	ADD2018/1954904
Removal from Australia – Post-removal procedures	BE-5500	ADD2018/1954930
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal Availability Assessment	BE-5503	ADD2018/1954951
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961
Removal from Australia – Removal of minors and families	BE-5505	ADD2018/1954965
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980
Removal from Australia – Voluntary removal	BE-5508	ADD2018/1954983

### 7.3. Supporting Material

Document	PPCR	TRIM / Website
Non-citizens in criminal detention	BC-556	
Removal from Australia - Glossary	BE-5509	ADD2018/1955777
Status Resolution System Control Framework Mandatory Control Points	BC-6186	ADD2019/2439257



## For Official Use Only

Document	PPCR	TRIM / Website
Transfer of custody	DM-3286	

## 8. References and legislation

- *Australian Border Force Act 2015*
- *Migration Act 1958*
- *Migration Regulations 1994*
- *Privacy Act 1988 Schedule 1* – Australian Privacy Principles

## 9. Consultation

### 9.1. Internal consultation

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

- AAT and Removals Injunctions Section
- ABF Operational Risk Management
- Complex Case Resolution
- Detention and Removal Operational Policy (detention policy)
- Detention Health Operations Section
- Enforcement Operations Central
- Field and Removal Operations, Enforcement Command QLD
- Field and Removal Operations Vic./Tas.
- Field Operations and Removals WA
- International Obligations and SHP Section
- Legal Opinions
- Operation Sovereign Borders, Joint Agency Task Force
- Protection Caseload Resolution
- Records Management
- Refugee and International Law
- Removal Operations HQ
- Removal Operations NSW
- Secrecy and Disclosure Unit – Information Governance Section
- Status Resolution Framework Section

## For Official Use Only

### 9.2. External consultation

No external stakeholder were consulted in the development of this Procedural Instruction.

## 10. Document details

<b>BCS Category/Function</b>	Border enforcement
<b>BCS Sub-Category/Sub-Function</b>	Program management and evaluation
<b>Period of Effect</b>	31 July 2021

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1	31 July 2018	Detention and Removal Operational Policy	Separation of Removing detainees from different environments topic
2	8 August 2019	Detention and Removal Operational Policy	Update to Control Framework, addition of P2P

### 10.2. Procedural Instruction approval

<b>Document owner</b>	Don Smith, Commander ABF Governance
<b>Approval date</b>	31 July 2018





**For Official Use Only**

# Removal from Australia – Removal of minors and families

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia.

Approval Date	13 August 2018
Date of Review	13 August 2018
Contact	Detention and Removal Operational Policy Section
Document ID (PPN)	BE-5505
TRIM Reference	ADD2018/1954965

# Table of Contents

<b>1. Introduction</b>	<b>3</b>
1.1. Overview	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	4
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1. Removal of families – overview	4
4.2. Removal of families – International legal obligations including the best interest of the child	6
4.3. Removal of children and guiding principles	8
4.4. Removal of an Australian-born dependant child - one parent unidentified	9
4.5. Unaccompanied minors	10
<b>5. Accountability and responsibilities</b>	<b>11</b>
Table 1 – Procedural Instruction roles and responsibilities	11
<b>6. Statement of Expectation</b>	<b>11</b>
<b>7. Related Framework documents</b>	<b>12</b>
7.1. Policy Statements	12
7.2. Procedural Instructions	12
7.3. Supporting Material	13
<b>8. References and legislation</b>	<b>14</b>
<b>9. Consultation</b>	<b>14</b>
9.1. Internal consultation	14
9.2. External consultation	14
<b>10. Document details</b>	<b>15</b>
10.1. Document change control	15
10.2. Procedural Instruction approval	15

# 1. Introduction

## 1.1. Overview

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

A non-citizen in the migration zone who does not hold a visa that is in effect is a UNC. If a UNC is unwilling or unable to resolve their visa status through visa grant or acquisition of citizenship the non-citizen will have no right to remain in Australia and will be liable for immigration detention under s189 of the *Migration Act 1958* (the Act) and removal from Australia under s198 of the Act.

### Purpose

All Removal from Australia PIs are designed to assist departmental and ABF officers, contracted service providers and stakeholders in effecting the removal of UNCs from Australia in a lawful manner, consistent with the departmental status resolution approach. PIs will assist officers in planning, managing and effecting a removal.

Each Removal from Australia PI is listed by subject in related framework documents. All PIs for Removal from Australia should be implemented in conjunction with [VM-5273](#) in *PPCR Departure Policy (returns, removals and departure support)* Policy Statement TRIM: PCD2018/1001.

# 2. Scope

## 2.1. In Scope

This PI sets out procedures and provides advice on:

- removal of families
- removal of Australian citizens under s199 or s205 of the Act
- international legal obligations including the best interest of the child<sup>1</sup>
- removal of unaccompanied minors<sup>1</sup> (UAM)

Suspected Illegal Foreign Fishers (IFF) will become liable for detention and removal on cessation of an enforcement visa<sup>2</sup>. For further information refer to:

- [DM-590](#) in *PPCR (Detention Services Manual (DSM) – Illegal Foreign Fishers – Illegal Foreign Fishers)*
- [BE-628](#) in *PPCR (DSM – Illegal Foreign Fishers – Enforcement visas)*.

<sup>1</sup> The terms child, children and minors is used in this instruction to describe people under the age of 18 years.

<sup>2</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.

## 2.2. Out of Scope

### Border and arrival turnaround

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

If UNC's who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

### Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

### Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either independently as a UNC or as the holder of a Bridging visa managed by either ABF or Home Affairs.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Case Resolution - Returns and removals - Return services*).

## 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Removal from Australia Glossary*).

## 4. Procedural Instruction

Removal officers should refer to the legislative and policy frameworks in [SM-5039](#) in PPCR (*Removal from Australia - Separation of families*) and [SM-5038](#) in PPCR (*Removal of unaccompanied minors from Australia*) when managing non-citizen family groups and unaccompanied non-citizen minors who have no lawful authority to remain in Australia.

### 4.1. Removal of families – overview

Under the provisions of s199 and s205 of the Act removal officers can remove the spouses/de facto partners and/or children of a removee or deportee (even if the spouses/de facto partners and/or children are Australian citizens or lawful non-citizens) if either:

- an officer removes, or is about to remove an unlawful non-citizen, and
  - the spouse/de facto partner of the unlawful non-citizen makes a request to an officer to also be removed from Australia, or
  - the spouse/de facto partner of the unlawful non-citizen makes a requests to an officer to also be removed from Australia with a dependant child or children of the non-citizen, or

- the non-citizen requests an officer to remove a dependant child or children of the non-citizen, or
- the Minister makes or has made an order for the deportation of a person, and
  - that person has a spouse/de facto partner and the spouse/de facto partner requests the Minister to also remove them, or them and a dependant child or children, or
  - that person does not have a spouse/de facto partner, but does have a dependant child or children and that person requests the Minister to also remove the dependant child or children.

Refer to [BE-5508](#) in PPCR (*Removal from Australia – Voluntary removal – Request for removal*).

### **Request for removal by a family member under s199 or s205 of the Act**

If a lawful non-citizen family member asks to accompany a removee or deportee, the removal officer should, to enable informed decision-making, interview the family member separately from the removee or deportee to explain the process and consequences of 'removal'.

Officers are to inform and, if necessary, explain to the family member and the removee the relevant exclusion period provisions that may apply to the removee or deportee.

The officer should advise the family member that:

- the family member is responsible for obtaining travel documents for themselves and any children travelling with them, and
- if required, they will also be expected to obtain evidence of custody arrangements and permission for their child to leave Australia. For further guidance on evidence of custody, refer to [VM-3066](#) in PPCR (*s5G – Relationship and family members – Custody (parental responsibility) for minor children*).

Officers are expected to assess the family's financial status to determine whether or not the family can afford to fund their own travel arrangements. This should include requesting documentary evidence of bank accounts and other assets or liabilities.

Officers must also establish the relationship between the removee and child dependants. Under policy, only biological and adoptive children of the UNC may be removed under s199 of the Act. Step-children are not considered to be dependants of UNCs for the purposes of s199. For more information refer to '[Advice about removing step-children under s199](#)' (TRIM ADD2015/1748525).

Officers must take interview notes and save those notes in TRIM and departmental systems, including the CCMD portal. They should also record a summary note of the interview on departmental systems and provide this note to the case manager.

Spouses/de facto partners and dependants of UNCs awaiting removal or deportation (s199 or s205 of the Act) may be Australian citizens.

Removal involving Australian children must be conducted with consideration of:

- [family court directions](#) refer to [BE-5495](#) in PPCR (*Removal from Australia – Impediments to removal – Family law matters – Family court directions*)
- [DM-5721](#) in PPCR (*Best Interests of the Child*) Policy Statement.
- related child protection policies and conventions.

Sections 199 and 205 do not require that requests for removal from spouses/de facto partners or dependant children be in writing. However, as a matter of sound administrative practice officers should ask family members to make such requests in writing and if required, for this purpose can use the forms:

- [Request by partner for removal of self and dependants from Australia](#) (TRIM ADD2017/1930431), or

- [Request by removee for removal of dependants from Australia](#) (TRIM ADD2017/2287828).

Officers should prepare and provide a formal minute to the relevant Commander seeking support for each discretionary s199 decision to remove the spouse/de facto partner and/or dependants (including Australian citizens) and to approve any expenditure as the PGPAAs23(3) goods & services delegate. This documentation must be referenced in the Critical Control Point 10 (CCP10) Removal Availability Assessment for the removee and in the notes section of the removee in the CCMD portal.

## **4.2. Removal of families – International legal obligations including the best interest of the child**

### **Responsibilities of the Department**

Under Article 3 of the Convention on the Rights of the Child (CRC), the Department is obliged to consider the best interests of the child as a primary consideration prior to taking any action or decision that may affect a child. This includes cases where the removal of an adult affects a minor (for example, removal of the parent of an Australian citizen or permanent resident child).

You can think about children's best interest by considering four general domains including:

- safety and welfare
- wellbeing and development
- belonging and stability; and
- legal considerations.

Generally speaking, if an officer can demonstrate that they have applied a thoughtful approach to the consideration of a child's circumstances across each of the domains, they will have satisfied their obligation. Where information may not be relevant or available in a particular domain, an officer can nonetheless reference that they have considered that this information would be useful in comprehensively considering the child's interests. Officers need to demonstrate a balanced, child-centric view, but this does not need to include any specialist assessment of the child's circumstances.

Child Wellbeing Operations (CWOps) is available to provide advice and guidance to business areas on any immigration case or operational situational involving child safeguarding.

In considering the best interests of a child, a status resolution or removal officer is expected to have reviewed relevant information and reached a position on how the course of action may have an impact on the child's interests. It is possible to arrive at a position that a course of action is not in the best interests of a child and for the child's best interests to be outweighed by another consideration, on balance.

CWOps will review the information the removal officers compile and advise if there are any additional factors that the removal officer should consider. Removal officers are welcome to make contact with CWOps at any time during the removal planning process to seek guidance or clarification.

### **Criteria for engaging Child Wellbeing Operations**

CWOps is available to quality assure the consideration of children's best interests in removal planning, in particular for the following cases:

- all unaccompanied minors
- accompanied minors being involuntarily removed as part of a family group
- cases in which a child has a close relationship with the individual being removed involuntarily, and the child will remain in Australia



- cases in which removal is voluntary however there are child safeguarding concerns relating to a child or the child has stated they do not want to return with their family
- cases in which there is a possibility that the child and the parent may be permanent separated due to the removal activity; (for example the child has substantiated protection claims against the country to which the parent is being removed)
- cases in which the removals officer is unsure of what outcome may be in the best interests of a child

Removal officers can refer to *Considering the Best Interests of Children Support Material* (TRIM ADD2019/942715) when considering the best interests of children.

CWOps can be contacted for further advice on [s. 47E\(d\)](#) @homeaffairs.gov.au.

## Departmental policy

While the best interests of children must be considered when planning removal, Article 3 of the CRC requires that best interests be a primary consideration, not the primary consideration. There may be other primary considerations which may outweigh the best interests of the child, such as the integrity of the migration program and the security of the Australian community. Where the best interests of a child outweighs the countervailing considerations, the Minister may consider Australia's international obligations relating to the best interests of the child in the exercise of the Minister's personal power under s195A of the Act, to grant a visa.

The removal of members of a family unit may also engage the prohibition of unlawful and arbitrary interference with the family and the obligation to protect the family as the fundamental group unit of society (also sometimes known as the principle of family unity) in articles 17(1) and 23(1) of the *International Covenant on Civil and Political Rights* (ICCPR)). The Minister may also consider these obligations in the exercise of the Minister's personal powers. Removal officers should consider referring cases that may engage these obligations to the ministerial intervention (MI) team prior to further removal planning where:

- the best interests of the child and the principle of family unity have not been considered at all prior to removal planning, or
- the best interests of the child and the principle of family unity have been considered, for example as part of a cancellation decision, but that decision was made a long time prior to removal planning, or
- the best interests of the child and the principle of family unity have been considered, for example as part of a cancellation decision, but the personal circumstances of the child or the family members have changed significantly; for example the birth of a subsequent child in a family unit.

It is departmental policy that family units with children under 18 years old should not be separated during the removal process. Where practicable, removal officers will always try to coordinate the removal of a family unit at the same time and from the same location. In circumstances where the family members cannot be removed together and the removal will result in separation of the family unit, the officer must demonstrate that considerations relevant to the best interest of the child and the family unity principle have been taken into account. For further advice in such cases, email [s. 47E\(d\)](#) @homeaffairs.gov.au.

In line with Australia's international human rights obligations under the CRC the best interests of a child should be a primary consideration in organising and facilitating removal from Australia. In any removal involving children, officers should consider the best interests of the child by referring to:

- the need for appropriate reception arrangements and contingency plans at the destination, particularly if the child is an unaccompanied minor
- cultural or religious considerations relating specifically to children or adolescents that may relate to the removal
- the impact that removal would have on the child's education (for example, if removal was scheduled a few days or a week before the end of a school year)

- the appropriateness of escort arrangements for removal involving children, particularly for unaccompanied minors
- continuing health and welfare issues, including housing or education, that may not be adequately met in the country of return or that might temporarily delay removal.

This is not an exhaustive list of elements to consider. Officers should consider a child's situation in reference to the child's particular needs, the circumstances of the removal and the prevailing situation in the country of return.

**Note:** The obligations under ICCPR and CRC in relation to the family unit and best interests of the child do not amount to a right to remain in Australia if a person has no other lawful authority to stay, but must be taken into account when arranging the removal.

### 4.3. Removal of children and guiding principles

#### International obligations

The removal of minors must comply with all international obligations.

For further information on the status of international conventions in Australian law and their application in relation to the best interests of the child refer to [BC-764](#) in PPCR (*Case resolution – Guiding principles in the treatment of children*).

Compliance with the provisions of CRC in respect of removing a minor (either as a removee or as the dependant of a removee) is addressed in:

- [BC-764](#) in PPCR (*Case resolution – Guiding principles in the treatment of children*)
- [VM-3057](#) in PPCR (*s5G - Relationships and family members - Best interests of minor children*).

#### Guiding principles

The following are guiding principles for the treatment of minors involved or affected by removal. Officers are to consider age, level of understanding and maturity, sex, cultural background and any other requirements including medical or religious requirements. Officers must consider Australia's obligations under CRC when making decisions concerning minors. The minor's best interests is a primary consideration. The minor's views should be taken into account. Officers must take appropriate measures to prevent minors being separated from their parents.

If it is determined that separation is unavoidable or in the minor's best interests, the officer must provide the minor with information concerning the whereabouts of their parents, if known. Officers must make genuine efforts to find family members in the case of unaccompanied minors or, if unsuccessful, make arrangements with appropriate child welfare authorities.

In any situation where a removee or deportee is a parent and requests that their child/children be removed with them, officers must consider custody arrangements. The officer must notify any other person with custody of the child/children, whether onshore or offshore, of the whereabouts of, and any removal arrangements for, the child/children. If the officer cannot locate custodial parents, they need to demonstrate that they have taken reasonable steps to trace the parents before removing the minor. Officers must be satisfied that appropriate support mechanisms are in place in the country of return. Officers must take steps to minimise any negative impacts that might occur as a result of an interaction between the Department and a family or minor by:

- ensuring where possible the family unit remains together
- progressing cases expeditiously to avoid stress caused by delays
- interacting respectfully with a parent in the presence of a minor

- ensuring the minor is able to practice their religion and that the removal accommodates the needs of school-age minors as far as possible.

Officers should take into account whether the minor's immigration status is different from the immigration status of their parents and/or siblings, for example, if the minor is an Australian citizen.

### Removal of Interest Brief (ROIB)

Removal involving minors are considered sensitive. ROIBs are used to report to the Minister's office on a weekly basis. They are generated in the CCMD portal and are coordinated by removals officers who seek input from various stakeholders involved with the planned removal of a case (i.e. regional managers, case managers, compliance officers and litigation officers). CCMD Portal functionality allows ROIB's to be formally reviewed by a local manager prior to being sent to Removal Operations HQ for clearance.

ROIBs are required for all involuntary cases and sensitive voluntary cases (including Illegal Maritime Arrivals (IMAs)).

Removal officers must complete a ROIB if the removee:

- is an involuntary removee, or has previously been voluntary and continues to change their mind or
- has had their visa cancelled under s501 of the Act or
- is being deported under s200 of the Act or
- is part of a family unit with minors or
- has been in long-term detention (2 years or more) or
- is subject to a removal that has had media interest or
- has a case that is of a complex or sensitive nature (for example, IMAs, people smugglers) or
- has had an extensive or significant criminal conviction resulting in more than five years imprisonment.

Detention and Removal Operations does not require a ROIB for all character cases or prison-to-plane removals. If none of the eight circumstances immediately above apply, the need for an ROIB is at the discretion of the Regional office or Removal Operations HQ.

### Voluntary request for removal - minors

The parents or legal guardians of a UNC minor may request removal on behalf of the minor under s198(1) of the Act. Under policy it is preferred that each parent sign the request for removal form on behalf of the minor to demonstrate their agreement to the removal. However, the removal can proceed even if only one parent signs unless there is a court order preventing the minor from leaving Australia.

If a request for removal has been made on behalf of a minor by only one parent, for possible legal advice, if necessary, email [s. 47E\(d\) @abf.gov.au](mailto:s.47E(d)@abf.gov.au).

## 4.4. Removal of an Australian-born dependant child - one parent unidentified

Removal officers may need to plan the removal of a UNC who has an Australian-born dependant child whose other parent is unknown to the Department. After all reasonable efforts to identify the Australian born child's other parent have failed (including interviewing the parent and Litigation Branch checks with relevant courts), removal of the child under the provision of s199 or s205 of the Act is possible and does not constitute a statement about the child's nationality. If the parent being removed does not request that the child be removed with them (as required under s199/s205) officers are to contact the

[s. 47E\(d\) @abf.gov.au](mailto:s.47E(d)@abf.gov.au).

## 4.5. Unaccompanied minors

### Immigration (Guardianship of Children) (IGOC) Act 1946

Under the IGOC Act the Minister may be given guardianship responsibilities of certain non-citizen minors who arrive in Australia unaccompanied.

For further information on these responsibilities, refer to [VM-932](#) in PPCR (*Guardianship of minors under the IGOC Act 1946*). For guidance on guardianship of minors, contact [s. 47E\(d\)](#) [@homeaffairs.gov.au](mailto:homeaffairs.gov.au).

### Removal planning

In planning the removal of an unaccompanied minor, removal officers must take into account the minor's individual circumstances and all available information. If the unaccompanied minor is an IGOC minor, the IGOC delegate must be notified and consulted as part of the removal process. IGOC delegates are responsible for and oversee the care and welfare decisions related to the IGOC minor.

Immediate support, reception arrangements, including family reunification or the assistance of local welfare authorities in the country the unaccompanied minor is being removed to, are important considerations in the planning for the removal. While all removals should be progressed quickly and efficiently, where an unaccompanied minor has requested removal for the purposes of family reunification, departmental officers should give particular attention to ensure the request is managed in a positive and expeditious manner. Removal officers should also:

- explain removal arrangements to the minor in the presence of an independent person, taking into account their age, mental capacity and any special communication needs, and
- use family tracing as a means of securing family reunification for the minor in the country of removal, and
- if the Department in Australia is unable to trace family members, seek assistance from the post in country and, if necessary, from local welfare authorities, and
- deal with health, welfare and special needs relating to the child and seek assistance from qualified persons if necessary.

Removal officers should refer to the legislative and policy framework in [SM-5038](#) in PPCR (*Removal of unaccompanied minors*) when managing unaccompanied non-citizen minors who have no lawful authority to remain in Australia.

### If a minor IMA crew member requests removal

IMA crew members who are minors are subject to the same processing as adult crew members and a Criminal Justice Stay Certificate (CJSC) is required in order to stay their removal. Officers should remove a minor crew member in accordance with the removal of any minor from Australia, including giving particular attention to post-arrival care arrangements.

The Department primarily engages International Organization for Migration (IOM) to provide post-arrival care for minor crew members, including reception, accommodation and domestic travel and escort arrangements to their homes. The relevant Consulate in Australia can also provide assistance particularly in matters of identity verification and confirmation of guardianship arrangements for the minor.

