



Australian Government  
Department of Immigration  
and Citizenship

# Entry Screening Guidelines

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## 1. PURPOSE

This document provides policy guidance and the procedures for entry screening, for use by the screening officer and their support team.

### Entry Screening

All non-citizens who are refused immigration clearance at an airport and claim that they cannot return to their home country, or who arrive in Australia as unauthorised maritime arrivals (UMA), are subject to entry screening by the department. This is in order to explore the non-citizen's reasons for coming to Australia and any reason why they cannot return to their home country, among other matters. Entry screening contributes to the department's consideration of whether a non-citizen should be removed from Australia, or whether they should remain in Australia pending further departmental consideration.

The outcome of entry screening is therefore one of two options:

- Screened-in – the non-citizen's reasons for why they cannot return to their home country warrant assessment through a departmental process, as they relate to Australia's protection obligations. The non-citizen may remain in Australia pending consideration of how they will be processed.
- Screened-out – the non-citizen's reasons for why they cannot return to their home country do not relate to Australia's protection obligations. The non-citizen is on a removal pathway.

## 2. SCOPE OF THESE GUIDELINES

These guidelines provide guidance for officers undertaking entry screening, s. 47E(d)

Outside the scope of these guidelines is:

- s. 47E(d)
- The conduct of entry or arrival interviews.
- The assessment of protection claims.

## 3. STATUTORY FRAMEWORK

There is no separate or specific statutory basis for entry screening. However, entry screening is undertaken to inform (among other considerations) a decision about whether to remove an unlawful non-citizen under section 198(2) of the *Migration Act 1958* (the Act).

Section 198 of the Act imposes an obligation on the Department to remove, as soon as reasonably practicable, a non-citizen who (among other things):

- is not the holder of a valid visa and has not made an application for a substantive visa (or whose application for a substantive visa, that can be granted when the applicant is in the migration zone, has been finally determined);
- has not been immigration cleared; or
- is detained under section 189 of the Act.

The purpose of entry screening is to determine whether a non-citizen should remain in Australia, pending an assessment against Australia's protection obligations, on account of the reasons the non-citizen has presented for why they cannot return to their home country or country of usual residence.

Where the entry screening process indicates the non-citizen does not require an assessment of Australia's protection obligations, or where a protection status determination process ultimately finds they do not engage Australia's protection obligations, the non-citizen must be removed as soon as reasonably practicable.

For more information about removal, refer to section 198 of the Act: Removal from Australia of unlawful non-citizens (see also PAM3: Act - Compliance and Case Resolution - Case resolution - Removal from Australia).

#### 4. WHICH NON-CITIZENS MUST BE ENTRY SCREENED?

The following categories of non-citizens require entry screening:

- UMAs s. 47E(d) [REDACTED]
- Any non-citizen who is refused immigration clearance, and indicates they cannot return to their home country.

Non-citizens in any one of the above categories are required to undergo an entry or arrival interview. s. 47E(d) [REDACTED]

Additionally, other relevant information presented by the non-citizen, such as responses provided by UMAs at other departmental interviews, will also inform entry screening.

Please note that if a non-citizen requests removal from Australia, prior to being screened, then a screening consideration is not required.

#### 5. ENTRY SCREENING OFFICERS and ESCALATION PROCEDURES

Entry screening is conducted by a senior officer of the department, who is considered the 'screening officer.' This is generally an executive-level officer reporting to the Global Manager, Refugee and Humanitarian Visas.

s. 47E(d)

## 6. ENTRY SCREENING CONSIDERATIONS

The screening officer s. 47E(d)

Australia pending an assessment against Australia protection obligations.

Whether a non-citizen engages Australia's protection obligations will depend upon an assessment of their claims under the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (the Refugees Convention), together with an assessment of complementary protection.

Complementary protection is the term used to describe a category of protection for people who are not refugees as defined in the Refugees Convention, but who also cannot be returned to their home country, because there is a real risk that they would suffer a certain type of harm that would engage Australia's international *non-refoulement* (non-return) obligations.

Australia's *non-refoulement* obligations, in addition to those under the Refugees Convention, are derived from international human rights conventions to which Australia became a party in the 1980s and 1990. These are:

- the *International Covenant on Civil and Political Rights* and its *Second Optional Protocol aiming at the abolition of the death penalty*
- the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

These obligation have been incorporated into the Migration Act in s 36(2), which provides that the criteria for a Protection visa include that the decision maker is satisfied the applicant is either a non-citizen in Australia in respect of whom Australia has protection obligations, or a member of the same family unit of such an applicant (s36(2)(b)).

In making this consideration, screening officers and their support teams should consider the following matters when reaching a screening outcome:

*Entry screening "threshold":*

Entry screening considers only whether a non-citizen's reasons for claiming they cannot return to their home country warrant an assessment of Australia's protection obligations through a departmental process. s. 47E(d)

Australia's protection obligations under the Refugees Convention, or the complementary protection provisions of the Act.

