



Australian Government

Department of Immigration  
and Border Protection

# PIC 4020 - Correspondence Examples

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## Background and Purpose

This document has been prepared in response to requests for examples of good decision records and for words to address particular issues. This document is a working document and we expect to add to it and to update the examples so that they remain relevant, current and accurate.

The **primary purpose** of this document is to provide you with examples as a point of reference or a guide when you are considering refusing an application because of a failure by the applicant to satisfy the requirements of PIC 4020. It is a reference on possible ways to address particular requirements.

These are a selection of fragments from a range of actual Natural Justice letters and decision records send out to applicants.

Therefore, please **DO NOT** just copy and paste things from here into your letters or decision records. Use the information and tailor it to your individual case.

When creating the s57 Invitation to Comment letter or the decision record remember to:

- Use the templates provided. These have been cleared by Legal Division and contain paragraphs or fragments that have a specific purpose.
- Do not paraphrase the legislation. If you are including legislation, copy and paste it from Legend.
- Keep it simple and clear

If you have examples that you would not mind sharing, please send them to s. 47E(d) and we will add.

## False or Misleading information in a Material Particular

If you have concluded information which is false or misleading in a material particular has been given, state how the information is relevant to a criterion being assessed. Both in the natural justice and decision record.

Ask yourself, for the visa I am processing, what criteria/regulations is the information relevant to?

If the information is in the previously held visa, then you ask, is the information that is false or misleading relevant to the criteria of the previous visa?

Be aware that in some cases the information may not be relevant to the criteria that you are considering which means PIC 4020 might not be appropriate.

In these examples, the decision makers has shown what criterion the information that is false or misleading relevant to.

### Example 1: NJ letter: Character Convictions

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## Example 2: NJ letter - Character declaration

*(Showing what criterion that information is relevant to.)*

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This is considered to be information that is false or misleading in a material particular as it was relevant to assessing whether the applicant met the character requirements under PIC 4001. The applicant is therefore likely to fail to meet PIC 4020(1)(b) in the application currently under assessment.

## Example 3: NJ letter - Character declarations

*(In this example, the decision maker has quoted the relevant clause.)*

"therefore information provided in regards to her character remains information material to the application, in the assessment of Regulation 462.221(b):

(b) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4011, 4013, 4014, 4019 and 4020.

## Example 4: Previously held a 417

*(Showing what criterion the information is relevant to.)*

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This information is relevant to the consideration of Regulation 417.222 (b)

(b) the applicant has not previously held more than 1 Subclass 417 visa in Australia.

## Example 5: Convictions

*(Showing what criterion the information is relevant to.)*

Given the information available to the Department indicates that you have been convicted of offences s. 47E(d)

. This information is relevant to the consideration of the character requirement

## Example 6: Second working holiday visa

*(Showing what criterion the information is relevant to)*

s. 47E(d)

s. 47E(d)

On the basis of these declarations and your documents, I find that you have provided information that is false or misleading in a material particular in relation to s. 47E(d)

This information is relevant to criteria 417.222

(b) the applicant has not previously held more than 1 subclass 417 visa in Australia

### Example 7: Genuine Temporary Entrant

*(In a decision record showing what criterion the information is relevant to. This of course would be the concluding paragraph.)*

Based on the evidence and information before me, I find that the applicant has given information that is false or misleading in a material particular to Genuine Temporary Entrant Criteria. Accordingly, I am not satisfied that the applicant meets Public Interest Criterion (PIC) 4020, subclause 4020 (1).

### Example 8: Financial requirements and Genuine Temporary Entrant

*(In a decision record showing what criterion the information is relevant to. This of course would be the concluding paragraph.)*

Based on the evidence and information before me, I find that the applicant has given or caused to be given information that is false or misleading in a material particular as it was relevant in deciding whether the applicant meets the financial requirements (Regulation 500.214) and consequently genuine temporary entry to Australia (Regulation 500.212).

Accordingly, I am not satisfied that the applicant meets Public Interest Criterion (PIC) 4020, subclause 4020 (1).

### Example 9: Be sponsored by a spouse or de facto

*(Showing what criterion the information is relevant to.)*

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[REDACTED] namely clause 309.211 which requires the applicant to be sponsored by her spouse or de facto partner.

## Identity

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### Example 1: Not satisfied with identity

*(This would come after the behaviour and immigration history had been discussed.)*

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Given the information above I am unable to be satisfied as to your true identity and therefore PIC 4020(2A) is not met.

### Example 2: No response to identity received

*(The preceding paragraphs would contain the information leading to this conclusion.)*

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[REDACTED] I am therefore satisfied that Public Interest Criterion (PIC) 4020(2A) applies, and I am not satisfied that you meet clause 600.213(1) in Schedule 2 of the Regulations.

### Example 3: Response to natural justice provided

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[REDACTED] Therefore, I am not satisfied that you meet PIC 4020 (2A).

## PIC 4020 Waiver provision

In your decision record you must:

- Show that you have turned your mind to both (a) and (b) of the PIC 4020 waiver provision
- Identify where the applicant has provided no information to support (a) or (b)
- Acknowledge any claims /supporting evidence given
- Show that you have considered these claims

### Example 1: – It is clear the applicant has applied for the waiver


s. 47E(d)



Therefore, based on the evidence and information before me, I am not satisfied that you meet Public Interest Criterion (PIC) 4020, subclause 4020(1).

### Example 2: Information not submitted

No information has been submitted that indicates that you are seeking waiver of PIC 4020. *[This is the standard fragment in the decision record.]* s. 47E(d)



s. 47E(d)



### Example 3: Information provided but you are not satisfied that there are grounds to justify waiver of PIC4020

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Example 4: Information provided but you are not satisfied that there are grounds to justify waiver of PIC4020

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Example 5: Applicant claims there are compassionate or compelling circumstances

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Example 6: No information provided but acknowledging all information provided

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Example 7: No information or response to natural justice provided

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Example 8: Family ties and Compelling interests of Australia

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### Example 9: Compelling interests of Australia

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### Example 10: Compelling interests of Australia

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### Example 11: No compelling or compassionate circumstances

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Therefore, based on the evidence and information before me, I am not satisfied that the applicant meets Public Interest Criterion (PIC) 4020, subclause 4020 (1). Accordingly, 457.224 is also not met.

