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Employer Compliance

Procedural Instruction

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1. Purpose

The purpose of this Procedural Instruction (PI) is to provide an overview of employer compliance activities and training requirements.

Where Australian Border Force (ABF) officers identify a gap or need for additional instructional material, they should contact the *Field Operational Policy* team by submitting a service request through the [Connected Services Portal](#).

2. Scope

2.1. In scope

This PI applies to employer compliance activities conducted in accordance with the *Migration Act 1958* (the Migration Act) and/or the *Migration Regulations 1994* (the Migration Regulations), and the ABF officers who undertake them.

For the purpose of this PI, the term:

- 'officer' refers to an ABF officer undertaking employer compliance activities unless otherwise stated.
- 'person' as defined in section 2C of the *Acts Interpretation Act 1901* (the Acts Interpretation Act) includes a body politic, a body corporate (companies and associations) or an individual (sole trader or partnership).

2.2. Out of scope

This PI does not provide instruction regarding sponsor monitoring activities under the Migration Act. Refer to the Sponsor Monitoring page on [EICOP SharePoint](#).

3. Introduction

The employer compliance program supports government visa settings by:

- ensuring that unfettered, illegal work hire practices do not undermine the integrity of Australia's migration program.
- supporting a whole-of-government approach to combating exploitation in the workforce and human trafficking by safeguarding vulnerable foreign workers from exploitation.
- limiting the potential for competitive disadvantage that might occur between complying and non-complying businesses.
- maximising work opportunities for Australian citizens and non-citizens with work rights.

The aim of employer compliance is to respond appropriately to different levels of employer non-compliance.

4. Training

Officers undertaking employer compliance activities (apart from section 487ZC warrants) should refer to their current policy and procedures for training requirements.

4.1. Section 487ZC search warrant

In order to apply for and execute an s487ZC search warrant, an officer must:

- be an Authorised Officer (AO)
- have successfully completed Certificate IV in Government (Investigations).

5. Operational Practices

5.1. ABF Operational Coordination and Planning

The [ABF Operations SharePoint](#) provides links to strategic, operational and tactical level planning resources. It includes:

- Operational Prioritisation Framework
- Operational Planning, Tasking and Incident Coordination System
- Lessons Management Framework
- Operational Planning Framework, including relevant planning templates
- Command, Control & Coordination (C3)
- Incident Coordination Centre (ICC) and Major Incident Room (MIR)
- Incident Command, Control Systems Plus (ICCS+)
- ABF Enforcement Doctrine
- The Event Categorisation and Reporting Framework (ECRF) – Notifiable Event List (NEL)
- Operational Performance Reporting
- Desktop Exercise Program – TTX Tuesdays.

Officers must refer to these resources when coordinating and planning employer compliance activities.

5.2. Operational Safety

Officers have a responsibility to ensure employer compliance activities are planned and conducted in a manner that is safe, including appropriate measures to effectively manage responses to conflict or potential conflict situations.

Operational safety and use of force practice, reporting, training, assessment, qualification and administration requirements are outlined in the Operational Safety Order (OSO) and are relevant to officers who, in the course of their duties, may use force in the exercise of their statutory powers.

Please refer to the [Operational Safety Order \(2021\)](#) on the Home Affairs Intranet and the [Operational Safety – PI \(BE-6645\)](#) on the PPCR for more information.

5.3. Work Health and Safety

The Department of Home Affairs (the Department) including the ABF has duties and obligations under the *Work Health and Safety Act 2011* (the WHS Act) and the *Work Health and Safety Regulations 2011*. Specifically, the Department and the ABF has the primary duty under the WHS Act to ensure, so far as is reasonably practicable, that workers (including but not limited to staff, officers, contractors, and volunteers) and other persons (for example, visitors) are not exposed to health and safety risks arising from the business or undertaking.

To assist the Department with meeting these duties and obligations, work area management has specific responsibilities to assist with provision of safe workplaces, with all workers having a duty to

take reasonable care for their own health and safety and to not adversely affect the health and safety of other persons. Workers must also comply with any reasonable instruction and cooperate with any reasonable policy or procedure relating to health and safety at the workplace

All officers should review the [Work, health and safety governance arrangements – PS \(HR-1230\)](#) and other WHS policies and procedures on the PPCR for guidance that may influence the planning and conduct of field operations.

