



Australian  
**BORDER FORCE**

# Air standard operating procedure

## 3.15 Managing claimants for protection

This standard operating procedure (SOP) applies when a client seeks to engage Australia's protection obligations while in immigration clearance.

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### Key procedural points

Protection claimants and claims should be dealt with sensitively.

A client seeking protection may:

- claim protection at any time while in immigration clearance
- state or otherwise indicate that they wish to seek protection/refugee status/asylum
- state or otherwise indicate that 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 SOP 5.2 *Managing minors in immigration clearance*
- arrive with family and / or friends who are also claiming protection.

Border Force Officers at the primary line will refer any clients indicating their wish to seek protection to a Leading Border Force Officer in the secondary immigration area.

Information gathered throughout the process will assist:

- TPVA 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 passenger or agents of interest.

Protection claims made during the pre-screening interview should not be copied into the M304 report or recorded in Integrated Client Services Environment (ICSE).

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## Duty of care – managing the client

The following steps must be taken and recorded to ensure that the Department of Immigration and Border Protection Portfolio's (the Portfolio) duty of care obligations are satisfied. The Leading Border Force Officers must:

- use an interpreter to communicate with the client, where they do not have sufficient understanding of English
- organise an ambulance immediately, if the client appears seriously ill, according to local arrangements
- call the **Nurse Triage and Advice hotline** (s. 47E(d) ), if the client requests or appears to need medical attention
- seek advice from Nurse Triage and Advice prior to providing the client access to any medication in the client's possession
- seek medical and / or Australian Federal Police (AFP) assistance as appropriate if the client appears emotionally distressed or under the influence of drugs or alcohol
  - staff must ensure they are not at risk and remove themselves from potential dangerous situations
  - staff must continue to monitor the client remotely via CCTV or viewing window if the client continues to be a potential threat to self or others
- see SOP 5.2 *Managing Minors in Immigration Clearance* for additional duty of care obligations, if the client is a minor
- provide water, meals and non-alcoholic beverages as appropriate
- provide access to toilet facilities as required
- maintain a safe and healthy environment by following the Work, Health and Safety (WHS) laws, see SOP 5.1 *Duty of Care*.

Further information is available at: [Work Health and Safety](#).

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## Procedure

### 1. Client claims protection

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

If a client presents:

- without a travel document, request the Border Force Officer at the primary line to create a movement record based on information available i.e. name, date of birth, gender
  - the movement will automatically generate a system referral to a Leading Border Force Officer
- with a travel document, request the Border Force Officer process the client using the details in the travel document presented and create a manual referral to a Leading Border Force Officer
- with a travel document and a visa, request the Border Force Officer process using the details in the travel document presented and create a manual referral to a Leading Border Force Officer

The Leading Border Force Officer must refer potential protection claims to the following staff:

- Senior Border Force Officer, Border Force Supervisor and Border Force Inspector
- the s. 47E(d) @border.gov.au mailbox, copying in the 'delegate' - Director, TPVA Branch.

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## 2. Identity and immigration status

Establishing the correct identity and immigration status of a potential protection claimant is important.

The Leading Border Force Officer should utilise all available resources to gather information to assist with identifying a client or verifying a claimed identity.

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#### Client presents with a travel document

Where the client presents with a travel document, the Leading Border Force Officer should confirm authenticity by:

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### 3. Person and baggage search

Where the Leading Border Force Officer has reasonable suspicions that grounds appear to exist for consideration of visa cancellation the Leading Border Force Officer may search or request another ABF officer to search the client's clothing and any property under the immediate control of the person. See SOP 3.17 *Conducting searches of persons and baggage*.

Where another ABF officer is requested to carry out a person and baggage search, advise the officer that the purpose of the search is to obtain information that would counter or support visa cancellation, (including documentation or information relating to identity or travel route of the client) and to identify items which could be used to potentially self-harm or harm others.

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### 4. Flight arrival details

If the client presents without a travel document or with a potentially fraudulent or altered travel document, the Leading Border Force Officer should try to establish the client's arrival flight.

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

Where the Leading Border Force Officer continues to hold reasonable suspicion that grounds appear to exist for consideration of visa cancellation, the Leading Border Force Officer may investigate the client's method of travel and travel route to Australia by:

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## 6. First interview

The first interview is to determine if the client is to be immigration cleared. The Leading Border Force Officer should determine whether:

- the client satisfies s. 166 of *The Migration Act 1958* (the Act)
- the purpose for the visa grant aligns with the client's intention for entry to Australia, see SOP 5.4 *Bona Fides*.

### Interview preparation

The Leading Border Force Officer should prepare to conduct the interview by referring to SOPs 5.4 *Bona fides*.

**Note:** Ensure the client is asked about their health. The record of interview template explains when the *Health screening questionnaire* at ADD2012/1055989 should be completed.