### Example 12: Bogus documents provided compassionate and compelling circumstances requested

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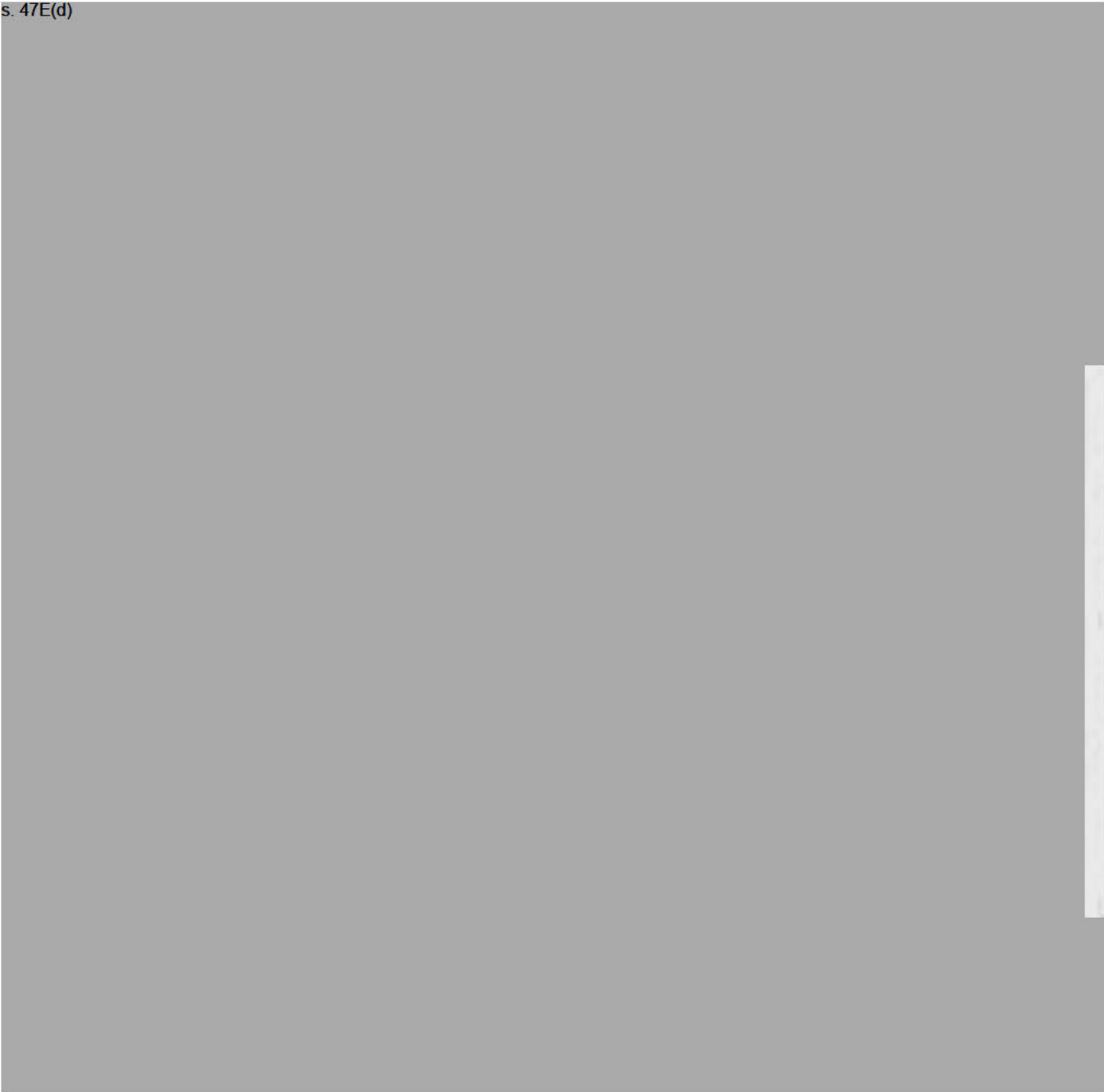
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## Considering the response

Example 1: Very detailed response provided

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### Example 2: Applicant has not responded to NJ letter/has not provided evidence of any circumstances

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### Example 3: Bogus document provided

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### Example 4: Financial Requirements

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### Example 5: False information about a previous marriage

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## Non-grant period – providing natural justice


### IF PRIMARY APPLICANT PREVIOUSLY REFUSED

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### IF FAMILY MEMBER PREVIOUSLY REFUSED

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# Public Interest Criteria (PIC) 4020

## Modules 1 - 3

2019/20

Good morning/afternoon and welcome to the PIC 4020 training.

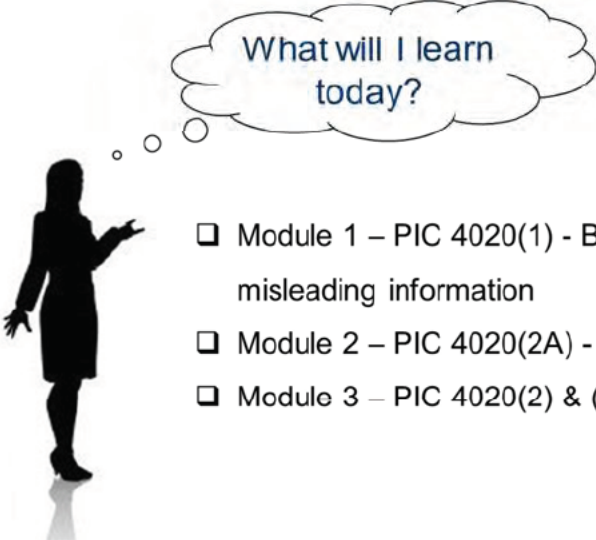
My name is [insert name] I'm from the PIC 4020 Operational Support team in Canberra. [Intro to other team members]

This session will run for about 2hrs.

- Please feel free to ask questions as we go through the training.
- As we go through the information if you have any cases that are relevant please give the details and we will discuss
- We should have some time at the end for any further questions or to discuss cases that you didn't get the opportunity to bring up throughout the training.

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# Session Overview



What will I learn today?

- ☐ Module 1 – PIC 4020(1) - Bogus document/false or misleading information
- ☐ Module 2 – PIC 4020(2A) - Identity
- ☐ Module 3 – PIC 4020(2) & (2B) Non-grant periods & MoFU

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[READ THE SLIDE]

There are two broad streams to PIC 4020

1. Fraud (4020(1)) – introduced in 2011
2. Identity (4020(2A)) – added in 2014



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# Module 1: PIC 4020(1)

2019

Background

Created in 2011

Identity & Minors added in 2014

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## PIC 4020(1) – Bogus documents/Information that is false or misleading

(1) There is **no evidence** before the Minister that the **applicant has given, or caused to be given**, to the Minister, an officer, the Tribunal during the review of a Part 5-reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, **a bogus document or information that is false or misleading in a material particular in relation to:**

- (a) the application for the visa; or
- (b) a visa that the applicant held in the period of 12 months before the application was made.

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The important factors are highlighted in this clause and in the following slides we will break them down.

[READ THE SLIDE]

PIC 4020(1) refers to bogus documents or information that is false or misleading in a material particular. Throughout the presentation, rather than say this in full, we will refer to it as **4020(1)**

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## PIC 4020(1)

### Bogus Document



s.5 (1) of the Migration Act 1958:

Bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

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**What definition of bogus document is the bank statement?**

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

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## PIC 4020(1)

### False or misleading information

PIC 4020(5) defines:

information that is false or misleading *in a material particular* means information that is:

- (a) false or misleading **at the time it is given**; and
- (b) **relevant to any of the criteria** the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.