5.4. Interaction with Diplomatic/Consular Personnel and Other Accredited Foreign Officials

During the conduct of an employer compliance activity, officers may interact with a person who claims to hold diplomatic/consular privileges and immunities.

Please refer to the [Interaction with Diplomatic/Consular Personnel and Other Accredited Foreign Officials – PI \(BE-6910\)](#) on the PPCR for further information.

5.5. Interaction with Vulnerable Persons

Officers must consider the management of vulnerable persons, their carers or family members, who may be present during an employer compliance activities.

Refer to [Management of Vulnerable Person by the Australian Border Force – PS \(SM-6943\)](#) on the PPCR which outlines a definition of vulnerable persons in the context of ABF and should be read in conjunction with the [Management of Vulnerable Persons by the Australian Border Force – PI \(SM-6944\)](#) which outlines the principles for engagement, reporting obligations, resources, legislative consideration and training opportunities.

5.5.1. Any Child Under 18

Officers must be mindful of the possibility of interaction with children under the age of 18 during the conduct of an employer compliance activity.

Please refer to [Locating and Detaining a Minor \(Including Unaccompanied Minors\) – SOP \(BE-5426\)](#) on the PPCR for further information.

5.5.2. Human Trafficking, Slavery and Slavery-like Practices

Officers must be mindful of the possibility of interaction with a victim of human trafficking, slavery and slavery-like practices during the conduct of field operations.

Please refer to [Human Trafficking, Slavery and Slavery-like Practices](#) on the Home Affairs Intranet for further information.

6. Employer Compliance Activities

A range of employer compliance activities are available to combat employer non-compliance. These activities are not necessarily sequential. Officers are to determine which activity to apply based on the complexity and severity of the alleged contraventions.

- Employer awareness
- Illegal Worker Warning Notice (IWWN)
- Notice issued under s487B of the Migration Act
- Compliance Notice
- Infringement Notice
- Enforceable undertaking

- Prohibition
- Site visits with informed consent
- Section 487ZC search warrant
- Civil penalty
- Criminal prosecution.

6.1. Authorised officers

In order to exercise powers related to employer compliance activities, officers may need to be an AO. Officers must refer to the relevant instrument on LEGEND via the Delegations Tab to verify if they are an AO.

Officers performing the AO role under Division 3 of Part 8E of the Migration Act (Search Warrants) must be issued an identity card. Subsection 487ZG(2) of the Migration Act requires that an AO issued with an identity card must carry it at all times when exercising powers.

Officers can contact Enforcement and Immigration Compliance Management (EICM) via email at @abf.gov.au to apply for an identity card.

6.2. Delegated officers

There are some powers related to employer compliance activities that are delegated. Officers must refer to the relevant instrument on LEGEND via the Delegations Tab to verify if the power they want to exercise requires a delegated officer.

6.3. Employer awareness activities

Employer awareness educates persons about the risk of hiring, referring and coercing illegal workers, their responsibilities under the Migration Act and the support tools available to them.

Refer to [Employer Awareness Activities – SOP \(BE-6750\)](#) on the PPCR or [EICOP SharePoint](#) for more information.

6.4. Illegal worker warning notices

If a person is found to be hiring or referring illegal workers, officers may issue that person with an IWWN.

Refer to [Illegal Worker Warning Notice \(IWWN\) – SOP \(BE-6751\)](#) on the PPCR or [EICOP SharePoint](#) for more information.

6.5. Notice issued under s487B of the Migration Act

Section 487B of the Migration Act provides a delegated officer, power to require a person to produce information or documents if they have reason to believe that the person has information or a document that is relevant to:

- a possible work-related or sponsorship-related offence
- a possible contravention of a work-related or sponsorship-related provision.

Refer to [Section 487B Notice to Give Information or Produce Documents – SOP \(BE-6753\)](#) on the PPCR or [EICOP SharePoint](#) for more information.