*Possible refugee protection claims:*

Article 1A(2) of the 1951 Refugees Convention states that a refugee may be defined (among other qualifications) as someone who:

*"...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."*

s. 47E(d)

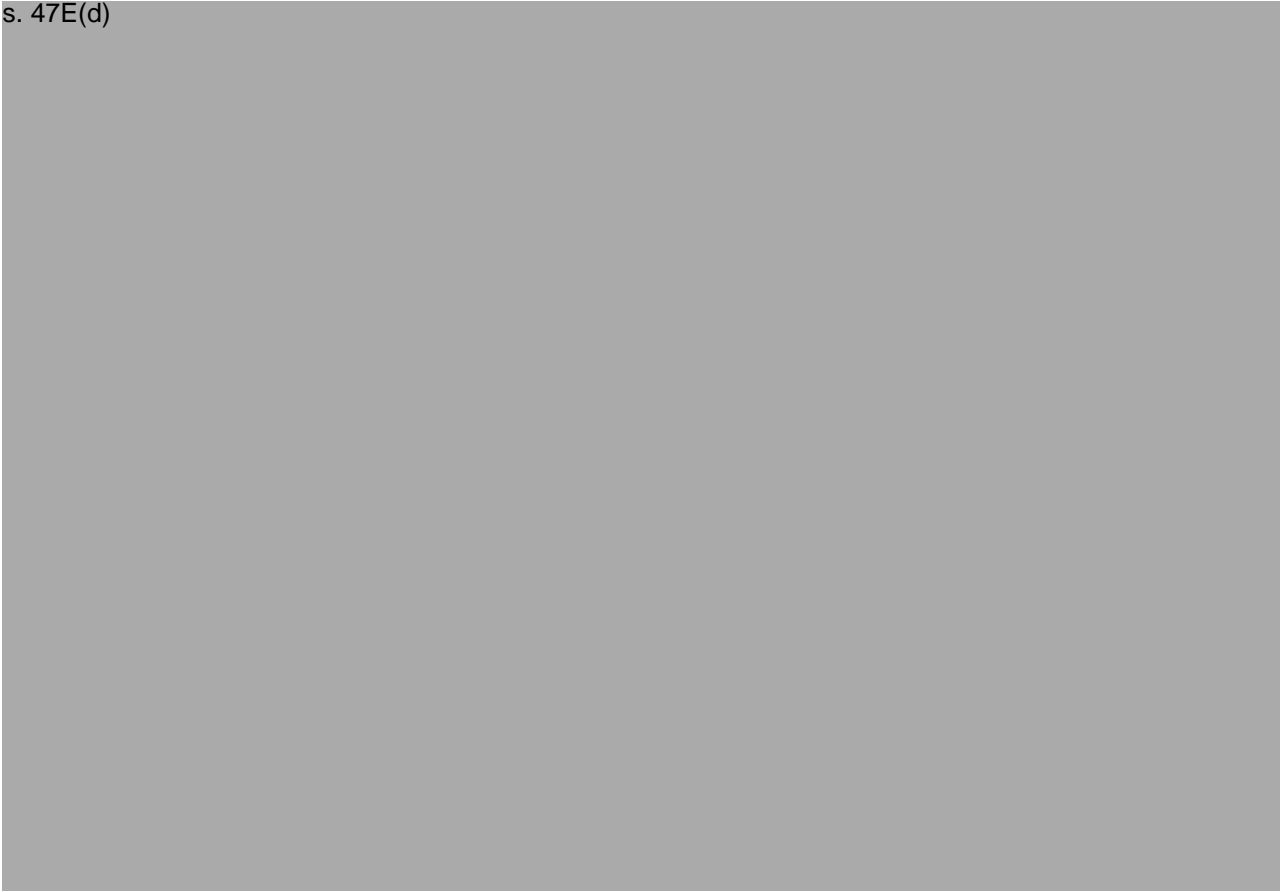
For further advice on Australia's protection obligations under the Refugees Convention refer to s36(2)(a) of the Act and PAM3: Refugee and Humanitarian - Refugee Law Guidelines.

*Possible complementary protection claims:*

Paragraph 36(2)(aa) of the Act provides that a person may be owed protection (in part) where they are:

*"... a non-citizen in Australia...in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm".*

s. 47E(d)




For further advice on Australia's complementary protection provisions refer to s36(2)(aa) of the Act and PAM3: Refugee and Humanitarian - Protection visas - Complementary Protection Guidelines.

While the Refugees Convention contains exclusion provisions and subsection 36(2C) of the Act (concerning complementary protection) outlines ineligibility provisions, these should not be considered during entry screening.

*Entry screening and the evidentiary burden:*


The screening officer does not need to make a case for the non-citizen. The onus is on the non-citizen to present their reasons on why they cannot return to their home country. Therefore, and subject to the immediately following exception, if the non-citizen does not present a fear of any serious or significant harm in their reasons for not being able to return to their home country, the non-citizen should be screened-out.

s. 47E(d)



Australia may be at risk of breaching its *non-refoulement* obligations where a non-citizen is forcibly removed to their country of origin, and information is available indicating they may be subject to a serious or significant harm in that country, even if this is not explicitly articulated by the non-citizen. This is especially the case where a non-citizen has been unable to articulate their reasons for being unable to return to their home country, on account of their vulnerabilities.

s. 47E(d)

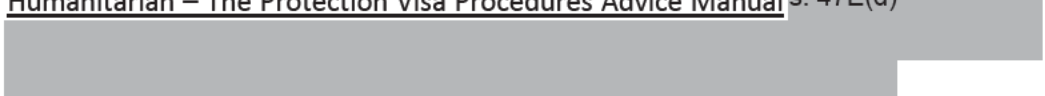


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s. 47E(d)



s. 47E(d) (for further guidance see PAM3: Refugee and Humanitarian – The Protection Visa Procedures Advice Manual s. 47E(d)



s. 47E(d)



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s. 47E(d)

s. 47E(d)

This is subject to regular review particularly where it becomes clear that such an approach is no longer warranted for the relevant caseload.

s. 47E(d)

s. 47E(d)

## 10. NON-CITIZENS WHO CLAIM TO BE STATELESS

If non-citizens s. 47E(d) those claiming to be stateless should be assessed against their country of former habitual residence.

