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Removal Availability Assessment Guide – Illegal Foreign Fishers who Request Removal from Australia

Standard Operating Procedure

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1. Purpose

This Standard Operating Procedure (SOP) is designed to assist Removal Officers to complete the Removal Availability Assessment (RAA) for Illegal Foreign Fishers (IFF) or Suspected Foreign Offenders (SFO) who request removal in writing under subsection 198(1) of the Migration Act 1958 (the Migration Act).

2. Scope

2.1. In scope

This SOP applies to IFFs:

- who are detained under clause 8 of Schedule 1A to the Fisheries Management Act 1991 (the Fisheries Management Act), clause 8 of Schedule 2 to the Torres Strait Fisheries Act 1984 (the Torres Strait Fisheries Act) or clause 8 of Schedule 1 to the Environment Protection and Biodiversity Act 1999 (the EBPC Act) or whose vessels are detained under section 69 of the Maritime Powers Act 2013 (the Maritime Powers Act),
- who held an enforcement visa which ceased, resulting in the IFF becoming an unlawful non-citizen (UNC) (within the meaning of the Migration Act),
- who have requested removal from Australia.

2.2. Out of scope

2.2.1 Maritime interceptions

This SOP does not apply to non-citizens intercepted and detained or arrested under the Maritime Powers Act for purposes other than fisheries and environment matters. This SOP does not apply to IFFs who were intercepted and detained inside the migration zone under Schedule 1A to the Fisheries Management Act, Schedule 2 to the Torres Strait Fisheries Act, or Schedule 1 to the EBPC Act, and who (upon the enforcement visa ceasing) are unauthorised maritime arrivals (UMA) within the meaning of subsection 5AA(1) of the Migration Act. Exclusion from this SOP continues throughout their removal process.

2.2.2 Onshore compliance / UMA / involuntary IFFs

Guidance for the completion of an RAA for Onshore Compliance detainees and UMAs is contained in the Policy and Procedure Control Register (PPCR):

- Removal Availability Assessment Guide - Onshore Compliance - SOP (BE-6157).
- Removal Availability Assessment Guide - Illegal Maritime Arrival - SM (BE-6158).

Removal Officers are to complete the Onshore Compliance RAA form for all involuntary IFF removals.

3. What is a Removal Availability Assessment?

The RAA is the key tool in determining and confirming whether an UNC is liable and available for removal under section 198 of the Migration Act. Forming Mandatory Control Point (MCP)10 of the Status Resolution System Control Framework, an RAA is commenced in the Compliance, Case Management and Detention (CCMD) portal on acceptance of a removal referral. The Removal Officer updates and completes removal

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liability and availability checks during the course of removal planning and management. There are three online RAA forms designed according to the mode of the removee's arrival in Australia:

- a standard Onshore Compliance RAA,
- an RAA for a person who is an UMA, as defined under section 5AA of the Migration Act,
- an RAA for an IFF leaving voluntarily.

All RAAs are completed in the CCMD portal. User guides can be accessed via the Application Menu->Help->Guides Training and Support and [CCMD SharePoint](#) Returns and Removals site.

3.1. IFF RAA guide

An IFF is a non-citizen who is detained under Schedule 1A to the Fisheries Management Act or Schedule 2 to the Torres Strait Fisheries Act. In this SOP, the term is also used to refer to an IFF who held an enforcement visa that ceased and who subsequently requested removal under the Migration Act. A SFO is a non-citizen who is detained under Schedule 1 of the EBPC Act.

IFFs suspected of breaches in relation to fisheries matters under the Fisheries Management Act and Torres Strait Fisheries Act comprise the majority of the IFF caseload for removals. The IFF caseload also comprises a small number of SFOs suspected of breaches in relation to environment laws under the EPBC Act.

IFFs who are UNCs and who request removal in writing (i.e. voluntary) are removed under subsection 198(1) of the Migration Act.

IFFs who are UNCs and who do not request removal in writing (i.e. involuntary) are removed under another subsection of section 198 of the Migration Act applicable to their circumstances. Refer to the [Removal from Australia - PI \(BE-5488\)](#).

This SOP applies to IFFs or SFOs who voluntarily request removal and provides an explanation of the purpose of each MCP10 question, suggested evidence supporting the Removal Officer's response and example text that can be considered when providing answers.

For consistency, the term IFF is used throughout this SOP. The exception to this is where specific policy or an RAA MCP10 CCMD portal question uses the term 'removee', 'detainee', 'SFO' or 'UNC'.

3.2. Key requirements

RAA questions are designed to ensure that the relevant removal power in section 198 of the Migration Act is identified and to document that the IFF is:

- liable for removal, and
- available for removal (removal is practicable).

In responding to each question, Removal Officers should keep in mind that any RAA recommendations to a delegate must be documented with evidence.

This establishes the IFF's liability and availability for removal.

Authority to approve/sign-off an RAA is assigned to officers at the Commander/Senior Executive Service (SES Band 1), Chief Superintendent (Executive Level 2.1), Superintendent (Executive Level 2) and Inspector (Executive Level 1) levels, with the intent of providing senior officer oversight of the inherent risks associated with categories of persons subject to removal.

Discretion to refer approval to a more senior officer is available to all officers when the circumstances of the case present sensitivities or complexity that warrant escalation.

Refer to Removal streams in [Removal from Australia – Commencing a removal - PI \(BE-5490\)](#).

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See: section 5. RAA Sign-off level.

3.2.1 Independent thinking

When preparing RAAs, Removal Officers should demonstrate to the delegate they have independently considered a case rather than relying on past checks and assurances provided by other officers in relation to the IFF. This will provide documentary evidence that a Removal Officer has carefully considered the case, if the lawfulness of removal ever comes into question.

Suggestions in the RAA text example tables are not prescriptive. Responses to each RAA question should be considered on a case by case basis and reflect the IFF's circumstances.

3.2.2 Supporting evidence

The types of supporting evidence listed in this document are intended as a guide. Removal Officers should select supporting evidence based on its relevance in each case. Removal Officers are not required to provide every example of supporting evidence listed for each RAA question.

Supporting evidence for each question may vary depending on each IFF's circumstance (for example, IFFs from one apprehension may have differing dated detention notices depending on the date their enforcement visa ceases).

Supporting evidence provided can be used to support more than one question.

All supporting evidence provided must be relevant at the time that the RAA is prepared and attached to the CCMD portal via a TRIM link. Removal Officers are to provide the most appropriate supporting evidence to support each RAA question.

Removal Officers collating supporting evidence into a PDF RAA attachment document must number the pages to assist the RAA approver, for example, "See pg1 Passport (PPT), pg5 Located Person Interview (LPI), and pgs 2-3 Integrated Client Services Environment (ICSE)".

Any departmental system screenshots must include a date stamp.

3.2.3 Multiple IFF RAA

In some circumstances, multiple IFFs will be removed in one removal operation.

Multiple persons are entered into one group RAA form in the CCMD portal.

In this case, attachments may be grouped by type and not by person.

For example, all IFF travel document (TD) copies can be saved together to Attachment A, all IFF Mainframe screenshots to Attachment B, etc.

The resulting multiple attachments may be ordered either alphabetically or numerically, as long as it is sequential.

3.3 Background

The legislative and policy environment is different for IFFs compared with other immigration detainees.

Ordinarily, IFFs arrive in Australia as holders of enforcement visas after apprehension at sea for suspected breaches of fisheries or environment legislation, usually without any identity documentation.

IFFs or SFOs are initially brought onshore and are held in detention under the Fisheries Management Act, the Torres Strait Fisheries Act or the EBPC Act at an Immigration Detention Facility (IDF) or Alternative Place of Detention (APOD). All IFFs who are brought into or are located within the migration zone, and who are taken into fisheries or environment detention on arrival or on location, are granted enforcement visas by operation of law in accordance with Division 4A of Part 2 of the Migration Act.

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3.3.1 Enforcement visa

An enforcement visa is granted to IFFs by operation of law in certain circumstances relating to fisheries and environmental protection matters. For detail on the grant, legislative implications, cessation, and cancellation of enforcement visas refer to the Detention Services Manual - Illegal Foreign Fishers - Enforcement visa - PI (BE-628).

At the cessation of an enforcement visa, an IFF becomes an UNC subject to immigration detention under section 189 and is liable for removal under section 198 of the Migration Act.

Note: If an officer knows or reasonably believes that the detainee is an Australian citizen or Australian resident, the suspected IFF must be released from fisheries, environment or immigration detention. This person will not have held an enforcement visa by operation of law.

3.3.2 Legislative basis

The legislative basis for removal of IFFs is section 198 of the Migration Act.

3.3.3 Voluntary removals

Under subsection 198(1) of the Migration Act:

- An officer must remove as soon as reasonably practicable an UNC who asks the Minister, in writing, to be removed.

An IFF who requests in writing to be removed is referred to as 'voluntary' in the context of removal from Australia.

Despite this power, it may not be reasonably practicable to remove the IFF while held in immigration detention under section 189 if the IFF is a 'suspect' under section 250 of the Migration Act. These sections when read in conjunction allow a 'suspect' to be held in immigration detention for the purposes of investigating and prosecuting an offence.

If an IFF held in immigration detention under the provisions of section 189 and section 250, requests removal under subsection 198(1) of the Migration Act, the Department has a statutory duty to remove the person. This obligation to remove will take priority over any any criminal justice stay certificate (CJC) and section 250. This obligation remains whether the IFF is in criminal custody or in immigration detention. It is prudent for the Removal Officer to advise the relevant law enforcement agency of this prior to completing the RAA. If the relevant law enforcement agency requires the IFF's presence in Australia for criminal justice proceedings, and the IFF is subject to conditional bail that states the IFF is not to depart Australia, that agency can request bail revocation (if applicable). This will ensure the IFF is held in criminal custody. If the IFF is not subject to such bail conditions, the relevant law enforcement agency may obtain a Criminal Justice Certificate (CJC) or Criminal Justice Warrant (CJW), which are the prerequisites for a Criminal Justice Visa (CJV) consideration.

Note: A CJC will not stay the removal of a person that has requested removal from Australia in writing. However, if a CJV is granted it will negate the request for removal as the IFF will no longer be an UNC. Refer to Operational Notification: ON2019-27 Criminal Justice Stay Certificates (CJSCs) Request for removal process (ADD2019/6353103) or Criminal Justice in Removal from Australia – Impediments to removal - PI (BE-5495).

3.3.4 Involuntary removals

IFFs not being removed as voluntary and pursuant to s198(1) are referred to as 'involuntary' in the context of removal from Australia.

The legislative basis for involuntary removal of IFFs under the Migration Act is subsection 198(2).

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Removal Officers are to complete the Onshore Compliance RAA form for all involuntary IFF removals. Refer to the Removal Availability Assessment Guide - Onshore Compliance - SOP (BE-6157) for further information.

Note: Section 164D of the Migration Act prevents a person who holds, or has held, an enforcement visa from applying for a visa other than a PV, but they can be granted a visa for which there is no application. This would apply where the Minister used his/her power to grant a visa without application.

If the IFF has made a substantive visa application, section 164D provides that:

- the holder of an enforcement visa may not apply for a visa other than a PV while they are in Australia,
- if a non-citizen who has held an enforcement visa remains in Australia once the visa ceases to be in effect, the non-citizen may not apply for a visa other than a PV.

