



Australian Government
Department of Home Affairs

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Penal Checking Handbook

Procedural Instruction

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1. Purpose

Section 501 of the *Migration Act 1958* (the Migration Act) provides the Minister with a power to refuse or cancel a visa if the visa applicant does not satisfy the Minister that they pass the character test. The character test is set out in s501(6) of the Migration Act.

Penal checks are part (but not all) of the procedure by which a person can be found to meet or fail the character requirements for entry to Australia under s501 of the Migration Act. Generally, a penal check will be conducted where the Schedule 2 requirements for a particular visa subclass require the applicant to satisfy Public Interest Criterion (PIC) 4001. While the procedures outlined here relate to the character requirement, they are a matter of policy only and do not have the force of law. When exercising powers or making decisions under legislation, decision-makers should give policy documents due weight, but should not apply policy inflexibly and should consider the merits of each individual case.

Importantly, Regulation 2.03AA of the *Migration Regulations 1994* (the Regulations) provides that, if a person is required to satisfy PIC 4001 or 4002 for the grant of a visa, the person may be asked to provide a statement from an appropriate authority in a country where the person resides, or has resided, that provides evidence about whether or not the person has a criminal history. If asked to provide such a statement, this becomes a criterion for the grant of the visa. The Minister or Minister's delegate may waive this requirement if the Minister is satisfied that it is not reasonable for the applicant to provide the statement.

The Character and Cancellation Program Management (CCPM) section manages a helpdesk for departmental staff on all character and general cancellation enquiries. Please send all related enquiries to CCPM s. 47E(d) @homeaffairs.gov.au).

2. Scope

The information in this instruction is only for Departmental staff for the purpose of the penal checking aspect of the character requirements of a visa application.

For information on the character requirement or guidance on interpreting the character test, refer to Procedural Instruction: s501 - The character test, visa refusal and visa cancellation – VM-1001, and 'Ministerial s499 direction' number 79.

s. 47E(d)

Citizenship applicants may also need to provide penal checks; refer to the citizenship application form (form 1300t) for information about penal checking requirements or contact the Citizenship Helpdesk s. 47E(d) @homeaffairs.gov.au).

3. Procedural Instruction

3.1 Quick Reference

3.1(a) - Information for visa applicants - how to obtain police clearance certificates

Information for applicants is available on the Department's website page 'Meeting our Requirements'.

Information on the penal checking procedures for each country is contained on the respective country page in the 'Our Offices' section of the Department's website; select the relevant country under the heading 'How do I obtain a police clearance certificate?'.

3.1 (b) - Updating Country Information

s. 47E(d)

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OFFICIAL: Sensitive**3.1(c) – Supporting Material**

All supporting material is available through the PPCF register:

VM-6539 - Attachment A – s. 47E(d)

VM-6553 – Attachment B: s. 47E(d)

VM-6554 – Attachment C: Singapore Certificate of Clearance

VM-6555 – Attachment D: Character Statutory Declaration

VM-6556 – Attachment E: s. 47E(d)

VM-6557 – Attachment F: Request Letter for Penal Clearance Certificates

3.2 Penal Checking**3.2 (a) - Who needs a penal check?**

The Department's policy is that penal checking must be conducted for any visa applicant:

- who is 17 years of age or older (or has turned 17 years of age whilst processing is undertaken) and
- whose stay in Australia will exceed 12 months and for whom PIC 4001 is a criterion for visa grant (unless the visa class they are applying for is exempt - see section 4.2) and
- who has spent more than 12 months cumulatively in any country in the last 10 years (calculated immediately before the time the visa application is lodged) since turning 16.

Examples:

- If an applicant is 16 years and 10 months old, a penal clearance certificate will not be required regardless of time spent overseas.
- Applicant is 17 years at time of lodgement of the visa application. He has lived in Mexico from birth until he was 16 ½, then moved to the US where he has lived for the past 14 months. A penal clearance certificate is required from the US, but not from Mexico.

The Department's policy is that it will not request a penal clearance certificate (regardless of whether the person is required to satisfy PIC 4001) if:

- The person's stay in Australia is for less than 12 months, and
- There are no character concerns (including but not limited to CMAL alert information).

The Department does not, as a matter of policy, exclude anyone from the requirement to undertake a penal clearance certificate. However, exceptions may be given for elderly, frail or incapacitated individuals at section 4.2).

The Department does not, as a general rule, require that applicants who are not subject to PIC 4001 supply a penal certificate. However, in cases where PIC 4001 is not applicable, all applicants are still required to be of good character and may have their visa refused under section 501 of the Migration Act if they are found not to pass the character test.

Where there is any doubt about whether an applicant meets the character requirements, penal clearance certificates should be requested. In these cases, certificates can be requested beyond the 10 year period noted above. That is, certificates can be requested from countries that an applicant spent over 12 months in more than 10 years ago.

Refer to the: Penal Checking Process Flow Diagram below for a visual representation of this information.

3.3 Form 80

In some instances, a visa applicant may be required to provide personal details to allow additional penal checks to be undertaken. The submission of a completed Form 80 is not a mandatory requirement unless PIC 4001 or 4002 is a criterion for the grant of the visa and the form is specifically requested by the Minister or the Minister's delegate under subregulation 2.03AA(2) of the *Migration Regulations 1994*. It is open to a delegate to request that a Form 80 be completed and submitted if the person must satisfy PIC 4001 or 4002.

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Generally, this would only be requested if it is considered necessary. s. 47E(d)

For a small number of countries, the processing office or post will obtain a police clearance certificate on behalf of the applicant. Where this arrangement is in place, the applicant will need to complete Form 80: Personal Particulars.

If the person is required to satisfy PIC 4001 or 4002 for the grant of a visa, and the applicant refuses to or fails to provide Form 80 after the Minister (or delegate) has requested that it be provided, the applicant will have failed to meet the visa criteria and the application must be refused. There is no ability for the delegate to waive the requirement to provide a completed Form 80 once it has been requested.

For queries relating to Form 80, please contact the s. 47E(d)
@homeaffairs.gov.au).

3.4 Do Protection visa holders have to provide a certificate from their country of claimed asylum?

If a Protection visa (subclasses 785, 790 and 866) holder requires a penal clearance certificate for a subsequent visa application (for example, as a sponsor of a child or a partner), or for citizenship, then a certificate should be requested from the country from which the applicant originally claimed asylum (unless the section 65 delegate determines it would put the protection visa holder's family at risk).

3.5 Non-migrating family members of the main applicant

It is a requirement of some visa classes that all members of a family unit meet PIC 4001, regardless of whether they are accompanying or joining the main applicant in Australia. This is because the dependants may at some time in future want to migrate (given that they are dependent on the primary applicant) and this policy is designed to prevent situations when applicants later decide that they want to reunite with non-migrating dependants by bringing them to Australia after a certain period of time where the dependant has any character concerns.

- In applications for permanent visas (or a temporary visa that is intended to lead to the grant of a permanent visa, such as a Prospective Marriage (subclass 300) visa), each person who meets the following criteria must (as a matter of policy) undergo penal checking:
 - they are personally required to satisfy PIC 4001 (i.e. separately and in addition to visa applicants)
 - they are at least 17 years old
 - they satisfy the definition of a 'member of the family unit' of the visa applicant under Regulation 1.12 (VM-3067- s5G - relationships and family members - Dependent family members) and
 - they are not an Australian citizen.

Generally, non-migrating family members with permanent residency are not asked to provide penal clearances if the Minister or the Minister's delegate is satisfied that they meet PIC 4001(b). Delegates should check all available information on departmental systems to check whether there are any indications that the non-migrating family member does not pass the character test before exercising their discretion under PIC 4001(b).

If a non-resident non-migrating family member is unable to provide a certificate (for example, a visa applicant's former partner will not permit a non-migrating child to undergo police checking or the non-migrating family member has been estranged from the applicant, e.g. 5 years or more), or if for any other reason it would not be reasonable for the person to be required to provide the statement, a penal waiver may be requested (providing the applicant has made reasonable efforts to obtain the certificate).

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3.6 What are the requirements for applicants of Permanent Partner visas?

Most Partner visa applications are processed in two stages, usually two years apart. The Department's policy is that all applicants are required to provide Australian Federal Police (AFP) certificates at least once during the process of their application, usually at second stage. However, if the applicant meets section 3.2 of the Penal Checking Handbook, the Department's policy is that they will be requested to obtain an AFP certificate at first stage. The Department would generally also request that foreign police certificates be obtained at first stage, unless reasons exist to waive this requirement.