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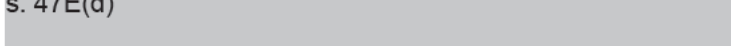
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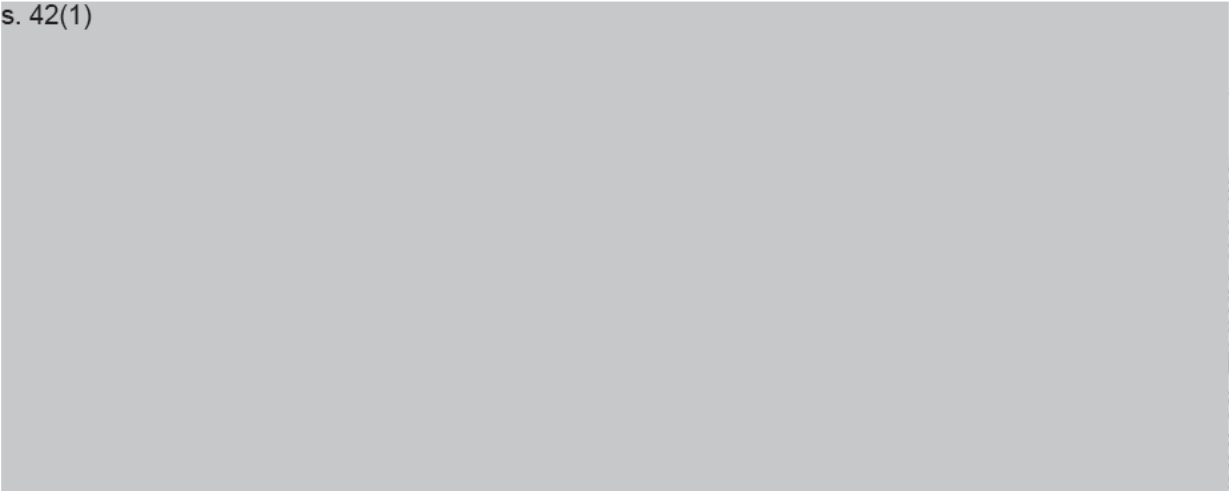
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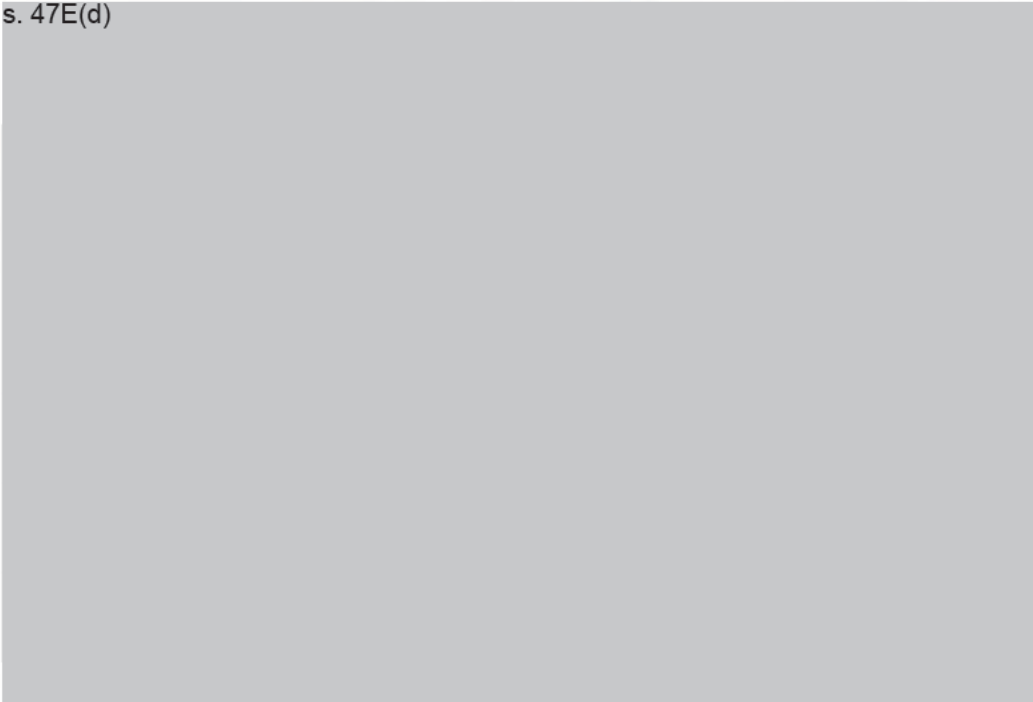
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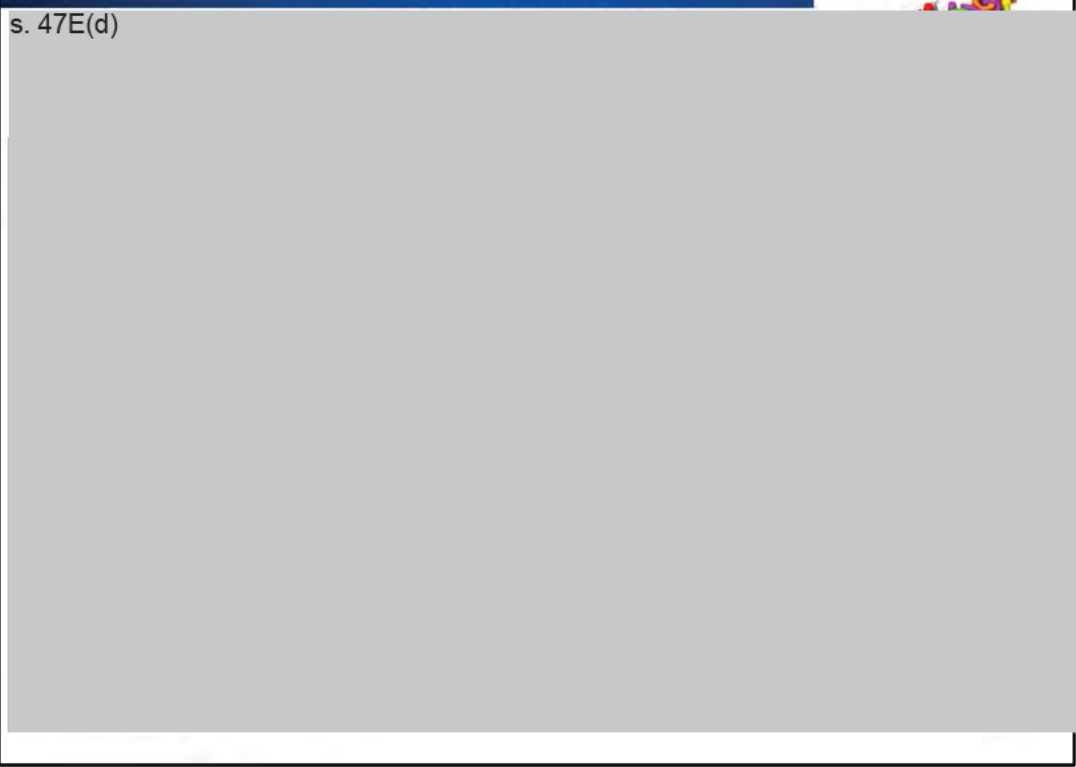
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# Questions



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Thank you



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# Module 2:

## PIC 4020(2A) - Identity

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## PIC 4020(2A) - Identity

(2A) The applicant satisfies the Minister as to the applicant's identity.



