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# Detention and Search (Divisions 1B and 1BA Customs Act 1901)

## Procedural Instruction

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# 1. Purpose

To inform Australian Border Force (ABF) officers of legislative requirements and procedures relating to the detention and search of suspects under Division 1B, and the detention and search of persons for the purposes of law enforcement co-operation under Division 1BA of the *Customs Act 1901* (Customs Act). It should be noted the detention of reportable child offenders at the border (s.219ZJB of the Customs Act) is addressed in a separate Procedural Instruction, *Detention of Reportable Child offenders at the border* (s.219ZJB Customs Act).

## 1.1. Background

The powers in relation to the detention and search of suspects, and the detention and search of persons for purposes of law enforcement cooperation are specified in Division 1B and Division 1BA of Part XII of the Customs Act.

Division 1B of the Customs Act concerns the detention and search of suspects (s219L - s219ZJ of the Customs Act) and provides officers with powers, in select circumstances, and subject to a range of conditions, to:

- detain for frisk searches
- require the production of things
- detain for external searches
- detain for internal searches
- carry out internal (non-medical) scans of persons, and
- arrange for internal (medical) searches by a medical practitioner.

Division 1BA of the Customs Act concerns the detention and search of persons for purposes of law enforcement co-operation. Officer powers are found in s219ZJA to s291ZJJ- 291ZJJ) of the Customs Act and are subject to a range of conditions. An officer may detain a person if the person is in a designated place and the officer has reasonable grounds to suspect the person has committed, is committing, or intends to commit a serious Commonwealth offence or a prescribed State or Territory offence. An officer may also detain a person subject to a warrant or bail condition; or for national security or security of a foreign country reasons, in certain circumstances and where certain conditions are met.

# 2. Scope

## 2.1. In Scope

This Procedural Instruction applies to officers in the aviation environment where they may be required to detain and search persons under the Customs Act.

## 2.2. Out of Scope

Detention and Search of persons under the *Migration Act 1958*. Detention of reportable child offenders at the border (s.219ZJB of the Customs Act) is addressed in a dedicated PI entitled *Detention of Reportable Child offenders at the border* (s.219ZJB Customs Act).

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### 3. Roles of Officers

A brief summary of the roles of officers involved in the detention and search process is explained in this section.

Table 1 – Roles of officers

| Role                            | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Authorised officer (AO)         | <p>Defined in s4(1) of the Customs Act to mean an officer of Customs authorised under subsection 4(1AA) to exercise the powers or perform the functions of an authorised officer under that provision.</p> <p>Subsection 4(1AA) provides that the Comptroller-General of Customs may, by writing, authorise an officer of Customs to exercise the powers or perform the functions of an authorised officer under a specified provision of this Act.</p> <p>Of note, the AO:</p> <ul style="list-style-type: none"> <li>• Reviews the circumstances of detention</li> <li>• Communicates with all concerned</li> <li>• Decides if reasonable grounds for suspicion exist</li> <li>• Decides if the person is to be detained for the purposes of an external search or is to be released</li> <li>• Where appropriate, completes and signs an order to search.</li> </ul> |
| Authorised Search officer (ASO) | <ul style="list-style-type: none"> <li>• An officer who has successfully completed a training course on Detention and Search powers.</li> <li>• Required to successfully complete an online course and assessment, undertake practical (role play) assessments and be assessed as competent by a Workplace Assessor.</li> <li>• Required to undergo Detention and Search re-certification every two years.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Body Scanner Operator (BSO)     | <ul style="list-style-type: none"> <li>• An officer authorised in writing by the Comptroller-General of Customs to use prescribed equipment for the purposes of internal non-medical scan and who is an Authorised Search officer (ASO) and who has also completed the CEO approved Internal Body Scanner Operational Training.</li> <li>• Required to undergo the BSO course recertification every two years.</li> <li>• Required to undergo Image Analysis re-certification every year.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                    |
| Detention officer (DO)          | <p>Defined in s4(1) of the Customs Act:</p> <p>For the purposes of Subdivision A (Detention and frisk search of suspects) of Division 1B as—an officer of Customs who is a detention officer because of a declaration under subsection 219ZA(1); or</p> <p>For the purposes of Subdivision B (Detention and external search of suspects)—an officer of Customs who is a detention officer because of a declaration under subsection 219ZA(2); or</p>                                                                                                                                                                                                                                                                                                                                                                                                                    |

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| Role                   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        | <p>For the purposes of Subdivision C (Detention and internal search of persons suspected of internally concealing substances etc)—an officer of Customs who is a detention officer (DO) because of a declaration under subsection 219ZA(3).</p> <p>Under s219ZA of the Customs Act, the Comptroller-General of Customs may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of the (above) subdivisions.</p> <p>Of note, the DO:</p> <ul style="list-style-type: none"> <li>• For a frisk search, must be an APS3 (Border Force officer) or above</li> <li>• For external and internal searches, must be an APS5 (Senior Border Force officer) or above</li> <li>• Must hold current certification as an Authorised Search Officer.</li> <li>• Exercises the power of detention</li> <li>• Determines whether reasonable grounds for suspicion exist</li> <li>• Determines if the detainee is a PINOP</li> <li>• Determines whether the detainee needs an interpreter or language card</li> <li>• Decides on the appropriate level of search</li> <li>• Explains the detention and search process</li> <li>• Informs the detainee of their rights</li> <li>• Obtains informed consent using an information card</li> <li>• Formally detains the person</li> </ul> <p>Conveys the reasonable grounds for suspicion to other officers and the Australian Federal Police if necessary.</p> |
| Referring officer (RO) | <p>Initially suspects on reasonable grounds and communicates these suspicions to the Detention Officer (DO).</p> <p>May also act as the Search Officer (SO) for the purposes of a frisk search where the officer is of the same sex<sup>1</sup> as the detainee.</p> <p>May act as the Witnessing Officer (WO) (if the RO is an officer or a police officer) but should not become a SO unless:</p> <ul style="list-style-type: none"> <li>• there is no other officer available; and/or</li> <li>• no other officer of the same sex<sup>1</sup> as the detainee is available.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Search officer (SO)    | <ul style="list-style-type: none"> <li>• Can conduct a frisk search (an external search can be conducted by any Part XII certified officer, any Part XIII certified officer or a police officer)</li> <li>• Must hold current certification as an Authorised Search Officer</li> <li>• Must be of the same sex<sup>1</sup> as the detainee</li> <li>• Obtains reasonable grounds for suspicion and the level of search from the DO and makes appropriate records of the reason e.g. in their notebook or official system</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

<sup>1</sup> Persons who identify as transgender must be consulted as to their preference for a male or female officer to conduct the search.

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| Role                    | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                         | <ul style="list-style-type: none"> <li>Explains the process of the search and use of equipment such as gloves</li> <li>Ascertains the ongoing consent of the detainee (see consent requirements under s219RAA)</li> <li>Must only conduct the search to the level authorised by the Detention Officer.</li> </ul>                                                                                                                                                                                                                                                                                                                              |
| Witnessing officer (WO) | <ul style="list-style-type: none"> <li>Must hold current certification as an Authorised Search Officer</li> <li>Must be of the same sex as the detainee (except for the purposes of a frisk conducted in public)</li> <li>Receives information regarding the reasonable grounds for suspicion and the level of search from the DO</li> <li>Observes the search noting relevant times and conversations</li> <li>Watches for signs of withdrawal of consent</li> <li>Ensures searches are conducted in line with the information contained within this Procedural Instruction and other relevant instructions published in the PPCR.</li> </ul> |

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## 4. Procedural Instruction

### 4.1. Workplace health and safety considerations

Persons internally concealing drugs are at risk of death or significant health issues in the event of the rupture or leakage from packaging. If there is any apparent deterioration in the physical condition of a detainee the Detention Officer (DO) must immediately seek medical assistance. Where a person is transported to hospital, details of the attending paramedical staff and proposed emergency department must be reported to ABF Operational Commands and the Australian Federal Police (AFP) Operations Coordination Centre (AOCC) on 02 6126 7755.

Medical advice on the detainee's ability to undergo a search may need to be sought or arrangements may need to be made to have first aid assistance available prior to undertaking a search.

Gloves must be worn when conducting searches for Work Health & Safety reasons. Officers may be required to search persons who are suffering from a communicable disease, including sexually transmitted diseases. Measures, such as the wearing of personal protective equipment and precautionary arrangements, must be taken in advance if this fact is known to, or reasonably suspected by, the officer.

There may be occasions where the person being searched reveals the extent of their medical condition after the officer has handled soiled clothing or other property. If this situation arises, the officer must seek medical advice as soon as possible so appropriate decontamination procedures can be followed.

An officer who believes they may have been exposed to a communicable disease must notify their supervisor immediately. If the officer who may have been exposed to the communicable disease cannot notify the supervisor, the supervisor must be notified by any officer who is aware of the exposure.

A supervisor notified of an officer's potential exposure to a communicable disease must take all reasonable steps to protect the health and safety of the officer, including:

- provide and ensure first aid treatment
- refer the officer to an appropriate medical service as soon as practicable
- ensure an incident report is completed.

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### 4.3. Personal searches conducted under an Act other than the Customs Act

Officers may have powers to detain and/or search persons in some circumstances under other legislation. Examples of these Acts are:

- Migration Act 1958
- Environment Protection and Biodiversity Conservation Act 1999
- Maritime Transport and Offshore Facilities Security Act 2003 (MTOFSA)
- Maritime Powers Act 2013 (MPA)
- Anti-Money Laundering and Counter Terrorism Financing Act 2006 (AMLCTF)
- Aviation Transport Security Act 2004 (ATSA).

Where a person is detained for the purposes of a search under another Act, the search must be conducted under that Act, not the Customs Act.

Persons detained under another Act are only entitled to the review or appeal processes under that Act. They are not entitled to the review or appeal processes offered under the Customs Act.

Officers must ensure compliance with the appropriate rights and obligations according to the Act under which the person has been detained and the powers exercised.

### 4.4. Categories of search under Part XII, Division 1B

#### Frisk search

Section 219L and 219M of the Customs Act deals with frisk searches in detail. A frisk search means the search of a person conducted by quickly running of hands over the person's outer garments; and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person (s4(1) of the Customs Act). This type of search does not involve officers touching the skin of the person.

#### External search

Sections 219, 291Q, 219R, 219RAA, 219ZAA, 219ZAB, 219ZAC and 219ZAE of the Customs Act deal with external searches in detail. Departmental policy recognises two levels of external searches:

- B1 – consists of the removal of some or all outer clothing
- B2 – consists of the removal of some or all outer clothing and underclothing including underwear.

#### Internal non-medical scan

An internal non-medical scan is an internal scan carried out under s219SA, s219SB, s219ZAA, s219ZAB, s219ZAC and 219ZAE of the Customs Act using the Smiths Detection B-SCAN 16HR-DV (as prescribed by regulation 125 of the Customs Regulation, which is an x-ray internal body scanner. The internal non-medical scan must be carried out by an officer who is authorised to use the equipment (the x-ray).

#### Internal medical search

Internal medical searches are discussed in detail in s219V, 219Z and 219ZF of the Customs Act. An internal medical search is a search conducted, subject to a range of conditions, by a medical practitioner at a hospital or the surgery or other practising rooms of a medical practitioner registered or licensed under a law

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of a State or Territory providing for the registration of medical practitioners (regulation 126). This search can include an x-ray, ultrasound, Computed Tomography scan or physical examination.

### 4.5. Categories of search under Part XII, Division 1BA

#### Search of person detained under this division

Under s219ZJD of Part XII of Division 1BA, an officer may, in relation to a person detained under this division:

- conduct a frisk search or an ordinary search of the person
- search the clothing that the person is wearing and any property under the person's immediate control, where the officer believes on reasonable grounds that it is necessary to do so for the purposes of:
  - o determining whether there is concealed on the person, or in the person's clothing or property, a weapon or other thing capable of being used to inflict bodily injury or to assist the person to escape from detention
  - o in the case of a person detained under s219ZJB (a person suspected of committing a serious Commonwealth offence or prescribed State or Territory Offence) – preventing the concealment, loss or destruction of evidence of, or relating to, the offence concerned
  - o in the case of a person detained under s219ZJCA (a person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country) – preventing the concealment, loss or destruction of material of interest for national security or the security of a foreign country.

Importantly, a search under s219ZJD must be conducted:

- as soon as practicable after the person is detained
- by an officer of the same sex as the detained person.

An officer who conducts a search under this Division may seize any weapon or anything mentioned in s219ZJD(1)(c) specifically a weapon or other thing capable of being used to inflict bodily injury or to assist the person to escape from detention; or any weapon or anything the officer has reasonable grounds to believe is a thing:

- with respect to which an offence has been committed
- that will afford evidence of the commission of an offence
- that was used, or intended to be used, for the purposes of committing an offence
- that is of interest for national security of a foreign country.

If a weapon or other thing is seized under this Division, officers must ensure it is delivered, or made available, to a Police officer (see s219ZJD(4) for details).

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### Frisk search

Under Division 1BA, frisk search has the same definition as in Division 1B (refer to Glossary).

### Ordinary search

Under Division 1BA, ordinary search has the same definition as in Division 1B (refer to Glossary).

## 4.6. Consent under Part XII, Division 1B

### Obtaining informed consent

Before conducting a search under Division 1B, the officer must be satisfied that all relevant legal requirements (including state of mind requirements) have been met (e.g. suspicion on reasonable grounds). The officer must also ensure the detainee clearly understand their rights (for detainees not fluent in English see s219ZD of the Customs Act).

To ensure informed consent, the DO must provide a full and detailed explanation of the persons' rights and outline exactly what the search procedures will involve in a language the traveller can understand (information cards in various languages or an interpreter may be used).

The right to refuse to consent should be put to the person very clearly, as well as the fact that if consent is given, he/she can withdraw it at any time.

If the person is 18 years of age or over, or not in need of protection and wishes to consent to an internal search, the consent form must be signed by the detainee.

Where it is believed or is apparent the person is illiterate or cannot understand English, the DO or an appropriate interpreter must read the Information Card and Consent Form to the person. Use of an interpreter including the interpreter's name must be recorded in the search register. (N.B. Search registers are used to record External and Internal searches, Frisk and Ordinary searches are recorded in officers notebooks and the Baggage Action General Statistics (BAGS) system). The interpreter must sign the register if they are present. If a phone interpreter is used, the register must be notated with 'telephone interpreter' instead of a signature.

If there is any doubt in the officer's mind as to whether the person clearly understands their rights or the explanations provided, even with the aid of an interpreter, then they are to be regarded as having refused consent.

