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and Border Protection**

Special Category visas in immigration clearance

PROCEDURAL INSTRUCTION

This instruction applies to Special Category visa (subclass 444) processing in immigration clearance.

Approval Date	18 January 2018
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Contact	s. 47E(d) [REDACTED] @abf.gov.au
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1. Introduction

1.1. Background

SCVs for certain New Zealand citizens

- 1.1.1. The Special Category visa (SCV) (subclass 444) is a temporary visa enabling New Zealand (NZ) citizens to be lawful non-citizens. To be granted a SCV, the applicant must be:
- a NZ citizen who holds (and shows to an officer) a NZ passport that is in force
 - neither a Behaviour Concern Non-Citizen (BCNC) nor a Health Concern Non-Citizen (HCNC). There is a limited provision to grant a SCV to certain behaviour concern non-citizens.
- 1.1.2. SCVs may be granted in the migration zone in immigration clearance or in the migration zone after immigration clearance.
- 1.1.3. Generally NZ citizens travel to Australia before applying for a SCV. This is because:
- under section 42 of the *Migration Act 1958* (Migration Act), NZ citizens travelling on a NZ passport do not need a visa to travel to Australia
 - regulation 2.06 of the *Migration Regulations 1994* (Migration Regulations) states that persons eligible to be granted a SCV in immigration clearance are exempted from the need to hold a visa to travel to Australia.
- 1.1.4. The combined effect of section 32 of the Migration Act and regulation 5.15A of the Migration Regulations is to allow NZ citizens to be granted a SCV, provided they:
- hold a NZ passport that is in force
 - not be a health concern non-citizen
 - not be a BCNC, unless the only reason they meet the definition of BCNC is that they have been excluded from another country in circumstances that do not warrant their exclusion from Australia.

Section 32 of the Migration Act – Special category visas

Section 32 Special category visas

- (1) There is a class of temporary visas to be known as special category visas.
- (2) A criterion for a special category visa is that the Minister is satisfied the applicant is:
 - (a) a non-citizen:
 - (i) who is a New Zealand citizen and holds, and has presented to an officer or an authorised system, a New Zealand passport that is in force; and
 - (ii) is neither a behaviour concern non-citizen nor a health concern non-citizen; or
 - (b) a person declared by the regulations, to be a person for whom a visa of another

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- class would be inappropriate; or
- (c) a person of a class of persons declared by the regulations, to be persons for whom a visa of another class would be inappropriate.
- (3) A person may comply with subparagraph (2)(a)(i) by presenting a New Zealand passport to an authorised system only if:
- (a) the New Zealand passport is of a kind determined under section 175A to be an eligible passport for the purposes of Division 5 of Part 2; and
 - (b) before the person is granted a special category visa, neither the system nor an officer requires the person to present the passport to an officer.

Electronic grant through SmartGate

- 1.1.5. Since 1 July 2007, the Migration Act and Migration Regulations have allowed:
- eligible ePassport holders (including NZ passport holders) to choose to be immigration cleared through the automated border processing system SmartGate
 - NZ citizens to be granted a SCV electronically (through SmartGate) without the need for a clearance officer to be present during the process.
- 1.1.6. SmartGate does not refuse clearance or refuse the grant of a SCV; all cases requiring consideration by an officer are referred to the manual primary line.
- 1.1.7. NZ citizens immigration cleared through SmartGate apply for their SCV by answering the health and character questions, and making a declaration, at the SmartGate kiosk. For those NZ citizens who choose to be immigration cleared at the manual primary line, their completed Incoming Passenger Card (IPC) is their application for an SCV.

Substantive visa holders

- 1.1.8. NZ citizens who hold a permanent visa cannot make a valid SCV application - refer to Schedule 1 item 1219(3)(c) of the Migration Regulations.
- 1.1.9. NZ citizens who hold a substantive temporary visa that is in effect cannot make a valid application for a SCV in immigration clearance - refer to Schedule 1 item 1219(3)(a) of the Migration Regulations. This prevents potential disadvantage or hardship, should the grant of a SCV cease a more favourable temporary visa.
- 1.1.10. NZ citizens who hold a temporary visa can apply for a SCV after entry, at departmental offices in Australia.
- 1.1.11. NZ seafarers who hold a temporary visa such as a maritime crew visa may be considered for a SCV after clearance at their port of arrival.

Special Category visas for certain New Zealand citizens who formerly held Norfolk Island immigration permits

- 1.1.12. On 1 July 2016, certain NZ citizens who held unrestricted entry permits granted under the repealed Immigration Act 1980 (Norfolk Island) were, under the Norfolk Island Legislation (Migration) Transitional Rule 2016, deemed to hold a SCV.

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2. Scope

2.1. In Scope

- 2.1.1. This instruction covers Non-citizens who hold a NZ passport in effect seeking a Special Category visa in immigration clearance under the Migration Act.
- 2.1.2. This instruction applies to Aviation and Maritime environments providing immigration clearance under the Migration Act.

2.2. Out of Scope

- 2.2.1. The granting of visas other than a Special Category visa.
- 2.2.2. Guidance on or granting of a Special Category visa outside of immigration clearance.
- 2.2.3. Clearance of travellers and/or goods under the Customs Act 1901 (Customs Act).

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3. Glossary

Table 1: Common terms and definitions used in this instruction

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	The Australian Border Force is a part of the Department of Home Affairs and is responsible for offshore and onshore border control enforcement, investigations, compliance and detention operations in Australia.
Australian Border Force officer	ABF officer	ABF officers or others who are delegated to perform border clearance duties. It applies to all Department of Home Affairs officers defined under section 4 of the <i>Australian Border Force Act 2015</i> (Australian Border Force Act).
Border Clearance officer	BCO	Has the meaning as defined by section 165 of the Migration Act, as an officer, or other person, authorised by the Minister to perform duties for the purposes of Part 2 Division 5 of the Migration Act.
Border Entry officer	BEO	An ABF officer who has a delegated authority to undertake primary Customs, Immigration and Biosecurity (CIB) clearance.
Behaviour Concern Non-Citizen	BCNC	Has the meaning given by section 5(1) of the Migration Act. Namely: • has been convicted of a crime and sentenced to death or to imprisonment for at least one year • has been convicted of 2 or more crimes and sentenced to imprisonment for periods that add up to at least one year, • has been charged with a crime where the person was of unsound mind • has been removed or deported from Australia or removed or deported from another country.
s. 47E(d)		
Health Concern Non-Citizen	HCNC	A non-citizen who is suffering from a prescribed disease or a prescribed physical or mental condition as under regulation 5.16 of the Migration Regulations.