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## PIC 4020(2A)

### What is Identity?

A person's identity is defined by a certain combination of characteristics or attributes that allows a person to be uniquely distinguished from another.

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## PIC 4020(2A)



Can an applicant meet PIC 4020 (2A)  
when there is conflicting identity  
information?

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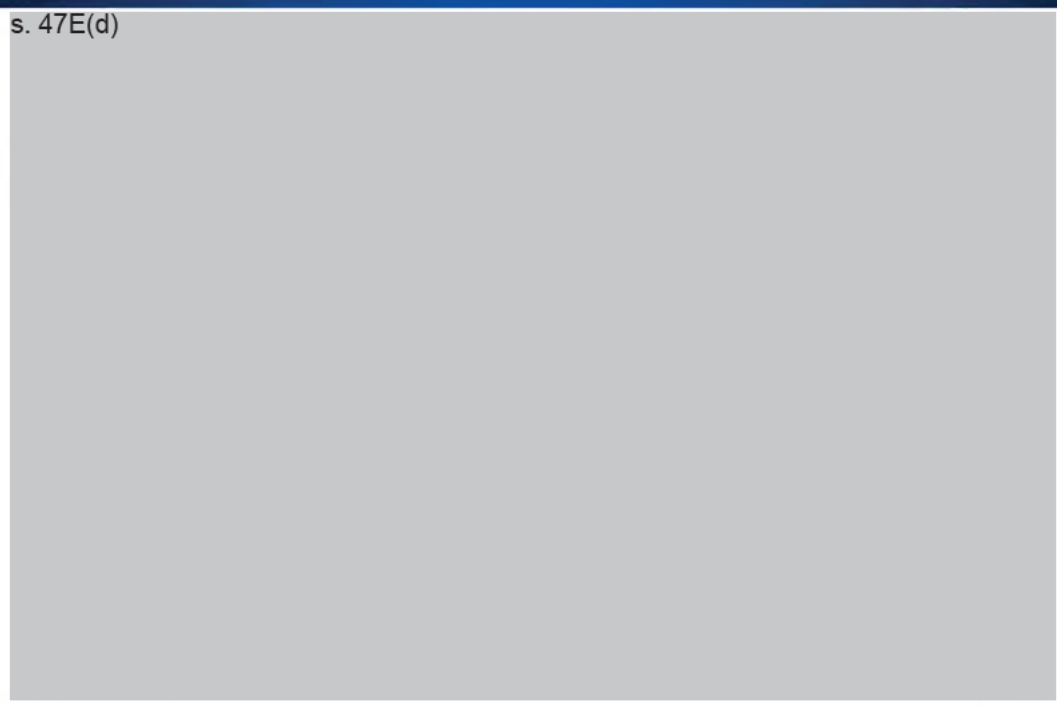
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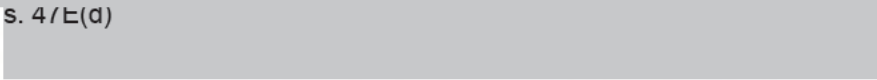


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# Module 3:

## PIC 4020(2) & (2B) - Non-grant periods

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Module 3 of the PIC 4020 training, this module will cover the non-grant periods associated to a refusal under PIC 4020 (1) and (2A),

How the non-grant periods can affect the members of the family unit of someone who has been refused under PIC 4020(1) or (2A)

And

How the non-grant periods work when minors are involved.

## PIC 4020(2)

(2) The Minister is satisfied that during the period:

(a) **starting 3 years** before the application was made; and

(b) **ending** when the Minister makes a decision to grant or refuse the application;

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## PIC 4020(2B)

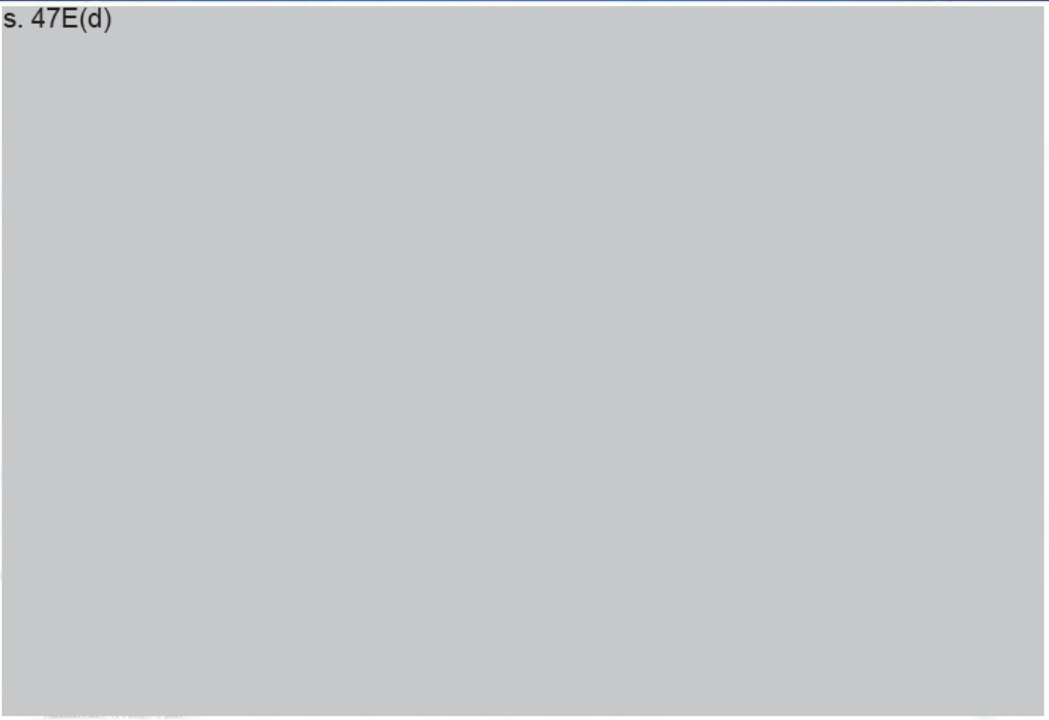
(2B) The Minister is satisfied that during the period:

- (a) **starting 10 years** before the application was made; and
- (b) **ending** when the Minister makes a decision to grant or refuse the application;

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## PIC 4020(2) & (2B)

### Minors

(2AA) & (2BA) Subclause (2) & (2B) do not apply to the applicant if, **at the time the application** for the refused visa **was made** the applicant was under 18.

Minors are required to meet all requirements of PIC 4020, they are only exempt from the non-grant periods.

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## PIC 4020(2) & (2B)

### Members of the Family Unit (MOFU)

The non-grant periods in PIC4020(2) and (2B) apply when an applicant **or a member of the family unit of the applicant** have previously been refused under PIC 4020(1) or (2A).



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PIC 4020 **may impact** Members of Family Unit.