Minor crew members are generally accompanied on the flight by a departmental removal liaison officer, and are met by IOM on arrival who will accompany them to their homes and hand over to the nominated guardian.

## For Official Use Only

### Illegal foreign fisher minors

Specific procedural guidance on the processes for the detention and removal of illegal foreign fishers minors and their 'minders'<sup>3</sup> who are bought into, apprehended in, or detained, in the migration zone by fisheries officers<sup>4</sup>, are covered in *DM-590* in PPCR (*Detention Services Manual (DSM) – Illegal Foreign Fishers – Illegal Foreign Fishers*).

## 5. Accountability and responsibilities

Table 1 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<ul style="list-style-type: none"> <li>The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met.</li> <li>Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures.</li> <li>Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives.</li> <li>Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review.</li> <li>Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out.</li> </ul>
Superintendent (EL2) Detention and Removal Operational Policy (DROP)	<ul style="list-style-type: none"> <li>Clearance of Procedural Instruction</li> <li>Approval of updates to policy</li> </ul>
Inspector (EL1) DROP	<ul style="list-style-type: none"> <li>Ensures Procedural Instruction is updated to reflect current policy</li> <li>Ensures support materials comply with Procedural Instruction</li> </ul>

## 6. Statement of Expectation

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

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

- a) the departure is reasonable and justified in the circumstances;

<sup>3</sup> Generally an adult illegal foreign fisher who accepts responsibility for the illegal foreign fisher minor, represent the minor's best interests and accompany the minor when repatriated to their country of origin.

<sup>4</sup> Exercising powers under the *Fisheries Management Act 1991*, the *Torres Strait Fisheries Act 1984* or the *Environmental Protection and Biodiversity Act 1999*.



## For Official Use Only

- b) all risks have been considered and
- c) approval has been sought and responsibility accepted for documenting the justification for the decision.

Workers are required to comply with all reasonable and lawful directions contained in this PI. Failure to comply with a direction may be considered a breach of the Australian Public Service Code of Conduct (for APS employees) or the *Professional Standards Secretary's Direction* under s55 of the *Australian Border Force Act 2015* (for non-APS employees).

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

## 7. Related Framework documents

### 7.1. Policy Statements

Document	PPCR	TRIM Number
Best Interests of the Child	DM-5721	ADD2018/3305896
Departure Policy (returns, removals and departure support)	VM-5273	PCD2018/1001
Removal from Australia - Separation of families	SM-5039	
Removal of unaccompanied minors from Australia	SM-5038	LEGEND

### 7.2. Procedural Instructions

Document	PPCR	TRIM Number
Removal and Detention Costs	DM-567	<u>PCD2017/6030</u>
Removal from Australia	BE-5488	ADD2018/1956150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791
Removal from Australia – Facilities and detainee service provider assessments	BE-5493	ADD2018/1954814
Removal from Australia – Health assessments	BE-5494	ADD2018/1954834
Removal from Australia – Impediments to removal	BE-5495	ADD2018/1954849
Removal from Australia – Implementing removal from Australia	BE-5496	ADD2018/1954866



## For Official Use Only

Document	PPCR	TRIM Number
Removal from Australia – Information disclosure to effect removal	BE-5497	ADD2018/1954878
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896
Removal from Australia – Operational planning and logistics	BE-5499	ADD2018/1954904
Removal from Australia – Post-removal procedures	BE-5500	ADD2018/1954930
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal Availability Assessment	BE-5503	ADD2018/1954951
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961
Removal from Australia – Removing detainees from different environments	BE-5506	ADD2018/1954972
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980
Removal from Australia – Voluntary removal	BE-5508	ADD2018/1954983
s5G - Relationships and family members - Best interests of minor children	VM-3057	
s5G – Relationship and family members – Custody (parental responsibility) for minor children	VM-3066	
Treatment of Children and Consideration of Children's Best Interests	BC-764	ADD2018/3312041

### 7.3. Supporting Material

Document	PPCR	TRIM / Website
Advice about removing step-children under s 199		ADD2015/1748525
<a href="#">Control framework for detention-related decision making</a>	BC-763	
Considering the best interests of children		ADD2019/942715
<a href="#">Pre-removal Clearances and Informed Request for Removal Statements</a>	VM-3226	
Removal from Australia - Glossary	BE-5509	ADD2018/1955777
<a href="#">Request by partner for removal of self and dependants from Australia</a>		ADD2017/1930431
<a href="#">Request by removee for removal of dependants from Australia</a>		ADD2017/2287828

## 8. References and legislation

- *Australian Border Force Act 2015*
- *Migration Act 1958*
- *Migration Regulations 1994*
- *Privacy Act 1988 Schedule 1* – Australian Privacy Principles

## 9. Consultation

### 9.1. Internal consultation

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

- AAT and Removals Injunctions Section
- Child Wellbeing Operations
- Complex Case Resolution
- Detention and Removal Operational Policy (detention policy)
- Detention Health Operations Section
- Enforcement Operations Central
- Field and Removal Operations, Enforcement Command QLD
- Field and Removal Operations Vic./Tas.
- Field Operations and Removals WA
- Health Policy and Performance
- Integrity Awareness
- International Obligations and SHP Section
- Legal Opinions
- Operation Sovereign Borders, Joint Agency Task Force
- Protection Caseload Resolution
- Refugee and International Law
- Removal Operations Headquarters
- Removal Operations NSW
- Status Resolution Framework Section

### 9.2. External consultation

No external stakeholder were consulted in the development of this Procedural Instruction.

**For Official Use Only****10. Document details**

<b>BCS Category/Function</b>	Border enforcement
<b>BCS Sub-Category/Sub-Function</b>	Program management and evaluation
<b>Period of Effect</b>	13 August 2021

**10.1. Document change control**

<b>Version number</b>	<b>Date of issue</b>	<b>Author(s)</b>	<b>Brief description of change</b>
1	13 August 2018	Detention and Removal Operational Policy	Separation of Removal of Minors and Families topic
2	8 August 2019	Detention and Removal Operational Policy	Updates to Control Framework, and update by CWOps to best interest of child

**10.2. Procedural Instruction approval**

<b>Document owner</b>	Commander ABF Governance
<b>Approval date</b>	13 August 2018



**For Official Use Only**

# Removal from Australia – Voluntary removal

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia.

Document approval date	17 August 2018
Last PPCF review date	17 August 2018
Contact details	Detention and Removal Operational Policy Section S. 47E(d) <a href="mailto:[REDACTED]@abf.gov.au">[REDACTED]@abf.gov.au</a>
Document ID (PPN)	BE-5508
TRIM record number	ADD2018/1954983
Primary influencing Legislation(s)	<i>Migration Act 1958</i>

**For Official Use Only**

# Table of Contents

<b>1. Introduction</b>	<b>3</b>
1.1. Overview	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	3
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1. Request for removal	4
4.2. If the person changes their mind about leaving voluntarily	5
4.3. UMA crew requesting removal	6
4.4. Removal of unauthorised maritime arrivals who arrived after 13 August 2012	6
<b>5. Accountability and responsibilities</b>	<b>7</b>
Table 1 – Procedural Instruction roles and responsibilities	7
<b>6. Statement of Expectation</b>	<b>8</b>
<b>7. Related Framework documents</b>	<b>8</b>
7.1. Policy Statements	8
7.2. Procedural Instructions	8
7.3. Supporting Material	9
<b>8. References and legislation</b>	<b>10</b>
<b>9. Consultation</b>	<b>10</b>
9.1. Internal consultation	10
9.2. External consultation	11
<b>10. Document details</b>	<b>11</b>
10.1. Document change control	11
10.2. Procedural Instruction approval	11

# 1. Introduction

## 1.1. Overview

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

A non-citizen in the migration zone who does not hold a visa that is in effect is a UNC. If a UNC is unwilling or unable to resolve their visa status through visa grant or acquisition of citizenship the non-citizen will have no right to remain in Australia and will be liable for immigration detention under s189 of the *Migration Act 1958* (the Act) and removal from Australia under s198 of the Act.

### Purpose

All twenty (20) Removal from Australia PIs are designed to assist departmental and ABF officers, contracted service providers and stakeholders in effecting the removal of UNCs from Australia in a lawful manner, consistent with the departmental status resolution approach. PIs will assist officers in planning, managing and effecting a removal.

Each Removal from Australia PI is listed by subject in related framework documents. All PIs for Removal from Australia should be implemented in conjunction with [VM-5273](#) in *PPCR Departure Policy (returns, removals and departure support)* Policy Statement TRIM: PCD2018/1001.

# 2. Scope

## 2.1. In Scope

This Procedural Instruction sets out operational instructions and provides advice on:

- request for removal from Australia
- voluntary to involuntary removal
- unauthorised maritime arrivals (UMA), passengers and crew.

Suspected Illegal Foreign Fishers (IFF) will become liable for detention and removal on cessation of an enforcement visa<sup>1</sup>. For further information refer to:

- [DM-590](#) in PPCR (*Detention Services Manual (DSM) – Illegal Foreign Fishers – Illegal Foreign Fishers*)
- [BE-628](#) in PPCR (*DSM – Illegal Foreign Fishers – Enforcement visas*).

## 2.2. Out of Scope

### Border and arrival turnaround

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

<sup>1</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.



If UNC's who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

## Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

## Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either independently as a UNC or as the holder of a Bridging visa managed by either ABF or Home Affairs lines.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Case Resolution - Returns and removals - Return services*).

# 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Removal from Australia Glossary*).

# 4. Procedural Instruction

## 4.1. Request for removal

### Legislative Authority

The Department encourages non-citizens who have no lawful right to remain in Australia to depart voluntarily. If a person requests, in writing, removal from Australia, they **must** be removed as soon as reasonably practicable (see [s198\(1\)](#) of the Act). When a person is removed under this power they are considered to be a 'voluntary removal'.

The [Request for removal from Australia](#) (TRIM ADD2016/715287) form is used to document the person's intention to leave Australia voluntarily. There is no legislative requirement for this form to be used.

Persons in immigration detention can request to be removed at any time.

A person who is a lawful non-citizen (such as a Bridging E visa holder) in criminal custody may also ask in writing that they wish to be removed as soon as reasonably practicable upon their release from criminal detention.

Before proceeding with a request to be removed, the removal officer should encourage the person to talk to their country representative (Consulate et al) or legal representative (if applicable), particularly if the person still has ongoing matters before the Department or the courts.

If a person has been found to engage Australia's protection obligations as defined by the Act, the Department must ensure that the person has been informed of their status.

As a guide, 'voluntary removal' may be defined as a person asking in writing to be removed, having made:

- an informed and independent choice to leave Australia, and/or
- an independent choice to cooperate with removal arrangements rather than being removed involuntarily.

### Written request for removal from Australia – which form to use

The [‘Request for removal from Australia’](#) (TRIM: ADD2016/715287) form is used to document the person’s intention to leave Australia voluntarily. Officers will be prompted to click on *‘Please select lawful status’* dropdown menu and should select either:

- Unlawful non-citizen
- Lawful non-citizen in criminal detention
- Immigration detainee in criminal detention, or
- Unlawful non-citizen in criminal detention.

There are also ‘Request for removal’ forms for spouses/de facto partners and/or dependant children to request their removal from Australia under [s199](#) or [s205 of the Act](#), for this purpose the following forms can be used:

- [Request by partner for removal of self and dependants from Australia](#) (TRIM: ADD2017/1930431), s198(1), s199(1) and s199(2) of the Act or
- [Request by removee for removal of dependants from Australia](#) (TRIM: ADD2017/2287828), s198 and s199(3) of the Act.

[‘Request for removal from Australia – Transitory persons’](#) (TRIM ADD2012/1782836) are to be used for UMAs who were brought to Australia from a regional processing country for a temporary purpose (i.e. medical treatment) and have requested to be removed from Australia.

[‘Request for removal from Australia – Unauthorised Maritime Arrival liable for transfer to Regional Processing Country’](#) (TRIM: ADD2012/1783241) are to be used for UMAs who are liable for transfer to a regional processing country but who request removal from Australia instead.

A person’s refusal to specifically use a ‘Request for removal from Australia’ form does not extinguish the obligation to remove the person under the applicable part of s198(1) of the Act if the person has made a request in writing.

Although there is no requirement in the Act or Regulations for a person who requests removal under s198(1) of the Act to withdraw any unfinalised visa applications, immigration-related reviews, litigation or requests for ministerial intervention, it is departmental policy that officers ask the person to do so. Signing a request for removal, in itself, does not terminate or cause to discontinue any outstanding matters the person may have before the Department or courts.

In relation to UMAs who have made protection claims and subsequently request removal in writing, if they decide to formally withdraw their protection claim, s46A bar will be activated. Should a UMA in this circumstance change their mind, s46A bar will prevent another protection claim being made. The onus is on the person to make relevant enquiries in relation to the effect their decision to depart Australia may have on these outstanding matters.

For guidance on how to complete these forms refer to [Request for removal from Australia form – Guide](#) (TRIM ADD2017/3957216).

## 4.2. If the person changes their mind about leaving voluntarily

In some circumstances, a person may request removal and later express a fear of returning or otherwise demonstrate behaviour that leads an officer to question the voluntariness of the person’s request to be

removed (for example, the person lodges a visa application or a request for review of a visa decision, or requests ministerial intervention).

If a person subsequently withdraws their request to be removed, the removal officer must record the withdrawal in departmental systems and advise AAT and Removals Injunctions Section at [s. 47E\(d\) @homeaffairs.gov.au](mailto:s.47E(d)@homeaffairs.gov.au). If there are unfinalised processes (for example, ministerial intervention requests or protection assessments), the removal officer must also advise relevant areas and the person's case manager.

### 4.3. UMA crew requesting removal

Some UMAs were identified as crew members and detained under [s189 of the Act](#). They may also be subject to [s250 of the Act](#) while the Australian Federal Police (AFP) conducts their investigation.

**Note:** Investigation by AFP does not preclude an UMA from requesting removal.

If a crew member expresses a desire to voluntarily leave Australia at any point, they should be provided with:

- a copy of the '[Information for maritime crew – Leaving Australian immigration detention](#)' (TRIM ADD2012/1107300)
- the appropriate [request for removal form](#).

If an UMA crew member requests removal, the Department must remove the person as soon as practicable.

### 4.4. Removal of unauthorised maritime arrivals who arrived after 13 August 2012

#### Effect of s198AD of the Act

Unauthorised maritime arrivals who arrived in Australia on or after 13 August 2012 are liable for transfer under [s198AD of the Act](#) to a regional processing country (RPC). The removal powers in s198 of the Act do not apply to this cohort ([s198\(11\) of the Act](#) applies) unless they are:

- 'exempt' by the Minister from the transfer, or
- a finally determined fast track applicant.

Under [s198AE of the Act](#), if the Minister thinks that it is in the public interest to do so, the Minister may, in writing, determine that s198AD of the Act does not apply to a UMA. Section 198AE exemption is therefore an essential consideration in removal operations for this cohort.

It is the Department's policy that an exemption under s198AE is not required for finally determined fast track applicants, in order to effect their removal from Australia. This applies to all fast track applicants, [as defined in s5\(1\) of the Act](#), and the corresponding [s5\(1AA\)\(b\) Ministerial Instruments](#).

#### Voluntary removal – UMAs

On 28 July 2013, the (then) Minister gave a blanket determination under [s198AE of the Act](#) to those UMAs detained under [s189 of the Act](#):

- if [s198AD of the Act](#) applied to a person, who under normal circumstances would otherwise be a person to whom [s198\(1\) of the Act](#) would apply in that they have a request in writing to the Minister to be removed from Australia, and
- have a right of entry to the country to which they have asked to be removed that the Department is satisfied can be exercised, and
- have not made, or they have withdrawn, any claims for Australia's protection, and

## For Official Use Only

- remain cooperative to the Department's satisfaction in all aspects necessary to effect their removal.

A UMA who satisfies the criteria set out in the Minister's determination is exempt from being transferred to the RPC and can be removed from Australia under s198(1) of the Act. If the UMA withdraws their request for removal, makes a claim for protection or no longer cooperates with removal arrangements, the s198AE exemption ceases and the UMA will again become liable for transfer to an RPC under s198AD of the Act.

### Involuntary removal – UMAs

All other approvals from the Minister to grant an individual s198AE determination need to be obtained prior to removal. This includes those UMAs who have been invited to apply for a protection visa through the fast track process but have not made a valid application or are not otherwise engaged with the Department in a protection assessment process.

Where a UMA does not meet the criteria of the blanket determination, a removal officer should draft a submission requesting the Minister to exercise his power under s198AE of the Act to make the determination that regional processing provisions do not apply to the UMA. The draft is to be sent to s. 47E(d) [@abf.gov.au](mailto:@abf.gov.au) who will review the submission before it is put to the Minister.

Once the submission has been made, removal officers must also create a ministerial intervention service in CCMD which reflects that the submission is in relation to seeing a s198AE exemption and the submission number. Guidance on preparing a submission can be found in Ministerial Intervention Guide for s198AE Submissions (TRIM: ADD2018/2016063).

Information on the application of subsections 198AD and 198AE to removal operations can be found in the [Section 198AE guide](#) (TRIM ADD2017/3911058).

## 5. Accountability and responsibilities

Table 1 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<ul style="list-style-type: none"> <li>• The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met.</li> <li>• Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures.</li> <li>• Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives.</li> <li>• Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review.</li> <li>• Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out.</li> </ul>
Superintendent (EL2) Detention and Removal Operational Policy (DROP)	<ul style="list-style-type: none"> <li>• Clearance of Procedural Instruction</li> <li>• Approval of updates to policy</li> </ul>
Inspector (EL1) DROP	<ul style="list-style-type: none"> <li>• Ensures Procedural Instruction is updated to reflect current policy</li> <li>• Ensures support materials comply with Procedural Instruction</li> </ul>

## For Official Use Only

## 6. Statement of Expectation

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

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

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

Workers are required to comply with all reasonable and lawful directions contained in this PI. Failure to comply with a direction may be considered a breach of the Australian Public Service Code of Conduct (for APS employees) or the *Professional Standards Secretary's Direction* under s55 of the *Australian Border Force Act 2015* (for non-APS employees).

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

## 7. Related Framework documents

### 7.1. Policy Statements

[VM-5273](#) in PPCR *Departure Policy (returns, removals and departure support)* TRIM: PCD2018/1001

[BC-763](#) in PPCR (*Status Resolution System Control Framework*) TRIM: ADD2019/2439251.

### 7.2. Procedural Instructions

Document	PPCR	TRIM Number
Non-citizens in criminal detention	BC-556	<u>LEGEND</u>
Pre-removal clearances and Informed Request for Removal Statements	VM-3226	LEGEND
Removal and detention costs	DM-567	<u>PCD2017/6030</u>
Removal from Australia	BE-5488	ADD2018/1956150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791



## For Official Use Only

Document	PPCR	TRIM Number
Removal from Australia – Facilities and detainee service provider assessments	BE-5493	ADD2018/1954814
Removal from Australia – Health assessments	BE-5494	ADD2018/1954834
Removal from Australia – Impediments to removal	BE-5495	ADD2018/1954849
Removal from Australia – Implementing removal from Australia	BE-5496	ADD2018/1954866
Removal from Australia – Information disclosure to facilitate removal	BE-5497	ADD2018/1954878
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896
Removal from Australia – Operational planning and logistics	BE-5499	ADD2018/1954904
Removal from Australia – Post-removal procedures	BE-5500	ADD2018/1954930
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal Availability Assessment	BE-5503	ADD2018/1954951
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961
Removal from Australia – Removal of minors and families	BE-5505	ADD2018/1954965
Removal from Australia – Removing detainees from different environments	BE-5506	ADD2018/1954972
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980

### 7.3. Supporting Material

Document	PPCR	TRIM / Website
Information for maritime crew – Leaving Australian immigration detention		ADD2012/1107300
<a href="#">Ministerial Intervention Guide for s198AE Submission</a>		ADD2018/2016063
<a href="#">Notice pursuant to section 223(2) of the Migration Act 1958</a>		ADD2009/902727
<a href="#">Pre-removal Clearances and Informed Request for Removal Statements</a>	VM-3226	
Removal from Australia - Glossary	BE-5509	ADD2018/1955777
<a href="#">Request by partner for removal of self and dependants from Australia</a>		ADD2017/1930431
<a href="#">Request by removee for removal of dependants from Australia</a>		ADD2017/2287828
<a href="#">Request for removal from Australia</a>		ADD2016/715287



## For Official Use Only

Document	PPCR	TRIM / Website
<a href="#">Request for removal from Australia form – Guide</a>		ADD2017/3957216
<a href="#">Request for removal from Australia – Transitory persons</a>		ADD2012/1782836
<a href="#">Request for removal from Australia – Unauthorised Maritime Arrival liable for transfer to Regional Processing Country</a>		ADD2012/1783241
Removal officer guide for preparing a section 198AE ministerial submission	BE-5566	ADD2018/3620195
<a href="#">Section 198AE guide</a>	BE-6286	ADD2017/3911058
Status Resolution System Control Framework Mandatory Control Points	BC-6186	ADD2019/2439257

## 8. References and legislation

- *Australian Border Force Act 2015*
- *Migration Act 1958*
- *Migration Regulations 1994*
- *Privacy Act 1988 Schedule 1* – Australian Privacy Principles

## 9. Consultation

### 9.1. Internal consultation

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

- AAT and Removals Injunctions Section
- ABF Operational Risk Management
- Complex Case Resolution
- Detention and Removal Operational Policy Section (Detention policy)
- Detention Health Operations Section
- Enforcement Operations Central
- Field and Removal Operations, Enforcement Command QLD
- Field and Removal Operations Vic./Tas.
- Field Operations and Removals WA
- Human Trafficking & Criminal Justice Visas
- International Obligations and SHP Section
- Legal Opinions
- Legal Opinions Fast Track Unit

## For Official Use Only

- Operation Sovereign Borders, Joint Agency Task Force
- Protection Caseload Resolution
- Records Management
- Refugee and International Law
- Removals Injunctions Section
- Removal Operations HQ, Enforcement Command
- Removal Operations NSW
- Secrecy and Disclosure Unit – Information Governance Section
- Status Resolution Framework Return and Removal Policy Section

### 9.2. External consultation

No external stakeholder were consulted in the development of this Procedural Instruction.