## 11. UNACCOMPANIED MINORS AND NON-CITIZENS WITH VULNERABILITIES

All unaccompanied minors who arrive as UMAs, or are refused immigration clearance at the airport, require an entry or arrival interview. An independent observer must be available for the interview. Entry screening for unaccompanied minors should take into account any particular vulnerability, their maturity and their capacity to clearly articulate their reasons for not being able to return to their home country.

s. 47E(d)

### 13. QUALITY ASSURANCE AND QUALITY CONTROL

In complex or sensitive cases, entry screening support teams should seek guidance from Protection Support Section by email at s. 47E(d) mailbox, prior to referral to the screening officer. Screening officers should seek advice from the Director of Protection Support and Engagement Section, Onshore Protection Program Management Branch, National Office.

s. 47E(d)

## 14. RECORD KEEPING

The GM UMA Protection Support Team is responsible for recording all entry screening outcomes on ICSE and TRIM.

An entry screening outcome must be recorded in writing as an email or file note and stored electronically on the non-citizen's client file on TRIM. Any other email or information relating to an individual screening consideration should also be placed on this file.

s. 47E(d)



## 15. NOTIFICATION


The screening officer will inform the GM UMA Protection Support team of the entry screening outcome.

This team completes all necessary record keeping and ensures the relevant departmental business areas are notified of the outcome.

The notification process varies depending on whether the non-citizen is an UMA or an air arrival:

### 13.1 AIR ARRIVALS:

s. 47E(d)



### 13.2 UNAUTHORISED MARITIME ARRIVALS:

#### *Internal departmental notification:*

For UMAs including those subject to automatic screening, the GM UMA Protection Support team notifies the relevant case manager or immigration detention centre of the screening outcome by email. A template for this notification is at [Appendix A](#).

#### *UMA non-citizen (client) notification:*

A UMA non-citizen is notified of a screening outcome only where they have been screened-out. This occurs after the entry screening decision has been communicated to the case manager by the GM UMA Protection Support team. It is provided orally at an interview arranged by their case manager; it is not provided in writing.

s. 47E(d)

A screen-out outcome may be used to inform a decision to remove an unlawful non-citizen under section 198(2) of the Act. The requirements for notification of removal, and the operational responsibility for notification, are managed by the Status Resolution and Removal Policy Section. As a decision to remove a non-citizen from Australia includes consideration of a range of factors, notification of removal is the responsibility of an appropriately delegated removals officer.

## 16. RELATED DOCUMENTS

*Migration Act 1958* (in particular, section 198 - Removal from Australia of unlawful non-citizens)

PAM3: Refugee and Humanitarian - Refugee Law Guidelines

PAM3: Refugee and Humanitarian - Protection visas - Complementary Protection Guidelines

PAM3: Refugee and Humanitarian - Protection Visa Procedures Advice Manual

Enhanced Screening Policy Guidelines

Entry Screening Communications Guide for Case Management

APPENDIX A

s. 47E(d)



Boat ID	Family Name	Given Names	Location	COB	Entry Screening Outcome



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# Protection claims at the border

## Procedural Instruction

This instruction applies when a traveller seeks to engage Australia's protection obligations at the border, whilst in immigration clearance.

Approval Date	21 November 2018
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Contact	s. 47E(d)
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# 1. Introduction

## 1.1. Background

Protection claimants and claims should be dealt with sensitively.

A traveller seeking protection (seeking to engage Australia's non-refoulement obligations under international law) may:

- claim protection at any time while in immigration clearance
- state or otherwise indicate they wish to seek protection/refugee status/asylum
- state or otherwise indicate they fear return to their country of nationality or usual country of residence
- arrive improperly documented (without a travel document, using a fraudulent travel document or visa)
- arrive with a genuine travel document
- arrive with or without a visa
- be a minor, see *Procedural Instruction: Managing minors in immigration clearance*
- arrive with family and/or friends who are also claiming protection.

Australian Border Force (ABF) officers at the primary line will refer any travellers indicating their wish to seek protection to a Visa Determination Officer (VDO) in the secondary immigration area.

Information gathered throughout the process will assist:

- the Humanitarian Program Operations Branch in assessing whether the client may be a person to whom Australia has protection obligations
- Border Intelligence Officers (BIO) network with the identification of potential accompanying or escorting passengers or agents of interest.

Protection claims made during the pre-screening interview should not be copied into the M304 report.

# 2. Scope

## 2.1. In Scope

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

Travellers who seek to engage Australia's protection obligations whilst in immigration clearance.

## 2.2. Out of Scope

Clearance of travellers and/or goods under the *Customs Act 1901*.

Claims for protection made at a regional office, before or after immigration clearance.

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### 3. Glossary

Table 1 – Common terms and definitions used in this instruction

Term	Acronym (if applicable)	Definition
Advanced Passenger Processing	APP	Is a traveller processing system. All travellers travelling to Australia, including all transit travellers, must be processed through APP.  Note: Infringement notices may be issued to operators who fail to comply with APP obligations.
Automated Telephone Interpreters Service	ATIS	Is an automated immediate interpreting service for agency clients who need to access a phone interpreter.
Australian Border Force	ABF	The Australian Border Force, is a part of the Department of Immigration and Border Protection, responsible for offshore and onshore border control enforcement, investigations, compliance and detention operations in Australia.
Australian Border Force officer	ABF officer	An ABF officer is an Immigration and Border Protection worker (see <i>section 4 Australian Border Force Act</i> ) authorised to perform border clearance duties.
Authorised Search officer		An ABF officer who has successfully completed the Detention and Search training course has the delegated authority to conduct detention search activities. Officers are required to successfully complete an online course and assessment, undertake practical (role-play) assessments and be assessed as competent by a Workplace Assessor. Officers are required to undergo Detention and Search recertification every two years.
Baggage		Baggage consists of (but is not limited to) bags, cases, and containers which hold a traveller's articles during transit.
Bogus Document		Has the meaning given in section 5 of the Migration Act, which provides that it means, in relation to a person, a document that the Minister reasonably suspects is a document that: <ul style="list-style-type: none"> <li>purports to have been, but was not, issued in respect of the person</li> <li>is counterfeit or has been altered by a person who does not have authority to do so</li> <li>was obtained because of a false or misleading statement, whether or not made knowingly.</li> </ul>
Border Clearance officer	BCO	An ABF officer who has a delegated authority to undertake primary Customs, Immigration and Biosecurity clearance.