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Immigration Officer's Report	M304	A report consisting of components, such as personal and flight details, narrative and coding, which together form a unified client record in the event a passenger is referred for secondary clearance.
Incoming Passenger Card	IPC	A card including personal particulars and a declaration incoming travellers are required to present to a clearance officer under regulation 3.01(3) of the Migration Regulations.
s. 47E(d)		
s. 47E(d)		
s. 47E(d)		
Special Category visa	SCV	A class of visa for which eligibility is derived from section 32(2)(a) or section 32(2)(c) of the Migration Act and can only be granted to New Zealand citizens.
Telephone Interpreters Service	TIS	TIS an automated immediate interpreting service for agency clients who need to access a phone interpreter.
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4. Procedural Instruction

4.1. Key procedural points

- 4.1.1. NZ citizens require only a NZ passport that is in force and do not require a visa for travel to Australia, unless previously assessed as BCNC, see *Procedural Instruction: Behaviour Concern Non-Citizen*.
- 4.1.2. The SCV remains in effect whilst the holder is a NZ citizen and ceases upon departure from Australia (it can also be cancelled, see *Procedural Instruction: Visa cancellation*).
- 4.1.3. A NZ citizen who holds an Australian permanent visa **cannot** by operation of law apply for a SCV.
- 4.1.4. Other foreign nationals (those who do not present a NZ passport) with Australian visas **cannot** validly apply for a SCV in immigration clearance.
- 4.1.5. NZ Certificate of Identity and NZ Refugee Travel Document holders **cannot** apply for a SCV as they are not NZ citizens.
- 4.1.6. A NZ citizen who holds a temporary visa other than a SCV **can only** apply for a SCV after immigration clearance.
- 4.1.7. Acceptable NZ passports include valid NZ Emergency Travel Documents held by NZ citizens.
- 4.1.8.

s. 47E(d)
- 4.1.9. A SCV applicant presenting at the primary line requires a NZ passport that is in force and a completed IPC.
- 4.1.10. ABF officers and SmartGate are 'clearance authorities' for the purposes of immigration clearance and the grant of SCVs.
- 4.1.11. If, an application for a SCV is made using SmartGate, the applicant must answer the health and character questions asked by the system.
- 4.1.12. Although an IPC is not required for SmartGate, users are required to hand an IPC to an ABF officer in the secondary examination area after successful immigration clearance at the electronic gate.
- 4.1.13. A SCV is granted when a computer system or file record of the grant is made in accordance with section 67 of the *Migration Act 1958* (the Migration Act). That is, a visa number has been electronically generated in the Travel and Immigration Processing System (TRIPs) or the traveller has been verbally notified by a Border Clearance Officer (BCO).

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4.2. Applying for a SCV in immigration clearance

- 4.2.1. A NZ citizen who does not hold any other visa for Australia may apply for a SCV in immigration clearance by presenting a NZ passport that is in force and a completed IPC.
- 4.2.2. A SCV applicant presenting at SmartGate requires a valid ePassport and responses to the health and character declarations, see *Procedural Instruction: SmartGate*.
- 4.2.3. Where a SCV applicant is processed through SmartGate and later declares a criminal conviction on the IPC, the ABF officer can consider cancellation of the SCV.

Referrals to ABF officers

- 4.2.4. SCV applicant referrals include:
 - Australian visa-holders
 - the traveller answers 'YES' to the IPC or SmartGate character question
 - the traveller answers 'YES' to the IPC or SmartGate tuberculosis question
 - a NZ citizen claiming to be an Australian citizen
 - s. 47E(d)
 - non-NZ passport holder
 - refusal to complete an IPC
 - Intuitive referral at the primary line.

Primary line assessment

4.2.5.

s. 47E(d)

- 4.2.6. During preliminary discussion the BEO is to:
 - introduce themselves to the traveller and state they are from the ABF
 - consider the traveller's level of understanding of English
 - if required, and telephone access is available, contact the Telephone Interpreters Service (TIS) or engage an ABF officer, fluent in the traveller's language, to assist in translating preliminary questions
 - advise the traveller the reason for referral
 - examine the traveller's passport for travel movements, visas and indications of tampering and alteration

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- if required, photocopy the traveller's IPC, passport bio-data page and relevant documents.

s. 47E(d)

4.3. Actioning referrals

Holders of an Australian visa (other than a Special Category visa)

4.3.1. s. 47E(d)

- 4.3.2. If immigration clearance requirements are satisfied and the traveller is immigration cleared, the BCO must complete the referral using the correct outcome codes. Following this, the BCO must ensure the visa is linked to the movement so that a SCV is not granted.

Character declaration

- 4.3.3. If the traveller has ticked 'YES' to the character question on the IPC, or is referred from a SmartGate declaration, the BCO is to question the traveller according to the BCNC requirements, see *Procedural Instruction: Behaviour Concern Non-Citizen*.
- 4.3.4. If, after assessment, it is determined that the traveller is not BCNC, the BCO is to:
- verbally notify the traveller of the visa grant
 - acquit referral and record details of interactions with the traveller in the M304.

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Tuberculosis declaration

- 4.3.5. If the traveller has ticked 'YES' to the tuberculosis question on the IPC, or is referred from a SmartGate declaration, the ABF officer is to question the traveller according to the HCNC requirements, see *Procedural Instruction: Foreign nationals and tuberculosis*.
- 4.3.6. If, after assessment, it is determined that the traveller is not HCNC, the BCO is to:
- verbally notify the traveller of the visa grant
 - acquit referral and record details of interactions with the traveller in the M304.

NZ passport holders claiming Australian citizenship

- 4.3.7. NZ citizens claiming to be Australian citizens must have their Australian citizenship confirmed by producing their Australian passport, Document of Identity (with Australia as nationality) or Australian Declaratory Visa.
- 4.3.8. **s. 47E(d)**
- 4.3.9. If the immigration status checks confirm that the traveller is an Australian citizen, continue with immigration clearance.

s. 47E(d)

Applicant does not hold valid NZ passport

- 4.3.12. If a traveller presents without a valid NZ passport, but has the evidence that they are a NZ citizen, the BCO should determine the traveller's circumstances and consider granting the traveller a visa in immigration clearance, such as a Border visa, see *Procedural Instruction: Granting border visas in immigration clearance*.

Refusal to complete an IPC

- 4.3.13. If a traveller refuses to complete an IPC, the officer should inform the traveller of the eligibility requirements of a SCV grant and if these requirements are not met, a SCV will not be granted, which may result in refusal of immigration clearance.

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4.4. NZ Crew

4.4.1.

s. 47E(d)

4.4.2.

s. 47E(d)

4.5. Eligibility for a SCV after immigration clearance

4.5.1.

A NZ citizen can apply for and be granted a SCV onshore if the requirements are met, including BCNC and HCNC travellers. ABF officers may advise that onshore applicants attend a Home Affairs office with their NZ passport (that is in force) and a completed IPC. Circumstances include:

- NZ citizens who arrive as crew and sign off for residence or stay in Australia
- NZ citizens who arrive in Australia as a temporary visa holder and the visa is about to cease or has ceased
- NZ citizen is immigration cleared on a non NZ passport and decides to remain in Australia as a SCV holder
- a non-citizen who acquires NZ citizenship while in Australia.