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## PIC 4020(2) & (2B)

### Reg 1.12 – Member of a Family Unit

#### *General rule*

*(2) A person is a member of the family unit of another person (the family head) if the person:*

- (a) is a spouse or de facto partner of the family head; or*
- (b) is a child or step-child of the family head or of a spouse or de facto partner of the family head (other than a child or step-child who is engaged to be married or has a spouse or de facto partner) and:*
  - (i) has not turned 18; or*
  - (ii) has turned 18, but has not turned 23, and is dependent on the family head or on the spouse or de facto partner of the family head; or*
  - (iii) has turned 23 and is under paragraph 1.05A(1)(b) dependent on the family head or on the spouse or de facto partner of the family head; or*
- (c) is a dependent child of a person who meets the conditions in paragraph (b).*

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# Questions



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Are there any questions about any of the topics covered today? Are there any examples that you would like to discuss?

Alternatively, please send any questions/examples to 4020 mailbox with examples.

Next session will be

- ☐ Module 4 – Procedural Fairness
- ☐ Module 5 – PIC 4020(4) - Waiver Provision
- ☐ Module 6 – Decision Records
- ☐ Module 7 – Fraud Recording & Systems

Thank you



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# Public Interest Criteria (PIC) 4020

## Modules 4 - 7

2019

Good morning/afternoon and welcome to the PIC 4020 training session.

My name is [insert name] I'm from the PIC 4020 team in Canberra. [Intro to other team members]

During the session feel free to ask question. [team leader contact name] is available to note any questions down to have an offline discussion if you would like.

The training session will run for about 2hrs.

- As we go through the information if you have any cases on hand or that you have had recently that might be relevant please free to give the details and we can discuss them
- We should have some time at the end for any further questions or to discuss cases you may have that weren't covered discussed throughout the training.

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# Session Overview

What will I learn today?



- ☐ Module 4 – Procedural Fairness
- ☐ Module 5 – PIC 4020(4) - Waiver Provision
- ☐ Module 6 – Decision Records
- ☐ Module 7 – Fraud Recording

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# Module 4: Procedural Fairness

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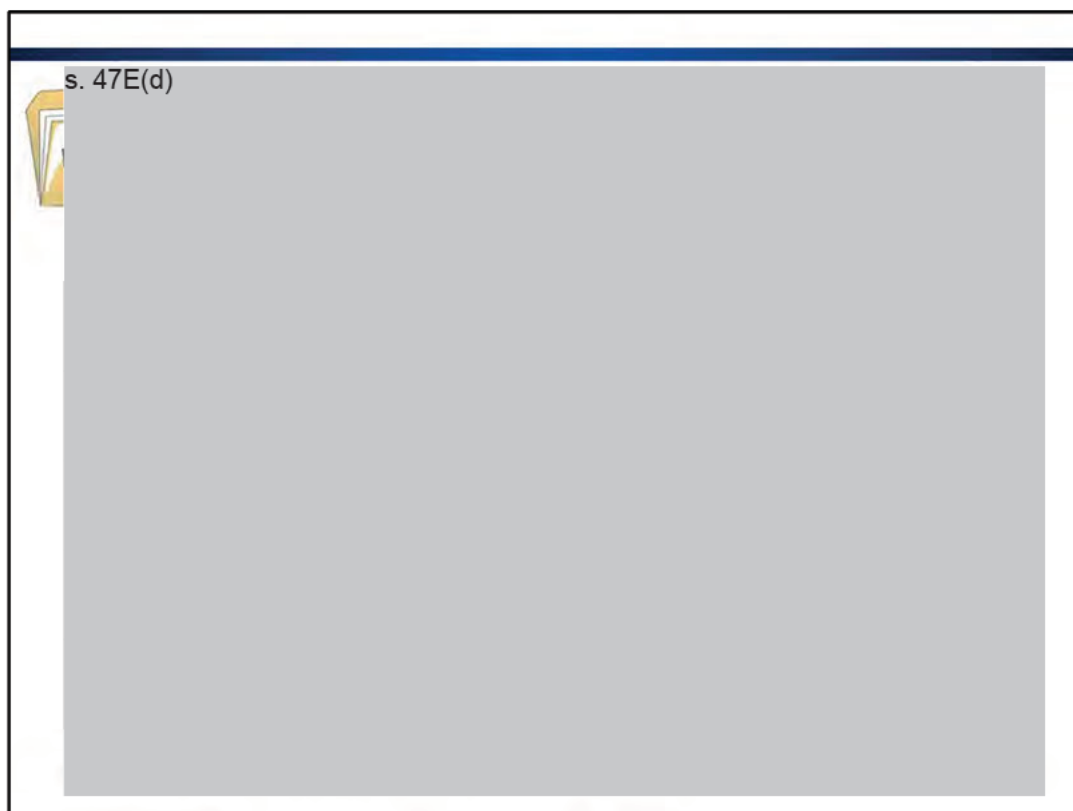
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Suggestions for sentences in the NJ

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**Section 5(1) of the Migration Act 1958 (interpretation) non-disclosable information**

means information or matter:

- (a) whose disclosure would, in the Minister's opinion, be contrary to the national interest because it would:
    - (i) prejudice the security, defence or international relations of Australia; or
    - (ii) involve the disclosure of deliberations or decisions of the Cabinet or of a committee of the Cabinet; or
  - (b) whose disclosure would, in the Minister's opinion, be contrary to the public interest for a reason which could form the basis of a claim by the Crown in right of the Commonwealth in judicial proceedings; or
  - (c) whose disclosure would found an action by a person, other than the Commonwealth, for breach of confidence;
- and includes any document containing, or any record of, such information or matter.

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s. 47E(d)

[READ the SLIDE]

s. 47E(d)

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# Questions



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# Module 5:

## PIC 4020(4) - Waiver Provision

2018

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[REDACTED]

(4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the granting of the visa.

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[REDACTED]

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s. 47E(d)



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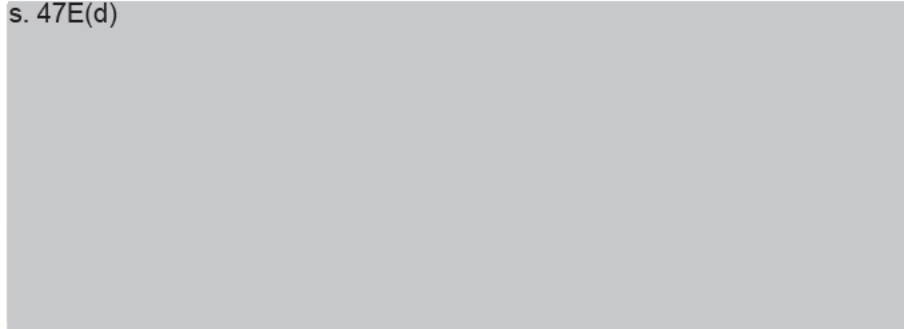


## Decision Records

### Waiver provision – no claim

*No information has been submitted that indicates you are seeking a waiver of PIC 4020 (ECS wording)*

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*4020(4) states: that the minister (delegate) be satisfied if (a) or (b) justify the grant of the visa*