## 10. Document details

<b>BCS Category/Function</b>	Border enforcement
<b>BCS Sub-Category/Sub-Function</b>	Program management and evaluation
<b>Period of Effect</b>	17 August 2021

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1	17 August 2018	Detention and Removal Operational Policy	Separation of Voluntary Removal topic
2	6 August 2019	Detention and Removal Operational Policy	Update reference to Control Framework and minor edits

### 10.2. Procedural Instruction approval

<b>Document owner</b>	Commander ABF Governance
<b>Approval date</b>	17 August 2018



**For Official Use Only**

# Removal from Australia – Impediments to removal

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia

Document approval date	30 August 2018
Last PPCF review date	30 August 2018
Contact details	Detention and Removal Operational Policy Section
Document ID (PPN)	BE-5495
TRIM record number	ADD2018/1954849
Primary influencing Legislation(s)	<i>Migration Act 1958</i>

**For Official Use Only**

# Table of Contents

<b>1. Introduction</b>	<b>3</b>
1.1. Overview	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	4
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1. Background	4
4.2. <i>Non-refoulement</i> obligations and removal processes	5
4.3. Protection assessments	5
4.4. Family law matters	5
4.5. Court orders from overseas jurisdictions	6
4.6. Criminal justice	6
4.7. Person's health prevents removal	7
4.8. Unfinalised merits review	7
4.9. Unfinalised judicial review in relation to substantive visas	7
4.10. Unfinalised judicial review in relation to non-substantive visas	8
4.11. Unfinalised ministerial intervention requests	8
4.12. Statelessness	9
4.13. External agency complaints	9
4.14. United Nations interim measures request	10
<b>5. Accountability and responsibilities</b>	<b>11</b>
Table 1 – Procedural Instruction roles and responsibilities	11
<b>6. Statement of Expectation</b>	<b>11</b>
<b>7. Related Framework documents</b>	<b>12</b>
7.1. Policy Statements	12
7.2. Procedural Instructions	12
7.3. Supporting Material	13
<b>8. References and legislation</b>	<b>13</b>
<b>9. Consultation</b>	<b>13</b>
9.1. Internal consultation	13
9.2. External consultation	14
<b>10. Document details</b>	<b>14</b>
10.1. Document change control	15
10.2. Procedural Instruction approval	15

# 1. Introduction

## 1.1. Overview

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

A non-citizen in the migration zone who does not hold a visa that is in effect is a UNC. If a UNC is unwilling or unable to resolve their visa status through visa grant or acquisition of citizenship the non-citizen will have no right to remain in Australia and will be liable for immigration detention under s189 Migration Act 1958 (the Act) and removal from Australia under s198 of the Act.

### Purpose

All twenty (20) Removal from Australia PIs are designed to assist departmental and ABF officers, contracted service providers and stakeholders in effecting the removal of UNCs from Australia in a lawful manner, consistent with the departmental status resolution approach. PIs will assist officers in planning, managing and effecting a removal.

Each Removal from Australia PI is listed by subject in related framework documents. All PIs for Removal from Australia should be implemented in conjunction with [VM-5273](#) in PPCR *Departure Policy (returns, removals and departure support)* Policy Statement (TRIM: PCD2018/1001).

# 2. Scope

## 2.1. In Scope

This PI sets out procedures and provides guidance on managing the following impediments to removal:

- *non-refoulement* obligations
- protection assessments
- family law matters
- court orders from overseas jurisdictions
- criminal justice
- a person's health
- unfinalised merits review
- unfinalised judicial review in relation to substantive visas
- unfinalised judicial review in relation to non-substantive visas
- unfinalised ministerial intervention requests
- statelessness
- external agency complaints
- interim measures request.

Suspected Illegal Foreign Fishers (IFF) will become liable for detention and removal on cessation of an enforcement visa<sup>1</sup>. For further information refer to:

- [DM-590](#) in PPCR (*Detention Services Manual (DSM) – Illegal Foreign Fishers – Illegal Foreign Fishers*)
- [BE-628](#) in PPCR (*DSM – Illegal Foreign Fishers – Enforcement visas*).

## 2.2. Out of Scope

### Border and arrival turnaround

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

If UNC's who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

### Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

### Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either independently autonomously as a UNC or the holder of a Bridging visa managed by either ABF or Home Affairs.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Case Resolution - Returns and removals - Return services*).

## 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Removal from Australia – Glossary*) TRIM: ADD2018/1955777.

## 4. Procedural Instruction

### 4.1. Background

A range of events and situations may impact the Department's ability to progress a removal. In many cases, these barriers are temporary and can be resolved in due course. If possible, removal officers should progress other elements of removal planning while resolving or waiting on the resolution of barriers.

<sup>1</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.



## 4.2. *Non-refoulement* obligations and removal processes

Section 197C of the Act clarifies that the availability of the removal powers in [s198](#) of the Act is independent of assessments of Australia's *non-refoulement* obligations. The section stipulates that an officer's duty to remove a person from Australia under [s198](#) of the Act arises irrespective of whether there has been an assessment, according to law, of Australia's *non-refoulement* obligations in respect of that UNC.

Section 197C of the Act is intended to assist interpretation of the Act by clarifying that the exercise of the removal power is not impacted by Australia's *non-refoulement* obligations. It remains critical to continue to follow pre-removal clearance processes to ensure *non-refoulement* issues are identified and appropriately managed prior to removal, including through consideration of visa pathways and ministerial intervention. This means that Australia will continue to meet its *non-refoulement* obligations through alternate management options, that is, before a person becomes available for removal.

## 4.3. Protection assessments

If the person is undergoing an assessment of protection claims (including an International Treaties Obligations Assessment (ITOA)), officers must not progress elements of removal planning that involve contact with foreign missions (for example, seeking travel documents). This is because these cases will be protection-related and contact with foreign missions or foreign government officials regarding the removee may give rise to new protection claims. Referred to as *sur place* claims, these claims can arise if information is given that the person has sought protection in Australia. More information is provided in [BE-5497](#) in PPCR (*Removal from Australia - Information disclosure to effect removal* PI - 'Providing identity documents to foreign governments').

Officers may proceed with other planning requirements that do not involve contact with foreign missions.

All ITOA and International Treaties Obligations Clearance Letters (ITOCL) referrals and queries should be referred to [s. 47E\(d\)](#) [@homeaffairs.gov.au](mailto:). Any policy related questions should be referred to the Protection visa Helpdesk at [s. 47E\(d\)](#) [@homeaffairs.gov.au](mailto:).

## 4.4. Family law matters

### Family Court directions

A direction from the Family Court that a UNC has access to a child in Australia does not override the Department's obligation to remove the UNC pursuant to [s198](#) of the Act. In these cases, removal should generally proceed, because under [s153\(2\)](#) of the Act only High Court, Federal Court and Federal Circuit Court orders prevent removal of a non-citizen.

The Family Court, however, has the power to order persons, such as children who are normally resident in Australia and who are the subject of joint custody or guardianship, not to leave Australia. If such an order is served on the Department or an officer becomes aware of an order, it is policy that removal of the child or custodial parent should not proceed until that order is revoked.

In all cases involving issues pertaining to parental responsibility, legal guardianship, or unaccompanied minors, officers must consult AAT and Removals Injunctions Section (email [s. 47E\(d\)](#) [@homeaffairs.gov.au](mailto:)) before removal can proceed.

If a removee wishes to remain in Australia to attend a Family Court hearing or await a Family Court judgment, officers should exercise their discretion in considering whether it would be reasonable to delay effecting removal. If an officer considers that a delay is not appropriate, they must advise the person that the person is entitled to seek legal representation to obtain a court injunction preventing removal until the Family Court matter is finalised. If no injunction is obtained, the person's removal will proceed. Contact AAT and Removals Injunctions Section if further advice is required.

Officers removing persons who have family members in Australia, particularly those with unfinalised matters in the Family Court, must be mindful of the stresses this may place on the person and the implications for the removal process. Officers overseeing the case of a person who has family members remaining in Australia should also be aware of the discretionary ability of the Department to fund the departure of citizen and lawful non-citizen partners or dependants of the person should such a request be made. Refer to [BE-5505](#) in PPCR (*Removal from Australia - Removal of minors and families*) PI.

### International obligations in relation to families

Officers have a duty under [s198](#) of the Act to remove an unlawful non-citizen from Australia as soon as reasonably practicable which may include individuals within family units. Please refer to [BE-5505](#) in PPCR (*Removal from Australia - Removal of minors and families*) PI and [VM-3057](#) in PPCR (*s5G - Relationships and family members - Best interests of minor children*) PI for further discussion of removal planning in such circumstances.

Related policy statements for removal from Australia are:

- [SM-5039](#) in PPCR (*Removal from Australia – Separation of Families*)
- [SM-5038](#) in PPCR (*Removal of unaccompanied minors from Australia*).

## 4.5. Court orders from overseas jurisdictions

Generally, overseas court orders on family law matters have no force or effect in Australia. Therefore, before acting on a court order issued by an overseas jurisdiction, email [LOHD](#) (the Legal Opinions helpdesk) for advice.

For more information on overseas court orders, refer to [BE-5505](#) in PPCR (*Removal from Australia - Removal of minors and families*) PI and [VM-3065](#) in PPCR ([s5G](#) - *Relationships and family members – Child-parent relationships*).

## 4.6. Criminal justice

Officers who are aware of any processes that may require the person to remain in Australia for the purposes of administration of criminal justice, either to face charges or to appear as a witness) must engage with the relevant law enforcement authority (LEA) to confirm their intention to:

- progress the criminal matter
- issue a Criminal Justice Stay Certificate (CJSC) or
- confirm that the detainee is not required in Australia for the administration of criminal justice.

A CJSC in effect will not prevent the voluntary removal of a UNC from [immigration](#) detention. A removal officer must consult with Criminal Justice Unit (CJU) via [s. 47E\(d\)](#) [@homeaffairs.gov.au](#) before proceeding with the removal where the LEA indicates an ongoing interest in the person.

If the UNC withdraws their request for removal, a removal officer provides the withdrawal request for removal form (TRIM: ADD2019/1630865) to the UNC for completion. If the UNC does not withdraw their request, removal planning continues and a removal officer continues to update the CJU on details. The CJU will consider the grant of a Criminal Justice Stay Visa (CJSV) or an alternative management strategy to ensure the administration of criminal justice can occur.

For detail on managing requests for removal from UNC's in immigration detention with or without a CJSC, refer to:

- Criminal Justice Stay Certificates – Request for Removal Process (TRIM ADD2019/5115387) and

- Request for Removal Process Diagram (TRIM ADD2019/5267904).

*Note that a Criminal Justice warrant ([s151](#)) will prevent removal from Australia whilst in effect.*

## 4.7. Person's health prevents removal

If the health services provider (HSP) has undertaken a fitness to travel assessment (FTTA) and has advised that the person is not fit for travel and provided reason why and plans to treat this issue, the removal is to be delayed until such time as the identified health issues are resolved. The removal is delayed until the Department and the HSP review the removees medical situation. Removal will continue when HSP assesses the removee as fit to travel. For more details refer to:

- [DM-5028](#) in PPCR (*Fitness to travel Assessment*)
- [DM-5261](#) in PPCR (*Health Discharge Assessment*)
- [BE-5494](#) in PPCR (*Removal from Australia - Health assessments*) PI.

## 4.8. Unfinalised merits review

### Unfinalised merits review in relation to substantive visas

Section [198](#) of the Act does not authorise involuntary removal of a UNC who has unfinalised merits review entitlements relating to a substantive visa application. This includes both circumstances where a person has a valid unfinalised merits review application and circumstances where they are still within relevant eligibility periods for lodgement.

### Progressing removal planning

Although removal officers must not remove persons undertaking merits review, planning for involuntary removal may still take place. If the review is in relation to a PV application, officers must not proceed with elements of removal planning that involve contact with foreign missions (for example seeking travel documents). See [protection assessments](#)

### Unfinalised merits review in relation to non-substantive visas

Unfinalised merits review entitlements in relation to non-substantive visas are not a legislative barrier for removal and should not delay or otherwise prevent removal planning and execution but must be escalated to Removal Operations Head Quarters (HQ) and AAT Removal Injunctions at the earliest opportunity.

As a matter of priority, removal officers must advise AAT and Removals Injunctions Section of the removal plans by emailing [s. 47E\(d\)](#) [@homeaffairs.gov.au](#). AAT and Removals Injunctions Section will be able to assist with advice in relation to possible legal issues or complications that may arise in the course of removal.

## 4.9. Unfinalised judicial review in relation to substantive visas

### General policy

The Act does not preclude involuntary removal of UNC's who are entitled to seek judicial review or who are seeking judicial review of a decision in relation to a substantive visa. However, as a matter of policy, persons in this cohort usually should not be removed because:

- the person should be given adequate time after a negative tribunal decision to consider their legal options to seek judicial review
- the court may ultimately overturn the substantive visa decision

- the court may grant an injunction to prevent removal of the person.

**Note:** This policy can be bypassed if a removee requests voluntary removal under [s198\(1\)](#) of the Act.

## Policy exceptions

In some cases, particularly if a person has a history of serial and repetitive litigation, the officers may decide to progress removal despite unfinalised litigation.

Before progressing removal, officers must first refer the case to the AAT and Removals Injunctions Section for their views on the appropriateness of the removal and the Department's ability to successfully defend an injunction application (to stay removal).

When referring cases to the AAT and Removals Injunctions Section, officers are to include a summary of the person's immigration history and note any sensitivities of the case (provide up-to-date ROIB, if available).

## 4.10. Unfinalised judicial review in relation to non-substantive visas

If a person is seeking judicial review (or is within the appeal period) of a non-substantive visa, removal should still proceed. This includes judicial review of a delegate's decision to refuse to waive condition [8503](#) (no further application). However, to mitigate any possible risks, officer should consult AAT and Removals Injunction Section before commencing removal planning.

When referring cases to the AAT and Removals Injunctions Section, officers are to include a summary of the person's immigration history and note any sensitivities of the case (provide up-to-date ROIB, if available).

## Notification

When seeking to remove a person with unfinalised litigation, officers should ensure that a person is notified of the scheduled removal with sufficient time to seek legal advice or initiate legal proceedings in relation to the Department's removal intentions.

For advice on removal notification requirements for this cohort refer to [BE-5504](#) in PPCR (*Removal from Australia - Removal notification PI - Removees with ongoing litigation*).

## 4.11. Unfinalised ministerial intervention requests

### Overview

Although an unfinalised Ministerial Intervention (MI) request is not an impediment to removal, it is policy that a person with an unfinalised MI request not be removed without consultation through the relevant MI team Director under the:

- the Assistant Secretary, Humanitarian Program Operations (s48B and 46A requests), contact [International Obligations](#) section and copy in [removals helpdesk](#)
- the Assistant Secretary, Status Resolution (s195A, s197AB, s197AD, s351, s417 and s501J), contact [Ministerial Intervention](#) section and copy in [removals helpdesk](#)
- the Commander, Field and Removal Operations (s198AE), contact [Removal Operation HQ](#). Note an exemption must be obtained pre-removal. For guidance refer to [BE-5566](#) in PPCR (Removal officer guide to preparing a section 198AE ministerial submission).

Removal officers should continue to arrange the removal during the course of a MI assessment. A MI request that has not met guidelines is considered finalised. Effective liaison and communication between status resolution officers, removal officers and MI teams are vital to ensure planned removal dates are not unnecessarily delayed, periods in detention are minimised and any repeat requests can be dealt with in a timely manner.

For advice on liaising with foreign government officials to obtain travel documents while MI requests are unfinalised, refer to [BE-5507](#) in PPCR (*Removal from Australia - Travel document for removal purposes PI - Obtaining a travel document – Unfinalised MI requests or judicial review*).

### s501 revocation requests

For persons who request removal from Australia after making, in accordance with [s501CA\(3\)](#) of the Act and Regulation [2.52](#), a valid application for revocation of a mandatory cancellation decision, the revocation application:

- can still proceed even if the detainee goes outside of Australia, and
- unless they withdraw the removal request, is not a barrier to removal.

If, however, the detainee does not request removal there is no removal power available.

## 4.12. Statelessness

The *United Nations Convention relating to the Status of Stateless Persons 1954* provides that a 'stateless person' is a person who is not considered to be a national by any State under the operation of its law. Stateless UNCs might come to the attention of removal officers in several different circumstances. For example, some may have been refused a PV while others may have had their visa cancelled on character grounds and may have lost their previous citizenship during their period of residence in Australia. Removal officers should explore all departmental systems and refer to relevant departmental stakeholders as required in order to verify a removees stateless claims and then appropriately consider removal options.

Removal officers should consider contacting Identity Business Support (IDBS) for advice about identity and complex cases on [s. 47E\(d\)](#) or email [s. 47E\(d\) @homeaffairs.gov.au](#) or [s. 47E\(d\) @homeaffairs.gov.au](#).

Removal officers can refer complex identity matters for action via the Department's '[Complex Identity Referral Form](#)' in the IMtel system. IDBS will advise the referring officer if a referral is accepted or if more information is required. **See:** [IIB-5144](#) in PPCR (*Enterprise Identity*).

If a person is genuinely stateless, there may be practical difficulties in effecting their removal. For example, without confirmation of nationality, it is not possible to obtain a travel document.

If a person who may be stateless is liable for removal, removal officers should, through Removals Operations HQ approach countries where the person may be entitled to citizenship - such as the country of their birth, country of previous residence, and/or country of nationality of their spouse, parents or grandparents - to establish whether any of those countries will either recognise the person as their national or issue a travel document to allow their return.

## 4.13. External agency complaints

Prior to removal, officers should check departmental systems such as the client of interest in ICSE, Client Search Portal and the detainee file for any evidence of unfinalised substantial claims or complaints made by external human rights and government oversight bodies such as the Commonwealth Ombudsman's Office, Australian Human Rights Commission, International Committee of the Red Cross or Red Cross. Unfinalised third party claims and complaints do not include routine objections to a removal raised by the removee's family, friends or legal representatives. If in doubt contact Removal Operations HQ via [s. 47E\(d\) @abf.gov.au](#) for advice.

If there is information to suggest that there is an outstanding external agency complaint, officers should email [s. 47E\(d\) @homeaffairs.gov.au](#) informing them of the removal date.

The existence of unresolved complaints should not stop or delay removal. Removal in these circumstances can be prevented only through a court injunction. Refer to [BE-5498](#) in PPCR (*Removal from Australia - Notifying stakeholders of the removal PI - Court injunction*).

Any questions or concerns raised by the relevant external bodies in relation to removal should be managed through the External Scrutiny team at [s. 47E\(d\)](#) [@homeaffairs.gov.au](#).

## 4.14. United Nations interim measures request

### Representations made to halt removal

When a complaint is made to either the:

- United Nations Human Rights Commission (UNHRC) or
- United Nations Committee Against Torture (UNCAT)

the relevant UN Committee may issue Australia with an interim measures request (IMR).

An IMR is a request not to remove the person until the UN Committee can hear and give its views on the person's complaint. If a complaint is made to a UN Committee and an IMR is issued, all removal arrangements for the person must be suspended until the IMR has been considered by the Department and a determination made by the Minister.

Although a UN agency, a complaint made by the United Nations High Commission for Refugees (UNHCR) is not a barrier to removal and is not subject to an IMR. UNHRC complaints are managed by the Migration and Humanitarian Organisation Section, International Division in the Department.

### Voluntary removal

Note that a complaint or IMR is not a barrier to the removal of a person that has requested removal in writing under [s198\(1\)](#) of the Act. Only a court injunction will halt a voluntary removal.

Information and consideration of outstanding complaints, including those with an associated IMR, can be sought by emailing UN Complaints and IMR Team at [s. 47E\(d\)](#) [@homeaffairs.gov.au](#).

### Involuntary removal

If the person only has a complaint before a Committee and no IMR has been issued, an involuntary removal can proceed. However, the involuntary removal of a person with an IMR must be suspended until a determination has been made by the Minister. IMRs must also be escalated/emailed to the UN Complaints and IMR team at [s. 47E\(d\)](#) [@homeaffairs.gov.au](#).