*N.B Consent is not a requirement when conducting a search under Division 1BA.*

### Withdrawal of consent

During any search, a person may withdraw consent at any time.

The person must do or say something to the officer to clearly indicate the original consent is being withdrawn.

Officers must look for verbal and non-verbal indicators the detainee is unhappy or reluctant about complying with any aspect of the search as it progresses, and clarify whether their consent is still valid.

## 4.7. Use of interpreters

Where an ABF officer or police officer detaining a person under this Division has reasonable cause to believe that a person is not fluent in English, the officer must take all reasonable steps to ensure during the person's detention, a person competent to act as an interpreter is used and acts as an interpreter for the purpose of communication (s219ZD of the Customs Act).

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Officers with suitable qualifications and in receipt of the Community Language Allowance are permitted to perform simple communication tasks, for example communicating with persons regarding their travel itinerary or the contents of their baggage.

To avoid actual or perceived conflicts of interest or integrity concerns, where a DO has determined that reasonable grounds for suspicion exist (or the officer has a reasonable belief), officers must cease to provide interpretation and a Telephone Interpreter Service must be used.

An interpreter provided by the Telephone Interpreter Service must be used where:

- the person requests an interpreter
- the DO has determined that reasonable grounds for suspicion exist and wishes to conduct a search, but there is reasonable cause to believe that:
  - o the person does not speak English
  - o is unable, because of inadequate knowledge of the English language or for any other reason, to communicate orally with reasonable fluency in the English language.

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s. 37(2)(b), s. 47E(d)

**4.11. A person to communicate with another person when detained under Subdivision C should be considered with regard to the Crimes Act caution and rights**

Once a belief is formed that a Commonwealth offence has been committed and the person will be questioned about their involvement in the offence, the person becomes a 'protected suspect' as defined in subsection 23B(1) of the Crimes Act. The Crimes Act caution and rights must be given prior to any further questioning otherwise the admissibility of any further statements or conversations may be rejected by the Court.

s. 47E(d)

s. 37(2)(b), s. 47E(d)

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# CHAPTER 1: Detention and Frisk Search of Suspects

This chapter refers to Subdivision A of Division 1B of Part XII of the Customs Act – Detention and frisk search of suspects (s219L – s219P).

## 4.14. The detainee's rights

If detained at a designated place that is a s234AA (places set aside for the purposes of the Customs Act), the person must be advised of their legal right to request for the frisk search be carried out in a private area of the detention place. Any search, regardless of being private or public, should be in a controlled environment selected by the officer.

If detained at a designated place other than a s234AA place, i.e. wharves, tarmac areas or on board ships, the officer conducting the search must make every effort to give the person as much personal privacy as the circumstances of the search allow, but must also take into account the detainee's wishes. For example, the detainee may indicate a strong preference to be frisked in full view of other persons in the vicinity.

The Customs Act does not accord any special rights for PINOPs undergoing a frisk search. However, officers should exercise reasonable care and sound judgement when dealing with PINOPs.

Where a person under 18 years of age is to be frisk searched:

- the persons parent/legal guardian or an independent witness (not an officer conducting customs functions) must be present during the detention and consent process and subsequent search and their consent obtained
- the frisk must be carried out in a private area of a detention place.

If no consent is given or a guardian is not present, then officers should not proceed with a frisk search, but should consider an external search and meet the necessary requirements

S. 47E(d)

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s. 37(2)(b), s. 47E(d)

**4.16. Refusal to submit to a frisk search or failure to produce things located during a frisk search**

Where a person refuses to submit to a frisk search or produce anything found during a frisk search, the DO must conduct an external search as soon as practicable (s219R of the Customs Act).

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# CHAPTER 2: Detention and External Search of Suspects

This chapter refers to Subdivision B of Division 1B of the Customs Act – Detention and external search of suspects (s219Q - s219RAA).

An external search is conducted when a person has refused to submit to a frisk search, or has refused to produce for inspection things found as a result of a frisk search, or a DO suspects on reasonable grounds the detainee is unlawfully carrying prohibited goods on their body.

## 4.17. Electronic recording of external search

An officer **must** inform the person prior to any external search being conducted that a **recording of the search** may be made and if produced, such a record will be provided to the person as soon as practicable (s219RAA(1) of the Customs Act).

## 4.18. The detainee's rights

### Consent and the withdrawal of consent

Under s219R(1) (c) (ii) and (iii) the detainee must consent to be searched and the consent must be recorded in compliance with s219RAA(2). The person may withdraw their consent to the external search at any time. At this time the matter must be reviewed by a Justice of the Peace or, in certain circumstances, by an Authorised Officer (AO).

### Communication with other persons, including relatives and lawyer

The person **may** at any time **communicate with another person**. However, an officer may stop the communication in order to safeguard the processes of law enforcement or protect the life and safety of any person (s219R(7) and 219R(8)). Where the person wishes to communicate with another person, the DO must carefully review all the information available in assessing whether there are reasonable grounds to believe the communication would compromise the law enforcement process. For example, if there are reasonable grounds to believe the person is involved in organised carriage of illicit drugs or other prohibited goods, then such communication should be denied.

The person may wish to inform travelling companions or waiting relatives of the delay. In these instances, the DO should offer to pass a message to waiting friends or relatives, unless this is likely to compromise law enforcement processes.

Communication with another person can include a lawyer. The DO should assist the person, but the person must arrange for this legal consultation and the search will not be delayed pending the arrival of the lawyer.

### Answering questions

The person is not obliged to answer any questions.

## 4.19. Detention of a person

The person must be informed they have been detained for the purposes of an external search in accordance with s219Q of the Customs Act.

It must be made clear to the person they have been detained in custody, they are not free to leave and that they are not under arrest.

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The detainee must be taken as soon as practicable/without any undue delay to the nearest detention place (appropriately equipped search room or vehicle that affords adequate personal privacy). What is reasonably possible in a particular case will depend on, among other things, the time/place/conditions of the detention.

### 4.20. Informed consent

To ensure properly informed consent, the DO must provide a full and detailed explanation of the detainee's rights and a full description of what will happen and what will not happen during the external search. For example:

- the necessity of wearing rubber gloves should be explained
- an assurance must be given that at no time will the detainee be touched after their clothes have been removed
- the limits of a B1 or B2 category search need to be outlined
- a smock will be offered to provide some privacy.

The right to refuse consent and to have the matter determined by a Justice of the Peace or AO should be put to the detainee very clearly.

The right to withdraw consent at any time during the search must be explained.

As soon as it becomes evident the detainee does not understand their rights, refuses to consent to a search or withdraws their consent an application for an order to search should be made to a Justice or AO.

# s. 37(2)(b), s. 47E(d)

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s. 37(2)(b), s. 47E(d)

**4.22. Order to search**

The Justice or AO must not make an external search order unless they are satisfied that there are reasonable grounds for suspecting the person is unlawfully carrying prohibited goods. The Justice or AO cannot rely on the DO's suspicion. The Justice or AO is required to make up their own mind.

If an order is given, the search must be conducted as soon as practicable.

Where a Justice or AO orders the search to proceed but the person refuses to submit, then officers must proceed with caution. Ultimately, if the search is ordered by a Justice then s219ZC(2) and s219ZC(2A) of the Customs Act empower an officer to use reasonable and necessary force in conducting the search.

Where a person has chosen to have an AO consider the application for an order for an external search (even though a Justice is available), the search is ordered by an AO and the person refuses to submit to the search, a Justice must be asked to review the matter before considering the use of reasonable force. An exception to this procedure is where the services of a Justice are not reasonably available.

If the Justice or AO does not make an order for external search, they must order that the person be released immediately.

The original application and signed order should be filed in the appropriate registry file. The Justice or AO retain a copy of the application and order for their own records. A copy of the signed order must be given to the person.

s. 37(2)(b), s. 47E(d)

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# s. 37(2)(b), s. 47E(d)

## 4.24. Conduct of an external search

Each external search must be electronically recorded where recording equipment is available, for example at airports.

Only the SO and WO should be present during the search, except where:

- a specified person is required to be present by order of a Justice or AO
- an interpreter is required.

When an interpreter has been arranged who is of the same sex<sup>1</sup> as the detainee it would be desirable for communication purposes for the interpreter to remain in the room during the search. This needs the agreement of both the detainee and the interpreter.

It may not be feasible for the interpreter to remain in the room (because they are not of the same sex as the detainee). In these circumstances, the DO should ensure the interpreter agrees with the detainee on a pre-arranged signal that will clearly indicate to the officer conducting the search the detainee wants the interpreter to be brought back into the room for further communication.

A paper smock must be offered to the detainee as a matter of course.

Gloves must be worn for Work Health & Safety reasons. An officer must explain this before the gloves are put on. Officers should never enter the search room already wearing gloves.

The period in which a person is fully undressed (if they have elected not to wear a smock) must be kept to an absolute minimum.

# s. 47E(d)

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# CHAPTER 3: Detention and internal non-medical scan

Where a DO forms reasonable grounds to suspect a person is internally concealing a suspicious substance, a DO must detain the person for the purposes of carrying out an internal search.

Subject to certain conditions, the person may be invited to participate in an internal non-medical scan performed by an authorised body scanner operator (BSO) using prescribed body scanning equipment, in lieu of being detained for the purpose of an internal medical search.

## 4.26. Legislation and powers under the Customs Act 1901

### Paragraph 219S(1)(a)

The legislation provides that a person may be detained for the purposes of carrying out an internal non-medical scan when a DO or police officer suspects on reasonable grounds a person is internally concealing a suspicious substance.

Where a person has been detained for the purposes of carrying out an internal non-medical scan, a DO may invite that person to consent to an internal non-medical scan where the eligibility requirements can be satisfied.

### Paragraph 219S(2)(a)

An ABF officer or police officer must, as soon as practicable, take the person to the nearest detention place suitable for the detention of the person.

### Subsection 219SA(1)

An internal non-medical scan must be carried out as soon as practicable where:

- there are reasonable grounds to believe the person is not in need of protection
- the person consents to an internal non-medical scan using the prescribed equipment (Reg 125 of the Customs Regulation)
- the requirements in inviting consent stipulated in s219ZAA are met.

### Subsection 219SA(2)

An internal non-medical scan must only be carried out:

- using equipment prescribed (Reg 125 of the Customs Regulation) for the internal non-medical scan purpose
- by an officer who is authorised for the purposes of s219ZAA(3) (a BSO).

### Section 219SB

The person must be referred for an internal medical search where a person has been invited to consent to an internal non-medical scan and either:

- a person refuses an invitation to consent to an internal non-medical scan
- an internal non-medical scan has begun but is not completed and the DO retains reasonable grounds to suspect the person is internally concealing a suspicious substance

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- after an internal non-medical scan is completed, the DO retains reasonable grounds to suspect the detainee is internally concealing a suspicious substance.

**Note:** Once detained for an internal non-medical scan, it is not necessary that the person is further detained for an internal medical search. Section 219SB directs that if any of the above conditions apply and the detainee does not consent to an internal medical search under s219V, arrangement for internal medical search, then s219T, initial order for detention, applies.

An internal non-medical scan must be carried out by an BSO of the same sex as the person. The officer must have successfully completed the Detention and Search Training Course.

The WO must also be of the same sex as the detainee. In addition, both the BSO and WO must be an ASO.

Detainees who identify as transgender must be consulted as to their preference for either male or female officers to conduct and witness the scan.

### 4.27. Eligibility

#### **Detainee has been scanned on a previous occasion**

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) dictates that each individual's effective dose from internal non-medical scanning be limited to 10 micro Sieverts ( $\mu\text{Sv}$ ) per year.

A detainee must not be subjected to an internal non-medical scan where a scan would result in individual's annual effective dose from internal body scanning exceeding  $10\mu\text{Sv}$ , unless given approval by a Registrar or Radiologist.

#### **Medical conditions/pregnancy**

Prior to inviting a person to consent to participate in an internal non-medical scan, a DO must ask the detainee if they have any known medical conditions or whether there are any medical reasons why they should not participate in an internal non-medical scan. An example of this may be someone who is or has recently undergone radiation treatment for cancer. In such instances, the officer should seek advice from a Registrar and/or Radiologist if a scan can/should be conducted.

Prior to inviting a female to consent to participate in an internal non-medical scan, a DO must ask the female if they are pregnant or if they have any reason to believe they may be pregnant. Policy precludes a DO from inviting a pregnant woman to consent to an internal non-medical scan.

When assessing the capability of a person to participate in an internal non-medical scan, officers must not ask the following detainee's to participate:

- minors and/or PINOPs
- wheelchair bound persons, persons relying on physical support of another person or walking frames to stand
- people incapable of reacting to audio or visual signals or directions.

#### **Detainees' wellbeing**

Persons internally concealing drugs are at risk of death or significant health issues in the event of the rupture of or leakage from packaging. If there is any apparent deterioration in the physical condition of a person, the DO must immediately seek medical assistance. Where a person is transported to hospital, details of the attending paramedical staff and proposed emergency department must be reported to the AFP Operations Coordination Centre (AOCC) on 02 6126 7755.

The DO is responsible for ensuring all details, including times, persons involved and conversations of any health issues are recorded and corroborated in official notebooks.

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### 4.28. Consent for an internal non-medical scan

If a person has been detained under s219S of the Customs Act, for the purpose of undertaking an internal non-medical scan, the BSO may carry out an internal non-medical scan of the person, as soon as practicable, if:

- there are reasonable grounds to suspect the person is internally concealing suspicious substances
- there are reasonable grounds to believe the person is not a PINOP
- the person consents
- the requirements of s219ZAA are met in inviting the detainee to provide their consent.

Where the eligibility requirements cannot be satisfied, a non-medical scan must not be performed (refer above for eligibility requirements).

### 4.29. Radiation exposure considerations

The ARPANSA licence for the internal body scanner requires that officers retain records of persons' exposure to ionising radiation (effective dose).

The licence requires that a person must not be subjected to an internal non-medical body scan where a scan would result in that individual's annual effective dose from internal body scanning exceeding 10µSv, unless given approval by a Registrar or Radiologist.

The Smiths B-SCAN 16HR-DV body scanner prescribed for use in conducting an internal non-medical scan may operate in three imaging modes: Full Body only; Torso View only; and Dual View. Dual View mode combines both Full Body and Torso View in one scan cycle.

The effective radiation dose for each scan mode is:

- Full Body            1.4 µSv
- Torso View        1.1 µSv
- Dual View         2.5 µSv

Before conducting an internal non-medical scan, the BSO must establish through the B992 Register of Persons Searched and/or the SharePoint Register whether the person has been subject to any internal non-medical scan during the preceding 12 months.

