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Detention Services Manual – Detainee entry and exit – Discharge from immigration detention

Procedural Instruction

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

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1. Introduction

1.1. Purpose

1.1.1. The purpose of this Procedural Instruction (PI) is to provide guidance to the Department of Home Affairs (the Department), including Australian Border Force (ABF), and the Detention and Facilities Services Provider (FDSP) when discharging a person detained under section 189 of the *Migration Act 1958* (the Migration Act) from immigration detention.

2. Scope

2.1. In Scope

2.1.1. This PI provides guidance to departmental officers and contracted service providers working in an immigration detention facility (IDF) when discharging:

- a person from immigration detention
- a detainee from an IDF into a community placement following the Minister making a Residence Determination.

2.1.2. This PI also includes:

- *Discharge Checklist* – Annex A

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

2.2. Out of Scope

2.2.1. This PI does not address:

- a detainee leaving an IDF for a temporary purpose (for example, an offsite appointment)
- airport turn-arounds who are not transferred to an IDF
- transfers to a regional processing country
- transfers of detainees within the immigration detention network (IDN)
- the revocation of a Residence Determination (community placement) by the Minister and associated arrangements
- comprehensive instructions on the discharge processes for removal.

3. Procedural Instruction

3.1. Background

3.1.1. When a detainee is granted a visa or they are no longer known or reasonably suspected of being an unlawful non-citizen, they must no longer be detained under the Migration Act and their discharge from immigration detention must be progressed without delay.

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

- 3.1.4. It is the role of the detainee's Status Resolution Officer (SRO) to notify a detainee and relevant stakeholders of an immigration decision, such as the grant/re-instatement of a visa.
- 3.1.5. Regional ABF Removal teams in consultation with SROs and FDSP officers, undertake the processes for removal planning and coordination.
- 3.1.6. The 'discharge process' refers to the process of managing the release of a detainee, including preparing the detainee for release and ensuring that relevant records relating to the detainee's release are appropriately authorised by the ABF Detention Superintendent (Facility).
- 3.1.7. The FDSP Property Officer is required to complete the *Discharge Checklist – Annex A*.
- 3.1.8. The Discharge process does not apply for detainees being transferred to another IDF.

3.2. The legislative framework

- 3.2.1. Section 191 of the Migration Act provides circumstances when certain persons must be released from immigration detention.
- 3.2.2. Section 196 of the Migration Act provides the period during which certain persons must be kept in immigration detention.
- 3.2.3. Notwithstanding the above legislative provisions, a person in immigration detention must be released if there ceases to be a reasonable suspicion that they are an unlawful non-citizen alien and it is not known that they are an unlawful non-citizen alien.
- 3.2.4. Section 198 of the Migration Act provides for the removal of an unlawful non-citizen (other than non-alien) from Australia.

3.3. Notification of an immigration decision

- 3.3.1. It is the role of the detainee's Status Resolution Officer (SRO) to notify a detainee and relevant stakeholders of an immigration decision, such as the grant/re-instatement of a visa.
- 3.3.2. The process of notifying detainees about immigration decisions made under the Migration Act must meet the applicable legal notification requirements. For further guidance, refer to:
 - *DSM – Legal Services – Notification and communication of immigration decisions – PI (DM-613)*
 - *Notification requirements – PI (LS-1818)*.

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3.4. General discharge considerations

- 3.4.1. At the beginning of a detainee's immigration detention in an IDF, each detainee must be provided with information regarding the discharge process. This aims to assist detainees to be aware and prepare strategies to manage any possible immigration status resolution outcome that may arise, being their possible (re-) entry into the Australian community or removal from Australia.
- 3.4.2. The FDSP is responsible for managing all discharge processes and for conducting this process in a manner that promotes the welfare and safety of detainees and ensuring that detainees are regularly informed about what is happening to them in a language they understand.
- 3.4.3. The FDSP must ensure:
- FDSP officers are available to undertake the discharge process at any time and in accordance with timeframes determined by the Department
 - undertake the discharge process at the time the FDSP is advised to do so by the Department and
 - commence the discharge process within **30 minutes** of the time advised by the Department for the detainee's release.