4. Completing the RAA MCP10

4.1. Selecting the legislative basis for removal

The Migration Act requires that certain UNCAs be removed from Australia as soon as reasonably practicable.

When responding to the first CCMD portal RAA question '*Which subsection under section 198 of the Migration Act is the removee being assessed under for removal?*' the Removal Officer must identify and select the subsection of the Migration Act that applies to the IFF's circumstances.

An additional note advises that under section 164D of the Migration Act, a holder of an enforcement visa or a non-citizen who remains in Australia after their enforcement visa has ceased, may only apply for a PV.

If an IFF has made a valid PV application, an involuntary removal power will not be available until the application has been finally determined.

Once a valid PV application has been finally determined and is refused (no grant), subsection 198(2) of the Migration Act will apply to an involuntary IFF.

The MCP10 RAA has been modified for IFFs and is only to be completed for voluntary IFF removals under subsection 198(1) of the Migration Act. Subsection 198(1) of the Migration Act is the default legislative setting in the CCMD portal for the RAA - IFFs being voluntarily removed from Australia.

Removal Officers are to complete the Onshore Compliance RAA form for all involuntary IFF removals.

Refer to 3.3.4 Involuntary Removals for further information.

4.1.1 Subsection 198(1)

Fact to be established: *IFF has requested removal in writing.*

The Department's Request for Removal from Australia form is designed to evidence voluntariness when signed. The relevant Request for Removal forms should be completed where a person has indicated a desire to be removed, however, a request for removal from Australia is acceptable in another form or document, as long as it is made in writing.

For unaccompanied minors who request removal, an assessment may be required to assess their capability to provide informed consent. Where required, this assessment is generally undertaken by the detention health service provider. Refer to the Removal from Australia – Removal of minors and families – PI (BE-5505) for further information refer any queries to Child Wellbeing Operations:

s. 22(1)(a)(ii) @homeaffairs.gov.au.

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4.1.2 Type of evidence

There is no option to provide comments or attach supporting evidence when selecting the legislative basis for removal in the CCMD portal, however, Removal Officers should turn their mind to the evidence that exists to support the fact that the IFF's removal is voluntary, such as:

- documentation signed by the IFF giving permission for the Department of Home Affairs (the Department) to supply biodata to foreign governments for the purposes of acquiring a TD so that they may be removed,
- a foreign TD application form signed by the IFF,
- a signed request for removal.

The RAA MCP10 for voluntary IFFs should not be used if there is any evidence on departmental systems or files indicating that the IFF may not be willing to be removed or is resisting voluntary removal.

4.2. Common facts

The MCP10 RAA for voluntary IFFs asks ten yes/no questions that are mandatory to answer. Removal Officers must answer each question and provide text to support the answer in each comment field. Removal Officers should refer to any available supporting evidence in each comment field. Example text and supporting evidence for each question is provided below.

4.2.1 Identity

Has the identity (including known aliases) of the IFF been established and recorded for the purpose of removal?

Fact to be established: *IFF nationality has been confirmed and identity is supported.*

Identity is difficult to establish within the IFF caseload. Many arrive without TDs or any form of written identification. IFFs may provide false information about their identity in an attempt to evade prosecution by AFMA as a recidivist IFF.

IFFs are out of scope of identity verification requirements in the Assessing Identity in the Field and in Detention – PI (IIB-1746). Generally, suspected IFFs and SFOs who are held in an IDF for the purposes of the Fisheries Management Act, Torres Strait Fisheries Act or the EPBC Act have already provided personal identifiers in accordance with legislative requirements.

The IFF identification test policy is located in the Detention Services Manual - Illegal foreign fishers - PI (DM-590).

The RAA MCP10 for IFFs (for voluntary removals only) provides that the minimum identity threshold for removal is that nationality has been confirmed and all known names and aliases have been recorded.

Evidence of the person's nationality may include:

- a copy of the bio data page of a TD (can be expired),
- correspondence from an Embassy/Consulate confirming nationality.

Steps should still have been taken to identify the person and obtain a valid travel document where required before assessing removal availability. In supporting identity, consider if the IFF has any aliases, and document them in your response.

Removal Officers are to check the IFF's files (including electronic files) and liaise with a Detention Operations or Status Resolution Officer (SRO) to clarify any outstanding concerns about the IFF's identity, nationality or welfare.

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Types of supporting evidence

Removal Officers will need to provide one or more of the following, as supporting evidence:

- valid TD: scanned copy of a passport (PPT), or certificate of identity (COI),
- records of interview can assist to establish the IFF's immigration history and be cross checked with departmental records such as the Integrated Client Services Environment (ICSE),
- client service portal (CSP) screenshots,
- ABF or the Royal Australian Navy (RAN) arrival crew list,
- results of identity interviews (case notes on file or systems),
- documents from the AFMA or ABF recording identity,
- a copy of the bio data page of a TD or seaman's papers (can be expired),
- correspondence from an Embassy/Consulate confirming identity,
- other ID documents, for example, birth certificate, driver's licence, National ID card, ship's manifest etc,
- advice from Identity and Biometrics s. 22(1)(a)(ii) [@homeaffairs.gov.au](mailto:homeaffairs.gov.au) confirming identity/nationality,
- if completed, a MCP7 (Detention Review Manager's Report) confirming the IFF's identity is met.

RAA text example

Yes

I am satisfied<Name> is a citizen of <Country>

I am satisfied<Name's>identity is supported

I have reviewed the relevant records and am satisfied that departmental systems are consistent with<Name's>stated<fisheries/environment/criminal> and immigration history

and/or

<Name>has been issued a valid<identity/TD>by<country><expiry date><other>

and/or

A<photo identification>or<comparison document/photo type>was completed on<date>

and/or

An identity investigation has been finalised by<section>and identity was met

and

No known aliases have been identified

or

Aliases attributed to<Name>have been investigated<enter outcome of investigation>.TRIM Ref<xxx/xxx>

See page Fisheries/environment detention note, RAN or ABF crew list, PPT, LPI, ICSE, MCP4<other>.

4.2.2 Australian Indigeneity

Has the IFF been referred for an Indigenous Australian assessment and if yes, what was the outcome?

Fact to be established: *The IFF does not meet or probably does not meet the tripartite test for Australian Indigeneity.*

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If the answer is no to this question and the IFF has not provided new information suggesting Indigeneity, Removal Officers are to proceed to the next RAA question.

If the [Status Resolution Helpdesk](#) has confirmed the IFF does not meet or probably does not meet the tripartite test, Removal Officers must contact Legal Opinions and the Character, Citizenship and Removal Litigation Sections to confirm in writing that there are no impediments to removal regarding claimed Australian Indigeneity. For further information, refer to Operational Notification [ON2020-27 Managing a detainee who may be of Aboriginal and or Torres Strait Islander Indigeneity \(ADD2020/4639457\)](#).

Types of supporting evidence

Removal Officers will need to attach one or more of the following, as supporting evidence:

- a 'Client of Interest note' in ICSE to flag that the matter was referred to the Status Resolution Helpdesk,
- correspondence from the Status Resolution Helpdesk confirming the outcome of the Indigeneity referral,
- confirmation from Legal Opinions, and Character, Citizenship and Removals Litigation Section, indicating that the IFF does not meet or probably does not meet the tripartite test in relation to Australian Indigeneity, and there is no impediment to removal.

RAA text example

No

Yes. <Name> was referred to Status Resolution Helpdesk and the outcome was he/she does not meet or probably does not meet the tripartite test for Australian Indigeneity

Confirmation has been received from Legal Opinions and Character, Citizenship and Removals Litigation Section that <Name> can be removed

See page x for correspondence from Status Resolution Helpdesk, Legal Opinions and Character, Citizenship and Removals Litigation Section.

4.2.3 Unlawful non-citizen

Will the IFF be an UNC on the day of removal?

Fact to be established: *The IFF is or will be an UNC on the day of their removal.*

Whether a person is an UNC is fundamental to the person's liability for removal from Australia. Most IFFs do not typically apply for a visa, however, the Removal Officer should consider this possibility. To ensure section 198 of the Migration Act will apply, the Removal Officer must be satisfied that the IFF:

- has been correctly notified of any visa decision in accordance with statutory requirements,
- is not subject to case law that impacts on whether the person is an UNC,
- is not an Australian citizen.

To assess case law impediments, Removal Officers must complete a Comprehensive Assessment Tool (CAT).

Notification requirements - PI (LS-1818) can assist Removal Officers to identify if the IFF is potentially affected by a particular legal decision. This assessment must also consider and document the possible impact of case law impediments on the IFF's known aliases.

To assess a person for Australian citizenship by descent or operation of law, Removal Officers must complete the relevant Citizenship Assessment Tool, available in the PPCR.

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- Citizenship Assessment Tool A - Person of Interest born in Australia - SM (VM-6436).
- Citizenship Assessment Tool B - Person of Interest born in Papua or New Guinea prior to 16/9/1975 - SM (VM-6437).
- Citizenship Assessment Tool C - Person of Interest born outside of Australia - SM (VM6438).

If there are any reasons to suspect Australian citizenship, Removal Officers are to refer the IFF's case immediately to the s. 22(1)(a)(ii) [@homeaffairs.gov.au](mailto:iff@homeaffairs.gov.au).

Note that additional care should be taken when assessing the citizenship of persons from Papua New Guinea, as detailed in the Citizenship Assessment Tool B.

All IFFs must be UNCs on the day of removal by virtue of their enforcement visa ceasing or being cancelled. Visa cessation or cancellation dates must be provided to confirm that the person's liability for removal is correct on the day of removal.

Types of supporting evidence

Removal Officers will need to provide one or more of the following, as supporting evidence:

- Mainframe, movement record (MR) screen which shows the arrival and lawful until date,
- arrival crew list from ABF or RAN, showing arrival date and legislative basis for apprehension,
- Fisheries Management Act, Torres Strait Fisheries Act or EPBC Act detention notices, which evidence initial detention under those Acts and provide further evidence as to when the person arrived and the maximum period that detention could remain in force,
- details of any release from fisheries or environment detention by the investigation agency (such as AFMA),
- ICSE, client details screen and visa view page,
- Removals Comprehensive Assessment Tool (completed by Removals Officer),
- compliance review in the CCMD Portal (under CSR Service - Decisions tab),
- Citizenship Assessment Tool A, B or C,
- section 189 notice of detention,
- Detention Review Manager (DRM) Review MCP7/ Detention note MCP4 from ICSE or other departmental systems,
- CSP, MR or summary and history,
- LPI and Detention Client Interview (DCI).

RAA text example

Yes

I am satisfied<Name> is a citizen of <Country>

I am satisfied<Name's>identity is supported

I have reviewed the relevant records and am satisfied that: departmental systems are consistent with<Name's>stated<fisheries/environment/criminal> and immigration history

and/or

<Name>has been issued a valid<identity/TD>by<Country><expiry date><other>

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and/or

A<photo identification>or<comparison document/photo type>was completed on<date>

and/or

An identity investigation has been finalised by<section>and identity was met.

and

No known aliases have been identified

or

Aliases attributed to<Name>have been investigated<enter outcome of investigation>.TRIM Ref<xxx/xxx>

See page Fisheries/environment detention note, RAN or ABF crew list, PPT, LPI, DCI, ICSE, MCP4<other>.