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Term	Acronym (if applicable)	Definition
		ABF officer role was previously known as the Primary Line officer.
Border Operations Centre	BOC	Is one of the ABF's operational capabilities. The BOC works closely with the ABF's Airline Liaison (offshore) Network, Ports Command, Commonwealth and State Agencies, international Airlines and Shipping companies to form part of our layered approach applied across the border continuum to protect the border whilst facilitating the movement of people across it.
Close Circuit Television	CCTV	Is a system of video monitoring at Australia's international airports and seaports.
Compliance, Case Management and Detention Portal	CCMD	Is a portal used to record and manage visa compliance, case management, detention client data and Departmental decisions.
Detain		Has the meaning given by section 5 of the Migration Act. To detain means to: <ul style="list-style-type: none"> <li>• take into immigration detention</li> <li>• keep, or cause to be kept, in immigration detention</li> </ul> take such action and use such force as are reasonably necessary.
Detainee		Has the meaning given by section 5 of the Migration Act to mean a person detained.
Detention Service Provider	DSP	Is a company contracted by the ABF to carry out service roles when a person is detained. The DSP is responsible for ensuring the management and safety and security of detainees, including the effective resolution of all security matters within the detention environment on a day-to-day basis.
Document Examination Unit	DEU	Supports the integrity of Australia's borders and Australian and citizenship programs by: <ul style="list-style-type: none"> <li>• providing document examination services for the Department, to a forensic level if necessary, to assist in decision making processes by Departmental officers</li> <li>• providing targeted document examination training for all Departmental officers.</li> </ul> It develops and maintains document examination reference systems to assist Departmental staff in recognising genuine fraudulent or counterfeit documents.

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Term	Acronym (if applicable)	Definition
Electronic Document and Information System on Network – Travel Documents	EDISON TD	Is a web-based image reference library of known genuine, fraudulent and counterfeit travel documents available for comparison. The Department's forensic document examiners contribute images and descriptions to the database. EDISON TD is available on the Department's network both in Australia and overseas (through Citrix).
Enter Australia		In relation to a person, it means entering the migration zone. Section 43(2) of the Migration Act provides that a person on an aircraft only enters Australia when the aircraft lands in the country.
Electronic Travel Authority	ETA	A subclass 601 visa is an electronically issued and stored authority for travel to Australia.
eVisitor		Is the TV-651 visa, an electronically stored authority to travel to Australia for short term tourism or business visits.
Immigration clearance		Refers to the process set out in section 172 of the Migration Act when a person attempts to enter Australia. A person can be in immigration clearance, refused immigration clearance, bypass immigration clearance or immigration cleared.
Immigration cleared		Has the meaning given by section 172(1) of the Migration Act.
Immigration Detention		<p>Under the Migration Act immigration detention means:</p> <p>(a) being in the company of, and restrained by:</p> <ul style="list-style-type: none"> <li>i) an officer</li> <li>ii) in relation to a particular detainee—another person directed by the Secretary or Australian Border Force Commissioner to accompany and restrain the detainee</li> </ul> <p>(b) being held by, or on behalf of, an officer:</p> <ul style="list-style-type: none"> <li>i) in a detention centre established under this Act</li> <li>ii) in a prison or remand centre of the Commonwealth or a State or a Territory</li> <li>iii) in a police station or watch house</li> <li>iv) in relation to a non-citizen who is prevented, under section 249, from leaving a vessel—on that vessel</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>v) in another place approved by the Minister in writing</li> </ul> <p>but does not include being restrained as described in subsection 245F(8A), or being dealt with under paragraph 245F(9)(b).</p>

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Term	Acronym (if applicable)	Definition
		<p><b>Note 1:</b> Subsection 198AD(11) provides that being dealt with under subsection 198AD(3) does not amount to immigration detention.</p> <p><b>Note 2:</b> This definition extends to persons covered by residence determinations (see section 197AC).</p>
Immigration Detention Facility	IDF	Is a place of residence for a person who has been detained while their immigration status is being resolved.
Immigration Officer's Report	M304	Is a report consisting of components, such as personal and flight details, narrative and coding, which together form a unified client record in the event a traveller is referred for secondary clearance.
Incoming Passenger Card	IPC	Is a card including personal particulars and a declaration of incoming travellers are required to present to a clearance officer under Regulation 3.01(3) to the Migration Regulations 1994 (Migration Regulations).
Integrated Client Service Environment (Production & Offspring)	ICSE	Is a processing system used to record and process citizenship, sponsorship and nomination applications and a multitude of onshore and offshore visa applications.
Migration Zone		<p>Has the meaning given by section 5(1) of the Migration Act as meaning the area consisting of the States, the Territories, Australian resource installations and Australian sea installations and, to avoid doubt, includes:</p> <ul style="list-style-type: none"> <li>• land that is part of a State or Territory at mean low water; and</li> <li>• sea within the limits of both a State or a Territory and a port; and</li> <li>• piers, or similar structures, any part of which is connected to such land or to ground under such sea</li> </ul> <p>but does not include sea within the limits of a State or Territory but not in a port.</p>
Non-citizen		Has the meaning given by section 5 of the Migration Act as person who is not an Australian citizen.
Non-refoulement obligations		<p>Non-refoulement obligations are obligations not to "refoule" (return) a person to a country where they may face certain types of harm.</p> <p>Australia is a party to several treaties that contain both explicit and implicit non-refoulement obligations. These include the Convention Relating to the Status of Refugees and its Protocol (Article 33(1)), the International Covenant on Civil and Political Rights (Articles 6 and 7), the Second Optional Protocol of the ICCPR aiming at the Abolition of the Death Penalty and the</p>