Waiver – information not submitted


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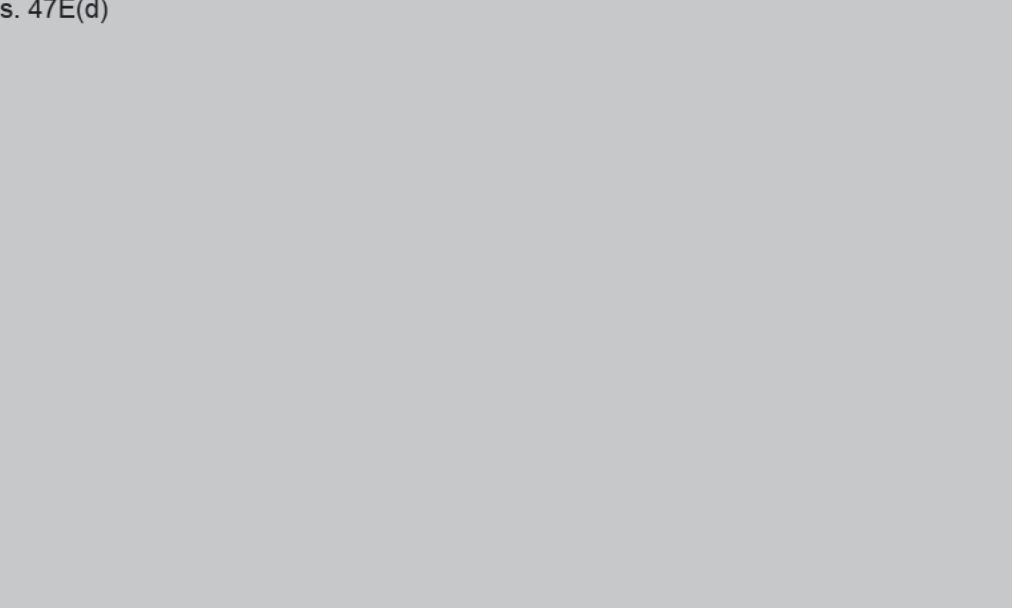
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# Questions



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# Knowledge Check

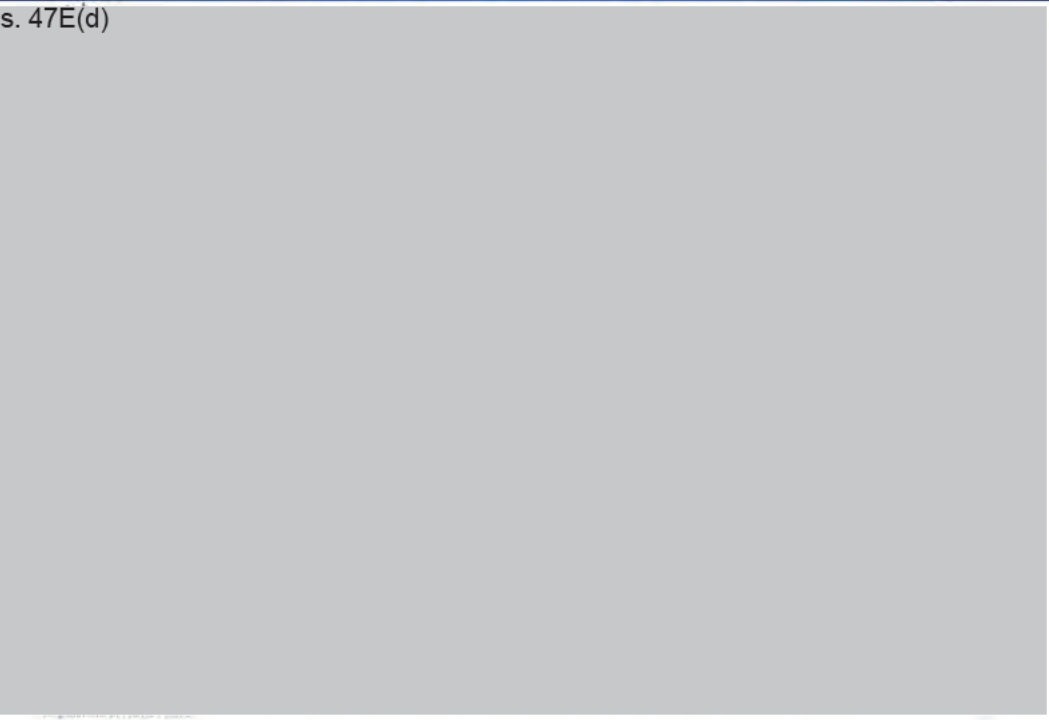


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Go through Questions/Answers

s. 47E(d)

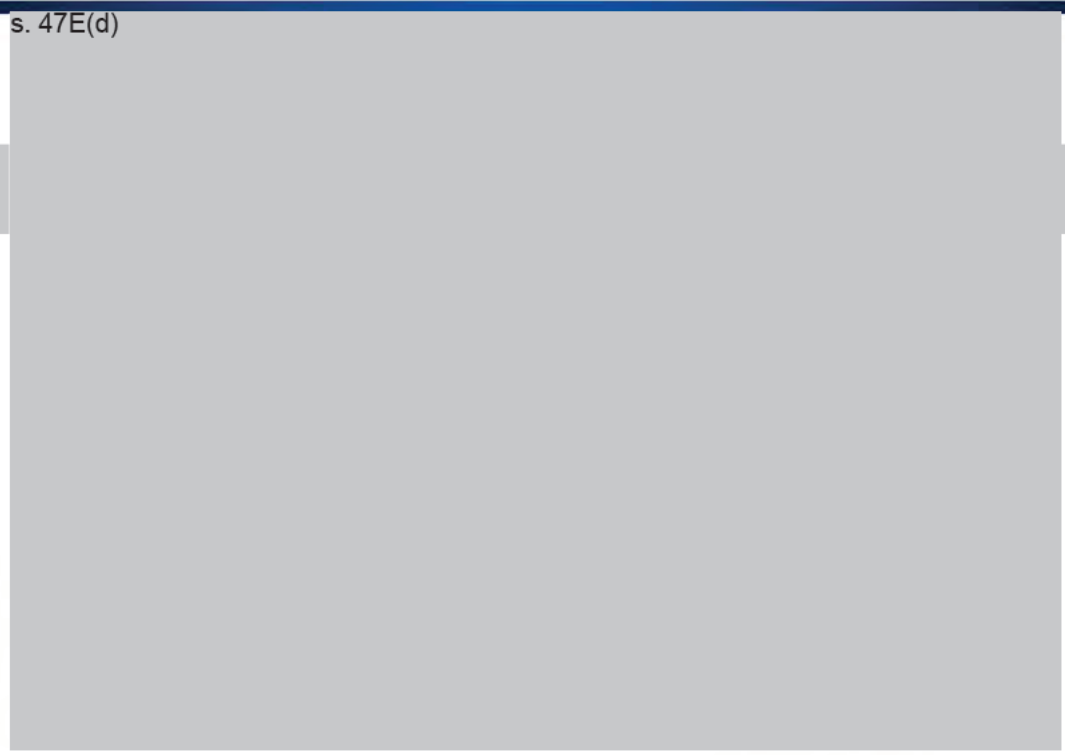


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## Knowledge Check

**According to 4020(2), how many years before the current application must the applicant or MoFU not have been refused a visa because of failure to satisfy PIC 4020(1)?**