### Preparing the client for interview

The Leading Border Force Officer should prepare the client for interview by referring to SOP 5.4 *Bona fides*.

### Interview

The Leading Border Force Officer must:

- clearly explain the interview process to the client (i.e. the purpose of the first and second interview)
- conduct the interview by referring to SOP 5.4 *Bona fides*.

On completion of the interview, the Leading Border Force Officer should discuss the case with the Senior Border Force Officer/Border Force Supervisor and decide if it would be appropriate to:

- refuse the client immigration clearance on the basis of non-compliance with s. 166 of the Act where a client presents without a travel document or visa
- issue a *Notice of intention to consider cancellation* (NOICC), where the client holds a visa and evidence indicates there are grounds to consider visa cancellation, see SOP 5.7 *Visa Cancellation*
- continue with immigration clearance, where the client meets s. 166 of the Act and there is insufficient or no evidence to support consideration of visa cancellation.

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### Immigration clearance decision

If the client is refused immigration clearance, the Leading Border Force Officer must:

- detain the client, see SOP 6.2 *Section 189 Detention* and SOP 6.1 *Events after refused immigration clearance*.
- provide the client a break prior to commencing the pre-screening interview see section 7.

**Note:** If the first interview results in visa cancellation, it is recommended that the second interview is conducted by another officer, where possible.

## 7. Second interview

### Purpose of the pre-screening interview

The pre-screening interview:

- must be undertaken where the client makes claims for protection in immigration clearance
- establishes the reason the client has travelled to Australia
- records any claims that *prima facie* may assist the delegate to decide whether the client engages 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 delegate, Director TPVA Branch.

Based on the claims made at the pre-screening interview, the delegate will decide whether the client's claims may bring them within the scope of Australia's protection obligations, as outlined in *Australia's Protection Obligations* at **Attachment B**.

This decision will result in the client being either 'screened in', see section 9 or 'screened out', see section 10.

The Leading Border Force Officer should facilitate any request by the client to have access to a consular official or the Office of the United Nations High Commissioner for Refugee (UNHCR).

### Interview preparation

The Leading Border Force Officer should prepare to conduct the pre-screening interview by:

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### Conducting the interview

To prepare the client for interview, the Leading Border Force Officer must advise the client 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 a Leading Border Force Officer from the interview room (i.e. intercom).

The Leading Border Force Officer should follow the *Border Entry Interview* template ADD2013/764465 to note the client's claims that may relate to the *United Nations Convention Relating to the Status of Refugees*, see **Attachment B**.

## 8. Liaising with the delegate (duty officer)

When the pre-screening interview is completed, the Leading Border Force Officer must:

- email the client's details and a copy of the completed pre-screening interview to the delegate (duty officer) for a screen in or screen out decision

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Contact details for the delegate (duty officer):

- Duty officer: Director, TPVA Branch, Refugee and Humanitarian Visa Management Division
- Duty Mobile: s. 47E(d)
- Email: s. 22(1)(a)(ii)

The email subject line should read 'Pre-screening interview – Airport name – CLIENT 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 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 may be appropriate to:

- discuss the case with the supervisor, duty manager
- telephone the delegate
- transfer the client to an Immigration Detention Facility (IDF) pending the delegate's decision

To transfer a client from the airport to an IDF, see Compliance, Case Management Detention and Settlement (CCMDS) portal *Step by Step Guide* at ADD2009/921852 and SOP 6.2 *Section 189 Detention*.

## 9. Client screened in

### Client located in immigration clearance

If a client is located in immigration clearance at the time of the screened in decision, the Leading Border Force Officer should:

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

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### Client located at a detention Facility

If a client is located at an IDF at the time of the screened in decision, the Leading Border Force Officer should:

- advise the Portfolio Case Manager of the decision
- transfer the case to CSR on the system and create a referral to Case Management, if not previously completed, see *CCMDS Step by Step Guide* at ADD2009/921852.

## 10. Client screened out

### Client located in immigration clearance

If a client is located in immigration clearance at the time of the screened out decision the Leading Border Force Officer should:

- advise the client of the decision
- commence the removal process; see SOP 6.1 *Events after refused immigration clearance* and SOP 6.3 *Summary Removal*.

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

### Client located at a detention facility

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

- ensure the client is advised of the screened out decision
- commence the removal process, see SOP 6.1 *Events after refused immigration clearance* and SOP 6.3 *Summary Removal*.



## Communication

The Leading Border Force Officer should:

- refer all improperly documented arrivals to the s. 47E(d)
- email all screened in decisions to relevant contacts, for example, Detention Review Manager (DRM) and Case Management

## 'Sit Rep' reporting

A Notifiable Event (NE) is an activity, incident or occurrence that may:

- have a minor, major or critical impact upon personnel (including third party providers and clients) and Portfolio business, operations, facilities or systems,
- require an operational response and/or Portfolio resources and management effort to resolve, and/or
- draw media attention and impact upon the reputation of the Portfolio.