4.2.4 Travel document**Will the IFF have a valid TD at the time of removal?**

Fact to be established: *The IFF has a valid TD.*

A person without a valid TD will not be available for removal and providing evidence of a TD is essential for RAA sign-off. The Removal Officer must assure the reviewer/approver of the currency and validity of the document. Expiry dates that could affect the progress of the removal operation should be highlighted.

Information about how the TD was obtained does not need to be provided unless the Removal Officer considers that it may be relevant.

Types of supporting evidence

Removal Officers will need to provide one or more of the following, as supporting evidence:

- a colour copy of the person's original TD from ICSE, CCMD, TRIM,
- correspondence from Embassy / Consulate.

RAA text example

Yes

<Name>has a current<Country><TD type>, number <ID number>, Expiry<expiry date>

The<TD>is in the custody of<insert name or place>

See page x for

PPT, COI, Emergency TD.

4.2.5 Finally determined visa applications**Does the IFF have any substantive visa applications not yet finally determined?**

Fact to be established: *Substantive visa applications, if made, have been finally determined.*

Most IFFs will not have made an application for a substantive visa and will have signed a request for removal from Australia form. Care should be exercised with recidivist IFFs who may have an extensive immigration history.

Under section 164D of the Migration Act, an enforcement visa holder cannot make an application for any other type of visa except a PV, but they can be granted a visa for which there is no application such as a

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CJSV. Neither a CJSV or enforcement visa is a substantive visa (refer to definition of *substantive visa* in subsection 5(1) of the Migration Act). An enforcement visa and an issued CJC will stay *involuntary* removal. A CJC in force for a *voluntary* removal under subsection 198(1) of the Migration Act will not stay removal. Refer to section 4.2.7 Criminal Justice Certificate (CJC) or Criminal Justice Visa (CJV).

Note: The grant of an enforcement visa ceases all other temporary visas that may be held by the person under subsection 82(2A) of the Migration Act.

PVs are substantive visas that can be temporary or permanent. Outcomes of substantive visa applications, subsequent appeals and merit review decisions are recorded in ICSE and located in the permission request screen. When assessing if the substantive visa application is finally determined, the Removal Officer should consider additional time periods available to the removee in which another appeal against a decision may be made. Eligibility periods for judicial and merits review are covered in section 4.2.6 Eligibility Periods, but must also be considered when confirming that the application for a substantive visa is finally determined. Refer to LEGEND:

- time-limited review by the Administrative Appeals Tribunal/ Administrative Review Tribunal (AAT/ART),
- Administrative Appeals Tribunal review of Part 5-reviewable decisions - Guide for primary decision makers - PI (VM-1803).

Note: From 14 October 2024, the AAT will be abolished and replaced with the Administrative Review Tribunal (ART).

To assess whether the removee's application is finally determined for exercising section 198 removal powers, officers should refer to the definition of 'finally determined' in:

- Removal from Australia - Glossary - SM (BE-5509).
- LEGEND: Migration and Operational Policy Contents - Migration Act - Act-defined terms instruction - s5(9)-s5(9B) - Finally determined.

Decisions that are **not** finally determined (exclusions) are those remitted:

- under subsection 5(9B) by the AAT/ART for further consideration by the Department,
- under paragraph 473CC(2)(b) by the Immigration Assessment Authority (IAA) on fast track reviewable decisions.

Types of supporting evidence

Removal Officers will need to attach one or more of the following, as supporting evidence:

- ICSE permission request screenshot,
- Removals Comprehensive Assessment Tool,
- CSP, which shows all permission requests including visa applications,
- evidence of the date of detention and notification under section 194 of the Migration Act.

RAA text example

No

A review of departmental records indicates that<Name>has not lodged a valid substantive visa application nor had a visa refused or cancelled since arrival in Australia

See page x for ICSE record

or

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RAA text example

<Name>lodged a<protection>visa application on<date>which was refused on<date>

<Name>did not seek merits review of the refusal decision

See page x for ICSE record

or

<Names> last held visa was cancelled on<date>under<section>of the Migration Act and revocation was sought on<date>with an outcome of not revoked on<date>

or

An application for review was lodged with the AAT/ ART on<date>and the departmental decision was affirmed on<date>

See pages xx for ICSE record, Removals Comprehensive Assessment Tool

or

<Name>had their<protection>visa cancelled on<date>

<Name>did not seek merits review of the cancellation/revocation decision

An application was lodged with the AAT/ ART on<date>

and the Departmental decision was affirmed on<date>

or

this was found to be a non-reviewable decision on<date>

or

<Name>is a fast track applicant. The Department referred<Name's>application for review by the Immigration Assessment Authority (IAA) on<date>

<Name's>application for protection was refused by the IAA on<date> See page ICSE, Removals Comprehensive Assessment Tool.

4.2.6 Eligibility periods

Is the IFF in an eligibility period for merits or judicial review as the result of a refusal to grant the visa or a visa cancellation?

If yes, Removal Officers are to delay removal until after eligibility period has ceased, unless the IFF has specifically requested voluntary removal under subsection 198(1) of the Migration Act.

Fact to be established: *Eligibility periods for merits review and judicial review have ceased.*

When an IFF signs a Request for Removal under subsection 198(1) of the Migration Act, they acknowledge that if they choose not to withdraw/discontinue any outstanding reviews or appeals, the matter may be dismissed by the Department or relevant review bodies (including the courts) once they are removed from Australia.

Merits review

Where the IFF has not voluntarily requested removal, removal must not be effected until all eligibility periods for merits review of a decision to refuse to grant a substantive visa have expired.

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Judicial review

Where the IFF has not voluntarily requested removal, removal must not be effected until all eligibility periods for judicial review have expired, except where the Character, Citizenship and Removal Litigation Section have cleared removal action.

Dates for administrative (merits) or judicial review are recorded in the ICSE permission request screen or CSP.

The timeframe for applying for review is dependent on factors such as the decision type, if the person is in detention and the visa subclass.

Eligibility periods for persons in immigration detention can be found in:

- Administrative Appeals Tribunal review of Part 5-reviewable decisions - Guide for primary decision makers - PI (VM-1803) - PI (VM-1803)

In addition, the following PAMs in LEGEND provide specific detail on eligibility periods for review and notification:

- PAM3: Act - Compliance and Case Resolution - Review - Time-limited review by the AAT/ ART,
- Code of procedure in Notification requirements – PI (LS-1818).

Types of supporting evidence

Removal Officers will need to provide one or more of the following, as supporting evidence:

- ICSE permission request screenshot,
- Signed Request for Removal from Australia.

RAA text example

No

<Name>has not been subject to a refusal or cancellation of a substantive visa in Australia and therefore, an eligibility period does not apply

See page x for ICSE record

or

The IFF signed a Request for Removal from Australia on<date>

See pages Request for removal, ICSE

or

The IFF lodged a<protection>visa application on<date>which was refused on<date>

The eligibility period for applying for a merits or Judicial Review expired on<date>

See page x for ICSE record

or

<Name's>application to the AAT/ ART was affirmed in favour of the Department on<date>

See page x for ICSE record

or

<Name's>application for Judicial Review was deemed in the Minister's favour on<date>

The IFF has exhausted all eligible Judicial review as at<date>

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under the Freedom of Information Act 1982

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RAA text example

See page x for ICSE record.

4.2.7 Criminal Justice Certificate (CJC) or Criminal Justice Visa (CJV)

Note: Under the Criminal Justice Visa Framework, there are two CJVs that may be granted to a non-citizen; a Criminal Justice Entry Visa (CJEV) and a CJSV. For the purposes of this SOP, these visa types will be referenced as CJVs, unless specific identification is required.

Are any Criminal Justice Certificates or Visas currently in force in relation to the IFF and/or has a law enforcement agency indicated any intention to prosecute the IFF?

If yes, ensure that the matter has been cleared in accordance with Removal from Australia - Impediments to removal - PI (BE-5495) before further removal action is progressed.

Fact to be established: *There is no CJC in force to stay removal. The Removal Officer establishes the presence or absence of a CJC. If a CJC is in force, the Criminal Justice Visa Unit has advised that removal will not cause undue interference with the criminal justice process.*

If a CJC is in force and the removee has signed a Request for Removal from Australia, ABF officers should provide evidence of referral to the Criminal Justice Visa Unit by sending an update regarding the request for removal to s. 22(1)(a)(ii) [@homeaffairs.gov.au](mailto:homeaffairs.gov.au). The Criminal Justice Visa Unit will inform relevant stakeholders and advise the Removal Officer whether removal will cause undue interference with the criminal justice process.

Officers should check both departmental systems and the IFFs's TRIM file for any evidence of a CJV or CJC. Where no evidence is recorded, no further investigation is required. If there is evidence or departmental records are unclear, confirmation on whether a CJV or CJC is in force should be sought by sending a request to the Human Trafficking & Criminal Justice Visa Section at s. 22(1)(a)(ii) [@homeaffairs.gov.au](mailto:homeaffairs.gov.au). A CJV holder cannot be held in, or bailed into, immigration detention. However, a CJV holder can be held in criminal custody. A CJV in force will prevent removal.

A CJC in force will not prevent a voluntary removal under subsection 198(1) of the Migration Act and documentation of referral and correspondence with the Criminal Justice Visa Unit should be included in the RAA. An active CJC will only prevent the removal of an involuntary IFF removee.

Please refer to ABF Operational Notification ON2019-27 Criminal Justice Stay Certificates (CJCs) - Request for removal process. Further information can be found in TRIM (ADD2019/5115387).

For further information on CJV or CJC, contact the Criminal Justice Visa Unit at s. 22(1)(a)(ii) [@homeaffairs.gov.au](mailto:homeaffairs.gov.au).

Types of supporting evidence

Removal Officers will need to provide one or more of the following, as supporting evidence:

- the presence or absence of a CJC or CJV being in force,
- a discussion between the IFF Removal Officer and the IFF informing the IFF of the removal process. Refer to Communication guide: (detainees subject to a Criminal Justice Stay Certificate), ADD2019/5653258 and CJC written message to detainee, ADD2018/2001832,
- the IFF's written Request for Removal form,
- email advising the CJP team of the IFF's request for removal so that they can engage with the relevant law enforcement authority to request they consider alternative management strategies for the detainee,

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- email advising National Removals that the removal can proceed despite the CJC. Refer to Communication guide: (detainees subject to a Criminal Justice Stay Certificate), ADD2019/5653258,
- email from state or federal police cancelling a CJC,
- email from the CJP team confirming that no CJC or CJV is in force,
- ICSE screen print outs, including all Client of Interest notes. Note that ICSE print outs, even where they may indicate that a CJV has been refused, are not sufficient when determining that this item is satisfied,
- Mainframe,
- CSP,
- ICSE/CSP screenshots.

RAA text example

No

A CJC is not currently in force for <Name>

A CJV is not currently in force for <Name>

and/or

Client of Interest notes do not specify any claims or interest from any relevant parties

Nil issues were noted in correspondence from the CJP team

See page Mainframe, ISCE - Client of Interest, email from the CJP team

or

<Name's>CJC was cancelled on<date>and ceased the CJV by operation of law

See email from police cancelling CJC, email from the CJP team, ICSE including all Client of Interest notes, Mainframe, CSP

or

Yes

<Name>has a CJC in force and has requested removal from Australia on <date>

The CJP team has advised <relevant stakeholders> and have cleared removal of <Name> from Australia under subsection 198(1) of the Migration Act.