Discharge involving minors

- 3.4.4. Where minors are involved, additional checks and measures must be considered. The release of a minor must be to an appropriate parent or guardian. Officers must confirm the parent/s or guardian/s identification prior to releasing the minor/s into another person's care.
- 3.4.5. Where the minor/s being discharged will be picked up by other family member/s or friend/s, the relevant parent/s or guardian must be advised that:
- person/s attending the IDF must provide a written authority from the parent/s or guardian/s authorising them to pick up the minor/s on their behalf
 - appropriate identification of the parent/s or guardian/s must also be shown to the officer facilitating the discharge
 - the person/s picking up must have appropriate identification.
- 3.4.6. For further guidance, contact the Child Wellbeing Operations Section. Child Wellbeing Officers can offer support for managing specific situations. Also see *Child Safeguarding Framework – PS (BE-916)* and *Best practice for Interacting with children – PI (BC-764)*.

Advising family and friends of impending discharge

- 3.4.7. A detainee may request the Department to contact a person/s outside the IDF such as family or appropriate community groups to inform them of the detainee's impending discharge. This may only be done at the request, or with the consent, of the detainee.
- 3.4.8. A detainee who has been in an IDF for even a small amount of time may have formed friendships and relationships with others in the IDF. Although they may have only a short period of time to prepare to leave the IDF, the detainee should be provided the opportunity to say their farewells to others provided it is operationally practicable to do so.

Property

- 3.4.9. **All** property belonging to a detainee who is leaving an IDF must be returned to them at the time of discharge, with the exception of illegal items that may have been given to, or are still to be collected by, the police.
- 3.4.10. After a detainee is discharged from an IDF, the FDSP must update the CCMD portal in relation to the detainee's property.
- 3.4.11. In returning detainee in-trust property, the FDSP must provide:
- the detainee with the opportunity to inspect their in-trust property on discharge and
 - the opportunity for the detainee to sign a statement indicating their satisfaction or otherwise with the property returned and the condition of the property and
 - if the detainee so wishes, a statement stating that the detainee no longer wants to possess the property and consents to it being left in the FDSP's possession for donation or destruction (as the FDSP sees fit).
- 3.4.12. Where there is a dispute in relation to the quantity or condition of the property returned to the detainee, the FDSP must ensure that:
- the full details of the property in question, including the cause of dissatisfaction, are obtained from the detainee and
 - an investigation is conducted to ensure that any confirmed mistake which is capable of being addressed prior to discharge is addressed by the FDSP.
- 3.4.13. Where a dispute in relation to the quantity or condition of the property returned to a detainee is unresolved at the time of discharge, the FDSP must:
- ensure that the detainee is given contact details of the IDF
 - ask the detainee for their contact details (forwarding address and phone number) and
 - where subsequent investigations after discharge confirm a mistake by the FDSP, ensure that:
 - the correct property is sent to the person via secure post and/or
 - an amount of compensation as determined by the FDSP Facility Operations Manager (FOM) (appropriate to the degree of inconvenience caused) is also sent to the person.
- 3.4.14. For further information, including abandoned property and disposal, refer to *DSM– Managing the administration of detention – Personal property – PI (DM-598)*.

Clothing

- 3.4.15. Appropriate clothing for the journey and destination is to be provided by the FDSP to a detainee being discharged from immigration detention or removed from Australia if the detainee's own clothing is insufficient.
- 3.4.16. The clothing must be clean and in good condition and appropriate to the destination. Underwear, including socks, must be new and new shoes will be provided if required. For further guidance, contact Onshore Contracts section at s. 47E(d) [REDACTED] [@homeaffairs.gov.au](mailto:homeaffairs.gov.au).