Record keeping

4.5.2.

Where a SCV is granted after referral, the BCO must undertake the following by the end of the shift to ensure national reporting requirements are met:

- Finalise the M304 report ensuring relevant information is recorded, including:
 - o reason for referral
 - o if the criminal history check was confirmed with the traveller, if applicable
 - o if the traveller was found to be a HCNC
 - o steps taken to reach the assessment, for example, a detailed narrative will assist ABF officers (and posts) in future assessments and avoid unnecessary delay to the traveller in subsequent travel
 - o references to times; for example, duty of care shown to traveller
 - o result of baggage searches
 - o traveller discussions about future visa applications, if applicable
 - o details of any Australian contacts
- ensure the appropriate outcome code is recorded, for example:

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5. Accountability and responsibilities

- 5.1.1. If ABF officers require clarification or assistance in regard to this instruction, they should contact the National Border Programme by email [s. 47E\(d\)@abf.gov.au](mailto:s.47E(d)@abf.gov.au) or telephone [s. 22\(1\)\(a\)\(ii\) AEST](tel:s.22(1)(a)(ii)AEST).
- 5.1.2. The Superintendent, National Border Programme has responsibility for the preparation and dissemination of this Procedural Instruction in regards to operational policy and programme management of border clearance activities for air and sea travellers, under the Customs Act and Migration Act.
- 5.1.3. The Director, Traveller Policy Advice and Support section has responsibility for preparation and dissemination of the Policy Statement in relation to this Procedural Instruction.

6. Statement of Expectation

- 6.1.1. This Procedural Instruction under the PPCF sets out guidance and directions to workers on how to implement the Department's policy.
- 6.1.2. It is expected that all workers who are subject to this Procedural Instruction will have due regard to it and will only depart from it if:
 - a) the departure is reasonable and justified in the circumstances
 - b) all risks have been considered
 - c) approval has been sought and responsibility accepted for documenting the justification for the decision.
- 6.1.3. Workers are required to comply with all reasonable and lawful directions contained in this Procedural Instruction. Failure to comply with a direction may be considered a breach of the Australian Public Service Code of Conduct (for APS employees) or the *Professional Standards Secretary's Direction* under section 55 of the *Australian Border Force Act 2015* (for non-APS employees).
- 6.1.4. All records created as a result of this procedure must be managed in accordance with the Records Management Policy Statement. Records created as a result of this policy/procedure must be saved in TRIM RM8 or an approved business system.

7. Related Framework documents

This instruction must be read in conjunction with the following documents:

7.1. Policy Statement

- 7.1.1. [TT-2983] Border Clearance.

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7.2. Procedural Instructions

- 7.2.1. [BC-2454] Behaviour Concern Non-Citizen.
- 7.2.2. [BC-2481] Foreign nationals and tuberculosis.
- 7.2.3. [BC-2538] Granting border visas in immigration clearance.
- 7.2.4. [BC-2458] Immigration clearance of Australian citizens.
- 7.2.5. [BC-2676] Managing minors in immigration clearance.
- 7.2.6. [BC-2698] SmartGate.
- 7.2.7. [BC-2482] Visa Cancellation.

8. References and legislation

Migration Act 1958

- 8.1.1. This Act sets out the primary requirements relating to immigration clearance as follows:
 - section 166 outlines the evidence that must be presented to a clearance officer or an authorised system upon entry to Australia.
- 8.1.2. Other sections of the Act are also important in the context of immigration clearance, they are:
 - Migration Regulations Schedule 1 item 1219 – Special Category (Temporary) (Class TY)
 - Migration Regulations Schedule 2 part 444 Special Category
 - Regulation 3.01(3) outlines the provisions of information required on a collection on a passenger card
 - Regulation 2.06 outlines non-citizens who do not require visa to travel to Australia
 - Regulation 5.15 outlines the prescribed circumstances a behaviour concern non-citizen has been excluded from another country for the purpose of paragraph (e) of the definition of subsection 5(1) – Behaviour concern non-citizen
 - section 5 outlines the definitions used in the Migration Act, in particularly
 - o Behaviour concern non-citizen
 - o Health concern non-citizen
 - section 32 outlines a Special Category visa
 - section 42 outlines visa essential for travel
 - section 67 outlines the grant and refusal of visa – how and when.

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9. Consultation

9.1. Internal consultation

- 9.1.1. The following internal stakeholders have been consulted in the development of this Procedural Instruction:
- Traveller Policy Branch, Traveller Policy Advice and Support Section
 - FOI Privacy and Records Management Branch, Records Management Section
 - Integrity Security & Assurance Division, Integrity and Professional Standards Branch
 - Temporary Visa Programme Branch, Sea Air & Bridging ABC Visas Section
 - Legal Division, Legal Advice and Operational Support Branch
 - Immigration Compliance Branch, National Border Programme.

9.2. External consultation

- 9.2.1. No external consultation.

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10. Document details

BCS Category/Function	Trade & Traveller Clearance Management
BCS Sub-Category/Sub-Function	Passenger and Crew Processing
Period of Effect	Three years from the date of approval

10.1.Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	11 APR 17	s. 22(1)(a)(ii)	Conversion of SOP into PI
1.1	24 APR 17	s. 22(1)(a)(ii)	Incorporation of comments from Traveller Policy
1.2	07 DEC 17	s. 22(1)(a)(ii)	Cleared by Legal (C30492)
1.3	11 JAN 18	s. 22(1)(a)(ii)	Reviewed for SES approval

10.2.Approval

Approved by:	Tracie GRIFFIN Acting Commander Immigration Compliance Branch
Approved on (date):	18 January 2018

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Writing M304 border reports

Procedural Instruction

This procedural instruction applies to the s. 47E(d) that records events and decision made in immigration clearance.

Approval Date	3 August 2018
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Contact	s. 47E(d) @abf.gov.au
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TRIM Reference	s. 22(1)(a)(ii)

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1. Introduction

1.1. Background

The Australian Border Force (ABF) uses the s. 47E(d) to capture information of travellers who have been entered into the s. 47E(d) which creates a referral. ABF officers performing secondary clearance functions use the s. 47E(d). The referral is actioned with the completion of an M304 report.

This instruction applies to the s. 47E(d) that records events and decisions made in border clearance.

Every referral must be finalised with a complete M304 report.

2. Scope

2.1. In Scope

This procedural instruction covers ABF officers performing secondary clearance functions using the referrals system. The referral is actioned with the completion of an M304 report.

This procedural instruction applies to staff in the aviation and maritime environments providing immigration clearance under the *Migration Act 1958* (Migration Act).