For second stage processing, the Department's policy is that PIC 4001 can be taken to be met without the need to request further Australian and/or foreign police certificates if:

- the applicant provided the relevant certificate(s) at first stage and there is no adverse information (see below) before the Department to suggest they are a risk or of character concern, and
- they have not spent more than 12 months cumulatively in the last 10 years in any country (other than Australia), even if that country is one the applicant was not required to provide a certificate for as part of the first stage process.

3.6 (a) - Indicators of adverse information

When assessing an applicant at second stage, visa processing officers are to undertake standard checks to confirm there is no adverse information on the applicant. Indicators that a person may not pass the character test could come from various sources, including:

- adverse information on previous police clearance certificates
- Central Movement Alert List (CMAL) or **s. 47E(d)**
- through self-declaration/answers provided in the visa application
- other departmental system checks indicating character concerns (e.g. client of note in ICSE) or a previous character assessment
- interviewing the applicant or
- other information that might come to light.

A summary of table of scenarios where a visa processing officer should/should not request an Australian or foreign police certificate at second stage for Permanent Partner visa applicants can be located below.

3.7 What are the requirements for sponsors (and partners of sponsors) of visa applications?

3.7 (a) - Regulation 1.20KB

Regulation 1.20KB provides that the Minister must refuse to approve the sponsorship of all applicants for particular visas if the sponsor, or the sponsor's spouse or de facto partner, have been charged with or convicted of a registrable offence (subject to various exceptions set out in Regulation 1.20KB) and one of the applicants is under the age of 18. 'Registrable offence' is defined in Regulation 1.20KB(13).

In order to determine whether or not the sponsor or their spouse or de facto partner have been charged with or convicted of a registrable offence, the Minister may require that the person provide a police check from a jurisdiction in Australia or a country in which they lived for a period, or a total period, of at least 12 months.

The Department's policy is that, in order to determine whether or not to refuse to approve the sponsorship under Regulation 1.20KB, police clearance certificates should be requested from the sponsor (and partner of the sponsor in certain circumstances). Not all offences that appear on a police clearance certificate will give rise to grounds to refuse the sponsorship under Regulation 1.20KB. However, the person's criminal history

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may still be relevant to determining whether PICs 4016 or 4018 are satisfied (which relate to whether the grant of the visa would be in the best interests of the applicant or additional applicant).

3.7 (b) - Regulation 1.20KC

The Minister must refuse to approve the sponsorship of each applicant for Partner (subclass 309 or 820) or Prospective Marriage (subclass 300) visa if the sponsor has been convicted of one or more relevant offences (as defined in 1.20KC(2)) and the sponsor has a significant criminal record in relation to the relevant offence/s.

In order to determine whether or not the Minister must refuse to approve sponsorship under Regulation 1.20KC, the Minister may, on one or more occasions, request the sponsor to provide a police clearance certificate from Australia, or from any foreign country they resided in for a total period of at least 12 months in either the 10 years prior to the sponsorship application, or since turning 16 (whichever is the latest date).

The Department's policy is that, if Regulation 1.20KC applies, the sponsor should be requested to provide a police clearance certificate. This is regardless of whether any of the applicants are under the age of 18.

This is relevant to the approval of the sponsorship, however not all offences that appear on a police clearance certificate will come within the scope of Regulation 1.20KC.

Regulation 1.20KC(5) requires the delegate to ask 'a sponsor', not the visa applicant, to provide police check(s). As such, delegates must send the request to the sponsor, not the visa applicant, even if a separate request for further information is sent to the visa applicant to provide other documents. To be clear, this means that a request for further information sent to a visa applicant must not include a request to the sponsor to obtain police check(s). This includes eligible New Zealand citizens seeking to be approved as a sponsor.

3.7 (c) - Waiver of Penal Checks

The section 65 delegate may decide not to request a police check under Regulation 1.20KC. In order to determine whether or not to request an overseas police certificate, the delegate may have regard to the guidance in the Penal Checking Handbook Section 7 – Waiver of the Penal Checking Requirement. A waiver of an AFP certificate would generally not be appropriate. Waiver requests for sponsors of a Partner (subclass 309 or 820) or Prospective Marriage visa (subclass 300) should be referred to an A-based officer at the relevant post for assessment and copy to Family Program Management

s. 47E(d)

Where the delegate has requested that the sponsor provide a police certificate, and the sponsor has not responded or provided an explanation as to why they did not comply with the request, it would generally not be appropriate for the delegate to waive the requirement. The delegate may refuse to approve the sponsorship if they have requested a police check and the sponsor has not provided the police check within a reasonable time (Regulation 120KC(6)).

A waiver request under Regulation 1.20KB for the sponsor (or sponsor's partner, where appropriate) of a Child, Orphan Relative, Partner, Prospective Marriage or Extended Eligibility visa application if a child under the age of 18 is included in the application, may be considered by the section 65 delegate in line with the guidance in PAM3: Div1.4/Form 40 sponsorship - Protection of children - Sponsors of concern. Waiver requests for sponsors will need to be emailed to Family Program Management.

3.8 What are the requirements for sponsor applicants for Sponsored Parent Temporary (subclass 870) visa applications.

A sponsor applicant, under subregulation 2.60X(2), must provide police checks:

- for a foreign country, specified in the request, in which the applicant has lived for a period, or a total period of 12 months or more since the latest of the following dates:
 - 10 years before the sponsor application was made; and
 - the date the sponsor applicant turned 16 (subregulation 2.60X(2)(a)); and
 - for a jurisdiction in Australia, specified in the request (subregulation 2.60X(2)(b)).

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A waiver of the penal checking requirement for a foreign police clearance of the sponsor applicant will generally not be appropriate if no response was provided or no explanation as to why the request for a foreign police certificate was not complied with. A waiver may be considered by the section 65 delegate in line with the guidance in VM-6221 - Div1.4/Form 40 sponsorship - Protection of children - Sponsors of concern. Waiver requests for sponsors will need to be approved at the APS6 level or above.

3.9 When is a stay in Australia considered to exceed 12 months?

The Department's general policy is that it will only request a police certificate from a visa applicant if the person's stay in Australia will exceed 12 months.

The Department considers that a stay in Australia would exceed 12 months where the applicant:

- is seeking a temporary visa that provides for an initial stay of over 12 months or
- is seeking a temporary visa that provides for an initial stay of less than 12 months, but the case officer considers it likely that for genuine reasons, the applicant will seek to extend their stay beyond 12 months or
- is seeking a permanent visa or a temporary visa with a view to the grant of a permanent visa (such as the Prospective Marriage (subclass 300) visa).

There will be occasions where the 12 month requirement will not apply at the visa application stage, but will apply by the time the visa is approved. In these cases, certificates should be requested.

Furthermore, there are visas that will allow multiple entries of (three months) stay over a period of time (e.g. 10 year visitor visa). This means that a person's stay in Australia does not technically exceed 12 months, however over the entire duration of the visa validity period the length of stay in Australia may exceed 12 months. In these circumstances, the penal checking requirement should be considered where the length of intended stay in Australia may be considered long-term, despite the fact that the stay will be non-continuous (i.e. interrupted by travel to and stay overseas). However, as there is no exact threshold for this under policy, it ultimately falls to the delegate to determine the necessity of the penal checking requirement.

3.10 Which certificates are required?

In order to determine whether an applicant's criminal history could form the basis of a decision the applicant does not satisfy the character test, the following documents should generally be requested:

- penal clearance certificates from any country in which the applicant has resided or stayed in for at least 12 months in the last 10 years, since turning 16 years of age **and**
- military certificates/discharge certificates for periods served in the armed forces in the last 10 years.

3.11 What is an alias?

An alias is the names or identities (including dates of birth) an individual has been formally or informally known by and used during their lifetime.

The name on the police clearance certificate must match the name in the passport. If the name on the police clearance certificate is different from the passport or does not list all other names the applicant has used or has been known by, another certificate will need to be requested.

Section 65 delegates need to assess minor variations found in personal details such as name, date of birth etc. and determine whether they are in fact an alias that a person has used or has been known by or whether this is a result of a departmental officer misspelling the personal details.

Examples of an alias are:

- Alternative dates of birth, including a change of day, month and/or just the year.