3.5. Planning for discharge

- 3.5.1. A detainee being discharged into the community or under a Residence Determination arrangement may only have a few hours' notice prior to being discharged from the IDF.
- 3.5.2. These short timeframes can impact on issues such as property, arrangements for the continuity of health care, the preparation and/or collection of relevant documentation, arranging community support and any farewells to persons in the IDF.
- 3.5.3. When notified by the Department, the FDSP must prepare detainees for discharge from the IDF (including discharge for removal) and will:
- confirm that the identity of the detainee matches that in the Department's release documentation
 - confirm that the Department's release documentation is complete and has been properly authorised
 - ensure that all FDSP officers engaged in the discharge of detainees are trained in the requirements of their role in the discharge process, with refresher training provided on a regular basis
 - ensure that detainees are advised of the reason for discharge, and are provided with the opportunity to ask questions, contact support networks and seek further advice
 - ensure the detainee being discharged from immigration detention will be treated with dignity and respect and will be informed and supported, where required, during the discharge process
 - update the detainee's Security Risk Assessment before discharge
 - ensure the detainee has been provided with a meal at a reasonable time prior to the time of discharge
 - ensure the detainee has been provided with clothing appropriate to the journey and destination climate
 - ensure all personal belongings are returned to the detainee or the detainee's escort if the detainee is being removed from Australia, noting in certain circumstances provision for alternative arrangements to return personal items may be requested and approved by the authorising delegate
 - ensure that where medication is involved, specific instructions from the prescribing medical staff are included in the information handed to the escorting officers or to the detainee
 - ensure detainee records held by the FDSP are transferred to the Department and that the CCMD portal is updated accordingly, by the end of the next business day following discharge
 - use the CCMD portal to record the detainee's discharge details and procedures and
 - immediately inform the Department of any concerns about the post-release welfare of the detainee.
- 3.5.4. Special consideration needs to be given when discharging minors including extended advice timeframes where appropriate and confirmation of appropriate release and care arrangements planned in advance.

- 3.5.5. Special arrangements may include that minors must be discharged into the care of a responsible adult, and that adult is a parent or guardian. If a suitable adult cannot be identified and/or located in time to align with the requirement to discharge the minor/s from detention, a referral/report should be made to the state or territory child welfare authority (STCWA) or at a minimum to the Status Resolution Support Services Program Management section for possible service provision support for the initial transition and to ensure connection to accommodation/services. For further information or advice, refer to the *Status Resolution Support Services (SRSS) Operational Procedures Manual (ADD2020/571645)* or contact the SRSS Operations and Support section at s. 47E(d) [REDACTED] [@homeaffairs.gov.au](mailto:homeaffairs.gov.au).

3.6. Court ordered discharge

- 3.6.1. The Department **must** comply with and give effect to all court ordered directions. In the event a detainee is being discharged under a court order, the court orders must be complied with strictly and promptly. Refer to *Commissioner's Direction 'Direction to comply with court orders' (25 January 2017)*.
- 3.6.2. Where court orders include explicit direction as to the time for compliance, that time **must** be adhered to.
- 3.6.3. Where court orders require 'immediate' release of a detainee, the usual procedures for discharge must be commenced immediately and pursued expeditiously.
- 3.6.4. **If court orders cannot be complied with, it may be necessary to approach the court to have the orders varied. Contact the litigation officer for the detainee urgently to discuss this issue and next steps.**
- 3.6.5. The possibility or prospect of Ministerial or other decisions that may give rise to an obligation to re-detain a person are **not** an adequate reason to delay implementation of court orders.