4.2.8 External agency complaints

Has the IFF or any external agency made a complaint/claim which is not yet finalised?

If yes, Removal Officers must include in response.

Fact to be established: *There is no unfinalised complaint or claim from the IFF or external agency that may affect removal.*

Prior to the removal, Removal Officers should check departmental records and systems for any evidence of an unfinalised claim or complaint made by the IFF or an external agency.

This does not include routine type objections to removal raised by an IFF's family/friends/legal representatives.

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Agency types

Check the Client of Interest screen, Permission Request in ICSE or CSP for any correspondence from:

External agencies, including (but not limited to):

- Commonwealth Ombudsman's Office (OO),
- Australian Human Rights Commission (AHRC),
- Australian Red Cross (ARC),
- International Committee of the Red Cross (ICRC),
- United Nations High Commission for Refugees (UNHCR),
- United Nations Committee against Torture (UNCAT).

If no claims against removal are evident in ICSE or the IFF's file in relation to an external agency, this item may be checked off and noted by the Removal Officer in the RAA without further investigation.

External agencies

Where a claim has been made on behalf of the IFF by the OO, AHRC, ARC, ICRC, UNHCR or UNCAT, this must be noted in the RAA. Other than notifying the External Scrutiny Section of the IFF's planned removal date, there is no requirement to contact them in relation to an outstanding complaint/claim. An outstanding complaint from these external agencies is not an impediment to removal. Only a court injunction will halt the removal.

United Nation committees

An Interim Measures Request (IMR) issued in respect of an involuntary IFF by a UN Committee - either the United Nations Human Rights Commission (UNHRC), or the United Nations Committee Against Torture (UNCAT) - will halt a removal until the matter has been considered by the UN Complaints and IMR team and agreed to by the Minister. If the person only has a complaint before a Committee and no IMR has been issued, the involuntary removal can proceed. Complaints and IMRs are not a barrier to voluntary removals.

Information and consideration of outstanding complaints, including those with an associated IMR, can be sought by contacting the UN Complaints and IMR Team at s. 22(1)(a)(ii) @homeaffairs.gov.au.

Types of supporting evidence

Removal Officers will need to provide one or more of the following, as supporting evidence:

- the ICSE Client of Interest Screen.
- email correspondence from External Scrutiny Section,
- email correspondence from UN Complaints and IMR Team,
- email correspondence from Removal Operations HQ.

RAA text example

No

Neither<Name>or any other external agency has made any substantial claim/s which is not yet finalised

See page ICSE Client of Interest

or

Yes

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RAA text example

External Scrutiny Section/UN Complaints and IMR Team have been advised on<date>of the planned removal of<Name>. No concerns have been raised by<insert name of external agency>

See email from<xxxx>

or

Yes

External Scrutiny Section/UN Complaints and IMR Team have been advised on<date>of the planned removal of<Name>

or

Yes

A response was received on<date>from<insert name of external agency> but Superintendent<Name>or the UN Complaints and IMR Team>has cleared removal action as being reasonably practicable

or

Yes

Removal clearance for<Name>was received on<date>from<insert name/section>. The attached clearance allows for removal as soon as reasonably practicable.

4.2.9 Fit to travel

Has the IFF been assessed as fit to travel by the relevant health service provider?

Fact to be established: *The IFF is assessed as fit to undertake travel and any significant health issues that may affect removal have been identified.*

Fitness to travel assessment (FTT) is an essential requirement when determining a person's availability for removal. Detainees being removed from Australia must have an FTT completed based on physical examination within 28 days prior to removal.

A lapse in the 28 day timeframe, a significant change in the IFF's health or other clinical indication will necessitate another FTT. The FTT must clearly indicate the date of the last physical examination.

The FTT may also contain a recommendation on the IFF's medical escort requirements during removal operation.

Types of supporting evidence

Removal Officers will need to provide one or more of the following, as supporting evidence:

- FTT within validity dates,
- Health Discharge Summary (HDS),
- email correspondence with the Detention Health Service Provider/ Health Service Provider located at the correctional facility regarding the person's fitness to travel status and/or health requirements for removal planning.

RAA text example

Yes

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RAA text example

The Fitness to Travel assessment (FTT) was completed on<date>. It stated that<Name>is fit to travel and is valid until<date>

See page xx for FTT

or

Yes

The FTT was completed on<date>and is valid until<date>. It stated that<Name>is fit to travel and will require medical escort. The FTT is valid until<date>

See page xx for FTT and page xx for HDS.

4.2.10 Best Interest of Children (BIC) consideration

Has a Best Interest of Children (BIC) , consideration for this removee identified circumstances that appear to meet the criteria for engaging Child Wellbeing Operations (CWOps)?

Fact to be established: *Is a Best Interest of Children (BIC) (conducted for the purpose of removal planning), assessment required and if so have Child Wellbeing Operations (CWOps) been engaged prior to removal?*

If yes, do not proceed with removal unless CWOps review the BIC assessment to advise whether any further action or additional factors should be considered.

The Child Safeguarding Framework (the Framework) articulates the strong commitment of the Department, including the ABF, to safeguarding children and their wellbeing, and supports the implementation of Australia's international obligations under the United Nations Convention on the Rights of the Child including during, but not limited to, the removal planning process. The Framework and the Department's child safeguarding policies apply to all departmental staff, ABF officers and contracted service providers involved in the care and support of children and their families in Australia's immigration programs.

Refer to the Child Safeguarding Framework – Policy Statement (BE-916) for further information.

For guidance on removals affecting or involving children, including detail on factors to consider when undertaking a BIC assessment, refer to the Removal from Australia – Removal of minors and families PI (BE-5505).

Removal Officers also need to be aware of Best Interests of the Child - PS (DM-5721) and the Best Practice for Interacting with Children - PI (BC-764) when reading this SOP.

Types of supporting evidence

Removal Officers will need to provide one or more of the following, as supporting evidence:

- email correspondence from CWOps confirming BIC have been appropriately considered.

RAA text example

No

or

Yes

The BIC assessment was submitted to CWOps on <date>. On <date> CWOps confirmed BIC have been appropriately considered for the removal.

See page xx for BIC correspondence.

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4.3 Reduced notification and removals effected in less than 48 hours

Where an IFF has requested removal and this can be effected as soon as practicable before the minimum 48 hour notification period, an MCP10 does not need to be completed by the Removal Officer. However, the relevant Removals Superintendent (EL2) or Removals Inspector (EL1) must be informed of and agree to the reduced removal notification period through the RAA process. In order to document the reduced removal notification period and obtain approval, Removal Officers are to include comments in the 'checked by' section of the MCP10 form explaining the reduced notification. Suggested wording to be used in this section is:

'The IFF has signed a subsection 198(1) of the Migration Act request for removal to be effected as soon as possible. The IFF is to be notified on [insert date] of intended removal on or after [insert date], requiring a reduced period of notification'

The Superintendent (EL2) (or Inspector (EL1)) may subsequently approve the MCP10, and reduced removal notification period, in the 'Decision' section adding the comment:

'Requirement for 48 hours' notice of removal is waived'

Refer to the Removal from Australia – Removal notification - PI (BE-5504) for further information.

4.4 Privacy and information handling

The Department is bound by the Privacy Act 1988 (the Privacy Act) which provides the legislative framework for the management, collection, use and disclosure of both personal and sensitive information. Schedule 1 of the Privacy Act establishes the Australian Privacy Principles (APPs) which regulate how officers must handle a client's personal information, and covers the collection, accuracy, storage, access, modification, use and disclosure of the information.

Officers dealing with information under this PI must be aware of the Department's obligations under the APPs and any other relevant Australian laws relating to information handling. This includes obligations under the Migration Act as well as the secrecy and disclosure provisions under the Australian Border Force Act 2015 (the ABF Act) where the information used as part of this PI contains Immigration and Border Protection (IBP) information.

For guidance on the application of the ABF Act and the Privacy Act, please contact

s. 22(1)(a)(ii) @homeaffairs.gov.au prior to collecting, handling or disclosing personal or sensitive information of individuals.

4.5 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. Refer to the Freedom of information policy statement and procedural instructions on the PPCR, or contact the FOI team by emailing [s.22\(i\)@homeaffairs.gov.au](mailto:s.22(i)@homeaffairs.gov.au) for more information.

5. RAA Sign-off level

Original source: Removal from Australia - Removal Availability Assessment - PI (BE-5503)

Commander/SES Band 1 or Chief Superintendent	Removal Superintendent/EL2	Removal Inspector/EL1
RAAs for individuals that engage non-refoulement obligations must	All cases where an informed request for removal has been	All IFFs who request removal in writing in line with subsection

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Commander/SES Band 1 or Chief Superintendent	Removal Superintendent/EL2	Removal Inspector/EL1
be signed at the Commander level	required (and signed by the IFF) as part of the pre-removal clearance referral process	198(1) of the Migration Act and are cooperating with efforts to remove them from Australia (i.e. voluntary removals) who do not meet EL2 or SES criteria
All cases where Child Wellbeing Operations has recommended senior level oversight of a removal including minors through a BIC assessment	All removal of people who refuse to request removal in writing in line with subsection 198(1) of the Migration Act or who are otherwise uncooperative with efforts to remove them from Australia (i.e. involuntary removals)	* Any sensitive and/or high profile cases can be escalated to the next level of approval officer
All cases where mental health or intellectual incapacity affects decision-making ability (as advised by the Department's contracted detention health services provider)	* Any sensitive and/or high profile cases can be escalated to the next level of approval office	
All section 199/section 205 requests for removal of citizen/ lawful family members of IFFs		
All unaccompanied minors (UAMs)		
All section 200 deportations		

6. Accountabilities and Responsibilities

For Removal Officer responsibilities, refer to Removals - Integrated Job Role Profile (ADD2019/1248242).

Position/Role	Description
Commander: ABF Workforce Capability (Document Owner)	Responsible for: • endorsing/approving Removals Procedural Instructions • verifying appropriate stakeholder consultation was undertaken during document drafting.
Superintendent: Enforcement and Immigration Compliance Operational Policy Section	Responsible for: • directing regular evaluation of this SOP to ensure that it still achieves its intended purpose

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Position/Role	Description
	- determining whether this SOP requires editing or should be made obsolete - monitoring change and amendments to legislation or other legal requirements, policy, business operations or risk profiles that may affect this PI.
Removals Operational Policy Team Enforcement and Immigration Compliance Operational Policy Section (Document Drafter)	Responsible for: - drafting this SOP in compliance with the Policy and Procedure Control Framework (PPCF) - undertaking stakeholder consultation - addressing key requirements of the policy or procedure.
Superintendent: National Removals (Stakeholder)	Responsible for: - advising this SOP's author on policy and procedures relevant to the business area, including any changes - ensuring attendance of subject matter experts (SME) at stakeholder consultation workshops - identifying additional stakeholders that should be consulted - ensuring draft versions of this SOP are reviewed and solution focussed feedback is provided within the specified timeframes - verifying that this SOP complies with procedures related to the business area - confirming that the Chief Superintendent/Commander responsible for Removals nationally supports the revised SOP.
Removals Superintendents Regional (Stakeholder)	- advising on policy and procedures relevant to the business area, including any changes - ensuring attendance of subject matter experts (SME) at stakeholder consultation workshops - identifying additional stakeholders that should be consulted - ensuring draft versions of this PI are reviewed and solution focussed feedback is provided within the specified timeframes - verifying that this PI complies with procedures related to the business area - notifying the responsible Regional Commander of procedural changes, as required.
Removal Officer (Stakeholder)	Responsible for: identifying the need for additions or amendments to this SOP and submitting the details to the Enforcement and Immigration Compliance Operational Policy Section

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Position/Role	Description
	- ensuring draft versions of this SOP are reviewed and solution focussed feedback is provided within the specified timeframes - complying with the instructions outlined in this SOP.