Under IMR policy the Minister is responsible for determining whether an IMR is warranted or unwarranted (removing the required approval of the Attorney-General). The policy requires IMRs to be assessed within 30-40 calendar days. An expedited process for dealing with IMRs when they are issued while the person is at an international transit point is included in policy. Removal officers who will be effecting the involuntary removal of a person with an IMR issued in respect of them by a UN Committee should refer to 'Removal of persons with an interim measures requested issued in respect of them by a United Nations Committee' (TRIM: ADD2017/1590876) for guidance.

The UN Complaints team will further develop administrative guidelines to support IMR policy, in conjunction with the Office of International Law, Attorney-General's Department (AGD).

A copy of IMR policy is in TRIM: ADD2014/903668. In the meantime, any IMR issues should be emailed directly to [s. 47E\(d\)](#) [@homeaffairs.gov.au](#) for further action.

If the UNHRC or UNCAT issue an IMR, removal action must cease while this request is considered. In these instances, in responding to the UNHRC or UNCAT, Protection Caseload Resolution Section will liaise with the AFP, AGD and other relevant stakeholders.



## For Official Use Only

Removal officers should on a case by case basis escalate IMRs made by the UNHRC or UNCAT to removal managers or Removals Operations HQ. See *Removal from Australia – Notifying stakeholders of the removal (TRIM: ADD2018/1954896) – Removal of Interest brief (ROIB)*.

Any questions or concerns raised by a United Nations agency should be managed through s. 47E(d) [@homeaffairs.gov.au](mailto:@homeaffairs.gov.au).

## 5. Accountability and responsibilities

Table 1 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<p>The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met.</p> <p>Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures.</p> <p>Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives.</p> <p>Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review.</p> <p>Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out.</p>
Superintendent (EL2) Detention and Removal Operational Policy (DROP)	<p>Clearance of Procedural Instruction</p> <p>Approval of updates to policy</p>
Inspector (EL1) DROP	<p>Ensures Procedural Instruction is updated to reflect current policy</p> <p>Ensures support materials comply with Procedural Instruction</p>

## 6. Statement of Expectation

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

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

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

Workers are required to comply with all reasonable and lawful directions contained in this Procedural Instruction. Failure to comply with a direction may be considered a breach of the Australian Public Service

## For Official Use Only

Code of Conduct (for APS employees) or the *Professional Standards Secretary's Direction* under section 55 of the *Australian Border Force Act 2015* (for non-APS employees).

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

## 7. Related Framework documents

### 7.1. Policy Statements

[VM-5273](#) in PPCR (*Departure Policy (returns, removals and departure support)*) TRIM: PCD2018/1001

[BC-763](#) in PPCR (*Status Resolution System Control Framework*) TRIM: ADD2019/2439251.

### 7.2. Procedural Instructions

Document	PPCR	TRIM Number
Enterprise Identity	IIB-5144	<a href="#">ADD2017/3991041</a>
Fitness to Travel Assessment	DM-5028	<a href="#">LEGEND</a>
Health Discharge Assessment	DM-5261	<a href="#">LEGEND</a>
Pre-removal Clearances and Informed Request for Removal Statements	VM-3226	LEGEND
Removal and Detention Costs	DM-567	<a href="#">PCD2017/6030</a>
Removal from Australia	BE-5488	ADD2018/19546150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791
Removal from Australia – Facilities and detainee service provider assessments	BE-5493	ADD2018/1954814
Removal from Australia – Health assessments	BE-5494	ADD2018/1954834
Removal from Australia – Implementing removal from Australia	BE-5496	ADD2018/1954866
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896
Removal from Australia – Operational planning and logistics	BE-5499	ADD2018/1954904
Removal from Australia – Post-removal procedures	BE-5500	ADD2018/1954930

## For Official Use Only

Document	PPCR	TRIM Number
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal Availability Assessment	BE-5503	ADD2018/1954951
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961
Removal from Australia – Removal of minors and families	BE-5505	ADD2018/1954965
Removal from Australia – Removing detainees from different environments	BE-5506	ADD2018/1954972
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980
Removal from Australia – Voluntary removal	BE-5508	ADD2018/1954983
s5G - Relationships and family members - Child-parent relationships	VM-3065	<u>LEGEND</u>
s5G - Relationships and family members - Best interests of minor children	VM-3057	<u>LEGEND</u>

### 7.3. Supporting Material

Document	PPCR	TRIM / Website
Removal from Australia - Glossary	BE-5509	ADD2018/1955777
Status Resolution System Control Framework Mandatory Control Points	BC-6186	ADD2019/2439257

## 8. References and legislation

- *Australian Border Force Act 2015*
- *Migration Act 1958*
- *Migration Regulations 1994*
- *Privacy Act 1988 Schedule 1 – Australian Privacy Principles*

## 9. Consultation

### 9.1. Internal consultation

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

- AAT and Removals Injunctions Section
- ABF Operational Risk Management
- Aviation Traveller NSW

## For Official Use Only

- Citizenship Operations
- Civil Litigation and Compensation
- Comcover Manager
- Complex Case Resolution
- Detention and Removal Operational Policy (detention policy)
- Detention Health Operations Section
- Enforcement Operations Central
- Field and Removal Operations, Enforcement Command QLD
- Field and Removal Operations Vic./Tas.
- Field Operations and Removals WA
- Health Policy and Performance
- Humanitarian Contract Management Section
- Human Trafficking and Criminal Justice Programme
- Integrity Awareness
- International Obligations and SHP Section
- Legal Opinions - Fast Track Advice Unit
- Legal Opinions - Legal Framework and Notifications Section
- Ministerial Intervention Unit and Complex Case Resolution
- Legal Opinions
- Onshore Contracts
- Operation Sovereign Borders, Joint Agency Task Force
- Privacy Operations Section
- Protection Caseload Resolution
- Records Management
- Refugee and International Law
- Removals Helpdesk
- Removals Injunctions Section
- Removal Operations HQ
- Removal Operations NSW
- Secrecy and Disclosure Unit – Information Governance Section
- Status Resolution Framework Section

### 9.2. External consultation

No external stakeholder were consulted in the development of this PI.

## 10. Document details

<b>BCS Category/Function</b>	Border enforcement
------------------------------	--------------------



## For Official Use Only

<b>BCS Sub-Category/Sub-Function</b>	Program management and evaluation
<b>Period of Effect</b>	30 August 2021

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1	30 August 2018	Detention and Removal Operational Policy	PPCF Compliance
2	1 August 2019	Detention and Removal Operational Policy	Addition of new 'control Framework'
3	30 October 2019	Detention and Removal Operational Policy	Process update for CJSCs and request for removal

### 10.2. Procedural Instruction approval

<b>Document owner</b>	Don Smith, Commander ABF Governance
<b>Approval date</b>	30 August 2018

**For Official Use Only**

# Removal from Australia – Health assessments

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia.

Document approval date	31 August 2018
Last PPCF review date	31 August 2018
Contact details	<u>Detention and Removal Operational Policy Section</u>
Document ID (PPN)	BE-5494
TRIM record number	ADD2018/1954834
Primary influencing Legislation(s)	<i>Migration Act 1958</i>

**For Official Use Only**



# Table of Contents

<b>1. Introduction</b>	<b>3</b>
1.1. Overview	3
<b>2. Scope</b>	<b>3</b>
2.1. In Scope	3
2.2. Out of Scope	4
<b>3. Glossary</b>	<b>4</b>
<b>4. Procedural Instruction</b>	<b>4</b>
4.1. Health Discharge Assessment (HDA)	4
4.2. Health Discharge Summary (HDS)	5
4.3. Fitness to Travel assessment (FTTA)	5
4.4. Request a FTTA	7
4.5. Supplies of medication	7
4.6. Removal of pregnant women	8
4.7. Medical escorts	8
4.8. Administration of medication	8
4.9. If a person has a communicable and/or notifiable disease/illness	9
<b>5. Accountability and responsibilities</b>	<b>10</b>
Table 1 – Procedural Instruction roles and responsibilities	10
<b>6. Statement of Expectation</b>	<b>10</b>
<b>7. Related Framework documents</b>	<b>11</b>
7.1. Policy Statements	11
7.2. Procedural Instructions	11
7.3. Supporting Material	12
<b>8. References and legislation</b>	<b>12</b>
<b>9. Consultation</b>	<b>12</b>
9.1. Internal consultation	12
9.2. External consultation	13
<b>10. Document details</b>	<b>13</b>
10.1. Document change control	13
10.2. Procedural Instruction approval	14

# 1. Introduction

## 1.1. Overview

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

A non-citizen in the migration zone who does not hold a visa that is in effect is a UNC. If a UNC is unwilling or unable to resolve their visa status through visa grant or acquisition of citizenship the non-citizen will have no right to remain in Australia and will be liable for immigration detention under s189 of the *Migration Act 1958* (the Act) and removal from Australia under s198 of the Act.

### Purpose

All twenty (20) Removal from Australia PIs are designed to assist departmental and ABF officers, contracted service providers and stakeholders in effecting the removal of UNCs from Australia in a lawful manner, consistent with the departmental status resolution approach. PIs will assist officers in planning, managing and effecting a removal.

Each Removal from Australia PI is listed by subject in related framework documents. All PIs for Removal from Australia should be implemented in conjunction with [VM-5273](#) in *PPCR Departure Policy (returns, removals and departure support)* Policy Statement (TRIM: PCD2018/1001).

# 2. Scope

## 2.1. In Scope

This PI sets out procedures and provides guidance on:

- Health Discharge Assessment
- Health Discharge Summary
- Fitness to Travel Assessment
- supply and administration of medication
- the role of a medical escort
- removal of pregnant women
- communicable and/or notifiable diseases.

Suspected Illegal Foreign Fishers (IFF) will become liable for detention and removal on cessation of an enforcement visa<sup>1</sup>.

**Note** that the term 'detainee' is used throughout this document to maintain consistency with Detention health policy. 'Removee' is used instead of detainee in reference to the period during and post removal from Australia or when removal policy applies exclusively.

<sup>1</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.

## 2.2. Out of Scope

This PI makes reference to detention health policies also applicable to:

- transferees in regional processing countries
- persons intercepted at sea.

The cohorts listed above are out of scope of this PI. Refer to detention health policy statement, [DM-5526](#) in PPCR (*Detention Health – Discharge and Removals Policy Statement*).

### Border and arrival turnaround

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

If UNCs who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

### Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

### Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either independently as a UNC or the holder of a Bridging visa managed by either ABF or Home Affairs.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Case Resolution - Returns and removals - Return services*).

## 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Removal from Australia Glossary*).

## 4. Procedural Instruction

### 4.1. Health Discharge Assessment (HDA)

A HDA aims to establish the physical and mental health status of a detainee at point of discharge transfer to community detention or removal from held immigration detention, in order to facilitate continuity of care. In facilitating continuity of care, a HDA is conducted for all detainees being removed from detention. A HDA results in a Health Discharge Summary (HDS) that details the health status of a detainee and the health care provided to them while in immigration detention.

**Note:** the HDA process is separate from the Fitness to Travel Assessment (FTTA).

For detailed information on HDAs refer to [DM-5261](#) in PPCR (*Detention Health - Health discharge assessment Procedural Instruction*).

Aircraft operators may also request completion of their Medical Information Form. This form is to be completed by a qualified health professional.

## 4.2. Health Discharge Summary (HDS)

The Health Discharge Summary (HDS) informs future health care providers of the clinical history of a removee who has been detained during their period of detention, including any treatment received, ongoing treatment and medication requirements, and health critical incidents, which may have occurred.

The Detention Health Service Provider (DHSP) will use the HDS to document health care concerns and make recommendations regarding post-removal continuity of care requirements for the removee once they arrive in the destination country. The DHSP will provide the Department a recommendation on post discharge support, which may include arranging medical appointments and referrals.

It should be noted that post-discharge support arrangements have no bearing on a person's assessment as to fitness to travel and as such are irrelevant considerations for FTTAs.

HDS post discharge support arrangements are not supported by Post-removal support (PRS) funding purposes. PRS provides immediate, short term assistance directly linked to facilitating the removal from Australia and excludes expenditure for medical services in the receiving country. Refer to [BE-5501](#) in PPCR (*Removal from Australia – Post-removal support PI*). The HDS will assist in-country health care service providers engaging with the removee in the destination country.

For further information on health care provided post removal, please refer to [DM-52611](#) in PPCR (*Detention Health - Health Discharge Assessment PI – 4.6 Health Discharge Summary*).

## 4.3. Fitness to Travel assessment (FTTA)

The FTTA is an assessment conducted by the contracted DHSP. The FTTA is concerned only with assessing a person's fitness to undertake travel to a destination. Post arrival health care arrangements are irrelevant considerations for determining a FTTA. The FTTA may be applied to:

- detainees in Australian Immigration Detention Facilities (IDFs)
- persons subject to a residence determination
- transferees to and from a regional processing country persons intercepted at sea and
- persons leaving correctional facilities and being removed immediately

The FTTA for removal from Australia allows a determination for a person in custody to travel, primarily on an aircraft (commercial or charter) with or without support, having regard to any physical or mental health conditions the detainee may have.

The FTTA will form part of the information required to be provided under the *Aviation Transport Security Regulations (2005)* (ATSR) to the aircraft operator.

Refer to [DM-5028](#) in PPCR (*Detention Health – Fitness to Travel Assessments PI – 4.1.2 A FTTA is required under Health Policy*) for scenarios and/or circumstances where this applies, (includes involuntary or voluntary removal from Australia) as well as where a FTTA may be appropriate for non-air travel.

There are a number of scenarios where a FTTA is not required, including airport turnarounds where the person is removed within 72 hours. See [DM-5028](#) in PPCR (*Detention Health -Fitness to Travel PI – 4.1.3 A Fitness to Travel Assessment is not required*).

The FTTA is conducted by a qualified health professional who must take into account the physical and mental health of the person in custody, the mode of transport required, whether additional clinical or mental health support is required during travel and/or any other special considerations such as, in travel medication administration.

A FTTA can be determined 'on the papers' using information from the detainee's Health Induction Assessment (HIA), HDS, Health Care Record (HCR) and, if the person has been in detention receiving medical treatment, it should be in consultation with the detainee's treating health professional.

A physical assessment of the detainee is required for FTTA only if:

- there has been a material change in the detainees health since their last physical health assessment, or
- at the time of removal more than 28 days will have lapsed since the detainees was last examined by a nurse or medical practitioner, or
- if it is otherwise clinically indicated.

The FTTA outlines the detainee's personal details, travel details, and relevant medical history. A FTTA may clear a person as fit to travel subject to provision of in-flight escort support which aims to ensure that a detainee's health will be appropriately managed during travel. The specific requirements of the medical escort are determined and approved by the Department based on advice from the DHSP. See [DM-5028](#) in PPCR (*Detention Health -Fitness to Travel* PI – 4.2.7 Medical Escorts), for further detail.

It is expected that the DHSP will commence planning for any escort support required during travel as early as possible in removal planning process, to facilitate seamless removal.

If the DHSP determines the detainee is not fit to travel, then the DHSP must provide their reasoning, evidence, management options and a date the detainee is likely to be fit to travel.

Generally, a FTTA is only valid for 28 days from the date of the health practitioner's signature for removal purposes. However, this period can be extended if the DHSP has maintained care and management of the detainee and their health has not deteriorated. The FTTA validity period can also reduce if the detainee's health deteriorates and /or if clinically indicated.

The FTTA clearance can be withdrawn, for example, if the detainee's health deteriorates prior to travel and previous travel arrangements in place (for example no escort) no longer provide sufficient management of health risk to warrant departure.

The DHSP should complete the FTTA as soon as possible, in order to properly plan escort and other arrangements for travel if these are required.

Removal will proceed only if a detainee is assessed as fit to travel. A FTTA clearance may be conditional upon requirements regarding escorts or medication or other matters. If so, these conditions must be satisfied for travel to proceed.

## Arrangements for FTTAs

There are different arrangements for organising FTTAs depending on the location of the detainee. The DHSP will perform FTTAs for persons being removed from detention, and will organise assessments for persons in community detention to be performed by a health professional in the DHSPs network of community providers. For persons removed from correctional detention, health professionals at the correctional centre/prison will complete the FTTA or the DHSP will organise the FTTA upon the person's release from the correctional centre/prison into immigration detention. In such cases, removal officers should note carefully the documentation provided by corrections health agencies/DHSP and escalate any concerns (especially regarding medications or escorts) to the Detention Health Operations Section.

Stakeholders should, as far as possible in a given case, engage in advance planning/liaison with a prison or other facility to encourage the facility to undertake a comprehensive assessment which fulfils FTTA requirements.

If a detainee is expected to stay in an immigration detention facility for more than 72 hours, responsibility for the completion of the FTTA lies with the DHSP.

Although contractually the DHSP has 72 hours in which to provide a FTTA, officers should notify the DHSP of the planned removal at the earliest opportunity to enable the DHSP to undertake the FTTA and organise medical escorts if required.

The removal of a detainee which involves a medical escort requires early consultation with Detention Health Operations Section (via email [s. 47E\(d\) @abf.gov.au](mailto:s.47E(d)@abf.gov.au)). The Detention Health Operations Section will oversee the operational issues and will liaise with the Health Services Contract Management Section for contractual matters and any approval of costs.

The inclusion of security escorts will be determined through a separate risk assessment process. Low risk removals will not require security escorts, even when a medical escort is provided.

For further advice email [s. 47E\(d\) @homeaffairs.gov.au](mailto:s.47E(d)@homeaffairs.gov.au). For additional information, refer to [DM-5028](#) in PPCR (*Detention Health - Fitness to Travel Assessments PI – 4.2.7 Medical Escorts*) and [BE-5491](#) in PPCR (*Removal from Australia – Escort Arrangements PI*).

#### 4.4. Request a FTTA

When requesting a FTTA for a person in an IDF, correctional facility or in the community, removal officers should follow the procedures outlined in [DM-5028](#) in PPCR (*Detention Health - Fitness to Travel Assessments PI*).

For persons removed from correctional detention, health professionals of the correctional centre/prison will complete the FTTA. If no FTTA is provided, or if the FTTA provided does not include sufficient detail to facilitate effective management of the person's health or mental health care or medication management needs during the travel, it is the DHSP's responsibility to contact the correctional centre/prison and obtain the FTTA of the detainee in question. For further advice email [s. 47E\(d\) @homeaffairs.gov.au](mailto:s.47E(d)@homeaffairs.gov.au).

#### 4.5. Supplies of medication

Detainees are to be removed from Australia with a safe supply of ongoing clinically recommended/prescribed medications.

Detention health policy provides for up to a four week supply of prescription medications at the time of release from immigration detention. The health professional undertaking the HDS will assess the amount of medication to be provided, and when and by whom it is to be provided taking into account the nature of the medication and the removee's access to such medication during travel and upon return to their home country.

An escort may be required to administer certain medications before or during travel; these arrangement should be clearly documented and communicated to all parties who will have dealings with the removee, to ensure that medication is held and dispensed in a manner that does not compromise the health or safety of any person.

As part of the discharge process, the HSP will provide a detainee with a health discharge summary and any necessary referrals. The HSP will provide medication and a HDS for detainees being discharged in accordance with the detention health policy and procedures on health discharge from immigration detention - refer to [DM-5261](#) in PPCR– *Detention Health - Discharge health assessment PI – 4.0 Procedural Instruction*) and [DM-5028](#) in PPCR (*Detention Health – Fitness to Travel Assessments PI – 4.2.10 Special considerations*).

**Note:** Some medications may be classified as a prohibited drug in some destinations and/or transit countries, and may not be permitted to be carried in those destinations. The HSP must ensure, prior to a



*removal, that any medications required by a removee during travel are authorized by relevant Governments to be carried during travel/at destination.*

## 4.6. Removal of pregnant women

Women who are pregnant can be assessed as fit to travel in certain circumstances.

If a pregnant detainee is scheduled to fly, the relevant airline should be contacted to determine the airline's current policy regarding accepting pregnant passengers, including any documentation required.

Airlines may have additional requirements to be met before an airline approves travel in a particular case. These requirements may be additional to the requirements to be met under a HSP led FTTA. Airlines may require a letter from a doctor or midwife outlining the estimated due date, single or multiple pregnancies, the absence of complications, and their fitness to fly for the duration of flight(s) booked. A medical escort may also be requested by the airline. Some airlines will complete their own medical assessment. Requirements vary from airline to airline.

After a pregnant woman has reached 30 weeks, officers must refer/email any plans for her involuntary (enforced) removal to <sup>s. 47E(d)</sup> [@homeaffairs.gov.au](mailto:_____@homeaffairs.gov.au) for risk assessment and consideration.

## 4.7. Medical escorts

There are several factors which may determine a person's need for a medical escort, including a physical or mental health condition which requires support, and/or a significant history of self-harm.

If the health professional undertaking the detainees FTTA recommends a medical escort during travel or airline security deems provision of a medical escort during travel necessary, the removal officer is to arrange this to ensure the proper care and support of the removee. Removal officers request medical escorts through the DHSP.

The DHSP can also arrange medical escorts through Detention Health Operations Section. Medical escorts are tailored to the requirements of a case, they should be appropriately qualified to closely observe the removee and provide necessary medication and nutrition. For policy and procedure on medical escorts, refer to [BE-5491](#) in PPCR (*Removal from Australia – Escort Arrangements PI – Non-security escorts.*)

Airlines are advised by a removal officer of the requirement for medical escorts. Information is provided in Form 1: Noticed of proposed movement of a person in custody and where applicable, the airline's medical form is attached. Timeframes should be specified so that this arrangement does not jeopardise departure plans.