3.7. Discharge on a visa s. 22(1)(a)(ii) [REDACTED]

- 3.7.1. Where a detainee is granted a visa, or had a visa re-instated, they will become a lawful non-citizen and **must** be discharged from immigration detention without delay.
- 3.7.2. The Department's role in such circumstances is to assist the former detainee to move into the community.
- 3.7.3. A detainee granted a visa may be entitled to 'post-release' assistance from the Department. This can be in the form of rental, living and medical costs assistance. For further information, refer to section 3.11 *Post Release*.
- 3.7.4. In the event a non-citizen is discharged from immigration detention as a result of a visa grant/re-instatement, if requested, arrangements should be made and funded (by the Department) to facilitate the travel of the non-citizen to their home state, if applicable. For example, if a person was located and detained in New South Wales (NSW), but held in an IDF in Western Australia, if requested, arrangements should be made for that person to travel back to NSW. Travel may include by road, rail or air, as would be fair and appropriate in the circumstances.
- 3.7.5. Where a Fit to Travel Assessment (FTTA) is required for a non-citizen being discharged from immigration detention on a visa, this should be requested by the SRO.
- 3.7.6. For further information or advice, refer to the *Status Resolution Support Services (SRSS) Operational Procedures Manual (ADD2020/571645)* or contact the SRSS Operations and Support section at s. 47E(d) [REDACTED] [@homeaffairs.gov.au](mailto:homeaffairs.gov.au).

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

3.9. Health Discharge Assessment and Fitness to Travel Assessment

- 3.9.1. To facilitate continuity of care, a HDA is conducted for all detainees being removed from Australia or discharged into the community, including into Residence Determination arrangements.
- 3.9.2. A HDA results in a Health Discharge Summary (HDS) and informs future health care providers of a detainee's clinical history, including significant health issues, past and current treatment as well as medications. It also supports the consideration and identification of any post discharge support that the detainee may require.
- 3.9.3. Distinct from the HDA, but complementing it, departmental policy requires that a FTTA is completed by a health service provider in all of the following circumstances:
- involuntary and voluntary removals from immigration detention in Australia
 - airport turnarounds where the person remains in the airport and only where the individual is exhibiting signs and symptoms of a health issue, or if clinically indicated
 - airport turnarounds where the person is temporarily sent to an IDF for more than 72 hours
 - non-air travel across Australia's IDN where the person has health risks and/or the journey's time or distance would be difficult given the person's medical condition.
- 3.9.4. The FTTA is an assessment by a registered health professional of a detainee's fitness to travel, primarily on an aircraft, including a determination as to any physical or mental health support required during travel. The FTTA does not include any consideration of post-removal health care.
- 3.9.5. The need to conduct the HDA must not impede the discharge process and arrangements must be in place at each IDF to permit a HDA to be prepared after-hours if required.
- 3.9.6. For further information, contact [s. 47E\(d\)](#) @homeaffairs.gov.au or refer to:
- *Fitness to Travel Assessment – PI (DM-5028)*
 - *Health Discharge Assessment – PI (DM-5261)*.

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3.10. Discharge advice

- 3.10.1. The SRO is responsible for advising relevant stakeholders of immigration decisions affecting a detainee. This includes notifying the Health Services Manager (HSM) as soon as practicable to arrange for a HDA to be conducted.
- 3.10.2. Advice to the ABF Detention Superintendent (Facility) of the detainee's pending discharge from immigration detention may be done verbally but must be recorded in the CCMD portal in an accurate, timely and complete manner. It is the role of the ABF Detention Superintendent (Facility) or their delegate to document the discharge details and procedures in the CCMD portal.
- 3.10.3. The ABF Detention Superintendent (Facility) or their delegate must also notify the FDSP without delay that a detainee is to be discharged from immigration detention and on what grounds. They then need to provide a hard copy of the discharge order to the FDSP to confirm the discharge and save it to the detainee's dossier.

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



Discharge from alternative place of detention (APOD) in the community (non-facility)

- 3.10.8. The process of discharging a detainee from an APOD located in the community (non-facility) is the same as from an IDF.