The DO must ensure that both the B992 Register of Persons Searched and the SharePoint Register record the effective dose of each detainee scanned and that BAGS records are completed to identify that the person was subject to an internal non-medical scan.

To minimise a person's radiation exposure, no more than three scans may be conducted each time a person is detained for an internal non-medical scan. This includes re-scans which may be done at the request of the Registrar or Radiologist or after the use of the controlled toilet.

Once the BSO is able to interpret an image no further scans are to be conducted.

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#### **4.31. Procedures for detaining a person for an internal non-medical scan**

##### **Appointing a Body Scan Search Officer**

Before a person is invited for an internal non-medical scan, the Referring Officer (RO) will refer their concerns to a DO.

The DO will invite the person to participate in the scan and seek consent for an internal non-medical scan.

Where a person consents to undertake an internal non-medical scan, the DO must assign a BSO to carry out the scan.

The BSO must be of the same sex as the person. Transgender persons must be consulted as to their preference for a male or female officer.

The BSO will prepare the body scan room and scanner for the internal non-medical scan.

X-ray equipment will not expose an embryo or foetus to more than the general public limit. However, an adjustment will be made in the workplace for pregnant officers should they opt not to operate x-ray systems. The decision to accept the role of the BSO is the responsibility of the pregnant officer.

##### **Appointment of Witnessing Officer (WO)**

Before detaining a person, the DO must appoint a WO. The WO must hold current certification as an ASO.

The WO will attend all further activity in relation to the detention of the detainee.

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The WO must be of the same sex as the person. Transgender persons must be consulted as to their preference for a male or female officer.

Subject to the preceding paragraph, the DO may witness the internal non-medical scan only where a suitable WO is not reasonably available.

X-ray equipment will not expose an embryo or foetus to more than the general public limit. However, an adjustment will be made in the workplace for pregnant officers should they opt not to operate x-ray systems. The decision to accept the role of the WO is the responsibility of the pregnant officer.

### Interpreter

Interpreters may remain in the body scanner room while the person is being scanned provided the interpreter is of the same sex as the person, and the person consents to the interpreter remaining in the room.

Where phone interpreters are being utilised, the phone does not need to be disconnected for the duration of the scan.

### Person's rights and caution

The DO must not question the person to determine whether the person is internally concealing drugs unless the person has been given a caution and rights under s219W(5) of the Customs Act. Before questioning the person, the person must be advised that:

- the detainee is not obliged to answer any questions
- anything said by the detainee may be used in evidence
- the detainee has the right to communicate with a lawyer or another person.

If the person wishes to consult a lawyer, the DO must arrange for the person to consult a lawyer of the person's choice before the scan is conducted (S.219W(1)(a) and (2)).

The person **may** at any time **communicate with another person**. However, an officer may stop the communication in order to safeguard the processes of law enforcement or protect the life and safety of any person (S 219W(1)(b) and (3)). Where the person wishes to communicate with another person, the DO must carefully review all the information available in assessing if there are reasonable grounds to believe the communication would compromise the law enforcement process. For example, if there are reasonable grounds to believe that the person is involved in organised carriage of illicit drugs or other prohibited goods, then such communication should be denied.

The person may wish to inform travelling companions or waiting relatives of the delay. In these instances, the DO should offer to pass a message to waiting friends or relatives, unless this is likely to compromise law enforcement processes.

### Seeking consent

To ensure the person gives informed consent to an internal non-medical scan, the DO must provide the person with sufficient understanding of:

- their rights
- the prescribed equipment
- how the prescribed equipment will be used
- what use may be made of any evidence the prescribed equipment might produce.

The Information for a Person Offered an Internal Non-Medical Scan card (Information Card) must be provided to the person to facilitate this process.

The person must sign a Consent for Internal Non-Medical Scan Form (Consent Form).

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### Refusal to give consent

A person does not have to provide a reason for refusing to consent to undertake an internal non-medical scan.

However, any reason(s) given for refusing to consent must be recorded in official notebooks and in the B992 Register of Persons Searched.

A person may recant their refusal to consent to an internal non-medical scan. DO's must ensure the person is providing informed voluntary consent to participate in an internal non-medical scan and there has been no duress on the person to recant their refusal to consent.

If the person does refuse consent and the DO retains reasonable grounds to suspect the person is internally concealing a suspicious substance, the detainee must be referred to the AFP for consideration of an internal medical search.

### Withdrawal of consent

A person may withdraw consent at any time. Although, once scanning is concluded the detainee cannot withdraw consent for the scan that was just conducted.

If the first scan is unable to be interpreted and a rescan is necessary, the person can withdraw consent and not participate in the next scan.

Officers must look for verbal and non-verbal indicators that the person is clearly unhappy or reluctant about complying with any aspect of the search as it progresses and clarify whether their consent is still valid.

If consent is withdrawn and the DO retains reasonable grounds to suspect the person is internally concealing a suspicious substance the detainee must be referred to AFP for consideration of an internal medical search.

## 4.32. Conduct of an internal non-medical scan

The DO and WO will escort the person to the body scanning room.

The DO will hand the person over to a BSO.

The DO will depart the room before any search and wait outside the room for completion of scanning.

The BSO will:

- confirm the person's identity
- confirm the person's consent
- reinforce the person's right to withdraw consent
- prepare the person for scanning.

The BSO must consider the person's physical capacity to undergo internal non-medical scanning and the person's apparent physical health. The BSO must refer any capacity or health concerns to the DO before scanning commences so that reasonably practicable steps can be taken to ensure the health and safety of the detainee. An officer should also consider whether a person may also be a PINOP for the purposes of conducting an internal non-medical scan.

The person must not be scanned more than three times in a single search (or screening).

All initial scans should be taken using "Dual View" mode.

The BSO may determine that a side-on scan is appropriate to increase the effectiveness of the scan. Side-on scans will only be taken as second or third scans.

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After each scan, the BSO will assess the image. The WO may be consulted only if they are also an authorised BSO.

Scanning is concluded after three scans, irrespective of whether the BSO is able to determine that any image would cause the DO to either retain or dismiss their reasonable suspicion.

In all cases, the BSO must advise the person the internal non-medical scan is concluded.

The scanned images must be referred to the relevant radiology provider during agreed radiology support times for assistance with image analysis.

The advice of the radiologist as to whether the person may or may not be internally concealing a suspicious substance will assist the BSO to assess the scan image and provide further information to the DO to determine whether or not the person should be referred to the AFP.

If, as a result of examining a scan image, the radiologist provides a referral the person should seek medical advice, the relevant form, and a print out of the images listed on the form, must be provided to the person.

In the event that a Registrar and/or Radiologist is unavailable to assist with image analysis, the BSO must consult and show the scan image with other BSOs before providing advice to the DO.

On completion of scanning, the BSO will review and analyse the images and provide advice to the DO of their opinion of the images/s, including whether the detainee should be referred to the AFP for consideration of an internal medical search.

The BSO will complete the notebook and the B992 Register of Persons Searched and action the scan images as per the requirements in Section Post Scan Management and Section Image Handling, Recording and Storage detailed in this Procedural Instruction.

# s. 37(2)(b), s. 47E(d)

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#### **4.35. Scan image handling, recording and storage**

##### **Backing-up images**

All images must be backed up and stored on a removable Hard Disk Drive (HDD), stored in the B-SCAN room safe. This is conducted by the Subject Matter Expert or Competency Assessment Training Officer.

Back up images must be registered in the Register of Electronic Records.

##### **Storage**

Body scan images when linked by image reference number to records such as the B992 Register of Persons Searched are personal information.

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As per the Protective Security Policy Framework, the acceptable storage for backed up body scan images is a locked "C" class cabinet contained within a locked office. This cabinet should be labelled as the Records Locker. The HDD must be secured in the locker with a register showing the details of the officer releasing/returning the HDD. The Register of Electronic Records also records any person and agency taking the record, the reason for access and destruction details.

The responsibility for the access and control of a HDD rests with either the Duty Manager or Shift Supervisor.

Prior to backing up images a Supervising officer may authorise a BSO to make copies of images for retention for training or reference purposes. Images retained for training or reference purposes must have all identification marking removed from the retained image.

### Disposing of records

Section 219ZAE of the Customs Act provides further detail on when an image of an internal non-medical scan must be deleted and under what circumstances, including:

- images must be deleted from the B-SCAN system and removable HDD must be destroyed as soon as practicable 12 months after the date of recording if relevant proceedings have not been initiated or have been discontinued
- the period of 12 months may be extended by a magistrate if the magistrate is satisfied there are special reasons for doing so
- images must be deleted as soon as practicable if the person is found to have committed a relevant offence but no conviction is recorded or is acquitted of a relevant offence and no appeal is lodged/confirmed, unless there is another relevant investigation or proceeding against the person.

After deletion, a witness to the deletion of the electronic recording must initial the Register of Electronic Records.

### De-Identifying images for training or reference purposes

A Supervising Officer may authorise a BSO to make copies of images for retention for training or reference purposes.

A Supervising Officer should consider the training or reference merit of each image being considered for retention.

### Providing images to AFP and/or medical practitioners

By signing the Consent Form, the detainee specifically permits the disclosure of scan images to the AFP and medical practitioners. This consent satisfies the Secrecy and Disclosure provisions under Part 6 of the ABF Act.

Electronic or Digital Images may be provided to AFP under the terms of Part 6 of the ABF Act in the course of an officer's duties. Images may be shown to medical practitioners under this part regarding protecting the health and safety of a person.

### Access to documentation and electronic recordings

Requests for access to documents or electronic recordings from partner agencies (excluding the AFP), other organisations or persons are subject to the provisions of Part 6 of the ABF Act, the *Freedom of Information Act 1982* and the Privacy Act.

A partner agency, organisation or individual may request copies of documentation and/or electronic recordings of detention and searches. This may occur during the investigation of the offence, following an individual person complaint or during an investigation by the Commonwealth Ombudsman, the Australian

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Commission for Law Enforcement Integrity, the Human Rights and Equal Opportunities Commission or the Office of the Australian Information Commissioner.

All requests from partner agencies, external organisations or individuals related to documents (including images) regarding the Internal Body Scanner will be directed to Operational Capability Branch responsible for the Body Scanner policy.

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# CHAPTER 4: Internal search

This paragraph refers to Subdivision C of Division 1B – Detention and internal search of persons suspected of internally concealing substances (s219RA to s219Z of the Customs Act).

Persons will be referred for an internal medical search where a DO suspects on reasonable grounds the person is internally concealing a suspicious substance; or an internal non-medical scan is positive or inconclusive; or if the person is not approved for or does not consent to an internal non-medical scan.

## 4.36. The detainee's rights

### Lawyer consultation

Under subsection 219W(1) of the Customs Act, the person may at any time consult a lawyer of their choice, or communicate with another person (subject to certain exceptions as set out in subsection 219W(3)). While this will normally be arranged by the AFP, the DO, ABF officer or police officer must arrange for the person to consult a lawyer of their choice.

### Consent and withdrawal of consent

The person may refuse to consent to the search. The detainee may also withdraw any consent provided at any time. In these circumstances, the AFP must apply to a Judge or Magistrate for an order for an internal search of the person.

### Communication with other persons, including companions

The detainee may at any time wish to communicate with another person. However, a DO or an AFP officer may stop the communication in order to safeguard the processes of law enforcement or protect the life and safety of any person (subsection 219W(3)). Where the person wishes to communicate with another person, the DO or AFP officer must carefully review all the information available in assessing whether there are reasonable grounds to believe the communication would compromise the law enforcement process or endanger the life and safety of any person. For example, if there are grounds to believe the person is involved in the organised carriage of illicit drugs or other prohibited imports/exports, and the officer believes that a communication would compromise the processes of law enforcement, then such communication should be denied.

The person may only wish to inform travelling companions or waiting relatives of the delay and such requests must be handled sympathetically. The DO or AFP officer must offer to pass a message to waiting friends or relatives, unless this is likely to compromise law enforcement processes.

## 4.37. Officers' role in an internal search

If an external search has not been conducted at the time a person is detained for an internal search, the officer must consider whether it is possible the person is externally concealing goods which may prove to be a security risk during transfer of the person to the police or an appropriate medical facility. If officers do have concerns, they should inform the responding AFP officers.

If a frisk search has already been conducted at the baggage examination bench, this may be sufficient to satisfy any security concerns.

If a DO suspects on **reasonable grounds** that a person is internally concealing a suspicious substance, the person may be detained.

Questioning of a detainee by the DO is permitted only after the person has been formally cautioned that:

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- they are not obliged to answer questions
- anything said may be used in evidence
- they have the right to consult a lawyer of their choice and communicate with another person at any time.

If the person makes no admission and, as a result of questioning, the DOs suspicions are allayed and the ABF officer no longer holds reasonable grounds for suspicion, then the person should be released immediately.

s. 37(2)(b), s. 47E(d)

### 4.39. Withdrawal of consent

Having given consent, a person can **withdraw** it any time. A judicial order may be sought if officers wish to conduct, or continue with, the search.

ABF officers need to look for verbal and non-verbal indicators if the person is clearly unhappy or reluctant about complying with any aspect of the search as it progresses, and must ask whether they still continue to consent to the search.

s. 37(2)(b), s. 47E(d)

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# PART 4: POST SEARCH PROCEDURES RELATING TO ALL CATEGORIES OF DETENTION AND SEARCH

## 4.52. Post search procedures

### When goods are found

Where goods have been located as a result of a personal search and there are reasonable grounds to believe the person has breached the Customs Act or other Customs legislation, the person and the goods shall be dealt with under *Procedural Instruction: Post Detection Procedures*.

### When no goods are found

When a SO informs the DO that no prohibited goods have been found and the person is no longer reasonably suspected of carrying such goods, the DO must immediately release the person from detention.

The DO must conduct a post search discussion with the released person in the presence of the witness to the search.

For all negative external searches and or internal non-medical scan, a duly completed and signed letter of explanation must be handed to the person.

## 4.53. Recording requirements

The DO is responsible for ensuring all recording and reporting of searches is completed in a timely manner.

### Notebooks

All officers involved in all searches (frisk, ordinary, external, internal non-medical and internal searches) must complete their official notebook entry in accordance with the *Procedural Instruction Official Diaries and Notebooks*.

### BAGS

All personal search details in the person's BAGS record must be completed by the record initiator.

All referrals to a DO for consideration of a frisk search, and all details of any frisk search conducted must be included in the BAGS entry.

BAGS records must not be completed until the AFP have advised of the positive or negative outcome of any referral. Full details of detections must be completed post entry.

The DO is responsible for ensuring completion and finalisation of BAGS records.