2.2. Out of Scope

This procedural instruction does not cover the layout of the M304 report and how to access it.

This procedural instruction does not apply to clearance of travellers and/or goods under the *Customs Act 1901* (Customs Act).

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3. Glossary

Table 1 – Common terms and definitions used in this instruction

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	The Australian Border Force is an agency within the Home Affairs portfolio responsible for offshore and onshore border control enforcement, investigations, compliance and detention operations in Australia.
Australian Border Force officer	ABF officer	An ABF officer is an Immigration and Border Protection worker (see section 4 <i>Australian Border Force Act 2015</i>) authorised to perform border clearance duties.
s. 47E(d)		
Immigration clearance		Is a person who is in immigration clearance in the circumstances set out in the <i>Migration Act 1958</i> (Migration Act).
Immigration officer's report	M304	Is a report consisting of components, such as personal and flight details, narrative and coding, which together form a unified client record in the event a traveller is referred for secondary clearance
s. 47E(d)		
Referral		Is a request from one departmental work area to another to undertake an activity for a specific purpose related to the processing of a visa application. It is also a record of caseload assurance checks undertaken by a decision maker.
Visa Determination officer	VDO	Is an ABF officer who has a delegated authority to undertake primary Customs, Immigration clearance.

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4. Procedural Instruction

4.1. Definition

The M304 report consists of several components, including personal details, flight details, narrative and coding, which combined, form a unified client record. This information is downloaded from the s. 47E(d) system. All referrals must be finalised with a completed M304 report.

When completing an M304 report, ABF officers must ensure the following categories are completed, which describe all actions and events occurring during border clearance:

- client bio-data and visa details
- flight details
- coding to describe the event
- coding to describe actions/outcomes in relation to the event
- a narrative containing contemporaneous notes describing the interview/event.

4.2. M304 report content

Initial screen

s. 47E(d)

The M304 report is used to support actions by ABF officers. This form records critical decision points and may be used to support a decision to refuse border clearance, infringe airlines and/or to inform the future removal of travellers.

Narrative

s. 47E(d)

The referral narrative must be written with clear information describing the event that has occurred. Whether a traveller has been immigration cleared, or refused clearance, the M304 report should contain clear information on what has occurred.

M304 reports should include, where relevant, the following information:

- the travellers immigration status
- circumstances surrounding the traveller's travel to Australia
- relevant statements or admissions by the traveller regarding travel and intentions whilst in Australia
- details of any search undertaken by ABF officers and noting the power used for the search
- information gathered during discussion or interview
- immigration decisions made, including the grounds upon which they were made

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- notices/forms issued to the traveller
- visas grants, including reasons for an ETA or border visa grant
- visa cancellation, both procedure and decision and detention events
- details of duty of care shown towards the person, for example consular or legal access, medical attention, refreshments and toilet breaks
- duty of care and details where the traveller is transferred to an immigration detention facility or police custody
- details of any return arrangements including papers served on the airline.

If documents such as records of interview or other evidence has been obtained in the course enquiry a TRIM record will have to be created and listed in the M304.

Recording information at end of shift

Where an ABF officer is unable to complete the entire M304 report for a refused immigration clearance case prior to the end of their shift the ABF shift supervisor should be informed of the circumstances. In these cases the 'template 53 – Draft Refusal' that records the minimum information required for further processing must be completed.

M304 reports must be completed in order to ensure that any system outcomes in the referral are actioned, specifically movement records, visa grants or cancellations. Where an M304 cannot be entirely completed prior to the end of a shift, an ABF officer must enter the minimum requirements and then 'finalise' the referral in the system. Subsequently to this ABF officers can 'un-finalise' the referral in the system and continue to finalise the report. This will ensure others accessing the system will be able to view an accurate account of a traveller's status.

Finalising the referral allows reporting and infringement documents to be extracted and saved where necessary. ABF supervisors need to ensure that ABF officers have finalised cases before finishing their shift.

Coding

VDO must ensure that the correct code is applied when describing an event or action, see *Procedural Instruction: Referral codes*.

The correct coding of M304s has three purposes:

- describing events arising from the source of the referral
- the referral reason and outcome
- providing statistical information managed by Strategic Policy and Planning Division. The data is used in the Annual Report and in Senate Estimates briefings.

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5. Accountability and responsibilities

If ABF officers require clarification or assistance in regard to this instruction, they should contact Traveller Operational Policy Section by email **s. 47E(d)** [redacted] [@abf.gov.au](mailto:[redacted]@abf.gov.au) or telephone: **s. 22(1)(a)(ii)** AEST.

The Superintendent, Traveller Operational Policy Section has responsibility for the preparation and dissemination of this Procedural Instruction in regards to operational policy and programme management of border clearance activities for air and sea travellers, under the Customs Act and Migration Act.

The Director, Traveller Policy Section has responsibility for preparation and dissemination of the Policy Statement in relation to this Procedural Instruction.

6. Statement of Expectation

This Procedural Instruction under the PPCF sets out guidance and directions to workers on how to implement the Department's policy.

It is expected that all workers who are subject to this Procedural Instruction will have due regard to it and will only depart from it if:

- a) the departure is reasonable and justified in the circumstances;
- b) all risks have been considered; and
- c) approval has been sought and responsibility accepted for documenting the justification for the decision.

Workers are required to comply with all reasonable and lawful directions contained in this Procedural Instruction. Failure to comply with a direction may be considered a breach of the Australian Public Service Code of Conduct (for APS employees) or the *Professional Standards Secretary's Direction* under section 55 of the *Australian Border Force Act 2015* (for non-APS employees).

All records created as a result of this procedure must be managed in accordance with the Records Management Policy Statement. Records created as a result of this policy/procedure must be saved in TRIM RM8 or an approved business system.

7. Related Framework documents

This instruction must be read in conjunction with the following documents:

7.1. Policy Statement

[TT-2983] Border Clearance.

7.2. Procedural Instructions

[BC-536] Arrival, immigration clearance and entry - Immigration clearance at airports and seaports.

[BC-2523] Referral codes.

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8. References and legislation

8.1. Migration Act 1958

This Migration Act sets out the primary requirements relating to immigration clearance mentioned in this procedural instruction, as follows:

- section 166 outlines the evidence that must be presented to a clearance officer or an authorised system upon entry to Australia.
- section 252 outlines the powers of search
- section 213 outlines carrier liability for costs
- section 217 outlines the requirement of carriers to remove
- section 229 outlines carriage of non-citizens without documentation.

9. Consultation

9.1. Internal consultation

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

- Integrity Security and Assurance Division, Integrity and Professional Standards Branch
- FOI Privacy and Records Management Branch, Records Management Section
- Traveller Branch, Traveller Policy Section.

9.2. External consultation

No external consultation.