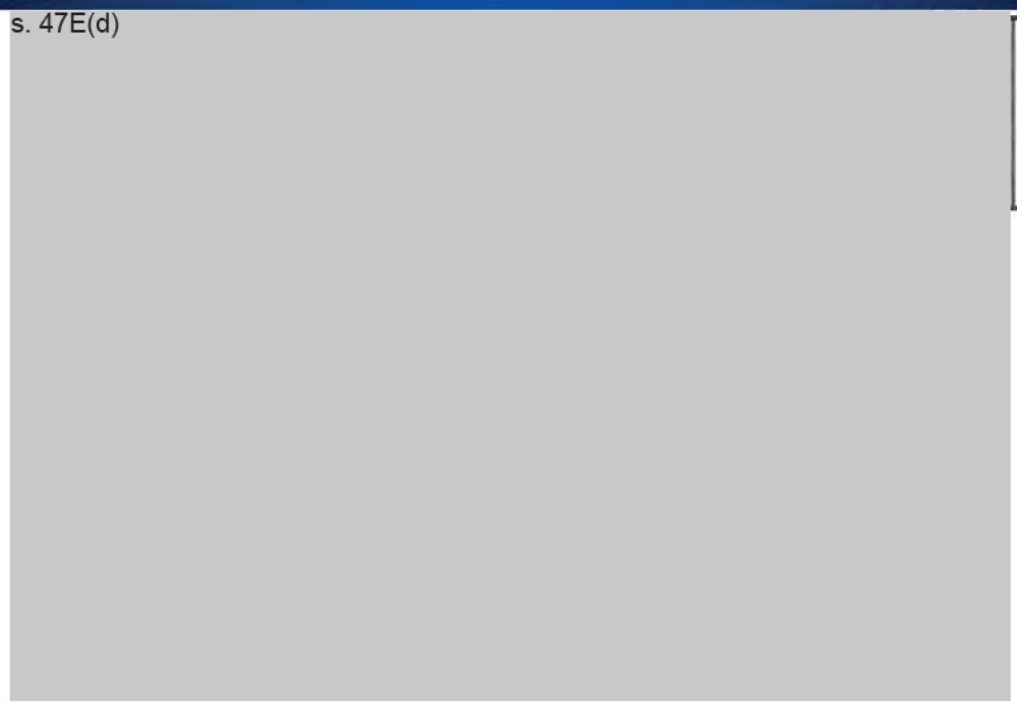


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Three years

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s. 47E(d)



s. 47E(d)



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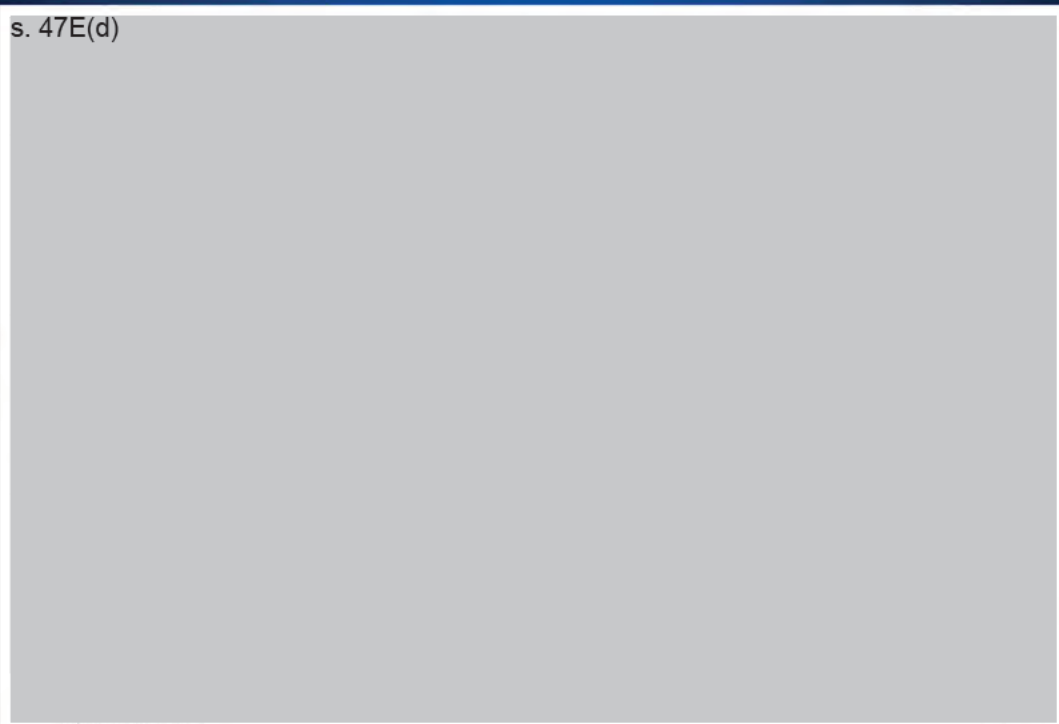


s. 47E(d)



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s. 47E(d)



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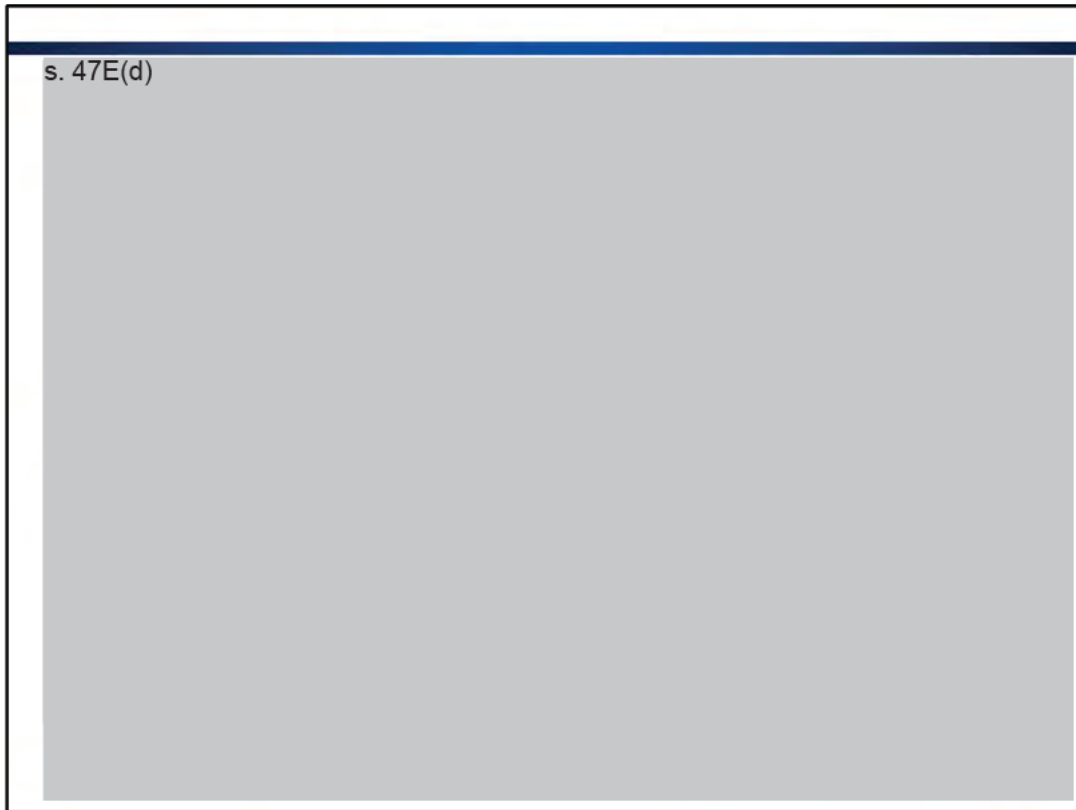


