



# Duty of care at the border

## Procedural Instruction

This procedural instruction provides guidance to the Department of Home Affairs staff and ABF officers in understanding Work, Health and Safety (WHS) obligations and duty of care that may apply in the context of airport operations, specifically when undertaking a client interview.

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# 1. Introduction

## 1.1. Background

All persons should perform their duties in accordance with Commonwealth Work Health and Safety (WHS) laws by:

- taking reasonable care for their health and safety
- ensuring their acts or omissions do not adversely affect the health and safety of other persons
- ensuring they are aware of WHS reporting requirements.

## 2. Scope

### 2.1. In Scope

This procedural instruction details the obligations under the *WHS Act 2011* (WHS Act) and pursuant of the Act for Australians Border Force (ABF) officers, and other deemed workers, when dealing with travellers at the Australian border.

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

### 2.2. Out of Scope

This procedural instruction does not apply to clearance of goods/travellers under the *Customs Act 1901* (Customs Act).

### 3. Glossary

Table 1 – Common terms and definitions used in this instruction

Term	Acronym (if applicable)	Definition
Alert		Allows the identification of a person of interest on arrival or departure from Australia.
Australian Border Force	ABF	The Australian Border Force is an agency within the Home Affairs portfolio responsible for offshore and onshore border control enforcement, investigations, compliance and detention operations in Australia.
Australian Border Force officer	ABF officer	An ABF officer is an Immigration and Border Protection worker (see section 4 <i>Australian Border Force Act 2015</i> ) authorised to perform border clearance duties.
Closed Circuit Television	CCTV	Is a system of video monitoring at Australia’s international airports and seaports.
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.
Immigration detention facility	IDF	Is a place of residence for a person who has been detained while their immigration status is being resolved.
Visa Determination officer	VDO	Is an ABF officer who has a delegated authority to undertake primary Customs, Immigration and Biosecurity clearance.
Work Health and Safety	WHS	Is the term used to describe the function of ensuring people are safe whilst at a workplace or undertaking work. This includes not just physical health but also psychological (mental) health.  Commonwealth departments and agencies have specific obligations under the WHS Act 2011, as do all people that are classified as ‘workers’ as defined in the WHS Act, of the individual departments and agencies.
Worker		Section 7 of the WHS Act defines a ‘worker’ as any person who carries out work in any capacity for the person conducting a business or undertaking (PCBU). For the purposes of the WHS Act, the Department of Home Affairs is a (PCBU).

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Term	Acronym (if applicable)	Definition
		Generally, all employees of the PCBU are workers; but this definition also includes contractors, sub-contractors and volunteers. Workers play an important role in the prevention of work-related incidents, injuries and illnesses. A worker includes a manager or supervisor at the workplace.

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## 4. Procedural Instruction

### 4.1. Work Health and Safety Act and duty of care obligations

For the purposes of the WHS Act the Department of Home Affairs is a person conducting a business or undertaking (PCBU), The Department, as a PCBU, has a primary duty of care under section 19 of the WHS Act to protect the health and safety of its workers and other persons, such as visitors, clients and detainees.

Section 7 of the WHS Act defines a 'worker' as any person who carries out work in any capacity for the Department. Generally, all employees of the Department are workers; but this definition also includes contractors, sub-contractors and volunteers. Workers play an important role in the prevention of work-related incidents, injuries and illnesses. A worker includes a manager or supervisor at the workplace.

Section 28 of the WHS Act outlines that while at work, workers must:

- take reasonable care for his or her own health and safety
- take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons
- comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with the WHS Act
- co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

ABF officers must ensure in performing duties they take reasonable steps to meet obligations under the WHS Act by:

- taking reasonable care for their health and safety
- taking reasonable care so that his or her acts or omissions do not adversely affect the health and safety of other persons in the workplace co-operate and comply with any national policy, procedure, direction or other reasonable instruction relating to health or safety at the workplace.

Reasonable care will be different in each circumstance. In assessing the care required, the ABF officer should turn their mind to the individual traveller's vulnerabilities and the control they are able to exercise over their work activities. For example, an officer may be required to undertake different actions when conducting an interview with an elderly, non-English speaking traveller who may suffer from health issues compared with a young, English-speaking healthy traveller.

### 4.2. Engaging with a traveller at the primary line

At the primary line, s. 47E(d) the Visa Determination officer (VDO) is to engage the traveller in the following manner:


- introduce themselves by name to the traveller, state they are from the ABF and advise the traveller of the reason for the inquiry or referral
- consider if the traveller is a minor, if so refer to Procedural Instruction: Managing minors in immigration clearance
- maintain confidentiality by communicating discretely and if necessary relocate to a more private area

- maintain notes, including information gathered and traveller interactions.