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10. Document Details

BCS Category/Function	Trade and Traveller Clearance Management
BCS Sub-Category/Sub-Function	Passenger and Crew Processing
Period of Effect	Three years from date of original approval

10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	24 May 17	National Border Programme	Updated document to PI
1.1	27 June 17	PPCF Control Framework	Cleared PPCF Quality Assurance
1.2	23 Feb 17	National Border Programme	Reviewed for SES approval
1.3	30 July 18	National Border Programme	Updated to Home Affairs template and reviewed for SES approval

10.2. Approval

Approved by:	Karen HACKER A/g Commander ABF Governance
Approved on (date):	3 August 2018

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Behaviour Concern Non-Citizen travellers at the border

Procedural Instruction

This instruction applies when an Australian Border Force officer becomes aware that an arriving New Zealand passport holder has criminal convictions and may be a behaviour concern non-citizen.

Approval Date	4 September 2018
Date of Review	4 September 2019
Contact	s. 47E(d) @abf.gov.au
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1. Introduction

1.1. Background

Section 32 of the *Migration Act 1958* (the Migration Act) provides for a criterion for the grant of a Special Category (subclass 444) visa (SCV). It sets out three types of applicants who are eligible for the grant of a special category visa. Currently, only New Zealand citizens are eligible for the grant of a special category visa.

Section 32(2)(a) of the Migration Act provides for the grant of a Special Category (subclass 444) visa (SCV) to a New Zealand citizen who is not a behaviour concern non-citizen.

Where a traveller is assessed as meeting the definition of Behaviour Concern Non-Citizen (BCNC), they cannot be granted a Special Category Visa (SCV). A '**Behaviour concern non-citizen**' is defined in s5(1) of the Migration Act.

New Zealand (NZ) citizens who have had a mandatory visa cancellation revoked by the Minister of Home Affairs under Section 501CA(4) of the Migration Act may be eligible for the SCV if they return to Australia provided that no new grounds have arisen that makes that NZ citizen fall within the meaning of BCNC since they made representations to the Minister: pursuant to paragraph 32(2)(c) and subregulation 5.15A(3).

Prior to proceeding with a BCNC consideration, the Visa Determination officer (VDO) must be satisfied the traveller is not an Australian citizen or permanent resident.

This Instruction is a guide, to assist ABF officers to assess NZ citizens efficiently against BCNC provisions. An ABF officer must:

- ensure a NZ citizen is cleared at the point where the officer is satisfied the NZ citizen does not meet the definition of BCNC and meets the SCV criteria, to avoid unnecessary delay
- use judgment and discretion to minimise unnecessary checks, such as requests for criminal records from the NZ Police.

2. Scope

2.1. In Scope

This procedural instruction applies to staff in the Aviation and Maritime environments providing immigration clearance under the Migration Act.

This procedural instruction applies to NZ citizens seeking grant of a SCV in immigration clearance at a manual primary line.

2.2. Out of Scope

This procedural instruction does not apply to clearance of travellers and/or goods under the *Customs Act 1901*.

This procedural instruction does not apply to NZ citizens who hold a visa that is not a Special Case (subclass 444) visaSCV.

This procedural instruction does not apply to NZ citizens who are seeking to enter Australia as a member of Crew and present a Crew Declaration form.

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3. Glossary

Table 1: Common terms and definitions used in this instruction

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	The Australian Border Force is an agency within the Home Affairs portfolio responsible for offshore and onshore border control enforcement, investigations, compliance and detention operations in Australia.
Australian Border Force officer	ABF officer	An ABF officer is an Immigration and Border Protection worker (see section 4 Australian Border Force Act) authorised to perform border clearance duties.
Behaviour Concern Non-Citizen	BCNC	Has the meaning given by section 5(1) of the <i>Migration Act 1958</i> (Migration Act). Namely: • has been convicted of a crime and sentenced to death or to imprisonment for at least one year • has been convicted of 2 or more crimes and sentenced to imprisonment for periods that add up to at least one year • has been charged with a crime where the person was of unsound mind has been removed or deported from Australia or removed or deported from another country.
Department of Home Affairs		Is the Australian government interior department with responsibilities for national security, law enforcement, emergency management, border control, immigration, refugees, citizenship, and multicultural affairs.
Incoming Passenger Card	IPC	Is a card including personal particulars and a declaration of incoming travellers are required to present to a clearance officer under Regulation 3.01(3) to the <i>Migration Regulations 1994</i> (Migration Regulations).

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Term	Acronym (if applicable)	Definition
s. 47E(d)		
s. 47E(d)		
Visa Determination Officer	VDO	Is an ABF officer who has a delegated authority to undertake primary Customs, Immigration and clearance.

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4. Procedural Instruction

4.1. Confirm that the traveller is not an Australian citizen (or eligible for Australian Citizenship) by operation of law

Many people who have acquired Australian citizenship by operation of law (by birth in Australia between 26/01/1949 and 19/08/1986) do not have a record of their citizenship status in any departmental systems. If

s. 47E(d) arises, please contact the Citizenship helpdesk for assistance, at [s. 47E\(d\)@homeaffairs.gov.au](mailto:s.47E(d)@homeaffairs.gov.au).

As this form of citizenship is granted by operation of law, the NZ passport holder may not be aware of their status or eligibility to meet requirements for Australian citizenship.

Under the *Australian Citizenship Act 2007* (the Citizenship Act), a person automatically becomes an Australian citizen by:

- Birth – being born in Australia and having at least one parent who is an Australian citizen or permanent resident at the time of their birth OR the person is ordinarily a resident in Australia throughout the period of 10 years beginning on the day the person is born: subsection 12(1) of the Citizenship Act.

Before considering the NZ passport holder for BCNC, the ABF officer should:

- Confirm with the NZ passport holder their country and year of birth
- Confirm the immigration status of their parent/s on or after 20 August 1986 noting there are a number of scenarios to consider. For further advice about determining citizenship contact the Citizenship helpdesk [s. 47E\(d\)@homeaffairs.gov.au](mailto:s.47E(d)@homeaffairs.gov.au).

4.2. Immigration status of a NZ traveller identifying criminal convictions

As the majority of NZ citizens do not hold a visa upon arrival - they apply for a Special Category visa (SCV) in immigration clearance. A New Zealand citizen in immigration clearance (that does not hold a substantive visa) cannot be detained under section 192 of the Migration Act as they do not hold a visa that can be considered for cancellation.

The NZ citizen should generally not be immigration cleared until:

- their overseas criminal convictions have been validated and the ABF officer proceeds with the BCNC decision, or
- the ABF officer determines they don't meet the BCNC criteria and a decision to grant an SCV and immigration clear the traveller is made.

Travellers should not be removed from their port of arrival until a decision has been made on their immigration status. They are only immigration cleared if they are removed with permission of ABF Officers and comply with the requirements of s166 of the Migration Act (presenting certain evidence of identity, etc.)(see section 172 of the Migration Act).

