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Operational Directive

To: Ports Operations Command – All Regional Commands

CC: Group Manager Immigration Detention
 Assistant Commissioner Ports Operations Command
 Assistant Commissioner Strategic Border Command
 Assistant Commissioner Enforcement Command
 Commander Australian Border Operations Centre
 Superintendent/s Australian Border Operations Centre

Date: 21 February 2020

Clearance at the border of Non-citizens claiming to be an Aboriginal Australian or Torres Strait Islander

Timing

Immediate effect

Application

When undertaking the immigration clearance of a non-citizen at the border who asserts a right to enter Australia on the basis of their claim to be an Aboriginal Australian or Torres Strait Islander.

This directive has been developed following the recent High Court ruling in *Love v Commonwealth*; *Thoms v Commonwealth* [2020] HCA 3.

Directive

1. All arriving persons must comply with immigration clearance requirements under the *Migration Act 1958* (Migration Act). The Department of Home Affairs (Home Affairs) and the Australian Border Force (ABF) will not allow non-citizens without a valid visa to enter Australia only on the basis of a claim at the border that they are Aboriginal Australian or Torres Strait Islander.
2. A non-citizen outside of Australia who claims to be an Aboriginal Australian or Torres Strait Islander must submit evidence in support of their claim to the Department prior to any attempt to travel to Australia. The non-citizen must not attempt to travel to Australia without a valid visa unless or until their claim has been assessed.

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3. A non-citizen who arrives at the border and satisfies all applicable requirements in s 166 of the Migration Act must be immigration cleared.

4. s47E(d)

5.

6. This directive does not apply to Australian citizens. If a clearance officer knows or reasonably suspects that the person is an Australian citizen (regardless of whether they have claimed to be an Aboriginal Australian or Torres Strait Islander), the person is taken to have satisfied the requirements in s 166. Further information can be found in section 4.18 of Procedural Instruction: *BC-536 Arrival, Immigration clearance and entry Immigration clearance at airports and seaports*.

Action required

7. All officers are to adhere to this Operational Directive until otherwise advised.
8. If a non-citizen at the border satisfies the requirements for immigration clearance, in that they hold a valid visa and present evidence of their identity, Border Clearance Officers (BCO) should proceed with the usual customs and quarantine clearance processes. Any claims of being an Aboriginal Australian or Torres Strait Islander are not relevant to the clearance process.

9. s47E(d)

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reporting

Cases of refused immigration clearance involving a non-citizen who claims to be an Aboriginal Australian or Torres Strait Islander are to be considered s47E(d) and s47E(d). Report is to be completed by officers.

Record keeping

All staff and officers are responsible for managing and maintaining business information in accordance with the Department's Record Management Policy.

Contact officer

Assistance in interpreting and applying the directive can be obtained from:

s47E(d)

Mailbox: s47E(d)

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Approved for distribution on 21/02/ 2020 by:

§22(1)(a)(ii)



Kylie Rendina

Assistant Commissioner

Border Patrol and Coordination Command

and on behalf of TC POC.

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