7. Version Control

Version number	Date of issue	Author(s)	Brief description of change
1	11/12/2018	Detention and Removal Operational Policy	Updated to reflect procedural instruction content and PPCF template (Archived version in ADD2012/206980)
2	24/07/2019	Detention and Removal Operational Policy	Critical Control Point (CCP) changed to MCP and minor edits
3	23/03/2021	Field and Removals Operational Policy	Update to align with MCP10 RAA text in the CCMD portal February 2020 release. Addition of question regarding Australian Indigeneity. Update to RAA sign-off level and minor edits.
4	21/02/2023	Enforcement and Immigration Compliance Operational Policy	Mandatory three year review. Transfer to current SOP template
5	24/09/2024	Enforcement and Immigration Compliance Operational Policy	Updated to include replacement of AAT by ART

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Attachment A – Definitions

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal reference guides, refer to [Removal from Australia - Glossary - SM \(BE-5509\)](#).

Term	Acronym (if applicable)	Definition
Certificate of Identity	COI	A type of travel document.
Compliance Case Management and Detention Portal	CCMD	The CCMD Portal is used by staff from a range of business areas to record and manage many visa compliance, case management, detainee data and departmental decisions.
Criminal Justice Certificate	CJC	A CJC is a short-term mechanism that prevents the involuntary removal of a non-citizen by the Department. The Department may consider whether an UNC meets the criteria for the grant of a CJV once an authorised official has issued a CJC. Criminal Justice Entry Certificates (CJEC) and Criminal Justice Stay Certificates (CJSC) are both CJCs.
Criminal Justice Stay Warrant	CJSW	A law enforcement agency may apply to the relevant criminal court for a CJSW to stay the non-citizen's removal in the interests of the administration of criminal justice. A CJSW has the same effect as a CJC.
Criminal Justice Visa	CJV	This is a class of temporary visas granted under Subdivision D of Division 4 of Part 2 of the Migration Act and has two types. The Criminal Justice Entry Visa (CJEV) permits a non-citizen to enter and remain in Australia temporarily. A criterion for a CJEV is a CJEC being in force. A Criminal Justice Stay Visa (CJSV) permits the holder to remain temporarily in Australia. A criterion for a CJSV is either a CJSC or a CJSW being in force.
Eligibility period		The period during which an appeal, such as merits review, may be lodged.
Environment detention		As defined in section 164A of the Migration Act, means detention under Schedule 1 to the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (the EPBC Act).
External Agency		An entity such as a stakeholder which interacts with the Department and may influence performance, but has no direct control.
Fit to Travel Assessment	FTT	A FTT is an assessment by a health professional to determine whether a person in detention is able to travel, primarily on an aircraft (commercial or charter) with or without support.

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Term	Acronym (if applicable)	Definition
Fisheries detention		As defined in section 164A of the Migration Act, this means detention under: - Schedule 1A to the <i>Fisheries Management Act 1991</i> (Fisheries Management Act) or - Schedule 2 to the <i>Torres Strait Fisheries Act 1984</i> (Torres Strait Fisheries Act)
Fisheries officer		Under subsection 5(1) of the Migration Act, means an officer as defined under the Fisheries Management Act or the Torres Strait Fisheries Act.
Illegal Foreign Fisher	IFF	A non-citizen who is detained under Schedule 1A to the <i>Fisheries Management Act 1991</i> or Schedule 2 of the <i>Torres Strait Fisheries Act 1984</i> . In this PI, the term is also used to refer to an 'IFF' who held an enforcement visa that ceased and who subsequently requests removal under the Migration Act.
Immigration detention		Immigration detention means: (a) being in the company of, and restrained by: (i) an officer; or (ii) in relation to a particular detainee—another person directed by the Secretary or Australian Border Force Commissioner to accompany and restrain the detainee; or (b) being held by, or on behalf of, an officer: (i) in a detention centre established under this Act; or (ii) in a prison or remand centre of the Commonwealth, a State or a Territory; or (iii) in a police station or watch house; or (iv) in relation to a non-citizen who is prevented, under section 249, from leaving a vessel—on that vessel; or (v) in another place approved by the Minister in writing; but does not include being restrained as described in subsection 245F(8A), or being dealt with under paragraph 245F(9)(b). This means detention under: - subsection 189(1) of the Migration Act and - subsection 250(2) of the Migration Act also allows for the detention of suspected offenders. For the purposes of section 189 of the Migration Act, an officer has a suspicion described in that section about a person if, but not only if, the person is a non-citizen who: - travelled, or was brought, to the migration zone; and - is believed, by an authorised officer on reasonable grounds, to have been on board a vessel (not being

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Term	Acronym (if applicable)	Definition
		an aircraft) when it was used in connection with the commission of an offence against a law in force in the whole or any part of Australia.
Integrated Client Services Environment	ICSE	The processing system used to record and process citizenship, sponsorship and nomination applications and a multitude of onshore and offshore visa applications.
Involuntary removal		In the context of removal from Australia, section 198 of the Migration Act removal powers, with the exception of subsection 198(1) of the Migration Act, are involuntary powers. Involuntary does not exclusively refer to a person's attitude to removal.
Mandatory Control Point	MCP	Part of the Status Resolution System Control Framework 'Control Framework' consisting of a number of identified decision points in the compliance pathway. The decision points represent a significant level of risk to decision makers, non citizens, detainees, the Department and other stakeholders.
Migration zone		As defined in subsection 5(1) of the Migration Act, means the area consisting of the States, the Territories, Australian resource installations and Australian sea installations and, to avoid doubt, includes: (a) land that is part of a State or Territory at mean low water; and (b) sea within the limits of both a State or a Territory and a port*; and (c) piers, or similar structures, any part of which is connected to such land or to ground under such sea; but does not include sea within the limits of a State or a Territory but not in a port. * "Port" means a port appointed under section 15 of the Customs Act or a port appointed under section 5 of the Migration Act (see section 5 of the Migration Act), as far as relevant.
Passport	PPT	A type of travel document
Removal Availability Assessment	RAA	The key tool in determining whether a person is liable and available for removal and other removal administrative requirements. The RAA prompts the assessing officer to consider both legislative and policy issues related to removal through a series of factual and procedural-related questions.

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Term	Acronym (if applicable)	Definition
Suspected Foreign Offender	SFO	A non-citizen who is detained under Schedule 1 of the EPBC Act. In this SOP, SFO is referred to as 'IFF' for consistency.
Travel Document	TD	An identity document issued by a government or international treaty organisation to facilitate the movement of individuals or small groups of people across international boundaries, such as a passport.
Unlawful non-citizen	UNC	<u>Section 14</u> of the Migration Act defines an UNC as a non-citizen in the migration zone who is not a lawful non-citizen. A person may be an UNC if they entered Australia without being immigration cleared (for example, without a visa), or entered lawfully on a visa that has either subsequently ceased and has not been replaced with another visa, or has been cancelled since the person entered Australia.

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Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

The contents of this table are a guide to powers and conditions contained in section 198 of the Migration Act. When considering use of a specific power, Removal Officers are advised to refer to the legislative text.

Legislative Provision			Is this power delegated?	If delegated, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
Migration Act 1958	subsection 198(1)	officer's power to remove an unlawful non-citizen who asks the Minister in writing to be removed	No	N/A
	subsection 198(2)	officer's power to remove an unlawful non-citizen who has not been immigration cleared and has not made a valid application for a substantive visa or has made a valid application and that application has been finally determined (for example, an IMA, irregular air arrival or turnaround removal) [refer to subparagraphs 193(1)(a)(i), (ii) or (iii)]	No	N/A
	subsection 198(2)	officer's power to remove an unlawful non-citizen who held an enforcement visa that has ceased to be in effect and has not been a lawful non-citizen since the enforcement visa ceased to be in effect, and has not applied for a substantive visa or has applied but the application has been finally determined (for example, illegal foreign fishers) [refer to subparagraphs 193(1)(d)]	No	N/A
	subsection 198(2A)	officer's power to remove an unlawful non-citizen who the Minister has personally refused to grant a visa, or has cancelled a visa, under	No	N/A

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Legislative Provision			Is this power delegated?	If delegated, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
		sections 501, 501A, 501B or 501BA		
	subsection 198(2B)	officer's power to remove an unlawful non-citizen whose visa has been mandatorily cancelled by a delegate of the Minister (as opposed to the Minister personally) under subsection 501(3A) and has not applied for a substantive visa and who either did not seek revocation within the timeframe, or was not successful in getting the cancellation of their visa revoked	No	N/A

1.2 Controls and Assurance

Related Policy	<u>Best Interests of the Child - PS (DM-5721)</u>
	<u>Best Practice for Interacting with Children - PI (BC-764)</u>
	<u>Removal from Australia – Removal of minors and families PI (BE-5505)</u>
	<u>Child Safeguarding Framework - PS (BE-916)</u>
	<u>Immigration Compliance and Status Resolution Framework – PS (SM-5122)</u>

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Procedures / Supporting Materials	<u>Administrative Appeals Tribunal review of Part 5-reviewable decisions - Guide for primary decision makers - PI (VM-1803) - PI (VM-1803)</u> <u>Citizenship Assessment Tool A - Person of Interest born in Australia - SM (VM-6436)</u> <u>Citizenship Assessment Tool B - Person of Interest born in Papua or New Guinea prior to 16/9/1975 - SM (VM-6437)</u> <u>CJC written message to detainee ADD2018/2001832</u> <u>Communication guide: (detainees subject to a Criminal Justice Stay Certificate) ADD2019/5653258</u> <u>Detention Services Manual - Illegal Foreign Fishers - enforcement visa - PI (BE-628)</u> <u>Detention Services Manual – Illegal Foreign Fishers – Illegal Foreign Fishers-PI (DM-590)</u> <u>Notification Requirements - PI (LS-1818)</u> <u>ON2019-27 Criminal Justice Stay Certificates (CJSCs) Request for removal process ADD2019/6353103</u> <u>ON2020-27 Managing a detainee who may be of Aboriginal and/or Torres Strait Islander Indigeneity ADD2020/4639457</u> <u>Removal Availability Assessment Guide - Illegal Maritime Arrival - SM (BE-6158)</u> <u>Removal Availability Assessment Guide - Onshore Compliance - SOP (BE-6157)</u> <u>Removal from Australia – Commencing a removal - PI (BE-5490)</u> <u>Removal from Australia Glossary - SM (BE-5509)</u> <u>Removal from Australia – Impediments to removal - PI (BE-5495)</u> <u>Removal from Australia - Removal Availability Assessment - PI (BE-5503)</u> <u>Removal from Australia – Removal notification - PI (BE-5504)</u> <u>Removal from Australia – Removal of minors and families – PI (BE-5505)</u>
Training/Certification or Accreditation	Recommended training available from the learning catalogue in 'Our People' Determining Immigration Status -COURSE ILT-PI-ROLE-DIS Status Resolution Foundations -COURSE ILT PI-ROL-SRFS
Other required job role requirements	Removals - Integrated Job Role Profile (ADD2019/1248242)
Other support mechanisms	Legal Opinions Helpdesk - s. 22(1)(a)(ii)@homeaffairs.gov.au National Removals - s. 22(1)(a)(ii)@abf.gov.au Removals Operational Policy (Connected Services Portal) Removals Operational Policy - s. 22(1)(a)(ii)@abf.gov.au