6.6. Compliance notice

Section 245AYP of the Migration Act provides an AO with a power to give a person a compliance notice where the AO has reason to believe a person has contravened a work-related provision of the Migration Act.

Refer to Employer Compliance: Compliance Notice under s245AYP of the Migration Act 1958 – Interim Operational Policy Guidance on [EICOP SharePoint](#) for more information.

6.7. Infringement notice

Regulation 5.22 of the Migration Regulations provides that an AO may cause an infringement notice to be served on a person if the AO has reason to believe that the person has committed an offence or contravened a civil penalty provision. An infringement notice is an alternative to proceedings for a civil penalty order.

Refer to the [Employer Compliance Infringements – SOP \(BE-6754\)](#) on the PPCR or [EICOP SharePoint](#) for more information.

6.8. Enforceable undertaking

Section 245ALA of the Migration Act provides an AO with a power to subject a person who is alleged to have contravened one or more work-related offences or provisions of the Migration Act, to a legally binding written agreement to address the contravention(s) and prevent future breaches.

Refer to Employer Compliance: Enforceable Undertakings under s245ALA of the Migration Act 1958 – Interim Operational Policy Guidance on [EICOP SharePoint](#) for more information.

6.9. Prohibition

Section 245AYK of the Migration Act provides a delegated officer with a power to declare a person to be a prohibited employer for a period of time if certain circumstances are met.

Refer to Prohibited Employers – Interim Operational Policy Guidance on [EICOP SharePoint](#) for more information.

6.10. Site Visits with informed consent

If an AO reasonably suspects that evidential material of a work-related contravention may be found at a work site, the AO may enter the premises with the consent of the occupier. Consent means the occupier has permitted an AO to enter the site without a search warrant.

Refer to [Site Visits with Informed Consent – SOP \(BE-6752\)](#) on the PPCR or [EICOP SharePoint](#) for more information.

6.11. Section 487ZC search warrant

An AO who has been issued a search warrant under s487ZC of the Migration Act has power to enter and search premises without the consent of the lawful occupier of the property.

Refer to [Section 487ZC Migration Act 1958 Search Warrants – SOP \(BE-6755\)](#) on the PPCR or [EICOP SharePoint](#) for more information.

6.12. Civil and criminal penalties

Section 245AA the Migration Act creates offences and civil penalties that can be applied to persons who allow, refer or coerce unlawful non-citizens to work or lawful non-citizens to work in breach of visa conditions.

The success of any court proceedings will depend upon the weight of evidence gathered. It is important that officers have a thorough understanding of how to gather evidence and conduct an investigation in accordance with basic evidentiary rules before pursuing civil or criminal penalties.

6.12.1. Civil

Subsection 486R(1) of the Migration Act provides a delegated officer power to apply to a court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a penalty. Applications to the court are managed through Customs and Civil Disputes Section.

If the court is satisfied that the person has contravened a civil penalty provision, the court may order the person to pay a penalty as specified in the civil penalty provision. However, paragraph 486R(5)(a) of the Migration Act provides, in determining the penalty for a body corporate it must not be more than 5 times the penalty specified for the civil penalty provision.

6.12.2. Criminal

Depending on the seriousness of the contravention of the work-related provision, officers may decide to refer for criminal prosecution.

Criminal prosecutions are referred to Case Assessment and Referrals Section (CARS).

If a criminal prosecution is successful, a person could face a term of imprisonment and/or be subject to a penalty unit fine. The penalty unit amount is specified in the work-related provisions, however, subsection 4B(3) of the *Crimes Act 1914* provides where a body corporate is convicted of an offence, the court may impose a penalty, not exceeding an amount equal to 5 times the amount that could be imposed on a natural person convicted of the same offence.

7. Recordkeeping

In line with the Department's [Records Management – PS \(TI-1094\)](#) on the PPCR, all records created or used by officers must be saved in TRIM.

For more information on record keeping responsibilities, please view [policies on the PPCR](#), [guidance](#) on the Home Affairs Intranet, or contact the Records team by emailing [s. 22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](#).

7.1. ABF official notebooks

All officers are issued with and required to maintain an ABF official notebook, which is used to record events contemporaneously while undertaking any employer compliance activity.