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Term	Acronym (if applicable)	Definition
		Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3).
Passenger Analysis Clearance Evaluation System	PACE	Is a system used to process travellers at Australia's international air and seaports.
Passport		As defined in section 5 of the Migration Act, includes a document of identity issued from official sources, whether in or outside Australia, and having the characteristics of a passport, but does not include a document, which may be a document called or purporting to be a passport, that the regulations declare is not to be taken to be a passport.
Person Identification Digit	PID	Is a unique number assigned to a record within the Travel and Immigration Processing System (TRIPS) database.
Refused Immigration Clearance	RIC	Refers to the circumstances set out in section 172(3) of the Migration Act.
Person Identification Digit	PID	Is a unique number assigned to a record within the Travel and Immigration Processing System (TRIPS) database.
Unlawful non-citizen	UNC	Has the meaning given by section 14 of the Migration Act as meaning a non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen; and to avoid doubt, a non-citizen in the migration zone who, immediately before 1 September 1994, was an illegal entrant within the meaning of the Migration Act as in force then became, on that date, an unlawful non-citizen.
Visa Determination officer	VDO	Is an ABF officer who has a delegated authority to undertake secondary Customs, Immigration and clearance. This ABF officer role was previously known as the Border Entry officer.

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# 4. Procedural Instruction

## 4.1. Traveller claims protection in immigration clearance

An inward movement and referral must be recorded for each traveller who seeks to engage Australia's protection obligations.

### Creating a referral

#### Arrival without a travel document

If a traveller arrives without a travel document the Border Clearance officer (BCO) at the primary line is to create a movement for the traveller record based on information available, that is, the name, date of birth and gender. The movement will automatically generate a system referral to a Visa Determination officer (VDO).

#### Arrival with a travel document, and without a visa

If a traveller arrives with a travel document but without a visa the BCO is to process the traveller using the details in the travel document presented. A referral will be generated by the system for referral to a VDO. The Passenger Analysis Clearance Evaluation (PACE) will generate a referral to a VDO.

If the system does not generate a referral, create a manual referral.

#### Arrival with a travel document and a visa

If a traveller arrives with a travel document and a visa the BCO is to process the traveller using the details in the travel document presented, and create a manual referral to a VDO. The VDO must refer potential protection claims to the following staff:

- 1) Senior Border Force Officer, Border Force Supervisor and Border Force Inspector
- 2) the s. 47E(d) mailbox, copying in the 'delegate' - Duty Delegate, Humanitarian Program Operations Branch.

### Actioning the referral

s. 47E(d)



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### 4.2. Identity and immigration status

Establishing the correct identity and immigration status of a potential protection claimant is very important. Establishing this will assist in assessing whether the traveller engages Australia's protection obligations.

The VDO should utilise all available resources to gather information to assist with establishing a traveller's identity, or verifying a claimed identity.

#### Initial system checks

The VDO must check:

s. 47E(d)

#### Traveller presents without a travel document

Where the traveller presents without a travel document, the VDO should refer the matter to a Senior Border officer, s. 47E(d)

■

■

#### Traveller presents with a travel document

Where the traveller presents with a travel document, the VDO should confirm the authenticity by:

s. 47E(d)

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### 4.3. Person and baggage search

Where the VDO has reasonable grounds to consider visa cancellation, an Authorised Search Officer (ASO) can search the traveller's clothing and any property under the immediate control of the person, see *Procedural Instruction: Detention and Search (section 252 Migration Act) and Detention and Search (section 219 Customs Act)*. Please note, there are limited purposes for using the search power in section 252 of the Migration Act.

If a non-citizen has not been immigration cleared, and an ASO suspects there are reasonable grounds for cancelling the non-citizen's visa, an ASO of the same sex as the non-citizen may search the non-citizen, their clothing (without removing their clothing), and any property under their immediate control to establish if the traveller has a document (or other item) that may be evidence for grounds to cancel their visa.

Where an ASO of the same sex becomes unavailable to conduct the search, another ASO of the same sex must be requested to carry out a person and baggage search. The authorised officer must be advised prior to the search:

- the purpose of the search
- to find out if there is evidence to cancel the visa, (including documentation or information relating to identity or travel route of the client)
- to identify items that may inflict bodily injury, or that would assist the person to escape immigration detention (if they are in immigration detention).

s. 47E(d)

### 4.4. Flight arrival details

If the traveller presents without a travel document or with a potentially fraudulent or altered travel document, the VDO is to establish the traveller's arrival flight if possible.

s. 47E(d)

### 4.5. Method and travel route used to enter Australia

Where the VDO continues to hold suspicion there are reasonable grounds for visa cancellation, the officer is to investigate the traveller's method of travel and travel route to Australia s. 47E(d)

### 4.6. First interview

The first interview is to determine if the traveller is to be immigration cleared. The VDO must determine whether:

- the traveller satisfies section 166 of the Migration Act
- the purpose for the visa grant aligns with the traveller's intention for entry to Australia, see *Procedural Instruction: Bona Fides*.

#### Interview preparation

The VDO is to prepare to conduct the interview by referring to *Procedural Instruction: Bona fides*.

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**Note:** Ensure the traveller is asked about their health. The record of interview template located at [Appendix A](#) explains when the Health screening questionnaire must be completed.