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Escalation arrangements	Legal Opinions Helpdesk - s. 22(1)(a)(ii)@homeaffairs.gov.au National Removals - s. 22(1)(a)(ii)@abf.gov.au Removals Operational Policy - s. 22(1)(a)(ii)@abf.gov.au
Recordkeeping	Compliance, Case Management and Detention (CCMD) Portal Integrated Client Service Environment (ICSE) <u>Official Diaries and Notebooks – PI (BE-2978)</u> TRIM
Program or Framework	<u>Immigration Compliance and Status Resolution Framework – PS (SM-5122)</u> <u>Status Resolution System Control Framework - PS (BC-763)</u>
Job Vocational Framework Role	Removals - Job Role Code 30000498

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Attachment C – Consultation

1.1 Internal Consultation

- ABF College
- ACT Operational Command
- Case and Incident Management Systems
- Character and Cancellation Program Management
- Character Integrity and Identity Policy
- Child Wellbeing Operations
- Complex Identity Advice
- Detention Operational Policy
- Employee consultation as per clause 1.7 of the Department of Home Affairs Workplace Determination 2019
- Enforcement South (Removal Operations SA)
- Field and Removals Operations WA
- Field and Removals Operations QLD
- Field Operations and Removals Operations Vic/Tas
- Freedom of Information
- Human Trafficking and Criminal Justice Programmes
- Humanitarian Policy
- Integrity Strategy and Policy Section
- Legal Group
- Ministerial Intervention Section
- National Removals
- Panels Grants and Corporate Contracts
- Privacy and Information Disclosure Section
- Removal Operations NSW
- Status Resolution Program Management and Capability
- Status Resolution Operational Coordination
- Status Resolution, Returns and Removals Policy
- Transport Security Operations

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Removal Availability Assessment Guide – Unauthorised Maritime Arrivals

Standard Operating Procedure

Document ID (PPN)	BE-6158
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Document Contact	Enforcement and Immigration Compliance Operational Policy Section s. 22(1)(a)(ii) @abf.gov.au

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1. Purpose

This Standard Operating Procedure (SOP) is designed to assist Removal Officers to complete the Removal Availability Assessment (RAA) for Unauthorised Maritime Arrivals (UMA), under section 198 of the *Migration Act 1958* (the Migration Act). This SOP provides guidance on identifying those UMAs:

- who meet the meaning of **unauthorised maritime arrival** in section 5AA of the Migration Act; and
- who require an exemption to the operation of section 198AD of the Migration Act (taking unauthorised maritime arrivals to a regional processing country (RPC)), so that they can be lawfully removed under section 198.

This SOP for UMAs provides guidance on facts that need to be established for two questions specific to UMAs within the RAA.

2. Scope

2.1. In scope

This SOP applies to an UMA that is a non-citizen who enters Australia by sea and because of that entry becomes an unlawful non-citizen, and is not an excluded maritime arrival.

2.2. Out of scope

This SOP does not apply to persons intercepted and detained under the *Maritime Powers Act 2013* (MPA), with exclusion from this SOP continuing throughout their return process, **including if the person detained under the MPA is in, or subsequently enters, the migration zone.**

Removal Officers should refer to the Removal Availability Assessment Guide – Onshore Compliance (BE-6157) in completing 'standard' RAA questions contained in this modified RAA for UMAs.

3. Removal Availability Assessment

3.1. Background

The RAA is the key tool in determining and confirming whether an unlawful non-citizen (UNC) is liable and available for removal under section 198 of the Migration Act. Forming Mandatory Control Point (MCP) 10 of the Status Resolution System Control Framework (BC-763), this tool is generated in the Compliance, Case Management and Detention (CCMD) portal when the Removals Officer accepts a removal referral. The Removal Officer updates and completes removal liability and availability checks during the course of removal planning and management. There are three online RAA profiles designed according to the mode of the removee's arrival in Australia:

- the standard onshore compliance RAA;
- an RAA for a person who is an UMA, as defined under section 5AA of the Migration Act; and
- an RAA for an Illegal Foreign Fisher (IFF) leaving voluntarily.

There are standard RAA questions, and two (2) questions specific to UMAs that are addressed in this guide. In relation to identity, it may be difficult to establish the nationality or identity of an UMA. Many arrive undocumented or they may provide false information about their identity and/or nationality. UMAs may need to be referred to Identity & Biometrics to establish their identity/nationality. Removals Officer can seek advice as to whether a case is sufficiently complex to warrant referral to Complex Identity Advice by contacting the Complex Identity Advice Helpline on 03 9235 3756 (8am to 7pm AEST Monday to Friday) or by emailing them at S. 22(1)(a)(ii) @homeaffairs.gov.au.

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A person is a UMA in accordance with the meaning set out in section 5AA of the Migration Act. The UMA RAA's intent is to identify those persons meeting the definition of an UMA, and to ensure that the relevant legislative provisions are correctly applied according to an individual's date and place of arrival to effect their removal. Key legislative provisions relate to liability for transfer to a RPC and the bar on making a valid visa application (which can be lifted by the Minister).

Guidance on the appropriate RAA to complete for different UMA cohorts is included below.

The additional questions in the UMA RAA are designed to identify UMAs who have:

- been screened out of the refugee status assessment (RSA) process; and
- arrived in Australia after 13 August 2012 and are liable for transfer to an RPC (and thus, unable to be removed under section 198 of the Migration Act, unless they have been exempted from being liable for transfer to an RPC).

All RAAs are completed in the CCMD portal. Removal Officers can access all current user guides in CCMD via the Application Menu->Help->Guides Training and Support and [CCMD SharePoint](#) Returns & Removals site.

Removal Officers will also need to be aware of and refer to the [Best Interests of the Child - PS \(DM-5721\)](#) and the [Best Practice for Interacting with Children - PI \(BC-764\)](#) when reading this SOP.

3.2. Key requirements

RAA questions are designed to ensure that the relevant removal power in section 198 of the Migration Act is identified and to ensure that the UMA is:

- liable for removal; and
- available for removal (removal is practicable).

In responding to each question, Removal Officers should keep in mind that any RAA recommendations to an approver should be documented with evidence. This establishes the UMA's liability and availability for removal. Once the RAA is completed, the Removals Officer submits it in the CCMD portal for review and approval. Authority to approve/sign-off an RAA is assigned to officers at the Commander (Senior Executive Service Band 1), Chief Superintendent (Executive Level 2.1), Superintendent (Executive Level 2) and Inspector (Executive Level 1) levels, with the intent of providing senior officer oversight of the inherent risks associated with an UMA's removal.

Discretion to refer approval to a more senior officer is available to all officers when the circumstances of the case present sensitivities or complexity that warrant escalation.

If Removal Officers require further advice about completing the RAA, discuss the matter with their supervisor in the first instance. If further advice is required, email [S. 22\(1\)\(a\)\(ii\) @abf.gov.au](#).

Independent thinking

When preparing RAAs, Removal Officers should demonstrate to the approver that they have independently considered a case rather than relying on past checks and assurances provided by other officers in relation to the UMA. This will provide documentary evidence that a Removal Officer has carefully considered the case against the relevant legislative provisions, should the lawfulness of the removal ever come into question.

Suggestions in the RAA text example tables are not prescriptive. The Removal Officer's input into each RAA question should be considered on a case by case basis and reflect the person's circumstances.

Matters that Removal Officers need to turn their minds to in answering RAA questions are discussed in the [Common Facts](#) section of this SOP.

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Supporting documentary evidence

The evidence that supports the officer's input into each question may vary depending on the UMA's circumstances, and evidence provided can be used to support input into more than one question. Removal Officers should ensure that they use the most up to date evidence about the UMA, to ensure the Removal Officer has the 'knowledge' that the detainee is both liable and available for removal.

Removal Officers are not required to list every piece of evidence that they considered for each item on the RAA. Instead, they may select the most appropriate evidence available. The types of supporting evidence, listed in this SOP, are intended as a guide only and Removal Officers should consider evidence based on its usefulness in each case.

All supporting documentary evidence provided must be relevant and contemporary at the time that the RAA is prepared and attached to the CCMD portal in a TRIM link.

Documentation

Removal Officers collating supporting evidence in a PDF RAA attachment should number the pages. System screen dumps should also include a date stamp. Regional removal teams using other methods of reporting evidence should follow local arrangements in place for these processes.

Note: Referencing supporting evidence by page number will assist the RAA approver, for example, 'See pg1 Passport (PPT), pg5 Located Person Interview (LPI), and pg2-3 Integrated Client Services Environment (ICSE)'.

Multiple UMA RAA

In some circumstances, such as removal operations for UMAs, multiple persons are entered into one RAA in the Removals Service of the CCMD portal. In this case, attachments may be grouped by type and not by person. For example, when answering the identity question, all UMA travel document (TD) copies can be saved to Attachment A; all UMA Mainframe print screens to Attachment B and so on. The resulting multiple attachments may be ordered either alphabetically or numerically, so long as it is sequential.

4. Questions specific to the UMA RAA

4.1. Select legislative basis for removal

In addition to the standard RAA questions, there are an additional two (2) questions specific to UMAs. The Migration Act requires that certain UNCs be removed from Australia as soon as reasonably practicable. When responding to the first (general) CCMD portal RAA question '*Which subsection under section 198 of the Migration Act is the removee being assessed under for removal?*' the Removal Officer must identify and select the subsection of section 198 of the Migration Act that applies to the UMA's circumstances.

Refer to [Attachment B](#) – Powers and Obligations to assess which subsection of section 198 of the Migration Act applies to the UMA's circumstances.

Once the Removal Officer has selected the subsection that applies, the following UMA specific questions must be answered.

4.2. Question 1- UMA status

Is the removee an UMA as defined in section 5AA of the Migration Act? For guidance, refer to BE-6158 in the Policy and Procedure Control Register (PPCR).

Facts to be established:

1. *whether the person meets the definition of an UMA as defined in section 5AA; and*
2. *was the UMA screened into the RSA or RPC processing arrangements.*

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The delegate will be seeking assurance that the person meets the definition of an UMA, as defined under section 5AA of the Migration Act.

Background**Protection claims assessment**

Many UMAs have come to Australia seeking asylum / Australia's protection. Based on the information provided by UMAs to officers and in-country information held by the Department, a determination was made in relation to whether the UMA was screened into a process for having their protection claims assessed. UMAs screened out of such processes are refused immigration clearance and removed from Australia.

Cohorts

Reforms in migration legislation on 12 August 2012, 1 June 2013, 1 January 2014 and 12 October 2015 have resulted in cohorts within the UMA population that are subject to differing PV application requirements or transfer to RPC arrangements. A number of cohorts have emerged as a result of the legislative changes and associated policy settings.