3.11. Post release

- 3.11.1. The Department's duty of care ceases when a person is discharged from immigration detention. However, in relation to 'special needs' cases, the Department should ensure appropriate arrangements are in place to address the needs of the former detainee post their release from immigration detention.
- 3.11.2. For the purposes of this PI, 'special needs' cases involve detainees who have been identified as requiring special consideration as a result of identified medical, psychological or other vulnerabilities. For guidance on the definition of vulnerable persons, refer to *Vulnerable Persons*

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– SM (SM-5337). The Department has several support programs to facilitate a person transitioning into the community as well as post-removal from Australia.

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

Discharge on a visa

- 3.11.4. When requested by the Department, for detainee's being discharged from immigration detention on a visa, the FDSP must:
- book temporary accommodation arrangements (for example, in a hostel or motel) and provide transport to that accommodation for a detainee who is being discharged from immigration detention, in accordance with the destination and accommodation requirements notified by the Department
 - assist the discharged person to settle into new accommodation (including assisting with check-in)
 - if the discharged person has not arranged for someone to meet them at an interstate destination, arrange for the discharged person to be met and accompanied to the initial point of accommodation and
 - issue a temporary living allowance to the discharged person, upon discharge.
- 3.11.5. If accommodation and transport involves interstate air travel, there are no requirements for the FDSP to escort the person during the flight.
- 3.11.6. Flight and accommodation costs incurred by the FDSP in the delivery of post-release services will be paid by the FDSP and reimbursed by the Department as a pass-through cost.
- 3.11.7. The temporary living allowance is a set amount as determined by the Department that will be paid by the FDSP to the discharged person and reimbursed by the Department as a pass-through cost.

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

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

4. Accountabilities and Responsibilities

Role	Description
ABF Detention Superintendent (Facility)	Responsible for: <ul style="list-style-type: none"> the discharge of detainees from an IDF for the purpose of their removal from Australia as requested by the Department overall accountability for the process involved in discharging a detainee from an IDF effecting the discharge of detainees from detention as required documenting the discharge details and procedures in the CCMD portal notifying the FDSP as soon as possible that a detainee is to be discharged from immigration detention and on what grounds and providing a hard copy of the discharge order to the FDSP to confirm the discharge and to be added to the detainee's dossier.
ABF Removals Officer	Refer to relevant removal policy and procedures and act in accordance with them.
ABF Security Liaison Officer (SLO)	Is responsible for initiating a change of address notification to the courts (if the detainee has any outstanding court matters).
Detention Health Service Provider (DHSP)	Responsible for: <ul style="list-style-type: none"> preparing the HDA and FTFA ensuring that the HDS and supporting documentation has been provided to the detainee and confirm that prescription medications have been issued and correctly translated if required. For further information refer to relevant health and removal policies and procedures.

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Role	Description
<p>FDSP Facility Operations Manager (FOM)</p>	<p>Responsible for:</p> <ul style="list-style-type: none"> • managing the discharge of detainees from an IDF • actioning Requests for Service requests from the relevant area of the Department for the discharge of detainees and • dispatching detainee files to ABF Detention Operations (Facility) for archiving post discharge. <p>For further information, refer to relevant removal policy and procedures.</p>
<p>FDSP Security and Risk Manager</p>	<p>Responsible for ensuring that the detainee’s Security Risk Assessment has been accurately and completely reviewed and updated.</p> <p>For further information, refer to relevant removal policy and procedures.</p>
<p>Status Resolution Officer (SRO)</p>	<p>In the case of a detainee being removed from Australia, the SRO is responsible for ensuring:</p> <ul style="list-style-type: none"> • the detainee has no outstanding matters in any court relating to the Department and is not subject to any orders or injunctions preventing their removal from Australia • that the detainee’s migration agent or legal representative (if applicable) has been notified in the case of the detainee’s voluntary removal • confirm where detainees intend to go post discharge and notify the relevant departmental stakeholders and • seek and record the detainee’s forwarding address and phone number. <p>In the case of a detainee being discharged into the Australian community, depending on the type of visa granted to the detainee, the SRO from the relevant state or territory office may assist in the transition of the detainee from immigration detention to the community by:</p> <ul style="list-style-type: none"> • ensuring the detainee is informed about what will be happening (ie. how the discharge will occur and/or next steps after being discharged) • confirming with the detainee where they will be staying and if they need accommodation • ensuring the detainee is linked into a local community group so that they have appropriate support on their discharge from immigration detention where appropriate • ensuring the relevant departmental stakeholders are informed of the detainees discharge as soon as possible • informing the ABF Detention Superintendent (Facility) of any concerns about the ‘post-release’ welfare of the detainee being discharged from immigration detention