Please refer to [Official diaries and notebooks – PI \(BE-2978\)](#) on the PPCR for more information.

8. Freedom of Information (FOI)

Officers are required to be familiar with and have a broad understanding of the principles and provisions outlined in the *Freedom of Information Act 1982* (the FOI Act). Every document created or held by the Department, including the information held in its systems, is subject to the FOI Act.

While FOI provides an opportunity for people to access documents through a legislated scheme, the Department encourages proactive disclosure of information to applicants, stakeholders and the public where appropriate.

Refer to the [Freedom of information – PS \(SM-3357\)](#) and procedural instructions on the PPCR, or contact the FOI team by emailing [foi@homeaffairs.gov.au](#) for more information.

A two-part eLearning package is available via our People to assist officers to understand the legal requirements when being asked to provide documents, or decide upon the release of documents under the FOI Act where they hold the relevant delegation. The eLearning package modules are:

- Module 1: Freedom of information overview
- Module 2: The Department's process for non-personal FOI requests.

9. Privacy

The Department's information sharing requirements are governed by various legislation including the Migration Act, the *Privacy Act 1988* (the Privacy Act) and the *Australian Border Force Act 2015* (the ABF Act).

The Privacy Act provides the legislative framework for the management of the collection, use and potential disclosure of both personal and sensitive information. The Department is bound by the Privacy Act. The Privacy Act establishes the Australian Privacy Principles (APPs), which are principles-based law, enabling the Department to tailor personal information handling practices, regulating the collection, use and disclosure of personal information, protection of personal information, including sensitive information, governance and accountability as well as, integrity and correction of personal information and the rights of individuals to access their personal information. All officers and contracted service providers dealing with these kinds of information must be aware of the Department's obligations under the APPs in the Privacy Act. The Privacy Act determines how officers must handle personal information, and covers the collection, accuracy, storage, access, modification, use and disclosure of the information.

APP 3 - Collection of solicited personal information requires that when the Department collects personal or sensitive information, it must be done in a lawful and fair means and is in relation to departmental functions and activities. Information about the Department's privacy policy and the form 1442i *Privacy Notice* is available on the Department's website at <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/privacy>.

Part 4A of the Migration Act regulates the access to and disclosure of 'identifying information'. Under s336A, 'identifying information' is broadly defined to include any personal identifiers (such as photographs, fingerprints and signatures) collected for a purpose specified in subsection 5A(3), or any identifiers or information derived from any such personal identifier. The disclosure of identifying information is unlawful unless permitted under s336E(2) of the Migration Act. Seek further information or advice where you are unsure about the categorisation of information as identifying information or its disclosure.

The secrecy and disclosure provisions in Part 6 of the ABF Act apply where the information being disclosed falls within the meaning of 'Immigration and Border Protection information' (IBP information) as defined by subsection 4(1) of the ABF Act. This includes information provided to the Commonwealth pursuant to a statutory obligation or otherwise by compulsion of law, as information that if disclosed could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence (paragraph 4(1)(d)). When deciding if information is IBP information, you will need to exercise your judgment based on your knowledge of the facts and all surrounding circumstances. Disclosure of IBP information must be in accordance with Part 6 of the ABF Act. Where you are unsure about the categorisation of information as IBP information or its disclosure, you may need to obtain additional information from your departmental counterparts, consult with your supervisor or seek advice.

For further information, refer to:

- [Privacy and information disclosure](#)
- [Australian Privacy Principles - handling personal information](#).