### Completion of B992 Register of Persons Search

An entry in the B992 Register of Persons Searched should be initiated immediately if a person suspected of concealing a suspicious substance or item is unable to allay the DO's suspicions and an external search, an internal non-medical scan, or referral to the AFP for an internal medical search is undertaken.

The DO is responsible for the initiation and timely completion of the B992 Register of Persons Searched for all external, internal non-medical and internal searches.

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The B992 Register of Persons Searched will be used to record further detention for internal non-medical scan and/or internal medical search following a frisk or external search. In these instances the details of the frisk search will also be included in the register.

### Complaints and compliments

On completion of a search and/or scan, the DO must ask if the person has any questions or concerns with the way the search was conducted.

In all circumstances officers must record the details of any questions or concerns and the outcome of the interaction in official notebooks and the B992 Register of Persons Searched.

Complaints and compliments must be reported to the relevant Duty Manager.

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## 5. Accountability and Responsibility

| Role                                                 | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Document author                                      | Responsible for: <ul style="list-style-type: none"> <li>Drafting policies and procedures in compliance with the Policy and Procedure Control Framework</li> <li>Using the approved Framework templates</li> <li>Addressing the key requirement of the policy or procedure</li> <li>Prior to drafting or reviewing, engage with their Divisional Coordinator.</li> </ul>                                                                                             |
| Document owner                                       | As the framework document owner, approves PIs and verify that appropriate stakeholder consultations have been completed.                                                                                                                                                                                                                                                                                                                                            |
| Superintendent, Traveller Operational Policy section | As the framework document owner, the Superintendent is responsible for: <ul style="list-style-type: none"> <li>regularly evaluating each PI document to ensure that it is still achieves its intended purpose</li> <li>determining whether a document requires editing or retirement</li> </ul> monitoring change and amendments to legislation or other legal requirements, business operations or risk profiles which may have an adverse effect on PI documents. |
| ABF border officers                                  | Participate in the PI evaluation and feedback processes and provide suggestions on effectiveness and usability of the document.                                                                                                                                                                                                                                                                                                                                     |
| Stakeholder                                          | Advise author on policy and procedure relevant to business area. Attend stakeholder consultation workshop. Identify other stakeholders that should be consulted. Review draft documents and provide solution focussed feedback within the specified timeframe. Verify that a completed Compliance SOP complies with policy and procedure related to the business area by endorsing completed SOP.                                                                   |
| Subject Matter Expert                                | A generic term for a departmental staff member or contractor who possesses specific expertise on the processes detailed in that PI/SOP.                                                                                                                                                                                                                                                                                                                             |

### 5.1. Statement of Expectations

#### 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.

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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.

## 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.

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## 6. Version Control

| Version number | Date of issue | Author(s)          | Brief description of change         |
|----------------|---------------|--------------------|-------------------------------------|
| 1.0            | 19 Apr 17     | s. 22(1)(a)(ii)    | Update of document into PI          |
| 1.1            | 30 May 17     |                    | Cleared PPCF Quality Assurance      |
| 1.2            | 20 Mar 18     | Legal Review entry | Cleared Legal Review                |
| 1.3            | 21 Mar 18     | s. 22(1)(a)(ii)    | Reviewed PI                         |
| 1.3            | 25 Oct 18     |                    | Reviewed and updated comments       |
| 1.4            | 28 Nov 18     |                    | PPCF Legal reviewed                 |
| 1.5            | 11 Dec 18     |                    | Updated and reviewed legal comments |
| 1.6            | 10 Jan 18     |                    | PPCF Legal reviewed                 |
| 1.7            | 11 Jan 18     |                    | Updated and reviewed legal comments |
| 1.8            | 17 Jan 18     |                    | Cleared Legal Review                |
| 1.9            | 23 Jan 18     |                    | Reviewed for SES Approval           |

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# Attachment A – Definitions

| Term                                                      | Acronym<br>(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 Federal Police (AFP)                           | AFP officer                | Is a person engaged under section 24 of the <i>Australian Federal Police Act 1979</i> (Australian Federal Police Act).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Australian Radiation Protection and Nuclear Safety Agency | ARPANSA                    | The Australian Radiation Protection and Nuclear Safety Agency is an Australian Government's primary authority on radiation protection and nuclear safety. They monitor and identify solar radiation and nuclear radiation risks to the population of Australia.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Aviation Security Identification Card                     | ASIC                       | Is a card of that type issued under Part 6 of the <i>Aviation Transport Security Regulations 2005</i> (Aviation Transport Security Regulations).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Baggage Action General Statistics                         | BAGS                       | Is a system used to create an electronic record of all baggage examinations and personal searches conducted on travellers. Most records are created in real time for incoming travellers using touch screens in the Back of the Hall area.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Customs controlled area                                   | s234AA place               | A section 234AA of the Customs Act place (commonly referred to as a Customs controlled area) is an area within an appointed airport or port that is regularly utilised by officers to exercise their power to patrol, question, detain, arrest, examine and search travellers and goods entering or leaving Australia.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Designated place                                          |                            | <p>As defined in subsection 4(1) of the Customs Act.</p> <p>Is generally anywhere that officers process arriving or departing ships and aircraft and/or international travellers.</p> <p>More specifically, the term 'designated place' refers to:</p> <ul style="list-style-type: none"> <li>• a port, airport or wharf that is appointed (and limits of which are fixed) under section 15 of the Customs Act</li> <li>• a place to which a ship/ aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1) (while the ship/ aircraft remains at that place)</li> <li>• a place a master of a ship or pilot of an aircraft has obtained permission under subsection 58(2) of the Customs Act to arrive (while the ship/aircraft remains there)</li> <li>• a boarding station appointed under section 15 of the Customs Act</li> </ul> |

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| Term              | Acronym<br>(if applicable) | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   |                            | <ul style="list-style-type: none"> <li>a place from which a ship/aircraft which is the subject of a section 175 of the Customs Act permission (this section does not allow for the transfer of goods between aircraft or ships) is required to depart (between grant of permission and departure)</li> <li>a place to which a ship/aircraft that is the subject of a s175 of the Customs Act permission (this section does not allow for the transfer of goods between aircraft or ships) is required to return (while the ship/aircraft remains there)</li> <li>a s234AA (customs controlled area) place that is not a place, or part of a place, referred to above.</li> </ul>                                                                                                                                                                                                                                               |
| Detention officer |                            | <p>Defined in s4(1) of the Custom Act to include:</p> <ul style="list-style-type: none"> <li>for the purposes of Subdivision A of Division 1B—an officer of Customs who is a detention officer because of a declaration under s219ZA(1); or</li> <li>for the purposes of Subdivision B of Division 1B—an officer of Customs who is a detention officer because of a declaration under s219ZA(2); or</li> <li>for the purposes of Subdivision C of Division 1B—an officer of Customs who is a detention officer because of a declaration under s219ZA(3).</li> </ul>                                                                                                                                                                                                                                                                                                                                                            |
| Detention place   |                            | <p>For an external search, s219ZB(1)(a) of the Customs Act, detention place is:</p> <ul style="list-style-type: none"> <li>a room in a section 234AA place: subsection 128(1) of the <i>Customs Regulation 2015</i> (the Customs Regulation)</li> </ul> <p>For detention and external search, the prescribed standards under s219ZB(1)(b) of the Customs Act and set out in subsection 128(2) of the Customs Regulation are:</p> <ul style="list-style-type: none"> <li>a place where persons inside the place are concealed from the view of persons outside and gives the detainee as much personal privacy as circumstances allow</li> <li>a place is secured against access by persons other than ABF officers, police officers and any person who, under subsection 219R(5) of the Customs Act, is allowed to be present in the place</li> <li>a place has reasonably comfortable ventilation and illumination</li> </ul> |

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| Term                                    | Acronym<br>(if applicable) | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                         |                            | <p>For detention and internal search, the prescribed standards under s219ZB(2)(a) of the Customs Act, as set out in subsection 128(3) of the Customs Regulation:</p> <ul style="list-style-type: none"> <li>A hospital, or the surgery or rooms of a registered or licensed medical practitioner, or a room in a section 234AAA place.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                         |
| Department of Foreign Affairs and Trade | DFAT                       | Is the organisation whose roles is to help make Australia stronger, safer and more prosperous by promoting and protecting Australia's interests internationally and contributing to global stability and economic growth.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| External search                         |                            | <p>As defined in subsection 4(1) of the Customs Act.</p> <p>External search in relation to a person, means a search of the body of, or anything worn by, the person; to determine whether the person is carrying any prohibited goods; and to recover any such goods, but does not include an internal examination of the person's body (s4(1) of the Customs Act).</p> <p>External searches are discussed in detail in s219R of the Customs Act.</p> <p>Departmental policy recognises two levels of external searches:</p> <ul style="list-style-type: none"> <li>B1 – consists of the removal of some or all outer clothing; and</li> <li>B2 – consists of the removal of some or all outer clothing and underclothing including underwear.</li> </ul> |
| Frisk search                            |                            | <p>As defined in subsection 4(1) of the Customs Act.</p> <p>The search of a person conducted by quickly running of hands over the person's outer garments; and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.</p> <p>Of note, this type of search does not involve officers touching the skin of the person.</p>                                                                                                                                                                                                                                                                                                                                                                    |
| Hard Disk Drive                         | HDD                        | A long term storage device using spinning magnetic media in the form of metal discs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Informed consent                        |                            | Informed consent means that the individual clearly understands what they are consenting to and what information is involved. A Detention officer must ensure the detainee has given informed consent by giving them a full and detailed explanation of what is and is not going to happen in the language they understand. Information cards and consent forms in various languages must be used to facilitate informed consent.                                                                                                                                                                                                                                                                                                                          |
| Internal medical search                 |                            | As defined in subsection 4(1) of the Customs Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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| Term                         | Acronym<br>(if applicable) | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                              |                            | <p>An internal search carried out under s219Z of the Customs Act by a medical practitioner.</p> <p>An internal medical search is to be carried out by a medical practitioner. See s219Z for details regarding the recovery, during the search, of any substance or thing internally concealed by the detainee.</p>                                                                                                                            |
| Internal non-medical scan    |                            | <p>As defined in subsection 4(1) of the Customs Act.</p> <p>An internal search carried out using prescribed equipment under section 219SA of the Customs Act.</p>                                                                                                                                                                                                                                                                             |
| Internal search              |                            | <p>As defined in subsection 4(1) of the Customs Act to mean:</p> <ul style="list-style-type: none"> <li>• an examination (including an internal examination) of the person's body to determine whether the person is internally concealing a substance or thing</li> <li>• in the case of an internal medical search, includes the recovery of any substance or thing suspected on reasonable grounds to be so concealed.</li> </ul>          |
| Letter of explanation        |                            | <p>Is a letter given at the completion of a negative external search and internal non-medical scan. The letter sets out several things, including a reiteration of the explanation that was given to the person prior to them consenting to participate in an internal non-medical scan.</p>                                                                                                                                                  |
| Ordinary search              |                            | <p>Under subsection 183UA(1) of the Customs Act, an ordinary search means a search of a person or of articles in the possession of a person that may include:</p> <ul style="list-style-type: none"> <li>• requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat</li> <li>• an examination of those items.</li> </ul>                                                                               |
| Person in need of Protection | PINOP                      | <p>As defined in subsection 4(20) of the Customs Act. For purposes of Division 1B, a person is in need of protection <u>if, and only if</u>, the person is a person:</p> <ul style="list-style-type: none"> <li>• under 18 years of age</li> <li>• in a mental or physical condition (whether temporary or permanent) that makes the person incapable of managing their affairs as defined in subsection 4(20) of the Customs Act.</li> </ul> |
| Personal Search              |                            | <p>A search (frisk, external) of a person under the Customs Act or other act.</p>                                                                                                                                                                                                                                                                                                                                                             |
| Prescribed Equipment         |                            | <p>Is equipment prescribed by the Customs Regulation for the purposes of conducting an internal non-medical scan.</p>                                                                                                                                                                                                                                                                                                                         |
| Prohibited goods             |                            | <p>As defined in subsection 4(1) prohibited goods means:</p>                                                                                                                                                                                                                                                                                                                                                                                  |

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| Term                             | Acronym<br>(if applicable) | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                  |                            | <ul style="list-style-type: none"> <li>goods whose importation or exportation is prohibited by this Act or any other law of the Commonwealth</li> <li>goods whose importation or exportation is subject to restrictions or conditions under this Act or any other law of the Commonwealth</li> <li>restricted goods that have been brought into Australia other than in accordance with a permission under subsection 233BABAE(2)</li> <li>goods subject to customs control.</li> </ul> |
| Suspected Internal Referral Form | SIRF                       | An administrative form to complete for suspected referral concealment.                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Smock                            |                            | A garment used for detainee privacy during an external search.                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Suspicious substance             |                            | A suspicious substance is defined in subsection 4(1) of the Customs Act as a narcotic substance that would, or would be likely to, assist in the proof of the commission of an offence against Division 307 of the <i>Criminal Code</i> that is punishable by imprisonment for a period of 7 years or more.                                                                                                                                                                             |

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# Attachment B – Assurance and Control Matrix

## 1.1. Powers and Obligations

| Legislative Provision |                          |                                                                                      | Is this a delegable power? | If delegable, list the relevant instruments of delegation |
|-----------------------|--------------------------|--------------------------------------------------------------------------------------|----------------------------|-----------------------------------------------------------|
| Legislation           | Reference (e.g. section) | Provision                                                                            |                            |                                                           |
|                       | s195                     | Power to question passengers etc.                                                    | No                         |                                                           |
|                       | s219L                    | Detention for frisk search                                                           | Yes                        | s219ZA(1) and ABF (C-G) No.1 of 2018                      |
|                       | s219M                    | Frisk search                                                                         | No                         |                                                           |
|                       | 219N                     | Power to require the production of things                                            | No                         |                                                           |
|                       | s219P                    | Persons to whom section 219R applies                                                 | No                         |                                                           |
|                       | s219Q                    | Detention for external search                                                        | Yes                        | s219ZA(2) and ABF (C-G) No.1 of 2018                      |
|                       | s219R                    | External search                                                                      | No                         |                                                           |
|                       | s219R(14)                | External search - authorised officer                                                 | Yes                        | ABF (C-G) No.1 of 2018                                    |
|                       | s219RAA                  | Videotape record may be made of external search                                      | No                         |                                                           |
|                       | s219RA                   | Certain Judges and Magistrates eligible to give orders under this Subdivision        | No                         |                                                           |
|                       | 219S                     | Initial detention                                                                    | Yes                        | s219ZA(1) and ABF (C-G) No.1 of 2018                      |
|                       | s219SA                   | Internal non-medical scan using prescribed equipment                                 | No                         |                                                           |
|                       | s219SB                   | Seeking detention order following invitation to consent to internal non-medical scan | Yes                        | ABF (C-G) No.1 of 2018                                    |