### Preparing the traveller for interview

The VDO should prepare the traveller for interview by referring to *Procedural Instruction: Bona fides*.

### Interview

The VDO must:

- clearly explain the interview process to the traveller (i.e. the purpose of the first and second interview)
- conduct the interview by referring to *Procedural Instruction: Bona fides*
- On completion of the interview, the VDO must discuss the case with the Senior Border Force Officer/Border Force Supervisor and decide if it would be appropriate to:
  - 1) refuse immigration clearance on the basis of non-compliance with section 166 of the Migration Act, where a traveller presents without a travel document and/or visa
  - 2) issue a *Notice of intention to consider cancellation* (NOICC) see [Appendix B](#), where the traveller holds a visa and evidence indicates there are grounds to consider visa cancellation, see *Procedural Instruction: Visa Cancellation at the border*
  - 3) continue with immigration clearance, where the traveller meets section 166 of the Migration Act and there is insufficient or no evidence to support consideration of visa cancellation.

s. 47E(d)

### Immigration clearance decision

If the traveller is refused immigration clearance, the VDO must:

- Detain the traveller, see *Procedural Instruction: Detention at the border (section 189 Migration Act)* and *Procedural Instruction: Events after refused immigration clearance*
- Provide the traveller with a break prior to commencing the pre-screening interview.

**Note:** If the first interview results in visa cancellation, where possible, it is recommended the second interview is conducted by another VDO. In addition, whenever reasonable and safe to do so an unlawful non-citizen is to be detained by a person other than the VDO who made the cancellation decision.

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### 4.7. Second interview

#### Purpose of the pre-screening interview

The pre-screening interview:

- must be undertaken where the traveller makes claims for protection in immigration clearance
- establishes the reason the traveller has travelled to Australia
- records any claims that prima facie may assist the delegate to decide whether the traveller may engage Australia's protection obligations.

All potential protection claims made in immigration clearance by a client who has been refused immigration clearance are considered by the Duty Delegate, Humanitarian Program Operations Branch.

Based on the claims made at the pre-screening interview, the delegate will decide whether the traveller's claims may bring them within the scope of Australia's protection obligations, as outlined in *Australia's Protection Obligations* at [Appendix C](#).

This decision will result in the traveller being either 'screened in', or 'screened out'.

The VDO is to facilitate any request by the traveller to have access to a consular official or the Office of the United Nations High Commissioner for Refugee.

#### Interview preparation

The VDO should prepare to conduct the pre-screening interview by:

s. 47E(d)

#### Conducting the interview

To prepare the traveller for interview, the VDO must advise the traveller of:

- the purpose of the interview
- pre-screening interview procedures
- procedures following both a decision to screen in and screen out
- digital and CCTV recording of the interview
- how to contact an ABF officer from the interview room (i.e. intercom).

The VDO should follow the *Border Entry Interview template* to note the traveller's claims that may relate to Australia's non-refoulement obligations arising out of the *United Nations Convention Relating to the Status of Refugees and its Protocol*, the *International Covenant on Civil and Political Rights (the ICCPR)*, the *Second Optional Protocol to the ICCPR aiming at the Abolition of the Death Penalty* and the *Convention Against Torture and Other Cruel, Degrading Treatment or Punishment*, see [Appendix C](#).

s. 47E(d)

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s. 47E(d)

### 4.8. Liaising with the delegate

When the pre-screening interview is completed, the VDO must:

- email the traveller's details and a copy of the completed pre-screening interview to the Duty Delegate, Humanitarian Program Operations Branch for a screen in or screen out decision

s. 47E(d)

### Contact details for the Duty Delegate, Human Program Operations Branch

#### Duty officer

- Humanitarian Program Operations Branch, Refugee, Citizen and Multicultural Programs Division

#### Duty Mobile

- s. 22(1)(a)(ii)

#### Email

- s. 47E(d) cc'ing
  - s. 22(1)(a)(ii)
  - s. 22(1)(a)(ii)
- the email subject line should read 'Pre-screening interview – Airport name – TRAVELLER FAMILY NAME, First name'
- the email body should contain verified and claimed identifiers including:
  - name
  - date of birth
  - sex
  - country of birth
  - country of citizenship
  - passport details, where relevant
  - flight details
  - other relevant identity, vulnerability and background details.

Where the Duty Delegate's decision is not received within a reasonable period of time, or it is unlikely that a decision will be made within a reasonable period of time, it is appropriate to:

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- discuss the case with the supervisor and duty manager
- telephone the Duty Delegate
- transfer the traveller to an Immigration Detention Facility (IDF) pending the Duty Delegate's decision.

To transfer a traveller from the airport to an IDF, see *Procedural Instruction: Detention at the border (section 189 Migration Act)*.

### 4.9. Traveller screened in

#### Traveller located in immigration clearance

If the traveller is located in immigration clearance at the time of the screened in decision, the VDO is to:

- advise the traveller of the decision
- explain to the traveller they will be transferred to an IDF where they will be able to lodge a Protection visa application

s. 47E(d)

#### Traveller located at an Immigration detention Facility

If a traveller is located at an IDF at the time of the screened in decision the VDO should:

- advise the Status Resolution Officer of the decision
- transfer the case to the Compliance Status Resolution service on CCMD and create a referral to Case Management, if not previously completed.

### 4.10. Traveller screened out

#### Traveller located in immigration clearance

If the traveller is located in immigration clearance at the time of the screened out decision the VDO should:

- Advise the traveller of the decision
- Commence the removal process; see *Procedural Instruction: Events after refused immigration clearance* and *Procedural Instruction: Summary Removal*.