### 4.3. Process for interviewing a traveller

If a traveller is to be formally interviewed, the VDO is to:

s. 47E(d)




### 4.4. Work Health and Safety pursuant of the Act during an interview

During the interview process, an ABF officer must turn their mind to their obligations under the *Work Health and Safety Act 2011* (WHS Act) and duty of care towards travellers. The ABF officer should consider the individual travellers position and assess what, if any vulnerabilities the traveller may have. In doing so, the ABF officer should consider:

- if the traveller appears seriously ill, follow local procedures and organise an ambulance immediately

s. 47E(d)



- provide water, meals and non-alcoholic beverages as required
- provide access to toilet facilities as required – if there is a suspicion of internal substance concealment refer to *Procedural Instruction: Controlled toilets*
- update the Client Monitoring sheet (Appendix A).

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ABF officers should be conscious that this is not an exhaustive list. The ABF officer should consider the situation, and raise concerns with their supervisor if there appears to be a risk.

#### **4.5. Obligations continue until the traveller is released or transferred**

When a traveller is refused immigration clearance and is awaiting removal or transfer to an immigration detention facility (IDF), the ABF officer should continue to take reasonable steps to ensure the health and safety of the traveller.

s. 47E(d)

ABF officers should consider what, if any, other reasonable steps may be taken to ensure the health and safety of the traveller.

#### **4.6. Other matters for consideration**

An ABF officer should:

- ensure they have a clear understanding of their obligations under the WHS Act, WHS regulations and of what their responsibilities are under all relevant directions, policies, procedural instructions and other published departmental information e.g. mandatory training
- comply with directions, policies, procedural instructions and other published departmental information
- co-operate with the implementation of any new safety management systems
- co-operate with the implementation of risk management processes
- report identified maintenance/infrastructure issues
- ensuring efficient and timely reporting of WHS incidents and other issues that have the potential to affect health and safety
- not engage in conduct that exposes any individual to serious injury, illness or death.

#### **4.7. Work Health and Safety Incident report**

A Work Health and Safety (WHS) incident report form must be completed in EasySAP immediately following all work-related safety incidents including:

- incidents where a person(s) is injured or ill;
- 'near miss' incidents, where an incident occurred and there was a possibility of a person sustaining an injury or illness; and
- the death of a person.

An incident report must be completed irrespective of whether the incident involves ABF employees, contractors, subcontractors, volunteers, or any other person at the workplace such as a traveller or visitor. For more information, refer to *Procedural Instruction: WHS incident management and reporting*.

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## 5. Accountability and responsibilities

If ABF officers require clarification or assistance in regards to this procedure, they should contact the Traveller Operational Policy Section by email s. 47E(d) or telephone: AEST.

The Superintendent, Traveller Operational Policy Section 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 Section has responsibility for preparation and dissemination of the Policy Statement in relation to this Procedural Instruction.

## 6. Statement of Expectation

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

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

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

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

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

## 7. Related Framework documents

This instruction must be read with:

### 7.1. Policy Statement

[HR-1230] Work Health and Safety Governance Arrangements.

### 7.2. Procedural Instructions

[BC-2676] Managing minors in immigration clearance.

[BC-683] Controlled toilets.

## 8. References and legislation

### Work Health and Safety Act 2011

This Act sets out the primary requirements relating to the health, safety and welfare of persons at work and follows:

- section 28 outlines the duty of care.

### Work Health and Safety Regulations 2011

The WHS Regulations complement and support the general duties under the WHS Act by setting out mandatory obligations on specific matters.

## 9. Consultation

### 9.1. Internal consultation

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

- Traveller Branch, Traveller Policy Section
- FOI Privacy and Records Management Branch, Records Management Section
- Integrity Security and Assurance Division, Integrity and Professional Standards Branch
- People Management Branch, Workforce Health and Safety Section
- Civil Commercial and Employment Law Branch, Civil Litigation and Compensation Section.

### 9.2. External consultation

No external consultation.

## 10. Document details

<b>BCS Category/Function</b>	Trade and Traveller Clearance Management
<b>BCS Sub-Category/Sub-Function</b>	Passenger and Crew Processing
<b>Period of Effect</b>	Three years from date of approval

### 10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	12 Apr 17	Traveller Operational Policy	Converted of SOP into PI
1.1	01 Jun 17	PPCF Control Framework	Cleared PPCF Quality Assurance
1.2	13 Feb 18	Traveller Operational Policy	Updated to Home Affairs template
1.3	10 May 18	Work Health and Safety	Consulted Work Health and Safety
1.4	23 July 18	Civil Litigation	Cleared Legal review
1.5	08 Aug 18	Traveller Operational Policy	Reviewed for SES approval

### 10.2. Procedural Instruction approval

<b>Document owner</b>	s. 22(1)(a)(ii) A/g Commander ABF Governance Branch
<b>Approval date</b>	13 August 2018

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# 11. Appendices

## 11.1. Appendix A

### Client Monitoring Sheet

Available in TRIM s. 22(1)(a)(ii)



## Client monitoring sheet

*This form should incorporate detention monitoring, if applicable*

### Client details

Client name:	Date:
ICSE Client ID:	
Case officer:	Time referred:

### Baggage search (if applicable)

Baggage search: YES / NO	Time of baggage search:
Officer's name:	Badge #:
Returned from baggage search	Time:

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