## 4.8. Administration of medication

A removee is generally responsible for their own medication en route to their country of return. If there is concern the removee could use the medication to cause themselves harm (for example by making medication errors due to a health or mental health condition) then a qualified health professional (for example, a registered nurse) should, prior to departure, be allocated responsibility for medication arrangements. These may include, for example, keeping safe custody of the medication and administering it as prescribed. If required, escorts should carry medication arranged in marked single dose packs and dispense it to the removee as prescribed.

For further advice, email <sup>s. 47E(d)</sup> [@homeaffairs.gov.au](mailto:_____@homeaffairs.gov.au).

#### 4.9. If a person has a communicable and/or notifiable disease/illness

As stated in *4.3 Fitness to Travel Assessment (FTTA)*, the FTTA is an assessment conducted by the DHSP. The FTTA is concerned only with assessing a person's fitness to undertake travel to a destination by identifying the presence of any pre-existing disease or ongoing health concerns and requirements and to assess the risks these will present in relation to travel. The FTTA is also used to satisfy the *Aviation Transport Security Regulations (2005)* requirement to declare medical conditions for persons in custody. In the case of a detainee having a notifiable disease/illness, the case must be referred to Detention Health Operations Section for approval prior to any travel.

Many communicable diseases are transferable only via blood to blood contact, in which case the detainee may be assessed as fit to travel, in such cases removal officers, or any person in contact with a person with the communicable disease, would be at no risk of becoming infected simply by being in the same room as the person. As persons in detention are afforded the same standards of privacy and confidentiality as the general Australian population, such information would not normally be disclosed to departmental officers in contact with or escorting the person, unless medically advised (see note below).

If a removal officer or escort is concerned about any contact they have had with a person during the course of their duties (for example they are bitten by a person) they should seek medical attention as soon as possible and a WHS incident report entered. For further information refer to [HR-2186](#) in PPCR (*Work health and safety incident management and reporting*).

If a person has an easily transmissible disease, such as diseases that are transmissible by the air (including chicken pox, measles or tuberculosis) the person may be placed into isolation by the HSP, and would not be assessed as fit to travel.

For further advice email [s. 47E\(d\)@homeaffairs.gov.au](mailto:s.47E(d)@homeaffairs.gov.au) or refer to [DM-5028](#) in PPCR (*Detention Health – Fitness to Travel Assessments PI – 4.2.6 If a person has a communicable and/or notifiable disease*).

**Note:** If medically advised, the 'use' of a detainee's medical information to brief removal escorts for safety purposes is permitted under APP 6.2(e) where escorts are operating under contract to the Department to deliver enforcement-related activities (such as removal). Refer to [BE-5497](#) in PPCR (*Removal from Australia - Information Disclosure to effect removal*).

## For Official Use Only

## 5. Accountability and responsibilities

Table 1 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<ul style="list-style-type: none"> <li>The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met.</li> <li>Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures.</li> <li>Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives.</li> <li>Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review.</li> <li>Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out.</li> </ul>
Superintendent (EL2) Detention and Removal Operational Policy (DROP)	<ul style="list-style-type: none"> <li>Clearance of Procedural Instruction</li> <li>Approval of updates to policy</li> </ul>
Inspector (EL1) DROP	<ul style="list-style-type: none"> <li>Ensures Procedural Instruction is updated to reflect current policy</li> <li>Ensures support materials comply with Procedural Instruction</li> </ul>

## 6. Statement of Expectation

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

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

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

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

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

## For Official Use Only

## 7. Related Framework documents

### 7.1. Policy Statements

- [VM-5273](#) in PPCR, *Departure Policy (returns, removals and departure support)* TRIM: PCD2018/1001
- [DM-5526](#) in PPCR (*Detention Health – Discharge and Removals*) LEGEND
- [BC-763](#) in PPCR (*Status Resolution System Control Framework*) TRIM: ADD2019/2439251.

### 7.2. Procedural Instructions

Document	PPCR	TRIM Number
Communicable Disease	HR-2115	ADD2017/3852162
Detention Health - Fitness to Travel Assessments	DM-5028	ADD2018/2742336
Detention Health – Health Discharge Assessment	DM-5261	ADD2018/2682788
Pre-removal clearances and Informed Request for Removal Statements	VM-3226	
Removal and Detention Costs	DM-567	<u>PCD2017/6030</u>
Removal from Australia	BE-5488	ADD2018/1956150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791
Removal from Australia – Facilities and detainee service provider assessments	BE-5493	ADD2018/1954814
Removal from Australia – Impediments to removal	BE-5495	ADD2018/1954849
Removal from Australia – Implementing removal from Australia	BE-5496	ADD2018/1954866
Removal from Australia – Information disclosure to effect removal	BE-5497	ADD2018/1954878
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896
Removal from Australia – Operational planning and logistics	BE-5499	ADD2018/1954904
Removal from Australia – Post-removal procedures	BE-5500	ADD2018/1954930

## For Official Use Only

Document	PPCR	TRIM Number
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal Availability Assessment	BE-5503	ADD2018/1954951
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961
Removal from Australia – Removal of minors and families	BE-5505	ADD2018/1954965
Removal from Australia – Removing detainees from different environments	BE-5506	ADD2018/1954972
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980
Removal from Australia – Voluntary removal	BE-5508	ADD2018/1954983
Work Health and Safety Incident Management and Reporting	HR-2186	ADD2018/3032481

### 7.3. Supporting Material

Document	PPCR	TRIM / Website
Removal from Australia Glossary	BE-5509	ADD2018/1955777
Status Resolution System Control Framework Mandatory Control Points	BC-6186	ADD2019/2439257

## 8. References and legislation

- *Australian Border Force Act 2015*
- *Aviation Transport Security Regulations (2005)*
- *Migration Act 1958*
- *Migration Regulations 1994*
- *Privacy Act 1988 Schedule 1 – Australian Privacy Principles*
- *Work Health and Safety Act 2011 (Cth)*

## 9. Consultation

### 9.1. Internal consultation

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

- AAT and Removals Injunctions Section
- ABF Operational Risk Management



## For Official Use Only

- Complex Case Resolution
- Detention and Removal Operational Policy Section (Detention policy)Detention Health Operations Section
- Enforcement Operations Central
- Field and Removal Operations, Enforcement Command QLD
- Field and Removal Operations Vic./Tas.
- Field Operations and Removals WA
- Health Policy and Performance
- International Obligations and SHP Section
- Legal Opinions
- Operation Sovereign Borders, Joint Agency Task Force
- Protection Caseload Resolution
- Records Management
- Refugee and International Law
- Removal Operations HQ, Enforcement Command
- Removal Operations NSW
- Secrecy and Disclosure Unit – Information Governance Section
- Status Resolution Framework Section
- Workforce Health and Safety Section, People Division

### 9.2. External consultation

No external stakeholder were consulted in the development of this Procedural Instruction.

## 10. Document details

<b>BCS Category/Function</b>	Border enforcement
<b>BCS Sub-Category/Sub-Function</b>	Program management and evaluation
<b>Period of Effect</b>	31 August 2021

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1	31 August 2018	Detention and Removal Operational Policy	PPCF Compliance



## For Official Use Only

Version number	Date of issue	Author(s)	Brief description of change
2	30 July 2019	Detention and Removal Operational Policy	Minor amendments

### 10.2. Procedural Instruction approval

Document owner	Don Smith, Commander ABF Governance
Approval date	31 August 2018



**For Official Use Only**

# Removal from Australia - Removal and detention costs

## Procedural Instruction

This Procedural Instruction contains operational policy instruction to Department of Home Affairs and Australian Border Force officers engaged in removal of unlawful non-citizens from Australia. It relates to

- Division 10 - Costs of removal and deportation and
- Division 14 - Recovery of costs from certain persons

of the *Migration Act 1958*, and the liability of certain persons to pay the Commonwealth the cost of their removal, deportation and/or detention.

Document approval date	4 September 2018
Last PPCF review date	4 September 2018
Contact details	Detention and Removal Operational Policy Section s. 47E(d) @abf.gov.au
Document ID (PPN)	DM-567
TRIM record number	PCD2017/6030
Primary influencing Legislation(s)	<i>Migration Act 1958</i>

**For Official Use Only**

## For Official Use Only

# Table of Contents

<b>1. Introduction</b>	<b>4</b>
1.1. Removal and Detention Costs	4
<b>2. Scope</b>	<b>4</b>
2.1. In Scope	4
2.2. Out of Scope	4
<b>3. Glossary</b>	<b>5</b>
Table 1 – Terminology and acronyms	5
<b>4. Removal and deportation costs</b>	<b>6</b>
4.1. About removal and deportation costs Part 2 – Division 10	6
4.2. Removal and deportation costs that incur liability under Division 10	7
4.3. Case studies	8
4.4. Liability to repay removal and deportation costs	9
4.5. Carrier liability – s213	9
4.6. Joint and several liability - s212 and s214	10
4.7. Attributing the liability	10
4.8. Use of an existing ticket	12
<b>5. Detention cost</b>	<b>13</b>
5.1. About detention costs Part 2 – Division 14	13
5.2. Liable cohorts	13
5.3. Detention costs that incur liability under Division 14	13
5.4. Persons liable to repay detention costs	14
5.5. Powers to recover costs	14
<b>6. Procedure for recovering cost</b>	<b>15</b>
6.1. When to recover costs	15
6.2. Notification of detention, removal and deportation costs	15
6.3. Notification process for detention costs on transfer to prison	16
6.4. Notification process for detention costs on completion of sentence	16
6.5. Calculation of detention, removal and deportation costs	17
6.6. Recording debts	17
6.7. Debt recovery	17
<b>7. Cost recovery mechanisms</b>	<b>18</b>
7.1. Powers in the Act	18
7.2. Court judgments in favour of the Department	18
7.3. Powers to access assets or money to recover costs	19
7.4. Court orders restraining dealings with non-citizens' property	19
7.5. Applying for a court order	20
7.6. How to apply for an order	21

## For Official Use Only

7.7.	What a court can do	22
7.8.	Effect of a restraining order	23
7.9.	Instituting legal proceedings to recover debts	23
<b>8.</b>	<b>Treatment of valuables</b>	<b>23</b>
8.1.	The power to take or seize valuables	23
8.2.	What are valuables	24
8.3.	The notice	25
8.4.	How to apply for a court order	26
8.5.	Freezing bank accounts	27
8.6.	Stopping payments of debts to detainees	28
8.7.	Dealing with taken and seized valuables	28
8.8.	Selling taken valuables	29
8.9.	Sale of valuables	30
8.10.	Who can sell valuables	30
8.11.	How valuables should be sold	30
8.12.	Proceeds of the sale	31
8.13.	If valuables are not sold	31
8.14.	If there is a surplus	31
8.15.	Keeping taken valuables	31
8.16.	Cash	32
8.17.	Returning taken valuables	32
8.18.	If the valuables or surplus cannot be returned	32
<b>9.</b>	<b>Accountability and responsibilities</b>	<b>33</b>
	Table 2 – Procedural Instruction roles and responsibilities	33
<b>10.</b>	<b>Statement of Expectation</b>	<b>33</b>
<b>11.</b>	<b>Related Framework documents</b>	<b>34</b>
11.1.	Policy Statements	34
11.2.	Procedural Instructions	34
11.3.	Supporting Material	35
<b>12.</b>	<b>References and legislation</b>	<b>36</b>
<b>13.</b>	<b>Consultation</b>	<b>36</b>
13.1.	Internal consultation	36
13.2.	External consultation	36
<b>14.</b>	<b>Document details</b>	<b>37</b>
14.1.	Document change control	37
14.2.	Procedural Instruction approval	37

## For Official Use Only

# 1. Introduction

## 1.1. Removal and Detention Costs

Procedural instructions (PIs) relating to Removal from Australia articulate the principles and policies that guide Department of Home Affairs (the Department) and Australian Border Force (ABF) officers in the removal of unlawful non-citizens (UNCs) from Australia.

The Removal and Detention Costs PI provides relevant guidance for the recovery of detention, removal and deportation costs from certain persons. This PI is an adjunct to the twenty (20) Removal from Australia PIs listed by subject in related framework documents.

### Purpose

Removal and Detention Costs PI is designed to assist departmental, ABF officers and relevant stakeholders in seeking to recover detention, removal and deportation costs from certain persons that are liable to pay and describe the powers available under the *Migration Act 1958* (the Act) to effect the recovery of these costs. Other persons reading this PI should keep in mind that they are not the primary audience and assistance and advice from within the Department or from ABF help desks is only open to departmental staff.

Removal and Detention Costs PI should be read in conjunction with the overarching policy articulated in:

- [VM-5273](#) in PPCR *Departure Policy (returns, removals and departure support)* TRIM: PCD2018/1001
- [FM-4808](#) in PPCR *Accountable Authority Instructions (AAI)* TRIM: ADD2018/2161857.

# 2. Scope

## 2.1. In Scope

This PI sets out procedures and guidance on the Act:

- Division 10 – recovery of costs of removal and deportation
- Division 14 - recovery of costs of keeping, maintaining and removing certain persons
- Procedures for recovering costs
- Cost recovery mechanisms
- Treatment of valuables under the Act.

Suspected Illegal Foreign Fishers (IFF) and suspected people smugglers will become liable for detention and removal on cessation of an enforcement visa<sup>1</sup>. On cessation of a valid visa suspected IFFs and people smugglers will be UNCs liable for removal or deportation and the associated costs. If convicted of illegal foreign fishing or people smuggling, these persons will also become 'certain persons' under s262 of the Act and also be liable for the cost of their immigration detention.

## 2.2. Out of Scope

### Border and arrival turnaround

<sup>1</sup> Non-citizens intercepted at sea for suspected breaches of fisheries or environment legislation are granted enforcement visas by operation of law, allowing entry into Australia during fisheries or environment detention.



## For Official Use Only

This instruction does not apply to those persons removed within 72 hours of being refused entry at an Australian airport or seaport (turnaround or summary removal). For the management of such cases, refer to [BC-536](#) in PPCR (*Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*).

If UNCs who are subject to turnaround or the summary removal process, are not removed within 72 hours, they are streamed into extant status resolution and removal processing.

### Maritime interceptions

This instruction does not apply to persons intercepted and detained under the *Maritime Powers Act 2013*, exclusion from this instruction continues throughout their return process. However non-citizens intercepted for suspected breaches of fisheries or environment legislation can become subject to removal under specific circumstances. See In Scope: Suspected Illegal Foreign Fishers.

### Returns

This instruction does not apply to voluntary returns from the community. A 'return' is the voluntary departure of a non-citizen from the community, either independently as a UNC or as the holder of a Bridging visa managed by either ABF or Home Affairs.

For further information on the types of services the Department offers to voluntary return requests, refer to:

- [VM-1035](#) in PPCR (*Compliance and Case Resolution Instructions - Case resolution - Community Status Resolution Service*)
- [BC-827](#) in PPCR (*Return and Reintegration Assistance Program*).

## 3. Glossary

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal instructions, refer to [BE-5509](#) in PPCR (*Removal from Australia Glossary*) TRIM: ADD2018/1955777. Refer to table 1 below for definitions specific to this PI.

Table 1 – Terminology and acronyms

Term	Acronym (if applicable)	Definition
Compliance, Case Management and Detention Portal	CCMD	the portal provides users easy access to CCMD material and serves as a central hub for related information  The portal is used by staff from a range of business areas to record and manage all visa compliance, case management and detention client data and departmental decisions
Cost		means the fares and other costs to the Commonwealth of transporting a non-citizen, an escort/s of the non-citizen from Australia and persons subject to s199 or s205 of the Act
Cost recovery		method of recovering expenses incurred, including for the provision of goods, services or regulation that are subject to legislation
Custodian		as 'custodian' is not defined in the Act or Regulations (Reg), its ordinary dictionary meaning - 'a person who has custody; a keeper; a guardian'. In this instruction, the term "escort" is used rather than 'custodian'



## For Official Use Only

Term	Acronym (if applicable)	Definition
Debt		a sum of money which is known, not disputed, due for payment now and capable of being recovered by debt action
Detainee		section 5(1) of the Act means a person detained Reg 5.35(1) means a person held at a detention centre in detention under the Act
Escort		a 'custodian', may be: <ul style="list-style-type: none"> <li>• an employee of a contracted detention services provider</li> <li>• a police officer</li> <li>• a medical escort</li> <li>• a welfare escort and/or</li> <li>• a removal liaison officer</li> </ul>
Liability		an amount owing, includes a debt and an amount not yet due for payment
Removal liaison officer	RLO	a departmental officer who accompanies an escort party and liaises with a range of internal and external stakeholders (including airline, airport and foreign government officials) during a complex or sensitive removal of an unlawful non-citizen
Removee		section 5 of the Act states that a removee is an unlawful non-citizen who is to be removed, or has been removed, under Division 8 of Part 2 of the Act
Valuables		includes gold jewellery, negotiable instruments, travellers cheques, cash, bank books, and other documentary evidence of debts owed to the detainee (s223)

## 4. Removal and deportation costs

### 4.1. About removal and deportation costs Part 2 – Division 10

Division 10 deals with the liability of non-citizens to the Commonwealth for the cost of their removal or deportation from Australia. It also sets out the mechanisms for recovery of these costs.

Section 207 defines 'costs' as 'the fares and other costs to the Commonwealth of transporting ... a non-citizen ... and ... a custodian of the non-citizen ... from Australia to the place outside Australia to which the non-citizen is removed or deported'.

As 'custodian' is not defined in the Act or Regulations, its ordinary dictionary meaning - 'a person who has custody; a keeper; a guardian' - will apply, and so may be:

- an employee of a contracted detention services provider
- a police officer

## For Official Use Only

- a medical escort
- a welfare escort and/or
- a removal liaison officer.

In this instruction, the term “escort” is used rather than ‘custodian’.

### 4.2. Removal and deportation costs that incur liability under Division 10

#### Costs included in the removal or deportation liability

Removal or deportation costs include the airfares, (charters from Australia) and all other travel costs for transporting the person (removee) from Australia to the destination country. If the removee is required to be escorted, the travel and accommodation costs of any required escorts, including Removal Liaison Officers (RLOs), for the duration of the removal operation are also attributable costs. This will include the costs of the escorts’ return journeys and any accommodation that may be required.

Other costs may also be included in the removee’s liability, provided they are directly related to the costs incurred by the Department in order to effect the removal. Such costs (incurred for both the removee and/or any escorts) may include:

- costs relating to obtaining passports or travel documents
- airport and departure taxes
- costs of vaccinations, if these are a condition of the travel
- accommodation and meal costs, if a stop-over in a transit country is required
- allowances for escorts incurred during the removal operation.

#### Costs not included in the removal or deportation liability

Any additional costs that are not directly related to the removal cannot be included in the removee’s liability to the Commonwealth. A common example of such an additional cost is a post-arrival reintegration package delivered on behalf of the Department by the International Organization for Migration (IOM) or any immediate post-removal support (including a monetary component) offered in limited circumstances by the Department to the removee. Neither of these costs can be attributed to the removee’s liability.

Occasionally, the Department may pay for domestic travel within the removee’s return country. Usually this is because the removee may live in a location that is not within close vicinity of the city where the international flight will arrive. The travel may involve a further domestic flight, or a bus journey. Such costs are generally considered to be part of immediate post-removal support and do not constitute part of the debt to the Commonwealth.

However, in circumstances where travel from Australia to the country of return has been booked as a single trip (one ticket); including the domestic travel to the home location of the removee, it would be impractical for a removals officer to try to separate the international travel component of the trip from the domestic component. In this case, the whole cost of the trip can be attributed to the liability.

Occasionally, the Department may choose to send an additional RLO-in-training on a removal exercise, in order for the officer to gain skills and experience. The cost of an RLO-in-training can be attributed to a removee’s liability if it was necessary to send a second RLO and they are undertaking necessary RLO duties. However, if the primary reason for having an extra RLO is for the purposes of training, and the second RLO would otherwise not be required, then the cost of the RLO-in-training is not to be included in the removee’s liability.

## For Official Use Only

### 4.3. Case studies

#### Case study 1

Bob is being removed from Hobart to Singapore. Two security escorts will accompany him. The travel route will require a stopover in Melbourne, where he will be accommodated overnight at the Melbourne Immigration Detention Centre (IDC). The Department has also applied for a travel document for Bob and arranged for post-removal support in Singapore.

The security escorts are accompanying Bob from Hobart.

In this scenario, Bob's removal costs include:

- international airfare from Melbourne to Singapore
- costs for the travel document
- facilities and detention service provider (FDSP) invoice for transport costs from Melbourne IDC to Melbourne airport.

Bob's costs will also include costs for his two security escorts:

- FDSP invoice amount for provision of escorts from Melbourne IDC until return
- international airfares from Melbourne to Singapore to Hobart
- accommodation and/or meal costs.

The following costs will not be attributed to Bob:

- travel costs from Hobart to Melbourne IDC. This is because the Hobart-Melbourne leg, given his overnight stay, is a domestic transfer for the purpose of pre-positioning for international travel, rather than the commencement of his international travel
- FDSP costs for provision of security escorts from Hobart to Melbourne
- FDSP security escort travel costs from Hobart to Melbourne
- immediate post-removal support in Singapore.