**Note:** Following a screened out decision, and without any legal bar to prevent them from doing so, a traveller may still insist on lodging a Protection visa (PV) application. If the traveller is legally barred from lodging a PV (or any other visa) application, the VDO is to advise the traveller they may attempt to do this but the application would be considered invalid. The VDO should also advise the attempted lodgement of this invalid visa application will not delay arrangements for their removal.

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### Traveller located at an IDF

If the traveller is located at an IDF at the time of the screened out decision, the Border Force Officer must:

- ensure the traveller is advised of the screened out decision
- commence the removal process; see *Procedural Instruction: Events after refused immigration clearance* and *Procedural Instruction: Summary Removal*.

## 5. Accountability and responsibilities

If ABF officers require clarification or assistance in regard to this instruction, they should contact Traveller Operational Policy by email s. 47E(d) or telephone: s. 22(1)(a)(ii) AEST.

The Superintendent, Traveller Operational Policy has responsibility for the preparation and dissemination of this Procedural Instruction in regards to operational policy and programme management of border clearance activities for air and sea travellers, under the Customs Act and Migration Act.

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

## 6. Statement of Expectation

### Directions

The APS Code of Conduct states that 'an APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction' (subsection 13(5) of the Public Service Act 1999).

Failure by an APS employee to comply with any direction contained in a PPCF document may be determined to be a breach of the APS Code of Conduct, which could result in sanctions up to and including termination of employment, as set out in subsection 15(1) of the Public Service Act 1999.

The Secretary's Professional Standards Direction, issued under subsection 55(1) of the Australian Border Force Act 2015, requires all IBP workers who are not APS employees (such as contractors or consultants) to comply with any lawful and reasonable direction given by someone in the Department with authority to issue that direction.

Failure by an IBP worker who is not an APS employee to comply with a direction contained in a PPCF document may be treated as a breach of the Professional Standards Direction, which may result in the termination of their engagement under section 57 of the Australian Border Force Act 2015. Non-compliance may also be addressed under the terms of the contract engaging the contractor or consultant.

### Policy, Guidance and Recommendations

For all other provisions of PPCF documents, the Secretary and the Commissioner expect all IBP workers to:

- consider whether a proposed departure from any provision set out in a PPCF document is reasonable and justified in the circumstances;
- consider the risks of departing from any provision set out in a PPCF document;
- be responsible and accountable for the consequences of departing from, or not adhering to the content of, all PPCF documents, including where such departure or non-adherence results in a breach of any legal or other obligations which lead to adverse outcomes for the Department;

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

### Exercise of Legislative Powers and Functions

IBP workers who make decisions or who exercise powers or functions under legislation have a duty to make these decisions or exercise these powers or functions in accordance with the requirements of the legislation and legal principle.

### What happens if this Policy Statement is not followed?

Failure to comply with a direction contained in this document may constitute a breach of the APS Code of Conduct, and may result in a sanction, up to and including termination of employment, being imposed under subsection 15(1) of the Public Service Act 1999.

For IBP workers who are not APS employees, failure to comply may constitute a breach of a direction under section 55 of the Australian Border Force Act 2015, and may result in the termination of their engagement under section 57 of that Act. Non-compliance may also be addressed under the terms of the contract engaging the IBP worker.

## 7. Related Framework documents

This instruction must be read with:

### Policy Statement

[TT-2983] Border Clearance

### Procedural Instructions

[BC-536] Arrival, immigration clearance and entry - Immigration clearance at airports and seaports

[BC-2461] Bona Fides

[BC-2438] Detention and Search (section 252 Migration Act)

[BC-687] Detention and Search (section 219 Customs Act)

[BC-2421] Duty of Care

[BC-2671] Events after Refused Immigration Clearance

[BC-2680] iA-thenticate e-passport reader

[BC-2676] Managing Minors in Immigration Clearance

[BC-2446] Detention at the border (section 189 Migration Act)

[BC-2460] Summary Removal

[BC-2482] Visa Cancellation at the border

[BC-2701] Immigration clearance outcomes for Electronic Travel Authority (ETA) and eVisitor holders with non-eligible passports

[BC-2473] Imposters and false/fraudulently obtained travel documents

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## 8. References and legislation

### Migration Act 1958

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

- Section 166 outlines the evidence that must be presented to a clearance officer or an authorised system upon entry to Australia.
- Section 167 outlines when and where evidence must be present to comply with section 166
- Section 168 outlines the circumstances where section 166 does not apply.
- Section 172 outlines a person's immigration clearance status, that is, whether the person has been immigration cleared, is in immigration clearance, has been refused immigration clearance or has bypassed immigration clearance.
- Section 173 outlines the circumstances where a visa ceases if the holder enters in a way not permitted.
- Section 174 outlines the circumstances where a visa ceases if the holder remains without immigration clearance.

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

- Section 116 – Power to cancel a visa.
- Section 189 – Detention of unlawful non-citizens
- Section 192 – Detention of visa holders whose visas liable to cancellation
- Section 193 - Application of law to certain non-citizens while they remain in immigration detention
- Section 198 – Removal from Australia of unlawful non-citizens
- Section 213 – Carriers may be liable for costs of removal and deportation
- Section 229 – Carriage of non-citizens to Australia without documentation
- Regulation 2.12 – Certain non-citizens whose applications refused in Australia (Act, s 48)

## 9. Consultation

### 9.1. Internal consultation

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

- Integrity and Professional Standards / Integrity and Professional Standards Branch
- Legal Division / Legal Advice and Operational Support
- FOI, Privacy and Records Management / Records Management Section
- Traveller Customs and Industry Policy / Traveller Policy Advice and Support Section
- Humanitarian Program Operations Branch

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### 9.2. External consultation

No external consultation

## 10. Document details

BCS Category/Function	Trade and Traveller Clearance Management
BCS Sub-Category/Sub-Function	Passenger and Crew Processing
Period of Effect	21 November 2021