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- Alternative first names, middle names or last names, such as maiden names or other married names and/or tribal/clan names.
- Abbreviations of any part of applicants' name.
- Variations in spelling of true name (of first, middle or last name) (a determination should be made where variation is only minor).
- Nationality changes.
- Gender changes.

All aliases must appear on the Australian National Police Certificate (even though the AFP may not require evidence of an alias in order to issue a certificate with all names).

Note: Case officers are required to ensure all alias/es that an applicant has used or has been known by are added to the applicants' record in ICSE and on departmental forms and identity documents in line with relevant procedural guidelines. An additional penal clearance certificate may need to be requested if alias details were not previously listed by the applicant in the first penal check request form. Case officers to check Form 80 and application forms for aliases (including different birth dates) to be included in ICSE.

3.11 (a) - IMA identity and aliases

Most aliases recorded in departmental systems for IMAs are not in themselves aliases but merely a derivation of their names recorded in absence of any identity documents by different departmental staff in different processes. Protection visa processing officers should generally rely on the name and date of birth used in the issued Australian identity document, such as an ImmiCard and PLO56 and associated visas. Where there is difference in the principal/preferred name/date of birth and the name/date of birth used in the issue of a previous identity document or visa, this name/date of birth will also need to be included as an alias for the purposes of a penal clearance certificate. Other names or bio details of the IMA recorded in the IMA client record which have not been used on official identity documents, will not need to be included on the penal clearance certificate.

The Enterprise Identity Procedural Instruction – IIB-5144 provides policy and procedural guidance comprehensive to departmental officers to enable early and accurate establishment of identity for non-citizens and individuals.

3.12 Fingerprints

Fingerprints that are required to be obtained for police clearance certificates (for any country) cannot be obtained from DIBP offices.

Availability of finger print services from police jurisdictions:

- Australian Federal Police (by appointment to applicants in the ACT only)
- New South Wales Police
- Northern Territory Police (by appointment only)
- Queensland Police
- South Australia Police (refer to the South Australian Police website for fingerprint locations)
- Tasmania Police
- Victoria Police (refer to the Victorian Police website for fingerprint locations).

Police in Western Australia no longer provide fingerprint services. As a result, visa applicants will need to contact the embassy, high commission or consulate of the country that requires the fingerprints to seek advice. The penal checking requirement would generally not be waived on the basis of any difficulty in obtaining fingerprints.

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3.13 What period of time should a certificate cover?

The Department's policy is that, in order to use the certificate to determine whether the person satisfied the character test (for s501 of the Migration Act or PIC 4001) or to refuse to approve sponsorship under Regulation 1.20KB or 1.20KC, the police certificate should at least cover the period from the certificate issue date back to when an applicant turned 16 years of age (the certificate will not necessarily express what period of time it covers, however, in the absence of an "as at date", it can be assumed that the certificate is not temporally limited).

The Department's policy is that it only requests that the applicant obtain a police certificate from countries they spent a total of 12 months or more in in the last 10 years. Some applicants and agents have interpreted this as meaning that any police certificate requested only needs to cover the last 10 years. This is not correct. The certificate should cover the period from the time the applicant turned 16.

3.14 When is an Australian National Police Check required?

If a visa applicant has resided in Australia for a total period of 12 months or more in the last 10 years (calculated immediately before the time the visa application is lodged, including time held in detention), since turning 16, a National Police Check must be requested.

The exception to this are IMA/UAA detainees who have been in held detention since their arrival in Australia (never spent time in the community) and there is no evidence that they have committed an offence while in detention, irrespective of the length of time spent in immigration detention. If the detainee has been found guilty of an offence, this may cause them to fail the character test. The indicators will usually be documented in ICSE, MAL or on CCMD/Portal.

3.14 (a) - When a subsequent National Police Check for detainees is not required

A subsequent National Police Check is not required for detainees who have been held in detention since their previous (expired) National Police Check was issued if there is no new information before the Department indicating a behaviour or character concern, since their last National Police Check was issued.

Where there is new information indicating behaviour or character concerns since their National Police Check was issued but those concerns have not resulted in a criminal investigation or charges, visa processing officers must email CCPM s. 47E(d) [redacted] [@homeaffairs.gov.au](mailto:[redacted]@homeaffairs.gov.au), outlining in the body of the email:

- the character or behavioural concerns identified **and**
- request confirmation that a subsequent National Police Check is not required in the circumstances.

Visa processing officers must thoroughly check departmental systems to identify any relevant indicators of character or behavioural concern that may have arisen since their last National Police Check was issued (ICSE, TRIM, CMAL, IMtel and the CCMDs portal). Processing officers should also consider consulting with the Departmental Security Liaison Officer located in each detention centre.

Visa processing officers must make a note in the PIC 4001 check event in ICSE if a subsequent National Police Check is not required in accordance with advice from CCPM s. 47E(d) [redacted] [@homeaffairs.gov.au](mailto:[redacted]@homeaffairs.gov.au).

3.15 What are the requirements of Norfolk Island?

On 1 July 2016, Norfolk Island (NI) became part of Australia for immigration purposes. Some who held a permit for NI transitioned onto a permanent Australian visa, while other non-citizens transitioned onto a temporary Australian visa. The temporary visa expired on 1 July 2017. If these visa holders want to continue to live, work or study in NI after this time, they will need to have applied before 1 July 2017 for a new Provisional Resident Return (subclass 159) visa, or an alternative visa that allows for stay and work on NI. Non-citizens who held a permit for NI and transitioned onto a temporary Australian visa were required to provide overseas penal clearance certificates from any country they resided in for 12 months in the past 10 years when they applied for the subclass 159 visa.

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For a visa applicant who has lived on NI for more than 12 months in the past 10 years and is subject to the police clearance certificate requirement, a request from a visa processing officer can be sent to s. 47E(d) @abf.gov.au to facilitate a NI police check. This will include both an AFP and NI police check. In the case where a visa applicant provides an AFP certificate rather than a NI Clearance Certificate, a request still needs to be made to our office in NI to facilitate a local police check.

In relation to overseas police checks, the previously conducted police clearances for non-citizens on NI (in order to obtain their permit), can be accepted by the Department. If the case officer does not have access to the relevant police clearance certificates, for example if these weren't handed over to the Department, delegates will need to request new copies of police clearance certificates covering the applicable period. Also, if a person has resided overseas for 12 months or more since obtaining the original overseas police check, they will need to obtain a new police clearance certificate from that country.

3.16 When in the visa application process should a penal check be requested?

To avoid delaying the decision to grant or refuse a visa, case officers should generally initiate penal checking at an early stage of assessing the visa application.

Case officers will need to consider:

- whether the length of time it may take to obtain a certificate could delay the decision to grant or refuse a visa, and
- whether the time taken to process the application could result in the certificate expiring before the visa can be granted or refused, and
- anything which could indicate that the applicant may fail to satisfy visa criteria and subsequently be refused a visa, regardless of the results of the check.

3.17 What if there is evidence the applicant may be of character concern?

Only a delegate authorised to make decisions under s501 can make an assessment as to whether a person does or does not pass the character test. **A visa cannot be refused** on character grounds by a delegate who is only authorised to make visa decisions under section 65 (section 65 delegate) because of a **failure by the applicant to satisfy PIC 4001**.

If the assessment process uncovers information that the applicant may not pass the character test, the case must be referred to the Visa Applicant Character Consideration Unit (VACCU) to consider refusal of the visa. The VACCU is part of the National Character Consideration Centre (NCCC) and manages all refusals under section 501 of the Migration Act. Details on how to refer a case to VACCU can be found on the 'visa applicant character consideration' intranet page.

If VACCU decides to not consider the case under section 501, or finds that the applicant passes the character test under section 501, the case will be referred back to the section 65 delegate for finalisation.

In these circumstances, the section 65 delegate can find that the applicant meets the requirements of either PIC 4001(a) (if all penal checks have been obtained) or PIC 4001(b) (if the necessary checks have not been obtained, but the requirement to obtain the checks has been waived).

If VACCU finds that the applicant does not pass the character test, but exercises their discretion not to refuse the visa, the case will be referred back to the section 65 delegate for finalisation. In these circumstances, the Minister or a section 65 delegate can find that the applicant meets the requirements of either PIC 4001(c) or PIC 4001(d).