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| Legislative Provision |                          |                                                                                                   | Is this a delegable power? | If delegable, list the relevant instruments of delegation |
|-----------------------|--------------------------|---------------------------------------------------------------------------------------------------|----------------------------|-----------------------------------------------------------|
| Legislation           | Reference (e.g. section) | Provision                                                                                         |                            |                                                           |
|                       | s219T                    | Initial order for detention                                                                       | Yes                        | ABF (C-G) No.1 of 2018                                    |
|                       | s219U                    | Renewal of order for detention                                                                    | Yes                        | ABF (C-G) No.1 of 2018                                    |
|                       | s219V                    | Arrangement for internal medical search                                                           | Yes                        | ABF (C-G) No.1 of 2018                                    |
|                       | s219W                    | Detention under this Subdivision                                                                  | No                         |                                                           |
|                       | s219X                    | Detainee becoming in need of protection                                                           | Yes                        | ABF (C-G) No.1 of 2018                                    |
|                       | s219Y                    | Applications for orders under this Subdivision                                                    | Yes                        | ABF (C-G) No.1 of 2018                                    |
|                       | s219ZAA                  | Use of prescribed equipment for external search or internal non-medical scan                      | No                         |                                                           |
|                       | s219ZAB                  | Prescribing equipment for use in external searches and internal non-medical scans                 | No                         |                                                           |
|                       | s219ZAC                  | Authorising officers to use prescribed equipment for external search or internal non-medical scan | No                         |                                                           |
|                       | s219ZAD                  | Giving a record of invitation and consent, or a copy of order                                     | No                         |                                                           |
|                       | s219ZAE                  | Records of results of external search or internal non-medical scan                                | No                         |                                                           |
|                       | s219ZA                   | Detention officers                                                                                | Yes                        | ABF (C-G) No.1 of 2018                                    |
|                       | s219ZB                   | Detention places                                                                                  | No                         |                                                           |
|                       | s219ZC                   | Detention under this Division                                                                     | No                         |                                                           |
|                       | s219ZD                   | Detainees not fluent in English                                                                   | No                         |                                                           |
|                       | s219ZE                   | Release from, or cessation of, detention                                                          | No                         |                                                           |
|                       | s219ZF                   | Conduct of internal medical search                                                                | No                         |                                                           |

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| Legislative Provision |                          |                                                                                                                   | Is this a delegable power? | If delegable, list the relevant instruments of delegation |
|-----------------------|--------------------------|-------------------------------------------------------------------------------------------------------------------|----------------------------|-----------------------------------------------------------|
| Legislation           | Reference (e.g. section) | Provision                                                                                                         |                            |                                                           |
|                       | s219ZG                   | Medical practitioner may take action to preserve detainee's life                                                  | No                         |                                                           |
|                       | s219ZH                   | Medical practitioner to answer questions and prepare report                                                       | No                         |                                                           |
|                       | s219ZJ                   | Proceedings against medical practitioners                                                                         | No                         |                                                           |
|                       | Section 219ZJAA          | Prescribed State or Territory offences                                                                            | No                         |                                                           |
|                       | s219ZJB                  | Detention of person suspected of committing serious Commonwealth offence or prescribed State or Territory offence | No                         |                                                           |
|                       | s219ZJC                  | Detention of person subject to warrant or bail condition                                                          | No                         |                                                           |
|                       | s219ZJCA                 | Detention of person for national security or security of a foreign country                                        | No                         |                                                           |
|                       | s219ZJD                  | Search of person detained under this Division                                                                     | No                         |                                                           |
|                       | s219ZJE                  | Comptroller-General of Customs must give directions about detaining persons under this Division                   | N/A                        | F2015L00891                                               |
|                       | s219ZJF                  | Detainees to be given reasons for detention and shown identification on request                                   | No                         |                                                           |
|                       | s219ZJG                  | Use of force in relation to detention                                                                             | No                         |                                                           |
|                       | s219ZJH                  | Moving detained persons                                                                                           | No                         |                                                           |
|                       | s219ZJI                  | Detainees not fluent in English                                                                                   | No                         |                                                           |
|                       | s219ZJJ                  | Detention of minors                                                                                               | No                         |                                                           |
|                       | s219ZK                   | Nature of functions of Judge or Magistrate                                                                        | No                         |                                                           |
|                       | s219ZL                   | Protection of Judge or Magistrate                                                                                 | No                         |                                                           |

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| Legislative Provision  |                          |                                        | Is this a delegable power? | If delegable, list the relevant instruments of delegation |
|------------------------|--------------------------|----------------------------------------|----------------------------|-----------------------------------------------------------|
| Legislation            | Reference (e.g. section) | Provision                              |                            |                                                           |
| <i>Crimes Act 1914</i> | Part 1 C                 | Investigation of Commonwealth offences | No                         |                                                           |

# s. 37(2)(b), s. 47E(d)

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# Internal search using Body Scanner

## Procedural Instruction

This procedural instruction informs Australian Border Force (ABF) officers of the procedures for the use of prescribed equipment for the detention and internal non-medical scanning of travellers.

|                   |                             |
|-------------------|-----------------------------|
| Approval Date     | 17 July 2018                |
| Date of Review    | 17 July 2019                |
| Contact           | s. 22(1)(a)(ii) @abf.gov.au |
| Document ID (PPN) | BC-692                      |
| TRIM Reference    | OPD2017/180001              |

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# 1. Introduction

## 1.1. Background

The detention and search provisions in Division 1B of Part XII of the *Customs Act 1901* (Customs Act) provide ABF officers legislative powers to detain and search a traveller. Powers to detain and search a traveller are necessary for the detection of prohibited goods, securing of evidence and protection of the safety of both ABF officers and the traveller subject to search. Search powers may impact on the privacy and personal dignity of the traveller. However, search and detention powers have a clear legislative basis under the Customs Act and are consistent with the provisions of the *Privacy Act 1988* (Privacy Act).

Personal search powers are socially and politically sensitive and are subject to ongoing scrutiny from the Government, the Commonwealth Ombudsman, the Office of the Australian Information Commissioner, the media and civil rights groups.

The personal search provisions of the Customs Act reflect a reasonable balance between preserving a traveller's rights under the Privacy Act and the protection of the community as a whole.

The detention and search legislative framework:

- recognises the need for the ABF to be able to search travellers in certain circumstances, in order to maintain the integrity of border controls
- reflects community expectations for the preservation of civil liberty and privacy entitlement of all travellers
- provides safeguards for the rights of travellers being detained for a personal search
- provides protection for ABF officers in the execution of their duty
- is consistent with the national privacy framework and the Privacy Act.

# 2. Scope

## 2.1. In Scope

This procedural instruction outlines ABF officer's legislative powers to detain and search a traveller, for the necessary detection of prohibited goods under Division 1B of Part XII of the Customs Act.

This procedural instruction outlines what is considered an 'authorised officer' allowing for a lawful search to be conducted.

This procedural instruction applies to clearance of travellers and/or goods under the Customs Act.

## 2.2. Out of Scope

This procedural instruction does not cover the training required for use of the Body Scanner.

This procedural instruction does not cover searches in relation to section 252 of the *Migration Act 1958* (Migration Act).

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### 3. Glossary

Table 1 – Common terms and definitions used in this instruction

| Term                                                      | Acronym (if applicable) | Definition                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Allaying suspicions                                       |                         | Is to be fair and to observe the principle of presumption, or innocence.                                                                                                                                                                                                                                                                                         |
| 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.                                                                                                                                                                                                         |
| Australian Border Force Commissioner                      | ABF Commissioner        | Is the Commissioner/ head of the ABF.                                                                                                                                                                                                                                                                                                                            |
| Australian Federal Police                                 | AFP                     | Is the organisation whose role is to enforce Commonwealth criminal law, contribute to combating complex, transnational, serious and organised crime affecting Australia's national security and to protect Commonwealth interests from criminal activity in Australia and overseas.                                                                              |
| Australian Federal Police officer                         | AFP officer             | Is an engaged person engaged under section 24 of the <i>Australian Federal Police Act 1979</i> (Australian Federal Police Act).                                                                                                                                                                                                                                  |
| Australian Radiation Protection and Nuclear Safety Agency | ARPANSA                 | Is an Australian Body that monitors and identifies solar radiation and nuclear radiation risks to the population of Australia.                                                                                                                                                                                                                                   |
| Authorised Search officer                                 |                         | An ABF officer who has successfully completed the Detention and Search training course. Officers are required to successfully complete an online course and assessment, undertake practical (role-play) assessments and be assessed as competent by a Workplace Assessor. Officers are required to undergo Detention and Search recertification every two years. |
| Body Scan authoriser                                      |                         | Is an ABF Inspector who authorises a Body Scan officer to conduct Body Scans and who has completed the Detention and Search training course.                                                                                                                                                                                                                     |
| Body Scan Search officer                                  |                         | Is an ABF officer authorised in writing by the Chief Executive Officer to use prescribed equipment for the purposes of internal non-medical scan and who is an authorised Search                                                                                                                                                                                 |

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| Term                       | Acronym (if applicable) | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            |                         | officer and who has completed the Detention and Search training course.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Customs Controlled area    | Section 234AA place     | Is a section 234AA place (commonly referred to as a Customs controlled area) is an area within an appointed airport or port that is regularly utilised by ABF officers to exercise their power to patrol, question, detain, arrest, examine and search travellers and goods entering or leaving Australia.                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Detention officer          |                         | An ABF officer belonging to a class of officers declared to be so by the Chief Executive Officer under subsection 219ZA(3) of the <i>Customs Act 1901</i> (Customs Act) and who is an authorised Search officer and who has also completed the Detention and Search training course.                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Detention place            |                         | <p>A detention place for the purposes of subsection 219ZB (1)(b) of the <i>Customs Act 1901</i> (Customs Act):</p> <ul style="list-style-type: none"> <li>travellers inside the place are concealed from the view of travellers outside</li> <li>the place is secured against access by travellers other than ABF officers, police officers and any person who, under subsection 219R(5) of the Act, is entitled to be present in the place</li> <li>The place has reasonably comfortable ventilation and illumination</li> <li>A detention place for the purposes of subsection 219ZB(2)(a) (internal medical search) must be:</li> </ul> <p>A hospital or the surgery or rooms of a registered or licensed medical practitioner.</p> |
| Informed consent           |                         | For a Detention officer to ensure the detainee has given informed consent the detainee must be given a full and detailed explanation of what is and what is not going to happen in the language they understand. Information cards and consent forms in various languages must be used to facilitate informed consent                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Internal medical search    |                         | An internal search carried out under section 219Z (internal medical search by medical practitioner).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

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| Term                          | Acronym (if applicable) | Definition                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Internal non-medical scan     |                         | An internal search carried out under section 219SA - internal non-medical scan using prescribed equipment – ( <i>Customs Act 1901</i> ) Customs Act.                                                                                                                                                                                                             |
| Internal search               |                         | Is an internal examination of the person's body to determine whether the traveller is internally concealing an object or a substance.                                                                                                                                                                                                                            |
| Letter of explanation         |                         | Is a letter given at the completion of a negative internal non-medical scan. The letter reiterates the explanation given to the traveller prior to them consenting to participate in an internal non-medical scan.                                                                                                                                               |
| Persons in need of Protection | PINOP                   | A person under 18 years of age or a person in a mental or physical condition (whether temporary or permanent) that makes the person incapable of managing their affairs as defined in section 4 of the <i>Customs Act 2901</i> (Customs Act).                                                                                                                    |
| Prescribed equipment          |                         | Is equipment prescribed by the <i>Customs Regulations 2015</i> (Customs Regulations) for the purposes of conducting an internal non-medical scan.                                                                                                                                                                                                                |
| Prohibited goods              |                         | Are goods whose importation or exportation is prohibited by the Customs Act or any other law of the Commonwealth.<br><br>Goods whose importation or exportation is subject to restrictions or conditions under the Customs Act or any other law of the Commonwealth. Goods subject to control of Customs.                                                        |
| Reasonable grounds            |                         | 'Reasonable grounds' means that, given the same set of facts and circumstances, a normal prudent person in that position would arrive at the same conclusion.<br><br>An internal non-medical scan will be unlawful where sufficient facts and circumstances do not exist to satisfy a Detention Officer as to the existence of reasonable grounds for suspicion. |
| Witnessing officer            |                         | Is an ABF officer who is an authorised Search officer and who has completed the Detention and Search training course.                                                                                                                                                                                                                                            |

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# 4. Procedural Instruction

## PART A – OVERVIEW

### 4.1 Ethics and integrity

ABF officers must be aware that a personal search such as an internal non-medical scan, can be an upsetting and embarrassing experience. Some travellers who undergo an internal non-medical scan search may not be internally concealing an illicit substance.

An ABF officer's behaviour and professionalism can often do much to ease what may be a stressful situation for the traveller being searched.

ABF officers are expected to maintain high standards of personal and professional behaviour that uphold the public's confidence in the integrity of the Department of Home Affairs. The Australian Public Sector (APS) Code of Conduct outlines these standards, and requires employees to treat everyone with respect and courtesy and behave at all times in a way that upholds APS values.

ABF officers are required to conduct detention and search procedures with probity and integrity according to the APS Code of Conduct and should:

- display the highest ethical standards
- not accept gifts in the course of an examination or search
- not misuse or take anything found in the course of a search.

### 4.2. Work Health and Safety (WHS)

Workplace safety is the responsibility of every ABF officer. Prior to commencing any examination, ABF officers must assess the working environments and circumstances of each individual tasking to identify any factors that may impact on an officer's personal safety.

### 4.3. Radiation safety

Commonwealth agencies require Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) approval to deploy any technology using and or emitting ionising radiation. ARPANSA approval for the prescribed Department of Home Affairs internal Body Scanner technologies include certain conditions and limitations for its use.

s. 37(2)(b), s. 47E(1)

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### 4.5. Medical conditions / pregnancy

Prior to inviting a traveller to consent to participate in an internal non-medical scan, Detention officers must ask the traveller if they have any known medical conditions or whether there are any medical reasons, why they should not participate in an internal non-medical scan.

Prior to inviting a female to consent to participate in an internal non-medical scan, Detention officers must ask the female if they are pregnant or if they have any reason to believe they may be pregnant.

Additionally Detention officers must ensure the traveller is physically capable of participating in an internal non-medical scan. Wheelchair bound travellers, travellers relying on physical support of another person or walking frames to stand should not be asked to participate in an internal non-medical scan. Additionally, the traveller must be capable of reacting to audio or visual signals or directions. Where the Detention officer considers the traveller cannot respond to audio or visual signals of direction the person should not be asked to participate in an internal non-medical scan.