10. Accountabilities and Responsibilities

Role	Description
Commander: ABF Workforce Operational Policy and Practices Branch (Document Owner)	Responsible for: • endorsing/approving Employer Compliance Procedural Instruction • verifying appropriate stakeholder consultation was undertaken during document drafting.
Superintendent: Enforcement & Immigration Compliance Operational Policy Section	Accountable to Commander, ABF Workforce Operational Policy and Practices Branch. Responsible for: • directing regular evaluation of the document to ensure that it achieves the intended purpose • determining whether the document requires editing or retirement • monitoring change and amendments to legislation or other legal requirements, policy, business operations or risk profiles that may affect document content.
Field Operational Policy team: Enforcement & Immigration Compliance Operational Policy Section (Document Author)	Accountable to Superintendent, Enforcement & Immigration Compliance Operational Policy Section. Responsible for: • drafting documents in compliance with the Policy and Procedure Control Framework (PPCF) • stakeholder consultation • using the approved/current PPCF templates • addressing key requirements of the policy or procedure.
Superintendent: Advanced Capability Faculty (Stakeholder)	Accountable to Commander ABF College Responsible for: • notifying the document author of training changes which impact document content • providing training requirements subject matter expertise • acting as a key stakeholder during document development/review
Field Operations Officers (APS5 to EL2): (Stakeholder)	Accountable to Commander Field Operations & Sponsor Monitoring Responsible for: • identifying the need for additions or amendments to the document and submitting the details to the Field Operational Policy team • ensuring attendance of subject matter experts (SME) at stakeholder consultation workshops • ensuring draft documents are reviewed and solution focussed feedback is provided within the specified timeframes • complying with the instructions outlined in this document.

11. Version Control

Version number	Date of issue	Author(s)	Brief description of change
0.1	11/04/2017	Field Operational Policy, ABF Governance	Transfer Employer Sanction PAMs into required PPCF format
0.2	06/06/2018	Legal Opinions Helpdesk	Legal comments and clearance
1.0	13/08/2018	Field Operational Policy, ABF Governance	Commander Endorsement
1.1	19/09/2018	Field Operational Policy, ABF Governance	Added Virtual Working Group to section 13.2
1.2	3/07/2020	Field Operational Policy	Removed Virtual Working Group section
2	13/10/2021	Field and Removals Operational Policy	Commander Endorsement
2.1	20/11/2023	EICOP	Commence mandatory PPCF three year review and Migration Amendment (Strengthening Employer Compliance) Act 2024 updates.
3	30/09/2024	EICOP	Approved by Commander Workforce Operational Policy & Practices

Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Authorised Officer	AO	An officer who has been authorised in writing by the Minister, Secretary or Australian Border Force Commissioner to exercise a power under the Migration Act or the Migration Regulations. AO authorisations are contained in the Delegations instruments, available on LEGEND.
Body Corporate		An artificial legal entity that has its own legal rights and duties, such as the right to sue and be sued and to own property. A body corporate may be established under common law or an Act of Parliament.
Delegate		A person who has been delegated by the Minister, Secretary or Australian Border Force Commissioner to exercise a specific power under the Migration Act or the Migration Regulations. Delegations are contained in the Delegations instruments, available on LEGEND.
Illegal worker		A non-citizen who engages in work when they either do not hold a valid visa, or are working in breach of their visa conditions. Work includes unpaid or volunteer work.
Person		The work-related offences and civil penalty provisions apply to a 'person' who allows or refers, an illegal worker to work. The Acts Interpretation Act defines 'person' to include a body politic or corporate as well as an individual (section 2C). This definition would capture employers and referrers such as employment agencies and labour hire intermediaries, to the extent they are an individual, a body corporate or a body politic.
Premises		Premises include a structure, building, vehicle, vessel, a place (whether or not enclosed or built on), or a part of one of those things.
Work		For the purposes of the work-related offences and civil penalty provisions, section 245AG of the Migration Act defines 'work' as any work, whether for reward or otherwise. This is a broad definition and may include paid work, voluntary work or work done in return for accommodation, food or any other benefit.
Work-related offence		"Work-related offence" means: (a) an offence against Subdivision C or E of Division 12 of Part 2 of the Migration Act; or (b) an offence against section 6 of the Crimes Act 1914 that relates to an offence against one of those Subdivisions; or (c) an ancillary offence (within the meaning of the <i>Criminal Code Act 1995</i>) that is, or relates to, an offence against one of those Subdivisions.
Work-related provision		A civil penalty provision in Subdivision C, E or F of Division 1 of Part 2 of the Migration Act.

Attachment B – Assurance and Control Matrix

1.1 Powers and obligations

Please Note: Staff exercising any powers, delegations or authorisations outlined in this PI (listed here) must check the latest delegation advice on the Intranet or the relevant instrument in LEGEND to ensure they currently hold the applicable power, delegation or authorisation.