Where the traveller has to be immediately removed from their arrival port (such as medical emergencies/possible internal concealment) and a decision has not been made on the person's immigration status, the traveller would be immigration cleared if they have been given permission to leave. Once departed, the traveller cannot be returned to 'clearance – their arrival port' for a decision to be made to either immigration clear or refuse clearance to the traveller.

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If the traveller is immigration cleared and further evidence of serious criminal history is obtained after clearance officers should consider referral of the matter through the General Cancellations network for further action.

4.3. Identifying a traveller with criminal convictions

A NZ passport holder with possible criminal convictions is likely to come to an ABF officer's attention via a:

s. 47E(d)

4.4. Preliminary discussion at the primary line

The ABF officer should:

- introduce themselves to the traveller and state that they are from Department of Home Affairs.
- explain to the traveller health and character requirements that a NZ citizen must meet for the grant of an SCV
- advise the traveller that based on their response to the IPC criminal declaration they will be required to answer a few questions.

The ABF officer should then ask the traveller about:

- the nature of their criminal convictions
- any previous travel to Australia
- any convictions recorded subsequent to previous travel to Australia.

A traveller may present a letter from the Department advising they have been assessed as not meeting the definition of BCNC under the Act. The ABF officer should:

- consider the letter's issue date
- determine if there have been any further convictions recorded since the date of the letter
- s. 47E(d)
- if BCNC status is unclear, or the letter was issued more than 12 months ago.

s. 47E(d)

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Removals and deportations

The BCNC definition includes removals/deportations/exclusions from countries other than Australia.

Generally, an ABF officer would not obtain this information from an IPC or general enquiries; however, an officer may become aware of a traveller who was removed or deported from another country by:

s. 47E(d)

The officer should advise a supervisor of this information and await instructions on whether the circumstances of the removal/deportation/exclusion meet the definition of BCNC and how to proceed with the case.

Revocation of mandatory visa cancellation

A NZ citizen may have voluntarily returned to NZ pending a request to have the mandatory cancellation of their visa revoked by the Minister under s.501CA(4) of the Act.

Generally, an ABF officer would become aware of this circumstance by:

s. 47E(d)

NZ citizens who have had a mandatory visa cancellation revoked may be eligible for the SCV if they return to Australia provided that no new grounds have arisen for the person to fall within the definition of BCNC, such as the person having no further convictions since the date the NZ citizen made representations to the Minister pursuant to paragraph 32(2)(c) and subregulation 5.15A(3).

Any prior convictions in Australia that were incurred prior to the NZ Citizen making representations to the Minister as part of the revocation request being made should not prevent the traveller from being granted the SCV and should not result in referral to the National Character Consideration Centre, if the cancellation had been revoked.

As evidence of SCV eligibility, NZ citizens who have had a mandatory visa cancellation revoked are advised by the Department when travelling to Australia to present a copy of:

- the revocation notification
- a current criminal history record.

An officer should check Departmental systems to corroborate this and to confirm whether further details regarding the traveller's criminal history is available. The traveller must declare all criminal convictions on their IPC.

Important: If a NZ citizen has recorded further criminal convictions since the date of the revocation request, an officer will need to assess whether the traveller falls within the BCNC definition.

If a NZ citizen does not present a copy of their criminal history record or if an ABF officer is unclear whether further criminal convictions have been recorded since the date of the revocation request, they should obtain a record of the traveller's official criminal history from the NZ Police.

Declaration of criminal convictions - minors

Where a minor declares a criminal conviction, the officer must escalate all cases to a supervisor, prior to interviewing and await instructions on how to proceed with the case. See Procedural Instruction: *Managing minors in immigration clearance*.

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4.5. Identity and immigration status

It is essential that the officer correctly establishes the traveller's true identity and immigration status.

Initial system checks

The officer should search Departmental systems to determine the citizenship, visa status or any immigration history for any potential identities found during investigations.

Prior to considering visa grant, the officer must confirm:

- the visa holder's identity through departmental systems and document checks
- the visa holder's immigration status by establishing:
 - o the visa holder is not an Australian citizen or permanent resident
 - s. 47E(d)
 - o if multiple visas are held
 - o visa details
 - o visa type
 - o visa expiry date
 - o request a fellow officer, supervisor or duty manager to also investigate the traveller's identity and immigration history on Departmental systems
 - o if the traveller has a pending visa application.

SCV application pending

Where a traveller has an SCV application pending, the officer should refer to system records or attempt to contact the relevant case officer, to ascertain if there are any significant considerations that may affect a visa decision.

If an officer is unable to contact the relevant case officer, they should discuss with a supervisor about proceeding with the BCNC assessment.

4.6. Determine if an SCV grant or SCV cancellation is being considered

An SCV is granted when either a computer system or file record of the grant is made in accordance with section 67 of the Migration Act. The officer must determine if an SCV has been granted by checking whether:

- a visa number has been electronically generated in Departmental systems
- there may be a Port and Date stamp in the traveller's passport, however, this may not always be evident if the traveller entered using the gates.

See Procedural Instruction: *Special Category Visas in immigration clearance*.

Where a traveller is referred without a record of visa grant, the officer must consider whether the traveller meets the criteria for the grant of a SCV, or to consider if the traveller meets the definition of BCNC.

Where a traveller is referred with a record of visa grant (the traveller is legally considered to hold a SCV) the officer must consider the traveller's criminal convictions and circumstances of the visa grant under section 116(1) of the Act which provides for Power to cancel, see Procedural Instruction: *Visa cancellation*.

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s. 47E(d)

Does not meet the BCNC definition, steps

If, based on the information provided, the officer is satisfied the traveller does not meet the BCNC definition, they should:

- discuss the case with their supervisor
- inform the traveller they are immigration cleared
- s. 47E(d)

BCNC status remains undecided

If the officer remains unsatisfied that the traveller does not meet the BCNC definition, further checks should be undertaken in relevant departmental systems.

Where the officer determines that the traveller's criminal convictions do not fall into the categories warranting visa cancellation (for example, minor convictions such as a traffic conviction with no custodial sentence) and there are no other immigration concerns, the officer should proceed with immigration clearance.

Where character concerns still exist or the officer is unsure, they should discuss the case with their supervisor.

4.7. Additional systems checks

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Does not meet the BCNC definition

After discussions with a supervisor, if the VDO is satisfied the traveller does not meet the BCNC definition, and the traveller satisfies the other requirements of the grant of a Special Category (subclass 444) visa, the traveller should be considered for a visa grant. If the visa is granted, the traveller should be immigration cleared (presuming they meet the identity requirements under s166 of the Migration Act).

BCNC status remains undecided

If the officer remains unsatisfied the traveller does not meet the BCNC definition, they should:

- discuss the case with their supervisor
- proceed to gather further information noted in section 4.8 and 4.9 below.