#### Case study 2

Natalie is being deported from Melbourne to Vietnam. She is required to undergo a medical check and vaccinations before her removal. On removal, two security escorts, Roberta and John, and a Removal Liaison Officer Samantha, will accompany her. The Department has also decided to send Jimmy, an RLO-in-training to observe the removal and gain more experience. Given the flight is to Vietnam, only one RLO would normally be assigned to this case.

Wild weather at the airport forced cancellation of their flight. The removal was aborted and Natalie was returned to immigration detention. One week later, Natalie is successfully removed and escorted back to Vietnam.

In this scenario, the costs that will accrue towards Natalie's removal liability include:

- international airfares for second planned removal for Natalie, two security escorts and RLO Samantha
- accommodation costs incurred during the removal for Natalie, two security escorts and RLO Samantha
- medical check and vaccinations required for Natalie, two security escorts and RLO Samantha
- FDSP transport costs from the IDC to the airport
- FDSP costs for provision of security escorts for second planned removal.

## For Official Use Only

The following costs will not be attributed to Natalie's debt to the Commonwealth:

- costs associated with the original aborted removal (because the removal did not occur)
- airfares, accommodation and other associated costs for Jimmy, as RLO-in-training

### 4.4. Liability to repay removal and deportation costs

#### About personal liability - s210

Section 210 of the Act sets out the general rule that a non-citizen (other than an unlawful non-citizen who came to Australia on a criminal justice visa) who is removed or deported is personally liable to pay the Commonwealth the costs for their removal or deportation.

For further information regarding whom to invoice for the costs of the removal of an unlawful non-citizen who came to Australia on a criminal justice visa, refer to PAM3: Act - Act-based visas - Criminal justice visas or email: Criminal Justice Visas.

This general rule is subject to s212, which sets out who is liable to pay the costs in situations where:

- **spouse** (refer to definitions in s5F and regulation 1.15A)
- **de facto partner** (refer to definitions in s5CB and regulation 1.09A) and/or
- **dependent child/children** (refer to the regulation 1.03 definition)

are removed at the same time.

A non-citizen's dependent child/ren who is removed with that non-citizen is not liable for the costs of their removal. Instead, the non-citizen being removed will bear the liability for the removal costs of any dependent child/ren removed with them. Refer to Joint and several liability - s212 and s214 for further information.

Unaccompanied minors are personally liable to pay the Commonwealth the costs for their removal or deportation.

#### Case study

Jamie Lee is a 16-year-old student who is to be removed from Adelaide to Hong Kong, where her family lives. Prior to her removal, the Department arranges for her travel documents and purchases an inexpensive luggage bag for her. A welfare escort will accompany her during her removal.

In this scenario, as Jamie is an unaccompanied minor, she will incur liability for the costs of her removal. Her costs will include:

- airfares and any accommodation costs for both herself and the welfare escort
- travel documents
- FDSP transport and escort costs from her place of detention to the airport.

Jamie will not be liable for costs for the luggage bag purchased for her. The luggage does not fall within the definition of 'costs' in s207, as the luggage is not directly related to the cost of transporting Jamie. However, inexpensive luggage may be reasonably necessary in order to effect the removal. Airlines will require items owned by Jamie to be contained either as hand luggage or in the airplane hold. This expense is treated as immediate post-removal support as it is necessary to effect the removal.

### 4.5. Carrier liability – s213

A carrier may be required to meet the costs associated with the removal or deportation of a non-citizen who:

- entered Australia

## For Official Use Only

- was required to comply with immigration clearance under s166 of the Act and either:
- did not comply or
- on complying, was detained under s189 of the Act as an unlawful non-citizen.

Carrier liability costs relate to Border and arrival turnarounds (summary removals) and are the responsibility of ABF officers in Border Operations. For further information about carrier liability, refer to PAM3: Act - Arrival, immigration entry and clearance - Carrier obligations and offences in LEGEND.

### 4.6. Joint and several liability - s212 and s214

In some circumstances, the liability for repayment of costs is shared by more than one party. This is known as joint and several liability. The effect of joint and several liability is that, a debt may be paid by either of the parties or by a combination of contributions from both.

Section 212(1) of the Act covers situations where two persons who are spouses or de facto partners are removed or deported together. In this case, they are jointly and severally liable for the full cost of their removal or deportation.

Joint and several liability also affects cases where lawful non-citizen family members of the removee are removed under s199. If a spouse or de facto partner of an unlawful non-citizen is removed under s199 they will be liable, together with the removee, to pay the Commonwealth the cost of their removal. This equally applies to Australian citizens and permanent residents.

If both spouses/de facto partners and their dependent child/ren are removed, each spouse/de facto partner is liable for their own costs, the costs of their spouse or de facto partner and the costs of their dependent child/ren (s212(2)).

If a non-citizen's dependent child/ren is removed with that non-citizen, the dependent child/ren will not incur liability for their removal costs. Instead, the non-citizen will be liable for the dependent child/ren's removal debt. However, if a dependent child is removed and they are unaccompanied, or are not the dependent child of the non-citizen with whom they are travelling, the child will incur liability for the cost of removal.

Equally, joint liability applies to carriers and removees if the carrier incurs liability under s213. In practice, this means that the Department can pursue the carrier or the removee for the removal or deportation debt.

Under policy, if a removee and a carrier are jointly liable for the removal costs, the **carrier's** details are to be recorded on the invoice. However, as the removee is also liable for the costs, the removee must still have a Central Movement Alert List (CMAL) narrative and record of the debt. Liability under s214 is to be clearly specified in the CMAL narrative.

For suggested CMAL narrative structure, refer to Instructions tab in debtor's pro forma TRIM ADD2016/1966064

### 4.7. Attributing the liability

In all cases that incur removal or deportation debt under s212 or s214 of the Act, cost liability for any dependent child/ren will need to be calculated and attributed to one party. For example, in the circumstance where both parents are removed under s198, the removal cost liability of their dependent child/ren must be attributed to one parent. It does not matter (from a departmental perspective) which of the liable parties removal officers choose to attribute with the liability for costs. For practical reasons, officers may consider whichever of the parties would be a 'main applicant' (if this were a visa application scenario) as the most appropriate choice.

## For Official Use Only

In the above example, Debt Management Unit will raise a debtor invoice for each parent's liability and apply the dependent child/ren liability to the nominated parent. To record the parents joint and several liability for each other's removal liability and their dependent child/ren, DMU will note each parent's joint and several liability in CMAL. It is important that removal officers provide DMU with details of the names and relationship of the joint and severally liable parent and the dependent child/ren. For guidance recording other parties, refer to 'Debt to the Commonwealth', CCMD Removal Finalisation TRIM: ADF2018/164307.

### Recording the liability

The liability for costs is raised by removal officers following removal or deportation and before the Returns and Removal service is finalised in the CCMD portal. Removal officers are to enter removal or deportation costs in the portal work plan 'Debt to the Commonwealth'. Instruction on completing the 'Debt to the Commonwealth', CCMD Removal Finalisation is located in TRIM: ADF2018/164307.

Using the information entered in the 'debt to the Commonwealth', the DMU will raise the debtor invoice and record any additional information as indicated by accountability 'Flags' made by the requesting removal officer.

### Flags

Accountability flags are recorded in the removee's work plan where applicable. To notify DMU of joint and several liability parties, create a new task in the work plan and flag [FAMILY]. Family member details are to be included in the portal. This will ensure that the DMU correctly records the removal debt to joint and severally liable parties in the Department's system. For further information on this and other accountability flags, refer to 'Debt to the Commonwealth', CCMD Removal Finalisation TRIM: ADF2018/164307.

### Other liable parties

If carrier liability under s213 of the Act is involved, officers are to ensure the carrier details are instead completed using the debtor's pro forma, located in TRIM: ADD2016/1966064. A debt narrative must still be recorded against the removee.

For further information on when to complete a debtor pro forma, refer to Procedure for recovering cost.

### Case study 1

Mary Wilson is to be removed from Sydney to Fiji. Her husband, Greg Wilson and their two dependent children, Arthur and Luke, are lawful non-citizens who have requested removal under s199 of the Act. The removal will incur costs for:

- airfares for two adults, two children and one escort
- obtaining travel documents
- accommodation in Fiji for the escort
- FDSP costs for transport from the place of detention to the airport.

In regards to joint liability, s214 imposes joint and several liability on Mary and Greg for the costs of the family's removal. Both Mary and Greg owe a debt to the Commonwealth to repay costs associated with their own removal, the removal of their spouse and the removal of their dependent children. As dependent children, Arthur and Luke are not liable for the costs of the removal. Action to recover these costs can only be taken against Mary or Greg or both, jointly.

### Case study 2

Frank Bates is to be removed from 'prison to plane' to London. His wife Kate and dependent child William are Australian citizens who have requested removal under s199 of the Act. Removal costs include:

- airfares for two adults, 1 child and 2 escorts
- FDSP cost for transport from prison to airport.



## For Official Use Only

In regards to joint liability, s214 imposes joint and several liability on Frank and Kate. Joint and several liability is incurred regardless of Kate's Australian citizenship. Kate is liable for the cost of her own, Frank and William's removal and is expected to take action to settle this debt before returning to Australia. As a dependent child, William would not be liable for any removal costs on return to Australia either as a child or as an adult.

### 4.8. Use of an existing ticket

#### About an existing ticket

Section 216 of the Act provides the Australian Border Force Commissioner or delegate with the power to use an existing ticket held by a removee or deportee towards the costs of their removal or deportation, with or without the ticket holder's consent.

It is recommended that officers wherever possible use this consensual cost recovery mechanism for unescorted removals that are assessed low risk.

Refer to forms: 'Use of removee ticket without consent' (TRIM: ADD2008/868620) and 'Consent to use ticket for removal' (ADD2008/868573).

#### Obtaining an existing ticket

Before an existing ticket can be used towards removal or deportation costs, the ticket must be either:

- given to the ABF Commissioner/delegate by the non-citizen or
- seized under a warrant issued under s251(4) of the Act or
- taken by the ABF Commissioner into the ABF Commissioner's possession under s223(5) (only if the detainee is or may become liable to pay the Commonwealth an amount under s210 or s212) or
- seized as a valuable under a s223(14) warrant (only if the detainee is or may become liable to pay the Commonwealth an amount under s210 or s212).

Officers are to issue form 41 property receipt to non-citizens whose tickets are taken for these purposes.

#### How the existing ticket may be used

Section 216 of the Act provides that the ABF Commissioner/delegate may arrange for the existing ticket, with or without the ticket holder's consent, to be applied for or towards the costs of removing or deporting the non-citizen from Australia.

Under this instruction, the ticket may be used or cancelled and the funds put towards a new airfare. If an existing ticket is cashed in to pay for the cost of removing or deporting a non-citizen from Australia and money is left over, the remaining money is to be returned to the non-citizen.

#### Case study

Evan Simpson is an unlawful non-citizen voluntarily being removed to the UK. Evan is cooperative with his removal planning and holds an airline ticket to London in his name. He agrees to rebook his ticket on a date and time suitable to the Department. Evan rebooks and provides the removals officer with his itinerary and removal is planned accordingly.

In this scenario, the Department does not take possession of the ticket and all financial costs or gains associated with rebooking the airfare are borne by the removee. On finalisation of Evan Simpson's 'Debt to the Commonwealth', a flag [OWN] is raised by the removal officer to alert the DMU that no airfare cost was incurred by the Department. Where the airfare is the only expense for removal from Australia, Evan will not be liable for a debt to the Commonwealth. Refer to Flags.

## For Official Use Only

# 5. Detention cost

## 5.1. About detention costs Part 2 – Division 14

Part 2 - Division 14 of the Act deals with the liability to the Commonwealth of certain persons described in s262(1)(a), (b) and (ba) of the Act for the cost of keeping, maintaining and removing certain persons. It also sets out mechanisms for recovering these costs.

In the context of Detention and Removals liability for costs, 'certain persons' are convicted illegal foreign fishers and convicted people smugglers.

## 5.2. Liable cohorts

Detention costs apply only to persons described in s262(1)(a), (b) and (ba) of the Act. See: Who is liable to pay detention costs.

In practical terms, much of the cost incurred by the Commonwealth in dealing with the persons described in s262(1)(a), (b) and (ba) relates to their removal from Australia. This is because persons convicted of an offence against the Act or a law relating to the control of fishing, are usually held in a State or Territory prison where the maintenance costs are met by the relevant State or Territory authorities. There are some cases, however, where the Commonwealth may incur maintenance costs in relation to this cohort of persons - an example is where a person needs to be detained in immigration detention prior to their conviction for an offence referred to in s262(1).

Note: For those persons detained prior to the amendment to s262 of the Act on 25 September 2014, the following applies:

- persons detained under s189 and s250(2) and
- while they are in immigration detention, are convicted of committing an offence of people smuggling or illegal foreign fishing

will remain liable to pay immigration detention costs.

Those detained since 25 September 2014 are not liable to pay detention costs if they were:

- persons detained under s189 and s250(2) but not convicted of an offence
- persons detained under s189 and s250(2) and subsequently granted a visa or
- persons detained under s189 only.

For liable cohorts refer to Persons liable to repay detention costs.

## 5.3. Detention costs that incur liability under Division 14

### Which detention costs are to be repaid

Refer to s262 of the Act re: Liability to the Commonwealth for the cost of keeping, maintaining and removing certain persons. Removal officers and delegates should be aware that the delegation under s262(2) is held at SES band level. Refer to: LEGEND - Delegations – ABF Delegations – Delegator Minister - ABF (M) No.1 of 2018 – Schedules 4 and 5.

### Keep and maintenance costs

Under s262(2) of the Act, the Minister may, by legislative instrument, determine a daily amount for the keeping and maintaining of a person in immigration detention in a specified period. Note that the convicted

## For Official Use Only

people smuggler or illegal foreign fisher (IFF) is liable for the cost of immigration detention in any facility including but not limited to Alternative Places of Detention (APODs).

Calculation of the convicted people smugglers or IFF's immigration detention liability is based on an amount determined in the relevant legislative instrument for the detention period. Removal officers are to use the detention calculator in the Debtor pro forma to assist with the calculation of immigration detention liability. For instrument details, refer to LEGEND – Migration – Instruments, Notices & Directions - Migration Act registered instruments - Determination of daily maintenance amounts for person in detention for the relevant period/s of detention.

### Transport costs

The cost to the Commonwealth of transporting the non-citizen and an escort/s between certain places may include, for example:

- airfares for travel between places of immigration detention
- FDSP costs for transport from place of detention to the airport from where the non-citizen is to be removed or deported from Australia and
- the cost of escorting the non-citizen during transportation.

## 5.4. Persons liable to repay detention costs

### Detention costs - s262

Under s262(1) of the Act, those who are liable to pay immigration detention costs include a person who:

- is, or has been detained, under s189 and
- was on board a vessel (not being an aircraft) when it was used in connection with the commission of an offence against the Act or against a prescribed law relating to the control of fishing that is in force in the Commonwealth, or in a State/Territory and
- is convicted of committing the offence

and the master, owner, agent and charterer of the vessel on which the person travelled to Australia.

## 5.5. Powers to recover costs

### Notice of debt - s263

Costs payable to the Commonwealth under Division 14, can be recovered in a court of competent jurisdiction under s263 of the Act. Immigration detention and/or removal costs incurred under Division 14 may also be recovered using the specific powers in Division 14, including the power of the Secretary to:

- issue a notice of debt, under s263, to a person liable to pay the Commonwealth an amount under s262
- issue a garnishee notice under s264
- recover debt from a person, under s265, who has failed to comply with a garnishee notice issued under s264
- take action against future debts under s267.

The Secretary or ABF Commissioner can also apply an existing ticket towards meeting the cost of removal if the liability is incurred under s216. Refer to Use of existing ticket.

## For Official Use Only

Delegations for sections 263, 264 and 267 are located in LEGEND - Delegations – ABF Delegations – Delegator Secretary – ABF (S) No.1 of 201 - Schedule 3.

### Use of these powers

As these statutory powers infringe on a person's real and personal property rights, officers must carefully consider whether to exercise these powers or not.

If an officer decides to use these powers, they must comply strictly with the statutory requirements and take particular care to exercise their powers in a manner that is lawful, professional and reasonable.

If an officer exceeds the lawful extent of their statutory powers, they may be personally liable, or cause the Department to be liable, to legal proceedings.

For further information, refer to Powers to access client assets or money to recover costs.

## 6. Procedure for recovering cost

### 6.1. When to recover costs

#### Removal or deportation costs

The costs of removal or deportation should be recovered only when liability for these costs is incurred, that is after the non-citizen has been removed or deported.

#### Detention costs

Departmental policy is that the process of recovering immigration detention costs from a non-citizen begins as soon as practicable after conviction for an offence referred to in s262(1). The Department can issue a convicted people smuggler or IFF with a debt recovery notice for the cost of their immigration detention following their conviction or just prior to removal from Australia. Removal officers should liaise with correctional facility management regarding the effect (if any) of debt recovery processes on the detainees behaviour in the correctional facility.

The debt recovery process is detailed in:

- the debt recovery flowchart (TRIM ADD2017/2288656) and
- calculation of detention, removal and deportation costs.

### 6.2. Notification of detention, removal and deportation costs

To notify persons of their estimated liability for detention, removal and or deportation costs one or more of the following forms can be used, as appropriate to the person's circumstances:

- Notice of detention costs ADD2017/2288471
- Notice of removal or deportation costs ADD2017/2288477
- Notice of detention and removal or deportation costs ADD2017/2288479.

The debtor pro forma may be used as a tool to calculate estimated costs when providing notice of costs to the person. See: Debtor pro forma. *Note that finalised detention, removal and deportation costs are entered in the 'Debt to the Commonwealth' work plan in CCMD portal.*

A notice of detention, removal or deportation costs is to be handed to persons who have incurred a liability for the costs of their removal. (*Note: This notice advises the person that the costs are an estimate only and*

## For Official Use Only

*that final costs will be sent to them via invoice from Debt Management Unit (DMU) once the removal is completed.)*

The detaining officer should explain the contents of the notice to the detainee and ask the detainee to sign the notice. If the detainee refuses to sign, the detaining officer should record this on the notice and, if possible, have the record witnessed and signed by another person.

### 6.3. Notification process for detention costs on transfer to prison

When a person has been convicted of an offence referred to in [s262\(1\)](#) of the Act, an officer takes the following steps for immigration detention cost recovery prior to prison detention (first period immigration detention):

- check the details of the person convicted in the [CCMD](#) portal to ensure [s262](#) applies (liable for debt recovery)
- advise State/Territory Corrections of the Department's intent to recover funds
- complete the debtor pro forma and email it to DMU, informing them that the debtor is a person convicted of an offence referred to in [s262\(1\)](#)
- submit the 'Notice to Garnishee' to State/Territory Corrections
- issue the person convicted of an offence referred to in [s262\(1\)](#) with the 'Notice of detention costs' [ADD2017/2288471](#) and ensure the person has received, read and signed the 'Notice of detention costs'. For more information, refer in TRIM to the detention recovery flow chart (TRIM [ADD2014/1425834](#))
- record the existence of the debt in CMAL.

Should a person refuse to sign a notice of costs, officers should note the person's refusal on the relevant document and ensure it is recorded in the portal.

In some instances, on completion of their prison sentence, a convicted people smuggler or IFF may return to immigration detention while awaiting their removal. In such cases, that person will accrue a second period immigration detention debt, and the officer must calculate the additional detention costs and add this to the person's final determination of all detention and removal costs.

### 6.4. Notification process for detention costs on completion of sentence

When a person has been convicted of an offence referred to in [s262\(1\)](#) of the Act, an officer takes the following steps on completion of the person's custodial sentence:

- check the details of the person convicted in the [CCMD](#) portal to ensure [s262](#) applies (liable for debt recovery)
- record any outstanding first period detention costs, calculate, and record estimated second period detention costs in notice in respect of detention and removal or deportation costs
- add the estimated cost of removal to persons final [Notice of detention, removal or deportation costs](#)
- update CMAL and begin the removal process.

Note that unlike first period immigration detention, cost recovery on completion of sentence will not commence until the DMU have invoiced the non-citizen following their removal.

See: [Notice of detention, removal or deportation costs](#)

## For Official Use Only

### 6.5. Calculation of detention, removal and deportation costs

#### Debtor pro forma and debt to the Commonwealth

The debtor pro forma should be used to calculate the final cost of detention. Final removal or deportation costs will become available in invoices and statements received following the removal operation. The calculated detention costs (using the debtor pro forma) and removal or deportation costs are entered into the Debt to the Commonwealth work plan in Returns and Removals Service in CCMD portal. These costs will work flow to the DMU. Save and TRIM the debtor pro forma if used for detention cost calculations.

DMU will raise a debt on the Department's finance system, issue and send an invoice to the address provided by the person removed. Invoices provide available payment methods and contact details for DMU. If removal officers receive any questions related to a specific debt invoice, they are to refer the enquirer to the contact details for the DMU, located on the invoice.

### 6.6. Recording debts

Removal officers must record in all relevant departmental systems, including the CCMD portal that a person convicted of an offence under s262(1) has a debt to the Commonwealth.