For detailed instructions on how character refusal decisions under section 501 are processed, see Procedural Instruction: *s501 - The character test, visa refusal and visa cancellation* – VM-1001

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Note: The Visa applicant character consideration intranet page to ensure you are using the most up to date referral templates, or email VACCU s. 47E(d)@homeaffairs.gov.au).

3.18 Where are requests for and receipts of penal clearance certificates recorded?

When requesting an applicant to provide a penal clearance certificate, visa processing officers should use standard letter fragments from the Enterprise Correspondence System.

When receiving a penal clearance certificate, confirmation of the receipt and date of receipt should be recorded in ICSE and TRIM. Communication from visa applicants in relation to lodging penal certificate requests with law enforcement agencies, progress updates, and any delays and/or reasons for delays should also be recorded on ICSE. Such records will be relevant information for possible refusal consideration under Regulation 2.03AA (on the grounds that, if requested, providing a clearance certificate is a criterion that must be satisfied for the grant of the visa – for more information see section 5.10 in this document).

4. Special Arrangements

4.1 What are special arrangements?

The Department's policy is that some groups and visa subclasses are not asked to provide police certificates. However, if there is any doubt about whether an applicant meets the character requirements, for example where there is a CMAL alert, 'client of interest' note, information from law enforcement partners, media reporting or integrity risk profile scores, certificates should be obtained.

4.2 Which groups are exempt under policy?

Provided there are no character concerns, applicants for the following visa subclasses would generally not be asked to obtain a certificate, despite PIC 4001 being a criterion for grant:

- Temporary Protection (subclass 785) visa (TPV), Safe Haven Enterprise (subclass 790) visa (SHEV) and Permanent Protection (subclasses 866) visa (PPV). Applicants for these visas should not be asked to provide a penal clearance certificate for the country from which they are seeking protection. Certificates are still required for all other countries in which the applicant has resided for 12 months or more in the past 10 years.
- Student (subclass 500) visa, s. 47E(d) [REDACTED].
- Temporary Graduate (subclass 485) visa (Graduate Work and Post-Study Work streams) (offshore penal certificates only).
- Temporary Work (International Relations) (subclass 403) visa – Privileges and Immunities stream. Also, US Pine Gap officials (including contractors) within the Government stream are exempt as the Department has agreed to recognise US security clearances. A letter from Joint Defence Force Pine Gap stating that the applicant holds the security clearance as part of their employment is sufficient. All other streams of the subclass 403 are not exempt.

Note: s. 47E(d) [REDACTED]

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4.3 For which groups can discretion in requesting a certificate be exercised?

The Department has identified a number of groups that demonstrate characteristics that may make it less appropriate for them to be asked to provide a foreign police certificate (provided no other information has come to light which suggests they may fail the character test). When deciding whether or not to request a certificate, a case officer should turn their mind to whether or not the person falls into one of the following groups.

It should be noted that the following guidance only applies to decisions to request foreign penal clearance certificates, and is not intended to apply to decisions to request Australian National Police Certificates.

Note: Where the case officer decides to request a certificate and the applicant states that they cannot provide a certificate, the case officer may waive the requirement to provide the certificate if they are satisfied that it is not reasonable for the applicant to provide the certificate. In order to waive the requirement, the case officer should follow the process set out in part 7 of this procedure.

4.3 (a) - Refugee/Humanitarian visa applications

For humanitarian visas (subclasses 200, 201, 202, 203 and 204) the case officer should not ask applicants to provide certificates from the country of origin. As part of the humanitarian visa application and interview process, the applicant will be asked to declare any criminal convictions including by signing a statutory declaration.

s. 47E(d)

4.3 (b) - Frail, elderly or otherwise incapacitated applicants

It may be appropriate for case officers not to request penal checks for frail, elderly or otherwise incapacitated applicants if the period covered by the check appears to have little significance (for example, the applicant was frail, elderly or otherwise incapacitated for the entire period for which the penal clearance certificate is sought).

4.3 (c) - Ship crew members or oil rig workers

If an applicant has spent a cumulative total of 12 months or more in the last 10 years working on a merchant ship, cruise ship, private yacht or oil rig, and the country whose flag the ship sails under or country of ownership of the rig is the same, then penal checks should be requested from the relevant authority of that country, regardless of whether that was for a single employer or multiple employers. For example, if an applicant had two nine month contracts with two different cruise lines that both sailed under the Greek flag, a penal clearance for Greece would be required.

Applicants should also provide a letter or statement of good conduct from the ship's captain/rig's superintendent or company attesting to their character. This letter should include the vessel's name, capacity in which the applicant was employed and the start and finish dates of the applicant's employment. If the letter indicates that the visa applicant has not worked a cumulative total of 12 months or more on a ship or oil rig for one particular country, the letter(s) of good conduct may be accepted instead of the police clearance certificate. If the applicant has been asked to provide something other than a statement from an appropriate authority (such as a letter from the applicant's employer attesting to their character), the powers in Regulation 2.03AA would not apply.

4.3 (d) - crew members

Because of the amount of international travel they undertake, flight crew members (including pilots) may have difficulty in obtaining documentary evidence of their movements in and out of countries.

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If it appears that a flight crew member may have spent a cumulative period of 12 months or more in any one country (possibly comprising many short stays of a few days or weeks) they are required to provide a certificate for that country.

If there is uncertainty about their movements or certificates cannot be obtained, the case officer may need to request a letter from the applicant's employer attesting to the flight crew member's character. If the applicant has been asked to provide something other than a statement from an appropriate authority (such as a letter from the applicant's employer attesting to their character), the powers in Regulation 2.03AA would not apply.

4.3 (e) - (Current and former) Diplomats and United Nations personnel

Diplomats and United Nations personnel may hold a Diplomatic (Temporary) (subclass 995) visa. Holders of this visa are assessed and accredited by the Department of Foreign Affairs and Trade (DFAT) Protocol Branch under the *Diplomatic Privileges and Immunities Act 1967*.

Currently the only PIC holders of this visa must satisfy is PIC 4021.

Full diplomatic status is accorded to people posted in Australia who are performing diplomatic functions. Officials assigned to consular posts in Australia are accredited as members of the consular corps and given lower levels of diplomatic privilege.

In addition, several international organisations are represented or headquartered in Australia, and their representatives are also accredited by DFAT and granted subclass 995 visas. These include the United Nations High Commissioner and the Deputy Commissioner for Refugees.

People with Diplomatic visas are accredited by the Chief of Protocol (as the Foreign Minister's representative). If they commit a crime during their stay in Australia, it is the responsibility of DFAT to answer any questions concerning their character and presence in Australia.

If a person has previously held diplomatic status in another country they will be unable to obtain a penal certificate relating to the term of their diplomatic posting. They should instead obtain a letter from the relevant High Commission, embassy or government Department attesting to their character. The letter should specify the countries where the applicant held diplomatic status and the period of the postings. If the applicant has been asked to provide something other than a statement from an appropriate authority (such as a letter from the applicant's employer attesting to their character), the powers in Regulation 2.03AA would not apply.

4.3 (f) - Foreign Government Agency stream of the Temporary Work (International Relations) (subclass 403) visa

While applicants for the Foreign Government Agency Stream of the Temporary Work (International Relations) (subclass 403) visa require a penal check, as an alternative they may provide a copy of their character clearance obtained as part of the employment process with the foreign government agency. To be acceptable however, this clearance must cover all countries in which the applicant has lived or stayed for 12 months or longer in the past 10 years since turning 16 years old. If the relevant period is not covered, case officers will need to request standard police checks for those periods. See Procedural Instruction, Temporary Work (International Relations) Subclass 403 – VM-3174 for more details.

4.3 (g) - Accredited sponsor applicants of the Temporary Skills Shortage (subclass 482) visa (and legacy Temporary Work (Skilled) subclass 457 visa)

The Temporary Skills Shortage (subclass 482) visa was introduced on 18 March 2018. Applicants sponsored by an accredited sponsor may be eligible to have the character requirements streamlined through the provision of a work reference. This reference must confirm the applicant is of good character and has not been convicted of any criminal offences.

However, applicants are still required to provide police clearances from Australia where required under existing policy settings, such as if applicants have resided in Australia for 12 months or longer in the last 10 years.

In addition, the Department will require full police checks for all countries in any of the following circumstances:

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- The accredited sponsor does not provide a work reference on behalf of the applicant at the time of lodgement.
- The applicant indicates they have a criminal record.
- The Department is in possession of adverse information regarding the criminal record of the applicant.