### 10.1. Document change control

s. 22(1)(a)(ii)


s. 22(1)(a)(ii)


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# 11. Appendices

## 11.1. Appendix A – Border Entry interview template

Trim Reference: s. 22(1)(a)(ii)

**Australian  
BORDER FORCE**

### Record of interview (recorded)

#### Pre-screening

Interview start time..... am/pm

#### Part A: Interview pre-amble

This interview is being conducted at \_\_\_\_\_, on \_\_\_\_/\_\_\_\_/20  
 between myself, \_\_\_\_\_, an officer of the  
 Department of Immigration and Border Protection, and

\_\_\_\_\_

This interview is being conducted with the assistance of (Interpreter ID) \_\_\_\_\_  
 who is an interpreter in the \_\_\_\_\_ language.

I need information about you and your arrival in Australia. This interview will be recorded.

This interview is your opportunity to provide any reasons why you should not be removed from Australia. If you do not answer my questions a decision may be made on the basis of the information we have.

You are expected to give true and correct answers to the questions I ask.


You should understand that if the information you give at any future interview is different from what you tell me now, this could raise doubts about the reliability of what you have said.

The Department is careful to protect the privacy of all information given by you during this interview. This information will not be made available to authorities in the country of your habitual residence. The exception to this is if a determination is made that you have no lawful basis to remain in Australia. In this situation, personal information may be provided to authorities of a foreign government where disclosure is necessary for your removal from Australia.

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## 11.2. Appendix B – Notice of intention to consider cancellation

 <b>Australian Government</b> <b>Department of Home Affairs</b>	<b>Notice of intention to consider cancellation</b> under section 116 of the <i>Migration Act 1958</i> (For use in immigration clearance)	Form <b>1111</b>
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All parts to be completed by an officer of the Department.  
 Please open this form using Adobe Acrobat Reader.  
 Either type (in English) in the fields provided or print this form  
 and complete it (in English) using a pen and BLOCK LETTERS.  
 Tick where applicable ☒

**Office use only**  
 ICSE Client ID

**Part A – Notice of intention to consider cancelling a visa**

**1** Full name  
 Family name   
 Given names

**2** Sex      Male ☐      Female ☐      Indeterminate / ☐  
    Intersex / Unspecified

**3** Date of birth       /  /

**4** Nationality

**5** Country of birth

**6** Possible grounds for cancellation  
 (include disclosable adverse information given by third parties)  
 It has come to my attention, as a delegate of the Minister for Home  
 Affairs and Minister for Immigration and Border Protection, that there  
 appear to be a ground for cancellation of your  
 subclass  visa granted on  /  /   
 under section 116 of the *Migration Act 1958*, relying on a ground at:  
☐ s116(1)(a)  
☐ s116(1)(aa)  
☐ s116(1)(b) because it appears that you have not complied with  
 condition   
 (Refer to reverse of pages 4, 5, 6 and front and reverse of page 7  
 for details of condition)  
☐ s116(1)(c)  
☐ s116(1)(d) because a ground appears to exist at   
 (Enter relevant ground here – s101, s102, s103, s104 or s105)  
☐ s116(1)(e) (i) ☐ (ii) ☐  
☐ s116(1)(f)  
☐ s116(1)(fa) (i) ☐ (ii) ☐  
☐ s116(1)(g) because a ground appears to exist at  
 Reg 2.43(1)   
☐ other

Please refer to reverse of pages 1, 2 and 3 for reference to the relevant  
 legislation.  
 Where the Minister can cancel a visa under subsection 116(1) of the  
 Act, the Minister must do so if there exist prescribed circumstances in  
 which the visa must be cancelled (see subsection 116(3) of the Act and  
 the 'prescribed circumstances' in subregulation 2.43(2) of the *Migration  
 Regulations 1994*) – refer to reverse of page 3.  
 Include the specifics (particulars) of the ground and the information  
 because of which the ground appears to exist.

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White – DEPARTMENT COPY      Green – CLIENT COPY

1111 [Design date 07/18] - Page 1

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Australian Government  
Department of Home Affairs

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# Australia's protection obligations

Australia will engage in its protection obligations if a person meets the definition of refugee in section 5H of the *Migration Act 1958* (the Act) or the complementary protection criteria outlined under section 36(2)(aa) of the Act.

Section 5H states that a person in Australia is a refugee if the person:

- (a) in a case where the person has a nationality – is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality – is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution is further defined under section 5J of the Act.

A person must meet the refugee assessment criteria to be granted a protection visa as a refugee.

In situations where a person falls outside the definition of a refugee, they may still be able to engage Australia's protection obligations under s36(2)(aa), which has codified Australia protection obligations under the following international instruments:

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT),
- The International Covenant on Civil and Political Rights (the ICCPR), or
- The 2<sup>nd</sup> Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

The complementary protection criteria states that a non-citizen is owed protection by Australia if there are substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to a person's home country, there is a real risk that the person will suffer significant harm. Significant harm is exhaustively defined under s36(2A) of the Act. A non-citizen will suffer significant harm if they will:

- be arbitrarily deprived of his or her life; or
- have the death penalty carried out on him or her; or
- be subjected to torture; or

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- be subjected to cruel or inhuman treatment or punishment; or
- be subjected to degrading treatment or punishment.

The introduction of the complementary protection criteria enables claims that may engage Australia's protection obligations, and not just those relating to refugee status. The Act reflects Australia's international obligations which means if a person claims they will suffer 'significant' harm if returned to their home country, then that person will have raised claims which *prima facie* may engage Australia's protection obligations, regardless of the reason for which that person will suffer significant harm on return to their home country.

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