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Role	Description
	<ul style="list-style-type: none"> advising SRSS if assistance is required to eligible detainees post-release and checking if the detainee has an Immigration Advice and Application Assistance Scheme (IAAAS) provider, after discharge of the detainee on a BVE, notify the provider of the person's new contact details. <p>SRO is also responsible for:</p> <ul style="list-style-type: none"> notifying facility stakeholders of an upcoming discharge, and requirement to commence the discharge process. Facility stakeholders include the ABF Detention Operations (Facility) officers and the Security Liaison Officer (SLO) (Facility) at a minimum and completing the Request For Service (RFS) in the CCMD portal requesting the DHSP undertake the HDA and FTTA for all (air or non-air) travel required and updating the CCMD portal with the detainee's known forwarding address confirming if the detainee consents for their address to be shared with the FDSP to have their property mailed to them, complete <i>Form 929 - Change of contact and/or passport details</i>. <p>For further information about the role of SROs, please contact the appropriate Status Resolution team:</p> <ul style="list-style-type: none"> policy enquiries – s. 47E(d) _____@homeaffairs.gov.au Bridging visa (E and D) and case law/notification enquiries - s. 47E(d) _____@homeaffairs.gov.au returns and removals policy advice s. 47E(d) _____@abf.gov.au policy advice on all return services s. 47E(d) _____@homeaffairs.gov.au

4.1. Statement of Expectation

4.1.1 The Secretary of the Department of Home Affairs and the ABF Commissioner expect all Immigration and Border Protection (IBP) workers to:

- comply with the provisions of this PI
- consider whether a proposed departure from any provision set out in this PI is reasonable and justified in the circumstances
- consider the risks of departing from any provision set out in this PI
- be responsible and accountable for the consequences of departing from, or not adhering to the content of this PI, including where such departure or non-adherence results in a breach of any legal or other obligations which lead to adverse outcomes for the Department and
- be responsible for documenting the reasons/justification for their decision to depart from, or not adhere to this PI.

4.1.2 IBP workers who make decisions or who exercise powers or functions under legislation have a duty to make these decisions or exercise these powers or functions in accordance with the requirements of the legislation and legal principles.

5. Version Control

Version number	Date of issue	Author(s)	Brief description of change
2.0	30/06/2017	Detention and Removal Operational Policy	Update of detention instructions to reflect PPCF requirements.
3.0	22/12/2017	Detention and Removal Operational Policy	Reviewed as per Duty Commissioner's request for 'extraordinary review'.
3.1	27/03/2018	Detention and Removal Operational Policy	PPCF QA feedback incorporated.
4.0	23/10/2018	Detention and Removal Operational Policy	Update legal review.
5.0	29/10/2018	Detention and Removal Operational Policy	Update post Inspector review.
6.0	20/01/2022	Detention Operational Policy	PPCF mandatory three (3) year review. Updates: <ul style="list-style-type: none">• PPCF template• policy owner (section name)• terminology

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Attachment A – Definitions

The terms and their accompanying definition that have specific meanings in the context of the suite of detention instructions is at *DSM– Definitions – Supporting Material (DM-5249)*.

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