While a traveller is detained, ABF officers must remain vigilant of the detainee's physical condition. Where a detainee reports to be unwell or presents with indications of ill health or demonstrates deterioration in their physical condition, the Detention officer must ask the detainee if they have any medical condition that may require medical attention. Medical advice on the detainee's ability to undergo a personal search may need to be sought or arrangements may need to be made to have first aid assistance available.

Travellers internally concealing drugs are at risk of death or significant health issues in the event of the rupture of, or leakage from packaging. If there is any apparent deterioration in the physical condition of a detainee, the Detention officer must immediately seek medical assistance. Where a detainee is transported to hospital, details of the attending paramedical staff and proposed emergency department must be reported to the Australian Federal Police (AFP) Australian Operations Coordination Centre (AOCC) on 02 6126 7755.

The Detention officer is responsible for ensuring all details, including times, travellers involved and conversations of any health issues are recorded and corroborated in official notebooks.

### 4.6. Security during detention

Internal non-medical scanning rooms at airports must be checked at the start of each shift, and before and after each scan.

A detainee must not be left alone or afforded the opportunity to dispose of any articles secreted on, or in their person. ABF officers should also be careful not to leave anything within reach of the person that may be used as a weapon to injure either themselves or others. Wherever practical the detainee should always be supervised by two ABF officers.

When a detainee is being accompanied to a scanning room, the detainee is to be escorted by two ABF officers. One ABF officer should walk alongside the detainee and one ABF officer should walk behind to ensure that the detainee does not dispose of any articles.

### 4.7. Controlled toilets

Should the detainee wish to go to the toilet at any time during the detention and search process, they should be permitted to use a controlled toilet, see *Procedural Instruction: Controlled toilets*.

### 4.8. Complaints and Compliments

Complaints and compliments from the public are one of the most immediate and effective forms of feedback the Department of Home Affairs can receive about how the ABF is seen to be performing. Complaints and compliments enable the ABF to increase its understanding of traveller's needs and expectations, identify areas needing improvement, and identify any systemic trends and recurring problems. Complaints also provide data to assist in organisational performance measurement and reporting.

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It is important therefore that travellers are given an opportunity to express, either verbally or in writing, any comments, concerns or objections.

On completion of an internal non-medical scan, the Detention officer should ask if the traveller has any questions or concerns. Where a traveller expresses, either verbally to the Detention officer or a more senior officer or in writing, any comments, concerns or objections to the process, the conduct of the scan, or behaviour of officers, comments should be recorded on the Internal Body Scanner Traveller Feedback Form.

If the results of the internal non-medical scan allay the detention officer's suspicion that the traveller is internally concealing drugs, a duly completed and signed Letter of Explanation must also be handed to the traveller.

Where used, interpreters must be retained until the traveller has been provided the opportunity to make and finalise a complaint. During the discussion, the Detention officer should endeavour to put the traveller at ease and invite the traveller to specify any problems or complaints for the official record.

ABF officers should as far as possible attempt to resolve the complaint at the time it is made. If the traveller is upset, the ABF officer should try to calm the traveller before they leave the area. ABF officers should ensure the traveller is provided a private area for this conversation and ensure the facilities offered to the traveller put them at ease.

Where a traveller wishes to complain to a senior officer, this request must, if possible, be facilitated. As soon, as is practicable, Detention officers should attempt to identify and clarify the issues that have led to the complaint in order to brief the senior officer. Where a senior officer is not reasonably available, ABF officers must advise the traveller and identify an alternate independent officer to assist or facilitate a written complaint. The circumstances of senior officer unavailability must be documented in official notebooks and included in reports to the workplace senior officer.

Where a traveller wishes to make a written complaint, ABF officers should attempt to clarify the issues that have led to the complaint but must not attempt to dissuade the traveller from the complaint. Travellers wishing to make a written complaint must be provided a copy of the Complaints and Compliments brochure.

While a traveller may decline to complain, ABF officers should remain mindful of social and cultural barriers around complaints to authority or an unwillingness to express dissatisfaction and attempt to identify any indication a traveller wishes to complain. ABF officers must not press the traveller regarding a possible complaint but should advise the traveller of Department of Home Affairs Complaints and Compliments scheme and if appropriate provide a Complaints and Compliments brochure. Additionally the ABF officer should ensure the traveller is aware of the various options available under this scheme. These are:

- fill in the form on the Department of Home Affairs website at [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au)
- make a free call to the client service feedback line on 133 177
- fill out the reply paid comment sheet attached to the complaints and compliments brochure located at all department of immigration and border protection locations
- write to Department of Home Affairs at:  
Global Feedback Unit  
GPO Box 241  
Melbourne Vic. 3001  
Australia.

At the completion of the discussion, the Detention officer is to facilitate the departure of the traveller from the Department of Home Affairs area or the referral of the travellers to the AFP or relevant agency.

In all circumstances, ABF officers must record the details of the complaint or compliment and the outcome of the interaction in official notebooks and the Personal Search Register. Complaints and compliments should be reported to the relevant Duty Manager using the Internal Body Scan Traveller Feedback Form. They must be reported in the Complaints and Compliments Management System and actioned in line with Complaints and Compliments Standards.

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### 4.9. Public comment

Where travellers comment on the use of internal body scan technology, ABF officers must not comment in response. Travellers and members of the public should be thanked for their comment, asked if they wish to provide a formal comment, and advise their comments will be noted.

Media Requests must be referred to the Department of Home Affairs Communication and Media Section.

In all cases the comments, concerns or objections for the use of the internal Body Scanner are to be recorded in official notebooks and reported on the Internal Body Scanner Traveller Feedback Form through the relevant Duty Manager.

## PART B – DETENTION AND INTERNAL NON-MEDICAL SCAN

### 4.10. Compliance with Legislative and Regulatory Requirements

To ensure compliance with the legislative and regulatory requirements relating to internal non-medical scanning, Detention and Body Scan Search officers must use the Internal Non-Medical Scan Guide during all phases of the management of a traveller suspected of internally concealing drugs.

### 4.11. Legislation and powers

The legislation provides that a traveller may be detained for the purposes of carrying out an internal non-medical scan when a Detention Officer suspects on reasonable grounds that a traveller is internally concealing a suspicious substance under subsection 219S(1)(a) of the Customs Act.

The decision to invite a traveller to consent to the carrying out of an internal non-medical scan using prescribed equipment is at the discretion of an ABF officer.

The Scan can only be carried out if a traveller has been detained under s219S of the Customs Act.

The scan can only be carried out if there are reasonable grounds to believe the detainee is not in need of protection. A traveller is in need of protection if the person is under 18 years of age or in a mental or physical condition (whether temporary or permanent) that makes the traveller incapable of managing his or her own affairs. Therefore an internal non-medical scan can only be carried out on travellers who are 18 years or older.

Where a traveller has been detained for the purposes of carrying out an internal nonmedical scan, Detention officers may invite the detainee to consent to an internal nonmedical scan.

The detainee must have consented to an internal non-medical scan using equipment prescribed by the legislation.

The scan must be carried out as soon as practicable after the detainee has been detained.

An ABF officer must, as soon as practicable, take the traveller to the nearest detention place suitable for the detention of the person.

An internal non-medical scan may only be carried out:

- using equipment prescribed for the purpose in the Customs Regulations
- by an officer who is authorised for the purposes of subsection 219ZAA(3) subsection 219SA(2) of the Customs Act.

The detainee must be referred for an internal medical search where a detainee has been invited to consent to an internal non-medical scan and either:

- a traveller refuses an invitation to consent to an internal non-medical scan

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- an internal non-medical scan has begun but is not completed, and the detention officer retains reasonable grounds to suspect the detainee is internally concealing a suspicious substance
- after an internal non-medical scan is completed, the detention officer retains reasonable grounds to suspect the detainee is internally concealing a suspicious substance.

Note: It is not necessary that the traveller is detained for an internal medical search.

An internal non-medical scan must be carried out by an ABF officer, of the same sex as the detainee, authorised by the Comptroller-General of Customs to use the prescribed equipment, and who has successfully completed the Detention and Search Training Course. The Witnessing officer must also be the same sex as the detainee.

s. 37(2)(b), s. 47E(d)

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# s. 37(2)(b), s. 47E(d)

### 4.14. Invitation to consent to an internal non-medical scan

If a traveller has been detained under section 219S of the Customs Act, for the purpose of undertaking an internal non-medical scan, an ABF officer may carry out an internal non-medical scan of the traveller, as soon as practicable, if:

- there are reasonable grounds to believe that the detainee is **not** in need of protection;
- the detainee consents
- the requirements of section 219ZAA of the Customs Act are met in inviting the detainee to provide their consent see 4.22 Seeking consent for further information in relation to these requirements.

Detention officers must ensure the traveller is physically capable of participating in an internal non-medical scan. Wheelchair bound travellers, travellers relying on physical support of another person or walking frames to stand should not be invited to participate in an internal non-medical scan. Additionally the traveller must be capable of reacting to audio or visual signals or directions. Where the Detention officer considers that the traveller cannot respond to audio or visual signals of direction the traveller should not be invited to participate in an internal non-medical scan.

These groups of people may instead be detained for an internal medical search.

The Detention officer must consider the traveller's physical health. The Information Card and Consent Form asks travellers to advise if they are pregnant, have a known medical condition or are ill. Additionally as part of detaining a traveller, the Detention Officer must verbally inquire whether the traveller is pregnant or ill and also take into regard the traveller's apparent physical health.

Where the Detention officer considers that asking the traveller to undertake a scan would expose that traveller to risk of injury by the mechanical operation of scanner, whether due to illness or physical incapacity, the traveller should not be invited to consent to an internal non-medical scan.

Accredited diplomatic agents or consular officers and family members are exempt from personal search. Heads of State, Heads of Government, Foreign Ministers, their spouses and children and other persons approved by the National Counter Terrorism Committee's Security Coordination Subcommittee are exempt from Customs, Immigration and Biosecurity (CIB) processes. These persons are **NOT** to be detained for personal search or any kind, see *Procedural Instruction: Foreign dignitary facilitation at airports*.

### 4.15. Radiation exposure considerations

The ARPANSA licence for the internal Body Scanner requires that Department of Home Affairs retain records of traveller's exposure to ionising radiation (effective dose).

The licence also requires that Department of Home Affairs limit annual exposure for each individual to ionising radiation for internal non-medical scan purposes at 10 micro Sieverts (µSv).

Before inviting a traveller to consent to participate in an internal non-medical scan, the Detention officer must establish through the Internal Non-Medical Scan Operators Log whether the person has been subject to an

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internal non-medical scan during the preceding 12 months. A traveller's annual radiation exposure from participating in internal non-medical scans may not exceed the 10Sv limit imposed by the ARPANSA licence.

The Detention officer must ensure that the Internal Non-Medical Scan Operators Log records the effective dose of each person scanned and that system records are completed to identify that the person was subject to internal non-medical scan.

The Smiths B-SCAN 16HR-DV Body Scanner prescribed for Department of Home Affairs use in conducting an internal non-medical scan, may operate in three imaging modes Full Body only, Torso View only and Dual View. Dual View mode combines both Full Body and Torso View in one scan cycle.

The effective radiation dose for each scan mode is:

- Full Body 1.2  $\mu$ Sv
- Torso View 1.0  $\mu$ Sv
- Dual View 2.1  $\mu$ Sv.

To minimise detainee radiation exposure no more than three scans may be conducted each time a traveller is detained for an internal non-medical scan.

The first scan shall be a Dual View scan. If the Body Scan Search officer is unable to interpret that image additional scans shall take in Torso View mode. The Body Scan Search officer shall interpret each additional image before conducting another scan.

Once the Body Scan Search officer is able to interpret an image no further scans may be conducted.

Where a traveller has been the subject of previous intervention that has lead to an internal non-medical scan or an internal medical search without result the Detention officer should consider whether a further internal non-medical scan is warranted.

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### PART C – PROCEDURE TO BE UNDERTAKEN PRIOR TO DETAINING A TRAVELLER

#### 4.16. Initiating the Personal Search Register

The Detention officer must initiate a new record in the Personal Search Register immediately if the Detention officer forms reasonable grounds to suspect that a traveller is internally concealing a suspicious substance and has established that the traveller cannot allay the Detention officer's suspicions.

The Detention officer must record their reasonable grounds for suspicion in the Personal Search Register before detaining the traveller and seeking their consent to an internal non-medical scan.

#### 4.17. Seeking approval to carry out an internal non-medical scan

Before detaining a traveller for an internal non-medical scan, the Detention officer must apply to a Body Scan approver for permission to invite a traveller to consent to an internal non-medical scan.

Before approving use of a body scanning technology the Body Scan approver should review the reasonable grounds for suspicion. If the Body Scan approver does not consider there to be reasonable grounds, the Body Scan approver may refuse to authorise an internal non-medical scan. When a Body Scan approver refuses permission to conduct an internal non-medical scan on the basis of insufficient grounds to suspect the traveller is internally concealing a suspicious substance, the traveller must be allowed to depart on completion of the relevant Customs, Immigration and Biosecurity (CIB) processes.

If the Body Scan approver considers that the traveller may not be invited to consent to an internal non-medical scan but considers that there are still reasonable grounds to suspect the traveller is internally concealing a suspicious substance, the traveller may be detained for an internal medical search.

The Body Scan approver must note the reasons for their decision in the Internal Non-Medical Scan Register.

#### 4.18. Appointment of witnessing officer

Before detaining a traveller, the Detention officer must appoint a Witnessing officer. Where the traveller has been subject to frisk or external search the Witnessing officer of those searches should be used if they have completed internal Body Scanner Deployment Operational Training.

The Witnessing officer will attend all further activity in relation to the detention of the detainee.

The Witnessing officer must be of the same sex as the traveller. Transgender travellers should be consulted as to their preference for a male or female officer. The witness must hold current certification as an Authorised Search officer.

Subject to the preceding paragraph the Detention officer may witness the internal nonmedical scan only where a suitable Witnessing officer is not reasonably available.

#### 4.19. Interpreter

The need for an interpreter must be established prior to commencing any detention and search activity. Where it appears that, a traveller is having difficulty in communicating in English the Detention officer must ask the traveller if they want an interpreter. If a Detention officer has any doubt a traveller has difficulty understanding conversation or directions, an interpreter should be used.

The need for an interpreter must be reassessed if, at any stage of detention and search activity, a detainee appears to have difficulty understanding conversation or directions. Where an interpreter is introduced after commencing detention and search processes, the process must be recommenced.

If an interpreter is not available to attend, the Telephone Interpreter Service (TIS) should be contacted.