- Those who arrived by boat at an excised offshore place after the time that place was excised but before 13 August 2012. UMAs in this cohort are not liable for transfer to an RPC under section 198AD and have had their protection claims assessed in Australia either through a protection visa process or an earlier process (such as Refugee Status Assessment or Protection Obligations Determination).
- Arrivals on or after 13 August 2012 but before 1 January 2014 and who were not taken to an RPC are subject to the fast track assessment process (but see also the cohort set out in legislative instrument 2016/10, which designates some UMAs taken to a RPC as still coming within the fast track process). Those subject to fast track assessment process were referred to the Minister for lifting the bar under section 46A of the Migration Act, allowing assessment of their protection claims onshore through the protection visa application process. If Australia's protection obligations have been found not to be engaged through that process for the UMA and the visa application is 'finally determined', that UMA is subject to removal under section 198 of the Migration Act. In answering question 1, you will need to reply yes to UMA status and yes to the screening in process. Evidence of the protection visa application being 'finally determined' should be included/attached here.
- Persons who enter Australia (including at an offshore excised place) on or after 1 January 2014 (or who arrived prior to that but are not in the cohort above, that is, those who have a finally determined visa application assessed through the fast track process) and meet the definition of an UMA, are liable for transfer to an RPC pursuant to section 198AD of the Migration Act and cannot be removed from Australia (subsection 198(11)). The Minister must determine under section 198AE that section 198AD does not apply to them for the removal under section 198 to lawfully to progress.
- Direct Entry Persons (that is those IMAs who arrived on the Australian mainland, rather than at an excised offshore place, before 1 June 2013) do not meet the definition of an UMA. However, the UMA RAA should be used for this cohort.
- Excluded maritime arrivals are excluded from the definition of UMA. This cohort includes New Zealand citizens who hold and produce an in force New Zealand passport, a non-citizen who holds and produces an in force passport and who is ordinarily resident on Norfolk Island, and other persons included in a prescribed class of persons (persons who enter Australia and hold and produce an ETA-eligible passport, or are included in that ETA-eligible passport— see regulation 1.15J and 1.11B of the Migration Regulations).

Note that a cohort of UNCs who are affected by the judgement of the Full Federal Court in DBB16 are not UMAs. To prevent a risk of unlawfully removing persons who have made a valid application for a substantive visa that has not been finally determined, refer to the Operational Notification - ON2019 - 05 Implications of the Federal Court judgement in DBB16 for instructions.

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Apprehension notes and movement records in ICSE

Compliance Client Interview (CCI)/Located Persons Interview (LPI)

Records of interview held in TRIM

RAA text options

No

<Name>arrived at<place>on<date>and does not meet the section 5AA Migration Act definition of a UMA

Yes

<Name>arrived at<place>on<date>and is an UMA according to the Migration Act

<Name>was screened out/in of refugee status assessment

<Name>protection claims assessment was finalised on<date>

<Name>has signed a request for removal (RfR) and withdrawn all former protection claims

See page # ICSE and page # RfR

4.3. Question 2- Section 198AE exemption

Is the removee an UMA who arrived on or after 13 August 2012? If yes, an exemption to a Regional Processing Country transfer under s198AE of the Migration Act may be required. For guidance, refer to BE-6158 in the PPCR.

Facts to be established:***Whether the UMA***

- *meets the definition of an UMA but arrived before 13 August 2012, or is a UMA by operation of subsection 5AA(1A) or (1AA) and whose parent arrived before 13 August 2012.*
- *meets the definition of an UMA, and arrived on or after 13 August 2012.*
- *falls within a determination made by the Minister under section 198AE that a class of persons are exempt from regional processing under section 198AD (blanket determination), or*
- *does not fall within a blanket determination, but a submission has been put to the Minister, who has exercised their power under section 198AE power to exempt them from regional processing under section 198AD, or*
- *is a fast track applicant and their application for a Protection Visa is finally determined.*
- *is exempt from regional processing due to the operation of sections 198AF or 198AG.*

Legislative Background

UMAs who arrived on or after 13 August 2012 are liable for transfer to an RPC by effect of section 198AD of the Migration Act.

If an UMA is liable for transfer to an RPC under section 198AD, removal powers under section 198 of the Migration Act are not available (see subsection 198(11)), unless one of the following provisions applies:

- section 198AE – if the Minister thinks that it is in the public interest to do so, the Minister may, in writing, determine that section 198AD does not apply to an UMA;
- section 198AF – section 198AD does not apply to an UMA if there is no RPC;

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- section 198AG – section 198AD does not apply to an UMA if the RPC, or each RPC (if there is more than one such country), has advised an officer, in writing, that the country will not accept the UMA.

On 30 November 2022, the Minister exercised their power under section 198AE to make a 'blanket determination' that section 198AD does not apply to the following class of UMA:

- if he or she was not a person to whom section 198AD applied, would be a person to whom subsection 198(1) would apply in that he or she has an extant request in writing to the Minister to be removed from Australia; and
- has a right of entry to the country to which he or she has asked to be removed, which the Department is satisfied can be exercised; and
- has not made, or has withdrawn any claims seeking Australia's protection; and
- remains cooperative to the Department's satisfaction in all aspects necessary to effect their removal.

If an UMA meets all four criteria in the Minister's determination, section 198AD no longer applies, which makes section 198 removal powers available. However, if an UMA who is liable for transfer to an RPC under section 198AD does not meet the criteria above, then the UMA can be exempt from regional processing if the Minister decides to exercise the power in subsection 198AE(1) to make a determination that section 198AD does not apply to the UMA. This is done by way of Ministerial submission and the Minister making the section 198AE determination in writing.

This determination would then allow section 198 removal powers to become available.

Transitory persons are UMAs who have been transferred to a RPC and have been brought to Australia for a temporary purpose. Section 198 removal powers are not available unless the Minister has exempted them from regional processing.

Submissions for section 198AE ministerial requests are generally completed by the relevant regional removal network. For guidance on section 198AE MI requests, refer to the [Removal officer guide for preparing a s198AE ministerial submission - SM \(BE-5566\)](#).

Cohorts where a section 198AE exemption is not required for removal

- Pre 13 August 2012 - UMAs who arrived before 13 August 2012 are not subject to regional processing because section 198AD does not apply to them.
- Finally Determined Fast Track applicants - a fast track applicant as defined in subsection 5(1) of the Migration Act, are UMAs who are subject to regional processing pursuant to section 198AD of the Migration Act, but have had their protection claims assessed in Australia.
- Where section 198AD did not apply to the UMA by operation of section 198AF or section 198AG. See Background at section 4.3.

How to establish the facts

Check ICSE and the CCMD portal to establish if the person is an UMA.

- What was the date of arrival in Australia?
- Where was the place of arrival?

If the arrival was before 1 June 2013, was it at an excised offshore place

- Did the person enter Australia by sea?
- Is the person an excluded maritime arrival?

Check ICSE, the CCMD portal and TRIM files for any record of section 198AE exemption.

- Does a blanket section 198AE determination apply to this person?

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- Has this UMA had a section 198AE MI request made on their behalf and what was the result?
- Has the UMA signed a request for removal?
- Is the UMA cooperating with the removal process (i.e. assisting the Department with TD acquisition)?

Kinds of documentary evidence that may be used

- Signed request for removal from Australia for the purposes of subsection 198(1) of the Migration Act;
- Evidence to show that the UMA is cooperating with the Department to facilitate their removal, which includes the UMA providing necessary information and documentation to obtain a TD;
- If the UMA does not fall within a blanket determination, a determination made under section 198AE signed by the Minister, that exempts the person from section 198AD of the Migration Act. Reference MI submission number in RAA text;
- If the UMA is part of the fast track cohort, screenshot of the ICSE permission request showing the application for a Protection Visa is finally determined;
- Evidence to show the UMA was not liable for transfer to an RPC under section 198AD due to place and date of arrival. For example, ICSE screenshots and TRIM arrival records.

RAA text options

No to "Is the removee an UMA as defined in section 5AA of the Migration Act"?

<Name> arrived by sea at <place> on <date> and does not meet the definition of an UMA and is not liable for transfer to RPC.

or

Yes to "Is the removee an UMA as defined in section 5AA of the Migration Act"?

<Name> arrived by sea at <place> on <date> and <Name> meets the definition of an UMA.

<Name> signed a request for removal on <date> and complies with all criteria of the Minister's blanket determination exempting transfer to RPC. <Name> will be removed under subsection 198(1) of the Migration Act.

or

<Name> has not requested removal but the Minister intervened on <date> under section 198AE to exempt the removee from transfer to an RPC See ministerial submission number XXX

or

<Name> is a finally determined fast track applicant and an exemption from section 198AD is not required

or

<Name> an exemption to section 198AD is available by operation of section 198AF or section 198AG.

See page # RfR, ICSE

4.4. Privacy and Information Handling

The Department is bound by the Privacy Act 1988 (the Privacy Act) which provides the legislative framework for the management, collection, use and disclosure of both personal and sensitive information. Schedule 1 of the Privacy Act establishes the Australian Privacy Principles (APPs) which regulate how officers must handle a client's personal information, and covers the collection, accuracy, storage, access, modification, use and disclosure of the information.

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Officers dealing with information under this PI must be aware of the Department's obligations under the APPs and any other relevant Australian laws relating to information handling. This includes obligations under the Migration Act as well as the secrecy and disclosure provisions under the Australian Border Force Act 2015 (the ABF Act) where the information used as part of this PI contains Immigration and Border Protection (IBP) information.

For guidance on the application of the ABF Act and the Privacy Act, please contact

s. 22(1)(a)(ii) @homeaffairs.gov.au prior to collecting, handling or disclosing personal or sensitive information of individuals.

4.5. 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. Please refer to Freedom of information policy statement and procedural instructions on the PPCR, or contact the FOI team by emailing @homeaffairs.gov.au for more information.

5. RAA Sign-off level

Original source: Removal from Australia - Removal Availability Assessment - PI (BE-5503)

Original source: [Removal from Australia - Removal Availability Assessment Form 1 \(SES 0000\)](#)

Commander/SES Band 1 or Chief Superintendent	Removal Superintendent/EL2	Removal Inspector/EL1
All unaccompanied minors (UMAs)	All cases where an <i>informed request for removal</i> has been required (and signed by the UMA) as part of the pre-removal clearance referral process	All UMAs who request removal in writing in line with subsection 198(1) of the Migration Act and are cooperating with efforts to remove them from Australia (i.e. voluntary removals) and who do not meet EL2 or SES criteria
All section 200 deportations	All removal of people who have not requested removal in writing in line with subsection 198(1) of the Migration Act or who are otherwise uncooperative with efforts to remove them from Australia (i.e. involuntary removals).	* Any sensitive and/or high profile cases can be escalated to the next level of approving officer
All section 199/section 205 requests for removal of citizen/ lawful family members of UMAs	* Any sensitive and/or high profile cases can be escalated to the next level of approving officer	
All cases where Child Wellbeing Operations has recommended senior level oversight of a removal including minors (through a Best Interests of the Child Consideration)		
All cases where mental health or intellectual incapacity affects decision-making ability (as advised by the Department's contracted detention health services provider)		

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6. Accountabilities and Responsibilities

For Removal Officer responsibilities, refer to Removals - Integrated Job Role Profile (ADD2019/1248242).