NEs that affect the airport and seaport networks are to be reported to the relevant Regional Command Centre (RCC).

NE categories include:

- Category 1 (Minor) – report in accordance with current business requirements (before s. 47E(d))
- Category 2 (Major) – report within s. 47E(d)
- Category 3 (Critical) – report within s. 47E(d)
- Hot Issues Brief (Critical) – report within s. 47E(d).

The NE must be actioned according to the relevant category, see *Borders Immigration Notifiable Event Categories* spreadsheet at ADD2015/255118.

The Border Force Supervisor will email the accurate and completed template to the relevant RCC for distribution, see *SITREP Template* at ADD2015/255109.

Please continue to monitor the situation and report as further details are received.

## Record keeping

The Leading Border Force Officer should:

- create a client TRIM file, if one does not already exist
- save the electronic copy of the pre-screening digital voice recording to the client's TRIM file
- save all electronic downloads on the client's TRIM file
- update M304 report and place a copy on the client's TRM file.

Leading Border Force Officers should not include in the M304 report or ICSE, the claims made by the client in the pre-screening interview, but are to instead include:

- a reference to the event, that the client sought to engage Australia's protection obligation
- the file number containing the hard copy of the pre-screening interview
- the TRIM digital recording reference.

The Leading Border Force Officer should also:

- update CCMDs portal entries in relation to detention as appropriate. See *CCMDs Step by Step Guide* at ADD2009/921852

- create/update MAL record i.e. in relation to exclusion period for visa cancellation and / or removal from Australia, as appropriate
- finalise the referral using the appropriate M304 draft template.

The Entry Screening Operations unit (located in the TPVA Branch) will:

- s. 47E(d)
- Electronically save in TRIM the delegate's screening decision, as communicated to the Leading Border Force Officer
- Maintain a consolidated record of airport screenings undertaken by the delegate.

## Feedback

If the content of this SOP requires updating or amending please contact:

s. 47E(d) @border.gov.au

## Legislative/Policy References

Topic	Reference
Immigration Clearance	<i>The Migration Act 1958 – Section 172 immigration clearance status</i>
Requirements for Immigration clearance	<i>The Migration Act 1958 – Section 166 evidence of identity for immigration clearance</i>
Searching persons and property	<i>The Migration Act 1958 – Section 252 searches of persons</i>
General Detention Procedures	<i>PAM3: Act – Compliance – NCOI – General detention procedures</i>
Protection visa processing	<i>PAM3: REFUGEE AND HUMANITARIAN – The Protection Visa Procedures Advice Manual</i>