4.8. Official criminal history record

To assist in the decision making process the officer should request the traveller complete:

- *Criminal History Declaration form*
- *Consent to disclosure of information.* This is likely to be unnecessary if an official criminal history record for the passenger has in the last 12 months been provided to the Department and a BCNC assessment has been made based on the information provided. If information comes to the attention of the ABF officer (via admission of the person or otherwise) that the person may have, since last being assessed for BCNC purposes, been convicted of a crime, officers may wish to obtain an updated criminal history record.

Note: NZ Police will not provide any information on convictions of minors.

Does not meet the BCNC definition

If the traveller cooperates and completes both forms, and based on the information available (including Departmental system checks and the declared criminal history record), the officer is now satisfied the traveller does not meet the BCNC definition, and the traveller satisfies the other requirements of the grant of a Special Category (subclass 444) visa, the traveller should be considered for a visa grant. If the visa is granted, the traveller should be immigration cleared (presuming they meet the identity requirements under s166 of the Migration Act).

BCNC status remains undecided

If the traveller cooperates and completes both forms, and the ABF officer is still unsatisfied that the traveller does not meet the BCNC definition, they should discuss if a request for an official NZ criminal history record to NZ Police is required with their supervisor or duty manager.

NZ Police provide a 24 hour/7 day service. All requests to NZ Police must be via email to

s. 47E(d) detailing:

- a subject line containing the traveller's full name and date of birth
- a single attachment containing:
 - o a signed *Consent to disclosure of information form*
 - o the traveller's passport bio-data page.
 - o to ensure that a complete criminal history record is provided by NZ Police, standard wording should be inserted into the body of the email request sent to them as follows:

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4.9. Official criminal history record

Once available, the officer must assess the official criminal history record to determine whether the traveller's convictions bring them within the BCNC definition.

The officer must determine:

- whether the convictions 'count' in relation to the definition, see *BCNC Reference Guide* at s. 22(1)(a)(ii)
- whether the total length of time the traveller has been sentenced to imprisonment equates to 12 months or longer, see *BCNC Reference Guide* at s. 22(1)(a)(ii)

Traveller does not meet the BCNC definition

If, based on the information gathered, departmental system checks and the official criminal history record, the officer is now satisfied the traveller does not meet the BCNC definition, they should discuss the case with their supervisor and/or duty manager, and if the decision is supported, and the traveller satisfies the other requirements of the grant of a Special Category (subclass 444) visa, they should be considered for a visa grant. If the visa is granted, they should be immigration cleared (presuming they meet the identity requirements under s166 of the Migration Act).

BCNC status remains undecided

If the officer remains unsatisfied as to whether the traveller does, or does not meet the BCNC definition, they should conduct a formal interview with the traveller.

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4.10. Interview

Interview preparation

In preparation for a BCNC interview, the ABF officer should:

- consider the traveller's behaviour and discuss any concerns with a supervisor/duty manager
- consider, where possible, the most appropriate officer to interview the traveller based on gender, religion and behaviour
- gather the following items:
 - o digital recorder (ensure battery is full)
 - o *Record of Interview for NZ citizens with criminal convictions (BCNC)*
 - o *Health Screening Questionnaire*
 - o writing paper and pens
- commence a *Client Monitoring sheet* and ensure all actions and times are recorded
- prepare the interview room
- position the traveller's chair furthest from the door and the officer's chair closest to the door (where appropriate and depending on the room layout)
- secure the traveller's luggage outside the interview room
- turn on the CCTV monitor for the interview room and other relevant areas
- consider the potential duration of the interview, i.e. the interview should be concluded within four hours, excluding time:
 - o that a traveller may require communicating with an interpreter, legal practitioner, or guardian
 - o waiting for an interview room
 - o that a traveller is allowed to receive medical attention, recover from intoxication or otherwise rest and recuperate.

Escorting the traveller to the interview room

The ABF officer **must**:

- inform the traveller that in order to enter Australia they must hold the appropriate visa and be cleared by an officer for entry into Australia, and that they will remain in immigration clearance until an interview is conducted and a decision is made relating to their eligibility for an SCV
- confirm the traveller understands the interpreter, if required
- request the traveller voluntarily and temporarily removes any items from their pockets to ensure personal safety
- instruct the traveller on use of the call button (if available) and the presence of the CCTV monitor
- advise the traveller that if they need to take a break at any time for any reason during the interview to let you know

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- inform the traveller of their responsibility under the WHS laws by quoting:
 - o *Australian law says that workplaces have to be safe. You are now in an Australian Border Force workplace. The ABF wants to make sure that this is a safe place for its workers and for people like you while you are here. The workers here must take care of your health and safety. You must also take care of your own health and safety, and the health and safety of other people around you. If you know of anything that could affect anyone's health or safety in this workplace, then you should tell us. Please comply with instructions about health and safety. If you do not understand anything about this, then you should ask us.*

Conducting the interview

The ABF officer should:

- inform the traveller that the interview will be recorded
- complete the *Record of Interview for NZ citizens with criminal convictions* (BCNC) at **s. 22(1)(a)(ii)**
- ensure the traveller is asked about their health
- complete the *Health Screening Questionnaire*
- ensure the *Client monitoring sheet* is maintained
- gather information during the interview that will assist in determining if the traveller meets the BCNC definition
- ask questions in relation to:
 - o the nature and circumstances of the traveller's criminal convictions
 - o sentence(s) served
 - o duration since the last conviction
 - o previous travel to Australia
 - o previous contact with the Department
 - o reasons for travel to Australia
 - o employment or business history
 - o family and living situation
 - o intentions for entry to Australia (temporary or permanent)
- clarify with the traveller their criminal history as recorded on the official criminal history report
- consider asking the traveller to provide evidence (documents) or contacts that may verify statements made at interview
- inform the traveller that their case will be discussed with a supervisor.

Generally, an officer will not question a traveller about removals, deportations or exclusions from other countries, except where there is information to indicate the traveller may be affected by this aspect of the BCNC definition.

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Does not meet the BCNC definition

After discussions with a supervisor, if the VDO is satisfied the traveller does not meet the BCNC definition, and the traveller satisfies the other requirements of the grant of a Special Category (subclass 444) visa, a visa grant should be considered. If the visa is granted, the traveller should be immigration cleared.

Meets the BCNC definition

After confirmation with a supervisor, that the traveller does meet the BCNC definition and will be refused immigration clearance, the officer should:

- finalise the mainframe referral
- complete a *Notice of refusal of a SCV*
- place a copy of the checked SCV refusal notice on the traveller's TRIM file
- consider if it is appropriate to invite the traveller to apply for a Border (subclass 773) visa, see section below.

Border visa consideration

In determining if compelling circumstances exist to justify an invitation to the traveller to apply for a Border visa, the VDO should discuss the following traveller circumstances with the Border Force Inspector. The traveller's:

- current circumstances
- reasons for travel to Australia
- intended length of stay
- any other relevant matters.