Position/Role	Description
Commander: ABF Workforce Capability (Document Owner)	Responsible for: • endorsing/approving Field and Removal Operations Procedural Instructions and SOPs • verifying appropriate stakeholder consultation was undertaken during document drafting.
Superintendent: Enforcement and Immigration Compliance Operational Policy Section	Responsible for: • directing regular evaluation of this SOP to ensure that it still achieves its intended purpose • determining whether this SOP requires editing or should be made obsolete • monitoring change and amendments to legislation or other legal requirements, policy, business operations or risk profiles that may affect this SOP.
Removals Operational Policy Team Enforcement and Immigration Compliance Operational Policy Section (Document Drafter)	Responsible for: • drafting this SOP in compliance with the Policy and Procedure Control Framework (PPCF) • undertaking stakeholder consultation • addressing key requirements of the policy or procedure.
Superintendent: National Removals (Stakeholder)	Responsible for: • advising this SOP's author on policy and procedures relevant to the business area, including any changes • ensuring attendance of subject matter experts (SME) at stakeholder consultation workshops • identifying additional stakeholders that should be consulted • ensuring draft versions of this SOP are reviewed and solution focussed feedback is provided within the specified timeframes • verifying that this SOP complies with procedures related to the business area • confirming that the Chief Superintendent/Commander responsible for Removals nationally supports the revised SOP.
Removal Officer (Stakeholder)	Responsible for: • identifying the need for additions or amendments to this SOP and submitting the details to the Enforcement and Immigration Compliance Operational Policy Section

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Position/Role	Description
	- ensuring draft versions of this SOP are reviewed and solution focussed feedback is provided within the specified timeframes - complying with the instructions outlined in this SOP.

7. Version Control

Version number	Date of issue	Author(s)	Brief description of change
1	11/12/2018	Detention and Removal Operational Policy	PPCF update to version dated 12/09/2017
2	24/07/2019	Detention and Removal Operational Policy	Critical Control Point (CCP) changed to Mandatory Control Point (MCP). DBB16 explanation added
3	24/05/2022	Field and Removals Operational Policy	Updated onto new SOP template and 3 year mandatory PPCF review
4	10/02/2023	Enforcement and Immigration Compliance Operational Policy	Three year stakeholder and legal review completed
5	24/09/2024	Enforcement and Immigration Compliance Operational Policy	Updated to include replacement of AAT by ART

Attachment A – Definitions

For a comprehensive list of the terms and their accompanying definitions that have specific meaning in the context of the suite of removal reference guides, refer to [Removal from Australia - Glossary - SM \(BE-5509\)](#).

Term	Acronym (if applicable)	Definition
Blanket determination		Refer to Migration Act -Unauthorised Maritime Arrival-Determination 2022 section 198AE determination – 30 November 2022 Determination (blanket exemption to section 198AD)
Direct entry person		The policy term 'direct entry person' refers to an UMA who arrived in Australia by sea before 1 June 2013 and made their first entry at a place that was not an excised offshore place and is therefore not an UMA. Direct entry persons were not subject to transfer to an RPC transfer or barred from making a valid visa application. From 1 June 2013, a person arriving by sea anywhere in Australia, who is not an excluded maritime arrival and who becomes an unlawful non-citizen because of that entry, is an UMA.

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Excised offshore place		Means any of the following Territories: • Christmas Island (excision time 8 September 2001 at 2pm ACT time) • Ashmore and Cartier Islands (excision time 8 September 2001 at 2pm ACT time) • Cocos (Keeling) Islands (excision time 17 September 2001 at 12 noon ACT time) • The Coral Sea Islands Territory • Islands forming part of a State or Territory prescribed in regulation 5.15C • an Australian sea or resources installation
Excluded maritime arrival		A person who: • is a New Zealand citizen who holds and produces a New Zealand passport that is in force • is a non-citizen who: - o holds and produces a passport that is in force and - o is ordinarily resident on Norfolk Island or • is included in a prescribed class of persons (persons who enter Australia and hold and produce an ETA-eligible passport, or are included in that ETA-eligible passport—see regulations 1.15J and 1.11B) defined and 1.11B
Fast track applicant	FTA	Under the definition in subsection 5(1), a person will be a fast track applicant if they are an UMA as defined in section 5AA of the Migration Act: • who entered arrived in Australia on or after 13 August 2012 but before 1 January 2014; and • who has not been taken to a RPC; and • to whom the Minister has given a written notice under subsection 46A(2) determining that the prohibition on being able to make a valid application in subsection 46A(1) does not apply to an application by the person for a protection visa; and • who made a valid application for a Protection Visa in accordance with that determination Or • they are a person who is or is included in a class of persons specified by legislative instrument.
Finally determined		An application is finally determined defined under subsection 5(9) when a decision: • is no longer subject to review by the AAT/ Administrative Review Tribunal (ART) (Migration and Refugee Division) under Part 5 of 7; Note: From 14 October 2024, the AAT will be abolished and replaced with the Administrative Review Tribunal (ART). • was subject to review but the prescribed period to institute that review has ended; • is made on a PV application by an excluded fast track applicant.

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		If review of a decision made in respect of an application is instituted under Part 5, 7 or 7AA as prescribed, it is finally determined when a decision on the review is taken to have been made as provided by subsections: • 368(2) – written decisions about Part 5 reviewable decisions • 368D(1) – oral decisions about Part 5 reviewable decisions • 430(2) – written decisions about Part 7 reviewable decisions • 430D(1) – oral decisions about Part 7 reviewable decisions • 473EA(2) – Immigration Assessment Authority decisions
Ministerial intervention (submission)	MI	The Minister has non-delegable, non-compellable powers under several sections of the Migration Act to intervene in individual cases if the Minister thinks it is in the public interest to do so. When required, Removal Officers submit a section 198AE MI for a determination in writing that the <u>section 198AD</u> power to transfer an <u>UMA</u> to a <u>RPC</u> does not apply to a person.
Offshore entry persons	OEP	OEP was a term used in the Migration Act before 1 June 2013 to describe and is a person who entered Australia at an excised offshore place and who was unlawful as a result. A person who entered as an OEP was barred by subsection <u>46A(1)</u> of the Migration Act from making a valid application for a visa.
Regional processing country	RPC	A country designated by the Minister under subsection 198AB(1) of the Migration Act as a regional processing country.
Section 46A bar	s46A	A visa application made by an UMA that is prevented 'barred' from being a valid application under subsection 46A(1) of the Migration Act. However, the Minister may lift this 'bar' in a written determination for a specified visa class under subsection 46A(2).
Transitory person		A person who was taken to another country under repealed section 198A, or to an RPC under section 198AD, or taken to a place outside of Australia under paragraph 245F(9)(b) of the Migration Act or the child of a transitory person (see paragraphs (d) and (e) of the definition of transitory person in subsection 5(1) of the Migration Act)
Unauthorised maritime arrival	UMA	<u>Section 5AA</u> of the Migration Act provides that a person is an unauthorised maritime arrival if: • the person entered Australia by sea at an excised offshore place at any time after the excision time for that place; or • at any other place at any time on or after the 1 June 2013 commencement of the <i>Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013</i>; and • became an unlawful non-citizen because of that entry; and

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		• is not an excluded maritime arrival.
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Attachment B – Assurance and Control Matrix

1.1. Powers and Obligations

The contents of this table are a guide to powers and conditions contained in section 198 of the Migration Act. When considering use of a specific power, Removal Officers are advised to refer to the legislative text.

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>	subsection 198(1)	Officer's must remove an unlawful non-citizen who asks the Minister in writing to be removed	No	N/A
	subsection 198(2)	Officer's must remove an unlawful non-citizen who is covered by subparagraphs 193(1)(a)(i), (ii) or (iii), has not been subsequently immigration cleared, and has not made a valid application for a substantive visa that can be granted while the applicant is in the migration zone, or has made a valid application that can be granted while the applicant is in the migration zone and that application has been finally determined	No	N/A
	subsection 198(11)	An officer's power to remove an unlawful non-citizen under section 198 does not apply to an unauthorised maritime arrival to whom section 198AD applies – that is, to those UMAs liable for transfer to an RPC	No	N/A

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Legislative Provision			Is this power delegated?	If delegated, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
	section 198AD	Officer's obligation to take a UMA who is detained under section 189 from Australia to an RPC, unless the UNC is covered by subsection 198AD(2A)	No	N/A
	section 198AE	Minister's power to determine that obligation to take a UMA to a RPC under section 198AD does not apply to an UMA is exempt from transfer to a RPC under section 198AD	No	N/A
<i>Privacy Act 1988</i>	Schedule 1	Australian Privacy Principles	No	N/A

1.2. Controls and Assurance

Related Policy	<u>Best Interests of the Child - PS (DM-5721)</u> <u>Child Safeguarding Framework - PS (BE-916)</u> <u>Employment Screening for Child-related Roles - PS (DM-917)</u>
Procedures / Supporting Materials	<u>Best Practice for Interacting with Children - PI (BC-764)</u> <u>ON2019 - 05 Implications of the Federal Court judgement in DBB16</u> <u>Removal from Australia - Glossary - SM (BE-5509)</u> <u>Removal from Australia - Removal Availability Assessment - PI (BE-5503)</u> <u>Removal officer guide for preparing a s198AE ministerial submission - SM (BE-5566).</u>
Training/Certification or Accreditation	Recommended training available from the learning catalogue in 'Our People' Status Resolution Foundations -COURSE ILT PI-ROL-SRFS Determining Immigration Status -COURSE ILT-PI-ROLE-DIS
Other required job role requirements	Removals - Integrated Job Role Profile (ADD2019/1248242)

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Other support mechanisms	<u>Removals Operational Policy (Connected Services Portal)</u> Removals Operational Policy - s. 22(1)(a)(ii) @abf.gov.au National Removals - s. 22(1)(a)(ii) @abf.gov.au Legal Opinions Helpdesk - s. 22(1)(a)(ii) @homeaffairs.gov.au
Escalation arrangements	Removals Operational Policy - s. 22(1)(a)(ii) @abf.gov.au National Removals - s. 22(1)(a)(ii) @abf.gov.au Legal Opinions Helpdesk - s. 22(1)(a)(ii) @homeaffairs.gov.au
Recordkeeping	TRIM Compliance, Case Management and Detention (CCMD) Portal Official Diaries and Notebooks – PI (BE-2978)
Program or Framework	<u>Status Resolution System Control Framework - PS (BC-763)</u> <u>Immigration Compliance and Status Resolution Framework – PS (SM-5122)</u> <u>Status Resolution Systems Control Framework – Mandatory Control Points – SM (BC-6186)</u>
Job Vocational Framework Role	Removals - Job Role Code 30000498

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Attachment C – Consultation

1.1 Internal Consultation

- ABF College
- ACT Operational Command
- Case and Incident Management Systems
- Character and Cancellation Program Management
- Character Integrity and Identity Policy
- Child Wellbeing Operations
- Complex Identity Advice
- Detention Operational Policy
- Employee consultation as per clause 1.7 of the Department of Home Affairs Workplace Determination 2019
- Field and Removals Operations NT
- Field and Removals Operations QLD
- Field Operations and Removals Ops Vic/Tas
- Field and Removals Operations WA
- Freedom of Information
- Human Trafficking and Criminal Justice Program
- Humanitarian Policy
- Integrity Strategy and Policy Section
- Legal Group
- Ministerial Intervention Section
- National Removals
- Panels Grants and Corporate Contracts
- Privacy and Information Disclosure Section
- Removal Operations NSW
- Removal Operations SA
- Status Resolution Program Management and Capability
- Status Resolution Operational Coordination
- Status Resolution, Returns and Removals Policy
- Transport Security Operations

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