Legislative Provision			Is this power delegated?	If delegated, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
<i>Migration Act 1958</i>	Section 245ALA	Enforceable Undertakings.	Yes	Migration (Minister) Immigration Compliance) Delegation and Authorisation 2024 (ADMIN 24/067)
<i>Migration Act 1958</i>	Section 245AYK	Declaration of person as prohibited employer.	Yes	ADMIN 24/067
<i>Migration Act 1958</i>	Subsection 245AYP(2)	Compliance Notices.	Yes	ADMIN 24/067
<i>Migration Act 1958</i>	Section 486R	Civil Penalty Orders	Yes	Australian Border Force (Minister) Instrument No.1 of 2018 (ABF (M) No.1 of 2018)
<i>Migration Act 1958</i>	Subsection 487B(1)	Secretary or ABF Commissioner may require a person to give information or produce a document.	Yes	Australian Border Force (Secretary) Instrument No.1 of 2018 (ABF (S) No.1 of 2018)
<i>Migration Act 1958</i>	Subsection 487ZC(1)	Authorised officer may apply to an issuing officer for a search warrant	Yes	ABF (S) No.1 of 2018
<i>Migration Act 1958</i>	Subsection 487ZG(2)	An AO must carry his or her identity card at all times when exercising powers as an AO under Division 3 of Part 8E (Search Warrants).	Yes	ABF (S) No.1 of 2018
<i>Migration Regulations 1994</i>	Regulation 5.22	When an infringement notice is to be served	Yes	ABF (S) No.1 of 2018

1.2 Controls and assurance

Related Policy	Freedom of information – PS (SM-3357) Records Management – PS (TI-1094)
Procedures / Supporting Materials	Employer Awareness Activities – SOP (BE-6750) Employer Compliance Infringements – SOP (BE-6754) Illegal Worker Warning Notices – SOP (BE-6751) Official diaries and notebooks – PI (BE-2978) Notice under Section 487B of the Migration Act 1958 – SOP (BE-6753) Section 487ZC Migration Act 1958 Search Warrants – SOP (BE-6755) Site Visits with Informed Consent – SOP (BE-6752) Prohibited Employers – Interim Operational Policy Guidance Employer Compliance: Enforceable Undertakings under s245ALA of the Migration Act 1958 – Interim Operational Policy Guidance Employer Compliance: Compliance Notice under s245AYP of the Migration Act 1958 – Interim Operational Policy Guidance
Training/Certification or Accreditation	Border Force Field Program
Other required job role requirements	Nil
Other support mechanisms (e.g. who can provide further assistance in relation to any aspects of this instruction)	Officers should seek assistance from a Field Operations Supervisor (APS6) or above in the first instance. Field Operational Policy (Connected Services Portal)
Escalation arrangements	Field Operational Policy (Connected Services Portal) s. 22(1)(a)(ii) @abf.gov.au
Recordkeeping (e.g. system based facilities to record decisions)	Total Records and Information Management (TRIM) (also known as Content Manager) Compliance Case Management and Detention (CCMD) Portal Integrated Client Services Environment (ICSE)
Program or Framework (i.e. overarching Policy Framework or Business Program)	Nil
Job Family Framework Role	Field Operations Officer

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Attachment C – Consultation

1.1 Internal consultation

Branch	Section
ABF College	Advanced Capability Facility
ABF Workforce Capability	Enforcement & Immigration Compliance Management
Compliance and Community Protection Policy	Migrant Worker and Field Compliance Policy
Field Operations and Sponsor Monitoring	Field Operations WA/SA
	Field Operations QLD/NT
	Field Operations NSW/ACT
	Field Operations VIC/TAS
Legislation	Legislation Governance
Privacy, FOI & Records Management	Freedom of Information
	Privacy
	Records Management
Legal Group	
Commander – Field Operations and Sponsor Monitoring	
All Staff consultation in accordance with Section 10 of the <i>Enterprise Agreement 2024-2027</i> .	

1.2 External consultation

Nil