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**A and C - Documents and Information that is false or misleading**

# Questions



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# Module 6:

# Decision Records

2019

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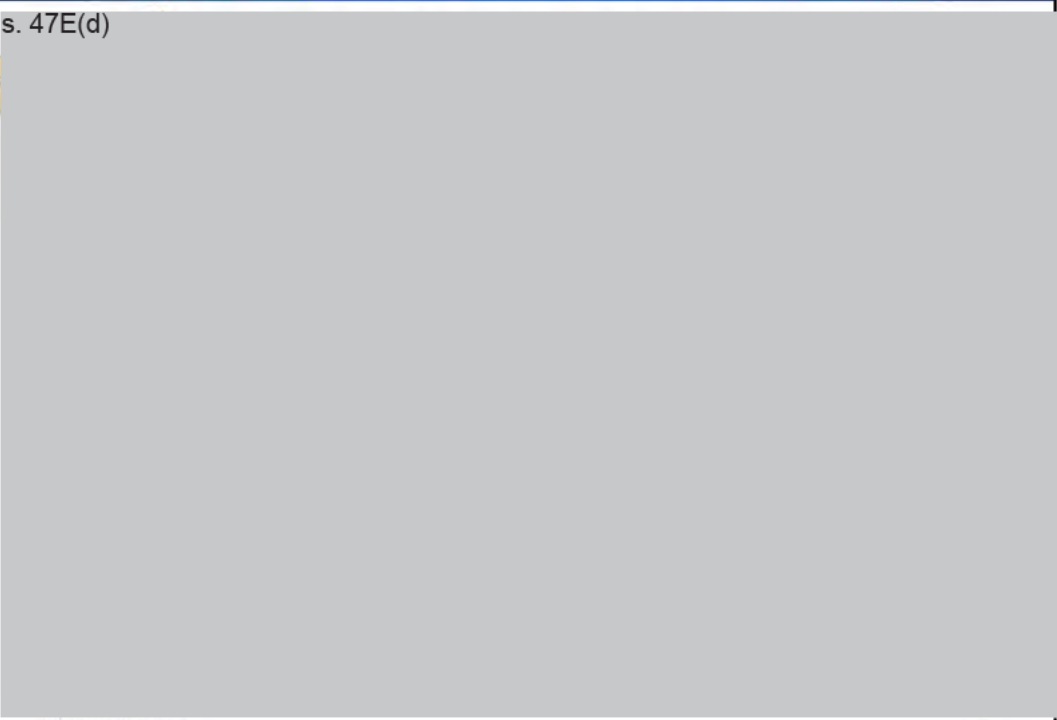
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## Decision Records

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



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s. 47E(d)

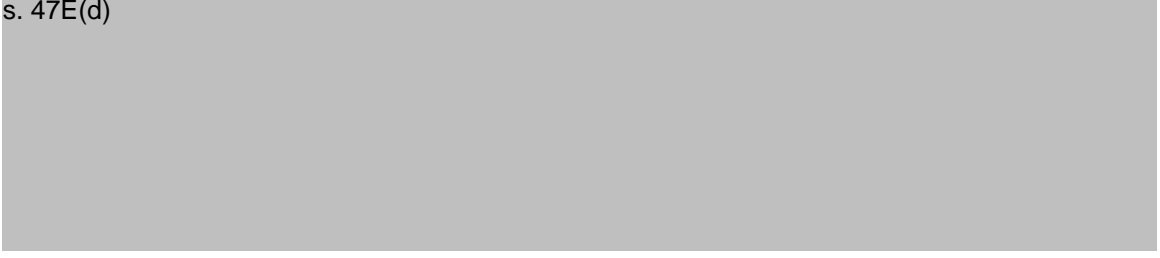


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# Questions



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# Module 7: Fraud Recording

2019

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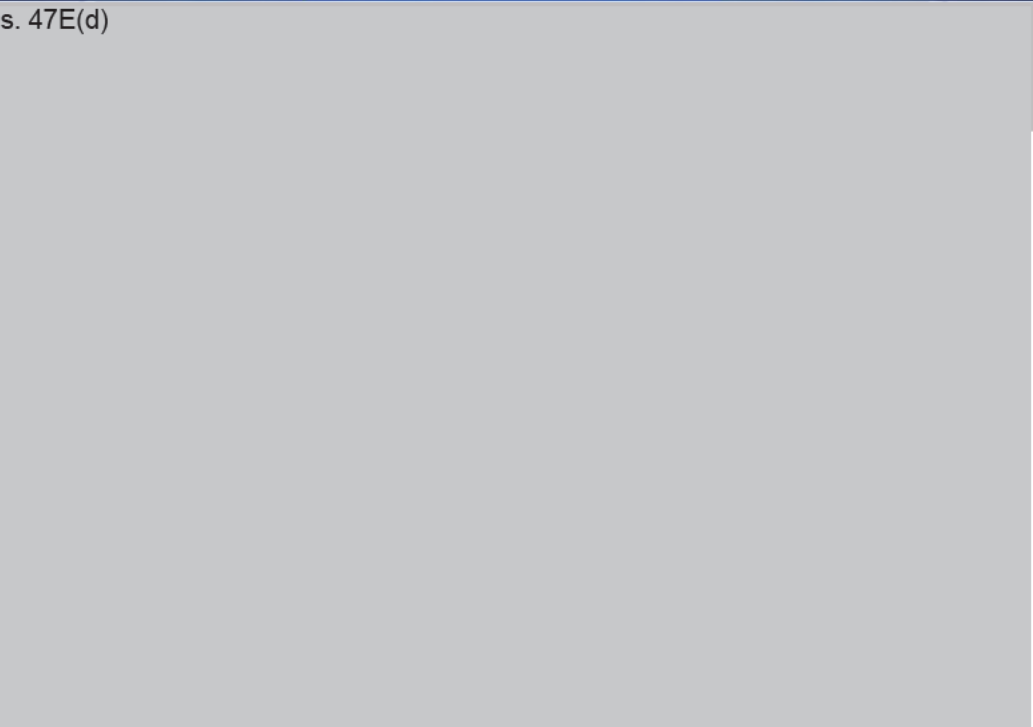


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Identity Standards Section

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# Questions



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