This particular mechanism for visa applicants to demonstrate that they satisfy character requirements is limited to applicants sponsored by companies with “accredited status”, with the understanding that “accredited status” is only available to low risk sponsors who meet stringent qualification criteria.

4.3 (h) - Retirement Visa (subclass 405 and 410)

Where a subclass 405 or subclass 410 visa holder is applying for a ‘roll-over’ visa, and the overseas penal certificates provided as part of their previous application have expired, applicants will be requested to provide penal certificates from any country they have spent a consecutive two months during the past ten years. This applies only where there is no other information available to visa processing officers indicating the applicant may be of character concern. Where there is information indicating a possible character concern, visa processing officers must request penal certificates from any country the applicant has spent a cumulative two months in the past ten years.

Where an applicant has provided a NPC from the AFP previously that has since expired, applicants will be required to provide a new NPC as per normal procedure.

5. Obtaining a Police Clearance Certificate**5.1 For which countries are certificates required?**

Certificates should be requested for all countries in which the visa applicant has resided or stayed for 12 months or more in the past 10 years (counted from immediately before the time the visa application is lodged or from the date of the request by the visa processing officer to obtain a police clearance certificate), since turning 16 years of age. For clarity please refer to 1.2

There will be occasions where the 12 month requirement will not apply at the visa application stage, but will apply by the time the visa is processed. In these cases, certificates are required.

The 12 months are calculated cumulatively, not consecutively, meaning that two periods of six months residence would be regarded as meeting the 12 month rule and require a certificate.

Certificates should cover all personal identifiers the applicant has used or by which the applicant is, or has been, known.

Certificates must be provided by a federal or national authority in the country from which the certificate is being obtained. Certificates provided by state or provincial law enforcement agencies are not acceptable for immigration purposes as they generally cover convictions only in that state or province, s. 47E(d)

Certificates in a language other than English, must be accompanied by an accurate English translation.

5.2 Who obtains the certificate?

For most countries, the applicant is responsible for obtaining the certificate. Information for applicants on how to obtain certificates is located on the relevant overseas country page(s) on the Department’s website.

If an applicant needs further information about the process, they will need to contact the relevant authority in the country from which they are seeking the certificate. The applicant is responsible for all costs associated with obtaining a certificate.

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There will be cases where the person's circumstances may require the Department to initiate a penal check. However, this should be determined on a case-by-case basis. As a general rule, the Department does not obtain Australian police clearance certificates.

5.3 Request / Referral Letter

Some countries require a referral letter from the Department in order to provide a penal clearance. A standard letter is available at **Attachment F** of the Penal Checking Handbook.

Departmental officers need to ensure that the letter is addressed to the relevant authority (correspondent) s. 47E(d) [redacted] Addresses can be found by consulting the relevant country information on the Home Affairs website at <https://www.homeaffairs.gov.au/about/contact/offices-locations>.

5.4 Can Interpol be asked to obtain a certificate?

The Department may ask Interpol for assistance in obtaining criminal history information, s. 47E(d) [redacted] These checks may take some time to process, depending on the country.

Case officers can send requests to CCPM s. 47E(d) [redacted] [@homeaffairs.gov.au](mailto:[redacted]@homeaffairs.gov.au).

5.5 When does the Department obtain the certificate?

For a number of countries, the processing office or post will obtain the certificate on behalf of the applicant. Where relevant, this information will be provided on the overseas country page on the Department's website.

In these cases, the applicant may be asked to complete Form 80 (*Personal particulars for assessment including character assessment*). Some authorities use the information in this form to obtain a criminal history check.

If a certificate is obtained by the Department through such an arrangement, the information may be considered sensitive or may be protected information under section 503A. Therefore no originals or copies should be released to the applicant unless approval is given by the relevant authority.

If case officers receive information that may be protected under s503A, they should discuss the issue, but not the information, with CCPM s. 47E(d) [redacted] [@homeaffairs.gov.au](mailto:[redacted]@homeaffairs.gov.au).

Section 503A of the Migration Act previously allowed the Department to treat information provided by a gazetted agency as confidential information when exercising section 501 visa cancellation and refusal powers. However, this provision was found to be invalid by the High Court of Australia in *Graham v Minister for Immigration and Border Protection* (2017) 91 ALJR 890, to the extent that it applied to prevent the information from being divulged to a Court to review a purported exercise of power by the Minister under s 501 of the Migration Act.

Until legislative amendments have been made, s503A is not to be used.

Note: The VACCU will not accept a referral if no penal clearance certificate is provided, unless a penal waiver has been issued or consultation has occurred with CCPM. Where posts have difficulties in conducting a penal check on the basis of a completed Form 80, advice should be sought from CCPM s. 47E(d) [redacted] [@homeaffairs.gov.au](mailto:[redacted]@homeaffairs.gov.au).

5.6 What type of Australian police clearance certificate is acceptable?

The only acceptable certificates for immigration purposes is a **National Police Certificate (NPC)** issued by the AFP.

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National Police Certificates are;

- issued by the AFP
- have the correct letterhead and security marks
- a complete disclosure report
- only issued on secure paper (an example of the certificate and security features is at <https://www.afp.gov.au/sites/default/files/PDF/national-police-certificate-sample.pdf>) s. 47E(d)

Applicants must provide complete AFP disclosure which lists all convictions and findings of guilt. The correct certificate will have '*Complete Disclosure*' in the heading.

A standard/partial disclosure is not acceptable for immigration purposes.

The completion guide on the AFP National Police Check Application Form clearly displays the various codes for different types of police checks - all applicants for immigration purposes **MUST use Code 33**. The difference between a standard AFP disclosure (Code 30) and a complete AFP disclosure (Code 33) is as follows:

- A standard disclosure does not include all of an applicant's criminal history (only those convictions not considered spent under various State and Territory legislation).
- A complete disclosure includes all convictions and findings of guilt from most Australian states and territories.
- To request an AFP check, applicants will need at least 100 points of identification from primary or secondary identity documents. Where a person cannot meet this requirement, contact CCPM s. 47E(d) [@homeaffairs.gov.au](mailto:ccpm@homeaffairs.gov.au).

National Police Checks issued by state or territory police services are not acceptable for immigration purposes, as legislation between states and territories varies, resulting in these checks potentially omitting spent convictions. It is also not possible in some States to indicate the check is for immigration purposes.

Note: s. 47E(d)

5.6 (a) - Protection visa applicants

s. 47E(d)

s. 47E(d)

In some circumstances, case officers may request TPV/SHEV and PPV applicants obtain a National Police Certificate issued by the Australian Federal Police. If a written request is received, applicants must then provide a complete AFP disclosure which lists all convictions and findings of guilt, following the instructions listed above.

5.7 Certificates issued by other agencies

The Department will accept an NPC from a third party provider only if the certificate supplied is an NPC issued by the AFP to the provider. The Department does not accept clearances printed on third party provider letter heads or certificates.

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Information on how applicants can obtain a National Police Check is available from the AFP website: <https://www.afp.gov.au/what-we-do/services/criminal-records/national-police-checks>.

It is open to the applicant to use a provider instead of the AFP, but the AFP is the preferred method.

5.7 (a) - Issue date and name details

Always check the 'as at date' in the body of the certificate (as opposed to the issue date). The certificate may not be acceptable for immigration purposes if there is a significant gap between issue date and 'as at date' (3 months or more). Ensure that all aliases and dates of birth are included in the certificate.

5.7 (b) - When applying for a Third Party Police Check, applicants should state the following

When applying for an NPC through a third party provider, applicants should ensure that:

- the purpose of the check is correct (immigration/visa/other); and
- that Code 33 - Immigration/Citizenship – for the supply to the Department of Immigration and Border Protection is utilised. This will ensure that the check is a "complete disclosure".

5.8 What if there is no procedure for obtaining a certificate?

Where there is no procedure for obtaining a certificate from a particular country, there will be no information listed under Police check for that country on the Department's website. s. 47E(d)

For these countries it is not necessary for the applicant to obtain a certificate.

In addition, the case officer does not need to ask for a waiver of the penal checking requirement (because the person would not be requested to provide the police certificate in the first place). However, if the case officer has any concerns about the applicant's character, they should contact CCPM s. 47E(d). All other character checks should still be undertaken.

A character statutory declaration must be completed where a certificate cannot be obtained. The only exception to this is where it is unsafe or extremely difficult for an applicant to travel to have a statutory declaration witnessed. The character statutory declaration is available in English from the Department's website and the Penal Checking Handbook intranet page.