If a decision is made to invite the traveller to apply for a Border visa, see Procedural Instruction: *Border visa grant in immigration clearance*.

If a decision is made that a Border visa is not appropriate, the traveller must be refused immigration clearance.

If the traveller has been refused immigration clearance, they must be detained and removed from Australia. Further information can be found in:

- Procedural Instruction: *Events after refused Immigration Clearance*
- Procedural Instruction: *Detention at the border (s.189 Migration Act, Detention of Unlawful non-citizens)*.

4.11. Notification of decision

The officer should:

- inform the traveller that the Special Category (subclass 444) visa has been refused
- provide the traveller with the completed Notice of refusal of an SCV
- inform the traveller of the process to apply for visas for future travel to Australia.

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If the traveller is not invited to apply for a Border visa, the officer must advise the traveller they are being refused immigration clearance and will be detained and removed from Australia as soon as practicable.

If the traveller is invited to apply for a Border visa, the officer should advise the traveller that they have been refused the Special Category (subclass 444) visa, however they have been invited to apply for a Border visa that will allow temporary stay (up to 30 days) in Australia.

If the traveller advises they wish to apply for a Border visa, they should be provided with Form 871 - Border visa application, see Procedural Instruction: *Border visa grant in immigration clearance*.

If the Border visa is granted continue with immigration clearance.

If the traveller advises that they do not want to apply for a Border visa, the traveller must be refused immigration clearances, see:

- Procedural Instruction: *Events after refusal of immigration clearance*
- Procedural Instruction: *Detention at the border (s.189 Migration Act)*.

5. Accountability and responsibilities

If ABF officers require clarification or assistance in regards to this instruction, they should contact the Traveller Operational Policy by email s. 47E(d) [s. 22\(1\)\(a\)\(ii\)@abf.gov.au](mailto:s.22(1)(a)(ii)@abf.gov.au) or telephone: AEST.

The Superintendent, Traveller Operational Policy section has responsibility for the preparation and dissemination of this Procedural Instructions in regards to operational policy and programme management of border clearance activities for air and sea travellers, under the Customs Act and Migration Act.

The Director, Traveller Policy Section has responsibility for preparation and dissemination of the Policy Statement in relation to this Procedural Instruction.

6. Statement of Expectation

Directions

The APS Code of Conduct states that 'an APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction' (subsection 13(5) of the Public Service Act 1999).

Failure by an APS employee to comply with any direction contained in a PPCF document may be determined to be a breach of the APS Code of Conduct, which could result in sanctions up to and including termination of employment, as set out in subsection 15(1) of the Public Service Act 1999.

The Secretary's Professional Standards Direction, issued under subsection 55(1) of the Australian Border Force Act 2015, requires all IBP workers who are not APS employees (such as contractors or consultants) to comply with any lawful and reasonable direction given by someone in the Department with authority to issue that direction.

Failure by an IBP worker who is not an APS employee to comply with a direction contained in a PPCF document may be treated as a breach of the Professional Standards Direction, which may result in the termination of their engagement under section 57 of the Australian Border Force Act 2015. Non-compliance may also be addressed under the terms of the contract engaging the contractor or consultant.

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Policy, Guidance and Recommendations

For all other provisions of PPCF documents, the Secretary and the Commissioner expect all IBP workers to:

- consider whether a proposed departure from any provision set out in a PPCF document is reasonable and justified in the circumstances;
- consider the risks of departing from any provision set out in a PPCF document;
- be responsible and accountable for the consequences of departing from, or not adhering to the content of, all PPCF documents, 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;
- be responsible for documenting the reasons/justification for their decision to depart from, or not adhere to, any PPCF document.

Exercise of Legislative Powers and Functions

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 principle.

What happens if this Policy Statement is not followed?

Failure to comply with a direction contained in this document may constitute a breach of the APS Code of Conduct, and may result in a sanction, up to and including termination of employment, being imposed under subsection 15(1) of the Public Service Act 1999.

For IBP workers who are not APS employees, failure to comply may constitute a breach of a direction under section 55 of the Australian Border Force Act 2015, and may result in the termination of their engagement under section 57 of that Act. Non-compliance may also be addressed under the terms of the contract engaging the IBP worker.

7. Related Framework documents

This instruction must be read with:

7.1. Policy Statement

[TT-2983] Border Clearance

7.2. Procedural Instructions

[BC-536] Arrival, immigration clearance and entry - Immigration clearance at airports and seaports
 [BC-2470] Special Category Visas in immigration clearance
 [BC-2671] Events after refused immigration clearance
 [BC-2538] Border visa grant in immigration clearance
 [BC-2676] Managing minors in immigration clearance
 [BC-2482] Visa cancellation

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8. References and legislation

Migration Act 1958

This Act sets out the primary requirements relating to immigration clearance as follows:

- Section 166 outlines the evidence that must be presented to a clearance officer or an authorised system upon entry to Australia.
- Section 116 outlines the power to cancel a visa.
- Section 189 outlines the Detention of an unlawful non-citizen
- Section 172 sets out the requirements of immigration clearance

Other sections of the Act are also important in the context of immigration clearance; they are:

- Section 32 outlines the criteria for a Special category visa.
- Section 5 outlines the definitions used in the Migration Act, in particular the definition of a BCNC.
- Section 67 outlines the criteria how and when to grant and refuse a visa
- Schedule 2 – subclass 773 outlines the provisions to grant a Border visa
- Schedule 2 – subclass 444 outlines the provisions to grant a Special Category visa

Migration Regulations 1994

The key regulations provisions relevant to this document are: regulations 5.15 (setting out the circumstances in which a person is excluded from a country other than Australia which would make a person a BCNC) and 5.15A (setting out the class of persons for whom a visa other than a SCV is inappropriate).

9. Consultation

9.1. Internal consultation

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

- Citizenship Operations Section
- Traveller Policy Advice and Support Section
- Records Management Section
- Integrity and Professional Standards Branch
- Legal Division

9.2. External consultation

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

- No external consultation

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10. Document details

BCS Category/Function	Trade & Traveller Clearance Management
BCS Sub-Category/Sub-Function	Passenger and Crew Processing
Period of Effect	4 September 2021

10.1. Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	25 May 17	s. 22(1)(a)(ii)	Update of document in PI
1.1	01 Aug 18	National Border Programme	Cleared PPCF Quality Assurance
1.2	10 Aug 18	Civil Litigation	Cleared review
1.3	22 Aug 18	s. 22(1)(a)(ii)	Updated to Home Affairs template and reviewed for SES approval
1.4	31 Aug 18	s. 22(1)(a)(ii)	Update document to incorporate legal comments

10.2. Approval

Approved by:	Don SMITH Commander ABF Governance
Approved on (date):	4 September 2018

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