The actual amount of the debt, however, is not to be listed. This is because, the debt amount may be subject to change: for example, a person may have begun to pay back a portion of the debt or the full cost of the removal may not be available when the removal is affected (when using FDSP escorts, for example). The amount listed on the system may not be finalised, instead use the following narrative:

<Name>was removed from Australia on DD/MM/YYYY under s198/199 of the Act. <Name>has incurred a debt to the Commonwealth. For further information, email Debtors.

Debtors will record details of debt on CMAL when invoice has been raised. Debtors will also update CMAL when debt has been paid in full.

#### Persons are not to be left destitute

Departmental policy is that a person should not be left destitute as a result of debt recovery action. A person would be left destitute if they had no money or had insufficient money to meet basic needs.

In particular, removees and deportees should be left with a reasonable amount of money to cover incidental expenses during, and immediately after, their removal or deportation. See: [BE-5501](#) in PPCR (*Removal from Australia – Post-removal support PI*).

### 6.7. Debt recovery

#### Who is responsible

Under the *Public Governance Performance and Accountability Act 2013* (PGPA Act) the Secretary of Home Affairs is obligated to pursue recovery of debts owing to the Commonwealth. The Secretary has given instruction on debt recovery to all departmental and ABF staff in the Accountable Authority Instructions (AAIs). Debts and amounts owing to the Commonwealth, represent a cost to taxpayers if not recovered and must therefore be pursued to the greatest possible extent.

#### Removal officers

Removal officers are responsible for notifying the DMU of all detention, removal or deportation costs incurred by persons in their removal caseload. This includes notification of application for a waiver, persons with joint and several liability and certain persons with any period of immigration detention debt. Removal officers are not authorised to omit notification of removee debt to the DMU.



## For Official Use Only

### Debt Management Unit (DMU)

The DMU (email [Debtors](#)) is responsible for pursuing all debts arising from removal or deportation and detention debts.

In most circumstances it is expected that the debt will be repaid in full before a visa with Public Interest Criterion (PIC) [4004](#) is granted. A visa decision-maker could, but is not compelled to grant a visa to an applicant that has paid or made arrangements to repay their debt to the Commonwealth where PIC 4004 is a criterion.

For information on debt management refer to:

- [FM-4808](#) in PPCR (*Accountable Authority Instructions (AAI) – Part 9 Managing debt*)
- [FM-1279](#) in PPCR (*Financial Management Guideline (FMG) 1.09.01 – Debt Management*)
- [FM-1237](#) in PPCR (*PAM3: Sch4/4004 - Debts to the Commonwealth*)
- [LS-1855](#) in PPCR (*Schedule 4 – Public Interest Criteria*)
- [Debtors](#) email re: debtor enquiries and debt management.

A delegate under the Migration Act should advise the DMU of their intention to exercise powers:

- under [s216](#), [s222](#), [s223](#), [s224](#), [s263](#), [s264](#), [s265](#), [s267](#) and/or [s268](#) and
- obtain payment towards these costs.

Following the exercise of these powers the DMU must be given details of the liability.

For further information, email [Debtors](#).

## 7. Cost recovery mechanisms

### 7.1. Powers in the Act

There are several cost recovery powers in the Act:

- Part 2 - Division 10 ([s216](#), [s222](#), [s223](#) and [s224](#)) provides for recovering removal/deportation costs owed by a non-citizen to the Commonwealth under [s210](#) or [s212](#)
- Part 2 - Division 14 ([s263](#), [s264](#), [s265](#), [s267](#) and [s268](#)) provide for recovering detention and removal costs owed to the Commonwealth by persons affected by [s262\(1\)](#).

### 7.2. Court judgments in favour of the Department

As a last resort, the Department can recover debts by applying to a court for judgment in its favour.

If the Department obtains a judgment, it may decide to enforce the judgment by:

- obtaining a writ of execution against the debtor's property (seizing goods of the debtor and selling them to satisfy the debt or selling land owned by the debtor at public auction)
- obtaining an instalment order (payment of the debt by instalment)
- securing a garnishee order against the debtor's wages or bank account or
- forcing the debtor into bankruptcy.

However, first refer to [Persons are not to be left destitute](#).

## For Official Use Only

### 7.3. Powers to access assets or money to recover costs

#### About these powers

The Act contains several powers the Department can draw upon to pursue assets or money for the purposes of recovering debts to the Commonwealth. These powers can be used to recover immigration detention debts incurred by convicted people smugglers and IFFs.

A broader application of these powers, beyond convicted people smugglers and IFFs, is generally not consistent with status resolution principles which focus on promotion of voluntary outcomes and dignified return, particularly where seizing or garnishing of assets is likely to:

- undermine voluntary removal outcomes, resulting in increased time in detention and associated costs or
- result in seized or garnished funds being returned to the person in the form of post-removal support.

For further information on any aspect of these powers for use to recover costs from convicted people smugglers or IFFs, email [Detention Policy](#).

### 7.4. Court orders restraining dealings with non-citizens' property

#### Purpose of restraining orders

Section 222 of the Act enables the ABF Commissioner/delegate to apply to a court for a restraining order in respect of any of a non-citizens property that is in Australia; or specified property of a non-citizen that is in Australia.

The purpose of these orders is to ensure that property belonging to non-citizens is available to apply later towards the payment of removal or deportation costs.

The orders themselves do not permit the seizure or sale of property to which they relate.

#### Exceptional circumstances

Only in exceptional circumstances is it appropriate to apply for a restraining order. This is because:

- it is a particularly time consuming, resource intensive and expensive exercise for the Department
- a successful application requires cogent evidence.

Officers must carefully consider whether the circumstances are so exceptional that applying for a court order will be of benefit to the Department in recovering costs. For example, this may be the case if:

- the non-citizen owns property that is of a value sufficient to meet their debt and
- taking possession of and selling the non-citizen's valuables under s223(5) and s224 is unlikely to be enough to meet the debt and
- the total cost of removal or deportation is likely to be very high and
- in all the circumstances, the estimated benefit to the Department and the Commonwealth is likely to outweigh the estimated cost of taking the action.

#### Before applying for a court order

##### Knowledge of significant property ownership

The ABF Commissioner/delegate should know that a non-citizen owns significant property before applying for a court order to restrain dealings with that property.

Therefore, in case debt recovery action is required, departmental officers engaged in enforcement activities (in particular, searches of premises under a [s251](#) warrant) are to note in the Questionnaire regarding assets

## For Official Use Only

of unlawful non-citizens (TRIM ADD2008/102962) existence and description of any property believed to belong to non-citizens.

In considering whether the non-citizen owns property of sufficient value to meet the debt, the non-citizen's overall asset position must be considered. If there are secured creditors in relation to a particular asset (for example, a mortgagee holds a mortgage over the non-citizen's residential premises), restraining dealings with the property to make it available for debt recovery may be a waste of resources.

### 7.5. Applying for a court order

#### Who can apply

Section 222(1) of the Act allows the ABF Commissioner/delegate to apply to the court for an order restraining dealings with property owned by certain non-citizens.

Before applying for a court order, delegates should ensure that:

- they have the necessary secretarial delegation – refer to: LEGEND - Delegations – ABF Delegations – Secretary delegation
- the action is in accordance with the Department's policy – email Removals Helpdesk
- the action is in accordance with the Department's financial management guidance – email Debtors
- they have the level of evidence required to support an application – email the Director, Administrative Appeals Tribunal (AAT) and Removals Injunctions Section, Migration & Citizenship Litigation Branch.

#### What property the application covers

Section 222(2) of the Act provides that the application may be made in respect of:

- any of the non-citizen's property that is in Australia or
- specified property of a non-citizen that is in Australia.

**Property** is broadly defined in s222(9) to mean 'real or personal property of every description, whether tangible or intangible, that is situated in Australia, and includes an interest in any such real or personal property'.

Departmental policy specifies that applications for court orders generally be made only in relation to **real property** (for example, houses, land and business premises) as opposed to **personal property** (for example, shares, motor vehicles, furniture and home entertainment equipment).

This is because the cost of making the application (including the time spent by departmental officers preparing the case, the cost of legal representation, the cost of filing the claim and the cost of actually enforcing the judgment debt) must not outweigh the benefit to the Commonwealth.

However, there may be a few occasions where a restraining order may be sought in respect of personal property, for example, if:

- the non-citizen's debt is equivalent to the value of identifiable personal property (for example, the non-citizen has a debt of AUD 20, 000 and a recent model car of similar or higher value) and
- their personal property is not readily convertible to cash and therefore the exercise of powers under s223 and s224 would not be appropriate.

#### Personal property versus valuables

**Personal property** may also include items that fall under the definition of valuables in s223(20) of the Act.

If an item meets both the definition of personal property and valuables, a delegate will need to consider whether it is best to:

## For Official Use Only

- apply for a restraining order in relation to that property under s222
- give a notice under s223(2), take possession of the property as a valuable under s223(5) and sell it under s224
- give a notice under s223(2) and issue a warrant under s223(14) for search and seizure of valuables or
- in relation to moneys in a bank account, restrain a bank or financial institution from processing transactions under s223.

### Relevant considerations

The following points should be considered:

- if it is more time consuming to apply for a court order (which needs to be followed up with further legal proceedings) than to take possession of valuables under s223(5) of the Act and sell them under s224, or seize valuables under a search warrant issued under s223(14)
- if the delegate at level will approve the application or issue a notice. The delegate being:
  - the ABF Commissioner/delegate who must apply to the court for an order under s222
  - the ABF Commissioner/delegate who may issue a notice under s223(2) and a search warrant to seize valuables under s223(14). See: LEGEND - Delegations – ABF Delegations – Secretary delegations.
- if the non-citizen is in detention, only valuables belonging to a detainee may be taken or seized under s223 but a court order made under s222 can apply to the property of a non-citizen regardless of whether or not they are in detention
- if the item is readily convertible to cash: if an item is not readily convertible to cash the powers under s223 and s224 should not be exercised.

## 7.6. How to apply for an order

The ABF Commissioner/delegate must seek legal advice (email LOHD to provide instruction to an external legal firm representing the Department).

However, as a general guide, before applying for an order under s222 of the Act, the ABF Commissioner/delegate must be satisfied that they can:

- prove that the person is an unlawful non-citizen or a non-citizen in respect of whom a deportation order has been made
- prove the non-citizen is liable, or may on removal or deportation become liable, to pay the Commonwealth the costs of their removal or deportation (under s210 or s212)
- prove there is a risk (and the reason the delegate believes there is a risk) that the Commonwealth will not be able to recover part or all of the actual or likely debt
- prove the non-citizen owns (or has joint or part ownership of) the property
- indicate the period for which the restraining order is being sought
- estimate the reasonable living expenses of the non-citizen (and their dependants)
- estimate the reasonable legal expenses likely to be incurred by the non-citizen in relation to a matter arising under the Act and
- indicate to what extent the non-citizen (and their dependants) should be allowed to access the property, if relevant, to provide for living and legal expenses.

## For Official Use Only

### Proving ownership

The application to the court must show that the non-citizen owns or otherwise has an interest in the property that is the subject of the application. This may be done by:

- providing the court with original or certified documentary evidence identifying the property and who owns it (for example, a certificate of title in relation to the property or a certificate of registration for a motor vehicle) or
- oral or affidavit evidence given by departmental officers identifying property and explaining why that property is believed on reasonable grounds to belong to the non-citizen.

It is possible that the non-citizen may provide contrary evidence (for example that the property belongs to someone else) and that this may affect the extent of evidence required by the court to decide ownership of the property.

Any admissions made by a non-citizen to a departmental officer (for example, as recorded by the Questionnaire regarding assets of unlawful non-citizens ADD2008/102962) would assist in proving ownership. These admissions should be recorded in departmental records.

### Proving risk to the Commonwealth

The ABF Commissioner/delegate must be able to substantiate their belief that there is a risk that the Commonwealth will not be able to recover costs if the court order is not made. In determining the extent of the risk, the delegate should consider three aspects:

- the nature of the non-citizen's property (for example, property such as money in bank accounts or shares is more easily transferred or disposed of than real property)
- whether there is any indication that the non-citizen has attempted or will attempt to sell assets or transfer them out of the jurisdiction
- the general reputation of the non-citizen (for example, whether there have been any prior dishonest dealings with the department).

## 7.7. What a court can do

### Restraining orders

Section 222(1) of the Act enables a court to make an order restraining any dealings with any property, or specified property, of a non-citizen if it is satisfied that:

- the non-citizen is liable, or may on removal or deportation become liable, to pay the Commonwealth removal or deportation costs under s210 or s212 and
- there is a risk that, unless the court makes the order, the Commonwealth will not be able to recover the whole or part of any amount that the non-citizen is, or will become, liable to pay.

An order can be made subject to such conditions as the court thinks fit. In particular, s222(7) provides that the order may be made subject to conditions that make provision for meeting:

- the non-citizen's (and any dependants') reasonable living expenses and
- reasonable legal expenses incurred by the non-citizen in relation to a matter arising under the Act.

Under s222(4), a restraining order has effect for the period specified in the order. This is, however, subject to s222(6), which allows the court to suspend the operation of an order it has made.

Under s222(5), a court may also rescind, vary or discharge an order it has made under s222.

## For Official Use Only

### Interim orders

Section 222(3) provides that the court may grant an interim order before considering an application made by the ABF Commissioner/delegate in relation to a non-citizen's property.

An interim order has effect pending the determination of the application.

### 7.8. Effect of a restraining order

#### Offence to contravene an order

Section 222(8) of the Act makes it an offence, punishable by two years' imprisonment, for a person to contravene a restraining order. This means that, subject to the precise terms of the order, neither the non-citizen to whom the property belongs nor anyone else can do the following with the property:

- sell it
- give it away
- destroy it
- move it
- use it.

However, s222(8A) provides that no offence is committed if the person has a reasonable excuse for contravening the order.

If a departmental officer becomes aware of any contravention of the court order, they should immediately email LOHD to bring it to attention to determine whether further legal action is appropriate.

### 7.9. Instituting legal proceedings to recover debts

If a restraining order is in force, and the debt remains unpaid, consideration may be given to instituting legal proceedings to enforce payment of the debt.

In the case of property, the most likely enforcement action is to seek judgment and then, if the debt is not recovered, obtain a writ of execution against the property, allowing court officials to seize and sell the property.

In the case of moneys in bank accounts, the most likely enforcement action is to seek judgment and then, if the debt is not recovered, obtain a garnishee order against the debtor's bank account.

## 8. Treatment of valuables

### 8.1. The power to take or seize valuables

Section 223(5) of the Act allows the Secretary, ABF Commissioner or a delegate to take possession of valuables that the ABF Commissioner/delegate believes on reasonable grounds to belong to a detainee in certain circumstances. Broadly, these circumstances require that:

- on being satisfied of the matters set out in s223(2), the ABF Commissioner/delegate has issued a notice to a detainee notifying them that their valuables are liable to be taken
- the notice has been served on the detainee as prescribed and
- the notice remains in force.



## For Official Use Only

However, this does not enable a departmental officer to enter premises to search for and seize valuables. To do this the officer needs to have a search warrant issued to him/her by the ABF Commissioner/delegate in the prescribed form.

Section 223(14) allows the ABF Commissioner/delegate to issue a search warrant if:

- on being satisfied of the matters set out in s223(2), the ABF Commissioner/delegate has issued a notice to a detainee notifying them that their valuables are liable to be taken
- the notice has been served on the detainee as prescribed and
- the notice remains in force.

Section 223(16) provides officers with a search warrant issued to them under s223(14) with power to:

- enter and search any building, premises, vehicle, vessel or place in which the officer has reasonable cause to believe there may be found any valuables to which a notice in force under s223 relates and
- seize any such valuables found in the course of such a search.

An officer may exercise this power at any time in the day or night and with such assistance and using such reasonable force as the officer thinks necessary.

*Note: Section 223(16) powers must not be used without first seeking advice from the Employer and Field Compliance Helpdesk. Queries should be submitted via the Service Request Catalogue on Bordernet. Refer to TRIM ADD2017/3138207 on how to submit a query.*

For further advice on executing search warrants for the purposes of seizing valuables, contact the Employer and Field Compliance Helpdesk. Queries should be submitted via the Service Request Catalogue on Bordernet. Refer to TRIM ADD2017/3138207 on how to submit a query.

## 8.2. What are valuables

Section 223(5) and s223(16) of the Act are limited in their application to the taking or seizure of valuables for the purpose of recovering removal/deportation costs incurred under s210 or s212.

Section 223(20) defines the term valuables to include:

- gold, jewellery, negotiable instruments, travellers cheques and cash and
- bank books and other documentary evidence of debts owed to the detainee.

Negotiable instruments are transferable instruments conferring the right to receive money. They include, for example, personal cheques, traveller's cheques, bills of exchange and promissory notes (IOUs).

As the term valuables is not exhaustively defined, it is possible that any article of worth or value could be taken under s223(5), or seized under s223(16) as a valuable, for example:

- electronic goods (for example, televisions, play stations, DVDs and stereo systems)
- white goods
- furniture
- tools of trade
- musical instruments and
- ATM cards.

However:

- departmental policy is that any valuable that cannot be readily converted into cash not be taken under 223(5) or seized under s223(16)

## For Official Use Only

- moneys held in a bank account are not valuables and cannot be taken or seized under s223. For advice on what can be done in relation to such moneys, refer to Freezing bank accounts.

Departmental officers considering whether to take or seize valuables under s223 should consider whether the valuables also constitute personal property for the purposes of s222.

### 8.3. The notice

#### Issuing the notice

Under s223(2) of the Act, a notice informing a detainee that their valuables are liable to be taken can be issued by the ABF Commissioner/delegate if they are satisfied that:

- the detainee is an unlawful non-citizen or a deportee and
- the detainee is liable, or may, on deportation or removal, become liable to pay the Commonwealth an amount for their deportation or removal costs under s210 or s212 and
- if no notice is given, there is a risk that the Commonwealth will not be able to recover the whole or a part of any amount that the detainee is, or will become, liable to pay to the Commonwealth.

The notice does not have to specify which of the detainee's valuables are liable to be taken. It can relate broadly to any or all valuables belonging to the detainee.

Departmental policy is that, as a general rule, a detainee be issued one notice only.

#### Serving the notice

Section 223(4) of the Act provides that the ABF Commissioner/delegate must cause a copy of the notice, notifying the detainee that their valuables are liable to be taken, to be served on the detainee as prescribed. Regulation 5.02 provides that a document may be served on a person in immigration detention by giving it to them or to another person authorised by them to receive documents on their behalf. (For more information, refer to PAM3: Act - Code of procedure - Notification requirements - Notifying detainees.)

Departmental policy is to issue and serve the detainee with a notice under s223 as soon as the delegate is satisfied that the detainee has valuables that can readily be converted to cash.

Detainees should be made aware of the effect of the notice. For example, officers should inform the detainee that:

- their valuables may be sold by any means the Commonwealth considers reasonable to meet their debt to the Commonwealth
- they may enter into any reasonable arrangement to pay the debt to the Commonwealth (for example, they may pay a security or arrange for a third party to pay a security rather than have their valuables sold) and
- if their debt to the Commonwealth is paid, any valuables that do not need to be sold to meet the debt will be returned to them.

For the pro forma notice, refer to Notice pursuant to section 223(2) of the Migration Act 1958.

#### Period of notice

Under s223(9) of the Act, a notice stops being in force at the end of the third working day after it is given. This is the case unless, before the end of the third working day, the ABF Commissioner/delegate applies to a court for an order confirming the notice.

If the ABF Commissioner/delegate applies to the court for an order confirming the notice, the notice remains in effect until the court makes a decision on whether to confirm the notice.

## For Official Use Only

### Confirming a notice

The ABF Commissioner/delegate may apply to the court for an order confirming an s223 notice.

If a notice is confirmed by the court, the court can specify how long it is to remain in force for, as long as it does not exceed 12 months. In effect this extends the time in which the ABF Commissioner/delegate can:

- take possession of the detainee's valuables under s223(5) and deal with them (for example, cost recovery measures), in accordance with s224
- issue a search warrant under s223(16) to search for and seize valuables belonging to the detainee.

Under s223(10), a court may confirm a notice on application by the ABF Commissioner/delegate only if the court is satisfied that:

- the detainee is an unlawful non-citizen or a deportee and
- the detainee is liable, or may on deportation or removal become liable, to pay the Commonwealth an amount in relation to their removal or deportation under s210 or s212 and
- if the court does not confirm the notice, there is a risk that the Commonwealth will not be able to recover the whole or a part of any such amount that the detainee is, or will become, liable to pay in relation to their removal or deportation.

In confirming the notice, the court may, under s223(11), make an order directing the ABF Commissioner/delegate to make provision for the meeting of either or both of the following:

- the detainee's reasonable living expenses (including the reasonable living expenses of the detainee's dependants (if any))
- reasonable legal expenses incurred by the detainee in relation to a matter arising under the Act.

For example, the court may direct that the Secretary return valuables which were subject to the notice, to the detainee.

If the court refuses to confirm the notice, s223(13) provides that the notice stops being in force immediately.