5.9 What if a visa applicant claims they cannot obtain a certificate?

Where there are procedures for obtaining a certificate, but the applicant claims to be unable to obtain one, the case officer should investigate the reasons.

Consideration should be given to circumstances where the applicant must present in person to apply for a certificate but it would be unreasonable for them to travel to do so due to risk or excessive cost.

Where appropriate, alternative documentary evidence should be requested from the applicant to mitigate the risk of them seeking a waiver to conceal a criminal offence. Evidence may be in the form of a letter from their employer attesting to their conduct while employed, or some other form of evidence as appropriate.

If the case officer is satisfied that, after making all reasonable efforts, the applicant is unable to obtain a certificate, the case officer may apply for a waiver.

Where a waiver is granted, it will be open to the case officer to find that the applicant satisfies PIC 4001 on the basis that they meet PIC 4001(b).

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5.10 What if an applicant refuses to obtain a certificate?

An section 65 delegate who is also delegated under Regulation 2.03AA may ask a person (who is required to satisfy PIC 4001 or 4002) to provide a statement from an appropriate authority in a country where the person resides, or has resided, that provides evidence about whether or not that person has a criminal history Regulation 2.03AA.

If the Regulation 2.03AA delegate makes such a request, providing the statement becomes a criterion for the grant of the visa.

If the person refuses to provide the statement, the section 65 delegate may refuse to grant the visa on the basis that the person has failed to satisfy the criterion in Regulation 2.03AA. Alternatively, the delegate may decide to waive the requirement to provide the statement if they are satisfied that it is not reasonable for them to provide the statement.

Officers should check in LEGEND whether they have the relevant delegation.

If the applicant has been asked to provide something other than a statement from an appropriate authority (such as a letter from the applicant's employer attesting to their character), the powers in Regulation 2.03AA would not apply.

See Regulation 2.03AA – Criteria applicable to character tests and security assessments.

s. 47E(d)

5.12 Do certificates have to be originals?

Original copies of clearances are no longer required for any visa subclass processed via either paper-based or online applications.

Scanned or online copies are both acceptable for paper-based and online visa applications if the quality of the scan or electronic copy is a minimum of 300DPI in 24 colour, or grey-scale, and saved as a JPG image or a PDF document at a good quality setting.

Original certificates issued in black and white by the relevant overseas authorities are acceptable for immigration purposes. s. 47E(d)

However, certificates that are provided in colour or black and white, which have been **subsequently** copied/scanned in black and white, are **not** acceptable, as various image specifications (which assist in determining the veracity of a certificate) are removed. Such police clearances **must** always be copied/scanned in either colour or grey-scale to determine the authenticity of a document.

If a case officer has any doubts about the authenticity of a certificate, for example where there is mismatched information, a MAL record indicating potential character risk, irregularities observed or the quality of the scanned or electronic copy is poor, they should request the applicant to provide an original. If there are concerns over the original, the case officer may refer it to the document examination unit and/or the relevant post for advice.

5.13 What is the validity period of a certificate?

All certificates are considered valid for 12 months from the date of issue, irrespective of the validity period specified by the issuing country.

If the applicant returns to the country that issued the police clearance certificate during the certificate's validity, it will not affect the validity. The duration of overseas travel is reviewed after expiry of the certificate.

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However, a new certificate should be requested if the case officer has concerns about the applicant's character.

If there is information to suggest the applicant may have offended within the 12 month period following the issue of the certificate, a new certificate should be requested.

5.14 Can the validity period of a National Police Check be extended?

The validity period of a National Police Check cannot normally be extended as it has only a 12 month validity period for migration purposes.

However, if a visa application is close to approval and the applicant's certificate has expired within the last three months due to delays caused by the Department, the Department's policy is that the case officer can grant an extension to that certificate.

The following conditions should be met:

- the certificate must state there are no disclosable outcomes
- the extension can only be up to the date of the visa grant and
- the total period of the extension must not be for more than three months from the expiry of the initial 12 month validity period.

If a visa application is not finalised within the extended (15 month) period, the applicant must provide a new certificate. This applies to all visa applications, including those where the Department has been responsible for delays in processing.

If the applicant is overseas when the certificate expires and has not returned to Australia since the expiry date, the certificate can be extended to the time of the visa grant.

5.15 Can the validity period of an overseas police clearance certificate be extended?

5.15 (a) - Onshore applicants/sponsors

Where a certificate has expired and the applicant has returned to the country that issued the certificate for more than two months in total (as a cumulative period) since the certificate expired, the applicant will need to provide a new certificate. The fact that the applicant would not meet the threshold of having lived for 12 months or more in the last 10 years in the country that issued the certificate, is irrelevant in this respect. A new certificate must still be provided.

Example: a Japanese applicant applies for the third subsequent Investor Retirement (subclass 405) visa in Australia and has resided 9.5 years out of the past 10 years in Australia. The applicant provided a Japanese penal certificate three years ago when applying for the previous visa, but has returned to Japan for 5 months since the validity of that certificate expired. The applicant will need to provide a new penal certificate from Japan.

The exception to this is for Permanent Partner visa applicants where a new certificate is required only where the applicant has returned to the country that issued the certificate for a cumulative period of 12 months or more since the grant of the temporary partner visa (subclasses 309 or 820). However, if there are character concerns, a new certificate must be requested, even where the period is less than two months.

Where a certificate has expired and the applicant has not returned to the country that issued the certificate, a new certificate is not required.

For example, offshore penal certificates and waivers for third countries obtained by TPV and SHEV holders as part of a previous TPV/SHEV application can be reused for a subsequent TPV/SHEV application, as long as the holder has not travelled back to that country for more than two months.

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The time allowed on a visa for initial entry to Australia is tied to the 12 month validity of any penal or health checks. This is to ensure that the applicant enters Australia while the penal and health certificates are still valid. This 12 month period is set under policy and is not a requirement under the Regulations. This period within which the visa holder must make initial entry to Australia, is a condition of the visa. It is not a criterion for grant and must not be confused with the visa period as described in section 68 of the Migration Act.

5.15 (b) - Offshore applicants

The certificate can be extended by up to three months by the case officer if the application is close to approval and the delays have been caused by the Department.

The same conditions apply as in section 5.14 – ‘Can the validity period of a National Police Check be extended?’.

For overseas posts, the decision to extend the certificate should be made by an A-based staff member or in consultation with an A-based staff member. Where a certificate has expired and the applicant has not returned to the country that issued the certificate, a new certificate is not required.

There may be some circumstances where an ‘offshore’ applicant has been in Australia since providing police clearances and is required to be offshore for the grant of their subsequent visa. If the offshore penal clearances are older than 12 months, there may be no need to request new clearances unless the person has spent over two months in any country other than Australia since the issuance of the previous certificate. Visa processing officers should ensure that they have regard to country information when deciding whether another certificate is required. Contact CCPM s. 47E(d) [REDACTED]@homeaffairs.gov.au for case specific guidance if necessary.

For policy guidance on determining an applicant’s first entry date, delegates should refer to GenGuideB - Non-humanitarian migration - Visa application and related procedures – VM-2915 and 8504 - "(First) Entry date" condition – VM-1226

6. Obtaining a Military Certificate**6.1 When is a military certificate required?**

A military certificate is a letter from an applicant’s relevant military organisation attesting to their character. This is generally a letter from their commanding officer stating the applicant has not been convicted of any criminal offence during their time in the military.

Visa applicants who are currently serving military personnel and who require penal checking must provide this letter. This is irrespective of whether they are serving in a compulsory or voluntary capacity.

Further, a letter stating that the person has been exempted from the compulsory national service may be requested if considered necessary.

6.2 Are police clearance certificates also required?

Police clearance certificates are still required for every country in which the applicant has resided for the periods set out in section 3.2. This includes where the applicant has been stationed at a military base in a foreign country.

When military personnel are serving in a country that is in a state of war (civil or otherwise), they are not expected to provide police certificates from that country.

6.3 When is a military discharge certificate required?

If an applicant has served in the armed forces of any country for any length of time, in either a voluntary or compulsory capacity during the preceding 10 years, a military discharge certificate should be obtained by the

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applicant. Normally, the applicant's statement regarding their military service history should be accepted unless there is information that suggests otherwise.