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Where an interpreter is used they should be asked to sign the Internal Non-Medical Scan Register. Where a TIS interpreter is used, that interpreter's name must be noted on the Internal Non-Medical Scan Register.

It is desirable for communication purposes for the interpreter to remain in the body scanning room or search room. Both the detainee and the interpreter must agree to the interpreter remaining. The interpreter must be placed in the room so they cannot see the operator's screen.

An interpreter must not remain in the Body Scanner room if they are not of the same sex as the detainee or the interpreter's presence is inappropriate from an operational or security perspective, or if the detainee has requested that the interpreter leave the room.

The Detention officer must ensure that the interpreter remains in close proximity to the room if it necessary that the interpreter be brought back into the room for further communication.

### 4.20. Detention

A Detention officer may not invite a traveller to consent to an internal non-medical scan if that traveller is precluded from being invited to an internal non-medical scan.

Before detaining a traveller for the purposes of carrying out an internal non-medical scan, the Detention officer must provide the traveller an opportunity to allay the suspicion the officer has developed.

The Detention officer must tell the traveller of the grounds for that suspicion to the fullest extent possible having regard to the security classification and sensitivity of information that may have informed development of that suspicion.

If, after giving the traveller the opportunity to allay the officer's suspicion, the Detention officer considers there are reasonable grounds to suspect the traveller is internally concealing a suspicious substance, the traveller may be formally detained. This should be done in such a way that the traveller has no doubt that he/she is in the custody of the officer whom the Detention officer has assigned for that purpose.

Once a Detention officer no longer holds reasonable grounds to suspect the detainee is internally concealing a suspicious substance, the detainee must be released.

### 4.21. Detainee's rights and caution

The Detention officer must not question the detainee to determine whether the traveller is internally concealing drugs unless the detainee has been given a caution under subsection 219W(5) of the Customs Act. The detainee must be advised that:

- the traveller is not obliged to answer any questions
- anything said by the traveller may be used in evidence
- the traveller has the right to communicate with a lawyer or another person.

If the detainee wishes to consult a lawyer the Detention officer must arrange for the detainee to consult a lawyer of the detainee's choice.

The detainee's right to communicate with another person can only be denied if an officer believes on reasonable grounds that such communication should be stopped in order to:

- safeguard the processes of law enforcement
- protect the life and safety of any person.

ABF officers must refer to a Manager before refusing to allow

- the detainee the right to communicate with another person.

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### 4.22. Seeking consent

A Detention officer may not invite a traveller to consent to an internal non-medical scan until a Body Scan approver authorises an internal non-medical scan.

To ensure that the detainee gives informed consent to an internal non-medical scan, the Detention officer must provide the detainee with sufficient understanding of:

- their rights
- what the prescribed equipment is
- how the prescribed equipment will be used
- what use may be made of any evidence that the prescribed equipment might produce.

Subsection 219SA(1)(c) of the Customs Act provides that the requirements of section 219ZAA of the Customs Act must be met in inviting the detainee to consent to an internal non-medical scan.

Section 219ZAA of Customs Act requires that:

- the detainee must be told certain things
- The invitation to consent and any consent must have been recorded by audiotape
- videotape or other electronic means or in writing
- The prescribed equipment must be operated by an authorised officer who is of the same sex as the detainee.

The detainee must be told:

- what the prescribed equipment is
- the purpose for which the prescribed equipment would be used
- that use of the prescribed equipment could produce evidence against the detainee that could be used in a court
- what known risk (if any) would be posed to the detainee's health by use of the prescribed equipment
- the procedure for the use of the prescribed equipment
- that the prescribed equipment would be used by an ABF officer authorised to use the equipment
- in the case of an external search—that the search would be continued without the use of the prescribed equipment should use of the equipment indicate that the detainee was or might be carrying prohibited goods
- in the case of an internal non-medical scan—that an order may be sought for the detainee to be detained and for an internal medical search of the detainee to be carried out, if:
  - o the detainee does not consent to the internal non-medical scan
  - o after carrying out an internal non-medical scan of the detainee
  - o detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance
- in any case—that the invitation, and any giving of consent, was being or would be recorded by audiotape, videotape or other electronic means or in writing
- that the detainee is entitled to a copy of those records.

The right to refuse consent or withdraw consent at any time must be reinforced to the detainee.

The information for a person offered an internal non-medical scan card (information card) must be provided to the detainee to facilitate this process.

The detainee must sign a Consent for Internal Non-Medical Scan Form (Consent Form).

The Information Card and Consent Form are available in English and 33 other languages.

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Where the Information Card and Consent Form are not available in an appropriate language, an interpreter must be used.

Where it is apparent the traveller is illiterate, the Witnessing officer or an appropriate interpreter must read the Information Card and Consent Form to the detainee.

The requirement in subsection 219ZAA(1)(i) of the Customs Act that the invitation to consent and the giving of consent is recorded will be deemed satisfied once the detainee has signed the Consent Form.

To ensure compliance with the caution, rights and information requirements, Detention officers must use the Internal Non-Medical Scan Guide.

### 4.23. Refusal to give consent

A detainee does not have to provide a reason for refusing to consent to undertake an internal non-medical scan.

Any reasons given for refusing to consent must be recorded in official notebooks and in the Internal Non-Medical Scan Register.

A detainee may recant their refusal to consent to an internal non-medical scan. Detention officers must ensure that the detainee is providing informed voluntary consent to participate in an internal non-medical scan and that there has been no duress on the detainee to recant their refusal to consent.

If the detainee does refuse consent and the Detention officer retains reasonable grounds to suspect the traveller is internally concealing a suspicious substance the detainee must be referred to AFP for consideration of an internal medical search.

**NOTE:** The detainee need not be detained for an internal medical search under section 219SB. Refer section 219T. For further information, see *Procedural Instruction: Detention and Search (s.219 Customs Act)*.

### 4.24. Withdrawal of consent

A detainee may withdraw consent at any time up to the conclusion of scanning. Once scanning is concluded the detainee cannot withdraw consent.

Scanning is deemed concluded if the Body Scan Search officer is able to interpret a scan image. If after three scans, the Body Scan Search officer is unable to interpret any scan image scanning is concluded.

It is not sufficient for the detainee to simply intend to withdraw his/her consent. The detainee must do or say something to the officer to clearly indicate consent is being withdrawn.

Officers must look for verbal and non-verbal indicators that the detainee is clearly unhappy or reluctant about complying with any aspect of the search as it progresses and clarify (through an interpreter if necessary) whether their consent is still valid.

A detainee does not have to provide a reason for withdrawing consent.

Any reasons given for withdrawing consent and the time of withdrawal must be recorded in the Personal Search Register and in official notebooks.

If the Detention officer retains reasonable grounds to suspect the detainee is internally, concealing a suspicious substance the detainee must be referred to AFP for consideration of an internal medical search.

**Note:** The detainee need not be detained for an internal medical search under section 219SB. Refer section 219T. For further information, see *Procedural Instruction: Detention and Search (s.219 Customs Act)*.

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### 4.25. Appointing a Body Scan Search officer

Where a detainee consents to undertake an internal non-medical scan the Detention officer must assign a Body Scan Search officer to carry out the scan. Body Scan Search officers must be authorised by the ABF Commissioner to use the prescribed equipment.

The Body Scan Search officer must be of the same sex as the detainee. Transgender travellers should be consulted as to their preference for a male or female officer.

The Body Scan Search officer should not have had any previous involvement with the detainee.

The Detention officer will advise the Body Scan Search officer that an internal nonmedical scan is authorised.

The Body Scan Search officer will prepare the body scan room and machine for scanning.

## PART D – CONDUCT OF AN INTERNAL NON-MEDICAL SCAN

### 4.26. Process

Any frisk or external search considered necessary must be completed before the conduct of an internal non-medical scan.

The Detention officer and Witnessing officer will escort the detainee to the body scanning room.

The Detention officer will depart the room before any search and wait outside the room for completion of scanning.

The Body Scan Search officer will:

- confirm the detainee's identity
- confirm the detainee's consent
- reinforce the detainee's right to withdraw consent
- prepare the detainee for scanning.

The Body Scan Search officer must also consider the travellers physical capacity to undergo internal non-medical scanning and the traveller's apparent physical health. The Body Scan Search officer must refer any capacity or health concerns to the Detention officer before scanning commences.

The Body Scan Search officer must only conduct a maximum of three scans. The first scan shall be taken using Dual view mode. Any successive scans shall be taken using Torso View mode.

The Body Scan Search officer may determine that a side-on scan is appropriate to increase the effectiveness of the scan. Side on scans will only be taken as second or third scans.

After each scan the Body Scan Search officer will assess the image. The Witnessing officer may be consulted only if they are also authorised by the ABF Commissioner to use the body scan. If the image is unsatisfactory or inconclusive the detainee may be rescanned.

If the Body Scan Search officer is able to interpret the scan image to decide whether the Detention Officer should either retain or dismiss their suspicion that the detainee is internally concealing a suspicious substance scanning is deemed concluded and no further scans may be conducted.

Scanning is concluded after three scans, irrespective of whether the Body Scan officer is able to determine that any image would cause the Detention Officer to either retain or dismiss their reasonable suspicion.

In all cases the Body Scan Search officer must advise the detainee that the internal non-medical scan is concluded.

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On completion of scanning the Body Scan Search officer will provide advice to the Detention officer of their opinion of the image/s. The Detention officer will re-enter the room and advise the detainee whether they will be released or referred to AFP for consideration of an internal medical search.

The Body Scan Search officer will complete the Internal Non-Medical Scan Operators Log and action the images.

s. 37(2)(b), s. 47E(d)

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### PART G – RECORDING REQUIREMENTS

It is essential that all operational activity in relation to the Internal Body Scanner be captured in a timely and complete manner.

#### 4.34. Official notebooks

All ABF officers involved in an internal non-medical scan must record the following details in their official notebooks:

- the detainee's full name
- Personal Search Register reference number
- ABF officers involved
- record number
- any conversation with the detainee
- involvement of external parties
- any other personal searches conducted
- interaction with AFP.

Whether or not a complaint is made at the time, ABF officers should record in their official notebooks any comments made prior to, during or after the search, which may indicate a possible future complaint. For further information. See *Procedural Instruction: official notebooks*.

#### 4.35. Personal Search Register

An entry in the Personal Search Register should be initiated immediately if a traveller suspected of internally concealing a suspicious substance is unable to allay the Detention officer's suspicions.

The Detention officer is responsible for the initiation and timely completion of the Personal Search Register.

#### 4.36. Internal Non-Medical Scan Traveller Feedback Form

The Detention officer must cross-reference any Internal Non-Medical Scan Traveller Feedback Forms to the Personal Search Register.

The Internal Non-Medical Scan Feedback Form must be forwarded to the Internal Body Scanner through the relevant airport Superintendent.

#### 4.37. Recording

A record must be created for all assessment and response activity (including assessment interview only) where the reason for a traveller's selection for further assessment is triggered by an alert or targeting profile.

The systems record number must be recorded on the traveller's IPC, in the Personal Search Register and each ABF officer's notebook for cross referencing.

The level of personal search must be recorded as an internal search.

The records must not be completed until AFP has advised the positive or negative outcome of any referral. Full details of detections must be completed post entry.

The Detention officer is responsible for ensuring completion and finalisation of all records relating to internal non-medical scans.

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### PART H – IMAGE HANDLING RECORDING AND STORAGE

#### 4.38. Internal Non-Medical Scan Operators Log

The Body Scan Search officer must complete the Internal Non-Medical Scan Operators Log (Attachment H) at the completion of each internal non-medical scan set.

The Detention officer must verify completion of log details and countersign the log.

#### 4.39. Backing up images

All images must be backed up to CD/DVD on a monthly basis by a Body Scan Search officer in the presence of a Supervisor. Once back-up of images is confirmed the Supervisor must clear the Body Scanner image library.

Back up images must be registered in the Register of Electronic Records.

The Internal Non-Medical scan Operators Log must note that a copy of an image has been made and that the image has been cleared from the scanner.

#### 4.40. Storage

Body scan images when linked by image reference number to records such as the Internal Non-Medical Scan Operators Log and Personal Search Register are personal information. The Privacy Act requires that all records containing personal information must be reasonably guarded against loss and unauthorised access, use, modification or disclosure.

The acceptable storage for backed up body scan images is a locked “C” class cabinet contained within a locked office within the ABF tenancy at airports. This cabinet should be labelled as the Records Locker.

DVDs and CDs must be secured in the locked with a register showing the details of the officer releasing/returning the DVD/CD. The Register of Electronic Records (Attachment L) also records any officer and agency taking the record, the reason for access and destruction details.

The responsibility for the access and control of DVDs and CDs in the Records Locker rests with either the Manager or Shift Supervisor.

Prior to backing up images a Supervisor may authorise a Body Scan Search officer to make copies of images for retention for training or reference purposes. Images retained for training or reference purposes must have all identification marking removed from the retained image.

#### 4.41. Disposing of records

The destruction of backed up internal body scan images is to be done via an approved shredder only. Methods of destruction such as directly re-recording or re-burning must never be used.

Backed up internal body scan image DVDs must be destroyed 12 months after the date of recording if relevant proceedings have not been instituted or have been discontinued.

A witness to the destruction of the electronic recording must initial the Register of Electronic Records.

Section 219ZAE of the Customs Act provides further detail on when an image of an internal non-medical scan must be destroyed and under what circumstances, including:

- DVDs and CDs must be destroyed as soon as practicable 12 months after the date of recording if relevant proceedings have not been initiated or have been discontinued
- the Department of Home Affairs the Director of Public Prosecutions (DPP) may apply to a magistrate to extend the period of 12 months if there are special reasons for doing so
- DVDs and CDs must be destroyed as soon as practicable if the detainee is found to have committed a relevant offence but no conviction is recorded or is acquitted of a relevant

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offence and no appeal is lodged/confirmed, unless there is another relevant investigation or proceeding against the detainee.

### **4.42. De-Identifying images for training or reference purposes**

Prior to backing up images, a Supervisor may authorise a Body Scan Search officer to make copies of images for retention for training or reference purposes.

The Supervisor should consider the training or reference merit of each image being considered for retention.

Images retained for training or reference purposes must have all image reference numbers and dates removed. The Internal Non-Medical Scan Operators Log must not that a copy of an image has been made for training or reference purposes and the image entry must be countersigned by both the Supervisor and Body Scan Search officer.

Negative images may not be retained for training or reference purposes unless intelligence strongly suggests the traveller was in fact internally concealing drugs.

### **4.43. Providing images to AFP and/or medical practitioners**

The disclosure of scan, electronic or digital images to the AFP and images to medical practitioners are authorised by the secrecy and disclosure provisions in the Australian Border Force Act.