## 8.4. How to apply for a court order

### Prerequisites

Before applying for a court order to confirm an s223 notice, delegates must ensure that:

- they have the necessary delegation – refer to: LEGEND - Delegations – ABF Delegations – Secretary delegation
- the action is in accordance with the Department's field operations policy – contact the Employer and Field Compliance Helpdesk. Queries should be submitted via the Service Request Catalogue on Bordernet. Refer to TRIM ADD2017/3138207 on how to submit a query
- the action is in accordance with the Department's financial policies – email Debtors and Financial Framework and
- they have the level of evidence required to support an application – email LOHD for legal advice.

A delegate who is considering applying for an order must also be satisfied that they can:

- prove that the detainee is an unlawful non-citizen or a deportee
- prove the detainee is liable, or may on deportation or removal become liable, to pay the Commonwealth an amount in relation to their removal or deportation under s210 and s212

## For Official Use Only

- prove there is a risk (and the reason/s why the delegate believes there is a risk) that the Commonwealth will not be able to recover part or all of the actual or likely debt
- prove that the valuables subject to the notice belong to the detainee
- indicate the period for which the order is being sought
- estimate the detainee's (and their dependants') reasonable living expenses
- estimate the detainee's reasonable legal expenses in relation to a matter arising under the Act and
- indicate to what extent the detainee (and their dependants) should be allowed to access the valuables to provide for living and legal expenses.

### Procedures

AAT and Removals Injunctions Section, Migration & Citizenship Litigation Branch, will instruct external legal representatives in relation to the application. It is not appropriate for other departmental officers to give instruction directly to external legal representatives.

The external legal firm will:

- advise on the appropriate court in which to commence proceedings
- advise on the way to commence proceedings and
- assist in drafting the application and supporting documents.

## 8.5. Freezing bank accounts

### Serving a notice on banks or financial institutions

Section 223(6) of the Act provides that a copy of a notice notifying a detainee that their valuables are liable to be taken under s223 may be served on any bank or financial institution.

A bank or financial institution includes, for example:

- private sector banks which are institutions that hold banking authority under the Banking Act 1959 and
- non-bank financial institutions such as building societies and credit unions

but does not include a superannuation fund, sharebroker or financial adviser.

For timeframe of notice, refer to: Period of notice.

### Effect of serving notice

Under s223(7) of the Act, a bank or other financial institution served with a copy of the notice must not, while the notice remains in force, process any transaction attempted in relation to any account held by the detainee. This is the case regardless of whether the account is held by the detainee:

- alone or jointly with another person/s and
- for their own benefit or as a trustee.

A bank or financial institution will be subject to a financial penalty for contravention of s223(7).

However, the bank or financial institution may process a transaction if it obtains the written consent of the ABF Commissioner/delegate to do so.

The effect of s223(7) is to freeze moneys in bank accounts. This is an important power if such money is to be used to obtain payment towards debts to the Commonwealth. However, it does not give departmental officers the power to access or seize the non-citizen's money. Once the moneys are frozen, the Department

## For Official Use Only

may then choose to institute proceedings to obtain a judgment in its favour under s215 and secure a garnishee order against the detainee's bank account.

### 8.6. Stopping payments of debts to detainees

#### Serving a notice on a person who owes money to a detainee

In addition to serving a notice on a bank or financial institution, s223(6) of the Act provides that a copy of a notice notifying a detainee that their valuables are liable to be taken under s223 may be served on any other person.

For timeframe of notice, refer to Period of notice.

#### Effect of serving notice

If a copy of a notice is served on a person who owes a debt to the detainee, s223(8) of the Act provides that that person shall not make any payment to the detainee in respect of their debt. This is the case as long as the notice is in effect, unless the Secretary provides written consent for that person to make a payment to the detainee.

The penalty for committing an offence against s223(8) is two years imprisonment.

The effect of s223(8) is to freeze debts owed to detainees by third parties other than banks or financial institutions. This is an important power if such money is to be used to obtain payment towards debts to the Commonwealth.

### 8.7. Dealing with taken and seized valuables

#### Taken and seized valuables

##### Legal requirements

Valuables taken under s223(5) of the Act must be dealt with in accordance with s224.

Under s224, if the Secretary has taken valuables under s223(5), the Secretary shall:

- keep and take reasonable steps to preserve the valuables while they are so kept until they are dealt with in accordance with s224
- return valuables to the person from whom they have been taken when s224(3) applies
- apply the valuables toward the payment of an amount owed to the Commonwealth under s210 or s212 and return any surplus.

Application of the valuables toward payment is realised by the sale of these valuables and use of the proceeds towards the discharge of that liability.

Valuables taken under s223(5) are not departmental assets. This means that they must not be recorded on the Department's asset register.

Once taken, valuables held by the Department are classed as relevant property under the *Public Governance Performance and Accountability Act 2013* (PGPA Act) and must also be managed in accordance with *FM-4808* in PPCR (AAI Part 10 - Managing Property).

Section 224 applies only if the Secretary takes possession of the valuables under s223(5). It does not apply to valuables seized under a search warrant issued under s223(16):

- if the valuables are taken under cover of a search warrant issued under s223(16), officers must deal with those valuables in accordance with directions from the Secretary under s223(17)

## For Official Use Only

- in the absence of any directions that the Secretary issued for the purposes of s223(17), before undertaking any action email Detention Policy.

### 8.8. Selling taken valuables

#### When can valuables be sold

Departmental policy is that valuables should not be sold if alternative arrangements have been made with the detainee or a third party to pay the costs. In certain circumstances, sections [224\(4\)](#) and [\(5\)](#) of the Act provide for valuables taken under [s223\(5\)](#) to have their value applied as payment towards amounts owed to the Commonwealth. These circumstances are where:

- at the time the ABF Commissioner/delegate takes possession of the valuables, the notified detainee is liable to pay removal or deportation costs to the Commonwealth under s210 or s212 or
- while the valuables taken under s223(5) are being kept by the ABF Commissioner/delegate, the notified detainee becomes liable to pay removal or deportation costs to the Commonwealth under s210 or s212 and
- those costs have not been paid to the Commonwealth. *Note that if costs have been paid in accordance with [s224\(3\)\(d\)](#), the valuables are to be returned to the notified detainee.*

#### Delegate considerations

The ABF Commissioner/delegate contemplating selling valuables under sections 224(4) and (5) of the Act is advised to identify and manage the operational risk in accordance with:

- [SM-1607](#) in PPCR (*Risk Management Policy*)
- [Risk Management Framework \(TRIM:ADD2017/686303\)](#)
- [Commonwealth Risk Management Policy](#).

The ABF Commissioner/delegate should consider all costs associated with the seizure, transport, handling, storage, sale of valuables and employee expenses when determining the value of cost recovery by seizure of valuables. Consideration of the sale of valuables should include selling (or disposing of) valuables in accordance with the PGPA Act. The sale of relevant property is termed a 'disposal' under the PGPA Act and a permitted official can sell (dispose of) property in accordance with [FM-4808](#) in PPCR ([AAI – Part 10 Managing Property](#)) refer to [Disposing property 10.16 – 10.17](#).

For guidance on financial delegate decision-making refer to [FM-4808](#) in PPCR ([AAI – Part 1 Delegations, Part 2 Spending Money and Part 3 Procurement](#)).

Other delegate considerations are regional capacity to coordinate and manage:

- legal steps prior to seizure
- the seizure operation
- the engagement of a third party merchant or valuer
- market valuation of valuables within the limited timeframe
- the assessment market interest in the valuables to be sold.

#### Notification of detention, removal and deportation costs

In order to notify the person of their estimated detention, removal or deportation costs an, an estimate of the market value of taken and seized valuables should be sought from an independent market valuer. Once valued, the estimated value is applied to the estimated cost of removal or deportation and the person's



## For Official Use Only

liability is adjusted accordingly in their notice of removal or deportation cost and/or detention costs. See: Notification of detention, removal and deportation costs.

### 8.9. Sale of valuables

Seized or taken valuables may be sold at market value in order to convert the valuables into a monetary value for application to the liability.

The ABF Commissioner/delegate can consider the proposed sale (disposal) of seized or taken valuables at market value using a third party (merchant) engaged for this purpose. Delegates and ABF officers are to ensure the sale of valuables is economical and ethical. Valuables should not be sold by a merchant if this would give rise to a real or perceived conflict of interest.

ABF officers must take reasonable steps to avoid any real or perceived conflict of interest or to obtain a benefit arising from their knowledge of the disposal of valuables. See: Conflict of interest policy ADD2016/1514467.

### 8.10. Who can sell valuables

The ABF Commissioner/delegate can authorise the sale of valuables taken under s223(5) of the Act from a detainee for application to their liability. Before selling valuables, departmental officers are required to ensure that they hold the necessary delegation under s223(5). Refer to: LEGEND - Delegations – ABF Delegations – Secretary delegation.

Before selling the valuables, ABF officers are also required to seek approval from the permitted official. See: [FM-4808](#) in PPCR (AAI – *Part 10 Disposing property*).

### 8.11. How valuables should be sold

The sale of valuables should accord with the Secretary's instruction to sell property at market price, taking into account the condition of the valuables and the fact that the sale must take place within the three day period during which the notice issued under s223(2) of the Act remains in effect. See [FM-4808](#) in PPCR (AAI – *Part 10 Managing property*).

Delegates should ensure that they have taken reasonable steps such as obtaining quotes to determine the value of the property before selling valuables.

Consideration of the resources required to determine the value of property should form part of the delegate's decision-making for seizure and disposal of property by sale. A record of quotes, valuations and disposal decision-making should be retained in departmental records.

Delegates should also ensure that they:

- are accompanied at all times by another departmental officer when selling valuables
- take detailed notes about the circumstances in which the sale took place (for example, how much time there was in which to dispose of the valuables, the names of those involved in the sale and whether any bargaining took place) to keep appropriate records in relation to the sale of property in accordance with the Department's record keeping policy. Departmental records should also be updated to reflect the disposal and
- obtain a receipt for the sale of valuables.

For further information on selling valuables taken under s223, contact Support Connect Portal.

## For Official Use Only

### 8.12. Proceeds of the sale

A delegate who sells or arranges the sale of valuables, must provide the cash received to a departmental Cashier, Collector or Sub-Collector of Public Money (CPM) on the day of receipt or by the next banking day if that is not possible. See: [FM-4808](#) in PPCR (AAI - *Part 7 Receiving and banking money*).

The notified detainees net liability under [s210](#) or [s212](#) is calculated following receipt of final removal costs and receipt of any monies resulting from the disposal of their valuables. See: [Debtor pro forma and debt to the Commonwealth](#).

### 8.13. If valuables are not sold

If no one will buy the valuables, the ABF Commissioner/delegate must keep the valuables until one of the circumstances set out in [s224\(3\)](#) of the Act requiring the ABF Commissioner/delegate to return the valuables occurs.

Valuables must be returned to the person from whom they were taken if:

- the notice to which they relate is no longer in force or
- the notified detainee is granted a visa or
- the notified detainee stops being a deportee or
- the notified detainee, when the notice is given, is not liable to pay an amount to the Commonwealth under [s210](#) or [s212](#) and does not within 6 months after the giving of that notice, become so liable or
- all amounts that the notified detainee is or will become liable to pay to the Commonwealth under [s210](#) or [s212](#) are paid to the Commonwealth.

### 8.14. If there is a surplus

Sections [224\(4\)](#) and [224\(5\)](#) of the Act provide that, if a surplus remains after the sale of valuables, the surplus must be returned to the person from whom the valuables were taken.

### 8.15. Keeping taken valuables

#### Legal obligation to keep safe

Section [224\(2\)](#) of the Act provides that the ABF Commissioner/delegate must arrange for valuables taken under [s223\(5\)](#) to be kept until they are disposed of in accordance with [s224\(3\)](#), [224\(4\)](#) or [224\(5\)](#).

The ABF Commissioner/delegate must ensure that all reasonable steps are taken to preserve the valuables while they are kept. This may include securing valuables and preserving their value and condition.

As such, field operations officers should have regard to the facilities available to manage the custody of valuables when deciding whether to take possession of them under [s223\(5\)](#). See [FM-4808](#) in PPCR (AAI – *Part 10 Custody, use and management of property*).

If, when executing a [s223](#) warrant, it is not practical to remove valuables from their current location the warrant holder should complete an "Inventory of Property Liable To Be Detained Under [s223](#) of the Migration Act". The warrant holder should also ask the detainee to sign the Inventory as a true and accurate record. If the detainee refuses to sign the Inventory, the warrant holder should:

- record this on the Inventory
- sign it themselves and

## For Official Use Only

- if possible, get the recording and signature witnessed by another person.

### 8.16. Cash

In accordance with the [FM-4808](#) in PPCR (AAI - *Part 7 Receiving and banking money*), cash taken under [s223\(5\)](#) of the Act be taken to a departmental Cashier, Collector or Sub-Collector of Public Money (CPM) on the day of receipt or by the next banking day if that is not possible. It is not to be kept at regional offices. See: [FM-1275](#) in PPCR (*FMG 1.07.01 – Receiving relevant money*).

### 8.17. Returning taken valuables

#### Legal obligation to return the valuables

Section [224\(3\)](#) of the Act deals with the circumstances in which valuables must be returned to the person from whom they were taken.

It provides that the ABF Commissioner/delegate must arrange for the valuables to be returned if:

- the [s223\(2\)](#) authorising notice stops being in force
- the notified detainee is granted a visa or stops being a deportee
- the notified detainee is not, when the authorising notice is given, liable to pay an amount to the Commonwealth under [s210](#) or [s212](#), and does not, within 6 months after the giving of that notice, become so liable
- all amounts that the notified detainee is or becomes liable to pay to the Commonwealth under [s210](#) and [s212](#) are paid.

The notified detainee means the person served with the notice under [s223](#).

The person from whom they were taken means the person who signed the property receipt when the valuables were seized after execution of the search warrant. This may be the notified detainee or a third party.

Departmental officers must ensure that a property receipt is completed when returning valuables to the person from whom they were taken. A record of all the details must be made in official notebooks.

### 8.18. If the valuables or surplus cannot be returned

If [s224](#) of the Act requires the ABF Commissioner/delegate to return the valuables or surplus, then every effort must be made to return them to the person from whom they were taken.

However, there may be situations where valuables or surplus cannot be returned. For example, the person cannot be located after their removal or deportation from Australia.

Under the Act the ABF Commissioner/delegate is not authorised to destroy or otherwise dispose of the valuables or surplus in these circumstances.

Disposal of relevant property approval should be made in accordance with [FM-4808](#) in PPCR (AAI *Part 10 - Disposing property*).

Each State/Territory has legislation that deals with the disposal of uncollected, unwanted, abandoned or lost goods in certain circumstances. For legal advice on how to deal with valuables in these circumstances, email [LOHD](#).

## For Official Use Only

# 9. Accountability and responsibilities

Table 2 – Procedural Instruction roles and responsibilities

Position	Accountability and/or responsibility
Commander (SES band 1) ABF Governance	<ul style="list-style-type: none"> <li>The 'approving authority' for Procedural Instructions within their Branch and have responsibility for ensuring that Review Period deadlines for these Procedural Instructions are met.</li> <li>Accountable for ensuring that the systems and business practices – or control frameworks – are in place to ensure adherence to policies and procedures.</li> <li>Responsible for ensuring procedural instructions and standard operating procedures are aligned with strategic objectives.</li> <li>Responsible for providing assurance that areas responsible for developing PPCF documents have undertaken due diligence in relation to consultation, evaluation and review.</li> <li>Accountable for ensuring that during the development of the documents, risks are assessed, obligations considered, and requirements of workers are clearly set out. [insert]</li> </ul>
Superintendent (EL2) Detention and Removal Operational Policy (DROP)	<ul style="list-style-type: none"> <li>Clearance of Procedural Instruction</li> <li>Approval of updates to policy</li> </ul>
Inspector (EL1) DROP	<ul style="list-style-type: none"> <li>Ensures Procedural Instruction is updated to reflect current policy</li> <li>Ensures support materials comply with Procedural Instruction</li> </ul>

# 10. Statement of Expectation

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* (Public Service Act)).

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.

The Secretary's Professional Standards Direction, issued under subsection 55(1) of the ABF Act, requires all Immigration and Border Protection workers (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 ABF Act. Non-compliance may also be addressed under the terms of the contract engaging the contractor or consultant.

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

## For Official Use Only

- 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 and
- be responsible for documenting the reasons/justification for their decision to depart from, or not adhere to, any PPCF document.

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.

## 11. Related Framework documents

### 11.1. Policy Statements

- [VM-5273](#) in *PPCR Departure Policy (returns, removals and departure support)* TRIM: PCD2018/1001
- [FM-4808](#) in *PPCR Accountable Authority Instructions (AAI)* TRIM: ADD2018/2161857.

### 11.2. Procedural Instructions

Document	PPCR	TRIM Number
Financial Management Guideline (FMG) 1.09.01 – Debt Management	FM-1279	ADD2018/798093
FMG 1.07.01 – Receiving relevant money	FM-1275	ADD2018/2489829
PAM3: Act - Arrival, immigration entry and clearance - Carrier obligations and offences		LEGEND
PAM3: Sch4/4004 - Debts to the Commonwealth	FM-1237	LEGEND
Removal from Australia	BE-5488	ADD2018/1956150
Removal from Australia – Aviation security requirements	BE-5489	ADD2018/1954574
Removal from Australia – Commencing a removal	BE-5490	ADD2018/1954658
Removal from Australia – Escort arrangements	BE-5491	ADD2018/1954741
Removal from Australia – Establishing that a person is a UNC and Maintaining reasonable suspicion	BE-5492	ADD2018/1954791
Removal from Australia – Facilities and detainee service provider assessments	BE-5493	ADD2018/1954814
Removal from Australia – Health assessments	BE-5494	ADD2018/1954834



## For Official Use Only

Document	PPCR	TRIM Number
Removal from Australia – Impediments to removal	BE-5495	ADD2018/1954849
Removal from Australia – Implementing removal from Australia	BE-5496	ADD2018/1954866
Removal from Australia – Information disclosure to facilitate removal	BE-5497	ADD2018/1954878
Removal from Australia – Notifying stakeholders of the removal	BE-5498	ADD2018/1954896
Removal from Australia – Operational planning and logistics	BE-5499	ADD2018/1954904
Removal from Australia – Post-removal procedures	BE-5500	ADD2018/1954930
Removal from Australia – Post-removal support	BE-5501	ADD2018/1954935
Removal from Australia – Removal Availability Assessment	BE-5503	ADD2018/1954951
Removal from Australia – Removal notification	BE-5504	ADD2018/1954961
Removal from Australia – Removal of minors and families	BE-5505	ADD2018/1954965
Removal from Australia – Travel documents for removal purposes	BE-5507	ADD2018/1954980
Removal from Australia – Voluntary removal	BE-5508	ADD2018/1954983

### 11.3. Supporting Material

Document	PPCR	TRIM Number
Consent to use ticket for removal		ADD2008/868573
Debtor pro forma		ADD2016/1966064
Debt recovery flow chart		ADD2017/2288656
Debt to the Commonwealth CCMD Removal Finalisation		ADF2018/164307
Form 41 Property receipt		LEGEND
Notice of detention costs		ADD2017/2288471
Notice of detention costs incurred to date		ADD2018/4676610
Notice of removal or deportation costs		ADD2017/2288477
Notice of detention and removal or deportation costs		ADD2017/2288479
Questionnaire regarding assets of unlawful non-citizens		ADD2008/102962



## For Official Use Only

Document	PPCR	TRIM Number
Removal from Australia - Glossary	BE-5509	ADD2018/1955777
Status Resolution System Control Framework	BC-763	ADD2019/2439257
Use of removee ticket without consent		ADD2008/868620

## 12. References and legislation

- *Australian Border Force Act 2015*
- *Migration Act 1958*
- *Migration Regulations 1994*
- Privacy Act 1988 Schedule 1 – Australian Privacy Principles
- *Public Governance Performance and Accountability Act 2013*

## 13. Consultation

### 13.1. Internal consultation

- Commercial and Employment Law Branch
- Community Protection and Border Policy Branch
- Detention and Removal Operational Policy (detention), ABF Governance Branch
- Enforcement Operations Central, Enforcement Command
- Field and Removal Operations QLD, Enforcement Command
- Field and Removal Operations Vic./Tas, Enforcement Command
- Field Operational Policy ABF Governance Branch
- Field Operations and Removals WA, Enforcement Command
- Financial Framework, Financial Operations Branch
- Integrity and Professional Standards Branch
- Legal Opinions B, Migration and Citizenship Law Branch
- Regional Processing Programme, Regional Processing and Performance Branch
- Removal Operations HQ, Field & Removal Operations Branch
- Revenue Management (Debt Management Unit), External Budgets & Revenue Branch

### 13.2. External consultation

No external stakeholders have been consulted in relation to this policy instruction.

**For Official Use Only****14. Document details**

<b>BCS Category/Function</b>	Border enforcement
<b>BCS Sub-Category/Sub-Function</b>	Program management and evaluation
<b>Period of Effect</b>	4 September 2021

**14.1. Document change control**

<b>Version number</b>	<b>Date of issue</b>	<b>Author(s)</b>	<b>Brief description of change</b>
1	4 September 2018	Detention and Removal Operational Policy	PPCF driven update
2	6 August 2019	Detention and Removal Operational Policy	Minor amendments

**14.2. Procedural Instruction approval**

<b>Document owner</b>	Don Smith, Commander ABF Governance Branch
<b>Approval date</b>	4 September 2018