Military discharge certificates are issued by military authorities at the conclusion of a person's military service. The military discharge certificate records the length of service, rank or rating held, where service was performed, and the type of discharge provided: honourable, misconduct or dishonourable.

Military discharge certificates are required as civil offences by military personnel are often dealt with in military courts and may be recorded only in military records.

The Military Certificate and Military Discharge Certificate form the preliminary assessment in assessing whether an applicant may have been involved in war crimes, crimes against humanity, and genocide in the absence of a formal conviction. For further information on War Crimes Screening please see War crimes – Screening of visa and citizenship applicants – IIB-1713

6.4 How is a military discharge certificate obtained?

Applicants are responsible for obtaining military discharge certificates. No government to government arrangements exist for obtaining these documents.

The penal checking information contained on the Department's website does not provide procedures for obtaining military discharge certificates. Applicants should approach the military authority in the relevant country. s. 47E(d)

6.5 What if an applicant cannot obtain a military discharge certificate?

If a military discharge certificate cannot be obtained under any other circumstances, the case officer will need to apply to the relevant post for a waiver in accordance with the penal waiver process.

6.6 What if an applicant refuses to obtain the certificate?

If an applicant is unwilling to provide the Military Certificate, please refer the case to CCPM s. 47E(d) _____@homeaffairs.gov.au.

7. Waiver of the Penal Checking Requirements

7.1 When may a waiver be appropriate?

A case officer may request a waiver of the penal checking requirement if they are satisfied that a visa applicant is genuinely unable to obtain a police certificate (or a military certificate).

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7.7 Where are waiver grants recorded?

When a waiver is granted or refused, the case officer who requested the waiver must TRIM a record on the visa applicant's file.

Post will record the decision in the 'Outcome' field in the Referral Details screen of ICSE as:

- Genuine = waiver is supported
- Non-Genuine = waiver is not supported

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The original statutory declaration should be kept with the visa application form.

7.8 Further Requirements – Character Statutory Declarations

7.8 (a) - When is a character statutory declaration required?

It is departmental policy that a character statutory declaration should be completed by a visa applicant if they are unable to obtain a police certificate (even if the visa applicant is from a country where no procedures for obtaining a police certificate are available).

Applicants will not be required to sign a statutory declaration in circumstances where it is unsafe or extremely difficult for them to do so.

The character statutory declaration is available from the Home Affairs website and, and at [VM-6555 Attachment D: Character Statutory Declaration](#). **The applicant must sign and provide the English language version to the Department.**

7.8 (b) - Who can witness a statutory declaration?

The statutory declaration must be made before an authorised witness under the *Statutory Declarations Regulations 2018* who has a connection to Australia.

For applicants residing overseas, it is advised that they find someone who is an authorised witness at their nearest Australian Embassy, High Commission or consulate, however the statutory declaration may also be made before any other person who is on the list of authorised witnesses and who has a connection to Australia, for example, a doctor who is registered to practice medicine in Australia.

A list of [authorised witnesses](#) can be found on the website of the Attorney-General's Department:

Wherever possible, for applications processed at post, a statutory declaration should be made before an A-based departmental officer.

7.8 (c) - Can locally engaged staff witness a statutory declaration?

Locally engaged staff are only authorised to witness a statutory declaration if specifically authorised by the Department of Foreign Affairs and Trade.

If an applicant supplies a statutory declaration and the case officer suspects that it has not been correctly witnessed, confirmation can be sought from the relevant post as the declaration may not be a statutory declaration for the purposes of the *Statutory Declarations Act 1959*.

7.8 (d) - What if an applicant cannot complete a statutory declaration?

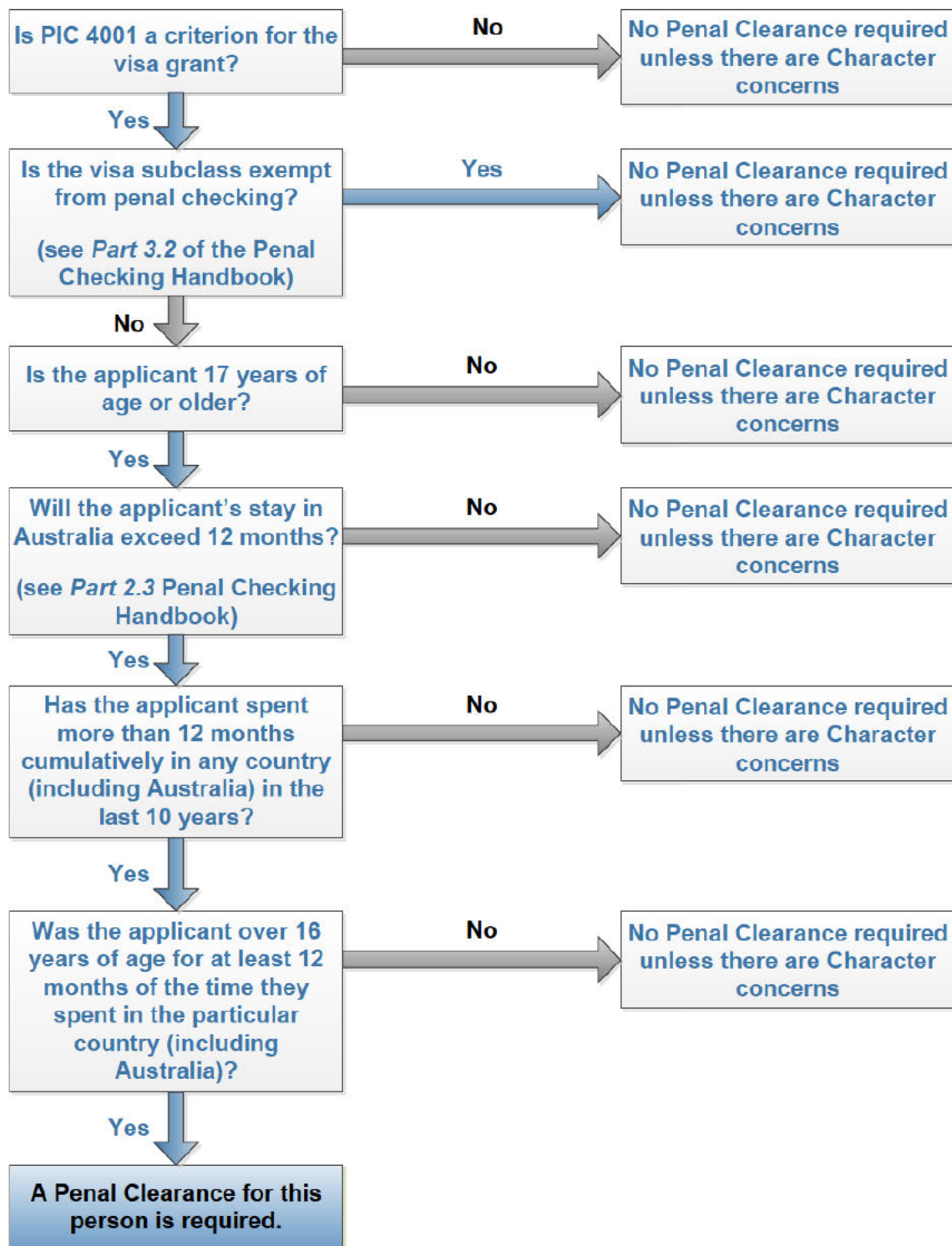
If an applicant cannot complete a statutory declaration because they have a criminal conviction (or they have an association with someone who has a criminal conviction), the case officer can amend the statutory declaration to include all relevant details.

For further guidance on this, please contact CCPM s. 47E(d) @homeaffairs.gov.au).