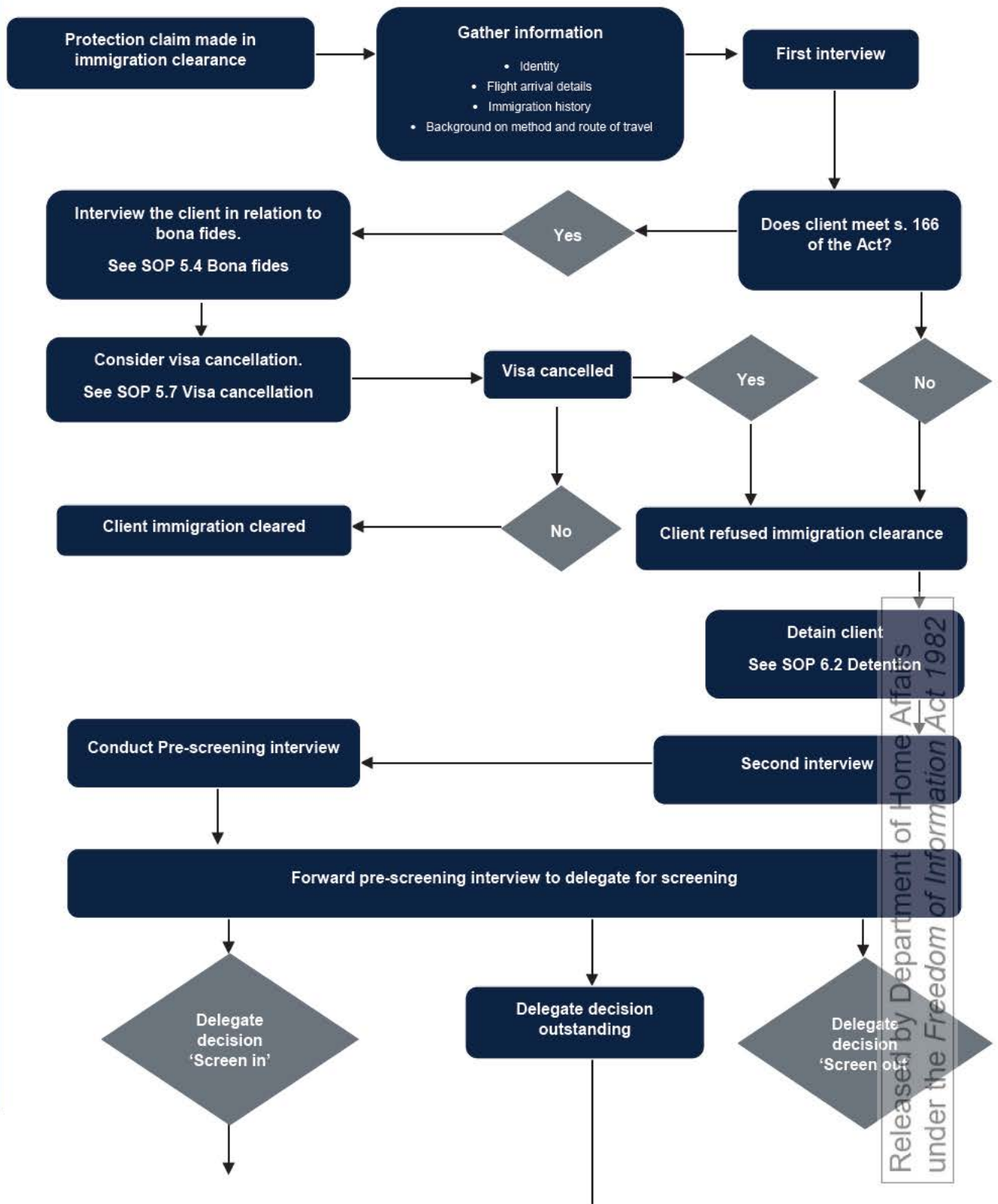
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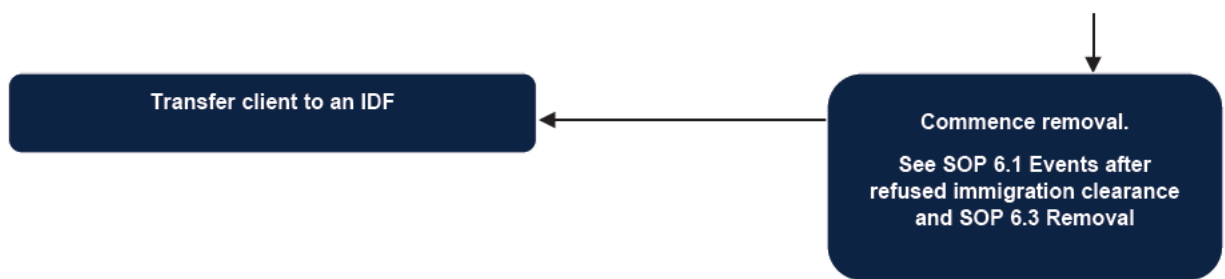
Version No.	Version Date	Approval Officer	Approval Reference
1.0	13 March 2013	s. 22(1)(a)(ii) Director, Airport Policy Section	TRIM ADD2013/427594
1.0	13 March 2013	s. 22(1)(a)(ii) Director, Protection policy Section	TRIM ADD2013/428358
1.0	25 June 2013	s. 22(1)(a)(ii) Director, Border Operation Support Section	TRIM ADD2013/18994
1.1	24 April 2014	s. 22(1)(a)(ii) Director, GM IMA Protection Support	Update to SOP with new Delegate details
1.2	07 July 2016	s. 22(1)(a)(ii) Superintendent, National Border Programme	Update to SOP with new Delegate details
1.3	16 February 2017	s. 22(1)(a) Superintendent, National Border Programme	Updated delegate contact details.

## Attachments

No.	Attachment Description	Reference/Source
A	Process flow chart – Managing Claimants for Protection	Border Process Team
B	Australia's Protection obligations	BPT excerpts from PAM3 Refugee and Humanitarian

### Attachment A: Process flow chart – Managing claimants for protection





## Attachment B: Australia's protection obligations

A person may be found to have protection obligations by Australia either under the 1951 *United Nations Convention relating to the Status of Refugees*, and its 1967 *Protocol* (Refugees Convention) (Article 33(1)) or the complementary protection criteria outlined in section 36(2)(aa) of the *Migration Act 1958*.

The Refugees Convention states that a person is owed protection by Australia if that person is outside their country and is unable or unwilling to go back because they have a well-founded fear that they will be persecuted because of their race, religion, nationality, political opinion or membership of a particular social group.

The complementary protection criteria states that a person 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.

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

The effect of the introduction of the complementary protection criteria means that if a person claims they will suffer a type of 'significant' harm if returned to their home country, then that person will have raised claims which prima facie may engage Australia's protection obligations. The protection claims will have been raised regardless of the reason for which that person will suffer significant harm on return to their home country.