### **4.44. Access to documentation and electronic recordings**

Image copies are not to be provided directly to the detainee. If the detainee specifically requests a copy of an image, the detainee is to be provided a Freedom of Information request (FOI) form. The FOI request must be forwarded to the FOI officer in FOI Privacy & Records Management Branch. s. 37(2)(b), s. 47E(d)

s. 37(2)(b), s. 47E(d)

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### 5. Accountability and responsibilities

If ABF officers require clarification or assistance in regard to this instruction, they should contact the National Border Programme by email **S. 22(1)(a)(ii)** @abf.gov.au or telephone: **S. 22(1)(a)(ii)** AEST.

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.

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

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.

s. 37(2)(b), s. 47E(c)

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s. 37(2)(b), s. 47E(d)

s. 37(2)(b), s. 47E(d)

## 8. References and legislation

### 8.1. 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.

### 8.2. Customs Act 1901

This Act sets out the primary requirements relating to the control of persons and goods through Australia's border

- division 1B of Part XII – Detention and search of suspects
- section 219L – Detention for frisk search
- section 219R – External search
- section 219S – Initial detention
- section 219SA – Internal non-medical scan using prescribed equipment
- section 219SB – Seeking detention order following invitation to consent to internal non-medical scan
- section 219W – Detention under this Subdivision
- section 219Z – Internal medical search by medical practitioner
- section 219ZAA – Use of prescribed equipment for external search or internal non-medical scan
- section 219ZAC – Authorising officers to use prescribed equipment for external search or internal non-medical scan
- section 219ZAE – Records of results of external or internal non-medical scan

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- section 219ZA – Detention officers.

### Privacy Act 1988

This Act sets out the requirements relating to protecting the privacy of individuals, and for related purposes.

## 9. Consultation

### 9.1. Internal consultation

The following internal stakeholders were 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
- Immigration Compliance Branch, National Border Programme Section
- Legal Strategy and Services Branch, PPCF Advice Section.

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

### Document change control

| Version number | Date of issue | Author(s)                               | Brief description of change      |
|----------------|---------------|-----------------------------------------|----------------------------------|
| 1.0            | 19 May 17     | National Border Programme               | Converted I&G to PI              |
| 1.1            | 20 June 17    | Policy and Procedures Control Framework | Cleared PPCF Quality Assurance   |
| 1.2            | 15 Nov 17     | PPCF Advice                             | Cleared Legal review             |
| 1.3            | 29 June 18    | National Border Programme               | Updated to Home Affairs template |
| 1.4            | 11 July 18    | National Border Programme               | Reviewed for SES approval        |

### 10.1. Approval

|                     |                                          |
|---------------------|------------------------------------------|
| Approved by:        | Don SMITH<br>Commander<br>ABF Governance |
| Approved on (date): | 17 July 2018                             |

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# Immigration clearance of Australian Citizens

## Procedural Instruction

This Procedural Instruction applies to persons presenting for immigration clearance as Australian citizens.

|                                    |                                |
|------------------------------------|--------------------------------|
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| Contact details                    | s. 22(1)(a)(ii) @border.gov.au |
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# 1. Introduction

Australian citizens have a right of re-entry to Australia and cannot be refused immigration clearance.

A person becomes an Australian citizen automatically or by application to the Minister.

A person becomes an Australian citizen automatically, for example, by being born in Australia, and:

- at the time of the person's birth, having at least one parent who is an Australian citizen or permanent resident; OR
- being ordinarily resident in Australia throughout the period of 10 years beginning on the day the person is born.

A person may apply to the Minister for Australian citizenship:

- by descent (generally, a person would apply for this if they were born outside Australia and one or both of their parents were Australian citizens at the time of the person's birth); or
- by conferral (generally, a person would apply for this if they are a permanent resident and they satisfy other relevant criteria set out in the *Australian Citizenship Act 2007* (Citizenship Act); or
- where the person was adopted outside Australia by at least one Australian citizen in accordance with the Hague Convention on Intercountry Adoption or a bilateral arrangement; or
- where the person ceased to be an Australian citizen and is seeking to resume their Australian citizenship

Acceptable evidence of Australian citizenship for the purpose of immigration clearance at the primary line includes the following:

- Australian passport (standard, official, diplomatic or emergency)
- Australian Document of Identity - specifying the traveller is an Australian citizen.
- Valid Australian military identification (when travelling on duty).

A traveller can be immigration cleared without any of the above documents if a Australian Border Force officer (ABF officer) in the secondary immigration area knows or reasonably believes that the traveller is an Australian citizen (refer section 166(4) of the *Migration Act 1958* (Migration Act)).

## 2. Scope

### 2.1. In Scope

This procedural instruction applies to Australian citizens presenting for immigration clearance at Australian international air and seaports under the Migration Act.

### 2.2. Out of Scope

This procedural instruction does not apply to non-citizens who present for immigration clearance.

Clearance of travellers and/or goods under the *Customs Act 1901* (The Customs Act).

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### 3. Glossary

| Term                            | Acronym<br>(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.                                                                                                                                                                                                                 |
| Australian Declaratory visa     | ADV                        | Is an administrative process that connects a person's status as an Australian citizen with a non-Australian travel document the person holds.                                                                                                                                                                                                                            |
| Australian passport             |                            | Is a passport issued under the <i>Passports Act 2005</i> (Passports Act 2005).                                                                                                                                                                                                                                                                                           |
| Border Operations Centre        | BOC                        | Is one of the ABF's operational capabilities. The BOC works closely with the ABFs Airline Liaison (offshore) Network, Ports Command, Commonwealth and State Agencies, international Airlines and Shipping companies to form part of our layered approach applied across the border continuum to protect the border whilst facilitating the movement of people across it. |
| Enter Australia                 |                            | In relation to a person, means enter the migration zone. Section 43(2) of the <i>Migration Act 1958</i> (Migration Act) provides that a person on an aircraft only enters Australia when the aircraft lands in the country.                                                                                                                                              |
| Immigration cleared             |                            | Has the meaning given by section 172(1) of the <i>Migration Act 1958</i> (Migration Act).                                                                                                                                                                                                                                                                                |
| 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).                                                                                                                                              |
| Passport                        |                            | Includes a document of identity issued from official sources, whether in or outside Australia, and having the characteristics of a passport, but does not include a document, which may be a document called or purporting to be a passport, that the regulations declare is not to be taken to be a passport.                                                           |
| Primary line                    |                            | Is the first point of border clearance.                                                                                                                                                                                                                                                                                                                                  |
| Visa Determination Officer      | VDO                        | Is an ABF officer who has a delegated authority to undertake secondary Customs, Immigration and Biosecurity clearance.                                                                                                                                                                                                                                                   |

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## 4. Procedural Instruction

### 4.1. Evidence of Identity Requirements

Under section 166 of the Migration Act an Australian citizen who enters Australia must provide, without unreasonable delay, to a clearance authority (a 'clearance officer' as defined in s 165 of the Migration Act or an 'authorised system' as defined in section 5(1) of the Migration Act):

- the person's Australian passport or prescribed other evidence of the person's identity and Australian citizenship
- a completed incoming passenger card (IPC).

Australian citizens are not required to answer the following questions as shown on the IPC:

- 'health' (Do you have tuberculosis?) or
- 'character' (Do you have any criminal convictions?).

At the Primary Line an Australian citizen is able to meet immigration clearance requirements by presenting acceptable evidence of Australian citizenship as detailed below:

- Australian standard passport
- Australian official passport
  - o issued to particular categories of officials e.g. Commonwealth/state/territory members of parliament, justices, judges, defence force, federal and state police attached to overseas diplomatic missions
- Australian diplomatic passport
  - o issued to those who hold a particular status, e.g. Governor General, Prime Minister, Commonwealth Government Ministers, Leader of the Opposition, accredited staff of overseas diplomatic missions
- Australian emergency passport
- Australian Document of Identity with Australia as nationality
  - o Documents of identity can be issued to Australian citizens or citizens of other Commonwealth countries. The nationality field on the biographical data page of Australian Documents of Identity should be checked to confirm the holder's nationality. Non-citizens holding an Australian Document of Identity cannot be processed as an Australian citizen and require a visa
- valid Australian military ID (when travelling on duty).

#### Claiming to be an Australia citizen at the primary line

Anyone presenting at the Primary Line who claims to be an Australian citizen, but is unable to present any of the above-mentioned documents, must be referred to a Visa Determination Officer (VDO) officer for secondary clearance. This includes anyone presenting only with an Australian citizenship certificate.

On occasion, a traveller claiming to be an Australian citizen will present a foreign passport on arrival in Australia and may be delayed while an ABF officer investigates the traveller's claim of Australian citizenship. A delay will not constitute immigration detention for the purposes of section 189 of the Migration Act.

Evidence required and procedures for establishing a traveller's claim of Australian citizenship are outlined in [section 4.45 Referrals - Australian citizens](#) of the *Procedural Instruction: Arrival, immigration clearance and entry - Immigration clearance at airports and seaports*.

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An ABF officer processing a traveller claiming to be an Australian citizen who is unable to present any of the documents referred to in section 4.1 Evidence of Identity Requirements must investigate the traveller's claims, see *Procedural Instruction: Immigration Clearance of Australian Citizens without an Australian Passport*.

Although the onus is on Australian citizens to show their Australian Passport to comply with section 166 of the Migration Act, under section 166(4) of the Migration Act a person may be taken to have complied with section 166 of the Migration Act if an ABF officer knows or reasonably believes that the traveller is an Australian citizen.

# s. 37(2)(b), s. 47E(d)

## 4.2. Australian Declaratory Visa

An Australian Declaratory Visa (ADV) is not a visa under the Migration Act (there is no power to grant visas to Australian citizens under the Migration Act). Rather, it is an administrative record that is linked to a foreign passport and identifies the holder as an Australian citizen where the holder is a dual citizen.

The administrative record uses a dummy "visa" subclass number 998, which is recorded in Mainframe. ADVs are usually in the form of a physical label affixed to the foreign passport, and:

- are valid for five years from date of issue
- permit multiple travel.

An ADV can be issued to dual nationals in compelling situations when travelling with an Australian travel document would present difficulties, such as:

- an emergency situation where processing of an Australian Passport is not feasible
- restrictive travel document or visa requirements that seriously disadvantage an Australian citizen
- a compelling situation involving personal risk if travelling on an Australian travel document
- a person under 18 years old travelling with a non-Australian parent or legal guardian

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- a person under 18 years old travelling with an Australian parent or legal guardian who has an ADV.

When presenting for clearance the traveller must provide:

- a valid non-Australian travel document linked to an ADV record in departmental systems
- a completed IPC.

An ADV recorded on outwards immigration clearance by the Border Operations Centre (BOC) does not have a visa label and is only valid for two days.

### 4.3. Australian Defence Force Personnel (Military)

Generally, Australian Defence Force personnel travel internationally with an Australian Passport. However, when travelling on military duty, military ID is acceptable proof of Australian citizenship and identity. For further information, see *Procedural Instruction: Immigration Clearance of Australian Citizens with Military ID only*.

### 4.4. Passenger Cards

All travellers are required to accurately answer the questions on the front of the IPC. However, Australian citizens are not required to respond to questions relating to their health, character or migration status.

#### Australian citizen who refuses to complete the Incoming Passenger Card

Australian citizens are required to complete an IPC but may fail to do so. Although Australian citizens cannot be refused entry for failing to complete an IPC, such travellers can be liable for a penalty upon conviction (regulation 3.08 of the *Migration Regulations 1994* (Migration Regulations) and section 504(1)(k) of the Migration Act. Therefore, if an Australian citizen does not complete an IPC, their most recent address should be noted and a M304 Referral Report forwarded to the nearest Regional Command for referral to the Commonwealth Director of Public Prosecutions. The Director of Public Prosecutions is responsible for considering whether the person should be prosecuted and, if so, for conducting the prosecution.

Further information about passenger cards can be found in *Procedural Instruction: Passenger Cards and Crew Declarations*.

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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 by email [s. 22\(1\)\(a\)\(ii\)@abf.gov.au](mailto:s.22(1)(a)(ii)@abf.gov.au) or telephone: [s. 22\(1\)\(a\)\(ii\) AEST](tel:s.22(1)(a)(ii)AEST).

The Superintendent, Traveller Operational Policy 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 Advice and Support 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.

### 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.

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### 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.

# s. 37(2)(b), s. 47E(d)

## 8. References and legislation

### 8.1. 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 172 outlines a person's immigration clearance status, that is, whether the person has been immigration cleared, is in immigration clearance, has been refused immigration clearance or has bypassed immigration clearance
- Section 189 outlines the detention of unlawful non-citizens.
- Section 504 outlines the penalties in respect to offences against the regulations that is for not completing a passenger card.

Regulations that also are important in the context of immigration clearance:

- Regulation 3.01 – Provision of information (general requirement)
- Regulation 3.08 – Offence—failure to complete a passenger card

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### 8.2. Australian Citizenship Act 2007

This Act sets out the requirements relating to Australian citizenship:

- Section 4 outlines the definition of an Australian citizen.

### 8.3. Australian Passports Act 2005

This Act sets out the requirements relating to Australian travel documents:

- Section 6 outlines the definitions of an Australian passport and Australian travel document.

## 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
- Legal Division
- Records Management Section
- Integrity and Professional Standards Branch

### 9.2. External consultation

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

- No external consultation.

## 10. Document details

|                                      |                                        |
|--------------------------------------|----------------------------------------|
| <b>BCS Category/Function</b>         | Trade & Traveller Clearance Management |
| <b>BCS Sub-Category/Sub-Function</b> | Passenger and Crew Processing          |
| <b>Published Location</b>            | Policy and Procedure Control Register  |
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| <b>Policy Owner</b>                  | Commander, ABF Governance Branch       |

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**10.1. Document change control**

| Version number | Date of issue | Author(s)                    | Brief description of change              |
|----------------|---------------|------------------------------|------------------------------------------|
| 1.0            | 16 FEB 17     | s. 37(2)(b), s. 22(1)(a)(ii) | Conversation into Procedural Instruction |
| 2.0            | 12 MAY 17     |                              | Cleared PPCF QA                          |
| 3.0            | 17 SEP 18     |                              | Update to Home Affairs Template          |
| 4.0            | 27 SEP 18     |                              | Reviewed for SES approval                |

**10.2. Procedural Instruction approval**

|                       |                                          |
|-----------------------|------------------------------------------|
| <b>Document owner</b> | Don SMITH<br>Commander<br>ABF Governance |
| <b>Approval date</b>  | 2 October 2018                           |

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