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OFFICIAL: Sensitive**Penal Checking Process Flow Diagram**
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Table of scenarios where a visa processing officer should/should not request an Australian or foreign police certificate at second stage for Permanent Partner visa applicants:

First Stage Visa Processing

First Stage Partner Visa Processing	Request Australian Police Certificate	Request Foreign Police Certificate
The applicant for a subclass 309 has spent more than 12 months (cumulative) in any one country including Australia	Yes	Yes
The applicant for a subclass 820 has spent more than 12 months (cumulative) in any one country including Australia	Yes	Yes

Second Stage Visa Processing

Second Stage Partner Visa Processing	Request Australian Police Certificate	Request Foreign Police Certificate
<p>The applicant for a subclass 100/subclass 801 provided an AFP certificate at first stage and:</p> <ul style="list-style-type: none"> the requirement to provide foreign certificate was waived at first stage and the applicant has spent less than 12 months in any other country since their entry into Australia on their subclass 309, or since the grant of their subclass 820. 	No	No
<p>The applicant for a subclass 100/subclass 801 provided an AFP certificate at first stage and:</p> <ul style="list-style-type: none"> the requirement to provide foreign certificate was waived at first stage and the applicant has spent more than 12 months in any other country since their entry into Australia on their subclass 309 or since the grant of their subclass 820. 	No	Yes

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The applicant of a subclass 100/subclass 801 did not provide an AFP certificate at first stage and: <ul style="list-style-type: none"> the requirement to provide foreign certificate was waived at first stage and the applicant has spent more than 12 months in any one country since their entry into Australia. 	Yes	Yes
The applicant did not provide an AFP certificate at first stage for their Subclass 309 or subclass 820	Yes	N/A
The applicant was considered for cancellation or refusal under s501 as part of their subclass 309 or subclass 820 process	Yes	Yes*
The applicant provided an AFP certificate or foreign police certificate(s) for their permanent subclass 100 or subclass 801 but the validity has expired due to lengthy visa processing times	No#	No#
The applicant is eligible for grant of subclass 801 or subclass 100 immediately due to long term relationship	Yes (only if they have previously entered Australia)	Yes

* for countries in which they have lived in for 12 months or more in the last 10 years

unless there are character concerns

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ATTACHMENT C: SINGAPORE CERTIFICATE OF CLEARANCE (COC)

This supporting document is VM-6554 – Attachment C: Singapore Certificate of Clearance

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OFFICIAL: Sensitive**ATTACHMENT D: CHARACTER STATUTORY DECLARATION**

This supporting document is VM-6555 – Attachment D: Character Statutory Declaration

If an applicant cannot sign the character statutory declaration because they have a criminal conviction or there is another reason why they may not meet the character test, please ask them to sign a standard Commonwealth statutory declaration with all their details.

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ATTACHMENT F: REQUEST LETTER FOR PENAL CLEARANCE CERTIFICATES

This supporting document is VM-6557 – Attachment F: Request Letter for Penal Clearance Certificates

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8. Accountability and Responsibility

Role	Description
Assistant Secretary – Character and Cancellation Branch	Document Owner is accountable and responsible for the overall document.
Director Character and Cancellation Program Management	Document Drafter is responsible for verifying the need for a document, drafting documents, consulting with all required stakeholders.

9. Version Control

Version number	Date of issue	Author(s)	Brief description of change
0.1	March 2017	s. 22(1)(a)(ii) Cancellation and Character Support Section	s. 47E(d)
0.2	May 2017	s. 22(1)(a)(ii) Cancellation and Character Support Section	Minor revisions following consultation
0.3	June 2017	s. 22(1)(a)(ii) Cancellation and Character Support Section	Finalisation following legal clearance
1.0	July 2018	Character and Cancellation Program Management Section	<ul style="list-style-type: none"> - Clarified what penal clearance certificates are needed at first stage for partner visas applicants and IMAs/UAs detainees who have been held in detention since their arrival in Australia. - Simplified the process for the acceptance of colour/black and white police clearance certificates. s. 47E(d) <ul style="list-style-type: none"> - Added TSS and legacy 457 applicants to groups for which discretion in requesting a certificate can be exercised.

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Version number	Date of issue	Author(s)	Brief description of change
			<ul style="list-style-type: none"> - Attachment D: Singapore – Appeal Letter is no longer needed as the appeals process is now done online and has been removed. - PPV applicants have been appended to the list of specific cohorts for which there is no need to request a penal waiver from the post. - Amended to reflect repeal of <i>Statutory Declarations Regulations 1993</i> and commencement of <i>Statutory Declarations Regulations 2018</i> - Updated processes to Sponsor waivers as provided by Family Program Management - Updates to provide general clarity on validity periods, as at dates, and issue dates. - Update to reflect changes to accredited sponsor program. - Removed detention requirement for NPC check from 1.13 - Addition of discretion to be exercised for subclass 405 and 410 visas (retirement visas) - AGS comments considered and incorporated.
1.1	March 2020	Character and Cancellation Program Management Section	<ul style="list-style-type: none"> - Finalisation following AS and Quality Check from PPCF
1.2	May 2020	Character and Cancellation Program Management Section	<ul style="list-style-type: none"> - Inclusion of guidance on third party police checks. - Inclusion of country specific reference regarding visa waivers. - Published June 2020 – now version 2
2.1	June 2020	Character and Cancellation Program Management Section	<ul style="list-style-type: none"> - Transition of Attachments as PPCF supporting documents - Correction of minor typographical errors

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Attachment G – Definitions

Term	Acronym (if applicable)	Definition
A-based staff		Australian based staff posted overseas (not locally engaged).
Applicant		Visa applicant (may include primary applicant and members of their family unit)
Case officer		Departmental officer processing and possibly also deciding on the visa application (officers should check if they are delegated under section 65)
Character and Cancellation Program Management	CCPM	Program Management area that provides policy and operational guidance on the use of the general cancellation powers, visa refusals and cancellations under section 501, and the penal checking requirement.
Character test		Section 501(6) of the Act
Post		s. 47E(d)
Penal Check		Also known as police check, refers to the process undertaken to obtain a penal clearance certificate.
Penal Clearance Certificate	PCC	An official record of criminal, or no criminal, convictions. The certificate is also known as a penal/police certificate and a penal/police clearance.

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Attachment H – Assurance and Control Matrix

1.1 Powers and Obligations

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
Migration Regulations 1994	Reg. 2.03AA	Criteria applicable to character tests and security assessments	yes	(Minister) Instrument 2019/226 (LIN 19/226).
Migration Regulations 1994	Reg. 1.20KB Reg. 1.20KC	Limitation on approval of sponsorship – child, partner and prospective marriage visas Limitation on approval of sponsorship – prospective marriage and partner visas	yes	(Minister) Instrument 2019/226 (LIN 19/226).
Migration Act 1958	s501	Refusal or cancellation of visa on character grounds	yes	(Minister) Instrument 2019/226 (LIN 19/226).
Migration Regulations 1994	PIC 4001	Public Interest Criteria and Related Provisions [Part 1 – 4]	yes	(Minister) Instrument 2019/226 (LIN 19/226).

1.2 Controls and Assurance

Related Policy	
Procedures / Supporting Materials	<p>Attachment A - s. 47E(d)</p> <p>Attachment B:</p> <p>Attachment C: Singapore Certificate of Clearance – VM - 6554</p> <p>Attachment D: Character Statutory Declaration – VM - 6555</p> <p>Attachment E: s. 47E(d)</p> <p>Attachment F: Request Letter for Penal Clearance Certificates – VM - 6557</p> <p>s. 47E(d)</p> <p>Character and security regulation 2.03AA, character test and security assessments - VM-995</p> <p>War crimes - Screening of visa and citizenship applicants - IIB-1713</p> <p>Direction no. 79 - Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA</p> <p>S501 - The character test, visa refusal and visa cancellation - VM-1001</p> <p>s. 47E(d)</p>
Training/Certification or Accreditation	COURSE LIOL-10900

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Other required job role requirements	Nil
Other support mechanisms (e.g. who can provide further assistance in relation to any aspects of this instruction)	All enquiries relating to penal checking including queries relating to waiver processes can be directed to CCPM: s. 47E(d) @homeaffairs.gov.au
Escalation arrangements	Director, C&CPM: s. 47E(d) @homeaffairs.gov.au
Recordkeeping (e.g. system based facilities to record decisions)	TRIM. ICSE.
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	Outcome 2: Support a prosperous and inclusive society, and advance Australia's economic interests through the effective management of the visa, multicultural and citizenship programs and provision of refugee and humanitarian assistance.
Job Vocational Framework Role	Visa Processing

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Attachment I – Consultation

1.1. Internal Consultation

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

- Audit and Assurance Branch
- Character, Integrity and Identity Policy Section
- Citizenship Program Management Section
- Complex and Controversial Cases Section
- Family Programme Management Section
- Freedom of Information Section
- National Character Consideration Centre
- Operational Risk Management Section
- PMO and SMO Network
- Privacy and Review Section
- Protection Assessment Support Section
- Records Management Section
- Risk Management Section
- Secrecy and Disclosure Section
- Skilled Migration Program Management Section
- Status Resolution Helpdesk

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